

Attachment E

Existing Consents to be Surrendered

NOTICE OF DETERMINATION OF DEVELOPMENT APPLICATION

Issued under section 80(1)(a) of the Environmental Planning and Assessment Act, 1979

**KING STREET WHARF (former Wharves 9 & 10), DARLING HARBOUR
Xerts Restaurant**

DA 203-06-2002

(FILE No. S02/01233 P11)

I, the Minister for Planning, pursuant to sections 80(1)(a) of the Environmental Planning and Assessment Act ("The Act"), and clause 10 of State Environmental Planning Policy No 56 – Sydney Harbour Foreshores and Tributaries, determine the application referred to in Schedule 1 by granting consent to the application subject to the conditions in the attached Schedule 2.

The reasons for the imposition of conditions are:

- To ensure the creation of a high quality urban environment;
- To protect the amenity of nearby residential areas.



Andrew Refshaige
Minister for Planning

Sydney 9 OCT 2002

SCHEDULE 1

DEVELOPMENT APPLICATION 203-06-02

Applicant name	City Plan Services Pty Ltd
Application date to DUAP	24 June, 2002
Applicant address	Level 6/364 Kent Street Sydney NSW 2000
Proposed development	Internal alterations to the existing restaurant to provide a multi-purpose theatre/function space in conjunction with the existing restaurant and to allow a small ice-cream shop front.
Land to be developed	Xerts Restaurant – 22 The Promenade King Street Wharf

NOTICES RELATING TO MINISTER'S DETERMINATION OF DEVELOPMENT APPLICATION
203-06-2002

1. To ascertain the date upon which the consent becomes effective refer to Section 83 of the Act.
2. To ascertain the date upon which the consent is liable to lapse refer to Section 95 of the Act.
3. Section 97 of the Act confers on an applicant who is dissatisfied with the determination of a consent authority a right to appeal to the Land and Environment Court exercisable within 12 months of the receipt of this notice.
4. The applicant should ensure that all additional approvals and agreements are obtained from other authorities, as relevant.
5. All references to:
 - the consent authority means the Minister for Planning;
 - the Minister means the Minister for Planning;
 - the Director-General means the Director-General of the Department of Planning or her nominee;
 - the Council means the City of Sydney Council;
 - the BCA means the Building Code of Australia; and
 - the PCA means the Principal Certifying Authority

Any advice or notice to the consent authority shall be served on the Director-General of the Department of Planning.

SCHEDULE 2

CONDITIONS OF CONSENT

DEVELOPMENT CONSENT 203-06-2002

General – Approved Development

1. Development at the site shall be carried out generally in accordance with DA 203-06-2002 comprising:
 - Statement of Environmental Effects & Appendices titled "Alterations to Accommodate Multi-Use Theatre/Cinema Function Space" prepared by City Plan Services dated May, 2002;
 - Operational Management Plan prepared by City Plan Services dated May 2002;
 - Venue Management Proposal prepared by Fuzzy Pty Ltd titled "Xerts Theatre/Entertainment Space";
 - Architectural drawings prepared by Alan P Corke Pty Ltd described as follows:

Plan No.	Plan Title	Date
A-001	New tenancy for Xerts – Plan	May, 2002
A-002	New tenancy for Xerts – Section	May, 2002
A-003	New tenancy for Xerts – Plan Cinema Mode	May, 2002
A-004	New tenancy for Xerts – Plan Conference	May, 2002
A-005	New tenancy for Xerts – Plan theatre seating	May, 2002
	New tenancy for Xerts – Ice Cream Servery	

As amended by the following conditions:

2. Permissible Hours of Operation

The hours of operation of the multi function venue located on the northern side of the subject premises are restricted to:

- a. 8.00am – 1:00 am 7 days a week; and
- b. Notwithstanding a) above, the premises may operate between

Sunday to Wednesday – 8.00am – 2.00am;
Thursday to Saturday – 24 Hours operation;

for a trial period of 24 months from the date of commencement of operation; and

- c. Notwithstanding a) and b) the premises may operate as a 24 hour operation venue for a maximum of 8 days in a calendar year, for a trial period of 24 months from the date of this consent;
- d. At the end of the trial period specified in b) and c) the hours of operation revert back to those specified in a);
- d. A further application may be lodged to continue the trading outlined in b) and c) above before the end of the trial period for the Department's consideration. Such consideration will be based on, the following criteria:

- *the performance of the operator in relation to compliance with development consent conditions, and any complaints received and any views expressed by the Police;*
- *Reasonable levels of monitoring of selected events throughout the trial period;*
- *Acoustic reporting of noise generated by typical events throughout the two year period including crowd noise at nearest sensitive receptors (residential dwellings) after the cessation of various events at various times*
- *Demonstration of compliance with the Operational Management Plan;*

NOTE: Details of the above monitoring and acoustic report are to represent a reasonable cross section of events throughout the two year period and is required to be submitted with any application for a review or an extension of trading hours. No further application for an extension of hours will be considered unless this information is provided.

The café servery area and restaurant area located on the southern side of the tenancy is permitted to retain 24 hour operation, seven days a week for use as a themed restaurant as per its original operation.

3. Entry and Exit of Patrons from the Premises

Under no circumstances shall the office space fronting onto Erskine Street be used as an entry or exit point (except in the case of emergency or as required under the BCA) to the restaurant or function venue past 12 midnight seven days a week. Entry and Exit to the venue and the restaurant after 12 midnight shall occur from the Lobby area on the Waterfront Promenade only.

Reason: To protect the amenity of residential areas located within King Street Wharf.

4. Compliance with the Operational Management Plan

Except as otherwise modified through conditions of consent, the use of the premises is to be undertaken in accordance with the "Operational Management Plan" for Xerts Restaurant prepared by City plan Services dated May, 2002.

5. Signage

Any signage associated with the approved use, other than that permitted without consent, within the public domain areas and on the building shall be subject to a further development application.

NOTE: Signage shall comply with the King Street Wharf Signage Policy.

6. Compliance with the Building Code of Australia

The building works the subject of this consent, including any food premises fit-out are to comply with the minimum requirements of the Building Code of Australia at all times. This includes, but is not limited to, interim fire protection measures during the demolition process and disabled access.

7. Place of Public Entertainment

Prior to the commencement of the use of the premises a Place of Public Entertainment Approval under Section 68 of the Local Government Act 1993 must be obtained from Council. Where licensed premises holds or obtains a Place of Public Entertainment Approval each specific area to

which the approval refers shall display in a prominent location a sign which states "This area is approved for 'X' persons" in letters a minimum of 25mm in height on a contrasting background.

8. Noise - Use of the Premises

The use of the premises including music and other activities must not give rise to any or more of the following:

- a. Transmission of vibration to any place of different occupancy greater than specified in AS 2670;
- b. An indoor sound pressure level in any place of different occupancy (and/or public place) greater than 3dB above the L90 background level or greater than 5dB at the boundary of any affected property in any octave band from 31.5Hz to 8,000 Hz centre frequencies inclusive between the hours of 7:00am to 12:00 midnight daily and 0dB above the L90 background between 12:00 midnight and 7:00 am the following morning. However, when the L90 background levels in the frequencies below 63 Hz are equal to or below the threshold of hearing, as specified by the equal loudness contours for octave bands of noise, this subclause does not apply to such frequencies.
- c. During the period 12 midnight to 7:00am the use shall be inaudible in any habitable room of any residential premises;
- d. The emission of an "offensive noise" as defined under the Protection of the Environment (Operations) Act 1997;
- e. The method of measurement of vibration in (a) and sound levels in (b), (c) and (d) must be carried out in accordance with AS 2973 for vibration measurements, AS 1055 for outdoor sound level measurements, and AS 2107 for indoor sound level measurements;
- f. Should complaints or breaches of noise regulations occur, the Council may employ a suitably qualified acoustic engineer to measure noise emanating from the property and to recommend appropriate action.

9. Noise - Mechanical Plant

Noise associated with mechanical plant must not give rise to any or more of the following:

- a. Transmission of vibration to any place of different occupancy greater than specified in AS 2670;
- b. An indoor sound pressure level in any place of different occupancy (and/or public place) greater than 3dB above the L90 background level or greater than 5dB at the boundary of any affected property in any octave band from 31.5Hz to 8,000 Hz centre frequencies inclusive between the hours of 7:00am to 10:00pm daily and 0dB above the L90 background between 10:00pm and 7:00 am the following morning. However, when the L90 background levels in the frequencies below 63 Hz are equal to or below the threshold of hearing, as specified by the equal loudness contours for octave bands of noise, this subclause does not apply to such frequencies.
- c. A sound level at any point on the boundary of the site greater than 50dBA;
- d. The emission of an "offensive noise" as defined under the Protection of the Environment (Operations) Act 1997.

The method of measurement of vibration in (a) and sound levels in (b), (c) and (d) must be carried out in accordance with AS 2973 for vibration measurements, AS 1055 for outdoor sound level measurements, and AS 2107 for indoor sound level measurements;

10. Patron Behaviour

The Management/License shall ensure that the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood. In this regard the management shall be responsible for the control of noise, loitering and litter generated by patrons of the premises and shall ensure that people leave the premises and area in an orderly manner. If so directed by Sydney City Council, the Management is to employ private security staff to ensure that this condition is complied with to the satisfaction of Council.

Reason: To protect the amenity of nearby residential areas.

11. Waste Removal

The removal of recycled bottles and glasses shall only occur between 7:00am and 8:00pm weekdays and 9:00am and 5:00pm weekends and public holidays, to avoid noise disruption to the surrounding area.

12. Gaming Machines

Gaming machines (card machines, poker machines or any other electronic gaming machine), or the like are not permitted to be installed in the premises.

Conditions that must be satisfied before a Construction Certificate for the relevant building works is issued

13. Storage And Waste Handling

The following requirements apply to storage and waste handling. Details to satisfy the following are required to be submitted to the Director General prior to issue of the Construction Certificate for the cafe:

- (a) The design of the building and the methods of storage and handling of waste and recyclable material must comply with Council's Code for Waste Handling in Buildings (adopted 17 October 1994). The Code requires the submission of a Waste Management Plan, except for minor partition work (Annexure "A" of the Code).
- (b) Certification and compliance with the design and constructional requirements of the Code including the associated Waste Management Plans and with the Conditions of Development Applicant consent relating to waste must be submitted to and approved by the Certifying Authority in the attached form W1 prior to issue of a Construction Certificate for above ground works under the EP&A Act 1979. Such approval must be given by the Architect or other appropriately qualified person experienced in Waste Handling Design and Environmental Management.
- (c) The Certified Plans and Specifications must address compliance with the Waste Code including details of the following, where applicable:
 - (i) The location, design and construction of the garbage room, recycling rooms, bin washing areas and collection areas.
 - (ii) The natural or mechanical ventilation, in accordance with the BCA and Australian Standard 1668.

- (iii) The location and design of any garbage chutes or compaction units required by Council's Code.
- (iv) The proximity of waste handling facilities to commercial food areas or loading docks, with a view to avoiding cross contamination.

Conditions that must be complied with prior to the commencement of works

14. Certification of Mechanical Ventilation

The details of any mechanical ventilation or air conditioning must be certified by a competent person to comply with Council's Ventilation Code, the Building Code of Australia and relevant Australian standards, to the satisfaction of the Principal Certifying Authority prior to commencement of any mechanical services work.

To enable certification, the mechanical ventilation documentation prescribed below shall be submitted to the Principal Certifying Authority:

- a) Certified plans (in duplicate), coloured so as to adequately distinguish the proposed alterations;
- b) A general description of the project plus mechanical ventilation drawings and documentation in duplicate, coloured to show ductwork and equipment as set out below. (Where appropriate a schematic drawing should also be submitted).
 - i) Supply Air Ducts, Shafts and Fans – Blue
 - ii) Return Air Ducts, Shafts and Fans – Pink
 - iii) Outside Air Ducts, Shafts, Intakes and Stair Pressurisation – Green;
 - iv) Exhaust Air Ducts, Shafts, Fans, Discharges and Smoke Spill – Orange;
 - v) Mixing Boxes and Conditions – Yellow
 - vi) ~~Fire Dampers and Electric Heaters – Red~~
- c) Drawings which show where applicable the existing and proposed air intakes, air discharges and cooling towers and their relative position to each other, the boundaries of the site, openable windows, and adjoining buildings;
- d) A Mechanical Ventilation Design Certificate pursuant to Section 93 of the Local Government Act 1993 in the form of Attachment M1, together with the Curriculum Vitae of the Design Engineer or other appropriate Certifier must be submitted to the Principal Certifying Authority (PCA). A copy of the Certificate and a microfilm set of the certified drawings must be submitted to Council by the PCA;
- e) Documentary evidence in support of requests for departure from the prescribed or deemed provisions of the Building Code of Australia or any other requirements.

15. Sydney Water Certificate

An application shall be made to Sydney Water for a Certificate under Part 6, Division 9, Section 73 of the Water Board (Corporatisation) Act 1994 (Compliance Certificate). Evidence that a Compliance Certificate has been applied for (ie Notice of Requirements) shall be produced prior to the commencement of works for the buildings under the Environmental Planning and Assessment Act 1979 for the development. The Section 73 certificate must be submitted to the PCA and the Department of Planning/ Council prior to the occupation of the development / release of the linen plan.

City of Sydney

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NOTICE OF DETERMINATION - APPROVAL

Issued under Section 80(1)(a) of the Environmental Planning and Assessment Act 1979

Development Application No.	D/2013/841
Applicant	VILLACOSTAPLENTY PTY LTD C/- Hatzis Cusack Lawyers PO BOX K226 HAYMARKET NSW 1240
Land to be developed	22 THE PROMENADE , SYDNEY NSW 2000 Lot 12 DP 1097922
Approved development	King Street Brewhouse and Restaurant - Ancillary use of the premises as a micro-brewery. Internal brewery operations will take place between 7.00am and 12 midnight.
Cost of development	\$0
Determination	The application was determined under delegation of Council and was granted consent subject to the conditions in Schedules 1 and 2.
Section 61 Contribution	A Section 61 Contribution (under the City of Sydney Act 1988) does not apply to this development.
Other Approvals	Before commencing <i>building work</i> or <i>subdivision work</i> , a relevant Construction Certificate must be obtained from Council or an Accredited Certifier. Council must be appointed the Principal Certifying Authority for any <i>subdivision work</i> under the Act.
Consent is to operate from	5 August 2013
Consent will lapse on	5 August 2018

Reasons for conditions

Unrestricted consent may affect the environmental amenity of the area and would not be in the public interest.

Right of appeal

NOTICE OF DETERMINATION – APPROVAL D/2013/841

If you are dissatisfied with this decision, Section 97 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the Land and Environment Court within six (6) months after the date on which you receive this notice.

Section 82A of the Environmental Planning and Assessment Act 1979 provides that the applicant may request the Council to review the determination. The request must be made in writing (or on the review application form) together with payment of the appropriate fee. The review must be lodged and determined within six (6) months of the date in which you received this notice.

Note: To enable the section 82A review to be considered within the six (6) month time frame prescribed under the Environmental Planning and Assessment Act 1979, it is advisable to lodge the application for review under Section 82A as soon as possible (within 4 months) to facilitate the statutory timeframes.

Section 82A does not apply to complying development, designated development, integrated development or a determination made by Council under Division 4 in respect of Crown applications. For further information please contact **Vanessa Aziz on ph. 92467758.**

GRAHAM JAHN

Director - City Planning, Development & Transport

NOTICE OF DETERMINATION – APPROVAL D/2013/841

CONDITIONS OF CONSENT

SCHEDULE 1A

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

Note: Some conditions in Schedule 1A 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/2013/841 dated 21 June 2013 and the following drawings:

Drawing Number	Architect	Date
Micro Brewery Plan 1	NA	21.6.13
Micro Brewery Plan 2	NA	21.6.13

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) HOURS OF OPERATION - MINOR DEVELOPMENT

The hours of operation are restricted to between 7.00am and 12 midnight Monday to Sunday.

(3) APPROVED USE

- (a) The use of the 'Micro Brewery' is approved **only** as an ancillary aspect of the approved restaurant. At **no** times is the use of the 'Micro Brewery' to facilitate the use of the premises as a 'pub' as defined in the Sydney Local Environmental Plan 2012.
- (b) The production, sale and consumption of alcohol from the 'Micro Brewery' is restricted to the approved restaurant on site. At no time shall the operator of the 'Micro Brewery' sell, or enable the consumption of alcohol off the premises.

(4) CONSTRUCTION & FITOUT OF FOOD PREMISES – MICROBREWERY

The construction and fitout of the microbrewery must comply with all requirements of the Food Act 2003, the Food Regulation 2010 and the Food Standards Code.

NOTICE OF DETERMINATION – APPROVAL D/2013/841

(5) NOISE - GENERAL

- (a) The emission of noise associated with the use of the premises including the operation of any mechanical plant and equipment shall comply with the following criteria:
- (i) The LAeq, 15minute noise level emitted from the use must not exceed the background noise level LA90, 15minute by more than 5dB when assessed at the boundary of any affected residence.
 - (ii) The LAeq,15minute noise level shall be adjusted for modifying factors in accordance with Part 4 of the Environmental Protection Authority (EPA) NSW Industrial Noise Policy.
 - (iii) The background noise level shall be measured in the absence of noise emitted from the use in accordance with Australian Standard AS 1055.1-1997-Description and measurement of environmental noise.
- (b) An LAeq,15minute noise level emitted from the use must not exceed the LA90, 15minute noise level by more than 3dB in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) when assessed inside any habitable room of any affected residence provided that;
- (i) Where the LA90, 15minute noise level is below the threshold of hearing Tf at any Octave Band Centre Frequency as defined in Table 1 of International Standard ISO 226 - Normal Equal-Loudness-Level Contours then the value of Tf corresponding to that Octave Band Centre Frequency shall be used instead.
 - (ii) The LAeq,15minute noise level and the LA90,15minute noise level shall both be measured with all external doors and windows of the affected residence closed;
 - (iii) The LA90,15minute noise level shall be measured in the absence of noise emitted from the use but with the ventilation equipment (excluding air-conditioning equipment) normally servicing the affected residence operating.
- (c) An LAeq,15minute noise level emitted from the use must not exceed the LA90, 15minute noise level by more than 3dB in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) when assessed inside any commercial premises provided that;
- (i) The LAeq,15minute noise level and the LA90,15minute noise level shall both be measured with all external doors and windows of the commercial premises closed;
 - (ii) The LA90,15minute noise level shall be measured in the absence of noise emitted from the use but with the ventilation equipment (including air-conditioning equipment) normally servicing the commercial premises operating.
 - (iii) In this clause, the term “noise level emitted from the use” means the contributing noise level from the use in isolation to any other ambient noise and account must therefore be taken of the LAeq,15minute when the use is not in operation.

NOTICE OF DETERMINATION – APPROVAL D/2013/841

- (v) In circumstances where this development application refers to a modification or addition to an existing use, the background noise level referred to in this clause pertains to the LA90, 15minute noise level measured in the absence of all noise from the site.

(6) COMPLAINTS - NOISE

Should noise complaint be received by Council from a place of different occupancy (including commercial premises) and the complaint being substantiated by a Council Officer, the use of the area concerned must cease operation until “attenuation works” are carried out so as that the premises complies with the relevant Noise conditions.

(7) EMISSIONS

- (a) The use of the premises must not give rise to the emission of gases, vapours, dusts or other impurities which are a nuisance, injurious or prejudicial to health.
- (b) Gaseous emissions from the development must comply with the requirements of the Protection of the Environment Operations Act, 1997 and Regulations. Uses that produce airborne particulate matter must incorporate a dust collection system.

(8) VENTILATION MINOR WORKS

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

(9) 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.

(10) WASTE AND RECYCLING MANAGEMENT - MINOR

The proposal must comply with the relevant provisions of Council's *Policy for Waste Minimisation in New Developments 2005* which requires facilities to minimise and manage waste and recycling generated by the proposal.

NOTICE OF DETERMINATION – APPROVAL D/2013/841

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>

IMPORTANT ADDITIONAL INFORMATION

A Review of this determination by the *Small Permits Appeal Panel* must be made in writing. An application form is available at the One Stop Shop.

The Environmental Planning and Assessment Act 1979 requires you to:

1. Obtain a **Construction Certificate** prior to the commencement of any works. An application may be lodged with Council, or you may apply to a private accredited certifier for a Construction Certificate. An accredited certifier **must obtain Council's approval** to certain conditions of this development consent, where indicated before issuing the Construction Certificate.
2. Nominate a **Principal Certifying Authority (PCA)** which may be either Council or an accredited certifier and notify Council of that appointment. You **cannot lawfully** commence works without complying with this requirement.
3. Give Council at least two days notice of your intention to commence the erection of a building **before** commencing construction works. You cannot lawfully commence works without complying with this requirement.
4. Obtain an **Occupation Certificate** before commencing occupation or commencing to use the building or on the completion of other works including the erection of a sign. You cannot lawfully commence occupation or the use of a building without complying with this requirement.

You may also need to:

5. Lodge an **Application for Approval** under Section 68 of the *Local Government Act 1993* for an activity under that Act, including the **erection of a hoarding**.
6. Lodge an **Application for Subdivision** to obtain a **Subdivision Certificate** if a land (including stratum) subdivision is proposed and an Application for Subdivision to obtain **Strata Title Subdivision** under the relevant Strata Titles Act, if strata title of the development is proposed.
7. Comply with the Food Act 2003, the Australia New Zealand Food Standards Code, Australian Standard 4674 – 2004, and register the business with Council if the premises is used for the manufacture, preparation, packing, storing, conveying or delivering of food or beverage for sale.
8. Contact Sydney Water, Rockdale (Urban Development Section) regarding the water and sewerage services to this development.
9. Carry out critical stage inspections in accordance with Section 109E of the EP&A Act 1979 and clauses 162A, 162B and 163 of the EP&A Regulation 2000.

Applications and submissions referred to in this consent may be lodged at:

CBD Level 2, Town Hall House, 456 Kent St, Sydney.

KINGS CROSS 50-52 Darlinghurst Rd, Kings Cross.

GLEBE Customer Service Centre, 186 Glebe Point Rd, Glebe.

If you have any enquiries on any aspect of this consent, contact Vanessa Aziz ph. 92467758, email vaziz@cityofsydney.nsw.gov.au.

10 December, 2020

Design Collaborative Pty Ltd
Suite 304 105 Pitt Street
SYDNEY NSW 2000

Dear Sir/Madam,

**SECTION 4.55 MODIFICATION APPROVAL FOR 22 THE PROMENADE , SYDNEY
APPLICATION NO: D/2010/964/B**

I refer to your application dated 7 October 2020 to amend current consent D/2010/964/A.

You are advised that your application for modification has been **approved** under Section 4.55(2) of the Environmental Planning and Assessment Act 1979. A copy of the Notice of Determination of the original development application is attached with the amendments resulting from the modification shown in ***bold italics***.

This approval is limited to only those amendments requested in your Section 4.55 application dated 7 October 2020.

The Council officer dealing with this application is **Charbel Touma ph. 02 9265 9040, email ctouma@cityofsydney.nsw.gov.au**.

Yours faithfully,



MICHAEL SOO
Senior Area Planning Manager

Notes:

Modification of development consent in accordance with Section 4.55 of the Act shall not be construed as the granting of development consent, but reference to a development consent, is a reference to the development consent so modified.

Section 8.9 of the Act confers on an applicant who is dissatisfied with this determination a right of appeal to the Land and Environment Court and the Court may determine the appeal.

For the reasons for imposing conditions, refer to the Notice of Determination for the original development consent.

Modification of a development consent does not remove the need to obtain any other statutory consent necessary under the Environmental Planning and Assessment Act 1979, or any other Act.

The conditions of consent of the development application have been modified with the consent of the applicant.

NOTICE OF DETERMINATION - APPROVAL issued under Section 4.16(1)(a) of the Environmental Planning and Assessment Act 1979

Development Application No.	D/2010/964/B
Applicant	Design Collaborative Pty Ltd
Land to be developed	22 The Promenade , Sydney Lot 12 DP 1097922
Approved development	Continued use for James Squire Brewhouse for outdoor seating consisting of 42 tables and 168 chairs. <i>(Amended on 10 December 2020 under Section 4.55(2) application – D/2010/964/B)</i>
Cost of development	\$0
Determination	The application was determined under delegation of Council and was granted approval subject to the attached conditions. This Section 4.55 modification application was determined under delegation of Council and was granted approval subject to the attached conditions.
Consent is to operate from	22 July 2010
Consent will lapse on	22 July 2015
Date of Section 4.55(2) Modification	10 December 2020

Reasons for conditions

Unrestricted consent may affect the environmental amenity of the area and would not be in the public interest.

Reasons for Approval

1. The development, as modified is considered to be substantially the same as that originally approved; and
2. Appropriate conditions of consent have been imposed to ensure that the development will not result in detrimental environmental impacts.

Community Consultation

The application was publicly exhibited and one submission was received. Issues raised in the submission have been taken into account in the report, and where appropriate conditions of consent have been included in the Notice of Determination to address these issues.

Right of Appeal

If you are dissatisfied with this decision, Section 8.9 of the Environmental Planning and Assessment Act 1979 gives you the right to appeal to the Land and Environmental Court within 6 months of the date of this notification.

Alternatively, you may request a review under Division 8.2 of the Act within 28 days of the date of this notice (NB Division 8.2 is not applicable to integrated or designated development).



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GRAHAM JAHN AM

Director - City Planning, Development & Transport

CONDITIONS OF CONSENT

SCHEDULE 1A

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

Note: Some conditions in Schedule 1A 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/2010/854~~ **D/2010/964** dated 24 June 2010 and the “Plan of Management for the **King Street Brewhouse and Restaurant Operations of ‘James Squire Brewhouse Bar & Restaurant’**” dated ~~July 2010~~ **September 2015** and drawing JSBH/FPI rev D drawn by 3 bald Men and dated 5.4.03

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.

(Amended on 10 December 2020 under Section 4.55(2) application – D/2010/964/B)

(2) USE OF PUBLIC DOMAIN

The use of the public domain for outdoor seating is permitted to operate until the ~~22 July 2015~~ ~~14 October 2020~~ **10 December 2025**. A further application may be lodged to continue trading in the outdoor seating before the end of the subject period for Council’s consideration. Such consideration will be based, inter alia, on the performance of the operator in relation to compliance with development consent conditions and any complaints received.

(Amended 14 October 2015 – D/2010/964/A)

(Amended on 10 December 2020 under Section 4.55(2) application – D/2010/964/B)

(3) HOURS OF TRADING – OUTDOOR SEATING AREA

The hours of operation of the outdoor seating area are regulated as follows:

- (a) The hours of trading must be restricted to between 8.00am and **12.00(am)** midnight Monday to Sunday, **inclusive**.
- (b) Notwithstanding (a) above, the use may trade between midnight and 2am Monday to Sunday for a trial period of five years ~~(end date: 14 October 2020)~~ **(Ending on 10 December 2025)** from the date of this consent.
- (c) A further application may be lodged to continue the trading hours outlined in (b) above 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.

(Amended 14 October 2015 – D/2010/964/A)

(Amended on 10 December 2020 under Section 4.55(2) application – D/2010/964/B)

(4) EASEMENT FOR THE PUBLIC ACCESS

- (a) The existing 2m wide “Easement for the Public Access” which traverses the full length of the tenancy shall continue to provide daily and unrestricted public access on a 24 hours 7 day per week basis.
- (b) Notwithstanding (a) above, the operator may restrict access (only after 6.00 p.m.) to the “Easement for the Public Access” on Thursdays to Saturdays, inclusive and on days of major events for a trial period expiring on ~~22 July 2015~~ ~~14 October 2015~~ **10 December 2025**. The operator shall inform Council in writing of the date upon which these extended hours commenced and of any interruption to the continual operation of these hours.

(Amended 14 October 2015 – D/2010/964/A)

(Amended on 10 December 2020 under Section 4.55(2) application – D/2010/964/B)

(5) NO FURNITURE IN THE EASEMENT FOR THE PUBLIC ACCESS

At no time is the operator to place furniture of any type, or kind, in the “Easement for Public Access” outlined in Condition 4(a) above.

(6) OUTDOOR SEATING AREA

The following conditions apply to footway seating:

- (a) The outdoor seating area shall be for the exclusive use of the operator of the respective tenancy.
- (b) The use of the public domain may be suspended to facilitate Council approved special events to be held in the street or for road and services works. No claim for compensation is entitled under such circumstances.
- (c) All furniture must be kept strictly within the boundaries of the area defined on the approved plan JSBH/FPI rev D drawn by 3 Bald Men and dated 5.4.03.
- (d) The management of the premises shall insure that people entering or waiting for access to the area do not obstruct the public way.
- (e) The use of any permanent walls or screens/barriers to surround the outdoor seating area is prohibited at all times.

- (f) The installation of temporary barriers on the public domain for the purposes of controlling large crowds is approved in principle.
- (g) The boundaries of the temporary barriers must not extend outside the approved outdoor seating area. The temporary barriers must not impede or block public access on the public domain foreshore at any time.
- (h) Removal of the temporary barriers from the public domain must be undertaken within the permitted hours of operation for the outdoor seating area.
- (i) The temporary barriers must be stored when not in use within the premises. No storage shall occur in the outdoor seating area or on the public domain.
- (j) The installation of barriers must not affect the amenity of the public domain. If so directed by Council, the applicant is to change the design, materials and finishes of the temporary barriers to the satisfaction of Council.
- (k) The City of Sydney Council and NSW Police reserve the right to instruct the operator of the premises to remove the temporary barriers off the public domain at any time during the period of this consent.

(7) LIQUOR LICENSING – RESTAURANT USE

The primary use of the premise and associated outdoor seating area shall be for restaurant purposes. A separate application is to be submitted to, and approved by Council prior to any change of the primary use to that of a bar.

(8) NOISE - LICENSED PREMISES

- (a) The L_{A10} noise level emitted from the use must not exceed the background noise level (L_{A90}) 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} noise level emitted from the use must not exceed the background noise level (L_{A90}) 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, the noise from the use must not be audible within any habitable room in any residential property between the hours of 12.00 midnight and 7.00am.
- (d) The L_{10} noise level emitted from the use must not exceed the background noise level (L_{90}) 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.
- (e) The use of the premise must be controlled so that any emitted noise is at a level so as not to create an “*offensive noise*” as defined in the *Protection of the Environment Operations Act 1997* to any affected receiver.

(9) EMERGENCY EGRESS

The fire exit doors from the indoor restaurant areas must not be obstructed or impeded by the location of the outdoor seating.

(10) PERMITTED OCCUPANCY CAPACITY

- (a) The patron occupancy capacity for the **outdoor seating area** shall not exceed **168 persons**. The table and seating layout can vary in the outdoor seating area so long as it does not exceed **168 person** maximum, impede circulation or result in cluttering of the area.
- (b) A sign (in lettering not less than 50mm in height on a contrasting background) shall be displayed at the main entrance to the premise indicating the above occupancy capacity for the outdoor area.

(11) NO SPEAKERS OR MUSIC OUTSIDE

Speakers 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 within the premises and removed in containers.

(13) NEIGHBOURHOOD AMENITY

- (a) Signs must be placed in clearly visible positions within the premise requesting patrons upon leaving the premises to do so quickly and quietly, having regard to maintaining the amenity of the area.
- (b) The management/licensee must ensure that the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood. In this regard, the management/licensee must be responsible for the control of noise and litter generated by patrons of the premises and must ensure that patrons leave the vicinity of the premises in an orderly manner to the satisfaction of Council.

(14) NO SERVICE BARS WITHIN THE OUTDOOR SEATING AREA

No service bars are permitted in outdoor seating area at any time.

(15) PLAN OF MANAGEMENT

The use must always be operated / managed in accordance with the Plan of Management, prepared by Hatzis Cusack Lawyers signed and dated September 2015 that has been approved by Council.

(Amended 14 October 2015 – D/2010/964/A)

(16) COPIES OF CONSENTS AND MANAGEMENT PLANS

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

(Amended 14 October 2015 – D/2010/964/A)

(17) 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 external areas within the outdoor seating area occupied by the public (excluding toilets);*
 - (iii) 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 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.*

(Amended 14 October 2015 – D/2010/964/A)

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>.