

IDAP REPORT – SECTION 4.55(1A) MODIFICATION

Property:	25/45-47 The Boulevard STRATHFIELD DA 2004/136/2
Proposal:	Section 4.55(1A) modification application to increase the hours of operation of an existing restaurant from 5.00 AM to 1.00 AM the following day (Monday to Sunday).
Applicant:	Jkl Design
Owner:	Langford Properties Pty Ltd
Date of lodgement:	17 November 2020
Notification period:	25 November 2020 to 09 December 2020
Submissions received:	None
Assessment officer:	P Santos
Estimated cost of works:	\$24,000.00
Zoning:	B4-Mixed Use - SLEP 2012
Heritage:	No
Flood affected:	No
RECOMMENDATION OF OFFICER:	APPROVAL

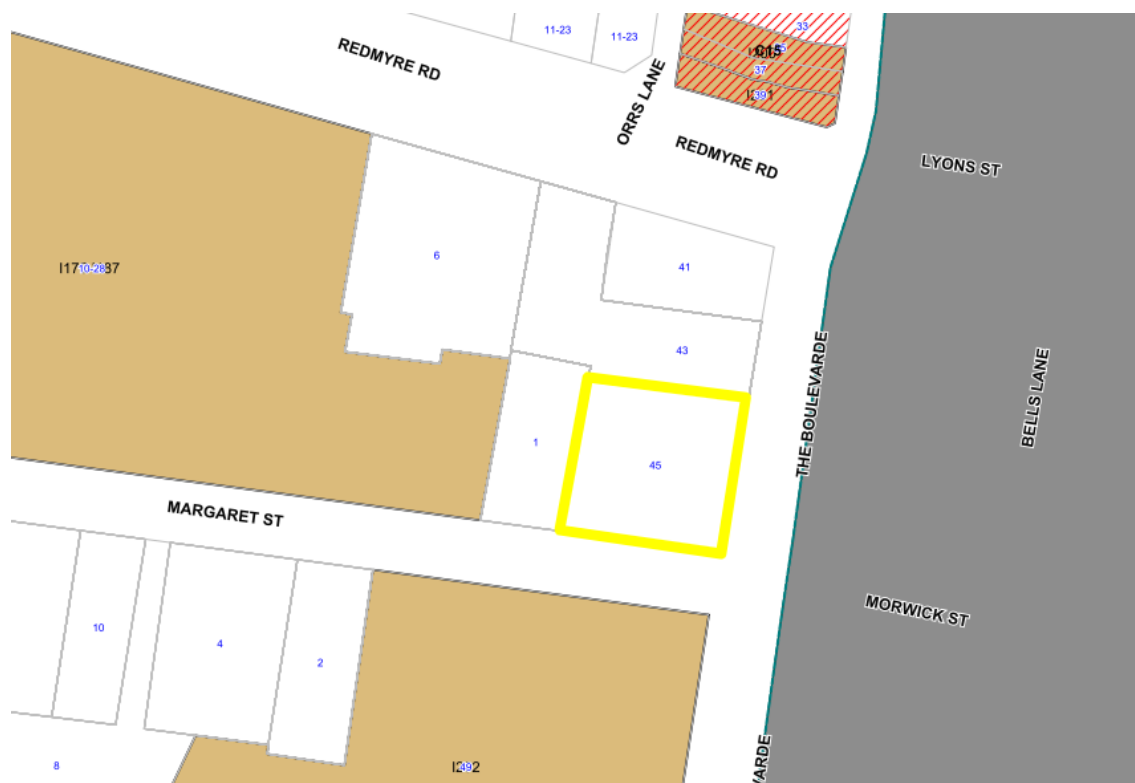


Figure 1. Locality plan of the lot (outlined in yellow) that contains the subject site and the immediate locality.

EXECUTIVE SUMMARY

Proposal

Development consent is being sought for the Section 4.55(1A) modification application to increase the hours of operation of an existing restaurant from 5.00 AM to 1.00 AM the following day (Monday to Sunday).

Site and Locality

The site is identified as 25/45-47 The Boulevarde, Strathfield and has a legal description of Lot 29 SP 82778. It is a ground level commercial establishment underneath levels of residential accommodation within a multi-storey building. The property is a square-shaped parcel of land and is located at the north western corner of The Boulevarde and Margaret Street.

The locality surrounding the subject site is comprised of mixed-use developments ranging from commercial premises to residential accommodation, to educational establishments.

Strathfield Local Environmental Plan

The site is zoned B4 - Mixed Use under the provisions of Strathfield LEP 2012 and the proposal is a permissible form of development with Council's consent. The proposal satisfies all relevant objectives contained within the LEP.

Development Control Plan

The proposed development generally satisfies the provisions of Strathfield Consolidated DCP 2005. This is discussed in more detail in the body of the report.

Notification

The application was notified in accordance with Council's Community Participation Plan from 25 November 2020 to 09 December 2020, where no submissions were received.

Issues

- Current trading hours;
- Proposed trading hours; and
- Floor plan.

Conclusion

Having regards to the heads of consideration under Section 4.15 of *the Environmental Planning & Assessment Act 1979*, Development Application 2004/136/2 is recommended for approval subject to suitable conditions of consent, as modified.

REPORT IN FULL

Proposal

Council has received an application for a Section 4.55(1A) modification application to increase the hours of operation of an existing restaurant to 5.00 AM to 1.00 AM the following day (Monday to Sunday).

The provided Statement of Environmental Effects indicated that the existing trading hours of the restaurant is 5.00 AM to 12.00 AM, Monday to Sunday. The restaurant will be operated by two full-time employees and two part-time. The SEE also referenced DA0405/136 as the approval that had given consent to the operation of the restaurant.

DA0405/136 was approved for the purpose of *'fit out of the vacant premises for the use as a restaurant'* on 31 August 2005, with the condition *"The days and hours of operation shall be restricted to Monday to Saturday, 11am to 10pm"*.

The Site and Locality

The subject site is legally described as Lot 29 SP 82778 and commonly known as 25/45-47 The Boulevarde, Strathfield. It is located at the corner of The Boulevarde and Margaret Street.

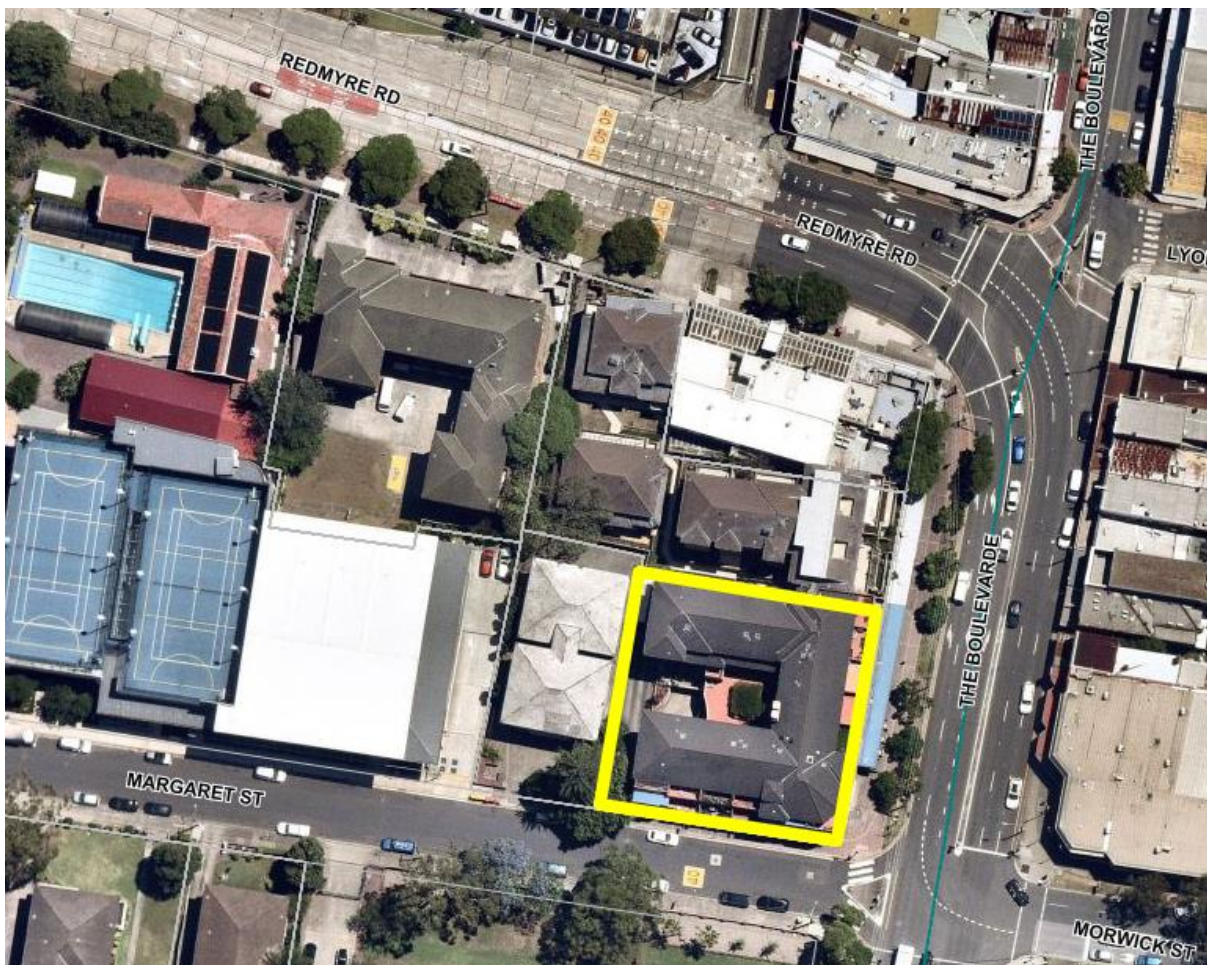


Figure 2. Aerial imagery of the lot (outlined) where the subject site is located with the immediate locality.

The site is currently occupied by a mixed-use building comprised of commercial establishments on the ground level and residential accommodation on the succeeding upper levels. Vehicular access to the building is via Margaret Street.



Figure 3. South-eastern corner elevation of the building in 45-47 The Boulevard, with the subject site located on the ground level.



Figure 4. Southern elevation of the building within 45-47 The Boulevard, facing Margaret Street.



Figure 5. Eastern elevation of the building within 45-47 The Boulevard, facing The Boulevard.



Figure 6. The subject site

The current noticeable streetscape that runs along The Boulevard, from its intersection with Margaret Street to Strathfield Square, is characterised by buildings that have at least two levels with the ground floor occupied by commercial premises.

The surrounding area is at the edge of a commercial precinct, immediately adjoining a medium residential zone and is generally characterised by mixed-use developments and educational establishments. Strathfield Railway Station is located approximately 270mm to the north, Meriden School and Santa Sabina College are both less than 100mm from the site.



Figure 7. Adjacent restaurants to the north of the subject site



Figure 8. Hanyang Galbi Restaurant - Unit 26, 45-47 The Boulevard and Jo Gum Ja Restaurant, further north from the site – Unit 27, 45-47 The Boulevard



Figure 9. Cokco Restaurant – Unit 28, 45-47 The Boulevarde



Figure 10. Mary Bailey House, south of the site, directly across Margaret Street



Figure 11. Commercial premises opposite the subject site, across The Boulevard, part of the Burwood LGA

Background

31 August 2005	DA0405/136 was approved for the purpose of <i>'fit out of the vacant premises for the use as a restaurant'</i> .
17 November 2020	A modification application (DA2004/136/2) was lodged.
25 November 2020	The current application was publicly exhibited until 09 December 2020, where no submissions were received.
02 December 2020	A site visit was undertaken by Council's Planner.
04 December 2020	An additional information letter was sent to the applicant, raising the following concerns: <ul style="list-style-type: none"> Any consent that proves the identified approved trading hours in the submitted SEE and Plan of Management is lawful; Justification on why extension of operating hours to 1.00 AM is being sought; Any consent that proves the provided floor plan is lawful.
18 December 2020	A letter was uploaded by the applicant on the NSW Planning Portal responding to the additional information request. The letter states: <ul style="list-style-type: none"> <i>"The Lot & SP number I am working on is Lot 25 SP 68203, not Lot 25 in SP 82778"</i>

- *“Please check the Lot & SP number you are dealing with for this application before we provide additional information for further process.”*
- *“The reason the restaurant manager seeks extension of trading hours is that most adjacent restaurants open until 1 am. This shorter trading hours results a financial difficulties to the restaurant manager.”*

21 December 2020	Council’s Planner responded to the letter via the NSW Planning Portal, and clarified that the first additional information request letter is still applicable.
21 December 2020	<p>The applicant has responded on the same day, stating the following:</p> <ul style="list-style-type: none"> • <i>“According to the liquor licence trading hours trading hours is from 10 am to 12 am. Monday to Sunday. As you may know already all the liquor licence are based on the trading hours described in the DA approvals.”</i> • <i>“With the floor plan we might be looking at different DA approval since your Lot & SP number is different with what I provided as I lodged the DA.”</i> • <i>“Also an outdoor dining area permit was lodged last year and approved under the same address – please refer to outdoor dining permit application.”</i>
23 December 2020	<p>Council’s Planner responded via email, and mentioned the following:</p> <ul style="list-style-type: none"> • <i>“The liquor licence and the development consent are two different matters. For the purpose of the operating hours of the restaurant, which in this application you are seeking to extend until 1.00 AM the following day, we will use the approved hours in the most recent development consent – DA0405/136.”</i> • <i>“there may be some sort of strata subdivision that happened after this approval. That is why the current Lot and DP numbers are not the same anymore. However, this does not remove that fact that the most recent approval in Council’s records applies to the subject shop...”</i>
31 December 2020	The applicant replied via email stating similar message regarding the relationship of liquor licence and approval.
15 January 2021	The application was deferred by Council’s Internal Development Assessment Panel to enable expanded investigation and comparative analysis of neighbouring shops’ hours of operation.

Referrals – Internal and External

Building and Compliance

The application was referred to Council's Senior Building Surveyor/Compliance Officer, who provided the following comments:

"The current annual fire safety statement does not include all of the fire safety items listed on the 2010 Annual Fire Safety Statement which means that the building fire safety systems have not been fully assessed."

"The floor plan is different to the previously approved plan so it needs to be ascertained what is currently constructed and if there will be any modifications to the existing."

A detailed assessment regarding the inconsistent floor plan is in the assessment section of this report.

Waste

The application was referred to Council's Environmental Project Officer – Waste, who provided the following comments:

"On page 2 of file "DA2004.136.2 – SEE – Unit 25 45-47 The Boulevard Strathfield.pdf" – Daily waste will be collected by a commercial contractor.

I think they should include that:

"Commercial contractor must be licensed for waste collection and must collect bins from inside the property, never leaving waste bins on footpath or kerbside, regardless of them being empty or full. Business must have a waste management plan and trade waste agreement evidence ready to be presented in case of inspection. Waste management must comply with Council's guidelines."

Should the application be supported, appropriate condition of consent will be imposed in relation to waste, taking into consideration the comments from Council's Environmental Project Officer – Waste.

Health

The application was referred to Council's Health Officer, who provided the following comments:

"Many of the surrounding restaurants have approval to operate to a maximum of 11.30 PM (DA0304/271/1), as sighted from other DAs submitted through Council, and others a maximum of 9pm."

"The applicant has not stated why they wish to extend trading hours of the restaurant. The current trading hours seem more than adequate for the operation of the business."

"This shopping district should have consistent hours of operation. If one shop wishes to trade to 1am, then most other restaurants may also apply for extended trading hours."

"Assuming that there may be a cumulative outcome of other shops extending their trading hours, several acoustic issues may arise for the residential apartments above."

“RECOMMENDATION

- *Explanation of why the applicant wishes to extend the already adequate trading hours has not been addressed.*
- *Inconsistent trading hours across neighbouring food business.”*

The applicant’s reasoning behind the intention to extend the restaurant’s trading hours was provided to Council on 18 December 2020 as a response to Council’s additional information request letter. The applicant’s response states “...*most adjacent restaurants open until 1.00 AM. This shorter trading hours results a financial difficulties to the restaurant manager*”. However, Council’s records indicate that trading hours of the neighbouring shops differ from what was stated in the letter from the applicant. This is discussed in more detail in the assessment section of this report.

Heritage

The application was referred to Council’s Heritage Advisor. To date, no response was received. However, the proposal in this application involves the extension of trading hours only. The site was approved to be used as a restaurant with an approval in 2005 (DA0405/136). No extension of the footprint or change to the external of the building forms part of this application. As such, the application may be determined without the comments from Council’s Heritage Advisor.

Section 4.55 of the EP&A Act 1979

The application has been lodged under the provisions of s4.55(1A) of the EPA Act. The application is considered to be of minor environmental impact, is substantially the same development for which consent was originally granted, has been notified in accordance with the provisions of Council’s CPP and any submissions made will be considered as part of this assessment.

Section 4.15 Assessment – EP&A Act 1979

The following is an assessment of the application with regard to Section 4.15 (1) of the Environmental Planning and Assessment Act 1979.

(1) *Matters for consideration – general*

In determining an application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

- (a) *the provision of:***
- (i) *any environmental planning instrument,***

Strathfield Local Environmental Plan

The development site is subject to the Strathfield Local Environmental Plan 2012

Part 2 – Permitted or Prohibited Development

Clause 2.1 – Land Use Zones

The subject site is zoned B4 - Mixed Use and the proposal as modified is a permissible form of development with Council’s consent.

The existing land use is defined as food and drink premises, as per the following definition under the SLEP 2012:

food and drink premises means premises that are used for the preparation and retail sale of food or drink (or both) for immediate consumption on or off the premises, and includes any of the following—

- (a) a restaurant or cafe,
- (b) take away food and drink premises,
- (c) a pub,
- (d) a small bar.

STATE ENVIRONMENTAL PLANNING POLICY NO. 55 – REMEDIATION OF LAND (SEPP 55)

SEPP 55 applies to the land and pursuant to Section 4.15 is a relevant consideration.

A review of Council's records for the site give no indication that the land associated with this development is contaminated. There were no historic uses that would trigger further site investigations.

The proposed modification does not involve any changes to the approved land use as a food and drink premises. The objectives outlined within SEPP55 are considered to be satisfied.

(ii) any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority, and

There are no draft planning instruments that are applicable to this site.

(iii) any development control plan,

The proposed development, as modified, is subject to the provisions of the Strathfield Consolidated Development Control Plan 2005. The following comments are made with respect to the proposal satisfying the objectives and controls contained within the DCP, where applicable to the proposed changes;

Part Q Urban Design Controls

3	Amenity Guidelines	Complies
.4	Acoustic Amenity and Air Quality	
.2	Essential Criteria	
	4) Noise generating developments particularly those adjacent residential developments and residential developments adjacent to noise generating sources such as busy roads and rail corridors, must submit and Acoustic Report	No

prepared by a suitably qualified acoustic consultant with a development application.

4	<i>Guidelines for Specific Developments</i>	<i>Complies</i>
.7	<i>Development Adjoining Residential Zones</i>	
.1	Essential Criteria	
	<p>5 The development must not otherwise cause nuisance to residents, by way of hours of operation, traffic movement, parking, headlight glare, security lighting or the like.</p>	No

Trading Hours

The proposed modification application intends to extend the trading hours of the restaurant to 1.00 AM, the following day, from Monday to Sunday. In accordance with the SEE and the Plan of Management submitted to Council, the current trading hours of the restaurant is 5.00 AM to 12.00 AM, the following day, Monday to Sunday.

The development consent that the current application wishes to modify is DA0405/136. This DA was approved on 31 August 2005 for the purpose of a '*fit out of the vacant premises for the use as a restaurant*'. The trading hours approved for the site, as indicated in the Notice of Determination for the DA0405/136 is as follows:

- *"The days and hours of operation shall be restricted to Monday to Saturday, 11am to 10pm."*

The applicant was given the opportunity to provide any information to Council that gives authority to their existing operating hours of Monday to Sunday, 5.00 AM to 12.00 AM, as lawful. To date, no information was given to Council.

The applicant has also identified in their correspondence with Council's Planner that the adjacent restaurants have been trading until 1.00 AM and they only wish to operate the same time as them. An investigation of Council's records of the neighbouring shops' approved trading hours revealed the following:

- Unit 27, 45-47 The Boulevarde (DA0203/353)
 - Monday to Thursday – 9.00 AM to 10.00 PM
 - Friday to Saturday – 9.00 AM to 12.00 AM (midnight)
 - Sunday – 9.00 AM to 10.00 PM
- Unit 28, 45-47 The Boulevarde (DA0304/219)
 - Monday to Friday – 11.30 AM to 11.00 PM
 - Saturday – 11.30 AM to 11.30 PM
 - Sunday – 5.30 PM to 10.30 PM

Taking into consideration of the above, despite the incorrect information provided to Council in relation to the operating hours in this modification application, the application can be supported to the following trading hours below that will be imposed as a condition of consent.

Monday to Thursday – 9.00 AM to 11.00 PM

Friday to Saturday – 9.00 AM to 12.00 AM (midnight)
Sunday – 9.00 AM to 10.00 PM

The trading hours immediately above are consistent with the other neighbouring restaurants. Further, relevant conditions of consent will be imposed in relation to any noise concerns that may arise due to the extension of the site's operating hours.

Inconsistent Floor Plan

The modification application was accompanied by a floor plan, pictured below, which is not consistent with the most recent approved floor plan of the subject site.

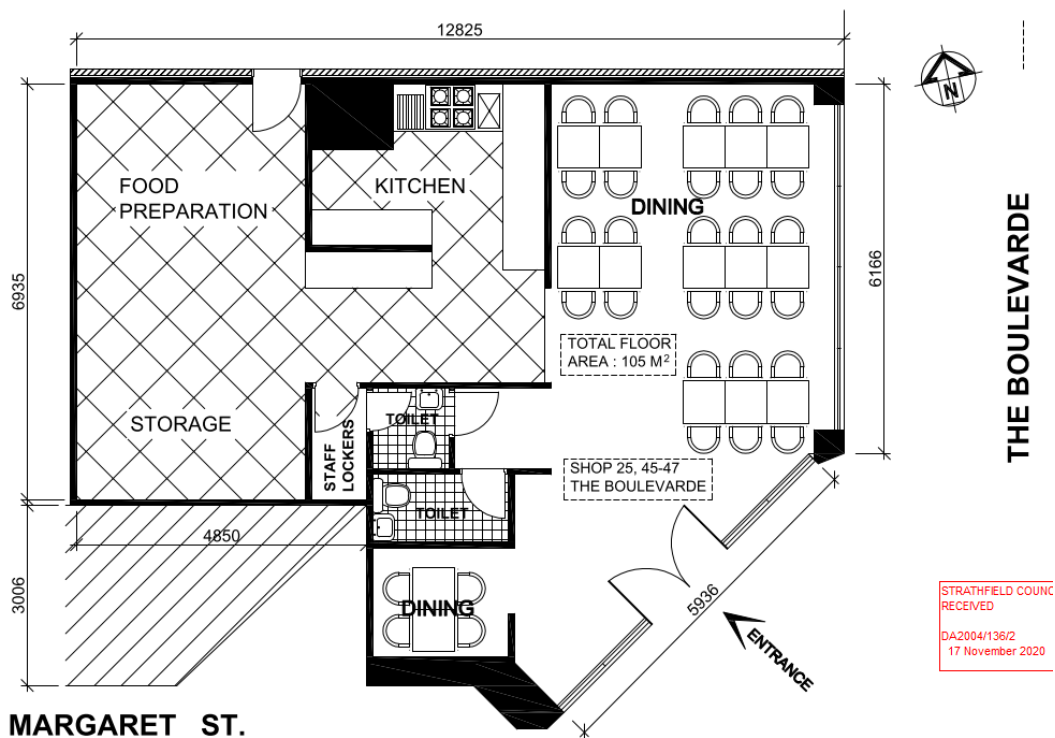


Figure 12. Extract of the submitted existing floor plan (source: Formdesign, dated 25 August 2020)

While the proposal does not include any change in the restaurant's floor layout, the applicant has mentioned that the floor plan in Figure 12 is existing and has been that way for 10 years. The applicant was given an opportunity to provide Council of any approval of the floor plan. Similar with the other information, no supporting documentation was provided to Council.

Acoustic Privacy

Appropriate conditions of consent will be imposed to ensure that no noise concerns will arise due to the proposal.

Waste matters were discussed in the original development application. However, with regard to the extended hours of operation and as per the comments made by Council's Environmental Project Officer – Waste, an appropriate condition of consent relating to waste management will be imposed.

(iv) Any matters prescribed by the regulations, that apply to the land to which the development application relates,

The provisions of this clause are not relevant to the modification and have been addressed/considered as part of the original development consent.

(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,

The proposed development, as modified and as conditioned, is of a scale and character that is in keeping with other developments being constructed or in operation in the locality. Accordingly, the proposal is not considered to have a significant impact on the natural and built environment or any negative social or economic impacts on the locality.

(c) the suitability of the site for the development,

It is considered that the proposed development, as modified and conditioned, will be suitable for the site having regard to its relationship to adjoining developments.

(d) any submissions made in accordance with this Act or the regulations,

In accordance with the provisions of Councils Community Participation Plan, the application was placed on neighbour notification for a period of fourteen (14) days where adjoining property owners were notified in writing of the proposal and invited to comment. No submissions were received raising the following concerns.

(e) the public interest.

The proposed development, as modified and conditioned, is of a scale and character that does not conflict with the public interest.

Local Infrastructure Contributions

Section 7.13 of the EP&A Act 1979 relates to the collection of monetary contributions from applicants for use in developing key local infrastructure. This section prescribes in part as follows:

A consent authority may impose a condition under section 7.11 or 7.12 only if it is of a kind allowed by, and is determined in accordance with, a contributions plan (subject to any direction of the Minister under this Division).

STRATHFIELD CONTRIBUTIONS PLAN

Section 7.11/7.12 Contributions are not applicable to the proposed development in accordance with the Strathfield Direct Development Contributions Plan 2010-2030/Indirect Development Contributions Plan.

Conclusion

The application for modification has been assessed having regard to the Heads of Consideration under Section 4.15 (1) of the *Environmental Planning and Assessment Act 1979*, the provisions of the SLEP 2012 and SCDP 2005.

Following detailed assessment it is considered that Development Application No. 136/2004/2 should be approved, subject to the conditions of consent, as modified:

- Modified condition #8 – trading hours
- Modified condition #33 – waste management

Signed:

Date: 11/01/2021

P Santos

Development Assessment Planner



I confirm that I have determined the abovementioned development application with the delegations assigned to my position.



I have reviewed the details of this modified development application and I also certify that Section 7.11/7.12 Contributions are applicable to this development and was levied accordingly in the original consent.

Report and recommendations have been peer reviewed and concurred with.

Signed:

Date:

M Rivera

Senior Planner

DETAILS OF CONDITIONS

(including section 94 conditions if applicable)

Plans

The following conditions have been imposed to ensure the development is in accordance with the approved plans and specific requirements of Council.

1. (1) The development shall be completed in accordance with the approved plans listed below prior to the building being used or occupied but subject to any variation as required by the conditions detailed herein.

Drawing	Date Received
Location Plan	15 July 2005
3681-1 : JKL Design	15 July 2005
3681-3: JKL Design	3 November 2004
3681-10: JKL Design	7 April 2005
MV 3681-1	15 February 2005
3681-4: JKL Design	3 November 2004

(2) A Construction Certificate must be obtained either from Council or a privately accredited person before commencement of any construction/demolition associated with this consent.

(3) The Principal Certifying Authority must be appointed prior to work commencing to supervise the work and authorise occupation/use of the building when completed.

2. The building shall not be occupied or used until the development has been completed in accordance with the conditions of this consent, construction has been completed in accordance with the Construction Certificate and an Occupation Certificate has been issued by the principal certifying authority.
3. Ensure that access to the storage room on the left hand side of the entrance is not obstructed by tables or chairs.

Financial Matters

The following conditions have been imposed to require payment for identified works or services, to require bonds to ensure compliance with various conditions and to safeguard against damage to Council property.

4. (1) A security payment of **\$2,117.40** (comprising \$2,000 refundable bond, **\$106.73** non-refundable administration fee and \$10.67 GST) against damage or harm to any Council property shall be paid to Council **prior to issue of a Construction Certificate.**
 - (2) The security payment referred to in (1) is also to ensure there is no building debris/material left on adjoining Council (Community) land and may be used to recover the costs incurred by Council in cleaning the land.
5. (1) Where Council is appointed as principal certifying authority to carry out the post-approval inspections, a fee of **\$117.40** (comprising **\$106.73** inspection fee and **\$10.67** GST) shall be paid **prior to the carrying out of any of the inspections.**

- (2) Any re-inspection which is necessary due to site access not being available, defective work, or the matter not being ready for inspection will be charged at

the rate of \$117.40 (Comprising \$106.73 fee and \$10.67 GST) per re-inspection. Any such additional re-inspection fee will be notified in writing by Council and shall be paid **prior to release of the damage deposit**. If the additional fee is not paid it will be deducted from the damage deposit.

Public Authority Matters

The following conditions have been imposed to ensure the requirements of the relevant Public Authorities and service providers are met.

6. (1) A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained for the proposed development. Application must be made through an authorised Water Servicing Coordinator. For details see the Sydney Water website www.sydneywater.com.au then follow the "e-developer" icon, or telephone 13 20 92.
- (2) The Section 73 Certificate must be submitted to the Principal Certifying Authority **prior to the issue of a sub-division certificate or occupation of the development**.

Site Operation

The following conditions have been imposed to ensure the operation of the development has minimal impact on the neighbourhood.

7. All loading and unloading of goods, material, equipment and the like shall take place within the site.
8. The days and hours of operation shall be restricted to ~~(Monday to Saturday, 11am to 4pm)~~ **the following:**

Monday to Thursday – 9.00 AM to 11.00 PM
Friday to Saturday – 9.00 AM to 12.00 AM (midnight)
Sunday – 9.00 AM to 10.00 PM

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9. The delivery and despatch of goods, material and the like to and from the premises shall only take place in any area external to the building, between 11am to 12pm, Monday to Friday and no goods, material or the like shall be delivered or despatched outside these hours.
10. No storage of goods, material, equipment, machinery, refuse, or refuse bins (including industrial waste containers) shall take place in any area external to the building, between the building and the street alignment and nor shall the same be stored or placed within the road reserve except in accordance with Council's Materials on the Footpath Policy.
11. All exhaust and other emissions from the premises shall comply with the provisions of the Protection of the Environment Operations Act and Regulations thereunder.

12. Noise emanating from the premises shall comply with the requirements of the Protection of the Environment Operations Act and Regulations thereunder.

Construction Matters

The following conditions have been imposed in relation to site matters during excavation and construction.

13. (1) All construction, demolition and excavation work shall be:
- (a) restricted to 7am and 5pm (Eastern Standard Time) on Mondays to Saturdays (inclusive);
 - (b) prohibited on Sundays and public holidays;
 - (c) prohibited on Saturdays and Sundays adjacent to a public holiday weekend and on an industry rostered day off, as determined by the CFMEU and the Master Builders' Association of **NSW**.
- (2) Construction hours may be varied with the approval of Council in special circumstances. An application under Section 96 of the Environmental Planning & Assessment Act 1979 must be made in advance with sufficient time given to consider such application, including notification to surrounding property owners/occupiers if necessary.

NOTE: The provisions of 1(c) above do not apply to minor renovations or refurbishments to single dwelling houses/ancillary buildings nor to owner- occupier residential renovations/ refurbishments.

14. (1) Clause 162A of the Environmental Planning and Assessment Act 2000, prescribes critical stage inspections which must be carried out by the Principal Certifying Authority (PCA) or by another authority if the PCA so agrees. The following critical stage inspections must be carried out for the various classes of building as defined in the Building Code of Australia:

Class 5, 6, 7, 8 and 9 (commercial, retail, warehouse, carpark and institutional buildings)

- (a) at the commencement of the building work;
 - (b) prior to covering any stormwater drainage connections; and
 - (c) after the building work has been completed and prior to any occupation certificate being issued in relation to the building.
- (2) In the event that an inspection as listed in (1) above is missed, as soon as practicable after a person who is not the principal certifying authority becomes aware that the inspection has been missed, he or she must inform the principal certifying authority of that fact and of the circumstances causing the inspection to be missed.
- (3) In addition to the inspections listed in (1) above and where Council is appointed as the Principal Certifying Authority, the following additional inspections will be required and must be inspected by Council:
- (a) Any pier holes (if pier holes are required to accommodate components of this structure).
 - (b) When damp proof course and flashings are placed in position.

- (c) All reinforcement of floors, slabs, columns, beams and stairs (if components of this structure).
 - (d) Any structural components (i.e. timber framework, structural steelwork or the like) before fixing any lining or covering.
 - (e) Wet area damp proofing and flashing before covering.
 - (f) The reinforcing steel after it has been placed in position prior to pouring of any concrete.
 - (g) The pool fence and surrounds of above ground pools prior to backfilling and/or fitting of lining.
 - (h) Safety fencing is in position, prior to the filling of the pool with water.
 - (i) The completed pool when the depth markers and resuscitation charts are in position.
 - (j) Tree protection - to establish/inspect tree protection measures to be carried out prior to commencement of works (including demolition or excavation)
 - (k) (i) Landscape final - to establish/determine whether site landscaping has been implemented and maintained in accordance with approved landscape plans and/or conditions of consent and to determine whether the bond can be refunded or extended for a 12-24 month period post final inspection by a Council officer.
(ii) If a private certifier is appointed as the principal certifying authority, written advice is to be provided to Council confirming when the site landscaping has been fully implemented and to request that Council inspect the site landscaping.
 - (l) Tree final - to determine whether trees have been retained, protected or replanted in accordance with the conditions of consent and/or the arborist's report, to assess trees for continuing safety and to determine whether the bond can be refunded or extended for a 12-24 month period post final inspection by a Council officer.
 - (m) The completion of all work associated with the building.
 - (n) The completion of all work associated with the demolition.
- (4) Where Council is appointed as the Principal Certifying Authority, requests for inspections must be arranged by telephoning 9748 9999 by at least 4pm on the day before the inspection is required. Council cannot guarantee inspections arranged after this time.

Air Quality

The following conditions have been imposed to ensure there is adequate mechanical ventilation provided for the development and to regulate air polluting uses and processes

- 15. The mechanical ventilation/air conditioning/exhaust system shall be maintained in continuous operation at all times the premises are occupied or in use.
- 16. All dehumidification condensates or other liquid wastes arising from ventilation equipment plant or equipment shall be conveyed via a closed pipe to the building sewerage service.
- 17. (1) The solid fuel heating and/or cooking appliance shall be designed and installed in compliance with:
 - (a) The EPA's Environmental Guidelines on Selecting, Installing and Operating Domestic Solid Fuel Heaters;

- (b) Section G2 of the Building Code of Australia;
 - (c) Clean Air (Domestic Solid Fuel Heaters) Regulation 1997;
 - (d) Manufacturer's specifications; and
 - (e) AS2918-2001 'Domestic Fuel Burning Appliances – Installation
- (2) Where there is a conflict between the manufacturer's specification and the Building Code of Australia, the more stringent standard shall apply. Evidence from an

appropriately qualified person stating that the design requirements have been met shall be submitted to and accepted by Council
Prior to the issue of a Construction Certificate.

Food Shop

The following conditions have been imposed to ensure the food preparation and storage areas are properly constructed to ensure cleanliness of the premises to preserve public health.

18. The food premises including all preparation and food storage areas shall comply with Council's Food Premises Code.

Note: Copies of the Code are available from Council's Customer Service Centre.

19. The food premises including all preparation and food storage areas shall comply with Council's Food Premises Code and specifically the premises shall comply with the following:
- (a) The floor shall be paved with an impervious material of smooth finish easy to be cleaned and drained to a floor waste.
 - (b) Partition walls shall be constructed of solid material.
 - (c) The interior walls of the kitchen and any related food preparation area of the premises shall be finished to a minimum height of 2000mm with glazed tiles or stainless steel sheeting or other approved material properly fixed to the walls.
 - (d) The walls where not tiled shall be cement rendered and steel trowelled to a smooth even finish, coved at all angles and painted with a washable paint of a light colour.
 - (e) The walls at the rear and side of all wash hand basins, sinks, draining boards, preparation benches and tables shall be finished with trowel jointed glazed tiles or other material, evenly laid to a height of at least 450mm above and 150mm to the side of the respective fitting.
 - (f) All intersections of the floor with walls and plinths shall be coved to a minimum radius of 25mm.
 - (g) All fittings sitting on the floor are to be either -
 - (a) on legs to provide a clear space of not less than 150mm for fittings up to 750mm in width. This height to be increased by 25mm for every additional 100mm in width (or part thereof); OR

- (b) placed on 75mm high solid concrete plinths.
 - (h) Concrete plinths 75mm in height and recessed 50mm for toe space, shall be provided beneath refrigerators, benches, cupboards and any other fitting not standing clear of the floor.
 - (i) All service pipes shall be concealed in floors, plinths, walls and ceilings.
 - (j) All fittings where abutting the wall or material fixed to the wall shall be sealed in such a manner as to prevent the access of food spillage or vermin.
 - (k) Any equipment abutting the wall and unable to be sealed to such wall shall be set from the wall to enable the wall and the equipment to be easily cleaned.
- 20. Food premises registration (for inspection purposes) must be obtained from Council prior to the issue of an Occupation Certificate and/or use of the premises.
- 21.
 - (1) A wash hand basin fitted with a common spout shall be provided in an approved position with a supply of hot and cold water under pressure thereto.
 - (2) A sufficient supply of soap and clean towels shall be provided at the wash basin.
- 22. A double bowl sink with a supply of cold and hot water (of not less than 77° Celsius) shall be provided for cleaning of all utensils, benches and equipment.
- 23. All waste material shall be stored in containers with tight fitting lids.
- 24. A separate area shall be provided for the storage of cleaning materials.
- 25. A separate area shall be provided for storage of employees clothing and personal belongings.
- 26. A cover shall be provided over the electricity/water supply meter box.
- 27. All equipment used for display or storage of hot foods shall be capable of maintaining such food at a temperature of not less than 60 degrees Celsius, and being fitted with an approved thermometer able to be read easily from outside the appliance for the purpose of measuring this temperature.
- 28.
 - (1) All equipment used for the display or storage of cold foods shall be capable of maintaining such food at a temperature of not more than 5 degrees Celsius.
 - (2) The equipment shall be fitted with an approved thermometer able to be read easily from outside the appliance for the purpose of measuring this temperature.
- 29. Plans and specifications showing details of all mechanical ventilation systems shall be submitted to Council and approval obtained prior to the issue of a Construction Certificate.
- 30. The doors of the water closet/air lock shall be close fitting and self closing.

31. The exhaust ventilation hood shall comply with the following:
- (a) the exhaust ventilation capture velocity of the hood shall be not less than 400 litres per second per square metre of the face area of the hood.
 - (b) the exhaust system shall completely cover the fitting to be ventilated and extend not less than 150mm beyond the perimeter of the fitting.
 - (c) the hood shall be provided with a condensation gutter around the base. The gutter shall not be less than 25mm in depth. Where abutting walls, the hood shall be constructed so as to provide a flat surface to such walls.
 - (d) the inside edge of the grease gutter shall not be less than 150mm beyond the plan perimeter of the appliance over which the hood of the mechanical exhaust system is installed, except on sides adjoining a wall.
 - (e) The lower edge of the canopy type exhaust hood shall not be less than 2000mm above finished floor level.

Disabled Access

The following conditions have been imposed to ensure that the development provides for adequate access and facilities for persons with disabilities

32. Access to the building for persons with disabilities shall be in accordance with the requirements of the Building Code of Australia Part D3 - "Access for People with Disabilities" AS1428.1. Details shall be submitted to and approved by Council **prior to the issue of a Construction Certificate.**

Waste Management

The following conditions have been imposed to ensure there is adequate waste handling facilities and controls to management waste generation and storage on the site and during the use of the building.

33. Full compliance must be given to the Waste management Plan submitted to Council on 15 February 2005 for the proposed development.

Further to the above, commercial contractor must be licensed for waste collection and must collect bins from inside the property, never leaving bins on footpath or kerbside, regardless of them being empty or full. Business must have a waste management plan and trade waste agreement evidence ready to be presented in case of inspection. Waste management must comply with Council's guidelines.

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REVIEW OF DETERMINATION

Section 82A of the Act allows the applicant/owner to request Council to review the determination of the application. Any such request must be made within 12 months of the Notice of Determination being issued and be accompanied by the required fee.

Note: An application under this Section of Act cannot be made for:

- (a) A determination in respect of designated development, or
- (b) A determination in respect of integrated development, or
- (c) A determination made by the council under section 116E in respect of an application by the Crown.

RIGHT OF APPEAL

If you are dissatisfied with this decision, section 97 of the Environmental Planning and Assessment Act, 1979, gives you the right to appeal to the Land and Environment Court within 12 months after the date on which you receive this notice.

ADVICE

The following matters are included as advice as relative to this application:

1.
 - (a) Section 95A of the Act provides that the applicant or any other person entitled to act on the consent may apply to the Council, before the consent lapses, for a 1 year extension.
 - (b) The consent will lapse unless the proposed use is physically commenced on the land subject of this consent.
2. In accordance with the Tree Preservation Order applying to the Strathfield Council area, any tree having a height greater than 4.0 metres or a girth greater than 0.5 metres measured at a point 1.0 metres above ground level, is not to be ringbarked, cut down, lopped, injured or wilfully destroyed excepting with the written consent of the Council.
3. Section 125 of the Act provides that any person who contravenes or causes or permits to be contravened the conditions of this consent or the Tree Preservation Order shall be guilty of an offence.
4.
 - (a) Section 126 of the Act provides that a person guilty of an offence against this Act shall, for every such offence, be liable to the penalty expressly imposed and if no penalty is so imposed to a penalty not exceeding \$110,000 and to a further daily penalty not exceeding \$11,000.
 - (b) Penalty Infringement Notices (on-the-spot fines) can also be issued for breaches of the conditions of development consent.
5. The contributions required under s94 of the Act are set out in the Section 94 Contributions Plan which can be viewed at Council's Customer Service

Centre, 65 Homebush Road, Strathfield during normal business hours.

6. Your attention is directed to the operation of the Commonwealth Disability Discrimination Act 1992 and the New South Wales Anti-discrimination Act, which may impose greater obligations on providing access for persons with disabilities other than compliance with the Building Code of Australia. You are advised to seek advice from the Human Rights and Equal Opportunity Commission on 1300 369 711 in respect of the matter subject of this consent.
7. This consent is for a Change of Use only and does not authorise the carrying out of any building work except that necessary to comply with conditions relating to fire safety measures identified within this consent.
8. **BEFORE YOU DIG**, applicants are strongly advised to contact "Dial Before You Dig" who can assist in ascertaining if there are underground utility services in the proposed area of excavation. The advice/information provided is free.

Contact details for "Dial Before You Dig" are as follows: Phone: 1100 Fax: 1300 652 077
Website: www.dialbeforeyoudig.com.au