



Pierre Younes (Ezy MP Pty Ltd)
7 Federal Avenue
ASHFIELD NSW 2131

D312/22
DK (CIS)

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

Issued under Section 4.18 of the Environmental Planning and Assessment Act 1979 (“the Act”). Clause 87 of the Environmental Planning and Assessment Regulation 2021 (“the Regulation”)

Development Application Number: 312/22

Land to which this applies: 40A McDougall Street, Kirribilli
Lot No.: 1, DP: 740787

Applicant: Pierre Younes (EZY MP Pty Ltd)

Proposal: Extend trading hours of existing convenience store 7.00am - 11.00pm - 7 days

Determination of Development Application: The development application was considered by the **North Sydney Local Planning Panel (NSLPP)** on 5 April 2023. 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: 5 April 2023

Reason for approval: The Panel supported the revised hours of operation to ensure the amenity of the residential area.

Consent to operate from: 12 April 2023

Consent will lapse on: 12 April 2028

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 by 12 April 2028.

How community views were taken into account:

The submissions received by Council were addressed in the NSLPP report (see Council's website: <https://www.northsydney.nsw.gov.au/north-sydney-local-planning-panel-nslpp>)

Review of determination and right of appeal:

Within 6 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

5 April 2023

DATE



Signature on behalf of consent authority

DAMON KENNY
EXECUTIVE PLANNER

(i) **Conditions**

Consent is granted subject to the following conditions imposed pursuant to Section 4.17 of the Environmental Planning & Assessment Act 1979 (“the Act”) and the provisions of the Environmental Planning & 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

Page No.

C. Prior to the Issue of a Construction Certificate (and ongoing, where indicated)

- C1. Compliance with Acoustic Report
- C2. Outdoor Lighting

I. On-Going / Operational Conditions

- I1. Hours of Operation
- I2. Deliveries
- I3. External Lighting
- I4. Patron Behaviour

C. *Prior to the Issue of a Construction Certificate (and ongoing, where indicated)*

Compliance with Acoustic Report

- C1. The recommendations contained in the acoustic report prepared by Acoustic Dynamics Pty Ltd, dated 31 August 2022 must be implemented during use of the development (as amended where references to an 11.00pm closing is mentioned, which is to be amended to 10.00pm - 7 days).

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

Outdoor Lighting

- C2. All outdoor lighting must comply with, where relevant AS/NZ1158.3:1999 Pedestrian Area (Category P) Lighting and AS4282:1997 Control of the Obtrusive Effects of Outdoor lighting.

(Reason: To maintain the amenity of adjoining land uses)

I. *Ongoing/Operational Conditions*

Hours of Operation

- I1. The hours of operation are restricted to:

7.00am to 10.00pm - 7 days per week

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

Deliveries

- I2. Deliveries to the shop (with the exception of newspapers) are not to occur before 7.00am and after 9.00pm - seven days.

(Reason: To maintain the amenity of the neighbourhood)

External Lighting

- I3. External lighting, awning signs and the like are to be turned off between the hours of 10.00pm and 7.00am - 7 days.

(Reason: To maintain the amenity of the neighbourhood)

Patron Behaviour

- I4. 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 operator must ensure that the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood.
- (c) The operator 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) The premises are to be operated in accordance with the **Plan of Management** prepared by David Carey (Town Planning and Development), dated September 2022 **and as amended where references to 11.00pm in the hours of operation in Conditions 13, 19 and 24 are amended to read 10.00pm).**

(Reason: To ensure patrons do not interfere with the acoustic amenity of residents in the immediate locality)