

Sydney Development Control Plan 2012 Assessment

The SDCP 2012 does not apply to this application as it is State Significant Development (SSD). Notwithstanding, a detailed assessment of the proposed modification against the matters of consideration and the relevant provisions under *Part 3.15 – Late Night Trading Management* is provided within the tables below.

Matters for Consideration

Matter for Consideration	Comment
<i>(a) the location and context of the premises, including proximity to residential and other sensitive land uses and other late-night trading premises;</i>	<p>The site is located at the Overseas Passenger Terminal within The Rocks/Circular Quay. The site's use as a restaurant is consistent with the locality's context as a late-night destination and tourist attraction. The site is not located nearby to any residential receivers.</p> <p>The site is also within proximity to many other late-night trading premises which operate until 2:00am or past 2:00am as addressed in Section 1 of the Modification Report.</p>
<i>(b) the specific nature of the premises, its activities and the proposed hours of operation;</i>	<p>The restaurant operates as a licensed restaurant, providing meals and drinks to patrons within the indoor and outdoor areas. The proposed modification seeks base trading hours from 6:00am to 2:00am for both indoor and outdoor areas.</p> <p>Given the nature and location of the premises and the applicant's demonstrated ability to appropriately manage the current trial hours of operation, the proposal is considered to be appropriate as it will contribute to Sydney's night time economy.</p>
<i>(c) the likely impact on the amenity of surrounding sensitive land uses, including noise, and the ability to manage the impacts.</i>	<p>The restaurant has been operating successfully within the approved trial hours of operation since the issue of the occupation certificate and the approval of subsequent modifications granting further trading hour extensions.</p> <p>The Applicant has successfully managed noise and amenity impacts through strict adherence to the approved POM resulting in no complaints since 2019.</p>
<i>(d) the provision of indoor performance, creative or cultural use and how this increases the diversity of late night activities in the area</i>	Not applicable.
<i>(e) the provision of indoor space for performance, creative or cultural uses in a licensed premise, including the nature of the space available for the use, programming and entertainment being provided.</i>	Not applicable.

Matter for Consideration	Comment
<i>(f) the contribution that late night trading proposals make to street activation and vibrancy of an area at night.</i>	<p>The proposal contributes to activation and vibrancy of the Circular Quay foreshore and street activation of Circular Quay West through pedestrian activity and outdoor dining.</p> <p>The proposal will allow the premises to continue to contribute to a strong and thriving night time economy and vibrancy of the CBD.</p>
<i>(g) the likely impacts arising from the closing times and patron dispersal of the proposed and existing late-night uses, including consideration of unlicensed late-night trading in an area, such as shops, businesses and food and drink premises.</i>	<p>The likely impacts arising from the closing times and patron dispersal are noise impacts. The impacts associated with late night trading have been successfully managed due to adherence to the approved POM and conditions of consent relating to noise limits.</p> <p>The site has been successfully operating late night trading during its trial periods and has not received any complaints from surrounding businesses demonstrating appropriate management of impacts on surrounding businesses.</p>
<i>(h) the existing hours of operation of surrounding business uses.</i>	The current hours of operation of nearby late-night trading businesses are discussed at Section 1 of the Modification Report.
<i>(i) the size and patron capacity of the premises;</i>	The modification does not seek to amend the size or patron capacity of the premises.
<i>(j) the impact of the premises on the mix, diversity and possible concentration of late night uses in the locality;</i>	The trial hours of operation have not resulted in any adverse impacts on other late night uses during the trial period and the modification is not expected to have any adverse impacts.
<i>(k) the likely operation of the proposal during day time hours, including the potential for street front activation.</i>	The proposed hours of operation are 6:00am to 2:00am, Monday to Sunday. The venue activates the street frontage and also the Circular Quay foreshore within an identified entertainment precinct.
<i>(l) 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;</i>	<p>The proposed modification does not include changes to patron capacity.</p> <p>The Applicant seeks to continue operating in accordance with the approved POM which has to date successfully managed potential impacts on surrounding land uses and the public domain.</p>
<i>(m) the diversity of retail and business services within an area and the impact of a late night trading proposal on this diversity;</i>	<p>The proposed modification will continue to operate in harmony with the diversity of surrounding retail and business services within the locality.</p> <p>The site has successfully operated during the current trial period, the Applicant has not received any complaints since 2019.</p> <p>Further, the proposal will continue to have a positive impact on the surrounding businesses due to additional pedestrian activity within the CBD throughout the day and night.</p>

Matter for Consideration	Comment
<i>(n) 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</i>	The measures to ensure the safety, security and crime prevention are addressed in the approved POM. The Applicant is committed to continue to adhere by the approved POM.
<i>(o) the accessibility and frequency of public transport during late night trading hours.</i>	The site is located within a highly accessible location being within walking distance of Circular Quay Station, Circular Quay Light Rail, Circular Quay Ferry Wharves and several bus stops. Train and Light Rail services operate regularly up until 1.00am on weekdays and 1:30am on weekends. After 1:30am, bus services substitute train services operating roughly every 30 minutes on most night routes. Sufficient public transport is available to support the proposed hours of operation.

Table 1: Matters for consideration for late night trading under section 3.15.3 of the SDCP 2012

Provisions

Provision	Comment	Complies
3.15.4 Trading hours and trial periods		
<i>(1) Base and extended hours that apply to particular late night trading areas are identified in Table 3.7 Late night trading hours.</i>	<p>The proposed hours of operation are generally consistent with Table 3.7 with the exception of the additional hour from 1am to 2am for external areas.</p> <p>This minor departure is considered justified given the Applicant's excellent management performance and given there are many other higher impact venues in the locality which operate external hours until or past 2am.</p>	On merit
<i>(3) Any hours that are beyond base hours will be subject to a trial period.</i>	<p>This modification seeks to make the hours of operation permanent given the Applicant has successfully managed late night trading on site since 2018 and has received no complaints since 2019.</p> <p>Further, many other venues within the locality have late night trading hours approved until 2am on a permanent basis.</p>	On merit
<i>(6) Extended trading hours beyond base hours may be permitted at the initial application stage, but only where the Council has determined that the premises have been or will be well managed,</i>	The restaurant has been successfully managed throughout the current trial period in accordance with approved POM. The restaurant has received no complaints since 2019.	Yes

Provision	Comment	Complies
including compliance with an approved Plan of Management		
(7) At the completion of a trial period a new application must be lodged to either renew existing trial hours or to seek an extension of trading hours.	This application seeks to make trading hours permanent.	On merit
(8) Premises seeking extended trading hours may be permitted up to two additional operating hours per trial period if a previous trial period is considered by the Council to have been satisfactory, unless eligible for an additional one trial hour under sections 3.15.4 (16) and (17).	This application seeks a single additional hour beyond the hours currently approved.	Yes
(9) Trial periods may be permitted up to the following durations: (a) First trial – 1 year; (b) Second trial – 2 years; (c) Third and subsequent trials – 5 years.	This application seeks to make trading hours permanent due to the successful operation of the previous two trial periods.	On merit
(11) Applications for a renewal or extension of trial trading hours should be lodged 30 days prior to the expiry period and applicants will be allowed a period of 'grace' from the termination of the trial period until the new application has been determined. During this period, the premises may continue to trade during existing approved trial hours.	This application has been lodged prior to 21 May 2022 in accordance with the Condition F3 of SSD 7683	Yes
(12) If an application is not lodged 30 days prior to the expiry of the trial period, then approved trading hours will revert to base trading hours.	N/A as the proposal is SSD.	Yes
(13) A renewal or extension of trading hours that are subject to a trial period may only be permitted if Council is satisfied that a late night trading premises has demonstrated good management performance and compliance with a plan of management, following the completion of a satisfactory trial period.	The Applicant has demonstrated good management performance as the restaurant has received no complaints since 2019. The Applicant remains committed to adhering to the approved POM.	Yes
(14) When Council is assessing trial period applications, it will consider whether a venue has demonstrated good management performance, based on matters including but not limited to: (i) Whether the trial period hours have been utilised; (ii) the nature and extent of any substantiated non-compliances with development consent or liquor license conditions, particularly those relating to public safety and impacts on amenity;	As addressed above the venue has demonstrated good management performance. The trial period has been utilised by the venue 'The Squires Landing' and has contributed to the pedestrian activity and vibrancy of the surrounding area. No complaints have been received since 2019.	Yes

Provision	Comment	Complies
<p>(iii) responses to substantiated complaints , including complaints recorded on the venues complaints register;</p> <p>(iv) Compliance with the approved Plan of Management for the venue;</p> <p>(v) consideration of complaints to Council and the State licensing authority under the Liquor Act 2007;</p> <p>(vi) an assessment of inspections by Council Officers during trial periods; and</p> <p>(vii) consideration of any submission made by Police.</p>	<p>The Applicant has complied with the approved POM throughout the current trial period.</p> <p>The Applicant has received no complaints from NSW Police, the State licensing authority or Council.</p>	
<p>(15) If the Council determines that a trial period has been unsatisfactory then trading hours will revert to the base late night trading hours or whatever hours have been approved as the maximum trading hours prior to the commencement of this DCP. Council will consult with an applicant prior to making such a determination.</p>	<p>As detailed above the Applicant has demonstrated compliance with the approved POM and has appropriately managed the current trial hours of operation. The Applicant has received no complaints since 2019.</p>	Yes
3.15.5 Plan of management requirements		
<p>3.15.5.1 Preparation</p> <p>(1) A Plan of Management, prepared in accordance with the guidelines in Schedule 3 Late night trading, is required to accompany an application for the following late night trading premises:</p> <p>...</p> <p>(d) existing Category B premises that seek a renewal or extension of existing approved trading hours...</p>	<p>An updated POM is submitted with this application.</p>	Yes
<p>(2) Plans of Management must be assessed and approved concurrently with the application for an extension of trading hours.</p>	<p>The approved POM was assessed and approved under Condition F4 of SSD 7683.</p>	Yes
<p>(3) The operators of late night trading premises are required to review their Plan of Management following every trial period and make revisions necessary to maintain a level of amenity and safety in the vicinity of the premises which is at an acceptable community standard.</p>	<p>The approved POM has been reviewed and remains relevant to the modification. Modifications have been made to reflect the proposed hours of operation.</p>	Yes
<p>(4) Council may request that an applicant amend their Plan of Management to provide further information in addition to the minimum requirements listed in Schedule 3 Late Night Trading in their Plan of Management where it is considered necessary</p>	<p>Noted. The Applicant is committed to the continue appropriate management of the restaurant.</p>	Yes
<p>3.15.5.2 Monitoring and Review</p> <p>At the termination of a trial period, applicants should consider changes in the nature of the operation that have occurred</p>	<p>The approved POM remains relevant to the modification.</p>	Yes

Provision	Comment	Complies
<p>during the operation of a premises that have given rise to unforeseen impacts on the amenity of the area or have been the basis for a substantiated complaint made to Council or the State licensing authority against the premises.</p> <p>In reviewing a Plan of Management at the termination of a trial period, it will be necessary for this information. This should be in the form of a new Plan of Management which includes a statement of revisions of the previous Plan of Management, if any are required to accompany an application for a renewal or extension of trading hours so that Council can determine whether adequate steps have been taken to resolve any problems that may have arisen from the operation of the premises during a trial period.</p> <p>The Council will undertake its own review of the level of compliance with the Plan of Management and whether the current operation has been successful on any application to extend a trial period or on any review. The matters considered by Council will include, but not be limited to:</p> <ul style="list-style-type: none"> (i) consideration of complaints to Council and the State licensing authority under the Liquor Act 2007; (ii) an assessment of inspections by Council Officers during trial periods; and (iii) consideration of any submission made by Police. 	<p>No complaints have been received since 2019 and subsequently no changes relating to complaints are required to be made to the POM.</p>	

Table 2: Assessment against relevant provisions of the SDCP 2012

In summary, the minor departure from the DCP is justified for the following reasons:

- the proposal is SSD
- the site is located within a nightlife area being The Rocks/Circular Quay
- the site is far from any residential receivers and the venue will continue to not be audible from residential premises after midnight
- the applicant has demonstrated excellent management performance resulting in minimal complaints to date
- the hours sought are consistent with other venues within the locality including Cruise Bar, The Orient Hotel, 100 George Street and The Argyle
- many other higher-impact venues within the locality have late night trading hours until or past 2:00am on a permanent basis
- the modification is minor given it only results in a single additional hour beyond the current approval