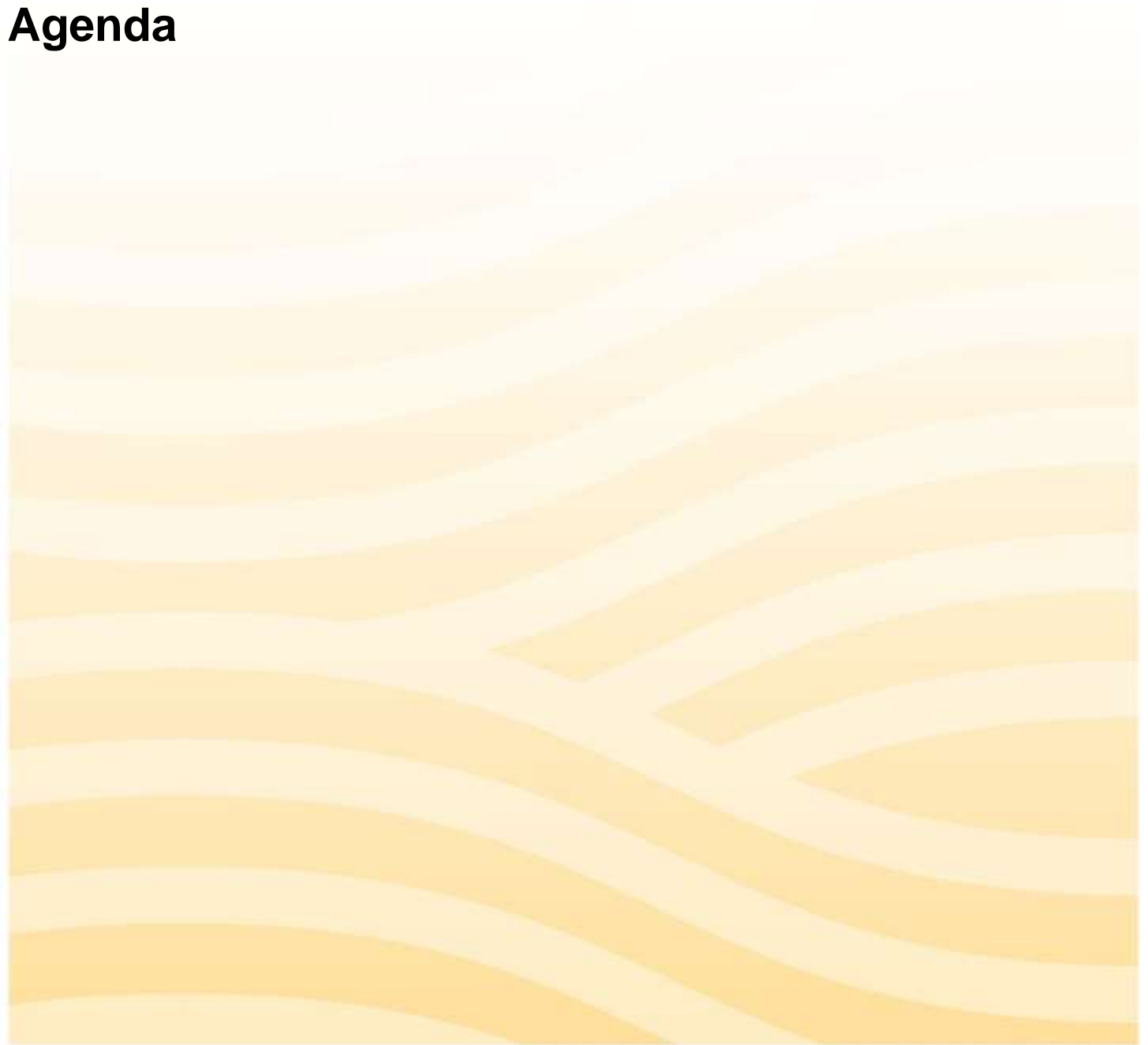




# Application Assessment Panel

Tuesday 6 February 2024  
3.00pm

## Agenda



## **Compliance with social distancing requirements to limit the spread of COVID-19 virus at Application Assessment Panel (AAP) Meetings:**

Woollahra Council will be holding Application Assessment Panel (AAP) meetings using conferencing technology.

The Chair of the Panel, members of the Panel and staff will be participating in meetings in person and members of the public are able to participate in the meeting by audio-visual link instead of attending in person.

Members of the public are invited to listen to meetings using conferencing technology or address the AAP meeting by conferencing technology. Public participation will be managed in accordance with meeting procedures.

- **To watch the meeting live listen to the meeting live at 3.00pm**  
Visit Council's website at 3.00pm and watch live via the following link:  
[https://www.woollahra.nsw.gov.au/council/meetings\\_and\\_committees/planning\\_panels/aap/aap\\_agendas\\_and\\_minutes](https://www.woollahra.nsw.gov.au/council/meetings_and_committees/planning_panels/aap/aap_agendas_and_minutes)
- **To request to address the Committee (pre-register by 12noon on the day of the meeting)**  
Pre-register to listen to the meeting live or request to address the Panel by 12noon on the day of the meeting by emailing your name, mobile number and the item you are interested in, to [records@woollahra.nsw.gov.au](mailto:records@woollahra.nsw.gov.au) or by contacting the Governance team on (02) 9391 7001.
- **To submit late correspondence (submit by 12noon on the day of the meeting)**  
Members of the public may submit late correspondence on an agenda item being considered at a Panel Meeting. If you wish to make a written submission on an Item on the Agenda, please email your submission to [records@woollahra.nsw.gov.au](mailto:records@woollahra.nsw.gov.au) by 12noon on the day of the meeting.

Once registered you will be forwarded information on how to join the meeting via email.

If you are experiencing any issues in joining the meeting please contact Council's Governance Team on (02) 9391 7001.

### **Outline of Meeting Protocol & Procedure (COVID-19):**

- The Chairperson will call the Meeting to order and ask the Panel/Staff to present apologies and/or late correspondence.
- The Chairperson will commence the Order of Business as shown in the Index to the Agenda.
- At the beginning of each item the Chairperson will ask whether a member(s) of the public wish to address the Panel.
- If person(s) wish to address the Panel, they are allowed three (3) minutes in which to do so. Please direct comments to the issues at hand.
- If there are persons representing both sides of a matter (e.g. applicant/objector), the person(s) against the recommendation speak first.
- At the conclusion of the allocated three (3) minutes, the speaker takes no further part in the debate unless specifically called to do so by the Chair.
- If there is more than one (1) person wishing to address the Panel from the same side of the debate, the Chairperson will request that where possible a spokesperson be nominated to represent the parties.
- After considering any submissions the Panel will debate the matter (if necessary), and arrive at a resolution.

### **Disclaimer:**

By speaking at the Application Assessment Panel (AAP) Meeting members of the public consent to their voice and personal information (including name and address) being recorded and publicly available on Council's website. Accordingly, please ensure your address to Council is respectful and that you use appropriate language and refrain from making any defamatory statements or discriminatory comments.

Woollahra Council does not accept any liability for statements, comments or actions taken by individuals during a Council meeting. Any part of the meeting that is held in closed session will not be recorded.

People connecting to this meeting by conferencing technology are reminded that under the *Local Government Act 1993*, the recording of meetings by a member of the public using any electronic recording device including a mobile phone or video camera is not permitted. Any person found recording without the permission of Council may be expelled from the meeting.

For further information please visit [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au)

**Application Assessment Panel Membership:** 1 Chair and 2 Panel Members

**Quorum:** 3 Panel members

# Woollahra Municipal Council

## Notice of Meeting

29 January 2024

To: Scott Pedder (Director Planning & Place) (Chair)  
Rosemary Bullmore (Manager Legal, Compliance & Enforcement)  
Tom O'Hanlon (Director Infrastructure & Sustainability)  
Craig Swift-McNair (General Manager)  
Anne White (Manager Strategic Planning & Place)

CC: The Mayor  
All Councillors

### Application Assessment Panel – 6 February 2024

In accordance with the provisions of the Local Government Act 1993, I request your attendance at Council's **Application Assessment Panel** meeting to be held in the **Thornton Room (Committee Room), 536 New South Head Road, Double Bay, on Tuesday 6 February 2024 at 3.00pm.**

Members of the public are advised that we will be holding Application Assessment Panel meetings remotely using conferencing technology (until further notice).

- Register to address the meeting (via Zoom) by completing the relevant form available on Council's website: [https://www.woollahra.nsw.gov.au/\\_data/assets/pdf\\_file/0012/279957/Registration-Form-to-Address-Planning-Panels-2023-2024.pdf](https://www.woollahra.nsw.gov.au/_data/assets/pdf_file/0012/279957/Registration-Form-to-Address-Planning-Panels-2023-2024.pdf) and email the completed form to [records@woollahra.nsw.gov.au](mailto:records@woollahra.nsw.gov.au) **by 12 noon day before the meeting.**
- Submit late correspondence for consideration by the Panel by emailing [records@woollahra.nsw.gov.au](mailto:records@woollahra.nsw.gov.au) **by 12 noon day before the meeting.**

Information on how to listen and/or address the Panel will be available on Council's website [https://www.woollahra.nsw.gov.au/council/meetings\\_and\\_committees/planning\\_panels/aap](https://www.woollahra.nsw.gov.au/council/meetings_and_committees/planning_panels/aap).

If you have any difficulties accessing the meeting please contact (02) 9391 7001.

Regards,

Craig Swift-McNair  
General Manager



# Application Assessment Panel Agenda

Item	Subject	Page
1.	Opening	
2.	Acknowledgement of Country (Gadigal People and Birrabirragal People)	
3.	Leave of Absence and Apologies	
4.	Declarations of Interest	
<b>Items to be Decided by this Committee using its Delegated Authority</b>		
D1	Confirmation of Minutes of Meeting held on 30 January 2024 - 24/14293.....	7
D2	DA300/2020/6 - 30-36 Bay Street Double Bay - 24/14419 .....	9
	<b>*See Recommendation Page 23</b>	



**Item No:** D1 Delegated to Committee  
**Subject:** **CONFIRMATION OF MINUTES OF MEETING HELD ON 30 JANUARY 2024**  
**Author:** Sue O'Connor, Governance Officer  
**File No:** 24/14293  
**Purpose of the Report:** The Minutes of the Application Assessment Panel of 30 January 2024 were previously circulated. In accordance with the guidelines for Committees' operations it is now necessary that those Minutes be formally taken as read and confirmed.  
**Alignment to Delivery Program:** Strategy 11.3: Ensure effective and efficient governance and risk management.

**Recommendation:**

THAT the Minutes of the Application Assessment Panel Meeting of 30 January 2024 be taken as read and confirmed.

---

**Executive Summary:**

This report presents the Application Assessment Panel Minutes of 30 January 2024 for confirmation.

**Options:**

Submission of minutes to the Application Assessment Panel is a procedural matter for the adoption of the minutes.

**Community Engagement and / or Internal Consultation:**

No internal or external consultation has taken place in the preparation of this report.

**Policy Implications:**

There are no direct policy implications as a result of this report.

**Financial Implications:**

There are no direct financial implications as a result of this report.

**Resourcing Implications:**

There are no direct resourcing implications as a result of this report.

**Conclusion:**

The minutes are presented for confirmation by the Application Assessment Panel.

**Attachments**

Nil





## SECTION 4.55 APPLICATION ASSESSMENT REPORT

<b>ITEM No.</b>	D2
<b>FILE No.</b>	DA300/2020/6
<b>ADDRESS</b>	30-36 Bay Street DOUBLE BAY
<b>ZONING</b>	E1 Local Centre
<b>EXISTING CONSENT</b>	Change of use to the ground floor premises from the approved retail shop to a new restaurant
<b>DATE OF CONSENT</b>	16/02/2021
<b>TYPE OF CONSENT</b>	Local development
<b>CONSENT AUTHORITY</b>	Woollahra Council
<b>PROPOSED MODIFICATION</b>	Modification to Conditions I.7 a) and I.23 a) relating to restrictions on window and door opening time
<b>TYPE OF MODIFICATION</b>	Section 4.55(1a)
<b>DATE S4.55 LODGED</b>	01/09/2023
<b>APPLICANT</b>	Fire & Embers Pty Ltd
<b>OWNER</b>	Bay Street JV Pty Ltd
<b>AUTHOR</b>	Mr B McIntyre
<b>TEAM LEADER</b>	Mr T Wong
<b>SUBMISSIONS</b>	Three (3) comprising of two (2) objections and one (1) letter of support
<b>RECOMMENDATION</b>	Approval

### 1. REASONS FOR RECOMMENDATION

The application has been assessed within the framework of the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979 and is recommended for approval because:

- The development consent as proposed to be modified, is considered to be substantially the same as the originally approved development;
- The proposed modifications satisfy section 4.55 of the Environmental Planning and Assessment Act 1979;
- It is considered to be satisfactory with all relevant planning policies including the objectives of WLEP 2014 and WDCP 2015;
- It will not have adverse effects on the local built and natural environment nor any adverse social and economic impacts in the locality;
- All likely impacts to adjoining properties including any submissions made have been addressed in the report, or are considered to be satisfactory;
- The site is suitable for the proposed development; and
- The proposed modifications are in the public interest

## SUMMARY

### 2. LOCALITY PLAN



Note: One submission received was a letter of support with no address provided

### 3. LEVEL OF DELEGATION

The application is to be determined by the Application Assessment Panel (AAP) as:

- It involves a modification application under s4.55 (1A) of the Act, which seeks to modify and/or delete conditions of consent which were previously imposed by the AAP.

### 4. SUMMARY OF APPROVED DEVELOPMENT

The approved development was for the *change of use to the ground floor premises from the approved retail shop to a new restaurant*. The AAP approved the DA on the 16<sup>th</sup> February 2021 with modifications to the originally recommended Condition I.7 and I.23 (among others).

**Annexure 1** is the relevant extract of Minutes of the AAP meeting of 16/02/2021.

**Conditions I.6** (in part), **I.7** and **I.23**, which are relevant to the currently proposed modifications, read as follows:

#### **“I.6 Neighbourhood Amenity – Licensed Premises (NSW Police requirements)**

*The Management of the premises:*

- a) *Shall ensure no patron to enter or depart the premises through the Bay Street access point after 9:00PM.*

....

### **I.7 Operation in Accordance with the Acoustic Report**

*The operation and management of the premises shall generally be in accordance with the approved Acoustic Report prepared by Acoustic Logic, referenced 20201241.2/1801A/R0/HC and dated 18/01/2021 (listed in Condition A.3) as provided below, where not conditioned elsewhere in this consent;*

- a) *All external windows and doors shall be closed, except for the entering and exiting of patrons/staff after 9pm every night, subject to Conditions I.6 a) and I.23, to minimise noise disruption to surrounding residential receivers.*
- b) *Amplified music within the venue is not to exceed a sound pressure level of 70 dB(A) L10 and an appropriate tamper proof noise limiter device shall be fixed to such equipment.*
- c) *External seating is not permitted. (Deleted on 15/7/2021)*
- d) *A prominent notice shall be placed within the premises to remind patrons to minimise the noise levels at any time.*
- e) *Signs are to be displayed at the entrance of the restaurant reminding patrons to minimise noise when departing the premise, especially after 9pm.*
- f) *Speakers are to be vibration isolated from the building structure by NRD type rubber mounts or equal.*

### **I.23 External Doors and windows**

*The external doors and windows must comply with the following requirements:*

- a) *All external doors and windows must be kept closed after 9:00 pm except for the ingress/egress of patrons and staff and subject to c) below;*
- b) *All external doors must be installed with self-closing devices; and*
- c) *No patrons are to enter or depart the premises through the doors on the Bay Street frontage after 9:00 pm”*

## **5. SUMMARY OF PREVIOUS SECTION 4.55 MODIFICATIONS**

- **DA 300/2020/2** was approved on 30 April 2021 for internal and external modifications to the approved restaurant and reduction of the maximum number of patrons.
- **DA 300/2020/3** was approved on 29 April 2021 for the deletion of **Conditions I.9(c) and (d)** relating to liquor consumption.
- **DA 300/2020/4** was withdrawn.
- **DA 300/2020/5** was approved on 15 July 2021 for the deletion of **I.7(c)** - Correction of error.

## **6. SUMMARY OF PROPOSED MODIFICATION**

The Section 4.55 application involves the modification to Conditions I.7 a) and I.23 a) relating to restrictions on window and door opening times.

## **7. ISSUES**

### **Primary Issues**

<b>Issue</b>	<b>Conclusion</b>	<b>Section</b>
Acoustic impacts	The submitted Acoustic report prepared by Acoustic Logic (Ref. 20230758.1/0108A/R0/JHT and dated 01/08/2023) was considered to be satisfactory by Council's Environmental Health Officer. The conclusion of the report states:	Throughout the report

Issue	Conclusion	Section
	<p><i>Acoustic Logic attended site on 21<sup>st</sup> July 2023 to take operational measurements – both internal and external – of the licenced premises operating at Shop 1/30-36 Bay Street (Margret). The measurements revealed that based on existing operational capacity, Margaret can achieve the noise emission objectives as conditioned by Woollahra Municipal Council with Windows open between 9pm – 10pm.</i></p> <p><i>It is expected that by allowing the windows to remain open between 9pm – 10pm, the ambient environment would remain as the prevailing noise level and the increase level experienced at nearby identified neighbours would be marginal.</i></p>	

### Summary of Submissions

Issue	Conclusion	Section
Acoustic impacts on adjoining residential receivers	Refer to 7.1 above	Throughout the report

## PROPERTY DETAILS AND REFERRALS

### 8. SITE AND LOCALITY

<b>Physical features</b>
The site is located on the south western corner of and has frontages to both Bay Street and Guilfoyle Avenue. The site is irregular in shape with a staggered rear boundary to the south west. It has boundary dimensions of 24.615m to Bay Street on its eastern side, 23.215m to Guilfoyle Avenue on its northern side and 22.53m and 25.045m on its southern and western side boundary respectively. The total site area is 767.2m <sup>2</sup> .
<b>Topography</b>
The site is relatively level.
<b>Existing buildings and structures</b>
The subject premises, currently occupied by a restaurant (Margaret), is located on the ground floor of a 6 storey contemporary commercial building. The building is highly visible from the public domain and is located within the Double Bay Commercial Centre.
<b>Surrounding Environment</b>
The subject site is located within the central section of Bay Street with Guilfoyle Park located directly opposite the site to the north.
Immediately adjoining to the south of the site is the Royal Oak Hotel, to the west is a commercial building that formed part of the previously approved development (No.2 Guilfoyle Ave) and to the rear are buildings which form part of a low-density residential precinct.
On the opposite and northern corner of Guilfoyle Avenue and Bay Street is a shop-top housing development. On the eastern side of Bay Street, diagonally opposite the Park to the north east, is a 2-storey mixed retail/commercial building. The Cosmopolitan Building is located directly opposite the site to the east.
The surrounding development comprises a mixture of commercial, retail, hotel, office, residential and places of public entertainment uses.



*Aerial view of the subject site*



*View of the subject site from the intersection of Bay Street and Knox Street*



*View of the Guilfoyle Avenue façade of the restaurant*



*View of the Bay Street façade of the restaurant*

## 9. RELEVANT PROPERTY HISTORY

<b>Current use</b>
Commercial/Retail
<b>Relevant Application History</b>
Refer to Sections 3 and 4 of this report for previous history relevant to the subject site.
<b>Relevant Compliance History</b>
Nil.
<b>Pre-DA</b>
Nil.
<b>Requests for Additional Information and Replacement Applications</b>
Nil.
<b>Land and Environment Court Appeal(s)</b>
Nil.

## 10. REFERRALS

Referral	Summary of Referral Response	Attachment
Environmental Health	Satisfactory, subject to conditions.	2

## ASSESSMENT UNDER SECTION 4.55

The application is assessed under Section 4.55 of the Environmental Planning and Assessment Act 1979.

### 11. SECTION 4.55(1A): MODIFICATION INVOLVING MINIMAL ENVIRONMENTAL IMPACT

Section 4.55(1A) allows the modification of a development consent where Council is satisfied that the proposed modification is of minimal environmental impact. The application involves modifications described in Section 6 above.

The considerations in Section 4.55(1A) require Council to address the following:

- a) *It is satisfied that the proposed modification is of minimal environmental impact - YES*
- b) *It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all) - YES*
- c) *It has notified the application in accordance with:*
  - i) *The regulations, if the regulations so require*
  - ii) *A development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent - YES*
- d) *It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be. - YES*

## ENVIRONMENTAL ASSESSMENT UNDER SECTION 4.15

The relevant matters for consideration under Section 4.15(1) of the Environmental Planning and Assessment Act 1979 include the following:

- (a) *the provisions of:*
- (i) *any environmental planning instrument, and*
  - (ii) *any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
  - (iii) *any development control plan, and*
  - (iiia) *any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
  - (iv) *the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
  - (v) *(Repealed)*

*that apply to the land to which the development application relates,*

- (b) *the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) *the suitability of the site for the development,*
- (d) *any submissions made in accordance with this Act or the regulations,*
- (e) *the public interest.*

## 12. ADVERTISING AND NOTIFICATION

### Submissions

The application was advertised and notified from **20 September 2023 to 5 October 2023** in accordance with Chapter 6 of the Woollahra Community Participation Plan 2019. Submissions were received from:

#### Support

1. **Michael Jarvin (resident of Double Bay)**, no address provided

#### Objections

1. **Janine Adams, Resident of Stamford Cosmopolitan**, 2-22 Knox Street, Double Bay
2. **Ingham Planning on behalf of Vera Boyarsky**, 7A/2-22 Knox Street, Double Bay

The submissions are acknowledged and the issues raised have been summarized in Section 6.2 of this report.

### Statutory Declaration

The applicant has completed the statutory declaration dated 18 January 2024 declaring that the site notice was erected and maintained during the notification period in accordance with Schedule 1 of the Woollahra Community Participation Plan 2019.

## 13. WOOLLAHRA LOCAL ENVIRONMENTAL PLAN 2014

The proposed modifications are limited to the extension of hours for which the windows to the ground floor restaurant (aka Margaret) are permitted to be open. The proposed modifications do not include any physical works to the approved building.



The proposed modifications satisfy all the relevant aims and objectives of the Woollahra LEP 2014 for reasons discussed throughout this report.

## **14. WOOLLAHRA DEVELOPMENT CONTROL PLAN 2015**

The proposed modifications are limited to the extension of hours for which the windows to the ground floor restaurant (aka Margaret) are permitted to be open. The proposed modifications do not include any physical works to the approved building.

Where relevant, an assessment against the relevant heads of consideration under the Woollahra DCP 2015 is provided below.

### **Chapter D5: Double Bay Centre**

#### **13.1.1 Part D5.1: Introduction**

##### Part D5.1.3: Objectives

The proposed modifications are consistent with relevant objectives in this Part of the DCP, for the reasons detailed throughout the report.

#### **13.1.2 Part D5.3: Urban Structure**

##### Part 5.3.2: Key Strategies

The relevant key strategy for the Double Bay Centre is to “*Ensure that the centre maintains its commercial viability and competitive position within the Sydney retail market*” by encouraging increased food and service retail uses.

The proposed modifications ensures the approved licensed restaurant (food and drink premises) achieves consistency with the relevant key strategy for the Double Bay Centre outlined in Part D5.3.2 of the Woollahra DCP 2015.

#### **13.1.3 Part D5.6: Development Controls**

The controls outlined in this part of the Woollahra DCP 2015 mainly relate to built form, site elements and external works. The proposed modifications relate only to operational conditions and do not involve any physical works to the built form. Notwithstanding, the proposal is assessed against the following relevant sections:

##### **Part D5.6.2 Use:**

The proposed modifications do not alter the use of the approved licensed restaurant (food and drink premises).

- The proposed modifications will ensure the prominence of this corner site and its frontage to Guilfoyle Park will continue to contribute to the character of the local centre which has activated the streetscape by offering food and beverage services.
- The approved licensed restaurant (food and drink premises) will continue to provide a vibrant and active ground floor use which has contributed to the diverse mix of uses within the Double Bay Centre and has created an attractive environment for visitors.
- The proposed modifications do not alter the approved built form.
- The proposed modifications, as conditioned, will ensure acoustic impacts on adjoining properties are mitigated.

The proposed modifications, as conditioned, satisfy the relevant objectives outlined in Part D5.6.2 of Woollahra DCP 2015.

### 13.2 Chapter F3: Licensed Premises

#### 13.2.1 Part 3.1.3: Objectives

The objectives of the Licensed Premises controls in Chapter F3 read as follows:

- O1 *To standardise the way we assess development applications (DAs) and other related applications for licensed premises*
- O2 *To provide certainty to applicants, residents and other stakeholders regarding our approach to, and planning requirements for, dealing with DAs and other related applications for licensed premises*
- O3 *To achieve a more consistent approach to determining trading hours and operating conditions for licensed premises*
- O4 *To recognise the important role of licensed premises in contributing to the vitality and vibrancy of centres at night while minimising potential negative impacts from activities associated with licensed premises.*
- O5 *To provide for the safety of patrons and the general public.*
- O6 *To ensure noise from the activities of licensed premises is not intrusive and does not unreasonably impact on the amenity of adjoining and nearby residential uses.*

The proposed modifications seek a change to operational conditions relating to the restriction on times as to when the window openings of the ground level licensed premises (Margaret) are required to be closed and therefore Part F3 of the Woollahra DCP 2015 is of relevance.

#### 13.2.2 Rating

The premises comprises an approved licensed restaurant and has a rating level of “HIGH” in accordance with Table F3.2 given that the proposed capacity is greater than 100 patrons. It is noted the proposal does not alter the approved number of patrons.

RISK RATING OF LICENSED PREMISES		
Type of licence	Location/zone	Risk rating
Hotel or General Bar, packaged liquor, clubs irrespective of their capacity	Anywhere	HIGH
On-premises, producer/wholesaler, limited with a capacity of 100 or more patrons		
Any licensed premises	R2 and R3 zones	HIGH

*Extract from Chapter F3 of the Woollahra DCP 2015*

#### 13.2.3 Part F3.3: Objectives and Controls

The relevant Objectives and Controls of Part F3.3 of the Woollahra DCP 2015 read as follows:

- O1 *Minimise the impact of licensed premises on the amenity of residential or other sensitive land uses.*
- C1 *Before deciding on an application involving licensed premises, the following matters are considered:*

- a) the location of the premises and the proximity of residential and other sensitive uses, including any external areas (not fully enclosed areas)
- b) the type of licensed premises;
- c) the size and capacity of the premises;
- d) trading hours;
- e) existing and likely cumulative impacts, including social impacts, of licensed premises on the amenity of surrounding areas;
- f) existing and proposed management practices relating to the operation of the premises and of the areas in the vicinity of the premises;
- g) the density of licensed premises in the vicinity of the proposed development;
- h) availability of car parking and proximity and access to public transport; and
- i) any recommendations/comments provided by NSW Police (applications involving licensed premises will be referred to NSW Police for comment in accordance with our Memorandum of Understanding – Crime Prevention Through Environmental Design).

### 13.2.4 Assessment

In accordance with Control C1, assessment of the licensed restaurant (food and drink premises) must consider the following:

- a) The location of the premises and the proximity of residential and other sensitive uses



Extract of the zoning map showing the context of the subject site in relation to zonings in the vicinity of the site

Control C10 requires that outdoor areas, openings, plant equipment, storage and waste collection spaces must take into account the amenity of surrounding residents.

The approved licensed restaurant (food and drink premises) has some operable window openings to the northern (Guilfoyle Avenue) and eastern (Bay Street) facades.

The subject premises is located within the E1 Local Centre Zone. The subject site is in close proximity to an R2 Low Density Residential zone to the south-western corner (3 South Avenue) of the subject site and is separated from the R2 Low Density Residential zone by the mixed used development at 2 Guilfoyle Avenue, which is located on the western periphery of the E1 Local Centre Zone.

The general locality is characterised by a mix of ground floor retail with commercial above and Shop top housing as detailed below.

Immediately adjoining to the south of the site is the Royal Oak Hotel (28 Bay Street) and immediately adjoining to the west is an approved 4 storey mixed used development (2 Guilfoyle Ave) comprising retail at ground floor and commercial tenancies above.

To the north-east of the subject site is a 5 storey mixed used development (45A Bay Street) comprising retail at ground floor and commercial tenancies above.

Opposite the subject site, to the north, and separated by Guilfoyle Park, is a 5 storey Shop-top housing development (38 Bay Street).

The approved development opposite, and directly to the east of the subject site at 2-22 Knox Street (Cosmopolitan Building) is a mixed use development, with retail tenancies on the ground floor and residential units on the floors above. The two (2) submissions received were from residents of the units at 2-22 Knox Street. Given their proximity to the restaurant, concerns were raised with regards to possible amenity impacts (acoustic) associated with the proposed modifications.

An acoustic report prepared by Acoustic Logic (Ref. 20230758.1/0108A/R0/JHT and dated 01/08/2023) was submitted with the application. The report provided the following conclusion:

## 5 CONCLUSION

Acoustic Logic attended site on 21<sup>st</sup> July 2023 to take operational measurements – both internal and external – of the licensed premise operating at Shop 1/ 30-36 Bay Street, Double Bay (Margaret). The measurements revealed that based on existing operational capacity, Margaret can achieve the noise emission objectives as conditioned by Woollahra Municipal Council with windows open between 9pm – 10pm.

It is expected that by allowing the windows to remain open between 9pm – 10pm, the ambient environment would remain as the prevailing noise level and the increase level experienced at nearby identified neighbours would be marginal.

*Source: Extract from the Acoustic Report prepared by Acoustic Logic (Ref. 20230758.1/0108A/R0/JHT dated 01/08/2023)*

Council's Environmental Health Officer has reviewed the report and has determined that the proposed modifications are satisfactory.

The location of the approved licensed restaurant (food and drink premises) is within the Double Bay local centre and is an expected form of development in the E1 Local Centre Zone. For reasons discussed throughout this report, and subject to conditions, the proposed modifications are considered to be appropriate and acceptable.

### *b) The type of licensed premises*

The proposed modifications do not seek to alter the approved type of licence required.

### *c) The size and capacity of the premises*

The proposed modifications do not alter the approved extent of the premises or maximum number of patrons.

d) *Trading hours*

The proposed modifications do not alter the approved trading hours.

e) *Existing and likely cumulative impacts, including social impacts, of licensed premises on the amenity of surrounding areas*

Control C7(a) of Part F3.3 of the Woollahra DPP 2015 requires the submission of a Plan of Management and Control C9 requires revisions where there is an extension of trading hours, patrons or a review of these limitations.

The proposed modifications do not alter the POM, trading hours or number of patrons.

Control C7(b) of Part F3.3 of the Woollahra DPP 2015 requires the submission of a Social Impact Report.

Any potential social impacts associated with the licensed premises were considered to be acceptable in the assessment of the original DA. The currently proposed modifications only related to the restrictions of the window opening/closing hours. In addition, Council's Environmental Health Officer considers the proposed modifications to be satisfactory.

Operational restrictions were imposed in the **Conditions** in Part I of the original consent which must be satisfied during the ongoing use of the development to ensure the reasonable maintenance of the residential amenity of the surrounding properties.

f) *Existing and proposed management practices relating to the operation of the premises and of the areas in the vicinity of the premises*

The approved Plan of Management (POM) dated June 2021 (**Annexure 4**) remains in force and effect. The proposed modifications do not require the approved POM to be amended.

g) *The density of licensed premises in the vicinity of the proposed development*

The table below identifies some of the food and drink premises and their hours of operation in this location or in close proximity to the subject site:

Address	Premises/Use	Relevant approved Conditions restricting hours that operable windows and doors can be open or where footpath dining has been approved up until 10pm
7 Bay Street, Double Bay	Bibo Wine Bar (Restaurant/Bar)	<ul style="list-style-type: none"> <li>The ground floor level front windows and the first floor level front balcony (fronting Bay Street) are to be closed from 11pm Monday to Saturday and 9pm on Sundays and Public Holidays in order to minimise amenity impacts to residents in the vicinity of the site.</li> </ul>
28 Bay Street, Double Bay	Royal Oak Hotel	<ul style="list-style-type: none"> <li><b>Cooper Street Bi-Fold Windows and Bay Street Windows and Doors</b> The bi-fold windows fronting Cooper Street are to be closed from 10pm seven nights a week to protect the amenity of the residential neighbours in Cooper Street.</li> <li><b>Bay Street Windows and Doors – Time Limited Consent</b> The windows and doors fronting Bay Street are to be closed at the following times:  Monday to Saturday: 12 midnight Sunday: 11pm</li> </ul>

Address	Premises/Use	Relevant approved Conditions restricting hours that operable windows and doors can be open or where footpath dining has been approved up until 10pm
		<p>This is a time limited development consent lasting twelve (12) months from the issue of any occupation certificate, in order to allow Council to review any adverse impacts upon the amenity of the neighbourhood of the hours of operation of the outdoor covered and uncovered areas approved by this consent.</p> <p>The closing time of the windows and doors approved by this condition must revert to the following, if no further development application or an application to delete this condition under Section 96(2) of the Act be lodged with Council before the end of that period.</p> <p><b>Monday to Sunday: 10pm</b> Council's consideration of any future application will take into account matters including, but not limited to, compliance with conditions of this consent, the approved Hotel Plan of Management and Security Procedures, and the number and nature of substantiated complaints to Council, the NSW Office of Liquor, Gaming and Racing, or the NSW Police Service.</p>
29 Bay Street, Double Bay	Matteo	<ul style="list-style-type: none"> <li>The footway approval trading hours are as follows:  <b>In B2 Zones (Local Centres)</b> Monday to Saturday: 6.00am to 10.00pm Sunday: 6.00am to 9.00pm</li> </ul>
2/ 22 Knox Street	The Cosmopolitan	None imposed.

The table above demonstrates the less onerous conditions imposed on other food and drink establishments in the area on adjoining properties (or those located in close proximity to the subject site) with regards to hours the operable windows are permitted to be open.

Given the commentary above, and having regard to the character of the area, the proposed modifications to extend the hours for which the operable windows can be open for is considered appropriate and acceptable in this locality and would achieve consistency with other food and drink establishments.

In this regard, there is no objection to the proposed amendments to Conditions **I.7** and **I.23** relating to the extended period of the external windows and doors. These conditions are to be amended as follows (changes are in **bold and underlined**):

### **I.7 Operation in Accordance with the Acoustic Report**

The operation and management of the premises shall generally be in accordance with the approved Acoustic Report prepared by Acoustic Logic, referenced 20201241.2/1801A/R0/HC and dated 18/01/2021 (listed in Condition A.3) as provided below, where not conditioned elsewhere in this consent;

- a) All external windows and doors shall be closed, except for the entering and exiting of patrons/staff after **10pm** every night, subject to Conditions I.6 a) and I.23, to minimise noise disruption to surrounding residential receivers.
- b) Amplified music within the venue is not to exceed a sound pressure level of 70 dB(A) L10 and an appropriate tamper proof noise limiter device shall be fixed to such equipment.
- c) External seating is not permitted.
- d) A prominent notice shall be placed within the premises to remind patrons to minimise the noise levels at any time.

- e) Signs are to be displayed at the entrance of the restaurant reminding patrons to minimise noise when departing the premise, especially after 9pm.
- f) Speakers are to be vibration isolated from the building structure by NRD type rubber mounts or equal.

### **I.23 External Doors and windows**

The external doors and windows must comply with the following requirements:

- a) All external doors and windows must be kept closed after **10:00 pm** except for the ingress/egress of patrons and staff and subject to c) below;
- b) All external doors must be installed with self-closing devices; and
- c) No patrons are to enter or depart the premises through the doors on the Bay Street frontage after 9:00 pm.

*h) Availability of car parking and proximity and access to public transport*

Not a relevant consideration.

*i) Any recommendations/comments provided by NSW Police*

The proposed modifications are considered to be consistent to the original comments and recommended conditions recommended by the NSW Police.

### **13.2.5 Conclusion**

The proposed modifications, as conditioned, are acceptable with regard to the objectives and controls in Chapter F3 of the Woollahra DCP 2015.

## **15. THE LIKELY IMPACTS OF THE PROPOSAL**

All likely impacts have been addressed elsewhere in the report, or are considered to be satisfactory and not warrant further consideration.

## **16. THE PUBLIC INTEREST**

The proposed modifications are considered to be in the public interest.

## **17. DISCLOSURE STATEMENTS**

There have been no disclosure statements regarding political donations or gifts made to any Councillor or to any council employee associated with this application by the applicant or any person who made a submission.

## **18. RECOMMENDATION: PURSUANT TO SECTION 4.55 OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979**

THAT the Council, as the consent authority, modify development consent to Development Application No. 300/2020/1 for the change of use to the ground floor premises from the approved retail shop to a new restaurant on land at 30-36 Bay Street Double Bay, subject to the following:

## Modification Summary

DA Application Number (PAN Number)	Determination Date	Modification Description
DA 2020/300/2 (73293)	30/04/2021	Addition of Condition A.3(a) Amendment of Conditions I.4 and I.5
DA 2020/300/3 (80632)	29/04/2021	Deletion of Conditions I.9(c) and (d)
DA 2020/300/4 (364708)	DA Withdrawn	N/A
DA 2020/300/5 (107774)	15/07/2021	Deletion of Condition I.7(c)
DA 2020/300/6 (364708)	06/02/2023	Amendment of Conditions I.7 and I.23

### A. General Conditions

#### A.1 Conditions

Consent is granted subject to the following conditions imposed pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979* ("the *Act*") and the provisions of the *Environmental Planning and Assessment Regulation 2000* ("the *Regulation*") such conditions being reasonable and relevant to the development as assessed pursuant to section 4.15 of the *Act*.

Standard Condition: A1 (Autotext AA1)

#### A.2 Definitions

Unless specified otherwise, words have the same meaning as defined by the *Act*, the *Regulation* and the *Interpretation Act 1987* as in force at the date of consent.

**Applicant** means the applicant for this consent.

**Approved Plans** mean the plans endorsed by Council referenced by this consent as amended by conditions of this consent.

**AS** or **AS/NZS** means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.

**BCA** means the Building Code of Australia as published by the Australian Building Codes Board as in force at the date of issue of any Construction Certificate.

**Council** means Woollahra Municipal Council

**Court** means the Land and Environment Court

**Local native plants** means species of native plant endemic to Sydney's eastern suburbs (see the brochure titled "Local Native Plants for Sydney's Eastern Suburbs" published by the Southern Sydney Regional Organisation of Councils).

**Stormwater drainage system** means all works, facilities and documentation relating to:

- the collection of stormwater,
- the retention of stormwater,
- the reuse of stormwater,
- the detention of stormwater,
- the controlled release of stormwater; and
- connections to easements and public stormwater systems.



**Owner** means the owner of the *site* and successors in title to the *site*.  
**Owner-builder** has the same meaning as in the *Home Building Act 1989*.

**PC** means the Principal Certifier under the *Act*.

**Principal Contractor** has the same meaning as in the *Act*, or where a Principal Contractor has not been appointed by the Owner of the land being developed Principal Contractor means the Owner of the land being developed.

**Professional engineer** has the same meaning as in the BCA.

**Public place** has the same meaning as in the *Local Government Act 1993*.

**Road** has the same meaning as in the *Roads Act 1993*.

**SEE** means the final version of the Statement of Environmental Effects lodged by the Applicant.

**Site** means the land being developed subject to this consent.

**Woollahra LEP** means *Woollahra Local Environmental Plan 2014*

**Woollahra DCP** means *Woollahra Development Control Plan 2015*

**Work** for the purposes of this consent means:

- the use of land in connection with development,
- the subdivision of land,
- the erection of a building,
- the carrying out of any work,
- the use of any site crane, machine, article, material, or thing,
- the storage of waste, materials, site crane, machine, article, material, or thing,
- the demolition of a building,
- the piling, piercing, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- the delivery to or removal from the *site* of any machine, article, material, or thing, or
- the occupation of the *site* by any person unless authorised by an occupation certificate.

**Note: Interpretation of conditions** - Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.  
Standard Condition: A2 (Autotext AA2)

### A.3 Approved Plans and Supporting Documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with both the architectural plans to which is affixed a Council stamp "Approved" and supporting documents listed below as submitted by the Applicant unless modified by any following condition.

Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
Dwg No. DA01 Issue A Dwg No. DA01 Issue A	Ground Floor Plan First Floor Plan	All by Lawton Hurley Architects	January 2021 August 2020
19234	Parking Statement	TTPP	30 June 2020
20201241.2/1801A/R0/HC	Acoustic Report	Acoustic Logic	18/01/2021

**Note:** Warning to Accredited Certifiers – You should always insist on sighting the original Council stamped approved plans. You should not rely solely upon the plan reference numbers in this condition. Should the Applicant not be able to provide you with the original copy Council will provide you with access to its files so you may review our original copy of the approved plan.

**Note:** These plans and supporting documentation may be subject to conditions imposed under section 4.17(1)(g) of the *Act* modifying or amending the development (refer to conditions which must be satisfied prior to the issue of any *Construction Certificate*.)  
Standard Condition: A5 (Autotext AA5)

### A.3(a) Approved Amended (s4.55) Plans and supporting documents

Those acting upon or under this amended consent must carry out all work and maintain the use and works in accordance with the approved plans and supporting documents listed in the original consent, as amended by the amended architectural approved plans to which is affixed a Council stamp “Approved” and supporting documents as submitted by the Applicant listed below otherwise than modified by further condition(s). Where the plans relate to amendments, alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
DA01 Issue C DA02 Issue C	Ground Floor Plan Level 1 Floor Plan	All by Lawton Hurley	All dated February 2021

**Note:** These plans and supporting documentation may be subject to conditions modifying the development imposed under section 4.17(1)(g) of the *Act* (refer to conditions which must be satisfied prior to the issue of any *Construction Certificate*.)  
Standard Condition: A6 (Autotext AA6)

[Added on 30/04/2021 under DA300/2020/2 (PAN - 73293)]

### A.3(b) Approved Amended (s4.55) Plans and supporting documents

Those acting upon or under this amended consent must carry out all work and maintain the use and works in accordance with the approved plans and supporting documents listed in the original consent, as amended by the amended architectural approved plans to which is affixed a Council stamp “Approved” and supporting documents as submitted by the Applicant listed below otherwise than modified by further condition(s). Where the plans relate to amendments, alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
20230758.1/0108A/R0/JHT	Acoustic Report	Acoustic Logic	01/08/2023

**Note:** These plans and supporting documentation may be subject to conditions modifying the development imposed under section 4.17(1)(g) of the *Act* (refer to conditions which must be satisfied prior to the issue of any *Construction Certificate*.)  
Standard Condition: A6 (Autotext AA6)

[Added on 06/02/2023 under DA300/2020/6 (PAN-364708)]

#### **A.4 Ancillary Aspects of Development (section 4.17(2) of the Act)**

The Owner must procure the repair, replacement or rebuilding of all road pavement, kerb, gutter, footway, footpaths adjoining the site or damaged as a result of work under this consent or as a consequence of work under this consent. Such work must be undertaken to Council's satisfaction in accordance with Council's *Specification for Roadworks, Drainage and Miscellaneous Works (2012)* unless expressly provided otherwise by these conditions at the Owner's expense.

**Note:** This condition does not affect the Principal Contractor's or any sub-contractors obligations to protect and preserve public infrastructure from damage or affect their liability for any damage that occurs.

Standard Condition: A8 (Autotext AA8)

#### **A.5 Development Consent is not granted in relation to Signage**

This approval does not give consent to the installation of any advertising/signage (see **note** below) located to the frontage of the subject site which encroaches onto or over Council's road reserve of Bay Street or Guilfoyle Avenue.

**Note:** This condition does not apply to any advertising and/or signage which is permitted under Division 2 (Advertising and Signage Exempt Development Code) of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

### **B. Conditions which must be satisfied prior to the demolition of any building or construction**

#### **B.1 Construction Certificate Required Prior to Any Demolition**

Where demolition is associated with an altered portion of, or an extension to an existing building the demolition of any part of a building is "commencement of erection of building" pursuant to section 6.6 of the *Act*.

In such circumstance all conditions in Part C and Part D of this consent must be satisfied prior to any demolition work. This includes, but is not limited to, the issue of a Construction Certificate, appointment of a Principal Certifier, and Notice of Commencement under the *Act*.

**Note:** See *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125.

Standard Condition: B1 (Autotext BB1)

#### **B.2 Public Road Assets Prior to Any Work/Demolition**

To clarify the condition of the existing public infrastructure prior to the commencement of any development (including prior to any demolition), the Applicant or Owner must submit to Council a full record of the condition of the public road infrastructure adjacent to the development site.

The report must be submitted to Council **prior to the commencement of any work** and include photographs showing current condition and any existing damage fronting and adjoining the site to the:

- road pavement,
- kerb and gutter,
- footway including footpath pavement and driveways,
- retaining walls within the footway or road, and
- drainage structures/pits.

The reports are to be supplied in both paper copy and electronic format in Word. Photographs are to be in colour, digital and date stamped.

If the required report is not submitted then Council will assume there was no damage to any infrastructure in the immediate vicinity of the site prior to the commencement of any work under this consent.

**Note:** If the Applicant or Owner fails to submit the asset condition report required by this condition and damage is occasioned to public assets adjoining the site, Council will deduct from security any costs associated with remedying, repairing or replacing damaged public infrastructure. Nothing in this condition prevents Council making any claim against security held for this purpose  
Standard Condition: B7

**C. Conditions which must be satisfied prior to the issue of any Construction Certificate**

**C.1 Modification of details of the development (section 4.17 (1) (g) of the Act)**

The approved plans and the Construction Certificate plans and specification, required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation, must detail the following amendments:

- a) The proposed fixed windows are to be a minimum of 10.38mm laminated Glazing with the minimum Rw35.
- b) The proposed sliding glass doors and windows are to be a minimum of 6.38mm laminated Glazing – Aluminium Frame with the minimum Rw34 and minimum TL as shown below:

Minimum TL of the Proposed 6.38mm Laminated Glazing with Bi-Fold Frame (Rw34)

63	125	250	500	1k	2k	4k	8k
16.7	19.9	26.6	29.3	32.8	31.9	33.9	39.9

- c) The maximum openable area on each façade is to comply with the following;
  - i. **Eastern façade facing Bay Street:** maximum allowable openable glazed façade (before 9.00pm) is 3.0m long (as highlighted in red below); and
  - ii. **North-eastern façade facing Guilfoyle Avenue:** maximum allowable openable glazed façade (before 9.00pm) is 4.0m long (as highlighted in blue below).

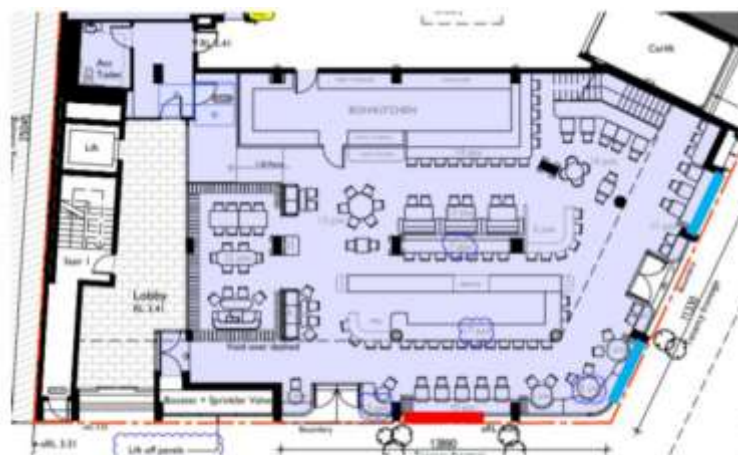


Figure 2 – Mark-up of Openable Glazed Façade (daytime and evening)

- d) All external doors being fitted with self-closing devices.
- e) In order to ensure that amplified music in the venue does not to exceed a sound pressure level of 70 dB(A) L10, an appropriate tamper proof noise limiter device shall be fixed to such equipment and shown on the construction certificate plans.
- f) Speakers are to be vibration isolated from the building structure by NRD type rubber mounts or equal.

**Note:** The effect of this condition is that it requires design changes and/or further information to be provided with the Construction Certificate drawings and specifications to address specific issues identified during assessment under section 4.15 of the Act.

**Note:** Clause 146 of the Regulation prohibits the issue of any Construction Certificate subject to this condition unless the Certifying Authority is satisfied that the condition has been complied with.

**Note:** Clause 145 of the Regulation prohibits the issue of any Construction Certificate that is inconsistent with this consent.

## C.2 Payment of Long Service Levy, Security, Contributions and Fees

The Certifying Authority must not issue any certificates under section 6.4 of the Act until provided with the original receipt(s) for the payment of all of the following levy, security, contributions, and fees prior to the issue of a Construction Certificate, Subdivision Certificate or Occupation Certificate, as will apply.

Description	Amount	Indexed	Council Fee Code
<b>LONG SERVICE LEVY</b> under <i>Building and Construction Industry Long Service Payments Act 1986</i>			
<b>Long Service Levy</b> <a href="http://www.longservice.nsw.gov.au/bci/levy/other-information/levy-calculator">www.longservice.nsw.gov.au/bci/levy/other-information/levy-calculator</a>	Contact LSL Corporation or use online calculator	No	
<b>SECURITY</b> under section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i>			
<b>Property Damage Security Deposit</b> -making good any damage caused to any property of the Council	\$8,780.00	No	T115
<b>DEVELOPMENT LEVY</b> under Woollahra Section 94A Development Contributions Plan 2011 This plan may be inspected at Woollahra Council or downloaded at <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a>			
<b>Development Levy</b> (section 7.12)	\$850.00 + Index Amount	Yes, quarterly	T96
<b>INSPECTION FEES</b> under section 608 of the <i>Local Government Act 1993</i>			
Security Administration Fee	\$202.00	No	T16
<b>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</b>	\$9,832.00 plus any relevant indexed amounts and long service levy		

### Building and Construction Industry Long Service Payment

The long service levy under section 34 of the *Building and Construction Industry Long Service Payment Act 1986*, must be paid and proof of payment provided to the Certifying Authority prior to the issue of any Construction Certificate. The levy can be paid directly to the Long Service Corporation or to Council. Further information can be obtained from the Long Service Corporation website [www.longservice.nsw.gov.au](http://www.longservice.nsw.gov.au) or the Long Service Corporation on 131 441.

### How must the payments be made?

Payments must be made by:

- cash deposit with Council,
- credit card payment with Council, or

- bank cheque made payable to Woollahra Municipal Council.

The payment of a security may be made by a bank guarantee where:

- the guarantee is by an Australian bank for the amount of the total outstanding contribution,
- the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable],
- the bank agrees to pay the guaranteed sum without reference to the Applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent,
- the bank guarantee is lodged with the Council prior to the issue of the Construction Certificate, and
- the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

#### **How will the section 7.12 levy (formerly known as 94A levy) be indexed?**

To ensure that the value the development levy is not eroded over time by increases in costs, the proposed cost of carrying out development (from which the development levy is calculated) will be indexed either annually or quarterly (see table above). Clause 3.13 of the Woollahra Section 94A Development Contributions Plan 2011 sets out the formula and index to be used in adjusting the levy.

#### **Do you need HELP indexing the levy?**

Please contact Council's Customer Service Team on ph 9391 7000. Failure to correctly calculate the adjusted development levy will delay the issue of any certificate issued under section 6.4 of the Act and could void any such certificate (eg Construction Certificate, Subdivision Certificate, or Occupation Certificate).

#### **Deferred or periodic payment of section 7.12 levy (formerly known as 94A levy) under the Woollahra Section 94A Development Contributions Plan 2011**

Where the Applicant makes a written request supported by reasons for payment of the section 7.12 levy other than as required by clause 3.9, the Council may accept deferred or periodic payment. The decision to accept a deferred or periodic payment is at the sole discretion of the Council, which will consider:

- the reasons given,
- whether any prejudice will be caused to the community deriving benefit from the public facilities,
- whether any prejudice will be caused to the efficacy and operation of the Plan, and
- whether the provision of public facilities in accordance with the adopted works schedule will be adversely affected.

Council may, as a condition of accepting deferred or periodic payment, require the provision of a bank guarantee where:

- the guarantee is by an Australian bank for the amount of the total outstanding contribution,
- the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable],
- the bank agrees to pay the guaranteed sum without reference to the Applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent,
- the bank guarantee is lodged with the Council prior to the issue of the Construction Certificate, and
- the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

Any deferred or periodic payment of the section 7.12 levy will be adjusted in accordance with clause 3.13 of the Plan. The Applicant will be required to pay any charges associated with establishing or operating the bank guarantee. Council will not cancel the bank guarantee until the outstanding contribution as indexed and any accrued charges are paid.

Standard Condition: C5

### **C.3 Waste Storage – Commercial**

The *Construction Certificate* plans and specifications required by clause 139 of the Regulation, must make provision for:

- a) A dedicated and enclosed waste and recycling storage area behind the building line or within non-habitable areas of the building.

Standard Condition: C18 (Autotext: CC18)

#### C.4 Structural Adequacy of Existing Supporting Structures

A certificate from a professional engineer (structural engineer), certifying the adequacy of the existing supporting structure to support the additional loads proposed to be imposed by the development, must be submitted with the Construction Certificate application.

**Note:** This condition is imposed to ensure that the existing structure is able to support the additional loads proposed.  
Standard Condition: C35 (Autotext CC35)

#### C.5 Professional Engineering Details

The Construction Certificate plans and specifications, required by clause 139 of the *Regulation*, must include detailed professional engineering plans and/or specifications for all structural, electrical, hydraulic, hydrogeological, geotechnical, mechanical and civil work complying with this consent, approved plans, the statement of environmental effects and supporting documentation.

Detailed professional engineering plans and/or specifications must be submitted to the Certifying Authority with the application for any Construction Certificate.

**Note:** This does not affect the right of the developer to seek staged Construction Certificates.  
Standard Condition: C36

#### C.6 Light and Ventilation

The *Construction Certificate* plans and specifications, required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation*, must detail all a lighting, mechanical ventilation or air-conditioning systems complying with Part F.4 of the *BCA* or clause 3.8.4 and 3.8.5 of the *BCA* Housing Provisions, inclusive of [AS 1668.1](#), [AS 1668.2](#) and [AS/NZS 3666.1](#). If an alternate solution is proposed then the *Construction Certificate* application must include a statement as to how the performance requirements of the *BCA* are to be complied with and support the performance based solution by expert *evidence of suitability*. This condition does not set aside the mandatory requirements of the *Public Health (Microbial Control) Regulation 2000* in relation to *regulated systems*. This condition does not set aside the effect of the *Protection of the Environment Operations Act 1997* in relation to offensive noise or odour.

**Note:** Clause 98 of the *Regulation* requires compliance with the *BCA*. Clause 145 of the *Regulation* prevents the issue of a *Construction Certificate* unless the *Accredited Certifier/Council* is satisfied that compliance has been achieved. Schedule 1, Part 3 of the *Regulation* details what information must be submitted with any *Construction Certificate*. It is the Applicant's responsibility to demonstrate compliance through the *Construction Certificate* application process. Applicants must also consider possible noise and odour nuisances that may arise. The provisions of the *Protection of the Environment Operations Act 1997* have overriding effect if offensive noise or odour arises from the use. Applicant's must pay attention to the location of air intakes and air exhausts relative to sources of potentially contaminated air and neighbouring windows and air intakes respectively, see section 2 and 3 of [AS 1668.2](#).

Standard Condition C59

#### C.7 Food Premises – Construction Certificate Plans and Specifications

The person with the benefit of this consent must submit to Council details for the construction and fit out of food premises. Such details must demonstrate compliance with the *Food Act 2003*, *Food Regulation 2004*; the *Food Standards Code* as published by Food Standards Australia and New Zealand and Australian Standard AS 4674-2004: *Construction and fit out of food premises*.

No *Construction Certificate* relating to the construction or fitout of food premises must be issued until Council's Environmental Health Officers' have advised in writing that the plans and specification are considered satisfactory.

The details for the construction and fit out of food premises, as considered satisfactory by Council's Environmental Health Officers' must form part of any *Construction Certificate*.

**Note:** The assessment of food premises fitout plans and specifications is subject to an adopted fee. The construction and fitout of food premises is not listed under clause 161 of the *Environmental Planning & Assessment Regulation 2000* as a matter that a *Certifying Authority* may be satisfied as to. Hence, the detailed plans & specifications must be referred to Council and be to Council's satisfaction prior to the issue of any *Construction Certificate* for such works.  
Standard Condition: C65

### **C.8 Ventilation - Kitchen Exhaust- Smoke & Odour Control**

- a) The discharge of air from the kitchen exhaust ventilation system(s) is considered an obnoxious discharge under Section 3.7 of Australian Standard 1668.2-1991. All exhaust air and spill air shall be discharged to atmosphere in such a manner as not to cause a danger or nuisance to occupants in the building, occupants of neighbouring buildings or members of the public.
- b) The design, construction and installation of the kitchen exhaust hood(s) shall comply with the requirements of *Appendix E, 'Kitchen Exhaust Hoods' of AS 1668.2-1991* and *Appendix F, 'Capture of Emissions By Kitchen Exhaust Hoods' of AS 1668.2-1991*.
- c) A *Smoke & Odour Impact Assessment Report* is to be prepared by a suitably qualified engineer detailing the design specification of the proposed kitchen exhaust system, including all smoke and odour inhibiting controls and filtering systems.
- d) The *Construction Certificate* plans and specifications, required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation*, must detail all the kitchen exhaust ventilation system(s), including all smoke and odour controls and filtering systems. Upon completion and prior to occupation of the premises, the kitchen exhaust ventilation system(s) shall be certified by a qualified engineer that the system(s) has been installed in accordance with AS 1668.1 and AS 1668.2 and the design specification as detailed in the *Smoke & Odour Impact Assessment Report*.

### **C.9 Ventilation - Internal Sanitary Rooms**

All internal sanitary rooms and laundry facilities not provided with natural ventilation must be provided with a system of mechanical exhaust ventilation in accordance with *Table B1 Minimum Exhaust Ventilation Flow Rates of AS 1668.2-1991*. Details of any proposed mechanical ventilation system(s) being submitted with the *Construction Certificate* plans and specifications, required to be submitted to the *Certifying Authority* demonstrating compliance with AS 1668 Parts 1 & 2.

### **D. Conditions which must be satisfied prior to the commencement of any development work**

#### **D.1 Compliance with Building Code of Australia and insurance requirements under the [Home Building Act 1989](#)**

For the purposes of section 4.17(11) of the *Act*, the following conditions are prescribed in relation to a development consent for development that involves any building work:

- a) that the work must be carried out in accordance with the requirements of the Building Code of Australia,



- b) in the case of residential building work for which the [Home Building Act 1989](#) requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

- a) to the extent to which an exemption is in force under the *Home Building Regulation 2004*, or  
b) to the erection of a temporary building.

In this condition, a reference to the BCA is a reference to that code as in force on the date the application for the relevant Construction Certificate is made.

**Note:** This condition must be satisfied prior to commencement of any work in relation to the contract of insurance under the *Home Building Act 1989*. This condition also has effect during the carrying out of all building work with respect to compliance with the Building Code of Australia.

**Note:** All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.  
Standard Condition: D1 (Autotext DD1)

## D.2 Works (Construction) Zone – Approval and Implementation

A Works Zone may be required for this development. The Principal Contractor or Owner can apply for a works zone. If the works zone is approved the Principal Contractor or Owner must pay all fees for this Works Zone before it can be installed.

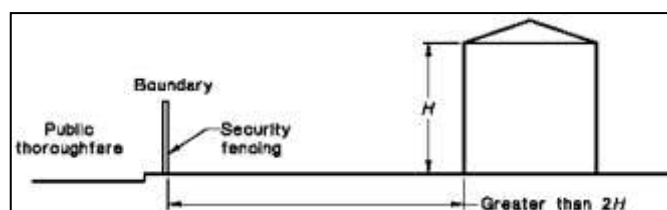
The Principal Contractor must pay all fees associated with the application and occupation and use of the road as a Works Zone. All Works Zone signs must have been erected by Council to permit enforcement of the Works Zone by Council's Rangers and NSW Police before commencement of any work. Signs are not erected until full payment of works zone fees.

**Note:** The Principal Contractor or Owner must allow not less than four to six weeks (for routine applications) from the date of making an application to the Traffic Committee (Woollahra Local Traffic Committee) constituted under the clause 22 of the *Transport Administration (General) Regulation 2000* to exercise those functions delegated by the Roads and Maritime Services under section 50 of the *Transport Administration Act 1988*.

**Note:** The enforcement of the works zone is at the discretion of Council's Rangers and the NSW Police Service. The Principal Contractor must report any breach of the works zone to either Council or the NSW Police Service.  
Standard Condition: D10 (Autotext DD10)

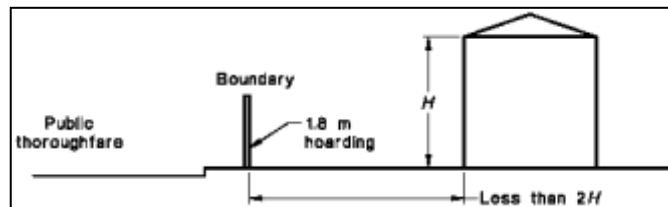
## D.3 Security Fencing, Hoarding and Overhead Protection

Security fencing must be provided around the perimeter of the development site, including any additional precautionary measures taken to prevent unauthorised entry to the site at all times during the demolition, excavation and construction period. Security fencing must be the equivalent 1.8m high chain wire as specified in AS 1725.



### Type A Hoarding

Where the development site adjoins a public thoroughfare, the common boundary between them must be fenced for its full length with a hoarding, unless the least horizontal distance between the common boundary and the nearest parts of the structure is greater than twice the height of the structure. The hoarding must be constructed of solid materials (chain wire or the like is not acceptable) to a height of not less than 1.8m adjacent to the thoroughfare.



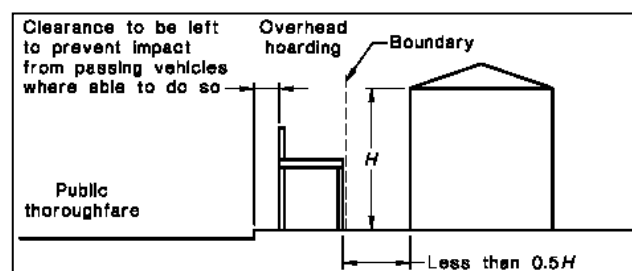
### Type B Hoarding

Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure and the facing facade protected by heavy-duty scaffolding, unless either:

- a) the vertical height above footpath level of the structure being demolished is less than 4.0m; or
- b) the least horizontal distance between footpath and the nearest part of the structure is greater than half the height of the structure.

The overhead structure must consist of a horizontal platform of solid construction and vertical supports, and the platform must:

- a) extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary,
- b) have a clear height above the footpath of not less than 2.1m,
- c) terminate 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand projecting not less than 0.5m above the platform surface, and
- d) together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa.



The Principal Contractor or Owner-builder must ensure that overhead protective structures are installed and maintained in accordance with the NSW "Code of Practice - Overhead Protective Structures 1995". This is code available at

[www.safework.nsw.gov.au/data/assets/pdf\\_file/0008/52883/Overhead-protective-structures-Code-of-practice.pdf](http://www.safework.nsw.gov.au/data/assets/pdf_file/0008/52883/Overhead-protective-structures-Code-of-practice.pdf)

## All Hoardings

Security fencing, hoarding and overhead protective structure must not obstruct access to utilities services including but not limited to man holes, pits, stop valves, fire hydrants or the like.

### Hoardings on Public Land

The Principal Contractor or Owner-builder must pay all fees associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

A creative hoarding (i.e. an approved artwork or historic image affixed to the hoarding) is required if the hoarding meets the criteria in Council's Creative Hoardings Policy (adopted March 2020). The cost of printing and affixing the creative hoarding is the responsibility of the Principal Contractor or Owner-builder. The Creative Hoardings Policy can be downloaded from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au)

**Note:** The Principal Contractor or Owner must allow not less than two (2) weeks from the date of making a hoarding application for determination. Any approval for a hoarding or overhead protection under the *Roads Act 1993* will be subject to its own conditions and fees.

**Note:** Council seeks to increase public art in the public domain by requiring artwork or historic images on hoardings located on public land. Under the Creative Hoardings Policy an application for a hoarding proposed on public land will require an approved artwork or historic image affixed to the hoarding if the hoarding meets the criteria in section 3 of the Policy:

- A. Hoardings proposed on land zoned B2 Local Centre, or B4 Mixed Use, or SP2 Infrastructure under Woollahra Local Environmental Plan 2014 AND erected for 8 weeks or more  
OR
- B. Hoardings proposed on land located along a State classified road (regardless of the zone) AND erected for 8 weeks or more  
OR
- C. Hoardings proposed in any other location than that referred to in A. and B. above AND erected for 12 weeks or more, except where:
  - i. the capital investment value of the work to which the hoarding relates is less than \$1 million  
OR
  - ii. the land is zoned R2 Low Density Residential  
OR
  - iii. the land is zoned R3 Medium Density Residential and the hoarding located in a lane or street that does not have through traffic (eg a cul-de-sac or no through road).

Artwork and historic images for the hoardings are assessed and approved in accordance with the Creative Hoardings Policy. Details of the artwork or images proposed to be affixed to the hoardings must be submitted with Council's form "Application for a permit to use a footpath for the erection of a hoarding/scaffolding".

The Creative Hoardings Policy can be downloaded from [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or for more information contact Council's Cultural Development Team.

Standard Condition: D11 (Autotext DD11)

## D.4 Site Signs

The Principal Contractor or Owner-builder must ensure that the sign/s required by clauses 98A and 227A of the *Regulation* is/are erected and maintained at all times.

Clause 98A of the *Regulation* provides:

### **Erection of signs**

- For the purposes of section 4.17(11) of the *Act*, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - a. showing the name, address and telephone number of the Principal Certifier for the work, and
  - b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - c. stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- This clause does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the *Act*, to comply with the Building Code of Australia.

Clause 227A of the *Regulation* provides:

### **Signs on development sites**

If there is a person who is the Principal Certifier or the Principal Contractor for any building work, subdivision work or demolition work authorised to be carried out on a site by a development consent or complying development certificate:

- Each such person MUST ensure that a rigid and durable sign showing the person's identifying particulars so that they can be read easily by anyone in any public road or other public place adjacent to the site is erected in a prominent position on the site before the commencement of work, and is maintained on the site at all times while this clause applies until the work has been carried out.

**Note:** Clause 227A imposes a penalty exceeding \$1,000 if these requirements are not complied with.

**Note:** If Council is appointed as the Principal Certifier it will provide the sign to the Principal Contractor or Owner-builder who must ensure that the sign is erected and maintained as required by clause 98A and clause 227A of the *Regulation*.

Standard Condition: D12 (Autotext DD12)

## **D.5 Toilet Facilities**

Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

Each toilet provided:

- a) must be a standard flushing toilet, and
- b) must be connected to a public sewer, or
- c) if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council, or
- d) if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.

The provision of toilet facilities in accordance with this condition must be completed before any other work is commenced.

In this condition:

**accredited sewage management facility** means a sewage management facility to which Division 4A of Part 3 of the *Local Government (Approvals) Regulation 1993* applies, being a sewage management facility that is installed or constructed to a design or plan the subject of a certificate of accreditation referred to in clause 95B of the *Local Government (Approvals) Regulation 1993*.

**approved by the Council** means the subject of an approval in force under Division 1 of Part 3 of the *Local Government (Approvals) Regulation 1993*.

**public sewer** has the same meaning as it has in the *Local Government (Approvals) Regulation 1993*.

**sewage management facility** has the same meaning as it has in the *Local Government (Approvals) Regulation 1993*.

**Note:** This condition does not set aside the requirement to comply with SafeWork NSW requirements.  
Standard Condition: D13 (Autotext DD13)

#### **D.6 Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 of the Act)**

The erection of the building in accordance with this development consent must not be commenced until:

- a) A Construction Certificate for the building work has been issued by the consent authority, the Council (if the Council is not the consent authority) or an accredited Certifier, and
- b) The person having the benefit of the development consent has:
  - appointed a Principal Certifier for the building work, and
  - notified the Principal Certifier that the person will carry out the building work as an Owner-builder, if that is the case, and
- c) The Principal Certifier has, no later than 2 days before the building work commences:
  - notified the consent authority and the Council (if the Council is not the consent authority) of his or her appointment, and
  - notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
- d) The person having the benefit of the development consent, if not carrying out the work as an Owner-builder, has:
  - appointed a Principal Contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
  - notified the Principal Certifier of any such appointment, and
  - unless that person is the Principal Contractor, notified the Principal Contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
  - given at least 2 days' notice to the Council of the person's intention to commence the erection of the building.

**Note:** *building* has the same meaning as in section 1.4 of the *Act* and includes part of a building and any structure or part of a structure.

**Note:** *new building* has the same meaning as in section 6.1 of the *Act* and includes an altered portion of, or an extension to, an existing building.

**Note:** The commencement of demolition works associated with an altered portion of, or an extension to, an existing building is considered to be the commencement of building work requiring compliance with section 6.6(2) of the *Act* (including the need for a Construction Certificate) prior to any demolition work. See: *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125.

**Note:** Construction Certificate Application, PC Service Agreement and Notice of Commencement forms can be downloaded from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au)

**Note:** It is an offence for any person to carry out the erection of a *building* in breach of this condition and in breach of section 6.6(2) of the *Act*.  
Standard Condition: D15 (Autotext DD15)

## **E. Conditions which must be satisfied during any development work**

### **E.1 Compliance with BCA and Insurance Requirements under the Home Building Act 1989**

For the purposes of section 4.17(11) of the *Act*, the following condition is prescribed in relation to a development consent for development that involves any building work:

- a) that the work must be carried out in accordance with the requirements of the Building Code of Australia (BCA),
- b) in the case of residential building work for which the [Home Building Act 1989](#) requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

- a) to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4) of the *Regulation*, or
- b) to the erection of a temporary building.

In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant Construction Certificate is made.

**Note:** All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.  
Standard Condition: E1 (Autotext EE1)

### **E.2 Compliance with Australian Standard for Demolition**

Demolition of buildings and structures must comply with Australian Standard AS 2601—2001: *The Demolition of Structures*.

Standard Condition: E2 (Autotext EE2)

### **E.3 Requirement to Notify about New Evidence**

Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination, heritage significance, threatened species or other relevant matters must be immediately notified to Council and the Principal Certifier.

Standard Condition: E4 (Autotext EE4)

### **E.4 Critical Stage Inspections**

Critical stage inspections must be called for by the Principal Contractor or Owner-builder as required by the Principal Certifier, any PC service agreement, the *Act* and the *Regulation*.

Work must not proceed beyond each critical stage until the Principal Certifier is satisfied that work is proceeding in accordance with this consent, the Construction Certificate(s) and the Act.

*Critical stage inspections* means the inspections prescribed by the *Regulations* for the purposes of section 6.5 of the *Act* or as required by the Principal Certifier and any PC Service Agreement.

**Note:** The PC may require inspections beyond mandatory critical stage inspections in order that the PC be satisfied that work is proceeding in accordance with this consent.

**Note:** The PC may, in addition to inspections, require the submission of Compliance Certificates, survey reports or evidence of suitability in accordance with Part A2.2 of the BCA in relation to any matter relevant to the development.

Standard Condition: E5 (Autotext EE5)

## E.5 Hours of Work –Amenity of the Neighbourhood

- a) No *work* must take place on any Sunday or public holiday.
- b) No *work* must take place before 7am or after 5pm any weekday.
- c) No *work* must take place before 7am or after 1pm any Saturday.
- d) The following *work* **must not** take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday:
  - (i) piling,
  - (ii) piercing,
  - (iii) rock or concrete cutting, boring or drilling,
  - (iv) rock breaking,
  - (v) rock sawing,
  - (vi) jack hammering, or
  - (vii) machine excavation.
- e) No loading or unloading of material or equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.
- f) No operation of any equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.
- g) No rock excavation being cutting, boring, drilling, breaking, sawing , jack hammering or bulk excavation of rock, must occur without a 15 minute break every hour.

This condition has been imposed to mitigate the impact of work upon the amenity of the neighbourhood. Impact of work includes, but is not limited to, noise, vibration, dust, odour, traffic and parking impacts.

**Note:** The use of noise and vibration generating plant and equipment and vehicular traffic, including trucks in particular, significantly degrade the amenity of neighbourhoods and more onerous restrictions apply to these activities. This more invasive work generally occurs during the foundation and bulk excavation stages of development. If you are in doubt as to whether or not a particular activity is considered to be subject to the more onerous requirement (9am to 4pm weekdays and 9am to 1pm Saturdays) please consult with Council.

**Note:** Each and every breach of this condition by any person may be subject to a separate penalty infringement notice or prosecution.

**Note:** The delivery and removal of plant, equipment and machinery associated with wide loads subject to RMS and NSW Police restrictions on their movement outside the approved hours of work will be considered on a case by case basis.

**Note:** Compliance with these hours of work does not affect the rights of any person to seek a remedy to offensive noise as defined by the *Protection of the Environment Operations Act 1997*, the *Protection of the Environment Operations (Noise Control) Regulation 2017*.

**Note:** NSW EPA Noise Guide is available at [www.epa.nsw.gov.au/noise/nqlg.htm](http://www.epa.nsw.gov.au/noise/nqlg.htm)  
Standard Condition: E6 (Autotext EE6)

## E.6 Public Footpaths – Safety, Access and Maintenance

The Principal Contractor or Owner-builder and any other person acting with the benefit of this consent must:

- a) Not erect or maintain any gate or fence swing out or encroaching upon the road or the footway.
- b) Not use the road or footway for the storage of any article, material, matter, waste or thing.
- c) Not use the road or footway for any *work*.
- d) Keep the road and footway in good repair free of any trip hazard or obstruction.
- e) Not stand any plant and equipment upon the road or footway.
- f) Provide a clear safe pedestrian route a minimum of 1.5m wide.
- g) Protect heritage listed street name inlays in the footpath which are not to be removed or damaged during development.

This condition does not apply to the extent that a permit or approval exists under the section 148B of the *Road Transport Act 2013*, section 138 of the *Roads Act 1993* or section 68 of the *Local Government Act 1993* except that at all time compliance is required with:

- a) Australian Standard AS 1742 (Set): *Manual of uniform traffic control devices* and all relevant parts of this set of standards.
- b) Australian Road Rules.

**Note:** Section 73 of the *Road Transport (Safety and Traffic Management) Act 1999* allows the NSW Police to close any road or road related area to traffic during any temporary obstruction or danger to traffic or for any temporary purpose.

**Note:** Section 138 of the *Roads Act 1993* provides that a person must not:

- erect a structure or carry out a work in, on or over a public road, or
- dig up or disturb the surface of a public road, or
- remove or interfere with a structure, work or tree on a public road, or
- pump water into a public road from any land adjoining the road, or
- connect a road (whether public or private) to a classified road,
- otherwise than with the consent of the appropriate roads authority.

**Note:** Section 68 of the *Local Government Act 1993* provides that a person may carry out certain activities only with the prior approval of the Council including:

- Part C Management of waste:
  - a. For fee or reward, transport waste over or under a public place
  - b. Place waste in a public place
  - c. Place a waste storage container in a public place.
- Part E Public roads:
  - a. Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway
  - b. Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.

Standard Condition: E7 (Autotext EE7)

## E.7 Placement and Use of Skip Bins

The Principal Contractor or Owner-builder must ensure that all waste storage containers, including but not limited to skip bins, must be stored within the site unless:

- a) Activity Approval has been issued by Council under section 68 of the *Local Government Act 1993* to place the waste storage container in a public place; and
- b) where located on the road it is located only in a positions where a vehicle may lawfully park in accordance with the Australian Road Rules.



**Note:** Waste storage containers must not be located on the footpath without a site specific activity approval. Where such site specific activity approval is granted a 1.5m wide clear path of travel is maintained free of any trip hazards.  
Standard Condition: E21 (Autotext EE21)

## E.8 Dust Mitigation

Dust mitigation must be implemented in accordance with “*Dust Control - Do it right on site*” published by the Southern Sydney Regional Organisation of Councils.

This generally requires:

- a) Dust screens to all hoardings and site fences.
- b) All stockpiles or loose materials to be covered when not being used.
- c) All equipment, where capable, being fitted with dust catchers.
- d) All loose materials being placed bags before placing into waste or skip bins.
- e) All waste and skip bins being kept covered when not being filled or emptied.
- f) The surface of excavation work being kept wet to minimise dust.
- g) Landscaping incorporating trees, dense shrubs and grass being implemented as soon as practically possible to minimise dust.

**Note:** “*Dust Control - Do it right on site*” can be downloaded from Council’s website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or obtained from Council’s office.

**Note:** Special precautions must be taken when removing asbestos or lead materials from development sites. Additional information can be obtained from [www.safework.nsw.gov.au](http://www.safework.nsw.gov.au) and [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au). Other specific conditions and advice may apply.

**Note:** Demolition and construction activities may affect local air quality and contribute to urban air pollution. The causes are dust, smoke and fumes coming from equipment or activities, and airborne chemicals when spraying for pest management. Precautions must be taken to prevent air pollution.  
Standard Condition: E23 (Autotext EE23)

## E.9 Food Premises – Construction and Fitout

The *principal contractor* or *owner builder* must ensure that all construction and fitout of the food premises complies with the details for the food premises submitted to and considered satisfactory by Council’s Environmental Health Officers but no less compliant than with the *Food Act 2003*, *Food Regulation 2004*; the *Food Standards Code* as published by Food Standards Australia and New Zealand and AS 4674-2004: *Construction and fit out of food premises*.

This condition has been imposed to protect public health and ensure that food premises are easily maintained in a clean condition fit for food preparation and consumption.  
Standard Condition: E29

## E.10 Site Waste Minimisation and Management – Demolition

In order to maximise resource recovery and minimise residual waste from demolition activities:

- a) the provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work,
- b) an area is to be allocated for the storage of materials for use, recycling and disposal (giving consideration to slope, drainage, location of waterways, stormwater outlets, vegetation and access and handling requirements),
- c) provide separate collection bins and/or areas for the storage of residual waste,
- d) clearly ‘signpost’ the purpose and content of the bins and/or storage areas,

- e) implement measures to prevent damage by the elements, odour, health risks and windborne litter, and
- f) minimise site disturbance, limiting unnecessary excavation.

When implementing the SWMMP the Applicant must ensure:

- a) footpaths, public reserves and street gutters are not used as places to store demolition waste or materials of any kind without Council approval,
- b) any material moved offsite is transported in accordance with the requirements of the *Protection of the Environment Operations Act 1997*,
- c) waste is only transported to a place that can lawfully be used as a waste facility,
- d) generation, storage, treatment and disposal of hazardous waste and special waste (including asbestos) is conducted in accordance with relevant waste legislation administered by the NSW Environment Protection Authority, and relevant occupational health and safety legislation administered by SafeWork NSW, and
- e) evidence such as weighbridge dockets and invoices for waste disposal or recycling services are retained.

**Note:** Materials that have an existing reuse or recycling market should not be disposed of in a land fill. Reuse and recycling opportunities are decreased when asbestos is not carefully removed and segregated from other waste streams.

Standard Condition: E31 (Autotext EE31)

### **E.11 Site Waste Minimisation and Management – Construction**

In order to maximise resource recovery and minimise residual waste from construction activities:

- a) the provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work,
- b) arrange for the delivery of materials so that materials are delivered 'as needed' to prevent the degradation of materials through weathering and moisture damage,
- c) consider organising to return excess materials to the supplier or manufacturer,
- d) allocate an area for the storage of materials for use, recycling and disposal (considering slope, drainage, location of waterways, stormwater outlets and vegetation),
- e) clearly 'signpost' the purpose and content of the storage areas,
- f) arrange contractors for the transport, processing and disposal of waste and recycling and ensure that all contractors are aware of the legal requirements for disposing of waste,
- g) promote separate collection bins or areas for the storage of residual waste,
- h) implement measures to prevent damage by the elements, odour and health risks, and windborne litter,
- i) minimise site disturbance and limit unnecessary excavation,
- j) ensure that all waste is transported to a place that can lawfully be used as a waste facility, and
- k) retain all records demonstrating lawful disposal of waste and keep them readily accessible for inspection by regulatory authorities such as Council, the NSW EPA or SafeWork NSW.

Standard Condition: E32 (Autotext EE32)

**F. Conditions which must be satisfied prior to any occupation or use of the building (Part 6 of the Act and Part 8 Division 3 of the Regulation)**

**F.1 Change of Building Use of Existing Building Requires Occupation Certificate (section 6.9 of the Act)**

A person must not effect a change of building use for the whole or any part of an existing building unless an Occupation Certificate has been issued in relation to the building or part.  
Standard Condition: F2 (Autotext FF2)

**F.2 Amended Plan of Management (POM) to be submitted and approved**

Prior to the issue of any *Occupation Certificate* or occupation or use of any licensed restaurant (food and drinks premises):

- a) The POM shall be amended to include details of all operational and management procedures of the premises. The POM shall include, but is not limited to, its amenity within the neighbourhood of the premises, compliance with conditions (relating to patron capacity, approved hours of operation, any trial periods, noise conditions, handling of complaints), the behaviour of patrons, liquor practices (if licensed, including the responsible service of alcohol), staffing roles and responsibilities (including security personnel if required), management of patrons within the premises and their exit and dispersal from the area, and other such operational matters to ensure compliance with relevant regulatory requirements.
- b) The POM shall be approved by Council prior to the commencement of operation of the restaurant.

**F.3 Commissioning and Certification of Systems and Works**

The Principal Contractor or Owner-builder must submit to the satisfaction of the Principal Certifier works-as-executed (WAE) plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA confirming that the works, as executed and as detailed, comply with the requirement of this consent, the *Act*, the *Regulations*, any relevant construction certificate, the BCA and relevant Australian Standards.

Works-as-executed plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA must include but may not be limited to:

- a) Certification from the supervising professional engineer that the requirement of the Geotechnical/Hydrogeological conditions and report recommendations were implemented and satisfied during development work.
- b) All flood protection measures.
- c) All garage/car park/basement car park, driveways and access ramps comply with Australian Standard AS 2890.1: *Off-Street car parking*.
- d) All stormwater drainage and storage systems.
- e) All mechanical ventilation systems.
- f) All hydraulic systems.
- g) All structural work.
- h) All acoustic attenuation work.
- i) All waterproofing.
- j) Such further matters as the Principal Certifier may require.

**Note:** This condition has been imposed to ensure that systems and works as completed meet development standards as defined by the *Act*, comply with the BCA, comply with this consent and so that a public record of works as execute is maintained.

**Note:** The PC may require any number of WAE plans, certificates, or other evidence of suitability as necessary to confirm compliance with the *Act, Regulation*, development standards, BCA, and relevant Australia Standards. As a minimum WAE plans and certification is required for stormwater drainage and detention, mechanical ventilation work, hydraulic services (including but not limited to fire services).

**Note:** The PC must submit to Council, with any Occupation Certificate, copies of WAE plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA upon which the PC has relied in issuing any Occupation Certificate.  
Standard Condition: F7 (Autotext FF7)

#### F.4 Food Premises - Inspection and Registration

Prior to the issue of any *Occupation Certificate* or occupation or use of any food premises:

- a) The *Principal Contractor* or *owner* must arrange an inspection of the fit out of the Food Premises by Council's Environmental Health Officer;
- b) A satisfactory final inspection must have been undertaken by Council's Environmental Health Officer; and
- c) The *owner* or *occupier* must have registered the Food Premises (Notification of conduct under section 100 of the *Food Act* 2003).

**Note:** Notification can be done on-line at [www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au)

**Note:** Inspections are subject to payment of the adopted inspection fee.

**Note:** Section 100 of the *Food Act* 2003 requires:

"100 Notification of conduct of food businesses

(1) The proprietor of a food business must not conduct the food business unless the proprietor has given written notice, in the approved form, of the information specified in the Food Safety Standards that is to be notified to the appropriate enforcement agency before the business is conducted. Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation."

**Note:** *Accredited Certifiers* are unable to issue *Compliance Certificates* in relation to compliance with the *Food Act* 2003, *Food Regulation* 2004; the Food Standards Code and the Australian Standard AS 4674-2004: *Construction and fit out of food premises*; since these are not matters which an *Accredited Certifier* can be satisfied in relation to under Clause 161 of the *Regulation*. This condition can only be satisfied following an inspection and sign off from Council's Environmental Health Officers.

Standard Condition: F15

#### F.5 Maintenance of the Kitchen Exhaust

The proprietor(s) of the subject site shall enter into a contract agreement for the regular maintenance and cleaning of the odour control units and filtering systems. A copy of the contract agreement shall be made available to Council's Health Services Section prior to the occupation of the building.

#### F.6 Acoustic certification

Prior to the issue of any *Occupation Certificate* or occupation or use of the licensed restaurant (food and drinks premises), certification shall be provided from an appropriately qualified acoustic specialist certifying that the works required by condition C.1 of this consent have been satisfactorily completed.

#### G. Conditions which must be satisfied prior to the issue of any Subdivision Certificate

Not applicable.

## **H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (section 6.4 (c))**

### **H.1 Removal of Ancillary Works and Structures**

The Principal Contractor or Owner must remove from the land and any adjoining public place:

- a) the site sign,
- b) ablutions,
- c) hoarding,
- d) scaffolding, and
- e) waste materials, matter, article or thing.

**Note:** This condition has been imposed to ensure that all ancillary matter is removed prior to the issue of the Final Occupation Certificate.  
Standard Condition: H12 (Autotext HH12)

## **I. Conditions which must be satisfied during the ongoing use of the development**

### **I.1 Hours of Operation of Licensed Premises**

The hours of operation for the licensed premises are restricted to 8:00am – 10:00pm Monday to Sunday.

This condition has been imposed to mitigate amenity impacts upon the neighbourhood by commercial or retail trading including, but not limited to, external impacts associated with clients attending the site for business or otherwise.

**Note:** This condition does not apply to deliveries to, or dispatches from, the site of wholesale goods or internal activities that occur under the approved hours of use. General use and deliveries or dispatches may be restricted by hours of use conditions. This condition does not restrict the operation of noise pollution laws.  
Standard Condition: I2 (Autotext: I12)

### **I.2 Extended Hours of Operation for Licensed Premises –Reviewable Condition**

The hours of operation for the Licensed premises are extended as follows:

- a) 7.00am to 8.00am Monday to Sunday, with no service of alcohol during this period;
- b) 10.00pm to 12.00 midnight Monday to Sunday.

This condition is a reviewable condition as referred to under section 4.17(10B-10D) of the Act. The extended trading hours will be reviewed in accordance with **Condition I.3**.

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

**Note:** Council's consideration of the extended hours of operation of licensed premises will take into account:

- a) compliance of the premises in terms of security and its general management;
- b) the number and nature of substantiated complaints regarding the operation of the premises;
- c) compliance with the conditions of this consent; and
- d) any other matters considered relevant to the environmental evaluation of the premises.  
Standard Condition: I4 (Autotext: I14)

### I.3 Review of Extended Hours of Operation for Licensed Premises

Council will review the extended trading hours as referred to in **Condition I.2** generally as follows:

- a) one (1) year following the issue of any Occupation Certificate applicable to this application (if works are proposed) or the date of development consent (if no works are proposed),
- b) two (2) years following the first review, and
- c) each five (5) years thereafter.

The review will be undertaken in accordance with clause 124D of the *Regulation*. This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

**Note:** A review will only be undertaken if Council has satisfactory evidence to suggest the extended trading hours are unduly impacting on the amenity of the neighbourhood or NSW Police has requested a review.

**Note:** The review will be presented to the equivalent delegated decision making panel that determined the application and all stakeholders will be notified of the meeting.

**Note:** As a result of a review a reviewable condition may be changed. Standard Condition: I5 (Autotext: I15)

### I.4 Maximum Patron Capacity

The total number of patrons on the premises at any time shall not exceed one hundred and twenty-four (124). A sign must be displayed in a prominent position in the premises stating the maximum number of persons (124) that are permitted in the premises.

Any person/s attending the premises for the purpose of 'takeaway' products/services will not be considered a 'patron' as detailed above, provided no food and or drink is consumed by those persons on the premises.

[Amended on 30/04/2021 under DA300/2020/2 (PAN - 73293)]

### I.5 Signage to be Displayed – Licensed Premises

Signage (in lettering not less than 15mm in height on a contrasting background) is to be erected in a prominent position near the principal entry to the premises in accordance with clause 98D of the *Regulation*.

The signage shall state the following and may change from time to time due to reviewable conditions in accordance with **Condition I.3**:

*“Approved hours of operation:*

- *Monday to Sunday and Public Holidays: 7am to 12 midnight*

*Approved patron capacity:*

- *Maximum of one hundred and twenty-four (124) patrons*

*Upon leaving please respect local residents by minimising noise.”*

The signage required by this condition is to be erected prior to the commencement of operations. This condition has been imposed to clearly identify the hours and patron capacity of the licensed premises.

Standard Condition: I9 (Autotext: I11)

[Amended on 30/04/2021 under DA300/2020/2 (PAN - 73293)]

## I.6 Neighbourhood Amenity – Licensed Premises (NSW Police requirements)

The Management of the premises:

- a) Shall ensure no patrons to enter or depart the premises through the Bay Street access point after 9:00 PM.
- b) Shall ensure persons entering and leaving the premises do not crowd or loiter in the vicinity of the premises in such manner that pedestrian movement is obstructed or hindered.
- c) Shall ensure that the manner in which the business of the premises is conducted and/or the behaviour of persons entering and leaving the premises does not cause undue disturbance to the amenity of the neighbourhood. In this regard, the Management shall be responsible for the control of noise and litter generated by persons and/or premises operations. If so directed by Council or by NSW Police, the Management is to employ private security staff to ensure that this condition is complied with.
- d) Shall record in a Register full details of any disturbance complaint/s made by a person to Management or staff in respect to the manner in which the business of the premises is conducted and/or the behaviour of persons entering or leaving the premises. Such recording will include time, date, nature of the complaint/s and any complainant details if provided.
- e) Shall respond to any disturbance complaint/s in a timely and effective manner. All actions undertaken by Management / staff to resolve such complaint/s shall be recorded in the Register.

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

**Note:** The lead agency for the enforcement of this condition is NSW Police.  
Standard Condition: I10 (Autotext: II10)

## I.7 Operation in Accordance with the Acoustic Report

The operation and management of the premises shall generally be in accordance with the approved Acoustic Report prepared by Acoustic Logic, referenced 20230758.1/0108A/R0/JHT and dated 18/01/2021 [listed in Condition A.3(b)] as provided below, where not conditioned elsewhere in this consent;

- a) All external windows and doors shall be closed, except for the entering and exiting of patrons/staff after 10pm every night, subject to Conditions I.6 a) and I.23, to minimise noise disruption to surrounding residential receivers.
- b) Amplified music within the venue is not to exceed a sound pressure level of 70 dB(A) L10 and an appropriate tamper proof noise limiter device shall be fixed to such equipment.
- c) Deleted.
- d) A prominent notice shall be placed within the premises to remind patrons to minimise the noise levels at any time.
- e) Signs are to be displayed at the entrance of the restaurant reminding patrons to minimise noise when departing the premise, especially after 9pm.
- f) Speakers are to be vibration isolated from the building structure by NRD type rubber mounts or equal.

[Deletion of Condition I.7(c) on 15/07/2021 under DA300/2020/5 (PAN - 107774)]

[Amendment of Condition I.7(a) on 06/02/2023 under DA300/2020/6 (PAN-364708)]

## I.8 Copies of Consents, Registers and Management Plans – Licensed Premises

A full copy of all current development consents (including approved plans) for the operation of the premises, any Registers required and any required Plan of Managements must be kept on the premises and made available for inspection immediately upon request by Council Officers, Police Officers and/or L&G Authorised Officers.

Standard Condition: I12 (Autotext: II12)

## I.9 Sale/Consumption of Liquor

### Licensed Restaurant (On-Premises License)

- a) No liquor may be sold, supplied or consumed on the premises except with the approval and authorisation from the relevant Liquor Authority.
- b) The primary use of the premises must be that of a restaurant with the provision of genuine meals, prepared upon the premises, to patrons seated at comfortable dining positions.
- c) Delete.
- d) Delete.
- e) The sale and/or supply of liquor must cease 15 minutes prior to the cessation of the respective hours of operation for the specified seating areas.
- f) No patron shall be permitted to take glasses or open containers of liquor off the premises.
- g) Management is responsible for ensuring the number of patrons in the premises does not exceed the approved capacity specified in **Condition I.4**.

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

Standard Condition: I14 (Autotext: II14)

[Deletion of Conditions I.9(c) and (d) on 29/04/2021 under DA300/2020/3 (PAN - 80632)]

## I.10 Operation in Accordance with Plan of Management (POM)

- a) The operation and management of the premises shall be in accordance with the Council approved POM at all times (Refer to Note 1 below).
- b) The approved POM shall be adopted by the Management, and filed with Council and the Licensing Police of the Eastern Suburbs Police Area Command prior to the commencement of operation of the restaurant.
- c) The plan shall be reviewed (at minimum) on an annual basis, and at any time there is a change in business ownership of the premises, to ensure harms that arise are mitigated.
- d) Where there is any inconsistency between the POM and the conditions of this consent, the conditions of this consent prevail.

**Note 1:** The approved POM in this condition refers to that in **Condition F.2** in this consent. The POM must be approved by Council prior to the commencement of operation of the restaurant

**Note 2:** The approved POM must not be altered or amended without the written consent of Council.  
Standard Condition: I15 (Autotext: II15)

## I.11 No outdoor entertainment

No sound reproduction device nor any form of entertainment is to be operated exterior to the premise.



### **I.12 Garbage Collection**

The garbage area must be maintained at all times to ensure that a breeding ground is not created for pests and must be capable of being easily and effectively cleaned.

All garbage containers must have tight fitting lids and be large enough or in sufficient numbers to contain all the waste produced by the business while awaiting the next removal from the premises.

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.  
Standard Condition: I16 (Autotext: II16)

### **I.13 Glass Sorting and Collection**

Glass must not be emptied or transferred from one receptacle to another anywhere in a public place. All glass must be emptied/transferred within the premises and removed in containers.

Bottle and/or glass sorting, recycling or collection shall only take place between the following hours:

- a) 8.00am to 8.00pm Monday to Saturday
- b) 10.00am to 8.00pm Sunday and Public Holidays

This condition has been imposed to protect the amenity of neighbouring residents.  
Standard Condition: I17 (Autotext: II17)

### **I.14 Surveillance Cameras (CCTV)**

#### **Licensed Premises**

The Management must maintain a closed-circuit television (CCTV) system on the premises.

The CCTV system must comply with the following requirements:

- a) It must operate continuously from opening time until one hour after closing.
- b) It must record in digital format at a minimum of six frames per second.
- c) Any recorded image must specify the time and date of the image.
- d) The system's cameras must cover:
  - i) all entry and exit points of the premises,
  - ii) the footpath immediately adjacent to the premises, and
  - iii) all publicly accessible areas (other than toilets) on the premises, from floor level to a minimum height of two metres.
- e) CCTV recordings must be retained for at least 30 days.
- f) Signage shall be clearly displayed adjacent to the principal entry alerting persons entering the premises that CCTV is in operation.

**Note:** The lead agency for enforcement is NSW Police.  
Standard Condition: I21

### **I.15 Parking Permits (Special Condition)**

Future tenants and residents of the proposed development will not be eligible for resident or visitor parking permits.

### I.16 Waste Collection – Commercial

General waste collection (excluding bottle and/or glass sorting, recycling or collection) is to be undertaken ONLY between the hours of:

- a) 7.00am to 9.00pm Monday to Friday, and
- b) 8.00am to 8.00pm Saturday, Sunday and Public Holidays

This condition has been imposed to protect the amenity of neighbouring residents.  
Standard Condition: I31 (Autotext: II31)

### I.17 Waste Management - Commercial

The owner and/or occupier must comply with the approved site waste minimisation and management plan (SWMMP) and with Woollahra DCP 2015, Chapter E5–Waste Management.

All waste must be presented for collection in a receptacle. Waste receptacles must be presented no earlier than the close of business on the day before collection. Waste and recycling bins/crates must be removed from the road or footpath within 1 hour of collection or otherwise in accordance with the approved SWMMP.

Receptacles are not to be stored in any public place at any time. Waste and recycling receptacles must be stored at all times within the boundaries of the site.

This condition does not apply to the extent that Activity Approval exists under the *Local Government Act 1993* or the *Roads Act 1993* and subject that all conditions of such approval(s) are complied with.

**Note:** This condition has been imposed to ensure that the provisions of the approved SWMMP and Woollahra DCP are complied with during the ongoing operations of the development.

**Note:** No waste will be collected by Council that isn't presented properly. The waste must be presented with lid closed to reduce littering.  
Standard Condition: I32

### I.18 Food Premises - Maintenance of Food Premises

The food premises must be maintained in accordance with the *Food Act 2003*, *Food Regulation 2004*; the Food Standards Code as published by Food Standards Australia and New Zealand and Australian Standard AS 4674-2004: *Construction and fit out of food premises*.

This condition has been imposed to protect public health.

**Note:** The provisions of the Food Act 2003 may change over time and irrespective of this condition compliance with this *Act*, regulations, food standards and other standards adopted under the Food Act (as amended) are mandatory. The *Food Act* and applicable regulations can be accessed free of charge at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).  
Standard Condition: I41

### I.19 Noise Control

The use of the premises must not give rise to the transmission of *offensive noise* to any place of different occupancy. *Offensive noise* is defined in the *Protection of the Environment Operations Act 1997*.

This condition has been imposed to protect the amenity of the neighbourhood.

**Note:** Council will generally enforce this condition in accordance with the *Noise Guide for Local Government* (<http://www.environment.nsw.gov.au/noise/nlg.htm>) and the *Industrial Noise Guidelines* (<http://www.environment.nsw.gov.au/noise/industrial.htm>) published by the Department of Environment and Conservation. Other state government authorities also regulate the *Protection of the Environment Operations Act 1997*.

**Useful links:**

**Community Justice Centres**—free mediation service provided by the NSW Government ([www.cjc.nsw.gov.au](http://www.cjc.nsw.gov.au)).

**Department of Environment and Conservation NSW**, Noise Policy Section web page ([www.environment.nsw.gov.au/noise](http://www.environment.nsw.gov.au/noise)).

**New South Wales Government Legislation** home page for access to all NSW legislation, including the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Noise Control Regulation 2000* ([www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)).

**Australian Acoustical Society**—professional society of noise-related professionals ([www.acoustics.asn.au/index.php](http://www.acoustics.asn.au/index.php)).

**Association of Australian Acoustical Consultants**—professional society of noise-related professionals ([www.aaac.org.au](http://www.aaac.org.au)).

**Department of Gaming and Racing** - ([www.dgr.nsw.gov.au](http://www.dgr.nsw.gov.au)).

Standard Condition: I56

## I.20 Maintenance of Sound Attenuation

Sound attenuation must be maintained in accordance with the *acoustic report*.

Standard Condition: I57

## I.21 Noise from Licensed Premises

The  $L_{A10}$  noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8k Hz inclusive) by more than 5dB(A) between 07:00 am and 12:00 midnight at the boundary of any affected residence.

The  $L_{A10}$  noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8k Hz inclusive) between 12:00 midnight and 07:00 am at the boundary of any affected residence.

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00 am.

This condition has been imposed to protect the amenity of the neighbourhood.

**Note:** dB(A) is a value used for 'A-weighted' sound pressure levels 'A' frequency weighting is an adjustment made to approximate the response of the human ear.

**Note:** *Licensed premises* means premises licensed under the *Liquor Act 2007*

**Note:** For the purposes of this condition, the  $L_{A10}$  is the A-weighted sound pressure level that is exceeded for 10% of the time over which a given sound is measured.

**Note:** The *background noise level* is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the  $L_{A90}$  level measured by a sound level meter over the applicable period.

**Note:** This condition is identical to the minimum standard condition imposed by the Casino Liquor and Gaming Control Authority (the Authority). The Authority may specify other standards in respect of the above condition under the *Liquor Act 2007*, and associated Regulations. Section 79 of the *Liquor Act 2007* provides an informal mechanism for complaints to be made (by residents, Police, local consent authorities and others) where the amenity of local neighbourhoods is unduly disturbed by the conduct of licensed premises including registered clubs (or their patrons).

The Director of Liquor and Gaming is responsible for resolving such complaints and may impose temporary or permanent conditions on any licence. For further information go to the NSW Office of Liquor and Gaming and Racing's website: ([www.olgr.nsw.gov.au](http://www.olgr.nsw.gov.au)).

**Note:** Interior noise levels of licensed premises which exceed safe hearing levels are not supported or condoned by Council.  
Standard Condition: I58

## I.22 Noise from Mechanical Plant and Equipment

The noise level measured at any boundary of the site at any time while the mechanical plant and equipment is operating must not exceed the *background noise level*. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed *background noise level* at any time.

The *background noise level* is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the  $L_{A90, 15 \text{ minute}}$  level measured by a sound level meter.

This condition has been imposed to protect the amenity of the neighbourhood.

**Note:** Words in this condition have the same meaning as in the:

*NSW Industrial Noise Policy* ([http://www.environment.nsw.gov.au/resources/ind\\_noise.pdf](http://www.environment.nsw.gov.au/resources/ind_noise.pdf))

ISBN 0 7313 2715 2, dated January 2000, and

*Noise Guide for Local Government* (<http://www.environment.nsw.gov.au/noise/nglg.htm>)

ISBN 1741370671, dated December 2004.

Standard Condition: I59

## I.23 External Doors and windows

The external doors and windows must comply with the following requirements:

- a) All external doors and windows must be kept closed after 10:00 pm except for the ingress/egress of patrons and staff and subject to c) below;
- b) All external doors must be installed with self-closing devices; and
- c) No patrons are to enter or depart the premises through the doors on the Bay Street frontage after 9:00 pm.

[Amendment of Condition I.23(a) on 06/02/2023 under DA300/2020/6 (PAN-364708)]

## J. Miscellaneous Conditions

Not applicable.

## K. Advisings

### K.1 Criminal Offences – Breach of Development Consent and Environmental Laws

Failure to comply with this development consent and any condition of this consent is a **criminal offence**. Failure to comply with other environmental laws is also a criminal offence.

Where there is any breach Council may without any further warning:

- a) Issue Penalty Infringement Notices (On-the-spot fines);
- b) Issue notices and orders;
- c) Prosecute any person breaching this consent; and/or
- d) Seek injunctions/orders before the courts to restrain and remedy any breach.

Warnings as to potential maximum penalties

Maximum penalties under NSW environmental laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

Warning as to enforcement and legal costs

Should Council have to take any action to enforced compliance with this consent or other environmental laws Council's policy is to seek from the Court appropriate orders requiring the payments of its costs beyond any penalty or remedy the Court may order.

This consent and this specific advice will be tendered to the Court when seeking costs orders from the Court where Council is successful in any necessary enforcement action.

**Note:** The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of *the Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious.

Standard Advising: K1 (Autotext KK1)

## K.2 Commonwealth Disability Discrimination Act 1992

The *Disability Discrimination Act 1992* (DDA) makes it against the law for public places to be inaccessible to people with a disability. Compliance with this development consent, the Woollahra Development Control Plan 2015 Chapter E8 – Adaptable Housing and the BCA does not necessarily satisfy compliance with the DDA.

The DDA applies to existing places as well as places under construction. Existing places must be modified and be accessible (except where this would involve "unjustifiable hardship").

**Note:** Further advice can be obtained from the Australian Human Rights Commission website [www.humanrights.gov.au/our-work/disability-rights/about-disability-rights](http://www.humanrights.gov.au/our-work/disability-rights/about-disability-rights) or call 9284 9600 or 1300 656 419. Standard Advising: K3 (Autotext KK3)

## K.3 Builder's Licences and Owner-builders Permits

Section 6.6(2)(d) of the *Act* requires among other matters that the person having the benefit of the development consent, if not carrying out the work as an **owner-builder**, must appoint a Principal Contractor for residential building work who must be the holder of a contractor licence.

The Owner(s) must appoint the Principal Certifier. The Principal Certifier must check that the required insurances are in place before the commencement of building work. The Principal Contractor (builder) must provide the Owners with a certificate of insurance evidencing the contract of insurance under the *Home Building Act 1989* for the residential building work.

**Note:** For more information go to the NSW Fair Trading website [www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating](http://www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating)

Standard Condition: K5 (Autotext KK5)

## K.4 Building Standards - Guide to Standards and Tolerances

The Principal Certifier does not undertake detailed quality control inspections and the role of the Principal Certifier is primarily to ensure that the development proceeds in accordance with this consent, Construction Certificates and that the development is fit for occupation in accordance with its classification under the Building Code of Australia.

Critical Stage Inspections do not provide the level of supervision required to ensure that the minimum standards and tolerances specified by the “NSW Guide to Standards and Tolerances 2017” are achieved.

The quality of any development is a function of the quality of the Principal Contractor’s or Owner-builder’s supervision of individual contractors and trades on a daily basis during the development. The Principal Certifier does not undertake this role.

Council, as the Principal Certifier or otherwise, does not adjudicate building contract disputes between the Principal Contractor, contractors and the Owner.

**Note:** For more information on the *NSW Guide to Standards and Tolerances* go to the NSW Fair Trading website [www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/after-you-build-or-renoate/guide-to-standards-and-tolerances](http://www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/after-you-build-or-renoate/guide-to-standards-and-tolerances) or call 133 220.  
Standard Condition: K6 (Autotext KK6)

### K.5 SafeWork NSW Requirements

The *Work Health and Safety Act 2011* and subordinate regulations, codes of practice and guidelines control and regulate the development industry.

**Note:** For more information go to the SafeWork NSW website [www.safework.nsw.gov.au](http://www.safework.nsw.gov.au) or call 131 050. Standard Condition: K7 (Autotext KK7)

### K.6 Appeal

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Brett McIntyre, Assessment Officer, on (02) 9391 7157.

However, if you wish to pursue your rights of appeal in the Land and Environment Court you are advised that Council generally seeks resolution of such appeals through a section 34 Conference, site hearings and the use of Court Appointed Experts, instead of a full Court hearing.

This approach is less adversarial, it achieves a quicker decision than would be the case through a full Court hearing and it can give rise to considerable cost and time savings for all parties involved. The use of the section 34 Conference approach requires the appellant to agree, in writing, to the Court appointed commissioner having the full authority to completely determine the matter at the conference.





Standard Condition: K14 (Autotext KK14)

### K.7 Recycling of Demolition and Building Material

It is estimated that building waste, including disposable materials, resulting from demolition, excavation, construction and renovation, accounts for almost 70% of landfill. Such waste is also a problem in the generation of dust and the pollution of stormwater. Council encourages the recycling of demolition and building materials.

Standard Condition: K17 (Autotext KK17)

### Attachments

1. Minutes of AAP (16 February 2021) [↓](#) 
2. Environmental Health Referral Response [↓](#) 
3. Acoustic Report [↓](#) 
4. Approved Plan of Management (POM) [↓](#) 

**AAP MEETING – Adopted - 16 February 2021**  
**FILE COPY**

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<b>ITEM No.</b>	D4
<b>FILE No.</b>	DA300/2020/1
<b>ADDRESS</b>	30-36 Bay Street, Double Bay
<b>PROPOSAL</b>	Change of use of the ground floor premises from the approved retail shop to a new restaurant

**Note:** The Panel checked Council's records to confirm that all interested parties had been notified of today's meeting.

**Note:** The Panel added a new Conditions C.1 (Modification of details of the development (section 4.17 (1) (g) of the Act) and F.6 (Acoustic certification) and amended Conditions I.1 (Hours of Operation – Indoor Area of Licensed Premises), I.2 (Extended Hours of operation for Licensed Premises – Reviewable Condition), I.7 (Operation in Accordance with the Acoustic Report), I.13 (Glass Sorting and Collection), I.16 (Waste Collection) and I.23 (External Doors & Windows)

**Reason for Decision**

The application has been assessed within the framework of the matters for consideration under section 4.15 of the Environmental Planning and Assessment Act 1979 and is recommended for approval because:

- It is considered to be satisfactory with all relevant planning policies including the objectives of WLEP 2014 and WDCP 2015
- It will not have adverse effects on the local built and natural environment nor any adverse social and economic impacts in the locality
- All likely impacts to adjoining properties including any submissions made have been addressed in the report, or are considered to be satisfactory.
- The site is suitable for the proposed development
- The proposal is in the public interest

(White/Bluett)

**Resolved: Pursuant to Section 80(1) of the Environmental Planning and Assessment Act 1979**

THAT the Council, as the consent authority, grant development consent to Development Application No. 300/2020/1 for the change of use of the ground floor premises from the approved retail shop to a new restaurant and fitout on land at 30-36 Bay Street Double Bay, subject to the following conditions:

**A. General Conditions**

**A.1 Conditions**

Consent is granted subject to the following conditions imposed pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979* ("the Act") and the provisions of the *Environmental Planning and Assessment Regulation 2000* ("the Regulation") such conditions being reasonable and relevant to the development as assessed pursuant to section 4.15 of the Act.

Standard Condition: A1 (Autotext AA1)

**AAP MEETING – Adopted - 16 February 2021  
FILE COPY**

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**A.2 Definitions**

Unless specified otherwise, words have the same meaning as defined by the *Act*, the *Regulation* and the *Interpretation Act 1987* as in force at the date of consent.

*Applicant* means the applicant for this consent.

*Approved Plans* mean the plans endorsed by Council referenced by this consent as amended by conditions of this consent.

*AS* or *AS/NZS* means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.

*BCA* means the Building Code of Australia as published by the Australian Building Codes Board as in force at the date of issue of any Construction Certificate.

*Council* means Woollahra Municipal Council

*Court* means the Land and Environment Court

*Local native plants* means species of native plant endemic to Sydney's eastern suburbs (see the brochure titled "Local Native Plants for Sydney's Eastern Suburbs" published by the Southern Sydney Regional Organisation of Councils).

*Stormwater drainage system* means all works, facilities and documentation relating to:

- the collection of stormwater,
- the retention of stormwater,
- the reuse of stormwater,
- the detention of stormwater,
- the controlled release of stormwater; and
- connections to easements and public stormwater systems.

*Owner* means the owner of the *site* and successors in title to the *site*.

*Owner-builder* has the same meaning as in the *Home Building Act 1989*.

*PC* means the Principal Certifier under the *Act*.

*Principal Contractor* has the same meaning as in the *Act*, or where a Principal Contractor has not been appointed by the Owner of the land being developed Principal Contractor means the Owner of the land being developed.

*Professional engineer* has the same meaning as in the *BCA*.

*Public place* has the same meaning as in the *Local Government Act 1993*.

*Road* has the same meaning as in the *Roads Act 1993*.

*SEE* means the final version of the Statement of Environmental Effects lodged by the Applicant.



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*Site* means the land being developed subject to this consent.

*Woollahra LEP* means *Woollahra Local Environmental Plan 2014*

*Woollahra DCP* means *Woollahra Development Control Plan 2015*

*Work* for the purposes of this consent means:

- the use of land in connection with development,
- the subdivision of land,
- the erection of a building,
- the carrying out of any work,
- the use of any site crane, machine, article, material, or thing,
- the storage of waste, materials, site crane, machine, article, material, or thing,
- the demolition of a building,
- the piling, piercing, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- the delivery to or removal from the *site* of any machine, article, material, or thing, or
- the occupation of the *site* by any person unless authorised by an occupation certificate.

**Note: Interpretation of conditions** - Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.  
Standard Condition: A2 (Autotext AA2)

### A.3 Approved Plans and Supporting Documents

Those with the benefit of this consent must carry out all work and maintain the use and works in accordance with both the architectural plans to which is affixed a Council stamp “Approved” and supporting documents listed below as submitted by the Applicant unless modified by any following condition.

Where the plans relate to alterations or additions only those works shown in colour or highlighted are approved.

Reference	Description	Author/Drawn	Date(s)
Dwg No. DA01 Issue A	Ground Floor Plan	All by Lawton Hurley	January 2021
Dwg No. DA01 Issue A	First Floor Plan	Architects	August 2020
19234	Parking Statement	TTPP	30 June 2020
20201241.2/1801A/R0/HC	Acoustic Report	Acoustic Logic	18/01/2021

**Note:** Warning to Accredited Certifiers – You should always insist on sighting the original Council stamped approved plans. You should not rely solely upon the plan reference numbers in this condition. Should the Applicant not be able to provide you with the original copy Council will provide you with access to its files so you may review our original copy of the approved plan.

**Note:** These plans and supporting documentation may be subject to conditions imposed under section 4.17(1)(g) of the *Act* modifying or amending the development (refer to conditions which must be satisfied prior to the issue of any *Construction Certificate*.)  
Standard Condition: A5 (Autotext AA5)

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**A.4 Ancillary Aspects of Development (section 4.17(2) of the Act)**

The Owner must procure the repair, replacement or rebuilding of all road pavement, kerb, gutter, footway, footpaths adjoining the site or damaged as a result of work under this consent or as a consequence of work under this consent. Such work must be undertaken to Council's satisfaction in accordance with Council's *Specification for Roadworks, Drainage and Miscellaneous Works* (2012) unless expressly provided otherwise by these conditions at the Owner's expense.

**Note:** This condition does not affect the Principal Contractor's or any sub-contractors obligations to protect and preserve public infrastructure from damage or affect their liability for any damage that occurs.  
Standard Condition: A8 (Autotext AA8)

**A.5 Development Consent is not granted in relation to Signage**

This approval does not give consent to the installation of any advertising/signage (see **note** below) located to the frontage of the subject site which encroaches onto or over Council's road reserve of Bay Street or Guilfoyle Avenue.

**Note:** This condition does not apply to any advertising and/or signage which is permitted under Division 2 (Advertising and Signage Exempt Development Code) of the *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008*.

**B. Conditions which must be satisfied prior to the demolition of any building or construction**

**B.1 Construction Certificate Required Prior to Any Demolition**

Where demolition is associated with an altered portion of, or an extension to an existing building the demolition of any part of a building is "commencement of erection of building" pursuant to section 6.6 of the *Act*.

In such circumstance all conditions in Part C and Part D of this consent must be satisfied prior to any demolition work. This includes, but is not limited to, the issue of a Construction Certificate, appointment of a Principal Certifier, and Notice of Commencement under the *Act*.

**Note:** See *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125.  
Standard Condition: B1 (Autotext BB1)

**B.2 Public Road Assets Prior to Any Work/Demolition**

To clarify the condition of the existing public infrastructure prior to the commencement of any development (including prior to any demolition), the Applicant or Owner must submit to Council a full record of the condition of the public road infrastructure adjacent to the development site.

The report must be submitted to Council **prior to the commencement of any work** and include photographs showing current condition and any existing damage fronting and adjoining the site to the:

- road pavement,
- kerb and gutter,

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- footway including footpath pavement and driveways,
- retaining walls within the footway or road, and
- drainage structures/pits.

The reports are to be supplied in both paper copy and electronic format in Word. Photographs are to be in colour, digital and date stamped.

If the required report is not submitted then Council will assume there was no damage to any infrastructure in the immediate vicinity of the site prior to the commencement of any work under this consent.

**Note:** If the Applicant or Owner fails to submit the asset condition report required by this condition and damage is occasioned to public assets adjoining the site, Council will deduct from security any costs associated with remedying, repairing or replacing damaged public infrastructure. Nothing in this condition prevents Council making any claim against security held for this purpose  
Standard Condition: B7

**C. Conditions which must be satisfied prior to the issue of any Construction Certificate**

**C.1 Modification of details of the development (section 4.17 (1) (g) of the Act)**

The approved plans and the Construction Certificate plans and specification, required to be submitted to the Certifying Authority pursuant to clause 139 of the Regulation, must detail the following amendments:

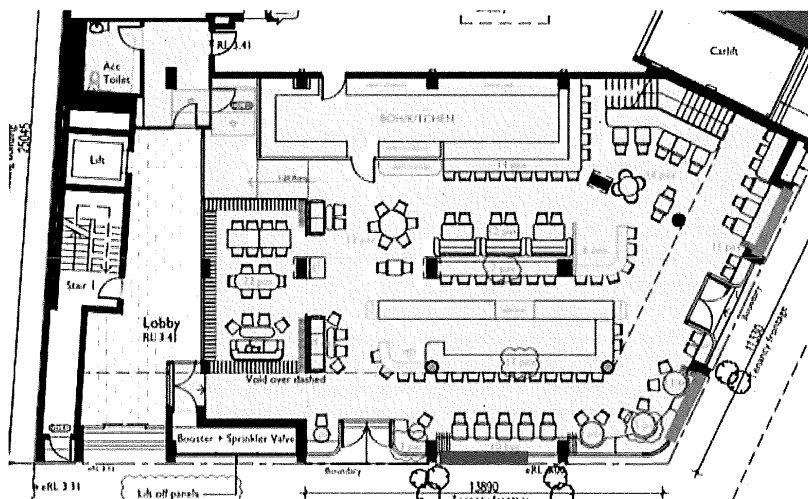
- a) The proposed fixed windows are to be a minimum of 10.38mm laminated Glazing with the minimum Rw35.
- b) The proposed sliding glass doors and windows are to be a minimum of 6.38mm laminated Glazing – Aluminium Fame with the minimum Rw34 and minimum TL as shown below:

Minimum TL of the Proposed 6.38mm Laminated Glazing with Bi-Fold Frame (Rw34)

<b>63</b>	<b>125</b>	<b>250</b>	<b>500</b>	<b>1k</b>	<b>2k</b>	<b>4k</b>	<b>8k</b>
16.7	19.9	26.6	29.3	32.8	31.9	33.9	39.9

- c) The maximum openable area on each façade is to comply with the following;
  - i. **Eastern façade facing Bay Street:** maximum allowable openable glazed façade (before 9.00pm) is 3.0m long (as highlighted in red below); and
  - ii. **North-eastern façade facing Guilfoyle Avenue:** maximum allowable openable glazed façade (before 9.00pm) is 4.0m long (as highlighted in blue below).

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**Figure 2 – Mark-up of Openable Glazed Façade (daytime and evening)**

- d) All external doors being fitted with self-closing devices.
- e) In order to ensure that amplified music in the venue does not to exceed a sound pressure level of 70 dB(A) L10, an appropriate tamper proof noise limiter device shall be fixed to such equipment and shown on the construction certificate plans.
- f) Speakers are to be vibration isolated from the building structure by NRD type rubber mounts or equal.

**Note:** The effect of this condition is that it requires design changes and/or further information to be provided with the Construction Certificate drawings and specifications to address specific issues identified during assessment under section 4.15 of the Act.

**Note:** Clause 146 of the Regulation prohibits the issue of any Construction Certificate subject to this condition unless the Certifying Authority is satisfied that the condition has been complied with.

**Note:** Clause 145 of the Regulation prohibits the issue of any Construction Certificate that is inconsistent with this consent.

**C.2 Payment of Long Service Levy, Security, Contributions and Fees**

The Certifying Authority must not issue any certificates under section 6.4 of the *Act* until provided with the original receipt(s) for the payment of all of the following levy, security, contributions, and fees prior to the issue of a Construction Certificate, Subdivision Certificate or Occupation Certificate, as will apply.

Description	Amount	Indexed	Council Fee Code
<b>LONG SERVICE LEVY</b> under <i>Building and Construction Industry Long Service Payments Act 1986</i>			
Long Service Levy <a href="http://www.longservice.nsw.gov.au/bci/levy/other-information/levy-calculator">www.longservice.nsw.gov.au/bci/levy/other-information/levy-calculator</a>	Contact LSL Corporation or use online calculator	No	

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<b>SECURITY</b> under section 4.17(6) of the <i>Environmental Planning and Assessment Act 1979</i>			
Property Damage Security Deposit -making good any damage caused to any property of the Council	\$8,780.00	No	T115
<b>DEVELOPMENT LEVY</b> under Woollahra Section 94A Development Contributions Plan 2011 This plan may be inspected at Woollahra Council or downloaded at <a href="http://www.woollahra.nsw.gov.au">www.woollahra.nsw.gov.au</a>			
Development Levy (section 7.12)	\$850.00 + Index Amount	Yes, quarterly	T96
<b>INSPECTION FEES</b> under section 608 of the <i>Local Government Act 1993</i>			
Security Administration Fee	\$202.00	No	T16
<b>TOTAL SECURITY, CONTRIBUTIONS, LEVIES AND FEES</b>	\$9,832.00 plus any relevant indexed amounts and long service levy		

**Building and Construction Industry Long Service Payment**

The long service levy under section 34 of the *Building and Construction Industry Long Service Payment Act 1986*, must be paid and proof of payment provided to the Certifying Authority prior to the issue of any Construction Certificate. The levy can be paid directly to the Long Service Corporation or to Council. Further information can be obtained from the Long Service Corporation website [www.longservice.nsw.gov.au](http://www.longservice.nsw.gov.au) or the Long Service Corporation on 131 441.

**How must the payments be made?**

Payments must be made by:

- cash deposit with Council,
- credit card payment with Council, or
- bank cheque made payable to Woollahra Municipal Council.

The payment of a security may be made by a bank guarantee where:

- the guarantee is by an Australian bank for the amount of the total outstanding contribution,
- the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable],
- the bank agrees to pay the guaranteed sum without reference to the Applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent,
- the bank guarantee is lodged with the Council prior to the issue of the Construction Certificate, and
- the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

**How will the section 7.12 levy (formerly known as 94A levy) be indexed?**

To ensure that the value the development levy is not eroded over time by increases in costs, the proposed cost of carrying out development (from which the development levy is calculated) will be indexed either annually or quarterly (see table above). Clause 3.13 of the Woollahra Section 94A Development Contributions Plan 2011 sets out the formula and index to be used in adjusting the levy.

**Do you need HELP indexing the levy?**

Please contact Council's Customer Service Team on ph 9391 7000. Failure to correctly calculate the adjusted development levy will delay the issue of any certificate issued under section 6.4 of the *Act* and could void any such certificate (eg Construction Certificate, Subdivision Certificate, or Occupation Certificate).

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### **Deferred or periodic payment of section 7.12 levy (formerly known as 94A levy) under the Woollahra Section 94A Development Contributions Plan 2011**

Where the Applicant makes a written request supported by reasons for payment of the section 7.12 levy other than as required by clause 3.9, the Council may accept deferred or periodic payment. The decision to accept a deferred or periodic payment is at the sole discretion of the Council, which will consider:

- the reasons given,
- whether any prejudice will be caused to the community deriving benefit from the public facilities,
- whether any prejudice will be caused to the efficacy and operation of the Plan, and
- whether the provision of public facilities in accordance with the adopted works schedule will be adversely affected.

Council may, as a condition of accepting deferred or periodic payment, require the provision of a bank guarantee where:

- the guarantee is by an Australian bank for the amount of the total outstanding contribution,
- the bank unconditionally agrees to pay the guaranteed sum to the Council on written request by Council on completion of the development or no earlier than 12 months from the provision of the guarantee whichever occurs first [NOTE: a time limited bank guarantee or a bank guarantee with an expiry date is not acceptable],
- the bank agrees to pay the guaranteed sum without reference to the Applicant or landowner or other person who provided the guarantee and without regard to any dispute, controversy, issue or other matter relating to the development consent or the carrying out of development in accordance with the development consent,
- the bank guarantee is lodged with the Council prior to the issue of the Construction Certificate, and
- the bank's obligations are discharged when payment to the Council is made in accordance with the guarantee or when Council notifies the bank in writing that the guarantee is no longer required.

Any deferred or periodic payment of the section 7.12 levy will be adjusted in accordance with clause 3.13 of the Plan. The Applicant will be required to pay any charges associated with establishing or operating the bank guarantee. Council will not cancel the bank guarantee until the outstanding contribution as indexed and any accrued charges are paid.

Standard Condition: C5

### **C.3 Waste Storage – Commercial**

The *Construction Certificate* plans and specifications required by clause 139 of the Regulation, must make provision for:

- a) A dedicated and enclosed waste and recycling storage area behind the building line or within non-habitable areas of the building.

Standard Condition: C18 (Autotext: CC18)

### **C.4 Structural Adequacy of Existing Supporting Structures**

A certificate from a professional engineer (structural engineer), certifying the adequacy of the existing supporting structure to support the additional loads proposed to be imposed by the development, must be submitted with the Construction Certificate application.

**Note:** This condition is imposed to ensure that the existing structure is able to support the additional loads proposed.

Standard Condition: C35 (Autotext CC35)

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### C.5 Professional Engineering Details

The Construction Certificate plans and specifications, required by clause 139 of the *Regulation*, must include detailed professional engineering plans and/or specifications for all structural, electrical, hydraulic, hydrogeological, geotechnical, mechanical and civil work complying with this consent, approved plans, the statement of environmental effects and supporting documentation.

Detailed professional engineering plans and/or specifications must be submitted to the Certifying Authority with the application for any Construction Certificate.

**Note:** This does not affect the right of the developer to seek staged Construction Certificates.  
Standard Condition: C36

### C.6 Light and Ventilation

The *Construction Certificate* plans and specifications, required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation*, must detail all a lighting, mechanical ventilation or air-conditioning systems complying with Part F.4 of the *BCA* or clause 3.8.4 and 3.8.5 of the *BCA* Housing Provisions, inclusive of [AS 1668.1](#), [AS 1668.2](#) and [AS/NZS 3666.1](#). If an alternate solution is proposed then the *Construction Certificate* application must include a statement as to how the performance requirements of the *BCA* are to be complied with and support the performance based solution by expert *evidence of suitability*. This condition does not set aside the mandatory requirements of the *Public Health (Microbial Control) Regulation 2000* in relation to *regulated systems*. This condition does not set aside the effect of the *Protection of the Environment Operations Act 1997* in relation to offensive noise or odour.

**Note:** Clause 98 of the *Regulation* requires compliance with the *BCA*. Clause 145 of the *Regulation* prevents the issue of a *Construction Certificate* unless the *Accredited Certifier/Council* is satisfied that compliance has been achieved. Schedule 1, Part 3 of the *Regulation* details what information must be submitted with any *Construction Certificate*. It is the Applicant's responsibility to demonstrate compliance through the *Construction Certificate* application process. Applicants must also consider possible noise and odour nuisances that may arise. The provisions of the *Protection of the Environment Operations Act 1997* have overriding effect if offensive noise or odour arises from the use. Applicant's must pay attention to the location of air intakes and air exhausts relative to sources of potentially contaminated air and neighbouring windows and air intakes respectively, see section 2 and 3 of [AS 1668.2](#).

Standard Condition C59

### C.7 Food Premises – Construction Certificate Plans and Specifications

The person with the benefit of this consent must submit to Council details for the construction and fit out of food premises. Such details must demonstrate compliance with the *Food Act 2003*, *Food Regulation 2004*; the *Food Standards Code* as published by Food Standards Australia and New Zealand and Australian Standard AS 4674-2004: *Construction and fit out of food premises*.

No *Construction Certificate* relating to the construction or fitout of food premises must be issued until Council's Environmental Health Officers' have advised in writing that the plans and specification are considered satisfactory.

The details for the construction and fit out of food premises, as considered satisfactory by Council's Environmental Health Officers' must form part of any *Construction Certificate*.

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**Note:** The assessment of food premises fitout plans and specifications is subject to an adopted fee. The construction and fitout of food premises is not listed under clause 161 of the *Environmental Planning & Assessment Regulation 2000* as a matter that a *Certifying Authority* may be satisfied as to. Hence, the detailed plans & specifications must be referred to Council and be to Council's satisfaction prior to the issue of any *Construction Certificate* for such works.  
Standard Condition: C65

**C.8 Ventilation - Kitchen Exhaust- Smoke & Odour Control**

- a) The discharge of air from the kitchen exhaust ventilation system(s) is considered an obnoxious discharge under Section 3.7 of Australian Standard 1668.2-1991. All exhaust air and spill air shall be discharged to atmosphere in such a manner as not to cause a danger or nuisance to occupants in the building, occupants of neighbouring buildings or members of the public.
- b) The design, construction and installation of the kitchen exhaust hood(s) shall comply with the requirements of *Appendix E, 'Kitchen Exhaust Hoods' of AS 1668.2-1991* and *Appendix F, 'Capture of Emissions By Kitchen Exhaust Hoods' of AS 1668.2-1991*.
- c) A *Smoke & Odour Impact Assessment Report* is to be prepared by a suitably qualified engineer detailing the design specification of the proposed kitchen exhaust system, including all smoke and odour inhibiting controls and filtering systems.
- d) The *Construction Certificate* plans and specifications, required to be submitted to the *Certifying Authority* pursuant to clause 139 of the *Regulation*, must detail all the kitchen exhaust ventilation system(s), including all smoke and odour controls and filtering systems. Upon completion and prior to occupation of the premises, the kitchen exhaust ventilation system(s) shall be certified by a qualified engineer that the system(s) has been installed in accordance with AS 1668.1 and AS 1668.2 and the design specification as detailed in the *Smoke & Odour Impact Assessment Report*.

**C.9 Ventilation - Internal Sanitary Rooms**

All internal sanitary rooms and laundry facilities not provided with natural ventilation must be provided with a system of mechanical exhaust ventilation in accordance with *Table B1 Minimum Exhaust Ventilation Flow Rates of AS 1668.2-1991*. Details of any proposed mechanical ventilation system(s) being submitted with the *Construction Certificate* plans and specifications, required to be submitted to the *Certifying Authority* demonstrating compliance with AS 1668 Parts 1 & 2.

**D. Conditions which must be satisfied prior to the commencement of any development work**

**D.1 Compliance with Building Code of Australia and insurance requirements under the Home Building Act 1989**

For the purposes of section 4.17(11) of the *Act*, the following conditions are prescribed in relation to a development consent for development that involves any building work:

- a) that the work must be carried out in accordance with the requirements of the Building Code of Australia,



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- b) in the case of residential building work for which the *Home Building Act 1989* requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

- a) to the extent to which an exemption is in force under the *Home Building Regulation 2004*, or  
b) to the erection of a temporary building.

In this condition, a reference to the BCA is a reference to that code as in force on the date the application for the relevant Construction Certificate is made.

**Note:** This condition must be satisfied prior to commencement of any work in relation to the contract of insurance under the *Home Building Act 1989*. This condition also has effect during the carrying out of all building work with respect to compliance with the Building Code of Australia.

**Note:** All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.  
Standard Condition: D1 (Autotext DD1)

### D.2 Works (Construction) Zone – Approval and Implementation

A Works Zone may be required for this development. The Principal Contractor or Owner can apply for a works zone. If the works zone is approved the Principal Contractor or Owner must pay all fees for this Works Zone before it can be installed.

The Principal Contractor must pay all fees associated with the application and occupation and use of the road as a Works Zone. All Works Zone signs must have been erected by Council to permit enforcement of the Works Zone by Council's Rangers and NSW Police before commencement of any work. Signs are not erected until full payment of works zone fees.

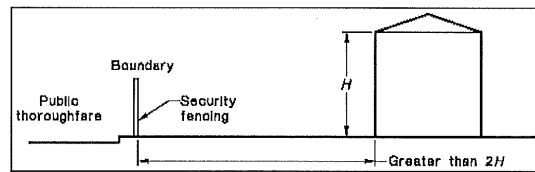
**Note:** The Principal Contractor or Owner must allow not less than four to six weeks (for routine applications) from the date of making an application to the Traffic Committee (Woollahra Local Traffic Committee) constituted under the clause 22 of the *Transport Administration (General) Regulation 2000* to exercise those functions delegated by the Roads and Maritime Services under section 50 of the *Transport Administration Act 1988*.

**Note:** The enforcement of the works zone is at the discretion of Council's Rangers and the NSW Police Service. The Principal Contractor must report any breach of the works zone to either Council or the NSW Police Service.  
Standard Condition: D10 (Autotext DD10)

### D.3 Security Fencing, Hoarding and Overhead Protection

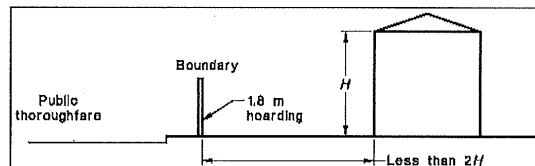
Security fencing must be provided around the perimeter of the development site, including any additional precautionary measures taken to prevent unauthorised entry to the site at all times during the demolition, excavation and construction period. Security fencing must be the equivalent 1.8m high chain wire as specified in AS 1725.

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**Type A Hoarding**

Where the development site adjoins a public thoroughfare, the common boundary between them must be fenced for its full length with a hoarding, unless the least horizontal distance between the common boundary and the nearest parts of the structure is greater than twice the height of the structure. The hoarding must be constructed of solid materials (chain wire or the like is not acceptable) to a height of not less than 1.8m adjacent to the thoroughfare.



**Type B Hoarding**

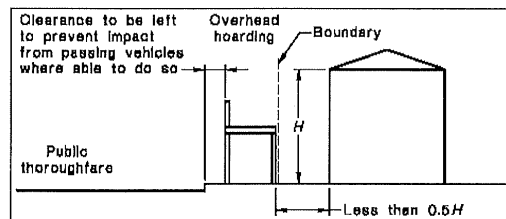
Where a development site adjoins a public thoroughfare with a footpath alongside the common boundary then, in addition to the hoarding required above, the footpath must be covered by an overhead protective structure and the facing facade protected by heavy-duty scaffolding, unless either:

- a) the vertical height above footpath level of the structure being demolished is less than 4.0m; or
- b) the least horizontal distance between footpath and the nearest part of the structure is greater than half the height of the structure.

The overhead structure must consist of a horizontal platform of solid construction and vertical supports, and the platform must:

- a) extend from the common boundary to 200mm from the edge of the carriageway for the full length of the boundary,
- b) have a clear height above the footpath of not less than 2.1m,
- c) terminate 200mm from the edge of the carriageway (clearance to be left to prevent impact from passing vehicles) with a continuous solid upstand projecting not less than 0.5m above the platform surface, and
- d) together with its supports, be designed for a uniformly distributed live load of not less than 7 kPa.

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The Principal Contractor or Owner-builder must ensure that overhead protective structures are installed and maintained in accordance with the NSW “Code of Practice - Overhead Protective Structures 1995”. This is code available at [www.safework.nsw.gov.au/\\_data/assets/pdf\\_file/0008/52883/Overhead-protective-structures-Code-of-practice.pdf](http://www.safework.nsw.gov.au/_data/assets/pdf_file/0008/52883/Overhead-protective-structures-Code-of-practice.pdf)

**All Hoardings**

Security fencing, hoarding and overhead protective structure must not obstruct access to utilities services including but not limited to man holes, pits, stop valves, fire hydrants or the like.

**Hoardings on Public Land**

The Principal Contractor or Owner-builder must pay all fees associated with the application and occupation and use of the road (footway) for required hoarding or overhead protection.

A creative hoarding (i.e. an approved artwork or historic image affixed to the hoarding) is required if the hoarding meets the criteria in Council’s Creative Hoardings Policy (adopted March 2020). The cost of printing and affixing the creative hoarding is the responsibility of the Principal Contractor or Owner-builder. The Creative Hoardings Policy can be downloaded from Council’s website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au)

**Note:** The Principal Contractor or Owner must allow not less than two (2) weeks from the date of making a hoarding application for determination. Any approval for a hoarding or overhead protection under the *Roads Act 1993* will be subject to its own conditions and fees.

**Note:** Council seeks to increase public art in the public domain by requiring artwork or historic images on hoardings located on public land. Under the Creative Hoardings Policy an application for a hoarding proposed on public land will require an approved artwork or historic image affixed to the hoarding if the hoarding meets the criteria in section 3 of the Policy:

- A. Hoardings proposed on land zoned B2 Local Centre, or B4 Mixed Use, or SP2 Infrastructure under Woollahra Local Environmental Plan 2014 AND erected for 8 weeks or more  
OR
- B. Hoardings proposed on land located along a State classified road (regardless of the zone) AND erected for 8 weeks or more  
OR
- C. Hoardings proposed in any other location than that referred to in A. and B. above AND erected for 12 weeks or more, except where:
  - i. the capital investment value of the work to which the hoarding relates is less than \$1 million  
OR
  - ii. the land is zoned R2 Low Density Residential  
OR
  - iii. the land is zoned R3 Medium Density Residential and the hoarding located in a lane or street that does not have through traffic (eg a cul-de-sac or no through road).

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Artwork and historic images for the hoardings are assessed and approved in accordance with the Creative Hoardings Policy. Details of the artwork or images proposed to be affixed to the hoardings must be submitted with Council's form "Application for a permit to use a footpath for the erection of a hoarding/scaffolding".

The Creative Hoardings Policy can be downloaded from [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or for more information contact Council's Cultural Development Team.  
Standard Condition: D11 (Autotext DD11)

### D.4 Site Signs

The Principal Contractor or Owner-builder must ensure that the sign/s required by clauses 98A and 227A of the *Regulation* is/are erected and maintained at all times.

Clause 98A of the *Regulation* provides:

#### *Erection of signs*

- For the purposes of section 4.17(11) of the *Act*, the requirements of subclauses (2) and (3) are prescribed as conditions of a development consent for development that involves any building work, subdivision work or demolition work.
- A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - a. showing the name, address and telephone number of the Principal Certifier for the work, and
  - b. showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - c. stating that unauthorised entry to the work site is prohibited.
- Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.
- This clause does not apply in relation to building work, subdivision work or demolition work that is carried out inside an existing building that does not affect the external walls of the building.
- This clause does not apply in relation to Crown building work that is certified, in accordance with section 6.28 of the *Act*, to comply with the Building Code of Australia.

Clause 227A of the *Regulation* provides:

#### *Signs on development sites*

If there is a person who is the Principal Certifier or the Principal Contractor for any building work, subdivision work or demolition work authorised to be carried out on a site by a development consent or complying development certificate:

- Each such person MUST ensure that a rigid and durable sign showing the person's identifying particulars so that they can be read easily by anyone in any public road or other public place adjacent to the site is erected in a prominent position on the site before the commencement of work, and is maintained on the site at all times while this clause applies until the work has been carried out.

**Note:** Clause 227A imposes a penalty exceeding \$1,000 if these requirements are not complied with.

**Note:** If Council is appointed as the Principal Certifier it will provide the sign to the Principal Contractor or Owner-builder who must ensure that the sign is erected and maintained as required by clause 98A and clause 227A of the *Regulation*.

Standard Condition: D12 (Autotext DD12)

### D.5 Toilet Facilities

Toilet facilities are to be provided, at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site.

Each toilet provided:

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- a) must be a standard flushing toilet, and
- b) must be connected to a public sewer, or
- c) if connection to a public sewer is not practicable, to an accredited sewage management facility approved by the Council, or
- d) if connection to a public sewer or an accredited sewage management facility is not practicable, to some other sewage management facility approved by the Council.

The provision of toilet facilities in accordance with this condition must be completed before any other work is commenced.

In this condition:

**accredited sewage management facility** means a sewage management facility to which Division 4A of Part 3 of the *Local Government (Approvals) Regulation 1993* applies, being a sewage management facility that is installed or constructed to a design or plan the subject of a certificate of accreditation referred to in clause 95B of the *Local Government (Approvals) Regulation 1993*.

**approved by the Council** means the subject of an approval in force under Division 1 of Part 3 of the *Local Government (Approvals) Regulation 1993*.

**public sewer** has the same meaning as it has in the *Local Government (Approvals) Regulation 1993*.

**sewage management facility** has the same meaning as it has in the *Local Government (Approvals) Regulation 1993*.

**Note:** This condition does not set aside the requirement to comply with SafeWork NSW requirements.  
Standard Condition: D13 (Autotext DD13)

**D.6 Building - Construction Certificate, Appointment of Principal Certifier, Appointment of Principal Contractor and Notice of Commencement (Part 6, Division 6.3 of the Act)**

The erection of the building in accordance with this development consent must not be commenced until:

- a) A Construction Certificate for the building work has been issued by the consent authority, the Council (if the Council is not the consent authority) or an accredited Certifier, and
- b) The person having the benefit of the development consent has:
  - appointed a Principal Certifier for the building work, and
  - notified the Principal Certifier that the person will carry out the building work as an Owner-builder, if that is the case, and
- c) The Principal Certifier has, no later than 2 days before the building work commences:
  - notified the consent authority and the Council (if the Council is not the consent authority) of his or her appointment, and
  - notified the person having the benefit of the development consent of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and

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- d) The person having the benefit of the development consent, if not carrying out the work as an Owner-builder, has:
- appointed a Principal Contractor for the building work who must be the holder of a contractor licence if any residential building work is involved, and
  - notified the Principal Certifier of any such appointment, and
  - unless that person is the Principal Contractor, notified the Principal Contractor of any critical stage inspections and other inspections that are to be carried out in respect of the building work, and
  - given at least 2 days' notice to the Council of the person's intention to commence the erection of the building.

**Note:** *building* has the same meaning as in section 1.4 of the *Act* and includes part of a building and any structure or part of a structure.

**Note:** *new building* has the same meaning as in section 6.1 of the *Act* and includes an altered portion of, or an extension to, an existing building.

**Note:** The commencement of demolition works associated with an altered portion of, or an extension to, an existing building is considered to be the commencement of building work requiring compliance with section 6.6(2) of the *Act* (including the need for a Construction Certificate) prior to any demolition work. See: *Over our Dead Body Society Inc v Byron Bay Community Association Inc* [2001] NSWLEC 125.

**Note:** Construction Certificate Application, PC Service Agreement and Notice of Commencement forms can be downloaded from Council's website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au)

**Note:** It is an offence for any person to carry out the erection of a *building* in breach of this condition and in breach of section 6.6(2) of the *Act*.  
Standard Condition: D15 (Autotext DD15)

**E. Conditions which must be satisfied during any development work**

**E.1 Compliance with BCA and Insurance Requirements under the Home Building Act 1989**

For the purposes of section 4.17(11) of the *Act*, the following condition is prescribed in relation to a development consent for development that involves any building work:

- a) that the work must be carried out in accordance with the requirements of the Building Code of Australia (BCA),
- b) in the case of residential building work for which the Home Building Act 1989 requires there to be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force before any building work authorised to be carried out by the consent commences.

This condition does not apply:

- a) to the extent to which an exemption is in force under clause 187 or 188, subject to the terms of any condition or requirement referred to in clause 187 (6) or 188 (4) of the *Regulation*, or
- b) to the erection of a temporary building.

In this clause, a reference to the BCA is a reference to that Code as in force on the date the application for the relevant Construction Certificate is made.

**Note:** All new guttering is to comply with the provisions of Part 3.5.2 of the Building Code of Australia.  
Standard Condition: E1 (Autotext EE1)

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### E.2 Compliance with Australian Standard for Demolition

Demolition of buildings and structures must comply with Australian Standard AS 2601—2001: *The Demolition of Structures*.  
Standard Condition: E2 (Autotext EE2)

### E.3 Requirement to Notify about New Evidence

Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination, heritage significance, threatened species or other relevant matters must be immediately notified to Council and the Principal Certifier.  
Standard Condition: E4 (Autotext EE4)

### E.4 Critical Stage Inspections

Critical stage inspections must be called for by the Principal Contractor or Owner-builder as required by the Principal Certifier, any PC service agreement, the *Act* and the *Regulation*.

Work must not proceed beyond each critical stage until the Principal Certifier is satisfied that work is proceeding in accordance with this consent, the Construction Certificate(s) and the *Act*.

*Critical stage inspections* means the inspections prescribed by the *Regulations* for the purposes of section 6.5 of the *Act* or as required by the Principal Certifier and any PC Service Agreement.

**Note:** The PC may require inspections beyond mandatory critical stage inspections in order that the PC be satisfied that work is proceeding in accordance with this consent.

**Note:** The PC may, in addition to inspections, require the submission of Compliance Certificates, survey reports or evidence of suitability in accordance with Part A2.2 of the BCA in relation to any matter relevant to the development.

Standard Condition: E5 (Autotext EE5)

### E.5 Hours of Work –Amenity of the Neighbourhood

- a) No *work* must take place on any Sunday or public holiday.
- b) No *work* must take place before 7am or after 5pm any weekday.
- c) No *work* must take place before 7am or after 1pm any Saturday.
- d) The following *work must not* take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday:
  - (i) piling,
  - (ii) piling,
  - (iii) rock or concrete cutting, boring or drilling,
  - (iv) rock breaking,
  - (v) rock sawing,
  - (vi) jack hammering, or
  - (vii) machine excavation.
- e) No loading or unloading of material or equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.

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- f) No operation of any equipment associated with the activities listed in part d) above must take place before 9am or after 4pm any weekday, or before 9am or after 1pm any Saturday or at any time on a Sunday or public holiday.
- g) No rock excavation being cutting, boring, drilling, breaking, sawing, jack hammering or bulk excavation of rock, must occur without a 15 minute break every hour.

This condition has been imposed to mitigate the impact of work upon the amenity of the neighbourhood. Impact of work includes, but is not limited to, noise, vibration, dust, odour, traffic and parking impacts.

**Note:** The use of noise and vibration generating plant and equipment and vehicular traffic, including trucks in particular, significantly degrade the amenity of neighbourhoods and more onerous restrictions apply to these activities. This more invasive work generally occurs during the foundation and bulk excavation stages of development. If you are in doubt as to whether or not a particular activity is considered to be subject to the more onerous requirement (9am to 4pm weekdays and 9am to 1pm Saturdays) please consult with Council.

**Note:** Each and every breach of this condition by any person may be subject to a separate penalty infringement notice or prosecution.

**Note:** The delivery and removal of plant, equipment and machinery associated with wide loads subject to RMS and NSW Police restrictions on their movement outside the approved hours of work will be considered on a case by case basis.

**Note:** Compliance with these hours of work does not affect the rights of any person to seek a remedy to offensive noise as defined by the *Protection of the Environment Operations Act 1997*, the *Protection of the Environment Operations (Noise Control) Regulation 2017*.

**Note:** NSW EPA Noise Guide is available at [www.epa.nsw.gov.au/noise/nglg.htm](http://www.epa.nsw.gov.au/noise/nglg.htm)  
Standard Condition: E6 (Autotext EE6)

**E.6 Public Footpaths – Safety, Access and Maintenance**

The Principal Contractor or Owner-builder and any other person acting with the benefit of this consent must:

- a) Not erect or maintain any gate or fence swing out or encroaching upon the road or the footway.
- b) Not use the road or footway for the storage of any article, material, matter, waste or thing.
- c) Not use the road or footway for any *work*.
- d) Keep the road and footway in good repair free of any trip hazard or obstruction.
- e) Not stand any plant and equipment upon the road or footway.
- f) Provide a clear safe pedestrian route a minimum of 1.5m wide.
- g) Protect heritage listed street name inlays in the footpath which are not to be removed or damaged during development.

This condition does not apply to the extent that a permit or approval exists under the section 148B of the *Road Transport Act 2013*, section 138 of the *Roads Act 1993* or section 68 of the *Local Government Act 1993* except that at all time compliance is required with:

- a) Australian Standard AS 1742 (Set): *Manual of uniform traffic control devices* and all relevant parts of this set of standards.
- b) Australian Road Rules.



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**Note:** Section 73 of the *Road Transport (Safety and Traffic Management) Act 1999* allows the NSW Police to close any road or road related area to traffic during any temporary obstruction or danger to traffic or for any temporary purpose.

**Note:** Section 138 of the *Roads Act 1993* provides that a person must not:

- erect a structure or carry out a work in, on or over a public road, or
- dig up or disturb the surface of a public road, or
- remove or interfere with a structure, work or tree on a public road, or
- pump water into a public road from any land adjoining the road, or
- connect a road (whether public or private) to a classified road, otherwise than with the consent of the appropriate roads authority.

**Note:** Section 68 of the *Local Government Act 1993* provides that a person may carry out certain activities only with the prior approval of the Council including:

- Part C Management of waste:
  - a. For fee or reward, transport waste over or under a public place
  - b. Place waste in a public place
  - c. Place a waste storage container in a public place.
- Part E Public roads:
  - a. Swing or hoist goods across or over any part of a public road by means of a lift, hoist or tackle projecting over the footway
  - b. Expose or allow to be exposed (whether for sale or otherwise) any article in or on or so as to overhang any part of the road or outside a shop window or doorway abutting the road, or hang an article beneath an awning over the road.  
Standard Condition: E7 (Autotext EE7)

### E.7 Placement and Use of Skip Bins

The Principal Contractor or Owner-builder must ensure that all waste storage containers, including but not limited to skip bins, must be stored within the site unless:

- a) Activity Approval has been issued by Council under section 68 of the *Local Government Act 1993* to place the waste storage container in a public place; and
- b) where located on the road it is located only in a positions where a vehicle may lawfully park in accordance with the Australian Road Rules.

**Note:** Waste storage containers must not be located on the footpath without a site specific activity approval. Where such site specific activity approval is granted a 1.5m wide clear path of travel is maintained free of any trip hazards.

Standard Condition: E21 (Autotext EE21)

### E.8 Dust Mitigation

Dust mitigation must be implemented in accordance with “*Dust Control - Do it right on site*” published by the Southern Sydney Regional Organisation of Councils.

This generally requires:

- a) Dust screens to all hoardings and site fences.
- b) All stockpiles or loose materials to be covered when not being used.
- c) All equipment, where capable, being fitted with dust catchers.
- d) All loose materials being placed bags before placing into waste or skip bins.
- e) All waste and skip bins being kept covered when not being filled or emptied.
- f) The surface of excavation work being kept wet to minimise dust.
- g) Landscaping incorporating trees, dense shrubs and grass being implemented as soon as practically possible to minimise dust.

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**Note:** “Dust Control - Do it right on site” can be downloaded from Council’s website [www.woollahra.nsw.gov.au](http://www.woollahra.nsw.gov.au) or obtained from Council’s office.

**Note:** Special precautions must be taken when removing asbestos or lead materials from development sites. Additional information can be obtained from [www.safework.nsw.gov.au](http://www.safework.nsw.gov.au) and [www.epa.nsw.gov.au](http://www.epa.nsw.gov.au). Other specific conditions and advice may apply.

**Note:** Demolition and construction activities may affect local air quality and contribute to urban air pollution. The causes are dust, smoke and fumes coming from equipment or activities, and airborne chemicals when spraying for pest management. Precautions must be taken to prevent air pollution.  
Standard Condition: E23 (Autotext EE23)

**E.9 Food Premises – Construction and Fitout**

The *principal contractor* or *owner builder* must ensure that all construction and fitout of the food premises complies with the details for the food premises submitted to and considered satisfactory by Council's Environmental Health Officers but no less compliant than with the *Food Act 2003*, *Food Regulation 2004*; the *Food Standards Code* as published by Food Standards Australia and New Zealand and AS 4674-2004: *Construction and fit out of food premises*.

This condition has been imposed to protect public health and ensure that food premises are easily maintained in a clean condition fit for food preparation and consumption.  
Standard Condition: E29

**E.10 Site Waste Minimisation and Management – Demolition**

In order to maximise resource recovery and minimise residual waste from demolition activities:

- a) the provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work,
- b) an area is to be allocated for the storage of materials for use, recycling and disposal (giving consideration to slope, drainage, location of waterways, stormwater outlets, vegetation and access and handling requirements),
- c) provide separate collection bins and/or areas for the storage of residual waste,
- d) clearly ‘signpost’ the purpose and content of the bins and/or storage areas,
- e) implement measures to prevent damage by the elements, odour, health risks and windborne litter, and
- f) minimise site disturbance, limiting unnecessary excavation.

When implementing the SWMMP the Applicant must ensure:

- a) footpaths, public reserves and street gutters are not used as places to store demolition waste or materials of any kind without Council approval,
- b) any material moved offsite is transported in accordance with the requirements of the *Protection of the Environment Operations Act 1997*,
- c) waste is only transported to a place that can lawfully be used as a waste facility, generation, storage, treatment and disposal of hazardous waste and special waste (including asbestos) is conducted in accordance with relevant waste legislation administered by the NSW Environment Protection Authority, and relevant occupational health and safety legislation administered by SafeWork NSW, and

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- e) evidence such as weighbridge docketts and invoices for waste disposal or recycling services are retained.

**Note:** Materials that have an existing reuse or recycling market should not be disposed of in a land fill. Reuse and recycling opportunities are decreased when asbestos is not carefully removed and segregated from other waste streams.  
Standard Condition: E31 (Autotext EE31)

**E.11 Site Waste Minimisation and Management – Construction**

In order to maximise resource recovery and minimise residual waste from construction activities:

- a) the provisions of the Site Waste Minimisation and Management Plan (SWMMP) are to be implemented at all times during the course of the work,
- b) arrange for the delivery of materials so that materials are delivered ‘as needed’ to prevent the degradation of materials through weathering and moisture damage,
- c) consider organising to return excess materials to the supplier or manufacturer,
- d) allocate an area for the storage of materials for use, recycling and disposal (considering slope, drainage, location of waterways, stormwater outlets and vegetation),
- e) clearly ‘signpost’ the purpose and content of the storage areas,
- f) arrange contractors for the transport, processing and disposal of waste and recycling and ensure that all contractors are aware of the legal requirements for disposing of waste,
- g) promote separate collection bins or areas for the storage of residual waste,
- h) implement measures to prevent damage by the elements, odour and health risks, and windborne litter,
- i) minimise site disturbance and limit unnecessary excavation,
- j) ensure that all waste is transported to a place that can lawfully be used as a waste facility, and
- k) retain all records demonstrating lawful disposal of waste and keep them readily accessible for inspection by regulatory authorities such as Council, the NSW EPA or SafeWork NSW.

Standard Condition: E32 (Autotext EE32)

**F. Conditions which must be satisfied prior to any occupation or use of the building (Part 6 of the Act and Part 8 Division 3 of the Regulation)**

**F.1 Change of Building Use of Existing Building Requires Occupation Certificate (section 6.9 of the Act)**

A person must not effect a change of building use for the whole or any part of an existing building unless an Occupation Certificate has been issued in relation to the building or part.

Standard Condition: F2 (Autotext FF2)

**F.2 Amended Plan of Management (POM) to be submitted and approved**

Prior to the issue of any *Occupation Certificate* or occupation or use of any licensed restaurant (food and drinks premises):

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- a) The POM shall be amended to include details of all operational and management procedures of the premises. The POM shall include, but is not limited to, its amenity within the neighbourhood of the premises, compliance with conditions (relating to patron capacity, approved hours of operation, any trial periods, noise conditions, handling of complaints), the behaviour of patrons, liquor practices (if licensed, including the responsible service of alcohol), staffing roles and responsibilities (including security personnel if required), management of patrons within the premises and their exit and dispersal from the area, and other such operational matters to ensure compliance with relevant regulatory requirements.
- b) The POM shall be approved by Council prior to the commencement of operation of the restaurant.

### F.3 Commissioning and Certification of Systems and Works

The Principal Contractor or Owner-builder must submit to the satisfaction of the Principal Certifier works-as-executed (WAE) plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA confirming that the works, as executed and as detailed, comply with the requirement of this consent, the *Act*, the *Regulations*, any relevant construction certificate, the BCA and relevant Australian Standards.

Works-as-executed plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA must include but may not be limited to:

- a) Certification from the supervising professional engineer that the requirement of the Geotechnical/Hydrogeological conditions and report recommendations were implemented and satisfied during development work.
- b) All flood protection measures.
- c) All garage/car park/basement car park, driveways and access ramps comply with Australian Standard AS 2890.1: *Off-Street car parking*.
- d) All stormwater drainage and storage systems.
- e) All mechanical ventilation systems.
- f) All hydraulic systems.
- g) All structural work.
- h) All acoustic attenuation work.
- i) All waterproofing.
- j) Such further matters as the Principal Certifier may require.

**Note:** This condition has been imposed to ensure that systems and works as completed meet development standards as defined by the *Act*, comply with the BCA, comply with this consent and so that a public record of works as executed is maintained.

**Note:** The PC may require any number of WAE plans, certificates, or other evidence of suitability as necessary to confirm compliance with the *Act*, *Regulation*, development standards, BCA, and relevant Australia Standards. As a minimum WAE plans and certification is required for stormwater drainage and detention, mechanical ventilation work, hydraulic services (including but not limited to fire services).

**Note:** The PC must submit to Council, with any Occupation Certificate, copies of WAE plans, Compliance Certificates and evidence of suitability in accordance with Part A2.2 of the BCA upon which the PC has relied in issuing any Occupation Certificate.

Standard Condition: F7 (Autotext FF7)

### F.4 Food Premises - Inspection and Registration

Prior to the issue of any *Occupation Certificate* or occupation or use of any food premises:

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- a) The *Principal Contractor* or *owner* must arrange an inspection of the fit out of the Food Premises by Council's Environmental Health Officer;
- b) A satisfactory final inspection must have been undertaken by Council's Environmental Health Officer; and
- c) The *owner* or *occupier* must have registered the Food Premises (Notification of conduct under section 100 of the *Food Act* 2003).

**Note:** Notification can be done on-line at [www.foodnotify.nsw.gov.au](http://www.foodnotify.nsw.gov.au)

**Note:** Inspections are subject to payment of the adopted inspection fee.

**Note:** Section 100 of the *Food Act* 2003 requires:

“100 Notification of conduct of food businesses

(1) The proprietor of a food business must not conduct the food business unless the proprietor has given written notice, in the approved form, of the information specified in the Food Safety Standards that is to be notified to the appropriate enforcement agency before the business is conducted. Maximum penalty: 500 penalty units in the case of an individual and 2,500 penalty units in the case of a corporation.”

**Note:** *Accredited Certifiers* are unable to issue *Compliance Certificates* in relation to compliance with the *Food Act* 2003, *Food Regulation* 2004; the Food Standards Code and the Australian Standard AS 4674-2004: *Construction and fit out of food premises*; since these are not matters which an *Accredited Certifier* can be satisfied in relation to under Clause 161 of the *Regulation*. This condition can only be satisfied following an inspection and sign off from Council's Environmental Health Officers.  
Standard Condition: F15

**F.5 Maintenance of the Kitchen Exhaust**

The proprietor(s) of the subject site shall enter into a contract agreement for the regular maintenance and cleaning of the odour control units and filtering systems. A copy of the contract agreement shall be made available to Council's Health Services Section prior to the occupation of the building.

**F.6 Acoustic certification**

Prior to the issue of any *Occupation Certificate* or occupation or use of the licensed restaurant (food and drinks premises), certification shall be provided from an appropriately qualified acoustic specialist certifying that the works required by condition C.1 of this consent have been satisfactorily completed.

**G. Conditions which must be satisfied prior to the issue of any Subdivision Certificate**

Not applicable.

**H. Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (section 6.4 (c))**

**H.1 Removal of Ancillary Works and Structures**

The Principal Contractor or Owner must remove from the land and any adjoining public place:

- a) the site sign,
- b) ablutions,
- c) hoarding,
- d) scaffolding, and

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- e) waste materials, matter, article or thing.

**Note:** This condition has been imposed to ensure that all ancillary matter is removed prior to the issue of the Final Occupation Certificate.  
Standard Condition: H12 (Autotext: HH12)

### I. Conditions which must be satisfied during the ongoing use of the development

#### I.1 Hours of Operation of Licensed Premises

The hours of operation for the licensed premises are restricted to 8:00am – 10:00pm Monday to Sunday.

This condition has been imposed to mitigate amenity impacts upon the neighbourhood by commercial or retail trading including, but not limited to, external impacts associated with clients attending the site for business or otherwise.

**Note:** This condition does not apply to deliveries to, or dispatches from, the site of wholesale goods or internal activities that occur under the approved hours of use. General use and deliveries or dispatches may be restricted by hours of use conditions. This condition does not restrict the operation of noise pollution laws.  
Standard Condition: I2 (Autotext: I12)

#### I.2 Extended Hours of Operation for Licensed Premises –Reviewable Condition

The hours of operation for the Licensed premises are extended as follows:

- a) 7.00am to 8.00am Monday to Sunday, with no service of alcohol during this period;
- b) 10.00pm to 12.00 midnight Monday to Sunday.

This condition is a reviewable condition as referred to under section 4.17(10B-10D) of the *Act*. The extended trading hours will be reviewed in accordance with **Condition I.3**.

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

**Note:** Council's consideration of the extended hours of operation of licensed premises will take into account:

- a) compliance of the premises in terms of security and its general management;
- b) the number and nature of substantiated complaints regarding the operation of the premises;
- c) compliance with the conditions of this consent; and
- d) any other matters considered relevant to the environmental evaluation of the premises.

Standard Condition: I4 (Autotext: I14)

#### I.3 Review of Extended Hours of Operation for Licensed Premises

Council will review the extended trading hours as referred to in **Condition I.2** generally as follows:

- a) one (1) year following the issue of any Occupation Certificate applicable to this application (if works are proposed) or the date of development consent (if no works are proposed),
- b) two (2) years following the first review, and
- c) each five (5) years thereafter.

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The review will be undertaken in accordance with clause 124D of the *Regulation*. This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

**Note:** A review will only be undertaken if Council has satisfactory evidence to suggest the extended trading hours are unduly impacting on the amenity of the neighbourhood or NSW Police has requested a review.

**Note:** The review will be presented to the equivalent delegated decision making panel that determined the application and all stakeholders will be notified of the meeting.

**Note:** As a result of a review a reviewable condition may be changed.

Standard Condition: I5 (Autotext: I15)

### I.4 Maximum Patron Capacity

The total number of patrons on the premises at any time shall not exceed one hundred and fifty-five (155). A sign must be displayed in a prominent position in the building stating the maximum number of persons (155), that are permitted in the building.

Any person/s attending the premises for the purpose of ‘takeaway’ products/services will not be considered a ‘patron’ as detailed above, provided no food and or drink is consumed by those persons on the premises.

Standard Condition: I6 (Autotext: I16)

### I.5 Signage to be Displayed – Licensed Premises

Signage (in lettering not less than 15mm in height on a contrasting background) is to be erected in a prominent position near the principal entry to the premises in accordance with clause 98D of the *Regulation*.

The signage shall state the following and may change from time to time due to reviewable conditions in accordance with **Condition I.3**:

*“Approved hours of operation:*

- *Monday to Sunday and Public Holidays: 7am to 12 midnight*

*Approved patron capacity:*

- *Maximum of one hundred and fifty-five (155) patrons*

*Upon leaving please respect local residents by minimising noise.”*

The signage required by this condition is to be erected prior to the commencement of operations. This condition has been imposed to clearly identify the hours and patron capacity of the licensed premises.

Standard Condition: I9 (Autotext: I11)

### I.6 Neighbourhood Amenity – Licensed Premises (NSW Police requirements)

The Management of the premises:

- a) Shall ensure no patrons to enter or depart the premises through the Bay Street access point after 9:00 PM.

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- b) Shall ensure persons entering and leaving the premises do not crowd or loiter in the vicinity of the premises in such manner that pedestrian movement is obstructed or hindered.
- c) Shall ensure that the manner in which the business of the premises is conducted and/or the behaviour of persons entering and leaving the premises does not cause undue disturbance to the amenity of the neighbourhood. In this regard, the Management shall be responsible for the control of noise and litter generated by persons and/or premises operations. If so directed by Council or by NSW Police, the Management is to employ private security staff to ensure that this condition is complied with.
- d) Shall record in a Register full details of any disturbance complaint/s made by a person to Management or staff in respect to the manner in which the business of the premises is conducted and/or the behaviour of persons entering or leaving the premises. Such recording will include time, date, nature of the complaint/s and any complainant details if provided.
- e) Shall respond to any disturbance complaint/s in a timely and effective manner. All actions undertaken by Management / staff to resolve such complaint/s shall be recorded in the Register.

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.

**Note:** The lead agency for the enforcement of this condition is NSW Police.  
Standard Condition: I10 (Autotext: II10)

**I.7 Operation in Accordance with the Acoustic Report**

The operation and management of the premises shall generally be in accordance with the approved Acoustic Report prepared by Acoustic Logic, referenced 20201241.2/1801A/R0/HC and dated 18/01/2021 (listed in Condition A.3) as provided below, where not conditioned elsewhere in this consent;

- a) All external windows and doors shall be closed, except for the entering and exiting of patrons/staff after 9pm every night, subject to Conditions I.6 a) and I.23, to minimise noise disruption to surrounding residential receivers.
- b) Amplified music within the venue is not to exceed a sound pressure level of 70 dB(A) L10 and an appropriate tamper proof noise limiter device shall be fixed to such equipment.
- c) External seating is not permitted.
- d) A prominent notice shall be placed within the premises to remind patrons to minimise the noise levels at any time.
- e) Signs are to be displayed at the entrance of the restaurant reminding patrons to minimise noise when departing the premise, especially after 9pm.
- f) Speakers are to be vibration isolated from the building structure by NRD type rubber mounts or equal.

**I.8 Copies of Consents, Registers and Management Plans – Licensed Premises**

A full copy of all current development consents (including approved plans) for the operation of the premises, any Registers required and any required Plan of Managements must be kept on the premises and made available for inspection immediately upon request by Council Officers, Police Officers and/or L&G Authorised Officers.

Standard Condition: I12 (Autotext: II12)



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**I.9 Sale/Consumption of Liquor**

**Licensed Restaurant (On-Premises License)**

- a) No liquor may be sold, supplied or consumed on the premises except with the approval and authorisation from the relevant Liquor Authority.
- b) The primary use of the premises must be that of a restaurant with the provision of genuine meals, prepared upon the premises, to patrons seated at comfortable dining positions.
- c) Liquor may only be sold and/or supplied to patrons on the premises with or ancillary to a genuine meal.
- d) Patrons shall be seated whilst consuming liquor.
- e) The sale and/or supply of liquor must cease 15 minutes prior to the cessation of the respective hours of operation for the specified seating areas.
- f) No patron shall be permitted to take glasses or open containers of liquor off the premises.
- g) Management is responsible for ensuring the number of patrons in the premises does not exceed the approved capacity specified in **Condition I.4**.

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.  
Standard Condition: I14 (Autotext: I114)

**I.10 Operation in Accordance with Plan of Management (POM)**

- a) The operation and management of the premises shall be in accordance with the Council approved POM at all times (Refer to Note 1 below).
- b) The approved POM shall be adopted by the Management, and filed with Council and the Licensing Police of the Eastern Suburbs Police Area Command prior to the commencement of operation of the restaurant.
- c) The plan shall be reviewed (at minimum) on an annual basis, and at any time there is a change in business ownership of the premises, to ensure harms that arise are mitigated.
- d) Where there is any inconsistency between the POM and the conditions of this consent, the conditions of this consent prevail.

**Note 1:** The approved POM in this condition refers to that in **Condition F.2** in this consent. The POM must be approved by Council prior to the commencement of operation of the restaurant

**Note 2:** The approved POM must not be altered or amended without the written consent of Council.  
Standard Condition: I15 (Autotext: I115)

**I.11 No outdoor entertainment**

No sound reproduction device nor any form of entertainment is to be operated exterior to the premise.

**I.12 Garbage Collection**

The garbage area must be maintained at all times to ensure that a breeding ground is not created for pests and must be capable of being easily and effectively cleaned.

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All garbage containers must have tight fitting lids and be large enough or in sufficient numbers to contain all the waste produced by the business while awaiting the next removal from the premises.

This condition has been imposed to mitigate amenity impacts upon the neighbourhood.  
Standard Condition: I16 (Autotext: I116)

**I.13 Glass Sorting and Collection**

Glass must not be emptied or transferred from one receptacle to another anywhere in a public place. All glass must be emptied/transferred within the premises and removed in containers.

Bottle and/or glass sorting, recycling or collection shall only take place between the following hours:

- a) 8.00am to 8.00pm Monday to Saturday
- b) 10.00am to 8.00pm Sunday and Public Holidays

This condition has been imposed to protect the amenity of neighbouring residents.  
Standard Condition: I17 (Autotext: I117)

**I.14 Surveillance Cameras (CCTV)**

**Licensed Premises**

The Management must maintain a closed-circuit television (CCTV) system on the premises.

The CCTV system must comply with the following requirements:

- a) It must operate continuously from opening time until one hour after closing.
- b) It must record in digital format at a minimum of six frames per second.
- c) Any recorded image must specify the time and date of the image.
- d) The system's cameras must cover:
  - i) all entry and exit points of the premises,
  - ii) the footpath immediately adjacent to the premises, and
  - iii) all publicly accessible areas (other than toilets) on the premises, from floor level to a minimum height of two metres.
- e) CCTV recordings must be retained for at least 30 days.
- f) Signage shall be clearly displayed adjacent to the principal entry alerting persons entering the premises that CCTV is in operation.

**Note:** The lead agency for enforcement is NSW Police.  
Standard Condition: I21

**I.15 Parking Permits (Special Condition)**

Future tenants and residents of the proposed development will not be eligible for resident or visitor parking permits.

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### I.16 Waste Collection – Commercial

General waste collection (excluding bottle and/or glass sorting, recycling or collection) is to be undertaken ONLY between the hours of:

- a) 7.00am to 9.00pm Monday to Friday, and
- b) 8.00am to 8.00pm Saturday, Sunday and Public Holidays

This condition has been imposed to protect the amenity of neighbouring residents.  
Standard Condition: I31 (Autotext: I131)

### I.17 Waste Management - Commercial

The owner and/or occupier must comply with the approved site waste minimisation and management plan (SWMMP) and with Woollahra DCP 2015, Chapter E5–Waste Management.

All waste must be presented for collection in a receptacle. Waste receptacles must be presented no earlier than the close of business on the day before collection. Waste and recycling bins/crates must be removed from the road or footpath within 1 hour of collection or otherwise in accordance with the approved SWMMP.

Receptacles are not to be stored in any public place at any time. Waste and recycling receptacles must be stored at all times within the boundaries of the site.

This condition does not apply to the extent that Activity Approval exists under the *Local Government Act 1993* or the *Roads Act 1993* and subject that all conditions of such approval(s) are complied with.

**Note:** This condition has been imposed to ensure that the provisions of the approved SWMMP and Woollahra DCP are complied with during the ongoing operations of the development.

**Note:** No waste will be collected by Council that isn't presented properly. The waste must be presented with lid closed to reduce littering. Standard Condition: I32

### I.18 Food Premises - Maintenance of Food Premises

The food premises must be maintained in accordance with the *Food Act 2003*, *Food Regulation 2004*; the Food Standards Code as published by Food Standards Australia and New Zealand and Australian Standard AS 4674-2004: *Construction and fit out of food premises*.

This condition has been imposed to protect public health.

**Note:** The provisions of the Food Act 2003 may change over time and irrespective of this condition compliance with this *Act*, regulations, food standards and other standards adopted under the Food Act (as amended) are mandatory. The *Food Act* and applicable regulations can be accessed free of charge at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au).  
Standard Condition: I41

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### I.19 Noise Control

The use of the premises must not give rise to the transmission of *offensive noise* to any place of different occupancy. *Offensive noise* is defined in the *Protection of the Environment Operations Act 1997*.

This condition has been imposed to protect the amenity of the neighbourhood.

**Note:** Council will generally enforce this condition in accordance with the *Noise Guide for Local Government* (<http://www.environment.nsw.gov.au/noise/nglg.htm>) and the *Industrial Noise Guidelines* (<http://www.environment.nsw.gov.au/noise/industrial.htm>) published by the Department of Environment and Conservation. Other state government authorities also regulate the *Protection of the Environment Operations Act 1997*.

**Useful links:**

**Community Justice Centres**—free mediation service provided by the NSW Government ([www.cjc.nsw.gov.au](http://www.cjc.nsw.gov.au)).

**Department of Environment and Conservation NSW**, Noise Policy Section web page ([www.environment.nsw.gov.au/noise](http://www.environment.nsw.gov.au/noise)).

**New South Wales Government Legislation** home page for access to all NSW legislation, including the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Noise Control Regulation 2000* ([www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au)).

**Australian Acoustical Society**—professional society of noise-related professionals ([www.acoustics.asn.au/index.php](http://www.acoustics.asn.au/index.php)).

**Association of Australian Acoustical Consultants**—professional society of noise related professionals ([www.aaac.org.au](http://www.aaac.org.au)).

**Department of Gaming and Racing** - ([www.dgr.nsw.gov.au](http://www.dgr.nsw.gov.au)).  
Standard Condition: 156

### I.20 Maintenance of Sound Attenuation

Sound attenuation must be maintained in accordance with the *acoustic report*.

Standard Condition: 157

### I.21 Noise from Licensed Premises

The  $L_{A10}$  noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8k Hz inclusive) by more than 5dB(A) between 07:00 am and 12:00 midnight at the boundary of any affected residence.

The  $L_{A10}$  noise level emitted from the licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8k Hz inclusive) between 12:00 midnight and 07:00 am at the boundary of any affected residence.

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12:00 midnight and 07:00 am.

This condition has been imposed to protect the amenity of the neighbourhood.

**Note:** dB(A) is a value used for 'A-weighted' sound pressure levels 'A' frequency weighting is an adjustment made to approximate the response of the human ear.

**Note:** *Licensed premises* means premises licensed under the *Liquor Act 2007*.

**Note:** For the purposes of this condition, the  $L_{A10}$  is the A-weighted sound pressure level that is exceeded for 10% of the time over which a given sound is measured.

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**Note:** The *background noise level* is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the  $L_{A90}$  level measured by a sound level meter over the applicable period.

**Note:** This condition is identical to the minimum standard condition imposed by the Casino Liquor and Gaming Control Authority (the Authority). The Authority may specify other standards in respect of the above condition under the *Liquor Act 2007*, and associated Regulations. Section 79 of the *Liquor Act 2007* provides an informal mechanism for complaints to be made (by residents, Police, local consent authorities and others) where the amenity of local neighbourhoods is unduly disturbed by the conduct of licensed premises including registered clubs (or their patrons). The Director of Liquor and Gaming is responsible for resolving such complaints and may impose temporary or permanent conditions on any licence. For further information go to the NSW Office of Liquor and Gaming and Racing's website: ([www.olgr.nsw.gov.au](http://www.olgr.nsw.gov.au)).

**Note:** Interior noise levels of licensed premises which exceed safe hearing levels are not supported or condoned by Council.  
Standard Condition: 158

### I.22 Noise from Mechanical Plant and Equipment

The noise level measured at any boundary of the site at any time while the mechanical plant and equipment is operating must not exceed the *background noise level*. Where noise sensitive receivers are located within the site, the noise level is measured from the nearest strata, stratum or community title land and must not exceed *background noise level* at any time.

The *background noise level* is the underlying level present in the ambient noise, excluding the subject noise source, when extraneous noise is removed. For assessment purposes the background noise level is the  $L_{A90, 15 \text{ minute}}$  level measured by a sound level meter.

This condition has been imposed to protect the amenity of the neighbourhood.

**Note:** Words in this condition have the same meaning as in the:  
*NSW Industrial Noise Policy* ([http://www.environment.nsw.gov.au/resources/ind\\_noise.pdf](http://www.environment.nsw.gov.au/resources/ind_noise.pdf))  
ISBN 0 7313 2715 2, dated January 2000, and  
*Noise Guide for Local Government* (<http://www.environment.nsw.gov.au/noise/nglg.htm>)  
ISBN 1741370671, dated December 2004.  
Standard Condition: 159

### I.23 External Doors and windows

The external doors and windows must comply with the following requirements:

- a) All external doors and windows must be kept closed after 9:00 pm except for the ingress/egress of patrons and staff and subject to c) below;
- b) All external doors must be installed with self-closing devices; and
- c) No patrons are to enter or depart the premises through the doors on the Bay Street frontage after 9:00 pm.

### J. Miscellaneous Conditions

Not applicable.

### K. Advisings

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### K.1 Criminal Offences – Breach of Development Consent and Environmental Laws

Failure to comply with this development consent and any condition of this consent is a **criminal offence**. Failure to comply with other environmental laws is also a criminal offence.

Where there is any breach Council may without any further warning:

- a) Issue Penalty Infringement Notices (On-the-spot fines);
- b) Issue notices and orders;
- c) Prosecute any person breaching this consent; and/or
- d) Seek injunctions/orders before the courts to restrain and remedy any breach.

#### Warnings as to potential maximum penalties

Maximum penalties under NSW environmental laws include fines up to \$1.1 Million and/or custodial sentences for serious offences.

#### Warning as to enforcement and legal costs

Should Council have to take any action to enforced compliance with this consent or other environmental laws Council's policy is to seek from the Court appropriate orders requiring the payments of its costs beyond any penalty or remedy the Court may order.

This consent and this specific advice will be tendered to the Court when seeking costs orders from the Court where Council is successful in any necessary enforcement action.

**Note:** The payment of environmental penalty infringement notices does not result in any criminal offence being recorded. If a penalty infringement notice is challenged in Court and the person is found guilty of the offence by the Court, subject to section 10 of *the Crimes (Sentencing Procedure) Act 1999*, a criminal conviction is recorded. The effect of a criminal conviction beyond any fine is serious.  
Standard Advising: K1 (Autotext KK1)

### K.2 Commonwealth Disability Discrimination Act 1992

The *Disability Discrimination Act 1992* (DDA) makes it against the law for public places to be inaccessible to people with a disability. Compliance with this development consent, the Woollahra Development Control Plan 2015 Chapter E8 – Adaptable Housing and the BCA does not necessarily satisfy compliance with the DDA.

The DDA applies to existing places as well as places under construction. Existing places must be modified and be accessible (except where this would involve "unjustifiable hardship").

**Note:** Further advice can be obtained from the Australian Human Rights Commission website [www.humanrights.gov.au/our-work/disability-rights/about-disability-rights](http://www.humanrights.gov.au/our-work/disability-rights/about-disability-rights) or call 9284 9600 or 1300 656 419.  
Standard Advising: K3 (Autotext KK3)

### K.3 Builder's Licences and Owner-builders Permits

Section 6.6(2)(d) of the *Act* requires among other matters that the person having the benefit of the development consent, if not carrying out the work as an **owner-builder**, must appoint a Principal Contractor for residential building work who must be the holder of a contractor licence.

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The Owner(s) must appoint the Principal Certifier. The Principal Certifier must check that the required insurances are in place before the commencement of building work. The Principal Contractor (builder) must provide the Owners with a certificate of insurance evidencing the contract of insurance under the *Home Building Act 1989* for the residential building work.

**Note:** For more information go to the NSW Fair Trading website [www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating](http://www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating)  
Standard Condition: K5 (Autotext KK5)

### **K.4 Building Standards - Guide to Standards and Tolerances**

The Principal Certifier does not undertake detailed quality control inspections and the role of the Principal Certifier is primarily to ensure that the development proceeds in accordance with this consent, Construction Certificates and that the development is fit for occupation in accordance with its classification under the Building Code of Australia.

Critical Stage Inspections do not provide the level of supervision required to ensure that the minimum standards and tolerances specified by the “NSW Guide to Standards and Tolerances 2017” are achieved.

The quality of any development is a function of the quality of the Principal Contractor’s or Owner-builder’s supervision of individual contractors and trades on a daily basis during the development. The Principal Certifier does not undertake this role.

Council, as the Principal Certifier or otherwise, does not adjudicate building contract disputes between the Principal Contractor, contractors and the Owner.

**Note:** For more information on the *NSW Guide to Standards and Tolerances* go to the NSW Fair Trading website [www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/after-you-build-or-renovate/guide-to-standards-and-tolerances](http://www.fairtrading.nsw.gov.au/housing-and-property/building-and-renovating/after-you-build-or-renovate/guide-to-standards-and-tolerances) or call 133 220.  
Standard Condition: K6 (Autotext KK6)

### **K.5 SafeWork NSW Requirements**

The *Work Health and Safety Act 2011* and subordinate regulations, codes of practice and guidelines control and regulate the development industry.

**Note:** For more information go to the SafeWork NSW website [www.safework.nsw.gov.au](http://www.safework.nsw.gov.au) or call 131 050.  
Standard Condition: K7 (Autotext KK7)

### **K.6 Appeal**

Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact Brett McIntyre, Assessment Officer, on (02) 9391 7157.

However, if you wish to pursue your rights of appeal in the Land and Environment Court you are advised that Council generally seeks resolution of such appeals through a section 34 Conference, site hearings and the use of Court Appointed Experts, instead of a full Court hearing.

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This approach is less adversarial, it achieves a quicker decision than would be the case through a full Court hearing and it can give rise to considerable cost and time savings for all parties involved. The use of the section 34 Conference approach requires the appellant to agree, in writing, to the Court appointed commissioner having the full authority to completely determine the matter at the conference.

Standard Condition: K14 (Autotext KK14)

**K.7 Recycling of Demolition and Building Material**

It is estimated that building waste, including disposable materials, resulting from demolition, excavation, construction and renovation, accounts for almost 70% of landfill. Such waste is also a problem in the generation of dust and the pollution of stormwater. Council encourages the recycling of demolition and building materials.

Standard Condition: K17 (Autotext KK17)

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Completion Date: 15/11/2023

## REFERRAL RESPONSE - ENVIRONMENTAL HEALTH

**FILE NO:** Development Applications: 300/2020/6  
**ADDRESS:** 30-36 Bay Street DOUBLE BAY 2028  
**PROPOSAL:** Modification to Conditions I.7 a) and I.23 a) relating to restrictions on window and door opening time  
**FROM:** Jasmine Sutrina  
**TO:** Mr B McIntyre

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### 1. ISSUES

- Acoustics – licenced premises

### 2. DOCUMENTATION

I refer to the following documents received for this report:

- Statement of Environment Effects, prepared by gsa planning, dated 25/08/2023.
- Acoustic Report, prepared by Acoustic Report Prepared by Acoustic Logic, dated 1/08/2023.

### 3. RESEARCH

The following research was undertaken in the preparation of this assessment:

- A site inspection was carried out on the following date:

### 4. SUMMARY OF PROPOSAL

#### Existing condition (DA/300/2020/5):

*I.7 Operation in Accordance with the Acoustic Report The operation and management of the premises shall generally be in accordance with the approved Acoustic Report prepared by Acoustic Logic, referenced 20201241.2/1801A/R0/HC and dated 18/01/2021 (listed in Condition A.3) as provided below, where not conditioned elsewhere in this consent;*

- All external windows and doors shall be closed, except for the entering and exiting of patrons/staff after 9pm every night, subject to Conditions I.6 a) and I.23, to minimise noise disruption to surrounding residential receivers.*
- Amplified music within the venue is not to exceed a sound pressure level of 70 dB(A) L10 and an appropriate tamper proof noise limiter device shall be fixed to such equipment.*
- Deleted.*
- A prominent notice shall be placed within the premises to remind patrons to minimise the noise levels at any time.*

- e) *Signs are to be displayed at the entrance of the restaurant reminding patrons to minimise noise when departing the premise, especially after 9pm.*
- f) *f) Speakers are to be vibration isolated from the building structure by NRD type rubber mounts or equal. Review of Determination and Right of Appeal*

**Proposed Modification to Conditions I.7 a) and I.23 a) relating to restrictions on window and door opening time is as follows:**

*Margaret is seeking to extend the allowable hours within all external windows and doors being open from 9pm to 10pm.*

## 5. ASSESSMENT

Comments have been prepared on the following. **Where Approval is recommended, Conditions of Consent follow at the end of the comments.**

### a) Acoustics

#### **Environmental Health – Review**

Review of the Acoustic assessment prepared by Acoustic Logic, dated 1/08/2023.

The Acoustic assessment prepared by Acoustic Logic (2023), adopts the evening period noise emission objectives as detailed in the acoustic report prepared by Acoustic Logic for DA300/2020/5 as the applicable noise criteria (see table 1).

Attended noise monitoring was conducted within the vicinity of the premises, between the hours of 7pm-10pm on Friday 21<sup>st</sup> of July 2023. Internal noise measurements were taken within the premises and it is noted, at the time of attended noise monitoring, operational capacity was not at 100%. External noise measurements were also recorded at the various residential receivers and presented in table 2 of the report.

The report undertakes predicted noise emission modelling based on internal noise measurements taken on site. These predicted noise levels, presented in table 3 of the report, conclude compliance with the evening noise emission objectives criteria.

As part of the report discussion it is clarified that internal and external dining noise contributions have been collectively considered and presented (in both measured and predicted) as part of the total noise level.

Additionally, the report acknowledges that at the time of attended measurement, operational capacity was at 65-90%. The report considers this and thus presents the noise levels to identified receivers at 100% internal and external capacity.

The acoustic report concludes, with the windows open between 9pm – 10pm, the ambient environment would remain as the prevailing noise level and the increase as nearby identified neighbours would be marginal.

#### **Environmental Health – Conclusion**

Environmental Health Unit generally agrees with the noise assessment conducted however seeks clarification regarding certain components of the acoustic report.

With respect to the attended noise monitoring conducted, the report notes internal capacity to not be 100% external capacity and thus later presents predicted noise levels to be at 100% capacity. Furthermore, it is noted that outdoor dining was not measured as part of the attended noise measurements however considered and consolidated in the measured and predicted total noise level. Environmental Health generally agrees with these adopted considerations however, clarification is required regarding the number of patrons for 100% occupancy and the corresponding numeral distribution for indoor and outdoor dining.

In consideration that this is a licenced premises, Environmental Health Unit expects noise modelling to apply further parameter. Ideally based on a worse-case scenario basis, akin to those presented in the Association of Australasian Acoustical

Consultants (AAAC) Licenced Premises and Patron Noise Assessment Technical Guidelines Version 3.0.  
Alternatively, should Acoustic Logic be resolved with their predicted noise modelling, Environmental Health Unit requires further clarification and justification as to selected parameters and how predicated noise levels were determined.

## 6. RECOMMENDATION

Council's Environmental Health Officer has determined that insufficient information has been submitted to enable an assessment of the proposal. The following information is required before any further assessment of the application can be undertaken:

- i. *Clarity regarding the maximum patron capacity for the restaurant and numeral patron distribution for indoor and outdoor dining.*
- ii. *Reassessing of predicted noise emission modelling with adopted worse-case scenarios parameters. Alternatively, should the applicant be resolute with the provided predicted noise emission modelling (as per table 3), further clarification and justification as to the selected parameters and how predicted noise levels were determined is required.*

Refers to comments in section 5 for further details.

- A. **General Conditions**
- B. **Conditions which must be satisfied prior to the demolition of any building or construction**
- C. **Conditions which must be satisfied prior to the issue of any construction certificate**
- D. **Conditions which must be satisfied prior to the commencement of any development work**
- E. **Conditions which must be satisfied during any development work**
- F. **Conditions which must be satisfied prior to any occupation or use of the building (Part 4A of the Act and Part 8 Division 3 of the Regulation)**
- G. **Conditions which must be satisfied prior to the issue of any Subdivision Certificate**
- H. **Conditions which must be satisfied prior to the issue of a Final Occupation Certificate (s109C(1)(c))**
- I. **Conditions which must be satisfied during the ongoing use of the development**
- J. **Miscellaneous Conditions**
- K. **Advisings**

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**Environmental Health Officer: Jasmine Sutrina Date: 15/11/2023**



MATTHEW PALAVIDIS  
VICTOR FATTORETTO  
MATTHEW SHIELDS

20230758.1/0108A/R0/JHT

1/08/2023

Fire & Embers Pty Ltd  
30-36 Bay Street  
DOUBLE BAY NSW 2028

Attn: Neil Perry

### **Shop 1/ 30-36 Bay Street, Double Bay (Margaret) - Operational Noise Testing**

## **1 INTRODUCTION**

This document provides an acoustic assessment of the existing operational bar and restaurant premises operating at Shop 1/ 30-36 Bay Street, Double Bay – Margaret. Acoustic Logic attended site during Margaret's typical operational hours and capacity on 21<sup>st</sup> July 2023 to take various internal and external measurements with the vicinity of the premises.

One of the conditions Margaret currently operates under, is that all external windows and doors shall be closed, except for the entering of staff/patrons after 9pm, every night, subject to condition 1.6a) and 1.23, to minimise noise disruption to surrounding residential receivers. Margaret is seeking to extend the allowable hours with all external windows and doors being open from 9pm to 10pm.

## **2 APPLICABLE CONDITIONS**

Margaret currently operates under the following approved modification consent conditions – DA/300/2020/5:

### ***1.7 Operation in Accordance with the Acoustic Report***

*The operation and management of the premises shall generally be in accordance with the approved Acoustic Report prepared by Acoustic Logic, referenced 20201241.2/1801A/R0/HC, dated 18/01/2021 (listed in Condition A.3) as provided below, where not conditioned elsewhere in this consent.*

- (a) All external windows and doors shall be closed, except for the entering and exiting of patrons/staff after 9pm every night, subject to Condition 1.6a) and 1.23, to minimise noise disruption to surrounding residential receivers.*
- (b) Amplified music within the venue is not to exceed a sound pressure level of 70dB(A) L10 and an appropriate tamper proof noise limiter device shall be fixed to such equipment.*

---

**SYDNEY**  
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MASCOT NSW 2020  
(02) 8339 8000

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- (c) **Deleted.**
- (d) *A prominent notice shall be placed within the premises to remind patrons to minimise the noise levels at any time.*
- (e) *Signs are to be displayed at the entrance of the restaurant reminding patrons to minimise noise when departing the premise, especially after 9pm.*
- (f) *Speakers to be vibration isolated from the building structure by NRD type rubber mounts or equal.*  
*Review of Determination and Right of Appeal."*

### 3 APPLICABLE NOISE CRITERIA

With reference to the applicable conditions referenced above, the following acoustic criteria have been presented and adopted in accordance with Acoustic Logic's Report (document reference: 20201241.2/1801A/R0/HC, dated 81/01/2021:

**Table 1 – Acoustic Report Noise Emissions Objectives (20201241.2/1801A/R0/HC)**

Receiver	Time Period	31.5	63	125	250	500	1k	2k	4k	8k	A-wt
R1 3 South Avenue. Double Bay	Day	58	54	53	48	46	44	38	33	30	<b>48</b>
	Evening	57	53	52	47	45	43	37	32	29	<b>47</b>
	Night*	55	51	50	45	43	41	35	30	27	<b>45</b>
R2 10 Guilfoyle Avenue, Double Bay	Day	56	58	53	47	44	43	37	30	25	<b>48</b>
	Evening	55	57	52	46	43	42	36	29	24	<b>47</b>
	Night*	53	55	50	44	41	40	34	27	22	<b>45</b>
R3 38-38 Bay Street, Double Bay	Day	53	55	55	50	47	44	38	33	25	<b>50</b>
	Evening	52	54	54	49	46	43	37	32	24	<b>49</b>
	Night*	50	52	52	47	44	41	35	30	22	<b>47</b>
R4 2-22 Knox Street, Double Bay	Day	56	60	58	54	50	47	41	36	29	<b>53</b>
	Evening	55	59	57	53	49	46	40	35	28	<b>52</b>
	Night*	53	57	55	51	47	44	38	33	26	<b>50</b>

**\*Table Note:** In this instance, night-time period is defined as 10:00pm o 12:00am, 7 days.

## 4 OPERATIONAL NOISE MEASUREMENTS

External measurements were taken at various residential receivers identified within the Acoustic Report prepared by this office (reference: 20201421.2/1801A/R0/HC, dated 18/01/2021).

Acoustic Logic attended site on 21<sup>st</sup> July 2023 between 7pm – 10pm to take various attended measurements within the vicinity of the premises. This section presents the measured noise levels whilst on site and other relevant observations noted.

### 4.1 MEASURED NOISE LEVELS

#### 4.1.1 Internal Noise Measurements

The following observations and measurements were made regarding internal noise levels:

##### 7pm – 9pm

- Operational capacity was at approximately 90% of full capacity.
- All external windows and doors were observed to be closed (excluding ingress/egress of staff and patrons).
- Internal background noise levels were measured to be approximately 76dB(A) with amplified background music barely audible.

##### 9pm – 10pm

- Internal capacity reduced to approximately 70% of full capacity by 9pm.
- All external windows and doors were observed to be closed (excluding ingress/egress of staff and patrons).
- Internal background noise levels were measured to be approximately 74dB(A).

#### 4.1.2 External Noise Measurements

The following observations and measurements were made regarding external noise levels:

- There were approximately 8 patrons seated externally as part of outdoor dining along Guilfoyle Avenue. No outdoor dining was taking place along Bay Street.
- Internal noise measurements were barely audible within 3m and were inaudible when further than 3m away.

The following external noise measurements were recorded at the various residential receivers identified within the report:



**Table 2 – Measured Noise Levels at Identified Receivers**

Receiver	f(Hz)	31.5	63	125	250	500	1k	2k	4k	8k	A-wt
R1 3 South Avenue, Double Bay	Measured Noise Level	50	50	46	39	37	34	28	19	13	39
	Noise Emission Objectives	57	53	52	47	45	43	37	32	29	<b>47</b>
	Compliance	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	<b>Yes</b>
R2 10 Guilfoyle Avenue, Double Bay	Measured Noise Level	43	43	37	42	41	34	25	19	18	<b>41</b>
	Noise Emission Objectives	55	57	52	46	43	42	36	29	24	<b>47</b>
	Compliance	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	<b>Yes</b>
R3 38-38 Bay Street, Double Bay	Measured Noise Level	49	49	47	45	40	39	34	25	18	44
	Noise Emission Objectives	52	54	54	49	46	43	37	32	24	<b>49</b>
	Compliance	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	<b>Yes</b>
R4 2-22 Knox Street, Double Bay	Measured Noise Level	53*	53	50	47	47	46	40	35	28	51
	Noise Emission Objectives	55	59	57	53	49	46	40	35	28	<b>52</b>
	Compliance	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	<b>Yes</b>

**Table Note:** Adjusted noise emissions from the premises based on inaudibility. Inaudibility occurs when the actual measured noise levels are a minimum of 10dB below the measured noise levels.

**4.2 PREDICTED NOISE LEVELS (BASED ON INTERNAL NOISE MEASUREMENTS)**

Predicted noise emission modelling has been undertaken based on measurements undertaken whilst on site. Measurements taken considered the scenario where all external windows and doors are closed (excluding ingress/egress of staff and patrons) at 9pm. Should external windows and doors remain open until 10pm, the following noise levels are expected to occur at the identified receivers:

**Table 3 – Predicted Noise Levels at Identified Receivers (9pm-10pm) Glazing Open**

Receiver	f(Hz)	31.5	63	125	250	500	1k	2k	4k	8k	A-wt
R1 3 South Avenue, Double Bay	Measured Noise Level	23	23	33	31	31	29	26	19	12	<b>34</b>
	Noise Emission Objectives	57	53	52	47	45	43	37	32	29	<b>47</b>
	Compliance	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	<b>Yes</b>
R2 10 Guilfoyle Avenue, Double Bay	Measured Noise Level	31	31	36	37	42	41	36	28	22	<b>44</b>
	Noise Emission Objectives	55	57	52	46	43	42	36	29	24	<b>47</b>
	Compliance	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	<b>Yes</b>
R3 38-38 Bay Street, Double Bay	Measured Noise Level	29	29	34	35	40	39	35	27	21	<b>43</b>
	Noise Emission Objectives	52	54	54	49	46	43	37	32	24	<b>49</b>
	Compliance	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	<b>Yes</b>
R4 2-22 Knox Street, Double Bay	Measured Noise Level	35	35	40	41	46	45	40	33	27	<b>48</b>
	Noise Emission Objectives	55	59	57	53	49	46	40	35	28	<b>52</b>
	Compliance	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	<b>Yes</b>

**\*Table Note:** Predicted noise levels to R1 and R2 are partially shielded by other buildings and do not have direct line of sight. As such, the presented noise levels are rather conservative and are likely to be 5-10dB lower than presented above.

### 4.3 DISCUSSION

Regarding the above measured noise levels, we note the following:

- Internally measured noise levels are dependent upon the patron capacity of the venue and vary according to the day and time. Measurements were taken within the venue both before and after 9pm at 90% and 65% capacity (respectively). These measurements are generally consistent with the predicted noise levels presented within Acoustic Logic's report (20201241.2/1801A/R0/HC, dated 18/01/2021).
- External noise measurements were affected by both internal dining patrons and external dining patrons. To protect the acoustic amenity of nearby receivers, it is important to consider the impacts from both internal and external dining contributions. We note that although the outdoor footpath dining was not subject to an acoustic assessment - rather it was subject to a separate footpath dining approval – the external noise measurements have been considered and presented above (both measured and predicted) as part of the total noise level.
- Predicted noise levels are based on measurements taken during typical operation. During the site visit, it was observed that from 9pm onwards, the internal capacity reduced quite significantly from 90% to 65%. Acoustic Logic acknowledges that this may not always be the case and thus presents the predicted noise levels to identified receivers at 100% internal and external capacity.
- A comparison of the current measured noise levels and predicted noise levels reveals that the predicted noise levels are below the measured noise levels. It is reasonable to conclude that this is because the ambient acoustic environment is the prevailing noise level being experienced by the identified receivers during the evening period.
- The measured noise levels at the identified receivers were inaudible with all the windows closed. The analysis indicates that even in the event where all glazing remains open until 10pm, it is not expected that the noise levels experienced by identified receivers will be significantly increased. Moreover, the predicted noise levels based on existing operational capacity and noise levels are still at least 5dB(A) below the allowable noise emissions objectives conditioned in the consent DA/300/2020.

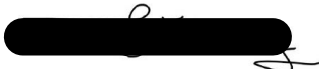
### 5 CONCLUSION

Acoustic Logic attended site on 21<sup>st</sup> July 2023 to take operational measurements – both internal and external – of the licensed premise operating at Shop 1/ 30-36 Bay Street, Double Bay (Margaret). The measurements revealed that based on existing operational capacity, Margaret can achieve the noise emission objectives as conditioned by Woollahra Municipal Council with windows open between 9pm – 10pm.

It is expected that by allowing the windows to remain open between 9pm – 10pm, the ambient environment would remain as the prevailing noise level and the increase level experienced at nearby identified neighbours would be marginal.

We trust this information is satisfactory. Please contact us should you have any further queries.

Yours faithfully,



Acoustic Logic Pty Ltd  
James Ting

# Fortis

## **Plan of Management**

**Margaret**

**30-36 Bay Street,  
Double Bay**

Date: June 2021  
(supersedes version August 2020)

Plan of Management

June 2021

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## 1.0 Executive Summary

This amended Plan of Management (PoM) supersedes the PoM approved by Council for DA-300/2020 for changing of use of the existing retail premise to a licensed restaurant the subject of an on-premises liquor licence. The approved trading hours are from 7:00am – 12:00am Monday to Sunday, and are reviewable as per Condition I.2.

This amended PoM has been prepared in accordance with the requirements outlined in Condition F.2 for DA 300/2020/1, at Restaurant 1 (Margaret) of Nos. 30-36 Bay Street.

Consent was previously sought for a liquor license with regard to the approved change of use, which has since been obtained through Liquor and Gaming NSW.

The preparation of this document has been undertaken in accordance with plans and a Statement of Environmental Effects ('**SEE**') that have been submitted to Council to support the proposal. Further, this Plan of Management demonstrates that the site can be effectively and safely managed in perpetuity, and would not adversely affect the amenity, safety and wellbeing of visitors to the site, surrounding premises and the wider community.

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## 2.0 General Objectives, Background Information and Details of the Proposal

This Plan of Management provides guidelines and management practices for the day-to-day operation of the restaurant at 30-36 Bay Street, Double Bay (**'subject site'**).

This Plan of Management aims to communicate the purpose of the restaurant to ensure that its operation:

- Is well managed;
- Is undertaken with regard to the surrounding area; and
- Takes a proactive role in being a responsible neighbour within the local area.

As indicated within Section 1 of this document, Council has approved the change of use to modify the operations from retail to restaurant, and two subsequent section 4.55 modifications to modify the internal layout and selected conditions of consent.

Subsequently approved operational changes are as follows:

- Alteration of internal ground floor plans;
- Seating within the restaurant would be limited to one hundred and twenty-four (124) patrons to comply with the approved maximum patron capacity; and
- The restaurant would employ thirty-five (35) staff. There would be a maximum of twenty (20) staff rostered on at any given time.

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## 3.0 Business and Operational Information

### 3.1 Business information

The details of the site operator are as follows:

- Name: Neil Perry
- Email address: neil@fooddesign.com.au

General contact information (including a phone number, contact form and email address) will be determined prior to the issue of the liquor licence, should members of the public need to contact restaurant staff. Such information will be made publicly available on the premises.

### 3.2 Area of the site occupied by the restaurant

For reference, the approved restaurant will occupy one part of the building as follows:

- The main part of the restaurant is located on the ground floor facing Bay Street and Guilfoyle Avenue
- Most cold-storage facilities are to be located at the rear of the ground floor.

Toilet facilities are located on the building's first floor, and are accessed via an internal stairway and the elevator. An accessible WC is provided at ground floor level and is directly accessible from the restaurant.

### 3.3 Access to the restaurant

Access to the restaurant is obtainable via two points, which are as follows:

- The main entrance is located at the front of the site along Guilfoyle Avenue Street; and
- The second entrance is located on Bay Street.

Access to and departure from the premises is restricted to the Guilfoyle Road access point after 9pm.

### 3.4 Hours of operation

The restaurant will operate during the following times:

- 7:00am to 12:00am, Monday to Sunday

The approved trading hours are reviewable as per Condition 1.2 below:

*The hours of operation for the Licensed premises are extended as follows:*

- a) 7.00am to 8.00am Monday to Sunday, with no service of alcohol during this period;*
- b) 10.00pm to 12.00 midnight Monday to Sunday.*

*This condition is a reviewable condition as referred to under section 4.17(10B-10D) of the Act. The extended trading hours will be reviewed in accordance with Condition 1.3.*

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### **3.5 Number of patrons**

Seating capacity within the restaurant is approved for a maximum of one hundred and twenty-four (124) patrons with tables and chairs to accommodate the approved number of internal patrons located within the restaurant's internal seating area.

Given that acoustic amenity of surrounding residential sites is paramount, staff are **not** to provide additional seating for patrons should they arrive once maximum seating capacity has been reached. Should advance bookings be taken, staff should be mindful of the patron numbers detailed above and are to stop taking bookings in the event that capacity is reached. The approved hours of operation, patron capacity, and instructions for patrons leaving the premises will be displayed on signage prior to the commencement of operations.

In the event of patron restrictions and advised social-distancing announced for public safety, staff will enforce the advised patronage in a clear and safe manner to ensure social-distancing is being exhibited within and near the premise. This will include but not limited to:

- Limiting patron numbers
- Distributing tables and chairs within the venue
- Adhering to 1.5 metre social distancing rules.

### **3.6 Staffing**

#### **3.6.1 Staff numbers**

The restaurant would employ a total of thirty-five (35) staff consisting of twelve (12) full time staff and twenty-three (23) casual staff. There would be a maximum of twenty (20) staff rostered on at any given time.

There would be no new permanent cleaning staff employed by the restaurant. General trade-related cleaning duties would be undertaken by restaurant staff, while cleaning of the site more broadly would be undertaken by contracted cleaning staff.

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### 3.6.2 Staff training

All restaurant staff would be required to undergo training to ensure they are appropriately qualified to undertake tasks associated with relevant roles. Such training would include familiarity with the contents and protocols of this Plan of Management, in addition to other considerations that include (but may not be limited to):

- Workplace practices and procedures;
- The responsible service of alcohol;
- Occupational health and safety requirements;
- Emergency events and contacts;
- Noise and litter management procedures;
- Evacuation procedures; and
- Identification and reporting of building maintenance issues and potential risks to both patrons and employees.

If not already undertaken, then all new staff operating the restaurant shall undertake training in the Responsible Service of Alcohol (RSA) where required to satisfy the requirements of Liquor and Gaming NSW.

If not already done, then a training guide for staff is to be implemented. Once undertaken, new staff will be required to provide a signature indicating that they have undertaken training to address each of the requirements listed above, in addition to any other specific training if/where necessary. The signed documents shall be placed within the personnel file of each employee, so that it can be presented to relevant authorities upon request.

### 3.6.3 Delegation of responsibilities

The designated manager of the restaurant will be nominated as Fire Warden.

Management will be responsible in terms of noise management procedures. Groups of people within seating areas will be actively observed by staff. Should particularly loud individuals and/or groups be identified, the relevant procedures outlined in Section 4.1 of this PoM will be enacted. Staff members are to ensure that signage remains visible at all times noting '... upon leaving, please respect local residents by minimising noise', in accordance with Condition I.5.

Throughout and at the end of each service, designated staff members will undertake an inspection of the restaurant including the adjoining footpath area, and remove any litter which may have been left by patrons. This will be undertaken using PPE (e.g. gloves), and a pick up reaching tool (or similar).

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## **4.0 Safety, Security and Emergencies**

### **4.1 Security**

Having regard to the proposed manner of operation of the Restaurant it is not envisaged there would be any need to provide licensed security personnel. Sufficient staff will be employed at the Restaurant during trading hours to monitor patrons to ensure they behave in an orderly manner and do not cause any undue noise disturbance. At closing time staff will request that patrons leave the area quickly and quietly having regard to neighbours, and do not loiter or linger in the immediate vicinity of the Restaurant.

There are no existing security measures (i.e. lighting, surveillance/CCTV measures, etc.). The installation of necessary security measures will be provided where required and/or as directed by conditions associated with the approved development application. The measures outlined in Condition I.14 will be enacted to ensure safety and security is achieved. This includes installing and maintaining a CCTV system on the premises which complies with requirements as per Condition I.14 (a) – (f).

As detailed in Section 3.3 of this document, access to the restaurant would be controlled via two entrance points that are clearly visible from service areas, with restricted access and egress after 9pm. Access to the site can be controlled by restaurant staff.

In the event that patrons enter the site in what appears to be an intoxicated state, then management of such patrons shall be undertaken in accordance with Appendix A, which is attached to this Plan of Management.

Groups of people within seating areas will be capable of being actively observed by staff. Should particularly loud individuals and/or groups be identified (either by staff observations or through reports by other staff/patrons of off-site complaints), then the following procedure would be followed:

- The person/group would be approached by the manager on duty and politely asked to reduce the volume of their voice or activity.
- Should excessive noise continue to be generated by the individual/group, then they would be approached a second time and be given a warning that the site adjoins residential areas and that excessive noise is affecting such areas.
- Should a third warning be required, then staff will request that the individual/group pay their bill and leave the site.

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Approaches taken by staff would be similar to those when dealing with an intoxicated person, as detailed within Appendix A. In the event that such requests to lower noise are met with verbal aggression, then the manager (if not the person issuing the warnings) will be notified. In the event of any threats and/or physical aggression, then the police are to be contacted to assist with the eviction of the person(s).

#### **4.2 Security of service areas**

During operating hours, areas where alcohol is stored will be observed by staff at all times to unauthorised persons from potentially accessing alcoholic products. All staff tasked with running the restaurant will be appropriately trained in the Responsible Service of Alcohol (RSA).

The size and location of the restaurant within the building will enable staff to actively observe persons consuming alcohol. All access points to the restaurant can also be observed from service areas.

#### **4.3 Emergency events**

##### **4.3.1 Fire**

In the event of a fire, then evacuation procedures are to be initiated. Procedures associated with a fire evacuation are contained within Appendix B, which is attached to the end of this document.

##### **4.3.2 Flood**

The subject site is within a flood-prone area. The floor levels of the site are above the 1 in 100-year flood level, however it is affected by the Probable Maximum Flood (PMF) level (i.e. levels that are subject to inundation during an absolute "worst case" scenario, as a result of probable maximum rainfall).

In the unlikely event of a flood, flood waters could inundate the ground floor level. In the event of a flood, the following procedures are to be initiated:

- Any persons within ground floor areas are to be immediately ushered to higher areas (i.e. the first floor). It is important to reiterate to such people that there is no risk to their safety to avoid panic.
- Access to flood-affected areas is to be prevented unless instructed by emergency services. A staff member(s) is to be located on the stairs during a flood event to prevent persons descending from the first floor to flood affected areas.
- Once it is safe to do so or when instructed by emergency personnel, staff are to guide patrons from the first level to the ground level and to a safe exit point(s).

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#### **4.3.3 Evacuation procedures**

The site operator must provide certified fire equipment commensurate with applicable standards; all such equipment is to be certified as required by law.

The site operator must document Emergency Evacuation Plans and have evacuation diagrams on display throughout the entire site. Both the site operator and staff must also conduct emergency drills and provide staff with information about emergency procedures at regular intervals.

Emergency evacuation procedures for the site are contained within Appendix B, which is attached to this document.

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## 5.0 Noise Management

It is acknowledged that the site is surrounded by a variety of land-uses, including residential development to the north of the subject site. The site operator wishes to demonstrate their commitment to maintaining the amenity of the locality.

An acoustic assessment (prepared by Acoustic Logic and dated 18 January 2021) was submitted to Council as part of the approved Development Application. This assessment is applicable to the approved modifications. The management of the premises will be undertaken in accordance with Condition I.6 (Neighbourhood Amenity – Licensed Premises NSW Police Requirements); Condition I.7 (Operation in Accordance with the Acoustic Report); Condition I.11 (No outdoor entertainment); and Condition I.23 (External Doors and windows), as per the approval for DA 300/2020/1 to ensure acoustic amenity to neighbouring development is maintained.

The measures enacted as part of the abovementioned Conditions include, but are not limited to: ensuring persons entering and leaving the premises don't crowd or loiter; Management to control noise generated by persons and/or premises operations; Management to record a Register of any disturbance complaints or the like and respond in a timely and effective manner. External windows and doors are to be closed after 9pm every night, and amplified music is to be in accordance with the Acoustic Report. Signage will be displayed to remind patrons to minimise noise, and Management and staff will monitor and manage patrons queuing for the restaurant, and move along any patrons congregating/loitering at the end of trade (refer to Section 4.1 and Appendix A for further details). No outdoor entertainment is proposed.

A detailed house policy (which details the Responsible Service of Alcohol) is contained within Appendix A which is attached to this document. Measures of addressing potentially intoxicated (and therefore noisy) patrons is further detailed within Section 4 of this document.

Further details regarding cleaning and waste management procedures are contained within Sections 6 and 7 of this document.

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## **6.0 Cleaning Procedures**

### **6.1 General hygiene**

Any food handling and hygiene practices shall be undertaken in accordance with the legislation, regulations, guidelines and directions of the NSW Food Authority and Council.

### **6.2 General cleaning practices**

General cleaning practices would be undertaken by restaurant staff; however, some cleaning activities (both of the shop and restaurant) may also be contracted to a private cleaning service.

All areas within the approved restaurant will be cleaned daily, though staff would be available to clean any additional/unexpected mess that is created at other times. Bathrooms would be kept clean using standard chemicals (i.e., disinfectants, bleach, etc.) that would be stored within existing storage areas, well away from any food and beverage products. There will be no bulk-storage of chemicals within the restaurant.

The contents of this Plan of Management will be passed on to any contracted cleaning services, and it is expected that any such business will follow the requirements of this document where they apply.

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## 7.0 Waste Management Procedures

Waste and recycling shall be stored within receptacles within the restaurant until they are transported to the main waste storage area at the rear of the site. During trading hours, the doors of the waste storage area are to remain closed except when in use.

As per Condition I.13 (Glass Sorting and Collection) of the approval, bottle and/or glass sorting, recycling or collection shall only take place between 8.00am and 8.00pm Monday to Saturday; and between 10:00am and 8:00pm Sundays and Public Holidays. As per Condition I.16 (Waste Collection – Commercial), general waste collection shall only take place between 7:00am and 9:00pm Monday to Friday; and between 8:00am to 8:00pm Saturday, Sunday and Public Holidays.

For collection, the bins are to be transported onto Guilfoyle Avenue via the car entrance and left in an appropriate kerbside location that does not block public walkways. Waste receptacles will be presented no earlier than the close of business on the day before collection. Waste and recycling bins/crates will be removed from the road or footpath within 1 hour of collection or otherwise in accordance with the approved Site Waste Minimisation and Management Plan.

The bin storage area is to be kept clean and tidy at all times; any spilled food waste is to be removed immediately, to prevent vermin being attracted to this area.

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## 8.0 Complaint Management

Contact information will be made available on site for the restaurant. Contact from complainants will be capable of being received during business hours (i.e. 7:00am to 12:00am, Monday to Sunday). Any complaints that are received will be managed as follows:

- A documented complaints process including a Complaints Register will be kept onsite at all times. Any complaints received will include the following information:
  - The name and contact details of the complainant(s), and the means by which the complaint was made (i.e. phone, email, in person, etc.);
  - The name and position of the employee who received the complaint;
  - The nature of the inquiry and/or complaint; and
  - Details and descriptions of the complaint (e.g. for noise complaints, documented information will include the type and duration of the noise, the location of the caller at the time that the complaint is received, the general area where the noise source was located, etc.).
- The responsible person (i.e. the manager) is to call back the complainant(s) as soon as practical and keep them informed of action(s) that are to be taken to address the issue(s) raised. Once the issue is resolved/finalised, the complainant is to be notified, with the details and content of any response to the complainant to be recorded within the Complaint Register.
- The responsible person is to document the status of the enquiry (i.e. open/closed) and what action(s) has been taken to resolve and finalise the issue.

Should any resolution of a complaint require a modification(s) to be made to the Plan of Management, then the person(s) who made the complaint should be consulted about any such changes.

The complaint register shall be made available to relevant authorities (i.e. Council, NSW Police, Liquor and Gaming NSW) upon request.

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## **9.0 Deliveries**

Deliveries would occur during normal business hours (i.e. between 7:00am to 5:00pm Monday to Saturday). Deliveries of other produce and materials would occur when required, and would therefore not occur at a specific time or frequency. delivery vehicles would utilise the vehicle access through the Guilfoyle Avenue entrance and the loading zone along Bay Street between 9:00am to 6:00pm Monday to Saturday.

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## **10.0 Review**

This Plan of Management should be used as a general guide to the day to day operations of the approved restaurant. It is possible that the Plan of Management will be refined by the Development Application process, and then further refined by the manager to suit the business's specific needs and internal policies. For this reason, the detail and contents of this Plan of Management should be considered adaptable.

Unless onsite activities require that this document be modified sooner, management will review the Plan of Management every twelve (12) months to determine whether the objectives of this document have been achieved. This is considered necessary to assess the effectiveness of the operational management plans and ensure its ongoing relevance to the day to day running of the restaurant.

The Plan of Management must remain consistent with community and Council expectations and the changing requirements of users. If at any time, it is apparent that the provisions of the Plan of Management require significant amendments, a new operational management plan must be prepared in consultation with Woollahra Council.

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## **Appendix A: House Policy for the Responsible Service of Alcohol**

### **INTRODUCTION**

This policy has been prepared to promote operational and staff awareness of responsibilities concerning the responsible service of alcohol which includes, but not limited to:

- Prevention of intoxication on the licensed premises;
- Harm Minimisation;
- Signs of intoxication; and
- Strategies for prevention and management of intoxicated patrons.

Where required by relevant authorities (i.e. Council, NSW Police, Liquor & Gaming NSW, etc.), both the Plan of Management and this House Policy will be updated as necessary.

'Responsible Service Practices' is a term that covers house policies, and will ensure that service of alcohol:

- Complies with the law;
- Helps staff deal with problem customers; and
- Maximises the profitability and the reputation of the business

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### **EMPLOYEES' RESPONSIBILITIES**

Licensees and employees have a statutory responsibility to ensure that patrons do not become intoxicated on their premises, and to prevent such patrons from entering or remaining on licensed premises.

Although none of these situations are easy to deal with, management and staff may, at times, have to deal with problem customers who may:

- Be observed as being loud and/or abusive;
- Be observed as being too drunk to drive; and/or
- Not care about themselves or others around them.

It is therefore critical to have policies and practices in place to prevent intoxication.

### **RESPONSIBLE SERVICE OF ALCOHOL STRATEGIES**

#### Observations and Signs of intoxication:

To determine intoxication, it is first necessary to have a reference point. Staff need to make an assessment of whether alcohol has been consumed prior to arrival at the premises. If none has, then the behaviour of people when they arrive can be used as a reference point.

Staff should observe and note the appearance and condition of the patron who is sold or supplied with liquor, as well as the period of time the patron has been consuming liquor on the premises. This assessment needs to consider that:

- Everyone, and their ability to be affected by alcohol, is different; and
- Physical factors such as weight, gender, height, age, health and fitness all affect the body's ability to absorb alcohol and remove it from the bloodstream.

#### The adoption of a house policy and the service of alcohol

The proposed house policy is a framework within which the business operates by outlining practices, procedures and conditions. It serves to guide the behaviour of staff to assist in serving liquor responsibly and to deal with difficult situations when they arise.

The following principles must be considered when serving alcoholic products:

- Liquor is not to be served to anyone under the age of 18 years. Where the age of the patron is unclear, then they are to be asked for appropriate identification (i.e. a passport, driver's licence, proof of age card, etc.);

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- The signs of intoxication are to be recognised, which may include, but are not limited to, being excessively loud and/or abusive, slurring of speech, acting inappropriately or in a manner that may cause harm to themselves or others, physical illness, etc;
- Staff are to try and not serve anyone to the point of intoxication;
- Management and staff are not to run promotions that facilitates and/or encourages the significant consumption of alcohol and/or intoxication of patrons'
- Staff are to not serve alcohol to anyone who is already intoxicated;
- Try to discourage people from engaging in activities that may harm themselves or others; and
- Engage in dialogue to prevent drink driving, including offering to call a taxi for patrons who may be too intoxicated to drive.

Approaches for the management of intoxicated persons

A tactful approach should always be employed to remove intoxicated persons from the restaurant. These may include:

- Verbal communication with the customer, which includes outlining any concerns followed by continual observation;
- Informing customers of the legal obligations of staff with regard to the service of liquor;
- Seeking assistance from the patron's friends;
- Intervening tactfully and peacefully;
- Consulting with the manager on duty or more experienced staff members and seeking their assistance;
- Avoiding physical contact with the patron;
- Offering to arrange safe transportation from the site; and/or
- Remaining calm and courteous at all times.

Should the person(s) become abusive and/or violent, then staff are to avoid physical confrontation with that person(s) and the police are to be called immediately by dialing 000.

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## Appendix B: Evacuation Procedures

**Note:** These procedures **do not** apply to flood events; refer to Section 4.3.2 (Page 11) of this document for procedures associated with flooding.

The following procedures are to be followed in the event of a fire, gas leak, or any other event that requires all staff and guests to immediately vacate the premises.

### Procedures:

The R.A.C.E. (Rescue, Alarm, Contain, Extinguish) procedure. This would involve:

- Ensuring that all guests are remove immediate danger;
- Raising the alarm;
- Ringing the Fire Brigade on 000 from safe area;
- Containing fire by closing doors and windows, if safe to do so; and
- Evacuating all persons to a nominated assembly area(s) and ensuring all persons (including staff) are accounted for.

For evacuations of the restaurant, the nominated Fire Warden will organise for all guests and staff to assemble at the evacuation assembly point.

Where it is safe to do so, the preferred evacuation point should be within Guilfoyle Park, so that evacuated persons can be easily seen to by emergency personnel if required. Should it not be safe to evacuate to Guilfoyle Park via Guilfoyle Avenue, then all persons are to evacuate via the Bay Street entrance point to Bay Street at the front of the site (i.e. public areas to the front of the site). Should evacuation to the latter point be required and a person(s) requires medical assistance, then where possible that person(s) should be taken to William Street to meet with emergency services.

Once it is confirmed that all staff have been accounted for, if safe to do so a nominated member of staff should watch the side entranceway to Guilfoyle Avenue to prevent unauthorised access to the site via retail tenancy and car lift. The side entrance doorway is not to be closed at any time during an emergency, to prevent the obstruction of emergency personnel who may need to enter the site via this point.

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**Duties:**

**Duty Manager, Site Operator (if present):**

- If safe, check upstairs, toilets and storage rooms to ensure that all patrons and staff have evacuated.
- Move to assembly area as quickly as possible.
- Where safe to do so, close doors behind you to contain fire.

**General Staff:**

- Perform R.A.C.E. procedures where required.
- If safe, collect the staff attendance book to verify that all staff are present and accounted for; and
- Direct guests to the assembly area as quickly as possible.
- Once at the emergency evacuation point, liaise with the Fire Warden to confirm that staff are accounted for.

**Exit Procedures**

The following points must be considered by all staff:

- Exit procedures are to be followed, unless they lead to the source of the fire/problem;
- Staff should only consider using a fire extinguisher if it is safe to do so and they are trained in the use of such equipment;
- Staff and guests may not be able to re-enter the building after evacuation for some time if at all; and
- Points for the Fire Warden or equivalent to consider:
  - The assembly area may not be safe due to other circumstances (e.g. flooding, building collapse, etc.).
  - Both emergency assembly areas must be identified and brought to the attention of all staff.

Remember that evacuation procedures may apply for a variety of situations and not just fire. Such situations may include chemical spillage, bomb threat, storm, aircraft crash, flooding, earthquake, riot, building collapse, gas leak, hostage and/or or siege situations.

Any fire drills should incorporate different scenarios, with evacuations being acted out accordingly, highlighting problems that may not have been envisaged.

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**Political Donations: Matters to be considered by Councillors at Council and/or Committee Meetings**

