

## Resolution of Local Planning Panel

**12 June 2024**

### Item 3

#### **Modification Application: 18 Huntley Street, Alexandria - D/2022/716/A**

The Panel grants consent to Modification Application Number D/2022/716/A subject to the conditions set out in Attachment 'A' of the Council's Officer's Report and with the following further amendments (with additions shown in ***bold italics*** and deletions shown in ~~strikethrough~~):

#### **(8) TRADING HOURS - MINOR DEVELOPMENT**

- (a) The ***indoor*** trading hours are restricted to between 7.00am and 10:00pm Monday to Saturday and between 7.00am and 8.00pm Sunday.
- (b) ***The outdoor trading hours are restricted to between 7.00am and 4.00pm Monday to Sunday for a trial period of 12 months, from the date of this amended consent, until 12 June 2025.***
- (c) ***Should the operator seek to continue the operating hours outlined in (b) above, an application must be lodged with Council not less than 30 days before the end of the trial period. Council's consideration of a proposed continuation and/or extension of the hours permitted by the trial will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions, any substantiated complaints received and any views expressed by the Police.***
- (d) ***All staff must vacate the premises within one hour after closing.***

**Reason** To ensure the premises operates within the approved hours of operation.

***Amended 12 June 2024 – D/2022/716/A***

**(12) PLAN OF MANAGEMENT**

- (a) *The Plan of Management prepared by WT Design Pty Ltd signed and dated 25 April 2024 must be amended to ensure consistency with all conditions of consent. The amended Plan of Management must be submitted to and approved by Council's Area Planning Manager prior to the commencement of increased patrons under Condition 15(b).***
- (b) *The use must always be operated / managed in accordance with the Plan of Management, prepared by Jianxin Cheng signed and dated 11 November 2022 that has been approved by Council under part (a) above. In the event of any inconsistency, the conditions of this consent will prevail over the Plan of Management.***

**Reason**

To ensure all parties are aware of the approved supporting documentation that applies to the development.

*Amended 12 June 2024 – D/2022/716/A*

**(14) COMPLIANCE WITH THE ACOUSTIC REPORT PRIOR TO INCREASING PATRON CAPACITY**

- (a) *All relevant performance parameters (including but not limited to requirements, engineering assumptions and recommendations) in the DA Acoustic Report (with the exception of the solid awning) prepared by Koikas Acoustics Pty Ltd, dated 20 March 2024, ref 6122R20240314asEllenCafe, titled Noise Complaint Review, Council Ref 2024/243982 must be implemented in the development prior to the commencement of increased patrons as permitted by Condition 15(b) of this consent.***
- (b) *Prior to the commencement of increased patrons as permitted by Condition 15(b) of this consent, the final construction drawings and final construction methodology must be assessed and reported to be in accordance with the requirements of the DA Acoustic Report in (a) above, with reference to relevant documentation. This must be done by a Suitably Qualified Acoustic Consultant\* (see definition below). Prior to the commencement of additional patrons as permitted by Condition 15(b) of this consent, plans are to be submitted to and approved by Council's Area Planning Manager.***
- (c) *Prior to the commencement of increased patrons as permitted by Condition 15(b) of this consent, a Suitably Qualified Acoustic Consultant\* is to provide a written Acoustic Verification Report to the satisfaction of Council that the development complies with the requirements set out in the Report and in (a) and (b) above.***

***Note: Suitably Qualified Acoustic Consultant means a consultant who possesses the qualifications to join the Australian Acoustical Society, Institution of Engineers Australia (grade of member) or the Association of Australasian Acoustical Consultants (grade of member firm).***

- (d) *All physical aspects of the building's structure installed in order to meet performance parameters in accordance with this condition must be maintained at all times.*

**Reason**

*To ensure all parties are aware of the supporting documentation that applies to the development.*

*Added 12 June 2024 – D/2022/716/A*

**(15) MAXIMUM PATRON CAPACITY**

- (a) *The maximum capacity is restricted to 20 patrons within the internal area and no patrons within the external area prior to Conditions 12(a) and 14 being satisfied.*
- (b) *The increased patrons numbers, following Conditions 12(a) and 14 being satisfied are:*
- (i) *The maximum capacity is restricted to 30 patrons within the internal area.*
- (ii) *The maximum capacity is restricted to 10 patrons within the outdoor terrace.*

**Reason**

*To ensure the premises can safely accommodate patrons and safeguard the amenity of the surrounding neighbourhood.*

*Added 12 June 2024 – D/2022/716/A*

**(16) ~~ACOUSTIC AWNING – ADDITIONAL DESIGN & ACOUSTIC SPECIFICATION REQUIRED – DESIGN & CONSTRUCTION SPECIFICATION OF ACOUSTIC AWNING PRIOR TO COMMENCEMENT OF INCREASED PATRONS~~**

~~*Reference is made to the acoustic report listed in the COMPLIANCE WITH THE ACOUSTIC REPORT PRIOR TO THE COMMENCEMENT OF INCREASED PATRONS condition:*~~

- (a) ~~*This report requires a solid awning to be constructed to address an identified external noise impact that would not comply with relevant noise criteria.*~~
- (b) ~~*To address this issue, design drawings and an acoustically certified construction methodology must be submitted and approved in accordance with this condition, via a separate Development Application to be submitted to Council within six (6) months from the date of this amended consent.*~~

~~*Prior to the design and construction of the awning, the applicant is to engage with the original Architects of 18 Huntley Street (DKO) to oversee the design. Following this consultation (which is to be confirmed in writing from DKO architects), detailed design drawings, materials and*~~

~~construction specification of the acoustic awning must be submitted via a separate Development Application within six (6) months of this amended consent.~~

~~The detailed design drawings and materials and construction specification as outlined above must be accompanied by a statement of acoustic compliance from a Suitably Qualified Acoustic Consultant\* (the consultant) as follows:~~

- ~~(a) The consultant will review the work submitted as per) above.~~
- ~~(b) The consultant will ensure that the awning is sufficiently designed so that the external noise emissions do not cause any cumulative exceedance of noise criteria.~~
- ~~(c) If necessary, the consultant will direct further changes to the work required by this condition.~~
- ~~(d) Once satisfied with the work above, the consultant will submit a compliance statement that the material (with document references) has been reviewed and will be acoustically sufficient to prevent non-compliance with noise criteria.~~
- ~~(e) \*Note: "Suitably qualified acoustic consultant" means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustical Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member.~~

~~The particulars specified in this condition must be submitted as part of the separate Development Application.~~

~~Upon satisfaction of this condition, the particulars will form part of the requirements for certification and verification in the COMPLIANCE WITH THE ACOUSTIC REPORT PRIOR TO THE COMMENCEMENT OF INCREASED PATRONS condition.~~

~~Added 12 June 2024 – D/2022/716/A~~

## Reasons for Decision

The application was approved for the following reasons:

- (A) The development, as modified, is substantially the same development as that originally approved and is consistent with Section 4.55(2)(a) of the Environmental Planning and Assessment Act 1979.
- (B) The proposal complies with the relevant controls of the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.
- (C) The proposed amendment represents an appropriate use of the outdoor space and results in a patron capacity that remains capable of being properly managed.
- (D) The proposed amendment includes the provision of several acoustic measures to ensure impacts are minimised to surrounding residents which are recommended to be implemented prior to the commencement of increasing patron numbers.
- (E) Based upon the material available to the Panel at the time of determining this application, the Panel is satisfied that:
  - (i) The development, as modified, is in the public interest because it is consistent with the objectives of the R1 General Residential zone and Sydney Development Control Plan 2012 and is consistent with the intended use of the site and the original approval.
  - (ii) Condition 8 was amended to protect the amenity of surrounding residents.
  - (iii) Condition 12 was amended to ensure consistency with all conditions of consent
  - (iv) Condition 14 was added to ensure all parties are aware of the supporting documentation that applies to the development.
  - (v) Condition 15 was added to ensure the premises can safely accommodate patrons and safeguard the amenity of the surrounding neighbourhood.
  - (vi) Condition 16 was deleted to remove the acoustic awning requirement.

Carried unanimously.

D/2022/716/A