

**Original signed by Luke Donovan on 18/6/2020**  
**Date determined: 15/6/2020**  
**Date operates: 15/6/2020**  
**Date lapses: 15/6/2025**

McDonalds Australia Limited  
C/- KDC Pty Ltd  
Suite 2B, 125 Bull Street  
NEWCASTLE WEST NSW 2302

D24/20  
LD (CIS)

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

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**Development Application Number:** 24/20

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**Land to which this applies:** Shop 6, 100 Miller Street, North Sydney  
Lot No.: 11, DP: 583735

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**Applicant:** McDonalds Australia Limited

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**Proposal:** Extend hours of operation for existing retail food and drink premises to 24 hours a day, 7 days a week.

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**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.

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**Date of Determination:** 15 June 2020

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The development application has been assessed against Section 4.15 of the *Environmental Planning and Assessment Act 1979* (as amended), and found to be generally acceptable in the site circumstances subject to the requirement for a 12-month trial period for the 24-hour operation of the retail tenancy.

**Reason for approval:** The Plan of Management, as amended by the recommended conditions will ensure a strong commitment to the good operation of the premises at all times during late night trading periods. All measures recommended by NSW Police will be included as part of the conditions of consent.

The Acoustic Assessment, as amended, demonstrate that noise emissions from the operation of the retail tenancy would satisfy the relevant noise limits at all assessed receivers for all assessment periods. Furthermore, sleep disturbance is not anticipated, as noise levels are predicted to remain below the EPA maximum noise triggered levels.

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The issues raised in the public submissions were considered in the assessment and where appropriate, conditions were imposed to address these issues.

Consequently, the development application is, therefore, considered to be reasonable in the circumstances and it is approved subject to conditions of consent including a 9-month trial period for the 24-hour operation the retail tenancy.

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**Consent to operate from:** 15 June 2020

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**Consent will lapse on:** 15 June 2025

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**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.

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**How community views were taken into account:**

Two (2) submissions were received against the application. The issues raised in the submissions are summarised and addressed in the planning report.

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**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.

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

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

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DATE

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Signature on behalf of consent authority  
DAVID HOY  
**TEAM LEADER ASSESSMENTS**

**(i) Conditions**

Consent is granted subject to the following conditions imposed pursuant to Section 4.17 of the Environmental Planning & Assessment Act 1979 (“the *Act*”) and the provisions of the Environmental Planning & Assessment Regulation 2000 (“the *Regulation*”) such conditions being reasonable and relevant to the development as assessed pursuant to Section 4.17 of the Act.

**(ii) Definitions**

Unless specified otherwise, words have the same meaning as defined by the *Act*, the *Regulation* and the *Interpretation Act* 1987 as in force at the date of consent.

***Applicant*** means the applicant for this consent.

***Approved Plans*** means the plans endorsed by Council referenced by this consent as amended by conditions of this consent.

***AS*** or ***AS/NZS*** means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.

***NCC*** means the National Construction Code as published by the Australian Building Codes Board as in force at the date of issue of any *Construction Certificate*.

***Council*** means North Sydney Council.

***Court*** means the Land and Environment Court.

***Local Native Plants*** means species of native plant endemic to North Sydney LGA.

***Stormwater Drainage System*** means all works, facilities and documentation relating to:

- The collection of stormwater,
- The retention of stormwater,
- The reuse of stormwater,
- The detention of stormwater,
- The controlled release of stormwater; and
- Connections to easements and public stormwater systems.

***Owner*** means the owner of the *site* and successors in title to the *site*.

***Owner Builder*** has the same meaning as in the *Home Building Act* 1989.

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

*Principal Contractor* for building work means the person responsible for the overall coordination and control of the carrying out of the building work.

Note: If any residential building work is involved, the principal contractor must be the holder of a contractor licence under the *Home Building Act 1989*.

*Professional Engineer* has the same meaning as in the *NCC*.

*Public Place* has the same meaning as in the *Local Government Act 1993*.

*Road* has the same meaning as in the *Roads Act 1993*.

*SEE* means the final version of the Statement of Environmental Effects lodged by the *Applicant*.

*Site* means the land being developed subject to this consent.

*NSLEP 2013* means *North Sydney Local Environmental Plan 2013*

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

*Work* for the purposes of this consent means:

- the use of land in connection with development,
- the subdivision of land,
- the erection of a building,
- the carrying out of any work,
- the use of any site crane, machine, article, material, or thing,
- the storage of any waste, materials, site crane, machine, article, material, or thing,
- the demolition of a building,
- the piling, piercing, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- the delivery to or removal from the *site* of any machine, article, material, or thing, or
- the occupation of the *site* by any person unless authorised by an *occupation certificate*.

Note: **Interpretation of Conditions** – Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.

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**A. Conditions that Identify Approved Plans**

**Prior to Operation of Late Night Trading- Amended Plan of Management**

A1. The following requirements must be satisfied prior to operation of late-night trading:

- a) The Operational Plan of Management prepared by McDonalds Australia Limited, dated May 2020, for the management of the premises (Shop 6, 100 Miller Street, North Sydney) must be amended to reflect the operational requirements of this consent under Condition I1 to I11 (inclusive).
- b) Written consent is to be obtained from the building owners and operators for the provision of after-hours access to communal building amenities within the building.
- c) The CCTV system must cover external areas of the tenancy including along parts of Miller Street and Pacific Highway, on approach to the subject tenancy. This is because the subject tenancy (Shop 6) is a corner tenancy with frontages to both Miller Street and Pacific Highway.

**Notes:**

- **Late night trading:** for the purposes of this condition and this consent, any reference to “late night trading” is a reference to the hours of operation permitted under Condition I2 of this consent.

A copy of the amended Operational Plan of Management required by this condition must be provided to Council and approved in writing prior to the operation of late night trading. The Operational Plan of Management may only be further varied with the written approval of Council.

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

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

**Hours of Operation**

I1. The hours of operation are restricted to:

6am to 12 midnight (7 days a week)

Upon expiry of the permitted hours:

- (a) all restaurant 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)

### **Hours of Operation – trial period**

12. Notwithstanding **Condition I1** above the approved use may operate 24 hours a day, 7 days a week for a trial period of 12 months from the date of this consent. 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.

**This trial period may be suspended at Council’s sole discretion upon receipt of justified and non addressed public complaints.**

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)

### **NSW Police**

13. The following measures imposed by NSW Police must be adhered to on an on-going basis-
1. The store should be clearly identified with signage that is visible from the street. This will enable all emergency services to locate the premises. Where possible visibility into the store should not be obscured by vegetation or any type of structure which can create opportunities for concealment.
  2. A high definition CCTV system should be included to provide maximum surveillance of all areas of the tenancy 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. At a minimum, security guards should be utilised for Thursday, Friday, Saturday and Sunday nights as well as other night expected to see busy trading including any night prior to a public holiday. Police recommend that security do regular patrols of the area surrounding the restaurant to monitor the behaviour of people approaching and leaving the location.
7. Staff should be provided with a secure area in which to store their personal effects whilst working.
8. Staff must receive appropriate training on what to do during an armed hold up or other similar incident involving a violent offender.
9. 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.
10. 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.
11. Windows within the store 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.
12. 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.
13. An emergency control and evacuation plan should be implemented within the store. Centre Management, staff and retail tenants should be trained in the execution of the plan in emergency situations.
14. All recording made by the CCTV system should 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 identifying an individual, who may be involved in criminal behaviour.
15. Management must also ensure the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood and that customers leave the vicinity in an orderly manner.



16. Wheelchair access (ramp) should at no time be blocked nor impede access to anyone with a disability.

17. Senior store manager contact details should be provided to North Shore Police.

(Reason: To ensure compliance with the measure imposed by NSW Police)

### **Patron Behaviour**

14. The 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) **At least one (1) security guard shall be employed on site between 10pm and 6am the following day, on those days nominated by NSW Police in Condition I3(6) for the duration of any 24 hour trading days.**

(Reason: To ensure patrons do not interfere with the acoustic amenity of residents in the immediate locality and to ensure high levels of safety and security)

### **Waste Collection**

15. 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)

### **Plan of Management**

16. The management of the McDonalds restaurant (Shop 6, 100 Miller Street, North Sydney) shall be conducted in accordance with the Amended Operational Plan of Management required by Condition A1, except as modified by other conditions of this consent.

A copy of the Amended Operational Plan of Management must be provided to Council and approved in writing prior to the operation of the consent. A copy of the Operation Plan of Management must be provided on site at all times during operation and may only be varied with the written approval of Council.

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

### **Daily Cleaning**

17. The operator is to ensure that at all times when the premises are open, 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 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)

### **Delivery Hours**

18. 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)

### **Noise from Plant and Equipment**

19. 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 and parks and such other affected receiver as may be notified by the Council in writing.

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

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

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

### **Noise and Vibration Impact**

- I10. 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)

**Access to toilets**

- I11. Staff and customers of the tenancy must be provided with access to toilets within the building during the hours in which the tenancy is operating.

(Reason: To ensure the availability of toilets during the extended hours of operation for both staff and customers of the tenancy)