

Attachment A

**Planning Report
Refused application DU/1993/641/B**

Modification Application Assessment

Application Number:	DU/1993/641
Application Type:	Section 4.55(2)
Site Address:	446-458 Elizabeth Street, Surry Hills
Proposal:	Section 4.55(2) modification of consent for a takeaway food premises. The proposed change is to amend the hours of operation to 11:30am to 3:00am, Monday to Sunday.
Date of Lodgement:	24 February 2026
Notification:	25 February 2026 to 12 March 2026
Submission(s) (total):	16
Recommendation:	Refusal
Officer:	Max Di Rosario

Site and Surrounds

1. The subject site has a legal description of Lot 1 in Deposited Plan 828940, and is commonly known as 446-458 Elizabeth Street, Surry Hills. It is irregular in shape with an area of 1318 square metres. It has a primary street frontage of 41 metres to Elizabeth Street and a secondary street frontage of 33.5 metres to Brumby Street.
2. The site contains a part 7, part 8 storey mixed use building which contains a total of 8 retail/commercial tenancies on the ground floor, commercial tenancies at level 1, and residential units on levels 2-7 above ground floor. The site is not a heritage item or within a heritage conservation area.
3. The surrounding area is characterised by a mixture of land uses, primarily being residential accommodation, commercial premises, and mixed use developments. To the north and south are mixed use buildings with ground floor commercial and residential above. To the east is a multistorey residential flat building and across Elizabeth Street, to the west are mixed use buildings.
4. A site inspection was carried out on 29 April 2026, and photographs of the subject site and its surroundings are reproduced in the figures provided below.



Figure 1: Aerial view of the subject site (shown shaded in green) and its surroundings



Figure 2: View of the subject site from the western side of Elizabeth Street



Figure 3: Trading hours signage on the door of the subject premises



Figure 4: Waste area of the subject premises shared with other premises on the ground floor

Relevant Background

Relevant Applications

5. The following applications are relevant to the current proposal:
 - (a) Development consent DU/1993/641 was granted on 6 July 1993 for the use of the premises as a takeaway food shop and delivery unit for Pizza Hut Australia with hours between 11:30am and 10:00pm, Sunday to Wednesday, and 11:30am to 12:00am midnight, Thursday to Saturday.
 - (b) Modification application DU/1993/641/A for extended trading hours between 10pm and 12:00am, Sundays to Wednesdays, and 12:00am midnight to 2:00am, Thursday to Saturday was refused on 1 December 2025 due to unacceptable amenity impacts and insufficient information provided with application, including no waste management plan, acoustic report or plan of management.

Compliance Action

6. The site is subject to an ongoing compliance action which is still being investigated and is relevant to the subject application
7. The compliance action relates to the operation of the venue, particularly issues relating to waste and noise management, and non-compliance with the approved operating hours.
8. The submissions received by Council in objection to the proposed modifications outline issues with waste management, non-compliance with approved hours of operation, and noise resulting from extended trade.
9. Figure 5 is an amalgam of photographs provided by submitters, and figures 6, 7 and 8 indicate the premises non-compliance with its approved hours of operation.



Figure 5: Photographs from submitters depicting the waste storage area of the premises

Surry Hills 🌙

Shop 1-2, 450 Elizabeth St, Surry Hills, NSW, 2010

See Trading Hours ▲

ORDER NOW >

Tue		Pickup:	9:00 AM - 12:15 AM
		Delivery:	9:00 AM - 11:59 PM
Wed		Pickup:	9:00 AM - 12:15 AM
		Delivery:	9:00 AM - 11:59 PM
Thu		Pickup:	9:00 AM - 12:15 AM
		Delivery:	9:00 AM - 11:59 PM
Fri		Pickup:	9:00 AM - 5:15 AM
		Delivery:	9:00 AM - 5:00 AM
Sat		Pickup:	9:00 AM - 5:15 AM
		Delivery:	9:00 AM - 5:00 AM
Sun		Pickup:	9:00 AM - 12:15 AM
		Delivery:	9:00 AM - 11:59 PM
Mon		Pickup:	9:00 AM - 12:15 AM
		Delivery:	9:00 AM - 11:59 PM

Figure 6: Operating hours according to the Pizza Hut website at <https://www.pizzahut.com.au/stores> (snippet taken on 19 May 2026)

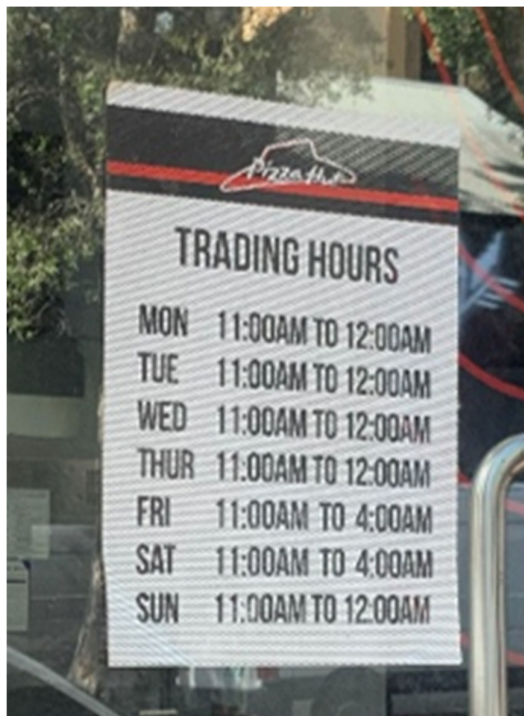


Figure 7: Operating hours according to the trading hours signage at the premises

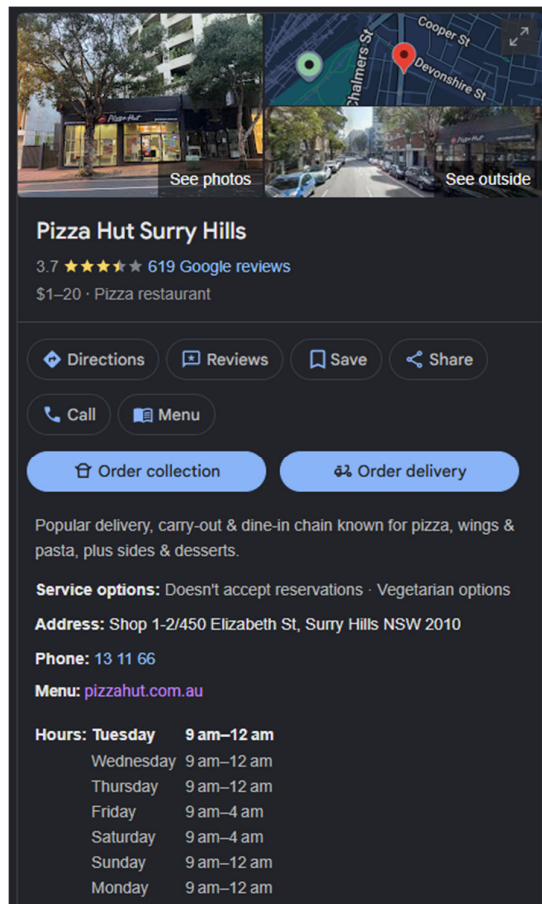


Figure 8: Operating hours according to the Google business profile (snippet taken on 19 May 2026)

Amendments

10. Following an assessment of the proposed development, a request for the preparation and submission of a waste management plan and a plan of management was sent to the applicant via email on the 26 March 2026. This information was requested as:
 - (a) These documents were sought during the assessment of modification application DU/1993/641/A but were not provided by the applicant. The lack of information was a reason for refusal, as Council staff were not satisfied the proposed modifications to the approved development were suitable for the subject site.
 - (b) The submission of the requested information would assist Council staff by demonstrating the likely impacts of the additional hours of operation sought are able to be appropriately managed, if the proposed modifications were approved.
 - (c) Considerable evidence provided in submissions and formal complaints received, and compliance investigations and site visits by Council indicate the lack of adequate waste storage facilities for the tenancy, and lack of adequate management of its current trade.

- (d) In the specific circumstances of the case, a waste management plan and plan of management are matters of relevance, particularly when considering the proposed modifications to the approved development intensify the approved use of the shop as a takeaway food premises by operating for additional hours and exacerbating ongoing management issues with the premises.
11. The applicant responded on 31 March 2026, indicating that a plan of management and waste management plan would not be provided.

Proposed Modifications

12. The application seeks to amend condition (4) of development consent DU/1993/641 to extend trading hours to between 11:30am to 3:00am, Monday to Sunday, representing an additional 29 hours per week, or a 36.48% increase in weekly operating hours.

Threshold Test

13. The development to which the proposed modifications relate is substantially the same as that originally granted.
14. There were no reasons cited for the granting of the original development consent.

Assessment

15. The proposed modifications are not supported for the following reasons:
- (a) The granting of additional hours is an intensification of the use of the premises as a takeaway food shop. In determining an application for the modification of a development consent, a consent authority must take into consideration matters of relevance in section 4.15(1) of the *Environmental Planning and Assessment Act, 1979* (EP&A Act), including relevant development control plan provisions per sub-section 4.15(1)(a)(iii).
 - (b) The relevant provisions in the Sydney Development Control Plan 2012 (Sydney DCP 2012) of relevance are contained in Sections 3.14 and 3.15 relating to waste and late-night trading management.
 - (c) Section 3.14.1 of the Sydney DCP 2012 sets out the requirements for the provision of a waste management plan during the assessment of an application and Section 3.14.3 relates to management of waste during operation. These sections of the Sydney DCP 2012 are considered of relevance considering the impacts associated with waste generated by the current trade of the premises, which already exceeds its approved hours.
 - (d) Section 3.15.5 of the Sydney DCP 2012 states the following:

“Where the Council is of the opinion that proposals for late night premises have the potential to impact adversely on amenity and neighbourhood safety, applicants are required to prepare and submit with their application Plans of Management that include verifiable data and actions”

- (e) Provision (1) (d) in Section 3.15.5.1 of the Sydney DCP 2012 requires a Plan of Management be provided where a Food and Drink Premises (A category B premises) seeks to extend its approved trading hours.
 - (f) Further, the proposed hours of operation extend beyond that of what is permitted for a takeaway food and drink premises (category B – Low Impact Premises), in Table 3.8 in 3.15.4 Trading hours and trial periods of the Sydney DCP. Permanent trade is permitted till 12:00am midnight, and extended hours till 2:00am if entry for patrons is on a main road in a Local Centre Area.
 - (g) The planning statement provided with the application indicates that no trial period is sought for the trade till 3:00am. Extending beyond permitted trading hours on a permanent basis is not supported, particularly considering the inadequate information provided with the application to determine the likely environmental impacts of the intensified development, in addition to the ongoing management and compliance issues associated with the premises.
 - (h) No waste management plan and plan of management have been provided to demonstrate that the business will be able to appropriately mitigate and manage impacts arising from extended hours of operation, an obligation pursuant to section 4.15(1)(b) of the EP&A Act.
 - (i) Without the above information, Council is unable to assess the environmental impacts and amenity impacts to the site surroundings and take into consideration whether the impacts resulting from the intensification of development can be managed appropriately.
16. The relevant planning instruments and policies have been taken into consideration in the assessment of the proposed modifications.
17. Besides the other matters discussed in this report, the previous assessment against the provisions of Section 4.15 of the EP&A Act are still relevant.

Notification

18. The proposed development was notified in accordance with the City of Sydney Community Engagement Strategy and Participation Plan.
19. Sixteen submissions were received, with 11 in objection to the proposed modifications, and 5 in support.
20. The submissions raised the following issues:

- (a) **Issue:** Amenity impacts resulting from additional trading hours including noise, odour and sleep disturbance.

Response: The management of noise cannot be effective without an appropriate plan of management. Although an acoustic report has been prepared and provided with the application, its recommendations to mitigate noise are limited, and relate primarily with reducing noise generated from the mechanical riser exhaust system to comply with Council's standard commercial plant/industrial noise condition. Other noise sources, including that likely generated by the additional trade from deliveries, patrons and staff during extended hours of operation, are not addressed by a plan of management.

- (b) **Issue:** Waste management issues

Response: No waste management plan has been provided despite a request to provide one.

- (c) **Issue:** Non-compliance with current consent.

Response: The operation of the premises has been referred to Council's Health and Building compliance team to investigate.

- (d) **Issue:** Acoustic report testing locations and validity.

Response: The testing locations are sufficient in providing an ambient background noise level akin to what is expected for the residential development in the mixed use building where the premises is located. It is worth noting that no access was provided to the acoustic consultant so no background level testing could be accommodated on the subject site.

- (e) **Issue:** Impact on neighbourhood character.

Response: The immediate area is within a mixed use zone which allows late night trading till 12:00am, or 2:00am if on a main road. The zoning permits the use, and the controls allow late night trading on the proviso of no substantial impacts to residential or sensitive receivers. Notwithstanding this, the proposal contains insufficient information and details regarding waste and late night trading management, would likely result in negative impacts on the character of the neighbourhood, and is not supported.

- (f) **Issue:** Support of proposal.

Response: Noted.

Financial Contributions

Contribution	Comment
Section 7.11 Development Contribution	The proposed modifications to the approved development will not modify the amount of contribution payable.
Section 7.12 Central Sydney Contribution	Not applicable as the Central Sydney Development Contributions Plan 2020 does not apply.
Affordable Housing Contribution	Not applicable.
Housing and Productivity Contribution	Not applicable.

Determination

21. The proposed modifications to the approved development have been assessed under Section 4.55 of the EP&A Act and are refused.
22. The subject application is determined under the delegated authority of the Council and its Chief Executive Officer by the Council's Area Planning Manager.
23. The undersigned declare to the best of their knowledge that they have no interest, pecuniary or otherwise, in this application or the persons associated with it, and have provided an impartial assessment.

Prepared by:



Max Di Rosario
Planner

Determined by:



David Reynolds
Acting Area Planning Manager