

Original signed by	Robyn Pearson	on	13/7/18
Date determined:	5/7/18		
Date operates:	13/7/18		
Date lapses:	13/7/23		

Development Consent No. 154/18

Notice of Determination

Section 4.18 of the Environmental Planning and Assessment Act 1979 (“the Act”)
Clause 100 of the Environmental Planning and Assessment Regulation 2000 (“the Regulation”)

Applicant’s Name

Café Free Sydney Pty Ltd

Land to which this applies

Units 1 & 2, 48 Yeo Street, Neutral Bay
SP: 83820

Proposal

Change to opening hours

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.

Reason for approval

The development application has been assessed against all applicable environmental planning instruments and was found to be generally satisfactory, including in relation to the North Sydney LEP 2013 and North Sydney DCP 2013.

The proposed hours of operation of 7am until 10pm, seven days a week, are consistent with the expectations set out within Part B Section 7 (Late Night Trading Hours) in NSDCP. No submissions were received following notification of this application to surrounding properties and Harrison Precinct.

This application for extended opening hours proposes no physical works, and therefore there will be no impact on the heritage listed building opposite, the nearby Conservation Area, or the character of the site and surrounds. Conditions are proposed to limit the impact on nearby residential properties.

Having regard to the provisions of Section 4.15 of the EP&A Act 1979 the application is considered to be satisfactory and therefore can be approved.

Date from which this Consent operates

13 July 2018

How were public submissions taken into account

The owners of adjoining properties and the Harrison Precinct were notified of the proposed development between 6 June and 22 June 2018. No submissions were received.

Period of Consent

Subject to Section 4.20 of the Act, this consent becomes effective and operates from 13 July 2018. The consent lapses five years after the date of consent in accordance with Section 4.53 of the Act and cannot be extended. To enjoy the benefits of this consent, works must physically commence onsite by 13 July 2023.

Review of determination and right of appeal

Within 6 months after the date of determination, 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. If a review is contemplated, it should be lodged within two months of the date of this determination to enable the six month period, which includes Council's review to be met.

Endorsed for and on behalf of North Sydney Council

ROBYN PEARSON
TEAM LEADER (ASSESSMENTS)

13 July 2018
Date of Endorsement

per:

(i) Conditions

Consent is granted subject to the following conditions imposed pursuant to Section 80 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 79C of the Act.

Standard Condition: A1 (Autotext AA1)

(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*.

PCA means the *Principal Certifying Authority* under the *Act*.

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*

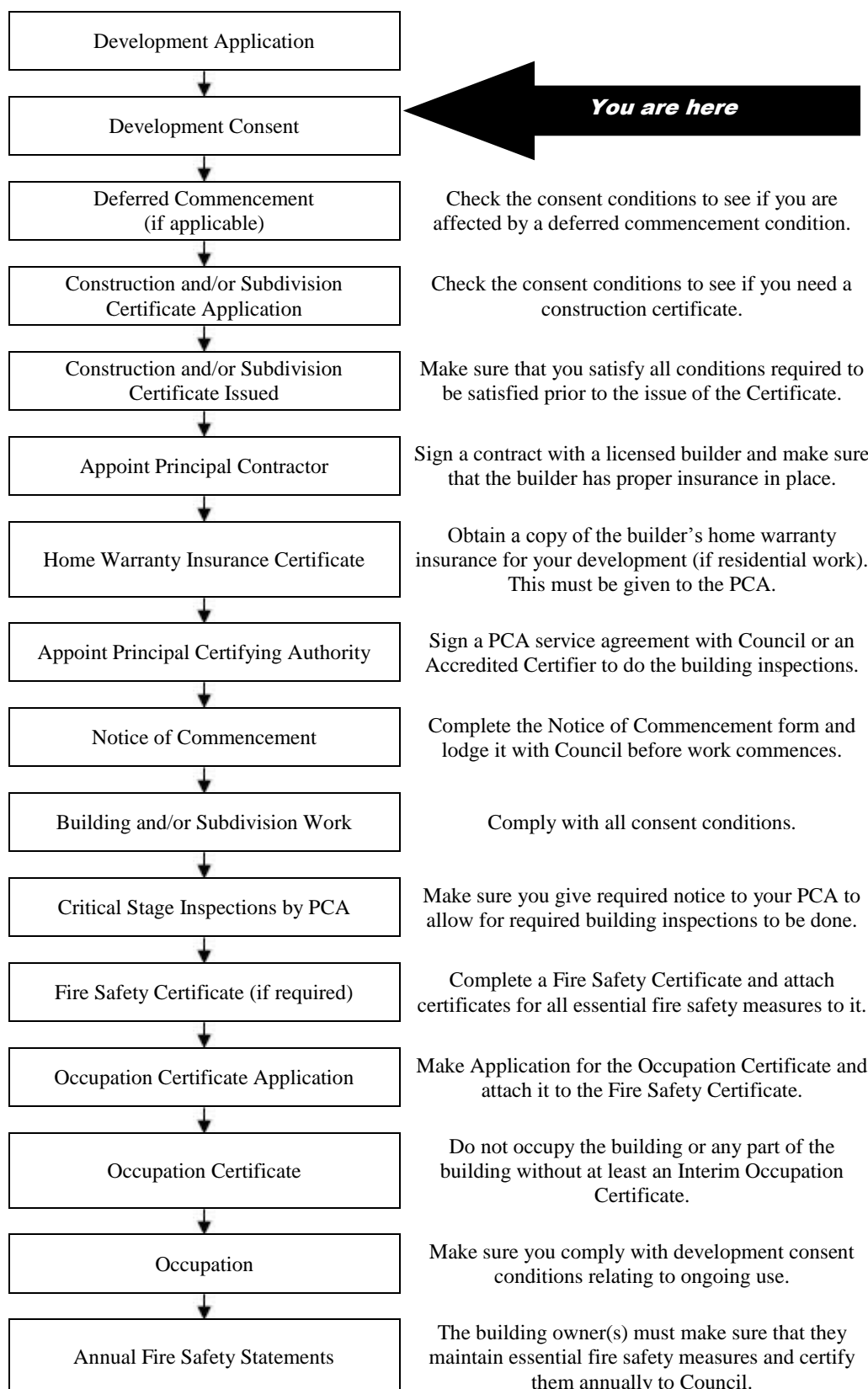
Work for the purposes of this consent means:

- 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.

Standard Condition: A2 (Autotext AA2)

(iii) The general steps after obtaining development consent from Council which need to be followed is provided below: -



Note: This guide is provided in good faith to assist applicants to understand the broad process. Not every statutory step may apply or has been covered given that each situation may vary in individual circumstances.

INDEX OF CONDITIONS

	Page No.
A. <i>Conditions that Identify Approved Plans</i>	
A1. Development in Accordance with Approval	7
A2. Terms of Consent	7
I. <i>On-Going / Operational Conditions</i>	
I1. Noise from Plant	7
I2. Hours of Operation	7
I3. Noise and Vibration Impact	8
I4. No Entertainment	8
I5. Patron Behaviour	8
I6. Footpath Seating Permit Required	9

A. *Conditions that Identify Approved Development*

Development in Accordance with Approval

A1. The café shall operate in strict accordance with the new revised hours of operation. The cafe shall also continue to operate in strict accordance with all the conditions attached to the previous approval (Ref. DA 464/10) which permitted Units 1 and 2 at 48 Yeo Street to be used as a restaurant.

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

Terms of Consent

A2. Approval is granted for a change to the hours of operation only. No approval is given or implied in this consent for any physical works, or any signage within or adjoining the subject property. It is the responsibility of the owner of the premises to ensure that the under awning signage that has been installed has the correct permissions if required.

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

I. *On-Going / Operational Conditions*

Noise from Plant

I1. The noise from plant, including but not limited to the kitchen exhaust fan, all refrigeration units, and all toilet exhaust fans shall not cause a sound level in excess of 5 dB(A) at any time above the background noise level at any point along the site boundaries.

(Reason: To ensure compliance with acceptable levels of noise established under best practice guidelines).

Hours of Operation

I2. The hours of operation are restricted to:

	Indoor Area	Footpath Seating Area
Monday to Sunday	7.00am - 10.00pm	7.00am - 6.00pm

Upon expiry of the permitted hours for the indoor area:

- (a) all restaurant 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.

All tables, chairs and associated furniture within the outdoor dining area must be removed from the footpath and packed away prior to the expiration of the permitted hours for the outdoor seating area.

(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

I3. The ongoing use of the premises must comply with all conditions pertaining to noise and vibration specified within the decision notice relating to the previous development consent (Ref. DA 464/10).

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

No Entertainment

I4. This approval is for a change to the hours of operation for an existing restaurant/cafe only, and does not authorise musical or other forms of entertainment. A separate development consent is required for any proposed entertainment.

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

Patron Behaviour

I5. 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 must ensure that the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood.
- (c) The management 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) If so directed by Council, the management 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)

Footpath Seating Permit Required

- I6. Footpath seating is not to be provided unless a footpath-seating permit is obtained from North Sydney Council. The permit must be permanently displayed on the premises in accordance with the provision of Council's footpath seating policy. Appropriate public liability insurance must be obtained before a footpath seating permit will be issued.

Note: Footpath seating permits are issued on an annual basis and Council reserves the right to review the operation of outdoor seating. Failure to comply with the terms of this consent and the footpath seating permit may result in the non-renewal of any footpath seating permit

(Reason: To ensure compliance with Council's policy for the provision of outdoor seating on footpaths)