



Douglas Hor
C/- DFP Planning
11 Dartford Road
THORNLEIGH NSW 2120

D338/23
DK(PE)

**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 87 of the Environmental Planning and Assessment Regulation 2021 ("the Regulation")

Development Application Number: 338/23

Land to which this applies: 340 Pacific Highway, Crows Nest
Lot No.: C, DP: 393414

Applicant: Douglas Hor
C/- DFP Planning

Proposal: Use of premises as sex service premises with operating hours 10am and 10pm 7 days a week.

Determination of Development Application: The development application was considered by the **North Sydney Local Planning Panel (NSLPP)** on 01 May 2024. 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: 01 May 2024

Reason for Deferred Commencement: The Panel was advised that the use had been operating for over 20 years and had not been the subject of any significant objections. The Panel noted that the deferred commencement provided the opportunity to identify and/or upgrade the fire and BCA provisions and to impose the conditions relating to the ongoing management of the use.

Deferred Commencement Time Frame: 6 Months

Date of Lapsing: 01 November 2024

How community views were taken into account:

The submissions received by Council were addressed in the NSLPP report (see Council's website: <https://www.northsydney.nsw.gov.au/downloads/file/3274/lpp05-340-pacific-highway-crows-nest-da33823-rpt>)

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

13 May 2024

DATE



Signature on behalf of consent authority
DAMON KENNY
EXECUTIVE PLANNER

(i) **Conditions**

Consent is granted subject to the following conditions imposed pursuant to Section 4.17 of the Environmental Planning & Assessment Act 1979 (“the *Act*”) and the provisions of the Environmental Planning & 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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AA. Deferred Commencement Conditions

This consent shall not operate until the following deferred commencement conditions have been satisfied.

The applicant must satisfy Council as to the matters specified in the deferred commencement conditions within 6 months 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 6 months from the date of this consent. It will lapse in accordance with Section 4.16(3) of the Environmental Planning and Assessment Act 1979.

BCA Compliance Statement

AA1 A BCA Compliance Statement pursuant to Clause 62 of the Environmental Planning & Assessment Regulations 2021, prepared by a suitable qualified Building Surveyor is to be provided identifying all required Category 1 fire safety measures.

(Reason: To ensure the building complies with the Category 1 fire safety provisions that are applicable to the building's proposed use)

Category 1 Fire safety measures

AA2. All Category 1 fire safety measures required to be provided are to be implemented.

(Reason: To ensure the building complies with the category 1 fire safety provisions that are applicable to the building's proposed use)

This consent shall not operate until such time as the written approval from Council's Manager Development Services stating that the requirements of these conditions have been satisfied.

B. Subject to the above deferred commencement condition being satisfied within 6 months of the date of this determination, the consent shall operate in accordance with the attached conditions.

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 No.	Description	Prepared by	Dated
Sheet 1/1	B	Existing Ground Floor Plan Existing First Floor Plan	DJL Architectural Design PTY LTD	05.10.23

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

Plans on Site

- A2. A copy of all plans endorsed with Council's approval stamp, 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 Certifier.

All documents kept on site in accordance with this condition must be provided to any officer of the Council or the Principal Certifier 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)

C. *Prior to the Issue of a Construction Certificate (and ongoing, where indicated)*

Noise from Plant and Equipment

- C1. 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 Noise Policy for Industry 2017 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 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 Noise Policy for Industry published by the NSW Environment Protection Authority.

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

D. *Prior to the Commencement of any Works (and continuing where indicated)*

Commencement of Works' Notice

- D1. Where building work, demolition is required by this development consent, it must not be commenced until the developer has given at least two days' notice to North Sydney Council of the person's intention to commence building work, demolition or excavation in accordance with this development consent.

(Reason: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

E. During Demolition and Building Work

Construction Hours (Commercial Core and Mixed-use Zones)

E1. Construction activities and works approved under this consent must be restricted to within the hours stipulated in the following table:

Location	Standard Construction Hours	
	Day	Hours
E2 Commercial Centre MU1 Mixed-use	Monday - Friday	7.00 am - 7.00 pm
	Saturday	8.00 am - 1.00 pm
	Sunday, Public holiday	No work permitted

Construction activities for development approved under this consent must be carried out in accordance with the standard construction hours above, the EPA Noise Policy for Industry 2017 and any Construction Noise Management Plan required under this consent.

In the event of breach to the approved hours of construction Council take may take enforcement action under Part 9 of the EP&A Act 1979 and in accordance with Council's adopted Compliance and Enforcement Policy.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

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)

Appointment of Principal Certifier (PC)

F2. Where building work, demolition is required by this development consent it must not be commenced until the developer has appointed a Principal Certifier for the building work in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

Construction Certificate

F3. Where building work, demolition is required by this development consent it must not be commenced until a Construction Certificate for the relevant part of the building work has been issued in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

Occupation Certificate

F4. A person must not commence occupation or use of the whole or any part of a new building (new building includes an altered portion of, or an extension to, an existing building) unless an Occupation Certificate has been issued in relation to the building or part. Only the Principal Certifier appointed for the building work can issue an Occupation Certificate.

(Reason: Statutory)

Critical Stage Inspections

F5. Building work must be inspected by the Principal Certifier on the critical stage occasions prescribed by the EP&A Act and its Regulations, and as directed by the appointed Principal Certifier.

(Reason: Statutory)

Commencement of Works' Notice

F6. Where building work, demolition is required by this development consent it must not be commenced until the developer has given at least two days' notice to North Sydney Council of the person's intention to commence the erection of the building.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

Demolition

F7. Where required by this development consent, demolition work must be undertaken in accordance with the provisions of AS2601- Demolition of Structures.

(Reason: To ensure that work is undertaken in a professional and responsible manner and protect adjoining property and persons from potential damage)

Site Sign

- F8. 1) A sign must be erected in a prominent position on the site
- a) stating that unauthorised entry to the work site is prohibited;
 - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
 - c) showing the name, address and telephone number of the Principal Certifier for the work.
- 2) Any such sign must be maintained while to building work or demolition work is being carried out but must be removed when the work has been completed.

(Reason: Prescribed - Statutory)

G. Prior to the Issue of an Occupation Certificate

Fire Safety Upgrade

- G1. Where required and prior to issue of any Occupation Certificate, any works involving the upgrading/installation of essential fire safety measures identified in the BCA Compliance Statement are to be fully completed.

A fire safety schedule and final fire safety certificate (as specified in clauses 78, 79 and 86 of the Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021 must be issued with the Construction Certificate and Occupation Certificate respectively.

A report from an appropriately qualified person in relation to fire safety and the National Construction Code, certifying that the fire upgrading works have been completed and indicating all required essential fire safety measures have been installed and verified as functioning in accordance with the above- named report, must be submitted to the Principal Certifier for approval prior to the issue of any Strata certificate.

Note: The requirement to undertake physical building works in relation to the installation/upgrade of essential fire safety measures in the building constitutes building work and as such will necessitate obtaining a Construction Certificate, appointing a Principal Certifier and obtaining an Occupation Certificate (pursuant to section 81A and 109M of the EP&A Act.

(Reason: To ensure adequate provision is made for fire safety in the premises for building occupant safety)

Privacy

- G2. The following privacy devices are to be provided:

- a) Obscure or frosted glass privacy screening shall be provided internally to the change room and room 1 windows.

These are to be installed prior to the issue of any Occupation Certificate.

(Reason: To ensure an adequate level of privacy is provided to adjoining properties and the public domain)

I. Ongoing/Operational Conditions

Hours of Operation

- I1. The hours of operation are restricted to:

Administration: 9am to 10pm
Customers: 10am to 10pm

Monday to Sunday Inclusive.

(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

12. 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)

Use of Premises

13. Use of the Premise must not give rise to offensive noise within the meaning of the Protection of the Environment Operations Act 1997.

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

Operational Plan of Management

14. The premises must be managed and operate in accordance with the Plan of Management titled The Up Market Bath House received by Council on 19/12/2023, and must comply with the requirements of the relevant legislation. The Plan of Management is to be updated to comply with conditions of consent and include the following and a copy maintained on site at all times during operation.

a) Health service access and inspections

The operators of the premises must provide reasonable access to, and facilities for authorised staff from health service providers and other agencies, including North Sydney Council. Evidence of access arrangements for the attendance of health service providers and other authorised staff must be identified in the Plan of Management.

b) Health of sex workers

The following provisions are required to ensure the continuing good health of sex workers in brothels:

- (i) Sex workers must be immunised against hepatitis A and B;
- (ii) Risk management protocols are to be prepared and implemented as part of a Plan of Management to assist sex workers and staff to manage risk exposures such as blood and body fluid splashes, needle stick injuries and the like;
- (iii) Sex workers must have access to a sexual health centre or private doctor for sexual health assessment, counselling and education appropriate to individual needs. Frequency of assessment is a matter for determination by the individual sex worker in consultation with his/her clinician;
- (iv) Evidence of attendance for sexual health tests must not be used as an alternative to safer sex practices;
- (v) Sexual health certificates of attendance should not imply freedom from sexually transmissible infections (STIs) nor should sexual health certificates of attendance be shown to clients; and
- (vi) There should be no impediment to sex workers taking time off for health reasons.

- c) Spa baths
Spa baths must be drained after each use so they can be cleaned and refilled with fresh water. Spa baths must be drained, filled and dosed with a nontoxic solvent and surfactant, circulated, drained and then rinsed, on a weekly basis.
- d) Lighting within the site will need to be positioned in a way to reduce opportunities for offenders to commit crime i.e vandalism and graffiti. The lighting will need to be sufficient to support images obtained from any CCTV footage. Please note that some low- or high-pressure lighting is not compatible with surveillance systems.
- e) An electronic surveillance system should be included to provide maximum surveillance of all areas of the site including entry/exits, car parks, and common areas. Cameras should also cover public footpath areas around the premises. The system should be capable of recording high-quality images of events. The recording equipment should be locked away to reduce the likelihood of tampering.
- f) All recording made by the CCTV system must be stored for at least a minimum of 30 days. Ensure that the system is accessible by at least one member of staff at all times it is in operation, and provide any recordings made by the system to a police officer or inspector within 24 hours of any request by a police officer or inspector.
- g) An intercom system should be incorporated into the surveillance system to enable visitors to the business to communicate with staff prior to being admitted during the hours of darkness or when the reception area is unattended. Intercom facilities should also be installed in each service room to allow communication between staff members and reception.
- h) Access control treatments should be installed within the premises to restrict, encourage and control access into and throughout the building.
- i) An emergency control and evacuation plan should be implemented within the business. Management and staff should be trained in the execution of the plan in emergency situations.
- j) Appropriate signage should be erected inside and around the perimeter of the entire property to warn of security treatments in place e.g. "This site is under 24-hour video surveillance".

In the event of any inconsistency between the Plan of Management and the conditions of this consent or relevant legislation, then the stricter condition or regulation will prevail.

(Reason: Safety, security and amenity)

Trade Waste Collection (Crows Nest Trade Waste Policy)

15. 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

16. 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)