

**ITEM 10. DEVELOPMENT APPLICATION: 127-139 MACLEAY STREET
POTTS POINT**

FILE NO: D/2008/1334

SUMMARY

Date of Submission: 07 August 2008

Applicant: George Bensen, Bensen and Partners Pty Limited

Proposal Summary: The proposal is for a wine bar fronting Llanckelly Place, containing up to 80 patrons, with proposed trading between 11.30am and 12.00 midnight seven (7) days per week.

The applicant originally applied for a wine bar to trade between 11.30am and 3.00am the following day for 120 patrons (including 52 seated).

The applicant was advised that 3.00am trading did not comply with Council's controls, and agreed to reduced the hours to 12.00 midnight and patron capacity to 80.

In accordance with the City of Sydney Late Night Trading Premises DCP 2007 the site is identified as being with a 'Local Centre' which allows maximum indoor trading between 8.00am to 11.00pm, with extended trading to 12.00 midnight for a trial period of one year, seven (7) days per week.

It is considered that the hours proposed are acceptable as they fall within the hours outlined in the DCP.

Twenty six (26) submissions were received with key concerns relating to the management of patrons, anti-social behaviour, hours of operation, suitability of the site for the proposed use, acoustic attenuation, noise impact on surrounding residential dwellings and the cumulative impacts of having another late night trading premises in the area.

Summary Recommendation: The development application is recommended for approval, subject to conditions. Specifically conditions relating to the Plan of Management, noise, security, hours of operation and acoustic attenuation.

It is considered that the noise impacts generated by the site can be contained through appropriate conditions to ensure that the proposal does not cause a nuisance to surrounding residential properties.

Development Controls:

The following planning controls may apply.

- (i) South Sydney Local Environmental Plan 1998
(Gazetted 28 April 1998, as amended)
- (ii) South Sydney Development Control Plan 1997
– Urban Design (in force on 2 July 1997, as
amended)
- (iii) City of Sydney Notification of Planning and
Development Applications Development Control
Plan 2005 (date of commencement – 18 May
2005)
- (iv) City of Sydney Access Development Control
Plan 2004 (in force on 28 June 2004)
- (v) City of Sydney Signage and Advertising
Structures Development Control Plan 2005
(commenced 28 March 2005)
- (vi) City of Sydney Late Night Trading Premises
2007 (in force 01 January 2008)
- (vii) City of Sydney Heritage Development Control
Plan 2006

Attachments:

A - Selected Drawings

RECOMMENDATION

It is resolved that consent be granted subject to the following conditions:

SCHEDULE 1A

Approved Development/Design Modifications/Covenants and Contributions/Use and Operation

Note: Some conditions in Schedule 1A are to be satisfied prior to issue of a Construction Certificate and some are to be satisfied prior to issue of Occupation Certificate, where indicated.

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2008/1334 dated 07 August 2008 and the following drawings:

Drawing Number	Architect	Date
02	Bensen Partners Architects	August 2008
03	Bensen Partners Architects	August 2008

and as amended by the conditions of this consent:

- (b) In the event of any inconsistency between the approved plans and supplementary documentation, the plans will prevail.

(2) HOURS OF OPERATION – SENSITIVE USES

The hours of operation are regulated as follows:

- (a) The hours of operation must be restricted to between 11.30am and 11.00pm seven (7) days per week.
- (b) Notwithstanding (a) above, the use may operate between 11.30am and 12 midnight seven (7) days per week for a trial period of one (1) year from the date of this consent. Council must be notified in writing of any break in operation of extended hours.
- (c) A further application may be lodged to continue the trading hours outlined in (b) above before the end of the trial period. Council's consideration of a proposed continuation and/or extension of the hours permitted by the trial will be based on, among other things, the performance of the operator in relation to the compliance with development consent conditions, any substantiated complaints received and any views expressed by the Police.

(3) PLAN OF MANAGEMENT

- (a) A plan of management is to be submitted to the satisfaction of Council, and in accordance with the City of Sydney Late Night Trading Premises Development Control Plan 2007 Part 2.9 and Appendix 2, prior to the issue of a Construction Certificate.
- (b) The use must always be operated / managed in accordance with the approved Plan of Management as outlined in part (a) of this condition.
- (c) A copy of the Plan of Management is to be kept on site and made available to Council officers and Police as required.

(4) MAXIMUM POPULATION OF LICENSED PREMISES

- (a) The maximum population of the premises is to be no more than 80 patrons.
- (b) For licensed premises, in addition to the sign showing the licensee's name, there must be affixed alongside, details of the maximum number of persons permitted in the premises, in letters not less than 25mm, displayed at the main front entrance of the premises. The overall size of both signs must not exceed 600mm in height or width in total.

(5) ACOUSTIC TREATMENT

The proposed new ceiling is to be acoustically rated to satisfy F5.4 of the BCA and acoustic requirements set out under Condition 29 and 30 of this consent.

(6) FIRE DOORS TO THE COURTYARD - OPERATION

The fire doors to the central courtyard are only to be used in an emergency. These doors are to remain closed at all other times.

(7) FIRE DOORS TO THE COURTYARD

The fire doors to the courtyard shall be acoustically treated and shall be fitted with acoustic seals.

(8) COMPLAINTS

If, during the on-going use of the premises, substantiated complaints of breaches of noise conditions occur the applicant must:

- (a) arrange for acoustic testing to be undertaken by a suitably qualified acoustic consultant; and
- (b) immediately implement any recommendations made by the consultant to ensure the premises complies with the noise levels specified in the "Noise-Use" condition above.

(9) RECEPTACLES FOR CIGARETTE BUTTS

(10) USE OF COURTYARD

The central courtyard is not to be used by patrons of the premises for smoking or drinking under any circumstances. This is to be patrolled and managed by the management/licensee on a regular basis.

(11) SIGNS - SEPARATE DA REQUIRED SIGNS

(12) REMOVAL OF GRAFFITI

(13) REMOVAL OF GLASS

(14) CARE OF BUILDING SURROUNDS

(15) NO SPEAKERS OR MUSIC OUTSIDE

(16) LIQUOR LICENSING ACCORD

(17) NOISE FROM GLASS REMOVAL

(a) A glass crusher must be installed in accordance with the approved drawing.

(b) Glass must not be emptied or transferred from one receptacle to another anywhere in a public place. All glass must be emptied/transferred within the premises and removed in containers.

(18) NEIGHBOURHOOD AMENITY

(19) NO PUBLIC ENTERTAINMENT

(20) WASTE AND RECYCLING COLLECTION

SCHEDULE 1B

Prior to Construction Certification/Commencement of Work/Health and Building

Note: Prior to the issue of the Construction Certificate, sufficient information must be forwarded to the certifying authority (whether Council or a private accredited certifier) illustrating compliance with the relevant requirements of the Building Code of Australia (and a copy forwarded to Council where Council is not the certifying authority). If Council is to be the certifying authority, please contact the Building Unit to discuss the requirements prior to submission of the application for construction certificate.

(21) ASBESTOS REMOVAL

(22) DISPOSAL OF ASBESTOS

(23) ASBESTOS REMOVAL SIGNAGE

(24) CONSTRUCTION AND FITOUT OF FOOD PREMISES

(25) FOOD PREMISES DATA BASE

(26) NOTIFY NSW FOOD AUTHORITY

- (27) MECHANICAL VENTILATION**
- (28) HOURS OF WORK AND NOISE – OUTSIDE CBD**
- (29) NOISE - LICENSED PREMISES**
- (30) NOISE - MECHANICAL PLANT AND EQUIPMENT**
- (31) WASTE AND RECYCLING MANAGEMENT - MINOR**
- (32) WASTE AND RECYCLING COLLECTION CONTRACT**
- (33) NO DEMOLITION PRIOR TO A CONSTRUCTION CERTIFICATE**
- (34) BARRICADE PERMIT**
- (35) STRUCTURAL CERTIFICATION FOR DESIGN – BCA (ALL BUILDING CLASSES)**
- (36) STRUCTURAL CERTIFICATION FOR EXISTING BUILDING – MINOR (ADDITIONS)**
- (37) BCA COMPLIANCE - ALTERATIONS AND ADDITIONS - UPGRADE OF WHOLE OR PART OF BUILDING IS REQUIRED (CC REQUIRED)**
- (38) BCA - NEW BUILDINGS WORKS - CLASS 2-9 BUILDINGS**
- (39) GLAZING – COMPLIANCE WITH AUSTRALIAN STANDARD**
- (40) FLAME AND SMOKE CONTROL REQUIREMENTS – BUILDING MATERIALS**
- (41) ACCESS AND FACILITIES FOR PERSONS WITH DISABILITIES**

SCHEDULE 1C

During Construction/Prior to Occupation/Completion

- (42) OCCUPATION CERTIFICATE TO BE SUBMITTED**
- (43) NO OBSTRUCTION OF PUBLIC WAY**

SCHEDULE 2

The prescribed conditions in accordance with Clause 98 of the Environmental Planning and Assessment Regulation 2000 apply where there is building work:

- (44) The prescribed conditions are as follows:**
 - (a) The work must be carried out in accordance with the requirements of the *Building Code of Australia* (as in force on the date the application for the relevant construction certificate is made).**
 - (b) This condition does not apply to:**

- (i) the extent to which an exemption is in force under Clause 187 or 188, subject to the terms of any condition or requirement referred to in Clause 187(6) or 188(4) of the *Environmental Planning and Assessment Regulation 2000*; or
 - (ii) the erection of a temporary building.
- (45)** In the case of residential building work for which the *Home Building Act 1989* requires that there be a contract of insurance in force in accordance with Part 6 of that Act, that such a contract of insurance is in force.

BACKGROUND

The Site and Surrounding Development

1. The site is rectangular in shape and runs between Macleay Street to the east and Llanckelly Place to the west. The site contains a three storey building with a central public courtyard and arcade running from east to west through the site.
2. The ground floor consists of commercial tenancies with residential dwellings and commercial tenancies on the upper floors.
3. The proposal is for lots 37 and 38 on the ground floor which have frontages to Llanckelly Place and the central arcade area. The tenancy includes a mezzanine level. The tenancy is currently vacant. Llanckelly Place is accessible only to pedestrians and is a through route between Darlinghurst Road to the south and Orwell Street to the North.
4. Surrounding land uses are low density multi-story buildings of three to five stories with predominantly commercial tenancies on the ground floor and residential above.



Figure 1 - Site Map

5. Photographs of the site are provided below.

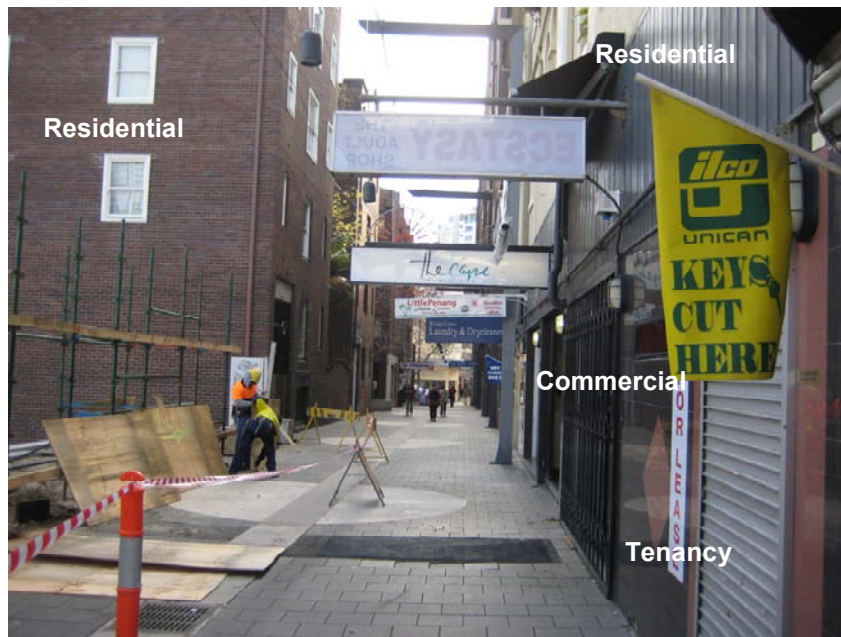


Figure 2 - Lankelly Place



Figure 3 - Site with frontage to Lankelly Place

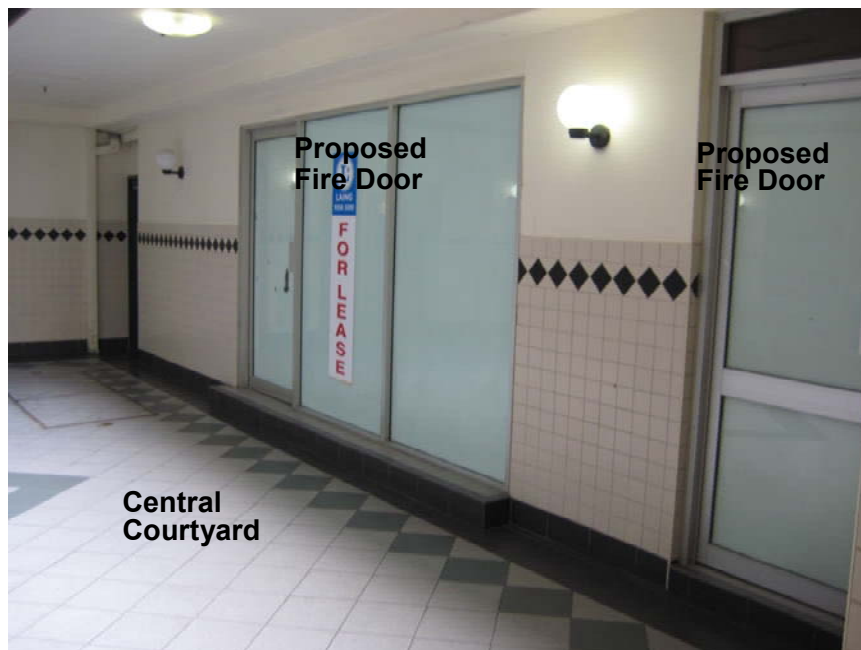


Figure 4 – Proposed fire doors to central courtyard



Figure 5 - Proposed wine bar to central courtyard with residential dwellings above

PROPOSAL

6. The application is to use the ground floor commercial premises fronting Llinkelly Place as a 'Wine Bar' for 80 patrons and operating between the hours of 11.30am and 12.00 midnight seven (7) days per week.
7. Works to include:
 - (a) moveable and fixed seating for 52 seated patrons at lower ground level, ground level and mezzanine level;
 - (b) fit out of a bar to the eastern end of the tenancy;
 - (c) fit out of a servery station to the north western end of the tenancy;
 - (d) installation of male and female bathrooms;
 - (e) installation of an acoustically treated stud wall to the arcade area; and
 - (f) new storage area.
8. A preliminary Plan of Management, contained within the Statement of Environmental Effects, was submitted with the application outlining:
 - (a) measures to minimise internal and external noise;
 - (b) procedures in place for minimising and managing waste generated on site and how and when waste will be collected;
 - (c) number of staff employed on site at any one time;
 - (d) arrangements for on-site security;
 - (e) management of large groups during peak trading periods; and
 - (f) when and how the site will be serviced generally.
9. Plans of the development are provided in **Attachment A**.

IMPLICATIONS OF THE PROPOSAL

Section 79C Evaluation

10. An assessment of the proposal under Section 79C of the Environmental Planning and Assessment Act 1979 has been made, including the following:-

STATE ENVIRONMENTAL PLANNING POLICIES (SEPPs)

11. The proposed development is not subject to any relevant State Environmental Planning Policies.

LEPs AND DCPs

South Sydney Local Environmental Plan 1998

12. Compliance of the proposal with the LEP controls is summarised below:

Development Controls	Permissible under South Sydney LEP 1998	Proposal as assessed under South Sydney LEP 1998
Planning Principles (Part 2)	Development is to be considered having regard to the goals and objectives within the Strategy for a Sustainable City of South Sydney.	The proposed development application satisfies the Strategy by providing a small bar with restricted hours of operation and plan of management.
Zoning Controls (Part 3)	Zone 10 – Mixed Uses	The development is permissible, subject to conditions. Refer to issues section of report.
Heritage Conservation (CI 22 to 27)	Development is to satisfy certain heritage requirements.	The site is not listed as a heritage item but is located within the Elizabeth Bay Conservation Area (CA19). The proposal satisfies the heritage controls as the new use makes minimal and acceptable changes to the external appearance of the building.

South Sydney DCP 1997

13. Compliance of the proposal with the DCP controls is summarised below:

Matter to be Considered	Compliance	Comment
PART B: URBAN DESIGN PRINCIPLES		
Urban Form Section 2	✓	Complies All changes are to be contained within the existing building envelope.

Matter to be Considered	Compliance	Comment
Urban Villages, Public Spaces and Pedestrian Networks Section 3	✓	Complies The subject site is located within the Kings Cross Urban Village, as defined by the DCP. Refer to issues section of report.
Sustainable, Healthy Environment Section 4	✓*	Able to comply The proposal can be conditioned, including the imposition of a trial period for extended trading hours, to ensure that the development does not cause an unreasonable public nuisance by way of noise pollution.
PART C: PUBLIC DOMAIN		
Security Section 3	✓	Complies The use of the site as a Wine Bar will encourage the use of Llankelly Place and provide ongoing casual surveillance of the area by patrons and staff.
Implementation (Section 94, FSR Bonus) Section 4	✓	Complies No Section 94 contribution is payable as the development will not result in a significant additional number of workers on site.
PART D: SOCIAL PLANNING		
Access Section 2	✓	Complies The proposal is designed to maximise access to, and use of, public and semi-public places, in this instance to Llankelly Place.
Community Infrastructure Section 5	✓	Complies The proposal is considered to relate to the capacity of existing community infrastructure.

Matter to be Considered	Compliance	Comment
Cumulative Impacts and Trade-Offs Section 6	✓	Complies The proposal is not considered to result in an unreasonable cumulative impact on the neighbourhood.
Economic Issues Section 7	✓	Complies The proposal is considered to make a positive contribution to the local economy.
Security Section 9	✓	Complies The proposal encourages the use of Llinkelly Place through patrons coming to and from the site thus increasing causal surveillance of the surrounding area.
Health Section 10	✓	Able to comply The proposal will be conditioned to ensure that it takes into account relevant codes and legislation to ensure that the well being of the community is maintained.
PART E: ENVIRONMENTAL DESIGN CRITERIA		
Parking, Access and Servicing Section 1.6	✓	Complies No change is proposed for the site. The site will be serviced from loading zones along Macleay Street.
Site Facilities Section 1.9	✓	Complies The proposal seeks to utilise the existing garbage room of the building. The proposal also seeks to install a bottle crusher within the bar area to reduce the impacts from waste generated on site.

Matter to be Considered	Compliance	Comment
<p>Signage Section 2.6</p>	<p>✓*</p>	<p>Able to comply No details of signage was submitted with the application.</p> <p>A condition of consent is recommended requiring a separate Development Application be made to Council for any signage.</p>
<p>Visual and Acoustic Privacy Section 4.1</p>	<p>✓*</p>	<p>Able to comply Refer to discussion on acoustic privacy in issues section of report.</p>
<p>Safety and Security Section 4.2</p>	<p>✓</p>	<p>Complies The proposal included a preliminary Plan of Management. However, further refinement will be necessary to ensure the Plan is consistent with the City of Sydney Late Night Trading Premises DCP 2007.</p> <p>A condition of consent is recommended requiring that the bar be managed in accordance with the approved Plan of Management.</p> <p>Refer to discussion on Operational/Management Controls and Acoustic Privacy in issues section of report.</p>
<p>Access and Mobility Section 4.4</p>	<p>✓</p>	<p>Complies Given the limitations of the existing premises, the proposal is designed to maximise access to, and use of, public and semi-public places.</p> <p>Any approval would include conditions requiring compliance with the BCA.</p>
<p>Fire Regulations Section 4.6</p>	<p>✓*</p>	<p>Able to comply Any approval would include conditions requiring compliance with the BCA.</p>

Matter to be Considered	Compliance	Comment
Operational Controls Section 6	✓*	Able to comply Operating hours have been provided by the applicant and are considered acceptable given the use of the site. Refer to issues section of report.

City of Sydney Late Night Trading Premises DCP 2007

14. In accordance with the City of Sydney Late Night Trading Premises DCP 2007 the site is identified as a 'Category B Premises – Low Impact'. A Category B premises includes:
 - (a) a hotel within the meaning of the *Liquor Act 2007* that has a capacity of 120 patrons or less and is designated as a general bar licence;
 - (b) premises that have a capacity of 120 patrons or less where the primary purpose is the sale or supply of liquor for consumption on the premises;
 - (c) an on-licence within the meaning of the *Liquor Act 2007*;
 - (d) any premises where the owner or occupier sells or supplies liquor for consumption on the premises that is not a category A premises; and
 - (e) any other commercial premises which in the opinion of the Council may impact on the amenity and safety of a neighbourhood resulting from its operation at night.
15. The site is identified as being with a 'Local Centre' which allows maximum indoor trading between 8.00am to 11.00pm, with extended trading to 12.00 midnight on trial, seven (7) days per week.
16. The applicant is seeking the hours 11.30am to 12.00midnight seven (7) days per week.
17. Subject to a trial period, it is considered that these hours are acceptable as they fall within the hours outlined in the DCP.
18. A condition of consent is recommended, outlining the 'base' hours of 11.30am to 11.00pm seven (7) days per week, with extended trading to 12.00midnight on a one year trial basis.

ISSUES

19. The issues identified in the above instruments/policies as non-complying or requiring further discussion in the abovementioned tables are discussed in detail below:

Zoning Objectives

20. In accordance with the South Sydney Local Environmental Plan 1998, the site falls within Zone 10 – Mixed Use Zone. One of the objectives of the zone is to ensure that the nuisance generated by non-residential development, such as that related to operating hours and noise is controlled so as to preserve the quality of the life for residents in the area. It is considered that noise impact generated by the site can be contained through appropriate conditions to ensure that the proposal does not cause an unreasonable nuisance to surrounding residential properties.

Kings Cross Urban Village

21. In accordance with the South Sydney Development Control Plan 1997, the site is located within the Kings Cross Urban Village Centre. The planning intent for this precinct is to recognise and encourage entertainment uses, particularly at lower levels of buildings, whilst containing these uses to the assigned areas to protect the amenity of the surrounding residential areas.
22. It is considered that the proposal helps to reinforce the character of the urban village through providing a source of entertainment while limiting amenity impacts on the surrounding residential area. This will be achieved specifically through:
 - (a) granting of a trial period for the extended hours of operation to allow for the monitoring of the use and management;
 - (b) noise attenuation to limit noise generated on site impacting on surrounding residential dwellings; and
 - (c) the enforcement of a Plan of Management, through a condition of consent, which will require the management/licensee of the premises to effectively manage patrons from the premises when they enter the public domain. This seeks to mitigate any anti-social behaviour and noise from patrons impacting on the surrounding residential dwellings.

Operational/Management Controls and Acoustic Privacy

23. The application originally sought for trading until 3.00am the next day seven (7) days per week. The applicant was advised by Council Officers that this was unacceptable in the context of the area. Accordingly, the applicant agreed to reduce the hours of operation to between 11.30am and 12.00 midnight seven (7) days per week, subject to a trial period. These hours are consistent with the hours outlined in the City of Sydney Late Night Trading Premises Development Control Plan 2007 and as such, are supported.
24. The City of Sydney Late Night Trading Premises DCP 2007 includes a Plan of Management checklist for Category 'B' Premises. A comparison of the proposal and the checklist is provided below:
 - (a) ***Measures to minimise internal and external noise***

No live music or entertainment will be provided on site. Signs are to be located at the entrance to the premises requiring patron to not congregate directly outside the premises.

A condition of consent is recommended requiring signs to be placed in clearly visible positions within the premises requesting patrons upon leaving the premises to do so quickly and quietly, having regard to maintaining the amenity of the area. If noise becomes an ongoing issue, Council can require the premises to hire security staff to manage any anti-social behaviour and noise caused by patrons.

(b) ***Procedure for minimising and managing waste generated on site and how and when waste will be collected***

The applicant has indicated that a bottle crusher will be used on site to minimise waste associated with bottles.

The applicant has outlined that they intend to use an existing garbage storage room which is accessible from the common central courtyard area.

Cardboard and paper will be flat stored and the frequency of removal from the premises depending on need.

A commercial contractor will be employed to remove waste and recycling associated with the site.

(c) ***Number of staff employed on site at any one time***

The applicant has indicated that three (3) to six (6) staff will be employed during normal trading activities with an additional staff member during peak trading periods.

(d) ***Arrangements for on-site security***

The applicant has indicated that no regular on-site security will be employed. However, the proprietors have indicated that they will employ security on need-to bases such as for high-trading events, such as New Years Eve and sports finals.

(e) ***Steps taken to manage patron behaviour when leaving the premises late at night***

This was not addressed in the proposal but will need to be addressed in the amended Plan of Management.

A condition of consent is recommended requiring signs to be placed in clearly visible positions within the premises requesting patrons upon leaving the premises to do so quickly and quietly, having regard to maintaining the amenity of the area. If noise becomes an ongoing issue, Council can require the premises to hire security staff to manage any anti-social behaviour and noise caused by patrons.

(f) ***Methods for controlling crowds within and outside the premises***

This was not addressed in the proposal but will need to be addressed in the amended Plan of Management.

(g) ***Management of large groups during peak trading periods***

The applicant has indicated that an additional staff member will be employed during peak trading periods.

(h) ***Copy of the House Policy that describes the measures to minimise harm associated with alcohol consumption to ensure the responsible service of alcohol***

While this was mentioned in the application, a copy was not provided. As such, it will be need to be included in the amended Plan of Management.

(i) ***State the maximum capacity of the premises***

While this was not addressed in the proposal, a condition of consent will limit the patron numbers to 80, which will need to be reflected in the amended Plan of Management.

(j) ***State the trading hours***

Hours of operation will be managed through a condition of consent limiting trading to between 11.30am and 11.00pm, with extended trading to 12.00 midnight on a one year trial, seven (7) days per week. This will need to be reflected in the amended Plan of Management.

(k) ***Outline how information will be provided to patrons about public transport within the local area***

This was not addressed in the proposal but will need to be addressed in the amended Plan of Management.

(l) ***When and how the site will be cleaned and services generally***

The applicant has indicated that stock delivery is to occur between 10.00am and 4.30pm Monday to Saturday by small vans that will utilise nearby loading zones on Macleay Street and Darlinghurst Road from which the stock can be 'trolleyed' to the premises.

The applicant has indicated that any litter on the footpath outside of the premises will be cleared by staff through regular sweeping.

(m) ***Details of the trading hours of other late night trading premises currently operating within a 50m radius of the site***

It should be noted that the nearest licensed premises, namely 'Springfields' on the corner of Springfield Avenue and Darlinghurst Road, and the 'Empire Hotel' on the corner of Roslyn Street and Darlinghurst Road are more than 50m away.

25. The Plan of Management is considered acceptable, however, to be entirely consistent with the DCP it requires further refinement, as detailed above. The refined Plan of Management will form part of the consent.

26. The refined Plan of Management will be required to be submitted to the satisfaction of Council, and in accordance with the City of Sydney Late Night Trading Premises Development Control Plan 2007, Appendix 2.

27. A copy of the Plan of Management will also be required, through a condition of consent, to be kept at the premises and made available to Council staff and Police on request.
28. The maximum patron capacity for the site is to be no more than 80 patrons. A condition of consent requires that this number is clearly displayed on entry to the site.
29. No security staff form part of this proposal. However, a condition of consent is recommended which requires security staff to be employed if breaches of the Notice of Determination are made in relation to noise and anti-social behaviour of patrons.
30. The site is not of a size to provide a dedicated smoking area. The proposal indicates that between 5 and 10 smokers will be outside of the venue at any one time. Smokers will leave the venue via Llinkelly Place and be encouraged, through signage, to move away from the venue whilst smoking. It is considered that these measures are acceptable and will help in reducing the noise impact of the premises on surrounding development. A condition of consent is recommended requiring that a cigarette butt bin and ash tray be made available to patrons entering the premises.
31. A condition of consent is also recommended outlining that the central courtyard is not to be used by patrons of the premises for smoking or drinking under any circumstances and this is to be patrolled and managed by the management/licensee.
32. Rubbish and recycling removal will be through a private contractor. The proposal includes the provision of a glass crusher within the premises to reduce noise during collection. It is considered that this measure is acceptable and will significantly reduce noise impacts from glass collection.

Section 79C(1)(b) Other Impacts of the Development

33. The proposed development will not result in any significant additional impacts other than those already identified and discussed above.

BCA Matters

34. The BCA Classification of the building is Class 6.
35. The development is capable of satisfying the requirements of the BCA without significant modification.

Section 79C (1) (c) Suitability of the site for the development

36. The site is suitable for the proposed development. Site suitability has already been discussed in the table/issues section above

Section 79C (1) (e) Public Interest

37. The proposed development is generally consistent with the relevant controls. In this regard it is considered that the proposal will have no detrimental effect on the public interest, subject to appropriate conditions being imposed on any consent.

POLICY IMPLICATIONS

38. Not applicable to this report.

FINANCIAL IMPLICATIONS - SECTION 94 CONTRIBUTIONS

Section 94 Contributions

39. The development is not subject to a Section 94 Contribution.

PUBLIC CONSULTATION

Section 79C(1)(d)

Advertising and notification

40. Adjoining and nearby owners and occupiers of buildings were notified of the proposal and invited to comment. In addition, notices were placed on the site and the proposal was advertised in the daily press in accordance with the provisions of the City of Sydney Notification of Planning and Development Applications Development Control Plan 2005.

41. Twenty four (24) letters of objection, 1 petition with 34 signatures objecting to the proposal and 1 letter of support were received. The grounds for objection are summarised as follows:

- (a) ***The site is unsuitable for development because it is in a predominantly residential area.***

Comment: The subject tenancy was built for and has been used for non-residential purposes. The proposal is within a mixed use zone and is recommended to trade until 11.00pm base hours and 12.00 midnight on trial. The proposal is considered to meet the zone objectives and the hours fall within the hours outlined within the City of Sydney Late Night Trading Premises Development Control Plan 2007. As such, the proposal is considered acceptable for the proposed site.

- (b) ***The proposed trading hours (until 3.00am) are not acceptable given that the premises is within a residential building and is in close proximity to several other residential buildings.***

Comment: 3.00am trading is outside of the permissible hours outlined within the City of Sydney Late Night Trading Premises Development Control Plan 2007. The applicant was informed of the Development Control Plan and subsequently reduced the hours in accordance with the controls. These hours will form a condition of consent which must be adhered to.

- (c) ***The wine bar will result in patrons partaking in anti-social behaviour, adversely affecting the neighbourhood amenity, especially through noise from patrons entering and leaving the premises.***

Comment: A condition of consent is recommended requiring signs to be placed in clearly visible positions within the premises requesting patrons upon leaving the premises to do so quickly and quietly, having regard to maintaining the amenity of the area. If noise becomes an ongoing issue, Council can require the premises to hire security staff to manage any anti-social behaviour and noise caused by patrons.

- (d) ***How will patrons queuing in Llankelly place be managed?***

Comment: This will be outlined, to the satisfaction of Council, within a Plan of Management which will form part of the consent.

- (e) ***The noise from the speakers will adversely affect the residential amenity within the building. How will the acoustic attenuation be managed?***

Comment: Acoustic treatment of the proposed ceiling will be required to meet BCA requirements and are recommended as a condition of consent.

- (f) ***The wine bar will produce noise that will be captured within the central courtyard of the site, creating a significant noise impact for residents within the building.***

Comment: The doors and walls to the central courtyard are required to be acoustically treated. These doors are to be used in an emergency only and will be required, through a condition of consent, to remain closed at all other times. These conditions are considered to attenuate any noise impacts from the wine bar on the courtyard area.

- (g) ***The collection of bottles will cause significant noise. How can their collection at night be prevented and/or managed?***

Comment: The collection of waste and recycling is condition to occur between the hours of 7.00am and 8.00pm weekdays and 9.00am to 5.00pm weekends. The proposal also includes a bottle crusher to be installed on site. This is considered to significantly reduce any noise impacts from glass collection associated with the site.

- (h) ***Smokers in Llankelly Place will cause significant noise impacts for residents.***

Comment: Smokers will be encouraged, through signage, to move up Llankelly Place towards Darlinghurst Road in order to reduce any noise impacts on surrounding residential dwellings.

- (i) ***What are the predicted noise and dust levels during construction?***

Comment: While dust levels cannot be predicted, standard construction management conditions are recommended including limiting the hours of construction to between 7.30am and 5.30pm Monday to Friday and 7.30am and 3.30pm Saturday.

- (j) ***Laneways off Llanekelly Place are not well lit. How will anti-social behaviour from the wine bar be managed in these areas?***

Comment: As outlined above, a condition of consent is recommended requiring signs to be placed in clearly visible positions within the premises requesting patrons upon leaving the premises to do so quickly and quietly, having regard to maintaining the amenity of the area. If noise or anti-social behaviour becomes an ongoing issue, Council can require the premises to hire security staff to manage patrons.

- (k) ***Cumulative impacts from having another liquor selling outlet within the area.***

Comment: The issue of cumulative impact or saturation of licensed premises has been previously raised in relation to the establishment of new nightclubs and hotels with large patron capacities. Based on the available data, such premises have historically attracted greater numbers of incidents of anti-social behaviour. The proposal is for a small bar, not a nightclub or premises with a large patron capacity. The applicant aims to offer an alternative venue for people who would like to socialise in a licensed premises without large numbers of people, queues and loud music.

EXTERNAL REFERRALS

NSW Police

42. NSW Police were notified of the proposed development. NSW Police has advised that they do not support the proposal on the grounds of cumulative impacts, specifically in relation to alcohol related crime and anti-social behaviour.
43. As discussed above, the cumulative impacts, or saturation of, licensed premises tends to relate to premises with large patron capacities. The proposal is for a small bar with the applicant indicating that the bar is offering an alternative venue for people who would like to socialise in a licensed premises without large numbers of people, queues and loud music.
44. The proposal meets the controls in relation to trading hours and patron numbers and will operate under an approved and appropriate Plan of Management.

Integrated Development

45. The proposal is not Integrated Development.

INTERNAL REFERRALS

46. The application was referred to Council's Specialist Health Surveyor.
47. No objection to the proposed development was raised, subject to the imposition of appropriate conditions. Appropriate conditions have been included in the recommendation of this report.

RELEVANT LEGISLATION

48. The Environmental Planning and Assessment Act 1979.

CONCLUSION

49. Subject to a trial period, the proposed trading hours are consistent with the hours outlined within the City of Sydney Late Night Trading Premise Development Control Plan 2007.
50. The Plan of Management submitted with the application is acceptable however, it is recommended to be further refined so as to be entirely consistent with all requirements outlined in the City of Sydney Late Night Trading Premises DCP 2007.
51. It is recommended that the period after which the development consent will lapse be two years.

GIOVANNI CIRILLO

Director City Planning and Regulatory Services

(Meagan Kanaley, Planner)