

**Item 3.****Development Application: 8-10 Danks Street, Waterloo - D/2022/397**

File No.: D/2022/397

**Summary****Date of Submission:** 4 May 2022, latest information submitted on 9 January 2023**Applicant:** Ora Restaurant Pty Ltd**Architect:** Archispectrum**Planning Consultant:** aSquare Planning Pty Ltd**Cost of Works:** \$0**Zoning:** The site is located in the B2 Local Centre zone. The existing use, defined as food and drink premises, is permissible with consent in the zone.**Proposal Summary:** The application seeks consent for an increase in the patron capacity of the existing licensed restaurant from 70 to 225 persons and continuation of trial extended hours between 7.00am and 12.00midnight, Monday to Friday, for a further five years.**Notification**

The application was notified for 14 days, between 4 and 19 October 2022. A total of 43 submissions were received (39 objections and 4 support). The objections raised the following concerns:

- inadequacy of the acoustic report;
- appropriateness of the extended hours of operation for the locality;
- noise impacts to neighbouring residential apartments;
- potential damages to the through site link contained within the adjoining property; and
- traffic and parking.

## Assessment

Additional information has been submitted over the course of the assessment to address issues raised by Council Officers and in objections received and include:

- an amended Plan of Management;
- additional acoustic assessment information to address potential impacts to adjoining residential apartments to the north, east and west;
- an updated waste management plan; and
- information pertaining to the removal of redundant driveway crossings and changes to kerb-side parking restrictions to increase the on-street parking and to provide a dedicated loading zone.

Suitable information has been provided to demonstrate that the potential amenity impacts associated with the proposed increased patron capacity and extension of the trial period for extended hours of operation can be appropriately managed.

Considering the substantial increase in patron capacity from the existing 70 to 225 persons, a 1-year trial period is recommended to allow the operator to demonstrate good management and compliance with conditions concerning the management of patron behaviour and noise impacts.

The application is referred to the Local Planning Panel for determination as it has attracted over 25 unique submissions by way of objection.

**Summary Recommendation:** The development application is recommended for approval, subject to conditions.

**Development Controls:**

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) City of Sydney Development Contribution Plan 2015
- (iv) City of Sydney Affordable Housing Program

**Attachments:**

- A. Recommended Conditions of Consent
- B. Selected Drawings

**Recommendation**

It is resolved that consent be granted to Development Application No. D/2022/397 subject to the conditions set out in Attachment A to the subject report.

**Reasons for Recommendation**

The application is recommended for approval for the following reasons:

- (A) The development, subject to conditions, is consistent with the objectives of the B2 Local Centre zone.
- (B) The development is consistent with the character statement and principles for the Danks Street locality.
- (C) The hours of operation are consistent with the objectives and in accordance with the recommended hours for the Local Centre area for a Category B premises as identified in the Sydney DCP 2012.
- (D) The development, subject to conditions, will ensure that the on-going operation of the development does not create unreasonable disturbance or nuisance to surrounding properties.

## Background

### The Site and Surrounding Development

1. The site has a legal description of Lot 3 DP 335447, commonly known as 8-10 Danks Street, Waterloo. It is rectangular in shape with an area of approximately 590m<sup>2</sup>. It has a frontage to the northern side of Danks Street and is located between Young Street to the west and Bourke Street to the east.
2. The site contains a part-one, part-two storey warehouse building. The building has two roller doors with driveway crossings, and two pedestrian entries. Neither of these roller doors or associated driveway crossings are currently in use.
3. The subject tenancy occupies the majority of the ground floor of the building. A separate retail premises (furniture shop) occupies a small portion of the ground floor at the eastern end of the building's street frontage. A separate office space occupies the first floor level above.
4. The subject tenancy has been fitted out as a restaurant under Complying Development Certificate (CDC) no 210006/01-01 circa 2021, and is currently trading as ŌRA, a licensed restaurant. The floor plan is shown in Figure 8 below. As shown in Figure 2, the western roller door has been modified to form the main pedestrian entrance to the subject tenancy while the eastern roller door is left closed. The pedestrian access point between the two roller doors is utilised as an emergency access point.
5. The surrounding area is characterised by a mixture of land uses. Adjacent to the north and east, at 169-175 Phillip Street, is a 3-7 storey residential flat building known as 'Warehouse 5'. To the west, at 2-6 Danks Street, is a 4 storey mixed use development known as the 'Arthouse', comprising commercial uses on the ground floor and residential apartments above. To the northwest, at 197 Young Street, is a two-storey converted warehouse building now known as the Waterloo Design Centre. It accommodates a range of commercial uses, including a cafe on the ground floor addressing the corner of Young Street and Phillip Street.
6. On the other side of Danks Street, to the south, includes a 4 storey mixed use development known as 'Warehouse 1' at 1 Danks Street, comprising commercial uses on the ground floor and residential apartments above. Warehouse buildings at 3-7 Danks Street, accommodate a range of commercial/retail uses.
7. Mixed use developments at 9-15, 18, and 17-19 Danks Street, located further east along Danks Street, also accommodate ground floor retail premises and residential apartments above.
8. The site is not identified as, or located adjacent to, a heritage item. It is also not located within or adjacent to a heritage conservation area.
9. The site is located within the locality of Danks Street, which forms part of the Green Square urban renewal area.
10. A site visit was carried out on 2 February 2023. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site and surrounds

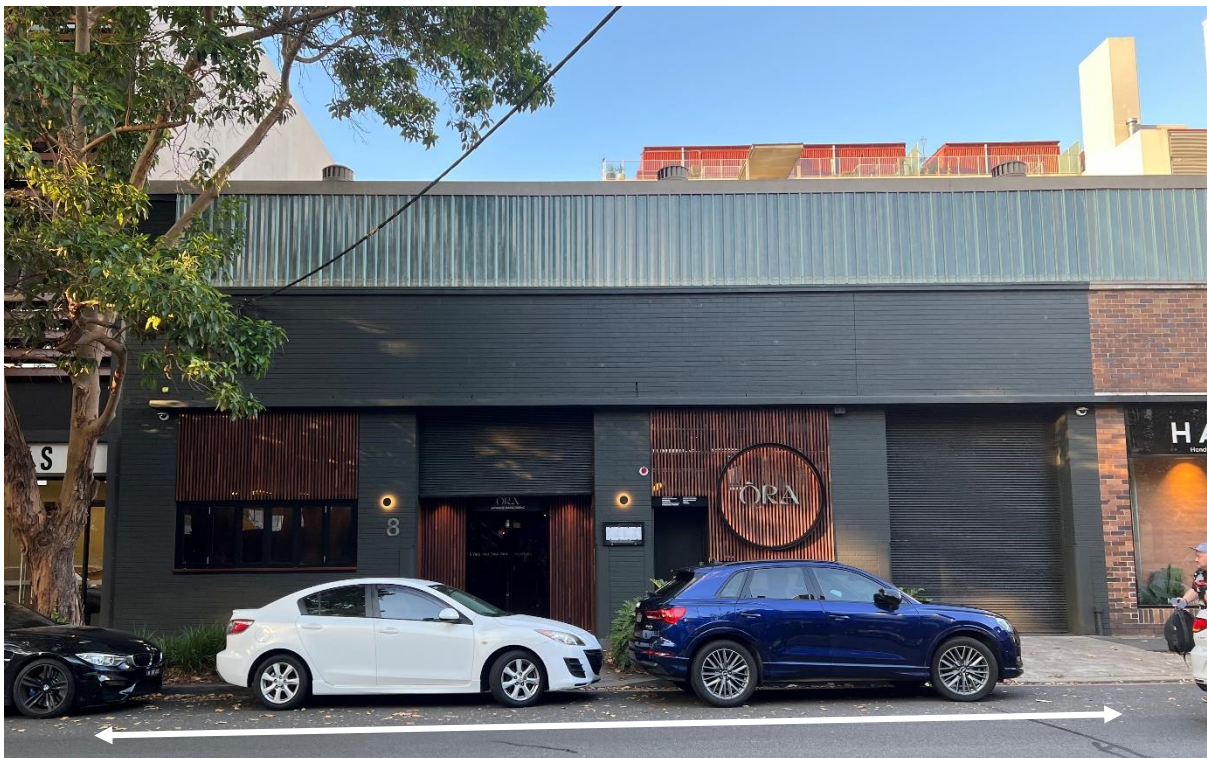
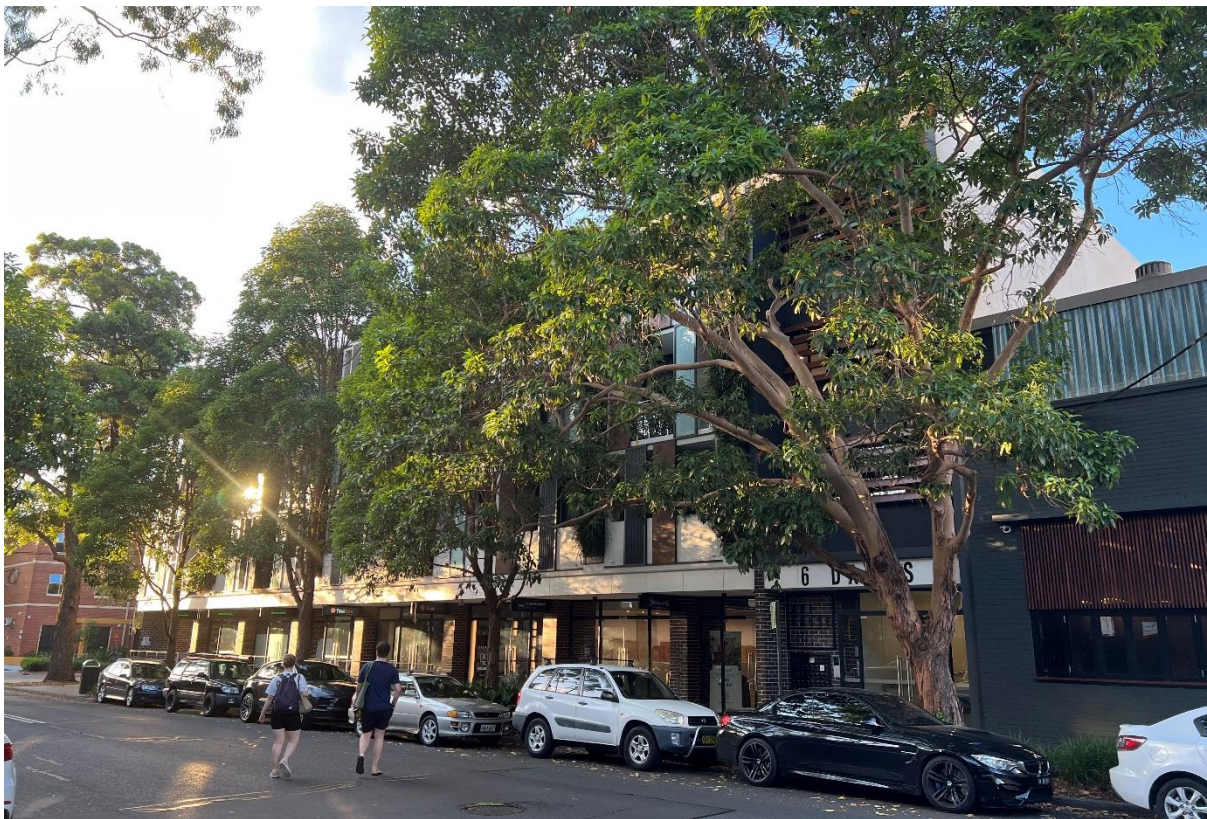


Figure 2: Subject tenancy viewed from Danks Street





**Figure 3:** Adjoining residential flat building 'Warehouse 5' to the west



**Figure 4:** Adjoining mixed use development 'Arthouse' to the east





Figure 5: Neighbouring mixed use development 'Warehouse 1' to the south



Figure 6: Neighbouring commercial development to the south

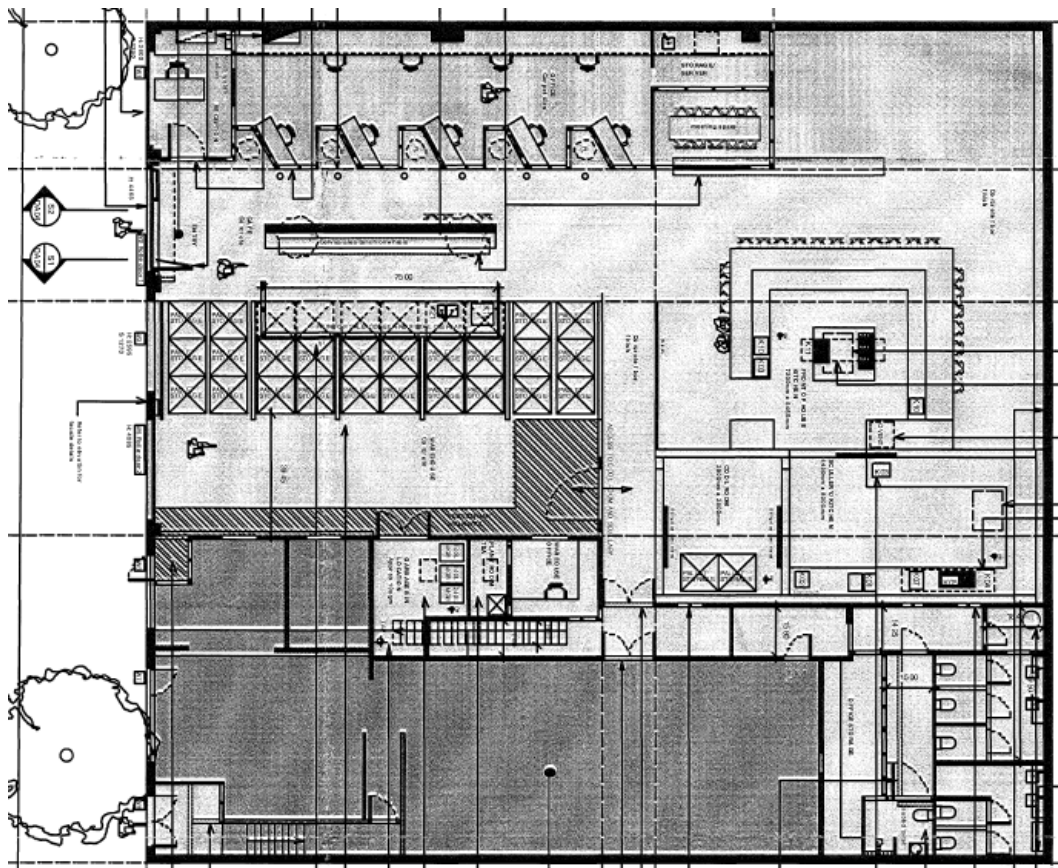
## History Relevant to the Development Application

### Development Applications

11. The following applications are relevant to the current proposal:

- **D/2012/1141** – Development consent was granted on 12 November 2012 for alterations and additions to the subject tenancy to accommodate a warehouse, office space and licensed restaurant/bar. The consent approved a maximum patron capacity of 70 people and extended hours of operation between 7.00am and 12.00 midnight, Monday to Sunday.

Condition 4 of the consent specified that no vehicles are to enter the site for loading or off-loading.



**Figure 7:** Approved floor plans of D/2012/1141

The development consent was subsequently modified. The most relevant modifications include:

- Modification C (D/2012/1141/C), which was approved on 16 August 2016 and which deleted Condition 4 to allow vehicles to enter and exit the tenancy via the western driveway for loading and unloading goods only.
- Modification D (D/2012/1141/D) was approved on 20 December 2017, extending the trial period for extended hours of operation for a further 2 years. This trial period ended on 20 December 2019.





13. The Applicant responded to the request on 30 September 2022, and submitted the information required. The Applicant also submitted a Traffic Report, which includes a proposal to alter the kerb-side parking restrictions in association with the removal of the two existing redundant driveways.
14. Following an assessment of the proposed development by Council Officers, a request for additional information, listed below, was sent to the applicant on 1 November 2022.
  - (a) An updated acoustic report that includes an assessment of the potential impacts to neighbouring residential apartments at 169-175 Phillips Street, some of which directly abut the site's eastern side boundary. The updated report must reflect the proposed extended hours of 7.00am - 12.00 midnight, and consider the cumulative impacts of amplified music, other relevant noise sources, and the proposed increased capacity of 250 patrons and staff. It must also recommend appropriate noise management measures and detail the proposed acoustic testing/verification to ensure compliance with the relevant noise criteria.
  - (b) An updated Plan of Management to remove references to the previous development consent, that addresses the requirements of Schedule 3.2 of Sydney DCP 2012, and which includes the relevant noise management measures recommended by the updated acoustic report.
  - (c) An updated waste management plan to justify a low waste generation rate and detail an appropriate waste management procedure.
15. The Applicant responded to the request on 23 December 2022 and 9 January 2023 with the requested documents.

## Proposed Development

16. The application seeks consent for the following:
  - increase the patron capacity from 70 people to 225 people, supported by an updated floor plan (Figure 9) to illustrate the seating arrangement;
  - hours of operation 10.00am to 10.00pm Monday to Sunday on a permanent basis, and extended hours of 7.00am - 12.00 midnight Monday to Sunday on a trial basis for a further 5 years; and
  - The following details from the updated Plan of Management are also noted:
    - maximum of 25 staff (in addition to the number of patrons);
    - all doors and windows (except those fronting Danks St) are to remain closed at all times;
    - entrance door to remain closed after 10pm;
    - no deliveries or disposing of garbage/glass bottles between 10pm and 7am; and
    - loading and unloading between 7am and 6pm Monday to Friday and 7am to 2pm Saturday (no deliveries on Sunday and public holidays).

- No consent is sought for any physical works, except to comply with the recommendations of the updated acoustic report. Additional fit out works, annotated in blue and red in Figure 9, are subject to a separate complying development certificate or are to be carried out as exempt development.

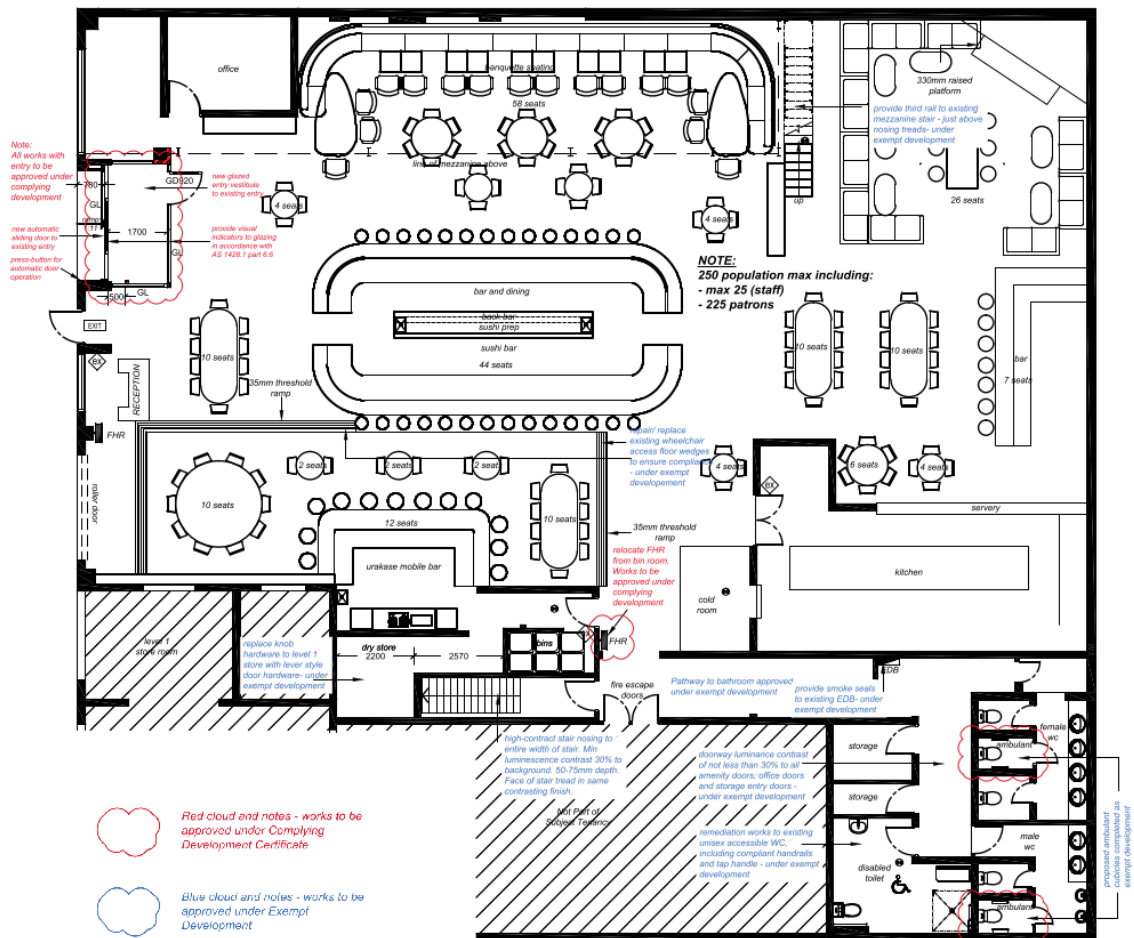


Figure 9: Proposed floorplans

- The proposal, in association with the removal of redundant driveway crossings, also seeks changes to the kerb-side parking restrictions to create a new timed loading zone and timed parking space. These changes to on-street parking arrangements are subject to separate approval of the Local Pedestrian Cycling and Traffic Calming Committee. The existing and proposed kerb-side arrangements are illustrated in Figures 10 and 11 below.





Figure 10: Existing kerb-side arrangements



Figure 11: Proposed kerb-side arrangements

### Assessment

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

## Local Environmental Plans

### Sydney Local Environmental Plan 2012

20. 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	Yes	The site is located in the B2 Local Centre zone. The existing use, defined as a food and drink premises, is permissible with consent in the zone.

#### Part 4 Principal development standards

#### Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
4.3 Height of buildings	Yes	The proposal will not alter the existing building height.
4.4 Floor space ratio (FSR)	Yes	A maximum FSR of 1.5:1 is permitted for the site.  The existing development has a FSR of approximately 1.28:1 and which complies with the FSR control.  No change to FSR is proposed under the subject application.

#### Part 7 Local provisions – general

Provision	Compliance	Comment
Division 1 Car parking ancillary to other development 7.7 Retail premises	Yes	A maximum of 12 car parking spaces are permitted.  No car parking spaces are proposed.
7.13 Contribution for purpose of affordable housing	N/A	See detailed under the 'Financial Contributions' section below.
7.23 Large retail development outside of Green Square Town Centre and other planned centres	Yes	The proposal will maintain the existing use of the site as a licensed restaurant, with a gross floor area of less than 1,000m <sup>2</sup> and which complies with the requirements of this control.

## Development Control Plans

### Sydney Development Control Plan 2012

21. 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

22. The site is located within the Danks Street locality. The proposed development is in keeping with the unique character and design principles of the locality in that it will maintain the retail use of the site to contribute to the function of Danks Street (west of Bourke Street) as a local village for residents and workers.

#### Section 3 – General Provisions

Provision	Compliance	Comment
3.4 Hierarchy of Centres, City South	Yes	The proposal will maintain the site's contribution, as a restaurant, to the function of Danks Street as a local village.
3.11 Transport and Parking	Yes	See further details in the 'Discussion - Site Servicing' section below.
3.14 Waste	Able to comply	A waste management plan has been submitted. Appropriate conditions have been recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
3.15 Late Night Trading Management	Yes	<p>The Plan of Management adequately addresses the requirements of DCP Schedule 3.2, includes the recommendations of the updated acoustic report, and a complaint handling and management procedure review mechanism. The Plan of Management is therefore considered acceptable, and appropriate conditions have been recommended to require the implementation of, and compliance with, the Plan of Management.</p> <p>The proposed hours of operation and intensification of the restaurant use is detailed in the Discussion section below.</p>



**Section 5 – Specific Areas**

Provision	Compliance	Comment
5.2.1 Green Square Urban Strategy 5.2.2 Objectives for Green Square	Yes	The proposal will contribute to the function of Danks Street as a local village by maintaining the existing use as a licensed restaurant and is consistent with the Strategy and Objectives for Green Square.  An acceptable acoustic report and Plan of Management have been provided to demonstrate that the restaurant can operate, with increased capacity and without unacceptable impacts to the amenity of neighbouring residential uses.

**Discussion****Hours of Operation**

23. The site is located in a Local Centre Area. The licensed food and drink premises, with the proposed increased capacity of 225 patrons, is a Category B premises as defined in section 3.15 of the Sydney DCP 2012.
24. The hours of operation recommended by Section 3.15.4 of Sydney DCP 2012, and the proposed hours of operation, are detailed in the table below:

	DCP Indoor Hours for Category B Premises	Proposed Hours
Base:	7.00am - 11.00pm	10.00am - 10.00pm, Monday to Sunday
Extended:	7.00am - 12.00 midnight	7.00am - 12.00 midnight, Monday to Sunday

25. The proposed hours are consistent with the recommended base and extended hours and are acceptable.
26. In accordance with Section 3.15.4(3), any hours that are beyond the base hours will be subject to a trial period.
27. The applicant submits that the extended hours have previously been subjected to 2 successful trial periods. As such, a third trial period of 5 years should be permitted by this development consent.

28. While the two previous trials are acknowledged, it is recommended that the extended hours of operation with increased patron capacity, be subject to a 12-month trial, because:
- (a) the proposed increase (over threefold) in patron capacity is substantial and significantly changes the nature of the food and drink premises; and
  - (b) previous trials were completed by a different operator and are not a record of the current operator's performance.
29. The 1-year trial period that is recommended, will allow the operator to demonstrate compliance with the new Plan of Management and the endorsed acoustic report (including all recommended acoustic treatments and management procedures discussed below). It will also allow Council to observe the management performance of the operator, particularly how the potential amenity impacts to adjoining residential uses are managed.

### **Acoustic Assessment**

30. The updated acoustic report submitted on 23 December 2022 addresses concerns raised by Council's Officers and objectors.
31. The updated acoustic report includes the following changes:
- (a) it acknowledges that the adjoining apartment buildings, in addition to 1 Danks Street, as sensitive receivers;
  - (b) it demonstrates that the relevant noise criteria can be complied with for the full extent of the extended hours of operation between 7.00am and 12.00 midnight;
  - (c) it considers the cumulative impacts of amplified music, other relevant noise sources, and the maximum number of people, being 225 patrons and 25 staff;
  - (d) it recommends appropriate noise attenuation and management measures; and
  - (e) it details the proposed acoustic testing and verification to ensure compliance with the relevant noise criteria.
32. The updated acoustic report has been reviewed by the City's Environmental Health Unit and is considered to provide suitable recommendations to manage potential noise impacts, particularly after 10.00pm. These recommendations have also been included in the updated Plan of Management, being:
- (a) no DJ playing within the premise, and no speakers are to be installed in, or placed so as to direct music towards the public domain;
  - (b) acoustic door (including the existing turn door with acoustic seal) to the main entry is to remain in a closed position after 10.00pm;
  - (c) patrons are to wait for a table inside the premises and staff are to monitor patrons leaving the restaurant to prevent patrons from gathering in the vicinity or acting in a manner that may adversely affect the amenity of neighbouring residential uses;
  - (d) no deliveries or waste disposal are to take place after 10.00pm; and

- (e) installation of noise limiter on all sound amplification equipment.
33. All conditions recommended by Council's Environmental Health Unit have been included in the recommended conditions of consent (Attachment A). This includes the requirement for the Applicant to obtain a written Acoustic Verification Report demonstrating compliance with all the performance parameters established in the updated acoustic report prior to the commencement of the extended hours and increased patron capacity.

### Site Servicing

34. The subject tenancy was approved to be used as a food and drink premises under development consent D/2012/1141. As part of that original consent, a condition was imposed requiring that no vehicles are to enter the site for loading and unloading. However, the consent did not specifically require the removal of the redundant driveway crossings and layback.
35. This restriction was later deleted under approved modification D/2012/1141/C, to allow on-site servicing. However, it is unclear if the approved arrangement was implemented given all tables and chairs would need to be cleared to allow access and sufficient turning area for vehicular access and on-site loading operations.
36. The layout of the existing restaurant was approved under CDC no. 210006/01 on 12 August 2021. The approved fitout has been carried out, and the new layout does not allow vehicles to enter the site. Servicing, therefore, currently occurs at the kerb side, in front of the two existing driveway crossings, similar to the original development consent no. D/2012/1141.
37. The existing driveway crossings are redundant and can be removed to allow the footpath to be upgraded to improve the pedestrian environment of Danks Street.
38. Associated with the removal of redundant driveway, the submitted transport report also recommends a change to the existing on-street parking restrictions along the site's frontage to provide an on-street loading zone. The changes are shown in Figures 10 and 11 above and are detailed below:
- (a) remove the two redundant driveway crossings and layback (10m wide in total), and add to the existing timed on-street parking; and
  - (b) create a 10m wide on-street timed loading zone adjacent to the existing driveway crossing for 169-175 Phillip Street, to the east of the subject site.
39. In effect, the proposed changes will create a timed loading zone and a timed on-street parking space during specified periods, and create two additional on-street parking spaces outside of the specified periods. These spaces, including the timed loading zone, will be available to the public.
40. The proposed changes to the on-street parking restrictions have been reviewed by the City's Traffic Operations Unit. The unit raised no objections and advised that the proposed loading zone will be subjected to the same time restrictions as the existing on-street parking spaces, being 8.30am - 6.00pm Monday to Friday, and 8.30am - 12.30pm Saturday.



41. The proposed changes to on-street parking restrictions will require the formal approval of the Local Pedestrian Cycling and Traffic Calming Committee (LPCTCC). Appropriate conditions are recommended in Attachment A to require separate approval of changes to parking restrictions to be obtained from the LPCTCC and for the removal of the redundant crossings.

## Consultation

### Internal Referrals

42. The application was discussed with Council's Environmental Health Unit; Licenced Premises Unit; Transport and Access Unit; Traffic Operations Unit; and the Waste Management Unit. Relevant comments have been included in this report, and where appropriate, conditions recommended by these units have been included in the recommended conditions of consent in Attachment A.

## Advertising and Notification

43. In accordance with the City of Sydney Community Participation Plan 2020, the proposed development was notified for a period of 14 days between 4 and 19 October 2022. A total of 305 properties were notified. A total of 44 submissions were received, including 41 in objection and three in support.

44. Issues raised in submissions are summarised and responded to as follows:

- (a) **Issue:** Noise impact, by means of background music and likely intoxicated patrons congregating at the Danks Street entrance, to the immediately adjoining residential developments, including the 'Arthouse', Warehouse 5, and Warehouse 1.

**Response:** The submitted acoustic report has demonstrated that the proposed development is able to comply with the relevant noise criteria so as to prevent any unacceptable adverse impacts to adjoining apartments. Conditions are recommended requiring all the noise mitigation measures recommended in the acoustic report are installed prior to the commencement of increased hours and capacity. The updated Plan of Management details processes to manage patrons' behaviour at the Danks Street entrance, particularly after 10pm, to avoid potential disturbance.

- (b) **Issue:** Loud music, such as a DJ, should not be allowed.

**Response:** All sound amplification equipment is required to be installed with a noise limiter, and the updated Plan of Management specifically states that no DJ is allowed.

- (c) **Issue:** The acoustic report includes numerous inaccuracies, raising concerns with the validity of the test results.

**Response:** The acoustic report has been updated to address noise impacts to nearby residential receivers. The City's Environmental Health Unit has reviewed the acoustic report, including noise measurement logs and accepts the baseline noise levels established on the basis of these measurements.

- (d) **Issue:** The proposed early morning and late night trading hours are unsuitable for the predominantly residential area.

**Response:** This section of Danks Street is identified as a 'Local Centre' late night trading area under the Sydney DCP 2012. The extended trading hours (after 10pm) and which are proposed to be continued, are permitted in 'Local Centre' late night trading areas on a trial basis in accordance with the City's planning controls.

- (e) **Issue:** A 5-year trial period for the extended hours is inappropriate.

**Response:** A one year trial period is recommended given the proposal is considered to significantly change the nature of the existing premises.

- (f) **Issue:** The Plan of Management has been recycled, failing to provide management measures necessary to minimise potential impacts to neighbouring residential uses associated with the extended hours and increased patron capacity.

**Response:** An updated Plan of Management has been submitted that adequately addresses the requirements of Sydney DCP 2012 and which incorporates measures recommended in the updated acoustic report and is accepted. Conditions are also recommended requiring the restaurant operator to comply with the Plan of Management, which includes procedures to manage potential impacts to nearby residences. Extended trading hours are approved on a one year trial, at which time Council Officers will be able to consider whether the premise has been well-managed or not.

- (g) **Issue:** Second-hand smoking from people congregating outside the restaurant affecting neighbouring residential uses.

**Response:** Smoking is banned in the immediate vicinity (4m) of the entrance to the restaurant under the *Smoke-free Environment Act 2000*.

- (h) **Issue:** Littering, additional noise, and potential damages to the through-site link of the adjoining Warehouse 5 development.

**Response:** Conditions are recommended to manage patrons entering and leaving the premises, to prevent bottles and glass from the premises and to prevent anti-social behaviour.

- (i) **Issue:** The increased patron capacity will increase local vehicular and pedestrian traffic. It will also increase demand for parking and public transport.

**Response:** Conditions are recommended to require the removal of existing redundant driveway crossings, and changes to the kerb-side parking arrangements to improve the pedestrian environment and increase the availability of public on-street parking. The intensity of use is also considered to be commensurate with the capacity of existing and planned infrastructure by virtue of the complying with the maximum floor space ratio identified for the site.

*In Support*

- (j) **Comment:** The restaurant has been a good neighbour and operator, with no issues regarding noise or patron behaviours. The proposal should be supported in full.

**Response:** The above comments are noted. The extended hours are subject to a 1-year trial period in accordance with Sydney DCP 2012 to allow the operator to demonstrate good management, including compliance with the acoustic report and the Plan of Management.

**Financial Contributions****Contribution under Section 7.11 of the EP&A Act 1979**

45. A section 7.11 development contribution is not payable under the provisions of the City of Sydney Development Contributions Plan 2015, considering:
- (a) the contribution payable is based on the net increase in workers population, which is calculated based on an identified rate per GFA of the premises;
  - (b) the net workers population associated with the site is unchanged as the proposal does not include a change of use of existing floor space nor an increase in gross floor area.

**Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012**

46. The site is located within the Green Square affordable housing contribution area.
47. An affordable housing contribution is not payable considering:
- (a) the proposal does not create more than 60sqm of gross floor area for purposes other than residential accommodation; and
  - (b) the proposal does not involve the change of use of more than 60sqm of existing floor area of a building.

**Relevant Legislation**

48. Environmental Planning and Assessment Act 1979.

**Conclusion**

49. The development, subject to conditions, is consistent with the objectives of the B2 Local Centre zone.
50. The development is consistent with the character and principles identified in the statement for the Danks Street locality contained in the Sydney DCP 2012.



51. The development is within the Local Centre area. The hours of operation are consistent with the objectives and in accordance with the permitted hours for a Category B premises in a Local Centre Area as identified in the Sydney DCP 2012.
52. The development, subject to conditions included in Attachment A, is able to operate without unreasonable disturbance or nuisance to surrounding properties.

**ANDREW THOMAS**

Executive Manager Planning and Development

Bryan Li, Senior Planner