

Item 3.**Development Application: 26-28 and 34 Pirrama Road, Pyrmont - D/2021/1445**

File No.: D/2021/1445

Summary

Date of Submission:	7 December 2021 Amended documentation 4 March 2022, 14 March 2022, 13 May 2022 and 14 July 2022
Applicant:	Mr Scott Barwick c/- SJB Planning (NSW) Pty Ltd
Architect/Designer:	Design 5 Architects
Developer:	Doltone House Group
Owner:	Department of Planning and Environment - Place Management NSW (PMNSW)
Planning Consultant:	SJB Planning
Cost of Works:	\$0.00
Zoning:	The site is located in the B3 Commercial Core zone. The proposed development is defined as a function centre. A 'function centre' is permissible in the B3 Commercial Core zone with consent.
Proposal Summary:	The subject application is an amending development application (DA) to allow an existing approved restaurant to be used for the dual purpose of a function centre for a maximum of 110 patrons. The proposed indoor hours of operation are 7.00am to 10.30pm, Monday to Thursday, 7.00am to 11.30pm, Fridays and Saturdays and 7.00am to 10.00pm, Sundays. The proposed outdoor hours of operation are 7.00am to 8.00pm, Monday to Sunday, although use of the outdoor area would still be required during all operating hours for access to the site amenities and for entry/exit to the premises. No building works are proposed as part of the application.

The approved restaurant is expected to open in September 2022. The restaurant has capacity for 166 patrons and includes 102 internal seats and 64 external seats. The approved base indoor hours of trade are 7.00am to 10.00pm, Monday to Sunday with a twelve (12) month trial for trading till 12 midnight. Outdoor seating is limited to trade until 8.00pm, with a twelve (12) month trial to 10.00pm, seven (7) days per week.

To be consistent with the already approved restaurant use, the accompanying Acoustic Report has recommended the following noise emission controls:

- All doors and windows on the southern, western and eastern facades remain closed at all times, and that the door and windows on the northern facade remain closed from 10.00pm.
- That the western terrace area be limited to 36 patrons from 7.00am to 6.00pm and 18 patrons from 6.00pm to 10.00pm; and that the northern terrace be limited to 28 patrons between 7.00am and 10.00pm.
- Between the hours of 10.00pm and 12 midnight, there is to be no use of the outdoor areas except by patrons leaving the premises or accessing the amenities.

Despite the Acoustic Report recommending use of the outdoor area until 10.00pm, the accompanying Plan of Management (PoM) states that use of the outdoor area will only be till 8.00pm, with the exception of allowing patrons to enter/exit the site and access the amenities. The PoM, however, is inconsistent with the Acoustic Report recommendations as it permits the northern terrace to be used by up to 28 patrons at any time, including after 10.00pm. This is also contrary to the proposed outdoor hours of operation which are till 8.00pm, 7 days a week. The PoM is also silent in terms of the number of patrons permitted within the western terrace area before 6.00pm.

The PoM also includes management practices that would be difficult to carry out and enforce, especially in terms of the maximum number of patrons permitted within different parts of the outdoor area.

The proposal is referred to the Local Planning Panel for determination as it represents contentious development, due to the receipt by the City of in excess of 25 unique submissions made by way of objection to the proposal.

The application was notified for a period of 42 days (i.e. 6 weeks) from 15 December 2021 to 26 January 2022. A total of 258 owners and occupiers were notified and 77 submissions were received, including 33 submissions in objection and 44 submissions in support. An online petition, containing 391 signatures, was also received in objection.

Key objections raised in the submissions relate to use and non-compliance issues associated with the existing Doltone House function centres, capacity of the proposed function centre, proposed hours of operation, cumulative impacts of the existing and proposed function centres, ineffectiveness of the PoM, inadequacy of the applicant's Acoustic Assessment, inability for adverse noise impacts to be properly managed or mitigated, ineffectiveness of security personnel, traffic impacts and amenity impacts on the surrounding residential properties especially in terms of noise. The matters raised in the submissions, including those in objection and those in support, are addressed in the body of the report.

Additional and amended information, including a traffic statement, updated plan of management (PoM) and amended acoustic report, were submitted during the assessment process in response to Council's concerns regarding cumulative traffic and noise impacts, and potential for adverse amenity impacts on nearby residential properties. Despite repeated requests for a more detailed and accurate acoustic assessment, the applicant has not adequately demonstrated that the proposal will not have significant noise impacts to neighbours.

The proposed function centre use is inconsistent with the relevant objectives of the Sydney LEP 2012 and is inconsistent with the Sydney DCP 2012 in terms of venue management, noise and residential amenity.

The proposal has failed to demonstrate that the proposed function centre use will not result in adverse impacts on the amenity of the nearby residential properties, that the proposed management practices will be capable of addressing amenity concerns, or that the site is suitable for the use. As such, the application is recommended for refusal.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

- (i) Environmental Planning and Assessment Act 1979
- (ii) SEPP (Resilience and Hazards) 2021
- (iii) SEPP (Biodiversity and Conservation) 2021
- (iv) Sydney Local Environmental Plan 2012
- (v) Sydney Harbour Foreshores and Waterways Area Development Control Plan (DCP) 2005
- (vi) Sydney DCP 2012

Attachments:

- A. Selected Plans
- B. Plan of Management

Recommendation

It is resolved that consent be refused for Development Application No. D/2021/1445 for the reasons outlined below.

Reasons for Recommendation

The application is recommended for refusal for the following reasons:

Unacceptable noise and amenity impacts

- (A) The proposed development is likely to result in unreasonable noise and amenity impacts, as it does not:
- (i) address the likely impacts of the development on the occupants of surrounding residential land uses;
 - (ii) consider the potential cumulative noise impacts from the proposed and existing late night premises in the area;
 - (iii) consider the potential impacts from patrons arriving and leaving the site en masse as is typical for a function centre use;
 - (iv) provide sufficient information to enable an accurate or detailed assessment of the potential noise impacts to be undertaken;
 - (v) satisfactorily demonstrate that the recommended noise emission restrictions are appropriate for the proposed use, will adequately protect the surrounding resident's amenity, or will be capable of being complied with; and
 - (vi) provide adequate measures to eliminate or control unreasonable noise impacts on nearby residential land uses.

The proposed development is therefore contrary to and fails to satisfy:

- (vii) Section 4.15(1)(b) of the Environmental Planning and Assessment Act, 1979.
- (viii) Clause 1.2 of the Sydney Local Environmental Plan 2012, including the aim at part 2(h) of the clause.
- (ix) Objective (b) at Section 3.15 'Late Night Trading Management' of the Sydney Development Control Plan 2012.
- (x) Objective (h) at Section 3.15 'Late Night Trading Management' of the Sydney Development Control Plan 2012.
- (xi) Objective (k) at Section 3.15 'Late Night Trading Management' of the Sydney Development Control Plan 2012.
- (xii) Section 4.2.3.11 'Acoustic privacy' of the Sydney Development Control Plan 2012.

Unacceptable Plan of Management

- (B) The Plan of Management is unsatisfactory given that:
- (i) the proposed management practices would be difficult to carry out and enforce and not likely to be adequate;
 - (ii) it has not been demonstrated that noise and amenity impacts on residential properties could be effectively managed;
 - (iii) it has not been demonstrated that use of the outdoor areas could operate in accordance with the proposed recommended patron and operating hour restrictions;
 - (iv) the proposed management measures rely on constant monitoring of the outdoor terrace areas; and
 - (v) the proposed management practices seek to encourage patrons to behave in a particular manner but cannot guarantee or enforce the terms of the management plan.

The proposed development is therefore contrary to and fails to satisfy:

- (vi) Objective (c) at Section 3.15 'Late Night Trading Management' of the Sydney Development Control Plan 2012.
- (vii) Objective (n) at Section 3.15 'Late Night Trading Management' of the Sydney Development Control Plan 2012.
- (viii) Section 3.2 'Plan of management requirements' at Schedule 3 of the Sydney Development Control Plan 2012.

Does not promote orderly development

- (C) The proposal does not promote the orderly use of the land, given that:
- (i) the dual use of the site, for a restaurant and function centre, would be difficult to manage given that each use would have different patron capacities, different hours of operation and different plans of management.

The proposed development is therefore contrary to and fails to satisfy:

- (ii) Object (c) at Clause 1.3 of the Environmental Planning and Assessment Act 1979.

Site unsuitable for the development

- (D) The proposed development has not satisfactorily demonstrated that:
- (i) the site is suitable for the development given its proximity to sensitive residential land uses.

The proposed development is therefore contrary to and fails to satisfy:

- (ii) Section 4.15(1)(c) of the Environmental Planning and Assessment Act, 1979.

- (iii) The B3 Commercial Core zone objectives of the Sydney Local Environmental Plan 2012.
- (iv) Objective (a) at Section 3.15 'Late Night Trading Management' of the Sydney Development Control Plan 2012.

Impacts on the public domain

(E) The proposal has the potential to impact negatively on the amenity of the street and public domain, given that:

- (i) it has not been demonstrated that there will be no queuing on the footpath.

The proposed development is therefore contrary to and fails to satisfy:

- (ii) Objective (a) at Section 3.2.2 'Addressing the street and public domain' of the Sydney Development Control Plan 2012.

Not in the public interest

(F) The proposal is unsatisfactory having regard to the submissions made in objection; and is contrary to the public interest.

The proposed development is therefore contrary to and fails to satisfy:

- (i) Section 4.15(1)(d) of the Environmental Planning and Assessment Act, 1979.
- (ii) Section 4.15(1)(e) of the Environmental Planning and Assessment Act, 1979.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 11 in DP 883135 and is known as 34 Pirrama Road, Pyrmont. The site is irregular in shape with an area of approximately 448sqm. The site has a primary street frontage of 34 metres to Pirrama Road to the south-west and direct frontage to Jones Bay Wharf to the north-east. A portion of the development site is also located on the adjoining Jones Bay Wharf site at Lot 2 in DP 1050360 and Lot 22 in SP 69951, which is known as 26-28 Pirrama Road, Pyrmont.
2. The site contains a single storey (double height) federation brick and timber building known as the former Arrow Marine Building. The building was originally constructed as a garage/warehouse for the adjacent Jones Bay Wharves and has previously been used as an office premises.
3. The building has approval for use as a licensed restaurant with indoor and outdoor seating (D/2020/942 as amended). The building is contained to 34 Pirrama Road, while the northern portion of the outdoor area and site entry/exit are located over 26-28 Pirrama Road, Pyrmont. The works associated with the restaurant have recently been completed and it is understood that the restaurant is expected to open in September 2022.
4. The south-west building elevation fronting Pirrama Road includes four (4) former garage door openings. The openings include glazing, inset behind the original roller shutters, and provide views into and out of the building. Two (2) access doors, with frontage to Pirrama Road, are sited to the northern portion of the building and are flanked by two window openings. The north-east elevation, fronting Jones Bay, contains four (4) double doors opening onto the northern terrace area. The north-east (shortest) elevation contains full height double doors which open outwards to the western terrace area. Retractable awnings, attached to the building, provide all-weather protection to the northern and western terrace areas.
5. The surrounding area is characterised by a mixture of land uses, primarily being commercial (cafes, restaurants, function centres and offices) and residential. To the north is Jones Bay Wharf, including the Doltone House function centre located at 26-32 Pirrama Road. To the north-east, opposite Jones Bay Wharf, are multi-unit residential buildings including the recently constructed 'Revy building'. To the east, on the adjoining site, is commercial office space occupied by Google. Development to the south and south-west is dominated by high-rise residential apartment building, and to the west, on the opposite side of Pirrama Road, is the escarpment face. Further to the north-west, at 25 Pirrama Road, is a four (4) storey residential flat building known as "Macarthur". This building is located approximately 25m from the subject site.
6. The site is identified as a local heritage item (former garage including interiors, yard, wharf and seawall - I1250) but is not located in a heritage conservation area.
7. The site is located within the Pyrmont Point locality and a small portion of the site is identified as being subject to flooding.
8. Site visits were carried out on 1 March 2022 and 2 September 2022. Photos of the site and surrounds are provided below:



Figure 1: Aerial view of the site and surrounds. Subject site shaded in blue and red, with the portion in red being located on the adjoining site at 26-28 Pirrama Road.



Figure 2: South-west building elevation viewed from Pirrama Road frontage



Figure 3: Site entry and exit viewed from Pirrama Road



Figure 4: View of the north-east and north-west elevations of the building including the northern and western outdoor terrace areas from within the site



'Macarthur' apartments -
25 Pirrama Road

Figure 5: View of the residential apartments on the opposite side of Pirrama Road from the enlarged outdoor terrace area located on the portion of the site located at 26-28 Pirrama Road



'Macarthur' apartments -
25 Pirrama Road

Figure 6: View towards the residential apartments on the opposite side of Pirrama Road and Jones Bay Wharf from the northern terrace area



Figure 7: View from the northern terrace area looking east towards the Google commercial offices



Figure 8: View of the site amenities located at the far end of the northern terrace



Figure 9: View of Jones Bay Wharf, including the existing function centres at 26-32 Pirrama Road, from the northern terrace area



Figure 10: View towards The Revy residential apartments at 8 Darling Island Road from the northern terrace area



Figure 11: View looking north-west along Pirrama Road from the Pirrama Road street frontage



Figure 12: View of the Macarthur residential apartments at 25 Pirrama Road from the front of the site.



Figure 13: View of the escarpment located on the opposite side of Pirrama Road.



Figure 14: View towards the subject site from the Macarthur residential apartments at 25 Pirrama Road



Figure 15: View of the internal fit-out of the subject premises

History Relevant to the Development Application

Development Applications

9. The following applications are relevant to the current proposal:
 - **P/2019/1853** – A Complying Development Certificate (CDC) was issued by Modern Building Certifiers on 3 September 2019 for the change of use of the office building to a licensed restaurant (indoors only) with a maximum patron capacity of 50 patrons and associated internal fit out works.
 - **HWC/2019/446** – A Heritage Works Confirmation (HWC) was issued on 6 January 2020 verifying that repair and maintenance works could be undertaken to the building without consent. The works included the removal of existing aluminium windows on the north-east and east elevations and replacement with reconstructed timber windows matching the surviving original windows on the east elevation.

- D/2020/942** - Development consent was granted on 11 December 2020 for the use and associated alterations and additions to the building for a licensed restaurant including works to provide outdoor seating (see Figure 16). The restaurant is expected to open in September 2022.

The restaurant has capacity for 166 patrons and includes 102 internal seats and 64 external seats. The approved base hours of trade for indoor are 7.00am – 10.00pm seven (7) days per week with a twelve (12) month trial for trading to 12 midnight. Outdoor seating is limited to trade until 8.00pm with a twelve (12) month trial to 10.00pm, seven (7) days per week.

The consent requires that all patrons must have an allocated seat and that the number and location of tables and chairs provided for seated dining must be in accordance with the approved floor plan at all times.

- D/2020/942/A** – A Section 4.55(1A) was approved on 5 August 2021 to delete part of condition 43 of the consent relating to BCA upgrades as compliance with the condition would require extensive works that would unreasonably alter the heritage building.
- B/2021/65** - As the appointed Principal Certifying Authority (PCA), the City of Sydney issued a Construction Certificate on 16 August 2021 for the works associated with D/2020/942 (as amended). A Part Occupation Certificate was issued by the City of Sydney on 4 August 2022.
- D/2020/942/B** - A Section 4.55(1) was approved on 6 April 2022 to amend the site address to include a portion of 26-28 Pirrama Road, Pyrmont and include additional plans in the stamped approved plan set (see Figure 17).

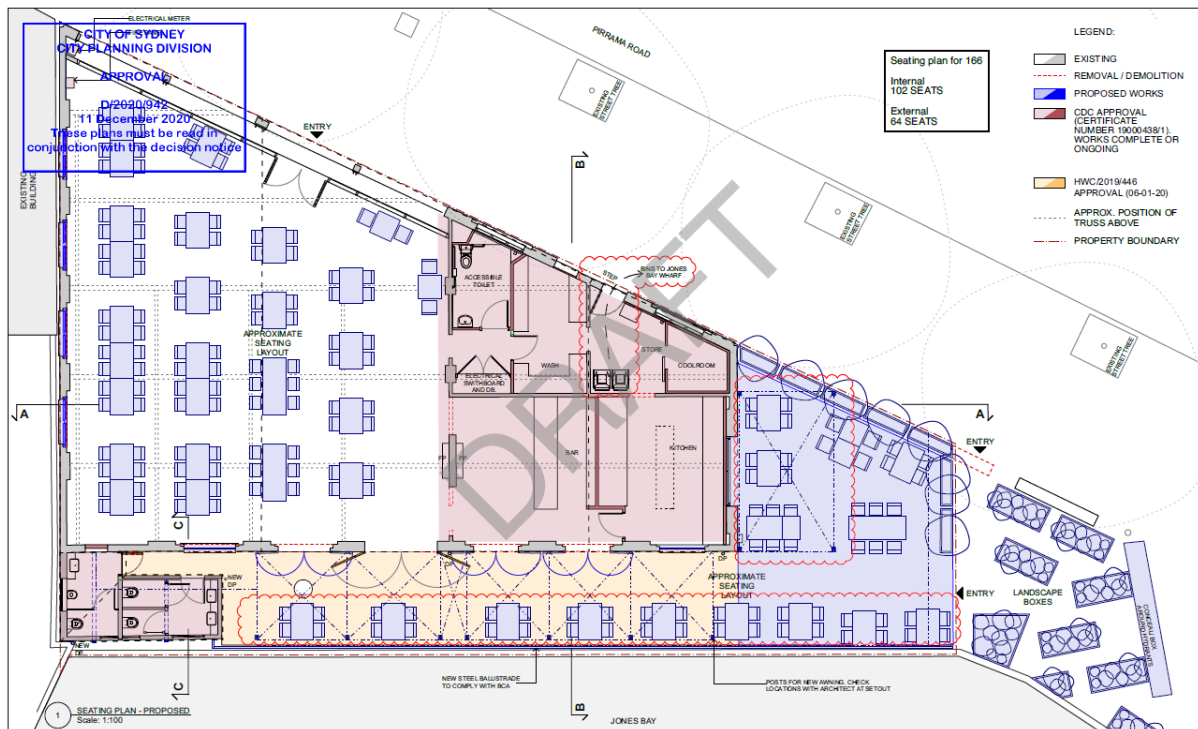


Figure 16: Extract of approved plan granted under D/2020/942, showing the approved indoor and outdoor seating layout

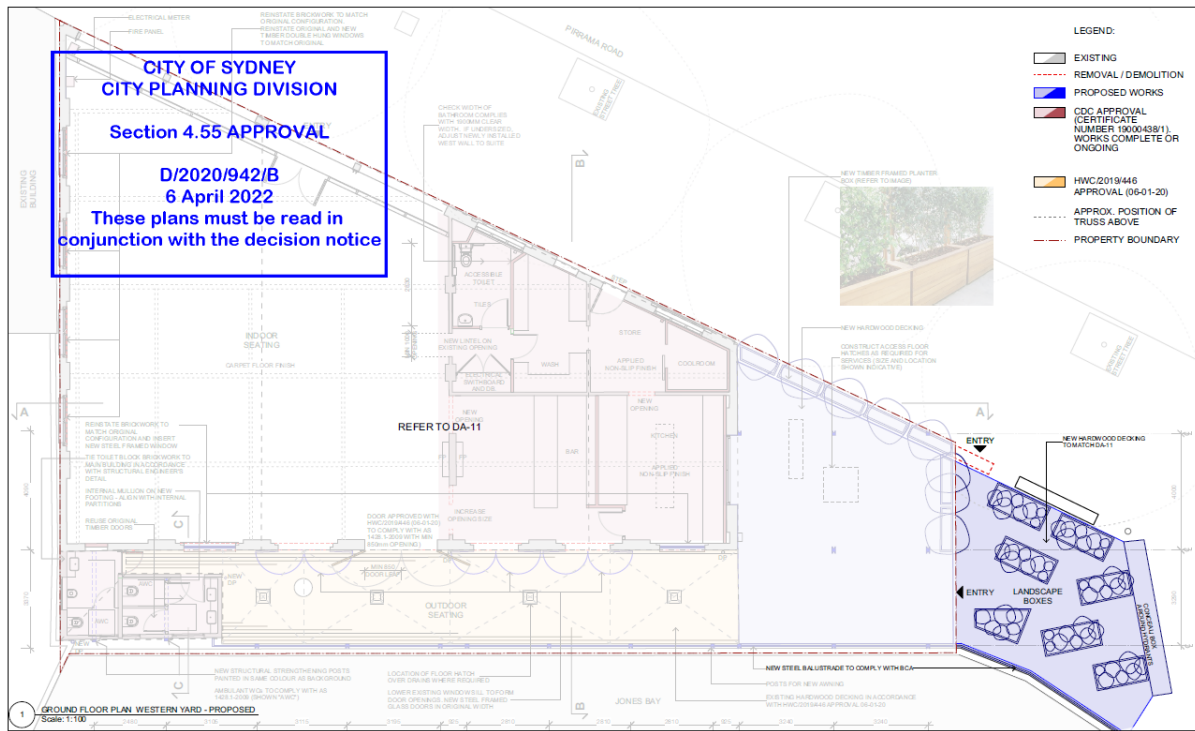


Figure 17: Extract of approved plan granted under D/2020/942, with the portion of the site located on 26-28 Pirrama Road shaded purple. This portion of the outdoor area contains landscape boxes which limits the useability of this area.

Compliance Action

10. The site has previously been subject to compliance action relating to unauthorised works to the building.
11. A complaint was received by Council on 16 June 2020 regarding the increase of the windows openings. Council staff conducted a site investigation. The investigation revealed that a CDC had been invalidly issued as the building is a Heritage Item under the Sydney LEP 2012. All work under the CDC to facilitate the change of use from an office to a restaurant had been completed at the time of the inspection. Works had also been undertaken to increase the windows openings on the northern and southern elevations without prior approval from Council.
12. A Stop Work Order and penalty infringement notice was issued for all works undertaken outside of HWC/2019/446. The compliance action was subsequently resolved when DA consent D/2020/942 was issued on 11 December 2020.
13. The City, as the appointed PCA for B/2021/65, further investigated potential non-compliance with the approved CC plans and conditions of D/2020/942 (as amended). All matters were resolved, and a Part Occupation Certificate was issued by the City of Sydney on 4 August 2022.
14. The previous compliance action is not relevant to the subject application.

Amendments

15. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information was sent to the applicant on 11 January 2022. The following was requested:
 - An amended Acoustic Report addressing matters relating to the use of the outdoor area and which considers the impacts of all patrons arriving and leaving the premises at the one time.
 - A Traffic Report and amended Acoustic Report assessing the cumulative impacts on the area from the proposed and existing late-night premises and function centres which currently all close at 12 midnight.
 - Details of how the bump out of sound systems, catering, etc, will work at the conclusion of a function, including details of loading and unloading operations.
 - An updated Plan of Management (PoM) addressing the above issues, including details of how impacts associated with patrons arriving and leaving the premises will be managed.
16. The applicant responded to the request on 4 March 2022 and submitted a covering letter and revised PoM, dated March 2022.
17. Following a review of the additional information by Council Officers, further correspondence was sent to the applicant on 7 March 2022 requesting that the outstanding issues identified in Council's correspondence of 11 January 2022 be addressed. Council officers did not accept that the difference between the approved restaurant use, and proposed function centre will be minimal and again requested that an amended Acoustic Report and Traffic Report assessing the cumulative impacts of the function centre be submitted.
18. The applicant responded on 14 March 2022 and submitted an updated Acoustic Report. On 13 May 2022, the applicant submitted a Traffic Statement and updated PoM, dated May 2022. The revised documentation also included a reduction to the maximum patron numbers from 130 to 110, and a reduction to the proposed hours of operation.
19. Following a review of the revised documentation by Council Officers, requests for further updated information were sent to the applicant on 29 June 2022 and 7 July 2022. The applicant was requested to clarify various management measures within the PoM, provide updated plans to reflect the reduced patron numbers, and address various concerns with the Acoustic Report.
20. The applicant responded on 14 July 2022. While some changes were made to the PoM (dated July 2022), no changes were made to the proposed plans or to the Acoustic Report. Despite repeated requests for an amended Acoustic Report, the applicant has shown no commitment to addressing the significant concerns raised by Council officers.
21. During the preparation of the assessment report, Council officers established that a portion of the development site was located on the adjoining Jones Bay Wharf site at 26-28 Pirrama Road, Pyrmont. Following confirmation from the applicant, the relevant property description has been updated to include Lot 2 in DP 1050360 and Lot 22 in SP 69951.

22. The final DA submission, as amended by the revisions summarised above, is the subject of this assessment report.

Proposed Development

23. The amending development application seeks consent for the following:
- An additional use of the premises as a function centre. The premises is currently permitted to be used as a licensed restaurant (under development consent D/2020/942 as amended). It is proposed that the premises would operate either as a licensed restaurant or as a function centre, but that both uses would not operate at the same time.
 - A maximum capacity of 110 patrons when being used as a function centre, including indoor seating for 110 guests (although the plans show indoor seating for 130 patrons). No outdoor seating is proposed when being used as a function centre (although the plans do nominate outdoor seating).
 - Indoor base operating hours of 7.00am to 10.00pm, Monday to Sunday, with a trial period of twelve (12) months for extended indoor hours of 7.00am to 10.30pm, Monday to Thursday and 7.00am to 11.30pm, Fridays and Saturdays.
 - Outdoor operating hours of 7.00am to 8.00pm, Monday to Sunday with the following capacity restrictions:
 - (i) Western terrace area: 18 persons between 6.00pm and 8.00pm.
 - (ii) Northern terrace area: 28 persons at any time including after 8.00pm.
 - Use of the western outdoor terrace area after 8.00pm as an exit thoroughfare.
 - Use of the northern outdoor terrace area after 8.00pm as a thoroughfare to the amenities serving the site.
24. The approved plan for the restaurant use (Figure 16) suggests that the area shown in orange is the "northern terrace" and the area shown in purple is the "western terrace". The plans and accompanying reports submitted as part of the subject DA, however, do not define the "western terrace" and "northern terrace" areas (see Figure 19 and Figure 20).
25. The additional use requires no building works and is to utilise the existing fit-out for the approved restaurant. The internal seating would be reconfigured when used for functions and the outdoor seating would be removed and stored within the Doltone House premises at Jones Bay Wharf.

26. The applicant has advised that a modification application to amend Condition 2 of DA 2020/942 (as amended) is proposed to be lodged following determination of the subject DA. Condition 2 of the current approval requires that the location of the tables and chairs must be in accordance with the approved floor plan at all times. The applicant has advised that the modification is required to provide flexibility in the table and seating configuration. A draft Notice of Modification has been prepared by the applicant and accompanies the DA.
27. Plans of the proposed development are provided below.

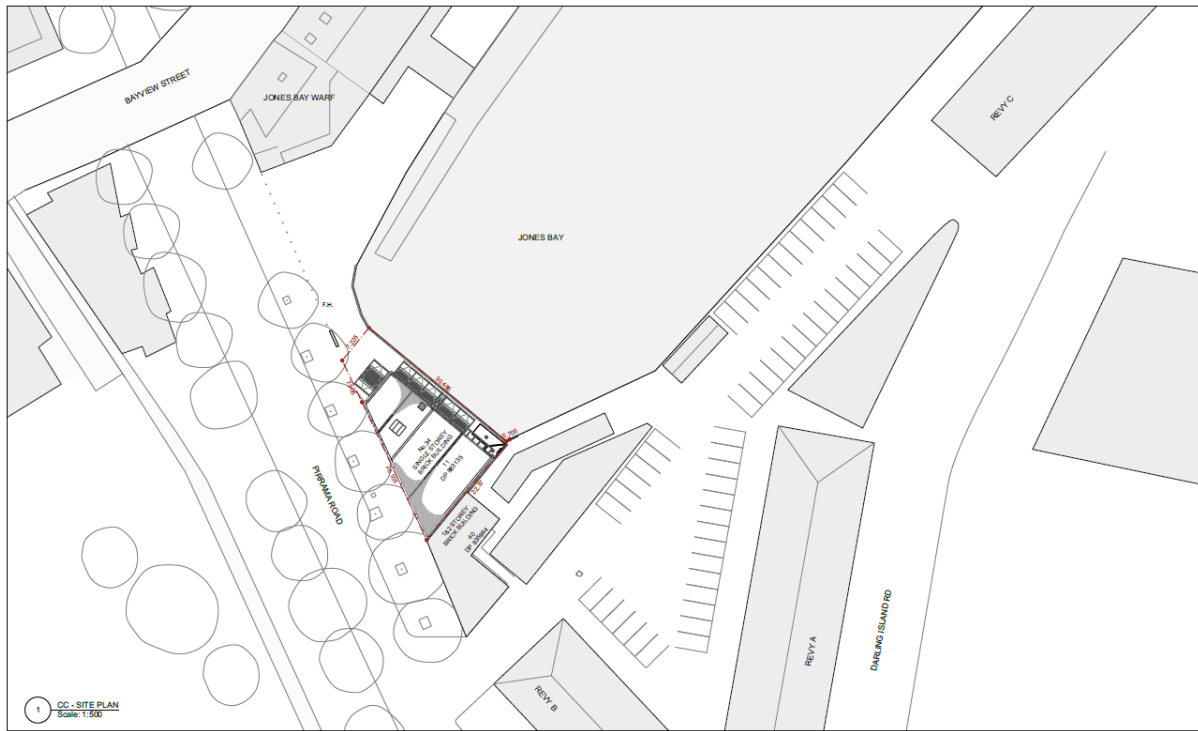


Figure 18: Proposed site plan

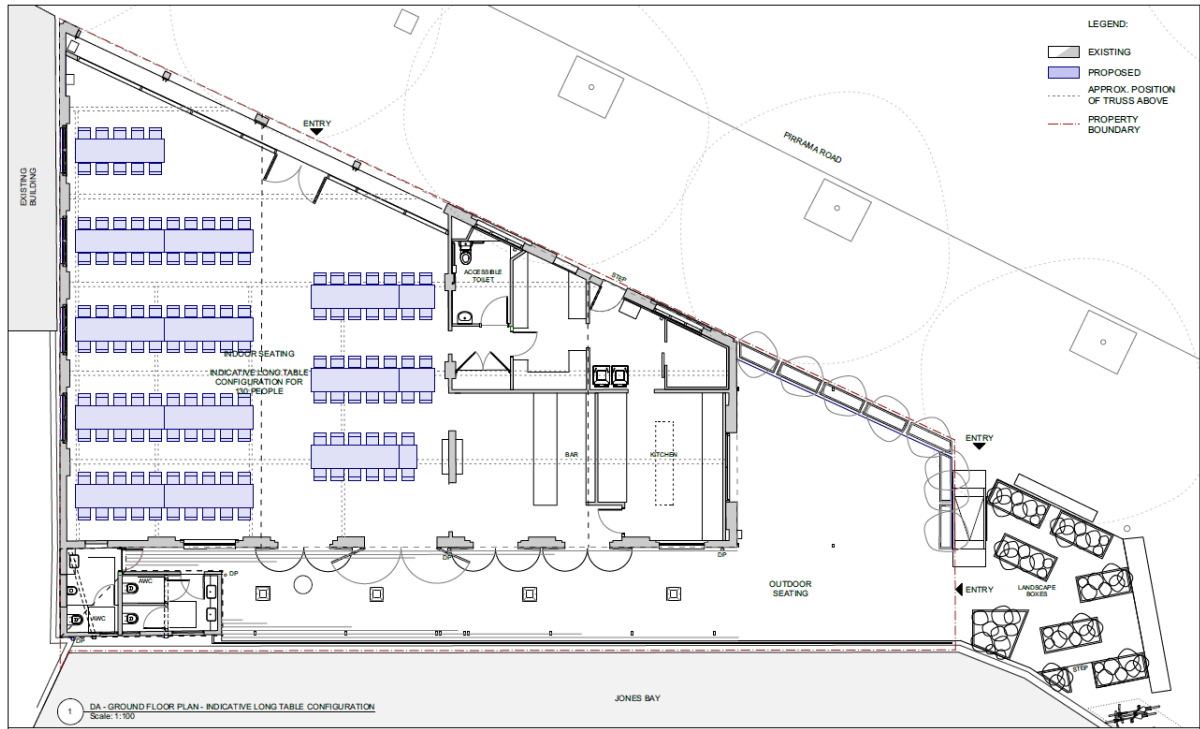


Figure 19: Proposed seating plan option A, noting that the configuration is for 130 instead of 110 patrons

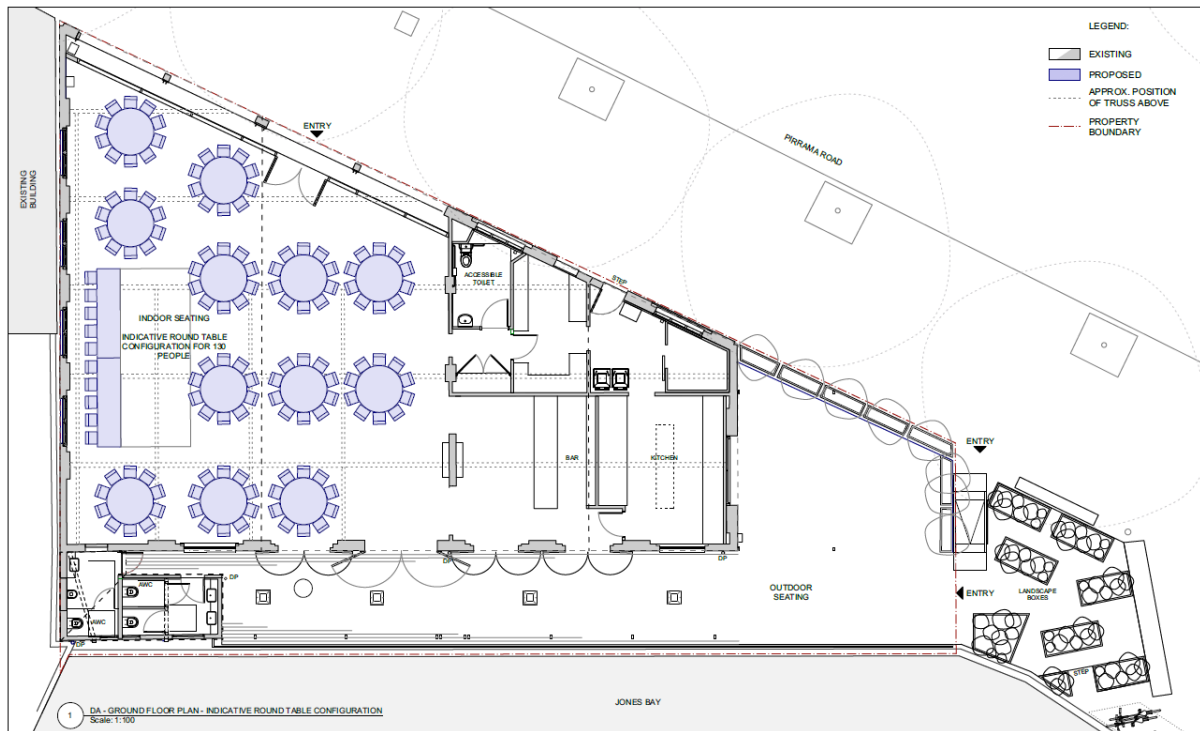


Figure 20: Proposed seating plan option A, noting that the configuration is for 130 instead of 110 patrons

Assessment

28. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

State Environmental Planning Policies

State Environmental Planning Policy (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land

29. The aim of SEPP (Resilience and Hazards) 2021 – Chapter 4 Remediation of Land is to ensure that a change of land use will not increase the risk to health, particularly in circumstances where a more sensitive land use is proposed.
30. Given that the proposal seeks to introduce an additional use to an already approved food and drink premises and that no building works are proposed, there will be no increased risk to human health.

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 - Chapter 10 Sydney Harbour Catchment

31. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP (formerly subject to Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005). The SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
32. The site is within the Sydney Harbour Catchment and eventually drains into the Harbour. The site is also located within the Foreshores Waterways Area. The objectives of the SEPP are therefore also applicable to the proposed development.
33. The matters to be considered under the SEPP, as relevant to the proposed development, are outlined below.

Compliance Table – matters for consideration		
Development Control	Compliance	Comment
10.10 Sydney Harbour Catchment	Yes	<p>The additional land use would have no additional impacts on the hydrological, ecological, and geomorphological processes or health of the catchment.</p> <p>The additional land use would have no additional impact on the visual quality of Sydney Harbour.</p>

Compliance Table – matters for consideration		
10.11 Foreshores and Waterways Area	Yes	The additional land use would have no additional impacts on any natural assets or the unique environmental or visual qualities of Sydney Harbour and its foreshores. Public access to and along the foreshore would not be altered by the proposal.
10.12 Heritage Conservation	Yes	The additional land use does not require any building works and would not prevent the heritage listed building from being protected and conserved.
10.19 Biodiversity, ecology and environment protection	Yes	The existing stormwater management system would continue to service the building. The additional land use would have no effect on the quality of water entering the waterways.
10.20 Public access to and use of foreshores and waterways	Yes	The existing public access arrangements to and along the foreshore would not be altered by the proposal.
10.22 Interrelationship of waterway and foreshore uses	Yes	The proposal would not change the existing land uses in the surrounding area or have any impact on the use of the waterway.
10.23 Foreshore and waterways scenic quality	Yes	The additional land use would not result in any detrimental impacts to the visual quality of Sydney Harbour and its foreshore and would not alter the character of the area.
10.24 Maintenance, protection and enhancement of views	Yes	The development would maintain views (including night views) to and from Sydney Harbour and would not adversely impact on any views from a public place or heritage item.

Sydney Harbour Foreshores and Waterways Area DCP 2005

34. The Sydney Harbour Foreshores and Waterways Area Development Control Plan 2005 contains guidelines that are to be applied to all land-based developments. Consideration against the relevant guidelines is provided below.

Compliance Table		
Development Control	Compliance	Comment
5.2 Foreshore Access	Yes	The additional land use would not alter public access to and along the foreshore.
5.4 Built form	Yes	The additional use requires no building works and is to utilise the existing fit-out for the approved restaurant. As such, there would be no change to the built form.

Local Environmental Plans

Sydney Local Environmental Plan 2012

35. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Partial compliance	<p>The site is located in the B3 Commercial Core zone. The proposed development is defined as a function centre and is permissible with consent in the zone.</p> <p>A function centre means a building or place used for the holding of events, functions, conferences and the like, and includes convention centres, exhibition centres and reception centres, but does not include an entertainment facility.</p> <p>The proposed function centre does not meet the objectives of the zone.</p> <p>Refer to the Discussion section for further details.</p>

Part 4 Principal development standards

Provision	Compliance	Comment
4.3 Height of buildings	Yes	A maximum building height of 9m is permitted for the portion of the site containing the existing building. The north-west portion of the site, adjoining

Provision	Compliance	Comment
		<p>the forecourt area of 26-28 Pirrama Road, permits a maximum height of 18m.</p> <p>The proposal is for an additional use only.</p> <p>Given that no building works are proposed, the proposal retains the existing building height of approximately 7.8m.</p>
4.4 Floor space ratio	Yes	<p>A maximum floor space ratio of 1:1 is permitted for the portion of the site containing the existing building. The north-west portion of the site, adjoining the forecourt area of 26-28 Pirrama Road, permits a maximum floor space ratio of 1.25:1.</p> <p>The proposal does not include any building works and therefore does not seek to change the existing gross floor area.</p>

Part 5 Miscellaneous provisions

Provision	Compliance	Comment
5.10 Heritage conservation	Yes	<p>The site is a local heritage item (I1250) being a “Former garage including interiors, yard, wharf and seawall (formerly 17A Pirrama Road)” but is not located within a heritage conservation area. The building is commonly known as the Arrow Marine Building.</p> <p>The site is adjacent to the following heritage items:</p> <ul style="list-style-type: none"> • I1200 (Local) – Eastern escarpment and palisade fence, above Pirrama Road”. • I1249 (Local) – 26-32 Pirrama Road – "Jones Bay Wharf" (Wharf 60, Berths 19–20) including wharf, sea wall, sheds and interiors, lower and elevated road and industrial artefacts.

Provision	Compliance	Comment
		<ul style="list-style-type: none"> I1251 (State) - 38-42 Pirrama Road – Former Royal Edward Victualling Yard warehouses “A” and “B” including interiors, wharf, sea wall, yard and industrial archaeology. I1252 (State) – 38-42 Pirrama Road – Naval Warehouse, Darling Island Former Royal Edward Victualling Yard warehouse “C” including interiors, wharf, seawall, yard and industrial artefacts. <p>The proposal is for an additional use of the premises only and will not have a detrimental impact on the heritage significance of the heritage items.</p>

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development		
Other land uses	Yes	<p>The approved restaurant use is defined as a 'retail premises'. Under clause 7.7 of the LEP, the maximum number of car parking spaces permitted for the existing restaurant is 1 space for each 50sq.m of gross floor area of the building used for the retail use.</p> <p>While a maximum car parking rate is not identified for function centres, it should be noted that the DA is not seeking to supersede the restaurant but rather add an additional permitted land use. Given that the restaurant use would continue, and that Council's car parking controls specify a maximum, rather than a</p>

Provision	Compliance	Comment
		minimum, parking rate, provision of no on-site parking facilities is considered acceptable and appropriate given the physical and heritage constraints associated with the site.
Division 3 Affordable housing		
7.13 Contributions for affordable housing	Yes	<p>The site is located in the Ultimo-Pyrmont area and is subject to the requirements of Clause 7.13 of the Sydney LEP 2012.</p> <p>Pursuant to sub-clause 7.13(1)(b), development that involves a change of use of more than 60 square metres of existing floor area of a building, is required to make a contribution towards affordable housing.</p> <p>As the DA is recommended for refusal, there is no need to consider the applicability of any contribution under this clause.</p>

Development Control Plans

Sydney Development Control Plan 2012

36. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

Section 2 – Locality Statements

37. The site is located within the Pyrmont Point locality. The Pyrmont Point locality statement encourages active ground floor uses and seeks to conserve waterfront views and vistas from the public domain. The proposed development is generally in keeping with the unique character of the Pyrmont locality as the proposal protects the historic building, provides a use with active public views of the waterfront and conserves existing public views.

Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain	Partial compliance	<p>The proposal is for an additional use of the premises only and does not include any building works.</p> <p>Objective (a) at Section 3.2.2 requires that development contributes to the</p>

Provision	Compliance	Comment
		<p>activity, safety, amenity and quality of streets and the public domain.</p> <p>It has not been satisfactorily demonstrated that the proposed function centre use will contribute to the safety and amenity of the street and public domain. Furthermore, it has not been demonstrated that there will be no queuing issues on the footpath while staff serve canapes and drinks within the recommended maximum capacity limitations.</p> <p>Refer to the Discussion section for further details.</p>
3.9 Heritage	Yes	<p>The site is a local heritage item (I1250) but is not located within a heritage conservation area. The site is also located adjacent to and near several local and State listed heritage items.</p> <p>The application proposes no building works and seeks to utilise the existing approved fit out of the building.</p> <p>Given no changes are proposed to the building, the additional use is considered to have no further impacts upon the heritage significance of the building.</p>
3.11 Transport and Parking	Yes	<p>The site currently does not provide any parking facilities or vehicular access. Due to the physical and heritage constraints associated with the site, no parking facilities or vehicular access is proposed.</p> <p>Bike parking spaces for new developments are to be provided in accordance with the rates set out in Table 3.5 of this section.</p> <p>Given that the proposed use is not included in Table 3.5, the applicant would be required to provide bike facilities to accommodate Council's mode share target for trips by bike as described in the Cycle Strategy and Action Plan 2007-2017.</p>

Provision	Compliance	Comment
		<p>Had the recommendation of this assessment been for approval, a condition for bike parking facilities would have been recommended.</p> <p>As per clause 3.11.1 of the DCP, a Traffic Assessment is required to address the potential impact of the development on surrounding movement systems where the proposed development is in the opinion of the consent authority, likely to generate significant traffic impacts.</p> <p>Given that the additional use of the premises as a function centre had the potential to impact on traffic and parking in the vicinity of the site, the applicant was requested to addresses.</p> <p>Refer to the Discussion section for further details.</p>
3.12 Accessible Design	Yes	The application proposes no building works and seeks to utilise the existing approved fit out of the building. Subject to compliance with the restaurant consent (D/2020/942 as amended), the proposal would be capable of complying with the accessible design requirements.
3.13 Social and Environmental Responsibilities	Yes	Had the recommendation of this assessment been for approval, conditions would have been recommended in relation to reporting and notification of incidents, installation and use of CCTV, and compliance with a Plan of Management.
3.14 Waste	Yes	<p>Waste is proposed to be stored internally on site and, when required, moved to the existing central waste location within Jones Bay wharf as with the management approved for the premises when it is in restaurant mode.</p> <p>Had the recommendation of this assessment been for approval, a</p>

Provision	Compliance	Comment
		condition would have been recommended to ensure the proposed development complied with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
3.15 Late Night Trading Management	No	<p>The premises is not located within a late night trading area and the use is defined as a category B premises.</p> <p>The accompanying Acoustic Report and Plan of Management have not adequately demonstrated that the proposed use of the premises as a function centre will not have adverse impacts on the amenity of the nearby residential properties.</p> <p>This matter forms part of the reasons for refusal of the application.</p> <p>Refer to the Discussion section for further details.</p>
3.16 Signage and Advertising	Yes	<p>The application does not include any signage.</p> <p>In accordance with Section 3.16.1, a signage strategy is required as the site is a heritage item.</p> <p>Had the recommendation of this assessment been for approval, a condition would have been recommended requiring that a signage strategy to be submitted and approved by Council prior to issue of an Occupation Certificate.</p>

Section 4 – Development Types

4.2 Residential Flat, Commercial and Mixed Use Developments

Provision	Compliance	Comment
4.2.3 Amenity		
4.2.3.11 Acoustic privacy	No	The accompanying Acoustic Report has not adequately demonstrated that the proposed use of the premises as a

Provision	Compliance	Comment
		<p>function centre will not have adverse impacts on the amenity of the nearby residential properties.</p> <p>This matter forms part of the reasons for refusal of the application.</p> <p>Refer to the Discussion section for further details.</p>

Discussion

Objectives of the B3 Zone

38. The assessment below considers whether the proposal is consistent with the objectives of the B3 Commercial Core zone.

- (a) **Objective:** To provide a wide range of retail, business, office, entertainment, community and other suitable land uses that serve the needs of the local and wider community.

Response: It has not been demonstrated that the site is suitable for the development given its proximity to sensitive residential land uses and that the use is likely to result in adverse impacts on the amenity of the nearby residential properties.

The proposal therefore does not achieve this objective. This matter forms part of the reasons for refusal of the application.

- (b) **Objective:** To encourage appropriate employment opportunities in accessible locations.

Response: The premises is already approved as a restaurant. While a breakdown of staff numbers has not been submitted, it is anticipated that the staff employed in the restaurant would also work in any function centre. On this basis, it is anticipated that the proposal would not result in further employment opportunities.

The site, however, is in an accessible location and it is recognised that any commercial use of the premises does result in employment opportunities.

The proposal is therefore generally consistent with this objective.

- (c) **Objective:** To maximise public transport patronage and encourage walking and cycling.

Response: Due to the attire that guests typically wear to functions, they are unlikely to walk or cycle to the venue. The most common form of travel by patrons is likely to be by car (private or public) and less likely by public transport.

However, given that the site is serviced by good public transport and is within waking distance of the City, the proposal is considered to be generally consistent with this objective.

- (d) **Objective:** To promote uses with active street frontages.

Response: The proposed additional use of the site as a function centre does not involve any building works and would continue to provide an active street frontage to Pirrama Road.

Late Night Trading Hours

39. The late-night trading management controls provided at Section 3.15 of the Sydney Development Control Plan (DCP) assist in encouraging diverse late-night trading, while managing the effects of these uses on the neighbourhoods in which they are located.
40. Late trading hours are considered by the Council to be a privilege subject to demonstrated good management practices. Longer trading hours may be permitted where it is considered that there is capacity for more late night uses to operate in an area and where it has been demonstrated that the use will not create an adverse impact on surrounding sensitive land uses.
41. Late trading hours will also only be supported in circumstances where appropriate management measures have been developed and where these measures can be successfully carried out. This is particularly important for late night trading premises that have the potential to impact on the amenity of residential properties at night.
42. The DCP defines the proposed function centre as a 'Category B Premises'. The Late Night Trading Management provisions within the DCP also identify a hierarchy of three late night trading areas throughout the City of Sydney. The three types of late-night trading areas are Late Night Management Areas, City Living Areas and Local Centre Areas. The subject site is not located within one of the designated late night trading areas and therefore falls under 'all other areas' noted throughout the controls.
43. Base hours are the standard range of trading hours that a late-night trading premises is entitled to if an application is approved. Extended hours mean trading hours that may be approved above base hours on a trial basis. The base and extended hours that apply to a 'Category B' premises within 'all other areas' are provided in the following table:

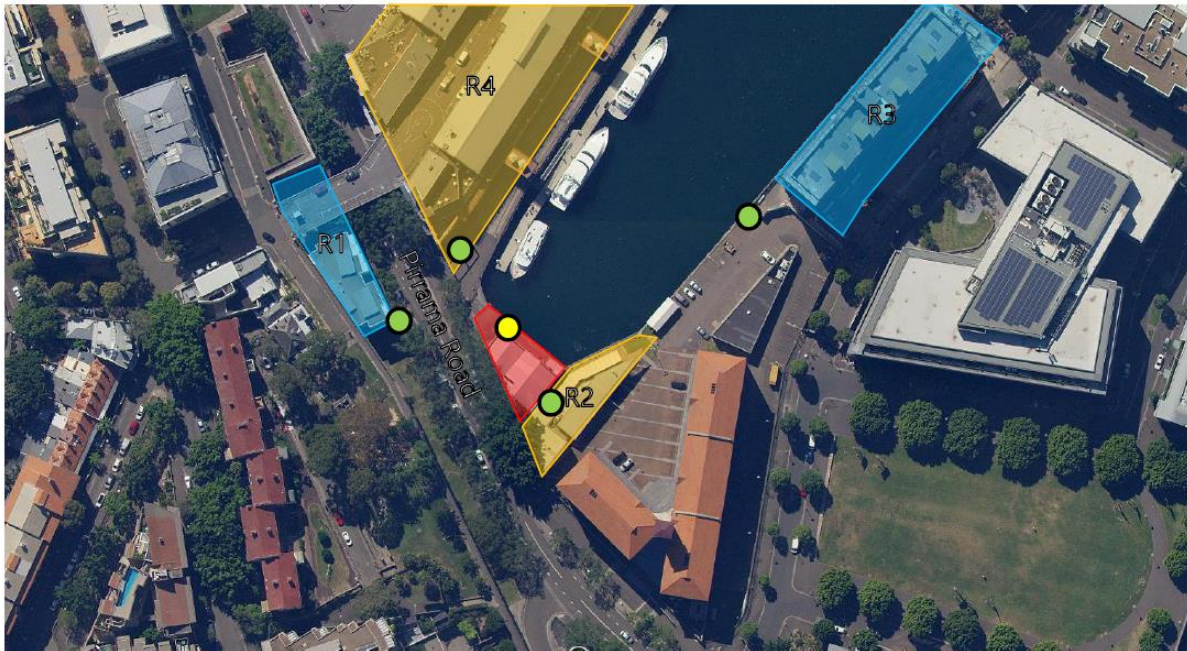
	All other areas – Category B	Applicant's proposed hours
Indoor trading hours	<p>Base: 7.00am to 10.00pm</p> <p>Extended: 7.00am to 12 midnight</p>	<p>Base: 7.00am to 10.00pm</p> <p>Extended: 7.00am to 10.30pm, Monday to Thursdays 7.00am to 11.30pm, Fridays and Saturdays</p>
Outdoor trading hours	<p>Base: 7.00am to 8.00pm</p> <p>Extended: 7.00am to 10.00pm</p>	<p>Base: 7.00am to 8.00pm</p>

44. As outlined above, under the DCP consideration may be given to the approval of base/permanent trading hours for indoor areas of 7.00am to 10.00pm and of base/permanent hours for the outdoor areas of 7.00am to 8.00pm. The base hours, however, are not automatically granted and any application must be considered on its merits. An approved premise is also eligible for consideration of extended indoor trading hours on a trial period basis between 7.00am and 12 midnight and extended outdoor trading hours been 7.00am and 10.00pm.
45. The DA, as originally submitted, proposed extended trading hours to 12 midnight, 7 days a week. As a result of concerns raised during the assessment process, the DA was amended and proposes indoor hours from 7.00am to 10.30pm, Monday to Thursday, from 7.00am to 11.30pm, Fridays and Saturdays, and from 7.00am to 10.00pm, Sundays. The proposed indoor hours fall within the extended hours identified in the controls. The proposed outdoor trading hours are between 7.00am and 8.00pm, Monday to Sunday. While no extended outdoor trading hours are proposed, the western terrace is intended to be used as the means of egress for patrons leaving the premises and the northern terrace will be used as a thoroughfare for patrons accessing the toilets which are located externally to the building.
46. Section 3.15.3 of the DCP includes matters that must be considered when determining applications for late night trading. In relation to the subject application, Council must be satisfied that:
- the location and context, including proximity to residential and other sensitive land uses, is appropriate for the proposed use;
 - there will be no unreasonable impacts on the amenity of the surrounding residential properties;
 - the premises can appropriately manage the impacts, especially in terms of noise;

- (d) there will be no unreasonable impacts arising from the closing times and patron dispersal, including any cumulative impact due to existing late night uses in the area; and
 - (e) a plan of management, demonstrating a strong commitment to good management of the operation of the business, particularly in relation to managing potential impacts on adjoining and surrounding land uses and premises, has been submitted and can be implemented.
47. The subject site is in close proximity to a number of residential uses which have the potential to be directly impacted by the proposed function centre use. The outdoor area is located approximately 25 metres from the nearest residential apartments to the north-west on the opposite side of Pirrama Road and is also the proposed entry/exit point for the building.
48. As discussed under the sub-headings 'Acoustic' and 'Plan of Management' in the sections below, the applicant has not satisfactorily demonstrated that the proposed function centre use will not unreasonably impact on the amenity of the nearby residential premises or that the proposed management practices will be capable of addressing the amenity concerns. For these reasons, it is recommended that the DA, including the proposed late-night trading, not be supported.

Acoustic Impacts

49. Section 4.2.3.11 of the DCP requires that a Noise Impact Assessment, prepared by a suitably qualified acoustic consultant, be submitted for uses which may affect the acoustic privacy of a nearby residential use.
50. An Acoustic Report, prepared by Acoustic Logic (revision 2 dated 10 March 2022), has been submitted to assess the impacts of the proposed development on the following nearest noise receivers:
- (a) Receiver 1: No. 25 Pirrama Road, Pyrmont being an existing multi-storey residential flat building located approximately 25 metres to the north-west on the opposite side of Pirrama Road.
 - (b) Receiver 2: No 38 Pirrama Road, Pyrmont being an existing multi-storey office building on the adjoining site to the south-east.
 - (c) Receiver 3: No. 8 Darling Island Road, Pyrmont being an existing multi-storey residential flat building located approximately 90 metres to the north-east.
 - (d) Receiver 4: No 32 Pirrama Road, Pyrmont being the commercial premises located at Jones Bay Wharf to the north.
51. The location of the four noise receivers is shown in Figure 21 and the relationship between the subject site and the nearest residential properties is shown in Figure 22.



● Unattended Noise Monitor
● Attended Noise Measurements
Site Map and Noise Monitor Location
 (Source: Six Maps NSW)

■ Residential Receiver
■ Commercial Receiver

Figure 21: Map showing the nearest receivers (subject site in red, commercial receivers shown in yellow and residential receivers shown in blue) (Source: Acoustic Logic)



Figure 22: Plan showing the location of the nearest sensitive receiver ('Macarthur' apartments at 25 Pirrama Road) in relation to the subject site.

52. The current approved restaurant use (D/2020/942 as amended) permits a maximum of 102 patrons internally and 64 patrons externally. The subject DA seeks approval for a total of 110 patrons, with the potential for all 110 patrons to be indoors at any given time. The acoustic assessment concludes that the increase in internal patron numbers would be approximately 1dB(A) and would not result in any significant noise impacts on surrounding receivers.
53. The noise report further concludes that the internal and external use of the premises for functions will be consistent with the already approved restaurant use provided that the following noise emission controls are imposed:
- (a) All doors and windows on the southern, western and eastern facades remain closed at all times.
 - (b) The doors and windows on the northern facade remain closed from 10.00pm.
 - (c) The external patron numbers are limited to:
 - (i) Northern terrace area: 28 patrons between 7.00am and 10.00pm; and
 - (ii) Western terrace area: 36 patrons from 7.00am to 6.00pm and 18 patrons from 6.00pm to 10.00pm.
 - (d) Between the hours of 10.00pm and 12 midnight, there are to be no external patrons except for patrons leaving the premises or accessing the amenities.
54. Provided the above restrictions are adhered to, the applicant's acoustic assessment concludes that noise emissions will be consistent the existing development consent for the restaurant (D/2020/942 as amended) and that the proposed development will comply with Council's noise emission restrictions.
55. The proposal fails to recognise, however, that the use of the premises as a function centre and that of a restaurant would operate differently. Unlike a restaurant use, which typically involves the staggered arrival and departure of patrons, patrons to a function centre typically arrive en masse at a specified commencement time and depart en masse at the conclusion of the function. Patron numbers at a restaurant are also likely to peak at mealtimes and gradually reduce up to the closing time, while it is assumed that the maximum capacity is maintained at all times during a function.
56. As a result, the following concerns have not been adequately considered:
- (a) Conditions have been imposed on the approved restaurant use requiring that all external patrons (i.e. a maximum of 64) must have an allocated seat and that the number and location of the outdoor tables and chairs provided for outdoor dining must be in accordance with the approved floor plan at all times. The approved restaurant floor plan provides outdoor tables of 4 persons, with two of the tables accommodating 6 persons. The function centre use, however, does not provide outdoor seating and therefore does not have the same limitations in terms of groups sizes.

In this regard, it has not been demonstrated that the noise created by 46-64 people within the same group/party is consistent with the noise created by 64 people (split into small groups of 4 to 6 per table) having dinner. While the acoustic assessment recommends that there be no use of the western terrace area after 10.00pm, it also acknowledges that the western terrace area must be used by patrons leaving the site. Unlike a restaurant, patrons attending functions typically arrive and depart at a similar time. As such, up to 110 patrons could exit via the western terrace at the same time, meaning that maximum patron numbers specified for the western terrace (located directly opposite the sensitive residential uses) would be exceeded. The acoustic assessment, however, is silent in terms of the likely impacts arising from up to 110 patrons departing the premises at the conclusion of a function.

- (b) The internal noise levels are likely to vary depending on the type, volume and duration of music played. A function may include the playing of music until the end of a function and may also include use of microphones and other equipment that is not typically used when operating a restaurant.
- (c) While the acoustic assessment recommends that all door and windows remain closed from 10.00pm, it also acknowledges that patrons must use one of the northern doors and terrace to access the amenities for the premises. While the approved restaurant use permits 28 seated patrons within the northern terrace area until 10.00pm (on a trial basis), with each table with the northern area limited to a maximum of 4 persons, the submitted Plan of Management (PoM) indicates that the function centre would permit groups of up to 28 patrons within the northern terrace area at any time, including after 10.00pm. Section 5.2 of the Acoustic Report also states that 28 patrons within the northern terrace at any time (including between 10.00pm and 12 midnight) would be in line with the existing approved DA acoustic assessment. The consent granted for the restaurant, however, only permit outdoor trading until 10.00pm on a trail basis.
- (d) The acoustic report does not include any recommendations in relation to the maximum number of permitted patrons within the northern terrace after 10.00pm and has not demonstrated that a group of 28 function centre guests within the northern terrace after 10.00pm (as proposed by the PoM) would be acceptable, noting that the restaurant use does not permit any outdoor dining after 10.00pm.
- (e) Furthermore, the acoustic report has not demonstrated that use of the one of the northern door openings after 10.00pm, together with 28 patrons outdoors, would comply with the required noise restrictions. It has not demonstrated that a group of 28 guests would generate the same noise levels as 28 seated guests, in tables of maximum of 4 people, as approved under the restaurant use. It has also not demonstrated that prior to 10pm, that a group of 28 patrons attending a function would generate the same noise levels as 28 seated guests, in tables of a maximum of 4 people, as approved under the restaurant use.
- (f) The acoustic assessment has not considered the cumulative noise levels from patrons departing the proposed and other existing function centres in the area. Nor has it addressed whether there is capacity for an additional late-night use or whether an additional late-night use in the locality would have unreasonable noise impacts on residential properties in the area.

57. Given that the acoustic assessment has not adequately demonstrated that the premises can operate without affecting the amenity of nearby residential properties and that there is a history of complaints associated with other late night uses and function centres in the area, it is considered by Council officers that the proposal has not demonstrated that the premises is suitable for the proposed function centre use.
58. Council's officers are also of the opinion that the proposed function centre use does not have comparable acoustic impacts to the already approved restaurant (D/2020/942 as amended) and consider that the restrictions that apply to the restaurant use will be inadequate in controlling the amenity impacts from a function centre. For these and other reasons outlined above, the application is not supported.

Plan of Management

59. Section 3.15.5 of the DCP requires that a Plan of Management (PoM) be submitted as part of the DA. Schedule 3.2 of the DCP outlines the information that a PoM should contain. This includes details of all measures that will be taken to ensure that the amenity impacts that may result from the operation of the premises are minimised.
60. The applicant has provided a PoM for the function centre use with a proposed maximum capacity of 110 persons. To minimise disturbance from the outdoor terrace area, the PoM proposes:
 - (a) No seating is provided on the outdoor areas when the site is being used as a function centre.
 - (b) Prior to 8.00pm the western terrace area is able to be used for greeting of guests on arrival and the serving of drinks and canapes. Once served guests will be encouraged to join the function within the premises.
 - (c) Prior to 8.00pm, function centre staff will monitor guest numbers on the western terrace and northern terrace.
 - (d) Guest numbers on the western terrace after 6.00pm are not to exceed 18 persons. At no time is there to more than 28 guests on the northern terrace.
 - (e) Should numbers on the western and northern terrace be nearing the capacity outlined in (d) above, staff will direct guests to join the function indoors, or if capacity permits, move to the northern terrace area (maintaining the maximum permitted at any time of 28 patrons on the northern terrace).
 - (f) Limiting numbers on the western terrace will be prioritised by staff to ease the closure of this area to guests after 8.00pm other than its use as an exit thoroughfare. Should guests access the western terrace other than as an exit path staff will direct them back to the northern terrace or indoors.
 - (g) The limitations on the use of the external terrace areas will be communicated to clients at the time of booking a function.
 - (h) After 8.00pm the western deck will not be used for any purpose other than as an exit thoroughfare for guests leaving the premises having exited the internal space via the western terrace.
 - (i) The northern deck will not be provided with seating when the premises is being used for functions but will provide access to the amenities for the premises.

- (j) With the arrival of large groups of guests, staff are to ensure that they enter the premises and are seated as quickly and quietly as possible so as to not disturb the surrounding area.
 - (k) Between 10.00pm and 12 midnight, staff are to monitor guests leaving the premises and provide corrective advice to any guests in the immediate vicinity of the premises acting in a manner which may adversely impact on the surrounding area.
61. During the assessment process, the applicant updated the PoM in response to concerns raised by Council officers. Although additional management measures have been incorporated into the PoM, the following matters have not been satisfactorily addressed:
- (a) The PoM states that prior to 8.00pm, the terrace will be used to serve canapes and drinks to guests. In order to comply with noise emission restrictions, only 64 of the 110 guests would be permitted outdoors before 6.00pm (with 36 of the guests permitted within the western terrace area and 28 permitted in the northern terrace area) and between 6.00pm and 8.00pm, only 46 of the 110 guests would be permitted outdoors (with 18 of the guests permitted within the western terrace area and 28 permitted in the northern terrace area).

The submitted DA documentation, including the accompanying PoM, Acoustic Report and DA plans, do not define the “western terrace” and “northern terrace” areas. Furthermore, the application has not demonstrated that the capacity limitations (which have been established for the seated restaurant use) are appropriate for the proposed function centre use.
 - (b) The PoM fails to explain how the maximum nominated patron numbers will be managed, especially given that there will be no outdoor seating and that guests will be able to move freely throughout the terrace area. The wrap around terrace also provides no physical barrier between the northern and western terrace areas (see Figure 4) and as such, it will not be possible to contain patrons to one particular area.
 - (c) It is proposed that the function centre staff will monitor guest numbers and will encourage guests to join the function within the premises once they have been served their drinks and canapes. While staff may encourage guests, there are no measures proposed that would guarantee that the maximum patron numbers will be complied with.
 - (d) The PoM states that the proposed method of checking that the maximum capacity has not been exceeded, will be determined by ensuring that no patron is admitted who is not assigned a seat. While this may be an appropriate method of ensuring that no more than 110 patrons are accommodated indoors, this method cannot be applied to the outdoor areas.
 - (e) The PoM states that guest numbers on the western terrace between 6.00pm and 8.00pm will not exceed 18 persons. The PoM, however, does not include any limitation on the number of guests within the western terrace prior to 6.00pm, which is contrary to the acoustic recommendations.

- (f) The PoM is unclear in terms of where the remaining guests (i.e. 46 guests prior to 6.00pm and 64 between 6.00pm and 8.00pm) will be located while canapes and drinks are being served. Unlike a restaurant use, guests attending functions will typically arrive around the designated start time. As guests must move through the terrace area to access the building, this could create queuing issues on the footpath while staff serve canapes and drinks within the maximum capacity limitations.
 - (g) While the PoM proposes that the northern deck will provide access to the amenities for the premises, it also allows up to 28 patrons to gather in this area at any time. No measures, however, have been put in place to ensure that the northern terrace is used as a thoroughfare only or to ensure that the 28-person limit will not be exceeded.
 - (h) While it is proposed that after 8.00pm the western terrace area will not be used by patrons (other than at the completion of the function), it is unclear how this will be prevented if access must be maintained to the amenities and no physical barrier is provided between the western and northern terrace area.
 - (i) The proposed management measures outlined in the PoM rely on constant monitoring of the outdoor terrace areas by the function staff and it is unclear if this can realistically occur.
 - (j) The acoustic assessment requires that all doors and windows remain closed from 10.00pm. The PoM states that to facilitate access to the external amenities after 10.00pm, exit and entry will be via the eastern most doors which are closest to the external amenities. This suggests that prior to 10.00pm, patrons will be provided unrestricted access to the outdoor terrace via all four (4) door openings thus making it harder to monitor and restrict the number of outdoor patrons. Furthermore, it is unclear what measures will be put in place to ensure that the eastern doors will remain closed while not being used for access, especially during warmer weather periods.
 - (k) The outdoor seating, used in restaurant mode, is to be packed up and stored within the Doltone House premises at Jones Bay Wharf when a function is to be held. Details regarding table movements, between the subject site and the proposed storage location within Jones Bay Wharf, have not been provided and there is concern that pack-up/set-up activities may occur late at night or early in the morning.
 - (l) While the applicant has indicated that there is no need for the bump in and bump out of sound equipment, given that the restaurant is fitted with speakers, it is unclear if other external equipment or the like will be used for functions and if so, how and when this will be delivered and collected from the site.
62. The proposed and approved DA plans also indicate that the western portion of the terrace will be provided with landscape planter boxes that will restrict use of this area (see Figure 16, Figure 17, Figure 19 and Figure 20). An inspection of the site revealed, however, that the planter boxes have not been configured as shown on the plans and as a result, provides a larger outdoor area (see Figure 5). While the PoM states that guest numbers on the western terrace between 6.00pm and 8.00pm will not exceed 18 persons, the PoM is silent in terms of the maximum capacity prior to 6.00pm. Any proposal to increase the useable portion of the terrace would not be supported and is not supported by any documentation submitted by the applicant.

63. In addition to the concerns identified above, Council's Environmental Health Unit has advised that they would not support the serving of drinks and canapes within the terrace areas as it would create additional noise nuisances to the nearby residential properties. Supporting correspondence, provided by SJB Planning and dated 4 March 2022, indicates that "(n)o guests will be served or allowed to consume food or drinks outside after 8.00pm". This restriction, however, has not been included in the PoM and it is unclear what measures are being implemented to prevent guests from consuming drinks outdoors after 8.00pm.
64. The applicant is of the opinion that the impact of patron numbers cumulatively in function mode compared to restaurant mode is likely to be negligible. This is on the basis that in restaurant mode, tables could be included for multiple services each night, while in function mode patron numbers are capped.
65. While it is recognised that the approved restaurant use (D/2020/942 as amended) has a greater capacity (i.e. 102 indoors and 64 outdoors) and longer extended operating hours (i.e. between 7.00am and 12 midnight, Monday to Sunday for a trial period of one year), the function centre DA has not considered that the majority of patrons attending a function typically arrive and leave at around the same time in large numbers. In comparison, a restaurant use will have patrons arriving in smaller numbers over a longer period and guests will then depart with a similar dispersion rate. For these reasons, Council officers are of the opinion that a function centre use would cause more disruption and amenity impacts than a restaurant use.
66. The applicant was also requested to assess the cumulative noise levels from patrons departing the proposed and other existing function centres in the area, including the other function centre and restaurant uses within Jones Bay Wharf. This request was made given that there is a history of complaints in the area and that it is likely that the proposed function venue will result in further complaints from residents.
67. In response, the applicant altered the proposed extended trading hours from 12 midnight, 7 days a week, to 11.30pm on Fridays and Saturdays, 10.00pm on Sundays and 10.30pm on Mondays through to Thursdays. This is to offset the closing times from the other nearby function centres which trade till 12 midnight.
68. While the proposed trading hours have been reduced, the PoM does not satisfactorily demonstrate that the noise impacts on residential properties can be effectively managed as discussed earlier in this report. The PoM also includes limited details regarding the management of patrons when leaving the site. The PoM states that staff will at all times ensure that all people entering and leaving the premises do so in a manner that respects the nature of the surrounding locality, and that reasonable measures will be taken to ensure that the behaviour of patrons when entering or leaving the premises does not detrimentally affect the amenity of the neighbourhood. While it is recognised that amenity impacts are hard to manage near residential properties, compliance measures to support these statements are uncertain and would be difficult to implement.
69. If dual use of the premises for both a restaurant and function centre is approved, it would be logistically difficult for Council Rangers, the Local Police and residents to know what use is occurring at the premises on any given day and therefore monitor compliance with the relevant consent conditions. This would be especially difficult given that each use has different patron capacities, different hours of operation and different plans of management.

70. The objects of the Environmental Planning and Assessment Act 1979 (the Act) include "to promote the orderly and economic use and development of land". The application has not demonstrated that the dual use of the premises is orderly development under the Act. This matter therefore forms part of the reasons for refusal of the application.
71. For the reasons outlined in this sub-section of the report, the PoM has not demonstrated that the function centre use can be appropriately managed or that the proposed management measures will prevent any adverse impacts on nearby residential properties.

Traffic Impacts

72. A Traffic Statement, prepared by McLaren Traffic Engineering (reference: 220202.01FA dated 9 May 2022), has been submitted in response to Council officer's concerns relating to traffic impacts associated with patrons arriving and leaving the site, including the cumulative traffic impacts from other nearby function centres, and truck loading/unloading operations.
73. As a result of the concerns raised, the proposal has been altered to reduce the patron capacity from 130 to 110. The proposed trading hours have also been reduced so that the proposed function centre will close earlier than the other nearby function centres which currently close at 12 midnight.
74. Council's Transport and Access Unit has considered the Traffic Statement and has advised that from a technical point of view, the local road and transport network is capable of accommodating the proposed development. The site is well serviced by public transportation, car parking and pick-up zones, such that patrons leaving the function centre would have several transportation options to depart the area once a function has completed. These options are the same as those available to the approved restaurant use and include:
 - (a) Taxis and other rideshare services (including private hire buses): The current parking restrictions along the property frontage, including the 'No Parking' zones that apply between 6.00pm and 12 midnight, Thursday to Sunday, will adequately service all pick-up/drop-off activities.
 - (b) Light rail: The premises is located within a 5-minute walk of The Star Light Rail Station which provides a light rail service to Central Station.
 - (c) Bus: The adjacent bus stops on Pirrama Road provide access to the No. 389 bus route between The Star and Bondi Junction and also stops at Town Hall Station.
 - (d) Commercial car parks: The Jones Bay Wharf Wilson Car Park is located opposite the site and The Star Parking Station is within a 10-minute walk.
75. In relation to the loading/unloading operations, it is proposed that the same servicing arrangements that currently apply to the approved restaurant use, will be applied to the function centre. Provided the same loading/unloading arrangements are adopted for the function centre, Council's Transport and Access Unit anticipate that there would be no additional impacts. In the event that external equipment or the like was to be used for functions, however, it is likely that additional impacts associated with the unloading and loading would occur.

76. The Traffic Statement further states that patrons are not expected to arrive and depart the site all at the same time. Given functions typically occur over a 3-to-5-hour period, the traffic assessment states that patrons attending functions will arrive and depart at various times throughout the evening. While Council officers disagree that function centres and restaurants operate in the same manner, it is recognised that the proposed operating hours have been amended so that the proposed function centre will cease operating earlier than the surrounding function centres.
77. While Council's Transport and Access Unit have advised that the proposal is acceptable on traffic grounds, it is acknowledged that certain driver behaviour in the area is causing operational issues within the roadway and that these issues could be made worse with the addition of another function centre.
78. While the amended operating hours may assist with the departure of guests at the conclusion of a function, the amended hours would not prevent an additional 110 guests from arriving at the same time as other functions and could potentially contribute to existing operational issues with the roadway.
79. It should be noted that Council officer's concerns regarding potential adverse amenity impacts on nearby residential properties also still apply. This includes potential noise impacts associated with patrons departing the site at the conclusion of a function.

Pymont Peninsula Place Strategy

80. The first stage of the NSW Department of Planning 'Pymont Peninsula Place Strategy' (PPPS) was exhibited for public comment from 26 November 2021 to 4 February 2022. The exhibited master plans identify seven sub-precincts and provide clear, structured guidance on how each of the seven sub-precincts should look and feel in 20 years' time.
81. The subject site is located within the 'Darling Island' sub-precinct which is described as a harbour home of large commercial, cultural and entertainment destinations, alongside existing residential. The Darling Island sub-precinct Master Plan nominates an 'Entertainment and Cultural Precinct' around The Star Casino, Australian National Maritime Museum and Pymont Bay Park. The location was chosen because of its proximity to other entertainment areas (such as Harbourside, Cockle Bay and the CBD) as well as to existing and future public transport.
82. In relation to the subject site, the Master Plan include a harbour foreshore walk which connects Darling Harbour to Rozelle. The subject site sits within the proposed new foreshore walk (see Figure 23). Given that there are no works associated with the DA, the additional land use would have no impact on the delivery of the 'Darling Island' sub-precinct Master Plan or foreshore walk.

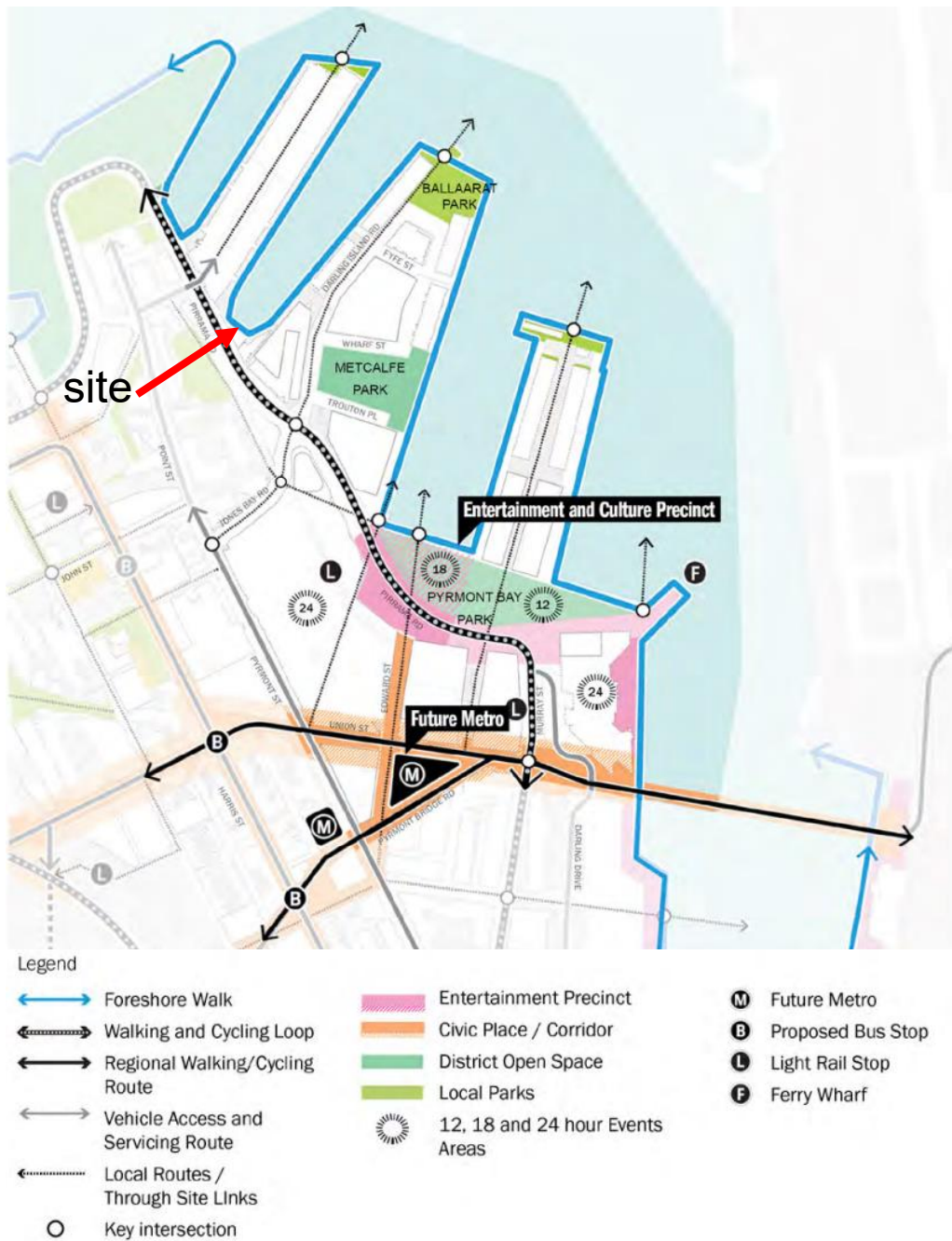


Figure 23: Extract of the 'Darling Island' sub-precinct Master Plan under the 'Pyrmont Peninsula Place Strategy'

Consultation

Internal Referrals

83. The application was discussed with Council's Environmental Health Unit, Licenced Premises Unit and Transport and Access Unit who raised concerns with the proposed development.

84. Significant issues have been raised by the above referral units which have not been adequately addressed by the applicant. See further details under the sub-headings 'Late Night Trading Hours', 'Acoustic Impacts', 'Plan of Management' and 'Traffic' in the 'Discussion' section above.

External Referrals

NSW Police

85. The application was referred to NSW Police for a period of 21 days on 13 and 15 December 2021.
86. It is understood that the Sydney Police arranged a community meeting on 28 March 2022 at the Ultimo Community Centre to discuss local concerns. Representatives from the Pymont Action Group attended the meeting.
87. The Sydney Police Crime Prevention Officer contacted the assessing Planner on 13 July 2022 to obtain an update on the application as the Police were meeting with the Pymont Action Group on 14 July 2022.
88. On 14 July 2022, the Sydney Police Crime Prevention Officer provided email correspondence to advise that a positive meeting had been held with the Pymont Action Group representatives. In response, Council's Planner provided a link to Council's DA tracker and an additional copy of the original referral letter to the Crime Prevention Officer in the event the NSW Police wished to make a submission.
89. A response was provided by NSW Police on 29 September 2022 advising that no objection was raised to the application. NSW Police recognises, however, that the application is proposed in an area which is already saturated with other licensed premises and as such, has recommended various conditions for inclusion within any consent granted. The recommended conditions relate to the provision and operation of CCTV, employment of security, compliance with the submitted plan of management, incident reporting, service of alcohol, cleaning, maintenance, noise and queuing. Had the recommendation of this assessment been for approval, these matters would have been addressed by way of conditions.
90. NSW Police have also recommended that conditions be imposed to protect the neighbourhood amenity, including conditions stating that the management of the premises must ensure that guests do not crowd or loiter in the vicinity of the premises, and that guests entering and leaving the premises must not cause undue disturbance to the amenity of the neighbourhood. NSW Police has also recommended that a condition be imposed requiring that the function centre is not to operate with a greater overall level of social impact on the well-being of the local and broader community than what could reasonably be expected from the documentation submitted in the process of obtaining the liquor licence for the premises. For reasons outlined within this report, it is considered that conditions of this nature would be impractical and difficult to enforce. Furthermore, the accompanying Plan of Management (PoM) provides no confidence that the proposed additional use of the site as a function centre would not have an unreasonable impact on the surrounding neighbourhood amenity.
91. Despite the recommendations of the NSW Police, the application is recommended for refusal.

Advertising and Notification

92. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 42 days (i.e. 6 weeks) between 15 December 2021 and 26 January 2022. An extended notification period was applied to allow for the Christmas and school holiday period.

A total of 258 owners and occupiers were notified and 77 submissions were received, including 33 submissions in objection and 44 submissions in support. An online petition, containing 391 signatures, was also received in objection.

93. The submissions raised the following key issues:

- (a) **Issue:** Number of existing Doltone House function centres. What was originally approved as a single restaurant in Jones Bay Wharf has incrementally grown to 5 function centres with an advertised capacity of 680 seated guests or 1000 standing guests.

Response: The site is located in the B3 Commercial Core zone. Function centres are permissible in the B3 zone with consent.

While the proposed function centre is a permissible land use and Council's controls do not include distance separation requirements between function centres, the Applicant has not adequately demonstrated that there will be no adverse cumulative impacts from the proposed and existing function centres.

This unresolved issue forms part of the reasons for refusal of the application.

- (b) **Issue:** Management of the existing Doltone House function centres, including the long history of complaints and non-compliances.

Response: While management and non-compliance issues relating to the existing function centres are not considerations that can be given weight in the assessment of the current application, the Applicant has not adequately demonstrated that the proposed function centre can adequately manage noise and amenity impacts, or that the proposed outdoor patron restrictions can be complied with.

This unresolved issue forms part of the reasons for refusal of the application.

- (c) **Issue:** Impacts from the existing function centres including loud music, patrons shouting, fights, traffic, cars revving and doing wheelies, buses blasting their horns to get around illegally parked vehicles, non-compliance with bump in and bump out restrictions, late night waste disposal and collection, truck movements, etc.

Response: As indicated above, management and non-compliance issues associated with the existing function centres are not considerations that can be given weight in the assessment of the current application. The Applicant, however, has not adequately demonstrated that an additional function centre will not exacerbate existing amenity impacts on nearby residents.

- (d) **Issue:** Capacity of the proposed function centre. Proposes 130 patrons indoors compared to the approved restaurant accommodating a maximum of 102 indoor patrons.

Response: The approved restaurant is for 166 patrons, including 102 internal seats and 64 external seats.

As a result of concerns raised during the assessment of the function centre, the Applicant has reduced the overall capacity from 130 patrons to 110 patrons. The indoor capacity is therefore now similar to the approved restaurant use (i.e. 8 additional patrons). The Acoustic Report also recommends that a maximum of 64 of the patrons be permitted outdoors before 6.00pm and that this number be reduced after 6.00pm.

While the proposed patron numbers are similar to the restaurant use, the Applicant has not adequately demonstrated that the proposed outdoor patron numbers can be complied with as discussed in this report.

This unresolved issue forms part of the reasons for refusal of the application.

- (e) **Issue:** Proposed hours of operation. A midnight closing time is considered to be too late and in effect means that residents are subjected to noise impacts till at least 1.00am. Trading should be restricted to 10.00pm indoors and 8.00pm outdoors.

Response: As a result of concerns raised during the assessment of the function centre, the Applicant has amended the proposed indoor hours of operation to be until 10.00pm, with a trial period of 12 months for trading until 10.30pm, Monday to Thursday and until 11.30pm, Fridays and Saturdays. The proposed outdoor trading hours continue to be until 8.00pm, 7 days a week.

As discussed in this report, late trading will only be supported where there is capacity for more late night uses to operate in an area and where it has been demonstrated that the use will not create an adverse impact on surrounding sensitive land uses. As these issues have not been satisfactorily addressed, it is agreed that the proposed hours of operation should not be supported.

- (f) **Issue:** Approved hours of operation for the restaurant. The trial approved under the existing consent should be removed.

Response: In its consideration of the current application, Council is unable to amend the approved hours granted for the restaurant use (D/2020/942 as amended).

The approved indoor area trade is until 10.00pm with a one-year trial period until 12 midnight and the approved outdoor area trade is until 8.00pm with a one-year trial period until 10.00pm. The one-year trial period will allow Council to monitor the management of the approved restaurant use. At the completion of the trial period a new application must be lodged if a further extension of trading hours is sort.

- (g) **Issue:** Cumulative impacts of the existing and proposed function centres, especially in terms of noise and traffic.

Response: The proposed function centre, when originally lodged, proposed an extended closing time of 12 midnight which was consistent with the other late-night premises and function centres in the area. The applicant was therefore requested to lodge a Traffic Report and amended Acoustic Report assessing the cumulative impacts on the surrounding area.

While it is recognised that the proposed trading hours have been reduced so that the proposed function centre will cease trading earlier than the other nearby function centres, the acoustic report has not considered potential cumulative impacts during operations and has not adequately demonstrated that the proposal will not have unreasonable amenity impacts on the nearby residential properties. Given inadequate information has been submitted, Council officers are unable to assess if existing amenity issues will be exacerbated.

This unresolved issue forms part of the reasons for refusal of the application.

- (h) **Issue:** Too close to residential properties.

Response: As discussed throughout this report, it is agreed that the proposed development has the potential to unreasonably impact on the amenity of the nearby residential properties, especially given that the outdoor area is located approximately 25 metres from the nearest residential apartments to the north-west on the opposite side of Pirrama Road and approximately 90 metres from the multi-storey residential flat building to the north-east.

This matter forms part of the reasons for refusal of the application.

- (i) **Issue:** Potential impact on resident's health and wellbeing.

Response: Matters relating to mental and emotional health impacts are not considerations that can be given weight in an assessment of an application made under the Environmental Planning and Assessment Act, 1979.

As discussed throughout this report, however, the submitted Acoustic Report has not adequately demonstrated that the proposal can comply with Council's noise emission restrictions and therefore could result in noise disturbance. Had the recommendation of this assessment been for approval, standard conditions would have been recommended to address noise emission restrictions.

- (j) **Issue:** Existing Plans of Management (PoM) for Doltone House are ineffective and do not mitigate adverse acoustic impacts.

Response: The residents of The Revy residential apartments engaged Acoustic Directions (an accredited acoustic consultant) to undertake noise measurements between 8.00pm on 13 December 2021 and 9.00am on 21 December 2021. Acoustic Directions found that the existing Johns Bay Wharf function centres were non-compliant with their PoM which requires that the "LA10 noise level emitted from the premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8 kHz inclusive) by more than 5 dB between 7:00am and midnight at the boundary of any affected residence".

As outlined in a response above, management and non-compliance issues relating to the existing function centres are not considerations that can be given weight in the assessment of the current application. Ongoing resident complaints in relation to the operation of the existing function centres are being managed by Council's Compliance Unit.

- (k) **Issue:** Adverse noise impacts cannot be adequately managed.

Response: The submitted PoM has not satisfactorily demonstrated that the noise emission restrictions recommended within the submitted Acoustic Report (i.e. in terms of limiting patron numbers within certain parts of the outdoor terrace) are either appropriate for the function centre use or can be complied with.

It is considered by Council officers that the proposal is likely to result in unreasonable noise impacts. This is a reason for refusal. Refer to the 'Discussion' section in the body of the report for details.

- (l) **Issue:** Application fails to consider the impacts of patrons entering and exiting the premises en masse as is likely for a function centre.

Response: It is agreed that the Acoustic Report submitted with the application does not make an adequate assessment of noise generated from patrons leaving the site at the conclusion of a function. Unlike restaurant patrons, who typically come and go in small groups at different times, it is considered a function centre use could have large groups arriving and leaving at the same time.

This unresolved issue forms part of the reasons for refusal of the application. Refer to the 'Discussion' section in the body of the report for further details.

- (m) **Issue:** Acoustic Report is misleading about the number of outdoor patrons.

Response: The Acoustic Report, at Section 2.2, states that when the premises is operating as a function centre, all patrons will be indoors by 8.00pm.

At Section 5.2 of the report, it states that under the application patrons will move indoors by 8.00pm and that there will be no external service after 8.00pm, but that after 8.00pm the northern terrace will continue to be used as a throughfare for patrons accessing the amenities for the site. This section of the report further states that it is "proposed" that 28 patrons will be within the northern terrace area at any time.

Section 6 of the Acoustic Report includes the recommendation and states that "between the hours of 10pm and 12am, no external patrons except for patrons leaving the premises or accessing toilets". It is noted that the acoustic assessment recommendations do not specify a maximum number of patrons within the northern terrace area and is silent in terms of how many patrons would be permitted outdoors at any one time when leaving the site.

As discussed in the 'Discussion' section of the report, the Acoustic Report has not adequately addressed concerns regarding the use and number of patrons outdoors. This matter forms part of the reasons for refusal of the application.

- (n) **Issue:** A Function Centre will be unable to comply with the Acoustic Report recommendations.

Response: As discussed in the 'Discussion' section of the report, it is agreed that the use of the premises as a function centre will be unable to comply with the recommendations of the Acoustic Report, especially in terms of the maximum patron number within each part of the outdoor terrace area.

Noise emission levels will also only comply with the Acoustic Report recommendation if all the doors remain closed after 10.00pm. When the doors are opened for access, including by patrons accessing the amenities, the noise level will not comply. This matter, however, has not been satisfactorily addressed within the Acoustic Report.

These unresolved issues form part of the reasons for refusal of the application.

- (o) **Issue:** The Acoustic Assessment is incorrect and incomplete.

Response: Acoustic Directions (accredited acoustical consultants) was engaged by an objector to review the Applicant's Acoustic Report. In response, the following feedback was provided:

- The Acoustic Report has been based on an internal sound level of 91 dBA (90th percentile) for music and patrons (i.e. the same level that was applied to the approved restaurant use). This sound level is significantly below the level that young people wish to dance to with DJ presentation of music. It is also far below the level of a typical live contemporary band, if live music is to be presented. The report does not provide a spectrum of the music sound within the venue, and this spectrum is critical for noise break-out calculations. Based on Acoustic Directions examination, Acoustic Logic (author of the Acoustic Report) typically underestimate the amount of bass sound in contemporary music.
- The Acoustic Report claims that increasing the patrons from 102 to 130 makes only 1 dB increase. This is incorrect and indicates that the author does not understand the noise-begets-noise mechanism that occurs in restaurants, resulting from the human-hearing reaction called the 'Lombard' effect. In contrast, research shows that this increase in patron numbers would create a change of 2 dB. Although an error of 1 dB is of little concern, the fact that they don't understand the Lombard effect with patron noise could have important implications for this development.
- The calculations of noise from patron conversations will be greatly in error if the 'Lombard' effect is not applied. Each time the patron numbers double, the actual noise increases by 6 dB, whereas Acoustic Logic believe the increase is only 3dB. For example, a change from 30 to 130 patrons creates a noise level change of 13 dB, whereas Acoustic Logic consider it is only 6.5dB.
- The Acoustic Report does not describe how noise will propagate from the venue to the Revy, does not state how the noise from both internal and external patrons has been calculated and provide no certainty that the residents amenity will be protected.

The City's Environmental Health Unit has reviewed the comments made by Acoustic Directions and agrees with the concerns raised. As discussed in the 'Discussion' section of the report, the DA has not adequately demonstrated that the function centre will be consistent with the approved restaurant use, as claimed by the proposed application.

- (p) **Issue:** Airlocks to the existing function centres have been promised but have not been provided.

Response: Doltone House lodged a separate development application (D/2022/215) on 21 March 2022 for alterations and additions to Jones Bay Wharf, including installation of three (3) glazed acoustic vestibules along the upper deck and other acoustic attenuation measures. D/2022/215 relates to works specifically to Jones Bay Wharf and is unrelated to the subject application.

In accordance with the City of Sydney Community Participation Plan 2019, D/2022/215 was notified for a period of 14 days from 23 March 2022 to 7 April 2022. Letters were sent to a total of 393 owners and occupiers within a 25m radius of the site.

Council's officers from the town planning and heritage sections met with the applicant on 23 August 2022 to discuss outstanding heritage related concerns. At the time of writing this report, D/2022/215 had not been determined as the requested additional information had not yet been submitted by the applicant.

- (q) **Issue:** The Plan of Management will be difficult to enforce and will not mitigate impacts to residents.

Response: It is agreed that the PoM has failed to demonstrate that the function centre use can be appropriately managed or that the proposed management measures will prevent any adverse impacts on nearby residential properties. Refer to the 'Discussion' section in the body of the report for details.

This unresolved issue forms part of the reasons for refusal of the application.

- (r) **Issue:** The use should remain as a restaurant only.

Response: The function centre use has been assessed as having potential adverse impacts to neighbouring properties and the locality. For reasons discussed in this report, the application is not supported. Any refusal of the application would not prevent the business operator from using the premises as a restaurant as approved under D/2020/942 (as amended).

- (s) **Issue:** Dual use of the premises will be difficult to monitor and enforce.

Response: The objectors are concerned that it will be unclear which conditions of consent and which PoM will apply when the premises is being used as a restaurant, and which will apply when it is being used as a function centre.

If dual use is permitted, it will be difficult for Council Rangers, the Local Police and residents to know what use is occurring at the premises on any given day and therefore monitor compliance with the consent conditions. This would be especially difficult if each use has different patron capacities, hours of operation and plans of management.

It is further agreed, that there would be an increased risk of the maximum patron numbers and operating hours to be exceeded,

For these reasons, the application has not demonstrated that the addition of a further use is orderly development under the Act. This issue forms part of the reasons for refusal of the application.

- (t) **Issue:** The function centres should employ Police during high volume periods.

Response: It is understood that residents have been working with City of Sydney staff and the Police Local Area Command to resolve current complaints and non-compliance issues with the existing function centres. As part of these discussions, it is understood that residents have requested that Doltone House be required to engage NSW Police officers (i.e. similar to how The Star Casino is required to pay for Police to be stationed at the venue during high volume periods).

As indicated in an above response, management and non-compliance issues relating to the existing function centres are not considerations that can be given weight in the assessment of the current application.

Had the recommendation of this assessment been for approval, a condition requiring policing of the premises/locality would only be imposed with the agreement of the Police Local Area Command. Council rangers, however, would be available to attend the premises should any complaints be made to Council. The existing consent for the restaurant also requires that surveillance cameras be positioned around the site and are to be made available to Council or the Police on request.

- (u) **Issue:** Staff and security personnel are unable to manage patrons once they have left the premises.

Response: The PoM relies on general staff to control the behaviour of patrons as they leave the premises. The PoM states that a function centre staff member will monitor the forecourt between the Arrow Marine Building and Jones Bay Wharf for at least 20 minutes after the end of a function and will request patrons to minimise noise and encourage them to proceed to their transport.

Had the recommendation of this assessment been for approval, conditions could have been recommended for requiring that security guard/s be provided.

It is recognised, however, that while staff members and security personnel can request patrons to be quiet and leave the area, they are not responsible for and do not have the power to control the behaviour of patrons. Depending on the degree of any anti-social behaviour, residents would need to lodge any complaint with the Local Police or Council.

As discussed in the 'Discussion' section of the report, the PoM fails to demonstrate that the function centre use can be appropriately managed or that the proposed management measures will prevent any adverse impacts on nearby residential properties. This matter forms part of the reasons for refusal of the application.

- (v) **Issue:** The operator should be required to provide the City and the Police Local Area Command with prior notice of all events.

Response: Concern noted. The application is not supported and is recommended for refusal for the reasons outlined in this report.

- (w) **Issue:** An additional function centre will further increase existing traffic chaos.

Response: Council's Transport and Access Unit has advised that the site is in an area with good infrastructure and good access to public transport. From a technical point of view, the local road and transport network is capable of accommodating the proposed development.

There is evidence, however, that certain driver behaviour is causing operational issues within the roadway and that these issues could be made worse with the addition of another function centre. Matters relating to driver behaviour, however, are a matter for Council and the Local Police to enforce.

While the amended operating hours may assist with the departure of guests at the conclusion of a function, the amended hours would not prevent an additional 110 guests from arriving at the same time as other functions and potentially contributing to existing operational issues with the roadway.

- (x) **Issue:** Cars and limousines double park to drop-off and pick-up patrons.

Response: The objectors have included evidence of cars and local buses illegally crossing over the double lines into oncoming traffic to manoeuvre around vehicles that are double parked. The double lined section of road is adjacent to the forecourt area between the Arrow Marine Building and Jones Bay Wharf. Half of the kerbside area, adjacent to the forecourt, is a designated 2P ticketed parking zone (3 spaces), while the remaining part is a "no parking" zone. In theory, correct use of the "no parking" zone should allow drop-off and pick-up activities to occur without the need for vehicles to double park within the roadway. Any proposal to increase the "no parking" zone or limit the timeframe of the 2P ticketed parking space would need to be considered and separately approved by the Local Pedestrian, Cycling and Traffic Calming Committee.

The kerbside parking area immediately outside the Arrow Marine Building includes a car share space and two (2) other spaces. The two spaces are "no parking" between 6pm and 12 midnight Thursday to Sunday and are a designated 2P ticketed parking zone outside of these times. The two (2) spaces would therefore be available for pick-up activities but would not necessarily be available for drop-off. The opposite side of Pirrama Road includes a designated 2P ticketed parking zone.

As indicated in the response above, certain driver behaviour is causing operational issues within the roadway and these issues could be made worse with the addition of another function centre.

- (y) **Issue:** During multiple events, the public parking station opposite Jones Bay Wharf fills quickly.

Response: Council does not require a function centre to provide on-site parking in order to maximise public transport patronage. In addition to the Jones Bay Wharf Wilson car park opposite the site, The Star Parking Station is within a 10-minute walk and would also accommodate patrons driving to the site.

- (z) **Issue:** Patrons typically do not arrive and leave via public transport.

Response: It is acknowledged that guests attending a function are unlikely to walk or cycle and that the most common form of travel would be by public transport or by car (private or public).

It should be noted that there is no minimum requirement for the provision of car parking spaces for function centre uses under Part 7 of the Sydney LEP 2012. As indicated in the responses above, the local road and transport network is capable of accommodating the proposed development. Driver behaviour, however, is not an indication of road or transport capacity.

- (aa) **Issue:** No lighting details have been provided.

Response: It is noted that residents in the nearby Revy C building have reported the installation of bright lights on the Upper Deck area used by Doltone House at Jones Bay Wharf. This matter, however, does not relate to the subject application.

While the DA is for an additional use of the premises only, had the recommendation of this assessment been for approval, conditions in relation to the intensity of lighting for external areas could have been imposed.

Issue: The Applicant has incorrectly indicated that the Pyrmont Precinct is earmarked as an entertainment area.

Response: The subject site is located within the 'Darling Island' sub-precinct. The Master Plan for the area includes an 'Entertainment and Cultural Precinct' around The Star Casino, Australian National Maritime Museum and Pyrmont Bay Park. The location was chosen because of its proximity to other entertainment areas (such as Harbourside, Cockle Bay and the CBD) as well as to existing and future public transport.

As shown in Figure 23, Jones Bay Wharf and the surrounding area does not form part of the Entertainment and Cultural Precinct under the PPPS.

- (bb) **Issue:** Residents were not notified, and the Applicant quietly lodged the DA just before Christmas when most residents are away.

Response: The Applicant lodged the DA on 7 December 2021. In accordance with the City of Sydney Community Participation Plan 2019, the proposed DA was required to be notified for a period of 21 days. An extended notification period was applied from 15 December 2021 to 26 January 2022 to allow for the Christmas and holiday period. Letters were sent to a total of 258 owners and occupiers within a 50m radius of the site.

The submissions in support of the proposed development raise a number of matters which are summarised and addressed below:

- (a) **Issue:** Doltone House are a long-established family business that creates unforgettable experiences for its guests.

Response: These matters are not considerations that can be given weight in an assessment of an application made under the Environmental Planning and Assessment Act, 1979.

- (b) **Issue:** As we enter a post Covid economy, we need to do whatever we can to support the hospitality industry which has been hit the hardest by the pandemic.

- (c) **Response:** Council acknowledges that the hospitality sector is one the hardest hit by the pandemic and has developed a Community Recovery Plan to support economic and social recovery in the local area over the next 18 months. The plan builds on the \$72.5 million in support packages released by Council in March 2020 and ensures Council continues to provide support where it's needed most.

The proposed development application, however, must still be assessed on merit against the applicable planning controls and is recommended for refusal on this basis.

- (d) **Issue:** It has historically been best practice that for a restaurant to be viable it should also be able to provide function service for private bookings to meet the needs of customers and to adjust to fluctuating market conditions.

Response: Function centres are a separately defined land use and require the separate consent of Council. The proposed development is assessed as being unacceptable in terms of its impact on the amenity of the nearby residential properties and has failed to demonstrate that it is capable of being adequately managed. The proposal is recommended for refusal for the reasons set out elsewhere in this report.

- (e) **Issue:** The venue will be popular, especially at night. The ability to host a 100 person function will be very useful for corporate and social events, and will create more options for patrons to favour and support.

Response: Due to concerns relating to potential noise impacts and ability for the business operator to manage patron numbers, the proposed development is assessed as being unacceptable and is not supported. The proposal is recommended for refusal for the reasons set out elsewhere in this report.

- (f) **Issue:** The proposal will result in more casual and full-time jobs, as well as provide career opportunities in the hospitality sector.

Response: The premises is already approved as a restaurant with capacity for 166 patrons. The use of the premises for functions is sought as an additional land use. While a breakdown of staff numbers has not been submitted, it is anticipated that the staff employed in the restaurant would also work in any function centre. Furthermore, the applicant has maintained in the DA documentation that the restaurant and function centre uses are comparable. On this basis, it is not anticipated that the proposal will result in considerably more jobs or career opportunities.

- (g) **Issue:** Doltone House provide an incredible service for our community.

Response: This matter is not a consideration that can be given weight in an assessment of an application made under the Environmental Planning and Assessment Act, 1979.

Furthermore, it is noted that while function centres service the wider community, they typically provide only a limited service to the local residential community.

- (h) **Issue:** The repurposing of REVY is a great addition to the Pymont area and wider community, will provide added amenity to the precinct, replaces an eyesore and safety hazard, will help in the street activation and will have a positive multiplier effect to the local economy.

Response: It is agreed that the alterations to the heritage listed building, undertaken as part of the approved restaurant use, has and will continue to have many positive impacts. The additional use of the premises as a function centre, however, will not further improve the streetscape or appearance of the refurbished building. The use of the premises as a restaurant is also likely to have positives effects on the local economy.

The proposed use of the premises as a function centre is assessed as being unacceptable in terms of its potential impact on the amenity of the nearby residential properties. This matter forms part of the reasons for refusal of the application.

- (i) **Issue:** Jones Bay Wharf is working closely with Google and Transport for NSW to get their planned walkway underway. The walkway will terminate at REVY and will help with access especially with local functions.

Response: The Pymont Peninsula Place Strategy (PPPS) includes a harbour foreshore walk which connects Darling Harbour to Rozelle. The subject site sits within the proposed new foreshore walk link. The walkway will not provide a more direct route to public transport options or to the vehicular drop-off/pick-up zones and as such, is unlikely to improve access for patrons attending the site.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

94. The development is not subject to a Section 7.11 development contribution under the provisions of the City of Sydney Development Contributions Plan 2015. Under the Plan, contributions for function centres are calculated per additional square meter of gross floor area. The application does not seek to increase the existing gross floor area of the building and as such is excluded from the need to pay a contribution.

Relevant Legislation

95. Environmental Planning and Assessment Act 1979.

Conclusion

96. The amending development application seeks consent to allow an existing approved restaurant to be used for the dual purpose of a function centre for a maximum of 110 patrons. The proposed base indoor hours of operation are 7.00am to 10.00pm, Monday to Sunday with a twelve (12) month trial for trading from 7.00am to 10.30pm, Monday to Thursday and from 7.00am to 11.30pm, Fridays and Saturdays. The proposed outdoor hours of operation are 7.00am to 8.00pm, Monday to Sunday. No building works are proposed as part of the application.
97. The submitted Acoustic Report provides insufficient information to adequately demonstrate that the proposed use of the site as a function centre will be capable of operating without unreasonable noise and amenity impacts to the occupants of surrounding residential land uses.
98. The recommendations of the Acoustic Report, in terms of maximum number of patrons permitted within different parts of the outdoor area, are impractical for functions and the accompanying Plan of Management (PoM) provides no confidence that the management measures outlined in the PoM can be successfully carried out or enforced.
99. The development fails to comply with the aims of the Sydney Local Environmental Plan 2012, the objectives of the B3 Commercial Core zone objectives, and the late night management controls contained within the Sydney DCP 2012.
100. In its current form where the additional use as a function centre was to be approved, it would be logistically difficult for Council Rangers, the Local Police and residents to know what use was occurring at the premises on any given day and therefore monitor compliance with the relevant consent conditions. This would be especially difficult given that each use proposes different patron capacities, different hours of operation and different plans of management. The proposal therefore does not promote orderly use of the land.
101. Between January 2022 and July 2022, multiple requests were made to the applicant to respond to and address the numerous issues raised. To date, however, the applicant has not adequately responded to the outstanding concerns and has not provided adequate supporting documentation to demonstrate with any confidence that the additional use can operate without adverse impacts on the surrounding residential properties. While many restrictions have been recommended by the Applicant, in an attempt to address the noise and amenity impacts, the proposed management measures are considered unfeasible and unrealistic.
102. Having regard to the above, the development is considered unsatisfactory and not in the public interest. The proposal is therefore recommended for refusal.

ANDREW THOMAS

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