

# **Attachment A**

<b>Recommended Conditions of Consent</b>
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## CONDITIONS OF CONSENT

### SCHEDULE 1A

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

**Note:** Some conditions in Schedule 1A are to be satisfied prior to issue of a Construction Certificate and some are to be satisfied prior to issue of Occupation Certificate, where indicated.

##### (1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2010/763 dated 21 May 2010, and the site plan dated ~~3 May 2010~~ **23 December 2023**,

and as amended by the conditions of this consent:

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

*(as amended by D/2010/763/G dated 20 March 2024)*

##### (2) HOURS AND DATES OF OPERATION

- (a) The hours of operation for the market, including set up, construction and dismantling of the site including the erection and dismantling of temporary structures, movement of vehicles and the loading and unloading of goods, are restricted to between 7:00am and ~~2:00pm~~ 3:30pm, every Saturday.
- (b) *Notwithstanding (a) above, the markets may operate between 7.00am and 7.00pm one Saturday per year in conjunction with the Annual Kings Cross Festival. Council must be informed in writing no later than 14 days prior to the festival of the intention of the operator to operate these extended hours.*

(Amended 25 August 2010)

*(Amended 30 November 2012)*

##### (3) CONSENT TO LAPSE

- (a) The period during which the use is approved to operate is restricted to between the date of this determination and until the ~~16 July 2011 21 December 2014 31 March 2019 2024~~ **31 March 2029**. The use must cease after that time.
- (b) A further application may be lodged to continue the operation of the markets before the end of this period for Council's consideration. Such consideration will be based on, inter alia, the performance of the operator in relation to compliance with development consent conditions and any complaints received.

(Amended 21 December 2011)

*(as amended by D/2010/763/E dated 14 March 2016)*

*(as amended by D/2010/763/F dated 12 February 2019)*

***(as amended by D/2010/763/G dated 20 March 2024)***

**(4) MANAGEMENT AGREEMENT**

- (a) The management/operator of the markets must enter into a new Management Agreement / Licence with Council for the use of the parkland and any associated footway, with all legal costs associated with the preparation of the licence being borne by the management/operator. The licence must be executed prior to the use of the space. The operation of the market and use of the park must then always be operated / managed in accordance with the Management Agreement / License.
- (b) The use of the park and any footway may be suspended to facilitate Council-approved special events, for park upgrade works, or for road and services works. No claim for compensation is entitled under such circumstances. Further, should the operator of the market change at any time, the licence is required to be renewed under the name of the new operator.
- (c) The continued operation of the market shall be managed by Council's Property Unit through a commercial leasing arrangement.
- (d) The City may at its sole and absolute discretion decide that on any particular day the Market will not open or will be relocated to another location designated by the City.

**(5) NATURE OF MARKETS**

The market operator is to ensure that the markets are conducted as a primarily food-based market, with the ratio of food stalls to other stalls to be set by Council under the management agreement referred to in the above condition of consent.

**(6) RESPONSIBILITIES OF MARKET OPERATOR**

- (a) Prior to the commencement of the use, the operator is to indemnify the City against all claims for damage or injury that may result from the activity or occupation of part of the public way during the activity. The operator must provide documentary evidence of public risk insurance cover of at least \$10,000,000 indemnifying Council;
- (b) The operator shall reimburse the City for the cost of repair of any damage caused to the public way or the parkland, or otherwise as a result of the operation of the market;
- (c) The operator shall ensure that a person designated responsible for the management of the markets is on site at all times during the operation of the markets, including setting up and shutting down, and the contact details of this person are to be provided to Council's Place Manager, City East, and Council's Health and Building Unit;

- (d) The operator shall comply with any reasonable directive of Council's Compliance Officers / Rangers;
- (e) The operator shall comply with the City's guidelines and Codes of Practice for Construction Hours and Noise;
- (f) The operator shall distribute a telephone contact number to all surrounding residents providing a contact number while the market is in operation, to respond and deal with complaints; and
- (g) The operator must ensure a suitable Occupational Health & Safety Plan is in place for all personnel.
- (h) *The operator must ensure that the stalls and any associated furniture and goods are contained within the approved shaded areas only. The stalls and/or any associated furniture must not encroach on the public way and must provide clearance to prevent any hindrance to the pedestrian flow.*

*(as amended by D/2010/763/E dated 14 March 2016)*

## **(7) PLAN OF MANAGEMENT**

The use must always be operated / managed in accordance with the Plan of Management, dated ~~3 May 2010~~ ~~20 June 2011~~ **31 December 2023** in addition to compliance with all other operational conditions of this consent.

- (7A) *In an event of change of an operator, a new Plan of Management must be submitted to and approved by Council's Area Planning Manager prior to the new operator commencing the use.*
- (7B) *If and when the City requires, an updated Plan of Management must be prepared to address all operational and management procedures to be employed, to ensure that the premises can operate without disturbance to the locality. The amended Plan of Management must be submitted to and approved by Council's Area Planning Manager.*

*(as amended by D/2010/763/E dated 14 March 2016)*

***(as amended by D/2010/763/G dated 20 March 2024)***

## **(8) WASTE MANAGEMENT**

- (a) ~~A Waste Management Plan must be submitted and approved by the Council's Health Unit.~~
- (b) Waste associated with the event is not permitted to accumulate except in designated and pre determined waste receptacles and areas. So far as is practicable all waste should be contained within a receptacle. Arrangements for the prompt collection of litter and waste associated with the event must occur as soon as practically possible after the event in accordance with the restricted hours of site operation.
- (c) Each food stall must have an adequate number of contained waste receptacles with a suitable cover to ensure that waste does not attract pests and insects.

- (d) Arrangements must be made for the safe and legal disposal of waste oil arising from food vendors on the site.
- (e) Waste must only be collected in accordance with the permitted hours of operation for the site/event.
- (f) The structures and surrounds are to be maintained in a clean and tidy manner at all times, and all waste and general rubbish is to be cleared on a regular basis.
- (g) There are to be no glass receptacles sold on site for the provision of food and drink.

(Amended 25 August 2010)

#### **(8A) TRAFFIC MANAGEMENT PLAN**

***The use must always operate in accordance with the Traffic Management Plan, dated 12 February 2024 in addition to compliance with all other operational conditions of this consent.***

***(Condition inserted 20 March 2024)***

#### **(9) SHARPS WASTE STORAGE**

~~The premises must provide a designated storage space for sharps waste disposal equipment which contains at least:~~ The operator must ensure that sharps which are found on the premises are disposed of in the sharps facilities provided in the toilet block which is next to Fitzroy Gardens. The operator shall be equipped with the following items at every event:

- (a) 1 sharps disposal bin;
- (b) 1 set of tongs;
- (c) gloves;
- (d) safe disposal procedural information, and;
- (e) needle stick injury procedural information.

(Amended 25 August 2010)

#### **(10) AMPLIFIED NOISE**

- ~~(a) Amplified music noise is only permitted between the hours of 10:00am and 2:00pm on Saturdays. Any entertainment provided on site must be acoustic only. No amplification is to be provided.~~
- ~~(b) Amplified sound from the use of a microphone is not permitted.~~
- ~~(c) Amplified noise must remain ancillary to the use of the site as food market.~~
- ~~(d) The applicant must at all times retain ultimate control of the noise level caused by any sound amplification equipment in compliance with (a), (b) and (c) above.~~

(Amended 29 May 2012)

(Amended 1 August 2012)

**(11) NO SPRUIKING/AMPLIFIED NOISE**

No persons (such as those commonly known as spruikers) or recordings or other devices which have the effect of spruiking are to be located on Council owned property. ~~Furthermore, the sound level of any spruiking or amplified noise generated within the land must not be audible on Council's footpath adjoining the subject property.~~

(Amended 29 May 2012)

(Amended 1 August 2012)

**(12) ~~BUSKING AND LIVE MUSIC~~**

~~All buskers and live music entertainment should act in accordance with Council's Busking Policy December 2007 City of Sydney Interim Busking Policy 2011.~~

(Amended 29 May 2012)

(Amended 1 August 2012)

**(13) SIGNS/GOODS IN THE PUBLIC WAY**

No signs, goods or market stalls are to be placed on the public footway or roadway adjacent to the park in Macleay Street or Baroda Street at any time.

**(14) SIGNS - SEPARATE DA REQUIRED**

A separate development application for any proposed signs (other than exempt or complying signs under Council's exempt and complying DCPs) which are either externally fitted or applied must be submitted for the approval of Council prior to the erection or display of any such signs.

## SCHEDULE 1B

### PRIOR TO COMMENCEMENT OF WORK / HEALTH AND BUILDING

#### (15) WASTE AND RECYCLING COLLECTION CONTRACT

Prior to commencement of the use the operator must ensure that there is a contract with a licensed contractor for the removal of all trade waste. No garbage is to be placed on the public way e.g. footpaths, roadways, plazas, and reserves at any time.

#### (16) NOISE - GENERAL

- (a) The  $L_{Aeq, 15minutes}$  noise level emitted from the use must not exceed 5dB above the background ( $LA_{90}$ ) noise level in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) between the hours of 7.00am and 12.00 midnight when assessed at the boundary of any affected receiver. The background noise level must be measured in the absence of noise emitted from the use in accordance with Australian Standard AS 1055.
- (b) The use of the site shall be controlled so that any emitted noise is at a level so as not to create and "offensive noise" as defined in the *Protection of the Environment Operations Act 1997* to any affected receiver.

#### ~~(17) NOISE – MECHANICAL PLANT AND EQUIPMENT~~

~~Noise associated with the use of mechanical plant and equipment must not give rise to any one or more of the following:~~

- ~~(a) Transmission of "offensive noise" as defined in the *Protection of the Environment Operations Act 1997* to any affected receiver.~~
- ~~(b) A sound pressure level at the boundary of any affected receiver that exceeds the background ( $L_{A90, 15minutes}$ ) noise level by more than 5dB. The background noise level must be measured in the absence of noise emitted from the use in accordance with Australian Standard AS1055.~~

*(Condition deleted 20 March 2024)*

#### (17A) NOISE – COMMERCIAL PLANT

- (a) **Noise from commercial plant and industrial development must not exceed a project amenity/intrusiveness noise level or maximum noise level in accordance with relevant requirements of the NSW EPA Noise Policy for Industry 2017 (NPfI) unless agreed to by the City's Area Planning Manager. Further:**
  - (i) **Background noise monitoring must be carried out in accordance with the long-term methodology in Fact Sheet B of the NPfI unless otherwise agreed by the City's Area Planning Manager.**
  - (ii) **Commercial plant is limited to heating, ventilation, air conditioning, refrigeration and energy generation equipment**

- (b) ***An LAeq minute (noise level) emitted from the development must not exceed the LA90, 15 minute (background noise level) by more than 3dB when assessed inside any habitable room of any affected residence or noise sensitive commercial premises at any time. Further:***
- (i) ***The noise level and the background noise level must both be measured with all external doors and windows of the affected residence closed.***
  - (ii) ***Background noise measurements must not include noise from the development but may include noise from necessary ventilation at the affected premises.***
- (c) ***Correction in Fact Sheet C of the NPfl are applicable to relevant noise from the development measures in accordance with this condition, however duration corrections are excluded from commercial noise.***

***(Condition inserted 20 March 2024)***

## **(18) EMISSIONS**

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

## **(19) CONNECTION TO SEWERS OF SYDNEY WATER CORPORATION**

- (a) Waste water arising from the use must be directed to the sewers of the Sydney Water Corporation (SWC) under a Trade Waste License Agreement. The pre-treatment of wastewater may be a requirement of the Corporation prior to discharge to the sewer. Details of the Corporation's requirements should be obtained prior to the commencement of construction work.
- (b) No waste water associated with the event is to be disposed of in the public sewerage system unless it is in accordance with (a) above.

## **(20) ACCESS AND FACILITIES FOR PERSONS WITH DISABILITIES**

The market shall be conducted and arranged so as to not impede equitable disabled access to the park in accordance with the *Building Code of Australia* and the *City of Sydney Access DCP 2004*.

## **(21) ~~TEMPORARY FOOD STALLS~~**

- (a) ~~The design and operation of the temporary food stalls must comply with the fact sheet – "Requirement for the Operation of a Temporary Food Stall, City of Sydney".~~



- (b) ~~No Temporary Food Stalls are permitted on site without prior consent from Council.~~
- (c) ~~An adequate supply of water must be provided to ensure that potable water is available throughout the duration of the event. All water tanks and piped supply lines are to be suitably constructed and where appropriate disinfected to maintain water quality and safety.~~
- (d) ~~Any collection of waste material and waste water must be carried out in such a manner as not to risk contamination of any food, food preparation area or food service area.~~
- (e) ~~Cool rooms, power refrigerators or refrigerated vans must be provided within the 5-20 meters of each stall that stores, displays and / or sells potentially hazardous foods. Alternatively, any food business that handles potentially hazardous food must provide a powered refrigerator capable of maintaining food at or below 5 degree Celsius with sufficient space.~~
- (f) ~~From 1<sup>st</sup> of July 2010, each temporary food stall operator(s), must directly apply to Council's Health Department for a temporary food stall licence. Successful applicants are required, to comply with Sydney Council's policies and the Food Standards Code under the Food Act 2003 at all times to be able to operate as a temporary food stall. This licence approval shall be renewed each financial year or otherwise stated. This licensing requirements and conditions may be modified, changed or altered without prior notice. The Council reserves the right to revoke or withdraw the licence approval if a business the licensee fails to comply with the conditions and the relevant legislations.~~

~~Note: The "Requirements for the Operation of a Temporary Food Stall, City of Sydney" and the "Temporary Food Stalls Event Register" and "Details of Temporary Food Stall" forms can be obtained from the City of Sydney website <http://www.cityofsydney.nsw.gov.au/>~~

~~The completed forms may be returned to Councils' Health and Building Unit by post, Fax Number or emailed to [TemporaryFood@cityofsydney.nsw.gov.au](mailto:TemporaryFood@cityofsydney.nsw.gov.au) [healthbuildinginfo@cityofsydney.nsw.gov.au](mailto:healthbuildinginfo@cityofsydney.nsw.gov.au)~~

(Amended 21 December 2011)

(Amended 1 August 2012)

***(Condition deleted 20 March 2024)***

## **(21A) TEMPORARY FOOD STALL – SET UP AND OPERATION**

- (a) ***Details of all temporary food stalls proposed to attend site must be submitted to the City of Sydney at least 28 days prior to the event commencing using the City of Sydney "Temporary Food Stall Event Register".***
- (b) ***All temporary food stalls at the event must be registered with the City of Sydney in accordance with the requirement of the Food Act***

**2003 using the City of Sydney, 'Temporary food stall application' form.**

- (c) **The set up and operation of any temporary food stall and associated equipment must comply with the NSW Food Authority Guidelines for Food Business at Temporary Events and Australian New Zealand Food Standards Code 3.2.2 – Food Safety Practises and General Requirement.**

**Note: The "Temporary Food Stalls Event Register" and Temporary food stall application forms can be obtained from the City of Sydney website <http://www.cityofsydney.nsw.gov.au>.**

**The completed forms may be returned to Council's Health and Building Unit by post, email or in person.**

**Post: Health and Building, Level 16, Town Hall House, 456 Kent Street, Sydney, NSW 2000**

**Email: [council@cityofsydney.nsw.gov.au](mailto:council@cityofsydney.nsw.gov.au)**

**In Person: Town Hall House – Level 2, 456 Kent Street, Sydney**

**(Condition inserted 20 March 2024)**

## **(22) ~~STALL REQUIREMENTS~~**

~~The following conditions have been imposed to ensure that adequate protection and safety is afforded to the public:~~

- (a) ~~All temporary structures shall be erected/installed in accordance with manufacturer's specifications and where there is no such specifications are to be erected in accordance with standard industry practices.~~
- (b) ~~All mechanical and electrical installations including generators, electrical cabling and any mobile structures are to be surrounded or covered by appropriate physical barriers so as to prevent unauthorised access by the public at all times, and to protect ground laid cabling from being trip hazards, during public occupation of the site.~~
- (c) ~~Appropriate fire fighting equipment is to be readily available for all installations including generators, power boxes, mechanical systems cooking facilities and the like, which may be utilised on site during normal occupation times.~~
- (d) ~~Food preparation areas shall be supplied with appropriate separate hand held fire extinguishers and fire blankets which are to be available at all times during operation.~~
- (e) ~~The ground surfaces on which the structures are to be erected or located, are to be sufficiently firm to sustain the structure while it is being used and isn't dangerous because of its slope or irregularity or for any other reason.~~
- (f) ~~Electrical services serving the stage and allied structures shall meet with the requirements of AS/NZS 3000 & 3002 and be certified by a licensed electrical contractor prior the commencement of use.~~

- (g) ~~There is to be NO SMOKING in ANY of the subject structures, and appropriate signage is to be displayed in conspicuous locations throughout the site.~~

**(Condition deleted 20 March 2024)**

**(22A) TEMPORARY STRUCTURES**

- (a) **The ground surface on which the structure is to be erected is to be sufficiently firm to sustain the structure whilst it is being used and isn't dangerous because of its slope or irregularity of for any other reason.**
- (b) **The temporary structures must be erected and secured in accordance with the manufacturers structural specifications to ensure they are structurally sound and can withstand likely wind and live loadings. Modular stage sections must be adequately bolted or clamped together to ensure that the overall design stability of the stage structures is achieved and maintained**
- (c) **Separate Certification must be provided by the installers for the structures, confirming installation in accordance with the relevant design and specification(s). Note: where structures are minimal in nature such as food stalls, marquees less than 10m<sup>2</sup>, platforms raised less than 300mm and the like, a copy of the manufacture's specification must be sufficient.**
- (d) **Stage structures are not to be loaded in excess of those loadings recommended by the suppliers and/or manufacturers. Appropriate signage nominating the maximum number of persons permitted on the stage must be prominently displayed.**
- (e) **Any lighting, rigging, scaffolding or the like, associated with the subject stages must be constructed and certified by a SafeWork NSW licensed rigger.**
- (f) **Electrical services serving stage(s) and allied structures must meet with the requirements of AS/NZS 3000 & 3002 and be certified by a licensed electrical contractor prior to the commencement of use.**
- (g) **Sufficient exits with designated 'Exit' signage must be provide to all temporary structures appropriate to the intended occupancy capacity for each structure.**
- (h) **All structures to which members of the public may be allowed access must be supervised by appointed responsible persons at all times when accessible to the public.**
- (i) **There must be NO SMOKING inside any of the subject structures. Appropriate signage must be displayed at the entrance to the structure and all security personnel made aware of this requirement.**
- (j) **Erection and dismantling (packing up) must be done quietly and orderly to minimise disturbance to the surrounding locality.**

**(Condition inserted 20 March 2024)**

## **(23) TRAFFIC AND PARKING ARRANGEMENTS**

The following requirements apply for the operation of the markets:

- (a) Market vehicles are permitted to use the eastern kerbside lane of Macleay Street south of Greenknowe Avenue up to point immediately north of Fitzroy Garden for unloading goods and moving them into stalls.
- (b) The use for the loading and unloading of vehicles on Fitzroy Gardens shall be reduced to the absolute minimum necessary, by use of kerbside spaces, barricades, monitoring/staffing, and the like. Loading shall occur between 7.00am and 10.30am and a plan shall be submitted to the satisfaction of the Director City Planning indicating a loading plan. The loading activities shall be reviewed and a report submitted after three months of operation. Loading arrangements may be varied where required by Council.
- (c) Any vehicle movements across the footpath area adjacent to Fitzroy Garden from Macleay Street are to be kept to a minimum and are to comply with (b) above.
- (d) The operator is to liaise with State Transit Authority and Taxi Council NSW regarding the impact of the use on the Macleay Street Bus Zone and Taxi Rank adjacent to Fitzroy Gardens, and undertake any measures required by these bodies.
- (e) Any proposals for alterations to the public road, involving traffic and parking arrangements, must be designed in accordance with RTA Technical Directives and must be referred to the Sydney Traffic Committee for approval prior to any work commencing on site.
- (f) Any lane closure must be in accordance with the AS1742.3, unless otherwise directed by Police or the City's Law Enforcement officers.
- (g) The operator is to provide and maintain appropriate and adequate traffic measures (barricades) along the eastern side of Macleay Street adjacent to Fitzroy Gardens for the safe movements of traffic and pedestrians if necessary on safety grounds, and if so directed by Council.
- (h) The operator must maintain Emergency Services access at all times.

## **(24) SANITARY FACILITIES**

- (a) Adequate sanitary facilities, including specialised facilities for use by persons with a disability, shall be provided on the site if required to cater for the maximum number of patrons attending the event at one time. In this regard, usage demand shall be monitored and appropriately managed throughout the event to ensure that public convenience is maintained, and be provided with adequate directional and way finding signage displayed throughout the site.
- (b) The organiser must provide at least three (3) toilets on-site to service as one (1) female toilet, one (1) male toilet and one (1) disable toilet, available and operational at all times during the market if required.
- (c) Sanitary facilities shall be appropriately cited so as not to cause a nuisance to permanent residents or members of public. In addition they

should not be cited with any significant proximity to the service of food and beverages and clearly marked by various signs to ensure they can be found easily from all areas within the market.

(Amended 25 August 2010)

## **SCHEDULE 1C**

### **DURING OPERATION OF THE MARKET**

#### **(25) CARE TO BE TAKEN WITH PARKLANDS AND LANDSCAPING**

The operator shall ensure that the operation of the markets, including vehicular access and loading or unloading does not cause damage to any trees within or surrounding the park, any fabric of the park, garden beds, and other structures or features.

#### **(26) PARKLANDS TO BE LEFT IN A CLEAN AND TIDY STATE**

The operator or designated on-site manager of the markets is to ensure that the parkland is left in a clean and tidy state at the close of the market.

#### **(27) NO OBSTRUCTION OF PUBLIC WAY**

The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances. Non-compliance with this requirement will result in the issue of a notice by Council to cease activity on site.

#### **(28) COMPLAINTS**

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

## SCHEDULE 2

### PRESCRIBED CONDITIONS

The prescribed conditions in accordance with Division 8A of the *Environmental Planning and Assessment Regulation 2000* apply:

- Clause 98 Compliance with *Building Code of Australia* and insurance requirements under the *Home Building Act 1989*
- Clause 98A Erection of signs
- Clause 98B Notification of *Home Building Act 1989* requirements
- Clause 98C Conditions relating to entertainment venues
- Clause 98D Conditions relating to maximum capacity signage
- Clause 98E Conditions relating to shoring and adequacy of adjoining property

Refer to the NSW State legislation for full text of the clauses under Division 8A of the *Environmental Planning and Assessment Regulation 2000*. This can be accessed at: <http://www.legislation.nsw.gov.au>