

Original signed by: Robyn Pearson Dated: 9/10/2018

Development Consent No. 432/13

Section 4.55 Application

Applicant's Name

Pierre Loti Pty Limited

Land to which this applies

392 Military Road, Cremorne
Lot No. B, DP: 439725

394 Military Road, Cremorne
Lot No. A, DP 417890

Proposal

Section 4.55 (2) modification to DA 432/13 to amend opening hours and increase patrons in outdoor seating area.

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. **432/13** and registered in Council's records as Application No. **432/13/3** relating to the land described as **392-394 Military Road, Cremorne**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 27 March 2014, has been determined in the following manner:

- To modify the development consent (D432/13) and modify condition A1 to include the revised plan:*

Development in Accordance with Plans (S 4.55 Amendments)

A1. The development shall be carried out in accordance with the following drawings:

Plan No.	Title	Drawn by	Dated
AA50_13_DA01	Site Plan	SbH Planning	03.12.13
AA50_13_DA02	Floor Plans	SbH Planning	03.12.13
AA50_13_DA03	Street Elevation	SbH Planning	03.12.13

and endorsed with Council's approval stamp, except as modified by the area clouded in red and on the new drawing for D432/13/3 as listed below:

Untitled floorplan drawing received by Council on 2 August 2018

The subject outdoor dining area shall operate in strict accordance with the revised hours of operation and increased capacity as listed in the following conditions. The cafe shall also continue to operate in strict accordance with all other conditions attached to the previous approval (Ref. DA. 432/13) which permitted the outdoor dining area, except as modified by new and altered conditions listed below.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

2. To insert new conditions (A4, I18, I19, I20, and I21) as follows:

Terms of Consent

A4. Approval is granted for the following works as shown on drawing listed in Condition A1 above:

(a) Additional seating in the outdoor dining area to accommodate 24 patrons.

Approval is also granted for the following hours of operation not shown on the drawing listed in Condition A1 above:

(b) Hours of operation:

Monday – Sunday: 8am until 8pm, with extended opening hours until 10pm as a 12-month trial period.

No approval is given or implied in this consent for any other works, both internal and external, within the subject property.

(Reason: To ensure the terms of the consent are clear.)

Hours of Operation – trial period

I18. Notwithstanding modified Condition I1 below, the approved use may operate between 8am and 10pm every day (Monday – Sunday) for a trial period of 12 months from the date of this consent. 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 hours of operation for the premises must revert to the standard hours of operation 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).

Outdoor Lighting

I19. All outdoor lighting 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.

(Reason: To maintain the amenity of adjoining land uses).

Large Tables

I20. The number of patrons sitting at one table within the outdoor dining area shall be restricted to no more than six (6).

(Reason: To maintain the amenity of adjoining land uses).

Noise and Vibration Impact (Compliance)

I21. Within 60 days of the date of this decision notice, further acoustic testing must be undertaken and a report from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, prepared to demonstrate that the use of the premises complies with the conditions of this consent and/or the Acoustic Report prepared by Acoustic Logic, dated 13/09/2018.

The testing must be carried out when the premises is operating at full capacity. A copy of the report must be submitted to Council within 14 days of its completion. If the use is found not to comply with the noise conditions, the use must cease immediately until appropriate measures to remedy the breach are implemented to the satisfaction of Council.

(Reason: To ensure compliance with acceptable noise levels to maintain the amenity of adjoining land uses)

3. *To modify conditions C7, I1, I10, I12, and I13 as follows:*

Compliance with Acoustic Report

- C7. The recommendations contained in the acoustic report prepared by Acoustic Logic dated 21/01/2014, as well as the acoustic report prepared by Acoustic Logic dated 13/09/2018 must be implemented during construction and use of the development but with no background music in the outdoor dining area (see Condition I4 attached to DA432/13).

A statement from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, certifying that the acoustic mitigation measures outlined in the above stated report have been suitably incorporated into the development and that relevant noise criteria have been satisfied, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

Hours of Operation

- I1. The hours of operation are restricted to:

No.392 Military Road

Outdoor Dining Area

Monday to Sunday 8am – 8pm

No.394 Military Road

Small Bar - Ground Floor

Sunday 10am – 11pm

Monday to Wednesday 9am – 11pm

Thursday to Saturday 9am – 12am (midnight)

First Floor

Retail shop

Monday to Wednesday & Friday 10am – 5pm

Thursday 10am – 9pm

Saturday & Sunday 10:30am – 4pm

Barber shop

Monday to Wednesday 11am – 5pm

Thursday & Friday 10am – 7:30pm

Saturday & Sunday 10am – 8pm

Upon expiry of the permitted hours, all services shall immediately cease, no person shall be permitted entry and all customers on the premises shall be required to leave within the following half hour.

All tables, chairs and associated furniture within the outdoor dining area must be vacated and packed away prior to the expiration of the permitted hours for the outdoor dining area.

(Reason: To ensure that amenity of the surrounding locality is maintained and hours of operation are consistent with those in surrounding locality).

Maximum Capacity

I10. The maximum number of patrons allowed by this consent is as follows:

- (a) No.392 Military Road – Outdoor Dining Area: 24 Patrons
- (b) No.394 Military Road – Ground Floor Bar: 45 Patrons plus 7 employees

A notice must be displayed at all times in the front window of the premises (or any other clearly visible place) identifying the maximum capacity described in (b) above.

(Reason: Protection of residential amenity, provision of public information, and to assist in assessing ongoing compliance).

No Alcohol outside the premises

I12. No patrons of the bar or licenced cafe are permitted to take alcohol onto the footpath adjacent to Military Road or Parraween Road.

(Reason: In the interests of safety and residential amenity)

Plan of Management

I13. The Plan of Management (Prepared by Plainpage Pty Ltd, Revision A, dated 30 October 2013) shall be updated as required in accordance with the terms of this consent, and a copy shall be provided to Council within 40 days of the decision date of this application. The updated Plan of Management shall then be complied with at all times:-

Section Number	Management Issue
1.4	Waste Management
1.5	Noise
1.6	On-site Security
1.7	Amenity
1.8	Patron Management
1.9	Sidecar Bar Liquor House Policy
1.10	Armed Robbery
1.11	Theft

(Reason: To ensure proper management)

Reason for approval

The development application has been assessed against all applicable environmental planning instruments and was found to be generally satisfactory, including in relation to the North Sydney LEP 2013 and North Sydney DCP 2013.

The proposed hours of operation of 7am until 11pm (Monday – Friday) and 8am – 10pm (Saturday and Sunday), are excessive given the close proximity of the site to residential properties, and considering also the proposed increase in the number of patrons by six within the outdoor seating area. It is therefore proposed to restrict the hours of operation of the outdoor seating area to 8am till 8pm seven days a week, with a later closing time of 10pm being allowed on a trial basis for 12 months. Upon the expiry of the trial period, Council will assess a further application for permanent trading hours until 10pm for the outdoor dining area, or the hours of operation shall revert to 8am – 8pm seven days a week.

This application for extended opening hours and additional capacity within the outdoor seating area proposes no physical works, and therefore there will be a negligible impact on the streetscape and character of the site and surrounds. Conditions are proposed to minimise impacts on nearby residential properties.

Having regard to the provisions of Section 4.15 of the EP&A Act 1979 the application is considered to be satisfactory and therefore can be approved.

How were community views taken into account in making the decision

The proposal was notified and advertised in accordance with Part A, Section 4 *Notification of Applications* of North Sydney DCP 2013. Three submissions against the application were received following this notification, with the neighbour amenity being the key issue raised. The submissions have been carefully considered within the assessment of this application, with conditions being recommended where appropriate to address the issues raised by the community.

The conditions attached to the original consent for Development Application No. 432/13/3 by endorsed date of 27 March 2014 still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **Lisa Kamali**. 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. The use of the Section 34 Conference approach requires the appellant to agree, in advance and in writing, that the Court appointed assessor will be given the full authority to completely determine the matter at the conference.

- (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 Certifying Authority 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 & 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 & Assessment Act.

DATE

Signature on behalf of consent authority
ROBYN PEARSON
TEAM LEADER (ASSESSMENTS)