

Original signed by **Kim Rothe** on **6/11/2020**

**Date determined:** 5/11/2020

**Date operates:** 6/11/2020

**Date lapses:** 6/11/2025

Ms Luxanun Srianun  
21 Hycraft Walk  
FIVE DOCK NSW 2046

D201/20  
KRR (CIS)

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

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**Development Application Number:** 201/20

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**Land to which this applies:** 59-61 Ridge Street (aka Shop 3/283 Miller Street), North Sydney  
Lot No.: 27, SP: 63051

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**Applicant:** Ms Luxanun Srianun

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**Proposal:** Extension of trading hours to existing food and drink premises to operate 7.00 am to 10.00 pm

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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:** 5 November 2020

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The development application has been assessed against the North Sydney Local Environmental Plan 2013 and the North Sydney Development Control Plan 2013.

**Reason for approval:** The proposal is considered acceptable in the circumstances as the development will improve on the amenity locality via improved service access without having material adverse impacts on adjoining apartments beyond that which can already occur as a result of the existing status of the tenancy in the strata plan.

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The extension of hours relates to an existing Food and Drink premises with hours in the morning period only, and not before 7.00 am, will not adversely impact on the streetscape or significance of the local Neighbourhood Character Area. All other issues identified in the report or raised in the submissions have been found to be either acceptable or able to be managed via the imposition of conditions of development consent.

This assessment, having regard to the provisions of Section 4.15 of the *Environmental Planning & Assessment Act, 1979* (as amended), this report has considered the concerns raised in the submissions as well as the performance of the application against Council's planning requirements. Following this assessment, the development application is supportable in the circumstances and is recommended for **approval** subject to the attached as recommended conditions of development.

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**Consent to operate from:** 6 November 2020

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**Consent will lapse on:** 6 November 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. To activate this consent, works must physically commence onsite by 6 November 2025

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

The owners of adjoining properties and the local community precinct committee were notified of the proposed development for a 14-day period in accordance with section A4 of NSDCP 2013 and Council's Community Engagement Protocol. The notification resulted in seven(7) total submissions.

Submissions raising concerns with the proposal concerned noise and amenity impacts to the residential tenancies.

The potential impacts of the development have been assessed against Council's controls and found to be supportable in the circumstances.

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

\_\_\_\_\_  
DATE

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

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**(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***

**Terms of Consent**

A1. Approval is only granted under this consent for alteration of hours of operation.

No approval is granted under this consent for any building works within tenancy.

(Reason: To clarify the terms of this consent)

**Ongoing Operational Conditions**

A2. The Food and drink premises operation is to be run in accordance with all relevant operational/ongoing conditions as imposed under DA 337/00 and DA 26/13 including subsequent modification applications. In the event of any inconsistency of consents, this consent shall prevail with regards to hours of operation.

(Reason: To clarify the terms of this consent)

**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)

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

**Hours of Operation**

I1. The hours of operation are restricted to:

7.00 am to 10.00 pm - Monday to Sunday inclusive

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)

### **Noise and Vibration Impact**

12. 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)

### **Doors and Windows Closure**

13. At all times the premises is in operation before 8:00 am, the windows and doors of the premises must be kept shut with the exception of allowing patrons to enter/exit. After 8:00 am the doors and windows may be kept open during operation.

(Reason: To ensure premises does not interfere with the acoustic amenity of residents in the immediate locality before 8:00 am)

### **Patron Behaviour**

14. The proprietors/management of the premises must take all steps necessary to ensure that no noise nuisance occurs from persons occupying, entering or leaving the premises. The proprietors/management must ensure that:

- (a) The management must ensure that the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood.
- (b) 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.

(Reason: To ensure patrons do not interfere with the acoustic amenity of residents in the immediate locality)

### **Noise from Operation**

15. The use of the premises must not cause an LAeq(15min) which exceeds the RBL by more than:

- (a) 5dB between the hours of 6.00am and 10.00pm; and,
- (b) 0dB between the hours of 10.00pm and 6.00am on the following day

when measured at the boundary of any affected residence. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy shall be applied.

“affected residence” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation and hospitals.

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

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 comply with best practice standards for residential acoustic amenity)



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

I6. 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)