

Attachment A

Development Consent D/2023/897

NOTICE OF DETERMINATION OF A DEVELOPMENT APPLICATION

Application number **D/2023/897**
PAN-375767

Applicant	THE TRUSTEE FOR CARSINGHA INVESTMENTS UNIT TRUST 180 George Street SYDNEY NSW 2000
Description of development	Fit out works and ongoing use on Level 5 of the Entertainment Quarter car park for electric go-karting and associated entertainment activities.
Property	116 Lang Road, MOORE PARK NSW 2021 Lot 101 DP 1246842
Determination	Approved Consent Authority ○ Council
Date of determination	15 February 2024
Date from which the consent operates	15 February 2024
Date on which the consent lapses	15 February 2026
Building Code of Australia building classification	Before commencing <i>building work or subdivision work</i> , a relevant Construction Certificate must be obtained from Council or an Accredited Certifier. Council must be appointed the Principal Certifier for any <i>subdivision work</i> under the Act.

Under section 4.18(1) of the EP&A Act, notice is given that the above development application has been determined by the granting of consent using the power in section 4.16(1)(a) of the EP&A Act, subject to the conditions specified in this notice.

Reasons for approval

1. The proposal is consistent with the aims and objectives of the Moore Park Showground in that it will contribute to the Entertainment Quarter as an entertainment and cultural destination.
2. The proposal, subject to conditions, is consistent with the State Environmental Planning Policy No 47 – Moore Park Showground.
3. The proposal, subject to conditions, will not result in unacceptable impacts to nearby residential properties and the operation of other facilities within the Entertainment Quarter.

Community Consultation

Four submissions have been received. Issues raised in all submission have been taken into account in the reoort, and where appropriate conditions of consent have been included in the Notice of Determination to address these issues.

Right of appeal / request a review of the determination

If you are dissatisfied with this determination:

Request a review

You may request a review of the consent authority's decision under section 8.3(1) of the EP&A Act. The application must be made to the consent authority within 6 months from the date that you received the original determination notice provided that an appeal under section 8.7 of the EP&A Act has not been disposed of by the Court.

Rights to appeal

You have a right under section 8.7 of the EP&A Act to appeal to the Court within 6 month after the date on which the determination appealed against is notified or registered on the NSW planning portal.

Objector's right of appeal against the determination

An objector who is dissatisfied with the consent authority's determination to grant consent, has the right to appeal to the Court against the determination under section 8.8 of the EP&A Act within 28 days after the date that the objector was notified of the determination appealed against.

The Dictionary at the end of this consent defines words and expressions for the purposes of this determination.



per

GRAHAM JAHN AM

Director - City Planning, Development & Transport

Person on behalf of the consent authority

For further information, please contact **Emily Cartwright** telephone. 02 9246 7720, or by email **ECartwright@cityofsydney.nsw.gov.au**.

Terms and Reasons for Conditions

Under section 88(1)(c) of the EP&A Regulation, the consent authority must provide the terms of all conditions and reasons for imposing the conditions other than the conditions prescribed under section 4.17(11) of the EP&A Act. The terms of the conditions and reasons are set out below.

GENERAL CONDITIONS

(1) APPROVED DEVELOPMENT

- (a) Development must be in accordance with Development Application No. D/2023/897 dated 29 September 2023 and the following drawings prepared by loopcreative:

Drawing Number	Drawing Name	Date
001 Revision 01	Site Plan	27 July 2023
100 Revision 03	Level 5 – Zoning Plan	04 September 2023

and as amended by the conditions of this consent.

- (b) In the event of any inconsistency between the approved plans and supplementary documentation, the drawings will prevail.

Reason

To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

(2) TIME LIMITED CONSENT

The use may operate for a period of two years from the date of consent. If the use is to be retained after this period, a further application may be lodged with the Council before expiration of the consent. Council's consideration of the continuation will be based on, among other things, compliance with the development consent conditions, any substantiated complaints received and the capacity of parking provisions.

Reason

To limit the use of Level 5 of the Entertainment Quarter carpark building as an entertainment facility.

(3) HOURS OF OPERATION

The hours of operation are regulated as follows:

- (a) The hours of operation must be restricted to between 07:00am and 12.00 midnight Monday to Sunday.

- (b) Notwithstanding (a) above, any amplified performance activities are to be restricted between 10.00am and 10.00pm Monday to Sunday.

Reason

To ensure the entertainment facility operates within the approved hours of operation and to protect the amenity of the surrounding area.

(4) PLAN OF MANAGEMENT

The use must always be operated/managed in accordance with the Plan of Management prepared by Que Consulting and dated 15 December 2023 that has been approved by Council (TRIM ref: 2024/015382). In the event of any inconsistency, the conditions of this consent will prevail over the Plan of Management.

Reason

To ensure all parties are aware of the approved supporting documentation that applies to the development.

(5) COMPLIANCE WITH MANAGEMENT STRATEGIES

Except where amended by any conditions of this consent, the entertainment facility must be managed in accordance with all relevant development consents relating to the site including all relevant Management Plans, which include the following (and any subsequent amendments):

- (i) Lighting Management Strategy Part 2: Family Entertainment Precinct (March 1997);
- (ii) Noise Management Strategy Part 2: Family Entertainment Precinct (March 1997);
- (iii) Water Quality, Drainage and Waste Management Strategy Fox Site (November 1996);
- (iv) Public Transport Management Strategy (August 1999); and
- (v) Parking Management Strategy (August 1999).

Reason

To ensure that the impacts of the entertainment facility are appropriately managed.

(6) WASTE AND RECYCLING MANAGEMENT - GENERAL

The proposal must comply with the relevant provisions of Council's *Guidelines for Waste Management in New Developments 2018* which requires facilities to promote the efficient storage, separation, collection and handling of waste to maximise resources recovery.

Reason

To ensure that waste and recycling is appropriately managed.

BUILDING WORK DURING BUILDING WORK

(7) HOURS OF WORK AND NOISE – OUTSIDE CBD

The hours of construction and work on the development must be as follows:

- (a) All work, including building/demolition and excavation work, and activities in the vicinity of the site generating noise associated with preparation for the commencement of work (eg. loading and unloading of goods, transferring of tools etc) in connection with the proposed development must only be carried out between the hours of 7.30am and 5.30pm on Mondays to Fridays, inclusive, and 7.30am and 3.30pm on Saturdays, with safety inspections being permitted at 7.00am on work days, and no work must be carried out on Sundays or public holidays.
- (b) All work, including demolition, excavation and building work must comply with the City of Sydney Code of Practice for Construction Hours/Noise 1992 and Australian Standard 2436 - 2010 Guide to Noise Control on Construction, Maintenance and Demolition Sites.
- (c) Notwithstanding the above, the use of a crane for special operations, including the delivery of materials, hoisting of plant and equipment and erection and dismantling of on-site tower cranes which warrant the on-street use of mobile cranes outside of above hours can occur, subject to a separate application being submitted to and approved by Council under Section 68 of the Local Government Act 1993 and Sections 138/139 of the Roads Act 1993.

Note: Works may be undertaken outside of hours, where it is required to avoid the loss of life, damage to property, to prevent environmental harm and/or to avoid structural damage to the building. Written approval must be given by the Construction Regulation Team, prior to works proceeding.

The *City of Sydney Code of Practice for Construction Hours/Noise 1992* allows extended working hours subject to the approval of an application in accordance with the Code and under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

Reason

To protect the amenity of the surrounding area.

(8) COMPLIANCE WITH NATIONAL CONSTRUCTION CODE

All proposed work must comply with the *National Construction Code (previously known as Building Code of Australia)*.

Reason

(Prescribed condition - EP&A Regulation 2021 clause 69(1)).

(9) LOADING AND UNLOADING DURING CONSTRUCTION

The following requirements apply:

- (a) All loading and unloading associated with construction activity must be accommodated on site, where possible.
- (b) If, it is not feasible for loading and unloading to take place on site, a Works Zone on the street may be considered by Council.
- (c) A Works Zone may be required if loading and unloading is not possible on site. If a Works Zone is warranted an application must be made to Council at least 8 weeks prior to commencement of work on the site. An approval for a Works Zone may be given for a specific period and certain hours of the days to meet the particular need for the site for such facilities at various stages of construction. The approval will be reviewed periodically for any adjustment necessitated by the progress of the construction activities.
- (d) Where hoisting activity over the public place is proposed to be undertaken including hoisting from a Works Zone, a separate application under Section 68 of the Local Government Act 1993 and Sections 138/139 of the Roads Act 1993 must be submitted to and approved by Council.

Reason

To protect the amenity of the public domain.

(10) NO OBSTRUCTION OF PUBLIC WAY

Unless otherwise approved by Council, the public way must not be obstructed by any materials, vehicles, waste receptacles, skip-bins or the like. Non-compliance with this requirement may result in the issue of a notice by Council to stop all work on the site.

Reason

To protect the amenity of the public domain.

(11) USE OF MOBILE CRANES

The following requirements apply:

- (a) Mobile cranes operating from the road must not be used as a method of demolishing or constructing a building.
- (b) For special operations including the delivery of materials, hoisting of plant and equipment and erection and dismantling of on site tower cranes which warrant the on-street use of mobile cranes, permits must be obtained from Council for the use of a mobile crane. The permits must be obtained 48 hours beforehand for partial road closures which, in the opinion of Council will create minimal traffic disruptions and 4 weeks beforehand in the case of full road closures and partial road closures which, in the opinion of Council, will create significant traffic disruptions.

- (c) The use of a crane for special operations, including the delivery of materials, hoisting of plant and equipment and erection and dismantling of on site tower cranes which warrant the on-street use of mobile cranes outside of approved hours of construction can occur, subject to a separate application being submitted to and approved by Council under Section 68 of the Local Government Act 1993 and Sections 138/139 of the Roads Act 1993.

Reason

To ensure mobile cranes are used appropriately.

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

(12) COMPLIANCE WITH THE ACOUSTIC REPORT PRIOR TO CONSTRUCTION AND OR OCCUPATION CERTIFICATES

- (a) All relevant performance parameters (including but not limited to requirements, engineering assumptions and recommendations) in the DA Acoustic Report prepared by Beau Weyers, dated 1st September 2023, ref 237401.0102.R01V02, titled HYPER KARTING, The Entertainment Quarter Noise Impact Assessment and Noise Management Plan, Council Ref 2023/564858 must be implemented in the development prior to the commencement of its use.
- (b) Prior to the issue of any relevant Construction Certificate, the final construction drawings and final construction methodology must be assessed and reported to be in accordance with the requirements of the DA Acoustic Report in (a) above, with reference to relevant documentation. This must be done by a Suitably Qualified Acoustic Consultant* (see definition below). This work will be to the satisfaction of the Registered Certifier.
- (c) Prior to the issue of any Occupation Certificate, a Suitably Qualified Acoustic Consultant* is to provide a written Acoustic Verification Report to the satisfaction of the Principal Certifier that the development complies with the requirements set out in the Report and in (a) and (b) above.

Note: Suitably Qualified Acoustic Consultant means a consultant who possesses the qualifications to join the Australian Acoustical Society, Institution of Engineers Australia (grade of member) or the Association of Australasian Acoustical Consultants (grade of member firm).

- (d) All physical aspects of the building's structure installed in order to meet performance parameters in accordance with this condition must be maintained at all times.

Reason

To ensure all parties are aware of the supporting documentation that applies to the development.

(13) SANITARY FACILITIES – DETAILS TO BE LODGED WITH AN OC

A performance solution addressing the non-compliance with sanitary facilities on Level 5 of the carpark building must be lodged to the principal certifier prior to the issuing of the occupation certificate.

Reason

To ensure compliance with *National Construction Code (previously known as Building Code of Australia)*.

(14) CONSTRUCTION TRAFFIC MANAGEMENT PLAN

- (a) A Construction Traffic Management Plan must be submitted to and approved by Council prior to an Occupation Certificate being issued.
- (b) The approved plan must be complied with during any demolition and/or construction work.

Reason

To ensure that the impacts of construction traffic is appropriately managed.

(15) TRANSPORT ACCESS GUIDE

A Transport Access Guide must be implemented and maintained by the operators of the premises and be made available to staff, clients, customers and visitors at all times. The following information shall be submitted to and approved by Council prior to the issue of an Occupation Certificate for the site/use.

The Transport Access Guide is to include (but not limited to) the following:

- A Transport Access Guide detailing sustainable transport options to access the site including public transport, cycling and walking or a combination of these modes
- Suitable nearby drop-off/pickup locations.
- Suitable nearby Taxi Zones.
- Public Transport options adjacent to the site.
- Pedestrian access to the site.
- Bicycle Parking and cycleway networks to the site.
- Communication methods by which the Transport Access Guide will be made available to staff, clients, customers and visitors.

Reason

To protect the amenity of the surrounding area.

OCCUPATION AND ONGOING USE

(16) OCCUPATION CERTIFICATE TO BE SUBMITTED

An Occupation Certificate must be obtained from the Principal Certifier and a copy submitted to Council prior to commencement of occupation or use of the whole or any part of a new building, an altered portion of, or an extension to an existing building.

Reason

To ensure the site is authorised for occupation.

(17) NOISE – COMMERCIAL PLANT / INDUSTRIAL DEVELOPMENT

- (a) Noise from commercial plant and industrial development must not exceed a project amenity/intrusiveness noise level or maximum noise level in accordance with relevant requirements of the NSW EPA [Noise Policy for Industry 2017 \(NPfl\)](#) unless agreed to by the City's Area Planning Manager. Further:
 - (i) Background noise monitoring must be carried out in accordance with the long-term methodology in [Fact Sheet B](#) of the NPfl unless otherwise agreed by the City's Area Planning Manager.
 - (ii) Commercial plant is limited to heating, ventilation, air conditioning, refrigeration and energy generation equipment.
- (b) An $L_{Aeq,15 \text{ minute}}$ (noise level) emitted from the development must not exceed the $L_{A90, 15 \text{ minute}}$ (background noise level) by more than 3dB when assessed inside any habitable room of any affected residence or noise sensitive commercial premises at any time. Further:
 - (i) The noise level and the background noise level must both be measured with all external doors and windows of the affected residence closed.
 - (ii) Background noise measurements must not include noise from the development but may include noise from necessary ventilation at the affected premises.
- (c) Corrections in [Fact Sheet C](#) of the NPfl are applicable to relevant noise from the development measured in accordance with this condition, however duration corrections are excluded from commercial noise.

Reason

To protect the acoustic amenity of surrounding properties.

(18) FOX STUDIOS AUSTRALIA NOISE MANAGEMENT STRATEGY PART 2; FAMILY ENTERTAINMENT PRECINCT

This strategy shall comply with the following development consent conditions:

- (a) For the period 10pm to 7am a maximum noise planning level (MINPL) being an LA90 of 40dB(A) measured during any fifteen minute period shall not be exceeded.
- (b) For the period 7am to 10pm a MNPL being an LA90 of 48dB(A) measured during any fifteen minute period shall not be exceeded.
- (c) If any of the noise sources on site generate tonal, frequency varying, repetitive or impulsive noise then a 5dB(A) penalty be applied to the LA10 operational control objectives. The way in which such a penalty is to be applied is detailed in the EPA's Environmental Noise Control Manual; and
- (d) Noise generated should not exceed the MNPLs in paragraphs (a) and (b) at the nearest residential receive

(19) NOISE CONTROL

The speakers of amplification equipment shall face inwards and away from the direction of residential premises. The vertical axis of speakers should be directed towards the ground.

Reason

To protect the acoustic amenity of surrounding properties

(20) EMISSIONS

- (a) The use of the premises must not give rise to the emission of gases, vapours, dusts or other impurities which are a nuisance, injurious or prejudicial to health.
- (b) Gaseous emissions from the development must comply with the requirements of the *Protection of the Environment Operations Act 1997* and *Protection of the Environment Operations (Clean Air) Regulation 2010*.
- (c) Uses that produce airborne particulate matter must incorporate an effective dust collection system.

Reason

To protect the amenity of the surrounding area.

General advisory notes

This consent contains the conditions imposed by the consent authority which are to be complied with when carrying out the approved development. However, this consent is not an exhaustive list of all obligations which may relate to the carrying out of the development under the EP&A Act, EP&A Regulation and other legislation. Some of these additional obligations are set out in the [Conditions of development consent: advisory notes](https://www.planning.nsw.gov.au/sites/default/files/2023-07/condition-of-consent-advisory-note.pdf). <https://www.planning.nsw.gov.au/sites/default/files/2023-07/condition-of-consent-advisory-note.pdf> The consent should be read together with the *Conditions of development consent advisory notes* to ensure the development is carried out lawfully.

The approved development must be carried out in accordance with the conditions of this consent. It is an offence under the EP&A Act to carry out development that is not in accordance with this consent.

Building work or subdivision work must not be carried out until a construction certificate or subdivision works certificate, respectively, has been issued and a principal certifier has been appointed.

A document referred to in this consent is taken to be a reference to the version of that document which applies at the date the consent is issued, unless otherwise stated in the conditions of this consent.

Dictionary

The following terms have the following meanings for the purpose of this determination (except where the context clearly indicates otherwise):

Approved plans and documents means the plans and documents endorsed by the consent authority, a copy of which is included in this notice of determination.

AS means Australian Standard published by Standards Australia International Limited and means the current standard which applies at the time the consent is issued.

Building work means any physical activity involved in the erection of a building.

Certifier means a council or a person that is registered to carry out certification work under the *Building and Development Certifiers Act 2018*.

Construction certificate means a certificate to the effect that building work completed in accordance with specified plans and specifications or standards will comply with the requirements of the EP&A Regulation and *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

Council means the City of Sydney.

Court means the Land and Environment Court of NSW.

EPA means the NSW Environment Protection Authority.

EP&A Act means the *Environmental Planning and Assessment Act 1979*.

EP&A Regulation means the *Environmental Planning and Assessment Regulation 2021*.

Independent Planning Commission means Independent Planning Commission of New South Wales constituted by section 2.7 of the EP&A Act.

Local planning panel means the City of Sydney Local Planning Panel.

Occupation certificate means a certificate that authorises the occupation and use of a new building or a change of building use for an existing building in accordance with this consent.

Principal certifier means the certifier appointed as the principal certifier for building work or subdivision work under section 6.6(1) or 6.12(1) of the EP&A Act respectively.

Site work means any work that is physically carried out on the land to which the development the subject of this development consent is to be carried out, including but not limited to building work, subdivision work, demolition work, clearing of vegetation or remediation work.

Stormwater drainage system means all works and facilities relating to:
the collection of stormwater,

the reuse of stormwater,

the detention of stormwater,

the controlled release of stormwater, and

connections to easements and public stormwater systems.

Strata certificate means a certificate in the approved form issued under Part 4 of the *Strata Schemes Development Act 2015* that authorises the registration of a strata plan, strata plan of subdivision or notice of conversion.

Subdivision certificate means a certificate that authorises the registration of a plan of subdivision under Part 23 of the *Conveyancing Act 1919*.

Subdivision works certificate means a certificate to the effect that subdivision work completed in accordance with specified plans and specifications will comply with the requirements of the EP&A Regulation.