



Applejack North Sydney Pty Ltd  
C/- David Rippingill  
Suite 304/105 Pitt Street  
SYDNEY NSW 2000

D91/20/2  
RW (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION D91/20/2 - APPROVAL**

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**Development Consent Number:** D91/20/2

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**Land to which this applies:** 99 Mount Street, North Sydney  
Lot No.: 112 DP: 632759

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**Applicant:** Applejack North Sydney Pty Ltd

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**Proposal:** To modify a consent DA91/20/1 to delete Condition I4 to permit entertainment at the licensed food and drink premises

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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. **D91/20** and registered in Council's records as Application No. **D91/20/2** relating to the land described as **99 Mount Street, North Sydney**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **17 August 2020**, has been determined in the following manner:

**A. Delete Condition I4 as follows:**

**No Entertainment**

~~I4. This approval is for a food and drink premises only and does not authorise musical or other forms of entertainment. A separate development consent is required for any proposed entertainment.~~

~~{Reason: Clarification of terms of this consent and ensure compliance with relevant legislation}~~

**A. Add Conditions I13 - I16 as follows:**

**Maximum Noise Levels from Music/Entertainment Use**

- I13. Any ambient music should be limited to no more than 75 dB(A) at one metre from any speaker. The amplified music equipment be fitted with noise limiters to prevent this noise level from being exceeded.

(Reason: To ensure patrons do not interfere with the acoustic amenity of residents in the immediate locality)

**Tenancy 10**

- I14. Any access to Tenancy 10 during full capacity must be limited to one, not two access points.

(Reason: To ensure patrons do not interfere with the acoustic amenity of residents in the immediate locality)

**Tenancy 11**

- I15. During full capacity and between 12.00 pm and 2.00 pm, Tenancy 11, must have only half of the western opening open.

(Reason: To ensure patrons do not interfere with the acoustic amenity of residents in the immediate locality)

**Noise Control - Trial Period (12 months) for Entertainment Use**

- I16. The provision of musical or any other form of entertainment is subject to a trial period of 12 months from the date of issue of the first Occupation Certificate, being interim or otherwise. Council must be informed in writing of the date of commencing the trial period.

In order for the above trial operations 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 entertainment use in accordance with the trial, will consider amongst other things, the impact of the operations on surrounding areas and 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 provision of musical or any other form of entertainment for the premises must cease completely and no entertainment (of any form) will be permitted at any time within the premises.

Note: Any person acting on this consent is advised that any modification application to the trial operations 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.

In the event that noise complaints are received and substantiated, the use of any amplified sound equipment must cease until such time as a satisfactory solution is in place to address the noise issue.

(Reason: Residential amenity)

**Reasons for Approval:**

The proposal involves deletion of Condition I4 to permit entertainment within the licensed premises. The proposed modification will result in development that is substantially and materially the same as approved by DA91/20.

The merits of the proposed modification and an assessment of this modification against relevant provisions and controls under environmental planning instruments (including the NSLEP 2013) have been described and detailed throughout this report. In summary, the proposed modification is considered acceptable and supportable, satisfying the above requirements and the provisions under Section 4.55 of *the Environmental Planning and Assessment Act 1979*. As such, having regard to the provisions of section 4.55 and 4.15(1a) of the Environmental Planning and Assessment Act 1979, the proposed development as modified is recommended for approval.

Accordingly, it is recommended that the following conditions are deleted/included in the modified consent:

- Deletion of Condition I4;
- Add Condition I13 in relation to maximum noise levels from music/entertainment use;
- Add Condition I14 in relation to limiting access points in Tenancy 10;
- Add Condition I15 to restrict opening in Tenancy 11; and
- Add Condition I16 to impose a trial period for music/entertainment use within premises.

**How community views were taken into account:**

The application was notified to neighbouring properties and the CBD Precinct for 14 days from 8 July to 22 July 2022 in accordance with Council's Community Participation Plan. No submissions were received during this period.

The conditions attached to the original consent for Development Application No. **91/20** by endorsed date of **17 August 2020** still apply.

**ADVISINGS**

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



**29 September 2022**

DATE

Signature on behalf of consent authority  
MIGUEL RIVERA  
**A/TEAM LEADER (ASSESSMENTS)**