

Development Consent No. 410/16

Section 4.55 Application

Applicant's Name

Rengaya 1993 Pty Ltd, C/- Giant Design Consultants

Land to which this applies

Shop 1, 101-103 Miller Street, North Sydney
Lot No.: 1, DP: 814292

Proposal

Increase in no. patrons to 134, changes to fitout, signage and opening hours.

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. **410/16** and registered in Council's records as Application No. **410/16/4** relating to the land described as **Shop 1, 101-103 Miller Street, North Sydney**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 28 April 2017, has been determined in the following manner:

- To delete conditions A1 of the consent and insert in lieu thereof the following new condition, namely:*

Development in Accordance with Plans/documentation

- A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Plan No.	Issue	Date	Title	Drawn by	Received
0101	A	09.11.2018	Layout Plan	Giant Design	19.11.2018
0102	A	09.11.2018	Reflected Ceiling Plan	Giant Design	19.11.2018
0201	A	09.11.2018	Shopfront Elevations	Giant Design	19.11.2018
0202	A	09.11.2018	Section A & B	Giant Design	19.11.2018
0304	B	21.12.2018	Shopfront 4/7 (Details)	Giant Design	14.01.2018

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

2. To insert the following new condition, namely:

- A8. The internal 32mm x 65mm vertical battens and semi-circle façade treatment as shown on *Drawing No. 0304, named Shopfront 4/7, dated 21.12.2018* are to be deleted for the portion between 1m and 2.6m above the finished floor level.

Plans and specifications which comply with this condition shall be submitted to the Certifying Authority for approval prior to the issue of a Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on, and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure sufficient passive surveillance is provided into and from the restaurant based on the recommendation of the NSW Police Force.)

3. To amend condition A4 of the consent as follows (The reference to plans has been deleted as the amended plans now referenced in A1 no longer show any works in this area):

No Consent granted to External Building Works to Fire Gate

- A4. No consent is given or implied for any external building works to the existing fire gate. Any such works shall be the subject of separate development applications.

(Reason: To ensure that the heritage significance of this site is not adversely affected and an appropriate streetscape treatment is maintained)

4. To amend condition A5 of the consent as follows (The reference to plans has been deleted as the amended plans now referenced in A1 no longer show any works in this area):

No Consent granted for External Seating

- A5. No consent is given or implied for any external seating or works to facilitate seating on the podium area to the east and south of the subject tenancy, and no outdoor dining is approved. Any such works shall be the subject of separate development applications.

(Reason: To ensure that the existing fire egress routes are maintained)

5. To delete condition A6 of the consent.

6. To delete condition C7 of the consent.

7. To amend condition I4 Hours of operation as follows:

Hours of Operation

- I3. The hours of operation are restricted to:

12.00pm until 12.00am (Midnight) Monday to Friday and,
5.30pm until 12.00am (Midnight) Saturday and Sunday

Upon expiry of the permitted hours:

- (a) all restaurant service (and entertainment) must immediately cease;
- (b) no person shall be permitted entry; and
- (c) all customers on the premises must be required to leave within the following half hour.

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

8. To delete conditions I14 of the consent and insert in lieu thereof the following new condition, namely:

Maximum Capacity – Premises and Footpath Seating

I14. The maximum number of patrons allowed by this consent is 134 persons/seats.

- a) the maximum number of patrons within the premises allowed by this consent is 134 persons/seats.

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 (a) above.

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

9. To insert the following new conditions, namely:

Signage Illumination Intensity

I15. The signage must be installed and used at all times in accordance with AS 4282-1997 *Control of Obtrusive Effects of Outdoor Lighting* and must be restricted in accordance with the following:

- (a) at no time is the intensity and period of intermittency of the sign to cause objectionable glare or injury to the amenity of the neighbourhood;
- (b) the level of illumination and/or lighting intensity used to illuminate the signage must not cause excessive light spill or nuisance to any nearby residential premises; and
- (c) the signage illumination must not flash.

(Reason: To ensure appropriate forms of signage that are consistent with Council's controls and those that are desired for the locality, and do not interfere with amenity of nearby properties)

Hours of Illumination

I16. The signage indicated on the western elevation - Drawing number 0201A may be illuminated during to following hours:

- 7.00am to Midnight - Monday to Thursday
- 7.00am to Midnight - Friday and Saturday

Illumination must cease at all other times.

(Reason: To ensure appropriate forms of signage that are consistent with Council's controls.

Reason for approval

The matters for consideration in sections 4.55(2) and 4.15(1) of the Act have been satisfied in the assessment of the proposed modification. The modifications are considered substantially the same. The operation of the restaurant is permissible and meets the objectives of the zone as specified within the NSLEP 2013. The extension to the trading hours are consistent with the late night trading hours specified for the CBD area. Nevertheless, conditions of consent have been imposed to preserve the amenity of other land uses.

How were community views taken into account in making the decision

The application to modify development consent DA410/2016 was notified in accordance with the North Sydney Development Control Plan 2013 although no submissions were received.

The conditions attached to the original consent for Development Application No. 410/16 by endorsed date of 28 April 2017 still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **Michael Stephens**. 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)