

Item 4.**Section 4.55(2) Modification Application: 23A Lime Street, Sydney - D/2021/1212/A****File No.:** D/2021/1212/A**Summary****Date of Submission:** 9 November 2022**Applicant:** Mohammad Bhuiya**Owner:** Transport for NSW**Zoning:** B8 Metropolitan Centre

Proposal Summary: The subject Section 4.55(2) modification application seeks to modify the approved restaurant operation known as 'Alegre Bar and Dining' as follows:

- (a) delete condition 14 to permit the installation and use of speakers in the outdoor dining area; and
- (b) extend the outdoor trial trading hours of 10:00pm to 12 midnight for a further trial period of two years.

The base consent approved a restaurant use for 300 patrons, including an outdoor dining area facing King Street Wharf which seats 102 patrons. The base hours approved for the indoor operation are 8:00am to 2:00am (the following day) and the base hours approved for the outdoor area are 8:00am to 10:00pm. A one-year trial period for the outdoor hours of operation of 10:00pm to 12 midnight was also approved but has since lapsed on 13 December 2022.

The application was notified for a period of 14 days between 22 November 2022 and 7 December 2022.

The application is reported to the Local Planning Panel for determination as 57 submissions were received objecting to the proposal following notification. The key issues raised in the submissions relate to noise from the premises, patron management and impact on nearby amenity.

During the course of the assessment additional information was provided including an updated acoustic report and plan of management (POM). The submitted acoustic report demonstrates that the provision of outdoor speakers can meet the NSW Noise Policy for Industry and the City of Sydney acoustic criteria. It is recommended that the speakers in the outdoor areas be permitted for a one-year trial period. A further Section 4.55(2) modification will be required to continue to use the speakers beyond this trial if supported by the Panel.

The proposed extended trial hours comply with the Sydney DCP 2012. The application seeks to continue the trial period for the outdoor operating hours for a further two years. Given the concerns raised, compliance history and the provision of outdoor speakers, a one-year trial period is recommended.

The operation of the restaurant is to be in accordance with the revised plan of management and in compliance with the acoustic report.

Summary Recommendation: The subject section 4.55 modification application is recommended for approval.

Development Controls: Environmental Planning and Assessment Act 1979
Environmental Planning and Assessment Regulation 2021
Sydney Local Environmental Plan 2012 (Gazetted 14 December 2012, as amended)
Sydney Development Control Plan 2012 (in force on 14 December 2012, as amended)
SEPP (Biodiversity and Conservation) 2021

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Plan of Management
- D. Acoustic Report

Recommendation

It is resolved that consent be granted to Section 4.55(2) Modification Application No. D/2021/1212/A 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, as modified is considered to be substantially the same as that originally approved.
- (B) The modified development is consistent with the objectives of the SP5 Metropolitan Centre Zone.
- (C) The modified development is considered acceptable having regard to the reasons given for the original consent in accordance with section 4.55(3) of the Environmental Planning and Assessment Act 1979. Besides the other matters discussed in this report, the previous assessment against the provisions of Section 4.15 of the EP&A Act are still relevant.
- (D) The modified development, subject to conditions, will promote the orderly operation of the premises and achieve an acceptable level of amenity for the existing and future occupants of adjoining sites.
- (E) The proposal satisfies the objectives and provisions of the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012.

Background

The Site and Surrounding Development

1. The site has a legal description of part of Lot 55, DP 1014625, known as 23A Lime Street. It is an irregular in shape with an area of approximately 4,565sqm. The property allotment comprises a set of four (4) buildings along Lime Street. The site is located in the northernmost building. The closest intersection to the premises is Erskine and Lime Street.
2. The subject site is located on the first floor (level two) in an existing five (5) storey building with ground level access from Lime Street to the east.
3. There is a fall in the site's topography towards Darling Harbour to the west. The premises has a balcony that has a frontage to the King Street Wharf promenade (to the west).
4. The surrounding area is characterised by commercial land uses of the King Street Wharf precinct including cafes, bars and restaurants on the ground level and office and business premises on the upper levels. Residential premises are located across Lime Street to the east and across the harbour to the west.
5. The site is not a heritage item nor located in a heritage conservation area. There are no adjoining or nearby heritage items.
6. The site is not identified as being subject to flooding.
7. A site visit was conducted on 7 December 2022. Photos of the site and surrounds are provided below.

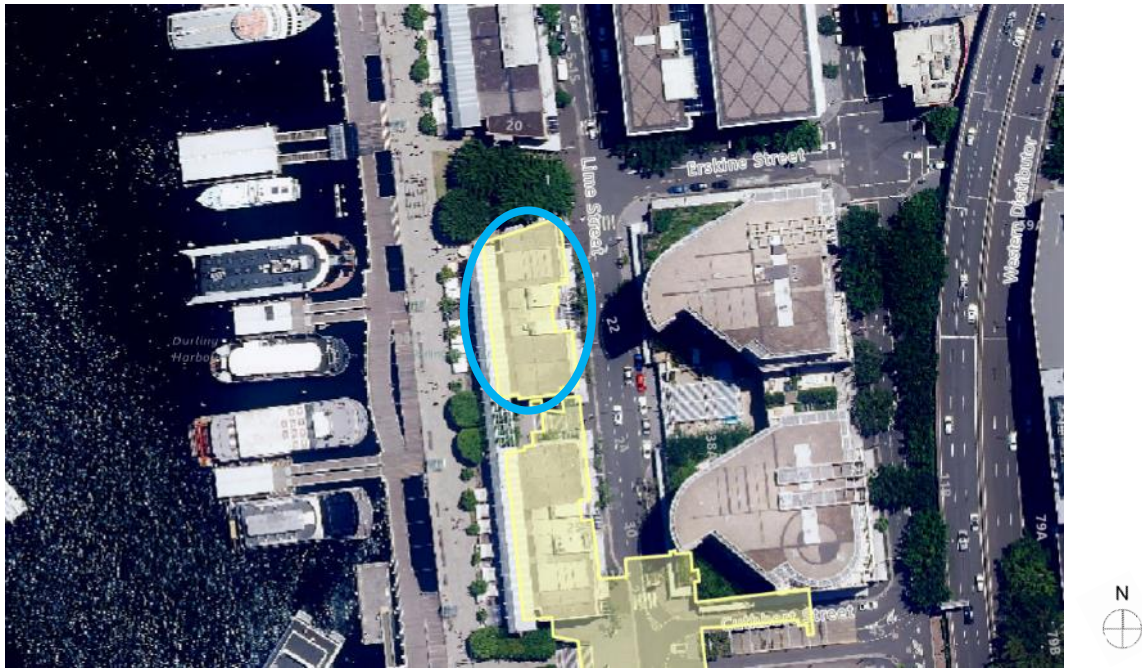


Figure 1: Aerial view of site and surrounds. Location of premises circled in blue.



Figure 2: Site viewed from King Street Wharf including the first-floor balcony of the restaurant premises (indicated in red outline)



Figure 3: Subject restaurant (indicated in red outline) as viewed from King Street Wharf including the neighbouring bar, restaurant, café and function room identified as 'Strike' bowling facility located on the lower ground level



Figure 4: Entry to the restaurant (indicated in red outline) viewed from Lime Street



Figure 5: Neighbouring restaurant located to the north of the site with entry on Lime Street



Figure 6: Site viewed from the west, on Lime Street



Figure 7: Neighbouring building located to the west of the site, on Lime Street. The ground level comprises commercial premises and upper levels include residential premises.



Figure 8: Neighbouring building located to the west of the site, on the corner of Lime Street and Erskine Street. The ground level comprises commercial premises and upper levels include residential premises.



Figure 9: Outdoor dining area (balcony) of the subject tenancy looking south



Figure 10: View towards the east as viewed from the outdoor dining area of the subject tenancy.

History Relevant to the Modification Application

Development Applications

8. Development consent D/2021/1212 was granted on 13 December 2021 for the use of Shop 13 and Shop 14 as a food and drink premises. The application approved the use of the premises as a restaurant including a bar, dining areas, and outdoor dining areas on the balcony overlooking King Street Wharf. Conditions 6 and 7 of the development consent stipulate the following operating hours of the premises:
 - indoor hours of operation from 8:00am to 2:00am (the following day) Monday to Sunday, inclusive;
 - base outdoor hours of operation from 8:00am to 10:00pm, Monday to Sunday, inclusive, approved on a permanent basis, and
 - extended outdoor hours of operation on a trial period basis between 10.00pm and 12 midnight, Monday to Sunday, inclusive. A one-year trial period was approved, which lapsed on 13 December 2022. A continuation of the extended hours can be sought by way of a further modification application, which is the subject of assessment of this report.
9. It is noted that the premises is a licensed premises with a capacity of 300 patrons. The primary purpose is a restaurant with kitchen and substantial food service. The sale of liquor ceases when the kitchen ceases to operate. All patrons are allocated seating generally in accordance with the plan outlined below in Figure 11 (see extract below).

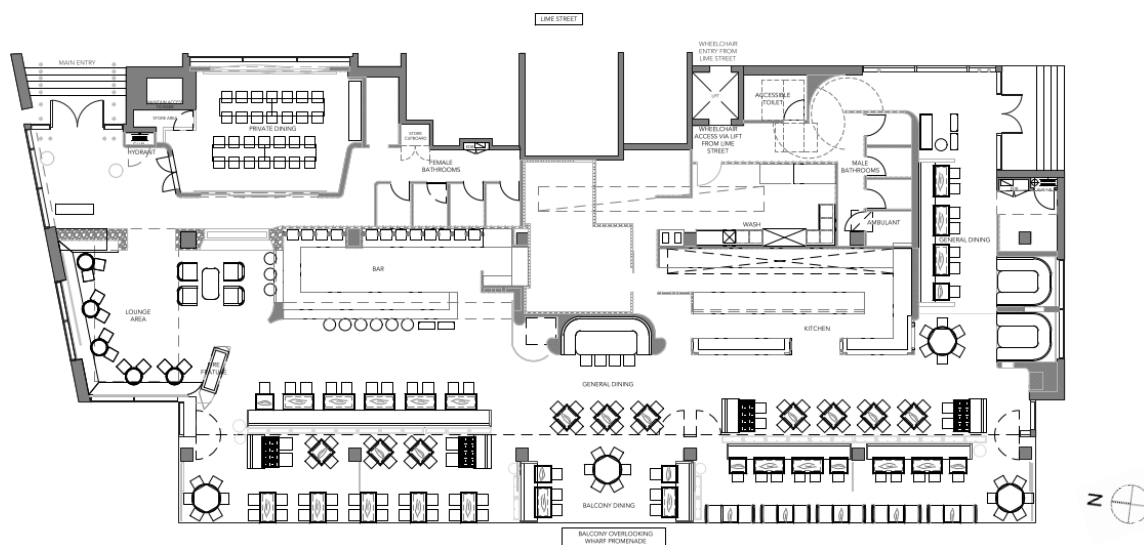


Figure 11: Approved restaurant seating plan as per D/2021/1212

10. The use was approved with a Plan of Management, dated 2 November 2021 with provisions regarding operating hours, waste storage, mechanical services, facilitating transport for patrons, signage requirements, responsible service of alcohol, staffing, security, surveillance, receiving deliveries, cleaning, pest management, emergency procedures and noise measures. Condition 11 of the consent (D/2021/1212) specifies that the use must operate in accordance with the Plan of Management.

11. The development consent for the restaurant under D/2021/1212 is also subject to a number of conditions regarding the control of noise. These include no spruiking, glass handling, and no speakers and music in outdoor areas. Conditions also include noise control from commercial plant equipment and compliance with the City of Sydney's noise criteria for entertainment.
12. The approval included the implementation of the attenuation measures detailed in the acoustic assessment dated 7 October 2021, prepared by Norrebo Design. Specifically, the condition requires implementation of measures prior to the commencement of operation of the restaurant, which included the implementation of door seals, noise limiter, and maximum specifications for any mechanical plant equipment.
13. While development consent D/2021/1212 dated 13 December 2021 was for the use of the restaurant, there was a separate Complying Development Certificate (P/2021/1069) issued by McKenzie Group on 8 July 2021 for the fitout of the licenced food and beverage venue.

Compliance Action

14. An inspection undertaken on 3 September 2022 by Council's Licensed Premises Officer found a number of non-compliances including amenities signage not installed, CCTV warning signage not installed, and CCTV checks not recorded. These matters have since been resolved.
15. This inspection also found that outdoor speakers had been installed, which contravenes the conditions of consent of D/2021/1212. This non-compliance has resulted in the submission of the subject Section 4.55(2) Modification and to renew/continue the extended trial period hours of operation for the outdoor areas.
16. There is no further compliance action related to the subject restaurant premises. No complaints have been received since the consent D/2021/1212 was issued on 13 December 2021.

Amendments to Subject Modification Application

17. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information was sent to the applicant on 15 February 2023. The requested information included the following:
 - updated acoustic report including further investigation of the background, predicted and attenuated sound levels detailed in the submitted acoustic assessment report; and
 - clarification of the operational hours and duration of the trial operation period.
18. The applicant responded to the request on 23 February and 20 March 2023, and submitted the following information:

- (a) A revised acoustic report dated 19 March 2023, prepared by Norrebro Design, with further investigation of the background, predicted and attenuated sound levels. Specifically, the report includes additional noise measurements from the balcony of the office premises at 25 Lime Street, that is located directly above the premises, and from a balcony of a residential apartment located at 26 Lime Street, located on the opposite side of Lime Street from the premises (as shown in Figure 12 below).
- (b) The applicant provided a revised Plan of Management dated 23 February 2023, and clarified that no extension beyond the previously approved base and trial hours is sought under this application. The application is limited to seeking a continuation of the extended outdoor hours of operation (between 10.00pm and 12 midnight) for a further two (2) year trial period.

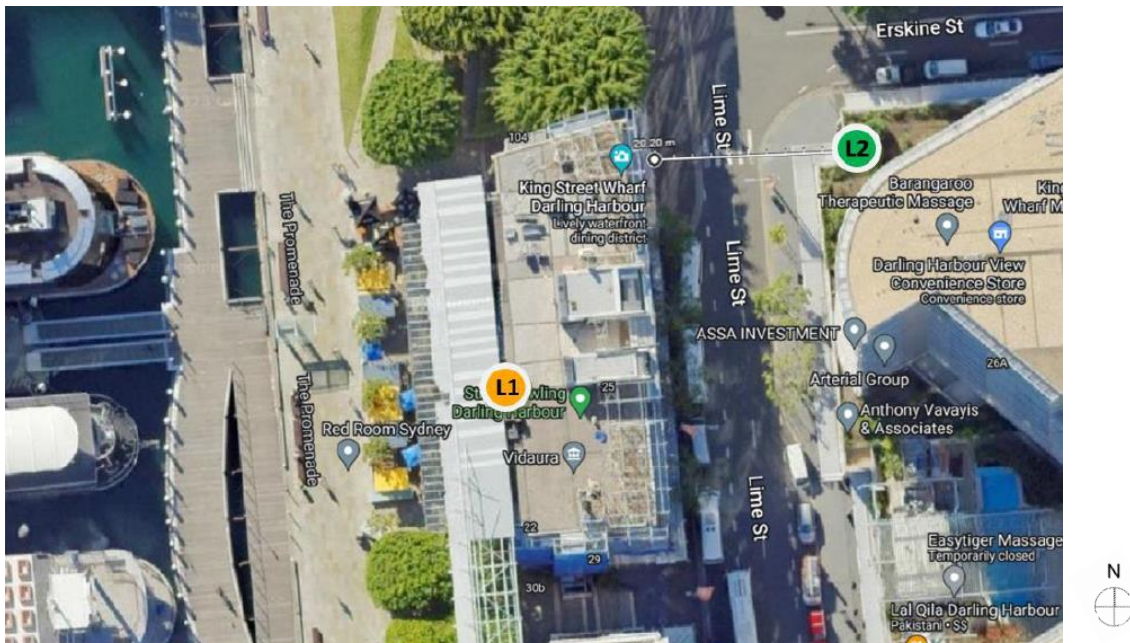


Figure 12: Extract from the acoustic assessment, prepared by Norrebro Design dated 19 March 2023 showing the location of additional noise measurements from the office balcony at 25 Lime Street, directly above the premises (L1), and a balcony of an apartment at 26 Lime Street, across the road from the premises (L2)

Proposed Modification

19. The original consent D/2021/1212, dated 13 December 2021 approved the use of shop 13 and shop 14 as a restaurant, with the following hours of operation:
 - (a) indoor hours of operation from 8:00am to 2:00am (the following day) Monday to Sunday, inclusive, approved on a permanent basis;
 - (b) base outdoor hours of operation from 8:00am to 10:00pm, Monday to Sunday, inclusive, approved on a permanent basis; and
 - (c) extended outdoor hours of operation on a trial period basis between 10.00pm and 12 midnight, Monday to Sunday, inclusive. A one-year trial period was approved, which lapsed on 13 December 2022.

20. This Section 4.55(2) Modification application has been lodged to seek a continuation of the extended outdoor hours of operation (between 10.00pm and 12 midnight) for a further trial period of two (2) years.
21. The Section 4.55(2) modification also seeks to delete Condition 14 (No Speakers or Music Outside) of the consent which currently prohibits the use of speakers and noise amplification equipment in the outdoor areas. The modification application seeks to install nine (9) speakers in the outdoor dining area, located along the balcony of the restaurant fronting King Street Wharf (as shown in Figure 13 below).

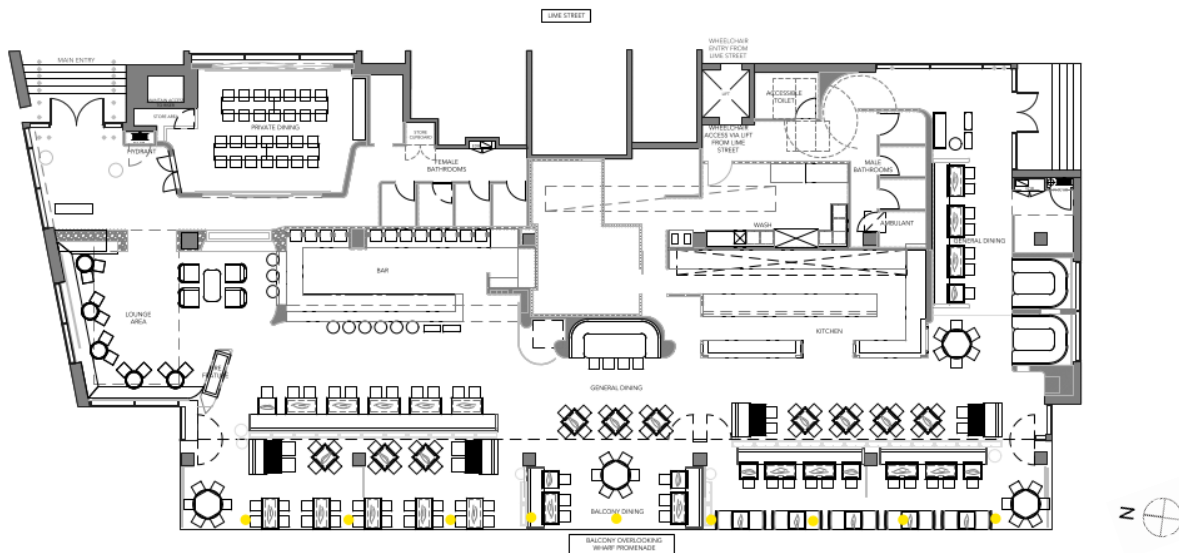


Figure 13: Location of outdoor speakers identified with yellow dots (●)

22. A revised acoustic report dated 19 March 2023, prepared by Norrebro Design has been submitted as part of the application and provides further details regarding the noise from the speakers. Details of this report are outlined in the 'Discussion' section below.

Assessment

23. The proposed development has been assessed under Sections 4.55 and 4.15 of the Environmental Planning and Assessment (EP&A) Act 1979.

State Environmental Planning Policies

Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021 – Chapter 6 Water Catchments

24. The site is located within the designated hydrological catchment of Sydney Harbour and is subject to the provisions of the above SEPP. The SEPP requires the Sydney Harbour Catchment Planning Principles to be considered in the carrying out of development within the catchment.
25. The site is within the Sydney Harbour Catchment and eventually drains into the Harbour. The site is also located within in the Foreshores Waterways Area. In deciding whether to modify the development consent, the consent authority must consider matters including water quality, aquatic ecology, flooding, recreation and public access, water-dependent uses, public good, the Foreshores and Waterways Area, rising sea levels, natural foreshore areas, landforms, flora, and fauna. Council must be satisfied of the matters regarding character and function of the harbour, compatibility with surrounding land uses, public access, traffic congestion, and visual quality.
26. The restaurant use is consistent with the provisions of the SEPP. The proposed modification comprises an additional trial period for extended hours of operation and the use of speakers to the outdoor dining area. The proposal is consistent with the provisions of the SEPP. The subject modification does not include any relevant items that compromise the foreshores waterways area.

Local Environmental Plans

Sydney Local Environmental Plan 2012

27. 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 SP5 Metropolitan Centre zone. The proposed modification does not seek to change the approved use of the premises, being a restaurant, which is permissible with consent in the zone.

Part 6 Local provisions - height and floor space

Provision	Compliance	Comment
4.3 Height of buildings	Yes	The proposed modification does not alter the existing building height.

Provision	Compliance	Comment
4.4 Floor space ratio	Yes	The proposed modification does not alter the existing floor space ratio.

Development Control Plans

Sydney Development Control Plan 2012

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

Section 3 – General Provisions

Provision	Compliance	Comment
3.15 Late Night Trading Management	Yes	See 'discussion' section below for further information.
4.2.3.11 Acoustic privacy	Yes	See 'discussion' section below for further information.

Discussion

Section 4.55 Threshold Test

29. In accordance with Section 4.55 of the Environmental Planning and Assessment (EP&A) Act 1979, the consent may be modified if it is satisfied that the development to which the consent as modified relates is substantially the same as development for which consent was originally granted.
30. The fundamental use of the premises as a restaurant is maintained. The proposal comprising the extension of trading hours and the provision of speakers is relevant to the approved restaurant premises. The provision of speakers and the continuation of the trading hours does not change the use of the restaurant premises as originally approved.
31. The extended trading hours for the outdoor area were a component of the original consent. The subject application seeks to continue the extended trading hours.
32. The provision of speakers is a new component but does not substantially alter the nature of the approved development. See the 'discussion' section below for further information regarding consideration of the speakers and the environmental impact.
33. The development to which the proposed modification relates is considered to be substantially the same as that originally granted.

34. In accordance with section 4.55(3) of the Environmental Planning and Assessment Act 1979, the modified development is considered satisfactory having regard to the reasons given for the original consent. Subject to conditions, the modified development is consistent with the objectives of the SP5 Metropolitan Centre zone and relevant planning controls and will promote orderly operation of the premises. Besides the other matters discussed in this report, the previous assessment against the provisions of Section 4.15 of the EP&A Act are still relevant.

Noise and Amenity

35. The proposed modification includes the provision of nine speakers to the outdoor dining area.
36. This assessment includes consideration of the noise impacts of the speakers in the outdoor dining area associated with the restaurant use. In particular, the relationship between the speakers and the surrounding area is assessed in accordance with 4.2.3.11 of the Sydney Development Control Plan 2012 (SDCP 2012). The surrounding area includes commercial premises of the King Street Wharf Precinct, office and business premises in the upper levels of the buildings along King Street Wharf, and residential premises in the surrounding area including the neighbouring building located on the opposite side of Lime Street.
37. The applicant has provided an acoustic report in support of their proposal. The acoustic assessment was prepared by Norrebro Design, dated 19 March 2023 and assesses the acoustic environment and impact on the amenity of the surrounding area. The assessment includes measurements of the existing sound levels, as follows:
- (a) Operator attended noise measurements in 12 different locations, comprising three (3) on-site and nine (9) surrounding the premises, as identified in **Figure 14** below.
 - (b) Additional noise loggers were installed for a period of a week on the office balcony located above the premises (identified as L1 shown in Figure 14 below), and a balcony of a residential apartment located on the opposite side of Lime Street from the subject premises (identified as L2 shown in Figure 14 below).

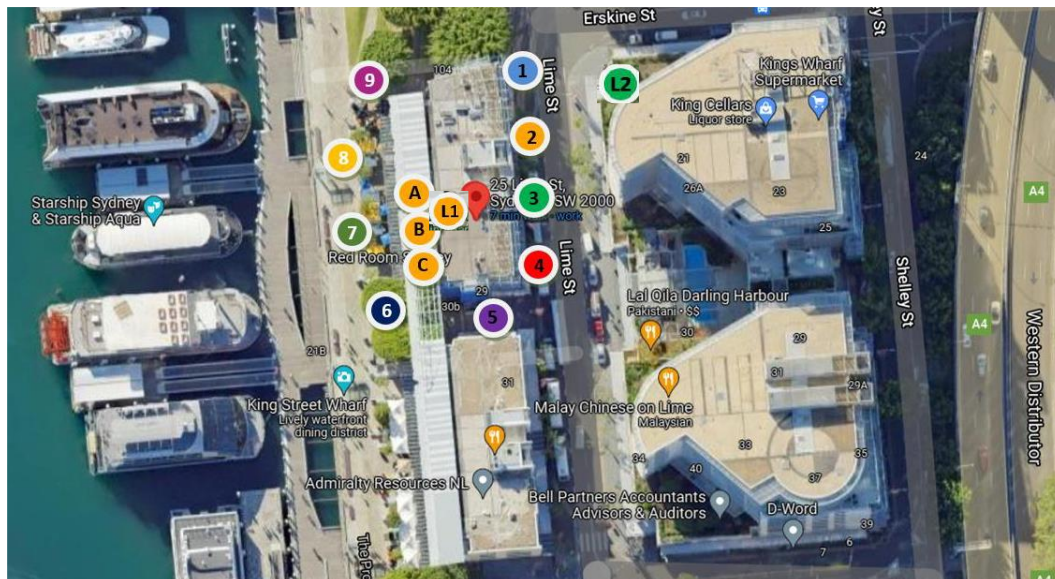


Figure 14: Extract from the acoustic assessment, prepared by Norrebro Design dated 19 March 2023 showing operator attended noise measurements identified 1-9 surrounding the premises and A-C on-site and additional noise loggers (L1 and L2)

38. The measurements detailed above inform the median background noise level in accordance with the NSW Noise Policy for Industry (NPFI) 2017. A project noise trigger level is then calculated from the median background noise level. The project noise trigger level (PNTL) is a level that, if exceeded, would indicate a potential noise impact and so 'trigger' a management response.
39. Details of the predicted sound levels from the speakers as well as cumulative impact from patron noise have been considered as part of the proposal. The sound contribution from the combined patron and speaker noise levels are below the measured existing sound level taken from the office balcony located above the premises (identified as L1 shown in Figure 14 above), and residential balcony located on the opposite side of Lime Street (identified as L2 shown in Figure 14 above). The proposed operation complies with the City of Sydney acoustic criteria for Noise entertainment and the project noise trigger level (PNTL).
40. Compliance with the noise criteria is subject to the premises operating with the following measures:
 - (a) directional speakers facing towards the venue with maximum level of 80dB at 3m;
 - (b) maintaining the existing diffusive acoustic ceiling; and
 - (c) maximum of nine (9) small to medium size speakers spread across the outdoor balcony dining area. No large speakers are allowed in the outdoor dining area.
41. The submitted acoustic assessment report prepared by Norrebro Design dated 19 March 2023 concludes the acoustic criteria are met subject to compliance with the recommended measures. The report concludes the proposed system, will not adversely affect the acoustic environment and the amenity at the adjacent properties, both residential and commercial.

42. The submitted report also concluded:
- (a) The large distance and the building shielding ensures inaudibility and compliance with the criteria for the residential receiver.
 - (b) The levels from the outdoor dining area are well below the existing levels on Lime Street in each octave bands, with differences between 30-40 dB at low frequencies and 20-30 dB at high frequencies.
 - (c) Compliance measurements undertaken indicate that sounds from the premises are masked by adjacent sports bar and other venue on the Promenade and by traffic and other street sources on Lime Street.
 - (d) On Lime Street, traffic noise is high between 9pm and 12 midnight, with many environmental sound components such as pedestrians, tourist busses and passing traffic sounds.
43. The acoustic assessment and proposal have been reviewed by Council's Environmental Health Unit and no objection is raised, subject to conditions.
44. In review of the proposal and consideration of the noise impact, the provision of speakers is satisfactory. The acoustic assessment undertaken finds the provision of speakers is acceptable, subject to the implementation of measures detailed above. These measures are included in the revised Plan of Management, dated 23 February 2023. Ongoing compliance with acoustic report is also recommended to be included as a new condition of consent. This is detailed below under the heading 'Modified conditions' below.
45. In accordance with the SDCP 2012, the proposal maintains the amenity of the surrounding residential receivers. The proposed modification includes measures to reduce noise at the source as detailed in paragraph 40 above. The submitted acoustic report demonstrates that the provision of outdoor speakers does not result in an exceedance of the maximum noise levels. The proposal is therefore considered satisfactory and demonstrates that the use may operate without unreasonable disturbance or nuisance to surrounding properties.

Late Night Trading Management

46. The premises is located in a late night management area and the use is defined as category B (Low Impact Premises). The proposal is a restaurant which may impact on the amenity of a neighbourhood resulting from its operation at night.
47. The submitted application seeks to continue the trial period for the extended hours of operation for the outdoor area (between 10.00pm and 12 midnight) for a further trial period of two (2) years.
48. Section 3.15.4 of the SDCP 2012 includes provisions for trial periods for extended hours of operation. The restaurant has been operating on the basis of an initial one (1) year trial applicable to the outdoor area, which includes the balcony fronting King Street Wharf. The outdoor area has permanently approved base hours of 8.00am to 10.00pm, Monday to Sunday, and extended hours between 10:00pm to 12 midnight on a trial period basis.

49. No change is proposed to the time of the extended hours. The extended hours of operation between 10:00pm and 12 midnight complies with Section 3.15.4 of SDCP 2012 regarding late night trading.
50. The SDCP 2012 permits extended trading hours for operation between 7am to 1am (the following day) for outdoor areas of category B premises on a trial basis in this location.
51. The SDCP 2012 specifies a maximum duration of 2 years for the second trial period.
52. In this instance, as the premises is now seeking to use speakers in this outdoor area and noting previous compliance investigation and content of submissions received, it is recommended that the trial period for the extended hours in the outdoor areas be limited to a further one year period. This will allow for a review of the operation and ensure that premises is able to operate without adverse impacts to surrounding uses. A one year trial period for the hours of operation will also align with the timing of the recommended trial period for the use of the outdoor speakers.

Plan of Management

53. The restaurant premises has been operating under an existing Plan of Management, dated 2 November 2021. The subject application includes a revised Plan of Management, dated 23 February 2023 to include further details regarding noise management and the installation of speakers.
54. The Plan of Management maintains existing provisions:
 - Section 2 - regarding hours of operation, patron capacity, staffing and responsible service of alcohol;
 - Section 3 - regarding security and surveillance; and
 - Section 4 - regarding receiving complaints, impact mitigation measures, management of waste and deliveries, cleaning, pest management, noise management and patron management.
55. The revised Plan of Management ensures the premises have considered and addressed potential impacts that arise from the operation. The revised Plan of Management is consistent with the SDCP 2012 and is satisfactory.

Modified Conditions

56. The proposal includes the following changes to the conditions of consent to facilitate the proposed modification:

(1) APPROVED DEVELOPMENT

(a) Development must be in accordance with Development Application No. D/2021/1212 dated 18 October 2021 and the following drawings: **drawing numbered 101 (Revision W, dated 26/10/2021 and prepared by 'Kathryn Ashley studio') and as amended by the conditions of this consent.**

<i>Drawing Number</i>	<i>Drawing Name</i>	<i>Date</i>
<i>Drawing no. 101 Revision W</i>	<i>Floor Plan</i>	<i>26/10/2021</i>
<i>Drawing no. 101 Revision W</i>	<i>Indicative Speaker Location Plan</i>	<i>26/10/2021</i>

and as amended by the conditions of this consent.

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

(7) OUTDOOR HOURS OF OPERATION

The outdoor hours of operation are regulated as follows:

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

(b) Notwithstanding (a) above, the use may operate between 10.00pm and 12.00am (midnight) for a trial period of 1 year from the date of this modified consent dated 17 May 2023. **Council's Health and Building Unit is to be informed in writing of the date of commencement of the trial hours. Email notification is to be sent to liquor@cityofsydney.nsw.gov.au**

(c) A further application may be lodged to continue the operating hours outlined in (b) above not less than 30 days before the end of the trial period. Council's consideration of a proposed continuation and/or extension of the hours permitted by the trial will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions, any substantiated complaints received, and any views expressed by the Police.

(11) PLAN OF MANAGEMENT

The use must always be operated / managed in accordance with the Plan of Management, **prepared by Kathryn Ashley Studio** signed and dated **2 November 2021 23 February 2023** that has been approved by Council. In the event of any inconsistency, the conditions of this consent will prevail over the Plan of Management.

(14) ~~NO SPEAKERS OR MUSIC OUTSIDE~~ SPEAKERS OR MUSIC OUTSIDE IN ACCORDANCE WITH ACOUSTIC ASSESSMENT

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

(a) The outdoor speakers are to be installed in accordance with the indicative speaker location plan referenced condition 1 and the acoustic report prepared by Norrebro Design, dated 19 March 2023, Revision 7 titled 'Outdoor Dining and Acoustic Assessment Report', Council reference no. 2023/141457 must be implemented in the development prior to the commencement of its use.

(b) The outdoor speakers may operate for a trial period of one (1) year from 17 May 2023. A further application may be lodged to continue the use of the outdoor speakers not less than 30 days before the end of the trial period. Council's consideration of a proposed continuation and/or extension of the use of the outdoor speakers permitted by the trial will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions, any substantiated complaints received, and any views expressed by the Police.

(c) Additional amplification equipment must not be brought onsite which if used could cause cumulative entertainment noise (including amplified sound) from the development to exceed controls in this consent.

(d) The outdoor speakers are to operate in accordance with the measures detailed in the acoustic report prepared by Norrebro Design, dated 19 March 2023, Revision 7 titled 'Outdoor Dining and Acoustic Assessment Report', Council reference no. 2023/141457.

Internal Referrals

57. The application was discussed with Council's Environmental Health Unit and Licenced Premises Unit.
58. Following the receipt of the requested additional information, the above units advised that the proposal is acceptable subject to conditions. Where appropriate these conditions are included in the modified Notice of Determination.

External Referrals

59. The application was referred to NSW Police for comment on 21 November 2022. At the time of writing this report, no response or objection has been received from NSW Police.

Advertising and Notification

60. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 14 days between 22 November 2022 and 7 December 2022. A total of 532 properties were notified and 57 submissions were received. It is noted that two submissions did not include a location.

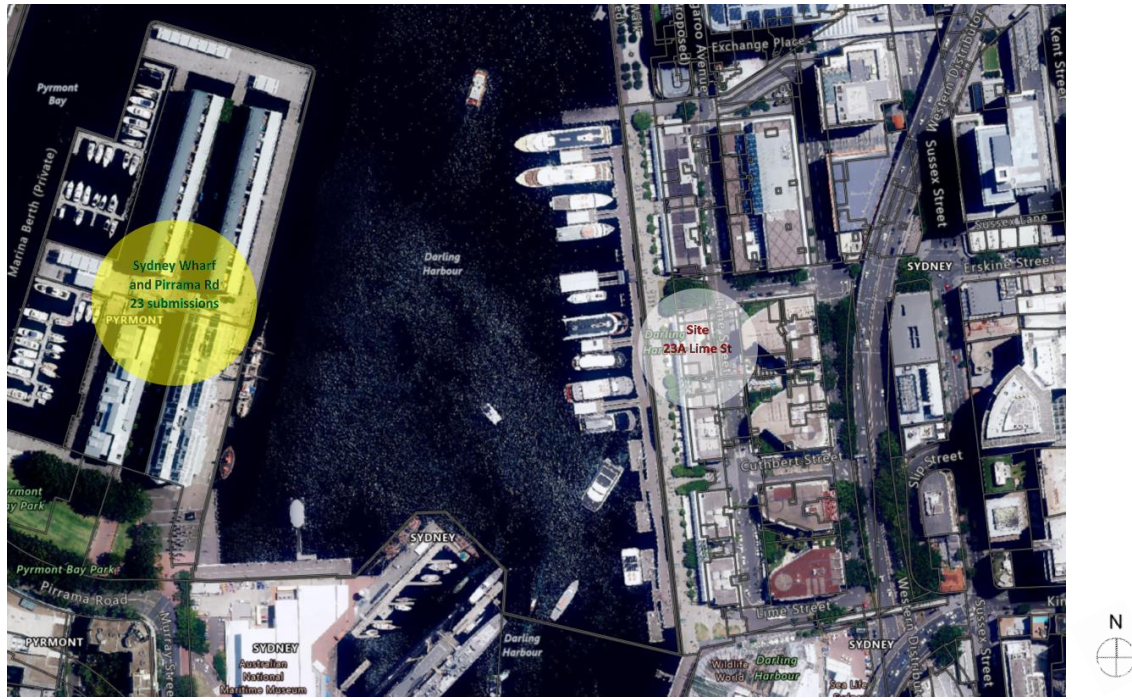


Figure 15: Subject site and location of submissions received during the notification of proposal

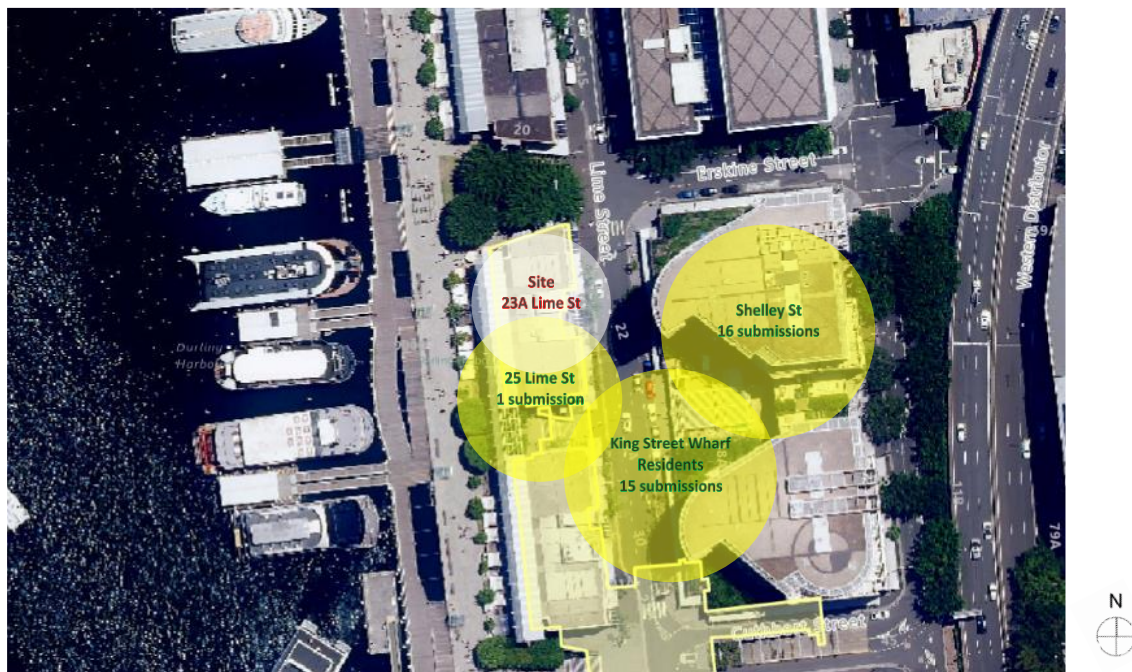


Figure 16: Subject site and location of submissions received during the notification of proposal

61. Issues raised in the submissions are summarised and responded to below:

- (a) **Issue:** outdoor speakers on the footpath.

Response: The proposal seeks to include speakers in the outdoor area identified in Figure 13 above located along the outdoor balcony area on the King Street Wharf frontage to the west. This is within the subject site and not on the footpath.

- (b) **Issue:** already plenty of noise, already a noisy venue, they play very loud music.

Response: The submitted acoustic report includes measurements of the existing background noise in the area. Noise measurements were undertaken on the site and surrounding area, as identified in Figure 14 above. Additional noise logging was undertaken for a 7-day period, as shown in Figure 12 above. The noise measurements inform the median background noise level in accordance with the NSW Noise Policy for Industry (NPFI) 2017. A project noise trigger level (PNTL) is then calculated from the median background noise level.

The contribution from the combined sound power (patrons and speakers) is below the measured existing sound levels taken from the commercial and residential balconies and complies with the City of Sydney acoustic criteria for Noise entertainment and the project noise trigger level (PNTL). In review of the proposal and consideration of the noise impact, the provision of speakers is satisfactory.

- (c) **Issue:** no necessity or reason for the speakers, can continue to operate as a viable business.

Response: The applicant notes the purpose of the speakers is to satisfy the demands and expectations of patrons to enable the restaurant to trade in a similar manner to premises in the surrounding area of the King Street Wharf precinct.

The subject application balances the diverse entertainment and recreational needs of people who work, live and visit the city as well as the amenity of residential or other sensitive land uses. As per the assessment contained in the 'Discussion' section above, the proposed modification is supported subject to a 1-year trial period.

- (d) **Issue:** impact on amenity, interrupting sleep, unacceptable noise levels.

Response: These issues are addressed above under the heading 'Discussion'. The submitted acoustic report has demonstrated that the proposed development is able to comply with the relevant noise criteria to prevent any unacceptable noise impacts to adjoining properties. The modified consent is to include conditions requiring all noise mitigation measures detailed in the acoustic report to be implemented including installation of speakers with maximum levels, provision of acoustic ceiling, and maximum provision of speakers located across the outdoor dining area.

The operation of the premises will also be subject to compliance with the Plan of Management ensuring premises have considered and addressed potential impacts that arise from the operation. The Plan of Management includes provisions regarding record of complaints, minimising intoxication, maintaining signs regarding neighbourhood amenity, protocol for dispersal, monitoring, queuing, and receiving of patrons.

The extended hours and use of speakers is limited to a one-year trial period.

- (e) **Issue:** already subject to intrusive entertainment noise, already plenty of disruptive noise coming from various restaurants and bars.

Response: There has been no compliance action related to the subject restaurant premises. No complaints have been received since the consent D/2021/1212 was issued on 13 December 2021.

The submitted acoustic assessment report prepared by Norrebro Design dated 19 March 2023 concludes the proposed system, will not adversely affect the acoustic environment and the amenity at the adjacent properties, both residential and commercial. The modified consent is to include conditions requiring all noise mitigation measures detailed in the acoustic report to be implemented including installation of speakers with maximum levels, provision of acoustic ceiling, and maximum provision of speakers located across the outdoor dining area. The submitted acoustic report demonstrates that the provision of outdoor speakers does not result in an exceedance of the maximum noise levels.

- (f) **Issue:** use of large amplifiers.

Response: The proposed modification includes details of specific speakers for use. There are to be no speakers or noise amplification equipment aside from the speakers as described in the submitted acoustic assessment.

- (g) **Issue:** patrons intoxicated and loud.

Response: The operation of the premises is subject to compliance with the Plan of Management. The Plan of Management includes provisions regarding minimising intoxication, maintaining signs regarding neighbourhood amenity, protocol for dispersal, monitoring, queuing, and receiving of patrons.

- (h) **Issue:** speakers have already been installed.

Response: Previous inspection by Council's late night and licensed premises section found a number of non-compliances including the installation of outdoor speakers. The subject Section 4.55(2) Modification is submitted in response to the inspection undertaken and to consider the provision of speakers and music in the outdoor dining area.

- (i) **Issue:** there is no limit on the volume that is permitted on the speakers.

Response: The submitted acoustic report prepared by Norrebro Design dated 19 March 2023 includes consideration of the maximum volume of the speakers. Compliance with the noise criteria is subject to the premises operating with the directional speakers facing towards the venue with maximum level of 80dB @ 3m. The Plan of Management specifies the speakers' maximum levels. The modified conditions of consent will ensure compliance with the Plan of Management and operation in accordance with the acoustic report. The speakers are subject to a one (1) year trial period.

- (j) **Issue:** there is no way to complain or stop this.

Response: The restaurant premises operates in accordance with the Plan of Management with provisions for receiving and responding to complaints. The City of Sydney website also includes provision for the reporting of excessive noise from licensed venues and commercial premises.

- (k) **Issue:** insufficient noise assessment, acoustic data collected appears to be a limited sample.

Response: Following a preliminary assessment of the proposed development by Council Officers, a request for additional information was sent to the applicant on 15 February 2023 requesting further investigation of the background, predicted and attenuated sound levels detailed in the submitted acoustic assessment report.

A revised acoustic report dated 19 March 2023, prepared by Norrebro Design with further investigation of the background, predicted and attenuated sound levels. The noise assessment has been undertaken in accordance with the provisions of the relevant NSW Noise Policy for Industry (NPFI) 2017 and Council's noise policy. Specifically, the report includes additional noise measurements for a 7-day period from the office balcony at 25 Lime Street, directly above the premises, and a balcony of a residential apartment at 26 Lime Street, located on the opposite side of Lime Street, from the premises.

The acoustic assessment has been reviewed by Council's Environmental health team and is considered satisfactory.

- (l) **Issue:** ensure that notifications are sent to all residents who will be affected by an application,

Response: The application was publicly exhibited in accordance with the City of Sydney Community Engagement Strategy and Community Participation Plan (CPP). In addition to placing applications on its website, Council notifies an application by sending a letter to surrounding property owners and occupiers. The CPP identifies the letter notification area and duration of exhibition for different types of proposals.

Financial Contributions

Levy under Section 61 of the City of Sydney Act 1988

62. The subject application does not require the levy of a development contribution.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

63. A Section 7.13 Contribution (under the City of Sydney Affordable Housing Program 2020) does not apply to this development, as modified.

Relevant Legislation

64. Environmental Planning and Assessment Act 1979.
65. Sydney Local Environmental Plan 2012
66. Sydney Environmental Planning Policy (Biodiversity and Conservation) 2021

Conclusion

67. The proposed modification of consent D/2021/1212 is recommended for approval, subject to modified conditions.
68. The submitted application seeks to continue the trial period for the outdoor operating hours between 10:00pm and 12:00am for a further two years. Given the concerns raised, compliance history and the provision of outdoor speakers, a one-year trial period in relation to both the hours of operation for the outdoor area and provision of speakers is recommended.
69. The submitted acoustic report demonstrates that the provision of outdoor speakers can meet the NSW Noise Policy for Industry and the City of Sydney acoustic criteria. The outdoor speakers are to operate in accordance with the recommended measures of the acoustic report, and plan of management
70. The use of the restaurant premises is to operate in accordance with the revised plan of management (POM) that reflects the provision of outdoor speakers and compliance with the acoustic report as part of this application.
71. The modified development, subject to modified conditions, is consistent with the objectives of the SP5 Metropolitan Centre zone.

72. The restaurant premises, subject to modified conditions included in Attachment A is able to operate without unreasonable disturbance or nuisance to surrounding properties. The proposed modification to the approved restaurant premises is supported, subject to the imposition of the modified conditions.

ANDREW THOMAS

Executive Manager Planning and Development

Eddy Tran, Planner