



Diadem DDM Pty Ltd
Level 1, 274-290 Victoria Street
DARLINGHURST NSW 2010

D280/23
RW (CPE)

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

Issued under Section 4.18 of the Environmental Planning and Assessment Act 1979 ("the Act"). Clause 100 of the Environmental Planning and Assessment Regulation 2021 ("the Regulation")

Development Application Number: **280/23**

Land to which this applies: 80 Pacific Highway, North Sydney
Lot No.: 1, DP: 1014953

Applicant: Diadem DDM Pty Ltd

Proposal: Amend Condition A6 of DA130/18 to permit the continuation of consent for two building identification signs

Determination of Development Application:

Subject to the provisions of Section 4.17 of *the Environmental Planning and Assessment Act 1979*, deferred commencement has been granted, subject to conditions in the notice of determination.

Date of Determination: 15 December 2023

Reasons for Deferred Commencement:

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

The proposal involves no changes to the existing building identification signs on the southern and eastern elevations and is unlikely to cause adverse material impacts to adjoining properties.

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

Deferred Commencement Time Frame: Five (5) years

Date Lapsing: 15 December 2028

How community views were taken into account:

The subject application was notified to adjoining properties and the Central Business District (CBD) Precinct for 14 days and no submissions were received. Appropriate conditions of consent have been recommended to maintain the amenity of adjoining properties.

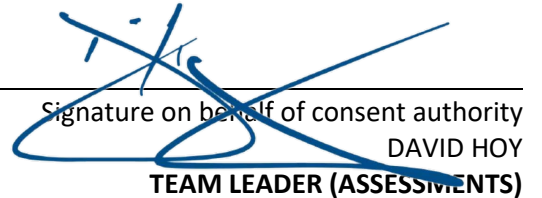
Review of determination and right of appeal:

Consideration should be given to providing the evidence to Council to allow sufficient time to consider the same and form a view as to whether the deferred commencement conditions are satisfied or not. Within 6 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.

Endorsed for and on behalf of North Sydney Council

20 December 2023

DATE


Signature on behalf of consent authority
DAVID HOY
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 2021 (“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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AA. Deferred Commencement Conditions

This consent shall not operate until the following deferred commencement condition(s) has/have been satisfied.

The applicant must satisfy Council as to the matters specified in the deferred commencement conditions within 5 years of the date of the grant of this consent.

If the applicant fails to satisfy Council as to the matters specified in the deferred commencement conditions within 5 years of the date of the grant of this consent. This consent will lapse in accordance with Section 4.56 of the Environmental Planning and Assessment Act 1979.

NOTE: Consideration should be given to providing the evidence to Council to allow sufficient time to consider the same and form a view as to whether the deferred commencement conditions are satisfied or not. You are also advised of your appeal rights under clause 95(6) of the Environmental Planning and Assessment Regulation 2021, which provides that: *If the consent authority has not notified the applicant within the period of 28 days after the applicant's evidence is produced to it, the consent authority is, for the purposes only of section 97 of the Act, taken to have notified the applicant that it is not satisfied as to those matters on the date on which that period expires.*

Lease Agreement to be Renewed

AA1. Prior to the Operation of this consent, the applicant must provide documentary evidence that the lease agreement required by Condition C1 of DA130/18 has been renewed for a further five (5) years from the date of expiry of the existing lease.

The renewed Lease Agreement is to include the following details:

- (a) A current Plan of Survey prepared by a Registered Surveyor must be submitted with the 'Total Area of the Encroachment' identified and noted in the Plan in m². The Plan must be accompanied by a letter from the Surveyor confirming the area in m².
- (b) Heads of Agreement must be entered into between Council and the encroaching owner. This must be followed by the execution of the Lease Agreement.
- (c) The commencement date of the lease.
- (d) A bond of \$20,000 must be lodged and maintained with Council to cover all costs associated with the preparation & negotiation of the lease documents and is to be accompanied with a letter of authorisation from the property owner granting Council permission to draw on the bond.
- (e) The lessee will be responsible for all maintenance and insurance.

(a) **Insurance**

"In the event that part of the proposed development encroaches upon or over Council land, the land owner must defend and hold harmless, indemnify and keep indemnified, Council and its employees, officers, agents and contractors from and against all claims, expenses, losses including consequential losses, damages and costs (including costs on a solicitor and client basis and whether incurred by or awarded against Council) that Council may sustain or incur as a result, whether directly or indirectly, of the encroachment by the proposed development on Council land, including:

- (a) any injury or death to any person including any injury or death to the general public, employees, officers, agents and contractors, or invitees, or other entity of the Council; or
- (b) damage to or loss of any property; and

- (c) arising out of performance by the landowner of its obligations under the Conditions of Consent including claims by a person who is not a party to this development, except to the extent caused or contributed to by Council, its contractors, employees and agents.

Without limiting the generality of this condition, the landowner must ensure that:

- (a) processes and methods to be used for carrying out the development will be completely suitable for the purposes for which they are required;
- (b) the development is carried out in accordance with the Conditions of Consent;
- (c) it will obtain for the benefit of Council all available product and work warranties from any suppliers, contractors and subcontractors in respect of equipment and materials used in the development that encroaches on Council land and assign such benefit to Council where the warranty is not in favour of Council.

The landowner must provide Council with a copy of its Certificate of Insurance on an annual basis so that Council can satisfy itself that the land owner holds adequate public liability insurance in relation to the development that encroaches on Council land. The encroaching owner is required to maintain public liability insurance of \$20 million, noting Council's interest on the Certificate of Currency."

- (b) **Maintenance**
Maintenance Responsibility

The Benefited Authority is responsible for the maintenance, repair and upkeep of the encroachment.

- (i) Owners Consent is required to undertake any additional works, other than general maintenance, to the encroachments."
- (c) **Costs**
All associated costs in relation to the encroachment will be borne by the property owners of 80 Pacific Highway.

All other terms and Conditions are to be in accordance with the Encroachment Management Policy.

(Reason: The east-facing signage encroaches over Council land on Blue Street)

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

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 endorsed with Council's approval stamp and other documentation listed in the table to this clause, or cited by other conditions, and as amended by other conditions of this consent.

Plan No.	Rev.	Description	Prepared by	Dated
2 of 10	02	Sign Locations	Diadem	17.7.2023

3 of 10	02	East Sign - General Arrangement	Diadem	17.7.2023
4 of 10	02	East Sign - Details	Diadem	17.7.2023
5 of 10	02	East Sign - Section Details	Diadem	17.7.2023
6 of 10	02	South Sign - General Arrangement	Diadem	17.7.2023
7 of 10	02	South Sign - Details	Diadem	17.7.2023
8 of 10	02	South Sign - Section Details	Diadem	17.7.2023

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

Time-limited Consent

A2. The signs may remain in place for a period of five years only from the date from which this consent operates, at which time they shall be removed from the building unless further development consent is obtained prior to this time. Any application should be lodged 6 months prior to the expiry date.

(Reason: To ensure development consent is obtained prior to uses continuing so that appropriate forms of signage that are consistent with Council's controls and those that are desired for the locality are carried out, and do not interfere with the amenity of nearby properties)

Conditions in Consent DA130/18 Ongoing

A3. All conditions of the preceding consent DA130/18 continue to operate for the duration of this consent. In the event of an inconsistency between the requirements of this consent and any preceding consent, the requirements of this consent shall prevail to the extent of the inconsistency.

(Reason: To clarify the terms of consent)

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)

I. Ongoing/Operational Conditions

Lease of Airspace over Council Land for Eastern Elevation Signage (Blue Street)

I1. The lease of airspace over Council land (Blue Street) by the eastern elevation signage as referred in Condition AA1 within this consent is to be maintained for the duration of the consent.

(Reason: Lease responsibility by Applicant)