

**Original signed by Luke Donovan on 18/2/2019**

**Date determined 14/2/2019**

**Date operates 18/2/2019**

**Date lapses 18/2/2024**

## **Development Consent No. 381/18**

### **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”)

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#### **Applicant’s Name**

Ionic Management Pty Ltd

#### **Land to which this applies**

101-111 Willoughby Road, Crows Nest  
Lot No. 1, DP 1246335

#### **Proposal**

New outdoor seating areas associated with retail tenancies G03 (24 seats) and G05 (26 seats) adjacent to the public plaza.

#### **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 outdoor hours of operation of both tenancies are 7am to 10pm (7 days) which is consistent with the maximum trading hours in Section 7 of NSDCP 2013. Noting that the site is zoned B4 Mixed Use. The amended DA Acoustic Assessment report was prepared by Renzo Tonin dated 9 January 2019 concludes that the proposal is able to comply with the established noise criteria with the exception of a 1dB(A) potential exceedance, without the need for any specific physical noise controls or management measures.

An amended plan of management dated January 2019, which is recommended as a condition of consent, was submitted with the application that provides specific measures to manage noise from the outdoor dining areas including specifying times in which patrons will be asked to vacate outdoor dining area, and when external doors will be closed and furniture moved inside the tenancies.

**Date from which this Consent operates**

18 February 2019

**How were community views taken into account in making the decision**

The application was notified to surrounding properties between 30 November and 14 December 2018. No submissions were received.

**Period of Consent**

Subject to Section 4.20 of the Act, this consent becomes effective and operates from 18 February 2019. 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 18 December 2024.

**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**

<b>Drawing Number</b>	<b>Revision/Issue</b>	<b>Title</b>	<b>Drawn by</b>	<b>Dated</b>
A001	B	Ground Floor	M.Ryan	17 September 2018

**Endorsed for and on behalf of North Sydney Council**

DAVID HOY  
TEAM LEADER (ASSESSMENTS)

18 February 2019  
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*

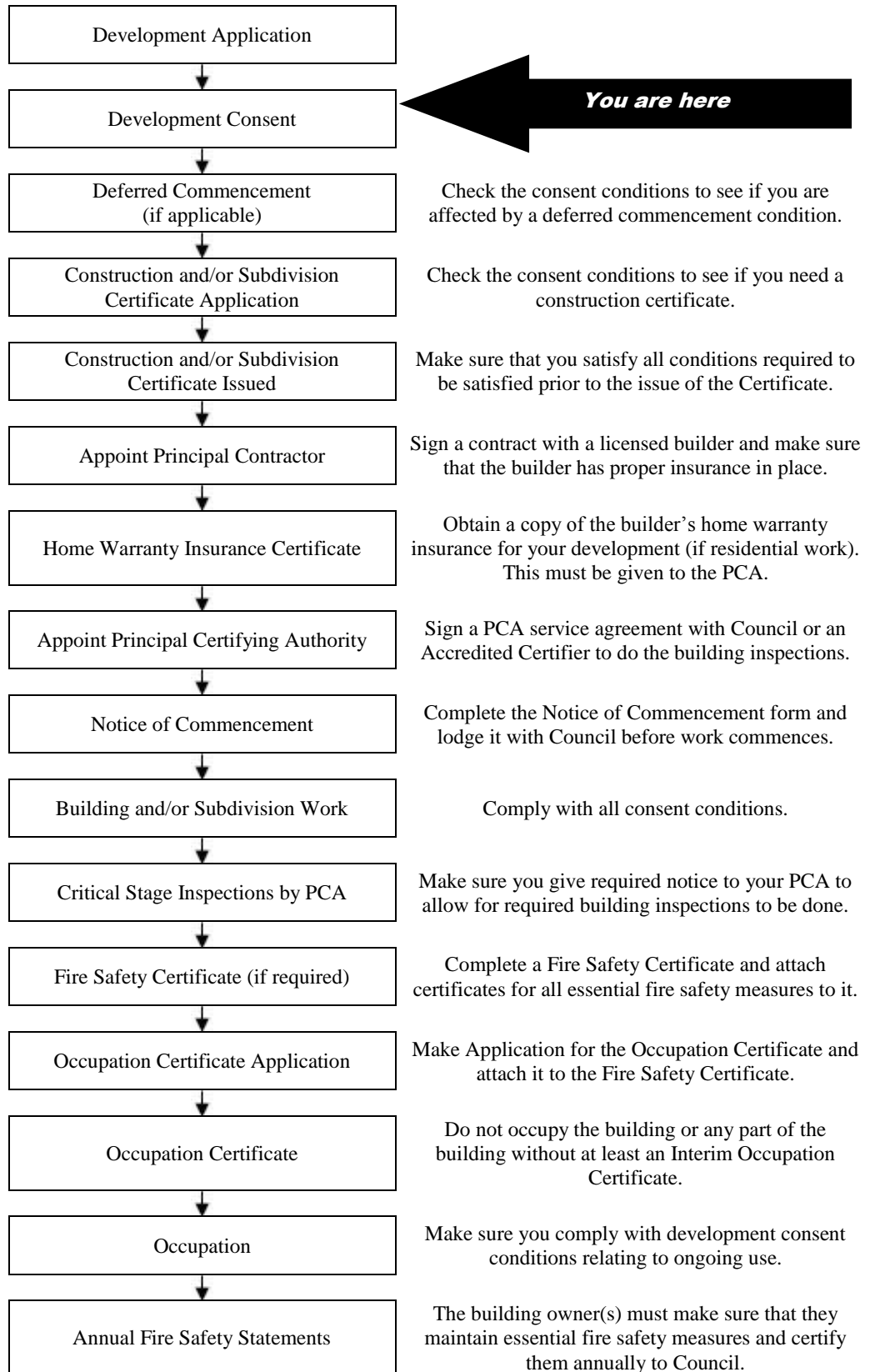
*NSDCP 2013* means *North Sydney Development Control Plan 2013*

*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.

Drawing Number	Revision/Issue	Title	Drawn by	Dated
A001	B	Ground Floor	M.Ryan	17 September 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 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)

**Outdoor Dining Areas**

- A3. The outdoor dining areas shall be limited to that documented on the approved plans.

(Reason: To ensure compliance with the approved development)

**I. *On-Going / Operational Conditions***

**Hours of Operation**

- II. The hours of operation for the outdoor dining areas nominated as T4 and T6 on the plan that forms part of Condition A1 of this consent are restricted to:

7am to 10pm (7 days a week)

Except as amended by the Premises Management Checklist – Outdoor Dining Areas for Tenancies G03 and G05 on upper ground level, Version 2.0 dated January 2019.

(Reason: to ensure that amenity of the surrounding locality is maintained and hours of operation are consistent with the NSDCP 2013)

### **No Entertainment**

I2. This approval is outdoor dining only and does not authorise musical or other forms of entertainment within these areas. A separate development consent is required for any proposed entertainment.

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

### **Maximum Capacity – Premises and Footpath Seating**

I3. The maximum number of patrons allowed by this consent is as detailed below:

- a) the maximum number of patrons within the outdoor dining area nominated as T6 that is in association with Tenancy G 05 is 26 seats.
- b) the maximum number of patrons within the outdoor dining area nominated as T4 that is in association with Tenancy G 03 is 24 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: Protection of residential amenity, provision of public information, and to assist in assessing ongoing compliance)

### **Orientation of Tables and Chairs**

I4. Tables and chairs located within the outdoor seating areas are to be located parallel to the shop front of the building, and not in a manner that allows chairs to project into the 1.55m wide clear pedestrian corridor.

(Reason: To ensure adequate and unobstructed pedestrian amenity relating to the provision of outdoor seating on footpaths)

### **Compliance with Premises Management Checklist**

I5. The on-going use of the outdoor dining areas must at all times be in accordance with the Premises Management Checklist – Outdoor Dining Areas for Tenancies G03 and G05 on upper ground level, Version 2.0 dated January 2019.

(Reason: The ensure the effective management of the outdoor dining areas and to reduce amenity impacts on the public)