

Original signed by	David Hoy	on	13/12/2021
Date determined:	9/12/2021		
Date operates:	13/12/2021		
Date lapses:	13/12/2026		

Elias Elias Studio Elm
PO Box 80
BELFIELD NSW 2191

D192/21
KRR (CIS)

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

Development Application Number:	192/21
Land to which this applies:	67 Union Street, McMahons Point Lot No.: 11, DP: 875975
Applicant:	Elias Elias Studio Elm PO Box 80, BELFIELD NSW 2191
Proposal:	Extend hours of operation of approved food and drink premises to 6.30 am - 9.30 pm (Monday to Friday) and 7.00 am - 9.30 pm (Saturdays and Sundays)
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:	9 December 2021
Reasons for Approval	<p>The development application has been assessed against the North Sydney Local Environmental Plan 2013, North Sydney Development Control Plan 2013 and the relevant State Planning Policies and generally found to be satisfactory in the site circumstances.</p> <p>Council's notification of the proposal has attracted a total of six (6) submissions including three submissions in support of the proposal. The submissions objecting to the proposal raised concerns with noise, privacy and impacts to parking, the general operation and access.</p> <p>The assessment of the proposal has considered the concerns raised in the submissions as well as the performance of the application against Council's planning requirements. The modification to the operation to the restaurant are considered to be acceptable.</p>

	<p>The expansion to the hours of operation is supported and principally on the basis of the lack of apparent impacts, modest extension of hours to 9:30pm and overall compliance with Council's late night trading policy.</p> <p>Following this assessment, the development application is considered to be reasonable in the circumstances and is recommended for approval subject to the amendment to the conditions as detailed in the recommendation of this report.</p>
Consent to operate from:	13 December 2021
Consent will lapse on:	13 December 2026
Period of Consent	<p>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 13 December 2026</p>
How community views were taken into account:	<p>The application has been notified in accordance with Council's policies. The concerns as raised in the submissions have been considered throughout the scope of this report.</p>
Review of determination and right of appeal:	<p>Within six 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.</p>

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

Endorsed for and on behalf of North Sydney Council

13 December 2021

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 and Assessment Act 1979 ("the *Act*") and the provisions of the Environmental Planning and 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	6
A2. Plans on Site	6
A3. Previous Consent	6
I. <i>Ongoing/Operational Conditions</i>	
I1. Hours of Operation	6
I2. Noise Control (Licensed Premises)	7
I3. Use of Rear Balcony for Dining Purposes Not Permitted	8
I4. Internal Access to Toilet	8
I5. Noise and Vibration Impact	8
I6. Patron Behaviour	8
I7. Daily Cleaning	9
I8. Waste Collection	9
I9. Delivery Hours	9
I10. Shop Premises Registration	9
I11. Noise Impact on Surrounding Area	9
I12. No Entertainment	10
I13. Privacy Screen to be Provided to Rear Balcony	10
I14. Rear Doors to Landing to Remain Closed	10

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.

Drawing number	Revision/ Issue	Dated	Title	Drawn by
DA-101	A	14 June 2021	Site Plan	Studio Elm
DA-102	A	14 June 2021	Floor Plans (including seating layout)	Studio Elm

(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)

Previous Consent

- A3. All relevant conditions of development consent of DA131 /14 and modifications remain applicable where relevant. In the event of an inconsistency, this consent prevails over this previous application.

(Reason: To clarify the terms of consent)

I. Ongoing/Operational Conditions

Hours of Operation

- I1. The hours of operation of the café are limited to the following:

6.30 am - 9.30 pm (Monday to Friday) and
7.00 am - 9.30 pm (Saturdays and Sundays)

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 Control (Licensed Premises)

12. 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 7.00 am 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 7.00 am 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 7.00 am.
- (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)

Use of Rear Balcony for Dining Purposes Not Permitted

13. No consent is granted or may be inferred for the use of the elevated timber landing and balcony

area to the rear of the cafe premises for dining purposes associated with the use of the premises. The landing and balcony area may be used for general storage and access purposes only.

(Reason: To protect amenity of adjacent residential premises)

Internal Access to Toilet

14. A new entry door to the toilet must be provided from the internal trading area and signage installed directing patrons to use the internal stairs only. The toilet may be accessed by patrons from the internal stairs only.

(Reason: To ensure patrons are not required to use the outdoor stairs so as to limit noise impacts)

Noise and Vibration Impact

15. The ongoing 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)

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/licensee] must ensure that the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood.
- (c) The [management/licensee] must be responsible for the control of noise and litter generated by patrons of the premises and must ensure that patrons leave the vicinity of the premises in an orderly manner to the satisfaction of Council.
- (d) If so directed by Council, the [management/licensee] is to employ private security staff to ensure that this condition is complied with.

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

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)

Waste Collection

18. Waste and recyclable material, generated by this premises, must not be collected between the hours of 10.00 pm and 6.00 am on any day.

(Reason: To ensure the amenity of surrounding properties)

Delivery Hours

19. No deliveries, loading or unloading associated with the premises are to take place between the hours of 10.00 pm and 6.00 am on any day.

(Reason: To ensure the acoustic amenity of surrounding properties)

Shop Premises Registration

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

Note: Council registration forms can be found at <http://www.northsydney.nsw.gov.au>.

(Reason: To ensure compliance with environmental health legislation)

Noise Impact on Surrounding Area

111. Use of the premises shall not cause a sound level in excess of 5 dB(A) at any time above the background noise level at any point along the site boundaries.

(Reason: To ensure compliance with acceptable levels of noise established under best practice guidelines)

No Entertainment

112. This approval is for a cafe only and does not authorise musical or other forms of entertainment. A separate development consent and Place of Public Entertainment licence would be required for such activities/events.

(Reason: Clarification of terms of this consent and ensure compliance with relevant legislation)

Privacy Screen to be Provided to Rear Balcony

113. The privacy screen shown on the approved plans must be installed to the eastern and southern edges of the balcony to a height of 1.7 metres above the finished floor level of the deck. The required screen shall consist of a timber lattice screen and must be maintained at all times.

Details of the required privacy screen are to be provided to the Certifying Authority prior to the issue of the Construction Certificate.

(Reason: To screen the deck area from adjacent residential balconies)

Rear Doors to Landing to Remain Closed

114. The ground floor rear (southern) doors to the cafe, must remain closed at all times during business hours, except as required for access to the toilet facilities. The door must be fitted with a self-closing mechanism and a sign placed on the inside of the door saying "staff access only" and not be propped open during hours of operation.

(Reason: To protect the acoustic privacy of the adjoining properties)