

Original signed by Miguel Rivera on 18/03/2022

Date determined: 17/03/2022

Date operates: 18/03/2022

Date lapses: 18/03/2027

Elton Chen
415/19 Roseby Street
DRUMMOYNE NSW 2047

D8/22
MR5 (CIS)

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

Development Application Number: 8/22

Land to which this applies: Shop 1, 118 Alfred Street South, Milsons Point
Lot No.: 1, SP: 83595

Applicant: Elton Chen

Proposal: Extension of trading hours for food and drink premises to 7.00 am to 10.00 pm Monday to Sunday.

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: 17 March 2022

Reasons for Approval

The development application has been assessed against the North Sydney Environmental Plan 2013 and the North Sydney Development Control Plan 2013 and generally found to be satisfactory.

From the reasons listed above, the proposed development is unlikely to cause adverse material impacts to adjoining properties.

Having regard to the provisions of Section 4.15 (1) of the *Environmental Planning and Assessment Act 1979*, the proposed development will not result in any unreasonable amenity or environmental impacts. The application is considered satisfactory and can be approved.

Consent to operate from: 18 March 2022

Consent will lapse on: 18 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 18 March 2027.

How community views were taken into account:

The subject application was notified to adjoining properties and the Lavender Bay Precinct Committee for 14 days where a number of issues were raised that have been addressed in this report where appropriate conditions of consent have been recommended to maintain the amenity of adjoining properties and/or the character of the streetscape/ conservation area.

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

DATE

Signature on behalf of consent authority
MIGUEL RIVERA
SENIOR ASSESSMENT OFFICER

(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. On-Going / Operational Conditions

Hours of Operation

11. The hours of operation are restricted to the hours stipulated in CDC7154/0 - specifically, in Part 4, No. 21 (2)(c) and (d), which are:

- 7.00am to 7.00pm, Monday to Saturday
- 9.00am to 6.00pm on Sundays and public holidays

Upon expiry of the permitted hours:

- a) all restaurant service (and entertainment) must immediately cease;
- b) no person shall be permitted entry;
- c) all customers within the outdoor dining area of the premises must leave before 7.00pm (Monday to Saturday) or before 6.00pm (Sundays and public holidays); and
- d) all customers within the internal spaces of 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 11 above the approved use may operate between 7.00am and 10.00pm, Monday to Sunday (including public holidays) for a trial period of twelve (12) months from the date of issue of the first Occupation Certificate, being interim or otherwise. Council must be informed in writing of the date of commencing the trial period.

Upon expiry of the above trial period hours:

- a) all restaurant service (and entertainment) must immediately cease;
- b) no person shall be permitted entry;
- c) all customers within the outdoor dining area of the premises must leave before 10.00pm; and
- d) all customers within the internal spaces of the premises must be required to leave within the following half hour.

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.

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)

Maximum Capacity - Premises and Outdoor Seating

13. The maximum number of patrons allowed by this consent is **forty-nine (49) persons/seats**.
- a) the maximum number of patrons within the internal portions of the premises allowed by this consent is thirty-seven (37) persons/seats.
 - b) the maximum number of patrons within the outdoor dining area of the premises allowed by this consent is twelve (12) persons/seats.

A notice must be displayed at all times in the front window of the premises (or any other clearly visible place) identifying the maximum capacity described in (a) and (b) above:

(Reason: Protection of residential amenity, provision of public information, and to assist in assessing ongoing compliance)

Noise Conditions for Licensed Premises

14. Appropriately qualified acoustic consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustic Society, Institution of Engineers Australia or the Australian Association of Acoustic Consultants must be appointed before the entertainment commences and details of that appointment submitted to Council.

During the first 60 days of operation within the premises, the attended acoustic monitoring must be undertaken in accordance following:

- a) The acoustic consultant must:
 - i) measure and verify that the noise emanating from the premises complies with the noise criteria specified in this consent; and
 - ii) if necessary, make recommendations to ensure that the noise emanating from the premises will comply with the noise criteria at all times. specified in this consent.
- c) The noise measurements must be:
 - i) undertaken without the knowledge of the applicant, manager or operator of the premises; and
 - ii) taken on at least three different occasions on three different days of the week (excluding Monday, Tuesday and Wednesday) from 11.00 pm until the end of the entertainment or the close of business, whichever occurs first.

- d) If the acoustic consultant recommends that additional treatment or works be undertaken under condition (a)(ii) above, those recommendations must be implemented to the acoustic consultant's and Council's satisfaction.
- e) If the acoustic consultant's recommendations are not implemented in accordance with this condition, the premises must not be used for entertainment until such time as the recommendations are implemented and verified.

(Reason: To manage the potential for ongoing noise impacts)

No Entertainment

15. This approval is for a restaurant/cafe only and does not authorise musical or other forms of entertainment. A separate development consent is required for any proposed entertainment.

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

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)

Waste Collection

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

(Reason: To ensure the amenity of surrounding properties)

Delivery Hours

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

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