



LK Pilates Neutral Bay Pty Ltd
C/- Jeremy Hopkins
Professional Planning Group Pty Ltd
T/a PPLAN
Unit 101, 132 Military Road
NEUTRAL BAY NSW 2089

D35/22
RB6 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 35/22/2 - APPROVAL**

Development Consent Number:	35/22
Land to which this applies:	132 Military Road, Neutral Bay Lot No.: 8, DP: 93684
Applicant:	LK Pilates Neutral Bay Pty Ltd c/- Jeremy Hopkins, Professional Planning Group Pty Ltd T/a PPLAN
Proposal:	To modify DA 35.2022 for a Change of use to Pilates Studio (recreation facility indoor), internal fit out, two business identification signs involving a change to the hours of operation, 6.00am to 7.45pm, Monday to Friday

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. **35/22** and registered in Council's records as Application No. **35/22/2** relating to the land described as **132 Military Road, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **27 May 2022**, has been determined in the following manner:

Condition A4 to be amended to reflect the approved change to operating hours:

Terms of Consent

A4. Approval is granted for fitout works as a Pilates studio and associated signage at 132 Military Road, Neutral Bay as follows:

- Staff numbers: Two
- Maximum client numbers: Twelve
- Hours of operation: 7.00 am to 7.45 pm Saturday, Sunday and Public Holidays
- Hours of operation: 7.00 am to 7.45 pm Monday to Friday
- No change is permitted to the hours of illuminated signage which is to remain 7.00 am to 7.45 pm
- the use as a Pilates studio must not intensify without further approval from Council.

This is subject to a 12-month trial period and subject to review.

(Reason: To ensure that the terms of the consent are clear)

Condition A6 to be amended to reflect the approved change to operating hours:

Operational Plan of Management and Noise Impact Assessment

A6. An amended operational plan of management is to be prepared and submitted to Council for approval prior to issue of any construction certificate and prior to issue of any occupation certificate. The plan is to include:

- the 'Accessibility Action Plan' submitted by the applicant on 3 May 2022
- address hours of operation; staffing (two persons); and maximum number of clients (twelve persons)
- audio-visual equipment, audio equipment, and gym equipment to be installed as follows:
 - i. 'Six' televisions which are wall-mounted, five located within the Studio and one located within the Reception area
 - ii. 1 x small Amplifier for instruction by microphone which is to be volume restricted to a maximum noise emission level less than 50dBA
 - iii. "Thirteen" reformer machines
 - iv. Air conditioning units
- Outline use of the equipment to address potential noise and vibration impacts on the adjoining residential uses, to ensure noise emission does not exceed the requirements set out in Table B-2.3 Noise Emission Levels of the NSDCP.
- Include a complaints register and complaints procedure.
- An amended Noise Impact Assessment to reflect the above requirements is to be submitted with the amended Operational Plan of Management to Council and to the Certifying Authority prior to issue of construction certificate and prior to issue of occupation certificate.

(Reason: To minimise any negative impacts on adjoining land uses including residential uses in terms of noise nuisance)

Condition C57 Noise from Plant and Equipment is to be **inserted**, as required by Environmental Health.

Noise from Plant and Equipment C57

C2. The use of all plant and equipment installed on the premises must not:

- (a) Contribute an LAeq(15min) which will cause the total LAeq(15min) from all plant and equipment operating contemporaneously on the site or in the strata scheme or in the mixed strata schemes to exceed the RBL by more than 5dB when measured at the boundary of any affected receiver. The modifying factor adjustments in Section 4 of the EPA Noise Policy for Industry shall be applied.
- (b) Cause "offensive noise" as defined in the *Protection of the Environment Operations Act 1997*.

"affected receiver" includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship and parks and such other affected receiver as may be notified by the Council in writing.

"boundary" includes any window or elevated window of an affected receiver.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Noise Policy for Industry published by the NSW Environment Protection Authority.

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

Condition G5 is to be **deleted**, as it is a duplication of condition G1.

Condition I1 to be **amended** to reflect the approved change to operating hours:

Hours of Operation

I1. The hours of operation are restricted to:

- 7.00 am to 7.45 pm Saturday, Sunday and Public Holidays
- 7.00 am to 7.45 pm Monday to Friday
- No change is permitted to the hours of illuminated signage which is to remain 7.00 am to 7.45 pm seven days.

(Reason: to ensure that amenity of the surrounding locality is maintained, and hours of operation are consistent with those in the surrounding locality)

Amend I3 Operational Plan of Management and Noise Impact Assessment

I3. The Pilates studio must operation in accordance with approved operational plan of management and in accordance with the recommendations of the approved Noise Impact Assessment at all times to minimize impacts to adjoining land uses, as outlined at Condition A6.

- An amended Noise Impact Assessment to reflect the requirements in Condition A6 is to be submitted with an amended Operational Plan of Management to Council and to the Certifying Authority prior to issue of construction certificate and prior to issue of occupation certificate.

(Reason: To minimise any negative impacts on adjoining land uses including residential uses in terms of noise nuisance)

Insert Condition I4 Hours of Operation - Trial Period (12 months)

I4. Notwithstanding Conditions A4 and I1 above the approved use may operate between 6.00 am to 7.45 pm Monday to Friday 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.

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 and the performance of the operation in relation to the 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)

The modification has been assessed against the *North Sydney Local Environmental Plan 2013* and the *North Sydney Development Control Plan 2013* and is considered to be consistent with the original approval and section 4.55(2) of the *Environmental Planning and Assessment Act 1979* and will not change the level of compliance with these plans and controls or with any other relevant planning policy. The modification is consistent with the reasons for the granting of development consent to DA 35.22 and is acceptable, subject to a 12-month trial period.

Reasons for Approval:

There is no change to the physical form of the studio; the change is limited to an extension to the operating hours to permit an additional five hours across the week, being 6.00 am to 7.00 am Monday to Friday. The air conditioning system will operate for these hours, and there may be vibration from the Reformer machines for these hours. There are no changes in terms of the studio's installation, location, and operation. Entry into the premise is unchanged. An amended Noise Impact Assessment and amended Operational Management Plan have been provided to address any amenity impacts. A condition for the recommendations contained therein and Condition C57 recommended by Council's Environmental Health section will be imposed to ensure that residential amenity and acoustic amenity for this mixed-use building is maintained. The modification to extend the hours of the indoor recreational facility will enable the use to be maintained, subject to a 12-month trial period to ensure that the modification will not result in any material amenity impact to adjoining properties.

Having regard to the provisions of section 4.55 and 4.15(1) of the *EPA Act 1979*, the proposed development as modified is substantially the same development as originally consented to and will not have any unreasonable amenity or environmental impacts. The application is therefore recommended for **approval**, subject to appropriate standard and site-specific conditions, relating to hours of operation subject to a 12-month trial period, operational plan of management, and noise impact assessment and Condition C57.

How community views were taken into account:

The proposal is considered to be in the public interest for the reasons stated throughout this report.

The conditions attached to the original consent for Development Application No. **35/22** by endorsed date of **27 May 2022** still apply.

ADVISINGS

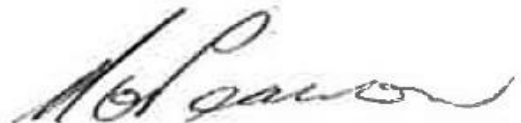
- (a) Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact **Ruth Bennett**. However, if you wish to pursue your rights of appeal in the Land and Environmental Court pursuant to Section 8.7 of *the Environmental Planning and Assessment Act 1979* (as 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

6 February 2023

DATE



Signature on behalf of consent authority
ROBYN PEARSON
TEAM LEADER (ASSESSMENTS)