



The Trustee for Etymon Projects Trust
L37 Australia Square
264 George Street
SYDNEY NSW 2000

D20/22
DK4 (CPE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 20/22/2 - APPROVAL**

Development Consent Number: 20/22

Land to which this applies: 168 Walker Street North Sydney
Lot No.: 100, DP: 1172241

Applicant: The Trustee for Etymon Projects Trust

Proposal: Modification involving minor design changes to the four food and drink premises and changes to operational matters

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. **20/22** and registered in Council's records as Application No. **20/22/2** relating to the land described as **168 Walker Street North Sydney**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **8 November 2022**, has been determined in the following manner:

To amend Condition A1 with the following:

- 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/ Rev	Description	Prepared by	Dated
DA1-00000	08	Cover Sheet	H & E Architects	18/04/2023
DA1-01100	08	General Arrangement - Upper Ground	H & E Architects	18/04/2023
DA1-01101	08	General Arrangement - Lower Ground	H & E Architects	18/04/2023
DA1-01102	08	General Arrangement - B02	H & E Architects	18/04/2023
DA1-01103	08	General Arrangement - UG - R4 Japanese Restaurant	H & E Architects	18/04/2023
DA1-01104	08	General Arrangement - UG - R3 All Day Diner	H & E Architects	18/04/2023

DA1-01105	08	General Arrangement - LG - R2 Cafe Wine Bar + Providore	H & E Architects	18/04/2023
DA1-03100	08	Elevations - Proposed	H & E Architects	18/04/2023
DA1-03101	08	Elevations - Proposed	H & E Architects	18/04/2023
DA1-03102	08	Elevations - Proposed	H & E Architects	18/04/2023
DA1-03103	08	Elevations - Proposed	H & E Architects	18/04/2023
DA1-07300	07	Detail - Exterior Shade Structure - Japanese Restaurant	H & E Architects	18/04/2023

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

To amend condition I2 as follows:

Hours of Operation - Trial Period

I2. Notwithstanding **Condition I1** above the approved use may operate between:

Japanese Restaurant: 11.00 am to 12.00 am, 7 days per week
Bakery/Wine Bar: 7.00 am to 12.00 am, 7 days per week
Providore: 7.00 am to 10.00 pm, 7 days per week
All Day Diner: 6.00 am to 12.00 am, 7 days per week

for a trial period of **24 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 hours of operation to be confirmed as ongoing, a modification application must be lodged with Council prior to the expiration of the trial period, for each food and drink/retail premise. 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 ninety (90) days prior to the expiration of the trial period in order to avoid the trial period lapsing.

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

To provide the additional conditions:

I14. An appropriate operating and maintenance plan and service register shall be implemented to ensure the mechanical exhaust system is operated and maintained in accordance with manufacturers requirements and thus ensure optimum treatment performance at all times.

(Reason: To maintain the amenity of surrounding land uses)

I15. Use of the mechanical exhaust system must not give rise to offensive odour or air pollution within the meaning of the *Protection of the Environment Operations Act 1997*.

(Reason: To maintain the amenity of surrounding land uses)

Reasons for Approval:

The proposed modification is generally consistent with the originally approved development application and s.4.55 of the EP&A Act 1979. Furthermore, the modifications does not result in any material amenity impact to adjoining properties or the surrounding area. The proposed modification is consistent with the reasons for the granted of development consent to the originally approved development and is considered to be acceptable.

Having regard to the provisions of section 4.15(1A) 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 subject application was notified to adjoining properties inviting comment between 21 July 2023 to 4 August 2023. Two (2) submissions were received in relation to the application.

The matters raised in the submissions have been addressed elsewhere in this report.

The conditions attached to the original consent for Development Application No. **20/22** by endorsed date of **8 November 2022** still apply.

ADVISINGS

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

10 October 2023

DATE



Signature on behalf of consent authority
DAMON KENNY
EXECUTIVE PLANNER (ASSESSMENTS)