



Martin De Jager  
Prestige Town Planning Pty Ltd  
2A Barree Avenue  
NARARA NSW 2250

D149/19/2  
GJY (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 149/19/2 - APPROVAL**

---

**Development Consent Number:** 149/19/2

---

**Land to which this applies:** 1/120-122 and 2/124-126 Military Road, Neutral Bay  
Lot 1 DP 702487

---

**Applicant:** Martin De Jager

---

**Proposal:** Modification of consent for: Expansion of existing gym premises, change of use of ground floor to a gym, proposed hours of operation (24 hours, seven days) and new window signage

---

Pursuant to Section 4.55 of the Act notice is hereby given of the determination by the consent authority of your request for a modification to Development Consent No. **149/19** and registered in Council's records as Application No. **149/19/2** relating to the land described as **1/120-122 and 2/124-126 Military Road, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **5 September 2019**, has been determined in the following manner:

**Condition I1 to be modified as follows and Condition I2 to be deleted:**

***I. Ongoing/Operational Conditions***

**Hours of Operation**

11. The gym may be open for business between the following hours:

24 hours, seven days a week, subject to operational conditions and the approved plan of management.

(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 the approved use may operate 24 hours, 7 days a week, for a trial period of 12 months from the date of issue of the first Occupation Certificate.~~

~~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 in Condition 11.~~

~~{Reason: To ensure safety and security and protect the amenity of surrounding areas}~~

**Reasons for Approval:**

The modification application has been assessed against all applicable environmental planning instruments and is found to be generally satisfactory, including in relation to the North Sydney LEP 2013 and North Sydney DCP 2013.

The assessment has taken into account community views and the application will not result in any unreasonable adverse effect on the local built and natural environment and will not result in any unreasonable adverse social or economic impact.

The development application would promote the orderly and economic use and development of land and its approval is in the public interest.

Having regard to the provisions of Section 4.15 and s.4.55 of the EP&A Act 1979 the application is considered to be satisfactory and therefore can be approved.

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

No submissions were received in relation to the Development Application and the current modification application was not required to be notified under Council's Community Engagement Protocol.

The conditions attached to the original consent for Development Application No. **149/19** by endorsed date of **5 September 2019** still apply.

**ADVISINGS**

- (a) Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact **Mr George Youhanna**. However, if you wish to pursue your rights of appeal in the Land and Environmental Court pursuant to Section 8.7 of *the Environmental Planning and Assessment Act 1979* (as amended), you are advised that Council generally seeks resolution of such appeals through a Section 34 Conference, instead of a full Court hearing, subject to any further advice to the contrary from Council's Solicitors and senior staff. Such an approach is less adversarial, it achieves a quicker decision than would be the case through a Court hearing and it can give rise to considerable cost and time savings for all parties involved.

- (b) Pursuant to Section 8.2, an applicant is able to request Council to review its determination. An application for a review under Section 8.2 of the Act must be made no later than 28 days after the date on which the application for the modification of the development consent was determined.
- (c) Prior to commencing any building, subdivision or associated constructions works, the following provisions of *the Environmental Planning and Assessment Act 1979* (the 'Act') are to be complied with:
- (i) A Construction Certificate is to be obtained in accordance with Section 6.3 of the Act.
  - (ii) A Principal Certifier is to be appointed and Council is to be notified of the appointment in accordance with Section 6.6 of the Act.
  - (iii) Council is to be notified at least two (2) days of the intention to commence building works, in accordance with Section 6.6(2)(a) of the Act.
- (d) You are advised that changes to the external configuration of the building, changes to the site layout, density and unit configuration internal changes to the proposed building or any changes to the proposed operation of a use **MAY** require the submission of a further modification under Section 4.55 of *the Environmental Planning and Assessment Act, 1979* (as amended).

Council staff would be pleased to assist in identifying such changes which may require the submission of a modification of a Development Application under Section 4.55 of *the Environmental Planning and Assessment Act*.

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

**23 November 2022**

DATE



Signature on behalf of consent authority  
GEORGE YOUHANNA  
EXECUTIVE PLANNER