

Original signed by	David Hoy	on	3/08/2021
Date determined:			3/08/2021
Date operates:			3/08/2021
Date lapses:			3/08/2026

Prestige Town Planning
2A Baree Avenue
NARARA NSW 2250

D131/21
KRR (CIS)

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

Development Application Number: 131/21

Land to which this applies: 9-11 Falcon Street, Crows Nest
Lot No.: 1, DP: 127595

Applicant: Prestige Town Planning

Proposal: Extend operating hours to be Mondays to Sundays from
7.00 am to 12.00 am including all Public and Bank
Holidays

**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: 3 August 2021

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 development will maintain a satisfactory level
amenity for adjoining properties, and will not adversely
impact on the streetscape. All other issues identified in the
report have been found to be either acceptable or able to
be managed via the imposition of conditions of
development consent.

Having regard to the provisions of section 4.15 of the
Environmental Planning and Assessment Act 1979, the
application is considered to be satisfactory and therefore
can be approved.

Consent to operate from: 3 August 2021

Consent will lapse on: 3 August 2026

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 3 August 2026.

How community views were taken into account:

No public submissions were received.

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

3 August 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.

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A. *Conditions that Identify Approved Plans*

Compliance with DA38/21

- A1. The premises shall operate in accordance with the conditions of development consent DA38/21 dated 13 May 2021, *except as amended by the conditions of this consent*. In the event of any inconsistency between requirements in relation to environmental health, food premises, noise and vibration, waste storage and disposal, the more strict or stringent requirement shall apply.

(Reason: To clarify approved development and relationship with existing approval)

I. *Ongoing/Operational Conditions*

Hours of Operation

- I1. The hours of operation are restricted to:

7.00 am to 11.00 pm (Monday to Wednesday)

7.00 am to midnight (Thursday to Saturday)

7.00 am to 10.00 pm (Sunday)

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)

Hours of Operation - Trial Period

- I2. Notwithstanding Condition **I1** above, the approved use may operate between 7.00 am to 12.00 am, including all Public and Bank Holidays, Monday to Sunday inclusive for a trial period of twelve (12) months from the date of issue of this consent. Council must be informed in writing of the date of commencing the trial period.

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)

Noise and Vibration Impact

- I3. 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)

Offensive Odour

- I4. The use of the premises shall not cause the emission of 'offensive odour' as defined under the Protection of the Environment Operations Act 1997.

(Reason: Minimise nuisance emissions)

Air Pollution

- I5. The use of the premises shall not cause 'air pollution' as defined under the Protection of the Environment Operations Act 1997.

(Reason: Environmental health)

Patron Behaviour

- I6. 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)

No Entertainment

17. 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)

Operational Plan of Management

18. The management of the boarding house shall be conducted in accordance with the Operational Plan of Management prepared by Prestige Town Planning dated 5 May 2021 and received by Council on 12 May 2021 except where otherwise amended by the conditions of this consent.

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