

Original signed by Robyn Pearson on 16 August 2022

Date determined: 15/08/2022

Date operates: 16/08/2022

Date lapses: 16/08/2027

Joseph Toth
6A/27 Justin Street
SMITHFIELD NSW 2164

D29/22
TH2 (CIS)

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

Development Application Number: 29/22

Land to which this applies: Shop 01, 118-124 Willoughby Road, Crows Nest
Lot No.: 2, DP: 559367

Applicant: Joseph Toth

Proposal: Change of use of a retail shop to a food and drink premises

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: 15 August 2022

Reasons for Approval The development application has been assessed against the North Sydney Local Environmental Plan 2013 and the North Sydney Development Control Plan 2013 and generally found to be satisfactory.

The current premises is being operated as a juice and ice cream premises which is a food or drink premises. A food and drink premises is a type of retail premises which is defined under the definition of a commercial premises pursuant to the Dictionary in NSLEP 2013. Commercial premises are permissible with the consent of Council in the B4 Mixed Use Zone.

The change of use to a food and drink premises will retain the use of the ground floor tenancy for a commercial use and likely to add to the mix of commercial land uses located adjacent to Willoughby Road and contribute to the continuous active use of ground level premises within the Crows Nest Town Centre.

Appropriate ongoing and operational conditions of consent ensure the food and drink premises complies with environmental health and safety legislation, the premises has appropriate waste facilities including collection and noise from the operations of the premises does not adversely affect the amenity of surrounding properties.

Having regard to the provisions of Section 4.15 (1) of the Environmental Planning & Assessment Act 1979, the proposed development will not result in any unreasonable amenity or environmental impacts. The application is considered satisfactory and can be approved.

Consent to operate from: 16 August 2022

Consent will lapse on: 16 August 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 16 August 2027.

How community views were taken into account:

The subject application was notified to adjoining properties and the Holtermann Precinct for 14 days where no issues were raised. However, appropriate conditions of consent have been recommended to maintain the amenity of adjoining properties and the character of the streetscape.

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

16 August 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.

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A. Conditions that Identify Approved Plans

Development in Accordance with Plans/Documentation

- A1. 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.

Plan No.	Issue	Title	Drawn by	Received
-	B	Site Context Plan	Envision Group Pty Ltd	24/01/22
DA 03	B	Floor Plan	Envision Group Pty Ltd	24/01/22
DA 04	B	Existing Elevation	Envision Group Pty Ltd	24/01/22
DA 05	B	Section	Envision Group Pty Ltd.	24/01/22

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

Terms of Consent

- A2. Approval is granted for the change of use only from a shop to a food and drink premises. Approval is granted for retail sale of food and drink for immediate consumption on or off the premises.

No approval is given or implied for any works which required development approval prior to 15 August 2022. The consent holder may consider a building information certificate application should it be desired to regularise any such works.

No signage is approved other than what is exempt under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

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

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

National Construction Code

- F1. All building work that has been carried out for the fit out of the food and drink premises must be in accordance with the provisions of the National Construction Code.

(Reason: Prescribed - Statutory)

G. Prior to the Issue of an Occupation Certificate

Cleanliness and Maintenance of Food Preparation Areas

- G1. To ensure that adequate provision is made for the cleanliness and maintenance of all food preparation areas, all building work in connection with the occupation or use of the premises for the preparation and storage of food shall be designed and carried out in accordance with the requirements of:

a) the Food Act 2003;

- b) the Food Regulation;
- c) the relevant Australian Standards;
- d) Council's Food Premises Code;
- e) Sydney Water Corporation - Trade Waste Section;
- f) the Protection of the Environment Operations Act and associated Regulations; and
- g) the Building Code of Australia.

Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Occupation Certificate.

The Occupation Certificate plans and documentation must incorporate details of the following:

- a) construction, materials and finishes;
- b) installation of fixtures, fittings and equipment;
- c) washing facilities, other facilities and special requirements;
- d) mechanical ventilation and exhaust discharges; and
- e) temperature control

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Occupation Certificate, fully satisfy the requirements of this condition.

To comply with the requirements of AS 4674 – Design, Construction and Fitout of Food Premises the following must be provided at the shop: -

A double bowl sink or dishwasher/glasswasher and single bowl sink where all the food contact equipment will fit in the dishwasher/glasswasher.

A separate hand wash facility must also be provided and must only be used for the washing of hands, arms and face.

(Reason: To ensure compliance with acceptable standards for the construction of food premises established under environmental health and safety legislation)

Garbage and Recycling Facilities

G2. Adequate provision must be made for the storage of waste and recyclable material generated by the premises. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Occupation Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, fully satisfy the requirements of this condition.

(Reason: To ensure the provision of appropriate waste facilities and to ensure efficient collection of waste by collection contractors)

I. Ongoing/Operational Conditions

Hours of Operation

I1. The hours of operation are restricted to:

9.00am to 8.00pm, Monday to Friday
9.00am to 9.00pm, Saturday & Sunday

Upon expiry of the permitted hours:

- a) all service must immediately cease;
- b) no person shall be permitted entry; and
- c) all customers on the premises must be required to leave within the following ten minutes.

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

Trade Waste

19. Trade wastewater must be disposed of in accordance with the permit requirements of Sydney Water Corporation Ltd, Wastewater Source Control Branch.

(Reason: To ensure compliance with Sydney Water's requirements and protect the environment)

Noise from Plant and Equipment

110. The use of all plant and equipment installed on the premises must not:

- a) Contribute an LAeq(15min) which will cause the total LAeq(15min) from all plant and equipment operating contemporaneously on the site or in the strata scheme or in the mixed strata schemes to exceed the RBL by more than 5dB when measured at the boundary of any affected receiver. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy shall be applied.
- b) Cause "offensive noise" as defined in the *Protection of the Environment Operations Act 1997*.

"affected receiver" includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship, commercial premises and parks and such other affected receiver as may be notified by the Council in writing.

"boundary" includes any window or elevated window of an affected receiver.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

Noise and Vibration Impact

111. The ongoing use of the premises approved under this consent must comply with all conditions pertaining to noise and vibration specified in this consent.

(Reason: To ensure compliance with the specified levels of noise and vibration and to maintain the amenity of surrounding land uses)

Daily Cleaning

112. The proprietor/operator is to ensure that at all times when the premises are open and at the end of each day after the premises have closed, all rubbish including loose papers, cigarette butts, bottles etc which may be left on the subject premises, site or immediately adjacent area is picked up and placed in the proprietor's/operator's rubbish bins.

(Reason: To ensure waste generated by the approved use or activity is properly managed by the person acting upon this consent, to prevent unsightly build-up of waste material)

Trade Waste Collection (Crows Nest Trade Waste Policy)

113. All trade waste and recycling generated from the premises must be managed and disposed of in accordance with the Crows Nest Trade Waste Policy available on Council's website at www.northsydney.nsw.gov.au.

Arrangements for the collection and storage of trade waste bins must comply with the following:

- a) Bins must be placed out for collection no earlier than 5.00pm and no later than 10.00pm on the day before collection.
- b) All trade waste must be collected between the hours of 6.00am and 10.00am.
- c) Waste and recycling bins are not to be stored permanently in streets and laneways unless specifically prescribed by Council in writing.

(Reason: To ensure compliance with Council's waste controls for the Crows Nest commercial area)

Delivery Hours

114. No deliveries, loading or unloading associated with the premises are to take place between the hours of 10.00pm and 6.00am on any day.

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

Shop Premises Registration

115. The shop premises must be registered with Council and NSW Food Authority prior to commencement of operation of the approved activity. Shop Premises Registration must be maintained at all times.

Note:

- a) Council registration forms can be found at <http://www.northsydney.nsw.gov.au>.
- b) Notification is required to the NSW Food Authority under Standard 3.2.2 Division 2 Section 4 Notification (see www.foodnotify.nsw.gov.au).

(Reason: To ensure compliance with environmental health legislation)