



Hamptons Property Service Pty Ltd
Po Box 954
EDGECLIFF NSW 2027

D378/13
TH2 (CPE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 378/13/3 - APPROVAL**

Development Consent Number: 378/13

Land to which this applies: 1 Broughton Street, Kirribilli
Lot No.: 101, DP: 1227471

Applicant: Hamptons Property Service Pty Ltd

Proposal: Modification of DA 318/2013 to modify Condition I4 Bi-fold doors to permit the doors to be open in alignment with the indoor hours of operation permitted under DA 258/20.

Pursuant to Section 4.55 of the Act notice is hereby given of the determination by the consent authority of your request for a modification to Development Consent No. **378/13** and registered in Council's records as Application No. **378/13/3** relating to the land described as **1 Broughton Street, Kirribilli**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **24 December 2013**, has been determined in the following manner:

A. Amend Condition I4 to read as follows:

Bi-fold doors - Modification 378/13/3

14. Subject to the trial period outlined in condition I22 the bi-fold doors at the front of the restaurant must be closed by **10.00 pm** Sun to Wednesday and **11.00 pm** Thursday to Saturday.

In the event that no modification application is lodged to extend or make permanent the trial period hours or an application is not approved for the bi-fold doors, then the bi-fold doors at the front of the restaurant must be closed by 8.00 pm every day of the week.

(Reason: To ensure that the amenity of the surrounding locality is maintained)

B. Add Condition I22 as follows:

Bi-fold doors - 12-month trial period

122. Notwithstanding Condition I4 Bi-fold doors in Development Consent No. 378/13 amended under Modification No. 378/13/2 the bifold doors may be openable between the following hours:

Sunday - Wednesday	7.00 am - 10.00 pm
Thursday - Saturday	7.00 am - 11.00 pm

Council must be informed in writing of the date of commencing the trial period.

In order for the above trial hours of operation to be confirmed as ongoing, a modification application must be lodged with Council prior to the expiration of the trial period. The assessment of the application to continue the use in accordance with the trial, will consider amongst other things, the impact of the use on surrounding areas the performance of the operation in relation to compliance with development consent conditions.

In the event that no modification application is lodged, or an application is not approved, then the bi-fold doors at the front of the restaurant must be closed by 8pm every day of the week as per Condition I4 identified by this consent.

Note: Any person acting on this consent is advised that any modification application to the trial hours of operation period should be submitted to Council a minimum of thirty (30) days prior to the expiration of the trial period otherwise the trial period must lapse.

(Reason: To ensure safety and security and protect the amenity of surrounding areas)

The proposed modifications are considered to be generally consistent with the originally approved development application and s.4.55 of the EP&A Act 1979. The proposed modifications are consistent with the reasons for the grant of development consent to the originally approved development and is considered to be acceptable.

The restaurant is considered to remain consistent with the objectives of the zone and the controls in the character statement for the Kirribilli Village Centre.

Reasons for Approval:

A twelve-month trial period is required which provides an opportunity to gauge the potential impact of the proposed extension to opening hours of the bi-fold doors and whether the opening of the bi-fold doors will not adversely impact upon the amenity of adjacent residential properties.

Having regard to the provisions of section 4.55 and 4.15(1) of *the Environmental Planning and Assessment Act 1979*, the proposed development as modified is substantially the same development as originally consented to. The application is, therefore, recommended for approval.

How community views were taken into account:

The application was notified to adjoining properties and the Bradfield / Lavender Bay Precinct for 14 days. Comments received following the notification have been considered and addressed in the assessment report and a trial period is recommended for the bifold doors to monitor noise and acoustic impact to surrounding residential areas.

The conditions attached to the original consent for Development Application No. **378/13** by endorsed date of **24 December 2013** still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact **Mr Thomas Holman**. However, if you wish to pursue your rights of appeal in the Land and Environmental Court pursuant to Section 8.7 of *the Environmental Planning and Assessment Act 1979* (as amended), you are advised that Council generally seeks resolution of such appeals through a Section 34 Conference, instead of a full Court hearing, subject to any further advice to the contrary from Council's Solicitors and senior staff. Such an approach is less adversarial, it achieves a quicker decision than would be the case through a Court hearing and it can give rise to considerable cost and time savings for all parties involved.
- (b) Pursuant to Section 8.2, an applicant is able to request Council to review its determination. An application for a review under Section 8.2 of the Act must be made no later than 28 days after the date on which the application for the modification of the development consent was determined.
- (c) Prior to commencing any building, subdivision or associated constructions works, the following provisions of *the Environmental Planning and Assessment Act 1979* (the 'Act') are to be complied with:
 - (i) A Construction Certificate is to be obtained in accordance with Section 6.3 of the Act.
 - (ii) A Principal Certifier is to be appointed and Council is to be notified of the appointment in accordance with Section 6.6 of the Act.
 - (iii) Council is to be notified at least two (2) days of the intention to commence building works, in accordance with Section 6.6(2)(a) of the Act.
- (d) You are advised that changes to the external configuration of the building, changes to the site layout, density and unit configuration internal changes to the proposed building or any changes to the proposed operation of a use **MAY** require the submission of a further modification under Section 4.55 of *the Environmental Planning and Assessment Act, 1979* (as amended).

Council staff would be pleased to assist in identifying such changes which may require the submission of a modification of a Development Application under Section 4.55 of *the Environmental Planning and Assessment Act*.

Endorsed for and on behalf of North Sydney Council

22 March 2024

DATE

Thomas Holman

Signature on behalf of consent authority
THOMAS HOLMAN
SENIOR ASSESSMENT OFFICER