



Lendlease Development Pty Ltd  
Level 8, 123 Pitt Street  
SYDNEY NSW 2000

D352/23  
KRR (CPE)

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

<b>Development Application Number:</b>	<b>352/23</b>
<b>Land to which this applies:</b>	155-189 Miller Street, North Sydney Lot No.: 1, DP: 1288164
<b>Applicant:</b>	Lendlease Development Pty Ltd
<b>Proposal:</b>	The use of outdoor dining areas along Miller Street and the Laneway on the ground level of the Victoria Cross Metro Station OSD with Hours 7.00am - 11.00pm, seven days a week.
<b>Determination of Development Application:</b>	Subject to the provisions of Section 4.17 of <i>the Environmental Planning and Assessment Act 1979</i> , approval has been granted subject to conditions in the notice of determination.
<b>Date of Determination:</b>	26 February 2024
<b>Reasons for Approval</b>	<p>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.</p> <p>The new outdoor dining areas are unlikely to create adverse material impacts to adjoining properties and promote the use and safety of future pedestrian intensive areas of the Central Business District of North Sydney</p> <p>Having regard to the provisions of Section 4.15 (1) of the <i>Environmental Planning &amp; Assessment Act 1979</i>, the proposed development will not result in any unreasonable amenity or environmental impacts subject to conditions. The application is considered satisfactory and is recommended for approval.</p>

---

**Consent to operate from:** 26 February 2024

---

**Consent will lapse on:** 26 February 2029

---

**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 26 February 2029.

---

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

The subject application was notified to adjoining properties and the CBD Precinct for 14 days where no submissions were received. Appropriate conditions of consent have been recommended to maintain the amenity of adjoining properties and the character of the streetscape.

---

**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.

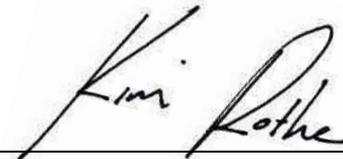
---

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

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

**26 February 2024**

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 2021 (“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**

	<b>Page No.</b>
<b>A.      <i>Conditions that Identify Approved Plans</i></b>	
A1.      Development in Accordance with Plans/Documentation	6
A2.      Plans on Site	6
<b>I.      <i>Ongoing/Operational Conditions</i></b>	
I1.      Hours of Operation	6
I2.      No Entertainment	7
I3.      Patron Behaviour	7
I4.      Daily Cleaning	7
I5.      Shop Premises Registration	7
I6.      Total Area of Premises and Footpath Seating	8
I7.      Umbrellas - No Encroachment	8
I8.      Commercial Waste and Recycling Storage	8
I9.      Footpath Seating Permit Required	8
I10.     Orientation of Tables and Chairs	9

**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 endorsed with Council's approval stamp and other documentation listed in the table to this clause, or cited by other conditions, and as amended by other conditions of this consent.

Plan No.	Rev.	Description	Prepared by	Dated
A-101	B	Proposed outdoor seating area, Miller Street & through site link		Undated
IDO2.1	B	L00 - Umbrella set-out plan	Fiona Lynch	20/09/2023
IDO2.3	B	L00 - Umbrella set-out plan - night	Fiona Lynch	20/09/2023
IDO2.4	B	L00 - Umbrella set-out elevations	Fiona Lynch	20/09/2023
	B	Umbrella and Awning Schedule, Sheets 1 & 2	Fiona Lynch	26/07/2023
0548r02v03		Pedestrian Design Statement Victoria Cross, North Sydney	PDC Consultants	17/05/2023

(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 plans endorsed with Council's approval stamp, 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 Certifier.

All documents kept on site in accordance with this condition must be provided to any officer of the Council or the Principal Certifier 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)

**I. Ongoing/Operational Conditions**

**Hours of Operation**

- I1. The hours of operation are restricted to:

The maximum operating hours for each of the proposed outdoor dining areas is 7.00 am - 11.00 pm, seven (7) days a week.

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)

**No Entertainment**

12. This approval is for outdoor dining in association with food and drink premises. Nothing in this Consent authorises musical or other forms of entertainment including amplified music to be broadcast, played or performed within these spaces. Separate development consent is required for any proposed entertainment.

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

**Patron Behaviour**

13. 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 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) 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**

14. 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)

**Shop Premises Registration**

15. 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:

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

(Reason: To ensure compliance with environmental health legislation)

**Total Area of Premises and Footpath Seating**

16. The maximum area for outdoor dining allowed by this Consent is as follows:

- Tenancy 13-97 sqm
- Tenancy 14-32 sqm
- Tenancy 15-24 sqm
- Tenancy 16-42 sqm
- Tenancies 17 to 21-20 sqm each

Outdoor dining associated with each of the above tenancies shall be limited to the area shown on the plans as per Condition A1 and the above schedule.

(Reason: To clarify the maximum extent of outdoor dining per tenancy, to assist in assessing ongoing compliance)

**Umbrellas - No Encroachment**

17. Umbrellas provided for the footpath seating area are to have a minimum clear height of 2.1m and be located entirely within the designated area for footpath seating and are not to encroach upon the pedestrian corridor at any time.

(Reason: To ensure adequate and unobstructed pedestrian amenity relating to the provision of outdoor seating on footpaths)

**Commercial Waste and Recycling Storage**

18. General Commercial waste and recycling material/storage bins must be stored in a separate area. Any wastes stored within the tenancies is to be a temporary holding area only and to be removed daily to the principle commercial and recycling elsewhere on site.

(Reason: To ensure that commercial waste is properly managed)

**Footpath Seating Permit Required**

19. Footpath seating is not to be provided unless a footpath-seating permit is obtained from North Sydney Council. The permit must be permanently displayed on the premises in accordance with the provision of Council's footpath seating policy. Appropriate public liability insurance must be obtained before a footpath seating permit will be issued.

Note: Footpath seating permits are issued on an annual basis and Council reserves the right to review the operation of outdoor seating. Failure to comply with the terms of this consent and the footpath seating permit may result in the non-renewal of any footpath seating permit

(Reason: To ensure compliance with Council's policy for the provision of outdoor seating on footpaths)

**Orientation of Tables and Chairs**

- I10. Tables and chairs located within the outdoor seating area are to be set out to ensure pedestrian thoroughfare and clearances are maintained to the shop front of the building, and not in a manner that allows chairs to project into the minimum clearance width of 3.35 metres within site through link pedestrian corridor and 13 metre minimum width of 13.0 metres as set out in the Pedestrian Design Statement Victoria Cross, North Sydney statement reference 0548r02v03 dated 17 May 2023 prepared by PDC consultants .

(Reason: To ensure adequate and unobstructed pedestrian amenity relating to the provision of outdoor seating on footpaths)