

Randwick Local Planning Panel (Public) Meeting

Thursday 9 June 2022



RANDWICK LOCAL PLANNING PANEL (PUBLIC)

Notice is hereby given that a Randwick Local Planning Panel (Public) meeting
will be held in the Microsoft Teams 1pm on
Thursday, 9 June 2022 at 1pm

Declarations of Pecuniary and Non-Pecuniary Interests

Address of RLPP by Councillors and members of the public

Privacy warning;

In respect to Privacy & Personal Information Protection Act, members of the public are advised that the proceedings of this meeting will be recorded.

Development Application Reports

D31/22 182 Marine Parade, Maroubra (DA/717/2017/A)..... 1

Kerry Kyriacou
DIRECTOR CITY PLANNING

Development Application Report No. D31/22

Subject: 182 Marine Parade, Maroubra (DA/717/2017/A)

Executive Summary

Proposal:	S4.55(2) modification application of approved development to add additional seating to the existing outdoor dining area with tables / chairs / umbrellas. Original consent: Outdoor dining and seating area to front of The Bay Hotel and Diner for 30 patrons with hours of operation being 8:00am to 9.30pm seven days per-week.
Ward:	Central Ward
Applicant:	Michael Munro (Hosking Munro)
Owner:	Saint George Investments Pty Ltd and Randwick City Council
Cost of works:	Nil
Reason for referral:	10 or more unique submissions by way of objection were received, and the seating area is located on land owned by Council.

Recommendation

That the RLPP grants development consent under Section 4.55 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/717/2017 for additional seating for **30** patrons (**60** in total) to the existing outdoor dining area with tables / chairs / umbrellas at the Bay Hotel and Diner at 182 Marine Parade, Maroubra, in the following manner:

- Amend Condition 1 to read:**

- The development must be implemented substantially in accordance with the plans and supporting documentation listed below and endorsed with Council's approved stamp, except where amended by Council in red and/or by other conditions of this consent:

Plan	Drawn by	Dated
DA100 Revision D	Hosking Munro	19 July 2018

Except, as amended by the **Section 4.55 'A' plans and documentation listed below, only in so far as they relate to the modifications highlighted on the Section 4.55 plans and detailed in the Section 4.55 application**, except as may be amended by the following conditions and as may be shown in red on the attached plans:

Plan	Drawn by	Dated
DA100 (Outdoor Seating Plan, Location Plan + McKeon Street Elevation), Revision H	Hosking Munro	17 November 2020

- Add Condition 1A to read:**

- The approved plan DA100, Revision H, dated 17 November 2020, must be amended in accordance with the following requirements and submitted to and approved by Council prior to operation of the outdoor dining area:
 - The area and configuration of the outdoor dining is to be consistent with that approved under approval LA/71/2022 in relation to the temporary footpath dining. The plans are to have a total area of 85m² for the outdoor dining area and a maximum capacity of 60 persons.

- Add Condition 20B to read:**

20B. The recommendations in the acoustic report prepared by Atkins Acoustics and Associates Pty Ltd dated October 2021 (ref: 52.7113.R1:GA/DT/2021 Rev 01) shall be implemented at all times:

- a. Implement an amended Plan of Management and Security Management Plan;
- b. no outdoor amplified music;
- c. no grouping of tables and chairs;
- d. installation and maintenance of CCTV surveillance cameras;
- e. outdoor furniture fitted and maintained with soft/cushioned leg cups/pads;
- f. all outdoor dining furniture removed at the conclusion of the trading period; and
- g. the installation of appropriate signage with respect to noise amenity and disturbance.

- **Add Condition 20C to read:**

20C. No amplified music, entertainment, or any other ancillary activity is permitted in the outdoor area.

- **Add Condition 33 to read:**

NSW Police Conditions

33. The use and operation of the outdoor dining area must be implemented in accordance with the recommendation outlined in the NSW Police Referral response dated 15 November 2021.

- **Amend Condition 3 to read:**

3. Prior to the installation of any items on the footway or operation of the extended footpath dining area, including any new area under DA/717/2017/A, the business proprietor shall enter into a new formal License Agreement with Council, covering the terms and conditions of the footpath dining. The applicant is advised to contact Council's Property Compliance Officer, (9093-6936), regarding Council's requirements for the formal license agreement.

Note: An updated plan in accordance with condition 1A is to be submitted as part of the license agreement documentation.

- **Amend Condition 3a to read:**

3a. Prior to entering into a new official agreement with Council for use of the footway dining area (in accordance with development consent DA/717/2017/A), the applicant shall submit to Council for approval and have approved an application for footway dining under the Roads Act 1993 in relation to the extended footway dining area.

- **Amend Condition 10 to read:**

10. The outdoor patron numbers are restricted to 90 persons and the operating hours must be restricted to the following and both are subject to a review period in accordance with Section 4.17 (10B) of the Environmental Planning & Assessment Act 1979 and Division 14 of the Environmental & Assessment Regulation 2000:

Outdoor dining/footway

- 8.00am and 9.30pm – Monday to Sunday and public holidays (inclusive).

The patron numbers and operating hours will be reviewed by Council within 12 months of the date of commencement of the increased patron numbers (60 persons). The operator of the premises must advise Council in writing of the date of commencement of the increased patron numbers and extended footway dining area. Appropriate supporting evidence (including but not limited to, an acoustic report) may be required at the end of the review period to demonstrate compliance with all conditions of this consent as part to the review.

All food and beverage services to customers shall only be provided within the abovementioned hours of operation and all patrons must vacate the area within 15 minutes of the specified hours.

- **Amend Condition 18 to read:**

18. Prior to commencement of operations, an amended plan of management is to be prepared to include but not limited to:
- The correct number of patrons approved to be in the outdoor area;
 - The recommendations provided in the acoustic report prepared by Atkins Acoustics and Associates Pty Ltd dated October 2021 (ref: 52.7113.R1:GA/DT/2021 Rev 01).

The Plan of Management should also detail the measures to be implemented to:

- ensure compliance with the relevant conditions of approval,
- ensure compliance with relevant noise criteria and minimise noise emissions and associated nuisances,
- minimise the potential environmental and amenity impacts upon nearby residents,
- effectively minimise and manage any possible anti-social behaviour or loud noises from children playing in the outdoor area,
- effectively manage and respond to resident complaints,
- ensure responsible service of alcohol and harm minimisation,
- provision of adequate security and surveillance,
- ensure that the maximum number of patrons does not exceed the authorised capacity, in accordance with Council's consent.

The plan of management is to be reviewed annually and amended as necessary to ensure compliance with the relevant requirements.

- **Amend Condition 19 to read:**

19. The maximum number of patrons within the outdoor dining area must not exceed **60** at any time and a sign detailing the maximum number of patrons permitted must be provided in a conspicuous position (e.g. near the building entrance), to Council's satisfaction. The maximum capacity of 60 patrons will be reviewed by Council within 12 months of the date of commencement of the increased patron numbers.

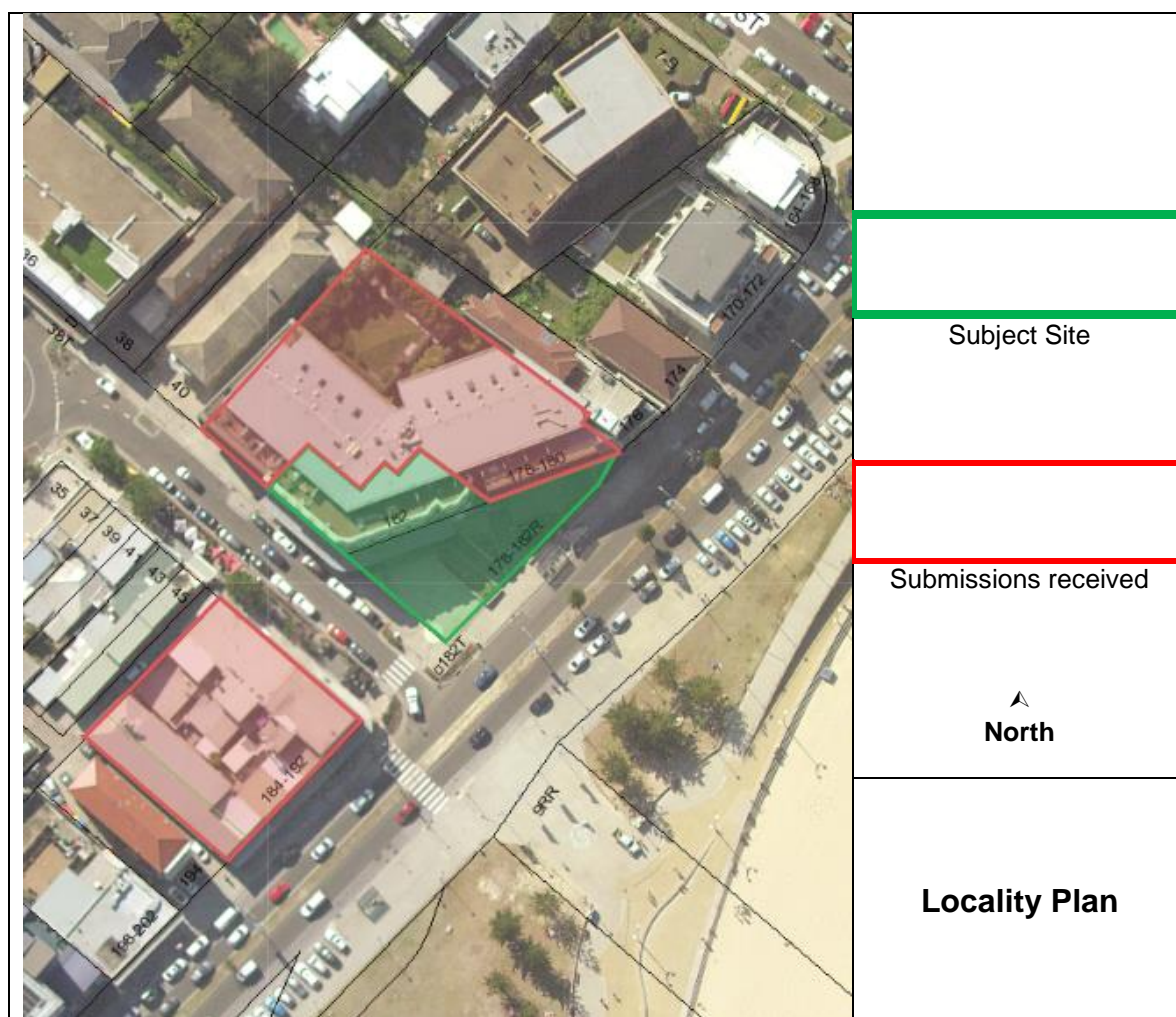
- **Amend Condition 20 to read:**

20. An acoustic report, prepared by a suitably qualified and experienced consultant in acoustics, must be provided to the Council **within 3 months of the commencement of the current consent (Modification A – DA/717/2017/A)**, which demonstrates and confirms that the relevant provisions of the *Protection of the Environment Operations Act 1997* and the noise criteria and requirements contained in this consent has been satisfied (including any relevant approved acoustic report and recommendations). The assessment and report must include all relevant fixed and operational noise sources. Assessment should be carried out at full capacity and consider the nearest affected residents.

Attachment/s:

Nil

D31/22



1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as more than ten (10) unique submissions by way of objection were received, and the proposed dining area is located on land owned by Randwick City Council.

The proposal seeks to modify the development consent to increase the size of the outdoor seating area to 120m² and increase the capacity from 30 patrons to 90 patrons.

The key issues associated with the proposal relate to acoustic amenity, management of the area, pedestrian access and visual impact. Concerns have also been raised in submissions regarding anti-social behaviour and additional parking and traffic impacts.

The proposal is recommended for approval subject to non-standard conditions that require a decrease to the number of patrons to a maximum of 60 persons, and associated amendments to the layout and number of tables/seating, and that the proposed outdoor dining be subject to a reviewable condition with regards to the number of patrons and hours of operation.

2. Site Description and Locality

The outdoor dining area is located on Council owned land identified as 178-182R Marine Parade, Maroubra. The subject site is adjacent to The Bay Hotel and Diner, which is located at 182 Marine Parade, Maroubra and legally described as Lot 12 in Deposited Plan 1073578.

The Bay Hotel and Diner is a local heritage item identified within the RLEP as item I220 - *Maroubra Beach Hotel and mixed commercial/residential building attached to the hotel*. The Bay Hotel and

Diner is occupied by a food and drink premises (approved via DA/642/2004) and contains residential units on the upper floors.

Maroubra Beach is located to the south-east of the proposed outdoor dining area, which has frontages to Marine Parade to the south-east and McKeon Street to the south-west. The approved outdoor area is located on the open space/footpath adjoining the site (which can be seen in Figure 1 below). An additional smaller outdoor dining area is adjacent to the main outdoor dining area as part of an elevated deck approved via DA/635/2014. Another outdoor dining area is located on the corner of McKeon Street and Marine Parade to the south-west, associated with a café. Surrounding development comprises shop top housing, residential flat buildings and a mixture of retail premises.



Figure 1 – Area of existing outdoor dining (Google Streetview).

3. Relevant history

Details of Current Approval

Development Application DA/717/2017

The original Development Application sought consent for a new outdoor dining and seating area to front of The Bay Hotel and Diner for 30 patrons with hours of operation being 8:00am to 9:30pm seven days per-week. The application was approved on 9 August 2018 by Randwick Local Planning Panel.

The original outdoor seating area comprised an area of 51.2m², and included eight (8) removable chairs, six (6) removable umbrellas, eleven (11) removable privacy screens and one (1) removable rubbish bin. The approved outdoor seating area can be seen in Figure 2 below:

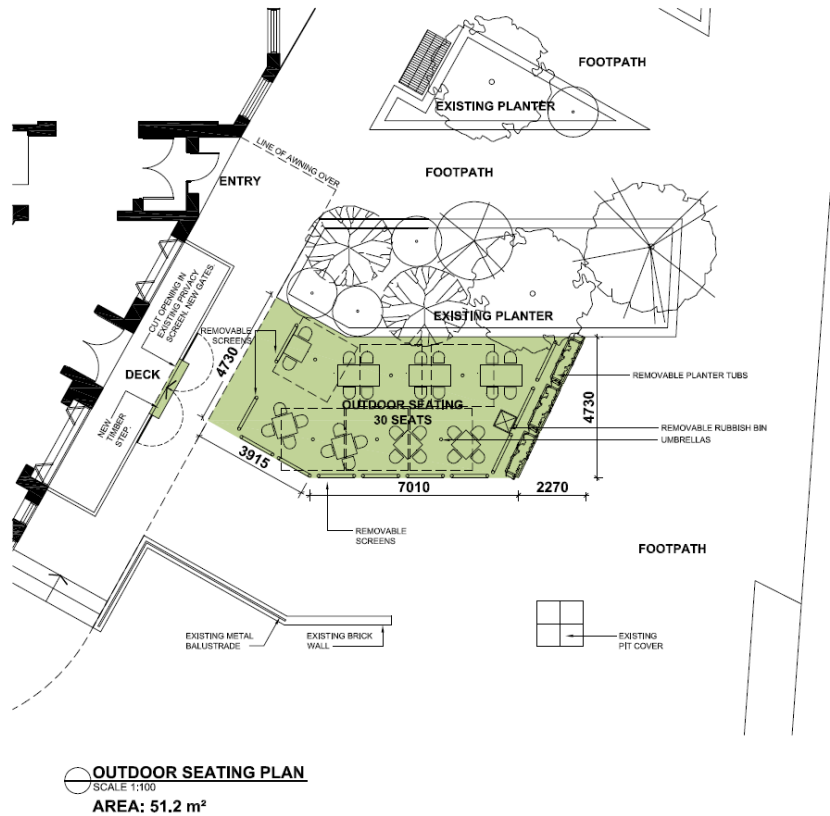


Figure 2 – Approved outdoor seating under original development consent.

Local Approval LA/71/2022

In response to the Covid 19 pandemic, Council permitted applications to be made for temporary outdoor dining. As such an application to temporarily extend the existing outdoor seating area was made and consent granted on 18 March 2022. The application approved an area of 85m², with a capacity of 60 patrons. The temporary outdoor seating approval will lapse on 30 June 2022. The approved temporary outdoor seating area can be seen in Figure 3 below:

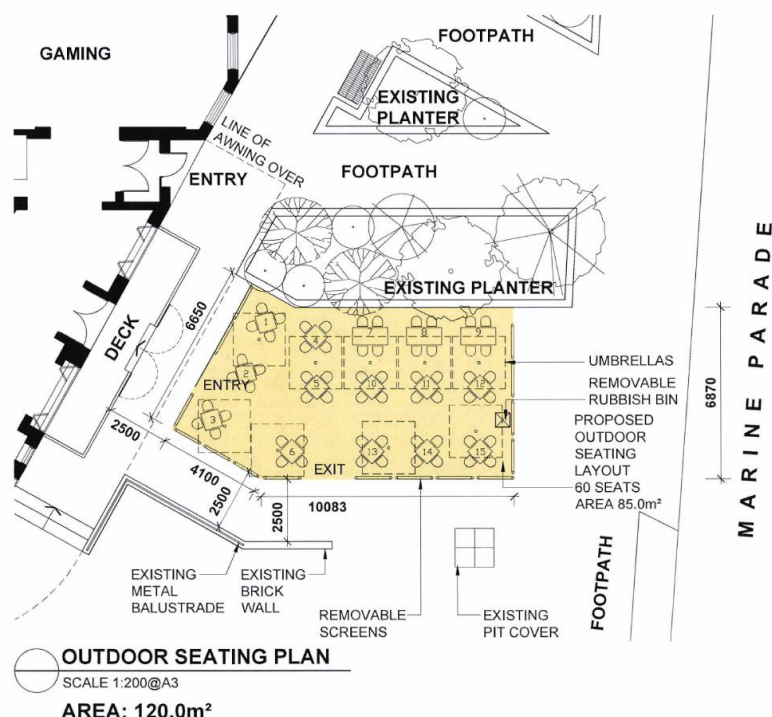


Figure 3 – Approved temporary outdoor seating under LA/71/2022.

Subject Modification Application

Modification application DA/717/2017/A was lodged with Council on 5 November 2021. The application was externally referred to NSW Police, and internally referred to Council's Environmental Health Officer, Development Engineer, Heritage Planner and Property Management team for comment and/or recommendations.

4. Proposal

The subject application seeks consent for the following modifications:

- Increase to the capacity of the outdoor seating area by 60 patrons, from 30 patrons to a total of 90 patrons involving the extension of the approved outdoor seating area to the south, comprising an additional area of 68.8m² and a total area of 120m².

The proposed area of seating can be seen in Figure 4 below:

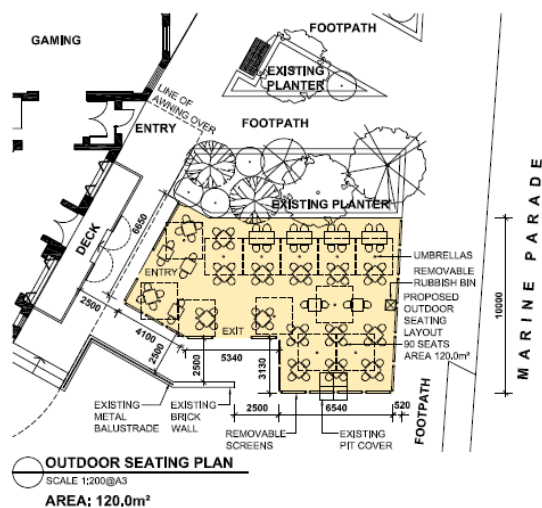


Figure 4 – Proposed Outdoor Seating Area.

By virtue of the above modifications, the application also seeks amendments to the following conditions in relation to the proposed modifications:

- Condition 18 in relation to the POM which is required to be updated to incorporate the new number of patrons and the recommendations of the acoustic report.
- Condition 19 in relation to the approved number of patrons to permit a maximum of 90 patrons.

No changes are proposed to the hours of operation of the existing approved outdoor seating area.

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Participation Plan. A total of twenty-one unique (21) submissions were received from or on behalf of residents from the following properties:

- Seven (7) unspecified residents from 180 Marine Parade, Maroubra
- G08/180 Marine Parade, Maroubra
- 104/180 Marine Parade, Maroubra
- 240/180 Marine Parade, Maroubra
- 301/180 Marine Parade, Maroubra
- 305/178-180 Marine Parade, Maroubra
- 311/180 Marine Parade, Maroubra
- 315/180 Marine Parade, Maroubra
- 321/180 Marine Parade, Maroubra
- 184 Marine Parade, Maroubra

Four (4) submissions were also received from unknown addresses.

The submissions received raised concerns with regards to the following:

Issue	Comment
Number of patrons <ul style="list-style-type: none"> - Concerns regarding the increase to the number of patrons which is excessive. - A small increase to 50 may be acceptable. - The current 30 persons is manageable 90 is not. - The area is not sufficient to accommodate 90 people. - The increase by triple the amount is inappropriate. - The original application sought 60 patrons but was approved at 30 patrons. - Recommendation that an increase to 50 persons be permitted on a trial basis, for the operator to demonstrate effective management of the area, without substantiated complaints. - Recommendation for an increase to 45 patrons and increase in area in accordance with additional spacing as a result of the Covid pandemic. - The space is not adequate to permit the number of patrons. 	<p>In response to the detailed assessment of the application, it is recommended that the number of patrons be reduced to a maximum of 60 persons, which would be consistent with the current temporary approval, and that the increased number of patrons be subject to a reviewable condition within a 12 month period. See Key Issues for further discussion.</p> <p>The concerns regarding the area and spacing requirements in relation to Covid 19 are noted. However, the development would need to comply with any government requirements and restrictions in relation to the current COVID 19 pandemic, which are regulated outwith the development consent process.</p>

Issue	Comment
<p><u>Noise impacts</u></p> <ul style="list-style-type: none"> - Concerns regarding the noise impacts from the proposed increase. - Noise from hotel and people smoking is an existing issue. - Can currently hear outdoor patrons and have to close glass doors to block out noise. - The noise impacts are greater in the heritage portion of the building as the glazing in the windows is limited. - There is increased noise levels on streets around closing time. - The Acoustic report states that the noise is dependent on the management of the premises, such a drastic increase in patrons would not be in the public interest. - A request for Council to review and consider any noise complaints associated with the outdoor areas since 2017. - Noise levels will interfere with the quiet peace and enjoyment of the residential properties. - The local residents currently accept the current noise level based on the 30 patrons which has been in place for a long time. - Noise and disturbance will become unbearable. - Due to the increase in size of the area, the width and height of the noise range would be increased affecting more residents. - Concerns regarding the acoustic report and use of "normal voices". Question why the current noise levels have not been assessed. - Request for outdoor dining area to be limited to 8am-8pm to minimise noise impacts upon residents. - Having a rowdy outdoor area is incompatible with the residential apartments. 	<p>See Key Issues for further discussion.</p>
<p><u>Mixed-use of the Building and Co-existing</u></p> <ul style="list-style-type: none"> - The Hotel should operate in a way that does not interfere too much with the rights of residents of the apartments above. - The residents of the apartments accept the conditions that come with living above the Hotel, and the current operation of the hotel and residential apartments is balanced. Increase to the outdoor seating area would upset the balance and be detrimental to the residents. 	<p>Given the mixed-use nature of the existing building which comprises the Hotel and residential apartments, consideration has been given to the residential amenity of the apartments. It is considered that subject to the recommendations, which involve a decrease to the number of patrons and size of the outdoor dining area to that which is sought, the proposal shall not result in any unreasonable impacts upon the adjoining residential properties. However, it is also recommended that the approval is subject to a reviewable condition in relation to the proposed number of patrons to ensure there are no detrimental impacts upon the local residents.</p>

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Issue	Comment
<p><u>Pedestrian Traffic and Access</u></p> <ul style="list-style-type: none"> - The additional pedestrian traffic would be detrimental to residents. - Increase in pedestrian traffic would impact upon the community and residents. - Would impact upon footpath, including having to navigate around 90 persons. - Would create congestion on footpath. 	<p>Concerns are raised regarding the extent of the proposed seating area. See Key Issues for further discussion.</p>
<p><u>Traffic and Parking</u></p> <ul style="list-style-type: none"> - Detrimental impact upon traffic flow and parking. - There is a current lack of parking in the area which will continue to be a problem. - Traffic congestion will be an issue, particularly at weekends. - Parking for visitors is already difficult and an increase to outdoor patrons would attract a significant number of additional vehicles. 	<p>See Key Issues for further discussion.</p>
<p>Concerns regarding anti-social behaviour and drunkenness including vomiting, urinating, and general disturbance.</p>	<p>The subject outdoor area is managed by the venue and as such the consumption of alcohol can be monitored and managed appropriately, as well as management of the safety and security of the outdoor seating area in general. Conditions of consent are also recommended with regards to a grace period for the closure of the outdoor area so that all persons do not leave at the same time. The application was referred to NSW Police who have recommended conditions of consent, should the application be approved, to minimise the social aspects, and the safety and security of the area. See Section 6 and Appendix 1 for further discussion.</p> <p>Notwithstanding the above, it is recommended that the proposed seating is approved subject to a reviewable condition with a 12 month period with regards to the proposed number of patrons.</p>
<p><u>Visual impact and Compatibility with the Character of the Area</u></p> <ul style="list-style-type: none"> - The tables, chairs and umbrellas in front of the heritage façade will change the streetscape and environment of the area. - The proposal is not in keeping with the character of the area. The proposal would portray the Watson Bay Hotel and does not promote the family-friendly environment of Maroubra Beach. 	<p>Concerns are raised regarding the extent of the proposed outdoor dining area which will extend across a significant portion of the footpath/public open space in front of the Hotel. As such, it is recommended that the area be reduced in size to that which is currently approved on a temporary basis. The reduction in area shall reduce the number of tables, chairs and associated structures. The development as recommended is not considered to result in any unreasonable visual amenity impacts, and shall ensure a balance between the retention of public space and the use of the footpath for additional seating.</p>

Issue	Comment
<p><u>Air pollution and odour from outdoor smoking</u></p> <ul style="list-style-type: none"> - There should be a condition imposed to provide a designated smoking area located away from the area below residents balconies. The current outdoor area results in smoke entering balconies and living areas on the upper levels. The area should be located near the corner of McKeon Street and Marine Pde and signage displayed to limit smoking area. - The outdoor area is utilised for smoking. An increase to the number of smokers within the confined area will increase the smell of smoke, with residents having to close windows and doors to prevent passive smoking. - Use of the entry of the apartments by patrons for smoking and gathering, causing nuisance and safety and security issues. - Ongoing issue is smoking in front of the entrance of the building which adversely impacts upon the residents. 	<p>The concerns in relation to smoking area are largely a result of the management of the premises and the behaviour of patrons, with particular regards to smoking outside the entrance to the apartment buildings which is outwith Council's control. The current POM requires that "smoking in outdoor designated areas is to be controlled so as not to unduly impact on the amenity of the locality." As such, any concerns regarding smoking at the premises should be referred to the Hotel management in the first instance. Notwithstanding, the proposed number of patrons and size of the outdoor dining area is not supported, with it recommended that the current temporary approval be permitted on a permanent basis which shall minimise the impacts associated with the smoking at the premises.</p>
<p><u>Waste management and rubbish</u></p> <ul style="list-style-type: none"> - There is cigarette and food litter from the current outdoor patrons which shall be exacerbated by the proposed increase. - Increased litter shall result in increase in pests. 	<p>The POM for the Hotel requires collection of any rubbish on the streets associated with the Hotel's operations. Conditions of consent shall be applied in relation to waste management of the site in addition to the requirements of the POM. The increased patronage is not considered to warrant refusal of the application with regards to waste.</p>
<p>Concerns regarding compliance with current development consent as follows:</p> <ul style="list-style-type: none"> - The Hotel regularly has in excess of 30 patrons in the outdoor seating area, if increased will the limit be enforced. - Use of public space for the outdoor seating, which has been known to extend outwith the council marked approved area. 	<p>Noted. Compliance with the existing development consent is a matter outwith the subject application. Should the premises be operating not in accordance with the development consent it is recommended that the matter be reported to Council's Customer Service Centre for further investigation.</p>
<p>Concerns regarding the use of the outdoor dining area for drinking only without food consumption.</p>	<p>The outdoor dining is to not to be used for the sole purpose of consuming alcohol, with alcohol only in conjunction with the provision of food. This forms a condition of consent and is contained within the POM. Any non-compliance with this provision should be reported to the Hotel management in the first instance.</p>
<p>Overcrowding to the entrance of the apartment building as the area adjoins the entrance area. The increase will cause congestion which shall overflow to the apartment entry area.</p>	<p>It appears that this is an existing issue. However, footpath dining is permitted in association with the existing use. It is recommended that an updated POM be submitted which will include provisions regarding the management of patrons leaving the premises. A condition of consent shall also be applied to ensure that the POM is adhered to at all times.</p>

Issue	Comment
<u>Visual Privacy</u> <ul style="list-style-type: none"> Concerns regarding overlooking into the balconies of the apartments above, with particular regards to the ground floor level apartments. 	The existing balconies fronting Marine Parade are highly visible to the general public given the location of the balconies and the location of the apartments adjacent to Maroubra Beach. As such, it is not considered that the proposed development would result in any unreasonable privacy impacts upon the residential properties, being located within an area of public open space. Notwithstanding, it is recommended that the size of the seating area be reduced to that which is currently permitted on a temporary basis, and therefore privacy impacts will be minimised in this regard.
Concerns regarding compliance with the number of toilets for the Hotel as a result of the increased patrons.	Compliance with sanitary facilities falls under the provisions of the BCA. It is considered that the Hotel has adequate toilets to accommodate the proposed increase.
Deliveries are currently within the subject area, concerns regarding when would deliveries take place.	The POM shall ensure that deliveries are made without comprising the safety and security of the area.
Devaluation of property.	Noted, however this is not a planning consideration.
<u>Use of McKeon Street</u> <ul style="list-style-type: none"> McKenon Street should be closed off and used as a communal space for all businesses to benefit McKenon Street would be pedestrianized and the restaurants could offer more outdoor space. 	The recommendations in relation to the future use of McKeon Street are outwith the scope of the subject modification application.

6. Section 4.55 Assessment

The subject modification application is made pursuant to Section 4.55(2) of the Environmental Planning and Assessment Act, 1979 (the Act), as amended. Under the provisions of section 4.55(2), a consent authority may modify the consent if the development satisfies the following:

- a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and*
- b) *it has consulted with any relevant public authorities or approval bodies, and*
- c) *it has notified the application & considered any submissions made concerning the proposed modification*

6.1. Substantially the Same Development

To establish if development is substantially the same as what was granted consent, reference is made to the case of *Moto Projects (No.2) v North Sydney Council* [1999] NSW LEC 280, which provides the following judgement:

“The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified.....

....The comparative task does not merely involve a comparison of the physical features or components of the development as currently approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development is granted).

The application originally approved outdoor seating for use in association with the existing Hotel at 182 Marine Parade, Maroubra known as The Bay Hotel and Diner. The approved development comprised one (1) area of seating with an area of approximately 51.2m². The outdoor seating area could accommodate a total of 30 patrons which was stipulated in the development consent for the outdoor seating area. It is worth noting that the original application DA/717/2017 originally proposed an area for 60 patrons, however in relation to concerns regarding noise, the number of patrons was reduced to 30.

The current application seeks to modify the size and capacity of the outdoor seating by adding an additional 68.8m² and increasing the number of patrons by 60, totaling 90 persons. The increase in area shall be an extension of the existing and approved outdoor seating area on Marine Parade to the south-east and south-west, with no new seating areas proposed. The substantially the same test requires Council to consider not only the physical features but undertake a quantitative and qualitative assessment of the development. Furthermore, the provisions of s4.55(2) requires an assessment to be undertaken against the development to which the consent was originally granted, before that consent as originally granted was modified.

Quantitatively, the proposed modifications shall result in an increased area of outdoor seating of approximately 68.8m² (134% increase), and an increase in patron numbers of 60 persons (200% increase) to that which was originally approved.

Concerns are raised regarding the extent of the increase, with particular regards to the increase in patron numbers, which shall be triple what was originally granted, and whether the outdoor seating area as modified would be substantially the same as that which was originally approved. However, as a result of the detailed assessment of the application, it is recommended that the area be reduced to a maximum of 85m² and the capacity of the area be limited to a maximum of 60 patrons (an additional 30 patrons). The proposal as recommended is not considered to be a radical transformation or substantial alteration to the approved development, particularly noting that the original development application proposed a total of 60 patrons. Furthermore, the development as modified continues to fall within the scope of the original description, being outdoor seating for use in association with the existing Hotel.

The term “substantially” means “*essentially or materially having the same essence*”.

The intent of the proposed outdoor seating remains the same as the approved development, providing an outdoor area for patrons of the Hotel, in addition to the pub use, and although the area and capacity of the seating has changed, it is considered that the essence of the use is consistent with that approved.

In view of the above, and the judgement in *Moto Projects (No.2) v North Sydney Council [1999] NSW LEC 280*, it is considered in this instance the fundamental characteristics and essence of the development would remain the same and as such Council can be satisfied that the resultant development is considered to be substantially the same development as originally approved.

6.2. Consultation with Other Approval Bodies or Public Authorities

The application was referred to NSW Police (Eastern Beaches Police Area Command) for comments and/or recommendations. A formal response was received from NSW Police on 15 November 2021. The response from NSW Police indicated that concerns were raised regarding the proposed outdoor seating area and increase in patrons with regards to neighbourhood amenity, and safety and security, as follows:

Police Object to the application in its current form due to the sheer magnitude of the capacity increase and concerns about the venues ability to comply with liquor licence conditioning regarding the installation of the umbrellas and ensuring the area is covered by CCTV footage.

Police also have concerns that this dramatic increase in capacity will lead to an increase on alcohol related crime, specifically assaults. It is well known that the overcrowding of venues increases the risk of these violent incidents occurring within a venue.

The POM does not provide any insight as to how the venue will be managed, with particular regards to the closure of the area at 9:30pm and curating patrons from outdoor into the internal areas of the

hotel, particularly given that the hotel does not have an internal capacity stipulated. This lack of patron controls can lead to further overcrowding and a greater risk to public safety. The POM only refers to security after 10pm which is outwith the outdoor area hours. Concerns are raised regarding a capacity of 90 persons and no security.

Further, Police have concerns about the “Exit” as marked on the plans from this outdoor area (facing McKeon Street). With the increase in capacity and perceived lack of oversight of the area, this gap in the fencing leaves the venue vulnerable to issues including over crowding and the monitoring of both intoxicated persons and minors entering the area – All three of which can result in public safety issues. It also needs to be pointed out to council that both permitting intoxication and consumption of alcohol by a minor on a licensed premises are prescribed offences under the Liquor Act and can result in additional sanctioning.

Within the application, the applicant is seeking to install additional umbrellas to provide shade within the area. While Police applauded this initiative from a sun sense, health and safety and comfort perspective, it does question as to how the venue will remain compliant with the conditions of their Liquor licence and the Plan of Management condition within the Notice of Consent with regards to CCTV. Within the application that they are seeking to install 11 of these umbrellas covering most of this area. Given the height of these umbrellas according to may cause an unintended breach of these conditions by blocking sight lines of the camera that are covering this area, leaving the venue and Licensee potentially liable for prosecution.

Concerns are also raised regarding noise associated with the increased patronage to residential properties, as well as noise associated with the moving of tables and chairs etc.

Notwithstanding the above, in order to address the above concerns the submissions provided a series of recommended conditions of consent should the application be approved. Full details of the recommended conditions are stipulated in Appendix 1. The submission also notes the following:

These conditions are sought to ensure that The Bay Hotel & Diner is managed in a way to ensure the quiet good order and nature of the neighbourhood, seek to mitigate risks to staff, patrons and members of the public from associated alcohol related violence.

Assessment Officer Comments:

It is considered that the concerns raised by NSW Police primarily are in relation to the management of the premises and the ability to comply with their relevant license and consent requirements with regards to CCTV. As such, any approval of the application must ensure that appropriate measures are implemented to minimise impacts upon the neighbourhood amenity, ensure the outdoor area is managed appropriately, and ensure ongoing compliance with any legislative requirements. One of the recommendations by the NSW Police is limiting the capacity of the outdoor area to 60 patrons (rather than the 90 patrons requested). This reduction in number is supported. Additionally, the service of alcohol within the outdoor area is only to be ancillary to food service. As discussed further in the report, subject to the recommendations, the proposed changes are not considered to be inconsistent with the objectives of the footpath dining controls, which permit footpath dining in conjunction with indoor premises provided access, safety and amenity of public footpaths is maintained, and encourage active uses of footpaths. In view of the above, the recommended conditions from NSW Police are fully endorsed, with particular regards to the increase in patrons being subject to a reviewable condition within 12 months, which would allow Council to cease the use if the proposal should adversely impact upon the amenity of the local area.

6.3. Notification and Consideration of Submissions

Subclause s4.55(2)(c) requires the modification application to be notified in accordance with:

- (i) *the regulations, if the regulations so require, or*
- (ii) *a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and*

The application was notified in accordance with the provisions of Council's Community Participation Plan. A total of twenty-one (21) submissions were received in response to the notification process.

The concerns raised in submissions have been taken into consideration in the assessment of the application and are addressed in the report.

7. Environmental Assessment

The site has been inspected and the application has been assessed having regard to Section 4.15 of the Environmental Planning and Assessment Act, 1979, as amended.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	The proposed modifications are ancillary to the approved development, which will remain substantially the same. The development remains consistent with the general aims and objectives of the RLEP 2012.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The proposed modifications have responded appropriately to the relevant planning controls and will not result in any significant adverse environmental, social or economic impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	<p>The site has been assessed as being suitable for the development in the original development consent.</p> <p>The modified development will remain substantially the same as the originally approved development and is considered to meet the relevant objectives and performance requirements in the RDCP 2013 and RLEP 2012. Further, subject to the recommendations, the proposed modifications will not adversely affect the character or amenity of the locality.</p> <p>Therefore the site remains suitable for the modified development.</p>
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

7.1. Discussion of key issues

Part D12 (Footpath Dining and Trading) of RDCP 2013

Part D12 of RDCP 2013 specifies numerous requirements in relation to proposed footpath dining and trading, including requirements in relation to the location and design of outdoor dining. A detailed assessment against the provisions of D12 have been undertaken and provided in Appendix 2. However, as a result of the detailed assessment of the footpath dining provisions concerns are raised regarding the following:

Pedestrian Access

The overall objectives of Section D12 aim to ensure access, safety and amenity of public footpaths is maintained, while facilitating active and lively street frontages.

The relevant objectives in relation to clause 2.1 are as follows:

- *To maintain the primary function of footpaths as public pedestrian corridors and domains, while encouraging opportunities for outdoor dining and other footpath trading activities.*
- *To maintain public safety including unobstructed access to footpaths and adjacent buildings.*

In achieving the above objectives, specifications are provided which require clear zones to be provided a minimum of 2.5m for locations adjacent to classified or main roads. Trading areas longer than 10m must provide a break a minimum of 1.5m in the centre of the trading area, and must be located a minimum of 0.5m from all other street furniture or structures. The provisions of clause 2.1 also require footpath trading areas to provide consistent pedestrian access. Additionally, any footpath trading should be consistent with existing footpath trading activities and have a public benefit.

The original application and outdoor dining area was supported on the basis that *“the proposal will result in a benefit to the public through provision of an active street corner while still maintaining sufficient area for pedestrian traffic.”* While the proposal as modified provides the minimum 2.5m clearance concerns are raised regarding the extent of the area allocated to the outdoor dining and detrimental impacts upon pedestrian access and traffic. The subject site is a corner allotment located on the corner of Marine Parade and McKeon Street. The site is also located adjacent to Maroubra Beach. As such the footpath adjoining the existing outdoor dining area is highly utilised and has high pedestrian traffic. As the site is located on a corner, the “footpath” essentially extends into the proposed dining area as pedestrians use the corner area to cut across from Marine Parade to McKeon Street and vice-versa. It is considered that the extension of the outdoor dining area to the edge of the planter box and south to the McKeon Street footpath would detrimentally impact upon pedestrian access on this corner, and potentially create congestion, particularly at the pedestrian crossing. As discussed throughout the report, the proposed area of 120m² and number of patrons at 90 is considered to be excessive and is not supported. It is considered that a reduction to the area for outdoor dining in accordance with the current temporary approval of 85m² would not unreasonably impact upon the pedestrian flow along the corner and would ensure that pedestrian access is maintained. A reduction to the size of the area would also ensure that the proposal area does not extend over the existing stormwater pit and access can be maintained at all times.

The proposed area is 6.54m-15.7m in length with no sufficient break in contradiction to clause 2.1(vi) which specifies that for areas more than 10m in length a break is to be provided within the centre. Subject to the recommendation to reduce the size of the area to 85m², the proposed area would be a maximum of 13.6m in length. While the proposed area would still exceed the permitted length, the proposed area is not considered to adversely impact upon pedestrian access or the visual amenity of the area.

Visual Amenity

Clause 2.4(iv) requires that footpath dining areas visually complement and be physically aligned with other street furniture (including adjacent footpath trading areas) and adjacent public utilities. Due to the site being a corner allotment, it is a stand alone footpath dining area. As discussed below under clause 6.7 of RLEP 2012, concerns are raised regarding the visual amenity of the proposed outdoor dining area which is considered to be excessive. However, subject to the recommendations it is considered that a balance would be achieved between the open space and footpath dining.

Residential Amenity

Clause 2.5 of Section D12 requires the applicant to demonstrate that the proposal will not have unreasonable impacts on the amenity of adjacent residences. Additionally, the objectives of Section D12 aim to ensure footpath dining is compatible with other community use of the footpath and does not adversely impact upon the amenity of adjacent residences. Concerns are raised regarding the associated noise impacts with the proposed increase in patron numbers. See detailed assessment further below under Acoustic Amenity. Subject to the recommendations which require a reduction to the patron numbers and size of the outdoor dining area, it is considered that the proposal would not result in any unreasonable amenity impacts upon the surrounding and adjoining residential properties.

In view of the above, it is considered that subject to the recommendations, the proposed development would remain consistent with the objectives of RDCP 2013 in relation to footpath dining and can be supported in this instance.

Clause 6.7 (Foreshore Scenic Protection Area) of RLEP 2012

The subject land is identified as being within a foreshore scenic protection area and an assessment of the proposed development (as modified) against the provisions of clause 6.7 of RLEP 2012 has been undertaken in this instance.

The objectives of clause 6.7 aim to ensure that the natural, visual and environmental qualities of scenic areas of the coastline are protected, to protect and improve visually prominent areas, protect significant public views to and from the coast, and ensure development is appropriate and does not detract from the scenic qualities of the coast.

Concerns are raised regarding the extent of the proposed outdoor dining area which shall comprise 120m² and the visual impact of the proposed structures on the coastline. The subject site is located adjacent to Maroubra Beach and is highly visible from the public domain including the foreshore and waterway. The proposed seating area shall be more than double the size of the originally approved area. The approximate extent of the increase in the outdoor dining area can be seen in Figure 5 below:

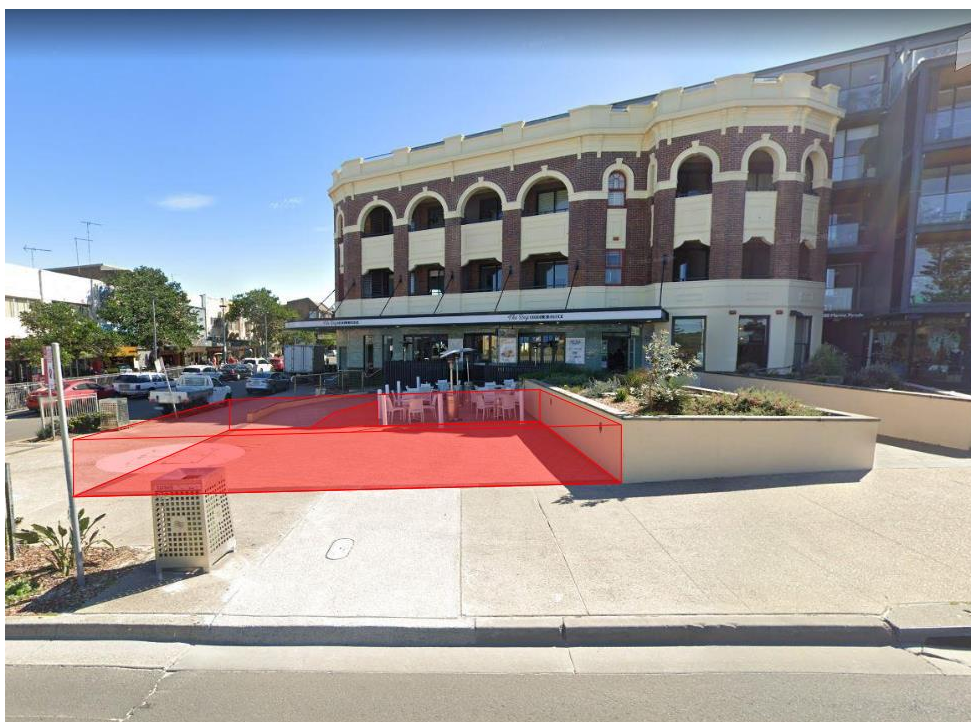


Figure 5 – Approximate extent of proposed outdoor dining area, which shall extend to the edge of the planter box and to the south-west to the existing retaining wall. (Original photo from August 2020 – Google Streetview).

The proposed area shall accommodate a total of twenty-five (25) tables and ninety (90) chairs, as well as associated heaters and umbrellas. The visual clutter of the area shall be detrimental to the streetscape and is not considered to protect the visual qualities of the foreshore, resulting in adverse

visual amenity. Concerns are also raised regarding the perception of the seating area as private land given the extent of the area proposed and the enclosure of the area by the use of removable screens. Given the visual prominence of the site and detrimental impact upon the public domain, the proposed development cannot be supported. It is noted that the site is currently operating under a temporary approval which extends the area to 85m², allowing a total capacity of 60 patrons. It is considered that a minor encroachment of the originally approved area in accordance with the area as specified in the current temporary approval would be visually compatible with the foreshore and could be supported.

The proposed outdoor dining shall not impact upon the natural or environmental qualities of the coastline, and as such subject to the recommendations the proposal would be seen to be consistent with the objectives of clause 6.7.

Acoustic Amenity

Concerns have been raised in submissions regarding potential noise impacts as a result of the additional outdoor dining and increase in patron numbers. The application was referred to Council's Environmental Health Officer who undertook a detailed assessment of the acoustic impacts, see further comments in Appendix 3.

It is noted that the original Development Application (DA/717/2017) originally proposed a total of 60 patrons for the outdoor dining area, however in response to concerns regarding noise, the number of patrons was reduced to a maximum of 30 patrons. As such concerns are raised regarding the proposed increase to 90 persons, the ability to comply with the relevant noise criteria and ensuring that there are no unreasonable noise impacts upon the adjoining residential properties. The submitted Acoustic Assessment report concludes that the proposed capacity of 90 persons can satisfy the OLGA noise assessment levels, however, also notes that noise from the outdoor area shall be dependent on customer behaviour and the implementation of effective onsite management. Furthermore, the submitted Acoustic assessment is based on "normal" voices and does not consider raised voice effort which could impact upon the results of the assessment and ability to comply with the noise criteria of the OLGA. Council's Environmental Health Officer has also outlined that the acoustic assessment does not consider the accumulated impact shouting (anti-social behaviour), dropping of utensils/crockery or moving of furniture. However, as highlighted in the EHO comments, the acoustic assessment can only make recommendations and assessment on predictions.

A temporary approval for an extension to the outdoor dining area was approved in March 2022 and is in operation until 30 June 2022. The temporary approval comprises an area of 85m² with a maximum capacity of 60 patrons. A search of Council's records did not reveal any formal complaints regarding the outdoor dining area since the temporary increase in patrons, however the temporary approval has only been in operation since March this year and as such it is considered that the associated impacts with the increased area and capacity have not been able to be fully anticipated or appreciated.

In view of the above, and in the absence of any recent complaints regarding the outdoor dining area, it is recommended that the number of patrons be limited to a maximum of 60. Additionally, it is recommended that a condition be imposed for an updated acoustic report to be provided within 3 months of the operation of the increased capacity which demonstrates that the development complies with the relevant noise criteria. This shall ensure that the actual capacity of outdoor area is appropriate and would not be based on assumptions. A reduction to 60 patrons would also be consistent with that originally sought in the original application.

While there were numerous submissions which raised noise impacts as a concern and highlighted an existing issue with noise from the Hotel, Council's Environmental Health Officer advised that there has not been a significant level of formal complaints to Council regarding noise from the Hotel. A search of Council's records revealed three (3) formal complaints in 2015, 2019 and 2021. Given the limited time the capacity of 60 patrons has been operating, it is also recommended that the proposed outdoor dining is approved subject to a reviewable condition to be reviewed by Council within a 12 month period.

Subject to the reduction of patrons to a maximum of 60, requirement for acoustic certification and the reviewable condition in which the applicant can demonstrate compliance and effectiveness of

management, it is considered that the proposed modifications would not result in any unreasonable impacts upon adjoining and surrounding properties with regards to acoustic privacy.

Traffic and Parking

Concerns have been raised in submissions regarding traffic and parking impacts as a result of the proposed modification and increase in patron numbers. No additional parking is required for footpath dining under the provisions of RDCP 2013. Furthermore, there is no opportunity to provide any additional parking for patrons on site. The existing premises is serviced by good public transport, and the surrounding on-street parking.

Subject to the recommendations, the proposed increase in patron numbers is not excessive, being approximately 30 persons more than were originally approved. Additionally, given the nature of the use of the venue and associated seating, which is a licensed premises, car usage would generally be less compared with other uses.

It is also noted that there would likely be a significant portion of patrons who would have already been coming to Maroubra Beach in any case and so the parking demand is being shared among a number of businesses and also with the Beach area itself, which generates the most demand for parking on its own. As such, patrons of the proposed outdoor dining would therefore likely contribute little to any additional parking demand. In view of the above, it is considered that the proposed modifications shall not result in any unreasonable impacts upon the local area with regards to traffic and parking impacts. Council's Development Engineer raised no concerns regarding the increased patron numbers and traffic impacts.

Number of Patrons

Several submissions have been received which raised concerns regarding the increase to the number of patrons from 30 persons to 90. The detailed assessment of the application concludes that the proposed 90 patrons is not supported as it shall result in adverse impacts upon the residential amenity of adjoining residents, and it is recommended that a maximum of 60 patrons be permitted in the outdoor dining area. The reduction to 60 patrons is also consistent with that recommended by NSW Police to ensure that the outdoor area can be adequately managed, and with the recent temporary approval which granted consent for an increased area and patronage until 30 June 2022.

Public Interest

The proposed modifications would be considered to be in the public interest if the development is consistent with the objectives of the zone, and the relevant provisions of RLEP 2012 and RDCP 2013. The subject seating is located within the B1 – Neighbourhood Centre zone pursuant to the Land Use Table in RLEP 2012. The objectives of the zone aim to provide a range of business uses to serve the local community, enable residential development that is well integrated with the primary business function of the zone, and minimise impacts upon the amenity of residents in the zone.

As discussed in the report, the proposed seating is consistent with the relevant provisions of RLEP and RDCP with regards to footpath dining. However, it is recommended that the number of patrons proposed be reduced to a maximum of 60 patrons and the area associated with the outdoor dining also be reduced to 85m². This would be consistent with the current temporary approval for the outdoor area. Furthermore, the proposed increase shall be subject to a reviewable condition in which the Applicant will need to demonstrate that the approved numbers and area has not unreasonably impacted upon the area or local residents, and complies with the relevant noise criteria. Subject to the recommendations, it is considered that the proposed development would be consistent with the objectives of the B1 zone.

8. Conclusion

That the application to modify the approved development to add additional seating for 60 patrons (90 in total) to the existing outdoor dining area with tables / chairs / umbrellas at 182 Marine Parade, Maroubra, be approved (subject to conditions) for the following reasons:

- The proposed modifications are considered to result in a development that is substantially the same as the previously approved development.
- The modified development will not result in significant adverse environmental impacts upon the amenity and character of the locality.
- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013
- The proposal is consistent with the specific objectives of the B1 zone in that it services the local community in conjunction with the existing Hotel use and shall not adversely impact upon the amenity of residents in the zone.
- The development is compatible with the existing footpath dining and shall not be detrimental to the visual quality of the public domain (subject to recommendations).

The application is recommended for approval on a trial basis only to be reviewed in 12 months and subject to the following recommendations:

9. Recommendation

That the RLPP grants development consent under Section 4.55 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/717/2017 for additional seating for **30** patrons (**60** in total) to the existing outdoor dining area with tables / chairs / umbrellas at the Bay Hotel and Diner at 182 Marine Parade, Maroubra, in the following manner:

- **Amend Condition 1 to read:**

1. The development must be implemented substantially in accordance with the plans and supporting documentation listed below and endorsed with Council's approved stamp, except where amended by Council in red and/or by other conditions of this consent:

Plan	Drawn by	Dated
DA100 Revision D	Hosking Munro	19 July 2018

Except, as amended by the **Section 4.55 'A' plans and documentation listed below, only in so far as they relate to the modifications highlighted on the Section 4.55 plans and detailed in the Section 4.55 application**, except as may be amended by the following conditions and as may be shown in red on the attached plans:

Plan	Drawn by	Dated
DA100 (Outdoor Seating Plan, Location Plan + McKeon Street Elevation), Revision H	Hosking Munro	17 November 2020

- **Add Condition 1A to read:**

- 1A. The approved plan DA100, Revision H, dated 17 November 2020, must be amended in accordance with the following requirements and submitted to and approved by Council prior to operation of the outdoor dining area:
 - The area and configuration of the outdoor dining is to be consistent with that approved under approval LA/71/2022 in relation to the temporary footpath dining. The plans are to have a total area of 85m² for the outdoor dining area and a maximum capacity of 60 persons.

- **Add Condition 20B to read:**

- 20B. The recommendations in the acoustic report prepared by Atkins Acoustics and Associates Pty Ltd dated October 2021 (ref: 52.7113.R1:GA/DT/2021 Rev 01) shall be implemented at all times:

- Implement an amended Plan of Management and Security Management Plan;
- no outdoor amplified music;
- no grouping of tables and chairs;
- installation and maintenance of CCTV surveillance cameras;
- outdoor furniture fitted and maintained with soft/cushioned leg cups/pads;
- all outdoor dining furniture removed at the conclusion of the trading period; and
- the installation of appropriate signage with respect to noise amenity and disturbance.

- **Add Condition 20C to read:**

- 20C. No amplified music, entertainment, or any other ancillary activity is permitted in the outdoor area.

- **Add Condition 33 to read:**

NSW Police Conditions

33. The use and operation of the outdoor dining area must be implemented in accordance with the recommendation outlined in the NSW Police Referral response dated 15 November 2021.

- **Amend Condition 3 to read:**

3. Prior to the installation of any items on the footway or operation of the extended footpath dining area, including any new area under DA/717/2017/A, the business proprietor shall enter into a new formal License Agreement with Council, covering the terms and conditions of the footpath dining. The applicant is advised to contact Council's Property Compliance Officer, (9093-6936), regarding Council's requirements for the formal license agreement.

Note: An updated plan in accordance with condition 1A is to be submitted as part of the license agreement documentation.

- **Amend Condition 3a to read:**

- 3a. Prior to entering into a new official agreement with Council for use of the footway dining area (in accordance with development consent DA/717/2017/A), the applicant shall submit to Council for approval and have approved an application for footway dining under the Roads Act 1993 in relation to the extended footway dining area.

- **Amend Condition 10 to read:**

10. The outdoor patron numbers are restricted to 90 persons and the operating hours must be restricted to the following and both are subject to a review period in accordance with Section 4.17 (10B) of the Environmental Planning & Assessment Act 1979 and Division 14 of the Environmental & Assessment Regulation 2000:

Outdoor dining/footway

- 8.00am and 9.30pm – Monday to Sunday and public holidays (inclusive).

The patron numbers and operating hours will be reviewed by Council within 12 months of the date of commencement of the increased patron numbers (60 persons). The operator of the premises must advise Council in writing of the date of commencement of the increased patron numbers and extended footway dining area. Appropriate supporting evidence (including but not limited to, an acoustic report) may be required at the end of

the review period to demonstrate compliance with all conditions of this consent as part to the review.

All food and beverage services to customers shall only be provided within the abovementioned hours of operation and all patrons must vacate the area within 15 minutes of the specified hours.

- **Amend Condition 18 to read:**

18. Prior to commencement of operations, an amended plan of management is to be prepared to include but not limited to:
 - The correct number of patrons approved to be in the outdoor area;
 - The recommendations provided in the acoustic report prepared by Atkins Acoustics and Associates Pty Ltd dated October 2021 (ref: 52.7113.R1:GA/DT/2021 Rev 01).

The Plan of Management should also detail the measures to be implemented to:

- ensure compliance with the relevant conditions of approval,
- ensure compliance with relevant noise criteria and minimise noise emissions and associated nuisances,
- minimise the potential environmental and amenity impacts upon nearby residents,
- effectively minimise and manage any possible anti-social behaviour or loud noises from children playing in the outdoor area,
- effectively manage and respond to resident complaints,
- ensure responsible service of alcohol and harm minimisation,
- provision of adequate security and surveillance,
- ensure that the maximum number of patrons does not exceed the authorised capacity, in accordance with Council's consent.

The plan of management is to be reviewed annually and amended as necessary to ensure compliance with the relevant requirements.

- **Amend Condition 19 to read:**

19. The maximum number of patrons within the outdoor dining area must not exceed **60** at any time and a sign detailing the maximum number of patrons permitted must be provided in a conspicuous position (e.g. near the building entrance), to Council's satisfaction. The maximum capacity of 60 patrons will be reviewed by Council within 12 months of the date of commencement of the increased patron numbers.

- **Amend Condition 20 to read:**

20. An acoustic report, prepared by a suitably qualified and experienced consultant in acoustics, must be provided to the Council **within 3 months of the commencement of the current consent (Modification A – DA/717/2017/A)**, which demonstrates and confirms that the relevant provisions of the *Protection of the Environment Operations Act 1997* and the noise criteria and requirements contained in this consent has been satisfied (including any relevant approved acoustic report and recommendations). The assessment and report must include all relevant fixed and operational noise sources. Assessment should be carried out at full capacity and consider the nearest affected residents.

Appendix 1: Referrals

1. External referral comments:

1.1. NSW Police

A response was received from NSW Police on 15 November 2021 who were not in support of the proposed increase in number of patrons to 90 persons and raised several concerns regarding the

proposed development. As such, the response from NSW Police provided a series of conditions of consent should the application be approved, as follows:

1) Patron Capacity

- (a) *Outdoor dining and seating area to front of The Bay Hotel and Diner for 60 patrons with hours of operation being 8:00am to 9.30pm seven days per-week.*
- (b) *A sign is to be placed above the front door indicating the maximum patron capacities of the footway dining area.*

2) Use of the footway area

The footway dining/trading area must not be used solely for the consumption of alcohol. Alcohol may only be served or consumed in this area if it is in conjunction with and ancillary to the service of a meal (as defined in the Liquor Act 2007), to the satisfaction of Council.

3) Access/Egress

The Licensee must ensure all patrons access and egress the footway dining area from a single point. This access/egress point is to be directly opposite the deck attached to the structure of the hotel as according the outdoor seating plan supplied in this application.

4) Surveillance cameras

- 1) *The licensee must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:*
 - (a) *the system must record continuously from opening time until one hour after the*
 - (b) *premises is required to close (or, in the case of a premises that is not required to cease trading, continuously at all times),*
 - (c) *recordings must be in digital format and at a minimum of ten (10) frames per second,*
 - (d) *any recorded image must specify the time and date of the recorded image,*
 - (e) *the system's cameras must cover the following areas:*
 - (i) *all entry and exit points on the premises,*
 - (ii) *the footpath immediately adjacent to the premises, and*
 - (iii) *all publicly accessible areas (other than toilets) within the premises.*
- 2) *The licensee must also:*
 - (a) *keep all recordings made by the CCTV system for at least 30 days,*
 - (b) *ensure that the CCTV system is accessible at all times the system is required to operate pursuant to sub-clause 1(a), by at least one person able to access and fully operate the system, including downloading and producing recordings of CCTV footage, and*
 - (c) *provide any recordings made by the system to a police officer or Liquor and Gaming NSW inspector within 24 hours of any request by the police officer or Liquor and Gaming NSW inspector to provide such recordings.*

Reason: To ensure the safety and security of the patrons of the venue and provide clarity on this condition.

5) Security Guards

- 1) *On Friday, Saturday and Sunday night or whenever live entertainment is being provided, a minimum of one (1) licensed security/crowd controllers are to patrol the premises from 8.00pm to 30 minutes after close.*
- 2) *The security guards being engaged by the proprietors of the business to carry out regular patrols of the immediate surrounding area to ensure that patrons of the hotel do not loiter or linger in the area or cause nuisance or annoyance to the neighbourhood and check the ages and levels of intoxication of those seeking entry to the premises.*
- 3) *All licensed security guards are to wear identifying uniforms with the word "security" located in a prominent position on the front and rear of their uniform. This writing must be clearly visible with the rear of the uniform being clearly identifiable through the CCTV footage. If the licensed security guard is wearing a reflective vest the word "security" must located in a prominent position on the front and rear of their uniform and not covered by any reflective vest. This writing must be clearly visible with the rear of the uniform being clearly identifiable through the CCTV footage.*

- 4) *All security personnel will be equipped with radios to facilitate communication. When security guards are engaged, the manager of the venue must also be equipped with compatible radio equipment to facilitate this communication.*

Reason: To ensure the safety and security of the patrons and staff of the venue.

6) Plan of management

A plan of management shall be submitted to and approved by council prior to occupation or use of the development, which details the measures to be implement to:

- *Ensure compliance with relevant conditions of approval,*
- *Ensure compliance with relevant noise criteria and minimise noise emissions and associated nuisances,*
- *Minimise the potential environmental and amenity impact upon nearby residents,*
- *Effectively minimise and manage anti-social behaviour,*
- *Effectively manage and respond to resident complaints,*
- *Ensure responsible service of alcohol and harm minimisation,*
- *Provision of adequate security and surveillance,*
- *Ensure that the maximum numbers of patrons does not exceed the authorised capacity, in accordance with council's consent.*

Reason: To ensure that the council, Police and other legislative bodies are operating in accordance with the application.

7) Complaint's log

- 1) *The licensee is to ensure that a telephone line is always available whereby members of the public can contact the licensee about matters of concern or make complaints about the operation of the hotel.*
- 2) *Should the licensee or their employees become aware of any complaints, the licensee is to respond thereto in a sympathetic and effective manner. Should any complaint not be resolved to the satisfaction of the complainant, he or she should notify the local police as soon as practicable.*
- 3) *The licensee shall keep a log book of calls from neighbours complaining about any disturbances caused by the licensed premises or its patrons. This log book shall be available for inspection by a Council officer or Police officer upon request.*
- 4) *No party to the complaint proceedings is to make known to any other person not being a party, the names or addresses of any other party in the proceedings; in particular, no patron of the premises is to be informed either directly or indirectly of the identity or location of any complainant.*
- 5) *The licensee is to ban any patron who causes any disturbance to the quiet and good order of the neighbourhood and/or who does not comply with any reasonable request by the licensee, his employees, or security personnel relating to the quiet and good order of the neighbourhood.*

8) Notice of consent

A copy of the relevant development consent is to be kept on the premises and with the Liquor Licence and made available for inspection on the request of a police officer, council officer, or any other person who is an authorised officer under the Environmental planning & Assessment Act 1979.

Reason: To ensure that the management of the hotel and enforcement bodies are aware of the venues conditions of consent.

9) Trial period

Should the council grant this increase in capacity; it should be limited to a 12-month period from the date of determination. Any extension of this trial period needs to be by way of a new application for determination.

2. Internal referral comments:**2.1. Heritage planner**

The application was referred to Council's Heritage Planner who provided the following comments and/or recommendations in relation to the proposed development:

The Site

The site is occupied by the Maroubra Bay Hotel, listed as a heritage item under Randwick LEP 2012. The Heritage NSW database listing for the building notes its rendered decoration including tall pilasters, moulded arches and parapet, and identifies its significance as a "good example of a 1920s beachside hotel. ... Occupies a prominent corner site of townscape significance."

Background

DA/378/2011 for footpath dining within the paved area on the Marine Parade frontage was approved in July 2011. The proposal included tables, chairs, low height partitions to delineate the seating area and umbrellas.

DA/635/2014 for a new elevated deck for footpath dining beneath the Marine Parade awning was approved in November 2014.

The original application proposed to reinstate the footway dining area adjacent to the hotel on the Marine Parade frontage to the building. Removable planter tubs were proposed to demarcate the footway dining area, as well umbrellas and tables and chairs to provide for 60 patrons.

Proposal

A Section 4.55 application has now been received which proposes to increase the size of the footway dining area adjacent to the hotel on the Marine Parade frontage to the building. Removable screens are proposed to demarcate the footway dining area, as well umbrellas and tables and chairs to provide for a total of 90 patrons.

Submission

The original application was accompanied by a Statement of Environmental Effects which includes a section addressing Heritage Conservation. The SEE considers that the proposed footway seating area is an appropriate addition to the surrounding of the hotel and will have no detrimental impact on the setting or appearance of the hotel. The SEE argues that the proposed use will have no impact on the heritage significance of the building.

The current application has been accompanied by a Statement of Environmental Effects which argues that the proposed footway seating area will have minimal visual impact and will be sympathetic to the heritage context of the subject building.

Controls

Clause 5.10(1) of Randwick LEP 2012 includes an objective of conserving the heritage significance of heritage items, including associated fabric, setting and views.

Clause 5.10(4) of Randwick LEP 2012 requires Council to consider the effect of a proposed development on the heritage significance of the heritage conservation area.

Section B2 of the DCP provides objectives and controls applicable to Heritage Items and development situated within a Heritage Conservation Area including design and character, scale and form, detailing, materials, finishes and colour schemes. In relation to Design and Character, clause 2.2 of the DCP notes includes a Control that street elevations and visible side elevations must not be significantly changed. In relation to Detailing, clause 2.5 of the DCP includes a Control that original detailing should be maintained and kept in good repair. In relation to Commercial

Properties, clause 2.13 of the DCP includes a Control that original forms, details, materials and finishes be retained.

Comments

Due to the alignment of the building and the roadway, there is a large triangular footpath area between the hotel façade and Marine Parade which incorporates planter boxes and changes of level. The original outdoor seating area was located underneath the central part of the awning on the Marine Parade frontage of the building. The previous outdoor seating area was located outside the line of the awning, defined by an existing planter box and a low masonry wall. The enlarged outdoor seating area is to extend closer to Marine Parade.

The proposed outdoor seating area will utilise an enlarged part of the existing extensive paved area in front of the building, and that an additional platform is not required. The proposed seating area is separated from the hotel building and will not result in any modification to existing building fabric. The proposed umbrellas will somewhat obscure the significantly altered ground floor facade, but will not impact on the visibility of the more intact first floor and second floor facades above awning level. The proposed outdoor seating area will not impact on the fabric of the heritage item, will offset the somewhat bare setting of the building and will not impact on significant views. The style of furniture is not yet finalised. The examples which have been provided for tables, chairs, benches, umbrellas and removable screens are satisfactory and no further consent conditions are required.

Recommendation

No further consent conditions are required.

2.2. Development Engineer

The application was referred to Council's Development Engineer who provided the following comments and/or recommendations in relation to the proposed development:

An application has been received to modify development Consent for outdoor footpath seating for the Bay Hotel & Diner at the above site.

This report is based on the following plans and documentation:

- *Seating Plan by Hosking Munro;*
- *Statement of Environmental effects by Hosking Munro*

General Comments

Development Engineering has reviewed the S4.55 application (amended seating plan) and also reviewed the Development Engineering conditions which formed part of the original DA assessment and advise that there are no Additional/Amended Development Engineering conditions in regards to the subject S4.55 application.

2.3. Environmental Health Officer

The application was referred to Council's Environmental Health Officer who provided the following comments and/or recommendations in relation to the proposed development:

Proposed Development:

It is proposed that the footway seating area at the Maroubra Bay Hotel be permitted to function between the hours of 8.00am and 9.30pm, daily and provide additional seating from 30 patrons to up to 90 patrons occupying 90 chairs at 25 tables.

Comments:

Development consent (DA/717/2017) was granted on 9 August 2018 for outdoor dining and seating for 30 patrons during the approved hours. This use is current until 9 August 2023.

The Hotel's current hours of trade are 8.00am to 1.00am the following day, Monday to Saturday and 8.00am to 12 midnight on Sunday. The footway dining area hours of trade 8.00am to 9.30pm Monday to Sunday.

An acoustic report prepared by Atkins Acoustics and Associates Pty Ltd dated October 2021 (ref: 52.7113.R1:GA/DT/2021 Rev 01) was submitted with the application and makes the following recommendations:

6.1 Recommendations

As part of the assessment the following noise management requirements have been considered;

- implementation of the Plan of Management and Security Management Plan dated November 2017;*
- no outdoor amplified music;*
- no grouping of tables and chairs;*
- installation and maintenance of CCTV surveillance cameras;*
- outdoor furniture fitted and maintained with soft/cushioned leg cups/pads;*
- all outdoor dining furniture removed at the conclusion of the trading period; and*
- the installation of appropriate signage with respect to noise amenity and disturbance.*

An increase from 30-90 patrons in the same amount of space is quite a significant increase and the acoustic report can only make recommendations based on predictions. The acoustic report doesn't consider the accumulated impact from shouting (anti-social behaviour), dropping of utensils/crockery or moving of furniture. However, the use of the outdoor area is proposed to cease by 9.30pm so will not be used in the "night" time period.

Plan of Management and security management plan prepared by Hosking Munro Pty Ltd dated May 2021 was provided with the application. This document has not been updated to reflect the newly proposed number of patrons in the outdoor dining area. The document also does not incorporate the recommendations provided in the acoustic report submitted with the application.

Submissions have been received raising concerns to potential noise disturbance and patrons congregating after the outdoor dining ceases. The assessing planner may consider a trial period in which an additional acoustic assessment would be required to be carried during trade for the business to demonstrate compliance.

The potential acoustic and amenity impact from the proposed development has been considered and appropriate conditions have been included in this referral.

2.4. Property Department

The application was referred to Council's Property Department who provided the following comments and/or recommendations in relation to the proposed development:

- The area to be approved should not impact on the proposed McKeon Street Plaza proposal (Council was awarded a \$500K grant towards the cost of the project to put something like the attached in place – see page 7 - this is a concept plan.)
The project is expected to run from September 2022 to February 2023.*
- We need more details on the distances marked in red so we know how much distance between the dining area and the metal steel fencing to ensure adequate unimpeded areas for pedestrian access.*

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- All items (umbrellas and all tables and chairs) must be temporary and removed at the end of trading and none should be fixed.

I note that there have been concerns raised in the past in regard to noise from the hotel due to bands and unauthorised signage. There has been no breaches of the footway dining area or agreement conditions under the current management to me.

Appendix 3: DCP Compliance Table

3.1 Section D7: Maroubra Beach Centre

The proposed modifications are not considered to be inconsistent with the provisions of Section D7 of RDCP 2013, with particular regards to clause 10 which outlines the requirements for open space within the beach centre. The approved outdoor dining area is identified as Public Open Space in figure 15 and the extension of the outdoor dining space shall remain within the Public Open Space area. The proposal is permitted with consent in the B1 zone and the proposal shall remain non-permanent, being subject to an agreement with Council. It is considered that subject to the recommendations, the proposal will not unreasonably impact upon the use of the public space, noting that the same area is currently in operation on a temporary basis. No fencing is proposed, with removable screens to be utilised around the perimeter of the outdoor dining area.

3.2 Section D12: Footway Dining

DCP Clause	Control	Proposal	Compliance
CI 2.1 Location and layout of footpath trading activities	i) Provide a clear zone on the footpath with a minimum width 2.0m or 2.5m for locations adjacent to classified roads, busy footpaths, footpaths in excess of 4m width and land within Randwick Junction Centre.	The proposed outdoor dining area will maintain a 3m clear zone to the south-east and a 5m clear zone to the south-west. However, the location of the site and outdoor area is unique in that it is situated on a corner and concerns are raised regarding the impact upon pedestrian access.	Complies , however concerns are raised regarding the size of the area and public safety, noting the nature of the footpath being on a corner and a highly utilised area. <i>See Key Issues for further discussion.</i>
	ii) Provide a minimum kerb setback 0.6m. Note the following kerb setbacks apply regardless of footpath width: (a) 0.9m adjacent to loading zones (b) 1.0m adjacent to "No Standing" zones (c) 1.5m adjacent to pedestrian crossings (applies both from kerb and the crossing) (d) 1.2m adjacent to angle parking (e) is not appropriate adjacent to a disabled parking space or a bus stop.	The proposed outdoor dining area is not adjacent to any kerbs.	N/A
	iii) If the minimum criteria in (i) – (ii) cannot be achieved, applicants must demonstrate the following: (a) Existing levels of public access and safety will be maintained for the footpath and the adjacent road, and (b) No unreasonable impacts on amenity or streetscape.	The proposed outdoor dining area will comply with the development controls in (i) and (ii).	Complies.
	iv) Where no footpath trading occurs in a locality, a proposed footpath trading	The proposed outdoor dining area is not within	Complies.

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DCP Clause	Control	Proposal	Compliance
	activity is to be provided adjacent to the kerb.	proximity to any kerbs, however remains indirectly adjacent to the nearest kerbs at Marine Parade and McKeon Street.	
	v) Locating footpath trading adjacent to the building line must demonstrate consistency with existing footpath trading activities, exceptional circumstances and/or a public benefit.	The proposed outdoor dining area shall be sited within the same location as the original approved area, with an extension to the south-east and south-west. The approved outdoor dining area has established the use of the footpath for this purpose.	Complies.
	vi) For trading areas longer than 10m, provide a 1.5m break in the centre of the trading area (excluding doorways and other essential openings).	The outdoor dining area varies between 6.54m-15.7m in length. A minor break of approximately 2m is provided to permit entry and egress through the dining area, however the pathway is constraint and awkward, and does not provide a sufficient break in the dining area. It is recommended that the area be reduced in size, which subsequently shall minimise the length of the area to a maximum of 13.6m, however the proposal would be consistent with the objectives of the control.	Does not comply. <i>See Key Issues for further discussion.</i>
	vii) Provide a minimum break of 1.0m from public utilities including fire hydrants, rubbish bins, seats, telephones, bicycle stands, bus shelters, taxi ranks and parking meters.	The proposed outdoor dining area is not located within proximity to these items.	Complies.
	viii) Provide a minimum break of 0.5m from all other street furniture including bollards, tree pits, street lights and traffic and electricity poles.	The proposed outdoor dining area is not located within proximity to these items. A garden bed is directly adjacent to the outdoor area, however the vegetation is protected as part of the garden bed. There is an existing stormwater pit in which the seating area will be located over. However, as part of the recommendations and reduction to the size of the	Complies, subject to condition.

DCP Clause	Control	Proposal	Compliance
		area, the pit will remain clear.	
	ix) Only that part of the footpath or public place directly in front of a restaurant/cafe may be used for footpath trading. The area may not extend to the area in front of neighbouring properties.	The Hotel is located on the corner of Marine Parade and McKeon Street. As such, the proposed outdoor dining area does not extend beyond the width of the existing food and drink premises associated with The Bay Hotel and Diner.	Complies.
	x) Seating may not be located next to the building line and the kerb side at the same time.	The proposed outdoor dining area is not within proximity to any kerbs.	Complies.
	xi) Provide a minimum depth of 1.1m within the footpath trading area for the comfort of patrons.	The minimum depth is 6.6m.	Complies.
	xii) Comply with a footpath gradient (crossfall) range of 1:100 to 1:40 (maximum) or demonstrate to Council that suitable access can be provided if a proposal is located on grades outside this range.	The proposed outdoor dining area is not subject to a crossfall greater than 1:40.	Complies.
	xiii) Locate the footpath trading area consistent with adjacent footpath trading activities, existing public utilities, landscaped areas and open spaces to provide consistent pedestrian access subject to the minimum setbacks above.	Concerns are raised regarding the impact upon pedestrian access and the loss of open space as a result of the increased area for the outdoor dining.	Concerns are raised regarding the extension of the outdoor dining area and impacts upon pedestrian access. <i>See Key Issues for further discussion.</i>
	xiv) Provide clear sight lines from the indoor premises to the outdoor trading area.	A direct and clear sightline will be maintained.	Complies.
CI 2.3 Operating hours	i) Comply with the approved hours of operation of the related indoor premises subject to the criteria below. ii) Outdoor dining areas in Business zones: (a) Local Centre Business zone B2: up to 11:00 p.m. Mondays to Saturdays and to 10:00 p.m. Sundays; (b) Neighbourhood Centre Business zone B1: up to 10:00 p.m. Mondays to Saturdays and up to 9:30 p.m. Sundays.	The subject site is zoned B1. No change is proposed to the approved hours of operation which are 8:00am to 9:30pm Monday to Sunday and public holidays.	Complies.
	iii) Outdoor dining areas in potentially sensitive areas (for example, in	The proposed developmetn shall retain	Complies.

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DCP Clause	Control	Proposal	Compliance
	<p>proximity to residential zones or premises):</p> <p>(a) Generally up to 9:30 p.m;</p> <p>(b) Further limitations may also be appropriate in areas within proximity to any residential premises.</p>	<p>the approved hours of operation for the existing outdoor dining area. The outdoor dining area shall cease at 9:30pm which is not considered unreasonable in the context of the residential dwellings. However, it is recommended that the increase in patronage be subject to a reviewable condition to ensure that there are no unreasonable amenity impacts upon the adjoining residential properties.</p>	
	<p>iv) Premises may be permitted a 30 minute period after the above-mentioned hours in which to vacate the outdoor dining area, provided this is within the approved hours of operation of the indoor premises.</p>	<p>A grace period of 15 minutes shall be retained for vacation of the outdoor dining area outside of the hours of operation (which is in accordance with the approved hours of operation of the food and drink premises of The Bay Hotel and Diner, being 8am until 12am, 7 days per week).</p>	Complies.
	<p>v) Variations to the above hours may be permissible only based on:</p> <p>(a) The merits of the proposal;</p> <p>(b) Existing hours of operation of the indoor premises, and/or</p> <p>(c) Proximity of residences.</p>	<p>No variation is proposed.</p>	N/A
CI 2.4 Furniture and fittings	<p>i) Dimensions fit into the footpath trading area including consideration for the comfort of patrons.</p>	<p>The submitted plans indicate suitable dimensions for the comfort of patrons. It is considered that the reduction in patrons shall ensure that the reduced area can comfortably accommodate the capacity of the area.</p>	Complies.
	<p>ii) Are safe, sturdy, (but not bulky), waterproof and weather resistant, can be easily removed at the close of business each day, will not damage the footpath or other public infrastructure or pose a trip/fall hazard or inconvenience</p>	<p>All furniture can be removed and will be safe whilst not being visually disruptive. The indicative furniture items are considered acceptable.</p>	Complies.

DCP Clause	Control	Proposal	Compliance
	to the public.		
	iii) Are weighted down or otherwise secured so as to prevent accidental dislodgement (e.g. umbrellas, A-frames).	The submitted furniture details show removable furniture that will be suitably weighted. Conditions are recommended to ensure the furniture is not permanently fixed to the pavement, and to ensure that the umbrellas are sufficiently weighted to prevent accidental dislodgement.	Complies subject to condition.
	iv) Visually complement and be physically aligned with other street furniture (including adjacent footpath trading areas) and adjacent public utilities.	While the proposed furniture is not bulky, concerns are raised regarding the number of furniture items and cumulative visual impact of the proposal. However, subject to the recommendation to reduce the size and capacity of the area, it is considered that the proposal would not be uncomplimentary to the area. The furniture is physically aligned with the existing planter bed and building.	Complies, subject to condition.
	v) Define a footpath trading activity by landscape planter boxes and flowerpots, bollards or screens (all to a maximum 1.2m height and maximum 1.8m length) provided they are located within the boundaries of footpath trading area and are removable at the close of business or otherwise designed as an integral part of a public open space area. Fittings are supplied and maintained at the expense of the applicant.	The outdoor dining area will be defined by removable screens that are less than 1.2m in height.	Complies.
	vi) Do not define the footpath trading area by full height solid or plastic screens or any other type of enclosure.	The outdoor dining area will be defined by removable screens that are less than 1.2m in height.	Complies.
	vii) Comply with Outdoor Advertising and Signage provisions in Part F2.	No outdoor advertising or signage is proposed.	N/A
	Umbrellas Provide: i) Heights consistent with	Standard commercial strength umbrellas are proposed, however the height clearance is not	Complies, subject to condition.

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DCP Clause	Control	Proposal	Compliance
	adjacent umbrellas or shade structures (if applicable) with a minimum height clearance from the footpath of 2.6 metres when open.	specified. A condition is recommended to ensure compliance with this part.	
	ii) Unimpeded views (if existing) of traffic signals, signs, pedestrian crossings	The proposed umbrellas are sufficiently set back from the street frontages and will not impede views.	Complies.
	iii) Unimpeded views (if existing) of historic facades or vistas of valued or historic streetscapes.	Councils' Heritage Planner raised no concerns regarding the views to the heritage façade of the building. The reduction to the size and capacity of the area shall ensure that the proposal will not impede upon the views.	Complies.
	iv) A safe and secure anchor point, (permanently fixed and which does not pose a trip hazard when the umbrella is in storage).	A condition is recommended to ensure compliance with this part.	Complies, subject to condition.
	v) No overhang of any roadway.	The proposed outdoor dining area is not within proximity to any road.	Complies.
	vi) Fire-retardant materials if located near a heating device.	Outdoor heaters are proposed. A condition is recommended to ensure compliance with this part.	Complies, subject to condition.
	vii) Market style, not beach umbrellas.	Market-style umbrellas are proposed. Notwithstanding, a condition is recommended to ensure compliance with this part.	Complies.
	Do not: viii) Provide umbrellas where building awnings exist unless it can be demonstrated that both can be appropriately accommodated within the space.	The proposed umbrellas are not located within proximity to any awnings.	Complies.
CI 2.5 Amenity	i) Demonstrate that the proposal will not have unreasonable impacts on the amenity of adjacent residences.	Concerns are raised regarding adverse impacts upon the adjoining residential properties as a result of the proposed modifications, with particular regards to increased noise impacts. A detailed assessment has been undertaken and	Acceptable, subject to conditions. <i>See Key Issues for further discussion.</i>

DCP Clause	Control	Proposal	Compliance
		it is recommended that the capacity and size of the area be reduced to minimise impacts upon adjoining properties.	
	ii) Provide adequate toilet and sanitary facilities to cater for patrons.	It is considered that adequate toilet and sanitary facilities are available based on the capacity of the existing food and drink premises and proposed additional patrons.	Complies.
	iii) Provide lighting and/or heating adequate for safety and amenity for all patrons.	Heating shall be provided.	Complies.
	iv) Demonstrate that lighting and/or heating will not cause a potential nuisance.	Standard commercial outdoor heaters are proposed that will not cause nuisance.	Complies.
	v) Demonstrate suitable management measures to control noise, litter and cleanliness of the outdoor trading area.	A Plan of Management was submitted with the DA that provides measures to control these matters. Notwithstanding, a revised POM is required to be submitted to Council for approval that takes account the recommended conditions and those of the acoustic report.	Complies, subject to conditions.

Responsible officer: Angela Manahan, Executive Planner

File Reference: DA/717/2017/A