

Attachment A

Recommended Conditions of Consent

SCHEDULE 1

CONDITIONS OF CONSENT

PART A - GENERAL

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2022/716 dated 18 July 2022 and the following drawings prepared by WanWorld Design:

Drawing Number	Drawing Name	Date
002	Proposed Floor Plan	22/03/2022
S01	Site Location	22/03/2022
2 Rev. 0	Outside seating Plan	15/11/2023

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.

Reason

To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

Amended 12 June 2024 – D/2022/716/A

(2) WASTE AND RECYCLING MANAGEMENT - GENERAL

The proposal must comply with the relevant provisions of Council's *Guidelines for Waste Management in New Developments 2018* which requires facilities to promote the efficient storage, separation, collection and handling of waste to maximise resources recovery.

Reason

To ensure that waste and recycling is appropriately managed.

(3) SIGNS - SEPARATE DA REQUIRED

A separate development application for any proposed signs additional to those approved as part of previous consents (other than exempt or complying signs) must be submitted to and approved by Council prior to the erection or display of any such signs.

Reason

To require separate consent to be obtained for any additional signs.

(4) SIGNS/GOODS IN THE PUBLIC WAY

No signs or goods are to be placed on the footway or roadway adjacent to the property.

Reason

To ensure the public domain is kept free from physical obstructions.

PART B – BEFORE THE ISSUE OF A CONSTRUCTION CERTIFICATE

There are no conditions relevant to Part B.

PART C – BEFORE THE COMMENCEMENT OF BUILDING WORK

There are no conditions relevant to Part C.

PART D – WHILE BUILDING WORK IS BEING CARRIED OUT

(5) HOURS OF WORK AND NOISE – OUTSIDE CBD

The hours of construction and work on the development must be as follows:

- (a) All work, including building/demolition and excavation work, and activities in the vicinity of the site generating noise associated with preparation for the commencement of work (eg. Loading and unloading of goods, transferring of tools etc) in connection with the proposed development must only be carried out between the hours of 7.30am and 5.30pm on Mondays to Fridays, inclusive, and 7.30am and 3.30pm on Saturdays, with safety inspections being permitted at 7.00am on work days, and no work must be carried out on Sundays or public holidays.
- (b) All work, including demolition, excavation and building work must comply with the City of Sydney Code of Practice for Construction Hours/Noise 1992 and Australian Standard 2436 – 2010 Guide to Noise Control on Construction, Maintenance and Demolition Sites.
- (c) Notwithstanding the above, the use of a crane for special operations, including the delivery of materials, hoisting of plant and equipment and erection and dismantling of on-site tower cranes which warrant the on-street use of mobile cranes outside of above hours can occur, subject to a separate application being submitted to and approved by Council under Section 68 of the Local Government Act 1993 and Sections 138/139 of the Roads Act 1993.

Note: Works may be undertaken outside of hours, where it is required to avoid the loss of life, damage to property, to prevent environmental harm and/or to avoid structural damage to the building. Written approval must be given by the Construction Regulation Team, prior to works proceeding

The *City of Sydney Code of Practice for Construction Hours/Noise 1992* allows extended working hours subject to the approval of an application in accordance with the Code and under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

Reason

To protect the amenity of the surrounding area.

PART E – BEFORE THE ISSUE OF AN OCCUPATION CERTIFICATE

(6) NOTIFICATION OF CONDUCT OF FOOD BUSINESS

- (a) The use must not commence until the food business has notified Council with their food business details in accordance with the *Food Act 2003* and *The Australia New Zealand Food Standards Code – 3.2.2 – Food Safety Practices and General Requirements, Clause 4*.
- (b) An Occupation Certificate must not be issued until such notification has been received by Council in accordance with Clause (a) of this condition.

Note: Registration forms are available on Council's website www.cityofsydney.nsw.gov.au.

Reason

To ensure Council is notified of food business details.

PART F – OCCUPATION AND ONGOING USE

(7) OCCUPATION CERTIFICATE TO BE SUBMITTED

An Occupation Certificate must be obtained from the Principal Certifier and a copy submitted to Council prior to commencement of occupation or use of the whole or any part of a new building, an altered portion of, or an extension to an existing building.

Reason

To ensure the site is authorised for occupation.

(8) TRADING HOURS - MINOR DEVELOPMENT

(a) the *indoor* trading hours are restricted to between 7.00am and 10:00pm Monday to Saturday and between 7.00am and 8.00pm Sunday.

(b) ***The outdoor trading hours are restricted to between 7.00am and 8.00pm Monday to Sunday.***

To ensure the premises operates within the approved hours of operation.

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(9) CESSATION OF SERVICE

The premises may be open for business only between the operating hours in condition 8 above. The operator must cease providing food at the premises 30 minutes before the required closing time.

Reason

To ensure the development operates within the approved hours of operation.

(10) NEIGHBOURHOOD AMENITY

(a) Signs must be placed in clearly visible positions within the café/restaurant requesting patrons upon leaving the premises to do so quickly and quietly, having regard to maintaining the amenity of the area. The signage must be in bold letters not less than 25mm in height on a contrasting background.

(b) The management must ensure that the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood.

Reason

To safeguard the amenity of the surrounding neighbourhood.

(11) NO SPEAKERS OR MUSIC OUTSIDE

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.

Reason

To safeguard the amenity of the surrounding neighbourhood.

(12) PLAN OF MANAGEMENT

The use must always be operated / managed in accordance with the Plan of Management, prepared by **Jianxin-Cheng WT Design Pty Ltd** signed and dated ~~11 November 2022~~ **25/04/2024** that has been approved by Council. In the event of any inconsistency, the conditions of this consent will prevail over the Plan of Management.

Reason

To ensure all parties are aware of the approved supporting documentation that applies to the development.

Amended 12 June 2024 – D/2022/716/A

(13) NOISE - ENTERTAINMENT

- (a) The $L_{Aeq, 15 \text{ minute}}$ noise level from the use must not exceed the background noise level ($L_{A90, 15 \text{ minute}}$) in any octave band (reference frequency 31.5 Hz to 8 kHz inclusive) by more than 5dB between 7.00am and 12.00 midnight when assessed at the boundary of any residential accommodation or tourist and visitor accommodation.
- (b) The $L_{Aeq, 15 \text{ minute}}$ noise level from the use must not exceed the background noise level ($L_{A90, 15 \text{ minute}}$) in any octave band (reference frequency 31.5 Hz to 8 kHz inclusive) between 12.00 midnight and 7.00am when assessed at the boundary of any residential accommodation or tourist and visitor accommodation.
- (c) Notwithstanding (a) above, the $L_{Aeq, 15 \text{ minute}}$ noise level from the use must not exceed the greater of the following levels between 7am and 12 midnight inside any habitable room of a residential accommodation or tourist and visitor accommodation, or at any time in an affected commercial premises:
 - (i) The existing internal $L_{A90, 15 \text{ minute}}$ (from external sources excluding the use) in any octave band (reference frequency 31.5 Hz to 8 kHz inclusive). Or,
 - (ii) If the $L_{Z90, 15 \text{ minute}}$ background level is below the hearing threshold curve (Tf - Table 1 of ISO 226 : 2003) in an above octave band, the lowest audible sound level (L_p) of the Tf curve in that octave band shall become that octave's $L_{Zeq 15 \text{ minute}}$ noise criteria level.

- (d) Notwithstanding (b) above, the $L_{A1\ 15\ \text{minute}}$ noise level from the use must not exceed the greater of the following sound pressure levels inside any habitable room between 12 midnight and 7am inside any habitable room of an affected residential accommodation or tourist and visitor accommodation:
- (i) The existing internal $L_{A90, 15\ \text{minute}}$ (from external sources excluding the use) minus 10 dB in any octave band (reference frequency 31.5 Hz to 8 kHz inclusive) inside a habitable room of an affected residential accommodation or tourist and visitor accommodation. Or,
 - (ii) If the $L_{Z90, 15\ \text{minute}}$ minus 10 dB level is below the hearing threshold curve (Tf - Table 1 of ISO 226 : 2003) in an above octave band, the lowest audible sound level (L_p) of the Tf curve in that octave band shall become that octave's $L_{Z1\ 15\ \text{minute}}$ noise criteria level.

Note: L_{eq} , L_{01} , and L_{90} , metrics and 'A' (weightings) are as per the definitions in the standard AS1055-20148. 'Z' means unweighted noise. An internal L_{A90} level must be determined in the absence of noise emitted by the use and be sufficiently representative of the receiver in a low noise level quiet state. External L_{A90} levels for planning must be established as per the long-term methodology in Fact Sheet B of the NPfl unless otherwise agreed by the City's Area Planning Manager.

Reason

To protect the acoustic amenity of surrounding properties.

(14) COMPLIANCE WITH THE ACOUSTIC REPORT PRIOR TO INCREASING PATRON CAPACITY

- (a) ***All relevant performance parameters (including but not limited to requirements, engineering assumptions and recommendations) in the DA Acoustic Report (with the exception of the solid awning as per Condition 16)) prepared by Koikas Acoustics Pty Ltd, dated 20 March 2024, ref 6122R20240314asEllenCafe, titled Noise Complaint Review, Council Ref 2024/243982 must be implemented in the development prior to the commencement of its use as per condition 8 of this consent, as modified.***
- (b) ***Prior to the issue of the commencement of increased patrons, the final construction drawings and final construction methodology must be assessed and reported to be in accordance with the requirements of the DA Acoustic Report in (a) above, with reference to relevant documentation. This must be done by a Suitably Qualified Acoustic Consultant* (see definition below). Prior to the commencement of additional patrons, plans are to be submitted to and approved by Council's Area Planning Manager.***
- (c) ***Prior to the issue of the commencement of increased patrons, a Suitably Qualified Acoustic Consultant* is to provide a written Acoustic Verification Report to the satisfaction of Council that the development complies with the requirements set out in the Report and in (a) and (b) above.***

Note: Suitably Qualified Acoustic Consultant means a consultant who possesses the qualifications to join the Australian Acoustical Society, Institution of Engineers Australia (grade of member) or the Association of Australasian Acoustical Consultants (grade of member firm).

- (d) **All physical aspects of the building's structure installed in order to meet performance parameters in accordance with this condition must be maintained at all times.**

Reason

To ensure all parties are aware of the supporting documentation that applies to the development.

Added 12 June 2024 – D/2022/716/A

(15) MAXIMUM PATRON CAPACITY

- (a) **The maximum capacity is restricted to 30 patrons within the internal area and outdoor terrace.**

Trial period of additional capacity

- (b) **Notwithstanding (a) above, the use may operate for a period of six (6) months from the date of this amended consent with a maximum occupancy capacity of up to 60 patrons (30 patrons within the internal area and 30 patrons within the outdoor terrace.**

To ensure the premises is able to operate with additional patrons whilst an acoustic awning is constructed.

Added 12 June 2024 – D/2022/716/A

(16) ACOUSTIC AWNING - ADDITIONAL DESIGN & ACOUSTIC SPECIFICATION REQUIRED – DESIGN & CONSTRUCTION SPECIFICATION OF ACOUSTIC AWNING PRIOR TO COMMENCEMENT OF INCREASED PATRONS

Reference is made to the acoustic report listed in the COMPLIANCE WITH THE ACOUSTIC REPORT PRIOR TO THE COMMENCEMENT OF INCREASED PATRONS condition:

- (a) **This report requires a solid awning to be constructed to address an identified external noise impact that would not comply with relevant noise criteria.**
- (b) **To address this issue, design drawings and an acoustically certified construction methodology must be submitted and approved in accordance with this condition, via a separate Development Application to be submitted to Council within six (6) months from the date of this amended consent.**

Prior to the design and construction of the awning, the applicant is to engage with the original Architects of 18 Huntley Street (DKO) to oversee the design. Following this consultation (which is to be confirmed in writing from DKO architects), detailed design drawings, materials and construction specification of the acoustic awning must be submitted via a separate Development Application within six (6) months of this amended consent.

The detailed design drawings and materials and construction specification as outlined above must be accompanied by a statement of acoustic compliance from a Suitably Qualified Acoustic Consultant* (the consultant) as follows:

- (a) The consultant will review the work submitted as per) above.**
- (b) The consultant will ensure that the awning is sufficiently designed so that the external noise emissions do not cause any cumulative exceedance of noise criteria.**
- (c) If necessary, the consultant will direct further changes to the work required by this condition.**
- (d) Once satisfied with the work above, the consultant will submit a compliance statement that the material (with document references) has been reviewed and will be acoustically sufficient to prevent non-compliance with noise criteria.**
- (e) *Note: "Suitably qualified acoustic consultant" means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustical Society, Institution of Engineers Australia or the Association of Australian Acoustic Consultants at the grade of member.**

The particulars specified in this condition must be submitted as part of the separate Development Application.

Upon satisfaction of this condition, the particulars will form part of the requirements for certification and verification in the COMPLIANCE WITH THE ACOUSTIC REPORT PRIOR TO THE COMMENCEMENT OF INCREASED PATRONS condition.

Added 12 June 2024 – D/2022/716/A

(17) NOISE – STRUCTURE BORNE IMPACT ON SEPARATE RESIDENTIAL PREMISE

- (a) Structure borne noise emanating from the premises is not to exceed the following criterion when measured within any separate residential accommodation:**
 - (i) $L_{A1, \text{Slow 15 minute}} \leq L_{A90, \text{15 minute}} \text{ dB(A)}$.**

Reason

To protect the acoustic amenity of surrounding properties.

Added 12 June 2024 – D/2022/716/A

(18) VIBRATION

Operation of the use is not to result in the transmission of any perceptible vibration to an occupiable area within a separate premises.

Reason

To protect the amenity of surrounding properties.

Added 12 June 2024 – D/2022/716/A

(19) NOISE – COMMERCIAL PLANT / INDUSTRIAL DEVELOPMENT

(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 \(NPfl\)](#) 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 NPfl 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 $L_{Aeq,15\text{ minute}}$ (noise level) emitted from the development must not exceed the $L_{A90, 15\text{ minute}}$ (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) *Corrections in [Fact Sheet C](#) of the NPfl are applicable to relevant noise from the development measured in accordance with this condition, however duration corrections are excluded from commercial noise.*

Reason

To protect the acoustic amenity of surrounding properties.

Added 12 June 2024 – D/2022/716/A

(20) NO SPRUIKING OF 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 generated within privately owned land must not be audible on any adjacent property with a shared boundary.

Reason

To safeguard the amenity of the surrounding neighbourhood.

Added 12 June 2024 – D/2022/716/A

(21) NOISE – INSTALLATION, SETUP, TESTING AND CALIBRATION OF LIMITER/S, PRIOR TO THE COMMENCEMENT OF INCREASED PATRONS

Prior to the commencement of increased patrons, a Suitably Qualified Acoustic Consultant* is to provide a Noise Limiter/s Verification Report to the written satisfaction of the Principal certifying Authority that the development complies with the requirements set out as follows, and any relevant requirement in the COMPLIANCE WITH THE ACOUSTIC REPORT PRIOR TO THE COMMENCEMENT OF INCREASED PATRONS condition:

- (a) All sound amplification equipment in the premises must be controlled by a Root Mean Square (RMS) noise limiter with an attack time constant not exceeding 0.5 seconds, release time constant not less than 1 second and a compression ratio equal of at least 20:1. The limiter shall be set by a suitably qualified acoustic consultant* as per the manufacturer's specification. The consultant must ensure that resultant amplified sound complies with the Council's criteria for entertainment noise.***
- (b) All Limiters and all post-limiter equipment including power amplifiers must be tamper proof and only operable by the acoustic consultant, a licensee and business owner who must keep a completed report on the premises.***
- (c) This report must certify that limiter/s were installed, tested and calibrated so amplified noise will comply with the NOISE – ENTERTAINMENT Condition. The report will be prepared in accordance with and provide detail on the following requirements:***
 - (i) An initial calibration of the operation of the limiter with the sound amplification equipment is to be undertaken. This assessment must include setting of the amplification system in addition to a documented overview of the system so that compliance is achieved with the noise criteria as referenced in parts (a) to (c) above.***

- (ii) **Limiters settings and subsequent equipment must be benchmarked at the time of the above operational assessment. Pink noise and a swept sine wave signal must be fed into the amplification system and the level of the noise increased until the limiter operates continuously to comply with criteria. The L_{Aeq} , L_{A1} , L_{Ceq} and L_{C1} (1/1 octave bands - 31.5 Hz to 8 kHz centre frequencies) levels must be measured at suitable relevant reference location/s in the premises, with the premises empty other than essential staff. Correlating L_{Aeq}/L_{A1} and L_{Ceq}/L_{C1} measurements must be taken at identified nearby noise sensitive receivers during this process.**
- (iii) **Music must then be played through the sound system(s) with the limiter(s) in continuous operation to verify the limiters work correctly and meet noise criteria at the locations detailed above.**
- (iv) **The report will address the limiter installed within the premises (including but not limited to its brand, type specifications and location) including the noise control levels the limiter was set to (including a copy of the software configuration file for any digital signal processing device used). Furthermore, all post limiter equipment will be photographed, documented and catalogued in the report including location on a layout drawing.**

Note: Suitably Qualified Acoustic Consultant means a consultant who possesses the qualifications to join the Australian Acoustical Society, Institution of Engineers Australia (grade of member) or the Association of Australasian Acoustical Consultants (grade of member firm).

Reason

To protect the acoustic amenity of surrounding properties.

Added 12 June 2024 – D/2022/716/A

(22) NOISE – AMPLIFIED SOUND AND THE UPKEEP AND OPERATION OF LIMITER/S

Following receipt of the report as per part (b) of the INSTALLATION, SETUP, TESTING AND CALIBRATION OF LIMITER/S, PRIOR TO THE COMMENCEMENT OF INCREASED PATRONS condition (and receipt of the a relevant occupation certificate, the report is to be kept on the premises at all times, signed and dated by the licensee and business owner. From this point forward the licensee and business owner must ensure the following:

- (a) **The limiter/s and sound amplification system must be maintained and not tampered with. That unauthorised modifications are not made which are contrary to the report. Repairs and replacements may be made to the system as necessary with any like component but must not be capable of increasing the permitted noise amplification levels outlined in the report.**

- (b) That 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. This does not apply to:**
- (i) Equipment that is only used when routed through and controlled by the limiter/s, i.e. the limiters and amplified sound system on the premises are capable of receiving and controlling that equipment, and**
 - (ii) Such that use of the equipment must not cause amplified sound which exceeds the cumulative entertainment noise controls in this consent.**

Reason

To protect the acoustic amenity of surrounding properties.

Added 12 June 2024 – D/2022/716/A

SCHEDULE 2

PRESCRIBED CONDITIONS

The prescribed conditions in accordance with Division 8A of the *Environmental Planning and Assessment Regulation 2021* apply:

- Clause 69 Compliance with *National Construction Code (previously known as Building Code of Australia)* and insurance requirements under the *Home Building Act 1989*
- Clause 70 Erection of signs
- Clause 71 Notification of *Home Building Act 1989* requirements
- Clause 72 Conditions relating to entertainment venues
- Clause 73 Conditions relating to maximum capacity signage
- Clause 74 Conditions relating to shoring and adequacy of adjoining property

Refer to the NSW State legislation for full text of the clauses under Division 2 conditions of the *Environmental Planning and Assessment Regulation 2021*. This can be accessed at: <http://www.legislation.nsw.gov.au>