

Relevant Information for Local Planning Panel

FILE: D/2021/242 **DATE:** 29 June 2021

TO: Local Planning Panel Members

FROM: Andrew Thomas, Executive Manager Planning and Development

SUBJECT: Information Relevant To Item 3 – 52 Waterloo Street Surry Hills – D/2021/242

Alternative Recommendation

It is resolved that:

- (A) the variation requested to clause 4.4 'Floor space ratio' in accordance with Clause 4.6 'Exceptions to development standards' of the Sydney Local Environmental Plan 2012 be upheld in this instance; and
- (B) consent be granted to Development Application No D/2021/242, subject to the conditions detailed in Attachment A to the subject report to the Local Planning Panel on 30 June 2021, subject to the following amendments (deletions shown in ~~strikethrough~~):

~~(12) NEIGHBOURHOOD AMENITY~~

- ~~(a) Signs must be placed in clearly visible positions within the restaurant requesting patrons upon leaving the premises to do so quickly and quietly, having regard to maintaining the amenity of the area.~~
- ~~(b) The management must ensure that the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood. In this regard, the management must be responsible for the control of noise and litter generated by patrons of the premises and must ensure that patrons leave the vicinity of the premises in an orderly manner to the satisfaction of Council. If so directed by Council, the management is to employ private security staff to ensure that this condition is complied with.~~

~~(13) COMPLAINTS~~

~~Where a noise complaint is received by Council from a place of different occupancy (including commercial premises) and the complaint is substantiated~~

~~by a Council Officer, the Council may employ a consultant to measure noise emanating from the property and to recommend (if necessary) appropriate actions to ensure compliance with the Condition (3) "Noise — Licensed Premises". The consultant must be a full member of the Australian Acoustic Society (AAS), Institution of Engineers Australia (IEA) or the Australia of Acoustical Consultants (AAAC). The cost of such appointment and associated work shall be borne by the operator, who shall also ensure the recommendations of the acoustic consultant are implemented.~~

~~(18) FOOD PREMISES — ADDITIONAL MECHANICAL VENTILATION REQUIREMENTS~~

- ~~(a) The cooking appliances require an approved air handling system designed in accordance with AS1668.1 — The Use of Ventilation and Air-conditioning in Buildings — Fire and Smoke Control in Buildings and AS1668.2 — The Use of Ventilation and Air-conditioning in Buildings — Mechanical Ventilation in Buildings, and must incorporate the following:
 - ~~(i) The discharge exhaust air must be directed in a vertical, or near-vertical direction above the roof, and~~
 - ~~(ii) The cooking appliances must not burn any charcoal, wood or other solid fuel.~~~~
- ~~(b) Details of the proposed system must be submitted to and approved by Council's Health and Building Unit in writing prior to the issue of a Construction Certificate.~~

~~(19) WASTE/RECYCLING COLLECTION~~

- ~~(a) The collection of waste and recycling must only occur during the designated zone collection times as outlined in the City's Waste Policy — Local Approvals Policy for Managing Waste in Public Places 2017.~~
- ~~(b) Garbage and recycling must not be placed on the street for collection more than half an hour before the scheduled collection time. Bins and containers are to be removed from the street within half an hour of collection.~~

~~(25) STORMWATER AND DRAINAGE — MINOR DEVELOPMENT~~

~~The drainage system is to be constructed in accordance with Council's standard requirements as detailed in Council's 'Stormwater Drainage Connection Information' document dated July 2006. This information is available on Council's website — www.cityofsydney.nsw.gov.au.~~

~~A Positive Covenant must be registered on the title for all drainage systems involving On-site Detention (OSD) to ensure maintenance of the approved OSD system regardless of the method of connection.~~

Background

The applicant has requested that a number of conditions contained in the recommendation to the report not be imposed. Refer to letter from applicant dated 24 June 2021 in Attachment A.

The conditions in question are:

- Condition 12 – Neighbourhood Amenity
- Condition 13 – Complaints
- Condition 18 – Food Premises – Additional Ventilation Requirements
- Condition 19 – Water/Recycling Collection
- Condition 25 – Stormwater and Drainage – Minor Development

Having considered the applicant's request it is reasonable that conditions 12, 13, 18, 19 and 25 not be imposed on the consent. This is because these matters are adequately addressed by the parent consent for the restaurant approved under D/2010/1716/D.

Condition 3 of the recommendation to the Local Planning Panel requires the proposed new seating enclosure to fully comply with the operational conditions approved under D/2010/1716/D.

Prepared by: Derek Smyth, Planner

Attachments

Attachment A. Letter from Applicants

Approved



ANDREW THOMAS

Executive Manager Planning and
Development

Attachment A

Letter from Applicant

Derek Smyth

From: [REDACTED]
Sent: Thursday, 24 June 2021 5:07 PM
To: Derek Smyth
Cc: City of Sydney; Archive Plan Syd; [REDACTED]
Subject: City of Sydney LPP - 30 June 2021 - Item 3 - DA 2012/242 - 38-52 Waterloo Street, Surry Hills (SJB8945B)
Attachments: 8945B_4_Council_Response re Item 3 DA2012-242_Final_210624.pdf; NSW LRS - Copy of Dealing - Dealing AE658055 - 68829914_104601196.pdf

Dear Derek,

Please find attached a letter to the Chair of the LPP requesting consideration of not imposing 5 of the proposed conditions of development consent.

It would be appreciated if this submission could be provided to the Chair and panel members for their consideration prior to the meeting next Wednesday.

Regards

[REDACTED]

[REDACTED]

SJB Planning
Level 2, 490 Crown Street
Surry Hills NSW 2010
www.sjb.com.au

[REDACTED]

[LinkedIn](#) | [Instagram](#) | [eNewsletter](#)





The Chairman
City of Sydney Local Planning Panel
GPO Box 1591
Sydney NSW 2001

24 June 2021

Dear Chair

Re: Item 3 – DA 2012/242 – 38-52 Waterloo Street, Surry Hills

We refer to the Assessment Report for Item 3 of the LPP Agenda of 30 June 2021.

The application is recommended for approval, and we support the recommendations with the exception of Condition 25.

Condition 25 reads:

“(25) STORMWATER AND DRAINAGE - MINOR DEVELOPMENT

The drainage system is to be constructed in accordance with Council's standard requirements as detailed in Council's 'Stormwater Drainage Connection Information' document dated July 2006. This information is available on Council's website - www.cityofsydney.nsw.gov.au.

A Positive Covenant must be registered on the title for all drainage systems involving On-site Detention (OSD) to ensure maintenance of the approved OSD system regardless of the method of connection.”

The building is already the subject of a positive covenant in the favour of Council (copy attached) for the management of stormwater.

The small roofed area of 36m² as a result of the proposal is intended to be connected into the existing stormwater management system.

A proposed Condition 9 already deals with stormwater management.



The roofed area does not alter the demand on the existing stormwater system as the roofed area is above the hard paved area from which runoff generated is already managed and collected by the stormwater system serving the building.

This area of water collection will supply the collecting and disposing of rainwater at a slightly higher elevation.

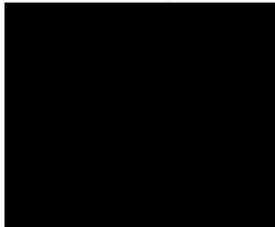
It is noted that the subject application is not for land use. The use of the enclosed area will continue in accordance with the terms of Consent D/2010/1716/D. This consent addresses capacity, patron management, waste management and the like.

Conditions 12, 13, 18 and 19 are therefore redundant and do not relate to the scope of the application for which consent is sought. These matters are already addressed appropriately in Consent D/2010/1716/D. It is far clearer to not seek to duplicate operational conditions on a consent for works which have no operational aspects. The draft consent already acknowledges this with proposed Condition 6 referencing the Plan of Management in place in accordance with Consent 2010/1716/D. Deletion of these four Conditions is requested.

Your consideration of the deletion of the Conditions is sought.

Should you require any further information, please do not hesitate to contact myself 


Yours sincerely



Attach.

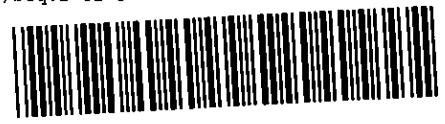
CERTIFICATE ORDER SUMMARY

Transaction Details

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Your Reference: Denode
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Available: Y
Size (KB): 144
Number of Pages: 5
Scan Date and Time: 07/05/2009 22:06

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SAI Global Property Division an approved NSW Information Broker hereby certifies that the information contained in this document has been provided electronically by the Registrar General in accordance with section 96B(2) of the Real Property Act 1900.



AE658055A

Form: 13PC
Release: 2.1
www.lands.nsw.gov.au

POSITIVE COVENANT
New South Wales
Section 88E(3) Conveyancing Act 191

PRIVACY NOTE: Section 31B of the Real Property Act 1900 (RP Act) authorises the Registrar-General to collect the information required by this form for the establishment and maintenance of the Real Property Act Register. Section 96B RP Act requires that the Register is made available to any person for search upon payment of a fee, if any.

(A) **TORRENS TITLE** 1/181217, V/928922, W/928922

(B) **LODGED BY**

Document Collection Box 462H	Name, Address or DX, Telephone, and LLPN if any UNIVERSAL TITLE SEARCHERS LLPN: 1233270 Reference: 3018427	CODE PC
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(C) **REGISTERED PROPRIETOR** Con Haralambis and Antonia Haralambis and 38-52 Waterloo St Surry Hills Pty Limited

(D) **LESSEE MORTGAGEE or CHARGE** Of the above land agreeing to be bound by this positive covenant

Nature of Interest	Number of Instrument	Name
Mortgage	AE83383	Australia and New Zealand Banking Group Limited

(E) **PRESCRIBED AUTHORITY** COUNCIL OF THE CITY OF SYDNEY

(F) The prescribed authority having imposed on the above land a positive covenant in the terms set out in annexure "A" hereto applies to have it recorded in the Register and certifies this application correct for the purposes of the Real Property Act 1900.

DATE 23 SEPTEMBER 2008

(G) **Execution by the prescribed authority**
I certify that an authorised officer of the prescribed authority who is personally known to me or as to whose identity I am otherwise satisfied signed this application in my presence.

Signature of witness: *[Signature]* Signature of authorised officer: *[Signature]*
 Name of witness: Tommy Janiszewski Name of authorised officer: JOHN BARELER
 Address of witness: 456 KENT ST SYDNEY Position of authorised officer: DIRECTOR OF CORPORATE SERVICES, POWER OF ATTORNEY BOOK 4442 NO. 334

(G) **Execution by the registered proprietor (SEE PAGE 2)**
 Certified correct for the purposes of the Real Property Act 1900 and executed on behalf of the corporation named below by the authorised person(s) whose signature(s) appear(s) below pursuant to the authority specified.
 Corporation: 38-52 Waterloo St Surry Hills Pty Limited ACN 099 503 474
 Authority: section 127 of the Corporations Act 2001

Signature of authorised person: *[Signature]* ~~Signature of authorised person:~~
 Name of authorised person: Con Haralambis ~~Name of authorised person:~~
 Office held: Sole Director/Secretary ~~Office held:~~


(H) **Consent of the mortgagee (SEE PAGE 2)**
 The mortgagee under mortgage No. AE83383, agrees to be bound by this positive covenant.
 I certify that the above mortgagee who is personally known to me or as to whose identity I am otherwise satisfied signed this application in my presence.

~~Signature of witness:~~ ~~Signature of mortgagee:~~
~~Name of witness:~~ SEE PAGE 2
~~Address of witness:~~

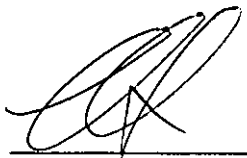
(G) Execution by the registered proprietor

I certify that the person(s) signing opposite, with whom I am personally acquainted or as to whose identity I am otherwise satisfied, signed this instrument in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the Registered Proprietor.



Signature of witness



Con Haralambis

Helen Bachaumis

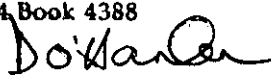
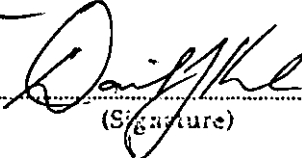
Name of witness:

Antonia Haralambis

Antonia Haralambis

38-52 WATERLOO STREET SURRY HILLS NSW 2010

Address of witness:

Dated at Sydney this 22 Day of AUGUST 2008
Executed by Australia and New Zealand Banking Group Limited (ACN 005 357 522)
signed by its Attorney DARREN O'HANCON
who certifies that he is Manager Property & Construction Finance pursuant to Power of Attorney Registered No. 564 Book 4388

Signed in the presence of 
(Signature)
DANIEL KENT
(Print Name)
ASSISTANT MANAGER
(Title)

ANNEXURE "A"

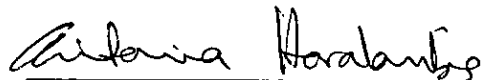
PUBLIC POSITIVE COVENANT

The Registered Proprietor covenants with the Council of the City of Sydney ("Council") that in consideration of Council having authorised the discharge of stormwater, sprinkler test water and subsoil water from the land burdened (the "land in Certificates of Title Folio Identifier 1/181217, V/928922, W/928922") through a private connection (the "private connection") beneath the public footway to the gully pit and Council's drainage system, the Registered Proprietor will at all times:

- (a) use the private connection for the purpose of discharging stormwater, sprinkler test water and subsoil water only;
- (b) under no circumstances permit any other form of discharge whatsoever ("unauthorised discharge") including (without limitation) the discharge of trade wastes, contaminants or suspended silt;
- (c) permit Council to disconnect the private connection and make good Council's drainage system if any unauthorised discharge from the land is detected, such disconnection and making good to be at the sole expense of the Registered Proprietor of the land;
- (d) regularly inspect, clean and maintain the on-site detention system and the private stormwater lines;
- (e) if a pump-out system is installed at any time, erect and maintain in a conspicuous position within the building erected on the land burdened a notice of adequate dimensions warning that the area is liable to flooding in case of pump failure and allow Council officers access to the building from time to time to inspect such notice;
- (f) release and hold harmless Council from and against all damages claims actions proceedings law suits losses costs expenses and other liabilities for any damage arising to any property or building on or in the land as a result of:
 - (i) any blockage of or surcharge or backflow from Council's drainage system;



Con Haralambis



Antonia Haralambis

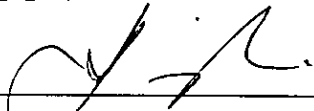


WITNESS FOR CON &
ANTONIA HARALAMBIS

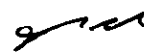
HELEN BACHTOUMIS.



Con Haralambis
38-52 Waterloo St Surry Hills Pty Ltd
Sole Secretary/Director



Witness: Tommy Janiszewski
Name (printed):



John Barbeler

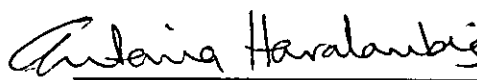
- (ii) the connection to Council's drainage system;
- (iii) the construction of the private connection beneath the footway or its presence in the public way;
- (iv) the relocation of the gully pit;
- (v) any costs and expenses of disconnection under paragraph (c);

to the extent caused or contributed by the Registered Proprietor or any lessee or occupier of the land burdened the Registered Proprietor indemnifies Council against all such claims and demands;

- (g) not carry out any works of excavation or alterations to the private connection and/or Council's drainage system without obtaining Council's prior written consent, which consent shall be at Council's sole discretion and, if granted, may be granted on such terms as Council sees fit;
- (h) acknowledge that if any provisions of this covenant are invalid or unenforceable such invalidity or unenforceability will not affect the operation, construction or interpretation of any other provisions of this covenant and the invalid or unenforceable provisions will be treated for all purposes as severed from this covenant.



Con Haralambis

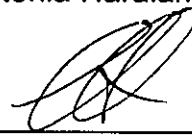


Antonia Haralambis

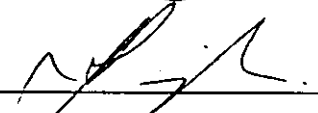


WITNESS FOR CON &
ANTONIA HARALAMBIS

HELEN BACHOUMLIS



Con Haralambis
38-52 Waterloo St Surry Hills Pty Ltd
Sole Secretary/Director



Witness:
Name (printed): Tommy Janiszewski



John Barbeler

