

Original signed by Luke Donovan on 22/1/2020

Date determined: 21/1/2020

Date operates: 22/1/2020

Date lapses: 22/1/2025

G O G Market Pty Ltd
U4 16 Willandra Street
RYDE NSW 2112

D352/19
MD1 (CIS)

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

Development Application Number: 352/19

Land to which this applies: G01, 164 Willoughby Road, Crows Nest
Lot No.: 28, SP: 92639

Applicant: OGAGA Holdings Pty Ltd

Proposal: First use and fit-out of supermarket with signage and outdoor dining; hours of operation 7am to 10pm seven days

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: 21 January 2020

Reason for approval: The application proposes sale of packaged food/drink and fruit & vegetables and seating limited to six persons immediately adjacent to the premises and beneath the street awning. The proposed hours of operation conclude at 10pm.

The proposal does not alter the building envelope. The proposal will not affect neighbouring solar access, views or privacy. The proposal does not unreasonably affect neighbouring acoustic privacy.

The proposed Willoughby Road window sign is affixed to the curved outside of the window and does not respect the curved ground floor frontage or window of the building. It is recommended that conditions delete the window sign.

Consent to operate from: 22 January 2020

Consent will lapse on: 22 January 2025

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 22 January 2025.

How community views were taken into account:

Three submissions were received including two which objected to the application with respect to the outdoor seating and noise, footpath obstruction, hours of operation, food preparation and traffic.

The application proposes sale of packaged food/drink and fruit & vegetables. The application does not propose to serve food and drink.

The application proposes seating limited to six persons, including a maximum of two seats per table, immediately adjacent to the premises. The proposal retains a clear path to the building entry.

The proposed seating is set back 2.8m from the kerb. The proposal does not include seating or goods display stands directly opposite the street tree. The furniture is also temporary and appears to be readily moveable.

The seating is beneath the street awning. The proposed hours of operation conclude at 10pm. It is not anticipated that persons would emit loud, continuous noise, and therefore a reasonable level of acoustic amenity will be retained.

A public car park diagonally opposite and within 60m of the site has recently been completed which could be used by customers of the supermarket.

Standard conditions can adequately address any potential, unreasonable adverse impacts to the locality and ensure the protection of the public interest.

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
LUKE DONOVAN
A/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	8
A2. Plans on Site	8
A3. No Demolition of Extra Fabric	8
A4. Separate Application	8
C. <i>Prior to the Issue of a Construction Certificate (and ongoing, where indicated)</i>	
C1. Willoughby Road external sign and Hume Lane door and window treatment	9
C2. Outdoor Goods Display Stands and Footpath Seating	9
C3. Water Systems	9
C4. Waste Management Plan	10
C5. External Colours and Finishes	10
C6. Cleanliness and Maintenance of Food Preparation Areas	11
C7. Garbage and Recycling Facilities	11
C8. Noise from Plant and Equipment	12
C9. Vibration from Plant and Equipment	12
C10. Noise Control (Licensed Premises)	13
C11. Noise and Vibration Compliance Certification Prior to Issue of Construction Certificate	13
C12. Mechanical Exhaust Ventilation	14
C13. Signage design - Control of the Obtrusive Effects of Outdoor Lighting	14
D. <i>Prior to the Commencement of any Works (and continuing where indicated)</i>	
D1. Commencement of Works Notice	14
E. <i>During Demolition and Building Work</i>	
E1. Cigarette Butt Receptacle	14
E2. Parking Restrictions	15
E3. Road Reserve Safety	15
E4. Removal of Extra Fabric	15
E5. Dust Emission and Air Quality	15
E6. Noise and Vibration	16
E7. Developer's Cost of Work on Council Property	16
E8. No Removal of Trees on Public Property	16
E9. Special Permits	16
E10. Construction Hours	17
E11. Out of Hours Work Permits	18
E12. Site Amenities and Facilities	19
E13. Health and Safety	19
E14. Prohibition on Use of Pavements	19
E15. Plant & Equipment Kept Within Site	19
E16. Waste Disposal	20

<i>F.</i>	<i>Prescribed Conditions imposed under EP&A Act and Regulations and other relevant Legislation</i>	
F1.	Building Code of Australia	20
F2.	Appointment of a Principal Certifier (previously known as a PCA)	20
F3.	Construction Certificate	20
F4.	Occupation Certificate	20
F5.	Critical Stage Inspections	21
F6.	Demolition	21
F7.	Protection of Public Places	21
F8.	Site Sign	21
<i>G.</i>	<i>Prior to the Issue of an Occupation Certificate</i>	
G1.	Infrastructure Repair and Completion of Works	22
G2.	Noise Certification	22
G3.	Damage to Adjoining Properties	22
G4.	Utility Services	22
<i>I.</i>	<i>On-Going / Operational Conditions</i>	
I1.	Hours of Operation	23
I2.	Noise and Vibration Impact	23
I3.	Existing Loading Dock	23
I4.	Loading within Site	23
I5.	Hours of Illumination	23
I6.	Signage Illumination Intensity	24
I7.	Daily Cleaning	24
I8.	Commercial Waste and Recycling Storage	24
I9.	Trade Waste Collection (Crows Nest Trade Waste Policy)	24
I10.	Delivery Hours	25
I11.	Shop Premises Registration	25
I12.	Footpath Seating (Width of Footway)	25
I13.	Footpath Seating Permit Required	26
I14.	Compliance with Trolley Management Plan	26
I15.	Maintenance of Signage Structure	26
I16.	Premises Management Checklist	26

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	Dated	Title	Drawn by	Received
A10	B	04.12.2019	Proposed floor plan	Liteco Studio	06.12.2019
A11	B	04.12.2019	RCP	Liteco Studio	06.12.2019
A21	B	04.12.2019	External elevations	Liteco Studio	06.12.2019
A31	B	04.12.2019	Internal elevations	Liteco Studio	06.12.2019
A41	B	04.12.2019	Shopfront signage details 1	Liteco Studio	06.12.2019
A42	B	04.12.2019	Shopfront signage details 2	Liteco Studio	06.12.2019
A51	B	04.12.2019	Outdoor seating goods display details	Liteco Studio	06.12.2019

(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)

Separate Application

- A4. Approval is granted for “building identification signs”, as defined in *North Sydney Local Environmental Plan 2013*. The approved building identification signs are indicated in condition A1, except as modified by the condition titled “Willoughby Road external sign and Hume Lane door and window treatment”. No consent is granted or implied for any displays in the nature of an “advertisement” or for any “advertising structures” as defined in the *North Sydney Local Environmental Plan 2013*.

A separate application is required to be lodged for any changes to the signage in relation to:

- (a) Enlargement of Display area;
- (b) Signage content;
- (c) Animation, flashing, changing, scrolling and/or moving imagery;

(Reason: To clarify the scope of development approval and to ensure that the approved signage remains “building identification signage” rather than “advertisement” or general advertising)

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

Willoughby Road external sign and Hume Lane door and window treatment

- C1. The Willoughby Road external window sign shown on drawing no. A42 prepared by Liteco Studio and received by Council on 04.11.2019 is not approved: The sign must be deleted from the plans.

The shelves to the Hume Lane windows are not approved: The shelves must be deleted from the plans. An unencumbered aisle with a minimum width of 2m must be maintained adjacent and parallel to these windows.

The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced and accompanying the issued Construction Certificate, fully satisfy the above.

(Reason: To reduce visual clutter and ensure light spill of, surveillance of and interest & activity to the public domain)

Outdoor Goods Display Stands and Footpath Seating

- C2. The two goods display stands on the footpath shown on drawings no. A10 and A21 prepared by Liteco Studio and received by Council on 04.11.2019 are not approved: The display stands must be deleted from the plans.

The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced and accompanying the issued Construction Certificate, fully satisfy the above.

(Reason: Council does not support goods display stands upon the footpath)

Water Systems

- C3. Any new

- (a) shower roses,
- (b) taps for use over a basin, ablution trough, kitchen sink or laundry tub,
- (c) flow restrictors,
- (d) toilets,
- (e) white goods, such as clothes washers or dishwashers,

must have the highest WELS star rating available at the time of development.

Any new

- (a) hotwater systems,
- (b) clothes drier,
- (c) dishwasher,
- (d) fixed air conditioning systems (including reverse cycle systems),
- (e) fixed heating systems,

must have a minimum energy star rating of 4.5 stars.

The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced and accompanying the issued Construction Certificate, fully satisfy the above.

(Reason: To ensure compliance with Section 2.6 Efficient Use of Resources of Part B in *North Sydney Development Control Plan 2013*)

Waste Management Plan

- C4. 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)

External Colours and Finishes

- C5. The external colours and finishes shall match those as existing and/ or be compatible with surrounding development. A schedule of external colours and finishes 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 that the completed colours and finishes of the works are compatible with surrounding development)

Cleanliness and Maintenance of Food Preparation Areas

C6. 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

C7. Adequate provision must be made for the storage of waste and recyclable material generated by the premises, including:

- (a) waste receptacle and a recycling receptacle must be provided near the outdoor dining area but within the premises; and
- (b) either frequent garbage collection, or provision of refrigeration for perishable garbage.

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

C8. 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

C9. 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)

Noise Control (Licensed Premises)

C10. 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)

Noise and Vibration Compliance Certification Prior to Issue of Construction Certificate

C11. A certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, certifying that suitable measures have been incorporated into the development and that the noise criteria contained in the conditions herein have been satisfied, must be provided to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The Principal 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 maintain an appropriate level of amenity for adjoining land uses)

Mechanical Exhaust Ventilation

C12. 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)

Signage design - Control of the Obtrusive Effects of Outdoor Lighting

C13. The signage must be designed in accordance with AS 4282-1997 control of obtrusive effects of outdoor lighting.

Plans and specifications complying 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 maintain the amenity of adjoining land uses)

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

Commencement of Works Notice

D1. 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

Cigarette Butt Receptacle

E1. A cigarette butt receptacle is to be provided on the site for the duration of excavation/demolition/construction process, for convenient use of site workers.

(Reason: To ensure adequate provision is made for builders' waste)

Parking Restrictions

- E2. 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

- E3. 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)

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)

Dust Emission and Air Quality

- E5. The following must be complied with at all times:

- (a) Materials must not be burnt on the site.
- (b) Vehicles entering and leaving the site with soil or fill material must be covered.

- (c) Dust suppression measures must be carried out to minimise wind-borne emissions in accordance with the NSW Department of Housing's 1998 guidelines - Managing Urban Stormwater: Soils and Construction.
- (d) Odour suppression measures must also be carried out where appropriate so as to prevent nuisance occurring at adjoining properties.

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

Noise and Vibration

- E6. 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)

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)

Special Permits

- E9. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.

The developer, owner or builder may apply for specific permits available from Council's Customer Service Centre for the undermentioned activities on Council's property. In the event that a permit is granted by Council for the carrying out of works, processes, storage of materials, loading and unloading associated with the development on Council's property, the development must be carried out in accordance with the requirements of the permit. A minimum of forty-eight (48) hours notice is required for any permit: -

1) **On-street mobile plant**

Eg. cranes, concrete pumps, cherry-pickers, etc. - restrictions apply to the hours of operation, the area of operation, etc. Separate permits are required for each occasion and each piece of equipment. It is the developer's, owner's and builder's responsibilities to take whatever steps are necessary to ensure that the use of any equipment does not violate adjoining property owner's rights.

(Reason: Proper management of public land)

2) **Hoardings**

Permits are required to erect Class A and Class B hoardings. If an 'A' Class hoarding is to alienate a section of Council's property, that section will require a permit for the occupation of Council's property.

(Reason: Proper management of public land)

3) **Storage of building materials and building waste containers (skips) on Council's property**

Permits to utilise Council property for the storage of building materials and building waste containers (skips) are required for each location. Failure to obtain the relevant permits will result in the building materials or building waste containers (skips) being impounded by Council with no additional notice being given. Storage of building materials and waste containers on open space reserves and parks is prohibited.

(Reason: Proper management of public land)

4) **Kerbside restrictions, construction zones**

Attention is drawn to the existing kerbside restrictions adjacent to the development. Should alteration of existing kerbside restrictions be required, or the provision of a construction zone, the appropriate application must be made and the fee paid to Council. Alternatives to such restrictions may require referral to Council's Traffic Committee and may take considerable time to be resolved. An earlier application is suggested to avoid delays in construction programs.

(Reason: Proper management of public land)

Construction Hours

E10. 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)

Out of Hours Work Permits

E11. Where it is necessary for works to occur outside those hours allowed by these conditions, an application may be made to Council's Customer Services Centre for a permit to carry out works outside of the approved hours. If a permit is issued the works approved must be carried out in accordance with any requirements specified in the permit. Permits will only be approved if **public safety is at risk**. Applications which seek a variation to construction hours solely to benefit the developer will require the lodgement and favourable determination of a modification application pursuant to the provisions of Section 96 of the Environmental Planning and Assessment Act 1979.

Notes:

- 1) Failure to obtain a permit for work outside of the approved hours will result in on the spot fines being issued, or Council pursuing any action required (including legal proceedings) to have the out of hours work cease, without prior warning.
- 2) Applications for out of hour's works should be lodged with Council no later than seven (7) calendar days prior to the date of the intended works.
- 3) Examples of activities for which permits may be granted include:
 - the erection of awnings,
 - footpath, road and other infrastructure works which cannot be carried out for public convenience reasons within normal hours,
 - the erection and removal of hoardings and site cranes, and
 - craneage of materials which cannot be done for public convenience reasons within normal working hours.
- 4) Examples of activities for which permits WILL NOT be granted include;
 - extended concrete pours
 - works which are solely to convenience the developer or client, and

- catch up works required to maintain or catch up with a construction schedule.
- 5) Further information on permits can be obtained from the Council website at www.northsydney.nsw.gov.au.

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

Site Amenities and Facilities

- E12. Where work involved in the erection and demolition of a building is being carried out, amenities which satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements, must be provided and maintained at all times. The type of work place determines the type of amenities required.

Further information and details 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)

Health and Safety

- E13. 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

- E14. 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

- E15. 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

E16. 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

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)

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)

Protection of Public Places

- F7. 1) A hoarding and site fencing must be erected between the work site and adjoining public place.
- 2) If necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place.
- 3) The work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
- 4) Any such hoarding, fence or awning is to be removed when the work has been completed.
- 5) No access across public reserves or parks is permitted.

Note: Prior to the erection of any temporary fence or hoarding over property owned or managed by Council, written approval must be obtained. Any application needs to be accompanied by plans indicating the type of hoarding and its layout. Fees are assessed and will form part of any approval given. These fees must be paid prior to the approval being given. Approval for hoardings will generally only be given in association with approved building works, maintenance or to ensure protection of the public. An application form for a Hoarding Permit can be downloaded from Council's website.

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

Site Sign

- F8. 1) A sign must be erected in a prominent position on the site
- a) stating that unauthorised entry to the work site is prohibited;

- b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
 - c) showing the name, address and telephone number of the Principal Certifying Authority for the work.
- 2) Any such sign must be maintained while building work or demolition work is being carried out, but must be removed when the work has been completed.

(Reason: Prescribed - Statutory)

G. Prior to the Issue of an Occupation Certificate

Infrastructure Repair and Completion of Works

- G1. Prior to the issue of any Occupation Certificate any and all works relating to the development:
- a. in the road reserve must be fully completed; and
 - b. to repair and make good any damaged public infrastructure caused as a result of any works relating to the development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) must be fully repaired;

to the satisfaction of Council Engineers at no cost to Council.

(Reason: Maintain quality of Public assets)

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)

Damage to Adjoining Properties

- G3. 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

- G4. 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 7am to 10pm.

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)

Noise and Vibration Impact

12. The on-going use of the premises approved under this consent must:

- (a) comply with all conditions pertaining to noise and vibration specified in this consent, and
- (b) not give rise to offensive noise within the meaning of the *Protection of the Environment Operations Act 1997*.

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

Existing Loading Dock

13. Vehicle deliveries and loading and unloading operations must occur within the site. The existing loading dock must be maintained at all times for use in connection with the development.

(Reason: To ensure that deliveries occur within the site and do not adversely affect traffic or pedestrian amenity)

Loading within Site

14. All loading and unloading operations must be carried out wholly within the confines of the site, at all times and must not obstruct other properties or the public way.

(Reason: To ensure that deliveries can occur safely within the site and does not adversely affect traffic or pedestrian amenity)

Hours of Illumination

15. All illuminated signs approved by this consent must cease illumination between the hours of 11.00pm to 7.00am, 7 days a week. The signage must be fitted with a timing device to automate the cessation of illumination during these times.

(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)

Signage Illumination Intensity

16. The sign(s) must be installed and used at all times in accordance with AS 4282-1997 *Control of Obtrusive Effects of Outdoor Lighting* and must be restricted in accordance with the following:
- (a) At no time is the intensity, period of intermittency and hours of illumination of the sign to cause objectionable glare or injury to the amenity of the neighbourhood.
 - (b) The level of illumination and/or lighting intensity used to illuminate the signage must not cause excessive light spill or nuisance to any nearby residential premises.
 - (c) The signage illumination (during permitted hours of illumination) must be constant. The signage illumination must not dim & brighten, flash, scroll or contain any animation or moving imagery.
 - (d) The signage lights must be within or behind the face, and not exposed to the sides, of the signage.
- (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)

Daily Cleaning

17. 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)

Commercial Waste and Recycling Storage

18. Commercial waste and recycling material/storage bins must be stored in a separate area to the residential waste and recycling material/storage bins.
- (Reason: To ensure that commercial waste and residential waste is not mixed and is properly managed)

Trade Waste Collection (Crows Nest Trade Waste Policy)

19. 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

- I10. 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

- I11. 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.

Note:

- 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)

Footpath Seating (Width of Footway)

- I12. This consent limits the number of seats that are not inside the shop and/or within the footpath area to six seats. A notice must be displayed at all times in the front window of the premises (or any other clearly visible place) identifying this maximum seating capacity, or the maximum seating obtained under a footpath-seating permit from North Sydney Council in accordance with the condition titled 'Footpath Seating Permit Required', whichever is the lesser.

All seating and furniture must be set back at least 2.7m from the street kerb. The tables and chairs must be located parallel to the shop front of the building (or reasonably parallel to its curved portion of shop front) and not in a manner that allows furniture to project into the 2.7m wide clear pedestrian corridor.

The furniture must not include sharp edges. The furniture must not include umbrellas. The furniture must be removed from the footpath and stored within the premises within 30 minutes of the end of each day's trading.

(Reason: To ensure adequate and unobstructed pedestrian safety and amenity relating to the provision of outdoor seating on footpaths, and to assist in assessing ongoing compliance)

Footpath Seating Permit Required

- I13. Footpath seating is not to be provided unless a footpath-seating permit is obtained from North Sydney Council. The permit must be permanently displayed on the premises in accordance with the provision of Council's footpath seating policy. Appropriate public liability insurance must be obtained before a footpath seating permit will be issued.

Note: Footpath seating permits are issued on an annual basis and Council reserves the right to review the operation of outdoor seating. Failure to comply with the terms of this consent and the footpath seating permit may result in the non-renewal of any footpath seating permit. Further information, including the permit application form, is available on Council's website: https://www.northsydney.nsw.gov.au/Business_Projects/Business_Economic_Development/Regulations_for_all_Businesses/Footpath_Trading

(Reason: To ensure compliance with Council's policy for the provision of outdoor seating on footpaths)

Compliance with Trolley Management Plan

- I14. At all times the operator must comply with the requirements of the approved Trolley Management Plan. Any trolleys found outside the development area shall be collected and returned the nominated trolley storage area(s) by the trolley owner, **at the owner's cost.**

(Reason: To protect the amenity of surrounding areas)

Maintenance of Signage Structure

- I15. The approved signage must be maintained at all times to a structurally sound condition.

(Reason: To ensure that structures are maintained to an acceptable standard and that they do not become a potential public hazard)

Premises Management Checklist

- I16. At all times the development is to comply with the Premises Management Checklist dated 1 November 2019 prepared by Gavin Ng – East Coast Property and Planning and received by Council on 04.11.2019, excepted as modified below:

(a) Within 30 minutes of the supermarket closing, i.e. 10.30pm, all outdoor temporary furniture and the like (such as tables, chairs and barriers) must be taken inside the supermarket.

(Reason: To protect the amenity of surrounding areas)