



Mr Michael Stephen
17 Macquarie Street
PARRAMATTA NSW 2150

D234/17
DK4 (CPE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 234/17/3 - APPROVAL**

Development Consent Number: 234/17

Land to which this applies: 79 Willoughby Road, Crows Nest
Lot No.: 11, DP: 1160762

Applicant: Michael Stephen

Proposal: Modification for removal of the cafes' extended hours trail period from the consent to operate the extended hours on an ongoing basis

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. **234/17** and registered in Council's records as Application No. **234/17/3** relating to the land described as **79 Willoughby Road, Crows Nest**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **12 September 2023**, has been determined in the following manner:

Hours of Operation

11 The hours of operation are restricted to:

Indoor

7.00 am - 10.00 pm (Mon - Wed)

7.00 am - 12.00 am (Thurs - Sat)

7.00 am - 10.00 pm (Sun)

Outdoor

7.00 am - 10.00 pm (Mon - Sun)

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)

To delete Condition 12.

The proposed modification is generally consistent with the originally approved development application and s.4.55 of the *EP & A Act 1979*. Furthermore, the modifications does not result in any material amenity impact to adjoining properties or the surrounding area. The proposed modification is consistent with the reasons for the granted of development consent to the originally approved development and is considered to be acceptable.

Reasons for Approval:

The modifications do not result in any material amenity impact to adjoining properties or the surrounding area. The proposed modification is consistent with the reasons for the granted of development consent to the originally approved development and is considered to be acceptable.

Having regard to the provisions of section 4.55 and 4.15(1a) of the *Environmental Planning and Assessment Act 1979*, the proposed development as modified is substantially the same development as originally consented to. The application is therefore recommended for **approval**.

How community views were taken into account:

The proposed development 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. **234/17** by endorsed date of **12 September 2023** still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact **Damon Kenny**. 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 October 2023

DATE

Signature on behalf of consent authority
DAMON KENNY
EXECUTIVE PLANNER (ASSESSMENTS)