

Original signed by David Hoy on 29/7/2019

Date determined: 26/7/2019

Date operates: 26/7/2019

Date lapses: 26/7/2024

Urbanism
Attention: Wesley Folitarik
Level 40, 100 Miller Street
NORTH SYDNEY NSW 2060

D98/19
HS1 (CIS)

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

Development Application Number: 98/19

Land to which this applies: 18 Falcon Street, North Sydney
Lot No.: 0, SP: 51823

Applicant: Urbanism

Proposal: Change of use to a food and drink premises and extension of operating 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.

Date of Determination: 26 July 2019

Reason for approval: The development application has been assessed against the North Sydney Local Environmental Plan 2013 and the North Sydney Development Control Plan 2013. The majority of the proposed works are at the rear of the subject site. The proposed operating hours of the food and drink premise are non-compliant with Council's late-night trading controls located in a B4 mixed use zone. However, subject to Condition I4, the proposed operating hours will undergo a trial for six (6) months.

The works is reasonably consistent with the form and scale of the surrounding area. Having regard to the provisions of Section 4.15(1) of the Environmental Planning & Assessment Act 1979, the proposed development will not have any unreasonable amenity or environmental impacts. The application is considered to be satisfactory and therefore can be approved.

Consent to operate from: 26 July 2019

Consent will lapse on: 26 July 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 26 July 2024.

How community views were taken into account:

The application was notified to adjoining property owners and the Holtermann Precinct on the 5 July 2019, inviting comment between 14 July 2019 and 28 July 2019. One (1) submissions was received by Council which was summarised in the delegated report.

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.

INDEX OF CONDITIONS

	Page No.
A. <i>Conditions that Identify Approved Plans</i>	
A1. Development in Accordance with Plans/documentation	7
A2. Plans on Site	7
A3. No Demolition of Extra Fabric	7
A4. Terms of Consent	7
C. <i>Prior to the Issue of a Construction Certificate (and ongoing, where indicated)</i>	
C1. Dilapidation Report Damage to Public Infrastructure	8
C2. Waste Management Plan	8
C3. Bond for Damage and Completion of Infrastructure Works – Stormwater, Kerb and Gutter, Footpaths, Vehicular Crossing and Road Pavement	8
C4. Cleanliness and Maintenance of Food Preparation Areas	9
C5. Garbage and Recycling Facilities	10
C6. Noise from Plant and Equipment	10
C7. Vibration from Plant and Equipment	11
C8. Compliance with Acoustic Report	11
C9. Mechanical Exhaust Ventilation	11
C10. Security Deposit/ Guarantee Schedule	12
C11. Amended Plan of Management	12
C12. NSW Police Conditions	12
C13. Hydraulic Lift Window	14
D. <i>Prior to the Commencement of any Works (and continuing where indicated)</i>	
D1. Public Liability Insurance – Works on Public Land	14
D2. Commencement of Works Notice	14
E. <i>During Demolition and Building Work</i>	
E1. Parking Restrictions	14
E2. Road Reserve Safety	15
E3. Temporary Disposal of Stormwater Runoff	15
E4. Removal of Extra Fabric	15
E5. Noise and Vibration	15
E6. No Work on Public Open Space	16
E7. Developer's Cost of Work on Council Property	16
E8. No Removal of Trees on Public Property	16
E9. Construction Hours	16
E10. Health and Safety	17
E11. Prohibition on Use of Pavements	17
E12. Plant & Equipment Kept Within Site	17
E13. Waste Disposal	17
F. <i>Prescribed Conditions imposed under EP&A Act and Regulations and other relevant Legislation</i>	
F1. National Construction Code	18
F2. Appointment of a Principal Certifier (previously known as a PCA)	18

F3.	Construction Certificate	18
F4.	Occupation Certificate	18
F5.	Critical Stage Inspections	18
F6.	Demolition	18
<i>G. Prior to the Issue of an Occupation Certificate</i>		
G1.	Access to Premises	19
G2.	Noise Certification	19
G3.	Certification for Mechanical Exhaust Ventilation	19
G4.	Damage to Adjoining Properties	19
G5.	Utility Services	19
<i>I. On-Going / Operational Conditions</i>		
I1.	Hours of Operation	20
I2.	Hours of Operation – trial period	20
I3.	Trade Waste	20
I4.	Noise and Vibration Impact	21
I5.	No Entertainment and Amplified Music	21
I6.	Patron Behaviour	21
I7.	Plan of Management	21
I8.	Daily Cleaning	22
I9.	Waste Collection	22
I10.	Trade Waste Collection (Crows Nest Trade Waste Policy)	22
I11.	Delivery Hours	22
I12.	Shop Premises Registration	22
I13.	NSW Police Conditions	23
I14.	Acoustic Amenity	23

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.

Plan No.	Issue	Title	Drawn by	Received
A0-01	C	Legend	Chris McNally	18.4.2019
A2-00	C	Proposed Ground Floor Plan	Chris McNally	18.4.2019
A3-00	C	Existing Falcon Street Elevation	Chris McNally	18.4.2019
A3-01	C	Proposed Falcon Street Elevation	Chris McNally	18.4.2019

(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)

No Demolition of Extra Fabric

- A3. Alterations to, and demolition of the existing building shall be limited to that documented on the approved plans.

(Reason: To ensure compliance with the approved development)

Terms of Consent

- A4. Approval is granted for fitout works and a change of use as a food and drink premises at No. 18 Falcon Street, Crows Nest.

No approval is granted or implied for any outdoor seating and/or any other works not covered by this consent.

No approval is granted or implied for signage. Signage may be erected under the provisions of SEPP (2008).

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

C. Prior to the Issue of a Construction Certificate (and ongoing, where indicated)

Dilapidation Report Damage to Public Infrastructure

- C1. A dilapidation survey and report (including photographic record) must be prepared by a suitably qualified consultant which details the pre-developed condition of the existing public infrastructure in the vicinity of the development site. Particular attention must be paid to accurately recording any pre-developed damaged areas so that Council is fully informed when assessing any damage to public infrastructure caused as a result of the development. A copy of the dilapidation survey and report is to be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The developer may be held liable for all damage to public infrastructure in the vicinity of the site, where such damage is not accurately recorded and demonstrated as pre-existing under the requirements of this condition.

The developer shall bear the cost of carrying out works to restore all public infrastructure damaged as a result of the carrying out of the development, and no occupation of the development shall occur until damage caused as a result of the carrying out of the development is rectified.

A copy of the dilapidation survey and report must be lodged with North Sydney Council by the Certifying Authority with submission of the Construction Certificate documentation.

(Reason: To record the condition of public infrastructure prior to the commencement of construction)

Waste Management Plan

- C2. A Waste Management Plan is to be submitted for approval by the Certifying Authority prior to the issue of any Construction Certificate. The plan must include, but not be limited to:
- a) The estimated volume of waste and method of disposal for the construction and operation phases of the development;
 - b) The design of the on-site waste storage and recycling area; and
 - c) Administrative arrangements for waste and recycling management during the construction process.

The approved Waste Management Plan must be complied with at all times in the carrying out of the development.

(Reason: To encourage the minimisation of waste and recycling of building waste)

Bond for Damage and Completion of Infrastructure Works – Stormwater, Kerb and Gutter, Footpaths, Vehicular Crossing and Road Pavement

- C3. Prior to the issue of any Construction Certificate, security deposit or bank guarantee must be provided to Council to the sum of \$1,500 to be held by Council for the payment of cost for any/all of the following:

- a) making good any damage caused to any property of the Council as a consequence of the doing of anything to which this consent relates,
- b) completing any public work (such as road work, kerbing and guttering, footway construction, stormwater drainage and [environmental controls](#)) required in connection with this consent
- c) remedying any defects in any such public work that arise within 6 months after the work is completed.

The security required by this condition and in the schedule contained later in these conditions must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

The security will be refundable following the expiration of 6 months from the issue of any final Occupation Certificate or completion of public work required to be completed (whichever is the latest) but only upon inspection and release by Council's Engineers.

Council shall have full authority to make use of the bond for such restoration works as deemed necessary by Council in circumstances including the following: -

- where the damage constitutes a hazard in which case Council may make use of the security immediately;
- the applicant has not repaired or commenced repairing damage within 48 hours of the issue by Council in writing of instructions to undertake such repairs or works;
- works in the public road associated with the development are to an unacceptable quality; and
- the Certifying Authority must ensure that security is provided to North Sydney Council prior to issue of any Construction Certificate.

(Reason: To ensure appropriate security for works on public land and an appropriate quality for new public infrastructure)

Cleanliness and Maintenance of Food Preparation Areas

C4. 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

C5. 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

C6. 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)

Vibration from Plant and Equipment

- C7. The use of all plant and equipment to be installed on the premises must comply with the vibration limits specified in “Assessing Vibration: a technical guideline” issued by the NSW Environment Protection Authority, at the boundary of any affected receiver.

A certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants must be submitted to the Certifying Authority, certifying that all plant and equipment on the site, together with the proposed plant and equipment, operating contemporaneously will comply with the requirements of this condition.

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.

“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 and commercial premises and such other affected receiver as may be notified by the Council in writing.

“boundary” includes any window or elevated window of an affected residence.

“contemporaneously” means *existing at or occurring in the same period of time* (Macquarie Dictionary 3rd rev. ed. 2004).

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

Compliance with Acoustic Report

- C8. The recommendations contained in the acoustic report prepared by GHD dated June 2019, must be implemented during construction and use of the development.

The noise emission criteria stated in the said GHD acoustic assessment must be achieved at the development.

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

Mechanical Exhaust Ventilation

- C9. A statement from an appropriately qualified and practising Mechanical Engineer is required detailing how the exhaust ventilation system will be installed in accordance with AS1668. 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 and operation of mechanical plant)

Security Deposit/ Guarantee Schedule

C10. All fees and security deposits/ guarantees in accordance with the schedule below must be provided to Council prior to the issue of any Construction Certificate:

Security deposit/ guarantee	Amount (\$)
Footpath Damage Bond	\$1,500.00
TOTAL BONDS	\$1,500.00

The security required by the above schedule must be provided by way of a deposit with the Council; or other such guarantee that is satisfactory to Council (such as a bank guarantee). Any guarantee provided as security must name North Sydney Council as the nominated beneficiary and must not be subject to an expiry date.

(Reason: Compliance with the development consent)

Amended Plan of Management

C11. The hours of operation as contained in Page 6 of original Plan of Management dated 18 April 2019 and prepared by Urbanism is to be updated as follows:

1. Hours of Operation:

Sunday to Wednesday: 11.00am – 12.00pm (midnight)

Thursday to Saturday: 11.00am – 3.00am (6 month trial)

2. The Plan of Management is to specify that one (1) security guard is to be employed at the premises between 1.00am and 3.00am Friday to Sunday.

A copy of the amended Plan of Management must be submitted to the Principal Certifying Authority for approval prior to the issue of any construction certificate.

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

NSW Police Conditions

C12. 1) The restaurant should be clearly identified with signage that is visible from the street. This will enable all emergency services to locate the premises. Visibility into the restaurant should not be obscured by vegetation or any type of structure which can create opportunities for concealment.

2) An electronic surveillance system should be included to provide maximum surveillance of all areas of the business including entry/exits, service areas, corridors and areas where cash is either kept or handled. The system should be capable of recording high-quality images of events. The recording equipment should be locked away to reduce the likelihood of tampering. Monitors should be placed in the store/office areas to allow staff to view all areas under camera surveillance.

- 3) An intruder alarm system should be designed and installed to the Australian Standard – Domestic & Commercial Alarm Systems to enhance the physical security of the premises.
- 4) Appropriate signage should be erected inside and around the perimeter of the entire property to warn of security treatments in place e.g. “This site is under 24-hour video surveillance”.
- 5) All ‘Staff only’ areas should be clearly marked as such and physical barriers such as doors and gates should be erected to prevent unauthorised entry.
- 6) Staff should be provided with a secure area in which to store their personal effects whilst working.
- 7) Lighting in and around the proposed development should comply with Australian Standard AS: 1158 and should provide for adequate, uniform illumination. External lighting should be of a ‘white light’ source. Note that high or low pressure sodium ‘orange’ lighting is not compatible with quality surveillance systems. Internal lighting should be controlled from ‘Staff only’ areas, away from public access. If this is not possible, use tamper-resistant switches. Luminaries (light covers) should be designed to reduce opportunities for malicious damage. Internal after-hours security lighting should provide adequate illumination to allow inspection by security patrols.
- 8) Doors should be of solid construction and should be fitted with quality deadlock sets that comply with the Building Code of Australia and Australian Standards – Lock Sets AS:4145.
- 9) Windows within the business should also be of solid construction. These windows should be fitted with quality window lock sets that comply with the Australian Standards – Lock Sets AS:4145. Glass within doors and windows should be reinforced to restrict unauthorised access. The glass can be either fitted with a shatter-resistant film or laminated to withstand physical attacks.
- 10) Tills should be positioned out of reach and should enable staff to maintain vision of the servicing area and beyond.
- 11) An efficient and secure Cash Collection and Storage system should be implemented to minimise the risk of robbery offences and should include a safe designed and installed to the Australian Standards.
- 12) An emergency control and evacuation plan should be implemented within the business. Management and staff should be trained in the execution of the plan in emergency situations.
- 13) Wheelchair access (ramp) should at no time be blocked nor impede access to anyone with a disability.
- 14) An after-hours contact for the restaurant should be provided to North Shore Police.

(Reason: To ensure the safety of the owners, customers and general community)

Hydraulic Lift Window

- C13. The proposed hydraulic lift window on the Falcon Street elevation must be amended to open inwards and must not overhang over the footpath along Falcon Street.

The window is always to remain closed from 12am till close (Thursday to Sunday).

(Reason: To ensure private property does not intrude on to public Land and acoustic amenity is maintained for nearby residents)

D. Prior to the Commencement of any Works (and continuing where indicated)

Public Liability Insurance – Works on Public Land

- D1. Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of public land and the undertaking of approved works within Council's road reserve or public land, as approved by this consent. The Policy is to note, and provide protection/full indemnification for North Sydney Council, as an interested party. A copy of the Policy must be submitted to Council prior to commencement of any works. The Policy must be valid for the entire period that the works are being undertaken.

(Note: Applications for hoarding permits, vehicular crossings etc will require evidence of insurance upon lodgement of the application.)

(Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land)

Commencement of Works Notice

- D2. 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 building work, demolition or excavation in accordance with this development consent.

(Reason: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

E. During Demolition and Building Work

Parking Restrictions

- E1. Existing public parking provisions in the vicinity of the site must be maintained at all times during works. The placement of any barriers, traffic cones, obstructions or other device in the road shoulder or kerbside lane is prohibited without the prior written consent of Council. Changes to existing public parking facilities/restrictions must be approved by the North Sydney Local Traffic Committee. The Developer will be held responsible for any breaches of this condition, and will incur any fines associated with enforcement by Council regulatory officers.

(Reason: To ensure that existing kerbside parking provisions are not compromised during works)

Road Reserve Safety

- E2. All public footways and roadways fronting and adjacent to the site must be maintained in a safe condition at all times during the course of the development works, with no obstructions caused to the said footways and roadways. Construction materials and plant must not be stored in the road reserve without approval of Council. A safe pedestrian circulation route and a pavement/route free of trip hazards must be maintained at all times on or adjacent to any public access ways fronting the construction site.

Where public infrastructure is damaged, repair works must be carried out in when and as directed by Council officers (at full Developer cost). Where pedestrian circulation is diverted on to the roadway or verge areas, clear directional signage and protective barricades must be installed in accordance with AS1742-3 (1996) "Traffic Control Devices for Work on Roads".

If pedestrian circulation is not satisfactorily maintained across the site frontage, and action is not taken promptly to rectify the defects, Council may undertake proceedings to stop work.

(Reason: Public Safety)

Temporary Disposal of Stormwater Runoff

- E3. During construction, stormwater runoff must be disposed in a controlled manner that is compatible with the erosion and sediment controls on the site. Immediately upon completion of any impervious areas on the site (including roofs, driveways, paving) and where the final drainage system is incomplete, the necessary temporary drainage systems must be installed to reasonably manage and control runoff as far as the approved point of stormwater discharge. Such ongoing measures must be to the satisfaction of the Certifying Authority.

(Reason: Stormwater control during construction)

Removal of Extra Fabric

- E4. Should any portion of the existing building, trees, or curtilage of the site which is indicated on the approved plans to be retained be damaged for whatever reason, all the works in the area of the damaged portion are to cease and written notification of the damage is to be given to Council forthwith. No work is to resume until the written approval of Council to do so is obtained. Failure to comply with the provisions of this condition may result in the Council taking further action including legal proceedings if necessary.

(Reason: To ensure compliance with the terms of this development consent)

Noise and Vibration

- E5. The works must be undertaken in accordance with the "Interim Construction Noise Guideline" published by the NSW Environment Protection Authority, to ensure excessive levels of noise and vibration do not occur so as to minimise adverse effects experienced on any adjoining land.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

No Work on Public Open Space

E6. No work can be undertaken within adjoining public lands (ie. Parks, Reserves, Roads etc) without the prior written consent of Council. In this regard the developer is to liaise with Council prior to the commencement of any design works or preparation of a Construction and Traffic Management Plan.

(Reason: Protection of existing public infrastructure and land and to ensure public safety and proper management of public land)

Developer's Cost of Work on Council Property

E7. The developer must bear the cost of all works associated with the development that occurs on Council's property, including the restoration of damaged areas.

(Reason: To ensure the proper management of public land and funds)

No Removal of Trees on Public Property

E8. No trees on public property (footpaths, roads, reserves, etc.) unless specifically approved by this consent shall be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works.

(Reason: Protection of existing environmental infrastructure and community assets)

Construction Hours

E9. Building construction and works must be restricted to within the hours of 7.00 am to 5.00 pm Monday to Friday and on Saturday to within the hours of 8.00 am to 1.00 pm inclusive, with no work on Sundays and Public Holidays.

Demolition and excavation works must be restricted to within the hours of 8.00 am to 5.00 pm Monday to Friday only. For the purposes of this condition:

- a) "Building construction" means any physical activity on the site involved in the erection of a structure, cladding, external finish, formwork, fixture, fitting of service installation and the unloading of plant, machinery, materials or the like.
- b) "Demolition works" means any physical activity to tear down or break up a structure (or part thereof) or surface, or the like, and includes the loading of demolition waste and the unloading of plant or machinery.
- c) "Excavation work" means the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders, or the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site and includes the unloading of plant or machinery associated with excavation work.

All builders, excavators must display, on-site, their twenty-four (24) hour contact telephone number, which is to be clearly visible and legible from any public place adjoining the site.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

Health and Safety

E10. All work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that warn the public to keep out of the site, and provide a contact telephone number for enquiries.

Further information and details regarding occupational health and safety requirements for construction sites can be obtained from the internet at www.workcover.nsw.gov.au

(Reason: To ensure the health and safety of the community and workers on the site)

Prohibition on Use of Pavements

E11. Building materials must not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand). A suitable sign to this effect must be erected adjacent to the street alignment.

(Reason: To ensure public safety and amenity on public land)

Plant & Equipment Kept Within Site

E12. All plant and equipment used in the undertaking of the development/ works, including concrete pumps, wagons, lifts, mobile cranes, hoardings etc, must be situated within the boundaries of the site (unless a permit is obtained from Council beforehand) and so placed that all concrete slurry, water, debris and the like must be discharged onto the building site, and is to be contained within the site boundaries.

Details of Council requirements for permits on public land for standing plant, hoardings, storage of materials and construction zones and the like are available on Council's website at www.northsydney.nsw.gov.au.

(Reason: To ensure public safety and amenity on public land)

Waste Disposal

E13. All records demonstrating the lawful disposal of waste must be retained and kept readily accessible for inspection by regulatory authorities such as North Sydney Council and the Environmental Protection Authority.

(Reason: To ensure the lawful disposal of construction and demolition waste)

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)

Critical Stage Inspections

F5. Building work must be inspected by the Principal Certifying Authority on the critical stage occasions prescribed by the EP&A Act and its Regulations, and as directed by the appointed Principal Certifying Authority.

(Reason: Statutory)

Demolition

F6. Demolition work must be undertaken in accordance with the provisions of AS2601-Demolition of Structures.

(Reason: To ensure that work is undertaken in a professional and responsible manner and protect adjoining property and persons from potential damage)

G. *Prior to the Issue of an Occupation Certificate*

Access to Premises

- G1. Prior to the issue of any Occupation Certificate, a certificate must be prepared by an appropriately qualified and practising Civil Engineer certifying that access and facilities for persons with a disability in accordance with the Building Code of Australia and AS Disability (Access to Premises – buildings) Standards 2010 (Premises Standards) has been provided. This certificate must be submitted to, and approved by, the Certifying Authority prior to issue of the Occupation Certificate.

(Reason: Equitable access and facilities for people with a disability)

Noise Certification

- G2. Prior to issue of the any Occupation Certificate a certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants is to be submitted to, and approved by, the Certifying Authority certifying that the noise and vibration from use of the development complies with the conditions of consent herein.

(Reason: To ensure acoustic amenity)

Certification for Mechanical Exhaust Ventilation

- G3. 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)

Damage to Adjoining Properties

- G4. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.

(Reason: To ensure adjoining owner's property rights are protected)

Utility Services

- G5. All utility services shall be adjusted, to the correct levels and/or location/s required by this consent, prior to issue of an occupation certificate. This shall be at no cost to Council.

(Reason: To ensure compliance with the terms of this consent)

I. On-Going / Operational Conditions

Hours of Operation

11. The hours of operation are restricted to:

- 11.00am – 11.00pm (Monday to Wednesday)
- 11.00am – 12.00 midnight (Thursday to Saturday)
- 11.00am – 10.00pm (Sunday)

Upon expiry of the permitted hours:

- (a) all restaurant service (and entertainment) 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)

Hours of Operation – trial period

12. Notwithstanding **Condition 11** above, the approved use may operate between Thursday to Saturday from 11.00am to 3.00am for a trial period of six (6) months from the date of issue of the first Occupation Certificate, being interim or otherwise. Council must be informed in writing of the date of commencing the trial period.

In order for the above trial hours of operation to be confirmed as ongoing, a modification application must be lodged with Council prior to the expiration of the trial period. The assessment of the application to continue the use in accordance with the trial, will consider amongst other things, the impact of the use on surrounding areas the performance of the operation in relation to compliance with development consent conditions.

In the event that no modification application is lodged, or an application is not approved, then the hours of operation for the premises must revert to the standard hours of operation identified by this consent.

Note: Any person acting on this consent is advised that any modification application to the trial hours of operation period should be submitted to Council a minimum of thirty (30) days prior to the expiration of the trial period otherwise the trial period must lapse.

(Reason: To ensure safety and security and protect the amenity of surrounding areas)

Trade Waste

13. 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)

Noise and Vibration Impact

14. 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)

No Entertainment and Amplified Music

15. This approval is for a food and drink premise does not authorise amplified music or other forms of entertainment in the food and drink premises. 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

16. 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)

Plan of Management

17. The management of the food and drink premise shall be conducted in accordance with the Plan of Management prepared by Urbanism, received by Council on 18 April 2019 except where otherwise amended by the conditions of this consent. One (1) license security person is to be employed at the premises between 1.00am and 3.00am (please refer to **Conditions I13, I14 and I6**), Friday to Sunday.

(Reason: To ensure ongoing operation of the food and drink premise is in accordance with the terms of consent)

Daily Cleaning

18. The proprietor/operator is to ensure that at all times when the premises are open and at the end of each day after the premises have closed, all rubbish including loose papers, cigarette butts, bottles etc which may be left on the subject premises, site or immediately adjacent area is picked up and placed in the proprietor's/operator's rubbish bins.

(Reason: To ensure waste generated by the approved use or activity is properly managed by the person acting upon this consent, to prevent unsightly build up of waste material)

Waste Collection

19. 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)

Trade Waste Collection (Crows Nest Trade Waste Policy)

110. All trade waste and recycling generated from the premises must be managed and disposed of in accordance with the Crows Nest Trade Waste Policy available on Council's website at www.northsydney.nsw.gov.au

Arrangements for the collection and storage of trade waste bins must comply with the following:

- (a) Bins must be placed out for collection no earlier than 5.00pm and no later than 10.00pm on the day before collection.
- (b) All trade waste must be collected between the hours of 6.00am and 10.00am.
- (c) Waste and recycling bins are not to be stored permanently in streets and laneways unless specifically prescribed by Council in writing.

(Reason: To ensure compliance with Council's waste controls for the Crows Nest commercial area)

Delivery Hours

111. 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

112. The shop premises must be registered with Council and NSW Food Authority prior to commencement of operation of the approved activity. Shop Premises Registration must be maintained at all times.

Notes:

- a) Council registration forms can be found at <http://www.northsydney.nsw.gov.au>.
- b) Notification is required to the NSW Food Authority under Standard 3.2.2 Division 2 Section 4 Notification. (see www.foodnotify.nsw.gov.au)

(Reason: To ensure compliance with environmental health legislation)

NSW Police Conditions

- I13. 1) All recording made by the CCTV system must be stored for at least 30 days and ensure that the system is accessible by at least one member of staff at all times it is in operation, and provide any recordings made by the system to a police officer or inspector within 24 hours of any request by a police officer or inspector. The CCTV cameras will need to be placed in suitable locations to enhance the physical security and assist in positively identify an individual, who may be involved in criminal behaviour.
- 2) The proprietors/management of the premises must take all steps necessary to ensure that no increased noise emissions occur from persons entering or leaving the premises. Management must also ensure the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood and that patrons leave the vicinity in an orderly manner.
- 3) It is noted that the development application states that a security guard will be hired for the last two hours of trading on Thursday, Friday and Saturday nights. Police recommend that security do regular patrols of the area surrounding the restaurant to monitor the behaviour of people approaching and leaving the restaurant.
- 4) An after-hours contact for the restaurant should be provided to North Shore Police.

(Reason: To ensure the safety of the owners, customers and general community)

Acoustic Amenity

- I14. The window and door on the Falcon Street elevation is to be closed between 12 (midnight) and 3.00am (Friday to Sunday).

(Reason: To ensure residential and acoustic amenity is maintained)