

Original signed by Kim Rothe on 12/12/2018
Date determined 12/12/2018
Date operates 12/12/2018
Date lapses 12/12/2023

Development Consent No. 196/18

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

Indeep Planning Pty Ltd

Land to which this applies

Shop 25, 100 Miller Street, North Sydney
Lot No. 11, DP 583735

Proposal

Increase seating capacity to 108 patrons and increase trading hours to 11:30am - 10:00pm Monday to Sunday, for a licenced restaurant (Tenancy T 25)

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 extension to seating and hours of operation at tenancy 25, 100 Miller Street, North Sydney is considered to have no detrimental impact on the amenity of the surrounding area acceptable when assessed against the objectives and provisions contained within the *Environmental Planning and Assessment Act, 1979*, SEPP 64, North Sydney Local Environmental Plan 2013 and North Sydney Development Control Plan 2013.

The application is considered to be generally suitable in the circumstances and is therefore, recommended for approval, subject to conditions.

Date from which this Consent operates

12 December 2018

How were community views taken into account in making the decision

The subject application has been notified in accordance with Council policy. There have been no submissions received during the course of the assessment.

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

Dwg No.	Issue	Title	Drawn	Dated	Received
A.00	A	Existing building Plan	Lati Studio	22 June 2018	28 June 2018
A.01	A	Proposed Plan	Lati Studio	22 June 2018	28 June 2018
A.02	A	Section 01	Lati Studio	22 June 2018	28 June 2018
A.03	A	Section 02	Lati Studio	22 June 2018	28 June 2018
A.04	A	Elevation 01	Lati Studio	22 June 2018	28 June 2018
A.05	A	Elevation 02	Lati Studio	22 June 2018	28 June 2018

Endorsed for and on behalf of North Sydney Council

DAVID HOY
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*

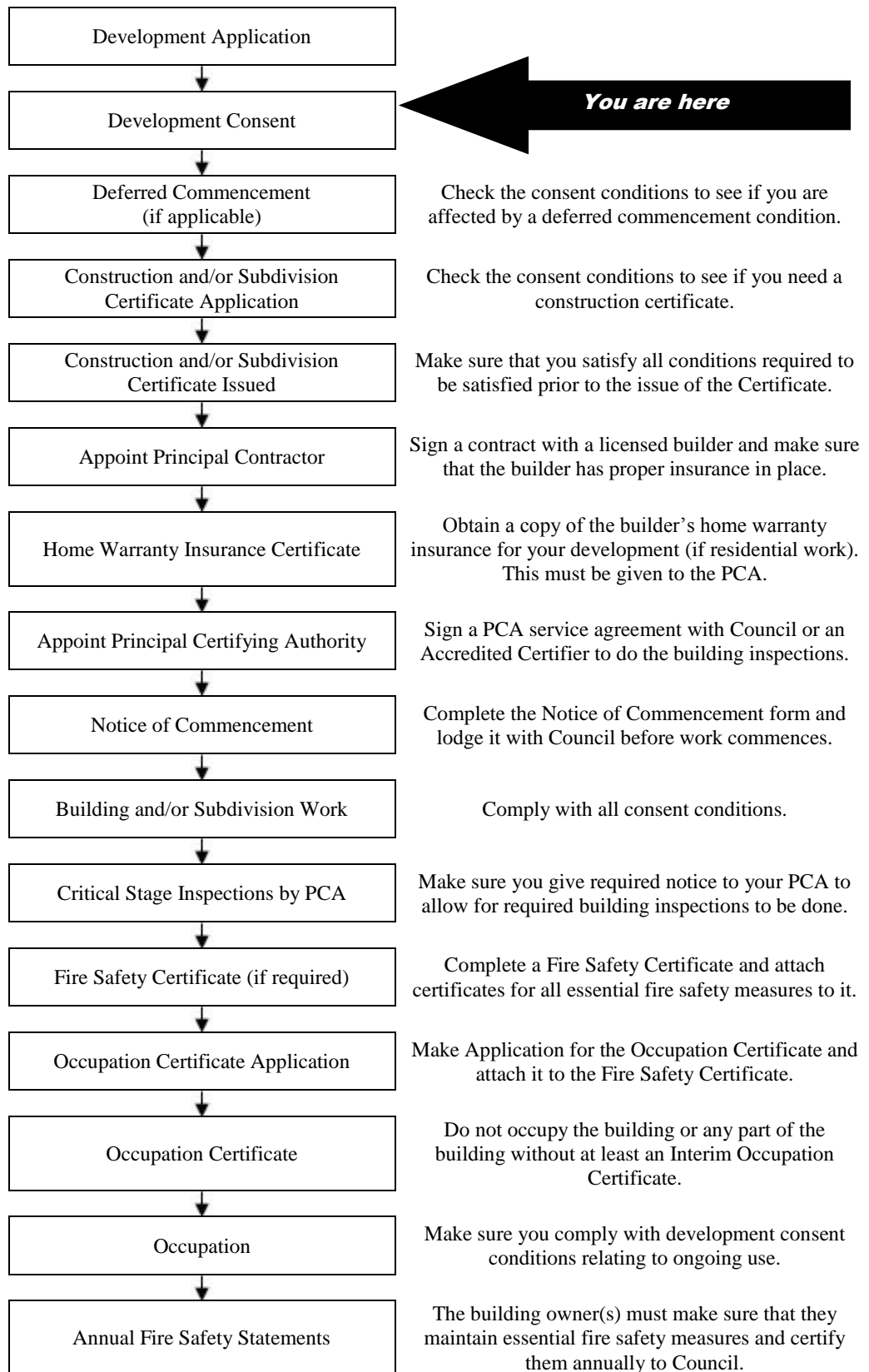
NSDCP 2013 means *North Sydney Development Control Plan 2013*

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.

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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.

Dwg No.	Issue	Title	Drawn	Dated	Received
A.00	A	Existing building Plan	Lati Studio	22 June 2018	28 June 2018
A.01	A	Proposed Plan	Lati Studio	22 June 2018	28 June 2018
A.02	A	Section 01	Lati Studio	22 June 2018	28 June 2018
A.03	A	Section 02	Lati Studio	22 June 2018	28 June 2018
A.04	A	Elevation 01	Lati Studio	22 June 2018	28 June 2018
A.05	A	Elevation 02	Lati Studio	22 June 2018	28 June 2018

(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 stamped approved plans, 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 Certifying Authority.

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

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 a Principal Certifying Authority (PCA)

- F2. Building work, demolition or excavation in accordance with the development consent must not be commenced until the developer has appointed a Principal Certifying Authority 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. Building work, demolition or excavation in accordance with the development consent 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 Certifying Authority appointed for the building work can issue an Occupation Certificate.

(Reason: Statutory)

Commencement of Works

- F5. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least 2 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)

I. On-Going / Operational Conditions

Hours of Operation

- I1. The hours of operation are restricted to:
11:00 am to 10:30 pm – Monday to 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)

Loading Dock – Operational Management Plan

- I2. The use and all loading and unloading operations must be carried out in accordance with the operational management plan prepared by Cromwell and received by Council on 30 September 2016. The loading dock hours of operation shall be limited in accordance with the following:

6:00 am to 10:00 pm – Seven days

(Reason: For pedestrian and traffic safety, and to maintain residential and public amenity)

Trade Waste

- I3. Trade waste water must be disposed of in accordance with the permit requirements of Sydney Water Corporation Ltd, Wastewater Source Control Branch.

(Reason: To ensure compliance with Sydney Water's requirements and protect the environment)

Waste Collection

- I4. Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.

(Reason: To ensure the amenity of surrounding properties)

Delivery Hours

- I5. No deliveries, loading or unloading associated with the premises are to take place between the hours of 10pm and 6am on any day.

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

Shop Premises Registration

- I6. The shop premises must be registered with Council prior to commencement of operation of the approved activity. Shop Premises Registration must be maintained at all times.

Note: Council registration forms can be found at <http://www.northsydney.nsw.gov.au>

(Reason: To ensure compliance with environmental health legislation)

Garbage and Recycling Facilities

- I7. Adequate provision must be made for the storage of waste and recyclable material generated by the premises.

(Reason: To ensure the provision of appropriate waste facilities and to ensure efficient collection of waste by collection contractors)

Noise from Plant and Equipment

- I8. 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 Industrial Noise Policy 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, commercial premises 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 Industrial Noise Policy published by the NSW Environment Protection Authority.

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

Noise Control (Licensed Premises)

- I9. The use of the premises must comply with the following:
- (a) The LA10 noise level emitted from the use of the premises must not exceed the background noise level (LA90) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) by more than 5dB between the hours of 7.00am and 12.00 midnight when assessed at the boundary of any affected residence.
 - (b) The LA10 noise level emitted from the use must not exceed the background noise level (LA90) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) between the hours of 12.00 midnight and 7.00am when assessed at the boundary of any affected residence.
 - (c) Notwithstanding compliance with (a) and (b) above, the noise from the use must not be audible within any habitable room or sleeping area in any affected residence between the hours of 12.00 midnight and 7.00am.
 - (d) The LA10 noise level emitted from the use must not exceed the background noise level (LA90) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) by more than 3dB when assessed indoors at any affected commercial premises with windows closed.
 - (e) The use of the premises must be controlled so that any emitted noise is at a level so as not to create an “*offensive noise*” as defined in the *Protection of the Environment Operations Act 1997*.

“affected residence” includes residential premises (including any lot in the strata scheme or any other strata scheme), premises for short-term accommodation and hospitals.

“boundary” includes any window or elevated window of an affected residence.
LA10 is the average maximum A-weighted Fast Response sound level emitted from the premises.

LA90 shall be measured in the absence of all noise from the premises (including mechanical plant noise).

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

(Reason: To ensure the amenity of surrounding land uses)

Patron Behaviour

- I10. 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 behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood.
- (c) 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.
- (d) 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)

Maximum Capacity – Premises and Footpath Seating

I11. The maximum number of patrons allowed by this consent is 108 persons/seats.

- a) the maximum number of patrons within the premises allowed by this consent is 108 persons/seats.

A notice must be displayed at all times in the front window of the premises (or any other clearly visible place) identifying the maximum capacity described in (a) and (b) above:

(Reason: provision of public information, and to assist in assessing ongoing compliance)