

**Item 4.****Development Application: 353-359 Crown Street, Surry Hills - D/2024/620**

File No.: D/2024/620

**Summary****Date of Submission:** 26 July 2024**Applicant:** Milestone (Aust.) Pty Limited**Architect/Designer:** The General Store**Owner:** Toga Development No 36 Pty Ltd**Planning Consultant:** Milestone**Cost of Works:** \$455,905**Zoning:** MU1 - Mixed Use. The proposed development is defined as a food and drink premises and is permissible with consent in the zone.**Proposal Summary:** The application seeks consent for the fitout and use of the subject tenancy as a food and drink premises (under a Full Hotel License) to be known as 'Good Pair Days'.

The business intends to operate as a boutique wine store, with 28 internal seats for the service of alcohol. The application also seeks consent to hold occasional wine tasting events for up to 85 people. The premises will operate under a Full Hotel Licence.

A Full Hotel License allows a licensee to sell alcohol to the public for consumption on the premises, sell takeaway alcohol, have gaming machines, sell alcohol at functions away from the premises subject to separate approval and to provide entertainment.

Note: the application does not include any gaming machines. The proponent does not propose to provide entertainment.

Patrons will be able to purchase bottles of wine in-store and if desired, order larger volume wine deliveries direct to their addresses from a warehouse off-site.

The applicant is intending to apply for an outdoor dining area and for business identification signage under separate applications to Council.

Proposed hours of operation for the internal parts of the premises are between 7:00am and 11:00pm, Mondays to Saturdays; and between 7:00am and 10:00pm, Sundays. Alcohol will not be sold on the premises prior to 10:00am.

In accordance with the Community Engagement Strategy 2024, the application was notified for 21 days, between 1 August 2024 and 23 August 2024. A total of 234 properties were notified. No submissions were received.

The applicant has amended the proposal during assessment, to clarify the following details:

- The license type for the premises will be a 'full hotel licence', allowing for the serving of alcohol and for take-away purchases.
- The number of patrons for wine tasting events has been reduced from 100 to 85, including internal and outdoor areas. An amended plan of management has been provided, reflecting the reduced number of patrons.
- All existing mechanical exhaust equipment will be removed. Food offerings will consist of cold platters/re-heating using microwave ovens.
- The premises has sufficient space for the installation of the required number of hand wash basins, per Australian Standard AS4674 design construction and fit out of food purposes (conditions are recommended in this regard).

The application has been referred to the Local Planning Panel on the basis the premises will operated under a full Hotel License. The referral of the application to the LPP is in accordance with the Minister's Local Planning Panel Direction dated 6 March 2024.

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

- Development Controls:**
- (i) Environmental Planning and Assessment Act 1979
  - (ii) Liquor Act 2007
  - (iii) Sydney Local Environmental Plan 2012
  - (iv) Sydney Development Control Plan 2012

- Attachments:**
- A. Recommended Conditions of Consent
  - B. Selected Drawings
  - C. Plan of Management

**Recommendation**

It is resolved that consent be granted to Development Application Number D/2024/620 subject to the conditions set out in Attachment A to the subject report.

**Reasons for Recommendation**

The application is recommended for approval for the following reasons:

- (A) The development, subject to conditions, is consistent with the objectives of the MU1 Mixed Use zone.
- (B) The development is compatible with the character of the Surry Hills North locality, noting its commercial and retail character.
- (C) The submitted Plan of Management has been assessed as acceptable. It adequately addresses the operational, safety and security requirements of the premises.
- (D) No objection is raised to the proposal by NSW Police.
- (E) As conditioned, the development will not unreasonably compromise the amenity of nearby properties.
- (F) The development accords with objectives of relevant planning controls.

## Background

### The Site and Surrounding Development

1. The site is irregular in shape, with an approximate area of 2,761sqm. The site is located at the intersection of Crown Street and Fitzroy Street, with primary frontage to Crown Street and vehicular access provided from Albion Street.
2. A 7-storey mixed use building is located within the site, characterised by ground floor commercial premises and serviced apartments above.
3. The subject tenancy comprises Shop 6, which is located on the ground floor of the building at the corner of Crown and Fitzroy Streets. Shop 6 has a long frontage to Crown Street with windows overlooking the footpath and an entry door from Crown Street. Surrounding land uses are both commercial and residential. There are other tenancies with frontages to Crown Street located within the same building that operate as food and drink premises.
4. Crown Street is a lively street, characterised by its extensive offering of ground floor food and drink premises. Council has recently completed upgrade works to the Crown Street public domain, including new footpath paving and garden beds.
5. The subject site is not listed as a heritage item and is not located within a heritage conservation area. A heritage item adjoins the northern boundary of the site, however it is sufficiently separated from the entrance to the subject tenancy, and not within the same visual catchment as the subject tenancy.
6. A site visit was carried out on 15 August 2024. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of site and surrounds (red line) with location of Shop 6 denoted by yellow shaded area



Figure 2: Site viewed from Crown Street, looking north-west. Shop 6 is denoted by a white dashed arrow.



Figure 3: Subject tenancy viewed from Crown Street



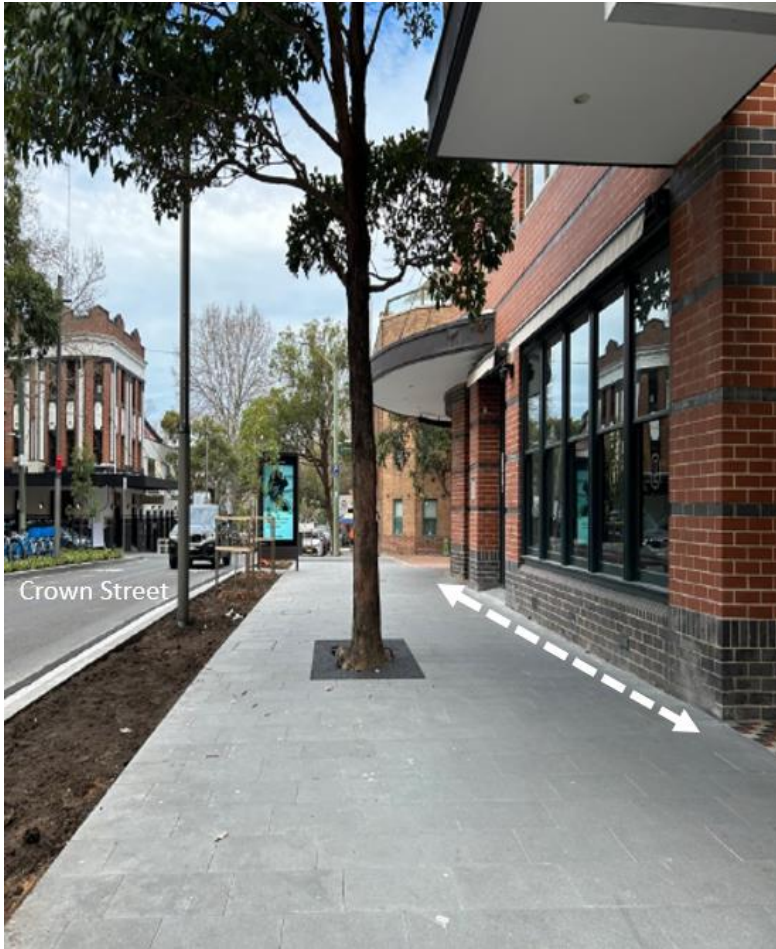


Figure 4: recently completed footway extension and upgrade works. Shop 6 is denoted by a white dashed arrow.



Figure 5: Subject tenancy, internal views



Figure 6: Subject tenancy, commercial kitchen to be demolished

## History Relevant to the Development Application

### Development Applications

7. The following applications are relevant to the current proposal:
  - **FA/2024/314**– On 20 August 2024, an application was lodged with Council for the use of 24.6sqm of public footway on Crown Street in association with 'Good Pair Days'. The application is being assessed at the time of reporting the subject application to the LPP. Hours of operation are identical to this application.
  - **D/2018/1149** – On 7 November 2018, approval was granted to change the operating hours of a licensed restaurant in Shop 6. The consent was modified twice, to extend trial periods associated with the approved 'extended' hours of operation, which were between 7:00am and 12:00 midnight, Monday to Saturday and between 7:00am and 10:00pm, Sundays.



- **D/1997/117/A** – On 28 November 2017, approval was granted for trading hours for a licensed restaurant in Shop 4 and Shop 5 from 7.00am – 12.00am midnight, Mondays to Saturdays inclusive and 7.00am – 10.00pm Sundays on a permanent basis.
- **D/1999/117** – On 1 March 1999, approval was granted to continue the use of Shop 4 and Shop 5 as a licensed restaurant and extending permissible trading hours until 12.00am midnight, Tuesdays to Saturdays inclusive.
- **D/1990/195** – On 31 August 1990 approval was granted to erect three buildings of between two storeys and seven storeys containing residential units, office, and retail/restaurant spaces. Condition 20 of the consent stipulated hours of operation between 8.00am and 12.00 midnight, Mondays to Saturdays inclusive and between 8.00am and 10.00pm Sundays.

### Compliance Action

8. The site is not subject to any ongoing compliance action that is relevant to the subject application.

### Amendments

9. The applicant has amended the proposal during assessment, to clarify the following details:
  - (a) it is intended to operate the premises under a 'full Hotel Licence' in relation to the proposed wine bar and boutique wine and liquor store, allowing for the serving of alcohol and for take-away purchases.
    - (i) Note 1: A Full Hotel License allows a licensee to sell alcohol to the public for consumption on the premises, sell takeaway alcohol, have gaming machines, sell alcohol at functions away from the premises, subject to separate approval and to provide entertainment.
    - (ii) Note 2: the application does not include any gaming machines and does not propose to provide entertainment.
  - (b) the number of patrons for 'special events' has been reduced from 100 to 85, including internal and outdoor areas and an amended plan of management reflecting the reduced number of patrons. This change has been made on the basis there is not sufficient space for 100 patrons within the site;
  - (c) the proposal involves removing all existing mechanical exhaust equipment and that no cooking is proposed for events within the premises (other than preparation of cold platters/re-heating using microwave ovens) - see Referrals section below; and
  - (d) the premises has sufficient space for the installation of the required number of hand wash basins, per Australian Standard AS4674 design construction and fit out of food purposes - see Referrals section below.

## Proposed Development

10. The business intends to operate as a boutique wine store to be known as 'Good Pair Days', with limited internal seating for the service of alcohol (28 seats). Wine fridges will line the edges of the premises. The application also seeks consent to hold occasional, catered wine tasting events for up to 85 people.
11. Patrons will be able to purchase small volumes of wine in-store. Larger orders will be delivered directly to patrons' addresses from a warehouse off-site.
12. The use is defined as a food and drink premises and will operate under a Full Hotel Licence.
13. The applicant is intending to apply for an outdoor dining area on Crown Street (approximately 14 seats) and for business identification signage under separate applications to Council.
14. Proposed hours of operation for the internal parts of the premises are as follows, with no alcohol to be served prior to 10:00am. Hours of operation for external parts are to be determined subject to a separate footway application to Council (see above):
  - (a) between 7:00am and 11:00pm, Mondays to Saturdays; and
  - (b) between 7:00am and 10:00pm, Sundays.
15. Proposed demolition includes removal of an existing commercial kitchen with exhaust, maintaining existing 'back of house' facilities, including 2 x WCs, cool room, and an office.
16. The SEE does not list any external works. However, the applicant states that the existing fitout of Bartolo Restaurant and Wine Room (previous use) will be removed prior to the commencement of works. During a site visit, it was confirmed this will include the removal and replacement of the existing masonry threshold that bears the name of the previous tenant ('Cafe Bartolo'). See referrals section below (public domain specialist comments).
17. Proposed internal fit out works include:
  - (a) installation of a take-away coffee counter at the corner of Crown and Fitzroy Streets;
  - (b) installation of presentation and visual merchandising counters with high bench seating and bench seating along shopfront windows;
  - (c) installation of wine display units and full height wine fridges;
  - (d) food preparation counter and wine presentation counters; and
  - (e) new floor and wall coverings and installation of lighting fixtures.
18. Plans and elevations of the proposed development are provided below.

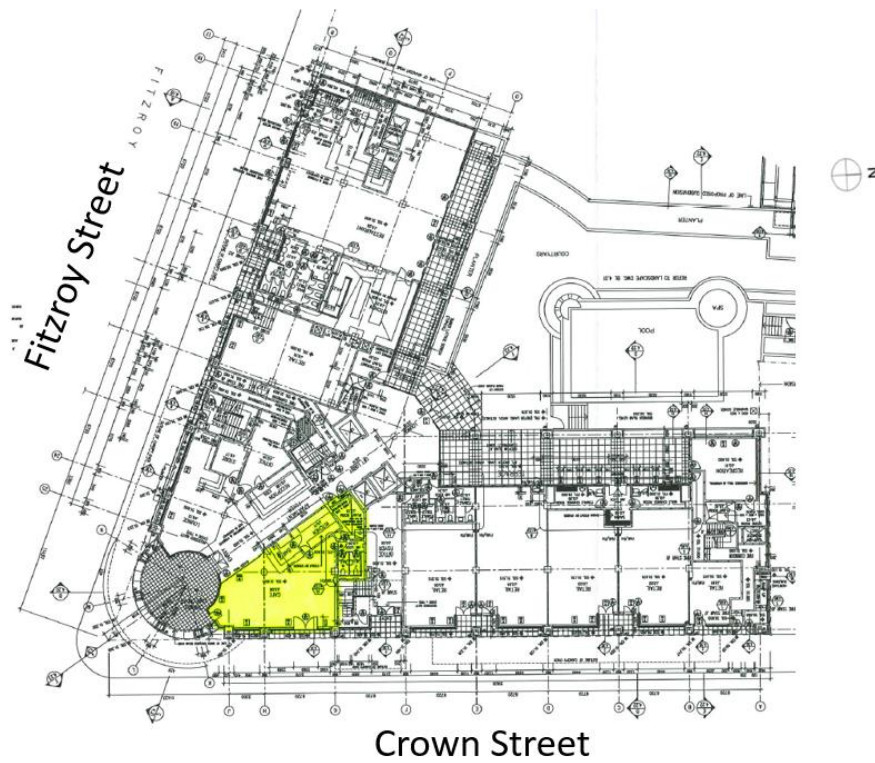


Figure 7: Site floor plan showing subject premises (shaded yellow) and adjoining premises on Crown Street (Source: DA file for D/2018/1149)

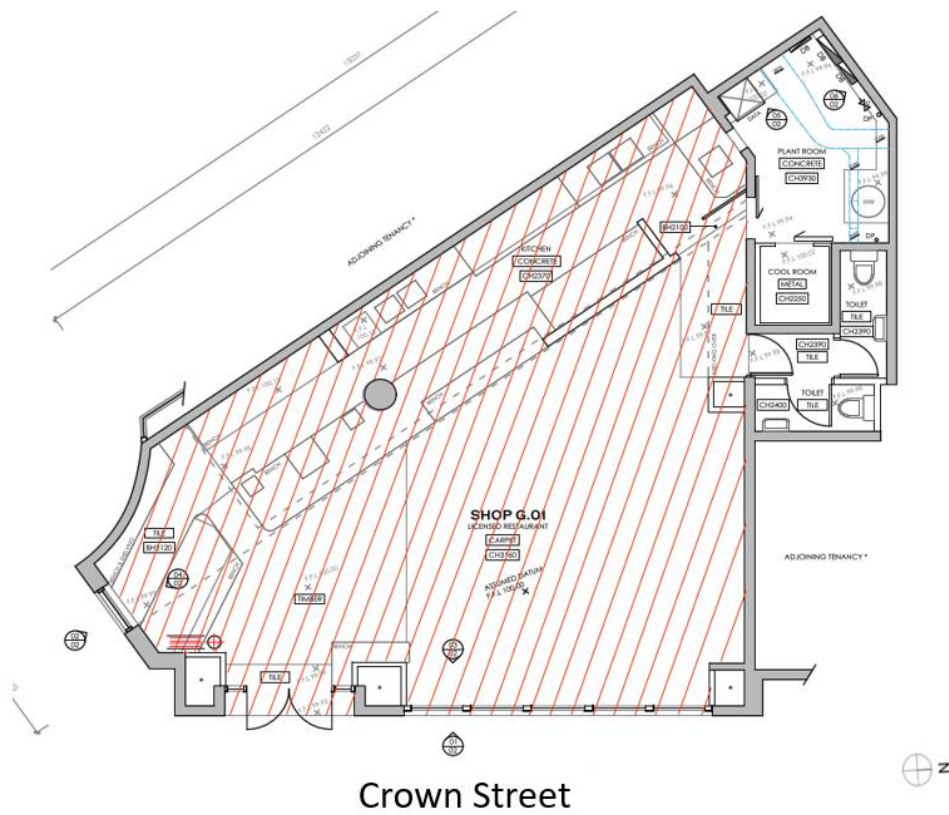


Figure 8: Demolition plan

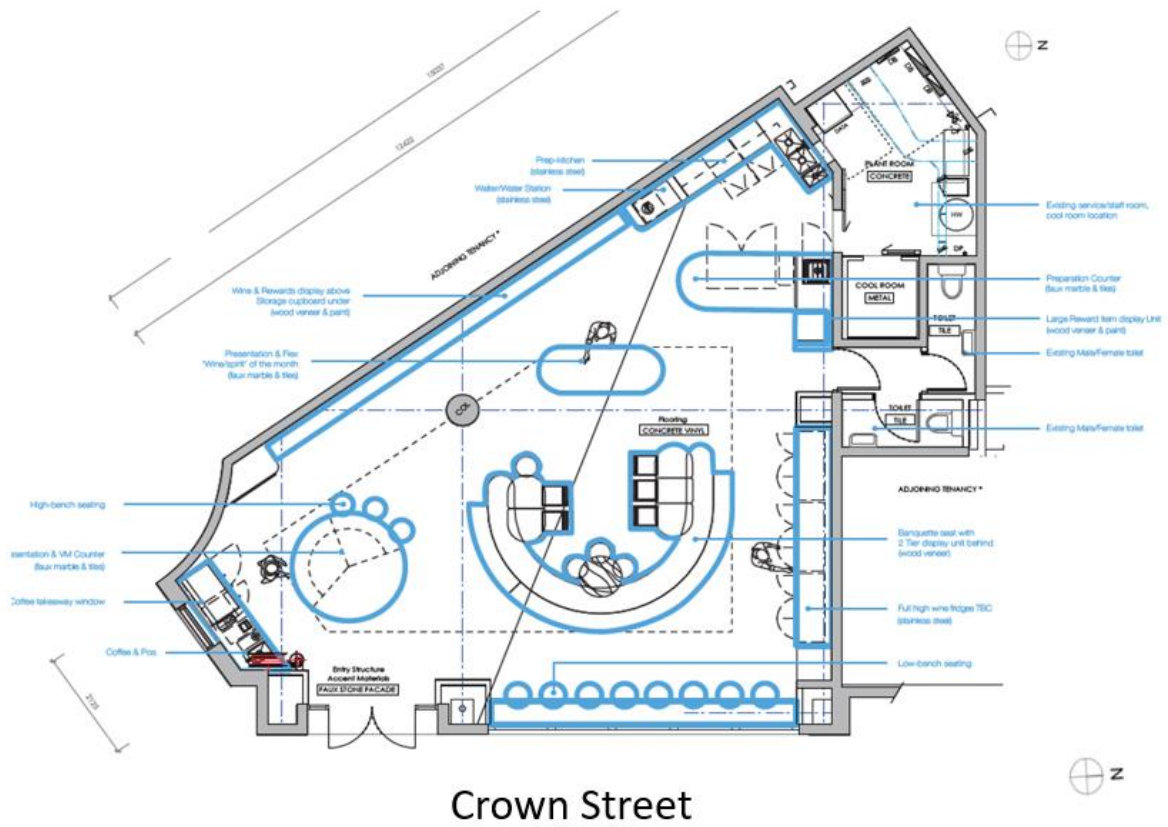


Figure 9: Floor plan

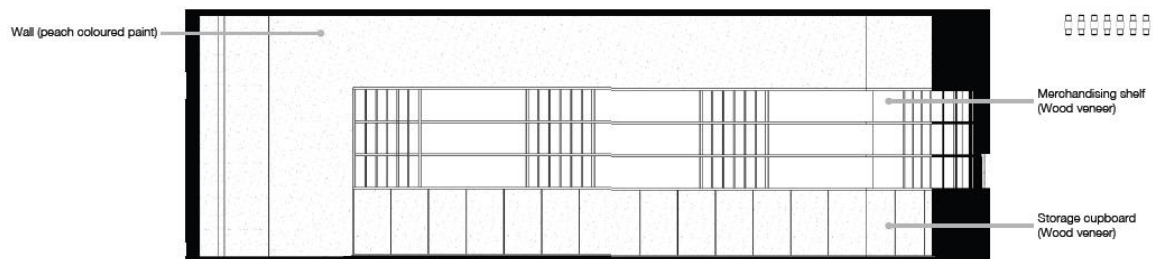


Figure 10: Indicative wine fridge detail and colour schedule

## Assessment

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

## Local Environmental Plans

### Sydney Local Environmental Plan 2012

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

#### Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	<p>The site is located in the MU1 Mixed Use zone.</p> <p>The proposed development is defined as food and drink premises and is permissible with consent in the zone.</p> <p>The proposal will operate under a Full Hotel Licence.</p> <p>The proposal meets key objectives of the zone. The proposal will provide an active street frontage that will contribute to a vibrant, diverse and functional streetscape.</p>

#### Part 4 Principal development standards

Provision	Compliance	Comment
4.4 Floor space ratio	No change	A maximum floor space ratio of 3:1 is permitted. The proposed works will not affect the existing floor space ratio for the site.

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

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	The proposed development will not result in any significant impacts on the appearance of the building.



Provision	Compliance	Comment
		<p>Conditions are recommended to ensure details are provided in relation to the cafe window and entry threshold.</p> <p>As conditioned, the proposal will have an acceptable environmental impact with regard to the amenity of the surrounding area.</p>

## Development Control Plans

### Sydney Development Control Plan 2012

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

#### Section 2 – Locality Statements

22. The site is located within the Surry Hills North locality. The proposed development is in keeping with the unique character and the design principles of the locality in that it continues the function of Crown Street as the primary retail/café precinct in Surry Hills and encourages an active ground floor use.

#### Section 3 – General Provisions

Provision	Compliance	Comment
3.2. Defining the Public Domain 3.2.3 Active frontages	Yes	The proposal retains an active frontage to Crown Street, in a location nominated on the Active frontages map.
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.
3.9 Heritage	Yes	<p>The subject site is not listed as a heritage item and is not located within a heritage conservation area.</p> <p>A heritage item adjoins the northern boundary of the site (351 Crown Street), however is sufficiently separated from the entrance to the subject tenancy, and not within the same visual catchment as the subject tenancy.</p>
3.11 Transport and Parking	Yes	No changes are proposed to existing parking facilities within the site.

Provision	Compliance	Comment
		<p>The site is well serviced by public transport, bus services and separated bike lanes are all within close proximity to the premises.</p> <p>In this respect, the use will be able to manage transport demand in a sustainable manner</p>
3.12 Accessible Design	Yes	Proposed works are at ground level, with accessible entry possible from the Crown Street footpath.
3.13 Social and Environmental Responsibilities	Yes	The proposed development provides adequate passive surveillance and is generally designed in accordance with the CPTED principles.
3.14 Waste	Yes	<p>The development proposes to use existing waste management areas within the development.</p> <p>A condition has been recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.</p>
3.15 Late Night Trading Management	Yes	The premises is located in a Local Centre Area. The premises will be operated as a hotel within the meaning of the Liquor Act 2007 (that is not designated as a general bar licence). As such, the use is defined as a Category A premises. See discussion section below.
3.16 Signage and Advertising	N/A	No signage is proposed under the subject application.

## Section 4 – Development Types

### 4.2 Residential Flat, Commercial and Mixed-Use Developments

Provision	Compliance	Comment
4.2.3.11 Acoustic privacy	Yes	The subject premises has been used as a licensed premises since 2018, with no noise complaints registered on Council's

Provision	Compliance	Comment
		records system. Relevant conditions are recommended in relation to noise emanating from the proposed use.
4.2.6 Waste and recycling Management	Yes	A condition has been recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.
4.2.9 Non-residential development in the MU1 Mixed Uses Zone	Yes	The potential for the proposal to impact on the amenity of existing residential uses has been considered.  Subject to recommended conditions, the development will not adversely impact the amenity of neighbouring residential properties.

## Discussion

### Late Night Trading Provisions

23. The Late Night Trading provisions set out at Section 3.15 of the Sydney Development Control Plan 2012 have been taken into consideration in the assessment of the proposal. Technically the premises is identified as a Category A premises as it is to be operated under a hotel licence. This will allow both consumption on the premises and takeaway sales. The nature of the use, restricted numbers for onsite consumption of alcohol, is however more characteristic of a Category B premises.
24. The applicant proposes to sell packaged liquor for takeaway between 10.00am and 10.00pm, daily. Otherwise, proposed hours of operation for the internal parts of the premises are as follows (with external parts of the premises to be determined subject to a separate Footway Application to Council):
  - (a) between 7:00am and 11:00pm, Mondays to Saturdays; and
  - (b) between 7:00am and 10:00pm, Sundays.
25. The premises is defined by SDCP2012 as a Category A premises. This is on the basis it will operate as a hotel within the meaning of the Liquor Act 2007 (that is not designated as a general bar licence). The Liquor Act 2007 defines a hotel as a premises to which a hotel licence relates.
26. The site is located within a 'Local Centre' Late Night Trading area (shaded red) as defined by part 3.15.2 of SDCP2012.

27. The proposed operating hours listed above are not consistent with the numerical provisions of SDCP2012. Table 3.8 of SDCP2012 specifies that for 'Local Centre' Late Night Trading areas, indoor areas associated with Category A premises should be operated as follows:
  - (a) 'base' hours of operation between 10:00am and 10:00pm daily; and
  - (b) 'extended' hours of operation between 10:00pm and 12:00 midnight daily.
28. As such, the proposal to operate the premises between 7:00am and 10:00am, daily is not consistent with the recommended hours of operation for Category A premises.
29. Provision 3.15.4(3) specifies that any hours that are beyond base hours may be considered subject to an initial (1 year) trial period. The trial period will enable the operation of the premises to be monitored in relation to its ongoing management performance and its impacts on neighbourhood amenity.
30. At the end of the trial period, Council may review the conditions relating to the site and to respond to such things as changes in the character of the neighbourhood and changes in management.
31. Further, provision 3.15.4(6) specifies that extended trading hours beyond base hours may be permitted, but only where the Council has determined that the premises have been or will be well managed, including compliance with an approved Plan of Management.
32. In relation to early morning trading, the proponent will not offer alcohol sales prior to 10:00am daily, and as such, the premises is more akin to a cafe (Category B premises) between 7:00am and 10:00am. As such, a one year trial period for early morning trading (prior to 10:00am) is recommended.
33. In relation to late night trading until 11:00pm, the applicant has submitted a Plan of Management that outlines management practises that will be implemented to mitigate the impacts for neighbouring dwellings. These include that:
  - (a) a store manager will be responsible for the overall management of the premises, including that noise will be minimised and that the plan of management adhered to;
  - (b) noise from recycling or collection of glass will take place only between 9:00am and 5:00pm, Monday to Sundays;
  - (c) patrons leaving the premises reminded by staff to leave the area quietly; and
  - (d) a complaints register will be established. All complaints will be directed to the staff/manager on site and will be listened to, investigated, reviewed and dealt with it in an appropriate manner, and as soon as possible.
34. Comment: the plan of management is consistent with the guidelines set out at Schedule 3 of SDCP2012. A condition is recommended that the premises must be operated in accordance with the POM.

35. The above hours are considered acceptable (subject to a recommended one year trial period), noting the premises will be managed in accordance with an approved Plan of Management. The trial period will provide the new operators the opportunity to demonstrate an effectively managed premises with regard for the residential amenity of nearby residential properties.

## Consultation

### Internal Referrals

36. The application was discussed with Council's;
- (a) Building Services Unit;
  - (b) Environmental Health Unit;
  - (c) Licenced Premises Unit;
  - (d) Public Domain Unit; and
  - (e) Waste Management Unit.
37. The above advised that the proposal is acceptable subject to conditions. Where appropriate, these conditions are included in the Notice of Determination.
38. Referral comments received from Council's public domain specialist note that a footpath widening and upgrade has recently been completed adjacent to the subject site.
39. The applicant confirmed during a site visit that the works involve the removal and replacement of the existing masonry threshold that bears the name of the previous tenant ('Cafe Bartolo'). Further works are proposed to create a takeaway coffee window at the southern end of the premises.
40. While no objection is raised to these works, suitable conditions are recommended in relation to the maintenance of the public domain, including payment of a public domain damage bond and preparation of a public domain dilapidation report prior to the commencement of works. A condition requiring details in relation to the takeaway coffee window is also recommended.

### External Referrals

#### NSW Police

41. The application was referred to NSW Police for comment. A response was received raising no objections to the proposed development, subject to the proposed use being operated in accordance with the updated plan of management.

### Advertising and Notification

42. In accordance with the Community Engagement Strategy 2024, the proposed development was notified for 21 days, between 1 August 2024 and 23 August 2024.



43. A total of 234 properties were notified. No submissions were received.

### **Financial Contributions**

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

44. The development is not subject to a Section 7.11 development contribution as there is no additional floor space being added to the development and noting the previous approval was also for a type of food and drink premises. As such, the development is excluded from the need to pay a contribution.

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

45. The site is located within the Residual Lands affordable housing contribution area. As the development is for purposes other than residential accommodation that will result in the creation of less than 60 square metres of gross floor area, the development is excluded and is not subject to a Section 7.13 contribution.

#### **Housing and Productivity Contribution**

46. The development is not subject to a Housing and Productivity Contribution under the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.
47. While the site is located with the Greater Sydney region, the development is not a type of commercial development to which the Housing and Productivity Contribution applies.

### **Relevant Legislation**

48. Environmental Planning and Assessment Act 1979
49. Liquor Act 2007

### **Conclusion**

50. The application proposes the use of subject tenancy known as Shop 6 as a food and drink premises (under a Full Hotel License).
51. The proposal is consistent with the objectives and provisions of the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012.
52. The premises is of a scale suitable to the MU1 Mixed Use zone and the 'Local Centre' Late Night Trading Area and subject to conditions will not cause adverse impacts on the amenity of the surrounding area.
53. The applicant has adequately addressed operational and security measures in the submitted plan of management.

54. Suitable conditions are recommended in relation to the interface between proposed works and the public domain, and in relation to the generation of noise from the use of the premises.
55. The development is therefore in the public interest and is recommended for approval subject to conditions.

**BILL MACKAY**

Acting Executive Manager Planning and Development

Adrian McKeown, Senior Planner.