

Original signed by Robyn Pearson on 31/3/2022

Date determined 29/3/2022

Date operates 31/3/2022

Date lapses 31/3/2027

Jean-Claude Branch
La Trade Australia Pty Ltd
31/26 Ridge Street
NORTH SYDNEY NSW 2060

D265/21
AB7 (CIS)

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

Development Application Number: 265/21

Land to which this applies: 6 Cremorne Road, Cremorne Point
Lot No.: 2, DP: 773565

Applicant: Jean-Claude Branch, La Trade Australia Pty Ltd

Proposal: Change of use of the existing manager's flat to guest accommodation, and associated works.

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: 29 March 2022

Reason for Approval The proposal has been assessed under the relevant planning instruments including NSLEP 2013 and NSDCP 2013 and generally found to be acceptable, subject to appropriate conditions. The proposed use will not involve any significant construction or demolition of the existing building beyond additional concealed cladding to the top floor balcony and is considered to be a minimal addition to the existing building with a negligible impact upon the Cremorne Point Conservation Area.

The use of the top floor unit as additional hotel accommodation on site has been demonstrated to operate under existing use rights, and is considered to be acceptable on the basis that additional measures will be in place to minimize acoustic privacy impacts upon adjoining properties including an on-site manager and bonds to supervise and enforce appropriate guest behaviour.

The use of the top floor unit for the purpose of hotel accommodation is not considered to be an excessive intensification of the use of the site, subject to conditions to ensure the maintenance of acceptable acoustic privacy for adjoining residential properties and to ensure adherence to the Plan of Management to oversee the use of this space and the hotel overall.

Appropriate conditions are recommended for imposition with the granting of consent to this change of use application to ensure that neighbourly amenity is maintained. The application is considered to be acceptable in the circumstances and can be approved subject to site-specific and standard conditions.

Consent to operate from: 31 March 2022

Consent will lapse on: 31 March 2027

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 31 March 2027.

How community views were taken into account:

The subject application was notified to adjoining properties and the Cremorne Point Precinct Committee seeking comment, and three submissions raised objections. Nevertheless, the proposal is considered to be acceptable on its merits without causing any unreasonable impacts to the streetscape and/or adjoining properties, subject to appropriate conditions of consent.

Review of determination and right of appeal:

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.

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

Endorsed for and on behalf of North Sydney Council

31 March 2022

DATE

Signature on behalf of consent authority
ROBYN PEARSON
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.

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I. Ongoing/Operational Conditions

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A. Conditions that Identify Approved Plans

Terms of the Consent

A1. Approval is granted for the following:

- a) The use of the top floor apartment, originally approved as a manager's flat under Development Consent No. 509/07, as hotel accommodation.
- b) The installation of cladding panels to the inside of the northern, western, and southern balustrades and screens of the rear balcony and deck of the top floor apartment.
- c) The top floor deck and balcony as constructed is not in accordance with Development Consent No. 509/07, and its use only is approved. The applicant should consider obtaining a Building Information Certificate to regularise the unauthorised works.
- d) The conversion of Room 1 on the ground floor of the hotel into accommodation for the use of the on-site hotel manager.

No approval is given or implied in this consent for the use of the space for any other purpose or any other building works, both internal and external, within the subject property, in accordance with the approved plans in Condition A2 of this consent.

Use of the premises from its current proposed use must not intensify without further approval from Council.

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

Development in Accordance with Plans/Documentation

A2. 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 No.	Title	Drawn By	Dated	Received
1	Elevations	La Trade Australia Pty Ltd	23/02/2022	23/02/2022
2	Plan	La Trade Australia Pty Ltd	23/02/2022	23/02/2022
3	Ground Floor Plan	Jean Claude Branch	18/03/2022	18/03/2022

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

Plans on Site

A3. 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

A4. 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)

B. *Matters to be Completed before the lodgement of an Application for a Construction Certificate*

Inconsistency with Development Consent DA509/07

B1. Pursuant to s4.17(1)(b) and s4.17(5) of the Environmental Planning and Assessment Act 1979, consent no DA509/07 for alterations and additions to an existing tourist facility (guest house) including a new managers flat within the attic level to the subject property, shall be modified in accordance with Clause 97 of the Environmental Planning and Assessment Regulation 2000 prior to the issue of a construction certificate for this consent by adding a new condition D4 as follows:

“Development consent DA265/21 authorises alterations and additions to an existing hotel accommodation including changing the use of the top floor manager’s flat to hotel accommodation, additional cladding to the balustrades of the rear balcony of the top floor flat, and the conversion of Room 1 into accommodation for the on-site manager, at 6 Cremorne Road, Cremorne Point. Where there is an inconsistency between this consent and consent no DA509/07 (and as subsequently modified), then consent no. DA265/21, shall prevail to the extent of the inconsistency.”

(Reason: To provide clarity as to the works approved under both development applications)

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

Privacy Measures

C1. In order to protect privacy for the adjoining properties and to ensure compliance with the terms of this consent, the following requirements are to be met, and the lodged plans herein listed in the Schedule of Condition A1 must be amended to show the following:

- a) The high-density cladding approved under **Conditions A1 and A2** of this consent must be installed to the entire length of the northern, southern, and eastern balustrades and privacy screens of the top floor balcony and deck area.

The applicant must submit architectural plans and documentation complying with the requirements of this consent for the written approval of Team Leader Assessments.

(Reason: To protect privacy for the adjoining properties and to ensure compliance with the terms of this consent)

E. During Demolition and Building Work

Parking Restrictions

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

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

Road Reserve Safety

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

Where public infrastructure is damaged, repair works must be carried out in when and as directed by Council officers (at full Developer cost). Where pedestrian circulation is diverted on to the roadway or verge areas, clear directional signage and protective barricades must be installed in accordance with AS1742-3 (1996) "Traffic Control Devices for Work on Roads". **If pedestrian circulation is not satisfactorily maintained across the site frontage, and action is not taken promptly to rectify the defects, Council may undertake proceedings to stop work.**

(Reason: Public Safety)

Removal of Extra Fabric

- E3. 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

- E4. 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

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

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

Developer's Cost of Work on Council Property

- E6. 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

- E7. 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

- E8. 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

E.g., 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

E9. Construction activities and works approved under this consent must be carried out only within the hours stipulated in the following table:

Standard Construction Hours		
Location	Day	Hours
B3 Commercial Core Zone B4 Mixed-use Zone	Monday - Friday	7.00 am - 7.00 pm
	Saturday	8.00 am - 1.00 pm
	Sunday, Public holiday	No work permitted

Construction activities for development approved under this consent must be carried out in accordance with the standard construction hours above and any Construction Noise Management Plan required under this consent.

In the event of breach to the approved hours of construction Council take may take enforcement action under Part 9 of the EP&A Act 1979 and in accordance with Council's adopted Compliance and Enforcement Policy.

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

Site Amenities and Facilities

E10. 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 workplace 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

E11. 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

E12. 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 and Equipment Kept Within Site

E13. 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

E14. All records demonstrating the lawful disposal of waste must be retained and kept readily accessible for inspection by regulatory authorities such as North Sydney Council and the Environmental Protection Authority.

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

F. Prescribed Conditions imposed under EP&A Act and Regulations and other relevant Legislation

National Construction Code

F1. All building work must be carried out in accordance with the provisions of the National Construction Code.

(Reason: Prescribed - Statutory)

Appointment of a Principal Certifying Authority (PCA)

F2. Building work, demolition or excavation in accordance with the development consent must not be commenced until the developer has appointed a Principal Certifying Authority for the building work in accordance with the provisions of the EP&A Act and its Regulations.

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

Construction Certificate

F3. Building work, demolition or excavation in accordance with the development consent must not be commenced until a Construction Certificate for the relevant part of the building work has been issued in accordance with the provisions of the EP&A Act and its Regulations.

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

Occupation Certificate

F4. A person must not commence occupation or use of the whole or any part of a new building (*new building* includes an altered portion of, or an extension to, an existing building) unless an Occupation Certificate has been issued in relation to the building or part. Only the Principal Certifying Authority appointed for the building work can issue an Occupation Certificate.

(Reason: Statutory)

Demolition

F5. 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

- F6. 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

- F7. 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 to 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)

Damage to Adjoining Properties

G2. 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)

I. Ongoing/Operational Conditions

Approved Use - Trial Period

I1. The approved use of the former manager's flat as hotel accommodation and management operations approved under this consent may operate for a trial period of 12 months from the date of issue of the first Occupation Certificate. Council must be informed in writing of the date of commencing the trial period.

In order for the above trial use to be confirmed as ongoing, a modification application under Section 4.55 of the Environmental Planning and Assessment Act 1979, 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 and 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 use and operation of the accommodation on site must revert to that approved and subsequently modified by Council under Development Consent No. 509/07.

(Note: Any person acting on this consent is advised that any modification application should be submitted to Council a minimum sixty (60) days prior to the expiration of the trial period to ensure the determination is made prior to the lapsing of the trial period)

(Reason: To protect the amenity of surrounding areas)

Hotel Accommodation - Operational Plan of Management

12. The management of the hotel accommodation shall be conducted in accordance with the Operational Plan of Management dated February 2022 and received by Council on 17 February 2022, including but not limited to the provision of an onsite manager, except where otherwise amended by the conditions of this consent.

(Reason: To ensure the ongoing operation of the hotel accommodation is in accordance with the terms of this consent)