



**SECTION 4.55(2)
APPLICATION REPORT
TO MODIFY EXISTING
RESTAURANT TO
ALLOW OUTDOOR
DINING**

**2-8 RIVER ROAD WEST,
PARRAMATTA
SHOP 1**

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SUPPORTING DOCUMENTATION

1. Crime Risk & Prevention through Environmental Design (CEPTED) Assessment Report prepared by Harris Crime Prevention Services.
2. Acoustic Report prepared by Acoustic Directions

1.0 INTRODUCTION

- 1.1 This Planning Report has been prepared by LJB Urban Planning Pty Ltd to support a Section 4.55(2) application to amend the approved development at 2-8 River Road West, Parramatta. The S4.55 is submitted to the City of Parramatta on behalf of the owner of the Restaurant 'On Sunset'. This application seeks to amend the hours of operation and allow for limited and restricted outdoor dining.
- 1.2 The purpose of this application is to realise the intention of the original approved development and permit limited outdoor dining. Outdoor dining creates a vibrant and activated public domain which is severely lacking from this section of the river frontage. With limitations and restrictions in place it is reasonable to allow this business the opportunity for outdoor dining. Allowing outdoor dining will assist in activating the waterfront and improve the safety and security of the public domain. This is in the public interest.
- 1.3 Restaurants and the retail industry have been through a very difficult few years with the restrictions and lockdowns due to Covid. Businesses need to take advantage of their locations and where possible enable patrons to sit outside in the fresh air. In the past there has been opposition from residents within the towers to the outdoor dining. It was always proposed that the external terrace would be used for this purpose when the original DA for the buildings was designed and approved. Residents were aware of this as the approved plans show 'retail terrace' and it is now reasonable to allow the business to recover from the effects of Covid and allow limited and restricted opportunities for outdoor dining.
- 1.4 This application is supported by an updated Acoustic Report and a CEPTED Report which support this current proposal.
- 1.5 The subject site is located at 2-8 River Road West, Parramatta. This DA relates to Retail Unit 1.
- 1.6 Development Application DA/702/2013 was granted deferred commencement by Joint Regional Planning Panel on 17 April 2014.
- 1.7 The application became operational on 22 May 2014.
- 1.8 The approval comprised the following:
- Demolition of existing building;
 - Construction of a part 11 and part 12 storey mixed use development containing 287 dwellings and 3 retail tenancies;
 - Excavation for 2 levels of basement parking for 373 cars; and
 - Foreshore beautification works.
- 1.9 Development Application DA/30/2015 was approved by Council on 12 October 2015. The approval comprised:

Alterations and additions to an approved mixed use development comprising of an additional 3 storeys to Building A and an additional 1 storey to Building B (a total increase in the number of units by 34) and an additional level of basement parking to accommodate 54 parking spaces.

1.10 Condition 147 of DA702/2013 requires the following:

'The specific retail use or occupation of the ground floor tenancies shall be the subject of further development approval for such use or occupation.'

1.11 Subsequently, DA/915/2016 was lodged with Council for the use and fit-out of the restaurant. This application was approved on 20 December 2016 and has had several modification applications.

DA History and S.4.55 History

1.12 Refer to Table 1 below, which provides a history of the previous use/fit-out application (DA/915/2016) and subsequent Section 4.55 applications:

Table 1: DA and Section 4.55 History

History of Applications for Subject Site
<p>DA/915/2016</p> <p>On 30 September 2016, a development application was lodged and sought approval for the following proposal:</p> <ul style="list-style-type: none"> • Fit-out and use of Shop 1 as a food and drink premises 'Restaurant'. • Outdoor dining proposed for 48 patrons. • Hours of use proposed as follows: <ul style="list-style-type: none"> - Monday to Sunday: 7am to midnight, with outdoor dining limited to 7am to 10pm. -
<p>On 15 December 2016, the application was partially Approval as follows:</p> <ul style="list-style-type: none"> • Fit-out and use of Shop 1 as a food and drink premises 'Restaurant'. • Hours of use proposed as follows: <ul style="list-style-type: none"> - Sunday to Thursday: 7am to 9pm; and - Friday and Saturday: 7am to 11pm. <p>No outdoor dining was permitted – this was based on submitted Acoustic Report, which identified that the noise limits would be exceeded.</p> <p>No live music/entertainment was permitted refer to condition No. 43 and 45.</p>
<p>DA/915/2016/A</p> <p>On 8 February 2017, a Section 96 Modification was lodged with Council to seek the following:</p> <ul style="list-style-type: none"> • Increase hours of internal operation to between 7am and midnight, 7 days a week. • Permit outdoor dining for up to 48 persons with Area A (under awning location - 32 patrons max) and Area B (uncovered outdoor area – 16 patrons max) between the following hours: <p>7am to 6pm: Area A – 32 patrons Zone B – 16 patrons</p> <p>6pm to 10pm: Area A – 24 patrons Area B – Nil</p> <p>Closed outside these hours.</p> • Modify Condition 43 to allow for live music in internal areas.
<p>On 7 April 2017, the application was partially approved as follows:</p> <ul style="list-style-type: none"> • Increased hours of operation Sunday to Thursday <i>approved subject to a 12 month trial period.</i> • Outdoor seating <i>approved subject to a 12 month trial period.</i>

History of Applications for Subject Site

- Live entertainment/ music *not approved*.

DA/915/2016/B

On **7 February 2019**, a Section 4.55 modification was lodged to seek the following:

- Permit outdoor dining to be increased to: 7am to 10pm with max of 150 seats, for a 12 month trial period, as follows:
7am to 6pm:
Zone 1 – 126 patrons
Zone 2 – 24 patrons
6pm to 10pm:
Zone 1 – 140 patrons
Zone 2 – 10 patrons.
From 10pm – 12 midnight:
Zone 1 - 100 patrons
- Modify Condition 38 to allow for hours of operation to be between 8am and 12 midnight, 7 days a week for a 12 month trial period.
- Modify Condition 43 to allow for live music in internal areas.

On **11 March 2019**, this Section 4.55 application was withdrawn.

DA/915/2016/C

In **October 2019**, a Section 4.55 modification was lodged to seek the following:

- Amend Condition 6 to permit outdoor dining, with up to a maximum of 122 seats for a 12 month trial period, as follows:
8am to 6pm:
Zone 1 – 102 patrons
Zone 2 – 20 patrons
6pm to 10pm:
Zone 1 – 110 patrons
Zone 2 – 8 patrons.
From 10pm – 12 midnight
Zone 1 - 100 patrons (*all patrons must be seated at least 1m back under awning*).
- Modify Condition 43 to allow for live music in internal areas, use of drum kit and/or strong percussion instruments not permitted. In addition, pre-recorded music can be played when external terrace is less than 25% occupied.
- In addition, building works were also proposed to improve sound proofing for nearby residential receivers.

On **20 April 2020**, the above Section 4.55 application was withdrawn.

BC/28/2020

A Building Certificate seeking formalise the following works was lodged:

- Installation of louvres;
- glass panels; and
- glass door surrounding outdoor seating area of Shop 1.

On **7 July 2020**, the building certificate was refused.

DA/915/2016/D

History of Applications for Subject Site

On **18 August 2020**, a Section 4.55 modification was lodged to seek the following:

- Amend Condition 6 to permit outdoor dining, with up to a maximum of 70 seats for a 12 month trial period, as follows:

8am to 6pm:

Zone 1 – 50 patrons

Zone 2 – 20 patrons

6pm to 10pm:

Zone 1 – 62 patrons

Zone 2 – 8 patrons.

From 10pm – 12 midnight

Zone 1 - 70 patrons (all patrons must be seated at least 1m back under awning).

- Modify Condition 38 to allow for operation between 7am to midnight, 7 days a week.
- Modify Condition 43 to allow for live music in internal areas, use of drum kit and/or strong percussion instruments not permitted. In addition, pre-recorded music can be played when external terrace is less than 25% occupied.

On **20 October 2020**, the Section 4.55 application was refused.

1.13 As demonstrated in **Table 1** above, the current permitted hours of use are as per the original development application (DA/915/2016), being:

- Sunday to Thursday 7am to 9pm
- Friday to Saturday 7am to 11pm.

In addition, the following are currently not permitted:

- Outdoor dining.
- Live music and/or entertainment.

1.14 This current Section 4.55 application seeks consent for the following:

- Increase hours of operation as follows

Sunday to Thursday 7am to 11pm

Friday to Saturday 7am to 11pm (remains as approved).

- Permit outdoor dining opportunities, for up to 48 patrons, under the following conditions:

A maximum of 48 patrons between 7am to 6pm as follows:

- *Zone A (under awning) – 32 patrons; and*
- *Zone B (open air terrace area) – 16 patrons.*

A maximum of 24 patrons (open air terrace area) between 6pm and 10pm as follows:

- *Zone A (under awning) – 24 patrons; and*
- *Zone B (open air terrace area) – no patrons.*

- Permit live music **inside** the restaurant on Friday and Sunday between 10am and 6pm. No drum kits or strong percussion instruments will be permitted.

1.15 To allow for the above changes to be incorporated into the consent, the following conditions require modification (deletions shown in ~~italic strikethrough~~ and new words shown in **bold italics**):

Condition No. 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 surrounding neighbourhood.

Condition No. 38:

The day and hours of operation are restricted to:

Day	Time
Sunday to Thursday	7am – 9pm 11pm
Friday and Saturday	7am – 11pm
Outdoor Dining	No outdoor dining permitted. 7am – 10pm, in accordance with the Acoustic Report prepared by Acoustic Directions Issue v1.1 dated 30/09/22. No outdoor dining permitted outside these hours.

Condition No. 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 amenity of the surrounding neighbourhood.

- 1.16 The design of the ground level retail along the Parramatta riverfront, within the mixed use building, was designed in such a way to provide for external uses. The footpath along the river is isolated at present and the ability to have some external seating will assist in increasing natural surveillance and improving pedestrian safety in this location.
- 1.17 The external terrace area has been designed to accommodate outdoor dining and the accompanying acoustic report has determined that the proposed hours of operation and use of the external outdoor area will not give rise to offensive noise, subject to sound proofing works being undertaken and limitations on the number of patrons within Zone 1 and 2 each day.
- 1.18 We would ask Council and the community to take a reasonable approach to this application and enable the minor changes to facilitate the activation and revitalisation of the Parramatta River foreshore.

2.0 SITE DESCRIPTION

2.1 The site is located at 2-8 River Road West, Parramatta. The application relates to Shop 1 which is legally described as:

- Lot 3 DP 1223735

2.2 The entire site is irregular in shape with a frontage of 208.56 metres to River Road West and 53.90m metres to Alfred Street at the western boundary. The eastern boundary is approximately 54.60 metres long while the northern boundary that immediately adjoins the Parramatta River is approximately 175.17 metres long.

2.3 The site has a total area of 1.023 hectares of this 2,492m² of land will be dedicated to Council resulting in a reduced site area of 7,661m².

2.4 **Figure 1** below is an aerial image, providing the site in its immediate context.

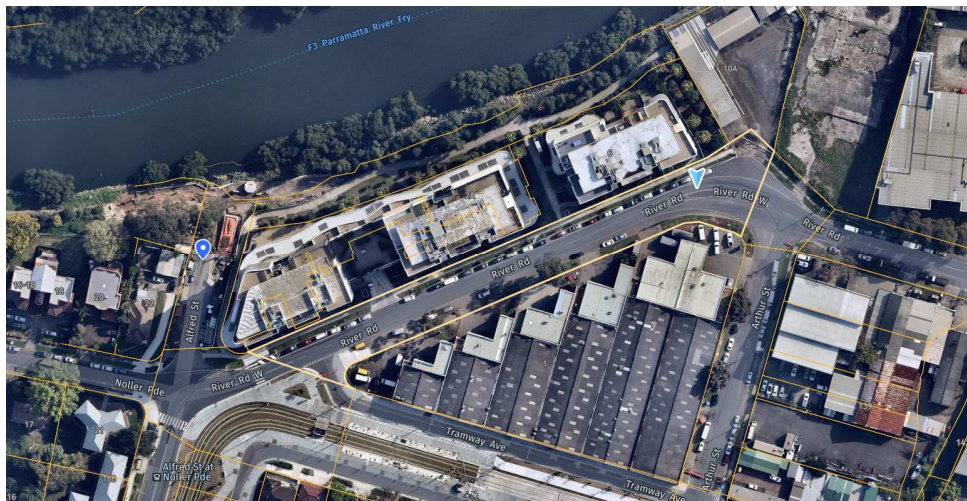


Figure 1: Subject Site and Immediate Context. Source: Nearmap

2.5 This application relates to retail shop 1 which is at the eastern end of the development and has frontage to River Road West, Alfred Street and the Parramatta River foreshore.

2.6 **Figures 2 to 9** below depict the subject site and its surrounds in photographs:



Figure 2: Subject Site looking north-east from Noller Parade and Alfred Street intersection.



Figure 5: Looking west along River Road West, from 4 River Road West. Non-residential uses positioned on the southern side of River Road West.



Figure 3: Looking west towards the corner of Noller Parade and Alfred Street intersection, adjoining residential properties.



Figure 6: Subject Site looking south from river walkway.



Figure 4: Looking south along the western side of the subject site, a cul-de-sac is behind the fence to the west and will be where the new Parramatta footbridge will connect.



Figure 7: Subject Site looking south from river walkway, showing residential units above restaurant.



Figure 8: Looking east along the river walkway, vacant ground floor commercial tenancies shown at right of photograph.



Figure 9: Looking west along the river walkway towards the subject site.

3.0 PROPOSED AMMENDMENT AND JUSTIFICATION

3.1 This Section 4.55(2) application seeks to modify development consent as follows:

- Increase hours of operation Sunday through to Thursday to allow operation to 11pm. Amended hours to include:

Sunday to Thursday 7am to 11pm

Friday to Saturday 7am to 11pm.

- Permit outdoor dining with the following restrictions:

A maximum of 48 patrons between 7am to 6pm as follows:

- Zone A (under awning) – 32 patrons; and
- Zone B (open air terrace area) – 16 patrons.

A maximum of 24 patrons (open air terrace area) between 6pm and 10pm as follows:

- Zone A (under awning) – 24 patrons; and
- Zone B (open air terrace area) – no patrons.

- Permit live music inside restaurant on Friday and Sunday between 10am and 6pm. No drum kits or strong percussion instruments will be permitted.

3.2 The proposed modifications are discussed further below:

Proposed Extension to Hours & Outdoor Dining

3.3 As discussed above, the proposed hours of use have reverted back to the original hours which are as follows:

Day	Time
Sunday to Thursday	7am – 9pm
Friday and Saturday	7am – 11pm

3.4 For the business to continue to be viable and functional hours of operation until 11pm are considered reasonable for the hospitality industry.

3.5 Concern has been raised previously in relation to the Acoustic Impacts on the dwellings above and to the west of the restaurant. An updated detailed Acoustic Assessment has been undertaken and provides recommendations to ensure compliant noise levels. It is noted that it is not unusual for restaurants and cafes to be located at the base of apartment buildings. It is in fact a requirement of development in the CBD to ensure activation. The Acoustic Assessment goes above and beyond what would normally be required for a restaurant / café use, however we appreciate the concerns that have been raised and we seek to ameliorate them. A summary of the acoustic measures is addressed further below.

- 3.6 The existing tenancy, like those vacant to the north at ground level, were intended to have retail / hospitality type uses in this location. The residents above, prior to moving in, would have had an expectation that a cafe/restaurant use would operate in this location as that was the intended design.
- 3.7 A restaurant that operates to 11pm, 7 days a week is not unreasonable in this location and without adequate hours can result in an unviable business. This would result in 100% vacancy rate for the non-residential tenancies located underneath this development.
- 3.8 In addition, if the hours were to remain at 9pm, this will limit the ability to have more than one sitting in the evening. Most restaurants operate with the ability to provide an early and late dinner sitting times.
- 3.9 The ground level design of the external terrace allows for the extension of the internal restaurant use from indoors to outdoors. The following photographs, highlight the adjacent external areas, which were originally designed for future use as outdoor dining:



Figure 10: Vacant retail terrace adjacent to the foreshore.

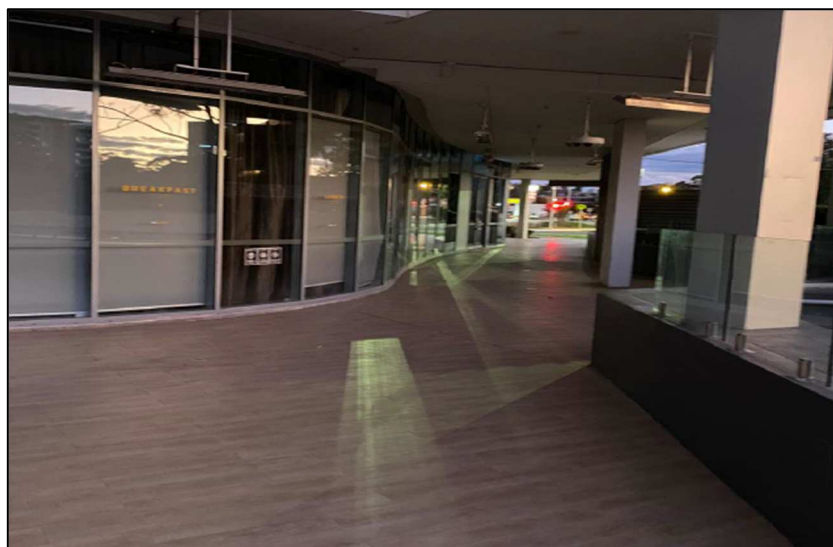


Figure 11: Vacant retail terrace adjacent to restaurant.

3.10 The spaces are desolate and do not contribute to a vibrant or inviting foreshore. The addition of outdoor dining will enhance the space and activate the foreshore.

3.11 The previous Section 4.55 applications, following the initial 12-month trial for outdoor seating, were either withdrawn and/or refused by Council. However, they sought to significantly increase outdoor seats beyond the number capped in the original trial. It is understandable that Council raised concern and was not supportive of any increases beyond the original trial period. This application seeks to revert back to the original limitations as follows:

7am to 6pm:

Area A – 32 patrons

Zone B – 16 patrons

6pm to 10pm:

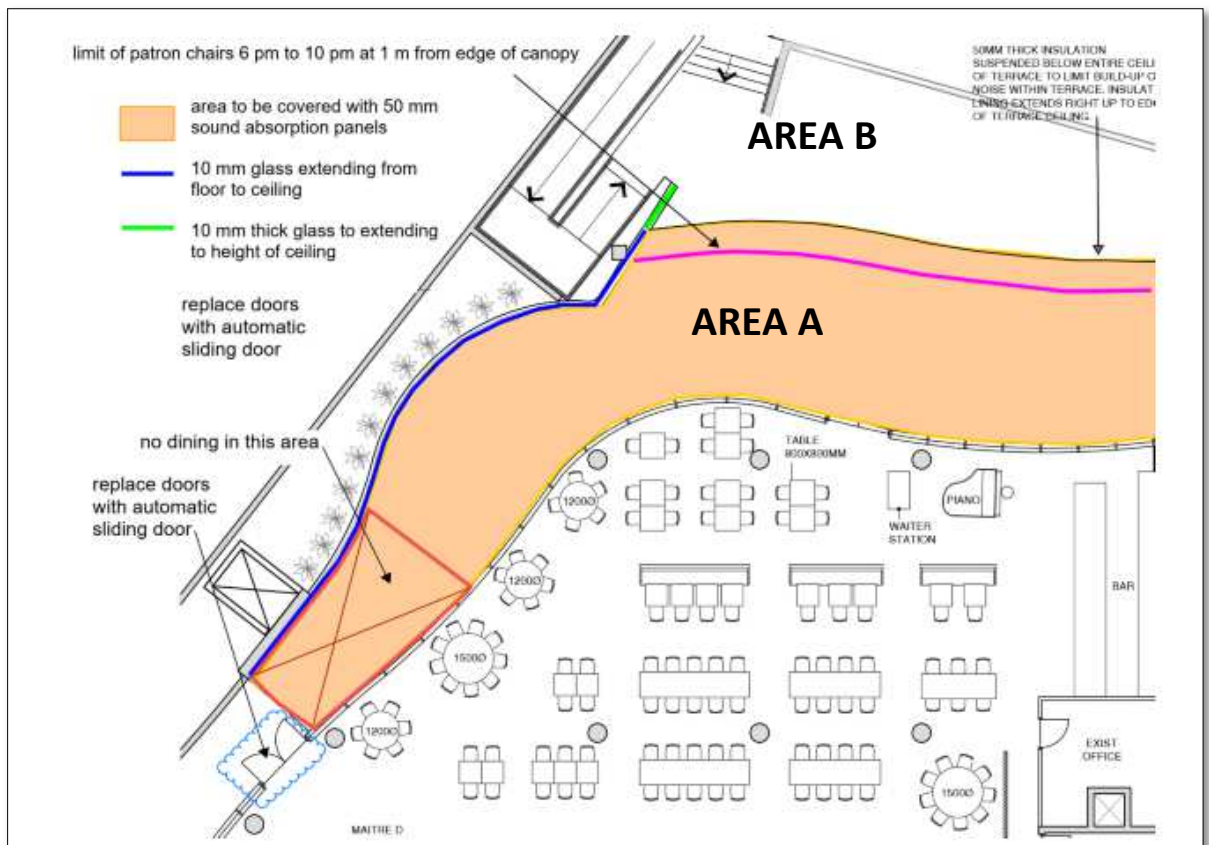
Area A – 24 patrons

Area B – Nil

3.12 The Acoustic report requires the following acoustic measures:

- a) *Change the main restaurant entry door on Alfred St to an automatic sensor-operated sliding door.*
- b) *Install a self-closing mechanism on the northern door between the restaurant and terrace.*
- c) *Cover the external ceiling with 50mm thick absorption panels suspended on the ceiling.*
- d) *Install 100mm thick insulation to the ceiling.*
- e) *Glazing of 10mm thickness to be installed on the western edge of the terrace*
- f) *Restriction in the extent of Area A that can be occupied by outdoor dining.*

3.13 The above changes will not significantly alter the architectural appearance of the restaurant and building and are minimal changes that can ensure that the internal operation of the restaurant can be extended from 9pm to 11pm, 7 days a week and limited outdoor dining allowed. The recommendations are summarised on the following plan:



- 3.14 If the above requirements are implemented, the proposed use of the terrace for outdoor dining with capped seats and time-limited hours should be able to operate without unreasonable impact on the nearest residential receivers.
- 3.15 The foreshore area adjacent to the site is currently an uninviting and desolate place creating a feeling of isolation for pedestrians. Outdoor dining will assist in creating a sense of safety and security which is a benefit to local community.
- 3.16 This aspect has been considered in detail in the accompanying Crime Risk and Prevention through Environmental Design (CPTED) Report prepared by Harris Crime Prevention. The report confirms that the proposal complied with CEPTED requirements and will improve activation and a sense of safety and security along the foreshore.

Permission of Time-Limited Internal Live Music

- 3.17 The original DA consent and subsequent modifications have not permitted live music and/or entertainment to be undertaken within the restaurant.
- 3.18 The accompanying acoustic report has determined that live music can be performed within the internal restaurant without adverse impact on nearby residential properties.
- 3.19 Given the venue caters for not only restaurant diners but from time-to-time functions such as christenings, it would seem reasonable to enable live music internally within the restaurant. This in most instances would include a piano player which provides soft background music although is considered live music and not permitted under the current restrictions.

- 3.20 We appreciate that people have varying degrees of tolerance for day-to-day noise and activities. This building was designed to offer mixed uses as approved in the original development consent.
- 3.21 Residents within the development are living in close proximity to a variety of non-residential uses and other dwellings, it is expected that noise at times will trigger annoyance amongst residents, however, if the use of live music/entertainment is undertaken in accordance with the acoustic report and be monitored to ensure compliance, then this is considered to be reasonable for the current operators and should be supported by Council.

Amendment of Conditions

- 3.22 As a result of the proposed amendments to this development application, it is also requested that Council amend the following conditions below (deletions shown in *italic strikethrough* and new words shown in **bold italics**), as follows:

Condition No. 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 surrounding neighbourhood.

Condition No. 38:

The day and hours of operation are restricted to:

Day	Time
Sunday to Thursday	<i>7am – 11pm</i>
Friday and Saturday	<i>7am – 11pm</i>
Outdoor Dining	<i>No outdoor dining permitted. 7am – 10pm, in accordance with the Acoustic Report prepared by Acoustic Directions Issue v1.1 dated 30/09/22. No outdoor dining permitted outside these hours.</i>

Condition No. 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 amenity of the surrounding neighbourhood.

4.0 ENVIRONMENTAL PLANNING & ASSESSMENT ACT 1979 ASSESSMENT

4.1 Consideration of Section 4.55 Application

4.1.1 The application is submitted pursuant to the provisions of Section 4.55(2) of the Act which states:

Other Modifications

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

(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

(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

(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

(d) it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.

Subsections (1) and (1A) do not apply to such a modification.

4.1.2 An assessment of the requirements of Section 4.55(2) is contained in the following section.

4.1.3 The Environmental Planning and Assessment Act 1979, requires the assessment of development proposals against the relevant 'heads of consideration' set out in Section 4.15 and the requirements of 4.55(8) of the EPA Act. These are addressed below.

4.1.4 The development application is not subject to the complying, prohibited, or advertised development provisions of the Act. There are no issues relating to endangered flora or fauna, watercourses, bush fire or aboriginal artefacts. The proposed development is submitted pursuant to the provisions of Section 4.2 (1) and (2) of the Act which provides if an environmental planning instrument requires development consent to be obtained, a person must not carry out the development unless such a consent has been obtained and is in force. The relevant environmental planning instrument requiring development consent to be obtained is Parramatta Local Environmental Plan 2011.

4.1.5 In determining a development application, Section 4.15(1) of the Environmental Planning and Assessment Act provides that a consent authority is to take into consideration such of the following matters as are of relevance:

“(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)
 - (vi) 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.

4.1.6 An assessment of the proposal against these matters concludes the proposal is suitable for approval. This is demonstrated in the following assessment.

4.1.7 The Environmental Planning and Assessment Act 1979, requires the assessment of development proposals against the relevant 'heads of consideration' set out in Section 4.15 of the EPA Act. These are addressed below.

4.2 Requirements of Section 4.55(2)

4.2.1 The proposed amendments are considered to satisfy the test for a section 4.55(2) application for the following reasons:

Substantially the same development

4.2.2 Whether a development is substantially the same development is a question of fact. This involves a qualitative and quantitative analysis. The analysis involves a comparison between the development as modified and the development originally approved. In the case of *Scrap Realty v Botany Bay City Council* [2008] the Chief Judge described the exercise as being:

"The power of a consent authority to modify a consent is a power to alter without radical transformation of a consent"

4.2.3 The comparison of the approved v proposed development is both as qualitative and quantitative.

4.2.4 In terms to the quantitative analysis, the test for substantially the same development does not limit the change that may occur. In this instance, the DA remains for the use of the tenancy for an approved restaurant. The question is whether the increased hours of operation, outdoor dining and the provision of internal music/entertainment would radically transform the consent. It is noted that increased hours and outdoor dining have been permitted previously, via a modification that allowed for a time limited consent. As such, the DA will remain as originally

approved, as the increased hours are not seeking to increase beyond that permitted on a Friday and Saturday night.

- 4.2.5 Music has not been permitted previously within the restaurant; however, this will only be provided in addition to the use of the restaurant and will not become that primary use of the site. As such, the provision of music is considered ancillary to the restaurant use and will still ensure that use remains substantially the same.
- 4.2.6 The nature of the amendments, in my opinion does not radically transform the consent and will still provide for a restaurant within the existing tenancy. The minor works to be undertaken to comply with the Acoustic Report requirements will not radically changes the appearance of the restaurant therefore ensure the development remains consistent with the original approval.
- 4.2.7 The modified development will maintain approved height, FSR, separation and setbacks. The modifications will not have an adverse effect in respect of: shadowing and privacy impacts as the building footprint remains as approved.
- 4.2.8 In terms of the qualitative analysis, the modified development still seeks to provide a restaurant that operates 7 days a week and will not seek hours of use beyond 11pm each day.
- 4.2.9 The modifications will not result in a substantially different development with all the changes having been justified within this report.
- 4.2.10 It is therefore considered that the impacts of the development are not substantially different.
- 4.2.11 The application as amended is considered 'substantially the same development' and therefore meets the test under Section 4.55(2) of the Environmental Planning & Assessment Act 1979.

Notification of the amendments

- 4.2.12 The proposed modifications will be notified in accordance with Council's notification policy.

Any submissions made

- 4.2.13 Any submissions made will be considered at the close of notification.

4.3 Planning Controls and Regulations

- 4.3.1 The relevant planning controls applicable to the development application are listed below:
- Parramatta LEP 2011
 - Parramatta DCP 2011
- 4.3.2 Compliance with the provisions of the above mentioned planning controls are discussed below.

Parramatta Local Environmental Plan 2011

- 4.3.3 The subject site is located in Granville and is therefore subject to the provisions of Parramatta LEP 2011.

4.3.4 The subject site is zoned B4 Mixed Use. The restaurant use continues to be permitted in the zone with development consent and achieves the objectives of the zone.

4.3.5 There are no other provisions in the LEP that are affected by this modification.

Parramatta Development Control Plan 2011

4.3.6 The following table provides an assessment against the provisions of Part 4 of the DCP which relates to the Harris Park Precinct:

Cl.	REQUIREMENT	COMMENT	Complies
Part 4 – Special Precincts – Harris Park			
4.3 Strategic Precincts.			
4.3.2 Harris Park			
Desired Future Character	<p>View corridors in appendix 2 to be protected.</p> <p>Align Buildings.</p> <p>Consistency in form.</p> <p>Min 30% landscaped area – maybe negotiable in some cases with 50% to be continuous</p> <p>Min 50% of landscaped area to be capable of deep soil.</p> <p>Areas less than 1.5m not to be included in landscaped area.</p> <p>Underground parking preferred.</p> <p>Min width of the allotment shall be 18 metres in any direction.</p> <p>Front setbacks to be compatible with neighbouring buildings.</p> <p>Unless otherwise stated side setbacks shall be 1.5m, greater where there is a need to increase solar access.</p> <p>Driveway to be a minimum of 3.5m.</p>	<p><i>Not affected by the proposed modifications under this Section 4.55 application.</i></p>	☑
	<p><u>Commercial Development</u></p> <p>Land uses on the ground floor are to be non-residential, with any residential development to be located on floors above ground level.</p> <p>Where a residential component is included above ground level, an appropriate level of amenity and</p>	<p><i>The DCP encourages non-residential at ground level and encourages active street frontages.</i></p> <p><i>Due to flood requirements the rear ground level is above the public pathway along the river and the restaurant is setback significantly from the public domain. As such, the provision of outdoor dining will create</i></p>	☑

CI.	REQUIREMENT	COMMENT	Complies
	<p>safety must be assured for the residents</p> <p>Buildings on the street frontage are to provide pedestrian amenity in the form of active street frontages, building entrances and awnings.</p>	<p><i>an active street frontage and provide natural surveillance for the public river walkway.</i></p>	
4.3.2.1 Harris Park Precinct Special Area			
Area of National Significance	<p>Consent Authority to be satisfied of the following:</p> <ul style="list-style-type: none"> • Ensure development does not adversely affect the heritage significance of the Area of National Significance. • Consider historic views from Elizabeth Farm. 	<p><i>Not affected by the modifications proposed for the restaurant use.</i></p>	<input checked="" type="checkbox"/>
Harris Park River Area	<p>Before granting consent for development within the Harris Park River Special Area, the consent authority must consider:</p> <ul style="list-style-type: none"> (i) re-establish foreshore public land are taken up, (ii) enhance open space links. (iii) Links with Elizabeth Farm House and the Parramatta River (iv) high quality facades and entrances to address River, (v) scale of buildings not to dominate the topographical features of the River landscape, (vi) maintain and re-establish building setbacks along the River, and (vii) improve foreshore landscaping and make apparent the settings of the important historic places and views along the river, such as the Queens Wharf. 	<p><i>The existing and modified use will maintain compliance with these requirements.</i></p> <p><i>Notwithstanding, the provision of limited outdoor seating and proposed hours of operation will enhance the useability of the foreshore area by improving natural surveillance and making pedestrians feel safe.</i></p> <p><i>Improved connection with the foreshore will be provide if the modifications proposed are approved by Council and will be highly beneficial for the community.</i></p>	<input checked="" type="checkbox"/>
4.3.2.2 River Road West			
Desired Future Character	<ul style="list-style-type: none"> • Site provides the opportunity for urban renewal of residential and mixed use buildings to be redeveloped addressing both the foreshore and street frontages and revitalising this 	<p><i>The provision of outdoor dining will ensure that the ground level use, currently approved as restaurant, suitably achieves the objectives of the River Road West precinct.</i></p>	<input checked="" type="checkbox"/>

Cl.	REQUIREMENT	COMMENT	Complies
	<p>section of the Parramatta River foreshore.</p> <ul style="list-style-type: none"> • Future redevelopment will ensure that the site responds to its riverside location through substantial improvements to the foreshore and public domain and well-designed buildings. • The provision of a foreshore open space corridor will facilitate the connection for both pedestrians and cyclists between the CBD and the eastern gateway to the city. • The orientation and layout of future development will activate pedestrian edges to the foreshore, street frontages and through site links, as well as maximising opportunities for passive surveillance. • Building separation will be designed to create visual linkages between the northern and southern sides of the foreshore, and between items of historical significance. Building height will be stepped from west to east to ensure that the built form is responsive to its existing and potential future context. 	<p><i>Currently the existing uses and lack of occupancy of the other adjoining ground level tenancies results in an unsafe environment along the river walkway. The provision of outdoor dining will provide for improved passive surveillance along this pedestrian edge and achieve the desired future character of the locality.</i></p> <p><i>The current elevation of the outdoor terrace area, between the restaurant and River, is elevated and therefore the diners within the restaurant will not be able to provide passive surveillance to the public walkway. The provision of outdoor dining combined with increased hours of operation, Sunday to Thursday, will result in a development that will achieve the desired future character of the River Road West locality. Conditions can be imposed to monitor the proposed changes.</i></p>	
Objectives of River Road West Precinct	a) Provides a well-designed interface that relates strongly to the river foreshore and responds well to existing land use types and built form on surrounding sites.	<p><i>The interface with the river walkway is acceptable and no significant built form modification is proposed under this application. Notwithstanding, the interface with the river walkway results in the external terrace, adjacent to the restaurant, being elevated due to flood constraints. The provision of outdoor dining will ensure passive surveillance of the public walkway and improve this interface.</i></p>	<input checked="" type="checkbox"/>
	b) Provides appropriate noise amelioration for residential uses to protect against existing noise generating industrial uses in the surrounding precinct and nearby James Ruse Drive and any future non-residential uses on and off the site.	<p><i>Noted. The accompanying acoustic report demonstrates that the proposed outdoor seating, increased hours of operation on Sunday to Thursday and provision of internal music/entertainment can all be undertaken without adverse impact on nearby residents.</i></p>	<input checked="" type="checkbox"/>

Cl.	REQUIREMENT	COMMENT	Complies
		<p>Noise attenuation works are included in this application and provided the restaurant operates in accordance with the Acoustic Impact Assessment, the proposed modifications should be approved.</p> <p>It is recommended that a time-limited modified consent be granted to ensure that Council can continue to monitor before issuing a consent without restrictions.</p>	
	c) Provides well-articulated/modulated buildings and an attractive composition of building elements that results in high quality design outcomes.	The proposed noise attenuation works will not significantly affect the architectural integrity of the existing building form.	<input checked="" type="checkbox"/>
	d) Results in minimal overshadowing within the site, surrounding properties and public open spaces, to ensure that adequate levels of amenity are achieved.	No effect on overshadowing from proposed modifications.	<input checked="" type="checkbox"/>
	e) Provides building separation that supports amenity and privacy, while also responding appropriately to important historic view corridors, and linkages across the Parramatta River.	Noted. The proposed works will maintain adequate separation and linkages to the Parramatta River.	<input checked="" type="checkbox"/>
	f) That provides active ground floor uses along street frontages, through site links and the river frontage to create an active pedestrian edge as well as maximising opportunities for passive surveillance.	The current restaurant is the only ground floor use that is active. The provision of outdoor dining along the northern side of the restaurant will provide an active frontage, as required under this DCP. In addition, it will provide for much improved passive surveillance opportunities.	<input checked="" type="checkbox"/>
	g) Provides opportunity for new commercial and or retail uses	Noted. The use of the tenancy for purpose of a restaurant will continue. The remaining tenancies unfortunately remain vacant and therefore the connection between outdoor dining and the public domain will see increased benefits for the community, provided limitations are placed on the operator, in accordance with the accompanying acoustic assessment report.	<input checked="" type="checkbox"/>

Cl.	REQUIREMENT	COMMENT	Complies
	h) Provides open spaces that are publicly accessible and provide opportunities for passive and active recreation.	<i>The provision of outdoor seating will encourage pedestrians to utilise the foreshore more. Currently there are no other ground level uses along this section of River Road West.</i>	<input checked="" type="checkbox"/>
Pedestrian Connections:	<ul style="list-style-type: none"> • Provide in accordance with Figure 4.3.2.2.2 and VPAs. • To be dedicated to Council. • New development designed to integrate with new links. • Minimum 6m width. • Desirable to extend Arthur St as potential view corridor. 	<p><i>Not affected by proposed modifications.</i></p> <p><i>Outdoor dining will activate the riverfront walkway and provide for casual surveillance of the public walkway.</i></p>	<input checked="" type="checkbox"/>
Consolidated Development Sites:	<ul style="list-style-type: none"> • Das for individual buildings will not be accepted. • Building design, form materials finishes and colours need to present as a contiguous development across the 2 sites. 	<i>The proposed noise attenuation works, required to enable the modifications to the restaurant use, will not significantly affect the existing building design and form.</i>	<input checked="" type="checkbox"/>
Land Use Mix:	<ul style="list-style-type: none"> • Ground level uses be mainly non-residential and create active frontages to the river, through-site links and road frontages as shown in Figure 4.3.2.2.3. • Ground level residential may be considered where site specific constraints and flooding can be overcome. • Have regard to flooding. • Large non-residential floor plates require future investigation to justify their location. 	<i>Refer to discussion below table, which makes reference to Figure 4.3.2.2.3.</i>	<input checked="" type="checkbox"/> See below for detailed discussion.
Building Form:	<ul style="list-style-type: none"> • Address river and street. • Articulated built form. • Provide active spaces a ground level. This should include commercial and retail spaces, as well as building entrances to the residential parts of each building. • Flexible floor plates at ground level to accommodate a variety 	<p><i>The only ground level tenancy occupied at present is this tenancy, which is used for purposes of a restaurant. As such, there is no current demand for alternate uses.</i></p> <p><i>The proposed modifications, which can be conditioned, and particularly the external outdoor seating will ensure that the river frontage is suitably activated to provide</i></p>	<input checked="" type="checkbox"/>

Cl.	REQUIREMENT	COMMENT	Complies
	<p>of uses and respond to changing market conditions.</p> <ul style="list-style-type: none"> Building to have clearly defined edge and corners and architectural treatments and relate to human scale. 	<i>connection and passive surveillance with the public walkway.</i>	
Building Envelope:	<ul style="list-style-type: none"> High quality design to correlate with the indicative building envelope shown in Figure 4.3.2.2.3 and 4.1.10.4 Building A – 10 storeys Building B – 10 Storeys Building C – 11 storeys Internal building separation of 26m to provide visual connections across the site. Respond to historic view corridors. Building depth (includes balcony zone) of 24m with uppermost floor 15m setback 4.5m from building form below. Tower element to be setback 6m from the river side. 6m wide ground level terrace/dining spill over along the riverfront. Podium level between Block A and B to be setback 11m from River Rd West Street. Hatched areas for extensive landscaping. 	<i>Not affected by the proposed modifications.</i>	<input checked="" type="checkbox"/>
Building Height	<ul style="list-style-type: none"> Max 10 (34m) to 11 (37m) storeys Height of new buildings are to ensure positive and cohesive relationships with other buildings both on the site and off the site and are to respond to the desired scale and character of the local area. Building height shall respond appropriately to the historic view corridors 5 and 6 detailed in Appendix 2 of this DCP. 	<i>The proposed modifications will not affect the overall height of the development.</i>	<input checked="" type="checkbox"/>

Cl.	REQUIREMENT	COMMENT	Complies
Building Setbacks	<ul style="list-style-type: none"> Building setbacks are to be in accordance with Figures 4.3.2.2.4 (or 4.3.2.2.5 where relevant) and 4.3.2.2.7. 	<i>No changes to setbacks proposed under this modification, setbacks remain unchanged.</i>	<input checked="" type="checkbox"/>
Building Separation	<ul style="list-style-type: none"> Minimum separation between buildings should be in accordance with Figure 4.3.2.2.4 (or 4.3.2.2.5 where relevant). Adequate building separation should be provided between buildings to respond appropriately to Historic View Corridors 5 and 6 as referred to in Appendix 2 of this DCP. Areas between buildings should allow for pedestrians to comfortably move between the buildings, and promote the principles of passive surveillance. These areas should provide a sense of public, as opposed to private space. 	<i>No changes to building separation under this modification, building separation remains unchanged.</i>	<input checked="" type="checkbox"/>
Residential development:	<ul style="list-style-type: none"> Comply with SEPP 65. Secure access to residential component of each building. 	<i>Not affected by this DA modification.</i>	<input checked="" type="checkbox"/>
Solar Access, Ventilation and Acoustic Amelioration:	<ul style="list-style-type: none"> Comply with SEPP 65 and Part 3 of the DCP. Solar access to be reasonably provided/retained in the public domain areas. Consider acoustic measures when opposite industrial uses and James Ruse Drive. Minimise conflict between non-residential uses and residential. 	<p><i>The accompanying acoustic assessment has determined that the modified hours, time-limited outdoor dining and provision of internal music/entertainment can be undertaken and will not result in any adverse impacts for nearby residents.</i></p> <p><i>In particular, noise attenuation works will be undertaken to minimise these impacts.</i></p> <p><i>Council, is able to condition an amended consent to provide a trial period to ensure that operator continues to manage the premises well and inline with the acoustic report.</i></p>	<input checked="" type="checkbox"/>
Flooding:	<ul style="list-style-type: none"> Buildings to accommodate 20 year and 100 year flood levels 	<i>No change. A flood report accompanied DA702/2013 and demonstrated that the development</i>	<input checked="" type="checkbox"/>

CI.	REQUIREMENT	COMMENT	Complies
	<p>with new development to consider PMF.</p> <ul style="list-style-type: none"> Meet Flooding Controls within the PLEP 2011, Section 2 of the DCP and the Lower Parramatta River Catchment and Clay Cliff Creek. 	<i>has been designed to comply with Council's flooding requirements.</i>	
Landscaping and Deep Soil:	<ul style="list-style-type: none"> Comply with Part 3 of this DCP. Street trees to be provided along all street frontage. Landscaping compatible with the VPA. Roof gardens may be considered. 	<i>Not affected by this modification.</i>	<input checked="" type="checkbox"/>
Traffic, Access, Parking & Services:	<ul style="list-style-type: none"> Provided in basement. Crossing to be in accordance with Fig 4.3.2.2.2 or agreed by Council. Minimise conflict with pedestrians. Enable vehicles to pass on driveways. Service/loading bays and substation etc to be screened from public domain. Realign kerb and gutter adjacent to No.8 refer to Fig 4.3.2.2.2. Remaining verge to be suitably landscaped. 	<i>Retail parking is provided within the basement carpark. The approved DA for the construction of the buildings required the provision of 37 parking spaces to accommodate the retail space at ground level. It is likely that the restaurant will be accessed by people that live within the development and within walking distance. There is sufficient parking provided on site and on the surrounding street network to cater for the continuing use.</i>	<input checked="" type="checkbox"/>
Public Domain:	<ul style="list-style-type: none"> In accordance with VPA. Public domain areas to be dedicated to Council. Fencing not desired not exceed 1m and be transparent. Incorporate range of treatments. Casual surveillance of all public areas from new development. New shared paths along the foreshore connect to existing. Create promenade experience. Maximise solar access. Implement WSUD principle. 	<i>The provision of outdoor dining associated with the restaurant, will ensure that casual surveillance of the riverfront walkway is successful. The current restaurant setback and level above the riverfront walkway reduces the ability to provide casual surveillance. The provision of outdoor seating will overcome this and provide for a safe public domain for the local community and visitors.</i>	<input checked="" type="checkbox"/>

CI.	REQUIREMENT	COMMENT	Complies
Heritage & Archaeology:	<ul style="list-style-type: none"> Consider Historic Views. Heritage Interpretation Strategy to be implemented in the 2-12 River Rd West precinct. Archaeological Testing to be undertaken. 	<i>Not affected by the proposed modification.</i>	<input checked="" type="checkbox"/>
Flora & Fauna:	<ul style="list-style-type: none"> Terrestrial and aquatic flora and fauna investigation if to be undertaken prior to redevelopment. Future redevelopment provide for rehabilitation and restoration strategy for flora and fauna. Lighting designed to minimise light spill. 	<p><i>An ecology report was prepared in relation to the rezoning of the site and determined the site was suitable for redevelopment.</i></p> <p><i>Not affected by the proposed modification.</i></p>	<input checked="" type="checkbox"/>
Contamination and Acid Sulfate Soil:	<ul style="list-style-type: none"> Comply with PLEP 2011, PDCP 2011, SEPP 55 etc. 	<i>Not affected by the proposed modification.</i>	<input checked="" type="checkbox"/>

Land Use Mix

- 4.3.7 Section 4.3.2.2 of the Parramatta DCP 2011 include provisions relating to the redevelopment of the River Road West Precinct. These have generally been discussed above and incorporated into the approved and constructed development.
- 4.3.8 However, these provisions have not been carried through with the use of the retail terrace area. The 'Land Use Mix' requirements have not been realised given the restriction on outdoor dining.
- 4.3.9 In particular, active uses are required at ground level and buildings need to be designed in accordance with Figure 4.3.2.2.3, which is extracted from the Parramatta DCP 2011 and provide below:



Figure 4.3.2.2.3
Pedestrian Links and Laneways

4.3.10 As can be seen above, **active edges** are required along the frontage of the restaurant and this was incorporated into the approved and constructed building design as shown below:

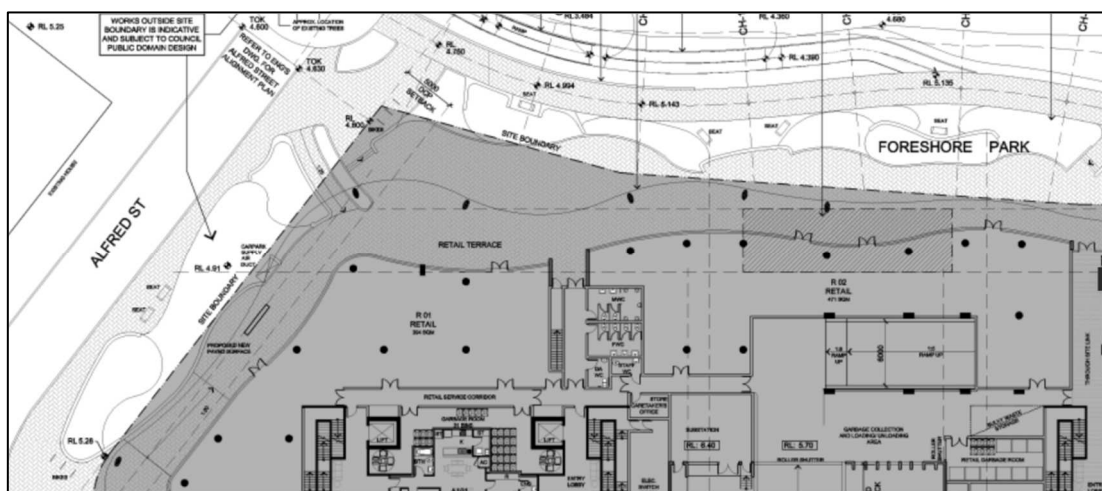


Figure 1: Ground Floor approved plan – KTA Architects dated 21/02/14

4.3.11 The outdoor terrace area remains vacant and the level of the terrace above the riverfront walkway results in an undesirable outcome and disconnection between the existing restaurant use and public domain. In addition, the setback of the restaurant doors/windows results in a poor planning outcome and lack of casual surveillance of the foreshore.

4.3.12 It is clear from the above plan, that the DA always intended the subject tenancy to be used for a retail use such as a restaurant. A key aspect of the approved DA is the activation of the foreshore area which is achieved by encouraging active uses and passive surveillance. However, the current restaurant use falls short of satisfying this requirement if outdoor dining is

not permitted within the retail terrace area and results in a wide unused area that lacks the causal surveillance that the DCP required.

- 4.3.13 The awning above the outdoor terrace area also blocks views from first level residential properties to the riverfront walkway. Therefore, the safety of community is at risk without the provision outdoor dining.
- 4.3.14 The DCP does require all non-residential uses to have consideration on maintain acceptable amenity for residential dwellings. The accompanying acoustic report and noise attenuation measures ensure that the use of this space for outdoor dining can reasonably be undertaken, subject to management ensuring compliance with the Acoustic Report.
- 4.3.15 This application will ensure the vision of the DCP for the River Road Precinct is realised for the benefit of the wider community.

4.4 The Likely Impacts

- 4.4.1 The likely impacts have been addressed in detail as part of this report. The main potential impact is on aural amenity with acoustic impacts. The accompanying Acoustic Report has demonstrated that the proposed uses can operate in a compliant and reasonable manner that will not have an unreasonable adverse impact on the residential amenity of surrounding users.
- 4.4.2 The proposal goes one step further and will, as demonstrated in the CEPTED report have a positive impact on the safety and security along the foreshore. The building was designed to have an active outdoor terrace with outdoor dining. This will assist in revitalising the area and passive surveillance along the foreshore.
- 4.4.3 It is therefore considered that the approval of this modification will have a positive impact.

4.5 The Suitability of the Site for the Development

- 4.5.1 As with the original development application, the site is suitable for the continued use as a restaurant. The outdoor terrace was approved in the initial DA as a 'retail terrace' which has the intention of being used in conjunction with the adjoining non-residential tenancies.
- 4.5.2 The proposed size-limited and time-limited outdoor seating area is suitable for the subject site and as it can be operated in a manner that will not create adverse impact on the amenity of nearby residential properties, should be supported in this instance.
- 4.5.3 The increased operating hours from Sunday to Thursday and internal live music/entertainment should also be supported as the accompanying Acoustic Report has demonstrated that there will be no adverse impacts, noise attenuation works and management of the restaurant should adhere to the recommendations within the Acoustic Report.
- 4.5.4 Overall, the proposed modifications are suitable for the site provided the restaurant is managed well.

4.6 Submissions

- 4.6.1 Any submissions received at the close of the public exhibition period will be considered by the applicant.

4.7 The Public Interest

- 4.7.1 It is in the public interest to ensure active uses along the foreshore area and the passive surveillance of the riverfront public walkway. The restaurant, in this location, does assist in providing limited activation but fails somewhat due to significant setback from the public walkway and also being set above the walkway, due to flooding affectations.
- 4.7.2 To ensure safety of the public and to satisfy the desired future character for the 'River Road West' locality the provision of size-limited and time-limited outdoor seating will be the improvement needed to achieve causal surveillance and ensure the safety of the community along with achieving the intent of the original DA, which approved the space as 'retail terrace'
- 4.7.3 The increased hours of operation internally and provision of live music/entertainment on Friday and Saturday, can be undertaken and managed in accordance with the accompanying Acoustic Report. This should be supported and is in the public interest as the adjoining tenancies remain vacant and result in no activation of the walkway to the east.
- 4.7.4 The proposed modifications are in the public interest.

5.0 CONCLUSION

- 5.1 The purpose of this application is to realise the intention of the original approved development and permitted limited outdoor dining. Outdoor dining creates a vibrant and activated public domain which is severely lacking from this section of the river frontage. With limitations and restrictions in place it is reasonable to allow this business the opportunity for outdoor dining. Allowing outdoor dining will assist in activating the waterfront and improve the safety and security of the public domain. This is in the public interest.
- 5.2 Restaurants and the retail industry have been through a very difficult few years with the restrictions and lockdowns due to Covid. Businesses need to take advantage of their locations and where possible enable patrons to sit outside in the fresh air. In the past there has been opposition from residents within the towers to the outdoor dining. It was always proposed that the external terrace would be used for this purpose when the original DA for the buildings was designed and approved. Residents were aware of this, and it is now reasonable to allow the business to recover from the effects of Covid and allow limited and restricted opportunities for outdoor dining.
- 5.3 This application is supported by an updated Acoustic Report and a CEPTED Report which support this current proposal.
- 5.4 It is therefore reasonable that Council approves the modifications sought under this Modification Application.



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