

The background of the cover is a photograph of a restaurant interior. On the left, there is a long, dark green tufted sofa with a white patterned cushion. In the center and right, a long wooden table is set with white plates, glasses, and silverware, surrounded by wooden chairs. The room has large windows with a decorative metal grille and a potted plant in the background.

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STATEMENT OF ENVIRONMENTAL EFFECTS

**MODIFICATION OF A CONSENT
TO EXTEND TRADING HOURS**

**LA PLAKA RESTAURANT
SHOPS 1-4
258 BURWOOD ROAD
BURWOOD**

FEBRUARY 2022

This report has relied upon the information available at the time of its preparation. All views and conclusions contained in the report are based on the aforementioned circumstances. The report is for the use of the client and Burwood Council and no responsibility will be taken for its use by other parties.

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Purpose

This Statement of Environmental Effects has been prepared to support an application to modify conditions of consent to extend the hours of operation for the La Plaka restaurant.

The modification seeks only to amend the hours of operation and do not seek any other change to the operation of the restaurant.

The relevant modification application was made in October 2017 and as such was made under Section 96(2) of the Environmental Planning and Assessment Act, 1979 as was current at the time.

As the modification application has been in abeyance for some time, this Statement has been prepared to provide a fresh and current assessment of the modifications.

An Operational Plan of Management has also been prepared and accompanies this Statement at **Appendix A**.

For clarity, this Statement addresses both Section 96(2) of the Act as was current at the time of lodgement as well as Section 4.55(2) of the Act as in force at the time the Statement was prepared.

1. What is the consent being modified?

The modification application relates to Notice of Determination No.170/2013 dated 3 August 2016 which granted consent to:

Change the hours of operation of a restaurant (La Plaka) from 7:00am until 9:00pm daily to allow trading hours to cease at 10:30 PM Sunday to Wednesday inclusive and trading hours to cease at 11:30 PM on Thursday Friday and Saturday for a 12 month trial period.

The consent relates to:

Shops 1-4, 258-264 Burwood Road, BURWOOD 2134

2. What is the modification?

2.1 The approved trading hours

The approved trading hours for the restaurant are:

Monday to Saturday:	7.00am to 10.00pm
Sunday:	7.00am to 8.00pm

Extended trading hours were granted a 12 month trial by Council at its meeting on 26 July, 2016, with the following hours being approved:

Sunday to Wednesday:	7.00am to 10.30pm
Thursday to Saturday:	7.00am to 11.30pm

That 12 month trial period expired on 3 August, 2017 and the trading hours reverted to those for which consent was originally granted.

On 19 October, 2017, the subject modification application was lodged seeking a permanent extension for the same hours of trading as per the 12 month trial.

2.2 The modified development

The modification application seeks to vary the approved trading hours as follows:

Sunday to Wednesday:	7.00am to 10.30pm
Thursday to Saturday:	7.00am to 11.30pm

No other modifications are sought.

This application seeks to apply the above hours on a permanent (i.e. not a trial) basis.

3. The subject land and surrounding land use context

3.1 The subject land

The subject land is known as Shops 1-4, 258-264 Burwood Road, Burwood.

The land is located near the southern end of the Burwood town centre as shown below.

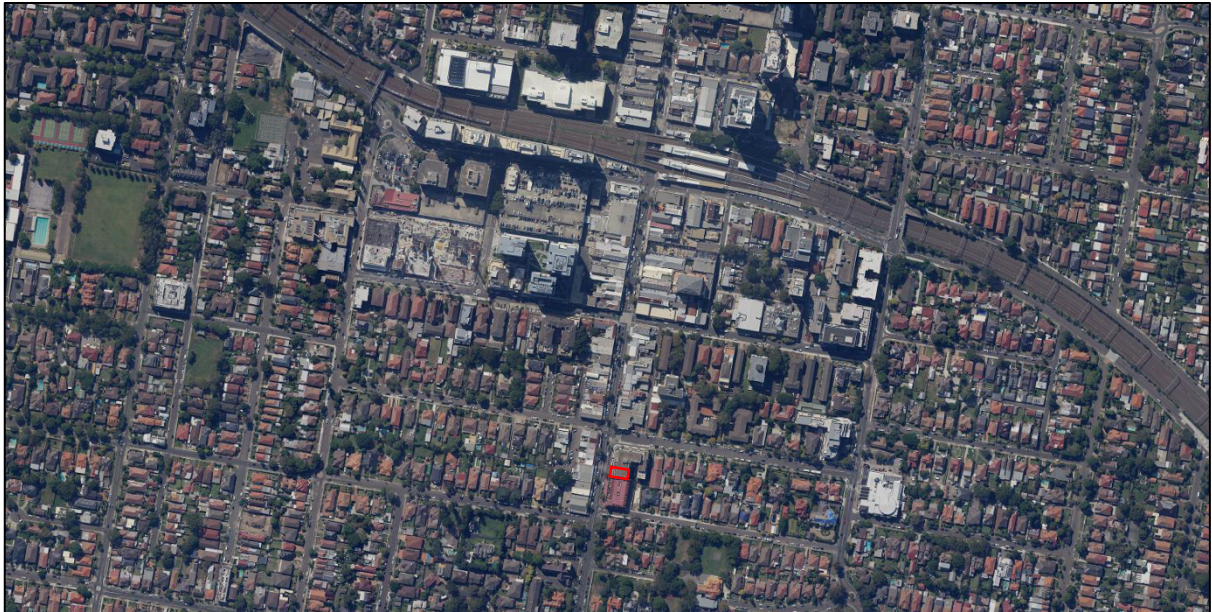


Figure 1: Location plan (source: SixMaps)

The premises occupies a ground floor tenancy of a mixed use building comprising of 4 restaurants in total and 47 residential apartments which is located on the south eastern corner of Burwood Road and Clarence Street.

The residential lobby is accessed off Clarence Street.

Other commercial premises along the ground floor of the building include a take away Chinese food bar adjacent to the residential lobby, and 2 restaurants, namely Zuruni restaurant on the corner of Burwood Road and Clarence Street and Sapid restaurant fronting Burwood Road.

The land is located approximately 330m to Burwood railway station and is also served by bus routes along Burwood Road and Clarence Street.

3.2 Surrounding land uses

The land to the south at 266-274 Burwood Road also comprises a mixed use development. The ground floor comprises a hairdresser, general practitioner, dental surgery, tutoring service and physiotherapist.

Across Burwood Road is a range of activities including an internet café, real estate agent, and health and beauty services.

A karaoke bar known as K Galaxy Karaoke is located across the road from the subject land at 195 Burwood Road and is open until 11.30pm.

The Burwood town centre offers a comprehensive range of retail, commercial services, entertainment and dining opportunities focussed on the main commercial strip of Burwood Road.



Figure 2: View along Burwood Road toward La Plaka



Figure 3: Commercial activities across Burwood Road

Street furniture improvements have been carried out along Burwood Road including hedge planting and decorative barriers as shown in the above photographs as well as below.



Figure 4: Planting and barriers on the corner of Burwood Road and Clarence Street

3.3 Land zoning

The subject land is zoned B4 Mixed Use under the Burwood Local Environmental Plan, 2012.

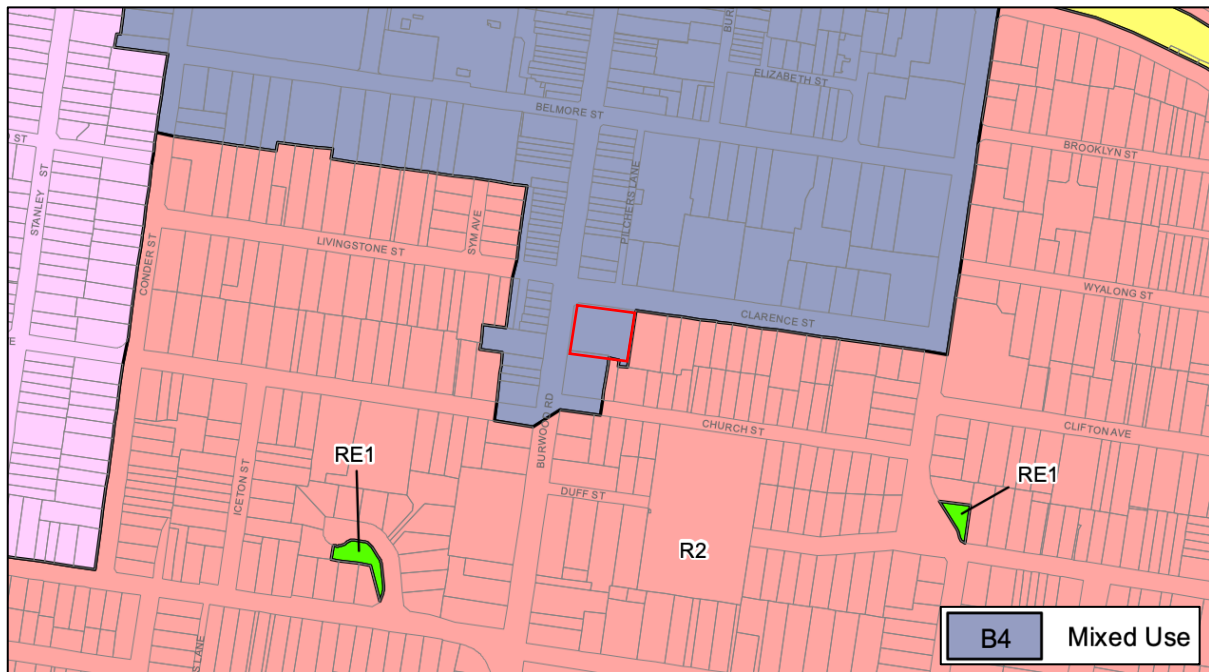


Figure 5: Extract of zoning map (source: www.legislation.nsw.gov.au)

Food and drink premises are permissible in the zone with consent.

The zone objectives for the zone are as follows:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

The proposed extension of hours is not considered contrary to the zone objectives for reasons outlined elsewhere in this Statement.

The subject land is in proximity to residential zoned land as evident from the zoning map.

4. Consideration of Section 96(2) and Section 4.55(2)

4.1 Preliminary

The relevant modification application was made in October 2017 and as such was made under Section 96(2) of the Environmental Planning and Assessment Act, 1979 as was current at the time.

For completeness and to remove any doubt, this Statement addresses both Section 96(2) of the Act as was current at the time of lodgement as well as Section 4.55(2) of the Act as in force at the time the Statement was prepared.

4.2 Section 96(2) and Section 4.55(2)

The proposed modification can be considered under Section 96(2) of the Act which stated:

96 Modification of consents—generally

.....

(2) Other modifications

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:

- (a) it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) it has notified the application 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**

- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1) and (1A) do not apply to such a modification.

- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application.*

.....

For completeness, Section 4.55(2) of the current version of the Act replicates the text of Section 96(2) which was current at the time the application was lodged and states:

4.55 Modification of consents—generally

(cf previous s 96)

.....

(2) Other modifications

A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if—

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and*
- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 4.8) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and*
- (c) *it has notified the application 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
- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

Subsections (1) and (1A) do not apply to such a modification.

- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

4.3 The modification satisfies the preconditions of Section 96(2) and Section 4.55(2)

To satisfy Section 96(2) and Section 4.55(2), the modification must satisfy various preconditions as set out in paragraphs (a) to (d) inclusive.

- (a) *it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all)*

The modification seeks only to vary one aspect of the proposal, being the hours of operation. No other part of the proposal is sought to be modified. As such, the development remains “substantially the same” as that for which consent was granted.

- (b) *it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent*

Not applicable.

- (c) *it has notified the application 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
- (d) *it has considered any submissions made concerning the proposed modification within the period prescribed by the regulations or provided by the development control plan, as the case may be.*

These are matters for Council.

Should the modification application receive submissions as a result of notification, the applicant would be pleased to be afforded the opportunity to respond to those matters.

4.4 The modification satisfies Section 79C and Section 4.15(1) of the Act

Both Section 96(3) and 4.55(3) require consideration of the matters for consideration under Section 79C and Section 4.15(1) of the Act, respectively. Assessments under those Sections are contained at **Appendices B** and **C** to this Statement.

In summary, the modification does not result in any inconsistency with the matters for consideration under either Section.

5. Consideration of likely impacts arising from the modification

5.1 Noise

High density living within a town centre must come with the expectation of some noise from restaurants and other entertainment or commercial activities. This is particularly the case along a major thoroughfare such as Burwood Road which connects Parramatta Road and Liverpool Road via Burwood station.

Notwithstanding, residents within the mixed use zone are entitled to amenity and La Plaka aims to ensure that it is not the source of nuisance.

An Operational Plan of Management accompanies the modification application and is contained at **Appendix A** to this Statement.

The Operational Plan of Management outlines measures to ensure the restaurant does not result in a nuisance to residential receivers in proximity to the restaurant.

These measures require the presence of a duty manager or supervisor to oversee operations and to ensure patron noise and behaviour is appropriate and does not create unreasonable noise.

The Operational Plan of Management contains specific provisions relating to noise as well as the recording of incidents and complaints. The Operational Plan of Management contains provision for the referral of incidents to the Local Area Command. The Operational Plan of Management also contains provisions for responding to complaints regarding noise and any other nuisance caused by the restaurant.

5.2 No service of alcohol is proposed

The premises is not licensed for the service of alcohol and it is considered that maintaining this will go some way to ensuring patron behaviour is appropriate. It is also noted that the adjoining restaurants, Sapid and Zuruni, are not licensed for service of alcohol.

That small strip of restaurants, including La Plaka will not contribute to any alcohol related incidents of anti-social behaviour.

La Plaka's evening trade is centred around small groups and couples with a demographic based mostly around young professionals. La Plaka tends to not cater for large group bookings.

5.3 Benefits of the modification

There are benefits arising from the proposed extension of operating hours.

The restaurant, along with other restaurants and premises in the area that are approved to trade under the same hours to those sought by this application, will add to the vitality of the town centre. With a wide range of dining available in the town centre, including restaurants with well-appointed fit outs and popular menus, Burwood can become a vibrant town centre that attracts spending in the centre.

Passive surveillance that comes from an increased residential component in the town centre reduces opportunities for anti-social behaviour and can deter crime. That is also assisted by on-street dining and other activity taking place in town centres.

5.4 No previous incidents have been recorded by the Local Area Command

The author is instructed that there have been no incidents at La Plaka that have involved the Police. Likewise, the author is instructed that there have been no incidents in the vicinity of La Plaka that have been attributed to La Plaka or its patrons.

While the opportunity to confirm this with the Local Area Command has not been available in the preparation of this Statement, it is assumed that Council will make its own enquiries with the Local Area Command to confirm what, if any, incidents have occurred at the premises.

6. Summary and Conclusion

A modification is sought to the consent for a permanent extension of trading hours as follows:

Sunday to Wednesday:	7.00am to 10.30pm
Thursday to Saturday:	7.00am to 11.30pm

The development remains substantially the same as that for which consent been granted and as such the consent can be modified under Section 4.55 of the Act as opposed to requiring a new development application.

The modification is supported by an Operational Plan of Management which outlines management protocols including responding to any complaints.

The extension of hours is in keeping with trading hours of other restaurants on Burwood Road in the vicinity of the subject restaurant and will contribute to the after-hours vitality of the Burwood town centre.

The amendments are recommended for approval.



Glenn Apps
Town Planner

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APPENDIX A

OPERATIONAL PLAN OF MANAGEMENT



OPERATIONAL PLAN OF MANAGEMENT

LA PLAKA RESTAURANT

SHOPS 1-4

258 BURWOOD ROAD

BURWOOD

JANUARY 2022

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1. PURPOSE OF THIS PLAN OF MANAGEMENT

- 1.1 The purpose of this Plan of Management is to establish performance criteria for various aspects of the operations of La Plaka restaurant at Shops 1-4, 258 Burwood Road, Burwood NSW (the “**premises**”), having regard to the relevant matters under the *Environmental Planning and Assessment Act 1979*, the *Protection of the Environment Operations Act, 1997* and the *Local Government Act, 1993*.
- 1.2 Of principal importance will be ensuring compliance with the following:
 - (i) The Premises is operated in such a manner so as to minimise any potential adverse impacts on the amenity of the area in which the Premises is located.
- 1.3 The Plan of Management recognises that the premises is not covered by a liquor license. Should it be required to sell liquor or allow BYO liquor to the premises, a liquor license shall be obtained under the *Liquor Act 2007* and this Plan of Management shall be amended to take into consideration a revised management regime for the sale of alcohol or the consumption of alcohol on the premises.

2. USE OF THIS PLAN OF MANAGEMENT

- 2.1 All staff involved with the operation of the premises shall be made familiar with this Plan of Management.
- 2.2 This Plan of Management takes into account the relevant documents regarding the operation of the premises which will include the development consent issued by Council.
- 2.3 If there is any inconsistency between the management procedures in this Plan of Management and the relevant documents, the more stringent requirement will prevail, to the extent of that inconsistency.
- 2.4 A copy of this Plan of Management shall be kept at the premises and will be produced to police or an officer of Burwood Council upon request.
- 2.5 All staff will be trained in the content of this Plan of Management, before commencing duties.



3. USE AND SUPERVISION OF THE PREMISES

3.1 The trading hours of the Premises are limited to the following:

Sunday: 7.00am to 10.30pm
Monday: 7.00am to 10.30pm
Tuesday: 7.00am to 10.30pm
Wednesday: 7.00am to 10.30pm
Thursday: 7.00am to 11.30pm
Friday: 7.00am to 11.30pm
Saturday: 7.00am to 11.30pm

Where a development consent imposes hours restrictions which are inconsistent with these trading hours, then those hours restrictions shall prevail to the extent of the inconsistency.

3.2 The immediate supervision of the premises shall be under a manager, duty manager or supervisor. A manager, duty manager or supervisor must be present on the premises at all times while the premises are trading.

4. NOISE AND AMENITY

4.1 The use of the Premises shall be controlled so that any emitted noise is at a level so as not to create an "offensive noise" as defined in the *Protection of the Environment Operations Act 1997*.

4.2 The manager, duty manager or supervisor must ensure unreasonable noise is minimised, particularly from patrons seated outside the premises.

4.3 Signage will be prominently displayed at the exit to the premises requesting that customers have regard to neighbours and keep noise to a minimum.

5. CCTV SYSTEM

- 5.1 The premises must maintain a closed-circuit television (CCTV) system on the premises in accordance with the following requirements:
- (a) the system must record continuously from the opening time until one hour after the premises is required to close,
 - (b) any recorded image must specify the time and date of the recorded image,
 - (c) the system's cameras must cover the following areas:
 - (i) all entry and exit points on the premises, and
 - (ii) all publicly accessible areas (other than toilets) within the premises.

6. INCIDENTS & INCIDENT REGISTER

- 6.1 The premises must maintain a register, in which the manager, duty manager or supervisor is to record the details of any of the following incidents and any action taken in response to any such incident:
- (a) Any incident involving violence or anti-social behaviour occurring on the premises,
 - (b) Any incident of which the manager, duty manager or supervisor is aware that involves violence or anti-social behaviour occurring in the immediate vicinity of the premises and that involves a person who has recently left, or been refused admission to, the premises,
 - (c) Any incident that results in a person being turned out of the premises,
 - (d) Any incident that results in a patron of the premises requiring medical assistance.
- 6.2 The manager, duty manager or supervisor must, if requested to do so by a police officer or Liquor & Gaming NSW inspector:
- (a) Make any such incident register immediately available for inspection by a police officer or Liquor & Gaming NSW inspector, and
 - (b) Allow a police officer or Liquor & Gaming NSW inspector to take copies of the register or to remove the register from the premises.
- 6.3 The manager of the premises must ensure that the information recorded in the incident register under this condition is retained for at least 3 years from when the record was made.

7. CRIME SCENE PRESERVATION

- 7.1 The manager, duty manager or supervisor must ensure that immediately after the manager, duty manager or supervisor or a staff member becomes aware of any

incident involving any act of violence causing an injury to a person on the Premises, the following is adhered to:

- (a) The manager, duty manager or supervisor and/or staff take all practicable steps to preserve and keep intact the area where the act of violence occurred, and retain all material and instruments associated with the act of violence in accordance with the Crime Scene Prevention Guidelines issued by the NSW Police;
- (b) The manager, duty manager or supervisor and/or staff make direct contact with the Local Area Commander or his/her delegate and advise the Commander or delegate of the incident; and
- (c) The manager, duty manager or supervisor and/or staff comply with any directions given by the Commander or delegate to preserve or keep intact the area where the violence occurred. In this condition: "Staff" in relation to the subject premises means any person employed by or action on behalf of the premises.

8. COMPLAINTS

- 8.1 The manager, duty manager or supervisor shall ensure that any complaints made directly to management or staff of the premises by local residents or local business people, about the operation of the premises or the behaviour of its customers, are addressed immediately and appropriately.
- 8.2 A register of complaints made about the operation of the premises or the behaviour of its customers is to be maintained on the premises by the manager and shall include:
 - The name, address and contact number of the person making the complaint;
 - The date and time that the complaint was made;
 - Details as to the nature of the complaint;
 - Notes of follow up action including the date and name and role of the person making the follow up action.
- 8.3 If required, any recurring complaints should be dealt with, if attributable to the premises, through new management procedures and incorporated into this Plan of Management.
- 8.4 The complaints register shall be made available to the Police and officers of the Council upon request.



9. DELIVERIES

- 9.1 Deliveries will only be in accordance with any hours that may be imposed by Council or otherwise during hours that are considered to be reasonable and in a manner that such deliveries do not result in any undue adverse impacts to the amenity of the area.

10. WASTE DISPOSAL

- 10.1 All waste shall be stored in approved containers placed inside the boundaries of the premises or the loading and storage areas available for this purpose within the property that the premises forms part of, before being removed for disposal by appropriate contractors. Waste shall not be stored in any area where food is prepared or stored.
- 10.2 Garbage shall only be placed outside the premises or on the footpath for collection.

11. MAINTENANCE

- 11.1 The premises shall be kept in a clean and tidy condition and footpaths in the immediate vicinity shall be free from rubbish associated with the premises and its customers.

12. FIRE SAFETY AND SAFETY MEASURES

- 12.1 The manager shall ensure that all essential services installed at the premises remain in good working order.
- 12.2 In the event of any malfunctioning essential service, the manager shall ensure that it is rectified as quickly as is reasonably possible.



- 12.3 Lists of the telephone numbers of all relevant emergency services shall be kept near all telephones within the Premises.
- 12.4 All managers, duty managers, supervisors and staff shall be made aware of fire safety requirements and the procedures to be followed in the event of an emergency at the premises.

13. REQUIREMENTS TO LIAISE WITH POLICE AND COUNCIL FOR THE AREA

- 13.1 If deemed to be necessary by the Police, Council and/or the manager, the manager will make contact with the Police and/or Council from time to time to discuss any issues relating to the operation of the Premises, including the consideration of any reasonable practices to be implemented at the Premises.

14. MONITORING THE PLAN OF MANAGEMENT

- 14.1 This Plan of Management will be reviewed from time to time and only updated in consultation with NSW Police and Council.
- 14.2 Any revisions to the Plan of Management must be endorsed by Council.



15. ADOPTION STATEMENT

Adopted by the Manager:

_____ Name

_____ Signature

_____ Date

APPENDIX B

ASSESSMENT AGAINST SECTION 79C OF THE ACT

Matter for consideration	Comment
(a) the provisions of:	
(i) any environmental planning instrument	<p>The modified development involves only a change to the hours of operation and does not result in any exceedance of a development standard or any other provisions or objectives of the Burwood LEP 2012.</p> <p>Likewise the modification does not result in a breach of any provision of a SEPP or deemed SEPP.</p>
(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)	<p>There are no draft planning instruments applicable to the modification.</p>
(iii) any development control plan	<p>The development as proposed to be modified remains compliant with the relevant provisions of the Burwood DCP.</p>
(iiia) any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F	<p>There are no planning agreements applicable to the subject land.</p>
(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)	<p>The Regulations do not prescribe any matters that are relevant to the modified development.</p>
(v) any coastal zone management plan (within the meaning of the <i>Coastal Protection Act 1979</i>)	<p>Not applicable.</p>
(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality	<p>A discussion of these impacts is contained in the body of this Statement at Chapter 5.</p>
(c) the suitability of the site for the development	<p>The site remains suitable for the modified proposed development.</p>
(d) any submissions made in accordance with this Act or the regulations	<p>Should notification of the Modification Application result in the receipt of submissions, the Applicant would welcome the opportunity to address those matters.</p>
(e) the public interest	<p>The modification is within the public interest as it satisfies the objectives of the zone and does not create unreasonable impacts.</p>

APPENDIX C

ASSESSMENT AGAINST SECTION 4.15(1) OF THE ACT

Matter for consideration	Comment
(a) the provisions of:	
(i) any environmental planning instrument	<p>The modified development involves only a change to the hours of operation and does not result in any exceedance of a development standard or any other provisions or objectives of the Burwood LEP 2012.</p> <p>Likewise the modification does not result in a breach of any provision of a SEPP or deemed SEPP.</p>
(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved)	<p>There are no draft planning instruments applicable to the modification.</p>
(iii) any development control plan	<p>The development as proposed to be modified remains compliant with the relevant provisions of the Burwood DCP.</p>
(iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4	<p>There are no planning agreements applicable to the subject land.</p>
(iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph)	<p>The Regulations do not prescribe any matters that are relevant to the modified development.</p>
(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality	<p>A discussion of these impacts is contained in the body of this Statement at Chapter 5.</p>
(c) the suitability of the site for the development	<p>The site remains suitable for the modified proposed development.</p>
(d) any submissions made in accordance with this Act or the regulations	<p>Should notification of the Modification Application result in the receipt of submissions, the Applicant would welcome the opportunity to address those matters.</p>
(e) the public interest	<p>The modification is within the public interest as it satisfies the objectives of the zone and does not create unreasonable impacts.</p>