

Original signed by Robyn Pearson on 13/12/2018

Date determined: 11/12/2018

Date operates: 13/12/2018

Date lapses: 13/12/2023

Development Consent No. 305/18

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

Procorp Developments Pty Ltd, C/- Haviland Architects

Land to which this applies

31A Fitzroy Street, Kirribilli
Lot No.: 3, DP: 908369

Proposal

Strata subdivision of an approved mixed use development.

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 proposed strata subdivision has been assessed against the North Sydney Local Environmental Plan 2013, the North Sydney Development Control Plan 2013 and the relevant State Planning Policies and found to be satisfactory in the site circumstances.

Council’s Senior Building Surveyor has raised no objection to the proposal subject to the imposition of appropriate conditions. Council’s Property Section has raised no objection subject to a condition requiring an airspace lease for the existing balcony encroachments.

Having regard to the provisions of Section 4.15 of the EP&A Act 1979 the application is considered to be satisfactory and is therefore recommended for approval subject to conditions of consent.

Date from which this Consent operates

12 December 2018

How were community views taken into account in making the decision

Notification of the application waived in accordance with Council's notification policy.

Period of Consent

Subject to Section 4.20 of the Act, this consent becomes effective and operates from 12 December 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 12 December 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.

Plans endorsed by the consent authority

Draft Strata Plan Titled:	Date	Drawn by	Received by Council
Location Plan	18/05/2018	Copland C. Lethbridge	18/09/2018
Basement, Ground Floor, First Floor, Second Floor, Attic Plan	18/05/2018	Copland C. Lethbridge	18/09/2018

Endorsed for and on behalf of North Sydney Council

**ROBYN PEARSON
TEAM LEADER ASSESSMENTS**

12 December 2018
Date of Endorsement

(i) Conditions

Consent is granted subject to the following conditions imposed pursuant to Section 4.16 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 4.15 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*.

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*

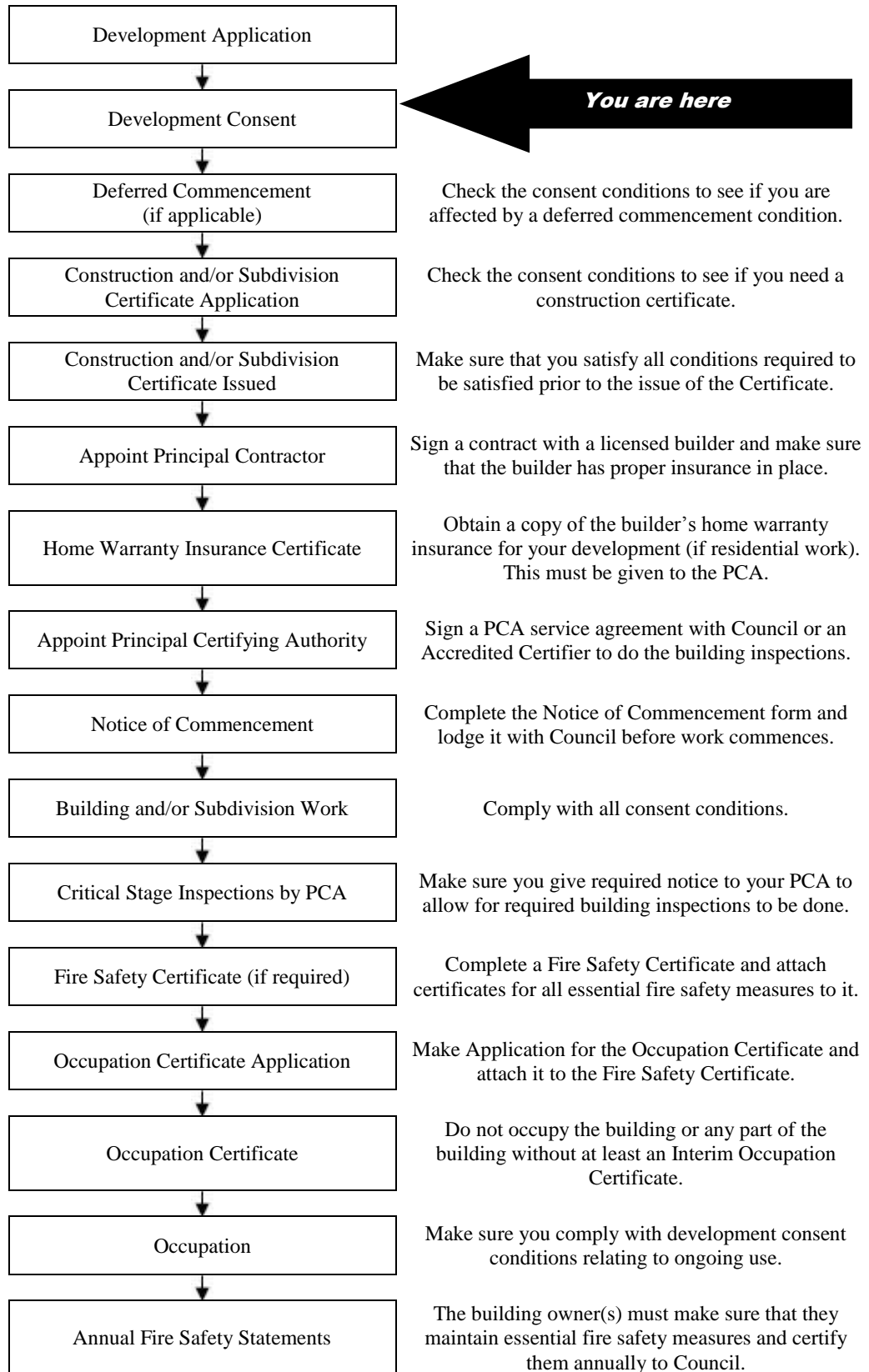
NSDCP 2013 means *North Sydney Development Control Plan 2013*

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.

(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 Plans/documentation	7
K. <i>Prior to the Issue of any Strata Certificate</i>	
K1. Encroachments	7
K2. Strata Subdivision	9
K3. Sydney Water	9
K4. Building and Unit Numbering (Strata Subdivisions)	10
K5. Services within Lots	10

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.

Draft Strata Plan Titled:	Date	Drawn by	Received by Council
Location Plan	18/05/2018	Copland C. Lethbridge	18/09/2018
Basement, Ground Floor, First Floor, Second Floor, Attic Plan	18/05/2018	Copland C. Lethbridge	18/09/2018

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

K. *Prior to the Issue of any Strata Certificate*

Encroachments

- K1. The Strata Certificate that authorises registration of the Strata Plan at NSW Land and Property Information shall not be issued until the applicant and Council have entered into a Heads of Agreement agreeing to the formalisation of a Lease Agreement over the existing balcony airspace over the public footpath in the road reserve of Fitzroy Street and Jeffreys Street in accordance with the Roads Act 1993. The required particulars of this agreement are as follows:

1. 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.
2. Prior to the issue of any strata subdivision, a Heads of Agreement must be entered into between Council and the encroaching owner. This must be followed by the execution of the Lease Agreement. Council's Registered Valuer will determine the appropriate market rent payable to Council.
3. The commencement date of the lease shall precede the release of the strata subdivision certificate.
4. A bond of \$20,000 must be lodged 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.
5. The lessee will be responsible for all maintenance and insurance.

Insurance

As part of the existing 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 encroachments by the existing 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 land owner 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.

The land owner 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.

Maintenance

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

Owners Consent from Council is required to undertake any additional works, other than general maintenance, to the encroachments.

Costs

All associated costs in relation to the encroachments will be borne by the property owners of 31A Fitzroy Street.

All other terms as Conditions are to be in accordance with Council's Encroachment Management Policy.

(Reason: To ensure that the existing encroachments over Council's land are regularised, insured and properly managed)

Strata Subdivision

K2. A Strata Certificate pursuant to the *Strata Schemes (Freehold Development) Act 1973*, that authorises registration of the strata plan, strata plan of subdivision or notice of conversion at NSW Land and Property Information Office must be obtained. If the Strata Certificate is obtained from an Accredited Certifier, other than the Council, the certifier is to provide Council with a copy of the endorsed Strata Certificate within 7 days of issuing the same, pursuant to the *Strata Schemes (Freehold Development) Regulation 2002*.

NOTES: For approval of the Strata Certificate by North Sydney Council, the following must be submitted to Council: -

- a) the original strata plans or strata plans of subdivision and administration sheets plus two (2) copies of each, and any original Instrument (including but not limited to any section 88B or 88E instruments) to be endorsed, all **enclosed in a protective cardboard tube** (to prevent damage during transfer);
- b) 2 additional copies of the strata plans or strata plans of subdivision and any relevant Instrument for submission to Council Customer Services and records department for electronic database scanning and copying;
- c) a completed *Subdivision or Strata Certificate Application* form together with payment of fee current at lodgement;
- d) written evidence that all applicable conditions of consent required to be satisfied, prior to issue of the Strata Certificate, have been satisfied. Council will check the consent conditions on the relevant consent(s). Failure to submit the required information will delay endorsement of the Strata Certificate, and may require payment of rechecking fees;
- e) **plans of subdivision and copies must not be folded; and**
- f) **council will not accept bonds in lieu of completing subdivision works.**

(Reason: To ensure compliance with relevant legislative requirements and maintenance of up to date Council records)

Sydney Water

K3. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained.

The Section 73 Certificate must be submitted to the Certifying Authority or North Sydney Council with the documentation to enable the issue of the Strata Certificate.

Notes:

1. Application must be made through an authorised Water Servicing Coordinator, for details see the Sydney Water web site www.sydneywater.com.au or telephone 13 20 92.
2. Following application, a 'Notice of Requirements' will be forwarded detailing water and sewer extensions to be built and charges to be paid. Please make early contact with the Coordinator since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

(Reason: To ensure compliance with Sydney Water requirements)

Building and Unit Numbering (Strata Subdivisions)

- K4. Prior to issue of the Strata Certificate, the person acting upon this consent must apply to North Sydney Council and receive written confirmation of the allocated street address and unit numbers for the building and the approved strata allotments within the completed project. These are the property addresses that will be recorded in Council records and must be displayed at the property in accordance with the provisions of the applicable Australian Standard (AS/NZS 4819:2011).

To assist Council, a draft proposal for numbering within the strata scheme or street should be submitted for concurrence to Council, as these numbers will be used to maintain Council's property and mapping database.

(Reason: To ensure that Council records are accurate, and that building and unit numbering complies with the requirements of Council's Property Addressing Policy. Proper building and unit numbering also assists emergency services in readily locating properties)

Services within Lots

- K5. A report must be provided by a Registered Surveyor certifying that all services (including but not limited to stormwater drainage, gas, electricity, telephone cable) as constructed or to be constructed are/will be contained within each lot or within the necessary easements to accommodate such services. The report must be submitted to the Certifying Authority for approval prior to the issue of any Subdivision Certificate.

(Reason: To ensure adequate servicing of the development)