

Attachment A

Recommended Conditions of Consent
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SCHEDULE 1 - DEFERRED COMMENCEMENT CONDITIONS (CONDITIONS TO BE SATISFIED PRIOR TO CONSENT OPERATING)

The following deferred commencement conditions must be satisfied prior to the consent becoming operative:

PART A - DEFERRED COMMENCEMENT CONDITIONS

(CONDITIONS TO BE SATISFIED PRIOR TO CONSENT OPERATING)

(A) The consent is not to operate until the following conditions are satisfied, within **24 months** of the date of this determination:

(1) WINDOWS

- (a) Drawings of the traditional window design are to be provided at a scale of 1:20 prior to any reinstatement of traditional windows.
- (b) Details of privacy measures prepared in consultation with a Heritage Consultant are to be submitted to ensure there is no visibility into the premises from the public domain and neighbouring buildings.

(2) BUILDING INFORMATION CERTIFICATE

- (a) A Building Information Certificate (BIC) must be issued by Council relating to the retention of other existing unauthorised works in the area subject of this development application.
- (B) Evidence that will sufficiently enable Council to be satisfied as to those matters identified in deferred commencement conditions, as indicated above, must be submitted to Council within 24 months of the date of determination of this deferred commencement consent failing which, this deferred development consent will lapse pursuant to section 4.53(6) of the Environmental Planning and Assessment Act 1979.
- (C) The consent will not operate until such time that the Council notifies the Applicant in writing that deferred commencement consent conditions, as indicated above, have been satisfied.
- (D) Upon Council giving written notification to the Applicant that the deferred commencement conditions have been satisfied, the consent will become operative from the date of that written notification, subject to the conditions of consent, as detailed in Part B Conditions of Consent (Once the Consent is Operation) of the subject report.

PART B – CONDITIONS OF CONSENT

SCHEDULE 1A

APPROVED DEVELOPMENT/DESIGN MODIFICATIONS/COVENANTS AND CONTRIBUTIONS/USE AND OPERATION

Note: Some conditions in Schedule A are to be satisfied prior to issue of a Construction Certificate and some are to be satisfied prior to issue of Occupation Certificate, where indicated.

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2021/1336 dated 15/11/2021 and the following drawings prepared by Town Planning Group:

Drawing Number	Drawing Name	Date
Plan A01	Locality Plan	04/08/2021
Plan A03	Existing Conditions – Lot 7	04/08/2021
Plan A04	Existing Conditions – Lot 6 Proposed Conditions – Lot 4B	04/08/2021
Plan A07	Proposed Plan – Lot 4 & Lot 4B	04/08/2021
Plan A08	Proposed Crossed Section Plan	04/08/2021

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) WINDOW REINSTATEMENT

- (a) The unauthorised works to the rear windows must be removed and the retention of existing traditional windows or reinstatement of traditional windows must occur. Evidence that this has occurred must be submitted to and approved by Council's Area Planning Manager prior to the issue of any Occupation Certificate.

(3) APPROVED USE

The premises may only be used for the purposes of a Restricted Premises as defined in Sydney Local Environmental Plan 2012, and specifically as sex on premises venue as defined in Sydney Development Control Plan 2012 with an ancillary licensed cafe.

A restricted premises is defined in the Sydney LEP 2012 as follows:

Restricted premises means premises that, due to their nature, restrict access to patrons or customers over 18 years of age, and includes sex

shops and similar premises but does not include a pub, hotel or motel accommodation, home occupation (sex services) or sex services premises.

A sex on premises venue is defined in the Sydney DCP 2012 as follows:

Sex on premises venue means a premises that gains income from an entrance or membership fee paid to use the premises for sex between the clients but are not premises where sex services take place, or are arranged in exchange for payment. Sex on premises venues include swingers clubs and sauna clubs that accommodate sexual encounters.

(4) NO APPROVAL FOR SEX SERVICES

Sex services as defined in the Sydney Local Environmental Plan and Sydney Development Control Plan 2012 Section 4.4.6 are not to be provided on the premises.

Sex services are defined in the Sydney LEP 2012 as follows:

Sex services means sexual acts or sexual services in exchange for payment.

Sex services are defined in the Sydney DCP 2012 as follows:

Sex services as defined in the Sydney LEP 2012, means sexual acts or sexual services in exchange for payment. For the purposes of these provisions, sexual acts or sexual services include acts of prostitution, including sexual intercourse as defined in s61A of the Crimes Act 1900, being:

- (a) sexual connection occasioned by the penetration to any extent of the genitalia, including surgically constructed vagina or a female person or the anus of any person by:
 - (i) *any part of the body of another person, or*
 - (ii) *any object manipulated by another person*
except where the penetration is carried out for proper medical purposes, or
- (b) sexual connection occasioned by the introduction of any part of the penis of a person into the mouth of another person, or
- (c) cunnilingus, or
- (d) the continuation of sexual intercourse as defined above.

(5) OPERATION OF SEX ON PREMISES USE

The operation of the sex on premises use is to comply with the requirements of development consents U02/00457 and D/2020/552.

(6) HOURS OF OPERATION – SEX ON PREMISES

The hours of operation are regulated as follows:

- (a) The hours of operation of the sex on premises use must be restricted to between the following hours

Monday	10.00am to 1.00am (Tuesday morning)
Tuesday	10.00am to 6.00am (Wednesday morning)
Wednesday	10.00am to 6.00am (Thursday morning)
Thursday	10.00am to 6.00am (Friday morning)
Friday	10.00am to 12.00am (Friday night)
Saturday	24 hours
Sunday	12.00am (midnight) to 6.00am (Monday morning)

(7) MAXIMUM CAPACITY OF PERSONS

The maximum number of persons (including staff and patrons) permitted in the entire sex on premises venue at any one time is 200 persons.

(8) PLAN OF MANAGEMENT

- (a) The Plan of Management titled 'Sex on-premises Site and Liquor Licence', prepared by Town Planning Group Pty Ltd dated December 2021, is to be amended prior to the issue of a Construction Certificate or the use commencing, as follows:
- (i) To ensure consistency with all conditions of this development consent.
 - (ii) A waste management plan that outlines the procedures for minimising and managing waste that is generated by the premises. This should address such matters as disposal of bottles, details of waste management facilities, waste collection and storage areas.
 - (iii) To refer to waste storage areas being provided and stored within the building at all times.
- (b) The use must always be operated / managed in accordance with the Plan of Management, submitted to satisfy the condition.

(9) COPIES OF CONSENTS AND MANAGEMENT PLANS

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.

(10) SEX ON PREMISES VENUE - CLEANING

- (a) The premises, including any booths, cubicles, walls, floors and 'glory holes' must be constructed of durable, impervious materials with smooth finishes that are able to be cleaned easily.
- (b) A cleaning register is to be kept on the premises at all times and must be available for inspection by authorised officers on demand. The register must

include but not be restricted to: date/time of all cleaning activities; printed name and signature of the employee(s) conducting the cleaning; and notation of specific areas requiring spot cleaning attention.

- (c) Spot cleaning must be conducted on as a minimum hourly basis or more frequently if needed and during peak periods.
- (d) There must be a minimum of 2 staff available at all times at the premises so as cleaning and security can be maintained.

(11) HEALTH SERVICES ACCESS

The proprietor must give access to health service providers to provide information and educational activities on disease transmission issues and any other issues.

(12) SEX INDUSTRY PREMISES - LIGHTING

- (a) All sex on premises cubicles, booths and sexual activity areas must be fitted with a local lighting system that achieves an adequate level of luminance for the purpose of allowing patrons to conduct examination of each other for visible evidence of sexual transmitted disease and to assist safe sexual practices. User adjustable dimmer switches may be installed to achieve this.
- (b) All sex on premises cubicles, booths and sexual activity areas must be fitted with lighting that achieves a minimum luminance of 80lx for the purpose of spot cleaning. This must be achieved either through the provision of a separate zoned lighting system or incorporated into the design of the local lighting system for sexual transmitted infection examination by patrons.
- (c) The premises must be capable of being illuminated with an adequate level of lighting so that the premises can be thoroughly cleaned when patrons are not on the premises.

(13) 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 28 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, USB 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.

(14) NOISE - ENTERTAINMENT

- (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 NPfI unless otherwise agreed by the City’s Area Planning Manager.

(15) NOISE – COMMERCIAL PLANT / INDUSTRIAL DEVELOPMENT

- (a) Noise from commercial plant and industrial development must not exceed a project amenity/intrusiveness noise level or maximum noise level in accordance with relevant requirements of the NSW EPA [Noise Policy for Industry 2017 \(NPfI\)](#) unless agreed to by the City’s Area Planning Manager. Further:
 - (i) Background noise monitoring must be carried out in accordance with the long-term methodology in [Fact Sheet B](#) of the NPfI unless otherwise agreed by the City’s Area Planning Manager.
 - (ii) Commercial plant is limited to heating, ventilation, air conditioning, refrigeration and energy generation equipment.
- (b) An $L_{Aeq,15 \text{ minute}}$ (noise level) emitted from the development must not exceed the $L_{A90, 15 \text{ minute}}$ (background noise level) by more than 3dB when assessed inside any habitable room of any affected residence or noise sensitive commercial premises at any time. Further:
 - (i) The noise level and the background noise level shall both be measured with all external doors and windows of the affected residence closed.
 - (ii) Background noise measurements must not include noise from the development but may include noise from necessary ventilation at the affected premise.
- (c) Corrections in [Fact Sheet C](#) of the NPfI are applicable to relevant noise from the development measured in accordance with this condition, however duration corrections are excluded from commercial noise.

SCHEDULE 1B

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

(16) BCA COMPLIANCE - ALTERATIONS AND ADDITIONS - UPGRADE OF BUILDING IS REQUIRED

- (a) Pursuant to Clause 94 of the Environmental Planning and Assessment Regulation 2000, the Lot 4 must comply with the *Building Code of Australia* (BCA) including:
 - (i) Fire resistance and stability – Part C1
 - (ii) Compartmentation and separation – Part C2
 - (iii) Protection of openings – Part C3
 - (iv) Provision for escape - Part D1;
 - (v) Construction of exits - Part D2;
 - (vi) Fire fighting equipment - Part E1;
 - (vii) Smoke hazard management – Part E2
 - (viii) Visibility in an emergency, exit signs and warning systems - Part E4;

Prior to a construction certificate being issued, the Certifying Authority must ensure that the proposed works and other upgrading works required by this condition satisfy the Building Code of Australia by complying with Clause A2.1 of the BCA.

(17) GENERAL HERITAGE

- (a) The proposed works are to be carried out in a manner that minimises demolition, alterations and new penetrations/fixings to the significant fabric of the existing building which is listed as a Heritage Item.
- (b) New services are to be surface mounted rather than chased-in to existing walls to minimise impact on heritage fabric.
 - (i) New services must use existing service runs;
 - (ii) Where this is not possible, details of an alternative solution must be shown on drawings at a suitable scale and submitted and approved by Council's Urban Design and Heritage Manager / Area Planning Manager prior to the issue of any Construction Certificate.
- (c) Appropriately qualified tradespersons (as appropriate) are to be commissioned who are skilled in traditional building and engineering trades to carry out the proposed scope of works.

(18) VENTILATION MINOR WORKS

The premises must be ventilated in accordance with the *Building Code of Australia* and AS1668.1-1998 and AS1668.2-1991.

(19) WASTE AND RECYCLING COLLECTION CONTRACT

Prior to any 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.

(20) WASTE AND RECYCLING MANAGEMENT - COMMERCIAL

- (a) A Waste and Recycling Management Plan, which meets the requirements as set out in Council's *Guidelines for Waste Management in New Developments 2018*, is to be approved by the Principal Certifying Authority prior to a Construction Certificate being issued.
- (b) All requirements of the approved Waste and Recycling Management Plan must be implemented during construction and operation of the development and include:
 - (i) Dedicated space to be provided within the development for the storage and recycling of bulky waste, problem waste, strip out and food waste.
 - (ii) Collection points for waste and recycling must be wholly located within the boundary of the development.
 - (iii) The nominated waste and recycling storage areas must be constructed to meet the relevant conditions required by the City's *Guidelines for Waste Management in New Developments 2018*.
 - (iv) Provision and storage within the boundary of the development of waste and recycling receptacles and any bulky waste at all times.
 - (v) Commercial tenancies must have a commercial waste contract(s) in place prior to commencement of business trading.
 - (vi) The path of travel between the bin storage areas/bulky waste storage areas and the designated waste/recycling collection point is to have a minimum 1,200mm wall-to-wall clearance, be slip-proof, of a hard surface, be free of obstructions and at no point have a gradient exceeding 1:14. The use of a lift is permitted, but consideration should be given to the inclusion of a service lift in this instance.

Note: The building manager/strata title manager or body corporate is responsible for ensuring all tenants are kept informed regarding Council's policies, and best practice waste and recycling source separation.

UPON COMPLETION OF THE DEVELOPMENT

- (d) Prior to any 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*.

(21) WASTE/RECYCLING COLLECTION - COMMERCIAL

- (a) Waste storage and 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) Waste and recycling bins must not be placed on the street for collection. Services must be conducted within the property boundary or as a wheel-out/wheel-back service.

SCHEDULE 1C

DURING CONSTRUCTION/PRIOR TO OCCUPATION/COMPLETION

(22) 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.

(23) 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*.

(24) ENCROACHMENTS – PUBLIC WAY

Apart from existing encroachments by the heritage buildings, no portion of the new works, including gates and doors during opening and closing operations, shall encroach upon or over Council's footpath area.

(25) LOADING AND UNLOADING DURING CONSTRUCTION

The following requirements apply:

- (a) All loading and unloading associated with construction activity must be accommodated on site, where possible.
- (b) If, it is not feasible for loading and unloading to take place on site, a Works Zone on the street may be considered by Council.
- (c) A Works Zone may be required if loading and unloading is not possible on site. If a Works Zone is warranted an application must be made to Council at least 8 weeks prior to commencement of work on the site. An approval for a Works Zone may be given for a specific period and certain hours of the days to meet the particular need for the site for such facilities at various stages of construction. The approval will be reviewed periodically for any adjustment necessitated by the progress of the construction activities.
- (d) Where hoisting activity over the public place is proposed to be undertaken including hoisting from a Works Zone, a separate application under Section 68 of the Local Government Act 1993 and Sections 138/139 of the Roads Act 1993 must be submitted to and approved by Council.

(26) 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>