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STATEMENT OF ENVIRONMENTAL EFFECTS

**FOR APPLICATION SEEKING EXTENDED TRADING HOURS
AND MODIFIED OPERATIONAL CONDITIONS**

AT ADRIA RESTAURANT

**TENNANCIES 106-108 COCKLE BAY WHARF,
201 SUSSEX STREET, DARLING PARK**

**PREPARED FOR THE APPLICANT
NPM INVESTMENT HOLDINGS PTY LTD**

**DECEMBER 2014
Ref: 140469.2S**

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- ANNEXURE 1 NOTICE OF DETERMINATION AND PLANNER'S REPORT FOR DA-123-09-07 FROM SYDNEY HARBOUR FORESHORE AUTHORITY DATED 17 OCTOBER 2007
- ANNEXURE 2 ACOUSTIC ASSESSMENT PREPARED BY RENZO TONIN & ASSOCIATES DATED NOVEMBER 2014
- ANNEXURE 3 PLAN OF MANAGEMENT PREPARED BY DESIGN COLLABORATIVE DATED DECEMBER 2014

1.0 INTRODUCTION

This Statement of Environmental Effects accompanies a modification application (*the Application*) for the premises known as Adria Restaurant situated at tenancies 106, 107 and 108 of Cockle Bay Wharf, 201 Sussex Street, Darling Park (*the Restaurant*).

The Application seeks to modify development consent DA-123-09-07 (*the Development Application – Annexure 1*) to extend trading between 12 midnight and 2am the following day for a twelve (12) month trial period, consistent with the requirement for initial trial periods under *City of Sydney Development Control Plan 2012 (the DCP)*. The Application also seeks to delete restrictions on the provision of outdoor speakers and the provision of entertainment.

The primary consideration for the Application to extend trading hours under the DCP is whether the Restaurant can and will operate in accordance with the conditions of consent and an approved Plan of Management, absent of adverse impact upon the surrounding area with respect to noise, adverse social impact, patron safety and any relevant standards.

The Application is supported by an Acoustic Assessment prepared by Renzo Tonin and Associates (*the Acoustic Report – Annexure 2*) and a Plan of Management prepared by Design Collaborative (*the PoM – Annexure 3*).

This Statement describes the site and surrounding area, outlines the existing consent, details the nature of the proposed development and undertakes an assessment of the Application as required using the heads of consideration under s. 79C(1) of the *Environmental Planning and Assessment Act, 1979 (the EP&A Act)*.

The assessment reveals that the Restaurant can operate in compliance with the relevant noise criteria and adequately mitigate any potential adverse social impact through the implementation of the proposed PoM.

This Statement concludes that there are no sound town planning reasons why modified consent should not be granted to the Application as proposed.

2.0 THE SITE

The Restaurant is located within tenancies 106, 107 and 108, within a row of restaurants at Cockle Back Wharf at 201 Sussex Street, Darling Park. Cockle Bay Wharf is legally described as Lot 60 of Deposited Plan 1009964 (*the Subject Site*). **Plan 1** shows the location of the Subject Site in relation to the wider surrounding area.

The Restaurant has both indoor seating and outdoor seating. Between the restaurant and Darling Harbour is a pedestrian boardwalk. To either side of Adria are other restaurants owned by the Applicant, including “I’m Angus” and “Nick’s Seafood”.

The Subject Site is a regularly shaped lot with an area of approximately 8,300sqm and a primary frontage to Darling Harbour of some 210 metres. A secondary frontage to Wheat Street provides access to a common loading dock for deliveries to the Restaurant and common waste facilities. The Cockle Bay Wharf building is three (3) storeys in height and provides a total floor area of some 17,000sqm.

The ground level of Cockle Bay Wharf provides a variety of restaurants and nightclubs, consistent with the location as a tourist destination. There are a total of fourteen (14) establishments offering different cuisines and entertainment experiences throughout Cockle Bay Wharf. The largest of those is located at the first floor and roof and is known as Dockside, a restaurant and function venue that can accommodate up to 1,200 patrons.

2.1 RELEVANT SITE PLANNING HISTORY

DA-123-09-07 was approved on 17 October 2007 for the alterations and fitout of the tenancies 106 and 107 as a restaurant, to demolish a wall between 106 / 107 and 108 and to demolish the interior of tenancy 108 so it could be used in conjunction with tenancies 106 and 107.

Condition F1 restricted the hours of operation to between 8am and 12 midnight, seven (7) days a week.

3.0 THE SURROUNDING AREA

The surrounding area is characterised by a mixture of commercial, retail, recreational and entertainment premises, surrounded in the wider area by commercial and residential dwellings. **Plan 2** is an aerial photograph of the Subject Site and immediately surrounding development.

Darling Harbour is a popular night-time tourist destination and entertainment precinct with numerous restaurants, hotels and entertainment premises. It is identified as being within a City Living Area under the DCP, in which, trade to 5am daily may be approved.

There are a total of 44 licensed premises in Darling Harbour with four (4) hotels (Pontoon Bar, Home Nightclub, Jimmy Buffett's Margaritaville and Watershed Hotel), one (1) packaged liquor licence (Harbourside Cellars) and thirty-nine (39) on-premises licences.

Of the 44 licenses, there are twenty-three (23) that benefit from extended trading authorisations under the *Liquor Act, 2007* and therefore able (with development consent) to trade after midnight. The majority of those that trade past midnight provide some sort of entertainment. Larger premises are well-known for the entertainment, such as Tokio, Pontoon, Helm Bar, Watershed, Pavilion, Bungalow 8, Blackbird and Home Nightclub.

Harbourside Shopping Centre sits on the opposite side of Darling Harbour and contains some of the aforementioned premises and likewise provides waterfront dining. It also provides accommodation hotels including the Novotel and IBIS Sydney.

Darling Harbour is entirely pedestrianised. There is no traffic within the Darling Harbour precinct except for people mover trains and occasional maintenance vehicles. Parking is available in secure car parks within walking distance towards Town Hall, Haymarket or Pyrmont. There is very limited off-street parking near the premises due to Darling Harbour being surrounded by major roads.

Darling Harbour is well serviced by public transport. It is available in the form of trains, light rail, ferries, buses and taxis. The closest train station is Town Hall (600m). On average, trains run from 4.30am to 1am the following day. Night ride buses are available 24 hours a day from Town Hall Railway Station on George Street during the closure period for Town Hall Railway Station.

Light Rail and Ferries are also available, but do not run during any of the extended trading hours.

The nearest noise sensitive receivers are all accommodation hotels such as Four Seasons Harbour Plaza (150m), Four Points by Sheraton (175m), Park Royal Darling Harbour (200m) and Novotel Sydney and IBIS Sydney (370m) on the other side of Darling Harbour.

4.0 THE PROPOSAL

The following section outlines the proposed operational changes proposed and consequential amendments to the conditions of the development consent required. Proposed changes to the conditions are shown by ~~strikethrough~~ for proposed deleted text and **bold** for proposed new text.

4.1 TRADING HOURS

Condition F1 in the Development restricts the trading hours of the Restaurant to between 8am and 12 midnight, 7 days a week. The Application seeks to extend trading by two (2) hours, to 2am the following day for a twelve (12) month trial period.

The Development Consent is therefore proposed to be modified as follows.

F1 The hours of operation of the restaurant shall be restricted to:

- (a) 8.00am – **1.00am the following day**~~12.00 midnight~~, 7 days a week*
- (b) Notwithstanding (a) above, the restaurant may trade to 2am for a trial period of twelve (12) months from the date of this consent so modified [insert date].**
- (c) A further application may be lodged to continue the trading hours outlined in (b) above before the end of the trial period. Council's consideration of a proposed continuation and / or extension of the hours permitted by the trial will be based on, among other things, the performance of the operator in relation to the compliance with the development consent conditions, any substantiated complaints received and any views expressed by the Police.**

4.2 OPERATIONAL CHANGES

Condition A8 prohibits the provision of “public entertainment”. It is inconsistent with more recent regulatory changes that deleted the requirement to obtain development consent to provide entertainment for uses such as restaurants. The change also reflects the current definition for *restaurant or café premises* under the *Sydney Local Environmental Plan 2012 (the LEP)*; viz:

restaurant or café means a building or place the principal purpose of which is the preparation and serving, on a retail basis, of food and drink to people for consumption on the premises, whether or not liquor, take away meals and drinks or entertainment are also provided.

Based on the foregoing Condition A8 is proposed to be deleted to permit the Restaurant to provide entertainment.

~~A8 — No “public entertainment” is to be provided within the premises unless approved by a development application under the Environmental Planning and Assessment Act, 1979.~~

Condition F12 prohibits the provision of amplified music in the outdoor portions of the Restaurant and is proposed to be deleted. It is noted that those speakers are already installed on the Restaurant and were used for the purpose of acoustic testing in the Acoustic Report.

~~F12 — No amplified music or entertainment shall be played in the outdoor seating area. No speakers shall be fitted, placed or directed towards the outdoor seating area at any time.~~

The Acoustic Report has assessed both of the changes above and predicted that patron noise levels at full capacity in conjunction with the provision of entertainment and outdoor speakers will comply with the after midnight acoustic criteria, subject to the adherence of recommendations made in the Acoustic Report. Those recommendations are for the use of an electronic limiter for any speaker system used for entertainment purposes.

4.3 TECHNICAL MATTERS/SPECIALIST REPORTS

4.3.1 Liquor Act Freeze Provisions

The Restaurant is located within the CBD Freeze Precinct. Section 471 of the *Liquor Act, 2007* prohibits the granting of development consent for licensed premises located within the Freeze Precinct which would also require the granting of licences, approvals or other authorisations under the Liquor Act.

Relevantly, a copy of the Restaurant's Liquor Licence is attached to the PoM that demonstrates that the licensed trading hours for the Restaurant are 11am to 2am the following day. The Application would not therefore require any further licence, approvals or authorisations under the Liquor Act and the freeze provisions are therefore no impediment to the granting of modified consent.

4.3.2 Acoustic Report

The Acoustic Report demonstrates that the predicted patron noise levels for full capacity outdoor dining complies with the criteria after midnight, subject to the adherence to the Acoustic Report's recommendations which include the installation of sound system limiting devices on entertainment speakers to monitor the noise levels during the operation of the Restaurant.

4.3.3 Plan of Management

The PoM establishes performance criteria for the Restaurant under the Liquor Act and EP&A Act to assist in ensuring that the operation has no adverse acoustic or social impact on the surrounding area to maintain safety and amenity for its patrons.

5.0 ENVIRONMENTAL ASSESSMENT

This section undertakes an assessment of the Application using the heads of consideration as required under s.79C (1) of the EP&A Act.

5.1 ENVIRONMENTAL PLANNING INSTRUMENTS

5.1.1 Darling Harbour Development Plan No 1

The Application is consistent with the objectives of the Darling Harbour Development Plan No 1 in that it would provide further for the development of tourist, recreational and entertainment facilities within the area to which the Plan applies. In particular, it would further provide for the development of tourist, recreational and entertainment facilities for the night-time economy.

5.2 DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS

There is no draft Environmental Planning Instrument relevant to the Subject Site or to the Application.

5.3 DEVELOPMENT CONTROL PLANS

5.3.1 Sydney Development Control Plan 2012

Section 3 General Provisions

- Control 3.13 Crime Prevention Through Environmental Design

Objective

(a) Provide a safe environment and minimise opportunities for criminal and anti-social behaviour.

Security measures will be in place through the PoM to provide a safe environment and minimise the potential for anti-social behaviour at the Restaurant.

- Control 3.15 - Late Night Trading Management

The aim of this section is to assist in the management of the impacts of late night trading premises on the sites and neighbourhoods in which they are located, and to protect the amenity of existing residential properties.

The City's night-time economy is an integral part of its commercial, cultural and social fabric. Late night trading premises are an important part of Sydney social and street

life and playing an important role in the City's economic growth. People who live or work in the City as well as tourists are attracted to these places as a result of their diversity and vitality. Late night trading premises can also provide employment and jobs with flexible hours.

Control 3.15.3 Matters for Consideration

(1) *Appropriate trading hours for late night trading premises will be determined by taking into account a number of issues which include, but are not limited to:*

(a) *the location and context of the premises, including proximity to residential and other sensitive land uses and other late night trading premises;*

The nearest noise sensitive receivers are over 100 metres from the Restaurant and the Acoustic Report has demonstrated that the use of the Restaurant as proposed will comply with the relevant acoustic criteria and therefore have no adverse impact on sensitive land uses.

(b) *the specific nature of the premises, that is a pub, nightclub, restaurant, or other similar premises and the proposed hours of operation;*

The premises is a Restaurant that is proposed to be permitted to trade between 8am and 2am the following day. The hours between 11am and 2am the following day are licensed for the sale and supply of liquor.

(c) *the existing hours of operation of surrounding business uses;*

The surrounding area trades between 7am and 5am the following day.

(d) *the size and patron capacity of the premises;*

The patron capacity of the Restaurant is limited by the number of chairs. The Liquor Licence attached to the PoM requires all patrons, including bar patrons, to have a seat available.

(e) *the impact of the premises on the mix, diversity and possible concentration of late night uses in the locality;*

The use is typical and appropriate for tourist destinations such as Darling Harbour.

(f) *the likely operation of the proposal during day time hours;*

The Restaurant presently and will continue to trade day time hours.

(g) *submission of a plan of management that demonstrates a strong commitment to good management of the operation of the business, particularly in relation to managing potential impacts on adjoining and surrounding land uses and premises, as well as the public domain;*

A robust PoM is included with the Application that meets the requirements of Control 3.15.5 and Schedule 3 of DCP 2014.

- (h) *the diversity of retail services within an area and the impact of a late night trading proposal on this diversity;*

As noted above the Restaurant use is typical and appropriate for tourist destinations such as Darling Harbour.

- (i) *measures to be used for ensuring adequate safety, security and crime prevention both on the site of the premises and in the public domain immediately adjacent to, and generally surrounding, the premises; and*

These measures are detailed in the proposed PoM which meets the requirements of Schedule 3 of the DCP for Category B – Low Impact Premises.

- (j) *the accessibility and frequency of public transport during late night trading hours.*

Section 3 of this Statement details the high level of public transport available in the surrounding area.

The foregoing demonstrates that the Restaurant is appropriately located, in that it is within a defined City Living Area not in close proximity to sensitive land uses and with access to high levels of public transport.

5.4 ANY PLANNING AGREEMENT OR DRAFT PLANNING AGREEMENT

There is no Planning Agreement that has been entered into under s. 93F of the EP&A Act, nor is there any Draft Planning Agreement that Applicant is offering to enter.

5.5 THE REGULATIONS

There is no matter prescribed by the *Environmental Planning & Assessment Regulation, 2000* relevant to the Subject Site or the Application for the purpose of s. 79C (i)(a)(iv) of the EP&A Act.

5.6 THE LIKELY IMPACTS

Based on the foregoing assessment which has demonstrated the nature of the tourist and entertainment precinct at Darling Harbour, an approval to extend trading hours and provide entertainment would be consistent with the character of the surrounding area and unlikely to result in any increase in adverse impact, subject to continued compliance with the Restaurant's approved PoM and recommendations of the Acoustic Report.

5.7 THE SUITABILITY OF THE SITE FOR DEVELOPMENT

The tenancies have been used for restaurant purposes for an extended period of time and are therefore suitable for the continued use and operation as proposed.

5.8 THE PUBLIC INTEREST

The Restaurant is located within a locally, regionally and internationally significant tourist precinct and supports the local day and night-time economy.

The Application is consistent with Council controls in that it is appropriately located, has been verified as compliant with the relevant acoustic criteria and supported by a robust PoM.

The Application is therefore considered to be in the public interest.

6.0 CONCLUSION

This Statement accompanies a modification application that seeks approval to permit an extension of trading hours between midnight and 2am for Adria Restaurant, located within Cockle Bay Wharf, for a twelve (12) month trial period and to permit the Restaurant to provide entertainment.

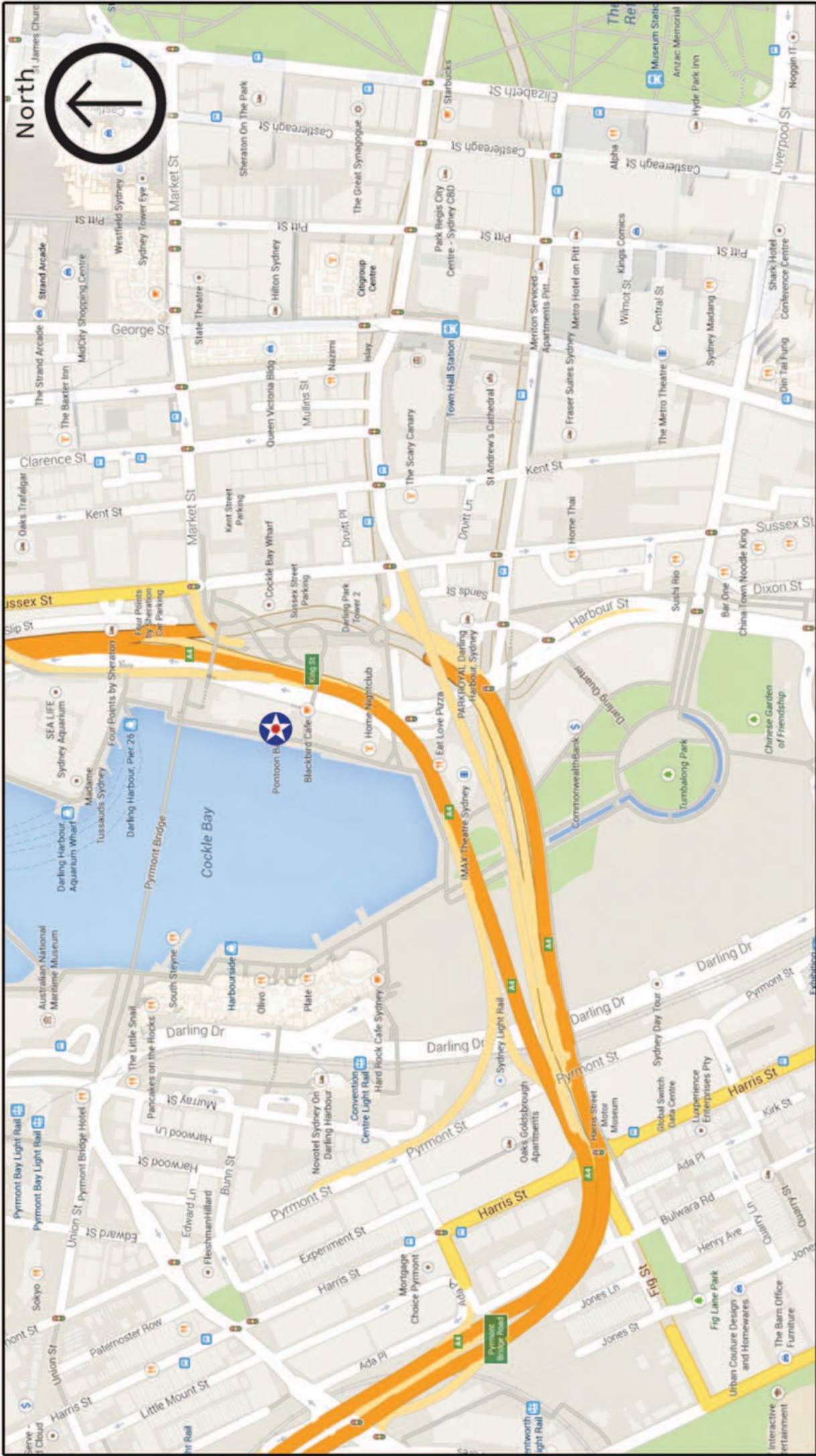
As demonstrated above in this Statement, the Application is consistent with the objectives and requirements of Council's planning controls.

In addition, approval of the Application will assist in ensuring that the Restaurant continues to contribute to a metropolitan Sydney night-time economy and support improved employment opportunities.

Under these circumstances, the Application is considered to be acceptable with regard to all relevant town planning and environmental issues.

It is therefore concluded that there are no valid town planning reasons why modified consent should not be granted to the Application as proposed.

PLANS



Source: Google Maps, 2014

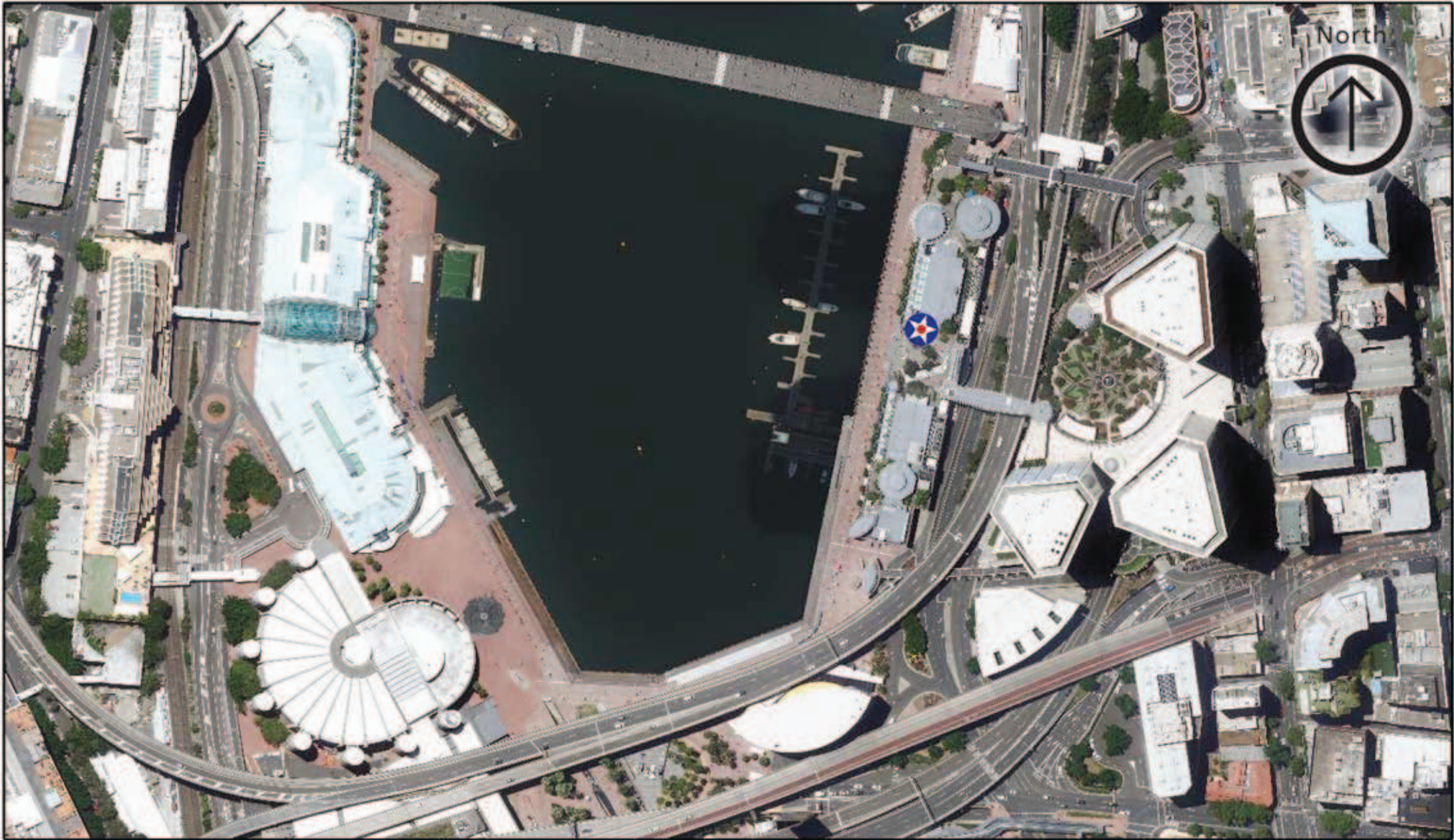


Adria Restaurant
 Tenancy 106, 107 & 108,
 Cockle Bay Wharf

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Location Plan



Source: SIX Maps, 2014

Aerial Photograph



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