

November 2011



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## Statement to support s96(1A) application: Level 5, 1 Dixon Street, Darling Harbour - Restaurant change of hours

## 1. Summary

This is a Statement prepared by Jason Perica, Director of Perica and Associates Urban Planning Pty Ltd. It accompanies a Section 96(1A) application to modify development consent DA104-0807, which applies to levels 1-3 and Level 5 of 1 Dixon Street, Darling Harbour (aka Haymarket).

The existing development approval permits the use of Level 5 (which is one level above street level) as a licensed restaurant.

Condition F1 of the consent limits the hours of operation of the restaurant to 11am-3pm and 5pm-11pm, seven days a week. The proposed modification seeks to change this condition to allow trading between 6.30am-12midnight on a permanent basis, and 12am-2am on a trial basis, 7 days a week.

The proposal does not involve any physical works or place of public entertainment.

The proposal has been assessed in accordance with s96 and S79C of the Environmental Planning and Assessment Act 1979, and it is suitable for the site and locality. In summary, the proposal should be supported because:

- (a) The tenancy is currently vacant, and the reactivation of the use will be positive for the area;
- (b) The restaurant use will be a positive addition to the range of existing uses in the area (and building), and add diversity of services for a global City and nearby entertainment area, including during later hours;
- (c) The closing time is less than the hours approved for other levels of the premises, contained in the same development consent being sought to be varied;
- (d) The applicant welcomes a trial period for hours after 12 midnight, consistent with the practice of the City of Sydney Council, while conditions of consent and powers available to the Council and Police will ensure that management can be monitored and impacts assessed prior to ongoing, continued and/or permanent hours sought after midnight;
- (e) The site is not within a “liquor freeze” area, and the hours are consistent with hours allowed for in the Council’s Late Night Trading DCP (which do not technically apply in any event); and
- (f) Granting consent would be in the public interest.

## 2. Background

Development consent was granted for “The Mandarin Club” use of the premises (including a separately run restaurant on level 5, which is one level above Dixon Street) on 15 November 2007.

The development consent has been modified 3 times since (3 April 2008, 26 June 2008 and 17 October 2008), relating to various operational matters (including hours) and a bin storage area.

There are many regulating conditions relating to operational, noise and amenity matters, which appropriately regulate the use.

Relevantly, condition F1 of the consent allowed the following hours:

<b>Level 1 (Bar/lounge):</b>	3pm-2am, seven days a week (4am for 2 year trial)
<b>Level 2 (Gaming):</b>	10am-2am, seven days a week (4am for 2 year trial)
<b>Level 3 (cafe/bar):</b>	6.30am-2am, seven days a week (4am for 2 year trial)
<b>Level 5 (Restaurant):</b>	11am-3pm and 5pm-11pm, seven days a week

From this, it is clear that the existing consent has allowed a commencing time of 6.30am in the mornings and a close of 2am on other levels. There was also allowance to trade until 4am for a two year trial for levels 1-3 (commencing at occupation certificate). It is not clear if this trial period has lapsed, and if so the consent allows permanent trading on levels 1-3 until 2am.

Currently, the use of levels 1-3 and 5 is vacant, having previously been occupied by the Mandarin Club. Despite this, the consent applies to the land and was not specific to the Mandarin Club, so may be reactivated at any time for the same approved use(s).

## 3. Site and Locality

The site is located on the north-western corner of Dixon and Goulburn Streets, Haymarket. The restaurant occupies the southern-most corner of Level 5, which is one level above Dixon Street. Opposite the site, to the south, is the entrance to “Chinatown”.

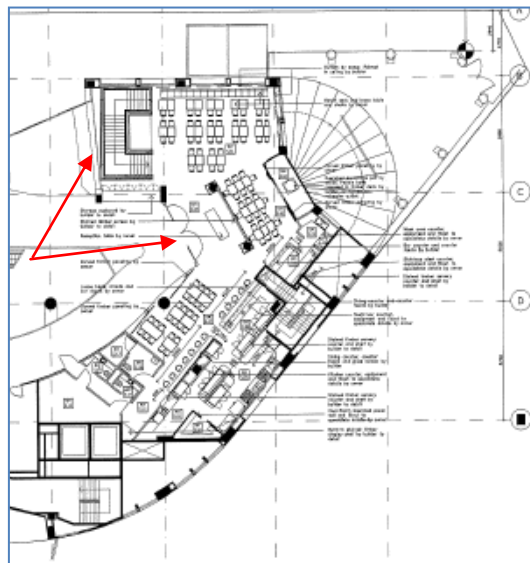
# Statement of Environmental Effects, 1 Dixon Street Haymarket



★ Site

source: Google Maps

Access to the restaurant is both from stairs to Dixon Street directly below the restaurant, and from the internal retail area, which occupies the podium of the existing building. This provides access for people with a disability, as shown in the plan extract below



**Figure 1 – Access**

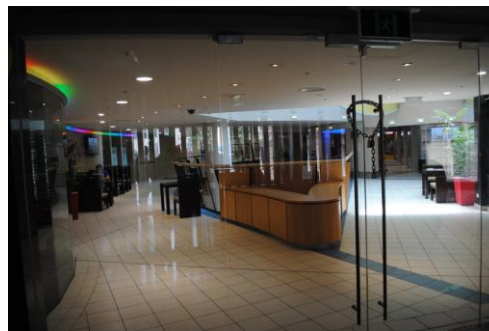
The restaurant includes a small outdoor terrace, which provides a smoking opportunity for guests, without having to go to the ground floor.



**Photo 1** View from Dixon Street



**Photo 2** Internal area – view out to Dixon St



**Photo 3** Internal view out to retail area

Surrounding development is mostly characterised by high rise buildings, containing hotel suites, retail and commercial office uses.

#### 4. Proposal

The proposal involves extended hours by amending Condition F1 of the consent, to specifically allow:

- (a) Permanent hours of operation for the Level 5 restaurant between 6.30am-12.00am (midnight) daily;
- (b) A 2 year trial for the hours of 12.00am (midnight) to 2.00am daily.

The plans indicating the current layout are included as **Attachment 1**, while a brief Plan of Management is included as **Attachment 2**.

No change is proposed to the layout of the premises. No works are proposed and no new signage is proposed.

## 5. Economic, Social and Environmental Impacts

The application has been assessed under s96 of the Environmental Planning and Assessment Act 1979, including consideration of the following matters:

### 5.1 S96(1A) – Substantially the same development and minimal environmental impact

The proposal is substantially the same development as approved. The changes proposed do not change the fundamental nature of the proposal. The environmental impacts will be minimal, noting the hours are less than approved on other levels of the premise, and the impact of the use compared to other approved uses and hours is less, while also providing benefits in terms of a greater range of services.

Other relevant matters under S96(1A) relate to notification and considering submissions, which are matters for the Sydney Harbour Foreshore Authority/ Department of Planning and Infrastructure.

### 5.2 Objects of the EPA Act

The proposal is consistent with the objects in Section 5 of the Act. Particularly, the proposal is consistent with objects relating to rational and orderly development of land. The orderly development of the land will be assisted by greater utilisation of an existing asset and resource and by activating a currently vacant tenancy. The proposal is consistent with environmentally sustainable development, and is particularly consistent with objectives relating to economic sustainability, with no environmental impacts of any significance.

### 5.2 Environmental Planning Instruments and Draft Environmental Planning Instruments



### (a) State Environmental Planning Policies (SEPPs)

Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005 is a deemed SEPP and applies to the site. The proposal is considered consistent with this Plan. No works are proposed and the proposal will not add any impacts to Sydney Harbour.

### (b) Darling Harbour Development Plan 1

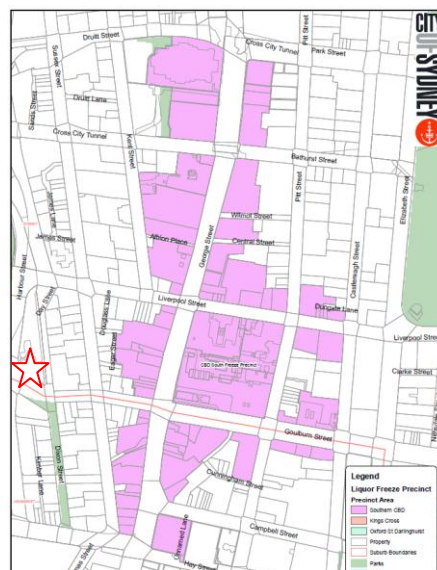
The proposal is consistent with the objects of Darling Harbour Development Plan 1, particularly *“to encourage the development of a variety of tourist, educational, recreational, entertainment, cultural and commercial facilities within that area”*.

The proposal is permissible under the Plan (and does not alter the approved use).

### (c) City of Sydney Local Environmental Plan 2005 (“the LEP”)

The site is not covered by the City LEP.

Although not an LEP matter, the liquor licence freeze is addressed here. The site is located on the fringe of the southern CBD freeze area:



**(d) Draft Environmental Planning Instruments:**

There are no draft EPIs applying to the site. Draft Sydney LEP 2011 does not apply to the site.

**5.3 Development Control Plans**

There are no DCPs applying to the site. While the City of Sydney Late Night Trading Premises DCP 2007 does not apply to the site, it is nonetheless considered that the proposal would be consistent with that DCP if it applied.

**5.4 Any Planning Agreement and the EPA Regulations**

No relevant matters apply regarding this application .

**5.5 The likely impacts of the development, including environmental impacts**

There will be no impacts of any significance arising from the proposal, environmental or otherwise.

In terms of loading, loading facilities exist in the building and loading demand will not change to warrant additional numbers of deliveries. The building contains a loading dock. No parking provisions are altered by the proposal, and the site has good access to public transport.

In terms of noise, the development consent was supported by a Noise report by Revers Acoustics, and many conditions of development consent regulate noise impacts. The main issue regarding potential noise related to a lower bar and public entertainment. The approved use is for a restaurant, and will not generate significant noise. Given the noise report and conditions regulating noise impacts (and a trial consent which is put forward), adequate safeguards and controls exist regarding any potential noise impacts.

In terms of late night trading, the greater provision of food premises will enhance the overall amenity and attractiveness of and to the city, including globally, for tourism, and for local residents.



In terms of management, a Plan of Management is attached and submitted with the application (**Attachment 2**).

No trees are affected and no environmental impacts of any significance will arise.

#### **5.6 The suitability of the site**

The site is suited to the proposal. The use already has consent and the application seeks to extend hours, which is appropriate in this instance.

The site is situated within “Chinatown” and will enhance the attractiveness of both Chinatown and Darling Harbour. In terms of a late trading restaurant, the site is very suitable.

#### **5.7 Any submissions received**

This is a matter for SHFA/the Department of Planning and Infrastructure.

#### **5.8 The Public Interest**

There will be no negative impacts from the proposal on the amenity of surrounding land, given existing development consent conditions, while a Plan of Management seeks to further regulate impacts and ensure good management of the premises

Granting consent would be in the public interest, as it allows an approved yet currently vacant premise to operate and add vitality, life and a range of services to an entertainment area. The proposal is consistent with the controls applying to the site.

### **6. Conclusion**

Condition F1 of the consent limits the hours of operation of the restaurant to 11am-3pm and 5pm-11pm, seven days a week. The proposed modification seeks to change this condition to allow trading between 6.30am-12midnight on a permanent basis, and 12am-2am on a trial basis (for 2 years), 7 days a week.

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## ATTACHMENTS

- 1. Proposed Plans**
- 2. Plan of Management**

Jason Perica  
Director