

Development Consent Conditions



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| Folder /DA No: | DA/717/2017 |
| Property: | 182 Marine Parade, Maroubra |
| Proposal: | Outdoor dining and seating area to front of The Bay Hotel and Diner for 30 patrons and hours of operation being 8:00am to 9.30pm seven days per-week. |
| Recommendation: | Approval |

DEVELOPMENT CONSENT CONDITIONS

GENERAL CONDITIONS

The development must be carried out in accordance with the following conditions of consent.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000* and to provide reasonable levels of environmental amenity.

Approved Plans & Supporting Documentation

1. The development must be implemented substantially in accordance with the plans and supporting documentation listed below and endorsed with Council's approved stamp, except where amended by Council in red and/or by other conditions of this consent:

| Plan | Drawn by | Dated |
|------------------|-----------------|--------------|
| DA100 Revision D | Hosking Munro | 19 July 2018 |

Amendment of Plans & Documentation

2. The approved plans and documents must be amended in accordance with the following requirements and submitted to and approved by Council prior to operation of the outdoor dining area:
 - a) The proposed new timber step adjacent to the deck shall be relocated so that it is recessed within the existing deck since it could be a trip hazard.
 - b) A minimum 2.5m clear zone shall be provided between the outdoor dining area and the existing deck to the west. The leasable area will subsequently be reduced, therefore the plans shall be updated. The resulting reduced area of the outdoor dining area shall be marked on the updated plans.
 - c) The planter boxes are not approved and shall be deleted.

Agreement

3. Prior to installation of any items on the footway or the operation of the proposed footpath dining area, the business proprietor must enter into a formal License

agreement with Council covering the terms and conditions of the footpath restaurant. The applicant is advised to contact Council's Property Compliance Officer, (9093-6936), regarding Council's requirements for the formal license agreement.

4. The proposed step accessing the existing timber deck shall be relocated so that it is recessed within the existing deck, as it could be a trip hazard. No part of the step is to extend into the pedestrian thoroughfare between the existing deck and proposed footpath dining area. Detail of these works on Council property will be subject to a separate approval by Council's City Services Department;
 - a) Details of the proposed civil works to be carried out on Council land must be submitted to Council in a Civil Works Application Form. If acceptable, Council will respond, typically within 4 weeks, with a letter of approval outlining conditions for working on Council land, associated fees and workmanship bonds. Council will also provide details of the approved works including specifications and construction details.
 - b) Works on Council land, must not commence until the written letter of approval has been obtained from Council and heavy construction works within the property are complete. The work must be carried out in accordance with the conditions of development consent, Council's conditions for working on Council land, design details and payment of the fees and bonds outlined in the letter of approval.
 - c) The civil works must be completed in accordance with the above, to Council's satisfaction prior to the commencement of operations within the footpath dining area and use of the step for pedestrian traffic.
5. The outdoor dining area is required to comply with the relevant requirements of Council's Development Control Plan for "Footpath Dining & Trading".

REQUIREMENTS BEFORE COMMENCEMENT OF OUTDOOR DINING USE

The following requirements must be satisfied prior to commencing the use and operation of the footway/outdoor dining activities.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Council's development consent conditions and to achieve reasonable levels of environmental amenity.

Furniture Details

6. Details of the proposed design, construction and placement of outdoor furniture including dimensions and any other articles proposed to be located on the footway must be submitted to and approved by Council in writing before placing the items or articles on the footway.

The umbrellas shall have a minimum height clearance from the footpath of 2.6m when open.

The umbrellas shall be of a market-style (not beach umbrellas) and comprise fire-retardant materials.
7. All outdoor furniture and associated articles must be adequately tied down and/or weighted, to ensure that the items and articles are stable and secure at all times.

The furniture and all associated articles must not represent a safety hazard to pedestrians or motorists at any time. If necessary, the furniture and associated articles must be removed from the outdoor area and be placed indoors in windy conditions.

8. The style and colour of the furniture and ancillary articles to be provided in the outdoor dining area are required to be consistent with Council's Development Control Plan "Footpath Dining & Trading".
9. The business proprietor must comply with any directive given by any utility authority in relation to access requirement to any utility within the proposed lease area.

OPERATIONAL CONDITIONS

The following operational conditions must be complied with at all times, throughout the use and operation of the development.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Council's development consent and to maintain reasonable levels of public health and environmental amenity.

Hours of Operation

10. The hours of operation of the outdoor dining area are restricted to:-
 - From: 8:00AM to 9:30PM on Monday to Sundays and public holidays (inclusive).

All food and beverage services to customers shall only be provided within the abovementioned hours of operation and all patrons must vacate the area within 15 minutes of the specified hours.

Food Safety Requirements

11. The relevant requirements of the Food Act 2003, Food Regulation 2004 and Australian & New Zealand Food Standards Code must be complied with at all times. All food businesses must be registered with Council and the NSW Food Authority prior to commencing the business operations.

Environmental Amenity

12. The business proprietor and all personnel must ensure that the footpath dining area (and the immediate vicinity adjacent to the footpath dining area) is maintained in a clean and tidy condition at all times, free of grease, food and litter.

Effective methods are to be used to clean the area on a regular basis and which must not cause a pollution incident as defined in the *Protection of the Environment Operations Act 1997*.

13. The use and operation of the footway dining area must not result in a nuisance or affect the safety of the public at any time and any relevant directions given by authorised Council officers must be complied with.
14. A toilet and hand-basin must be made available to customers at all times, with appropriate signage to inform customers and the facilities must be kept in a clean and sanitary condition at all times.

15. The L_{10} noise level emitted from the licensed premises shall not exceed the background noise level (L_{90}) in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5dB between 7.00am and 12.00 midnight at the boundary of any affected residence. The background noise level shall be measured in the absence of noise emitted from the licensed premises.

The L_{A10} noise level emitted from the licensed premises shall not exceed the background noise level (L_{A90}) in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) between 12.00 midnight and 7.00am at the boundary of any affected residence. The background noise level shall be measured in the absence of noise emitted from the licensed premises.

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12.00 midnight and 7.00am.

16. 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}), 15 min noise level, measured in the absence of the noise source/s under consideration by more than 5dB(A). The source noise level shall be assessed as an $L_{Aeq, 15 \text{ min}}$ and adjusted in accordance with the NSW Environmental Protection Authority's Industrial Noise Policy 2000 and Environmental Noise Control Manual (sleep disturbance).

17. The business proprietor must establish and maintain a formal and documented system for the recording and resolution of complaints made to the licensed premises by residents. All complaints are to be attended to in a courteous and efficient manner and referred promptly to the business proprietor or duty manager. The appropriate remedial action, where possible, is to be implemented immediately and the business proprietor or duty Manager is to contact the complainant within 48 hours to confirm details of action taken.

Upon reasonable prior notice, the business proprietor must make available the incident book to the police and Council officers.

18. The Plan of Management shall be updated and submitted to and approved by Council and approved by Maroubra Local Area Command (NSW Police) prior to commencement of operations, which details the measures to be implemented to:

- ensure compliance with the relevant conditions of approval,
- ensure compliance with relevant noise criteria and minimise noise emissions and associated nuisances,
- minimise the potential environmental and amenity impacts upon nearby residents,
- effectively minimise and manage any possible anti-social behaviour or loud noises from children playing in the outdoor area,
- effectively manage and respond to resident complaints,
- ensure responsible service of alcohol and harm minimisation,
- provision of adequate security and surveillance,
- ensure that the maximum number of patrons does not exceed the authorised capacity, in accordance with Council's consent.

19. The maximum number of patrons within the outdoor dining area must not exceed 30 at any time and a sign detailing the maximum number of patrons permitted must be provided in a conspicuous position (e.g. near the building entrance), to Council's satisfaction.
20. An additional acoustic report, prepared by a suitably qualified and experienced consultant in acoustics, must be provided to the Council **within 12 months of commencement of use of the outdoor dining area** (or sooner if requested by Council as a result of complaints being received by Council), which demonstrates and confirms that the relevant provisions of the *Protection of the Environment Operations Act 1997* and the noise criteria and requirements contained in this consent has been satisfied (including any relevant approved acoustic report and recommendations). The assessment and report must include all relevant fixed and operational noise sources.

Regulatory Requirements

21. The relevant requirements of the *Environmental Planning & Assessment Act 1979* and *Local Government Act 1993*, *Food Act 2003*, *Public Health Act 2010* and *Roads Act 1993* must be fully complied with at all times.

Failure to comply with these legislative requirements is an offence and may result in the commencement of legal proceedings, issuing of `on-the-spot` penalty infringements or, the service of a Notice or Order by Council.

22. The premises must not be used for the sale, supply or consumption of alcohol unless a Liquor Licence (issued under the *Liquor Act 2007*) has been obtained beforehand.

The footway dining/trading area must not be used solely for the consumption of alcohol. Alcohol may only be served or consumed in this area if it is in conjunction with and ancillary to the service of a meal (as defined in the *Liquor Act 2007*), to the satisfaction of Council.

23. The Agreement, including conditions and requirements of the Agreement must be complied with at all times.

Failure to comply may result in a breach of the Agreement and a breach of this consent, which may result in the issuing of appropriate notices, orders, on-the-spot penalty infringements, legal proceedings and/or cancelling of the Agreement.

24. The business proprietor must keep in full force and effect for the term of the agreement established, a policy of public risk insurance with respect to the licensed area and the business undertaken by the business proprietor therein. The limit of public risk shall be not less than \$20,000,000 or other such sum as the Council may reasonably nominate in writing from time to time as the amount which may be paid arising out of any one single accident or event. The policy must also satisfy the following requirements:

- a. The policy shall extend to cover death or injury to any person and damage to property of any person sustained when such person is using or entering the licensed area.
- b. The policy must name the Council as an interested party and the business proprietor as the insured and must contain a clause that the insurer will not cancel or change the insurance without first giving the Council ten (10) days prior written notice.
- c. The insurance must be with an insurer approved by the Council and a copy

of the policy or a certificate of insurance shall be delivered by the business proprietor to the Council

25. The business proprietor shall indemnify Council for the full duration of the agreement from and against all claims, demands, writs, etc. as set out in the formal agreement.
 26. All street furniture is to be removed from the Licenced area outside approved trading hours of the outdoor dining area.
 27. The business proprietor and all personnel must ensure that the footpath dining area (and the immediate vicinity adjacent to the footpath dining area) is maintained in a clean and tidy condition at all times, free of grease, food and litter.
 28. The footpath restaurant area business proprietor shall, during the term of the agreement with Council, abide with any current or future Council Policy, Resolution or directive relative to the consumption of alcohol in public spaces.
 29. Should the area become inundated by floodwaters during operating hours, the applicant shall take action to ensure the safe evacuation of patrons from the area. The applicant shall also take action to remove their goods from the outdoor seating area in order to limit damage and prevent the goods becoming moving flood debris. Appropriate measures shall be included in the Plan of Management to give effect to this requirement.
 30. The business proprietor shall abide with any directive given by Council and any utility authority in relation to access requirements to any Council asset or utility within the proposed licensed area.
- NOTE:** Council may also from time to time access the stormwater Gross Pollutant Trap located near the south eastern corner of the outdoor seating area for maintenance and cleaning
32. The dimensions of the outdoor trading/dining area and number of chairs, tables and patrons must not exceed that specified in the development consent and Licence Agreement with Council at any time and all items of furniture must be located within the designated approved area at all times.

GENERAL ADVISORY NOTES

The following information is provided for your assistance to ensure compliance with the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, or other relevant legislation and requirements. This information does not form part of the conditions of development consent pursuant to Section 80A of the Act.

- A1 The requirements and provisions of the *Environmental Planning & Assessment Act 1979* and *Environmental Planning & Assessment Regulation 2000*, must be fully complied with at all times.

Failure to comply with these requirements is an offence, which renders the responsible person liable to a maximum penalty of \$1.1 million. Alternatively, Council may issue a penalty infringement notice (for up to \$6,000) for each offence. Council may also issue notices and orders to demolish unauthorised or

non-complying building work, or to comply with the requirements of Council's development consent.

- A2 There are to be no emissions or discharges from the premises, which will give rise to an environmental or public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and *Regulations*.