



City of Parramatta	
File No:	DA/915/2016/E

SECTION 4.15 ASSESSMENT REPORT Environmental Planning & Assessment Act 1979

DA No:	DA/915/2016/E
Subject Property:	CP SP 94898, Lot 3 DP 1223735, 2-8 River Road West, PARRAMATTA NSW 2150, 8 River Road West, PARRAMATTA NSW 2150
Proposal:	Section 4.55(2) modification of DA/915/2016 for the fit out and use of Shop 1 as a food and drink premises ('Restaurant'). The modification seeks to: - Amend the hours of operation on Sundays to Thursdays to 7am to 11pm; - Permit limited outdoor dining with restrictions on the number of patrons and hours; - Permit live music inside the restaurant on Friday and Sunday between 10am and 6pm.
Date of receipt:	23 November 2022
Applicant:	LJB Urban planning Pty Ltd
Owner:	Parariver Pty Ltd
Property owned by a Council employee or Councillor:	The site is not known to be owned by a Council employee or Councillor
Political donations/gifts disclosed:	None disclosed on the application form
Submissions received:	37
Recommendation:	Refusal
Assessment Officer:	Darren Wan

LEGISLATIVE REQUIREMENTS

Relevant provisions considered under section 4.15(1)(a) of the Environmental Planning and Assessment Act 1979	<ul style="list-style-type: none">• State Environmental Planning Policy (Biodiversity and Conservation) 2021• State Environmental Planning Policy (Resilience and Hazards) 2021• State Environmental Planning Policy (Transport and Infrastructure) 2021• Parramatta Local Environmental Plan 2011 (PLEP 2011)• Parramatta Development Control Plan 2011 (PDCP 2011)
Zoning	B4 Mixed Use
Bushfire Prone Land	No
Heritage	No
Heritage Conservation Area	No
Designated Development	No
Integrated Development	No
Clause 4.6 variation	No
Delegation	Parramatta Local Planning Panel (PLPP) due to number of submissions

1. EXECUTIVE SUMMARY

Modification Application DA/915/2016/E was lodged on 23 November 2022 and seeks the intensification of the approved restaurant by increasing the operational trading hours, allowing outdoor dining and allowing live entertainment.

The application is made pursuant to s4.55(2) of the Environmental Planning and Assessment Act 1979.

In accordance with the Parramatta Consolidated Notification Procedures, the Modification Application was notified between 2 December 2022 and 11 January 2022. In total, 37 unique submissions were received.

Key concerns raised in the submissions are as follows:

- Noise Impacts;
- Poor Management of existing restaurant;
- Parking/traffic;
- Smoking/shisha;
- Use of common property; and
- Loss of property value.

In accordance with the Environmental Planning and Assessment Act 1979, Section 9.1 – Directions by the Minister, this application is reported to the Parramatta Local Planning Panel for determination as the modified proposal received more than 10 submissions during the notification process.

Section 4.15 Assessment Summary

The application has been assessed relative to section 4.15 of the Environmental Planning and Assessment Act 1979, taking into consideration all relevant state and local planning controls.

The modified proposal seeks an increase in trading hours from 7am-11pm Sundays to Thursdays and allow outdoor dining between 7am-10pm. It also seeks to allow live entertainment within the premises.

For clarity, the existing approved hours of operation contrasted to the proposed hours under this modification has been provided below:

Existing Approved	Modified Proposal
7am – 9pm Sunday to Thursday	7am – 11pm Sunday to Thursday
7am – 11pm Friday and Saturday	No change
No outdoor dining permitted	7am – 10pm, seven days
No live music permitted	Live music permitted Fridays and Saturdays

It is of note that the current restaurant is subject to a number of Service Requests relating to its operation as well as breaches to the liquor license. On this basis, Council Officer's do not support the modified proposal as the additional intensity would adversely impact on the amenity and safety of the surrounding locality.

In addition, the applicant was requested to provide satisfactory owner's consent, which at the time of writing this report, has not been provided.

Having regard to the matters for consideration under Section 4.15, and Section 4.55 of the Environmental Planning and Assessment Act 1979, it is recommended that Modification Application No. DA/915/2016/E be refused.

2. SITE DESCRIPTION AND CONDITIONS

The subject site is legally described as Lot 3 in DP 1223735 and CP in SP 94898, and is commonly known as Shop 1, No. 2-8 River Road West, Parramatta. The premises operating from Shop 1 is known as 'On Sunset' restaurant and is on the ground floor of the building identified as 'Block A' towards the western end of the subject site. The premises currently operates with an on-premise licence (LIQ0660034084). Shop 1 has a total gross leasable area of 543m².

The locality is characterised by a range of low density one-and-two storey dwelling houses to the west along the Parramatta River and to the south, industrial and warehouse buildings to the east and south-east, parks along the north (along the Parramatta River foreshore) and a place of public worship to the south-west. It is noted that no portion of the mixed-use development is located on the RE1 Public Recreation Zone that is adjacent to the site to the north.

The site is located within the Parramatta Light Rail preferred route/notification area. The site is approximately 800 metres walking distance from the Parramatta Ferry Wharf and is approximately 1200 metres walking distance from the Parramatta Railway Station.



Figure 1: Zoning of the subject site and surrounds

3. RELEVANT SITE HISTORY

Table 1 below provides details of existing approvals relating to the site.

Development Application	Description
Development Application: DA/702/2013	On 17 October 2013, the then NSW JRPP (now Sydney Central City Planning Panel) approved DA/702/2013 for consolidation of 9 lots, remediation works, demolition of existing structures and construction of a part 11 and part 12 storey mixed-use development containing 287 units and 3 ground floor retail tenancies.
Modification Application: DA/702/2013/A	On 26 June 2014, Council approved DA/702/2013/A to stage the construction of the proposal and delay the payment of Section 94A contributions.
Modification Application: DA/702/2013/B	On 17 October 2014, Council approved DA/702/2013/B to delete Condition 37 (lot consolidation) and amend Condition 59 (driveway entry).
Modification Application: DA/702/2013/C	On 24 June 2016, Council approved DA/702/2013/C to modify the ground floor layout plan for Retail (R01) providing for 3 retail tenancies and a modified garbage area layout and included a floor area for Shop 1 of 543m ² .

Development Application: DA/915/2016	<p>On 15 December 2016, Council approved DA/915/2016 for fit-out and use of shop 1 as a 'restaurant'.</p>
Modification Application: DA/915/2016/A	<p>On 7 April 2017, Council approved DA/915/2016/A to amend the provision of outdoor seating and hours of operation. Outdoor dining was approved between 7am until 10pm seven days per week. Trading hours were extended on Sundays to Thursdays to operate between 7am until 11pm.</p> <p>Note: The approval was on a 12-month trial basis, after which the applicant was required to submit a further application to extend the trial period. Accordingly, no such application was ever lodged and the extended trading hours and use of the outdoor dining space reverted back to the original approval.</p>
Modified Application: DA/915/2016/B	<p>On 7 February 2019, Council received DA/915/2016/B seeking amendments to permit up to 150 patrons within the outdoor dining area and use of the outdoor dining area from 7am until 12am midnight. The application also sought to increase trading hours to between 7am until 12am midnight and to permit live music. On 11 March 2019, the applicant withdrew the modification application.</p>
Modification Application: DA/915/2016/C	<p>On 23 October 2019, Council received DA/915/2016/C seeking to increase trading hours to between 7am until 12am midnight and to permit live music. On 20 April 2020, the applicant withdrew the modification application.</p>
Building Certificate Application: BC/28/2020	<p>On 7 July 2020, Council refused BC/28/2020 seeking to regularise the unauthorised building works relating to the installation of louvres, glass panels and glass door surrounding outdoor seating area for the following reasons:</p> <ol style="list-style-type: none"> 1) <i>The unauthorised building structures: -</i> <ol style="list-style-type: none"> a) <i>are not suitable for the site and are not in the public interest.</i> b) <i>are considered to set undesirable precedent in the area.</i> c) <i>are considered to compromise the fire safety measures of the existing building.</i> d) <i>will limit the passive surveillance of the public space, particularly the aluminum louvres.</i> 2) <i>The solid wall appearance of unauthorised building structures, particularly the aluminum louvres, privatises the building ground floor.</i> 3) <i>The site lines into and out of the tenancy are blocked, reducing passive surveillance and perceived safety of the area.</i> 4) <i>There is no operative/active development consent for the outdoor dining (common property) area of the shop (On Sunset Restaurant). Therefore, the necessity of installations of such structures to safeguard any adverse wind conditions becomes obsolete.</i>
Modification Application: DA/915/2016/D	<p>On 20 October 2020, Council refused DA/915/2016/D, which sought to permit live music, allow outdoor dining and extend trading hours to operate between 7am to 12am midnight, 7 days a week. The application was refused for the following reasons:</p> <p><u><i>Adverse acoustic amenity</i></u></p> <ol style="list-style-type: none"> 1. <i>Pursuant to Sections 4.15(1)(a)(iii) and (b) of the Environmental Planning and Assessment Act 1979 and Part 3.3.4 'Acoustic Amenity' of Parramatta Development Control Plan 2011 as the proposal does not satisfy the objective of the control ensuring that non-residential development does not unreasonably diminish the amenity of nearby residential uses from noise intrusion.</i> <p><u><i>Inconsistency with the conditions of consent pertaining to safety and security</i></u></p> <ol style="list-style-type: none"> 2. <i>Pursuant to Sections 4.15(1)(a)(iii) and (b) of the Environmental Planning and Assessment Act 1979 and Part 3.4.4 'Safety and Security' of Parramatta Development Control Plan 2011 as the proposal does not satisfy the objectives of the control ensuring that non-residential development does not encourage the consideration and application of crime prevention principles and contribute to the safety and perception of safety in public spaces.</i> <p><u><i>Inconsistency with the conditions of consent pertaining to hours of operation</i></u></p> <ol style="list-style-type: none"> 3. <i>Pursuant to Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979 and given the number of complaints from the adjoining residents and upon recommendation by NSW Police, Council's Environmental Health Compliance and City Safety and Security teams, the proposal to increase the number of patrons within the outdoor dining area and the increase in the hours of operation 7am – 12am (midnight), 7 days a week is not in the public interest. The hours of operation shall revert to 7am – 9pm Sundays to Thursdays and 7am to 11pm Fridays and Saturdays with <u>no outdoor dining permitted</u> as Condition 38(c) has not been approved under a previous Section 4.55 modification.</i> <p><u><i>Inconsistency with the conditions of consent pertaining to outdoor dining</i></u></p> <ol style="list-style-type: none"> 4. <i>Pursuant to Section 4.15(1)(d) of the Environmental Planning and Assessment Act 1979 and given the number of complaints from the adjoining residents and upon recommendation by NSW Police, Council's City Safety and Security and Environmental Health Compliance teams, the proposal is not in the public</i>

interest. Outdoor dining is not allowed at the premises 'On Sunset Restaurant' due to the proposed adverse amenity impacts to the adjoining residential dwellings and noting that Condition 6(d) has not been approved under a previous Section 4.55 modification.

Insufficient information

5. Pursuant to Sections 4.15(1)(a)(iii) and (b) of the Environmental Planning and Assessment Act 1979, Part 2.12.5 Air Quality of Parramatta Development Control Plan 2011 and Condition 2 of DA/915/2016/A, an Air Quality and Odour Impact Assessment report has not been provided to assess the impact to adjoining residents of increasing the numbers of patrons within the outdoor dining area and any recommended mechanical ventilation measures to mitigate smoke from cooking and cigarettes (including shisha or hookah).
6. The proposal fails to satisfy the relevant considerations under Section 4.15(1)(e) Environmental Planning and Assessment Act 1979 in that the adverse acoustic impacts generated by the proposal to increase both the number of approved patrons within the outdoor dining area (from 0 to 70) and to extend the hours of operations from 7am – 9pm Sunday to Thursday and 7am to 11pm Friday and Saturday to 7am to 12am (midnight), 7 days a week is not considered to be in the wider public interest due to an existing non-compliance with Conditions 6 & 38.

4. THE PROPOSAL

Approval is sought to increase hours of operation, permit outdoor dining, and permit live music on premises. In order to facilitate these amendments, the following amendments to the conditions are required:

Amend Condition 1 as follows:

1. The development is to be carried out in accordance with the following plans endorsed with Council's Stamp as well as the documentation listed below, except where amended by other conditions of this consent and/or any plan annotations:

Drawing No.	Prepared By	Dated
Ground Floor Plan, Drawing No. 1513 – SK161125_01 issue 02 dated 30/11/2016	KTA Architects	25.11.2016
Ground Floor Plan, Drawing No. MR100 – A	Xandel Pty Ltd	29.11.2016
River Road Restaurant 1 Drawing No. 201601-DA100 – A outdoor seating location as amended by Acoustic Report Rev. 2	Toplace	01.09/2016
Hydraulic Services Retail 1 – Tenancy fitout. Dwg. No. PN-01113 –H52-A	C&M Consulting Engineers	17.11.16

Document(s)	Prepared By	Dated
Statement of Environmental Effects	LJB Urban Planning	27 September 2016
Statement of Environmental Effects	LJB Urban Planning	1 November 2022
Waste Management Plan	Elephants Foot Recycling Solutions	April 2016
Acoustic report Doc Ref. 20161355.1/2809A/R1/HP	Acoustic Logic	Revision 2 dated 24.1.07
Acoustic report Doc Ref. 220930 OnSunset V1.1	Acoustic Directions Pty Ltd	02 October 2022

Note: In the event of any inconsistency between the architectural plan(s) and the landscape plan(s) and/or stormwater disposal plan(s) (if applicable), the architectural plan(s) shall prevail to the extent of the inconsistency.

Reason: To ensure the work is carried out in accordance with the approved plans.

Amend Condition 6 as follows:

6. No outdoor dining shall be permitted at the premises. The use of the outdoor dining shall comply with Drawing S4.55_1 dated October 2022 and the restrictions outlined in the Acoustic Report prepared by Acoustic Directions Issue v1.1 dated 30/09/22.

Reason: To protect the amenity of the surround neighbourhood.

Amend Condition 38 as follows:

38. *The days and hours of operation are restricted to:*

<i>Day</i>	<i>Time</i>
<i>Sunday to Thursday Friday and Saturday</i>	<i>7am – 9pm 11pm 7am – 11pm No outdoor dining permitted.</i>
<i>Outdoor dining</i>	<i>7am-10pm, in accordance with the Acoustic Report prepared by Acoustic directions Issue V1.1 dated 30/09/22. No outdoor dining permitted outside of these hours.</i>

Reason: To minimise the impact on the amenity of the area.

Amend Condition 43 as follows:

43. *No live music or entertainment shall be provided within the premises. Live music is permitted within the restaurant on Fridays and Saturdays only. The live music is not to include drum kits and/or strong percussion. Live music will not be permitted outside of these hours and is not permitted externally to the restaurant within the outdoor dining areas.*

Reason: To protect the amenity of the surrounding neighbourhood.

5. REFERRALS

The following section outlines the response and conditions recommended from each of the internal and external referrals in relation to the subject application.

Referral	Comment
Crime Prevention	Not supported.
Environmental Health (Acoustic)	Not supported.
NSW Police	Not supported.

6. ASSESSMENT UNDER SECTION 4.55

SECTION 4.55(2)	
(a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The modified proposal will retain the use of the subject premises as a restaurant but is considered to exacerbate the amenity impacts to nearby residents within proximity to the site.
(b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	The modified proposed will not contravene any conditions issued as a requirement of concurrence.
(c) it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (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, and	The modification was notified in accordance with City of Parramatta Consolidated Notification Procedures.
(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.	All submissions received were considered as part of the assessment of this modification. Please refer to submission discussion below.
(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.	An assessment against the relevant matters contained within s4.15 are addressed further in this report.

ASSESSMENT OF WHETHER THE PROPOSAL IS SUBSTANTIALLY THE SAME

In considering whether the development is substantially the same, the applicant bears the onus of satisfying the consent authority that the modified development is substantially the same as the original development (*Vacik Pty Ltd v Penrith City Council*, unreported, 24 February 1992). In this judgement, Stein J states that it is not appropriate to simply say that the nature of the development, in this case the use of the site as a residential flat building, as amended would be the same use and therefore substantially the same development. Stein J goes on to say that it is necessary to consider whether the proposed modified development would be essentially or materially or having the same essence as that which had been originally approved. These comments are reiterated in **Trinivass Pty Ltd v The Council of the City of Sydney [2018] NSWLEC 77**.

Bignold J in his decision in *Moto Projects No 2 Pty Limited v North Sydney Council* [1999] 106 LGERA 298, states that:

“The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison must be a finding that the modified development is “essentially or materially” the same as the (currently) approved development.

The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).”

As such, an assessment of the proposed modified development to determine if substantially the same as the original development requires an assessment of the quantitative and qualitative impacts of the modified proposal.

Quantitative Assessment

The quantitative difference would be increasing the hours of operation by 2 hours, Sunday to Thursday, as well as increase the patron capacity of the outdoor dining area.

Qualitative Assessment

The modified proposal seeks to intensify the use of the subject premises by increasing trading hours, patron capacity and allowing live music in the venue.

Historic records show that the restaurant as currently operated has not been in accordance with the consent. Any additional intensification of the premises without evidence that the business is capable of operating within the confined of the consent is likely to exacerbate the existing situation and add to the amenity impacts of nearby residents.

Conclusion

Based on the above assessment, the modified development is substantially the same as the original approved development, although it would create additional amenity impacts to surrounding residents.

7. ENVIRONMENTAL PLANNING INSTRUMENTS

7.1 STATE ENVIRONMENTAL PLANNING POLICY (RESILIENCE AND HAZARDS) 2021 – CHAPTER 4 REMEDIATION OF LAND

The site was remediated prior to construction of the existing building on site, as required under DA/702/2013. In addition, the suitability of the site for the use as a restaurant was deemed satisfactory under the assessment of DA/915/2016. This modified proposal does not change that assessment, and therefore is still considered to satisfy clause 4.6 of the SEPP.

7.2 STATE ENVIRONMENTAL PLANNING POLICY (TRANSPORT AND INFRASTRUCTURE) 2021 – CHAPTER 2 INFRASTRUCTURE

The relevant matters to be considered under Chapter 2 of the SEPP for the proposed development have been considered in the assessment of DA/702/2013 and DA/915/2016. This modified proposal does not change that assessment and does not require amendment to the original conditions imposed.

8. PARRAMATTA LOCAL ENVIRONMENTAL PLAN 2011

Clause 2.3 Zone objectives and Land Use Table

The site was zoned B4 Mixed Use. The modified proposal will retain the approved use of the subject tenancy as a 'restaurant' as approved under DA/915/2016, which was permitted with consent within the B4 Mixed Use zone.

As the modified proposal does not seek any physical works, there are no relevant provisions of PLEP2011 to address.

9. PARRAMATTA LOCAL ENVIRONMENTAL PLAN 2023

Parramatta LEP 2023 was gazetted on 2 March 2023. Clause 1.8 of the LEP now repeals the following planning instrument which applied to the land:

- Auburn Local Environmental Plan 2010
- Holroyd Local Environmental Plan 2013
- Parramatta (former The Hills) Local Environmental Plan 2012
- Parramatta Local Environmental Plan 2011

Clause 1.8A Savings provision relating to development applications states:

If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced.

The current modification application was lodged on 23 November 2022 and therefore shall continue to be assessed under Parramatta LEP 2011.

It is also noted that B4 Mixed Use Zone is now referred to as MU1 Mixed Use in line with the Employment Zones Reform legislation changes.

10. PARRAMATTA DEVELOPMENT CONTROL PLAN 2011

Only the relevant provisions of Parramatta DCP 2011 that relate to the modified proposal have been addressed below:

Development Control	Comment	Comply
<i>Part 3 Development Principles</i>		
3.3.4 Acoustic Amenity	<p>The application was referred to Council's Environmental Health Officer who objected to the proposal based on the history of complaints and service requests relating to the current operation of the subject premises, as well as the following:</p> <p><i>The proposed restrictions on live entertainment detailed in the applications Statement of Environmental Effects and the acoustic report, particularly in relation to noise levels and measurement, are ambiguous and not measured in a real life scenario.</i></p> <p><i>The application is approved as a restaurant, but the nature of complaints received by Council indicates that it is also operating as a reception centre. This is required to be clarified before any further approvals can be granted in regard to extension of operating hours and/or live entertainment.</i></p> <p><i>The acoustic consultant has "concluded that if recommendations given in Section 7 for acoustic constructions and treatments and sound levels with live and background music are implemented, the level of noise reaching residents will comply with the noise conditions given in Council's DA consent", however the acoustic consultant failed to take noise measurements inside habitable room/s of residential apartments located directly above the existing restaurant which would be considered potentially most affected noise sensitive locations.</i></p>	No

	<p><i>The existing consent condition number 51 prohibits the restaurant from making any offensive noise. In my considered opinion, if any noise from the proposed development is heard by neighbouring residents past 10pm at night whether it is from outdoor dining area or internal restaurant noise, I will consider that as offensive noise in breach of the condition number 51.</i></p> <p>It is also of note that the predicted noise levels do not comply with the EPA Noise Policy for Industry 2017 and therefore cannot be endorsed to increase the hours of operation or to permit outdoor dining.</p>	
3.4.4 Safety and Security	<p>As discussed above, there have been a history of complaints and service requests relating to the current operation of the subject premises.</p> <p>Council's Crime Prevention Officer advised that <i>'the objections received in relation to this application and the complaints received and investigated by Council and the Police make it apparent that the applicant has been either incapable of, or unwilling, to operate the restaurant within the conditions of consent granted as they exist now, or as they existed in the outdoor dining trial period'</i>.</p> <p>Comments received from NSW Police – Cumberland Area Command also advised that the premises was subject to constant visits due to reports of breaches to the liquor licensing conditions.</p> <p>On that basis, no further intensification of the site will be considered until such time the business can show the ability to consistently operate in accordance with the development conditions as currently approved.</p>	No

11. DEVELOPMENT CONTRIBUTIONS

As there are no proposed building works, a development contribution is not required to be paid.

12. BONDS

As there are no proposed building works, the payment of bonds is not required to be paid.

13. EP&A REGULATION 2021

Applicable Regulation considerations including demolition, fire safety, fire upgrades, compliance with the Building Code of Australia, compliance with the Home Building Act, PCA appointment, notice of commencement of works, sign on work sites, critical stage inspections and records of inspection would have been addressed by appropriate consent conditions, had the modification application been recommended for approval.

15. THE LIKELY IMPACTS OF THE DEVELOPMENT

The assessment demonstrates that the modified proposal will have significant adverse amenity impacts on adjoining properties as per comments received from Council's Environmental Health and Crime Prevention Officers, as well as NSW Police. Until such time the business can show the ability to consistently operate in accordance with the development conditions as currently approved, no additional intensification of the restaurant can be considered.

16. SUITABILITY OF THE SITE

The suitability of the site is not in question as the modified proposal retains the approved use of the subject premises as a restaurant. In that regard, the original assessment of the suitability of the site for the development does not change.

17. PUBLIC CONSULTATION

In accordance with the Consolidated City of Parramatta Consolidated Notification Plan the Development Application was notified and advertised between 2 December 2022 and 11 January 2023:

In response, 37 submissions were received. Key concerns raised in the submissions are addressed below:

Issue	Response
Poor Management / Safety / use of premises as a function centre	<p>Concern was raised over the existing management of the business. Many submissions suggested that the business is already not operating in accordance with the consent, and any intensification would just exacerbate the situation, as well as put the safety of nearby resident at risk.</p> <p>NSW Police also referred to numerous breaches of the premise's liquor license as well as having to constantly attend to noise complaints at the premises. This is also evident by the number of Service Requests received by Council.</p> <p>Nevertheless, the poor management of the existing business is unable to be included as a reason for refusal, and the outstanding Service Requests will be dealt with by Council's Compliance Officers.</p>
Noise	<p>Concern was raised over the noise impacts resulting from the intensification of the approved restaurant.</p> <p>Council shares the same concern, as discussed in the Acoustic Amenity discussion within the DCP Compliance table.</p> <p>This has been included as a reason for refusal.</p>
Parking/Traffic	<p>Concern was raised regarding the existing lack of parking, as well as the behaviour of the patrons when driving to and from the subject premises.</p> <p>This has not been included as a reason for refusal. The concerns raised are generally in relation to the poor management of existing customers and will be dealt with by Council's Compliance Officers.</p>
Smoking / Shisha / Air quality	<p>Concern was raised regarding the patrons' smoking cigarettes and shisha in the outdoor dining area. Smoking in commercial outdoor dining areas is regulated under the <i>Smoke-free Environment Act 2000</i>, enforced by NSW Police.</p> <p>This has not been included as a reason for refusal, however had the application been recommended for approval, a condition of consent would have been imposed to restrict smoking and shisha in the outdoor dining areas.</p>
Outdoor dining area is common property	<p>Concern was raised that the areas proposed to be outdoor dining are actually common property and does not belong to the business. In that regard, it is noted that the areas proposed for outdoor dining are the same areas approved on a trial basis, under DA/915/2016/A.</p> <p>This has not been included as a reason for refusal, as the areas proposed for use by the restaurant appear to be contained wholly within Lot 3 DP 1223735 which is privately owned and not associated with the strata.</p>
Property value	<p>Concern was raised that intensifying the use of the business would have a detrimental effect on the property value of the residential units in the building.</p> <p>This has not been included as a reason for refusal, as property value is not a matter for consideration under s4.15 of the <i>Environmental Planning and Assessment Act 1979</i>.</p>

CONCILIATION CONFERENCE

On 11 December 2017, Council resolved that:

"If more than 7 unique submissions are received over the whole LGA in the form of an objection relating to a development application during a formal notification period, Council will host a conciliation conference at Council offices."

As the application received 37 submissions, a Conciliation Conference is required. The applicant was informed of this, but at the time of writing this report, has not yet responded to Council's request.

Given that the application is recommended for refusal for a number of reasons outside of the issues raised by the submissions, Council considers it appropriate to proceed with the refusal.

18. PUBLIC INTEREST

The intensification of the approved restaurant will cause adverse impacts to the surrounding residential amenity and does not satisfactorily demonstrate that the business can operate in accordance with the consent.

It is for this reason that the modified proposal is not considered to satisfy Section 4.15(1)(e) and cannot be supported.

19. CONCLUSION

The application has been assessed relative to section 4.15 of the Environmental Planning and Assessment Act 1979, taking into consideration all relevant state and local planning controls.

The modified proposal is considered to have increased impacts on the acoustic amenity and safety of the surrounding residents. Having regard to the assessment of the proposal from a merit perspective, Council officers are not satisfied that the intensification of the restaurant will result in a good outcome.

For these reasons, it is considered that the proposal is unsatisfactory having regard to the matters of consideration under Section 4.15 of the Environmental Planning and Assessment Act, 1979 and is recommended for refusal.

20. RECOMMENDATION

Pursuant to Section 4.16 of the Environmental Planning and Assessment Act, 1979:

- A. **That** the Parramatta Local Planning Panel, exercising the function of the consent authority, **refuse** the requested modification to DA/915/2016/E to intensify the approved restaurant by increasing the hours of operations, allow outdoor dining and allow live entertainment.
- B. **That** Council advise those who made a submission of the determination.

REASONS FOR REFUSAL

1. **Parramatta Development Control Plan 2011**
 - a. The modified proposal is inconsistent with the following clauses:
 - Part 3.3.4 – Acoustic Amenity; and
 - Part 3.4.4 – Safety and Security.
2. **Environmental Planning and Assessment Regulation 2021**
 - a. The modified proposal failed to provide satisfactory owner's consent, in accordance with Section 98(1)(b) of the *EP&A Regulation 2021*.
3. **Environmental Planning and Assessment Act 1979**
 - a. The modified proposal has non-compliances with *Parramatta Development Control Plan 2011*. Accordingly, the proposal fails to satisfy the matters of consideration prescribed under s4.15(1)(a)(iii) of the *EP&A Act 1979*.
 - b. The modified proposal is therefore not considered to be in the public interest and also fails to satisfy s4.15(1)(b), (d), and (e) of the *EP&A Act 1979*.