



ITEM No. 2.4

REPORT: **DEVELOPMENT APPLICATION No. X/142/2021 for additions and alterations to an existing commercial development being a food and drink premises at Niagara Cafe, 92 Bathurst Road, KATOOMBA NSW 2780**

Reason for report The proposal is classified as sensitive development, being development involving demolition works on a heritage item.

RECOMMENDATION	That the Development Application X/142/2021 for additions and alterations to an existing commercial development being a food and drink premises at Niagara Cafe, 92 Bathurst Road, KATOOMBA NSW 2780 be determined in accordance with s4.16 of the <i>Environmental Planning and Assessment Act</i> , by the granting of consent subject to the conditions stated in Part 3 of this report.
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Reasons in support of the recommended decision

1. The development generally complies with the relevant State and Local planning instruments and policies
2. The development will not impact upon the significance of the 'Niagara Café' Heritage item on the subject site as required by Clause 5.10 – *Heritage conservation* of LEP 2015.
3. The proposal is considered consistent with the controls of Clause 7.6(1) – Katoomba Precinct B2-KA01 of LEP 2015 and Clause G5.1 – Katoomba Precinct B2 - KA01 – Katoomba Street and Bathurst Road Shopping Strip Precinct of DCP 2015.
4. The location and treatment of the rear deck area is not considered to create a visual impact upon its surrounds.
5. The restriction on use of the outdoor area after 10pm will limit acoustic impacts during the night time period.
6. The application has demonstrated via an accompanying acoustic report that the amenity of adjoining properties, including residential uses and the Carrington Hotel, are unlikely to be adversely impacted by noise generation during the evening period (prior to 10pm). However, to provide improved certainty regarding acoustic impact on the amenity of adjoining properties, it is recommended that any approval be subject to a 12 month trial period before permanent use of the rear outdoor deck area is approved.

Disclosure Disclosure of any political donation and/or gift - No

Declaration of interest No conflict of interest

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PART 1 **Development proposal**
PART 2 **Council assessment**
PART 3 **Proposed conditions of consent**

PART 1: Development proposal

Applicant	Mr J Jarimba
Land owner	Mr C Bobolas and Mrs K Bobolas
Location	Niagara Cafe, 92 Bathurst Road, KATOOMBA NSW 2780
Lot & DP	L 1, DP 929512
Date lodged	17 February 2021
Value of works	\$70,820.00
Proposal in detail	<p>The development proposal seeks approval for alterations and additions to the existing commercial property (currently accommodating the Bootlegger Bar) for the use of an existing rear deck for the purpose of an outdoor standing and seating area and a bar. There is no clear record as to the construction of the rear deck which appears to have occurred sometime after 2007. To ensure the deck is structurally adequate for its intended purpose, it will be required as a condition of consent that a structural engineer certifies as to its adequacy as part of any Construction Certificate.</p> <p>The following physical works are proposed to the existing commercial tenancy:</p> <p><u>Ground Floor</u></p> <ul style="list-style-type: none"> • No changes are proposed to the existing ground floor <p><u>First Floor – Internal</u></p> <ul style="list-style-type: none"> • Provision of a new 1.2m wide passageway through the existing kitchen area to link the dining area to an existing concrete path leading to the proposed rear terrace area. This passageway will be constructed with new ‘Fyrecheck’ walls and ceiling and require the reduction in size of an existing kitchen in this area, • Repositioning of the existing cook top grill, fryer and bench in the existing kitchen, and • Relocation of two (2) existing exhaust flues to the external roof area. <p><u>First Floor – External (rear courtyard)</u></p> <ul style="list-style-type: none"> • Provision of new timber deck steps with handrail and landing above existing concrete steps to be used to access the existing rear courtyard, • Provision of a new screen and gate to rainwater tank and grease pit area (at base of external stairs), • Provision of landscaping screening to boundaries of deck area consisting of citrus trees, mint bushes, lavender, sticky myrtle and one (1) creape myrtle feature tree in addition to an internal garden bed maintaining lemon trees, • 1.8m high lattice (black bamboo) privacy screen along western boundary fence, • New bar for the service of beverages to existing timber deck, and • New storage shed for the storage of outdoor equipment to the rear of the

proposed new bar.

Proposed operations

Hours of operation for the outdoor seating area are proposed to be 12:00pm to 10:00pm Monday to Sunday. The Bootlegger Bar is closed on Tuesday and as such the outdoor deck area will also not be open.

No live music is proposed for this area.

The accompanying statement of environmental effects provided in part for the following further description in regard to the operation of the outdoor area:

Patron Capacity

The premises will retain a maximum capacity of 120 patrons internally, with the proposed outdoor area seeking to accommodate a maximum capacity of 50 additional patrons (without outdoor seating i.e. standing) and a maximum of 40 additional patrons (with outdoor seating). This would result in a total maximum capacity of 170 patrons across the premises.

However, the premises is currently restricted to 50 patrons as a result of COVID-19 restrictions, and the outdoor area will be restricted to approximately 27 patrons based on current restrictions, being one person for every two square metres to occupy a courtyard.

Staff

The premises will generally utilise existing staff numbers with one (1) additional staff member per shift tending to the outdoor seating and bar area.

Departure or variation to a development standard

The applicant is not seeking to vary a development standard.

Supporting documentation

The plans and documents lodged are considered sufficient to enable assessment of the application. The application is supported by:

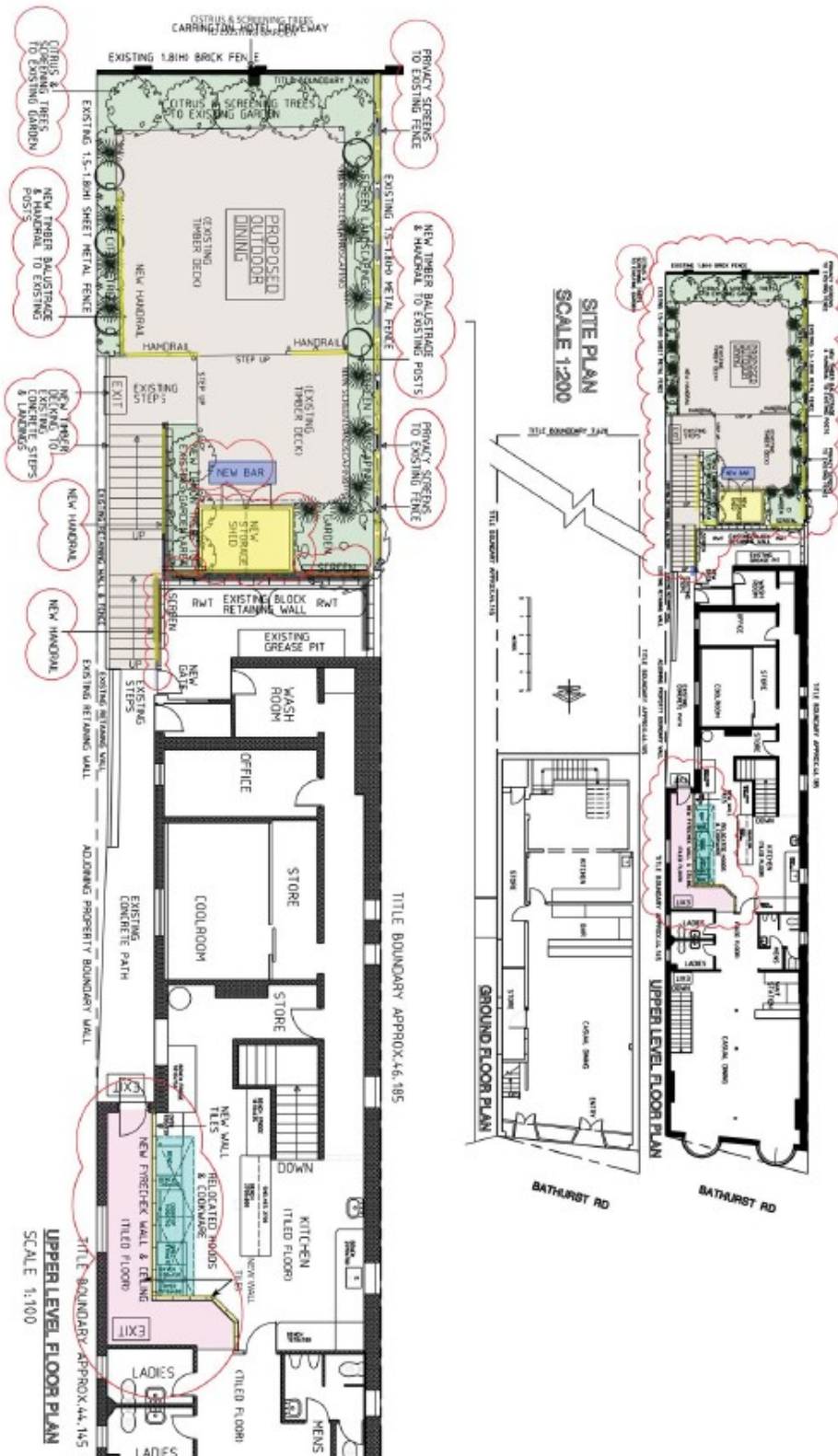
- Architectural plans prepared by R.A. Walls Construction
- Acoustic Report prepared by GHD
- Accessibility Report prepared by Bio-Building Design
- Venue Management Plan for the Bootlegger Bar
- Statement of environmental effects prepared by Creative Planning Solutions

[Documentation online](#)

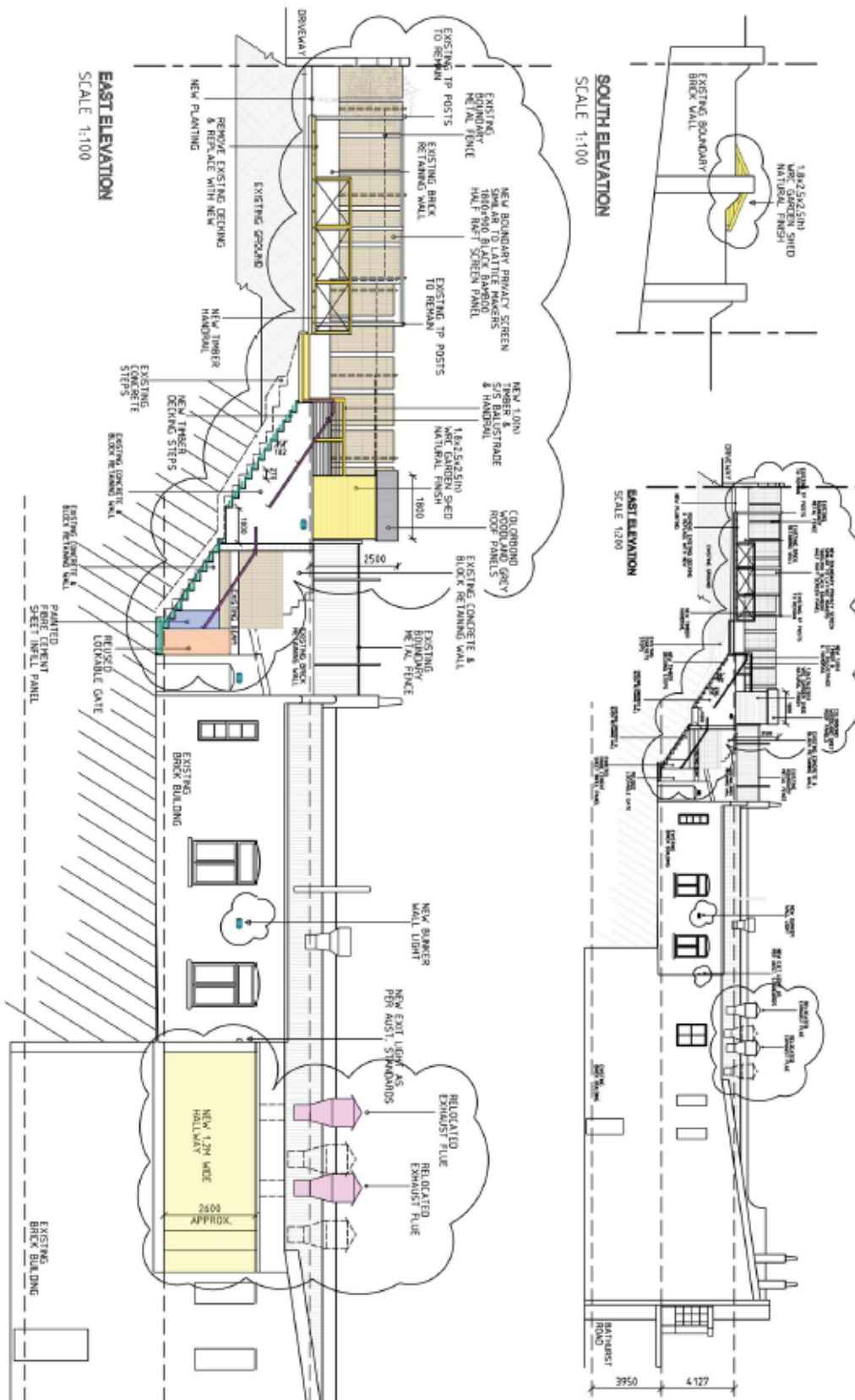
Plans to scale and key documents lodged with the application can be viewed online. Go to www.bmcc.nsw.gov.au/development – Track and View applications. Search and select X/142/2021.

Reduced site and elevation plans are below.

Site plan



Elevation plan



PART 2: Council assessment

2.1 Overview and summary of issues

Location	Niagara Cafe, 92 Bathurst Road, KATOOMBA NSW 2780
Lot & DP	L 1 DP 929512
Zoning	B2 - Local Centre
Characterisation of use	Provision of an external courtyard area to an existing food and drink premises which is a type of retail premises.
Permissibility	The proposed development is permissible within the zone.
Type of development	Local
Applicable environmental planning instrument/s	<ul style="list-style-type: none"> ○ State Environmental Planning Policy No. 55 – Remediation of Land ○ Sydney Regional Environmental Planning Policy No. 20: Hawkesbury-Nepean River ○ Local Environmental Plan 2015 ○ Development Control Plan 2015
Applicable additional local provisions	<ul style="list-style-type: none"> ○ Design excellence ○ Active street frontages ○ Sustainable Resource Management ○ Essential Services
Applicable additional local clauses – development in villages	<ul style="list-style-type: none"> ○ Development in villages ○ Katoomba Precinct
Bushfire prone land	The property is not mapped as bushfire prone.
Heritage significance	The property is listed as a heritage item and is located within a heritage conservation area.
Aboriginal significance	No Aboriginal objects are recorded or Aboriginal places declared in or near the subject property.
Potentially contaminated land	The land is not listed on the Council’s potentially contaminated land register and none of the activities that may cause contamination, listed in Table 1 of Planning NSW’s Managing Land Contamination Planning Guidelines, are being or are known to have been carried out on the site.
Site description	<p>The subject site is located on the southern side of Bathurst Road approximately 80m south west of Katoomba railway station. The site is generally rectangular in shape with a total area of approximately 328m² and maintains a street frontage onto Bathurst Road of approximately 7.52m.</p> <p>The site accommodates a two storey food and drink premises which is occupied by the Bootlegger Bar. The existing building (also known as the Niagara Cafe) is identified as an item of local heritage significance under LEP 2015 with the</p>

following description provided within its heritage inventory sheet;

The Niagara is a two-storey restaurant/café facing north to Katoomba Street. The present façade and fitout was designed in the inter-war functionalist style and is one of the best examples of that style in Katoomba. The building has a ground floor shopfront of bay shaped windows with metal framing and varnished timber entry doors with chrome plated chevron door pulls. The first floor is of stack bond glazed bricks with a simple rectangular parapet. A rendered stringcourse extends to become a cantilevered awning over the two curved steel framed bay windows.

The awning has a slightly fluted edging and is lined with battened fibro cement sheets.

The signs for the café have been incorporated into the design. The parapet sign is in neon lights over black lettering set into a panel of glass bricks. The sign over the shop entry is of metal.

The Bootlegger Bar maintains the current hours of operation:

Monday: 5pm to 12am

Tuesday: Closed

Wednesday – Saturday: 12pm to 12am

Sunday: 12pm to 10pm.

The ground floor maintains a dining area, bar and ancillary space. The ground floor connects to the first floor via separate staircases, one staff only and one for general public usage. The first floor consists of a bar, dining area, kitchen storage, amenities and outdoor area (subject to this application).

Directly adjoining the site to the east (No. 88 Bathurst) is a two storey building maintaining a newsagency and an upstairs residential apartment. Directly adjoining to the west (No. 96 Bathurst) is a hairdressing salon and a residential apartment on the first floor.

Directly to the rear of the site is the Carrington Hotel which also maintains access driveways and gardens associated with its use. A mixture of commercial uses are provided surrounding the subject site including a medical centre complex (98-108 Bathurst Road), Harp and Fiddle bar (86 Bathurst Road) and the Old City Bank Brasserie (47 Katoomba Street) as well as the Baroque Room (No. 15 Katoomba Street) which is a live performance and music venue.



Development history / background

The development application was originally received requesting that the proposed hours of operation for the rear external terrace deck reflect the current operating hours of the Bootlegger Bar, i.e. 12pm to 12am Monday to Saturday (Tuesday closed) and 12.00pm to 10.00pm on Saturday.

Following a preliminary assessment of the application and the submission of an acoustic report, the proposal was amended to a 10pm closing time for the outdoor deck area. Amended information received also included an access report, updated architectural plans and venue management plan. Following the receipt of this amended information, the application was subsequently renotified to surrounding properties.

City wide infrastructure contribution

The Citywide infrastructure contribution applies to the site, however the costs of works are less than \$100,000 and, in accordance with Council's Infrastructure Contributions Plan, no contribution payments are triggered by the current application.

Referral authorities

Comments were sought and obtained from:

- Council's Heritage Advisor
- Council's Senior Building Surveyor (Fire Safety)
- Council's Accessibility Officer
- Council's Environmental Health Officer

These comments have been included in the report.

Notification period

The application was originally notified to adjoining owners and published in the

local paper, with the notification period being from 3 March 2021 until 17 March, 2021. Following the receipt of amended plans and acoustic and access reports, the application was subsequently renotified between 3 May 2021 and 17 May 2021.

Number of submissions One (1) submission was received during the original notification period. One (1) further submission was received during the renotification period from the same submitter.

Summary of issues raised Issues raised include:

- Concern in regard to adverse acoustic impact created by the proposal on the adjoining rooms at the Carrington Hotel.
- Impacts created by the proposed use upon adjoining businesses will cancel out any economic gain that the development will produce.

Summary of assessment issues Key issues determined in the assessment are:

- Acoustic impact of use of the rear deck area upon surrounding properties.
- Operation of proposed rear outdoor deck area.
- Non-compliant access for people with a disability to Bootlegger Bar and proposed rear deck area.
- Visual impact of proposed deck area and relationship with immediate adjoining properties.
- Car parking considerations associated with new outdoor deck use.

Assessment issues are detailed below.

2.2 Evaluation

The application has been assessed in accordance with *s4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act)*. Only those provisions relevant to the proposed development have been addressed.

State Environmental Planning Policy (SEPP) – s4.15(1)(a)(i)

The following table provides for an assessment against the provisions applicable State Environmental Planning Policies.

SEPP 55 – Remediation of Land

Consideration has been given to whether the land is contaminated, as required by cl.7 of the SEPP.

Potentially contaminated land

The land is not listed on the Council’s potentially contaminated land register and none of the activities that may cause contamination, listed in Table 1 of Planning NSW’s Managing Land Contamination Planning Guidelines, are being or are known to have been carried out on the site.

Sydney Regional Environmental Plan No 20 – Hawkesbury-Nepean River

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Standard	Discussion	Compliance Y/N
Impact of development on drinking water sub catchment	The subject site is located in the Cox's River sub catchment. The proposal is not considered to be contrary to the general planning considerations and the specific planning policies and related recommended strategies applicable to the proposed development, including water quality, water quantity and urban development.	Yes

Local Environmental Plan 2015 [LEP2015] – s4.15(1)(a)(i)

The proposed development has been assessed against the provisions of LEP 2015 with significant points identified and discussed below.

Part 1 Preliminary			
Clause	Standard	Discussion	Compliance Y/N
1.2	Aims of Plan	The proposed development is considered to satisfy the aims of the plan that are relevant to the proposed development.	Yes

Part 2 Permitted or prohibited development			
Clause	Standard	Discussion	Compliance Y/N
Land Use Table	Permissibility	The proposed use a 'food and drink premises' which is permitted with consent in the B2 zoning.	Yes
2.3	Zone objectives	<p>The objectives of the zone are met, as it is considered that the works will maintain the existing commercial operations on the subject site. In this regard, the proposal is considered to be specifically consistent with the following two objectives of the zone;</p> <ul style="list-style-type: none"> <i>To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.</i> <i>To maintain the economic viability of the towns and villages of the Blue Mountains.</i> 	Yes

Part 4 Principal development standards

Building

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Part 4 Principal development standards				
4.3	Height of buildings	Maximum height of 11m	No change to the existing building height.	Yes
4.4	Floor space ratio	Maximum FSR of 1.5:1	No change to the existing floor area.	Yes

Part 5 Miscellaneous provisions			
Clause	Standard	Discussion	Compliance Y/N
5.10 Schedule 5	Heritage conservation	<p>The subject property is listed as heritage item No. K106 – ‘Niagara Cafe and interiors’. The very front portion of the property on Bathurst Road is also within K065 Transport Corridor’. Building works are subject to the following objectives:</p> <p><i>(a) to conserve the environmental heritage of the Blue Mountains,</i></p> <p><i>(b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings and views,</i></p> <p><i>(c) to conserve archaeological sites,</i></p> <p><i>(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.</i></p> <p>Objectives (a) and (b) above are applicable.</p> <p>Development consent is also required under clause 5.10 (2) (a) (iii) of LEP 2015 for demolishing or altering the exterior (including, in the case of a building, making changes to its detail, fabric, finish or appearance) of a building within a heritage conservation area.</p> <p>Council’s Heritage Advisor provided the following commentary on the design as amended:</p> <p><i>The application is generally acceptable on heritage grounds as it complies with the relevant statutory and policy documents and would have a satisfactory impact.</i></p> <p><i>The proposed changes to the upper level kitchen are considered acceptable as they do not impact on the significant original fabric of the café. The changes proposed to the use of the rear terrace as outdoor dining are minimal and considered acceptable. The proposed landscaping and screen will help in mitigating the visual impacts when</i></p>	Yes

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Part 5 Miscellaneous provisions			
Clause	Standard	Discussion	Compliance Y/N
		<p><i>viewed from the state-significant Carrington Hotel, and other properties in the vicinity, which are part of the Katoomba Central HCA.</i></p> <p>Consideration was given to whether the proposed rear terrace would be visible when viewed from the north as part of the HCA. The proposed barriers to the rear terrace are of a similar height as the existing parapets across the frontage of the site, with the terrace itself setback approximately 30m from the site's front boundary. The buildings along Bathurst Road are all built boundary to boundary with many of them having parapet heights consistent with the Niagara parapet.</p> <p>The rear terrace will not be visible from north when viewed from either Bathurst Rd, the Katoomba Railway Station or Goldsmith place. This is due level of these areas compared to the height of the Niagara as well as the setback nature of the terrace.</p> <p>There would only a select view line that could glimpse the top of the barrier from the Great Western Highway. The highway is located approximately 190m north of the site, with most view lines actually screened by the height of parapets in this location. Even when viewed at this distance, the barrier would read as being set well back from the Niagara front façade and would be perceived as part of the roof structure that is in the same visual catchment.</p> <p>The proposal is therefore considered to satisfy objective (a) and (b) of clause 5.10 of LEP 2015 subject to the provision of appropriate condition in relation to the treatment of the proposed privacy screen.</p>	
5.10.8	Aboriginal places of heritage significance	A search of the AHIMS register on the OEH website shows no aboriginal sites or places on or within 50 m of the land.	Yes

Part 6 Additional local provisions			
Clause	Standard	Discussion	Compliance Y/N

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Part 6 Additional local provisions			
Clause	Standard	Discussion	Compliance Y/N
Impact on natural environment			
6.9	Stormwater management	The proposed development does not create additional hardstand area and will not impact upon the existing stormwater arrangement for the premises.	Yes
Impact on built environment			
6.19	Design excellence	Although the subject site is located within Katoomba Village centre, the development works do not involve the erection of a new building or external alterations to an existing building that will impact on its appearance from the public domain. The design excellence clause is not applicable in this instance.	NA
6.20	Active street frontages	Alterations to the rear portion of the existing building is not considered to create an impact on the existing flow of pedestrian traffic to the ground floor food and drink premises.	Yes
6.23	Essential Services	The proposed development will maintain existing connections to a water supply, reticulated sewage system, electricity system and telecommunications services for the subject site.	Yes

Part 7 Additional local clauses – development in villages			
Clause	Standard	Discussion	Compliance Y/N
7.1	Development in villages	The Council is satisfied that the development on the land is consistent with the objectives specified for the development proposed. Refer clauses 7.6 below for discussion in relation to the specific precinct objectives.	Yes
7.6	Katoomba Precinct	The site is located within 'Katoomba Precinct B2-KA01'. The relevant objectives are identified and discussed as follows; <i>(a) to promote a diversity of retailing, commercial, community, cultural and residential uses that serve the community, business and tourists,</i> The proposed works will expand upon the existing indoor commercial activities on the subject site. The provision of an outdoor aspect to the current food	Yes

Part 7 Additional local clauses – development in villages			
Clause	Standard	Discussion	Compliance Y/N
		<p>and drink premises will provide for an additional feature to the current operations which is considered to serve the community, business and tourists of the local area.</p> <p><i>(b) to promote a built form and scale that is consistent with that of the existing and adjacent streetscape,</i></p> <p>Not applicable in this instance as no impact is created upon the existing streetscape.</p> <p><i>(c) to conserve buildings with heritage significance and protect the identified heritage value and character of other buildings in the precinct,</i></p> <p>The proposed works were reviewed by Council's Heritage Advisor and are considered to maintain the significance of the existing heritage building.</p> <p><i>(d) to promote active street frontages to all roads, lanes, footpaths and public areas,</i></p> <p>Not applicable in this instance as the proposed development does not alter the nature of the existing street frontage.</p> <p><i>(e) to enhance pedestrian linkages within the village of Katoomba.</i></p> <p>Not applicable in this instance as the proposed development does not alter the existing pedestrian linkages to the Katoomba village centre.</p>	

Development Control Plan 2015 – s4.15(1)(a)(iii)

The proposed development has been assessed against the provisions of the Development Control Plan 2015 with significant points of consideration identified and discussed in the table below.

Part B Context, site analysis and design			
Clause	Standard	Discussion	Compliance Y/N
B1	Site and context analysis	The submitted documentation adequately addressed constraints and opportunities as related to the existing heritage significance of the subject site.	Yes

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Part B Context, site analysis and design			
Clause	Standard	Discussion	Compliance Y/N
B2	Building envelope	The proposal does not alter the existing building envelope on the subject site.	Yes
B3	Character and design	The current proposal provides for the redevelopment of an existing rear deck area with no immediate impact created on the presentation of the building to the public domain.	Yes

Part D Heritage management			
Clause	Standard	Discussion	Compliance Y/N
D1	Heritage	<p>This section of the DCP aims to ensure heritage items are retained and appropriately conserved. Relevant controls had been identified and discussed as follows:</p> <p><i>Control C1. Heritage items are to be retained and conserved, that is:</i></p> <p><i>(a) Significant fabric is to be retained;</i></p> <p><i>(b) Original principal building forms (including roof pitch, eaves height and chimneys) are to be retained;</i></p> <p><i>(c) No alterations or additions are to be made to the original elevations, details, materials or finishes of the principal building form except to allow for restoration and reconstruction;</i></p> <p><i>(d) Original verandahs and balconies are not to be infilled or enclosed;</i></p> <p><i>(e) Original room layouts of the principal building forms are to be retained.</i></p> <p>The significant fabric of the heritage item will not be impacted due to the changes proposed. The upper level kitchen where works are proposed is a section that has been previously modified. In this regard, works to this area, being a reduced kitchen area and provision of a passageway linking to the existing rear outdoor area will not generate any heritage concerns. Limited visual changes will be created of the first floor when viewed from the dining area noting all internal works on this level will be provided to the existing back of house area.</p>	Yes

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Part D Heritage management			
Clause	Standard	Discussion	Compliance Y/N
		<p>The proposed development does not alter the appearance of the existing building in terms of its impact on the significance of the transport corridor.</p> <p><i>Control C6. A Heritage Impact Statement is required for works to a heritage item that require consent. The Heritage Impact Statement is to be in accordance with the submission requirements guidelines in Part 11.4. Submission Requirements. The scope and nature of the report will depend upon the significance of the item and the proposed degree of change to the item.</i></p> <p>A Heritage Impact Statement was not submitted with this application although the proposal was discussed in the Statement of Environmental Effects. This is considered acceptable. The proposed development is a modest change to the interiors of the existing building to accommodate access to the proposed rear outdoor dining area. The proposal to use the rear deck as outdoor dining is considered acceptable. There will be appropriate conditions included in the consent in relation to suitable screening and landscaping to mitigate any amenity impacts.</p>	

Part E Site development and management			
Clause	Standard	Discussion	Compliance Y/N
E2	Traffic, parking and access	<p>The application will not provide for an increase in the building floor area noting that the new use proposed is associated with an existing rear deck area. The proposed development does not provide for any parking facilities.</p> <p>The existing building maintains a single frontage onto Bathurst Road with remaining boundaries being land locked by surrounding properties. For a licenced premises, it is noted that the following applicable parking rate within the DCP is applicable;</p> <p><i>15 space per 100m² of GFA</i></p> <p>Gross floor area is defined as the internal floor area of a building and as such the outdoor area does not constitute part of the gross floor area. The area of</p>	Yes

Part E Site development and management			
Clause	Standard	Discussion	Compliance Y/N
		<p>the deck is approximately 51m² of public space which would otherwise have trigger the need for 7 spaces.</p> <p>Although not a requirement, consideration was given to whether the development, on merit, should provide additional parking.</p> <p>Refer to the <i>F2.2 Parking and Access</i> section of the table below for further discussion.</p>	
E3	Accessibility, adaptability and housing choice	<p>The 'Niagara Café' building currently maintains a single main entry point for public access via the ground floor façade facing Bathurst Road. Entry into the food and drink premises is via two sets of 'French' doors fronting the footpath. Both have two steps to negotiate the level change from the footpath to the ground floor level with the western most doorway containing the smallest step from the door threshold/ landing to the footpath.</p> <p>A stairway then provides the only means of public access from the ground floor to the first floor, with the new corridor and existing concrete pathway leading to refurbished stairs rising up to the outdoor deck area.</p> <p>An 'Access and Mobility Report' prepared by Bio Building Design was provided in response access issues raised during assessment. The report concludes that compliant access into the building, to the first floor and the proposed outdoor area is unable to be provided without adverse impact to the heritage fabric of the building. It also concludes that the existing facilities on the first floor are not accessible.</p> <p>The application is not proposing any access for people with a disability into the property and the report includes a proposed 'unjustifiable hardship' application which would be provided as part of any assessment of a future Construction Certificate. It is noted that the provision of access for people with a disability under the Access to Premises Standard and Building Code of Australia is part of any Construction Certificate assessment.</p> <p>The 'unjustifiable hardship' application forming part of the Access Report, identifies that the current</p>	

Part E Site development and management			
Clause	Standard	Discussion	Compliance Y/N
		<p>practice is for staff and management to assist people with a disability into the premises. In the worst case scenario, this would mean staff assisting patrons in a wheelchair by lifting them into the premises. Even then access would be limited to the ground floor level.</p> <p>Noting the above, it is acknowledged that not providing access for people with a disability to the property or to the upper levels would assist in maintaining the existing heritage fabric and significance of the property. While so, one of the objectives of the Access to Premises Standard is to <i>'ensure that dignified, equitable, cost-effective and reasonably achievable access to buildings'</i> is provided for people with a disability. The unjustifiable hardship application in the access report states that the current practice is <i>'not ideal in terms of dignity and independence'</i>. In this regard, it is appropriate to consider a performance solution to allow a person with a disability the opportunity to access, at a minimum, the ground floor level of the building with dignity.</p> <p>The guidelines for the Access to Premises Standard state that consideration should be given to identifying suitable alternative solutions before considering a defence based on unjustifiable hardship. On this basis, it is considered appropriate that any forthcoming consent provide for the provision of a portable ramp which could be provided by staff if a person with a disability arrived at the property. While a ramp would need to address a total rise of 285 mm from ground floor level to the footpath, there appears to be a suitable width of footpath to allow the ramp to be placed on the footpath with an area at the base for manoeuvring of people using a wheelchair.</p> <p>The ramp should be portable in nature, as it would be temporary and could be stored when not required. This would assist with dignified access and not impact on the heritage significance of the existing building.</p> <p>This requirement has been included in the conditions of consent. It will also be conditioned that a design statement prepared by a suitably qualified</p>	

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Part E Site development and management			
Clause	Standard	Discussion	Compliance Y/N
		person is prepared as part of the Construction Certificate documentation.	
E4	Site management	Site management will be included as a condition of consent including any demolition involving asbestos to be handled and disposed of in the appropriate manner.	Yes
E5	Safety and security	<p>The application has been accompanied by a 'Venue Management Plan' which has identified security measures to be incorporated on the subject site as specifically part of any operational outdoor deck/dining area. Measures include the following:</p> <ul style="list-style-type: none"> • Each dining area is to have one permanent staff member in attendance at all times. • External stairs to the outdoor dining area is to be provided with additional lighting. A review of the elevation plans has identified three (3) bunker wall lights provided to the side of the external outdoor walkway and stairs leading to the rear deck area. • Additional foot lighting being proposed to the external steps. • Handrails are proposed for the outside of the steps and any deck area that is elevated. This has been identified on the accompanying architectural plans. • Notification to the local police of any proposed special event proposals. • The provision of security cameras to the outdoor dining area specifically above the external passage door, to the top landing of the external stairs and to the top of the garden shed. <p>Implementation of the above measures are considered to assist in maintaining an appropriate level of security and use.</p>	Yes
E6	Waste management	No changes are expected from the current weekly commercial waste collections from the subject site.	Yes

Part F Specific development types

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Clause	Standard	Discussion	Compliance Y/N
Retail and commercial development			
F2.1	Building design and site planning	The proposed use of an existing rear deck area will result in limited visual bulk and scale concerns.	Yes
F2.2	Parking and access	<p>As noted above at E2, the proposed use of the rear deck creates an additional parking demand of 7 spaces. However, the site meets the exceptions criteria outlined at F2.2.1(C1).</p> <p>Regardless, it is considered appropriate to consider the merits of whether additional car parking should be required.</p> <p>It is noted that the site is constrained in a manner which does not allow for any available parking to the site. However the site is located in close proximity to the Katoomba railway station as well as public transport in the form of bus routes. In addition, regular taxi services are provided opposite the site along Bathurst Road.</p> <p>Vehicle parking is also potentially available in and around the Katoomba village centre, including larger public car parks to the south. These are considered to be within walking distance and generally have unrestricted parking times. Additional parking in the street is not considered likely to significantly impact upon the existing traffic network surrounding the subject site.</p> <p>In this regard, justification of no additional parking spaces is considered supportable on the merits of the proposed development.</p>	Yes
F2.4	Amenity	Some concern is raised in relation to potential amenity impacts, in particular noise generation. Refer to the <i>Likely Impacts</i> section of this Report for further discussion.	Yes

Part G Locality management – (...) Precinct			
Clause	Standard	Discussion	Compliance Y/N
G5.1	Katoomba Precinct B2- KA01 – Katoomba Street and Bathurst Road Shopping Strip Precinct	Taking into consideration the nature of the proposed works, compliance with the requirements of the Precinct Controls are not considered applicable in this instance with controls primarily focused upon expected built form solutions associated with new structures. As the proposal	Yes

Part G Locality management – (...) Precinct			
Clause	Standard	Discussion	Compliance Y/N
		does not modify the main frontage presentation onto Bathurst Road or create any variation to existing setbacks, no potential issues are identified.	

Planning Agreement – s4.15(1)(a)(iiia)

There are no planning agreements that apply to the proposed development or the subject site.

Regulations – s4.15(1)(a)(iv)

The *Environmental Planning and Assessment Regulation*, provides controls and regulations that relate to the management of the proposed development. These requirements are inherent in the assessment processes undertaken for the proposal.

Fire safety and other considerations

Standard	Discussion	Compliance Y/N
Fire safety	<p>The application was referred to Council's Building Fire Safety specialist for consideration of fire protection and structural capacity. No issues were raised with the proposed development subject to the provision of appropriate conditions of consent.</p> <p>The National Construction Code of Australia, Volume 1 (Building Code of Australia) identifies the number of persons which may be accommodated within a floor area associated with a building use advising that a 1m² area should be provided for persons within a restaurant or the like. The proposed deck area is provided with an area of 51m² (excluding the bar area and stair landing). The application has identified that this area is to accommodate a maximum 50 additional standing patrons or alternatively, a maximum of 40 additional patrons seated.</p> <p>In this regard, the maximum number of persons proposed within the outdoor area is acceptable (being the maximum standing capacity) in regard to building design relating to access and egress considerations of the Building Code of Australia.</p>	Yes

Likely impacts – s4.15(1)(b)

Likely impacts on the natural and built environment	
	Discussion
Acoustic Impacts	The application has been accompanied by an acoustic report providing for an assessment of the proposed utilisation of the existing deck as an outdoor seating and bar area associated with the Bootlegger Bar. It is noted that this report has

Likely impacts – s4.15(1)(b)

Likely impacts on the natural and built environment

	Discussion
	<p>considered the impacts from the use of the deck up until midnight as per the original proposal. When submitting the acoustic report the applicant also amended the proposed hours of operation to cease use at 10.00pm.</p> <p>The report has considered the use of the outdoor area and the noise emissions limited to persons conversing at a maximum of either 50 patrons standing or a maximum of 40 patrons with outdoor seating. The report has acknowledged that no live music is proposed within this outdoor area with only background music considered appropriate in accordance with the relevant noise criteria of the supporting acoustic report. This has been included as a condition of consent.</p> <p>The location and use of the existing deck area is considered to create potential noise impacts upon the following adjoining properties:</p> <ul style="list-style-type: none"> • No. 96 Bathurst Road directly adjoining the subject site to the west which maintains an apartment above the existing commercial premises on this site. This apartment is in the vicinity of 4.5m below the proposed outdoor area with the external entry door having an airlock with three glazed windows also down the side of this building. • No. 88 Bathurst Road directly adjoining the subject site to the east currently maintains a newsagency tenancy on the ground level with the upper level providing for an apartment and a rear yard area directly adjoining the subject site's deck area. During the assessment of the application, Council has been advised that the Carrington Hotel has recently entered into an agreement to purchase this property with the apartment to be refurbished and rented out on a long term residential lease. • The Carrington Hotel maintaining grounds which directly adjoins the subject sites rear deck area. The hotel provides for hotel rooms on the first floor approximately 15m south west of the proposed outdoor area. <p>The supporting acoustic report has identified a noise criteria for each of the above three properties prior to 10pm (being an evening time period) and after 10pm (being a night time period) as provided by the NSW Noise Policy for Industry. This Policy provides intrusive noise levels for commercial premises with general acceptance that after 10pm, there is the potential for sleep disturbance at any residential receivers or hotel accommodation.</p> <p>Noting the above, the accompanying Acoustic report provided for predicted noise levels from the use of the outdoor area in both seating and standing scenarios advising as follows;</p> <p><i>*Prior to 10pm the outdoor area should not adversely affect the amenity of potential residential uses in the adjacent blocks or the short-term occupants of the Carrington Hotel accommodation.</i></p> <p><i>After 10pm, if the outdoor area is operating at maximum capacity, no noise impacts are expected at 96 Bathurst Road however there is the potential for noise impacts at the Carrington Hotel and 88 Bathurst Road (if it were to be</i></p>

Likely impacts – s4.15(1)(b)

Likely impacts on the natural and built environment

Discussion

used as a bedroom for sleeping).

The following noise levels were predicted in relation to the relevant criteria for each adjoining property;

Receiver	Criteria	Seating Noise level	Standing Noise Level
No. 96 Bathurst (entry)	51 (prior to 10pm)	44	45
	45 (after 10pm)		
No. 96 Bathurst (window)	51 (prior to 10pm)	38	39
	45 (after 10pm)		
88 Bathurst	49 (prior to 10pm)	48	49
	44 (after 10pm)		
Carrington Hotel	53 (prior to 10pm)	50	51
	48 (after 10pm)		

The period after 10pm, the noise criteria is only met in one instance with all other scenarios being either at or well above the criteria. For this reason, consistent with the amended proposed hours of operation, it is recommended that the approved hours of operation prohibited use of the outdoor area after 10pm.

The above figures indicate that prior to 10pm, while maintaining compliant noise levels, for No. 88 Bathurst Road and also for the Carrington Hotel the noise modelling scenarios are either quite close or exactly equal to the adopted noise criteria levels. In this regard, the noise assessment identifies that the use of the outdoor area has the potential to adversely impact upon amenity, particularly in terms of 88 Bathurst Road and the short-term occupants of the Carrington Hotel.

It is therefore considered appropriate to include as a condition of any forthcoming consent that the use of the rear deck area be initially for a trial period of 12 months. Prior to the conclusion of the 12-month period, a modification application would be required to modify any consent granted to provide for the permanent use of the rear deck associated with the Bootlegger Bar.

A 12-month period from the operation of the outdoor area would allow for consideration of the use of the deck with any consent granted as well as the ongoing impact upon adjoining properties throughout both cooler and warmer

Likely impacts – s4.15(1)(b)	
Likely impacts on the natural and built environment	
	Discussion
	<p>periods of the year. This period would also allow Council to review and consider the use of the outdoor area in light of any possible complaints received. The trial period would also allow for consideration of any possible impacts that the use of the deck area may create upon the heritage significance and operations of the Carrington Hotel.</p> <p>Modification of the condition to make any use permanent would also require renotification of the condition to be changed, therefore also allowing for adjoining neighbours (as per with the current application) the opportunity to provide for submissions for consideration.</p>
Presentation of deck area to surrounds	<p>The rear boundary of the subject site is currently provided with a 1.8m high brick fence with brick pylon supports as part of the existing length of boundary wall along the northern side of the Carrington Hotel site. It is noted that this existing wall is to not be altered in presentation. Alongside No. 96 Bathurst Road to the west, the proposal has identified the provision of a series of half raft black bamboo screen panels to be provided with a 1.8m height and 0.9m width. The adjoining eastern property being No. 88 Bathurst currently maintains a number of metal sheets of varying height along the boundary with the subject site with plans identifying no change to this boundary treatment.</p> <p>When viewed from the ground level circulation area and gardens of the Carrington Hotel site, it is not considered that the deck area or physical modifications will create for an inappropriate visual relationship with this heritage item. There is change proposed to the common boundary wall and the deck is elevated comparative to the adjoining Carrington grounds. The proposal has identified the provision of ‘Meyer or Lisbon Lemon trees’ alongside the decks rear boundary wall which at a mature height of 4.5m will also assist in providing a softened landscaped presentation of the outdoor area when viewed from the Carrington Hotel site.</p> <p>The first floor hotel rooms will have views into deck area, however its landscaped treatment including a mixture of bushes and provision of an evergreen medium sized tree (being a Crepe Myrtle) is considered to provide for an appropriate treatment. As the deck will also be of a timber construction, the materials used are not considered to detract from its immediate surrounds.</p> <p>The retention of metal sheets with No. 88 Bathurst Road is considered to provide for an unsightly appearance to and for the subject site from the adjoining neighbour. While metal sheeting may be acceptable currently due to the inactive use of the rear deck area, with the deck area and associated access to be used as part of this application and noting also modifications provided to the stair access and associated landing, it is considered appropriate that this metal sheeting be removed and replaced with screening similar in nature as per the adjoining western boundary up to a height of 1.8m for the length of the eastern side boundary from the building to rear boundary. This would enable appropriate visual privacy to be maintained between the subject site and No. 88 Bathurst Road. Details of the fencing is conditioned to be submitted to Council</p>

Likely impacts – s4.15(1)(b)

Likely impacts on the natural and built environment

	Discussion
	<p>for approval prior to commencement of work on site.</p> <p>In relation to the materials to be used for screening, the use of black bamboo screen panels was reviewed by Council's Heritage Advisor and not considered an appropriate finish in terms of its heritage significance. It has been required as a condition of consent that this be substituted with a timber slat screening of a similar height. Timber slat screening along the eastern boundary would also be appropriately conditioned and allow for a consistent presentation to each side of the deck area.</p>

Likely social impacts

	Discussion
Crime	<p>It is considered that the development will not result in an increased adverse social impact. The provision of the Venue Management Plan associated with the future use has been reviewed and it is considered that operation in line with this plan will provide for a socially acceptable environment within the town centre. The management plan provides commentary in relation to all necessary management considerations for the venue including premises safety and security, responsible service of alcohol, staff training, noise management and managing patron's behaviour.</p> <p>It is also noted that the Venue Management Plan will be incorporated into the proposed conditions of consent.</p>

Likely economic impacts

	Discussion
Employment	<p>The development will provide for an economic benefit for the existing commercial use and surrounding town centre. The use of the rear deck area is considered to economically improve operations of the existing Bootlegger bar which may also consequently generate further employment opportunities. In addition, as the outdoor area may attract more persons to the town centre, this may also subsequently lead to additional persons visiting surrounding existing commercial uses.</p> <p>Subject to any future use being in accordance with recommended conditions of consent, the proposal is therefore considered to create favourable economic impacts.</p>

Suitability of the site for the development – s4.15(1)(c)

Site suitability	<p>The site is considered suitable for the proposed development for the following reasons:</p>
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Suitability of the site for the development – s4.15(1)(c)	
	<ul style="list-style-type: none"> ○ The proposed outdoor area will utilise an existing timber deck area with restricted construction works provided for. ○ The proposal has adequately demonstrated that the heritage significance of the existing building will not be detrimentally impacted upon by the use of the rear terrace area. ○ The subject site currently maintains essential services to accommodate the proposed use. ○ The use of the rear terrace area subject to compliance with supporting documentation will not create amenity impact upon surrounding properties.

Submissions – s4.15(1)(d)	
Notification and / or exhibition	
<p>Consultation was undertaken in accordance with the requirements of Part H (Public Participation) of Blue Mountains Development Control Plan 2015 and the requirements under the Environmental Planning and Assessment Regulations.</p>	
Notification	<p>The application was originally advertised in the Blue Mountains Gazette for 14 days from 3 March 2021 until 17 March 2021. The application was re-notified with the submitted acoustic report for 14 days from 3 May 2021 to 17 May 2021.</p> <p>During the original notification period one (1) submission was received. During the re-notification period, a further one (1) submissions was received from the same person.</p>

Issue		Comment
1.	<p><i>Concern in regard to adverse acoustic impact created by proposal on the adjoining rooms at the Carrington Hotel.</i></p>	<p>The application has been accompanied by an acoustic report which has identified that prior to 10pm expected noise levels will be compliant with the identified noise criteria and would not create an unacceptable impact upon the hotel rooms of the Carrington Hotel. It is also noted that the proposed hours of operation have been modified during the assessment of the development from a closing time of 12am to 10pm.</p> <p>As discussed within this report, it is noted that compliance with the noise criteria requirements prior to 10pm for seated and standing patrons in the outdoor deck area are at a range which is considered to be borderline in terms of consideration of amenity impacts. In this regard, to appropriately mitigate the impact of the use of the deck area, any approval granted will be conditioned to provide for a 12-month trial period. Any forthcoming consent conditioned in this manner would allow for appropriate consideration of the impacts of the outdoor area upon its surrounds, subsequent issues generated during its use or resolution of possible</p>

Submissions – s4.15(1)(d)		
Notification and / or exhibition		
		<p>complaints during the trial period.</p> <p>Noting the above, any request for the permanent use of the deck area will require modification of any approval granted. This would also allow the opportunity during the subsequent notification period for adjoining properties (as per the current application) to provide submissions for consideration.</p>
2.	<p><i>Impacts created by the proposed use upon adjoining businesses will cancel out any economic gain that the development will produce.</i></p>	<p>Any forthcoming approval will be provided with a trial period for 12 months to considered impacts upon surrounding commercial operations. Conversely, via the expansion of the existing commercial use on the subject site, this may contribute to the improved economic growth of surrounding businesses via a possible spilling over of patrons to these uses.</p> <p>Noting the above, it is not considered that the provided concern can be justified in the assessment of the current proposal..</p>

Public interest – s4.15(1)(e)	
Public interest	<p>Issues which have arisen during the assessment are considered to have been appropriately mitigated by the proposed conditions of consent. A trial period of 12 months is an appropriate manner of regulating future operations and allow for further consideration were the applicant to request that the use be provided in a permanent nature whether the proposed development is contrary to the public interest</p>

PART 3 Proposed conditions of consent

Confirmation of relevant plans and documentation

1. To confirm and clarify the terms of consent, the development shall be carried out in accordance with the following plans and accompanying supportive documentation, except as otherwise provided or modified by the conditions of this consent:

Document	Prepared by:	Drawing No	Issue	Date
Ground Floor Plan / First Floor Plan	R.A. Walls Constructions	DA-02	A	2 April, 2021
East Elevation / South Elevation	R.A. Walls Constructions	DA-03	A	2 April, 2021
Landscape Plan	R.A. Walls Constructions	DA-04	A	2 April, 2021
Venue Management Plan		-	-	-
Outdoor Dining Development Application Acoustic Report	GDH	-	-	April, 2021
Waste Management Plan	Creative Planning Solutions	-	Project No. D998	February, 2021

Confirmation of approved use

2. The approved use the subject of this consent is confirmed as:
- First Floor – Internal fit and new passageway as well as repositioning/relocation of equipment and flues in existing kitchen.
 - First Floor – External work and new steps and associated handrail/landing to existing rear courtyard. New work to include enclosure screening, landscaping, boundary screens, a bar and a storage shed.

The approved development does not include any works to the ground floor or works to the front of the building. Access for persons with a disability is to be provided by a portable access ramp as required under condition 4 of this consent.

Portable accessible ramp

3. Prior to the issue of any occupation certificate, the certifying authority is to be satisfied that a portable accessible ramp is available for use when required for persons requiring a ramp to access the ground floor of the premises from the footpath. The certifying authority is to be also satisfied that a storage area (for the storage of the ramp when not in use) is available in close proximity to the building entry to allow staff to easily access the ramp when required.

Details of western fencing

4. The proposed boundary privacy screen along the western boundary with No. 96 Bathurst Road (identified on plans as being similar to lattice makers 1800 x900

Black Bamboo half raft screened panels) is, with adjoining owner's consent, to be substituted with a suitable timber slat screen of a similar scale height. Alternatively the privacy screen is to be placed adjacent to the boundary. Details of the screening to be provided for the approval of Council's Heritage Advisor prior to the issue of a Construction Certificate.

Details of eastern fencing

5. The existing metal fencing along the eastern boundary with No. 88 Bathurst Road is to be removed, with adjoining owner's agreement, and provided with privacy screening as described in by condition 4 of this consent. Alternatively it is to be place adjacent to the boundary fence. The privacy screening is to be provided for the entire length of the boundary from the end of the building to the rear boundary. Details of the screening to be provided for the approval of Council's Heritage Advisor prior to the issue of a Construction Certificate.

Certification of rear deck

6. To ensure the structural adequacy of the rear deck for its intended purpose, a certificate is to be obtained from a registered Structural Engineer confirming the adequacy of the structure to support the anticipated loads at peak use.
- This certificate is to be submitted as part of the construction certificate documentation. No additional work is to be undertaken on the deck without the written acceptance of Council's Heritage Adviser.

Construction certificate

7. A construction certificate is required prior to the commencement of any building works. This certificate can be issued either by Council as a certifying authority or by an accredited certifier.

Building Code of Australia

8. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

Occupation certificate

9. The rear outdoor deck area must not be used or occupied prior to the issue of any occupation certificate in accordance with sections 6.9 and 6.10 of the *Environmental Planning and Assessment Act 1979*.

Access and mobility design statement

10. To ensure access and facilities for people with a disability or limited mobility are considered in accordance with the principles of the *Disability Discrimination Act 1992*, and the provisions of the Disability (Access to Premises – Buildings) Standards 2010, a design statement is required to form part of the Construction Certificate documentation from a suitably qualified Access and Mobility Specialist.
- Nothing in this condition alters any obligations imposed under the *Disability Discrimination Act 1992*.

Offensive noise

11. To ensure the continued amenity of nearby properties, any noise associated with operations on the site shall not constitute offensive noise as defined by the Protection of the Environment Operations Act 1997 and Regulations made

thereunder, or any subsequent Act.

Signage

12. To ensure that the site is easily identifiable for deliveries and provides information on the person responsible for the site, a sign displaying the following information is to be erected in a prominent position on the site prior to building, subdivision or demolition works commencing:
- The name, address and telephone number of the principal certifying authority for the work.
 - The name of the principal contractor for any building work and a telephone number on which that person may be contracted outside working hours, and
 - The statement that "Unauthorised entry to the site is prohibited".

Site management

13. To safeguard the local amenity and pedestrian safety, reduce noise nuisance and to prevent environmental pollution during the construction period:
- Site and building works (including the delivery of materials to and from the property) shall be carried out Monday to Friday between 7am-6pm and on Saturdays between 8am-3pm, excluding public holidays. Alteration to these hours may be possible for safety reasons but only on the agreement of Council.
 - Stockpiles of building materials and waste shall be stored clear of the footpath, kerb or road surface and shall have measures in place to prevent the movement of such material off site.
 - All construction operations shall be undertaken within the site, with pollutants contained on site.
 - All waste must be contained and removed to an approved Waste Disposal Depot.

Workers amenities

14. Before work starts, toilet facilities must be provided for construction personnel on the site. Amenities are to be installed and operated in an environmentally responsible and sanitary manner.

Asbestos and other hazardous materials

15. If any asbestos or other hazardous material is discovered during works, compliance with the following is required:
- Work Health and Safety Act 2011*
Work Health and Safety Regulation 2017
AS 2601 The demolition of structures
SafeWork NSW
Protection of the Environment Operations (Waste) Regulation 2014

All asbestos or other hazardous material is to be disposed of to an approved waste management facility licensed to receive the waste.

External lighting

16. To protect the amenity of the local area and to avoid obtrusive light spill to the surrounding properties, all external lighting shall meet the following requirements:
- a) The lights are to be 'warm white' in colour; and
 - b) The lights are to have a light output distribution sufficient to achieve the required illumination purpose while avoiding excessive light spill to the surrounding properties.

As a minimum level of performance, the light output distribution shall conform with the limits set for the Environmental Zone as outlined in the relevant Light Technical Parameters specified under Section 3 AS 4282 Control of the obtrusive effects of outdoor lighting.

Fit out of premises

17. To ensure the premises are constructed so as to be suitable for the safe and hygienic preparation of food, the fitout of the premises is to comply with National Food Standard 3.2.3 *Food Premises and Equipment* and Australian Standard AS4674.2004 *Design, Construction and Fitout of Food Premises*. Fit out to be as set out in plans provided. Details are to be submitted to the Principal Certifying Authority as part of the Construction Certificate documentation.

Floors, walls and ceilings

18. Floors, walls and ceilings shall comply with the requirements of Australian Standard 4674.2004 *Design, Construction and Fit-Out of food premises and the Food Safety Standard 3.2.3*. In particular parts 3.1, 3.2 and table 3.3 of Australian Standard 4674.2004 (which indicates suitable floor, walls and ceiling finishes).

Adequate sinks

19. To prevent cross contamination, the premise shall be equipped with the following as a minimum requirement as set out in Section 4 of Australian Standard 4674-2004:
- a) Washing sinks:
 - Single bowl sink and dish washer of adequate size for cleaning and sanitising of all equipment.
 - Or double bowl sink
 - Or double bowl sink and dish washer where some equipment is too big to be wash in the dish washer.
 - Or triple bowl sink where each bowl can be designated for washing, rinsing and sanitising
 - b) If food business requires immersion of food in water – a designated food preparation sink is required away from washing area.
 - c) Cleaners sink to be installed away from open food production (if no floor waste drain provided in food prep area).
 - d) Sink/s should be of adequately sized, large enough for the correct cleaning and sanitising of all utensil/s and equipment.

Support of appliances

20. So that equipment is easily moved for cleaning purposes, refrigerators, frozen food cabinets, cooking appliances, equipment, fittings, cupboards/cabinets etc., are to be supported on either:
- Wheels or castors capable of being easily moved when fully loaded.
 - Legs that provide at least 150mm clear space between the floor and the underside of the fitting.

Dishwasher

21. So that utensils are properly sanitised between each use, the dishwasher is to have a supply of potable water at a minimum temperature of 60°C and 71°C for the wash cycle and at least 82°C for the rinse cycle. The wash cycle must operate for a least 60 seconds and the rinse at least 10 seconds. A thermometer accurate to within 2°C is required to ensure that the temperature of water in the wash and rinse tanks meets minimum temperature requirements.

Ventilation

22. To ensure emissions from cooking processes are effectively removed and to avoid air pollution, the mechanical exhaust system is to be designed and constructed in accordance with *AS1668 'Mechanical Ventilation and Air Conditioning Code'*.
- a) Plans and specifications showing details of the proposed mechanical exhaust system to the kitchen are required as part of the Construction Certificate documentation.
 - b) Noise from the mechanical exhaust system shall not exceed 5dB(A) above background noise levels at the adjacent residential properties. Full details are to be submitted from an acoustic engineer to ensure compliance with this condition.

Lighting

23. Lighting to comply with AS 4674-2004 part 2.6, which includes all lights in open food areas to have either:
- a) Shatter proof tubes,
 - b) Light covers or
 - c) Sleeves over tubes and
 - d) Be designed to prevent harbouring of dust, dirt, other matter.

Garbage storage area

24. A designated area is to be provided for garbage and recyclable material in accordance with AS4674-2004.

The construction requirements of the garbage area under AS4674 require area paved with an impervious material with a tap and drained to sewer. (see section 2.4 Garbage and Recyclable Materials AS4674-2004).

Details including tap and drain to the reticulated sewer are to be submitted to the Principal Certifying Authority as part of the Construction Certificate Documentation. A copy of which is to be provided to the Environmental Health Officer at the final inspection for food safety.

Hand Washing

25. Designated hand wash basin/s is required for the washing of hands, this must comply with AS4674-2004 part 4.4. The washbasin shall be:
- a) Of an adequate size to wash hands, arms and face.
 - b) Permanently fixed at bench height
 - c) In locations that will not be obstructed
 - d) There shall be a permanent supply of warm running potable water delivered through a single outlet.
 - e) Basin to be drained to sewer
 - f) Taps to the washbasin must be hands free or elbow operated.
 - g) Spout to extend out over the basin adequately to ensure easy of hand washing.

Location of hand wash basin to be accessible and no further than 5 metres from any place where food handlers are handling open food. There may need to be more than one hand wash basin.

Staff toilet

26. Staff toilet shall be provided with a hand wash basin with the same requirements as AS4674-2004.

Mechanical exhaust system to be installed in staff toilet which operates when the sanitary compartment is in use and for at least 30 seconds after the toilet is vacated.

Doors to toilet to have self-closing devices added to keep doors closed.

Waste water disposal

27. To ensure that waste water is disposed of to the satisfaction of Sydney Water and is of a suitable standard for the reticulated sewage system, you should contact Sydney Water Trade Waste on tradewaste@sydneywater.com.au and ensure you meet the requirements for trade waste disposal prior to operation of the food premises.

Grease arrestors

28. Grease arrestors shall not be located in areas where food, equipment or packaging materials are handled or stored. Access to grease arrestors for emptying shall not be through areas where open food is handled or stored or where food contact equipment and packaging materials are handled or stored.

The owner / applicant is required to maintain a formal agreement with Sydney Water for the trade waste removal (grease arrestor waste). The Principal Certifying Authority must ensure that a Trade Waste Agreement is signed prior to occupation or use of the premises.

Proofing against vermin

29. To prevent the harbourage of vermin,
- a) cavities, false bottoms and similar hollow spaces capable of providing access to vermin shall not be formed in the construction of the premises, nor in the installation of fixtures, fittings and equipment unless adequate

		access to allow proper cleaning is provided.
		b) the cavity bounded by the bottom of the cupboard, the wall, floor and kickboard is to be filled with an expanding foam so as to fill the space.
Landscape implementation and maintenance	30.	<p>The Principal Certifier is to ensure all proposed landscape works are to be fully implemented.</p> <p>The person who benefits from this consent is to ensure that all landscaped areas are adequately maintained for the life of the development. Plants that die or are removed are to be replaced with the same species in an equivalent stage of growth, unless remaining plantings satisfactorily achieve the identified landscape functions.</p>
Final inspection	31.	<p>Council must be contacted at least 48 hours prior to the opening of the premises to arrange for a final inspection by Council's Environmental Health Officer. The Principal Certifying Authority must ensure the final inspection by the Environmental Health Officer pass all food safety requirements above prior to occupation or use of the premises.</p>
Annual fire safety statement Each essential fire safety measure in the building	32.	<p>Each year, within 12 months of the previous statement or after a certificate of installation has been issued for the building (whichever is applicable), the owner of the building must submit to Council an annual fire safety statement that must demonstrate that each essential fire safety measure in the building is being maintained.</p> <p>A copy of the statement (together with a copy of the current fire safety schedule) is to be given to the Commissioner of Fire & Rescue NSW by email at afss@fire.nsw.gov.au. A further copy is to be prominently displayed in the building.</p>
Seating/Standing numbers	33.	<p>The maximum number of persons to be accommodated within the rear outdoor deck area is 50 (without outdoor seating, i.e., standing). On occasion where the rear terrace is to be used for seated events or functions, the maximum number of persons to be accommodated is 40 (with outdoor seating).</p>
Hours of operation	34.	<p>The hours of operation of the rear deck terrace is from 12 noon to 10pm. The rear terrace is to not operate on days in which the Bootlegger Bar is not open.</p>
Operation in accordance with venue management plan	35.	<p>The rear outdoor deck area and the Bootlegger Bar is to comply at all times with the requirements of the Venue Management Plan as provided by condition 1 of this consent.</p>
Music to rear outdoor deck area	36.	<p>No live music (amplified or acoustic) is permitted to the rear deck area. Only background music is permitted. Speaker systems are to be controlled only by staff, not patrons.</p> <p>Noise levels from the premises shall not exceed the relevant noise criteria detailed in the Outdoor Dining Development Application Acoustic Report prepared by GDH, dated April 2021 as provided by Condition 1 of this consent.</p>
12 month trial / probationary period	37.	<p>The consent operates for a 12-month trial/probationary period from the date of the occupation certificate and commencement of use of the rear outdoor deck</p>

area. Within the last 2 months of this period, the applicant may apply for the continued operation of the consent by way of a Section 4.55 modification application. The request shall include a detailed submission of the steps taken by the operators to ensure that the use of the existing rear deck for the purpose of an outdoor standing and seating area has not caused any adverse impact on the amenity of the surrounding properties.

The following will be assessed in consideration of whether a Section 4.55 modification application should be granted:

- The effective operation in accordance with the Venue Management Plan and Outdoor Dining Development Application Acoustic Report and the conditions of this consent,
- A demonstrated record of responsiveness to any complaints received, and
- The matters raised as part of any submissions lodged during the notification period of the application,

Should a Section 4.55 modification application not be made or should the extension not be granted the consent shall lapse.