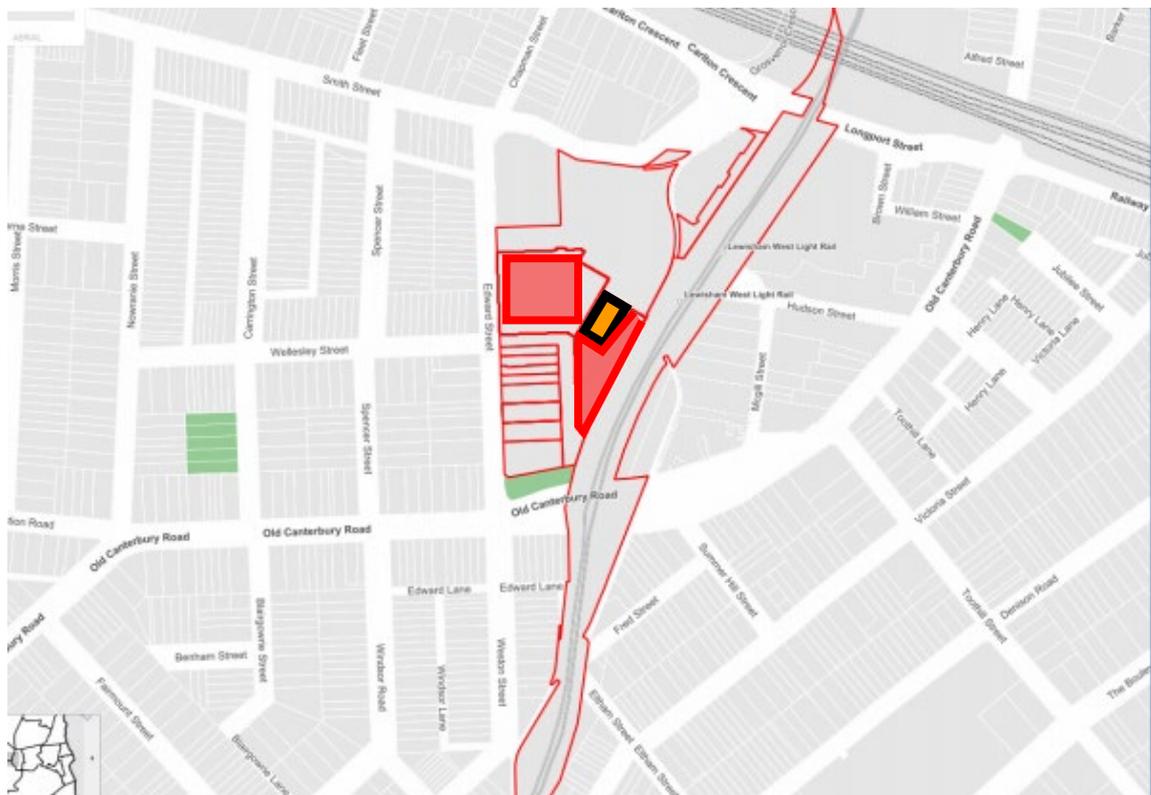


INNER WEST

DEVELOPMENT ASSESSMENT REPORT

Application No.	MOD/2021/0083
Address	601/5 Mungo Scott Place SUMMER HILL NSW 2130
Proposal	S 4.55 (1A) to modify determination No.10.2019.51 to amend conditions relating to the retail tenancy known as Shop 107
Date of Lodgement	16 March 2021
Applicant	EG Funds Management Pty Ltd
Owner	Ms Mia GM Kwok
Number of Submissions	Initial: 13
Value of works	\$17,820.00
Reason for determination at Planning Panel	Number of submissions
Main Issues	Acoustic impacts from café operation
Recommendation	Approval with Conditions
Attachment A	Recommended conditions of consent
Attachment B	Plans of proposed development



LOCALITY MAP

Subject Site		Objectors		
Notified Area		Supporters		

1. Executive Summary

This report is an assessment of the application submitted to Council for S 4.55 (1A) to modify determination No.10.2019.51 to amend conditions relating to the retail tenancy known as 107 on the site. at 601/5 Mungo Scott Place, Summer Hill. The application was notified to surrounding properties and 13 submissions were received in response.

The main issues that have arisen from the application include:

- Amenity (acoustic, visual privacy) impacts arising from the operation of the food and drink premises.

The non-compliances are acceptable, subject to conditions and therefore the application is recommended for approval.

2. Proposal

The application is for a Section 4.55 (1A) modification of determination No.10.2019.51 to amend conditions relating to the retail tenancy known as 107 (within building 3A) on the site. In particular the current modification seeks to amend the following conditions of consent in schedule H:

- Modify condition 1 to better characterise the approved use as 'retail food and drink premises.
- Modify condition 5 to allow outdoor seating.
- Modify condition 7 regarding operating hours.
- Modify condition 12 regarding employee numbers.

No physical changes to the building are proposed.

3. Site Description

The subject site is part of the approved Concept Plan (MP_0155) and is located on a large area of land (24,738m²) bounded by Smith and Longport Streets to the north, Edward Street to the west, the Inner West Light Rail line to the east and Old Canterbury Road to the south. The land straddles the Hawthorn Canal and is located primarily in Summer Hill in the former Ashfield local government areas but a small portion of the site to the east of the canal is located in Lewisham in the former Marrickville local government area.

The subject premises is located on the western side of the light rail corridor and the eastern side of Edward Street. Currently located upon the site is a recently constructed mixed use development, comprising of ground floor retail premises 66m² in size (the premises subject to this application) and residential units. The building subject to this development application is *not an item of local heritage significance* and has only recently been constructed. DA 10.2018.05 provided consent for subdivision of two lots into three and results in the site not being identified as an item of local heritage significance.

Located to the north east of the site (on a separate parcel of land) is the heritage listed Mungo Scott Building. Located directly to the north is another recently constructed mixed use development known as Building 5A.

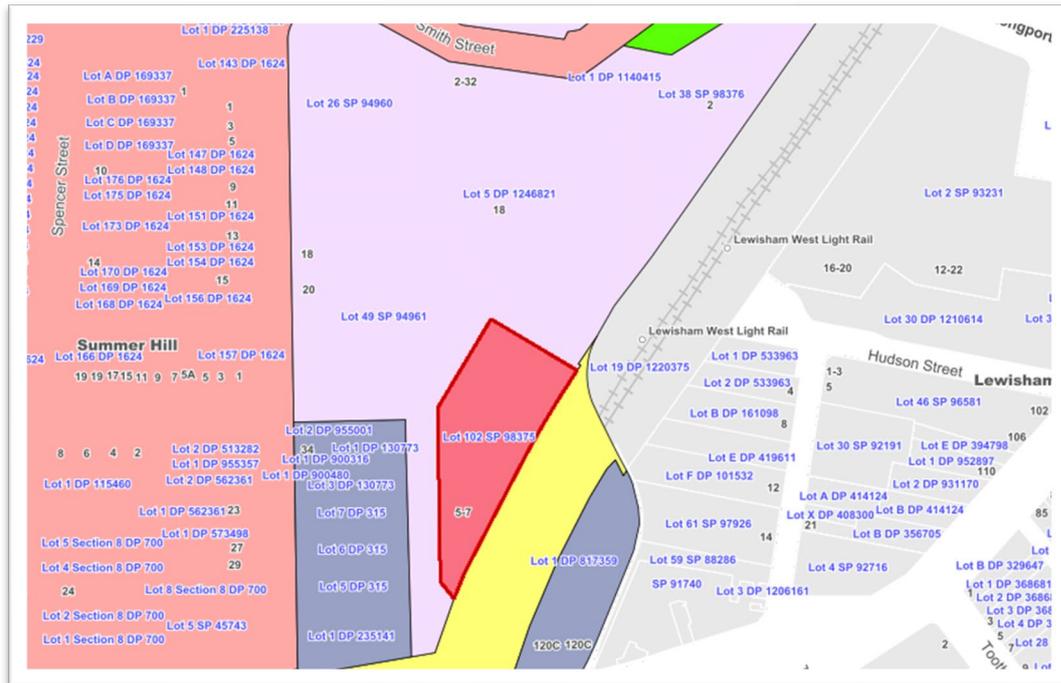


Figure 1 – Land Zoning Map, site identified by red box



Figure 2 – Identification of premises in Building 3A in red



Figure 3 Aerial Photo with site identified

4. Background

4(a) Site history

The following application outlines the relevant development history of the subject site and any relevant applications on surrounding properties.

No.	Determination Date	Proposal	Determination
MP10_0155	07.12.2012	Concept Plan Approval: Mixed use residential and commercial development.	Approved
MP10_0180	11.07.2013	Stage 1: Mixed use residential and commercial development	Approved
MP10_0180 Modification 1	11.07.2013	Stage 1 Modification to Condition C4 – s.94 contributions	Approved
10.2014.154	11.09.2014	Some internal and external works to the <i>Mungo Scott</i> Building and the attached administration annexe and the temporary use as a marketing/sales office	Approved

10.2014/70	25.09.2014	Stage 2: Demolition of buildings; additions to Building 5A (silos) and construction of new buildings as a mixed use residential and commercial development. Construction of a new access road from Edward Street	Approved
MP10_0155 Modification 1	10.03.2015	<p>Modifications to the Concept Plan Approval to allow (within the Ashfield LGA):</p> <ul style="list-style-type: none"> • Adaptive re-use of the existing Mungo Scott Building, silo structures and 3 other buildings and 12 new building envelopes • Staged construction over 4 stages • Up to 360 dwellings (and up to 33,500m² GFA) • Up to 4,000m² of commercial floor space • Up to 1,500m² of retail floor space • A floor space ratio of 1.4 - 1.6:1 • Up to two levels of basement car parking and 35 on-street car parking spaces • 4,806m² of public open space to be dedicated to Council and an additional 5,287m² of publicly accessible open space • New local streets serving the development • Road works including a roundabout at Edward and Smith Streets as part of Stage 1 and a signalised intersection at Old Canterbury Road as part of Stage 3 • Off-site pedestrian upgrade works in the surrounding area and to Summer Hill Village 	Approved
MP10_0155 Modification 2	NSW Department of Planning and Environment	<p>Proposed Modification to the approved Concept Plan seeking to retain open space and internal roads in private ownership by deleting reference to dedication in the Development Description and in the Future Environmental Assessment Requirements.</p> <p>This modification application is consistent with the decision of the Council at its meeting on 9 February 2016. This application has no bearing on the subject development application.</p>	Approved
10.2015.201	Determined by Council	<p>Part Stage 4: Construction of a vehicle access and pedestrian bridge from Smith Street to connect to Building 1A.</p> <p>Building 1A involves new residential development and is the subject of a separate development application to Marrickville Council.</p>	Approved 11/8/2016
10.2015.202	Determined by JRPP	<p>Part Stage 3 (DA 1):</p> <ul style="list-style-type: none"> • Excavation for and construction of two (2) levels of basement car parking, plus waste storage and plant facilities (to interface with Stage 2 basement already approved) • Construction of a new nine (9) storey residential flat building comprising of 52 dwellings, (with one ground floor commercial tenancy having a floor area of 66 m²) referred to on the DA plans as Building 3A & 3B • Adaptation, refurbishment and conversion of an existing grain silo building, comprising four silos to a 14 storey residential flat building comprising 	Approved

		<p>of 56 dwellings, referred to on the DA plans as Building 3C</p> <ul style="list-style-type: none"> • Construction of a new nine (9) storey residential flat building comprising 27 dwellings, referred to on the DA plans as Building 3D • Construction of a new (private) roadway and footpath (as an extension of the roadway approved for construction under Stage 2) • Provide approximately 75m of private roadway incorporating 11 on-street car parking spaces. The roadway, car parking and communal open space pertaining to this DA will all remain in private ownership on completion of the development. 	
10.2015.203	Determined by Council	Part Stage 3 (DA 2):	Approved by Council 10/5/2016
10.2018.005	Determined by Council	Subdivision of consolidated Lot 3 into three new lots (4,5 and 6), proposed lots 4 and 5 include stratum subdivision to accommodate parking and services to the Mungo Scott Building, Strata Subdivision of the approved mixed use development in proposed lot 4 into 136 Stata lots, plus common property.	Approved by Council 6/9/2018
10.2018.178	Determined by IWLPP	Fit out and use of retail premises within buildings 5A and 5E as food and drink premises	Refused by Local Planning Panel
10.2019.50	Determined by Council	Use of commercial tenancy within Building 3A as a retail premises	Approved by Council 3/6/2019
10.2019.157	Determined by Council	Use of Plaza for community markets	Withdrawn
DA2020/0190	Determined by Council	Use of Plaza for community markets	Approved
DA/2020/0382	Determined by Council	Fit out and use of three tenancies in building 5A as commercial premises	Approved
DA/2020/0455	Determined by Council	Fit out and use of tenancies 1, 2 and 3 in Building 5A and 5E as food and drink premises	Approved
MOD/2021/0083	To be determined by IWLPP	S 4.55 (1A) to modify determination No.10.2019.51 to amend conditions relating to the retail tenancy known as 107 (within building 3A) on the site.	Current Application

5. Assessment

The following is an assessment of the application with regard to the heads of consideration under the provisions of Section 4.15 and 4.55 of the *Environmental Planning & Assessment Act 1979 (EP&A Act 1979)*. Section 4.55(1A) of the *Environmental Planning & Assessment Act 1979* states that “a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

S4.55(1A)	Provision	Performance	Compliance
(a)	It is satisfied that the proposed modification is of minimal environmental impact, and	The proposal seeks consent to amend the conditions of consent. Proposed works are of minimal environmental impact.	Yes
(b)	it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	The proposed modification seeks to amended the conditions of consent to allow for outdoor seating, hours of operation relating to outdoor seating and staff numbers.	Yes
(c)	it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and	The concurrence of any other public authority is not required.	N/A
(d)	it has notified the application in accordance with: (i) the regulations, if the regulations so require, or (ii) development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and	The proposed changes do require notification under Council’s Notification Policy. The application was notified and 13 individual submissions received, the matters raised are outlined within the assessment section below.	Yes
(d)	it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.	The application was placed on notification, the matters raised are outlined within the assessment section below.	Yes

5(a) Environmental Planning Instruments

The application has been assessed against the relevant Environmental Planning Instruments listed below:

- *State Environmental Planning Policy (Major Development) 2005*

The following provides further discussion of the relevant issues:

(i) *State Environmental Planning Policy (Major Development) 2005*

The application has been prepared having regard to the provisions of SEPP (Major Development) 2005 and the approved Concept Plan for the site No: MP 10_0155 (as amended). Upon the repeal of Part 3A of the Environmental Planning and Assessment Act, 1979 this development became subject to Schedule 6A of the Act as a transitional Part 3A project; and approval to carry out this development is subject to Part 4 (or 5) of the Act (as relevant).

Accordingly, a consent authority must not grant consent under Part 4 for the development unless it is satisfied that the development is generally consistent with the terms of the approval of the Concept Plan.

The proposal has been assessed against the provisions of this the concept plan and it is considered that the proposal for food and drink tenancy is consistent with the terms of the approved Concept Plan. Continued use of the tenancy in building 3A for a food and drink premises does not result in the overall GFA for the purposes of retail spaces being altered. The modification application is consistent with the concept approval which granted consent for a maximum of 1,500m² of retail floor space.

5(a)(i) *Ashfield Local Environment Plan 2013 (ALEP 2013)*

The application was assessed against the following relevant clauses of the *Ashfield Local Environmental Plan 2013*:

- Clause 1.2 - Aims of Plan
- Clause 2.3 - Land Use Table and Zone Objectives
- Clause 2.5 - Additional permitted uses for land
- Clause 5.10 - Heritage Conservation

(i) Clause 2.3 - Land Use Table and Zone Objectives

The site is zoned IN2-*Light Industrial* under the *Ashfield LEP 2013 (ALEP)*. The *ALEP 2013* defines the development as a food and drink premises:

food and drink premises means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub.

Note. Food and drink premises are a type of **retail premises**—see the definition of that term in this Dictionary.

The development is not permitted with consent within the land use table. Although the proposed use is prohibited on the site under the zoning table, Commercial Uses are

permissible on the land by virtue of the Concept Approval MP 10_0155 under the provisions of State Environmental Planning Policy (Major Development) 2005.

The following table provides an assessment of the application against the development standards:

Standard	Proposal	non compliance	Complies
Height of Building Maximum permissible: 10m	No change to existing height	N/A	N/A
Floor Space Ratio Maximum permissible: 1:1	FSR/ GFA not altered by the proposal.	N/A	N/A

5(c) Draft Inner West Local Environmental Plan 2020 (Draft IWLEP 2020)

The Draft IWLEP 2020 was placed on public exhibition commencing on 16 March 2020 and accordingly is a matter for consideration in the assessment of the application under Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979.

The amended provisions contained in the Draft IWLEP 2020 are not relevant to the assessment of the application. Accordingly, the development is considered acceptable having regard to the provisions of the Draft IWLEP 2020. Under the IWLEP 2020 the site continues to remain zoned IN2 – Light Industrial and the provisions of State Environmental Planning Policy (Major Development) 2005 remain in effect.

5(d) Development Control Plans

The application has been assessed against the relevant provisions of Inner West Comprehensive Development Control Plan (DCP) 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill. The current modification does not alter compliance with the provisions of the IWCDCP 2016.

Modification Assessment

Modification to Condition (H) 1

The current application seeks to modify condition (H) 1 of the consent to read as follows:
*The premises shall not be used for any purpose other than that stated in the Development Application, i.e. retail **food and drink premises** without the prior consent of the Council.*
As noted above, food and drink premises are already defined as a sub-type of **retail premises** within the Ashfield LEP.

Council raises no objection to this modification of the condition as it clarifies the current use of the premises as food and drink premises, which is a form of retail premises. The proposed modification to condition 1 is minor and in line with the original DA consent and DA 10.2015.0202, which gave approval for the development. The proposed modification is recommended for support.

Modification to condition (H)5

The current application seeks to modify condition (H) 1 of the consent to read as follows:
~~**This development application does not provide development consent for any outdoor seating.**~~

The under-awning area adjacent to the premises only may be used for outdoor seating as illustrated in the Furniture Plan DD-17 prepared by Caroline Wilde dated August 2020.

As part of the current modification the applicant has provided the below furniture plan, which outlines a request for the use of 9 tables and 18 chairs externally located under the awning of the premises.

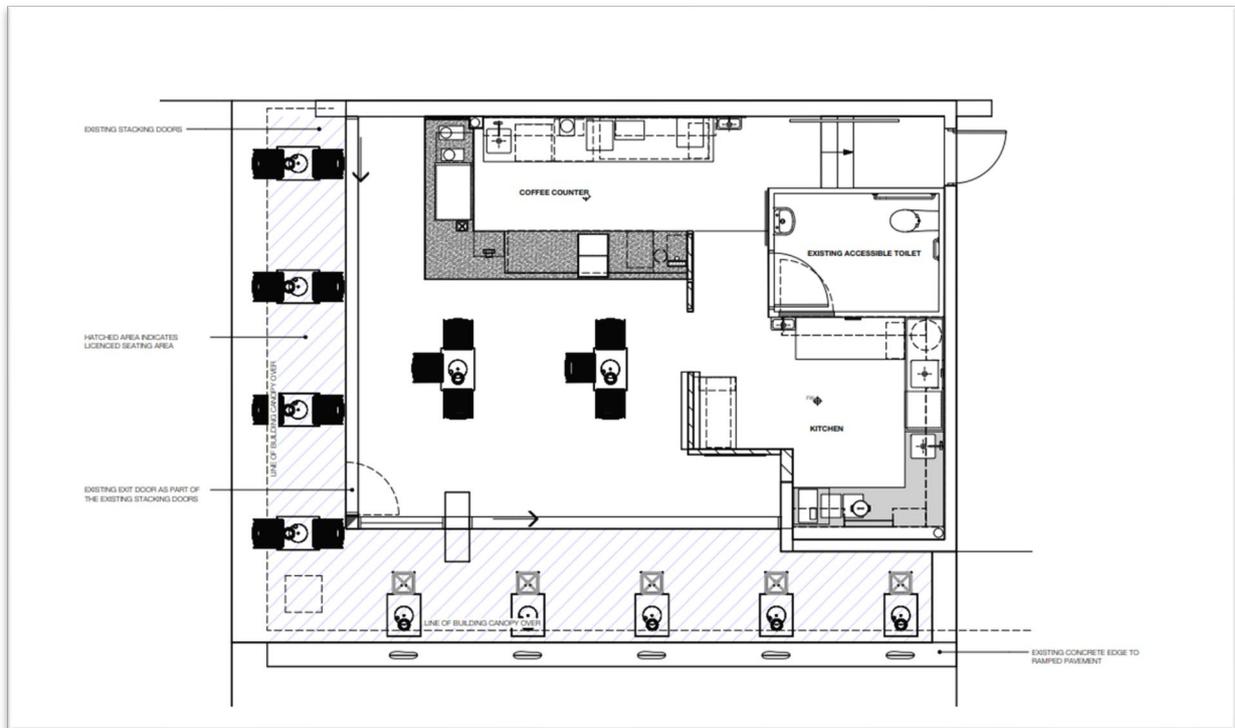


Figure 4 – Furniture Plan

A site inspection and referral to Council compliance team has confirmed that the subject premise is currently utilising external seating in a similar configuration to the plans submitted with the modification application. Site inspections of the premises have been undertaken Sunday 18 April 2021 (during the operating hours of the Flour Mill Community Markets) and Tuesday 20 April 2021, as a result the following site inspection photo were taken by Council officers on the Sunday:



Figure 5 – Outdoor seating of subject premises currently in use



Figure 6 – Outdoor seating of subject premises currently in use



Figure 7 – Outdoor seating of subject premises currently in use

The premises is located immediately below and opposite residential apartments, some of which have significant glazing and balconies located within proximity to the subject premises (see figure 8 below). As a result of the notification process a number of these neighbouring residential residents have made submissions objecting to the current use of outdoor seating (operating without consent) and the proposed continuation of this outdoor seating. Concerns raised during the notification period relate to acoustics, the gathering of patrons and odour.

As outlined above the shop is currently operating as a food and drink premises, which is a form of retail premises. Such a use has always been envisioned within the approved development and within this location/ shop (see figure 9 below). As part of this assessment, an analysis of the proposed rate of outdoor seating (9 tables and 18 chairs) considers that this rate of seating would be acceptable and in line with that of a food and drink premises such as the one currently proposed and a blanket prohibition on outdoor seating in this location is considered unreasonable. Instead, an appropriate balance between resident amenity and operation of the commercial tenancy can be achieved through the imposition of strict hours of operation and patron management.

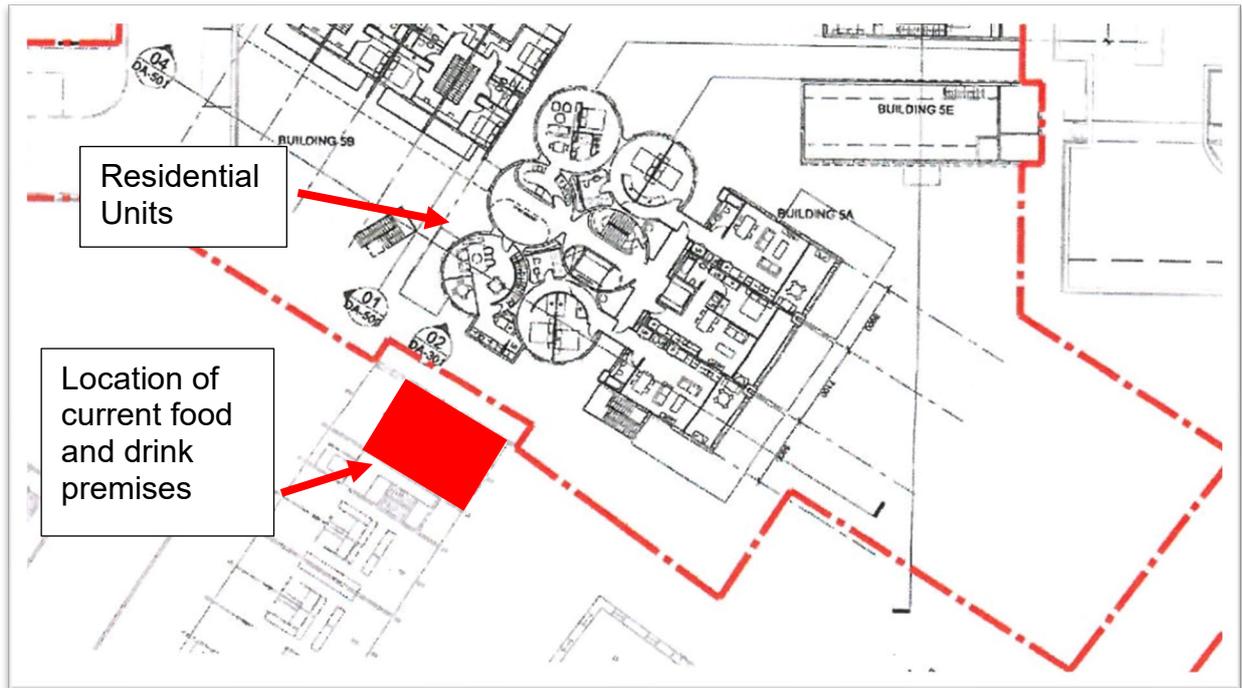


Figure 8 – Approved Plans from DA 10.2014.070



Figure 9 – Approved Plans from DA 10.2015.202, orange highlight outlines that space is approved for retail use, while pink, green and blue outline residential.

Modification to condition (H)7 regarding operating hours.

The current application seeks to modify condition (H) 7 of the consent to read as follows:

The premises including the outdoor area are only to be open for business and used for the purpose approved within the following hours.

<u>Trial Period</u>	Indoor and Outdoor Area
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<i>Monday to Thursday</i>	<i>7:00am – 9:00pm</i>
<i>Friday and Saturday</i>	<i>7:00am – 10:00pm</i>
<i>Sunday</i>	<i>7:00am – 9:00pm</i>

The above operating hours are for a trial period of 12 months from the date of any Occupation Certificate. At the cessation of the trial period the hours of operation are to be as follows.

<u><i>After Trial Period</i></u>	<i>Indoor and Outdoor Area</i>
<i>Monday to Friday</i>	<i>8:00am – 8:00pm</i>
<i>Saturday and Sunday</i>	<i>8:00am – 8:00pm</i>

Set-up and clean-up operations must commence no earlier or later than 1 hour before opening and 1 hour after closing hours (as stipulated by this condition). All doors and windows must remain closed during set up and cleaning where possible.

Service is to cease 30 minutes before closing time.

In the event that the operator wishes to seek consent for permanent late trading hours or a further trial period a Section 4.55 application is to be lodged and approved by the consent authority. The application should seek to modify this condition accordingly and be accompanied by supporting documentation.

Council has reviewed the modification to condition (H) 7 and considers the requested amendment to be unsupportable due to the potential noise impacts on neighbouring residential units. The location of the proposed outdoor seating and proximity to neighbouring residential units is expected to have unreasonable impact if allowed to operate from 7am to 9pm or 10pm and is not supported. Likewise, the operation of outdoor seating from 8am to 8pm is also likely to result in unreasonable environmental impact given the proximity of neighbouring residences.

Council has determined to apply a conservative approach to the outdoor seating, based on the information provided (which does not include an acoustic assessment of the potential impacts), as a result it is recommended that condition (H)7 be updated to include the following:

<i>Outdoor seating Area</i>	
<i>Monday to Friday</i>	<i>9:00am – 4:00pm</i>
<i>Saturday</i>	<i>8:00am – 6:00pm</i>
<i>Sunday</i>	<i>8:30am – 4:00pm</i>

During the hours outside of the approved outdoor seating hours of operation, all doors and windows to the food and drink premises must remain closed. This is to reduce the extent of acoustic impacts on neighbouring residential receivers.

It is considered that the imposition of the above amendments to condition (H)7 will ensure an appropriate balance between residential amenity and commercial operations. The recommended hours of outdoor seating have been tailored to be during traditional work hours Monday to Friday and provide for additional hours on weekends. The proposed hours are well within the timeframe operations for an ordinary food and drink premises.

The resulting acoustic impacts from the recommended hours of operation are expected to be similar and in-line with that of a traditional mixed-use development, which incorporates retail at the ground floor. Given the nature of the site as a mixed-use commercial/ residential complex some acoustic impacts from the operation of a commercial premises is to be anticipated with acoustic levels of a traditional single residential use unreasonable to expect. However, the recommended amendment to the condition H(7) ensures that neighbouring residents are not disturbed during the early or late hours of the day and limits the main acoustic

generation to hours where additional acoustic generation is to be anticipated and reasonable to expect.

Modification to condition H (12)

The current application seeks to modify condition (H)12 of the consent to read as follows:

The maximum number of employees on the premises is not to exceed ~~four (4)~~ eight (8) at any time.

The maximum number of patrons on the premises is not to exceed forty (40) at any time.

It is considered that the site is appropriately serviced by public transport and accommodates a significant rate of on-site parking within the basement. As a result, it is considered that proposed increase to staff numbers will not have a significant amenity impact for parking within the locality and continues the approved use as a retail premises. The proposed amendment to condition 12 is recommended for support.

5(e) The Likely Impacts

The assessment of the Development Application demonstrates that, subject to the recommended conditions, the proposal will have minimal impact in the locality.

5(f) The suitability of the site for the development

Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

5(g) Any submissions

The application was notified in accordance with Council's policy for a period of 14 days to surrounding properties. As a result of this notification 13 submissions were received in response. The submissions raised the following concerns which are discussed under the respective headings below:

Issue: Groups of people gathering outside neighbouring residential units and impacting residential amenity (Parton Management)

Comment: The gathering of patrons is a matter to be addressed/resolved through the café operator and strata of residential units and is not subject to the current modification application. It is recommended that the café and strata review and agree to the placement of temporary (movable) signage outlining an appropriate location for patrons to wait as to not impact neighbouring amenity. This signage could be brought in and out with the outdoor seating and assist to manage patrons awaiting take away. The current modification and additional requirements for hours of operation for outdoor seating and closure of doors and windows when outdoor seating is not in use is expected to assist in minimising amenity impacts for residents early in the morning or late at night and encourage waiting internally to the café.

Issue: Acoustic impacts arising from the operation of the café

Comment: Acoustic impacts arising from the café have been reviewed and assessed above. Appropriate conditions regarding hours of operation for the outdoor seating of the café and closure of doors and windows when the outdoor seating is not permitted to be operating is recommended. It is considered that compliance with these conditions will minimise acoustic impacts and ensure a balanced outcome for both commercial and residential properties.

Issue: Odour pollution from the operation of the café

Comment: Concerns regarding odour pollution arising from the café's operation are currently being investigated by Council's Environmental Health Team. This investigation is still on-going and separate from the current modification. The current application is not considered to result in adverse odour emissions.

Issue: Use of outdoor seating without approval

Comment: The café has been found to have been operating outdoor seating without consent. The current modification has been lodged in response to compliance action taken against the café regarding the outdoor seating. The determination of the current modification application will set in train the next steps with regard to the pending compliance action.

Issue: Café not being used as a Kiosk

Comment: The space to which the café is currently operating from was approved as a retail space under the Major project's approval MP10_0155 and later under DA 10.2015.0202. The space has always been intended for retail use, with food and drink premises a form of retail use. The use is acknowledged as being prohibited under the ALEP 2013, but is made permissible under the Major Projects approval. The subject premises is not restricted to a Kiosk use and is permitted to operate as a retail premises.

5(h) The Public Interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed.

The proposed modification is not considered contrary to the public interest.

6 Referrals

6(a) Internal

The application was referred to the following internal sections/officers and issues raised in those referrals have been discussed in section 5 above.

- Compliance and Enforcement – The application was referred to Council's compliance and enforcement team, who outlined that there has been numerous complaints regarding the operation of the premises, use of outdoor seating and acoustic impacts. The investigation of these complaints has led to the lodgement of the current modification application.

7. Section 7.11 Contributions/7.12 Levy

Section 7.11 contributions/7.12 levies are not payable for the proposal.

8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Ashfield Local Environmental Plan 2013* and Inner West Comprehensive Development Control Plan (DCP) 2016 for Ashbury, Ashfield, Croydon, Croydon Park, Haberfield, Hurlstone Park and Summer Hill.

The development will not result in any significant impacts on the amenity of the adjoining premises.

The application is considered suitable for approval subject to the imposition of appropriate conditions.

9. Recommendation

- A. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to s4.55 of the *Environmental Planning and Assessment Act 1979*, grant consent to Application No. MOD/2021/0083 for S4.55 (1A) to modify determination No.10.2019.51 to amend conditions relating to the retail tenancy known as 107 on the site. at 601/5 Mungo Scott Place SUMMER HILL NSW 2130 subject to the conditions listed in Attachment A below.

Attachment A – Recommended conditions of consent

CONSENT NO. 10.2019.51.1

1/17

CONDITIONS:

A General Conditions

(1) Approved plans stamped by Council

The development must be carried out only in accordance with the plans and specifications set out on drawing numbers

No.	Issue	Title	Prepared by	Dated
AR – 3 -3 – AB - 102	11	General Arrangement Plan – Level 1 – Building 3AB	EJE Architecture	13/11/2017
ST3 – DA1_301	A	Summer Hill Elevations Sheet 02 – Stage 3 DA 1	Hassell	6/10/2015
ST3 – DA1_302	A	Summer Hill Elevations Sheet 03 – Stage 3 DA 1	Hassell	6/10/2015

In the event of any inconsistency, the conditions of this consent shall prevail.

(2) Compliance with BCA

All architectural drawings, specifications and related documentation shall comply with the Building Code of Australia (BCA). All work must be carried out in accordance with the requirements of the Building Code of Australia (BCA). **B Design Changes**

(1) Amended plans to be submitted

Nil.

C Conditions that must be satisfied prior to issuing/releasing a Construction Certificate

(1) Permits – General

Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent shall obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the Local Government Act 1993 and/or Section 138 of the Roads Act 1993. Permits are required for the following activities:

- a) Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application.
- b) A concrete pump across the roadway/footpath
- c) Mobile crane or any standing plant
- d) Skip bins
- e) Scaffolding/Hoardings (fencing on public land)
- f) Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.
- g) Awning or street verandah over footpath
- h) Partial or full road closure

- i) Installation or replacement of private stormwater drain, utility service or water supply

Contact Council's Road Access team to ensure the correct Permit applications are made for the various activities.

Applications for such Permits shall be submitted and approved by Council prior to the commencement of the works associated with such activity or issue of the Construction Certificate (whichever occurs first). Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

(2) Public Liability Insurance

Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands shall take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.

(3) Services and infrastructure adjustment/relocation

The applicant shall meet the full cost for Telstra, Sydney Water, Energy Australia, AGL Electricity/AGL Retail Energy or alternative service/energy providers to adjust/relocate their services/infrastructure as required. The applicant shall make the necessary arrangements with the relevant service authority or relevant retail energy company.

(For information on the location of services contact the "Dial before you Dig" service on 1100.)

Documentary evidence from the utility authorities/retail energy company confirming that all of their requirements have been satisfied shall be submitted to Council with the Construction Certificate.

(4) Trade Waste Licence Agreement

Waste water arising from the use must be directed to the sewers of the Sydney Water under a Trade Waste License Agreement. The pre-treatment of wastewater may be a requirement of Sydney Water prior to discharge to the sewer. Details of the requirements of the Trade Waste Agreement must be obtained prior to the issue of a Construction Certificate. Plans detailing how compliance will be achieved must be prepared and submitted to the Principal Certifying Authority prior to the issue of a Construction Certificate.

(5) General Acoustic

The proposed use of the premises and the operation of all plant and equipment shall not give rise to an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 and Regulations.

In this regard, the operation of the premises and plant and equipment shall not give rise to a sound pressure level at any affected premises that exceeds the background $L_{A90, 15min}$ noise

level, measured in the absence of the noise source/s under consideration by 5dB(A). The source noise level shall be assessed as an $L_{Aeq, 15min}$ and adjusted in accordance with the NSW Environment Protection Authority's Industrial Noise Policy and Environmental Noise Control Manual (sleep disturbance).

An acoustic report prepared by a suitably qualified and experienced acoustic consultant shall be provided to the satisfaction of the Principal Certifying Authority demonstrating that noise and vibration from the operation of the premises including the use, plant and equipment will satisfy the stipulated criteria above and relevant provisions of the Protection of the Environment Operations Act 1997 and Regulations and relevant state and local policies and guidelines. Recommendations must be consistent with the approved plans.

Details demonstrating compliance with the requirements of this condition are to be submitted to the Principal Certifying Authority for approval prior to the issue of any Construction Certificate.

(6) Acoustic Conditions

The LA10* noise level emitted from the premises must not exceed the background noise level in any octave band centre frequency (31.5Hz– 8k Hz inclusive) by more than 5dB between 7:00 am and 12:00 midnight at the boundary of any affected residence.

The LA10* noise level emitted from the premises must not exceed the background noise level in any octave band centre frequency (31.5Hz – 8k Hz inclusive) between 12:00 midnight and 7:00am at the boundary of any affected residence.

Notwithstanding compliance with the above, the noise from the premises must not be audible within any habitable room in any residence between the hours of 12:00 midnight and 7:00am.

*For the purposes of this condition, the LA10 can be taken as the average maximum deflection of the noise emission from the licensed premises or restaurant.

Details of the acoustic measures to be employed to achieve compliance with this condition must be provided prior to the issue of a Construction Certificate. Such measures must be in accordance with the approved acoustic report and plans.

(7) Food Shops – Certification

Should the premise be used for the purpose of a food and drink premises then it must be designed, constructed and operated in accordance with the:

- Food Act 2003
- Food Regulation 2010
- Australia and New Zealand Food Standards Code
- Australian Standard AS 4674 – 2004 (Design, construction and fit-out of food premises)
- Australian Standard AS 1668 Part 1 – 1998
- Australian Standard AS 1668 Part 2 – 2012; and
- Building Code of Australia

Details demonstrating compliance with the requirements of this condition are to be submitted to the Principal Certifying Authority prior to the issue of any Construction Certificate.

(8) Plan of Management

A Plan of Management is to be provided to Council prior to the issue of a Construction Certificate. The Plan of Management is to cover (but is not limited to) the following issues:

- Ensure compliance with the relevant conditions of approval,
- Minimise the potential impact of the operation of the premises on nearby residents,
- Effectively minimise and manage anti-social behaviour,
- Minimise noise emissions and associated nuisances,
- Effectively manage and respond to resident complaints,
- Ensure responsible service of alcohol and harm minimisation, and
- Patron conductivity and security.
- Outline to any tenant conditions regarding maximum patron numbers/ staff numbers
- Outline to any tenant conditions regarding waste disposal/ waste transfer to bin storage areas in basement.

a) Security Management

The plan must specify security patrol, surveillance and other security and response methods and security management of the public and private domain within and surrounding the site.

No signage visible from the public domain is to be installed that advertises directly or indirectly, the gaming machines on site.

b) Patron Management

Patrons must be prevented from removing glass, opened cans, bottles or alcohol from the premises (except from any approved bottle shop).

Signs must be placed in clearly visible positions within the premises requesting patrons upon leaving to do so quickly and quietly, having regard to the amenity of the area.

A sign detailing the maximum number of persons permitted in the premises, in letters not less than 25mm, must be displayed at the main front entrance of the premises within the building.

The management/licensee is responsible for the control of noise and litter generated by patrons of the premises and must ensure that patrons leave the vicinity of the premises in an orderly manner to the satisfaction of Council. If so directed by Council, the management/licensee is to employ private security staff to ensure that this condition is complied with.

c) Recycling and Waste Collection

The sorting and/or collection of waste and recycling must only occur between 8.00am and 9.00pm daily. Glass sorting/breaking should not occur after 6pm unless it can be done in a manner that does not have adverse acoustic impacts on surrounding properties or tenancies.

d) Public Entertainment

Details of how public entertainment will be managed to ensure minimal impacts on surrounding properties including acoustic impacts, parking and traffic. Details of sound limiters and/or acoustic provisions including management of patrons, closing of doors and windows etc. Such entertainment must be carried out in accordance with any approved acoustic reports & traffic reports identified within this consent.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Construction Certificate.

Each tenant is to sign the plan of management required within the conditions above. Tenants are to keep a copy of the plan of management on site at all times and all staff are to be familiar with the requirements/ conditions dictated within the management plan.

D Conditions that must be complied with before work commences

(1) Requirement for a Construction Certificate

In accordance with the provisions of Section 81A of the *Environmental Planning and Assessment Act 1979* the erection of a building and/or construction works must not commence until:

- (a) detailed plans and specifications of the building have been endorsed with a Construction Certificate by:
 - (i) Council; or
 - (ii) an accredited certifier; and
- (b) a principal certifying authority (PCA) has been appointed and the Council has been notified in writing of the appointment, and
- (c) at least two days notice, in writing, has been given to Council of the intention to commence work.

The documentation required under this condition shall show that the proposal complies with all development consent conditions and the *Building Code of Australia*.

Note: If the principal certifying authority is the Council, the appointment will be subject to the payment of a fee for the service to cover the cost of undertaking building work and / or civil engineering inspections.

WARNING: Failure to obtain a Construction Certificate prior to the commencement of any building work is a serious breach of Section 81A(2) of the *Environmental Planning & Assessment Act 1979*. It is a criminal offence that attracts substantial penalties and may also result in action in the Land and Environment Court and orders for demolition.

E Conditions that must be complied with during construction or demolition

(1) Storage of building materials

Building materials and spoil are to be located wholly on site and not placed in a position that may result in materials being washed onto the roadway or into the stormwater system.

(2) Construction Hours

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work shall only be permitted during the following hours:

- a) 7:00 am to 6.00 pm, Mondays to Fridays, inclusive (with demolition works

- finishing at 5pm);
- b) 8:00 am to 1:00 pm on Saturdays with no demolition works occurring during this time; and
- c) at no time on Sundays or public holidays.

Works may be undertaken outside these hours where they do not create any nuisance to neighbouring properties in terms of dust, noise, vibration etc and do not entail the use of power tools, hammers etc. This may include but is not limited to painting.

In the case that a standing plant or special permit is obtained from Council for works in association with this development, the works which are the subject of the permit may be carried out outside these hours.

This condition does not apply in the event of a direction from police or other relevant authority for safety reasons, to prevent risk to life or environmental harm.

Activities generating noise levels greater than 75dB(A) such as rock breaking, rock hammering, sheet piling and pile driving shall be limited to:

8:00 am to 12:00 pm, Monday to Saturday; and
2:00 pm to 5:00 pm Monday to Friday.

The Proponent shall not undertake such activities for more than three continuous hours and shall provide a minimum of one 2 hour respite period between any two periods of such works.

“Continuous” means any period during which there is less than an uninterrupted 60 minute respite period between temporarily halting and recommencing any of that intrusively noisy work.

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997* and guidelines contained in the New South Wales Environment Protection Authority Environmental Noise Control Manual.

(3) Demolition requirements/standards

Demolition (if it is to be carried out) must be in accordance with the following:

- (a) Australian Standard 2601 and any requirements of the Workcover Authority.
- (b) The Waste Management Plan submitted with the Development Application.
- (c) The property is to be secured to prohibit unauthorised entry.
- (d) All precautions are to be exercised in the handling, removal and disposal of all asbestos materials. Licensed contractors and the disposal of asbestos is to be carried out in accordance with the requirements of the Work Cover Authority.
- (e) All other materials and debris is to be removed from the site and disposed of to approved outlets.
- (f) Any demolition on the site is to be conducted in strict accordance with, but not limited to, sections 1.5, 1.6, 1.7, 3.1 and 3.9 of the AS 2601 - 1991, demolition of structures.

The following measures must be undertaken for hazardous dust control:

- (g) Prior to demolition, the applicant shall submit a Work Plan prepared in accordance with AS 2601 by a person with suitable expertise and experience to the Principal Certifying Authority. The Work Plan shall identify any hazardous materials, the method of demolition, the precautions to be employed to minimise any dust nuisance and the disposal methods for hazardous materials.
- (h) Hazardous dust must not be allowed to escape from the site or contaminate the immediate environment. The use of fine mesh dust proof screens, wet-lead safe work practices, or other measures is required.
- (i) All contractors and employees directly involved in the removal of hazardous dusts and substances shall wear protective equipment conforming to AS 1716 Respiratory Protective Devices and shall adopt work practices in accordance with WorkSafe Requirements (in particular the WorkSafe standard for the *Control of Inorganic Lead At Work* (NOHSC: 1012, 1994) and AS 2641, 1998).
- (j) Any existing accumulations of dust (eg; ceiling voids and wall cavities must be removed by the use of an industrial vacuum fitted with a high efficiency particulate air (HEPA) filter and disposed of appropriately.
- (k) All dusty surfaces and dust created from work is to be suppressed by a fine water spray. Unclean water from the suppressant spray is not be allowed to enter the street gutter and stormwater systems.
- (l) Demolition is not to be performed during high winds that may cause dust to spread beyond the site boundaries without adequate containment.
- (m) All lead contaminated material is to be disposed of in accordance with the NSW Environment Protection Authorities requirements.
- (n) Construction and demolition waste, particularly timber, bricks and tiles, concrete and other materials need not be disposed of- they can be recycled and resold if segregated properly from any hazardous waste contamination.
- (o) Following demolition activities, soil must be tested by a person with suitable expertise to ensure the soil lead levels are below acceptable health criteria for residential areas. Full certification is to be provided for approval by the Principal Certifying Authority.

(4) Road and footpath – safety and access requirements

The contractor is to take all precautions to ensure footpaths and roads are kept in a safe condition and to prevent damage to Council's property.

Heavy vehicles entering and leaving the site must only cross the footpath where it is adequately timbered and strapped. Pedestrian access across this footpath must be maintained in good order at all times during the work. Any damage caused must be made good by Council at Council's restoration rates, at the applicant's or builder's expense.

***F* Conditions that must be complied with prior to installation of services**

(1) Fire alarm details - Principal Certifying Authority

Details of the proposed/existing Fire Alarm system shall be submitted to the Principal Certifying Authority for consideration and satisfaction prior to installation including a certificate, prepared by a person competent to do so, setting out the:-

- (i) basis of design
- (ii) standard to which the system is to be installed; and
- (iii) including all relevant documentation including wiring diagram and details of detectors.

At the completion of the installation a certification shall be submitted to the Principal Certifying Authority containing the following:-

- (i) inspection, testing and commission details;
- (ii) date of inspection, testing and commissioning;
- (iii) the name and address of the individual who carried out the test;
- (iv) a statement that the service has been designed, installed and is capable of operating to the above standard.

(2) Approval to use/occupy building

The tenancy or any part thereof must not be used or occupied until an Occupation Certificate has been obtained from the Principal Certifying Authority.

Note: If Council is chosen as the Principal Certifying Authority a fee is applicable prior to the release of the Construction Certificate.

G Conditions that must be complied with before the building is occupied**(1) Trade waste/disposal**

Arrangements for the proper storage and disposal of any trade waste to be made prior to the occupation of the premises.

(2) Acoustic report

A report prepared by a suitably qualified and experienced acoustic consultant shall be submitted to Council prior to an Occupation Certificate being issued for the development which demonstrates and certifies that noise and vibration emissions from the development comply with the relevant provisions of the *Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority's Industrial Noise Policy and Noise Control Manual and conditions of Council's approval, including any recommendations of the acoustic report referenced in the conditions of the approval.

Details demonstrating compliance with the requirements of this condition is to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any Occupation Certificate.

(3) Food Premises Notification and Registration

Any food and drink premises operating from the tenancy must obtain food premises notification from the NSW Food Authority prior to commencement of business operations /issue of an Occupation Certificate and a copy of the notification shall be submitted to the

Principal Certifying Authority.

Notification can be completed on the NSW Health Department's website at www.foodnotify.nsw.gov.au

Prior to the commencement of business operations/issue of an Occupation Certificate the owner of the business is to complete and submit Council's food business registration form which can be obtained from Council's website at www.leichhardt.nsw.gov.au. Evidence of registration must be submitted to the Principal Certifying Authority.

Should Council be the nominated Principal Certifying Authority, then the applicant shall notify Council not less than forty-eight (48) hours prior to the proposed occupation of the premises to arrange for a final compliance inspection.

The applicant shall not operate the food premises until an Occupation Certificate has been issued.

Details demonstrating compliance with the requirements of this condition are to be submitted to the satisfaction of the Principal Certifying Authority prior to the issuing of any Occupation Certificate.

(4) Registration of Use with Council Food Shop / Skin Penetration

In the event that a food and drink or skin penetration outlet is to operate from the tenancy then, the premise must be registered with Council's Environment Health Section in accordance with the following relevant legislation:

Food Shop - Food Act 2003

Details demonstrating compliance with the requirements of this condition is to be submitted to the satisfaction of the Principal Certifying Authority prior to the issue of any interim / final occupation certificate.

***H* Conditions that are ongoing requirements of development consents**

(1) Approved use

The premises shall not be used for any purpose other than that stated in the Development Application, i.e. retail premises without the prior consent of the Council.

(2) Acoustic requirements

The L_{A10} noise level emitted from the premises, measured between the hours of **7am and 12 midnight**, is not to exceed the background noise level in any octave band frequency (centred on 31.5Hz to 8 kHz inclusive) by more than 5 dB, when measured at the boundary of any adjoining residence.

The L_{A10} noise level emitted from the premises, measured between the hours of **midnight and 7am**, is not to exceed the background noise level in any octave band frequency (centred on 31.5Hz to 8 kHz inclusive), when measured at the boundary of any adjoining residence.

(3) Acoustic impacts

The proposed use of the premises and the operation of all plant and equipment shall not give rise to an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 and Regulations.

In this regard, the operation of the premises and plant and equipment shall not give rise to a sound pressure level at any affected premises that exceeds the background $L_{A90, 15min}$ noise level, measured in the absence of the noise source/s under consideration by 5dB(A). The source noise level shall be assessed as an $L_{Aeq, 15min}$ and adjusted in accordance with the NSW Environment Protection Authority's Industrial Noise Policy and Environmental Noise Control Manual (sleep disturbance).

(4) Acoustic Testing in first 60 days

During the first sixty (60) days of trading being provided at the premises, the following acoustic measures must be undertaken:

- a) A suitably qualified acoustic consultant must be appointed to:
 - i) measure and verify the noise emanating from the premises; and
 - ii) if necessary, make recommendations to ensure that the noise emanating from the premises complies with the noise criteria.
- b) The noise measurements must be:
 - i) undertaken without the knowledge of the applicant, manager or operator of the premises; and
 - ii) taken on at least three (3) different occasions on three (3) different days of the week (excluding Monday, Tuesday and Wednesday) from 6pm until the end of the public entertainment or close of business, whichever occurs first, and
 - iii) submitted to Council within seven (7) days of testing.
- c) If the acoustic consultant recommends that additional treatment or works be undertaken those recommendations must be:
 - i) submitted to Council with the noise measurements; and
 - ii) implemented to the acoustic consultant's satisfaction before the end of the first sixty (60) days of public entertainment provided on the premises.
- d) If the acoustic consultant's recommendations are not implemented in accordance with this condition, the relevant element of trading (ie outdoor area access)/ public entertainment on the premises must cease until such time as the recommendations are implemented and verified.

(5) Outdoor Seating

~~***This development application does not provide development consent for any outdoor seating.***~~

The under-awning area adjacent to the premises only may be used for outdoor

seating as illustrated in the Furniture Plan DD-17 prepared by Caroline Wilde dated August 2020.

(Amended by MOD/2021/0083)

(6) Health Impacts

The use of the premises shall not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the Protection of the Environment Operations Act 1997 and Regulations. The use of the premises and the operation of plant and equipment shall not give rise to the transmission of a vibration nuisance or damage other premises.

(7) Hours of operation - Trial period

The premises are only to be open for business and used for the purpose approved within the following hours.

Trial Period	Indoor Area
Monday to Thursday	7:00am – 9:00pm
Friday and Saturday	7:00am – 10:00pm
Sunday	7:00am – 9:00pm

The above operating hours are for a trial period of 12 months from the date of any Occupation Certificate. At the cessation of the trial period the hours of operation are to be as follows.

After Trial Period	Indoor Area
Monday to Friday	8:00am – 8:00pm
Saturday and Sunday	8:00am – 8:00pm

Set-up and clean-up operations must commence no earlier or later than 1 hour before opening and 1 hour after closing hours (as stipulated by this condition).

The above hours of operation only apply to the internal use of the food and drink premises. Any outdoor use or outdoor seating must operate within/between the following hours:

Outdoor seating Area	
<i>Monday to Friday</i>	<i>9:00am – 4:00pm</i>
<i>Saturday</i>	<i>8:00am – 6:00pm</i>
<i>Sunday</i>	<i>8:30am – 4:00pm</i>

During times/hours outside of the approved outdoor seating hours of operation, all doors and windows to the food and drink premises must remain closed. This is to reduce the extent of acoustic impacts on neighbouring residential receivers.

Service is to cease 30 minutes before closing time.

In the event that the operator wishes to seek consent for permanent late trading hours or a further trial period a Section 4.55 application is to be lodged and approved by the consent

authority. The application should seek to modify this condition accordingly and be accompanied by supporting documentation.

(Amended by MOD/2021/0083)

(8) Deliveries on site

All deliveries to and/or from the site are to be conducted from vehicles standing wholly within the site and under no circumstances from delivery vehicles standing kerbside in adjacent streets.

Permitted hours for deliveries are as follows:

Monday to Friday: 7:00am to 5:00pm

Saturday: 7:00am to 5:00pm

Sunday: 8:00am to 12:00pm (midday)

(9) Waste Transporting

The transporting of waste from the tenancy to the waste holding area within the basement must only be undertaken between the following hours:

7:00am to 9:00pm – Monday to Saturday

7:00am to 9:00pm – Sunday

Glass sorting/breaking should not occur after 6pm unless it can be done in a manner that does not have adverse acoustic impacts on surrounding properties or tenancies.

(10) Cleaning Activities

All cleaning activities are permitted to operate after the tenancy's hours of operation, but must be completed prior to 10:00pm.

All façades are to be closed during cleaning activities.

(11) Creation of a Complaints Register

The premises must establish a compliant register document, which documents all complaints received during the operation of the premises.

This register is to be kept with the centres manager and made available to Council upon request.

All complaints are to be acted upon in a timely manner and any re-occurring complaints must be addressed by a more significant/long term solution. Responses to the complaints should also be documented in the register.

The occupant/tenant is to provide a contact phone number at the front of the reception so that any complaints regarding operation can be made.

(12) Maximum number of employees and patrons

The maximum number of employees on the premises is not to exceed ~~four (4)~~ eight (8) at any time..

The maximum number of patrons on the premises is not to exceed forty (40) at any time.

(Amended by MOD/2021/0083)

(13) Retain amenity

The use is to be conducted at all times without interference to the amenity of the area.

(14) Trade waste containers

Any trade waste containers are to be screened from view from a public place and are not to obstruct or interfere with the use of the loading and parking facilities.

(15) Protection of the Environment Operations Act 1997 - offensive noise/vibration prohibited

The use and occupation of the premises including all plant and equipment installed thereon, shall not give rise to any offensive noise or vibration from the premises within the meaning of the *Protection of the Environment Operations Act 1997*.

(16) Air conditioners - noise control - Protection of the Environment Operations Act 1997

The air conditioners as approved by this consent shall be installed and operated at all times so as not to cause "Offensive Noise" as defined by the *Protection of the Environment Operations Act 1997* that will adversely affect the amenity of the premises in close proximity to the property.

(17) Discharge of condensate from air conditioning units

Any condensate, moisture, etc shall not be permitted to be discharged onto the ground surface of the premises or into stormwater drainage systems in contravention of the requirements of the *Protection of the Environment Operations Act 1997*.

All such wastes must be discharged to sewers of the Sydney Water.

(18) Parking spaces and loading areas - maintenance/ line marking/use

The off-street car parking spaces and the loading/unloading areas provided on site shall be maintained and line marked in accordance with AS2890.1 (1993). Under no circumstances are such spaces to be used for the storage of goods or waste products.

(19) 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.

(20) Cooking Equipment – No Mechanical Ventilation

- (a) Cooking must not commence until an air handling system, which complies with the requirements of Part F4.12 of the Building Code Australia and AS1668.2 - *The Use of Ventilation and Air-conditioning in Buildings – Mechanical Ventilation in Buildings* is approved, installed and operational.
Cooking is defined as the process of changing any food from raw to cooked by applying heat, and also includes the preparation of food using heat.
- (b) Use of a microwave, a sandwich press, a toaster or similar is permitted in accordance with the exemptions contained within AS1668.2 - *The Use of Ventilation and Air-conditioning in Buildings – Mechanical Ventilation in Buildings*.
- (c) The use of such equipment in (b) of this condition must not generate heated air, smoke, fumes, steam or grease vapours that is deemed by an enforcement and/or authorised officer of Council to be:
- (i) Causing a nuisance to persons within or nearby the premises and/or building;
 - (ii) Causing air pollution as defined under the *Protection of the Environment Operations Act 1997* or,
 - (iii) Not effectively removed from the food premises in accordance with the requirements of the *Australia New Zealand Food Standards Code*.

(21) Sanitary Facilities – Food Premises

The sanitary facilities must be separated from all food handling areas via an airlock, self-closing door or mechanical ventilation in accordance with the provisions of the *Building Code of Australia*, Part F 3.1, 4.8 and 4.9.

(22) Odour Emission Control

There are to be no emissions or discharges from the premises which will give rise to an offence under the *Protection of the Environment Operations Act 1997* and *Regulations*.

I Advisory Notes**(1) Other approvals**

This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act, including:

- an Application for Approval under Section 68 of the *Local Government Act 1993* for any proposed activity under that Act, including any erection of a hoarding. All such applications must comply with the *Building Code of Australia*.
- an Application for Approval under Section 68 of the *Local Government Act 1993* for a Place of Public Entertainment if proposed. Further building work may also be required for this use in order to comply with the *Building Code of Australia*. If there is any doubt as to what constitutes "Public Entertainment" do not hesitate to contact Council's Fire Officer.
- an application for an Occupation Certificate under Section 109(C)(2) of the *Environmental Planning and Assessment Act 1979*.

Note: An application for an Occupation Certificate may be lodged with Council if the applicant has nominated Council as the Principal Certifying Authority.

- an Application for a Subdivision Certificate under Section 109(C)(1)(d) of the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed.
- an Application for Strata Title Subdivision under the *Strata Schemes (Freehold Development) Act 1973*, if strata title subdivision of the development is proposed.
- a development application for demolition approval under the *Environmental Planning and Assessment Act 1979* if consent for demolition is not granted by this consent.

(2) Works and requirements of other authorities

- Sydney Water may require the construction of additional works and/or the payment of additional fees. Other Sydney Water approvals may also be necessary prior to the commencement of construction work. You should therefore confer with Sydney Water concerning all plumbing works, including connections to mains, installation or alteration of systems, and construction over or near existing water and sewerage services.
- Contact Sydney Water, Rockdale (Urban Development Section) regarding the water and sewerage services to this development.
- Australia Post has requirements for the positioning and dimensions of mail boxes in new commercial and residential developments. A brochure is available from your nearest Australia Post Office.
- Energy Australia/AGL Electricity/AGL Retail Energy or other alternative service/energy providers have requirements for the provision of connections.
- Energy Australia has a requirement for the approval of any encroachments including awnings, signs, etc over a public roadway or footway. The Engineer Mains Overhead Eastern Area should be contacted on 9663 9408 to ascertain what action, if any, is necessary.
- Telstra has requirements concerning access to services that it provides.

(3) Modifications to your consent - prior approval required

Works or activities other than those authorised by the approval including changes to building configuration or use will require the submission and approval of an application to modify the consent under Section 96 of the *Environmental Planning & Assessment Act 1979*. You are advised to contact Council immediately if you wish to alter your approved plans or if you cannot comply with other requirements of your consent to confirm whether a Section 96 modification is required.

Warning: There are substantial penalties prescribed under the *Environmental Planning and Assessment Act 1979* for breaches involving unauthorised works or activities.

(4) Signs –approval required

A separate Development Consent or Complying Development Certificate must be obtained prior to the erection of any advertising sign.

(5) Bulk bins on footpath and roadway

Approval is required from Council prior to the placement of any bulk bins on Council's footpath and/or roadway.

(6) Compliance with the Disability Discrimination Act - liability

This decision does not ensure compliance with the Disability Discrimination Act. The owner, lessee, operator and/or manager of the premises is advised that under the *Disability Discrimination Act 1992*, it is illegal to discriminate against a person with a disability by means of restricting access to or within the building. If access is restricted the owner, lessee, operator and/or manager of the premises may be liable for prosecution and/or a successful appeal to the Human Rights and Equal Opportunities Commission. You should therefore investigate your liability under that Act. Australian Standard 1428 - Design for Access and Mobility, Parts 2, 3 and 4 may assist in determining compliance with the *Disability Discrimination Act 1992*.

Reason for the imposition of conditions

Unrestricted consent would be likely to cause injury:

- a) to the amenity of the neighbourhood
- b) to the heritage significance of the area
- c) to the heritage significance of the property
- d) to the amenity of the neighbourhood due to the emission of noise
- e) to the amenity of the neighbourhood due to the creation of a traffic hazard

and further, would not be in the public interest.

Compliance with Building Code of Australia

- (1) All building work (other than work relating to the erection of a temporary building) must be carried out in accordance with the requirements of the Building Code of Australia (as in force on the date the application for the relevant construction certificate or complying development certificate was made).
- (2) This clause does not apply to the extent to which an exemption is in force under clause 187 or 188 of the Environmental Planning and Assessment Regulation 2000, subject to the terms of any condition or requirement referred to in clause 187 or 188.

NOTES

- (i) This approval does not relieve an applicant of the obligation to obtain any other approval required under Section 68 of the Local Government Act, 1993 and Ordinances or Section 4.12 of the Environmental Planning & Assessment Act, 1979 or any other Act or Regulation.
- (ii) Further approval(s) – see above, may be required in addition to this development consent. Plans and specifications submitted for building works must comply with the Building Code of Australia, any relevant condition of development consent and/or other code or requirement of Council at the time of approval.

Ask Council if you are unsure of what procedures you need to follow.

SECTIONS 8.2, 8.7 AND 4.53 OF THE ENVIRONMENTAL PLANNING & ASSESSMENT ACT, 1979

You are advised that:

- Under the provisions of Section 8.2 of the Environmental Planning and Assessment Act, 1979, an applicant may request Council to review a determination of the applicant's development application, other than an application for designated development. Any request for a review must be made within six (6) months of the date on which the applicant received notice, given in accordance with the regulations, of the determination of the application and be accompanied by the fee prescribed in Section 257 of the Regulations.
- If you are dissatisfied with this decision, Section 8.7 of the Environmental Planning and Assessment Act, 1979, gives you the right to appeal to the Land and Environment Court within six (6) months after the date on which you receive this notice.
- Under the provisions of Section 4.53 of the Environmental Planning and Assessment Act, 1979, unless the development, which is the subject of this consent, is commenced within five (5) years from the date of determination, the consent will lapse.

