



## Land and Environment Court

COURT OF THE STATE OF NEW SOUTH WALES

**FILE NUMBER(S) :** 10831 of 2008

**CORAM:** Murrell C

**KEY ISSUES:** Section 97 Appeal :- conditions of consent; noise; hours of operation; use of roof top for dining; heritage issues; streetscape; maintaining subdivision pattern.

**LEGISLATION CITED:** Environmental Planning and Assessment Act 1979  
Manly Local Environmental Plan 1988  
Manly Development Control Plan  
Manly Town Centre Urban Design Guidelines  
Development Control Plan for Late Night Venues 2005

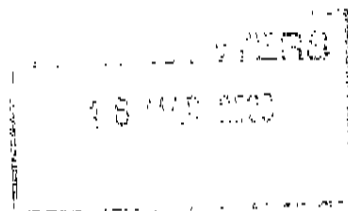
**DATES OF HEARING:** 25/11/2008, 26/11/2008 and 17/12/2008

**EX TEMPORE JUDGMENT  
DATE :** 17 December 2008

**LEGAL REPRESENTATIVES:** **APPLICANT**  
Mr P. Clay, barrister  
Instructed by Gadens Lawyers

**RESPONDENT**  
Ms C. Schofield, solicitor  
of Pikes Lawyers

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**THE LAND AND  
ENVIRONMENT COURT  
OF NEW SOUTH WALES**

**Murrell C**

**17 December 2008**

**10831 of 2008 Hilrok Properties Pty Ltd v Manly Council**

*This determination was given extemporaneously  
and it has been edited prior to publication*

**JUDGMENT**

- 1 COMMISSIONER: This is an appeal under s 97 of the *Environmental Planning and Assessment Act 1979*. Whilst it was originally in an appeal against the deemed refusal, prior to the hearing the council advised that it was prepared for consent to be granted subject to conditions and as such this hearing has been in respect of conditions.
- 2 The premises known as the Ivanhoe Hotel and the parcels that are the subject of this development application include part of 19-23 The Corso, 25 The Corso, 27 The Corso and part of 31 The Corso, Manly.
- 3 By way of background consent have been granted for various portions of these lots previously. The Court granted an approval for a coffee shop in what is known as part of the Commonwealth Bank building, and this development application would in fact supersede that consent. Also there was approval granted by the council for various portions. An object of the application is to rationalise consents and to reconfigure the floor area. The proposal includes a TAB, a coffee shop, a poker machine area, bottle shop and restaurant/bistro areas. It is noted that the proposed development application has the effect of deleting the current nightclub on the premises.

- 4 The Court heard evidence from a number of experts in the proceedings. Mr Stephen Cooper, acoustic engineer consultant on behalf of the applicant and the council sought advice from Mr Koikas regarding the proposed conditions that Mr Cooper recommended and the measures required for noise attenuation. Mr Robert Staas, a heritage consultant architect provided advice for the applicant and Ms Diane Smith, council's heritage adviser, also provided evidence to the Court. Mr Lidis provided town planning advice and Mr Islam principal planner with Manly Council provided town planning advice.
- 5 There are a number of objectors to the proposed development and the Court has the benefit of reading letters in the bundle of documents. The objectors' concerns were expressed about further expansion of a hotel in the Manly area due to a number of anti-social problems and also the fact that the proposed hotel is in the vicinity of St Matthews Church, a heritage item, on The Corso.
- 6 It is also noted that the Police provided advice by letter of 9 October 2008, as follows:
- "a small team of senior police have reviewed the development application and from the perspective of the Manly Police, this DA has a number of aspects that are particularly appealing, and in our view would significantly contribute to improving the amenity of the area and reduce the likelihood of alcohol-related crime in and around the Ivanhoe Hotel. The most appealing element of the DA is the significantly increased emphasis on activities other than consuming alcohol and a genuine intention to broaden the appeal of the hotel by providing dining, gambling, dancing as well as an increased focus on sports. If successful, the DA will realise a doubling of the floor space but limit numbers to the existing approval to 900 patrons.
- 7 In considering the development application the Court undertook an inspection of the site and vicinity. As is often the case in proceedings in this Court, there was a great deal of discussion about the architectural merit in terms of the heritage and fitting in with the heritage of the area between Ms Smith and Mr Staas and during the course of the proceedings an amended plan came forward, exhibit N, to in fact ensure that the

current subdivision or frontages of sites is maintained in a visual sense to ensure that the frontages of, in particular, the bank portion to be utilised by the operator and the part of the pharmacy to the south to also be utilised, that they read as different frontages as such, rather than a continuous façade blending in with the hotel.

- 8 It is proposed in the application to also remove part of the partial enclosure or triangular portion, I will call it, above the balcony balustrade on the first floor terrace balcony area. I note that the council recently approved an extension of the licence/lease for the awning and the balcony structure and the support structures over The Corso, such that the lease/licence arrangement runs to 2018.
- 9 The Court has had regard to the planning regime provided for in the Manly Local Government Area. The subject site is zoned 'Business' zone 3 under the Manly Local Environmental Plan 1988 and in particular there are a number of objectives as follows:
  - (a) to provide for and encourage the development and expansion of business activities which will contribute to the economic growth and employment opportunities within the municipality,
  - (b) to accommodate retail commercial and professional services in established locations in that the residential neighbourhoods where such development is compatible,
  - (c) is with respect to car parking, not relevant to these proceedings, and
  - (d) to minimise conflicts between pedestrians and vehicles, not relevant in these proceedings.
- 10 There is a definition of item of environmental heritage and in this regard I note that 'The Corso' is an item of environmental heritage as is the subject building itself. The Corso is identified as an item of environmental heritage in terms of the frontages of the buildings. The subject site, the 'Ivanhoe Hotel', is also a heritage item and 'The Corso' itself is an item in the town centre of a conservation area. As such cl 19 of the plan and cl 18 of the plan needs to be taken into consideration and the consent authority needs

to be satisfied that the development is one that is appropriate in terms of the heritage objectives identified in cl 18 and 19. Also cl 21 refers to conservation areas. The consent authority shall not grant approval to erect or alter a new building unless an assessment is made of the significance of the heritage items and/or conservation area as such.

- 11 The council also has a suite of planning controls in terms of the *Manly Development Control Plan* for the business zone and in particular for this application for the design of the townscape, council must be satisfied that the design of any new development has given due attention to the site's position within and the contribution to the overall existing future townscape quality of Manly centre. This DCP also provides a map to show individually listed heritage items and 'The Corso' streetscape itself. The other DCP is known as "The Corso DCP" and there are objectives in terms of maintaining The Corso as a special street and the statement of significance requires that the pedestrian nature of The Corso means that it is invariably experienced from eye height level as one walks through the street.

"This experience reveals particular important attributes and overall changing building scale from higher to lower as one moves from the Manly Cove to the ocean beach. The particular scale and character generated by the ability to read the parapet details of the street façades are silhouetted against the sky and background trees, rather than against other buildings, and then looking closer building façades that are restrained but finely detailed."

- 12 There is mention also of St Matthews Church located at the intersection of Darley Road with its tower as a focal point, together with the oblique intersection of Sydney Road, as important interruptions to the linear form of The Corso.
- 13 The DCP provides for critical views to be kept open in 5.5. Part of the significance and character of The Corso derives from the views from within the streetscape out to Manly Cove and to the ocean beach. The Manly Heritage Study identifies:

"two longer views within the visual catchment of The Corso from the Sydney Harbour ferry down Sydney Road, Fairlight/Shelley Beach headland. New buildings need to maintain/express the existing narrow-fronted subdivision pattern. The requirement to conserve most existing buildings will mean this is automatically met where new buildings are permitted, the architectural expression must give the impression of a separate building on each individual allotment. This applies to both front and rear elevations."

- 14 There is also provisions at 5.8 for windows and balconies open to the street to allow interaction between the building and the public street.

"To provide natural ventilation windows to upper floors are to be openable and balconies are not to be enclosed. Where individual circumstances make the enclosure of balconies desirable, large areas of glazing without internal modulation will not be supported and the enclosure must still be openable."

- 15 Section 5.11 provides:

For footpath awnings are required but trafficable balconies and post-supported awnings and balconies are prohibited. A previous council policy to encourage post-supported awnings and trafficable balconies projecting over the roadway is rescinded because they are now considered to be an unnecessary intrusion on the available streetscape. The *Manly Town Centre Urban Design Guidelines* provide more details on the acceptable design of awnings.

- 16 As such it is noted, as I stated, that there has been an extension to the

- 17 The other DCP is the 'Manly Town Centre Urban Design Guidelines' of 2002 and this provides, "in particular views from the water and land maintain and protect existing view corridors and clearly that is from the Manly Wharf through to the beachfront as well." Once again there is comment about second storey balconies built over The Corso in terms of impeding views and in terms of building expression and materials, the parapets or gabling are to be articulated to provide a modulated skyline. There is no proposal to change the development in this regard.

- 18 The other control is the *Development Control Plan for Late Night Venues 2005* and it is noted the definition for "late night venues" includes but is not limited to hotels, clubs, nightclubs, restaurants and premises which have a liquor licence. Fast food outlets and take-away food shops are proposed to trade after 10pm and there is a provision in terms of the hours of operations for hotels being 5am to 2am with a 12.30am restricted entry policy and similarly there is a control for balconies and rooftop areas. Balconies and outside rooftop areas shall be closed to patrons from 10pm until 8am and the other DCP is for access and this goes to the provision of toilets for disabled and subject establishments.
- 19 The planners conferred and with respect to the disabled toilet/accessible toilet this shall be provided at the first floor. Lidis considers that with an accessible toilet at ground level and the basement that the DCP for access would be generally complied with. I should mention that the - which I will insert in the appropriate place in the judgment - the issue of the disabled toilet was resolved between the parties or the experts as such and the amended plan provides for same. As to the management of the lift also, that is a requirement that it be available for persons without requiring a staff member to accompany same.
- 20 With respect to the hours for the rooftop it was agreed that if the use of the rooftop can comply with the relevant noise standards, then there is no issue to the use of that area for eating and drinking. With respect to the hours of the bottle shop it was agreed that the bottle shop can operate until midnight in line with the DCP for late night venues.
- 21 At the end of the day the areas of contention became narrowed and the Court must focus on the conditions that are now in dispute. In particular the council's heritage expert is of the opinion that the wrought iron balustrade to the first floor for the proposal should be deleted and the existing timber balustrade retained, the reason being that the wrought iron balustrade will detract from the architectural style of the building. Also

council's heritage adviser is of the opinion that the proposed timber-framed windows to the sides of the balcony over The Corso should be deleted because they will increase the bulk of the section of the building cantilevered over the pedestrian area of The Corso.

22 Mr Staas on the other hand considers that the proposed wrought iron detailing is not inconsistent with buildings of this era seen within the vicinity and The Corso and that in his opinion the proposed replacement of the timber slats for the balcony with the wrought iron is not inappropriate to the heritage and will not impact on the heritage of the building or The Corso itself as such. With respect to the side portions extending over The Corso, that is portions over the balcony on the sides, it is proposed that these be provided to allow for weather protection, given the orientation of the building and given the strong sea breezes from one side of the peninsula to the other. As such he sees this as a practical measure to provide for greater amenity and comfort for patrons on the balcony. From a heritage point of view Mr Staas is of the opinion that these windows will still be openable and they will not create such a bulk that would detract from the heritage significance of the building itself or The Corso and it is an appropriate addition in terms of the practical use of the balcony as it is proposed that the balcony also be used for dining purposes.

23 The council is of the opinion that the enclosure at the ends of the balcony would prevent view corridors in terms of the provisions articulated in its planning regime. In my assessment, I note that there is a lease, a licence of The Corso airspace, to provide for supports to the balcony and this expires in 2018. As such at that point in time, council could require removal of the balcony and the alterations of this development application.

24 In terms of the view corridor I am satisfied that the proposed addition of the in-fills of the end of the veranda does not represent an in-filling of the balcony as such, it provides for weather protection and it will not be visually obtrusive in terms of one's view line from one end of the corso to the other. It will be visible in parts as one moves along The Corso



however it is not such an impediment to the view corridor that would warrant refusal of the application and I am satisfied that on heritage grounds it will not impact on the heritage significance of The Corso itself, as an item or on the building per se and in terms of the conservation area it is also an acceptable adaptation of the building.

- 25 The other issues related to the heritage, in particular The Corso frontages in order to retain the subdivision pattern. The amended plans in the assessment of Ms Smith as proposed by the applicant, provide for a greater reading of the subdivision pattern and a distinction or differentiation between what is known as No. 31 and No. 25. In that regard this issue was no longer one that was of concern to the council given the amendments proposed by the applicant.
- 26 On the question of the hours, the operation, the amended conditions have been provided to the Court today and the operating hours are contained within condition 7. I should go back and say, in terms of condition 2 and 3 these will be deleted from the council's conditions such that the proposal will be then in accordance with the amended plan. With respect to condition 7 the council proposed that the "outdoor area on the rooftop over 25 The Corso and the front balcony at No. 27 be closed to patrons from 12 midnight until 8am. The rooftop over 25 The Corso can be used as an outdoor smoking area after midnight until the close of the hotel with no service or consumption of food and alcohol between 12 midnight and 8am, that it is to be used for a smoking area only."
- 27 The applicant proposes that the condition be that the first floor bar and outdoor areas shall be closed to patrons between 3am and 7am Tuesday to Sunday mornings and between midnight Sunday night and 7am Monday other than for the purpose of egress by patrons to and from the upper level. As such the outdoor eating area would be available to patrons for smoking and for drinking. The noise issue from the outdoor area was a matter that was addressed by Mr Cooper and in his assessment the design is such that the noise can be managed and ameliorated.

- 28 In terms of the balcony, Mr Cooper did in fact concede that there may be the occasion when people may be able to be heard but in his assessment this should not prevent access to the front balcony and if it does present a problem in terms of the liquor administration noise requirements that noise from the outdoor area access can be managed into the future.
- 29 The current operation of the hotel is such that the balcony over The Corso is currently available to patrons and the lease allows for its use to 3am. In my assessment the people on the upstairs balcony would provide for surveillance over the public domain and if in the future there is an amenity concern in terms of noise at any residential property, there are conditions contained within the consent under 15C and 15E which make noise compliance clear. I also note that there is a monitoring condition in terms of noise for the ongoing operation and in terms of offensive noise, that is from plant or equipment, not relevant in terms of the balcony, but the provision under 15C is noise from use of the premises and there is a requirement for compliance with the standard noise conditions, that is the LA10 noise emitted from the hotel should not exceed background L90 by more than 5 d(Ba), 7am to midnight at the boundary of any affected residence and the LA10 noise emitted from the hotel should not exceed background L90 between midnight and 7am at the boundary of any affected residence. And notwithstanding compliance with the above, the noise from the hotel should not be audible within any habitable room in any residential premises between the hours of midnight to 7am and I am satisfied that there is provision within the conditions to ensure that the amenity, in particular of residential premises, would not be unreasonably adversely impacted by the use of the balcony for the purposes proposed by the applicant. As such I accept the applicant's condition with respect to No. 7 and the flow-on effect of that is that the applicant's condition in terms of 15D is also accepted.
- 30 With respect to the upper level dining, that is the rooftop area, it is noted it has walls. Mr Cooper's states, the impacts of the noise can be managed

and contained. Furthermore in my assessment this is an outdoor area which is at a first level rooftop area as opposed to an outdoor level at ground level where there is an interface with the public domain and clearly extended hours in such instances would not be appropriate. I do not consider this is a precedence having regard to council's carefully considered planning regime for the area. This is one I am satisfied that can be managed, in particular with the conditions that have been proposed.

31 The only other matter is with respect to the surrender of consents. Given that there have been previous approvals, the Court raised that it would be appropriate that the consent issued in respect of these proceedings should rationalise previous consents to ensure certainty in the execution of the approved plans. As such it would appear to be appropriate for previous consents to be surrendered. In this regard the parties are to liaise in terms of what consents may be appropriate to surrender and the appropriate timing of same and advise the Court accordingly.

32 In response to the surrender of consents the parties subsequently advised the Court as follows.

I confirm we act for the Respondent.

The parties have not reached agreement with respect to the additional condition discussed at the mention this week.

For the reasons given by us at the mention, Council seeks the imposition of the following condition:

" Pursuant to section 80A(1)(b) of the Environmental Planning and Assessment Act 1979 :

- (a) the development consents granted with respect to development applications 92/05 , 231/06 and 90/07 shall be surrendered prior to the issue of any construction certificate for the development approved in this consent; and
- (b) prior to the issue of any occupation certificate (including an interim occupation certificate) for the first floor of 25 and 27 The Corso ,Manly for development approved in this consent , the development consent granted with respect to Development Application No.

220/96 & Building Application No. 64/97 shall be modified such that it does not permit use of the basement at 27 The Corso , Manly as a nightclub. In any event, that consent shall be modified within 3 years of the date of this consent so it does not permit use of the basement of 27 The Corso , Manly as a nightclub. Once that consent has been so modified, the basement of 27 The Corso, Manly shall not be used as a nightclub unless a further development consent for that use is obtained. "

33 The Applicant proposes the following condition:

" Pursuant to section 80A(1)(b) of the *Environmental Planning and Assessment Act 1979* :

- (a) the development consents granted with respect to development applications 92/05 , 231/06 and 90/07 shall be surrendered prior to the issue of any construction certificate for the development approved in this consent; and
- (b) 6 months after the date of issue of any occupation certificate (including an interim occupation certificate) for the first floor of 25 and 27 The Corso ,Manly for development approved in this consent , the development consent granted with respect to Development Application No. 220/96 & Building Application No. 64/97 shall be modified such that it does not permit use of the basement at 27 The Corso , Manly as a nightclub. Once that consent has been so modified, the basement of 27 The Corso, Manly shall not be used as a nightclub unless a further development consent for that use is obtained. "

It is important to note that upon completion of the first floor, the ground floor of the hotel will be in a very poor state due to the surrounding renovation and relocation of gaming room, TAB and neighbouring tenancies, and will therefore not be an attractive place for patrons. This will create issues for the attractiveness of the hotel generally as the ground floor is the main entry to the hotel.

Therefore it is not expected that the first floor would become fully operational and adequately patronised until the ground floor is also completed. It is also unlikely that our client will be in a position to immediately commence works to the ground floor and basement upon completion of the first floor as these works will need to be undertaken during the low season (autumn/winter). I am instructed that there will be an extended period of low trading and low patronage levels as a result of the major refurbishment works which will require continued operation of the nightclub in order to maintain financial viability of the hotel. It is for this reason that the Applicant seeks a period of 6 months between completion of the first floor and cessation of the nightclub use.

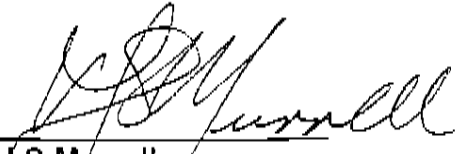
Because of the uncertainties created by the current economic climate, our client does not wish to effectively accept a deadline on the completion of the works by agreeing to cease the nightclub use within 3 years of the date of the consent. We note that the consent itself allows our client 2 years in which to physically commence the consent, which could mean that the nightclub use would be required to cease only 1 year after physical commencement, which could be at the very early stages of the redevelopment.

We ask that you please consider the practical difficulties faced by the Applicant in the circumstances when determining the appropriate condition that is sufficient to achieve the objection of ensuring cessation of the nightclub use.

34 The matter of the surrender of previous consents was raised by the Court at the end of the proceedings. I am satisfied the additional six months in condition b) as submitted by the applicant is reasonable in the circumstances. This achieves the outcome of the eventual closure of the night club while at the same time having regard to the practical concerns raised by the applicant above.

35 Accordingly, the formal orders of the Court are:

- (1) The appeal in respect of the premises being part of No.'s 19-23, 25, 27 and 31 The Corso Manly, known as the Ivanhoe Hotel, is upheld.
- (2) The development application submitted to Manly Council and as amended and shown in exhibit N is determined by the granting of consent subject to the conditions contained in annexure A.
- (3) The exhibits may be returned to the parties with the exception of N, M, 7 and 2.

  
**J S Murrell**  
Commissioner of the Court  
ljr

## Annexure 'A'

### Conditions of Consent

#### Hillrok Properties Pty Ltd v Manly Council

#### Development Application: DA 196/08

##### Premises:

- Part of No 19-23 The Corso, Manly
- No 25 The Corso, Manly
- No 27 The Corso, Manly
- Part of No 31 The Corso, Manly

1 This approval relates to the following documents and drawings/plans Nos. 08007 – DA02-C dated 27 November 2008; 03-A dated 2 May 2008, 04-C dated 27 November 2008, 05-A dated 2 May 2008, finishes schedule drawing DA 101C dated 27 November 2008 prepared by NBRS & Partners as amended by the conditions of this consent.

- Statement of Environmental Effects prepared by Design Collaborative Pty Limited, dated June 2008 and received by Council on 20 June 2008.
- Peer Review of the Statement of Environmental Effects prepared by Urbis, dated May 2008 and received by Council on 20 June 2008.

The submitted Statement of Environmental Effects includes the following documents:-

- Statement of Heritage Impacts prepared by NBRS + Partners dated April 2008 and received by Council on 20 June 2008.
- Traffic and Parking Assessment prepared by Michael Grosvenor Consulting dated May 2008 and received by Council on 20 June 2008.
- Acoustic Assessment prepared by The Acoustic Group dated 28 May 2008 and received by Council on 20 June 2008.
- Social Impact Statement prepared by Design Collaborative Pty Limited dated May 2008 and received by Council on 20 June 2008.
- Draft Plan of Management for the operation of the Ivanhoe Hotel prepared by Design Collaborative dated June 2008 and received by Council on 20 June 2008.
- Building Code of Australia 2007 Assessment Report (draft) prepared by Dix Gardner Pty Ltd dated 23 April 2008 and received by Council on 20 June 2008.

1A Pursuant to section 80A(1)(b) of the *Environmental Planning and Assessment Act 1979*:

- a) the development consents granted with respect to development applications 92/05, 231/06 and 90/07 shall be surrendered prior to the issue of any construction certificate for the development approved in this consent; and
- b) 6 months after the date of issue of any occupation certificate (including an interim occupation certificate) for the first floor of 25 and 27 The Corso, Manly for development approved in this consent, the development

Appeal No: 10831 of 2008

consent granted with respect to Development Application No. 220/96 & Building Application No. 64/97 shall be modified such that it does not permit use of the basement at 27 The Corso, Manly as a nightclub. Once that consent has been so modified, the basement of 27 The Corso, Manly shall not be used as a nightclub unless a further development consent for that use is obtained.

2 The final Plan of Management is to include the following issues:-

- Sound levels generated by the new outdoor smoking areas after 10 pm should be monitored and a response plan developed if acceptable levels are exceeded.
- Consideration should be given to a special bin for pizza boxes and related waste placed and serviced by the hotel in the area adjacent to the pizza kitchen.
- While approved patron levels are unchanged in the current proposal, service capacity is increased substantially. Methods of monitoring actual capacity on an ongoing basis should be described and assurances received.
- To provide enough security staff and measures adequate to address the potential increase in patronage.
- To ensure the toilets in the basement are well lit, maintained clean and monitored by security.
- To ensure the pizza retail outlet does not become place for congregation of intoxicated people.

A copy of the Final Plan of Management is to be submitted to Council prior to the occupation of the premises.

- 3 Plans are to be amended, prior to the issue of Construction Certificate, to include either an internal pass or service door between the pizza kitchen and the adjacent bar.
- 4 The expanded bottle shop is to post a *prominent and very visible* signage emphasizing that the consumption of alcohol in the Alcohol Free Zone (AFZ) is prohibited, that this prohibition is enforced and displaying a map of the Zone. Plans are to be notated accordingly, prior to the issue of Construction Certificate.
- 5 The first floor bar and outdoor areas shall be closed to patrons between 3 am and 7 am Tuesday to Sunday (mornings) and between midnight Sunday (night) and 7 am Monday, other than for the purpose of egress by patrons to and from the upper level.
- 6 The proposed outdoor smoking areas are not to be enclosed, without the prior consent of Council. This is to comply with the Smoke-free Environment Act 2000.
- 7 There shall be an additional accessible toilet in accordance with AS 1482.2 located on the basement level with direct complying access from the lift. The plans are to be amended prior to the issue of the Construction Certificate. Lift access to all levels of the Hotel shall be available for persons with a disability

at all times the Hotel is trading without the need of an accompanying staff member.

- 8 The hours of operation for the proposed uses shall not exceed the following without the prior consent of Council:

- Coffee Shop 7:00am to 2:30am
- Bottle Shop 9:00am to 12:00 am (following day) - every day

- 9 The entry doors and windows to the following areas facing the Corso must be closed and locked during the following times:

- Coffee Shop 1:00am to 7:00am every day
- TAB Bar 11:00pm to 9:00am every day
- Pizza Retail 1:00am to 7:00am every day

Between the abovementioned hours, these parts of the Hotel may only be accessed from internal entries within the Hotel itself. No direct entry into these areas from the Corso is permitted between the above specified hours.

From 1:00am to 2:30am every day, there shall be no takeaway service provided by the coffee shop and, during those hours, the coffee shop shall only serve food and beverages to patrons of the Hotel to be consumed inside the Hotel.

From 1:00am to the close of the Hotel every day, the pizza area shall not provide any takeaway service and, during those hours, the pizza area shall only serve food to patrons of the Hotel to be consumed inside the Hotel.

- 10 A separate waste and recycling service shall be engaged/contracted by businesses operating from the premises.
- 11 Non biodegradable plastic bags shall not be issued to customers for the purpose of carrying items purchased from the bottle shop from the date five years after the issue of the Occupation Certificate. At all times "enviro" type bags are to be available for purchase at a nominal cost. Notwithstanding this condition, the developer must comply with any applicable State or Federal legislation concerning the use of plastic bags.
- 12 The pizza retail and coffee shop shall not provide prepared foods/drinks to their customers in any non-recyclable or non-biodegradable plastic or foam.

### 13 **Acoustics**

With the application for a Construction Certificate, the developer must submit to Council/Accredited Certifier an acoustic report covering the issues listed below. The report must be prepared by a qualified practicing acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants). The building plans are to be endorsed to comply with the required acoustical measures.

### **Mechanical Noise and Vibration**

The report must:



*Appeal No: 10831 of 2008*

- identify each item of plant and equipment;
- include the measurements, and calculations made for each piece of equipment;
- certify that the method of treating the mechanical plant or equipment will ensure that it meets the following criteria:
  - 1 a sound pressure ( $L_{Aeq \text{ period}}$ ) at any noise sensitive position of any other premises or occupancy shall not exceed the recommended amenity noise criteria detailed in the Department of Environment and Conservation, New South Wales (EPA) Industrial Noise Policy.
  - 2 shall not exceed the intrusiveness criteria determined in accordance with the Department of Environment and Conservation, New South Wales (EPA) Industrial Noise Policy and does not contain any tones, low frequency or impulsive factors as defined in the Department of Environment and Conservation, New South Wales (EPA) Industrial Noise Policy table 4.1
  - 3 Australian Standard AS 2670.2-1990 Evaluation of human exposure to whole-body vibration - Continuous and shock-induced vibration in buildings (1 to 80 Hz)

#### 13A Noise requirements:

##### Installation and Commissioning

The Development is to be constructed to meet the requirements detailed in the approved acoustic report (see 15D), and the following construction noise requirements:

##### **Construction Noise:**

Noise from construction activities associated with the development shall comply with the NSW Environment Protection Authority's Environmental Noise Manual – Chapter 171 and the Protection of the Environment Operations Act 1997.

##### **Level Restrictions**

Construction period of 4 weeks and under:

- the  $L_{10}$  sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 20 dB(A).

Construction period greater than 4 weeks and not exceeding 26 weeks:

- the  $L_{10}$  sound pressure level measured over a period of not less than 15 minutes when the construction site is in operating must not exceed the background level by more than 10 dB(A).

##### **Silencing**

All possible steps should be taken to silence construction site equipment.

Prior to the issue of any Occupation Certificate

### 13B Acoustic validation report

After completion of the works, the developer must submit to the principal certifying authority, a report from a qualified practicing acoustic engineer (who is a member of either the Australian Acoustical Society or the Association of Australian Acoustical Consultants) certifying that the works identified in 15 have been undertaken to meet the acoustic design criteria.

### 13C Ongoing Operation

#### Noise from mechanical plant or equipment

The use of the premises shall not give rise to any of the following when measured or assessed at "sensitive" positions within any other property:

- 'Offensive noise' as defined in the Protection of the Environment Operations Act 1997;
- Transmission of vibration to any place of different occupancy above the requirements of AS2670.2-1990;
- a sound pressure  $L_{Aeq,period}$  at any noise sensitive position of any other premises or occupancy greater than the recommended **amenity noise criteria** detailed in the Department of Environment and Conservation, New South Wales (EPA) Industrial Noise Policy;
- a sound pressure  $L_{Aeq,15min}$  at any noise sensitive position greater than **the intrusiveness criteria** determined in accordance with the Department of Environment and Conservation, New South Wales (EPA) Industrial Noise Policy and does not contain any tones, low frequency or impulsive factors as defined in the Department of Environment and Conservation, New South Wales (EPA) Industrial Noise Policy table 4.1.

**Offensive Noise** is defined in the Protection of the Environment *Operations Act 1997* as noise:

- a That, by reason of its level, nature, character or quality, or the time at which it is made, or any other circumstances:
  - i Is harmful to (or is likely to be harmful to) a person who is outside the premises from which it is emitted, or
  - ii Interferes unreasonably with (or is likely to interfere unreasonably with) the comfort or repose of a person who is outside the premises from which it is emitted, or
- b That is of a level, nature, character or quality prescribed by the regulations or that is made at a time, or in other circumstances, prescribed by the regulations.

#### Noise from Use of the Premises

Noise from the use of the premises must comply with the standard noise conditions for licensed premises issued by the Office of Liquor, Gaming and Racing, viz:

- The LA10 noise emitted from the hotel shall not exceed the background L90 level in any Octave Band Centre Frequency (31.5Hz

*Appeal No: 10831 of 2008*

- 8 kHz inclusive) by more than 5 dB between 7.00am and 12 midnight at the boundary of any affected residence.
- The LA10 noise emitted from the hotel shall not exceed the background L90 level in any Octave Band Centre Frequency (31.5Hz – 8 kHz inclusive) between 12 midnight and 7.00 am at the boundary of any affected residence.
- Notwithstanding compliance with the above, the noise from the hotel shall not be audible within any habitable room in any residential premises between the hours of 12 midnight and 7.00am.
- For the purposes of this condition the LA10 can be taken as the average maximum deflection on a sound level meter from noise emitted from the hotel.

### 13D Compliance with Submitted Acoustic Report

The noise reduction measures specified in the acoustic report prepared by The Acoustic Group report dated 28 May 2008 (report 38.4341 R8:ZSC) shall be installed prior to the issuing of the occupation certificate, being:

- Other than for the purpose of ingress and egress the doors to the first floor balcony on the Corso facade shall be closed between midnight and 7.00 am when entertainment is provided.
- All windows to the first floor balcony on the Corso facade shall be closed and locked between midnight and 7.00 am when entertainment is provided.
- The rear wall of the first floor courtyard is to be of solid masonry construction.
- The glazing to the first floor and ground floor courtyards is to be fixed glazing using laminated glass of not less than 10.38mm thick.
- Acoustic absorption panels utilising 50mm thick fibreglass (35 kg/m<sup>2</sup>) faced with perforated ply or metal (minimum open area 23%) is to be provided in the outdoor areas as shown on the approved plans.
- The awnings over the first floor exit to the outdoor courtyard are to have acoustic absorption fixed to the underside of the ceiling. The absorptive treatment is to have a Noise Reduction Coefficient (NRC) of not less than 0.8.

All noise reduction measures specified in the above acoustic report shall be complied with at all times during the operation of the premises.

### 13E Noise Compliance Report

Within three months of occupation of the premises, a noise compliance report shall be submitted to Council. The report shall state that the noise abatement measures detailed in The Acoustic Group report dated 28 May 2008 report 38.4341 R8 and condition 15D and the Construction Certificate acoustic report (Condition 15) have been implemented. Compliance testing shall be undertaken to confirm that the noise emissions from the premises complies with the noise criteria specified in Condition 15C of this consent.

**13F Departing Patron Noise**

Patrons leaving the subject premises should be reminded by Hotel security personnel to leave quietly and not disturb the peace of the area and its residential neighbours.

- 14 The following nine (9) conditions apply to the proposed coffee and food shops. Prior to the release of the Construction Certificate premises must be inspected to the satisfaction of Council's Environmental Health Officer.

- A hand basin with a common spout is to be provided within the premises in an approved and conveniently located position with a supply of hot and cold water under pressure.
- Adequate efficient glass washing and/or dish washing machines or double bowl sinks or two-compartment tubs shall be provided for the washing and rinsing of drinking and eating utensils.
- All glass and/or washing machines, double bowl sinks and two - compartment tubs shall be supplied with hot water at a temperature of not less than 75 degrees Celsius (sinks/tubs) and 82 degrees Celsius (dishwashing machines) unless the machine(s) clean by chemical sanitising.
- The dishwashing and glasswashing machine(s) shall be fitted with (a) thermometer(s) which is/are visible to the operator indicating the temperature of the water in the wash tank and the rinse tank.
- A cleaner's sink shall be provided in a room or space away from any food preparation area.
- ~~Adequate dressing room accommodations shall be provided for male and female staff with sufficient lockers to store clothing and personal items.~~
- Adequate facilities shall be made available for the storage of cleaning equipment and material.
- A garbage room or garbage receptacle storage area shall be provided within the site in an approved position constructed in accordance with the requirements of Council.
- The applicant must contact Sydney Water on tel. 131110 to determine whether a Trade Waste Permit is required before discharging any trade waste to the sewerage system.

- 15 The development shall be provided with access and facilities for people with disabilities in accordance with Australian Standard 1428.2-1992 Design for Access and Mobility Part 2: Enhanced and additional Requirements (AS1428.2).

- 16 No portion of the proposed building or works, including gates and doors during opening and closing operations are, to encroach upon any road reserve or other public land.

- 17 Pursuant to Section 97 of the Local Government Act, 1993, Council requires, prior to issue of the Construction Certificate, or commencement of any excavation and demolition works, payment of a Trust Fund Deposit of \$30,000. The deposit is required as security of compliance with Conditions of Consent, and as security against damage to Council property during works on the site.

*Appeal No: 10831 of 2008*

Note: Should Council property adjoining the site be defective eg, cracked footpath, broken kerb etc., this shall be reported in writing to Council, at least 7 days prior to the commencement of any work on site.

Note: Where Council is not the principal certifying authority, refund of the trust fund deposit will also be dependent upon receipt of a final occupation certificate by the Principal Certifying Authority and infrastructure inspection by Council.

- 18 No obstruction shall be caused to pedestrian use of Council's footpath or vehicular use of any public roadway during construction.
- 19 Details of the builder's name and licence number contracted to undertake the works shall be provided to Council/Accredited Certifier prior to issue of the Construction Certificate.
- 20 Toilet facilities are to be provided at or in the vicinity of the work site on which work involved in the erection or demolition of a building is being carried out, at the rate of one toilet for every 20 person or part of 20 persons employed at the site, by effecting either a permanent or temporary connection to the Sydney Water's sewerage system or by approved closets.
- 21 No person shall use or occupy the building or alteration which is the subject of this approval without the prior issue of an Occupation Certificate.
- 22 A sign must be erected on the subject site in a prominent position stating that unauthorised entry is prohibited and giving details of the name of the builder or the person responsible for the site and 24 hour contact details. The sign is to have dimensions of approximately 500mm x 400mm. Note: The sign is not required if the building on the site is to remain occupied during the course of the building works.
- 23 All construction works shall be strictly in accordance with the Reduced Levels (RLs) as shown on the approved plans with certification being submitted to the Principal Certifying Authority during construction from a registered surveyor certifying ground and finished ridge levels.
- 24 Consent given to build in close proximity to the allotment boundary is in no way to be construed as permission to build on or encroach over the allotment boundary. Your attention is directed to the provisions of the Dividing Fences Act which gives certain rights to adjoining owners, including use of the common boundary. In the absence of the structure standing well clear of the common boundary, it is recommended that you make yourself aware of your legal position which may involve a survey to identify the allotment boundary.
- 25 A Certificate of Adequacy signed by a practising Structural Engineer is to be submitted to the Council/Accredited Certifier in respect of the load carrying capabilities of the existing structure to support the proposed additions prior to the issue of the Construction Certificate.
- 26 Four (4) certified copies of the Structural Engineer's details in respect of all reinforced concrete, structural steel support construction and any proposed


- retaining walls shall be submitted to the Council/Accredited Certifier prior to the issue of the Construction Certificate.
- 27 Where any excavation extends below the level of the base of the footing of a building on an adjoining allotment of land, the person causing the excavation shall support the neighbouring building in accordance with the requirements of the Building Code of Australia.
- 28 The floor surfaces of bathrooms, shower rooms, laundries and WC compartments are to be of an approved impervious material properly graded and drained and waterproofed in accordance with AS3740. Certification is to be provided to the Principal Certifying Authority from a licenced applicator prior to the fixing of any wall or floor tiles.
- 29 The implementation of adequate care during demolition/ excavation/ building/ construction to ensure that no damage is caused to any adjoining properties.
- 30 An adequate security fence, is to be erected around the perimeter of the site prior to commencement of any excavation or construction works, and this fence is to be maintained in a state of good repair and condition until completion of the building project.
- 31 All external cladding and trim of the approved building shall be of a non reflective nature (with reflectivity index of maximum 20%). Details of such finishes shall be submitted to the Council/Accredited Certifier **prior to the issue of the Construction Certificate.**
- 32 Roofwaters and surface stormwaters from paved areas is to be conveyed by pipeline to Council's street gutter.
- 33 Four (4) copies of Architectural Drawings consistent with the development consent and associated specifications are to be submitted to Council/Accredited Certifier prior to the issue of the Construction Certificate.
- 34 All demolition is to be carried out in accordance with AS2601-2001.
- 35 Asbestos cement sheeting must be removed in accordance with the requirements of the WorkCover Authority.
- 36 A Fire Safety Schedule specifying the fire safety measures (both current and proposed) that should be implemented in the building premises shall be submitted with the Construction Certificate application, in accordance with Part 9 Clause 168 of the Environmental Planning and Assessment Regulation 2000. Note: A Construction Certificate cannot be issued until a Fire Safety Schedule is received.
- 37 The building being erected in Type A, Construction for a Class 5, 6 & 9b building in accordance with the Fire Resistance Provisions of the Building Code of Australia.
- 38 All building work must be carried out in accordance with the provisions of the Building Code of Australia.

*Appeal No: 10831 of 2008*

- 39 No building materials, waste containers or skips may be stored on the road reserve or footpath without prior separate approval from Council, including payment of relevant fees.
- 40 All lights used to illuminate the exterior of the buildings or site shall be positioned and/or fitted with cut off luminaries (baffles) so as to prevent the emission of direct light onto adjoining roadways and land.
- 41 All towers, ventilation/ducting, exhaust fan structures and any other structures on the roof are to be the subject of a separate Development Application.
- 42 A sediment/erosion control plan for the site shall be submitted for approval to the Council/Accredited Certifier **prior to the issue of the Construction Certificate**. Implementation of the scheme shall be completed prior to commencement of any works on the site and maintained until completion of the development.
- 43 Any future structures to be erected on the site shall be the subject of a Development Application and Construction Certificate Application.
- 44 A Construction Certificate Application is required to be submitted to and issued by the Council/Accredited Certifier prior to any building works being carried out on site.
- 45 Should you appoint Council as the Principal Certifying Authority (PCA) to undertake inspections during the course of construction then the following inspection/certification are required:
- Silt control fences
  - Footing inspection - trench and steel
  - Framework inspection
  - Wet area moisture barrier
  - Health inspection
  - Final inspection
- The cost of these inspections by Council is \$1,380 (being \$230 per inspection inclusive of GST). **Payment of the above amount is required prior to the first inspection.** Inspection appointments can be made by contacting the Environmental Services Division on 9976 1414.
- At least 24 hours notice should be given for a request for an inspection and submission of the relevant inspection card. Any additional inspection required as a result of incomplete works will incur a fee of \$110.
- 46 An Occupation Certificate is to be issued by the Principal Certifying Authority prior to occupation of the development.
- 47 Roof and framing including provision for tie downs, bracing and fixings are to be designed by a practising Structural Engineer. The Engineer is to specify appropriate wind category relating to the site terrain, house design and height of the structure, with details being submitted to the Principal Certifying Authority prior to the commencement of framework.

*Appeal No: 10831 of 2008*

- 48 The capacity and effectiveness of erosion and sediment control devices must be maintained to Council satisfaction at all times.
- 49 Building operations such as brickcutting, washing tools or paint brushes, and mixing mortar not be performed on the roadway or public footway or any other locations which could lead to the discharge of materials into the stormwater drainage system.
- 50 The applicant and/or builder must prior to the commencement of work, install at the periphery of the site, measures to control sedimentation and the possible erosion of the land. The measures must include:-
- i siltation fencing;
  - ii protection of the public stormwater system; and
  - iii site entry construction to prevent vehicles that enter and leave the site from tracking loose material onto the adjoining public place.
- 51 Building or construction work must be confined to the hours between 7.00am to 6.00pm, Monday to Friday and 7.00am to 1.00pm, Saturday, with a total exclusion of such work on Public Holidays and Sundays. Non-offensive works where power operated plant is not used and including setting out, surveying, plumbing, electrical installation, tiling, internal timber or fibrous plaster fixing, glazing, cleaning down brickwork, painting, building or site cleaning by hand shovel and site landscaping, is permitted between the hours of 1.00pm to 4.00pm Saturdays. Note: That the Protection of the Environment Operations Act 1997 may preclude the operation of some equipment on site during these permitted working hours.
- 52 The operations of mechanical services are not to give rise to an offensive noise within the meaning of the Protection of the Environment Operations Act 1997.
- 53 Development consent of Council shall be obtained for any new advertising structure prior to erection.
- 54 No sandwich boards or the like are to be placed on Council's footpath.
- 55 **This approval shall expire if the development hereby permitted is not commenced within 2 years of the date hereof or any extension of such period which Council may allow in writing on an application made before such an expiry.**
- 58 The maximum number of patrons permitted at the Ivanhoe Hotel, including in the areas covered by this consent within the premises known as 19-23 (part), 25 and 31 (part) The Corso, is not to exceed 900 persons. No increase in patron numbers is approved under this consent.



**J S Murrell**  
Commissioner of the Court  
ljr