

Development consent

Section 89E of the *Environmental Planning and Assessment Act 1979*

As delegate of the Minister for Planning, under delegation dated 16 February 2015, I consent to the development application, referred to in Schedule 1, subject to the conditions in Schedule 2.

These conditions are required to:

- prevent, minimise, and/or offset adverse environmental impacts including economic and social impacts;
- set standards and performance measures for acceptable environmental performance;
- require regular monitoring and reporting; and
- provide for the ongoing environmental management of the development.

Chris Ritchie
Acting Executive Director
Key Sites and Industry Assessments

Sydney 25 AUGUST 2017

SCHEDULE 1

Application No.:	SSD 7683
Applicant:	Jimmy's on the Mall Pty Ltd
Consent Authority:	Minister for Planning
Land:	Overseas Passenger Terminal (Tenancy 5), Circular Quay Way, The Rocks (Lots 1-3 DP 876516)
Development:	The use of Tenancy 5 of the Overseas Passenger Terminal (OPT) as a restaurant and: • external alterations to the OPT building; • new elevated micro-brewery pod to the north of the OPT; • outdoor dining area to the north of the site; and • business identification signage.

DEFINITIONS

Advisory Notes	Advisory information relating to the consent but do not form a part of this consent
Applicant	Jimmy's on the Mall Pty Ltd
Application	The development application and the accompanying drawings, plans and documentation described in Condition A2
BCA	Building Code of Australia
Construction	Any works, including earth and building works
Council	City of Sydney Council
Certifying Authority	Means a person who is authorised by or under section 109D of the EP&A Act to issue a construction certificate under Part 4A of the EP&A Act; or in the case of Crown development, a person qualified to conduct a Certification of Crown Building works under section 109R of the EP&A Act
Day time	The period from 7am to 6pm on Monday to Saturday, and 8am to 6pm on Sundays and Public Holidays
Department	Department of Planning and Environment or its successors
Evening	The period from 6pm to 10pm
EIS	Environmental Impact Statement entitled 'SSD 7683: Overseas Passenger Terminal Circular Quay (Tenancy 5)', prepared by Keylan Consulting Pty Ltd dated November 2016
EPA	Environment Protection Authority, or its successor
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation or Regulation	<i>Environmental Planning and Assessment Regulation 2000</i>
NSW Heritage	Heritage Council of NSW
Minister	Minister for Planning, or nominee
Night time	The period from 10pm to 7am on Monday to Saturday, and 10pm to 8am on Sundays and Public Holidays
OEH	Office of the Environment and Heritage, or its successor
PCA	Principal Certifying Authority has the same meaning as in section 4 and Part 4A of the EP & A Act.
POEO Act	<i>Protection of the Environment Operations Act 1997</i>
Reasonable and Feasible	Reasonable relates to the application of judgement in arriving at a decision, taking into account: mitigation benefits, cost of mitigation versus benefits provided, community views and the nature and extent of potential improvements. Feasible relates to engineering considerations and what is practical to build.
PNSW	Property NSW
RtS	Response to Submissions entitled 'SSD 7683: New Restaurant and Micro-brewery Tenancy 5, Overseas Passenger Terminal, Response to Submissions, prepared by Keylan Consulting Pty Ltd dated 29 May 2017.
RMS	Roads and Maritime Services Division, Department of Transport or its successor
Secretary	Secretary of the Department of Planning and Environment, or nominee/delegate
Subject Site	Overseas Passenger Terminal (Tenancy 5), Circular Quay Way, The Rocks (Lots 1-3 DP 876516)
TNSW	Transport for NSW (including Roads and Maritime Services)
TPZ	Tree Protection Zone

SCHEDULE 2

PART A ADMINISTRATIVE CONDITIONS

Obligation to Minimise Harm to the Environment

- A1 In addition to meeting the specific performance criteria established under this consent, the Applicant must implement all reasonable and feasible measures to prevent and/or minimise any harm to the environment that may result from the construction or operation of the development.

Terms of Consent

- A2 Except as amended by the conditions of this consent, development consent is granted only to carrying out the development as described in Schedule 1.
- A3 The Applicant, in acting on this consent, must carry out the development:
- in compliance with the conditions of this consent;
 - in accordance with all written directions of the Secretary;
 - generally in accordance with the State Significant Development Application SSD 7683 Environmental Impact Statement entitled 'SSD 7683: Overseas Passenger Terminal Circular Quay (Tenancy 5), prepared by Keylan Consulting Pty Ltd dated November 2016;
 - generally in accordance with the Response to Submissions entitled 'SSD 7683: Overseas Passenger Terminal Circular Quay (Tenancy 5), Response to Submissions', prepared by Keylan Consulting Pty Ltd dated 29 May 2017; and
 - following drawings; except for
 - any modifications which are Exempt or Complying Development; and
 - as otherwise provided by the conditions of this consent.

Architectural (or Design) Drawings prepared by <i>Collins and Turner</i> :			
Draw No.	Revision	Name of Plan	Date
257_ADA_001	B	Location Plan	7/4/2017
257_ADA_002	B	Location Plan	7/4/2017
257_ADA_010	F	Level 1 Demolition	7/11/2016
257_ADA_011	G	Level 2 Demolition	7/4/2017
257_ADA_012	H	Level 1 Floor Plan	7/4/2017
257_ADA_013	H	Level 2 Floor Plan	7/4/2017
257_ADA_020	D	Elevation East	7/4/2017
257_ADA_021	D	Elevation West	7/7/2017
257_ADA_022	D	Elevation North	7/4/2017
257_ADA_023	B	Elevation East (Demolition)	7/4/2017
257_ADA_024	B	Elevation West (Demolition)	7/4/2017
257_ADA_025	B	Elevation North (Demolition)	7/4/2017
257_ADA_030	D	Section 01	7/4/2017
257_ADA_060	C	Micro-brewery Plans	7/4/2017
257_ADA_062	A	Micro-brewery Pod Section	11/4/2017
LD-SK-01	C	Public Domain	2/5/2017
OPT_MP_100	4	Level 1 External Signage Masterplan	1/5/2017
OPT_MP_101	4	Level 2 External Signage Masterplan	1/5/2017

OPT_S1_S2_110	3	S1_S2 Identification Signage	9/5/2017
OPT_S1_111	3	Identification Signage – North Elevation	9/5/2017
OPT_S1_121	3	Identification Signage – East Elevation	9/5/2017
OPT_S1_200	2	Identification Signage – Detail	9/5/2017
OPT_S1_201	1	Identification Signage – Detail	9/5/2017
OPT_S2_115	3	Identification Signage – West Elevation Detail	9/5/2017
OPT_S2_116	1	Identification Signage – West Elevation Detail	9/5/2017
OPT_S3_500	3	Identification Signage – North Elevation	1/5/2017

- A4 If there is any inconsistency between the documents in Condition A3, the most recent document prevails to the extent of the inconsistency. However, conditions of this consent prevail to the extent of any inconsistency.

Limits on Consent

- A5 This consent in no way implies or grants approval for the following:
- a) internal building works;
 - b) removal of any palm trees (note: the relocation of the three existing palm trees is permitted by this consent);
 - c) subdivision of the site or building;
 - d) drop-down blinds, shading devices, awnings, umbrellas or the like in the outdoor seating and in the new deck within the double height space in the tower drum;

Development Expenses

- A6 It is the responsibility of the Applicant to meet all expenses incurred in undertaking the development, including expenses incurred in complying with conditions imposed under this consent.

Prescribed Conditions

- A7 The Applicant must comply with all relevant prescribed conditions of development consent under Part 6, Division 8A of the EP&A Regulation.

Lapsing of Consent

- A8 The development consent will lapse 5 years after the determination date, unless the construction works authorised by this development consent have commenced.

Long Service Levy

- A9 For work costing \$25,000 or more, a Long Service Levy must be paid. For further information please contact the Long Service Payments Corporation on their Helpline 13 1441.

Legal Notices

- A10 Any advice or notice to the consent authority must be served on the Secretary.

END OF PART A

PART B PRIOR TO ISSUE OF CONSTRUCTION CERTIFICATE

No Works Prior to Construction Certificate

- B1 Work must not commence until a Construction Certificate in respect of the work has been issued.

Building Code of Australia (BCA) Compliance

- B2 The proposed works must comply with the applicable performance requirements of the BCA to achieve and maintain acceptable standards of structural sufficiency, safety (including fire safety), health and amenity for the ongoing benefit of the community. Compliance with the performance requirements can only be achieved by:
- a) complying with the deemed to satisfy provisions; or
 - b) formulating an alternative solution which:
 - i) complies with the performance requirements; or
 - ii) is shown to be at least equivalent to the deemed to satisfy provision; or
 - iii) a combination of a) and b).

Structural Details

- B3 The Applicant must submit structural drawings prepared and signed by a suitably qualified practising Structural Engineer to the Certifying Authority demonstrating compliance with:
- a) the relevant clauses of the BCA; and
 - b) the development consent.

The structural drawings must be prepared to the satisfaction of the Certifying Authority and be submitted prior to the issue of the relevant Construction Certificate.

Construction Fitout of Food Premises

- B4 The construction, fitout and finishes of the food premises must comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code under the Food Act 2003 all relevant Australian Standards and the provisions of the BCA. Details of compliance with the relevant provisions must be prepared by a suitably qualified person and submitted to the satisfaction of the Certifying Authority prior to the issue of the relevant Construction Certificate relating to the fitout works.

Pre-Construction Dilapidation Report

- B5 The Applicant is to engage a qualified structural engineer to prepare a Pre-Construction Dilapidation Report detailing the current structural condition of all retained existing and adjoining buildings, infrastructure and roads within the 'zone of influence'. The report must be submitted to the Certifying Authority prior to issue of the relevant Construction Certificate or any works commencing whichever is earlier. A copy of the report must be forwarded to the Ports Authority and Property NSW.

The Pre-Construction Dilapidation Report must also include a photographic recording of the public domain site frontages and must be submitted to Ports Authority and Property NSW satisfaction. The recording must include clear images of the footpath, nature strip, kerb and gutter, driveway crossovers and laybacks, kerb ramps, road carriageway, street trees and plantings, parking restriction and traffic signs, and all other existing infrastructure along the street. The form of the recording is to be as follows:-

- a) a PDF format report containing all images at a scale that clearly demonstrates the existing site conditions;

- b) each image is to be labelled to identify the elements depicted, the direction that the image is viewed towards, and include the name of the relevant street frontage;
- c) each image is to be numbered and cross referenced to a site location plan;
- d) a summary report, prepared by a suitable qualified professional, must be submitted in conjunction with the images detailing the project description, identifying any apparent existing defects, detailing the date and authorship of the photographic record, the method of documentation and limitations of the photographic record; and
- e) include written confirmation, issued with the authority of both the Applicant and the photographer that the Ports Authority and Property NSW is granted a perpetual non-exclusive license to make use of the copyright in all images supplied, including the right to make copies available to third parties as though they were Ports Authority and Property NSW images. The signatures of both the applicant and the photographer must be included.

Sydney Water Building Plan Approval

- B6 Prior to the issue of a Construction Certificate, the approved plans must be submitted to the Sydney Water Tap in™ online service to determine whether the development will affect any Sydney Water sewer or water main, stormwater drains and/or easement, and if further requirements need to be met.

Sydney Water's Tap in™ online service is available at:

<https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>

Outdoor Lighting

- B7 All outdoor lighting within the site must comply with, where relevant, *AS/NZ1158.3: 1999 Pedestrian Area (Category P) Lighting* and *AS4282: 1997 Control of the Obtrusive Effects of Outdoor Lighting*. Details demonstrating compliance with these requirements are to be submitted to the Certifying Authority prior to the issue of the relevant Construction Certificate.

Associated Roadway Costs

- B8 All costs associated with the construction of any new road works including kerb and gutter, road pavement, drainage system and footway must be borne by the Applicant. The new road works must be designed and constructed in accordance with the Council's "Development Specification for Civil Works Design and Construction". Plans demonstrating compliance with these requirements must be submitted to the Certifying Authority prior to the issue of the relevant Construction Certificate.

Storage and Handling of Waste

- B9 The design and management of waste must comply with the requirements of *City of Sydney Development Control Plan 2012*. Details must be submitted to the satisfaction of the Certifying Authority prior to the issue of the relevant Construction Certificate.

Footpath Damage Guarantee

- B10 If not already obtained, a Footpath Damage Bank Guarantee to cover the site frontage and areas of the public domain which may be damaged and must be lodged with the relevant road authority. A suitable bank guarantee must be submitted in favour of the relevant road authority as security for repairing any damage to the public domain in the vicinity of the site.

The guarantee must be lodged with the relevant road authority prior to the issue of the relevant Construction Certificate.

Access for People with Disabilities

- B11 Access and facilities for people with disabilities must be designed in accordance with the BCA. Prior to the issue of the relevant Construction Certificate, a certificate certifying compliance with this condition from an appropriately qualified person must be provided to the Certifying Authority.

Sanitary Facilities for Disabled Persons

- B12 The Applicant must ensure that the provision of sanitary facilities for disabled persons complies with Section F2.4 of the BCA. Updated plans demonstrating compliance with this condition must be submitted to the Certifying Authority prior to the issue of the relevant Construction Certificate.

Mechanical Plant Noise Mitigation

- B13 Details of noise mitigation measures for all mechanical plant are to be detailed on the Construction Certificate drawings. Certification from an appropriately qualified acoustic engineer that the proposed measures will achieve compliance with the requirements of the NSW Industrial Noise Policy and other guidelines applicable to the development is required to be submitted to the Certifying Authority prior to the issue of the relevant Construction Certificate.

Construction Environmental Management Plan

- B14 Prior to the issue of the relevant Construction Certificate, a **Construction Environmental Management Plan** (CEMP) must be prepared in consultation with Ports Authority of NSW and Property NSW and submitted to the Secretary for information. The CEMP must address, but not be limited to, the following matters, where relevant:

- a) hours of work;
- b) 24 hour contact details of site manager;
- c) construction pedestrian traffic management (refer to **Condition B15**);
- d) construction noise and vibration management, prepared by a suitably qualified person, which addresses the relevant provisions of Australian Standard 2436 – 2010 Guide to Noise Control on Construction, Maintenance and Demolition Sites, and the Interim Construction Noise Guideline (Department of Environment and Climate Change, 2009);
- e) air quality management, which includes the monitoring and management of air quality and dust to protect the amenity of the neighbourhood; and
- f) construction waste.

Note: The CEMP must not include works that have not been explicitly approved in the development consent. In the event of any inconsistency between the consent and the CEMP, the consent prevails.

Construction Pedestrian and Traffic Management Plan

- B15 Prior to the issue of the relevant Construction Certificate, the Applicant must prepare **Construction Pedestrian and Traffic Management Plan** (CPTMP) to the satisfaction of the Ports Authority of NSW and in consultation with the Coordination Office within TfNSW. The CPTMP must specify, but not limited to, the following:

- a) location of the proposed work zone;
- b) haulage routes;
- c) construction vehicle access arrangements;
- d) proposed construction hours;
- e) estimated number of construction vehicle movements;
- f) construction program;

- g) consultation strategy for liaison with surrounding stakeholders;
- h) any potential impacts to general traffic, cyclists, pedestrians, ferry services and bus services within the vicinity of the site from construction vehicles during the construction of the proposed works;
- i) cumulative construction impacts of projects including Sydney Light Rail Project. Existing CPTMPs for developments within or around the development site should be referenced in the CPTMP to ensure that coordination of work activities are managed to minimise impacts on the CBD road network; and
- j) should any impacts be identified, the duration of the impacts and measures proposed to mitigate any associated general traffic, public transport, ferry services, pedestrian and cyclist impacts should be clearly identified and included in the CPTMP.

A copy of the CPTMP must be provided to the Secretary.

Requirements of Public Authorities

- B16 The Applicant must comply with the requirements of any public authorities (e.g. Ausgrid, Sydney Water, Telstra Australia) in regard to the connection to, relocation and/or adjustment of the services affected by the construction of the proposed structure. Any costs in the relocation, adjustment or support of services are the responsibility of the Applicant. Details of compliance with the requirements of any relevant public authorities must be submitted to the satisfaction of the PCA prior to the issue of the relevant Construction Certificate.

Outdoor Glazed Perimeter Fence

- B17 Prior to the issue of the relevant Construction Certificate, the Applicant must prepare an outdoor seating fence plan which outlines specific materials and design details in consultation with GML Heritage consultants. The plan must be submitted to the Secretary for approval.

Campbell's Cove Public Domain Integration

- B18 Prior to the issue of the relevant Construction Certificate, the Applicant must consult with Property NSW to ensure all paving, levelling, drainage and other associated works will suitably integrate with the treatments, materials and levels proposed in the Campbell's Cove public domain proposal (SSD 7246). The details and the outcome of this consultation must be provided to the Secretary and the Certifying Authority prior to the issue of the relevant Construction Certificate.

Compliance Report

- B19 Prior to the issue of a Construction Certificate, the Applicant, or any party acting upon this approval, must submit to the Certifying Authority a report addressing compliance with all relevant conditions of this Part.

END OF PART B

PART C PRIOR TO COMMENCEMENT OF WORKS

Notice of Commencement of Works

- C1 The Department, the PCA and Council must be given written notice, at least 48 hours prior to the commencement of work on the Subject Site.
- C2 The PCA must provide the builder's current and direct contact number to businesses adjoining or impacted by the proposed works and the Transport Management Centre and Sydney Coordination Office within TNSW, to resolve issues relating to traffic, freight, servicing and pedestrian access during construction in real time.

Demolition

- C3 The demolition work must comply with the provisions of *Australian Standard AS2601: 2001 The Demolition of Structures*. The work plans required by AS2601: 2001 must be accompanied by a written statement from a suitably qualified person that the proposals contained in the work plan comply with the safety requirements of the Standard. The work plans and the statement of compliance must be submitted to the satisfaction of the Certifying Authority prior to the commencement of works.

Certified Plans

- C4 Plans certified in accordance with section 109C of the EP&A Act are to be submitted to the Certifying Authority and the Department prior to the commencement of works and must include details as required by any of the following conditions.

Archaeology

- C5 Prior to the commencement of footing and piling works, the Applicant must undertake archaeological test excavation.
- C6 The archaeological testing must follow an appropriate research design and excavation methodology and be directed by an excavation director who meets the Heritage Council's Excavation Director Criteria for the excavation of state significant archaeological sites.
- C7 The testing results must guide the next stage of development. Areas of state significant archaeology and substantially intact archaeological evidence must be appropriately managed and avoided wherever possible in the design and this process must be overseen by the excavation director detailed in **Condition C6**.
- C8 In the event it is not possible in whole or part, detailed full archaeological salvage must be undertaken. This must be guided by an appropriately research design and excavation methodology and be directed by an excavation director detailed in **Condition C6**.
- C9 A final excavation report must be prepared within 12 months of the completion of the archaeological works on site and must include details of any artefacts recovered, where they are located and details of their ongoing conservation and protection in perpetuity by the landowner. The final excavation report must be provided to the Department of Planning and Environment, the Heritage Council and to the Sydney Local studies unit.

Contamination

- C10 Prior to the commencement of any works, a hazardous material survey must be undertaken. The survey must detail any unexpected finds and appropriate management measures.

Hoarding

- C11 A separate application under section 138 of the *Roads Act 1993* must be made to the relevant road authority to erect a hoarding and/or scaffolding in a public road and such application is to include:
 - a) architectural, construction and structural details of the design as well as proposed artwork; and

- b) structural certification prepared and signed by an appropriately qualified practising structural engineer.

Evidence of the issue of a Structural Works Inspection Certificate and structural certification must be provided to the Certifying Authority prior to the commencement works.

Barricade Permit

- C12 Where construction/building works require the use of a public place including a road or footpath, approval under section 138 of the *Roads Act 1993* for a Barricade Permit is to be obtained prior to the commencement of work. Details of the barricade construction, area of enclosure and period of work are required to be submitted to the satisfaction of the relevant road authority.

Road Occupancy Licence

- C13 A Road Occupancy Licence (ROL) must be obtained from the relevant road authority under section 138 of the *Roads Act 1993* for any activity that may impact on the operation of the road network. The ROL allows the Applicant to use a specified road space at approved times, provided certain conditions are met. The Applicant must allow a minimum of 10 working days for processing ROL applications. Traffic Control Plans are to accompany each ROL application(s) for any such activities.

Tree Protection Zone

- C14 Prior to the commencement of works, a Tree Protection Zone(s) (TPZ) must be established around all tree(s) to be retained. Tree protection must be installed and maintained in accordance with the *Australian Standard 4970: Protection of Trees on Development Sites*.

- C15 Each TPZ must be:

- a) enclosed with a 1.8m high fully supported chainmesh protective fencing. The fencing must be secure and fastened to prevent movement. The fencing must have a lockable opening for access. Woody roots must not be damaged or destroyed during the establishment or maintenance of the fencing;
- b) kept free of weed and grass for the duration of works;
- c) have two signs identifying the name and contact details of the site Arborist attached facing outwards in a visible position. All signs must remain in place throughout all work on site; and
- d) Tree Protection Fencing must not be relocated unless approved by the Private Certifying Authority.

- C16 The following works must be excluded from within any TPZs:

- a) soil cut or fill including excavation and trenching;
- b) soil cultivation, disturbance or compaction;
- c) stockpiling, storage or mixing of materials;
- d) the parking, storing, washing and repairing of tools, equipment and machinery;
- e) the disposal of liquids and refuelling;
- f) the disposal of building materials;
- g) the siting of offices or sheds; and
- h) any action leading to the impact on tree health or structure.

Compliance Report

- C17 Prior to the commencement of works, the Applicant, or any party acting upon this approval, must submit to the PCA a report addressing compliance with all relevant conditions of this Part.

END OF PART C

PART D DURING CONSTRUCTION

Hours of Work

- D1 The hours of demolition and construction, including the delivery of materials to and from the Site, are restricted as follows:
- a) between 7 am and 7 pm, Mondays to Fridays inclusive;
 - b) between 8 am and 5 pm, Saturdays; and
 - c) no work on Sundays and public holidays; or
 - d) work may be undertaken outside these hours where:
 - i) the delivery of materials is required outside these hours by the Police or occasional works are required outside these hours by other authorities; or
 - ii) it is required in an emergency to avoid the loss of life, damage to property and/or to prevent environmental harm.

Noise and Vibration Management

- D2 The development must be constructed with the aim of achieving the construction noise management levels detailed in the *Interim Construction Noise Guideline* (Department of Environment and Climate Change, 2009). All feasible and reasonable noise mitigation measures must be implemented and any activities that could exceed the construction noise management levels must be identified and managed in accordance with the **Construction Environmental Management Plan**.
- D3 Any noise generated during the construction of the development must not be offensive noise within the meaning of the *Protection of the Environment Operations Act, 1997* or exceed approved noise limits for the Subject Site.
- D4 Vibration caused by construction at any residence or structure outside the subject site must be limited to:
- a) for structural damage vibration to buildings (excluding heritage buildings), British Standard BS 7385 Part 2-1993 Evaluation and Measurement for Vibration in Buildings;
 - b) for structural damage vibration to heritage buildings, German Standard DIN 4150 Part 3 Structural Vibration in Buildings Effects on Structure; and
 - c) for human exposure to vibration, the evaluation criteria presented in British Standard BS 6472- Guide to Evaluate Human Exposure to Vibration in Buildings (1Hz to 80 Hz) for low probability of adverse comment.

Setting out of Structures

- D5 The structures must be set out by a registered surveyor to verify the correct position of each structure in relation to property boundaries and the approved alignment levels. The registered surveyor must submit a plan to the PCA certifying that the structural works are in accordance with the approved development application.

Approved plans to be onsite

- D6 A copy of the approved and certified plans, specifications and documents incorporating conditions of approval and certification must be kept on the site and must be readily available for perusal by any officer of the department, the relevant authority or the PCA.

Site Notice

- D7 A site notice(s) must be prominently displayed at the boundaries of the site for the purposes of informing the public of project details including, but not limited to the details of the Builder, PCA and Structural Engineer. The notice(s) is to satisfy all but not be limited to, the following requirements:

- a) minimum dimensions of the notice are to measure 841mm x 594mm (A1) with any text on the notice to be a minimum of 30 point type size
- b) the notice is to be durable and weatherproof and is to be displayed throughout the works period
- c) the approved hours of work, the name of the site/project manager, the responsible managing company (if any), its address and 24 hour contact phone number for any inquiries, including construction/noise complaint are to be displayed on the site notice and
- d) the notice(s) is to be mounted at eye level on the perimeter hoardings/fencing and is to state that unauthorised entry to the site is not permitted.

Waste Classification

- D8 The Applicant must ensure that all waste generated by the development is classified in accordance with the EPA's *Waste Classification Guidelines 2009* and disposed of at a facility that may lawfully accept that waste.

Impacts of Below Ground (Sub Surface) Works – Non-Aboriginal Objects

- D9 If during the course of construction the Applicant becomes aware of any previously unidentified heritage object(s), all work likely to affect the object(s) must cease immediately and the Heritage Council of New South Wales must be notified immediately and consulted with regard to the recommencement of works.

Impacts of Below Ground (Sub Surface) Works – Aboriginal Objects

- D10 If during the course of construction the Applicant becomes aware of any previously unidentified Aboriginal object(s), all work likely to affect the object(s) must cease immediately and OEHL informed in accordance with section 89A of the *National Parks and Wildlife Act 1974*. Relevant works must not recommence until written authorisation from OEHL is received by the Applicant.

Asbestos and Hazardous Waste Removal

- D11 Any existing filling on the site must be assessed for the presence of asbestos materials during construction. All materials requiring removal from the site must be classified in accordance with *Waste Classification Guidelines* (NSW EPA, 2014). The Applicant must ensure that demolition works are undertaken so that cross-contamination of the site does not occur.
- D12 Removal of asbestos and other hazardous building materials must be undertaken by a suitably licensed contractor and an asbestos clearance certificate must be provided before waste classification, disposal or site validation is undertaken.

Site Contamination Issues During Construction

- D13 Should any new information come to light during demolition or construction works which has the potential to alter previous conclusions about site contamination, the Department must be immediately notified and works must cease. Works must not recommence on site until the Department confirms works can recommence.

Work Cover Requirements

- D14 To protect the safety of work personnel and the public, the work site must be adequately secured to prevent access by unauthorised personnel, and work must be conducted at all times in accordance with relevant Work Cover requirements.

Hoarding/Fencing Requirements

D15 The following hoarding requirements must be complied with:

- a) no third party advertising is permitted to be displayed on the subject hoarding/fencing; and
- b) the construction site manager must be responsible for the removal of all graffiti from any construction hoarding/fencing or the like within the construction area within 48 hours of its application.

Implementation of Management Plans

D16 Applicant must ensure that the requirements of the **Construction Environmental Management Plan** and **Construction Pedestrian Traffic Management Plan** required by Part B of this consent are implemented during construction.

Disposal of Seepage and Stormwater

D17 Any seepage or rainwater collected on-site during construction must be either re-used or disposed of, so as not to cause pollution. Seepage or rainwater must not be pumped to the street stormwater system unless separate prior approval is given in writing by Council.

Covering of Loads

D18 All vehicles involved in the excavation and / or demolition process and departing from the property with materials, spoil or loose matter must have their loads fully covered before entering the public roadway.

Vehicle Cleansing

D19 Prior to the commencement of work, suitable measures are to be implemented to ensure that sediment and other materials are not tracked onto the roadway by vehicles leaving the Site. It is an offence to allow, permit or cause materials to pollute or be placed in a position from which they may pollute waters.

Stockpile Management

D20 The Applicant must ensure that:

- a) stockpiles of excavated material do not exceed 4 metres in height;
- b) stockpiles of excavated material are constructed and maintained to prevent cross contamination; and
- c) suitable erosion and sediment controls are in place for stockpiles.

No Obstruction of Public Way

D21 The public way must not be obstructed by any materials, vehicles, refuse skips or the like, under any circumstances. Non-compliance with this requirement will result in the issue of a notice by the Secretary to stop all work on site.

Contact Telephone Number

D22 The Applicant must ensure that the 24-hour contact telephone number is continually attended by a person with authority over the works for the duration of the development.

Compliance Report

D23 The Applicant, or any party acting upon this consent, at the completion of the works must submit to the PCA a report addressing compliance with all relevant conditions of this Part.

END OF PART D

PART E PRIOR TO OCCUPATION OR COMMENCEMENT OF USE

Occupation Certificate

- E1 An Occupation Certificate must be obtained from the PCA prior to commencement of occupation or use of the whole or any part of the approved building.

Plan of Management

- E2 Prior to the issue of any Occupation Certificate, an updated **Plan of Management** must be prepared to include the following:
- a) hours of operation permitted in **Conditions F1** and **F2**, as well as hours of operation when liquor is proposed to be supplied;
 - b) maximum number of patrons permitted at any one time (internally and externally) at the premises and shown on a plan drawn to scale;
 - c) complaints procedures consistent with **Condition F20**;
 - d) collection of waste and recycling as permitted in **Conditions F15** and **F16**;
 - e) queuing of patrons as outlined in **Condition F17**;
 - f) **Noise Management Plan**: the **Plan** must establish noise management levels, outline noise management and mitigation measures to minimise impacts on nearby receivers and include provisions for a suitable noise monitoring program.

The **Plan of Management** is to be prepared to the satisfaction of the NSW Police and approved by the Secretary prior to the issue of any Occupation Certificate.

Signage to be Displayed

- E3 Signage (in lettering not less than 15 mm in height on a contrasting background) must be erected in a prominent position near the main principle entry to the premises prior to the issue of any Occupation Certificate. The signage must state: Approved patron capacity is limited to 800.
- E4 Signage (in lettering not less than 15 mm in height on a contrasting background) must be erected in a prominent position near the main principle entry to the premises prior to the issue of any Occupation Certificate. The signage must state the approved hours of operation that are outlined in **Condition F1**.

Road Damage

- E5 The cost of repairing any damage caused to Council's assets in the vicinity of the Subject Site as a result of construction works associated with the approved development is to be met in full by the Applicant prior to the occupation/use of the building.

Fire Safety Certification

- E6 Prior to the commence of the use, a **Fire Safety Certificate** must be obtained for all the Essential Fire or Other Safety Measures forming part of this consent. A copy of the Fire Safety Certificate must be submitted to the relevant authority and be prominently displayed in the building.

Structural Inspection Certificate

- E7 A **Structural Inspection Certificate** must be submitted to the satisfaction of the Certifying Authority prior to the use of the building. A copy of the Certificate with an electronic set of

final drawings (contact approval authority for specific electronic format) must be submitted to the approval authority after:

- a) the site has been periodically inspected and the Certifier is satisfied that the structural works is deemed to comply with the final design drawings; and
- b) the drawings listed on the Inspection Certificate have been checked with those listed on the final Design Certificate/s.

Post- Construction Dilapidation Report

E8 Prior to the issue of any Occupation Certificate:

- a) the Applicant must engage a suitably qualified person to prepare a post-construction dilapidation report at the completion of the construction works. This report to ascertain whether the construction works created any structural damage to adjoining buildings, infrastructure and roads.
- b) the report is to be submitted to the PCA. In ascertaining whether adverse structural damage has occurred to adjoining buildings, infrastructure and roads, the PCA must:
- c) compare the post-construction dilapidation report with the pre-construction dilapidation report required by these conditions and
- d) have written confirmation from the relevant authority that there is no adverse structural damage to their infrastructure and roads.
- e) a copy of this report is to be forwarded to the Council, Ports Authority, Property NSW and the Secretary and each of the affected property owners.

Mechanical Ventilation

E9 Following completion, installation and testing of all the mechanical ventilation systems, the Applicant must provide evidence to the satisfaction of the PCA, prior to the issue of any Occupation Certificate, that the installation and performance of the mechanical systems complies with:

- a) the BCA;
- b) Australian Standard AS1668 and other relevant codes;
- c) the development consent and any relevant modifications; and,
- d) any dispensation granted by the New South Wales Fire Brigade.

Waste and Recycling Collection

E10 Prior to the issue of any Occupation Certificate and/or commencement of the use, whichever is the earlier, the building owner must ensure that there is a contract with a licensed contractor for the removal of all trade waste. No garbage is to be placed on the public way e.g. the roadways, footpaths, plazas, and reserves at any time.

Food Premises – Health Registration Database

E11 Prior to the commencement of food handling operations, the proprietor of the food premises must notify and register the food premises with Council's Health and Building Unit and the NSW Health Department at www.foodnotify.nsw.gov.au prior to the opening of the premises;

E12 Prior to the commencement of food handling operations, the proprietor of the food premises must notify the NSW Health Department of the following information:

- a) contact details of the food business including the name of the food business and the name and address of the proprietor;
- b) the nature of the food business; and

- c) the location of all food premises of the food business within the jurisdiction of NSW Health.

Sanitary Facilities for Disabled Persons

- E13 Prior to the issue of the final Occupation Certificate, details must be provided to the Certifying Authority demonstrating that the provision of sanitary facilities for disabled persons within the premises complies with Section F2.4 of the BCA and **Condition B12** of this consent.

Fire Safety Certification

- E14 Prior to the commence of the use, a **Fire Safety Certificate** must be obtained for all the Essential Fire or Other Safety Measures forming part of this consent. A copy of the Fire Safety Certificate must be submitted to the relevant authority and be prominently displayed in the building.

END OF SECTION E

PART F POST OCCUPATION - DURING OPERATION

Hours of Operation

F1 The hours of operation are restricted as follows:

Indoor Areas

- a) 6 am to 12 midnight Sunday to Thursday (inclusive);
- b) 6 am to 1 am Friday and Saturday (inclusive); and
- c) 6 am New Year's Eve to 2 am New Year's Day (inclusive).

Outdoor Areas

- d) 8 am to 10 pm Monday to Sunday (inclusive)

F2 Notwithstanding (d) above, the use of the outdoor areas of the premises may operate between 6 am to 8 am and 10 pm to 1 am Monday to Sunday; and between 10 pm on New Year's Eve to 2 am on New Year's Day for a trial period of one year commencing from the date of the issue of any Occupation Certificate. The Secretary must be informed in writing of the date of commencement of the trial hours.

F3 If a modification or development application is lodged to continue any trial period specified in **Condition F2** then the use the subject of the application for extension may continue until the application is determined.

Maximum Patron Capacity

F4 The maximum number of persons (including staff, patrons and performers) permitted in the premises at any one time is 870 persons and includes:

- i. 800 patrons;
- ii. Across premises: 70 staff;
- iii. A comfortable dining position must be available for each patron upon the premises. This must include a seat and access to table/bench space in accordance with the approved plans; and
- iv. Management is responsible for ensuring the number of patrons in the premises does not exceed the approved capacity specified in sub clause (i).

Plan of Management

F5 The use of the premises as a restaurant must operate at all times in accordance with the approved **Plan of Management** required by **Condition E2**.

Storage of Dangerous Goods

F6 The safe storage and handling of dangerous goods must be in compliance with relevant Australian Standards and particular attention to allowable quantities of dangerous goods stored indoors and Class segregation guidelines must be adhered to.

Noise Control - Plant and Machinery

F7 Noise associated with the operation of any plant, machinery or other equipment on the site, must not give rise to any one or more of the following:

- a) transmission of "offensive noise" as defined in the *Protection of the Environment Operations Act 1997* to any place of different occupancy;

- b) a sound pressure level at any affected residential property that exceeds the background (LA90, 15 minute) noise level by more than 5dB(A). The background noise level must be measured in the absence of noise emitted from the premises. The source noise level must be assessed as a LAeq, 15 minute; and
- c) notwithstanding compliance with (1) and (2) above, the noise from mechanical plant associated with the premises must not be above the background noise level between the hours of 12 midnight and 7 am.

Noise Control - Use

F8 Noise emanating from the premises (internal and outdoor areas) including patron noise and music must not give rise to any one or more of the following:

- a) transmission of "offensive noise" as defined in the *Protection of the Environment Operations Act 1997* to any place of different occupancy;
- b) the LA10 noise level must not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz-8kHz inclusive) by more than 5dB between 7 am and 12 midnight at the boundary of any affected residence;
- c) the LA10 noise level emitted must not exceed the background noise level in any Octave Band Centre Frequency (31.5Hz-8kHz inclusive) between 12 midnight and 7 am at the boundary of any affected residence; and
- d) notwithstanding compliance with (a), (b) and (c) above, all noise associated with the premises must not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7 am.

Annual Fire Safety Certificate

F9 An annual **Fire Safety Statement** must be given to Council and the Fire & Rescue NSW commencing within 12 months after the date on which the initial Interim/Final Fire Safety Certificate is issued. This must ensure that the essential services installed in the building for the purpose of fire safety have been inspected and at the time of inspection are capable of operating to the required minimum standard.

Odour Requirements

- F10 The use of the premises must not give rise to the emission of gases, vapours, dusts or other impurities which are a nuisance, injurious or prejudicial to health.
- F11 Gaseous emissions from the development must comply with the requirements of the *Protection of the Environment Operations Act, 1997* and Regulation. Uses that produce airborne particulate matter must incorporate a dust collection system.

Complaints – Smoke / and/or Odour

F12 Should substantiated complaints be made to the Department and/or Council regarding smoke and/or odour or other air pollutants, then mitigation measures and ongoing management strategies are to be developed by a suitably qualified person and submitted to the Secretary for approval.

Until suitable mitigation measures are in place, the use must be managed so as not to create nuisance including particulate matter, odour, fumes and smoke emissions to the satisfaction of an authorised officer of Council or the Department. Any control measures should be in accordance with best management practices and odour controls based on the level 3 technique as outlined in the *Technical framework: assessment and management of odour*

from stationary sources in NSW, prepared by the Department of Environment and Conservation NSW.

External Lighting

- F13 External Lighting must comply with *AS4282: 1997 Control of the Obtrusive Effects of Outdoor Lighting*. Upon installation of lighting, but before it is finally commissioned, the Applicant must submit to the PCA evidence from an independent qualified practitioner demonstrating compliance in accordance with this condition.

Loading and Unloading

- F14 All loading and unloading of service vehicles associated with the use of the premises must be carried out within the existing loading dock.

Storage and Handling of Waste

- F15 The removal of recycled bottles and glasses must only occur between 7 am and 8 pm weekdays and 9 am and 5 pm weekends and public holidays to avoid disruption to the area.
- F16 No waste must be placed for collection in a public place e.g. footpaths, roadways and reserves under any circumstances.

Queuing of Patrons

- F17 An **adequate queuing system** for patrons must be implemented at the entrance(s) of the licensed restaurant to ensure any queue:
- a) does not disturb or create conflict with members of the public in the vicinity of the queue;
 - b) does not create a hazard of obstruction;
 - c) does not disturb the quiet enjoyment and amenity of the neighbourhood;
 - d) enables persons to exit the premises;
 - e) enables NSW Police, Department or Council and other regulatory authorities and emergency services unimpeded access to the premises.

CCTV Footage on premises

- F18 The Licensee must maintain a CCTV system which meets the following minimum requirements:
- i. A camera must be located at the main entrance to the venue and positioned to record any person entering through this entrance. The CCTV recordings of this camera must be sufficient to enable an individual to be identified, beyond reasonable doubt, when:
 - a) the person represents not less than 100% of screen height, and
 - b) there is an unobstructed view of the person's face.
 - ii. In addition, CCTV cameras must be maintained throughout the premises with camera coverage to specifically record images of the following areas:
 - a) all other public entrances and exits, whether or not in use at the time,
 - b) staircases,
 - c) all portions of the floor area accessible to the public where entertainment is provided,

- d) toilet external entrances,
 - e) all public accessible areas within the premise excluding toilets and accommodation rooms,
 - f) the footpath area directly adjacent to the premises, and
 - g) courtyard and smoking areas.
- iii. The CCTV recordings of the cameras referred to in sub condition (2) must be sufficient to enable the recognition of a person. A viewer must be able to say with a high degree of certainty whether or not an individual shown is the same as someone they have seen before, when:
- a) the person represents not less than 50% of screen height, and
 - b) there is an unobstructed view of the person's face.
- iv. Camera views are not to be obstructed by temporary or permanent structures, signage or other impediments.
- v. Camera recordings must meet the standards set in sub condition (1) and (3) at all times, either by way of camera positioning, camera shades or other environmental factors.
- vi. Recordings must:
- a) be in digital format,
 - b) record at a minimum of ten (10) frames per second, and
 - c) commence one hour prior to opening, and operate continuously until at least one hour after closure.
- vii. The correct time, date and camera identification must be automatically embedded on all recordings and be able to be read when the image is played back on a different system without interfering with the view of the target area.
- viii. Recordings should be retained for a period of 30 days before being reused or destroyed. The licensee must ensure that no person is able to delete or alter any recordings within the 30 day period.
- ix. When the venue is open and trading, at least one person must be at the venue that is capable of accessing the CCTV system and is able to immediately review recordings and produce copies.
- x. Immediate access to the CCTV system and the ability to review recordings on the system is to be granted to NSW Police, OLGR Inspectors or other regulatory officers upon request.
- xi. The CCTV system must be able to reproduce a copy of the recordings on Compact Disc, DVD or USB memory stick and must, upon request, be provided within one working day to NSW Police, OLGR Inspectors or other regulatory officers.
- xii. Prior to the commencement of trade each day, the CCTV system must be checked to ensure the equipment is in full operating order. If, during the daily check or at any other time, it is discovered that the equipment is not in full operating order, the licensee is to notify the Local Area Commander or delegate within two hours. All reasonable steps must

be undertaken to repair the system as soon as practicable. The Licensee must record this daily checking activity in the incident register book that meets the standards required by the Licensing police and Council.

Neighbourhood Amenity

F19 The management of the premises:

- i. Must ensure patrons do not crowd or loiter in the vicinity of the premises in such manner that pedestrian movement is obstructed or hindered.
- ii. Must ensure that the manner in which the business of the premises is conducted and/or the behaviour of persons entering and leaving the premises does not cause undue disturbance to the amenity of the neighbourhood. In this regard, the management must be responsible for the control of noise and litter generated by persons and/or premises operations. If so directed by the Secretary or Council or the NSW Police, the Management is to employ private security staff to ensure that this condition is complied with.

Complaints Register – Disturbance Complaints and Incidents

F20 The management of the premises:

- i. Must record in a Complaints Register full details of any disturbance complaint/s made by a person to management or staff in respect to the manner in which the business of the premises is conducted and/or the behaviour of persons entering or leaving the premises. Such recording will include time, date, nature of the complaint/s and any complainant details if provided.
- ii. Must respond to any disturbance complaint/s in a timely and effective manner. All actions undertaken by management / staff to resolve such complaint/s must be recorded in the Register.
- iii. Must take all reasonable steps to stop or reduce disturbances to prevent future occurrences to the satisfaction of the Secretary or the NSW Police.
- iv. In the event of an Incident of a serious nature, the manager must contact the Applicant immediately and the Incident must be reported to the NSW Police. For the avoidance of doubt an Incident is of a serious nature if it involves violence causing injury or requires the intervention of the NSW Police or any emergency service.
- v. The Complaints Register must have printed page numbers to ensure it is an accurate record of Disturbances and/or Incidents at the Subject Site. The Complaints Register must be kept in a secure place on the Subject Site and a photocopy or electronic backup must be made at the end of each calendar month and the backup must be retained for at least three years.
- vi. If an Incident constitutes a valid complaint, the manager must rectify the situation immediately and take all reasonable steps to stop or reduce the source of the Incident to prevent future occurrences to the satisfaction of the Secretary or the NSW Police.

END OF SECTION F

ADVISORY NOTES

Appeals

AN1 Applicant has the right to appeal to the Land and Environment Court in the manner set out in the EP&A Act and the EP&A Regulation (as amended).

Other Approvals and Permits

AN2 The Applicant must apply to NSW Heritage for any approvals under the *Heritage Act 1977* (if required), and the Council for all necessary permits including crane permits, road opening permits, hoarding or scaffolding permits, footpath occupation permits and/or any other approvals under section 68 (Approvals) of the *Local Government Act 1993* or section 138 of the *Roads Act 1993*.

Responsibility for other consents / agreements

AN3 The Applicant is solely responsible for ensuring that all additional consents and agreements are obtained from other authorities, as relevant.

AN4 The existing liquor licence relevant to the site is Licence No LIQO 624000996.

Approvals under Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act)

AN5 The obligation to obtain further approval under the EPBC Act rests with the Applicant. The Applicant's responsibilities and statutory requirements under the EPBC Act for environmental approvals.

AN6

- i. The *EPBC Act* provides that a person must not take an action which has, will have, or is likely to have a significant impact on a matter of national environmental significance (NES) matter; or Commonwealth land, without an approval from the Commonwealth Environment Minister.
- ii. This application has been assessed in accordance with the New South Wales EP&A Act 1979. The determination of this assessment has not involved any assessment of the application of the Commonwealth legislation. It is the Applicant's responsibility to consult the Department of Sustainability, Environment, Water, Population and Communities to determine the need or otherwise for Commonwealth approval and you should not construe this grant of approval as notification to you that the Commonwealth Act does not have application. The Commonwealth Act may have application and you should obtain advice about this matter. There are severe penalties for non-compliance with the Commonwealth legislation.

Temporary Structures

AN7

- a) An approval under *State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007* must be obtained from the Authority for the erection of the temporary structures. The application must be supported by a report detailing compliance with the provisions of the BCA.
- b) Structural certification from an appropriately qualified practicing structural engineer must be submitted to the Authority with the application under *State Environmental Planning Policy (Miscellaneous Consent Provisions) 2007* to certify the structural adequacy of the design of the temporary structures.

Disability Discrimination Act

AN8 This application has been assessed in accordance with the EP&A Act. No guarantee is given that the proposal complies with the Disability Discrimination Act 1992. The Applicant/owner is responsible to ensure compliance with this and other anti-discrimination legislation. The Disability Discrimination Act 1992 covers disabilities not catered for in the minimum standards called up in the BCA which references AS 1428.1 - Design for Access and Mobility. AS1428 Parts 2, 3 & 4 provides the most comprehensive technical guidance under the Disability Discrimination Act 1992 currently available in Australia.

Asbestos Removal

AN9 All excavation works involving the removal and disposal of asbestos must only be undertaken by contractors who hold a current WorkCover Asbestos or "Demolition Licence" and a current WorkCover "Class 2 (Restricted) Asbestos Licence and removal must be carried out in accordance with NOHSC: "Code of Practice for the Safe Removal of Asbestos".

Site Contamination Issues During Construction

AN10 Should any new information come to light during works which has the potential to alter previous conclusions about site contamination, the Applicant must be immediately notified and works must cease. Works must not recommence on site until contact is made with the Department and the Department advises the Applicant works can recommence.

Future Modification Application

AN11 The modification application should be lodged no earlier than 120 days before the end of the trial period and no later than 60 days before the end of the trial period. The consideration of a proposed continuation and/or extension of a trial will be based on, among other things, the performance of the operator in relation to the compliance with the development consent conditions, any substantial complaints received and any views expressed by the NSW Police Force.

The applicant must provide any additional information the consent authority requests to assess the application within 7 days of receipt of that request.

END OF ADVISORY NOTES