

Original signed by	David Hoy	on	6/6/19
Date determined:	6/6/19		
Date operates:	6/6/19		
Date lapses:	6/6/24		

Play Co Pty Ltd
46 Evans Street
BALMAIN NSW 2041

D99/19
RF3 (CIS)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
NOTICE OF DETERMINATION – Approval

Development Application Number: 99/19

Land to which this applies: Shops 2 and 3, 567 Pacific Highway, St Leonards
Lot No.: 1, SP: 96792

Applicant: Play Co Pty Ltd

Proposal: First use of shop 2 as a restaurant & shop 3 as a cooking school, and proposed hours of operation 7am to 10pm. Alterations to the shopfront of Shops 2 and 3 to accommodate mechanical exhaust grilles and business identification signage.

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.

Date of Determination: 6 June 2019

Reason for approval: The proposed use of Shops 2 & 3 as a restaurant and cooking school, comply with the relevant LEP and DCP controls. The proposed ventilation at the subject premises is designed to minimise possible smell and noise impacts on the residential units on the next floor above the proposed restaurant and cooking school. The recommended conditions of consent would ensure the usage and hours of operation are satisfactory; and that the design of the development includes mitigation features to ameliorate impacts to the residential components of the contemporary mixed-use developments in the locality. The approval would satisfy the objectives and provisions of the Environmental Planning and Assessment Act 1979, SEPP 64, North Sydney Local Environmental Plan 2013 and North Sydney Development Control Plan 2013.

Consent to operate from: 6 June 2019

Consent will lapse on: 6 June 2024

Period of Consent

Subject to Section 4.20 of the Act, this consent becomes effective and operates from the date listed above. The consent lapses five years after the date of consent in accordance with Section 4.53 of the Act and cannot be extended. To activate this consent, works must physically commence onsite by 6 June 2024.

How community views were taken into account:

Subject to conditions of consent, the proposed uses would be in the public interest because they meet the zone objectives in a manner that complies with the relevant DCP and other controls. No submissions were received.

Review of determination and right of appeal:

Within 6 months after the date of notification of the decision, 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. A review of determination should be lodged as soon as possible, and preferably no later two months after the date of notification of the decision to enable the review to be completed within the six-month period.

Plans endorsed by the consent authority – please refer to condition A1.

Endorsed for and on behalf of North Sydney Council

DATE

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

(i) Conditions

Consent is granted subject to the following conditions imposed pursuant to Section 4.17 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 4.17 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.

Principal Certifier for building or subdivision work means the certifier appointed as the principal certifier for the building work under section 6.6 (1) or for the subdivision work under section 6.12 (1).

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.

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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 by	Dated	Received
DA 00	C	Cover Sheet	Play Co Pty Ltd	2 April 2019	18 April 2019
DA 01	C	Site Plan	Play Co Pty Ltd	22 March 2019	18 April 2019
DA 02	C	Lower ground floor	Play Co Pty Ltd	22 March 2019	18 April 2019
DA 03	C	Upper ground floor	Play Co Pty Ltd	2 April 2019	18 April 2019
DA 04	C	Pacific Highway Elevation	Play Co Pty Ltd	2 April 2019	18 April 2019
DA 05	C	Clarke Lane Elevation	Play Co Pty Ltd	22 March 2019	18 April 2019
DA 07	C	Signage Detail Shop 2	Play Co Pty Ltd	2 April 2019	18 April 2019
DA 08	C	Signage Detail Shop 3 Pacific Highway	Play Co Pty Ltd	2 April 2019	18 April 2019
DA 09	C	Signage Detail Shop 3 Clarke Lane (except for details 1 & 2 on DA09 which are not approved)	Play Co Pty Ltd	22 March 2019	18 April 2019

(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

Building Code of Australia

- F1. All building work must be carried out in accordance with the provisions of the Building Code of Australia.

(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

No retail sale of food/drinks is approved from shop 3 (cooking school).

I1. The retail sale or distribution of food/drinks from shop 3 (cooking school) is not permitted.

(Reason: To ensure that the operation of the remises is consistent with its stated purpose, and to manage local traffic and amenity)

Hours of Operation

I2. The hours of operation for Shops 2 and 3 are restricted to:

Shop 2	7am to 10 pm – Monday to Sunday
Shop 3	7am to 10 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)

Shop Premises Registration

- I3. The shop premises shops 2 and 3 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)

Patron Behaviour

- I4. The proprietors/management of the shops 2 and 3 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 – shop 2 and 3 premises

- I5. a) The maximum number of patrons allowed by this consent in shop 2 – restaurant by this consent is **35** persons/seats.
- b) the maximum number of persons allowed within shop 3 - cooking school by this consent is to be consistent with the following staffing details:
- Cooking school classes will comprise a maximum of 4 students.
 - Cooking school classes will be limited to 2 per day
 - 1 reception staff will be at the counter during open hours,
 - 1 teacher will be teaching in class

- The reception and waiting area are only to provide seating for students / clients to wait while attending or enrolling in classes.

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)

Cleanliness and Maintenance of Food Preparation Areas

I6. To ensure that adequate provision is made for the cleanliness and maintenance of all food preparation areas, all building work in connection with the occupation or use of the premises for the preparation and storage of food shall be designed and carried out in accordance with the requirements of: -

- a) the Food Act 2003;
- b) the Food Regulation;
- c) the relevant Australian Standards;
- d) Council's Food Premises Code;
- e) Sydney Water Corporation - Trade Waste Section;
- f) the Protection of the Environment Operations Act and associated Regulations; and
- g) the Building Code of Australia.

Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The Construction Certificate plans and documentation must incorporate details of the following:

- a) construction, materials and finishes;
- b) installation of fixtures, fittings and equipment;
- c) washing facilities, other facilities and special requirements;
- d) mechanical ventilation and exhaust discharges; and
- e) temperature control

The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To ensure compliance with acceptable standards for the construction of food premises established under environmental health and safety legislation)

Garbage and Recycling Facilities

17. Adequate provision must be made for the storage of waste and recyclable material generated by the premises. Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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

Noise from Plant and Equipment

18. 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)

Certification for Mechanical Exhaust Ventilation

19. Prior to issue of an Occupation Certificate and following the completion, installation, and testing of all the mechanical ventilation systems, a Mechanical Ventilation Certificate of Completion and Performance in accordance with Clause A2.2(a)(iii) of the Building Code of Australia, must be submitted to, and approved by, the Certifying Authority.

(Reason: To ensure compliance with acceptable standards for the construction and operation of mechanical plant)

Trade Waste

I10. 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)

Connection to Sewers of Sydney Water Corporation

I11. In the event a Trade Waste licence is required, waste water arising from the use must be directed to the sewers of the Sydney Water Corporation (SWC) under a Trade Waste License Agreement. Details of the Corporation's requirements should be obtained prior to the commencement of any work.

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

Noise and Vibration Impact

I12. The on-going use of the premises approved under this consent must comply with all conditions pertaining to noise and vibration specified in this consent.

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

Odour

I13. Use of the mechanical ventilation system must not give rise to offensive odour within the meaning of the *Protection of the Environment Operations Act 1997*.

(Reason: To ensure the amenity of surrounding properties)

Waste Collection

I14. 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

I15. 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

- I16. 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)

Hours of Illumination

- I17. All illuminated signs approved by this consent must cease illumination between the hours of 10.00 pm and 7.00 am.

(Reason: To ensure appropriate forms of signage that are consistent with Council's controls and those that are desired for the locality, and do not interfere with amenity of nearby properties)