

Item 3.**Review of Determination: 446-458 Elizabeth Street, Surry Hills -
RDU/1993/641/A****File Number:** RDU/1993/641/A**Summary****Date of Submission:** 19 June 2026**Applicant:** Chetan Kalra**Owner:** The Owners - Strata Plan No 44070**Planning Consultant:** CPS Planning**Cost of Works:** \$9,000**Zoning:** The site is zoned MU1 - Mixed Use under the Sydney Local Environmental Plan 2012. The existing take away food and drink premises is permissible with consent within the zone.**Proposal Summary:** The applicant seeks a review by the Local Planning Panel under sections 8.2(1)(b) and 8.3(4)(c) of the Environmental Planning and Assessment Act 1979 of Council's refusal on 28 May 2026 of modification application DU/1993/641/B.

The modification sought to extend the trading hours of the existing Pizza Hut takeaway food and drink premises to 11:30am – 3:00am daily.

Prior to this, on 1 December 2025, Council had refused modification application DU/1993/641/A, which proposed trading hours until 12:00am Sundays to Wednesdays and until 2:00am Thursday to Saturday.

The approved hours of operation (as per DU/1993/641) are between 11:30am and 10:00pm Sunday to Wednesday, and 11:30am to 12:00 midnight Thursday to Saturday.

Council refused DU/1993/641/B on 28 May 2026 due to insufficient supporting information, unacceptable amenity impacts, and non-compliance with Sydney DCP 2012 controls relating to late night trading, and waste management.

In accordance with the City of Sydney Community Participation Plan 2025, the subject application for a review of the previous determination was notified in the same manner as the original 'Modification B' application.

The review application was notified for 14 days, between 23 June 2026 and 8 July 2026. All those who made a submission on the original application were also notified. A total of 581 properties and occupiers were notified and 18 submissions were received.

Submissions raised issues in relation to unauthorised trading hours, excessive noise and odours, waste generation, non-compliance with planning controls and the compliance history of the premises.

The compliance history of the premises has been poor since April 2025 when complaints were first received in relation to the premises trading outside of approved hours of operation. Complaints focussed on amenity impacts for residents of the subject mixed-use building including excessive noise from delivery riders and mechanical ventilation, waste management issues and cooking odours.

On 7 July 2026, Council's compliance officers issued an order under Division 9.3 of the Environmental Planning and Assessment Act 1979. The order requires the premises to comply with the planning approval for hours of operation under condition (4) of U93-00641 issued by the former South Sydney Council. The premises is currently not complying with the terms of the order.

Section 8.4(1) of the Act states that after conducting its review of a determination, the Local Planning Panel, as the consent authority, may confirm or change the original decision to refuse application number DU/1993/641/B.

Council officers are of the view that the original determination should be upheld on the basis the proposed hours of operation are outside of those permitted by the Sydney DCP and will unacceptably impact the residential amenity of neighbouring properties. Further, insufficient amendments have been made to the substance of the proposal to be satisfied the environmental impacts extended hours will be acceptable.

It is therefore recommended that the Local Planning Panel confirm the original decision, made under delegation, to refuse application number DU/1993/641/B.

Summary Recommendation: This proposal is recommended for refusal.

Development Controls:

- (i) Sydney Local Environmental Plan 2012 (SLEP 2012)
- (ii) Sydney Development Control Plan 2012 (SDCP 2012)
- (iii) City of Sydney Guidelines for Waste Management in New Developments

Attachments:

- A. Planning report - refused application DU/1993/641/B
- B. Refusal notice - DU/1993/641/B
- C. Submissions

Recommendation

It is resolved that following a review under Division 8.2 the Environmental Planning and Assessments Act of the determination to refuse Application Number DU/1993/641/B for extended hours, the Local Planning Panel uphold the original determination to refuse the application for extended hours of operation.

Reasons for Recommendation

The recommendation to uphold the original determination to refuse extended hours is made for the following reasons:

- (A) The reasons provided for the refusal of DU/1993/641/B remain valid. The applicant has not provided sufficient information with the review application to demonstrate amenity impacts for residential properties can be satisfactorily mitigated.
- (B) The proposed hours of operation will result in unacceptable impacts on residential amenity and are inconsistent with the aims of the Sydney Local Environmental Plan 2012, particularly those relating to community amenity and neighbourhood character.
- (C) The proposal is inconsistent with the Late Night Trading provisions of the Sydney Development Control Plan 2012, which recognise the site's location within a Local Centre Area and the proximity of surrounding residential uses.
- (D) The applicant has not demonstrated compliance with the Waste and Recycling Management provisions of the Sydney Development Control Plan 2012, including through the submission of an adequate Waste Management Plan.
- (E) The proposed hours of operation are contrary to the objectives of section 4.2.9 of the Sydney Development Control Plan 2012, which are to ensure non-residential development is compatible with, and does not detract from the amenity of residential development; and to ensure any impacts generated by non-residential development such as operating hours, noise, privacy, vehicular and pedestrian traffic are adequately managed to preserve the quality of life for residents in the area.
- (F) As the proposal does not satisfy the relevant provisions of the Sydney Local Environmental Plan 2012 and Sydney Development Control Plan 2012, approval would not be in the public interest.

Background

The Reason the Application is Reported to the Local Planning Panel

1. The applicant has requested a review of Council's previous determination, under delegated authority, of application number DU/1993/641/B.
2. The application was refused on 28 May 2026. The application sought consent to modify condition (4) of Development Consent DU/1993/641 relating to hours of operation to allow the premises to trade between 11:30am to 3:00am, daily.
3. The applicant requests the review of this refusal be undertaken by the Local Planning Panel rather than by Council's officers, in accordance with Sections 8.2(1)(b) and 8.3(4)(c) of the Environmental Planning and Assessment Act.

The Site and Surrounding Development

4. The subject tenancy is known as Lots 1 and 2 in SP44070 and is part of a larger site commonly known as 446-458 Elizabeth Street, Surry Hills. The overall site is irregular in shape with an area of approximately 1,318 square metres. It has a primary street frontage of 41 metres to Elizabeth Street and a secondary street frontage of 33.5 metres to Brumby Street.
5. The subject tenancy is located at the north-western corner of the overall site and has a ground level frontage to Elizabeth Street. A podium level is located above the subject tenancy. The podium contains a landscaped element and mechanical exhaust ventilation for the subject tenancy (Figure 6 below).
6. The site contains a part 7, part 8 storey mixed use building. Retail and commercial office tenancies are located at the ground and first floor levels of the building including the subject tenancy. Residential apartments are located on levels 2-7.
7. The surrounding area is characterised by a mixture of land uses, primarily being residential accommodation, commercial premises, and mixed-use developments. To the north and south are mixed use buildings with ground floor commercial and residential above. To the east is a multistorey residential flat building and across Elizabeth Street, to the west are mixed use buildings.
8. The site is not a heritage item, is not located within a heritage conservation area and is not affected by flooding.
9. A site inspection was carried out on 16 July 2026 with the assistance of the store manager. A second site inspection was carried out on 21 July 2026 with the assistance of the building Strata manager and apartment owners within the building who had made submissions. Photographs of the subject site and its surroundings are reproduced in the figures below.



Figure 1: Aerial view of site (red outline) and surrounds. The location of the subject tenancy is shaded yellow.



Figure 2: Site viewed from Elizabeth Street, looking east



Figure 3: Site viewed from Elizabeth Street footpath



Figure 4: Interior view of subject site



Figure 5: Shared waste storage area at northern edge of tenancy, looking west towards Elizabeth Street



Figure 6: Mechanical exhaust vent for the premises, which is close to residential apartments, looking west towards Elizabeth Street

History Relevant to the Development Application

Development Applications

10. The following applications are relevant to the current proposal:

- (a) DU/1993/641: On 6 July 1993, consent was granted for the use of the subject tenancy as a takeaway food shop and delivery unit for Pizza Hut Australia. Approved hours of operation were between 11:30am and 10:00pm, Sunday to Wednesday, and 11:30am to 12:00am midnight, Thursday to Saturday.
- (b) DU/1993/641/A: On 1 December 2025, consent was refused to modify condition (4) of the consent for hours of operation, such that the premises could trade between 11:30am to 12:00am, Sundays to Wednesdays, and 11:30am to 2:00am, Thursday to Saturday.

The application was refused due to unacceptable amenity impacts and insufficient information, including no waste management plan, acoustic report, or plan of management.

- (c) DU/1993/641/B: On 28 May 2026, consent was refused to modify condition (4) of the consent for hours of operation, such that the premises could trade between 11:30am to 3:00am, daily.

The application was refused due to insufficient information, unacceptable amenity impacts for neighbouring residential properties and the application not being in the public interest.

11. The subject application, RDU/1993/641/A, seeks a review of the above refusal DU/1993/641/B.

Compliance Action

- 12. A search of the City's electronic records shows no complaints were registered in relation to the operation of the subject premises until 2 April 2025.
- 13. Since April 2025, numerous complaints have been received from residents living within the subject building and from the Strata managers on behalf of residents. The complaints relate to the premises trading outside of approved operating hours and impacts on residential amenity including noise, waste and odours.

14. The complaints raise the following issues:

- (a) April to September 2025: six complaints received relating to noise from ventilation fans and the premises trading until 4.15am
- (b) November 2025: complaints were received relating to sleep disturbance, noise from operation of the premises, large banners on the footpath, delivery bikes blocking the footpath and waste management
- (c) January and February 2026: a number of noise complaints resulting in sleep disturbance
- (d) March and April 2026: Odour complaints, with fan noise, delivery bike alarms, loud employees cleaning until 5:00am

15. In March 2026, Council's compliance officers issued a notice of intention to issue an order under Division 9.3 of the Environmental Planning and Assessment Act 1979, requiring the premises to comply with the planning approval for hours of operation under condition (4) of U93-00641 issued by the former South Sydney Council.
16. On 7 July 2026, Council's compliance officers issued an order under Division 9.3, Schedule 5 Part 1 of the Environmental Planning and Assessment Act 1979. The order requires the premises to comply with the planning approval for hours of operation under condition (4) of U93-00641 issued by the former South Sydney Council.
17. The premises is not complying with the terms of the order. At the time of reporting, Pizza Hut is advertising operating hours between 9:00am and 4:00am Fridays and Saturdays and between 9:00am and 12:00am Mondays to Thursday.

Amendments

18. Following a review of the subject application a request was sent to the applicant on 13 July 2026, requesting the following details:
 - (a) an amended Statement of Environmental Effects (SEE) and drawings, identifying whether building works recommended by the acoustic report are proposed to be implemented as part of the subject DA application
 - (b) a waste management plan, demonstrating how commercial and food waste will be handled by the site, including a calculation of the food waste generation for food scraps produced by the premises
 - (c) an updated Operational Plan of Management including a floor plan of the premises referencing the waste management plan required (above); and outlining patron capacity (internal) for the premises
19. The applicant responded to the request on 29 July 2026, stating they would accept a condition of consent requiring the installation of the measures recommended by the acoustic report (see details below).
20. The applicant has not provided evidence of owner's consent being provided for works to common property that are recommended by the acoustic report. A document pertaining to Owner's Consent was lodged with the application, however it consists of a document prepared by a real estate agent. It does not contain a Strata Seal and may not be sufficient to confirm the requirements of the Strata Scheme Management Act.
21. No waste management plan or updated plan of management was provided. Instead, the applicant provided a list of seven other premises within the local government area that had not been asked by Council for the same details.

Proposed Development

22. The applicant requests a review by the Local Planning Panel of a determination by Council.
23. DU/1993/641/B to modify the existing consent for the use of the premises as a takeaway food shop and delivery unit for Pizza Hut was refused under delegation.

24. The application sought consent to modify Condition (4) of Development Consent U93/00641 relating to approved hours of operation to permit the premises to operate between 11:30am and 3:00am the following day, seven days per week.
25. The application was accompanied by an acoustic report, which states works may be undertaken, which may assist in reducing sound emanating from the operation of the premises. These include:
 - (a) installing a 4m length of acoustic sheet metal duct between the fans and riser outlet, being 25 mm thick
 - (b) installing silencers between the riser and all fans to which it connects, with specific sound levels to be reached
 - (c) reducing the speed of all fans connected to the riser by 40%
 - (d) additional controls including installing an automatic door to ensure that doors remain closed when not in use and that windows be kept closed during the proposed extended trading hours.
26. No owner's consent has been provided for these works, and they are not shown on any drawings lodged with the application.
27. The works recommended by the acoustic report are partly on common property. The subject site is a strata building and the application was not accompanied by strata approval.

Assessment

28. The subject review application has been assessed with consideration of sections 4.15 and 8.2 of the Environmental Planning and Assessment Act 1979 ('The Act').

Section 8.2 - Determinations and decisions subject to review

29. Sections 8.2(1)(b) and 8.3(4)(c) of the Act permits the applicant to request a review by the Local Planning Panel of the determination of an application for the modification of a development consent. In this case, the decision to refuse modification application number DU/1993/641/B.
30. The subject review request was made within the specified time period, per Section 8.2(2)(a) of the Act, which in this instance is within 6 months of the determination of DU/1993/641/B (28 May 2026).
31. The review application was notified to neighbouring properties in accordance with the City's Community Engagement Strategy and Community Participation Plan 2025–2029, in the same manner as the original application and with those making a submission to the original application being notified.
32. Section 8.3(3) of the Act states that in requesting a review, the applicant may amend the modification of the development consent. In this instance, the applicant has not amended the substance of the proposal. However, they have provided some additional information to support the review application (see amendments section above).

33. The proposed modifications in the review application are the same as those previously refused.

Addressing Reasons for Refusal of DU/1993/641/B

34. Section 8.4(1) of the Act allows the Local Planning Panel (LPP), as consent authority, to confirm or change the original refusal of DU/1993/641/B following its review.
35. The five reasons for refusal of DU/1993/641/B (refer Attachment B) have been reconsidered as part of this review.

Reason 1: Insufficient information provided with the application.

36. Information submitted with the refused application was insufficient to demonstrate that the proposed extension of hours would not result in adverse impacts. In particular a Plan of Management and a Waste Management Plan were not provided. As such, it was not possible to demonstrate there would be no significant environmental impacts on neighbouring properties (per 4.15(1)(b) of the EP&A Act), nor that the proposed modifications to the approved development would be suitable for the site (per 4.15(1)(c) of the EP&A Act).
37. A Plan of Management (POM) was lodged with the review application, however it fails to provide appropriate mitigation measures in relation to the operation of the premises (see Reason 2 for refusal of DU/1993/641/B below).
38. A Waste Management Plan (WMP) has not been provided. The WMP was requested to demonstrate how commercial and food waste generated by the proposed extended hours of operation will be handled by the site, such that its handling will not impact on the amenity of the site and other commercial and residential tenants (in relation to timing of waste disposal and number of bins required with the longer operating hours).
39. A calculation of food waste generation including food scraps produced by the premises was requested, noting that since 1 July 2026, the Protection of the Environment Legislation Amendment (FOGO Recycling) Act 2025 (Part 5A.2, Section 170F) requires collection of FOGO (Food Organics and Garden Organics) waste. This may require additional bins for food waste.
40. The applicant did not provide the requested details. Instead, they provided a letter dated 29 July 2026, detailing seven food and drink premises venues that were not required by Council to provide the same documents.
41. The request for a WMP is reasonable. It is relevant to Council's waste planning controls, the City of Sydney Guidelines for Waste Management in New Developments and the newly introduced requirements for FOGO recycling (effective since 1 July 2026). The request is also relevant to addressing waste issues raised in submissions and complaints received by Council in relation to the compliance history of the site.
42. The applicant advised during assessment they are happy to commit to any of the three measures given within the Acoustic Report and that the recommendations of the Acoustic Report could be incorporated into conditions of consent should the application be approved. As above, Council's officers are of the view owner's consent has not been provided for works recommended by the acoustic report.

Reason 2: Unacceptable Amenity Impacts

43. The second reason for refusal was that the proposal does not meet a key aim of the Sydney Local Environmental Plan 2012 at clause 1.2(h) of SLEP 2012, which is that development must enhance the amenity and quality of life of local communities.
44. The compliance history of the site indicates that the operation of the premises exceeding the conditions of consent have resulted in sustained and significant impacts for neighbouring properties, particularly during the last year. This is reflected in submissions received following the notification of the subject application.
45. The application seeks consent to operate the premises until 3:00am daily, however submissions and internet searches undertaken by Council's officers show that the premises frequently operates beyond that time (until at least 4:00am) before reopening the following day at 9:00am.
46. The environmental impacts caused by these hours are assessed as follows:

Noise and odours

- (a) Mechanical ventilation vents are located close to residential apartments within the site (Figure 6 above). Whilst the applicant states they would accept a condition of consent requiring more acoustic baffles to be installed on existing mechanical ventilation, these measures in part require lining existing ventilation risers from the premises and may require strata consent. The application does not include strata consent.
- (b) Even if strata consent were obtained, and an acoustic lining to the riser was achieved, these works would not ameliorate late night and early morning cooking odours. Residents who are impacted by these odours advise they need to keep doors and windows closed at night, reducing ventilation amenity of apartments.
- (c) The currently approved hours of operation, 11:30am and 10:00pm, Sunday to Wednesday, and 11:30am to 12:00am midnight, Thursday to Saturday, provide a measure of relief for residents of neighbouring apartments in relation to noise and odour as the premises are not approved to operate beyond 10:00pm Sunday to Wednesday and 12:00am midnight Thursday to Saturday opening at 11:30am the following day.
- (d) Further, the store manager and internet searches verify the premises trades from 9:00am daily and is frequently open until 4:00am the following day. This provides only 4-6 hours of relief per day when noise from mechanical ventilation, and odours impacting neighbouring dwellings.

Noise from delivery riders

47. Submissions raise concerns about electric bicycle delivery riders. The store manager has advised that most business involves delivery services and that more than 200 deliveries may be collected on busy nights between 10:00pm and 3:00am.

48. Whilst electric bikes are generally quiet and may be legally parked on footpaths, the layout of the premises requires riders to lock their bikes on the footpath before entering the store to pick up deliveries. Submissions state that bike alarms are loud and are disruptive to sleep. Submissions highlight that bikes must be locked and unlocked during each pick up for delivery and that bike alarms frequently malfunction, resulting in sleep disturbance late at night when Elizabeth Street has less vehicular traffic and when background noise levels are lower.
49. The plan of management lodged with the application contains a Traffic and Parking Management statement that references noise from delivery bikes. The statement does not provide any effective noise mitigation measures for e-bike deliveries. Instead, it contains broad statements including that:
- (a) delivery drivers, motorbikes and bicycles are expected to obey all road and traffic signs in the vicinity and are discouraged from parking on the footpath and
 - (b) Pizza Hut commits to swift service to ensure no loitering of vehicles, assisted by tracking devices and alerts on the relevant delivery services.
50. No measures are proposed in the Plan of Management that would avoid or manage the situation where delivery bikes are locked and unlocked during deliveries, which causes sleep disturbance for residents late at night when Elizabeth Street is not affected by vehicle noise.

Waste storage and collection

51. Submissions raise the issue of waste storage areas being dominated by waste bins and containers generated by the premises. This issue may be able to be resolved by increasing the frequency of waste collection, however the applicant has not provided a waste management plan as requested, detailing how the additional waste from the premises during extended hours would be managed.

Reasons 3 & 4: Non-compliance with the City's SDCP 2012 planning controls

52. The modification application was refused on the basis it fails to satisfy the relevant sections of Council's Development Control Plan 2012 (SDCP 2012) in relation to late night trading (Section 3.15). These allow for the approval of trading hours until 2:00am on a trial basis, where the premises has demonstrated effective management and compliance with a Plan of Management. Further, it fails to satisfy the relevant sections of SDCP 2012 in relation to waste (Section 3.14 and Section 4.2.6).
53. The review application has been assessed against the relevant DCP controls (see below SDCP 2012 section) and is recommended for refusal on the basis the proposal will have significant and ongoing negative impacts on the residential amenity of neighbouring properties.

Reason 5: Approval of the application is not in the Public Interest

54. The proposed amendments, if approved, will have unacceptable ongoing negative impacts on the amenity of neighbouring residential properties. There is sufficient evidence that the proposed hours of operation are not suitable for the site and the proposed modifications are not in the public interest.

Local Environmental Plans

Sydney Local Environmental Plan 2012

55. While the existing take away food and drink premises is permissible in the MU1 Mixed Use zone and has been trading for many years, the increased impacts from unauthorised extended hours of operation are inconsistent with Sections 1.2(h) and (j) of SLEP 2012 (The Aims of the Plan), which require development to enhance the amenity and quality of life of local communities and the existing or desired future character of particular localities.

Development Control Plans

Sydney Development Control Plan 2012

56. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

Section 3.15: Late Night Trading Management

Late Night Trading Areas

57. The site is identified in the DCP as being located within a 'Local Centre Area' (shaded red - see Figure 7 below).
58. Schedule 3.1.3 of SDCP 2012 provides key defining elements for Local Centre Areas. These include that:
- (a) premises within Local Centre Areas will generally have shorter trading hours than their counterparts in other late night trading areas due to their proximity to sensitive residential land uses and their greater potential to impact upon the liveability of local residents; and
 - (b) careful consideration must be given to the residential context of the area and existing hours of other late night trading premises in close proximity. The subject premises is in close proximity to residential premises within the site and those adjoining it.
59. Schedule 3.1.3 states that consideration must be given for whether a suitable plan of management has been provided. A plan of management lodged with the application fails to provide suitable mitigation measures for noise from operations through duct lining to a riser on common property, with associated strata owners consent. It also fails to offer suitable management of noise from delivery bikes.

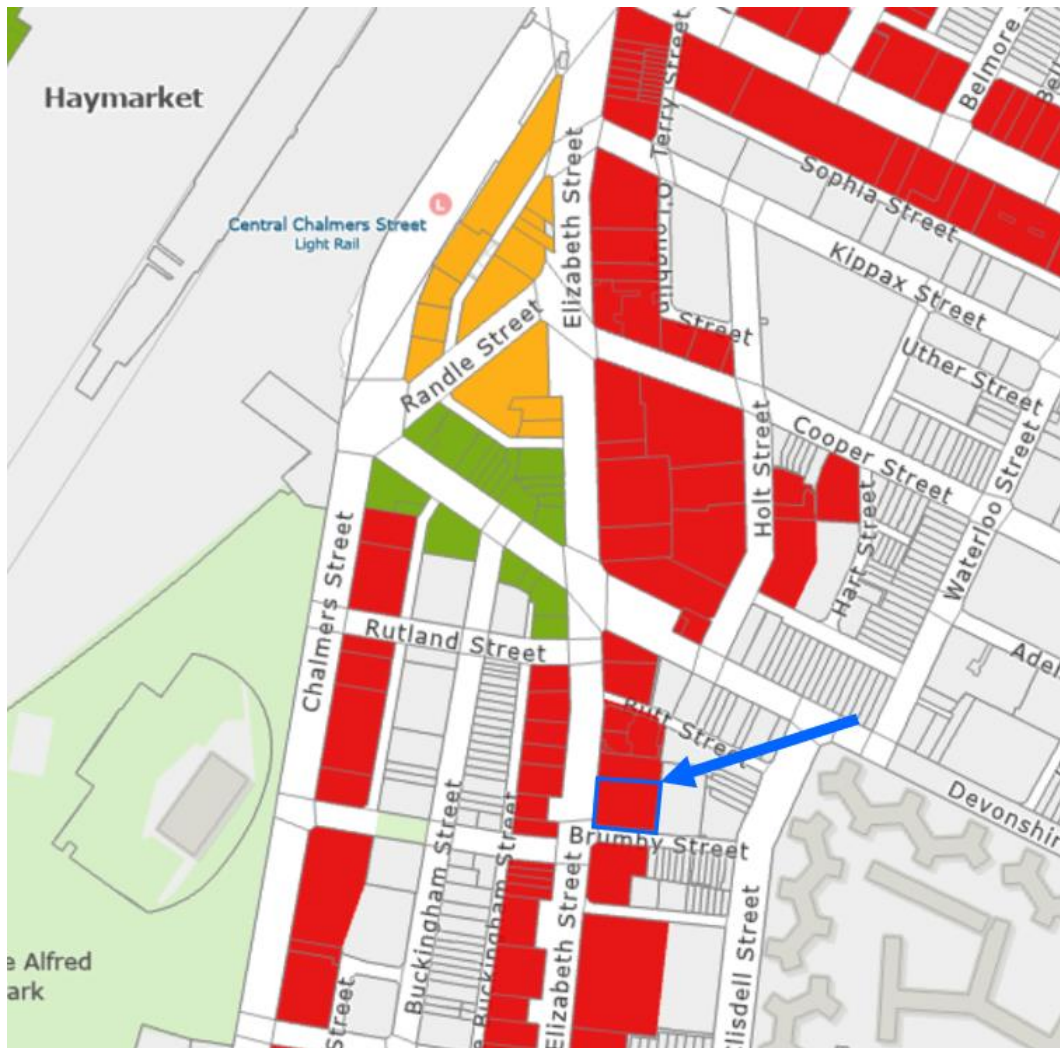


Figure 7: Site is located within a 'Local Centre' Late Night Trading Area (blue arrow)

Categories of Late Night Trading Premises

60. The Late Night Trading Area Provisions of SDCP 2012 provides three categories of premises, described as Category A, Category B and Category C Premises. The premises are ranked according to their capacity to impact neighbouring properties due to their operations late at night.
- (a) Category A - High Impact Premises include licensed venues and dedicated performance venues with larger patron numbers;
 - (b) Category B Premises - Low Impact Premises include any other commercial premises, other than Category C premises, which in the opinion of the Council may impact on the amenity and safety of a neighbourhood resulting from its operation at night, including but not limited to, **food and drink premises, takeaway food and drink premises**, theatres, karaoke venues, convenience stores, entertainment facility and stand-alone gyms in buildings with residential accommodation and the like; or; and

- (c) Category C Premises - Any retail premises or business premises which does not sell, supply or allow the consumption of liquor on or off the premises or hold any license under the Liquor Act 2007 and does not include convenience stores, **food and drink premises, takeaway food and drink premises**, gyms in buildings with residential accommodation, or adult entertainment venue or sex services premises.
61. The applicant contends that the premises should be classified as a 'Category C' premises because it does not hold a liquor licence, play music, or accommodate many patrons. The use is reasonably categorised as a Category B premises the following reasons:
- (a) 'Category C' premises include the most benign late night premises. The definition expressly **excludes** food and drink premises and takeaway food and drink premises due to their potential impact on nearby residential amenity.
 - (b) By contrast, 'Category B' premises expressly **includes** food and drink premises and takeaway food and drink premises, recognising they may affect neighbourhood amenity and safety through late-night operations.

Late Night Trading Controls

62. Table 3.8 of SDCP 2012 permits late night trading hours for Category B premises within Local Centre Areas as follows:
- (a) 'base' hours of operation of between 7:00am and 11:00pm, daily; and
 - (b) 'extended' hours between 7:00am and 12:00 midnight daily or up to 2:00am if Council is satisfied that entry and egress of all patrons will be onto a main street and not onto a laneway which abuts residential properties, or into a predominantly residential area.
63. The refused modification application sought to amend Condition (4) of consent DU/1993/641 to permit trading until 3:00am daily. The current approval allows operation from 11:30am to 10:00pm Sunday to Wednesday and 11:30am to midnight Thursday to Saturday.
64. The decision to refuse the previous modification application was consistent with the City's Late Night Trading controls.
65. Section 3.15.3 requires consideration of the premises' location, surrounding land uses, operating characteristics, proposed hours, and likely impacts on residential amenity, including noise and management of those impacts. The premises is surrounded by residential apartments that are adversely affected by its late-night operation.
66. Section 3.15.4 provides that trading beyond base hours is subject to a trial period and may only be approved where the premises has demonstrated effective management and compliance with a Plan of Management. This has not been demonstrated by current operations.
67. The proposed hours of operation for the premises will have unacceptable impacts on the residential amenity of neighbouring properties, particularly late at night and would be better suited to a 'Late Night Management Area' (shaded green) or a 'City Living Area' (shaded yellow).

68. The applicant highlights that there is a brothel located opposite the site that is approved to operate 24 hours per day. Notwithstanding this, the impacts of a brothel are not comparable to those of a takeaway food premises in relation to noise, odour and waste issues.

Section 4.2.3 Amenity

69. The provisions of section 4.2.3.11 (Acoustic privacy) state that a Noise Impact Assessment prepared by a suitably qualified acoustic consultant may be required when submitting a development application for commercial uses which may affect the acoustic privacy of adjacent residential uses.
70. An acoustic report was lodged with the application that recommends additional works to the existing mechanical ventilation riser, reducing the speed of the fans within the riser and installing automatic doors to the entry of the premises.
71. Whilst the applicant states they would accept a condition of consent requiring these works to be completed, they would not, in themselves, be sufficient to mitigate the impacts of the existing premises late at night or provide sufficient odour relief for neighbours to utilise balconies near to the risers. Nor would these measures ameliorate intrusive noise from delivery bikes that are not appropriately managed by the proposal.

Sections 3.14 and 4.2.6: Waste and recycling Management

72. The applicant has not provided a waste management plan (WMP) as requested both during the assessment of the previous 'Mod B' application and the current review application.
73. By not providing a WMP, the proposal is contrary to the relevant objectives of sections 3.14.1 and 4.2.6 of the DCP (Waste and recycling Management), which are to ensure waste from within developments can be collected and disposed of in a manner that is healthy, efficient, minimises disruption to amenity, and is conducive to the overall minimisation of waste generated; and to ensure buildings provide appropriate facilities to manage waste and maximise recovery of resources and ensure that residential amenity is not impacted by waste systems and collection.
74. Submissions received during the notification of the subject review application and the refused modification application demonstrate significant waste management impacts resulting from the operation of the premises. This includes overflowing waste bins.

Section 4.2.9 Non-residential development in the B4 Mixed Uses Zone

75. Section 4.2.9 of the DCP provides that in granting consent for non-residential development on sites within proximity to residential uses within the MU1 Mixed Use zone, the consent authority must have regard to the potential impacts on the amenity of existing residential uses with consideration of noise impacts and operating hours.
76. The proposed hours of operation, until 3.00 am, will result in unacceptable amenity impacts on neighbouring properties contrary to the objectives of section 4.2.9 of SDCP 2012, which are to ensure non-residential development is compatible with, and does not detract from the amenity of residential development; and to ensure any impacts generated by non-residential development such as operating hours, noise, privacy, vehicular and pedestrian traffic are adequately managed to preserve the quality of life for residents in the area.

Consultation

Internal Referrals

77. The application was discussed with Council's specialists, including environmental health, waste and late night trading specialists.
78. Council's environmental health officer did not raise any objections to the proposal, noting the acoustic report recommended measures that could be installed to mitigate noise from mechanical ventilation.
79. Council's waste and licenced premises specialists requested additional information to enable further consideration of the proposal, including an amended plan of management and a waste management plan (see above). These documents have not been provided.

External Referrals

NSW Police

80. The application was referred to NSW Police for comment. No response was received.

Advertising and Notification

81. In accordance with the City of Sydney Community Participation Plan 2025, the subject application for a review of the previous determination was notified in the same manner as the original application. The review application was notified for 14 days, between 23 June 2026 and 8 July 2026 and all those who made a submission on the original application were notified.
82. Eighteen (18) submissions were received including three (3) in support of the application. Submissions supporting the application highlight the premises is convenient for shift workers and residents in the area, that it supports local employment and reflects that Surry Hills is a busy inner-city area with a demand for services beyond standard daytime hours.
83. The submissions objecting to the proposal raised the following issues:
Noise, cooking odours, and delivery bikes
 - (a) The vast majority of delivery drivers are e-bikes from external delivery companies. They are alarmed every time they arrive and leave. Often these alarms get stuck in a loop before they can be turned off.
 - (b) Residents already experience significant impacts from cooking odours and exhaust emissions generated by the premises. The exhaust outlet regularly causes odours to enter residential apartments and common areas, affecting residents' comfort and enjoyment of their homes. Extending operating hours would increase the duration for which residents are exposed to these odours to unacceptable levels.

Comment:

If approved, the proposal would have further noise and odour impacts on neighbouring properties with these issues being relevant to reasons of refusal for the previous application.

The applicant states they will accept conditions requiring works to be undertaken, as recommended by an acoustic report lodged with the application. However, these works require strata owner's consent, which was not provided with the application. The POM does not adequately address noise from delivery drivers or mitigate impacts caused by cooking odours for extended hours of operation.

Compliance history

- (c) The business has not demonstrated compliance with its existing conditions of consent. Before any consideration is given to extending hours, the operator should first be required to demonstrate a sustained record of compliance with the hours already approved.

Comment:

The operators of the site have demonstrated a poor compliance record, as outlined in this report. They have failed to abide by the terms of an order that was recently served on the premises.

Waste

- (d) Increased hours will make current waste management issues worse. There have been occasions where other businesses in our building have not been able to dispose of their rubbish because the bin area is full or overflowing. We see the rubbish after every weekend when Pizza Hut has been trading from 9:00am till 5.15 am.
- (e) There have been repeated instances where security gates have been left open, waste bins unsecured and common area walkways inadequately cleaned and poorly maintained.

Comment:

Waste issues are relevant to the reasons the previous application was refused. An operational waste management plan has not been provided for assessment.

Inconsistency with planning controls

- (f) The extended hours are inconsistent with planning controls relating to trading hours.

Comment:

The proposed extended hours of operation are beyond those permissible by the DCP and are likely to have further impacts on the residential amenity of neighbouring properties

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

84. The City of Sydney Development Contributions Plan 2015 applies to the site. The development would not generally be subject to a section 7.11 local infrastructure contribution under this Plan (if recommended for approval) on the basis there is no increase proposed to floor area.

Contribution under Section 7.13 of the Sydney Local Environmental Plan 2012

85. As the proposal is development for purposes other than residential accommodation that will result in the creation of less than 60 square metres of gross floor area, it would generally be excluded from paying a Section 7.13 affordable housing contribution.

Housing and Productivity Contribution

86. The development is not subject to a Housing and Productivity Contribution under the Environmental Planning and Assessment (Housing and Productivity Contribution) Order 2023.

Relevant Legislation

87. Environmental Planning and Assessment Act 1979.

Conclusion

88. The applicant has not provided sufficient information with the review application to demonstrate amenity impacts for residential properties can be mitigated. For these reasons, the reasons provided for the refusal of DU/1993/641/B remain valid and the review is recommended for refusal.
89. The proposed extended hours of operation, beyond those permissible by the controls, will result in further residential amenity impacts for residents of the subject site and neighbouring sites and are contrary to key aims of the SLEP 2012, which are to enhance the amenity and quality of life of local communities and the objectives of the SDCP 2012 relating to non-residential development in Mixed Uses zones.

90. The extended hours of operation are contrary to the relevant Late Night Trading provisions of the SDCP 2012 and the operation of the premises is not consistent with the relevant Waste and Recycling Management provisions of the DCP.
91. Approval for a development that fails to satisfy the relevant objectives and provisions of the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012 is not in the Public Interest.

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Manager Planning Assessments

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