

**Item 3.****Development Application - 81 Macleay Street, Potts Point****File No.:** D/2019/179**Summary****Date of Submission:** 28 February 2019 and amended plans and additional information submitted up to 27 May 2019**Applicant:** Mr Dirk Anderson**Architect/Designer:** NDRSN Architecture**Owner:** Tuxfend Pty Ltd & Zenza Pty Ltd**Cost of Works:** \$15,000**Zoning:** B4 Mixed Use - use of the premises as a restaurant is permitted with consent in the zone.**Proposal Summary:** Alterations to Shop 2 including installation of a new shopfront and signage and to increase the capacity of the existing licensed restaurant from 46 to 146 patrons. Proposed indoor trading hours are 7.00am - 12.00 midnight, Monday - Saturday and 8.00am - 10.00pm on Sunday. Proposed outdoor trading hours are 8.00am - 10.00pm, Monday - Sunday.

The application is referred to the Local Planning Panel as it is for contentious development, with more than 25 objections received in response to the public notification and exhibition of the application.

The application was notified and advertised for a period of 21 days from 6 to 28 March 2019. Thirty-two submissions were received. Issues raised in submissions pertain to patron capacity, hours of operation, adverse impacts upon residential amenity, increased traffic, reduced on-street car-parking, waste management, loading and servicing, concerns about use of the grease trap, a lack of clarity in what is being proposed, flaws in the methodology and recommendations of the Acoustic Report and concerns about patrons using the front stair and congregating, drinking, smoking and obstructing access to the adjacent residential lobby.

**Proposal Summary  
(continued):**

The issues raised in submissions are addressed in this report.

Additional information has been submitted over the course of this assessment up until 27 May 2019. This includes amended shopfront drawings, an amended acoustic report, waste management plan, revised plan of management, a signed declaration letter and other clarifications.

The proposed trading hours comply with the provisions of the Sydney DCP 2012 Amendment - Late Night Trading 2018.

The proposed licenced restaurant complies with the Liquor Act 2007, the Liquor Regulation 2018 and the Liquor Freeze rules.

Council's Building Surveyor has confirmed that the premises is able to provide adequate facilities and safety provisions for the increased population in accordance with the BCA.

The proposal, including the amended Plan of Management has been reviewed by Council's Environmental Health and Licenced Premises Specialists, Council's Safe City Unit and Kings Cross Police Local Area Command. Each of the referrals from these experts support the proposal, subject to recommended conditions.

**Summary Recommendation:**

The development application is recommended for approval, subject to conditions.

**Development Controls:**

- (i) State Environmental Planning Policy No 64 - Advertising and Signage
- (ii) Sydney Local Environmental Plan 2012
- (iii) Sydney Development Control Plan 2012
- (iv) Sydney Development Control Plan 2012 Amendment - Late Night Trading 2018 (Not Liquor Licensing)

**Attachments:**

- Attachment A.** Recommended Conditions of Consent
- Attachment B.** Selected Drawings
- Attachment C.** Plan of Management

**Recommendation**

It is resolved that consent be granted to Development Application No. D/2019/179 subject to the conditions set out in Attachment A to the subject report.

**Reasons for Recommendation**

The application is recommended for approval for the following reasons:

- (A) The proposed development is consistent with the objectives of the B4 Mixed Use Zone in that it contributes to a mixture of compatible land uses.
- (B) The proposed development is considered appropriate to its setting and complies with the relevant planning controls contained in the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.
- (C) The proposed development is compatible with the character of the area and will not result in unacceptable adverse impacts upon the amenity of surrounding residential properties, subject to the recommended conditions.

## Background

### The Site and Surrounding Development

1. The commercial tenancy that is the subject of this report has a legal description of Lot 187 SP 72138 and is commonly known as Shop 2, 81 Macleay Street, Potts Point. It is located on the upper ground floor of the 18-storey, mixed use Ikon building, and has an outlook to Macleay Street.
2. The Ikon building occupies an allotment that is irregular in shape, with area of approximately 3,294sqm. The Ikon building has a primary street frontage to Macleay Street and a secondary street frontage to Manning Street, with vehicular access via a basement connection to Rockwall Crescent to the north.
3. Surrounding land uses include the residential Rockwall Apartments adjacent to the north, residential uses in the apartment buildings to the west and in the tower above the subject tenancy. Commercial uses are accommodated in the podium and street level tenancies within the site and fronting Macleay Street on neighbouring sites.
4. The lot that accommodates the Ikon building does not contain a heritage item but is in the vicinity of the local heritage item (I592) known as Manar house and flat building group on the opposite eastern side of Macleay Street and state heritage item (I1153) Rockwall house adjacent to the north-west. The Ikon building is identified as a detracting building within the Potts Point Conservation Area (CA51).
5. A site visit was carried out by staff on 6 May 2019. Photos of the site are below.



**Figure 1:** Aerial image of subject site and surrounding area



Figure 2: Subject site viewed from Macleay Street.



Figure 3: Existing signage structure (signage content proposed to be replaced).



Figure 4: Existing shopfront (proposed to be altered).



Figure 5: Internal fit-out works currently being carried out as approved by CDC no. NW18/3279.

## History Relevant to the Development Application

6. The Ikon building was formerly known as the Landmark Parkroyal Hotel. The subject site was used as a restaurant within the hotel and was retained in the redevelopment of the site. The restaurant use is longstanding, however Council's records do not contain a specific consent for the restaurant use prior to its redevelopment as the Ikon building.
7. U01/01137-01 - On 20 February 2002, the former South Sydney Council granted development consent for conversion of the existing hotel to 195 residential units plus retail outlets and strata subdivision.
8. D/2003/01199 - On 29 December 2003, development consent was granted for 12 signs with certain hours of illumination associated with the commercial tenancies within the building.
9. D/2005/704 - On 5 July 2005, development consent was granted for continuation of use of the subject site as a restaurant and for internal alterations.
10. D/2008/216 - On 28 March 2008, development consent was granted for the fit-out and use of a retail tenancy for a fresh food store and licenced restaurant with external seating for 16 patrons and internal seating for 30 patrons.
  - (a) Condition (1) approved the development in accordance with the submitted DA, Statement of Environmental Effects and drawings. The submitted documentation specifies the restaurant use would have seating capacity for 30 patrons indoors and 16 patrons outdoors;
  - (b) Condition (2) of this consent restricted indoor trading hours to between 8.00am and 11.00pm and outdoor areas to between 10.00am and 8.00pm, Monday to Sunday. Extended indoor trading hours of between 7.00am and midnight and outdoor trading hours of between 8.00am and 10.00pm, Monday to Sunday; was approved for a trial period of one year from the date of issue of the Occupation Certificate; and
  - (c) there is no record of a Construction Certificate or an Occupation Certificate relating to this development consent being submitted to Council. While the fresh food store and licensed restaurant is known to have operated at the site, it is considered that for the purposes of this assessment the trial period for extended trading hours specified at Condition (2) has lapsed.
11. P/2019/63 - On 10 January 2019, a Complying Development Certificate (NW18/3279) was issued for the fit out of an existing food premises and bar. The works approved under this CDC are currently underway as shown in **Figure 5** above.
12. There are no current compliance actions relevant to the subject Development Application (DA).

## Proposal

13. The application seeks consent for:

### (a) Works

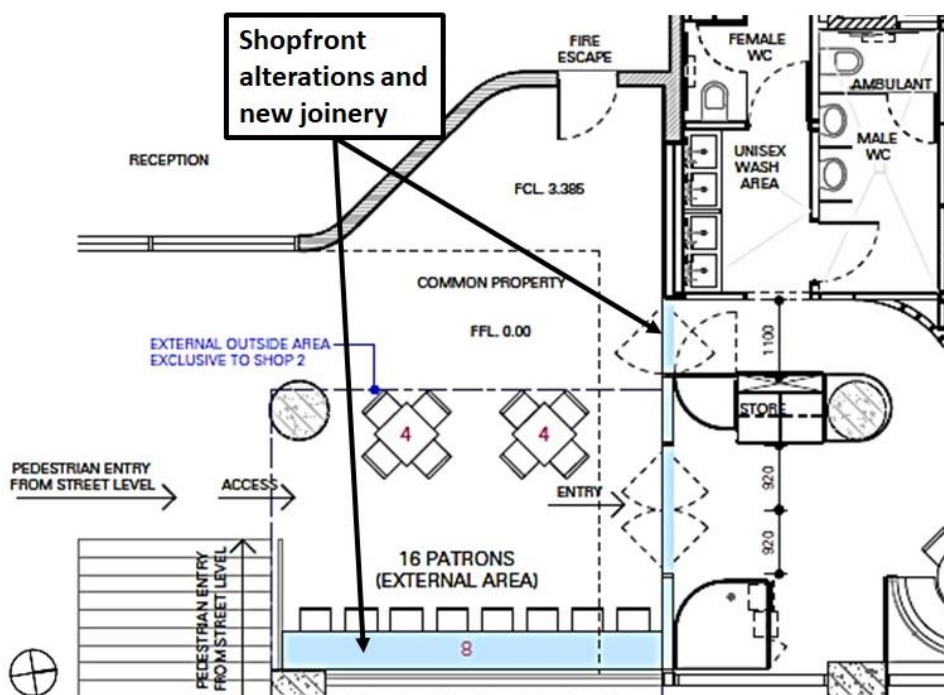
- (i) alterations to the existing shopfront;
- (ii) install business identification signage to the existing horizontal projecting wall sign structure to the Macleay Street façade;
- (iii) install business identification signage (gold leaf lettering) to the shopfront doors and transom window; and
- (iv) in the an existing restaurant including installation of a new shopfront and signage.

### (b) Use and operation

- (i) increased capacity of the existing licensed restaurant from 46 to 146 patrons; and
- (ii) proposed indoor trading hours are 7.00am - 12.00 midnight, Monday - Saturday and 8.00am - 10.00pm on Sunday. Proposed outdoor trading hours are 8.00am - 10.00pm, Monday - Sunday.

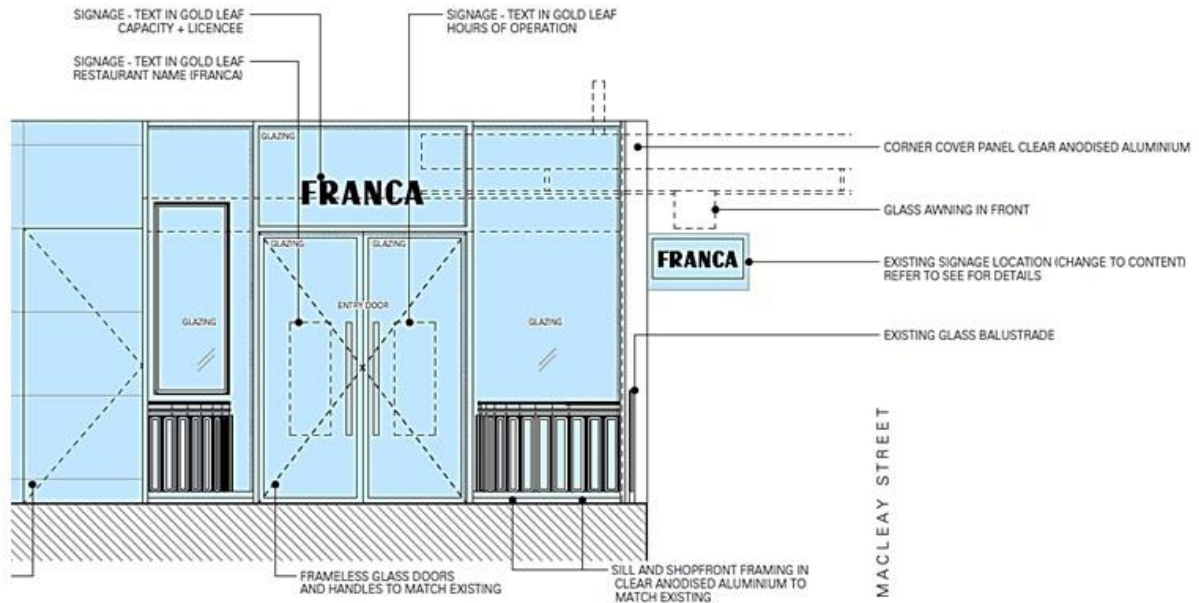
14. Additional information has been submitted over the course of the assessment up until 27 May 2019. These submissions included amended shopfront drawings, an amended acoustic report, waste management plan, revised plan of management, a signed declaration letter and other clarifications.

15. Drawings of the proposed development are provided in **Figures 6 and 7** below.



**Figure 6:** Proposed shopfront alterations plan.





**Figure 7:** Proposed shopfront alterations and signage elevation.

### Economic/Social/Environmental Impacts

16. The application has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:

- (a) Environmental Planning Instruments and DCPs.

### State Environmental Planning Policy No 64—Advertising and Signage

17. The application proposes the following signage:

- (a) business identification signage to the existing horizontal projecting wall sign structure to the Macleay Street façade; and
- (b) business identification signage (gold leaf lettering) to the shopfront doors and transom window.

18. SEPP 64 was gazetted on 16 March 2001 and aims to ensure that outdoor advertising is compatible with the desired amenity and visual character of an area, provides effective communication in suitable locations and is of high quality design and finish.

19. Clause 8 of SEPP 64 states that the consent authority must not grant development consent to an application to display signage unless it is satisfied that:

- (a) *the signage is consistent with the objectives of this Policy as set out in clause 3(1)(a), and*
- (b) *the signage the subject of the application satisfies the assessment criteria specified in Schedule 1.*

20. It is considered that the proposed signage is consistent with the objectives of SEPP 64 and satisfies Schedule 1 criteria. Refer to the discussion in the DCP compliance table and Issues section of this report.

**Sydney LEP 2012**

21. The site is located within the B4 Mixed Use zone and the proposed use as a restaurant is permissible in the zone. The proposed use as a restaurant will intensify by increasing patron capacity and extending hours of operation.
22. The relevant matters to be considered under Sydney Local Environmental Plan 2012 for the proposed development are outlined below.

## Compliance Tables

Development Control	Compliance	Comment
4.3 Height of Buildings	Yes	A maximum height of 70m is permitted.  Proposed shopfront alterations and installation of signage is to a maximum height of approximately 5.1m.
5.10 Heritage conservation	Yes	The proposal will have no adverse impacts upon adjacent heritage items or the surrounding conservation area.

Part 6 Local Provisions - Height and Floor Space	Compliance	Comment
Division 4 Design excellence	Yes	Council's Urban Design Specialist has reviewed the proposed shopfront alterations and signage and supports the proposed works.  The proposal satisfies the requirements of this control.

**Sydney Development Control Plan 2012 Amendment - Late Night Trading 2018 (Not Liquor Licensing)**

23. The Sydney Development Control Plan 2012 Amendment - Late Night Trading 2018 (Not Liquor Licensing) (the Late Night Trading DCP Amendment) was publicly exhibited from 27 November 2018 until 8 February 2019.
24. The Late Night Trading DCP Amendment proposes changes to the late night trading provisions in Section 3.15 of the Sydney DCP 2012 (the DCP). The proposed amendment includes changes to extend hours for low impact venues in Local Centres and other changes to encourage more diverse late night trading.
25. On 13 May 2019, Council resolved to approve the Late Night Trading DCP Amendment. As such it is considered certain and imminent and is given appropriate weight in this assessment.
26. The proposal is consistent with the amended controls. Refer to issues section of the report.

**Sydney DCP 2012**

27. The relevant matters to be considered under Sydney Development Control Plan 2012 for the proposed development are outlined below.

**2. Locality Statements – Potts Point**

The subject site is located within the locality of Potts Point. The proposal is considered to be in keeping with the locality's character and the applicable design principles in that it will contribute to the dynamic mix of uses in the area.

<b>3. General Provisions</b>	<b>Compliance</b>	<b>Comment</b>
3.5 Urban Ecology	Yes	The proposed development will not adversely impact upon the local urban ecology.
3.9 Heritage	Yes	The proposed development will have no adverse impacts upon adjacent heritage items or the surrounding conservation area.
3.12 Accessible Design	Yes	A condition has been recommended for the proposed shopfront alterations to provide appropriate access for persons with disabilities in accordance with the BCA.
3.13 Social and Environmental Responsibilities	Yes	The proposed development will contribute to the activation and passive surveillance of Macleay Street.
3.14 Waste	Able to comply	<p>Council's Waste Management Specialist has reviewed additional information submitted by the applicant to address concerns raised about proposed waste management facilities and processes.</p> <p>Subject to the recommended conditions the proposal is able to satisfy the requirements of this provision and is supported.</p> <p>Refer to the Issues section in this report.</p>

3. General Provisions	Compliance	Comment
3.15 Late Night Trading Management	Yes	<p>The proposed extension of hours of operation and increased patron numbers satisfy the requirements of the Late Night Trading DCP Amendment and are supported.</p> <p>Refer to the Issues section in this report.</p>
3.16.1 Signage Strategy	Yes	<p>As described in the History section of this report, development consent D/2003/01199 approved 12 signs with certain hours of illumination associated with the commercial tenancies within the Ikon building. In effect this consent operates as a Signage Strategy for the building.</p> <p>The proposed installation of graphic content to the sign that projects from the Macleay Street façade is in keeping with the Signage Strategy approved by D/2003/01199.</p>
3.16.6.8 Window Signs	Yes	<p>The proposal includes the application of gold leaf lettering to the restaurant entry doors and transom window above.</p> <p>These locations are not identified as signage zones in the approved Signage Strategy. However, this signage is consistent with the development standards for window signs that are exempt development under the SEPP (Exempt and Complying Development Codes) 2008 and could be applied without approval of the consent authority.</p> <p>Council's Urban Design Specialist has reviewed the proposed gold leaf signage and supports its design. This signage is consistent with DCP requirements in that it is modestly proportioned, it complements the fenestration of the proposed shopfront and is not illuminated.</p> <p>For these reasons the proposed gold leaf lettering signage is supported.</p>

4. Development Types  4.2 Residential flat, commercial and mixed use developments	Compliance	Comment
4.2.3 Amenity - Acoustic Privacy	Yes	Council's Environmental Health Specialist has reviewed the submitted Acoustic Report and is satisfied that subject to the recommended conditions the proposed intensification of the existing restaurant use can operate without unacceptable adverse impacts to the acoustic privacy of nearby residences.
4.2.6 Waste and Recycling Management	Able to comply	Refer to comments with regard to DCP provision 3.14 in the compliance table above.
4.2.9 Non-residential development in the B4 Mixed Uses Zone	Yes	As addressed elsewhere in this report, it is considered that subject to the recommended conditions the proposed intensification of the restaurant use will be able to operate without unacceptable adverse impacts to the amenity of nearby residences.

## Issues

### Hours of Operation

28. The proposed intensified restaurant use with an increased patron capacity of 146 patrons, is defined as a Category B premises under section 3.15 of the Late Night Trading DCP Amendment.
29. The subject site is identified as being within a Local Centre Area as shown on the Late Night Trading Areas Map. Provision 3.15.4 of the Late Night Trading DCP Amendment specifies permissible late night trading hours for Category B premises in Local Centre Areas, as follows:
- (a) base hours:
    - (i) indoor trading 7.00am to 11.00pm;
    - (ii) outdoor trading 7.00am to 8.00pm;
  - (b) extended hours:
    - (i) indoor trading 7.00am to 12.00 midnight; and

- (ii) outdoor trading 7.00am to 10.00pm;
30. The subject proposal is for:
- (a) indoor trading hours of between 7.00am and 12.00 midnight, Monday to Saturday and 8.00am and 10.00pm on Sunday; and
  - (b) outdoor trading hours of between 8.00am and 10.00pm, Monday to Sunday.
31. In accordance with provision 3.15.4 of the Late Night Trading DCP Amendment it is recommended that:
- (a) the following 'base hours' are approved permanently:
    - (i) indoor trading hours of between 7.00am and 11.00pm, Monday to Saturday and 8.00am and 10.00pm on Sunday;
    - (ii) outdoor trading hours of between 8.00am and 8.00pm, Monday to Sunday;
  - (b) the following 'extended hours' are approved on a 1 year trial:
    - (i) indoor trading hours of between 7.00am and 12.00 midnight, Monday to Saturday; and
    - (ii) outdoor trading hours of between 8.00am and 10.00pm, Monday to Sunday.

### **Liquor Act 2007**

32. The subject site is located within the area identified on the Liquor Amendment (Temporary Licence Freeze) Act 2009 precinct map and the Sydney CBD Entertainment Precinct map, which are prescribed precincts as defined in the Liquor Act 2007 (the Act) and Liquor Regulation 2018.
33. Section 471 of the Act places restrictions on the consent authority with regard to granting development consent for certain development, such as increases to trading hours, for some types of licenced premises.
34. Licenced restaurants are excluded from these restrictions.
35. The proposed use is considered to be for a restaurant with an on-premises licence. Subsequently, the subject proposal is excluded from those restrictions under S471 of the Act.
36. Council's Licenced Premises Specialist has reviewed the proposal and has advised that it complies with the Act as it pertains to the type of liquor licence under which the restaurant will operate and the Liquor Freeze rules.

### **Waste Management**

37. Council's Waste Management Specialist reviewed the proposal and raised concerns about how the existing waste facilities would cater for the proposed increase in patron numbers and trading hours.
38. On 21 May 2019, Council officers requested additional information from the applicant including waste generation calculations, information about the adequacy of waste and recycling storage areas within the building and details about waste collection locations.

39. On 22 May 2019, the requested information was provided. Council's Waste Management Specialist reviewed the information and has advised that subject to the recommended conditions, the proposal can be supported.

#### **Other Impacts of the Development**

40. The proposed development is capable of complying with the BCA.
41. It is considered that the proposal will have no significant environmental, social or economic impacts on the locality, subject to appropriate conditions being imposed.

#### **Suitability of the site for the Development**

42. The proposal is suitable for the site.

#### **Internal Referrals**

43. The assessment process has been informed by advice from Council's Building Surveyor, Safe City, Licenced Premises, Environmental Health, Urban Design, and Waste Management Specialists.
44. Where appropriate, conditions recommended by these referrals have been included for imposition on any consent given.
45. Subject to these recommended conditions it is considered that the restaurant with increased patron capacity and hours of operation can operate without unacceptable adverse impacts upon the amenity of nearby residences.

#### **External Referrals**

46. On 6 May 2019, the subject application was referred to Kings Cross Police Local Area Command for comment.
47. On 16 May 2019, Kings Cross Police Local Area Command responded to advise that subject to a condition requiring the restaurant to operate in accordance with the submitted Plan of Management at all times, no objection was raised.

#### **Notification, Advertising and Delegation**

48. In accordance with Schedule 1 of the Sydney DCP 2012, the subject application was notified and advertised for a period of 21 days between 6 March 2019 and 28 March 2019. As a result of this notification a total of 1006 properties were notified and there were 32 submission(s) received. Issues raised in submissions are summarised and responded to as follows:

- (a) Objection is raised to the proposed increase in capacity of the restaurant to 146 patrons, with no commensurate increase in floor area. This will cause an unacceptable adverse impact upon the health, safety and amenity of the Ikon residential building from increased noise, increased numbers of patrons using the front stair and congregating, drinking, smoking and obstructing access to the adjacent residential lobby. Such problems occurred when the former restaurant was operating and which prompted Ikon concierge staff to ask restaurant patrons and staff (loitering after closing) to leave the premises quietly. Due to the proposed intensification of the restaurant use these problems will no doubt be greater and more frequent.

**Response** - Council's Building Surveyor has considered the proposed increase in capacity and has confirmed that the subject premises is able to provide adequate facilities and safety provisions for the increased population in accordance with the BCA. It is then a matter of whether the restaurant can be managed in such a way that the increased capacity does not have any unacceptable amenity impacts. The proposal, including the amended Plan of Management (POM) has been reviewed by Council's Environmental Health and Licenced Premises Specialists, Council's Safe City Unit and Kings Cross Police Local Area Command. Each of the referrals from these experts support the proposed increase in patron capacity and trading hours, subject to the conditions recommended in Attachment A to this report.

- (b) The entrance of any prestige building establishes its presentation and image to the public. The Ikon building's Owners Corporation has recently allocated \$900,000 for upgrades of its entrances. If despite these objections Council is to approve this application, it should be subject to conditions for the operator to employ security staff to manage patrons congregating in, entering and exiting this common entrance area, to ensure there is no queueing and for the adjacent areas to be cleaned daily.

**Response** - As noted in response to the objection at (a) above, the proposal, including the POM has been reviewed by Council's Environmental Health and Licenced Premises Specialists, Council's Safe City Unit and Kings Cross Police Local Area Command. Each of the referrals from these experts support the proposal subject to the recommended conditions, including those which require the restaurant to operate in accordance with the POM. The Sydney DCP 2012 does not require security to be provided for licenced restaurants. Nonetheless, the POM states that security will be employed should management deem it necessary. The POM details a cleaning and maintenance regime for the restaurant. For clarity a condition has been recommended that as part of this regime, that the adjacent common areas including the undercroft entry and stair to Macleay Street are cleaned and tidied also.

- (c) Objection is raised to the proposed increase in capacity. An increase to 100 patrons indoors and 16 outdoors would be more appropriate.

**Response** - Refer to the responses to objections (a) and (f) elsewhere in this report.

- (d) Objection is raised to the proposed increase in capacity. An increase to 92 patrons would be more appropriate.

**Response** - Refer to the responses to objections (a) and (f) elsewhere in this report.



- (e) Objection is raised to the proposed increase in capacity. An increase to 90 patrons would be more appropriate.

**Response** - Refer to the responses to objections (a) and (f) elsewhere in this report.

- (f) Objection is raised to the proposed increase in capacity. An increase to 80 patrons approved on a trial basis would more appropriately balance the interests of the restaurant operator and the amenity of residents.

**Response** - As is evident from the submissions summarised at (c) to (f) above, there are different opinions as to what is an appropriate patron capacity for the site. The proposed increase in patron capacity is supported. How Council officers have come to this recommendation is detailed in the response to objection (a) above and elsewhere in this report.

- (g) Objection is raised to the proposed increase in capacity. It will cause an unacceptable adverse impact upon the amenity of the Ikon residential building arising from rubbish, odours and vermin in common areas such as service lifts and loading docks associated with the restaurant.

**Response** - As noted elsewhere in this report, concerns about waste management were raised by Council officers during the assessment of the application. These concerns have been addressed by submission of a waste management plan and by imposition of further conditions pertaining to waste and recycling management, storage and collection. The POM is considered to adequately address servicing, maintenance and cleaning of the building. The requirement for the restaurant to be operated in accordance with the POM is recommended as a condition of consent. Enforcement of the POM by Council officers can be requested by nearby residents or members of the public by contacting Council, should the need arise. Refer to the response to objection (s) below for further discussion of odours arising from the existing grease trap and its maintenance.

- (h) Objection is raised to the proposed increase in capacity. It will cause a significant increase in pedestrian traffic and will reduce the availability of on-street parking for residents and their visitors in the vicinity of the site. As the existing Rockwell Crescent loading docks are at capacity any increase in trucks and service vehicles will increase traffic congestion and associated noise in the vicinity of the site.

**Response** - Council's car parking and transport requirements contained in the Sydney LEP and DCP 2012 aim to facilitate walking, cycling and the use of public transport. The subject DA does not propose any restaurant customer parking. This is permitted under Council's car parking requirements. The subject site is highly accessible by walking, cycling and public transport. The proposal complies with Council's car parking and transport requirements and for this reason any increase in pedestrian and vehicular traffic is considered to be acceptable. The original consent for the Ikon building U01/01137-01 includes conditions for a Loading Area Management Plan and Vehicle and Pedestrian Traffic Management Plan to regulate the operation of the parking, loading docks and service areas. Servicing of the site is to be in accordance with these existing management plans.

- (i) Objection is raised to the proposed extension of hours. Most restaurants in the area close between 10pm and 11pm, bars tend to close later, and most restaurants in the area do not share an entry with a residential building. As the proposed restaurant has not started trading and there is no way of determining if through proper management the restaurant is able to operate without unacceptable impacts upon the amenity of adjacent residences, it is premature to consider an extension of trading hours.

**Response** - The hours of operation that are consistent with the 'base' trading hours permitted by the Late Night Trading DCP Amendment have been recommended for approval on a permanent basis. As is detailed in the Issues section of this report above. It is recommended that the proposed extended trading hours are approved for a trial period of 12 months. The restaurant operator is required to submit an application to renew extended trading hours at the end of the trial period. This will provide the consent authority with an opportunity to review the restaurant's track record of management and including any complaints or submissions from any other concerned parties, prior to granting any consent for those extended trading hours to be renewed.

- (j) Should the proposal be approved then it should be subject to conditions for the entry doors to be physically closed at 8pm and remain closed other than to provide access to the restaurant until the end of trading. Trading hours should be curtailed so that no new patrons may enter from 10-10.30pm and all patrons are off premises by 11pm, with management being responsible for patrons leaving the premises quietly after 10pm.

**Response** - It is recommended that a condition is imposed on any consent granted for the development to comply with all recommendations of the Acoustic Report. Among the recommendations of the Acoustic Report are operational measures to reduce noise emissions including that the restaurant entry doors are to be kept closed at all times except for ingress/egress of patrons. With regard to the trading hours suggested in submissions, refer to the responses to objections (i) and (k) elsewhere in this report.

- (k) Should the proposal be approved then it should be subject to conditions restricting trading hours for the outdoor area to between 8.00am and 10.00pm, Monday to Sunday and for the indoor area to between 8.00am and 11.00pm, Monday to Saturday and 8.00am and 10.00pm, Sunday.

**Response** - As is evident from the submissions summarised at (j) and (k) above, there are different opinions as to what trading hours are appropriate for the site and under what conditions they are appropriate. The proposed trading hours are supported subject to conditions for extended trading hours to be on a trial basis. How Council officers have come to this recommendation is detailed in the response to objection (i) above and elsewhere in this report.

- (l) Should the proposal be approved then it should be subject to conditions restricting deliveries and garbage collections to between 8.00am and 6.00pm Monday to Sunday.

**Response** - The original consent for the Ikon building U01/01137-01 includes conditions for a Loading Area Management Plan and Vehicle and Pedestrian Traffic Management Plan to regulate the operation of the parking, loading docks and service areas. Servicing of the site is to be in accordance with these existing management plans. Conditions have been recommended for the Waste and Recycling Management Plan to be and implemented in accordance with the *Guidelines for Waste Management in New Developments 2018* and the *City's Waste Policy*.

- (m) The limited kitchen space shown on the plans suggests that the fit out of the tenancy is for a bar rather than a restaurant. Council must not allow the premise to operate as a bar rather than a restaurant and should apply a condition on any approval granted for this purpose.

**Response** - As noted in the Issues section of this report, despite submissions in the DA documentation provided by the applicant, in this assessment the proposed use is considered to be for a restaurant with an on-premises licence. As requested in the submission and based on the recommendations of Council's Licenced Premises Specialist a condition has been recommended for imposition that stipulates that the primary purpose of the premises is as a licenced restaurant.

- (n) Should the proposal be approved then it should be subject to conditions for bicycle and motorcycle delivery riders to keep their bicycles off the common foyer and stairs of the building and be required to leave their bicycles on the footpath, with a bicycle rack to be provided on the footpath for use by delivery riders.

**Response** - As requested a condition is recommended for bicycle and motorcycle delivery riders to keep their vehicles off the common foyer and stairs of the building and requiring them to park their vehicles in designated parking areas.

- (o) Should the proposal be approved then it should be subject to conditions to prohibit music being played in the outdoors seating area as strata by-laws prohibit loud noise or music in common areas.

**Response** - As requested a condition is recommended that prohibits speakers and / or noise amplification equipment being installed or for music to be played in the restaurant's outdoor seating area.

- (p) Should the proposal be approved then it should be subject to conditions so that alcohol can only be served with a meal in the outdoor seating area.

**Response** - As noted elsewhere in this report, a condition is recommended that specifies the primary purpose of the premises is as a licenced restaurant. This means that a food service must be provided at all times that alcohol is served. Restrictions on service of alcohol in the outdoor seating area are regulated under the licence provisions to be determined by Liquor and Gaming NSW.

- (q) Should the proposal be approved then it should be subject to conditions prohibiting smoking in the outdoor area as strata by-laws prohibit smoking in common areas.

Response - As of 6 July 2015, the *Smoke-Free Environment Act 2000* banned smoking within four metres of a pedestrian entrance to a public building (including restaurants) and in outdoor dining areas. So in the case of the proposed restaurant smoking is banned in the outdoor dining area of the restaurant and within four metres of the entrance to the restaurant. Council has no power to impose a smoking ban on residential property. However as the submission states smoking is prohibited under the building's strata by-laws and which could be enforced by the Owners Corporation.

- (r) Concern is raised about the potential blocking of the emergency exit door located near the restaurant's outdoor seating area.

**Response** - A clear path of escape from the fire escape door to Macleay Street is retained under the current proposal and remains unchanged from that previously approved by D/2008/216 for the fit-out and use of the subject tenancy for a fresh food store and licenced restaurant.

- (s) The grease trap in the former restaurant always caused problems such as foul odours wafting through the building. An intensification of this use will exacerbate this. Should the proposal be approved then it should be subject to conditions to address this problem.

**Response** - Condition (17) of the Complying Development Certificate No. NW18/3279 (Council ref. no. P/2019/63) requires that if a grease trap or other waste water treatments were required by Sydney Water, then any necessary approvals and works are to be obtained and carried out prior to issue of an Occupation Certificate. Council officers requested that the applicant submit evidence to demonstrate that this condition had been complied with, specifically whether the property had a grease trap that could treat the waste water generated by the intensified restaurant use. The applicant has shown that he has obtained the necessary approvals from Sydney Water for the discharge of wastewater from the site. He also confirmed that the restaurant has a grease trap with a capacity of 3000L for the exclusive use of the subject premises. This is double the capacity required by Sydney Water for a restaurant of up to 199 seats. An agreement is in place with a contractor to pump liquid waste from the site. An expert has advised that with regular pumping and cleaning there should not be any odours emitted during pumping. It is considered that this matter has been adequately addressed.

- (t) The Statement of Environmental Effects and DA form do not clearly state what the proposal is for. The last approval granted (D/2008/216) for the subject tenancy was for the retail sale of fresh food with a small licensed restaurant. The proposal seeks to operate under this consent, however no mention is made of the proposed change of use so that the fresh food store component of the development will no longer operate, to be replaced by a restaurant and bar. For these reasons the application is inadequate and should not be granted consent.

**Response** - As noted elsewhere in this report, additional information has been submitted over the course of the assessment up until 27 May 2019. These submissions included amended shopfront drawings, an amended acoustic report, waste management plan, revised POM, a signed declaration letter and other clarifications. It is considered that these submissions have adequately explained what the proposal is for. If as recommended the subject DA is approved it is considered the restaurant will be able to operate subject to the conditions recommended in Attachment A to this report. Condition (2) notes that the subject consent will rely on and must be read in conjunction with Complying Development Certificate No. NW18/3279 (Council ref. no. P/2019/63). However, the restaurant will be able to operate independently and without relying upon the last approval granted (D/2008/216).

- (u) The findings and subsequent recommendations of the submitted Acoustic Report are flawed as it does not apply realistic and appropriate measures for noise and noise control. Nor does it measure the impacts of noise from increased pedestrian and vehicular traffic in the area.

**Response** - Council's Environmental Health Specialist has reviewed the amended Acoustic Report. Amendments were to clarify that no additional mechanical plant and equipment was to be installed. The referral of Council's Environmental Health Specialist raised no concerns about the method, measures or recommended noise controls of the amended Acoustic Report.

- (v) All restaurants and cafes in the area have a cumulative effect on residential amenity. These cumulative impacts should be considered in balancing commercial interests and resident's concerns.

**Response** - The Late Night Trading DCP Amendment takes a strategic approach to coordinating late night trading across the City, including the cumulative effects of such development and its impacts upon residential amenity. The Late Night Trading DCP Amendment has been considered in this assessment as detailed elsewhere in this report.

- (w) Footpath encroachment by cafes, restaurants and other uses encourage people to mull around and block the walkway. This encroachment upon footpaths forces pedestrians to walk on the vehicular carriageway. This puts pedestrians' safety at risk. For this reason the subject proposal must not be approved.

**Response** - The subject DA does not propose any structures or use of the public footpath.

- (x) The proposal is supported with extended trading hours on a trial basis. Noise and other issues can be monitored, however similar businesses operate in the area without disruption to the community. This and other applications like it are vital to improving the night time economy in Potts Point.

**Response** - Noted.

## Public Interest

- 49. It is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being proposed.

### **S7.11 Contribution**

50. The development is not subject to a S7.11 development contribution as it is for development where a contribution has previously been paid for the development when the building was originally constructed, which is a type of development listed in Table 2 of the City of Sydney Development Contributions Plan 2015 and is excluded from the need to pay a contribution. A contribution is therefore not payable.

### **Relevant Legislation**

51. The Environmental Planning and Assessment Act 1979.

### **Conclusion**

52. The subject DA proposes alterations to Shop 2 including installation of a new shopfront and signage and to increase the capacity of the existing licensed restaurant from 46 to 146 patrons. Proposed indoor trading hours are 7.00am - 12.00 midnight, Monday - Saturday and 8.00am - 10.00pm on Sunday. Proposed outdoor trading hours are 8.00am - 10.00pm, Monday - Sunday.
53. The application is referred to the Local Planning Panel as it is for contentious development, with more than 25 objections having been received in response to the public notification and exhibition of the application. The issues raised in submissions have been addressed in this report.
54. Additional information has been submitted over the course of this assessment up until 27 May 2019. These submissions included amended shopfront drawings, an amended acoustic report, waste management plan, revised plan of management, a signed declaration letter and other clarifications.
55. The proposed trading hours comply with the provisions of the Sydney DCP 2012 Amendment - Late Night Trading 2018 (Not Liquor Licensing).
56. The proposed licenced restaurant complies with the Liquor Act 2007, the Liquor Regulation 2018 and the Liquor Freeze rules.
57. Council's Building Surveyor has confirmed that the premises is able to provide adequate facilities and safety provisions for the increased population in accordance with the BCA.
58. The proposal, including the amended Plan of Management has been reviewed by Council's Environmental Health and Licenced Premises Specialists, Council's Safe City Unit and Kings Cross Police Local Area Command. Each of the referrals from these experts support the proposal, subject to recommended conditions.
59. The subject DA is recommended for approval, subject to conditions.

### **GRAHAM JAHN, AM**

Director City Planning, Development and Transport

Ben Chamie, Senior Planner