

Mr Mitomo Somehara
7 Bernie Avenue
FORRESTVILLE NSW 2087

D175/99
(KRR) (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979
(AS AMENDED)**

**Notice to Applicant of Determination of Request
to Modify a Development Consent**

Pursuant to Section 4.55 of the Act notice is hereby given of the determination by the consent authority of your request for a modification to Development Consent No. **175/199** and registered in Council's records as Application No. **175/99/2** relating to the land described as **20 Burlington Street, Crows Nest**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 24 November 1998, has been determined in the following manner:-

A. *Modification to Conditions 1, 9 and 35 as follows:*

Development in Accordance with Plans

1. The Development being carried out in accordance with plans numbered A 1:00 (A), dated September 1998, drawn by Marchese and Partners, and received by Council on 18 September 1998 or where amended by DA175/99/2 marked up Plan numbered A1:00(A), marked up to show defined licenced area and labelled "Tachinomi YP Café", dated September 1998 drawn by Marchese and Partners, and received by Council on 28 February 2018

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

Hours of Operation

9. The hours of operation are restricted to:

7am to 12 Midnight Monday to Saturday;
7am to 10pm 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 half hour.

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

Service of Meals

35. This approval is granted for the provision of meals on premises but all cooking of any meals is to be prepared off site. Any food served on the premises is to be reheated and assembled only with no cooking to occur on premises.

(Reason: Compliance)

B. To insert the following Conditions 36-41:

Maximum Number of Patrons

36. There are to be no more than 20 patrons (excluding staff) on the premises at any one time during the operation. A sign must be displayed in a prominent position in the building stating the maximum number of 20 persons, as specified in this development consent, that are permitted in the premises.

(Reason: Prescribed - Statutory)

Use of Premises

37. Consent is granted for use of the premises as a food and drink - restaurant or café premises and is contingent on compliance with the attached conditions of development consent. Nothing in this consent confers approval for the use of the premises as a pub or general bar. The premises must maintain appropriate licensing at all times suitable for operation as a food and drink premises - restaurant or café.

(Reason: To clarify the terms of the consent)

Plan of Management

38. The operation of the licensed premises must be in generally in accordance with the Plan of Management for Tachinomi YP Café dated 25 February 2018 and submitted to Council on 1 March 2018. A copy of the Plan of Management must be available on premises at all times and staff are to be trained in the requirements.

(Reason: To ensure that adequate management practices are in place, the premises are operated in an orderly fashion and the amenity of the surrounding locality is maintained)

Patron Behaviour

39. 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 behavior of patrons entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood. Signage will be located in prominent locations near the entry and exit of the facility which reads as follows:

“Please be mindful of neighbours. No loitering outside premises. Keep the door closed at all times.”

- (a) 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.
- (b) 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)

Complaint Management

40. The Manager shall be responsible for maintaining a complaints register, noting any complaints made by any party (eg. NSW Police, North Sydney Council, property owners, residents or the public). The complaints register will record the following information:

- Complaint date and time;
- Name, contact and address details of person(s) making the complaint;
- Nature of complaint;
- Name of staff on duty; and
- Action taken by premises to resolve the complaint.

Contact details for the Manager shall be made available on request to NSW Police, North Sydney Council, property owners, residents or other affected parties for the purposes of complaint registration.

The Manager shall be responsible for appropriately responding to any complaint that is registered.

The Manager should develop appropriate steps to resolve the matter regarding which a complaint is registered. Where appropriate the matter regarding which a complaint is registered should be escalated to North Sydney Council or NSW Police.

(Reason: To ensure adequate complaint management measures are in place)

Licensed Premises Registration

41. The premises must be registered with the Officer of Liquor Gaming and Racing and appropriate licensing must be maintained at all times. Should the Licence be revoked or discontinued then the use of the premises in accordance with this consent must also cease.

(Reason: To ensure compliance with licensing legislation)

The conditions attached to the original consent for Development Application No. 175/99 by endorsed date of 24 November 1998 still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **Kim Rothe**. However, if you wish to pursue your rights of appeal in the Land and Environmental Court pursuant to Section 8.7 of the Environmental Planning and Assessment Act 1979 (as amended), you are advised that Council generally seeks resolution of such appeals through a Section 34 Conference, instead of a full Court hearing, subject to any further advice to the contrary from Council's Solicitors and senior staff. Such an approach is less adversarial, it achieves a quicker decision than would be the case through a Court hearing and it can give rise to considerable cost and time savings for all parties involved. The use of the Section 34 Conference approach requires the appellant to agree, in advance and in writing, that the Court appointed assessor will be given the full authority to completely determine the matter at the conference.
- (b) Pursuant to Section 8.2, an applicant is able to request Council to review its determination. An application for a review under Section 8.2 of the Act must be made no later than 28 days after the date on which the application for the modification of the development consent was determined.
- (c) Prior to commencing any building, subdivision or associated constructions works, the following provisions of the Environmental Planning and Assessment Act 1979 (the 'Act') are to be complied with:
- (i) A Construction Certificate is to be obtained in accordance with Section 6.3 of the Act.

- (ii) A Principal Certifying Authority is to be appointed and Council is to be notified of the appointment in accordance with Section 6.6 of the Act.
- (iii) Council is to be notified at least two (2) days of the intention to commence building works, in accordance with Section 6.6(2)(a) of the Act.
- (d) You are advised that changes to the external configuration of the building, changes to the site layout, density and unit configuration internal changes to the proposed building or any changes to the proposed operation of a use **MAY** require the submission of a further modification under Section 4.55 of the Environmental Planning & Assessment Act, 1979 (as amended).

Council staff would be pleased to assist in identifying such changes which may require the submission of a modification of a Development Application under Section 4.55 of the Environmental Planning & Assessment Act.

DATE

Signature on behalf of consent authority
DAVID HOY
TEAM LEADER (ASSESSMENTS)