

<b>Original signed by</b>	<b>Robyn Pearson</b>	<b>on</b>	<b>7/07/2022</b>
	<b>Date determined:</b>	<b>5/07/2022</b>	
	<b>Date operates:</b>	<b>7/07/2022</b>	
	<b>Date lapses:</b>	<b>7/07/2027</b>	

Fortius Cammeray Pty Ltd  
C/- Urbis  
Angel Place, Level 8, 123 Pitt Street  
SYDNEY NSW 2000

D71/22  
AB7 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
NOTICE OF DETERMINATION - Approval**

---

**Development Application Number:** 71/22

---

**Land to which this applies:** Shop 1, 450-476 Miller Street/11 Amherst Street, Cammeray  
Lot No.: 2 DP: 1129460

---

**Applicant:** Planik Pty Ltd

---

**Proposal:** Additional seating to existing restaurant (Shop 1)

---

**Determination of Development Application:** Subject to the provisions of Section 4.17 of *the Environmental Planning and Assessment Act 1979*, approval has been granted subject to conditions in the notice of determination.

---

**Date of Determination:** 5 July 2022

---

**Reasons for Approval**

The proposal has been assessed under the relevant planning instruments including NSLEP 2013 and NSDCP 2013 and generally found to be acceptable. The proposed additional and reconfigured seating for the indoor and outdoor areas of Shop 1 are considered to be a minimal and sympathetic additions to the existing Cammeray Square development and will serve to enhance and activate the streetscape of the local Cammeray Village Centre.

Subject to conditions to ensure the maintenance of general amenity for adjoining residential properties, the proposed additional seating is not considered to be excessive or overly intrusive, and the additional noise generated by the outdoor seating is minimal and will be contained under the existing umbrella canopy and building awnings.

---

---

The development is considered to be acceptable and generally compliant with Council's other controls in NSDCP 2013 and will not result in any other significant adverse impact upon the amenity of adjoining properties or the character of the adjoining area. The proposal is therefore considered to be acceptable within the site circumstances and is considered a reasonable intensification to the existing use. Appropriate conditions are recommended for imposition with the granting of consent to this change of use application to ensure that residential amenity is maintained.

---

**Consent to operate from:** 7 July 2022

---

**Consent will lapse on:** 7 July 2027

---

**Period of Consent**

Subject to Section 4.20 of the Act, this consent becomes effective and operates from the date listed above. The consent lapses five years after the date of consent in accordance with Section 4.53 of the Act and cannot be extended. To activate this consent, works must physically commence onsite 7 July 2027.

---

**How community views were taken into account:**

The subject application was notified to adjoining properties and the precinct committee seeking comment, and six submissions were received, with one submitter providing comments to both original and amended plans. Nevertheless, the proposal would provide improved activation for the existing use without causing any unreasonable impacts to the streetscape and/or adjoining properties, subject to appropriate conditions of consent.

---

**Review of determination and right of appeal:**

Within six months after the date of notification of the decision, a review of this determination can be requested under Division 8.2 of the Act or an appeal to the Land and Environment Court made pursuant to the provisions of Section 8.7 of the Act. A review of determination should be lodged as soon as possible, and preferably no later two months after the date of notification of the decision to enable the review to be completed within the six-month period.

---

Plans endorsed by the consent authority - please refer to condition A1.

**Endorsed for and on behalf of North Sydney Council**

**7 July 2022**

---

DATE

---

Signature on behalf of consent authority  
ROBYN PEARSON  
**TEAM LEADER (ASSESSMENTS)**

---

**(i) Conditions**

Consent is granted subject to the following conditions imposed pursuant to Section 4.17 of the *Environmental Planning and Assessment Act 1979* ("the Act") and the provisions of the *Environmental Planning and Assessment Regulation 2000* ("the Regulation") such conditions being reasonable and relevant to the development as assessed pursuant to Section 4.17 of the Act.

**(ii) Definitions**

Unless specified otherwise, words have the same meaning as defined by the Act, the Regulation and the *Interpretation Act 1987* as in force at the date of consent.

**Applicant** means the applicant for this consent.

**Approved Plans** means the plans endorsed by Council referenced by this consent as amended by conditions of this consent.

**AS** or **AS/NZS** means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.

**NCC** means the National Construction Code as published by the Australian Building Codes Board as in force at the date of issue of any *Construction Certificate*.

**Council** means North Sydney Council.

**Court** means the Land and Environment Court.

**Local Native Plants** means species of native plant endemic to North Sydney LGA.

**Stormwater Drainage System** means all works, facilities and documentation relating to:

- The collection of stormwater,
- The retention of stormwater,
- The reuse of stormwater,
- The detention of stormwater,
- The controlled release of stormwater; and
- Connections to easements and public stormwater systems.

**Owner** means the owner of the *site* and successors in title to the *site*.

**Owner Builder** has the same meaning as in the *Home Building Act 1989*.

**Principal Certifier** for building or subdivision work means the certifier appointed as the principal certifier for the building work under section 6.6 (1) or for the subdivision work under section 6.12 (1).

**Principal Contractor** for building work means the person responsible for the overall coordination and control of the carrying out of the building work.

Note: If any residential building work is involved, the principal contractor must be the holder of a contractor licence under the *Home Building Act 1989*.

**Professional Engineer** has the same meaning as in the *NCC*.

**Public Place** has the same meaning as in the *Local Government Act 1993*.

**Road** has the same meaning as in the *Roads Act 1993*.

**SEE** means the final version of the Statement of Environmental Effects lodged by the *Applicant*.

**Site** means the land being developed subject to this consent.

**NSLEP 2013** means *North Sydney Local Environmental Plan 2013*

**NSDCP 2013** means *North Sydney Development Control Plan 2013*

**Work** for the purposes of this consent means:

- the use of land in connection with development,
- the subdivision of land,
- the erection of a building,
- the carrying out of any work,
- the use of any site crane, machine, article, material, or thing,
- the storage of any waste, materials, site crane, machine, article, material, or thing,
- the demolition of a building,
- the piling, piercing, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- the delivery to or removal from the *site* of any machine, article, material, or thing, or
- the occupation of the *site* by any person unless authorised by an *occupation certificate*.

Note: **Interpretation of Conditions** - Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.

**INDEX OF CONDITIONS**

	<b>Page No.</b>
<b>A.      <i>Conditions that Identify Approved Plans</i></b>	
A1.      Terms of the Consent	6
A2.      Development in Accordance with Plans/Documentation	6
A3.      Plans on Site	6
A4.      No Demolition of Extra Fabric	6
<b>F.      <i>Prescribed Conditions imposed under EP&amp;A Act and Regulations and other relevant Legislation</i></b>	
F1.      National Construction Code	7
<b>I.      <i>Ongoing/Operational Conditions</i></b>	
I1.      Noise Impact on Surrounding Area	
I2.      No External Music	7
I3.      No Entertainment	7
I4.      Hours of Operation	7
I5.      Noise and Vibration Impact (Compliance)	8
I6.      Patron Behaviour	8
I7.      Maximum Capacity - Premises and Footpath Seating	8
I8.      Umbrellas Canopy and Outdoor Furniture	9

**A. Conditions that Identify Approved Plans**

**Terms of the Consent**

- A1. Approval is granted for the fitout and seating within the existing use of a café/restaurant for a maximum total of 70 persons/seats, with a maximum 32 persons/seats located inside the premises, and a maximum 38 persons/seats located beneath the outdoor canopy and awning areas.

No approval is given or implied in this consent for any further changes to the existing use, or any building works, both internal and external, within the subject property, beyond internal fit outs in accordance with this consent.

Use of the premises must not intensify without further approval from Council.

(Reason: To ensure the terms of the consent are clear)

**Development in Accordance with Plans/Documentation**

- A2. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Drawing No.	Title	Drawn By	Dated	Received
A-02	Sections	Planik Pty Ltd	10/05/2022	13/05/2022
A-03	Proposed Seating Plan	Planik Pty Ltd	10/05/2022	13/05/2022

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

**Plans on Site**

- A3. A copy of all stamped approved plans, specifications and documents (including the plans, specifications and documents submitted and approved with the Construction Certificate) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

All documents kept on site in accordance with this condition must be provided to any officer of the Council or the certifying authority upon their request.

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information and to ensure ongoing compliance)

**No Demolition of Extra Fabric**

- A4. Alterations to, and demolition of the existing building shall be limited to that documented on the approved plans.

(Reason: To ensure compliance with the approved development)

**F. Prescribed Conditions imposed under EP&A Act and Regulations and other relevant Legislation**

**National Construction Code**

- F1. All building work must be carried out in accordance with the provisions of the National Construction Code.

(Reason: Prescribed - Statutory)

**I. Ongoing/Operational Conditions**

**Noise Impact On Surrounding Area**

- I1. The proposed use of the premises and its associated activities, and the operation of all plant and equipment shall not give a rise to an "offensive noise" as defined in the Protection of *the Environment Operations Act 1997* and Regulations.

In this regard, the use of the premises and its associated activities, and the operation of any plant or equipment on the site shall not give rise to a Leq sound pressure level that is 5dB(A) greater than the A-weighted Leq background sound pressure level, measured at any point on the residential boundary.

(Reason: To ensure the acoustic amenity of the surrounding area)

**No External Music**

- I2. Any proposed music system is to be contained within the internal boundaries of the café/restaurant. No background music shall be audible outside the café and no external speakers shall be installed.

(Reason: Ensure compliance with the terms of this consent)

**No Entertainment**

- I3. This approval is for additional and reconfigured seating to an existing café/restaurant only and does not authorise musical or other forms of entertainment. A separate development consent and Place of Public Entertainment licence would be required for such activities/events.

(Reason: Clarification of terms of this consent and ensure compliance with relevant legislation)

**Hours of Operation**

- I4. The hours of operation are restricted to:

\* 7.00 am and 10.00 pm (Monday to Sunday)

Upon expiry of the permitted hours:

- (a) all activities must immediately cease;
- (b) no person shall be permitted entry; and
- (c) all customers and/or visitors to the premises must be required to leave within the following half hour.

(Reason: to ensure that amenity of the surrounding locality is maintained, and hours of operation are consistent with those in surrounding locality)

**Noise and Vibration Impact (Compliance)**

15. Within 60 days of commencement of operation of the premises, further acoustic testing must be undertaken and a report from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, prepared to demonstrate that the use of the premises complies with the conditions of this consent and/or the Acoustic Report prepared by GHD Pty Ltd, dated 28 February 2022.

The testing must be carried out when the premises is operating at full capacity. A copy of the report must be submitted to Council within 14 days of its completion.

If the use is found not to comply with the noise conditions, the use must cease immediately until appropriate measures to remedy the breach are implemented to the satisfaction of Council.

(Reason: To ensure compliance with acceptable noise levels to maintain the amenity of adjoining land uses)

**Patron Behaviour**

16. The proprietors/management of the premises must take all steps necessary to ensure that no noise nuisance occurs from persons entering or leaving the premises. The proprietors/management must ensure that:

- (a) A sign is placed in clearly visible position adjacent to the entry/exit of the premises requesting patrons upon leaving the premises to do so quickly and quietly, having regard to maintaining the amenity of the area.
- (b) The [management/licensee] must ensure that the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood.
- (c) The [management/licensee] must be responsible for the control of noise and litter generated by patrons of the premises and must ensure that patrons leave the vicinity of the premises in an orderly manner to the satisfaction of Council.
- (d) All seating associated with this use shall be located in the areas approved by this consent only and shall not extend outside of the approved area at any time.
- (e) If so directed by Council, the [management/licensee] is to employ private security staff to ensure that this condition is complied with.

(Reason: To ensure patrons do not interfere with the acoustic amenity of residents in the immediate locality)

**Maximum Capacity - Premises and Footpath Seating**

17. The maximum number of patrons allowed by this consent is **70** persons/seats.
- a) the maximum number of patrons within the premises allowed by this consent is **32** persons/seats.
  - b) the maximum number of patrons accompanying the footpath area being **38** persons/seats.



A notice must be displayed at all times in the front window of the premises (or any other clearly visible place) identifying the maximum capacity described in (a) and (b) above:

(Reason: Protection of residential amenity, provision of public information, and to assist in assessing ongoing compliance)

**Umbrella Canopy and Outdoor Furniture**

18. The outdoor umbrella canopy approved under Development Consent 106/21 must be in place whenever the outdoor seating area is in use. If tables and chairs are brought inside following the conclusion of operating hours, they must not be dragged, but lifted and carefully placed so as not to disturb residents.

(Reason: To minimise the impacts of noise for nearby residents)