

Attachment A

Recommended Conditions of Consent
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CONDITIONS OF CONSENT

SCHEDULE 1A

APPROVED DEVELOPMENT / USE AND OPERATION

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2019/179 dated 28 February 2019 and the following drawings prepared by NDRSN:

Drawing Number	Drawing Name	Date
01_01b, A	Entry Plan	10-Apr-19
01_02, A	Proposed Floor Plan	8-Apr-19
02_02, A	Proposed Street Elevation / Restaurant Entry Elevation	8-Apr-19

and as amended by the conditions of this consent.

- (b) In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

(2) RELIANCE ON PREVIOUS COMPLYING DEVELOPMENT CERTIFICATE

This development consent relies on and must be read in conjunction with Complying Development Certificate No. NW18/3279 (Council ref. no. P/2019/63).

(3) LICENSED PREMISES – PRIMARY PURPOSE

The primary purpose of the premises is as a licensed restaurant with the kitchen to be open and substantial food service to be available to patrons at all times during the approved hours of operation. The sale and supply of liquor shall cease when the kitchen ceases to operate. All patrons are to have an allocated seat and the number and location of tables and chairs provided for seated dining must be in accordance with the approved floor plan at all times.

(4) HOURS OF OPERATION - INDOORS

The indoors hours of operation are regulated as follows:

- (a) The hours of operation must be restricted to between 7.00am and 11.00pm, Monday to Saturday and 8.00am to 10.00pm Sunday.

- (b) Notwithstanding (a) above, the use may operate between 11.00pm and 12 midnight, Monday to Saturday for a trial period of 12 months from the date of issue of the Occupation Certificate. Council's Health and Building Unit is to be informed in writing of the date of commencement of the trial hours. Email notification is to be sent to liquor@cityofsydney.nsw.gov.au
- (c) A further application may be lodged to continue the operating hours outlined in (b) above 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.

(5) HOURS OF OPERATION - OUTDOORS

The outdoors hours of operation are regulated as follows:

- (a) The hours of operation must be restricted to between 8.00am and 8.00pm, Monday to Sunday.
- (b) Notwithstanding (a) above, the use may operate between 8.00pm and 10.00pm, Monday to Sunday, for a trial period of 12 months from the date of issue of the Occupation Certificate. Council's Health and Building Unit is to be informed in writing of the date of commencement of the trial hours. Email notification is to be sent to liquor@cityofsydney.nsw.gov.au
- (c) A further application may be lodged to continue the operating hours outlined in (b) above 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.

(6) MAXIMUM PATRON CAPACITY

- (a) The maximum occupancy capacity is restricted to 146 patrons.
- (b) Notwithstanding compliance with part (a) above, the capacity of patrons hosted inside the premises should not exceed a total of 130 patrons, while the capacity of patrons hosted in the external seating area should not exceed 16 patrons. The capacity for each area shall not exceed the maximum numbers at any given time.
- (c) The manager/licensee is responsible for ensuring the number of persons in the premises does not exceed that specified above.
- (d) A sign in letters not less than 25mm in height must be fixed at the main entry point to the premises alongside the Licensee's name stating the maximum number of persons, as specified in the development consent, that are permitted in the building. Details are to be provided to the satisfaction of the Principal Certifier prior to issue of a Construction Certificate.

Note: Clause 98D of the *Environmental Planning and Assessment Regulation 2000* requires a sign specifying maximum number of persons permitted in the building to be displayed in a prominent position for the following types of premises:

- (i) entertainment venue,
- (ii) function centre,
- (iii) pub,
- (iv) registered club,
- (v) restaurant.

(7) PLAN OF MANAGEMENT

The use must always be operated / managed in accordance with the Premises Management Checklist (Low Impact Premises) (the Plan of Management) submitted under cover of email dated 17 April 2019 and as supported by the letter of declaration that the restaurant manager has read and understood the Plan of Management, signed and dated 16 May 2019, that has been approved by Council.

(8) COPIES OF CONSENTS AND PLAN OF MANAGEMENT

A full and current copy of all current development consents for the operation of the licensed premises, and the Plan of Management must be kept on-site and made available to Police or Council Officers, or Special Investigator upon request.

(9) NOISE – ENTERTAINMENT LICENSED RESTAURANT

- (a) The $L_{A10, 15 \text{ minute}}$ noise level emitted from the use must not exceed the background noise level ($L_{A90, 15 \text{ minute}}$) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) by more than 5dB between the hours of 7.00am and 12.00 midnight when assessed at the boundary of any affected residence.
- (b) The $L_{A10, 15 \text{ minute}}$ noise level emitted from the use must not exceed the background noise level ($L_{A90, 15 \text{ minute}}$) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) between the hours of 12.00 midnight and 7.00am when assessed at the boundary of any affected residence.
- (c) Notwithstanding compliance with (a) and (b) above, noise from the use when assessed as an $L_{A10, 15 \text{ minute}}$ enters any residential use through an internal to internal transmission path is not to exceed the existing internal $L_{A90, 15 \text{ minute}}$ (from external sources excluding the use) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) when assessed within a habitable room at any affected residential use between the hours of 7am and 12midnight. Where the $L_{A10, 15 \text{ minute}}$ noise level is below the threshold of hearing, T_f at any Octave Band Centre Frequency as defined in Table 1 of International Standard ISO 226 : 2003- Normal Equal-Loudness-Level Contours then the value of T_f corresponding to that Octave Band Centre Frequency shall be used instead.

- (d) Notwithstanding compliance with (a), (b) and (c) above, the noise from the use must not be audible within any habitable room in any residential use between the hours of 12.00 midnight and 7.00am.
- (e) The $L_{A10, 15 \text{ minute}}$ noise level emitted from the use must not exceed the background noise level ($L_{A90, 15 \text{ minute}}$) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) by more than 3dB when assessed indoors at any affected commercial premises.

Note: The $L_{A10, 15 \text{ minute}}$ noise level emitted from the use is as per the definition in the Australian Standard AS1055-1997 Acoustics – Description and measurement of environmental noise. The background noise level $L_{A90, 15 \text{ minute}}$ is to be determined in the absence of noise emitted by the use and be representative of the noise sensitive receiver. Background noise monitoring must be carried out in accordance with the long-term methodology in Fact Sheet B of the NPfl unless otherwise agreed by the City's Area Planning Manager.

(10) COMPLIANCE WITH THE ACOUSTIC REPORT PRIOR TO CONSTRUCTION AND OR OCCUPATION CERTIFICATES

- (a) All relevant performance parameters (including but not limited to requirements, engineering assumptions and recommendations) in the DA Acoustic Report prepared by M Webber & D. Suwandi of Renzo Tonin & Associates, dated 18th April 2019, ref TK298-01F02 DA Acoustic Report (r4), titled Shop 2, 81 Macleay Street Potts Point DA Acoustic Report, Council Ref 2019/196513 must be implemented in the development prior to the commencement of its use.
- (b) Prior to the issue of any relevant Construction Certificate, 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). This work will be to the satisfaction of the certifier.
- (c) Prior to the issue of an Occupation Certificate, a Suitably Qualified Acoustic Consultant* is to provide a written Acoustic Verification Report to the satisfaction of the Principal Certifier/Principal certifying Authority 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 render them eligible for membership of the Australian Acoustics Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member.

- (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.

(11) NO SPEAKERS OR MUSIC OUTSIDE

Speakers and/or noise amplification equipment must not be installed and music must not be played in any of the outdoor areas associated with the premises including the public domain. Speakers located within the premises must not be placed so as to direct the playing of music towards the outdoor areas associated with the premises.

(12) NOISE FROM GLASS REMOVAL

Glass must not be emptied or transferred from one receptacle to another anywhere in a public place. All glass must be emptied / transferred inside of the building on the premises and removed in containers.

(13) GLASS CRUSHER

All glass bottles and other glass waste must be reduced to glass shards (by way of a glass crusher located within the premises) prior to the removal of such waste from the premises.

(14) REMOVAL OF GLASS

Patrons must be prevented from removing glasses, opened cans, bottles or alcohol from the premises or approved outdoor dining area included in the boundaries of the licensed premises.

(15) 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. The signage shall be in bold letters not less than 25mm in height on a contrasting background.
- (b) The management must ensure that the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood.

(16) CLEANING & TIDYING OF THE UNDERCROFT ENTRY AND STAIR

As part of the routine cleaning and maintenance of the restaurant it is the responsibility of restaurant management that the adjacent common areas including the undercroft entry and stair to Macleay Street are cleaned, tidied and any litter, dust or waste collected and disposed of appropriately.

(17) BICYCLE AND MOTORCYCLE DELIVERY VEHICLE PARKING

Bicycle and motorcycle food delivery riders attending the approved restaurant must park their vehicles legally in designated parking areas within the building or on public roads. Bicycle and motorcycle food delivery riders attending the approved restaurant must not park their vehicles in pedestrian circulation and access areas within the common property of the building such as the entry foyer and stairs adjacent to Macleay Street.

(18) SURVEILLANCE CAMERAS

- (a) CCTV surveillance cameras shall be strategically installed, operated and maintained throughout the premises with particular coverage to:
 - (i) principal entrance/s and exits;
 - (ii) all areas within the premise occupied by the public (excluding toilets);
 - (iii) staircases in multilevel premises; and
 - (iv) the area within a 10m radius external to the public entrance(s) to the premise.
- (b) Suitable and clearly visible signage shall be displayed at the principal entrance(s) to the premise and in a prominent position on each floor accessible to the public, in lettering not less than 50mm in height with the words "Closed Circuit Television in use on these premises".
- (c) All CCTV recording equipment and cameras shall be of high grade digital quality capable of establishing the population and identification of patrons, offenders and incidents within the depth of field view of the cameras. In this respect each surveillance camera shall be capable of recording a minimum rate of 10 frames per second and at high resolution.
- (d) CCTV recording discs or hard drive recordings shall be retained for 30 days before being re-used, destroyed or deleted. Time and date shall be auto recorded on the disc or hard drive. The CCTV recording equipment shall be capable of reproducing a CD, DVD or other appropriate digital copy of recorded footage on demand of Council or Police Officers either immediately or within 12 hours of the request being made. Copy discs must be handed to Council, Police Officer or Special Inspectors as required.
- (e) All CCTV recording devices and cameras shall be checked daily to ensure the equipment is operating correctly. The Licensee shall record this daily checking activity in the security/incident register book that meets the standards required by the Licensing Police and Council. If it is discovered at any time that the equipment is not in full operating order all reasonable steps must be taken to repair the system as soon as practicable. Where the system will not be functioning in full operating order for a period of longer than 24 hours the manager/licensee is to notify the relevant Local Area Commander of the NSW Police.
- (f) All CCTV recording devices and cameras shall be operated at all times when the premises are open to the public and, where premises do not operate 24 hours a day, continuously for at least 1 hour prior to opening and closing times of the premises.
- (g) The CCTV recording device shall be secured within the premises and only be accessible to senior management personnel so as to maintain the integrity of the recorded footage. When the premises is operating there must be at least one staff member present at the premises who is authorised to access the CCTV system and able to immediately review recordings and produce copies.
- (h) Camera views are not to be obstructed by temporary or permanent structures, signage or other impediments.

(19) ERECTION OF SIGN

Approved signage is to be erected in a secure manner to ensure safety and its installation is not to involve measures that would cause irreversible damage to the building.

(20) SIGN ILLUMINATION

- (a) At no time is the intensity, period of intermittency and hours of illumination of signage to cause objectionable glare or injury to the amenity of the neighbourhood and as such must be designed, installed and used in accordance with AS4282-1997 Control of Obtrusive Effects of Outdoor Lighting.
- (b) The sign(s) must not flash. Signs with flashing, chasing, pulsating or flickering lights are not permitted.
- (c) The maximum night time luminance of any sign is not to exceed 300 cd/sqm.
- (d) Signage is only permitted to be illuminated while a premises is open.
- (e) Upward facing light sources onto the signage is not permitted.

(21) SIGNAGE GENERAL REQUIREMENTS

The design of the approved signage must comply with the following:-

- (a) The signage is not to contain highly reflective materials, colours and finishes.
- (b) The signage is not to incorporate sound, vibration, odour and other emissions.

(22) SIGNS/GOODS IN THE PUBLIC WAY

No signs or goods are to be placed on the footway or roadway adjacent to the property.

SCHEDULE 1B

PRIOR TO CONSTRUCTION CERTIFICATE/COMMENCEMENT OF WORK/HEALTH AND BUILDING

(23) WORKS REQUIRING USE OF A PUBLIC PLACE

Where construction/building works require the use of a public place including a road or footpath, approval under Section 138 of the *Roads Act 1993* is to be obtained from Council prior to the commencement of work. Details of any barricade construction, area of enclosure and period of work are required to be submitted to the satisfaction of Council.

(24) WASTE AND RECYCLING MANAGEMENT - COMMERCIAL

- (a) The Waste and Recycling Management Plan for Franca Brasserie, prepared by Sydney Waste Services and submitted under cover of email dated 22 May 2019, has not been approved by this consent.
- (b) The aforementioned Waste and Recycling Management Plan is to be amended to be consistent with the following waste conditions and is to be submitted to and approved by the Principal Certifier prior to a Construction Certificate being issued. A copy of the approved Waste and Recycling Management Plan is to be submitted to Council. The Waste and Recycling Management Plan must comply with the Council's *Guidelines for Waste Management in New Developments 2018*. All requirements of the approved Building Waste and Recycling Management Plan must be implemented during construction of the development.

UPON COMPLETION OF THE DEVELOPMENT

- (c) Prior to an Occupation Certificate being issued or the use commencing, whichever is earlier, the Principal Certifier must ensure that waste handling works have been completed in accordance with: the Waste and Recycling Management Plan; other relevant development consent conditions; and Council's *Guidelines for Waste Management in New Developments 2018*.

(25) WASTE AND RECYCLING COLLECTION CONTRACT

Prior to an Occupation Certificate being issued and/or commencement of the use, whichever is earlier, the building owner must ensure that there is a contract with a licensed contractor for the removal of **all waste**. No garbage is to be placed on the public way, e.g. footpaths, roadways, plazas, reserves, at any time.

(26) WASTE AND RECYCLING MANAGEMENT – STORAGE AND COLLECTION

- (a) Commercial waste and recycling receptacles and any bulky waste must be stored on the property at all times and must not be placed on the kerbside for collection. Waste collection must take place from within the loading dock area.
- (b) Space must be allocated for the storage of re-usable commercial items such as crates and pallets. These must not be stored in a public place.

- (c) Commercial waste and recycling receptacles must be stored in a separated area from residential waste and recycling receptacles and commercial tenants must not have access to residential bins or waste rooms.
- (d) Commercial waste service collection services and waste storage arrangements must be conducted in accordance with the *City's Waste Policy –Local Approvals Policy for Managing Waste in Public Places (2017)*.

SCHEDULE 1C

DURING CONSTRUCTION/PRIOR TO OCCUPATION/COMPLETION

(27) OCCUPATION CERTIFICATE TO BE SUBMITTED

An Occupation Certificate must be obtained from the Principal Certifier and a copy submitted to Council prior to commencement of occupation or use of the whole or any part of a new building, an altered portion of, or an extension to an existing building.

(28) HOURS OF WORK AND NOISE – OUTSIDE CBD

The hours of construction and work on the development must be as follows:

- (a) All work, including building/demolition and excavation work, and activities in the vicinity of the site generating noise associated with preparation for the commencement of work (eg. loading and unloading of goods, transferring of tools etc) in connection with the proposed development must only be carried out between the hours of 7.30am and 5.30pm on Mondays to Fridays, inclusive, and 7.30am and 3.30pm on Saturdays, with safety inspections being permitted at 7.00am on work days, and no work must be carried out on Sundays or public holidays.
- (b) All work, including demolition, excavation and building work must comply with the City of Sydney Code of Practice for Construction Hours/Noise 1992 and Australian Standard 2436 - 2010 Guide to Noise Control on Construction, Maintenance and Demolition Sites.
- (c) Notwithstanding the above, the use of a crane for special operations, including the delivery of materials, hoisting of plant and equipment and erection and dismantling of on site tower cranes which warrant the on-street use of mobile cranes outside of above hours can occur, subject to a permit being issued by Council under Section 68 of the Local Government Act 1993 and/or Section 138 of the Roads Act 1993.

Note: Works may be undertaken outside of hours, where it is required to avoid the loss of life, damage to property, to prevent environmental harm and/or to avoid structural damage to the building. Written approval must be given by the Construction Regulation Unit, prior to works proceeding

The *City of Sydney Code of Practice for Construction Hours/Noise 1992* allows extended working hours subject to the approval of an application in accordance with the Code and under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

(29) USE OF INTRUSIVE APPLIANCES – NOT APPROVED

This development consent does not extend to the use of appliances which emit noise of a highly intrusive nature (such as pile - drivers and hydraulic hammers) or are not listed in Groups B, C, D, E or F of Schedule 1 of the City of Sydney Code of Practice for Construction Hours/Noise 1992”.

A separate Section 4.55 application must be submitted to the Council for the use of any equipment of a highly intrusive nature (such as pile - drivers and hydraulic hammers) or are not listed in Groups B, C, D, E or F of Schedule 1 of the *City of Sydney Code of Practice for Construction Hours/Noise 1992*.

(30) ENCROACHMENTS – PUBLIC WAY

No portion of the proposed structure, including gates and doors during opening and closing operations, shall encroach upon Council's footpath area.

(31) COVERING OF LOADS

All vehicles involved in the excavation and/or demolition process and departing the property with demolition materials, spoil or loose matter must have their loads fully covered before entering the public roadway.

(32) NO OBSTRUCTION OF PUBLIC WAY

The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances. Non-compliance with this requirement will result in the issue of a notice by Council to stop all work on site.

SCHEDULE 2

PRESCRIBED CONDITIONS

The prescribed conditions in accordance with Division 8A of the *Environmental Planning and Assessment Regulation 2000* apply:

- Clause 98 Compliance with *Building Code of Australia* and insurance requirements under the *Home Building Act 1989*
- Clause 98A Erection of signs
- Clause 98B Notification of *Home Building Act 1989* requirements
- Clause 98C Conditions relating to entertainment venues
- Clause 98D Conditions relating to maximum capacity signage
- Clause 98E Conditions relating to shoring and adequacy of adjoining property

Refer to the NSW State legislation for full text of the clauses under Division 8A of the *Environmental Planning and Assessment Regulation 2000*. This can be accessed at: <http://www.legislation.nsw.gov.au>