



CE Waters Pty Ltd
Suite 4, Level 17, 100 Miller Street
NORTH SYDNEY NSW 2060

D92/21
RT (CPE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 92/21/6 - APPROVAL**

Development Consent Number: 92/21

Land to which this applies: 12-14 Waters Road, Neutral Bay
Lot No.: 18, DP 537700; SP: 68360, SP 75048, SP 88483

Applicant: CE Waters Pty Ltd

Proposal: Section 4.55(2) application seeking modifications to Condition E47 (Construction Hours) in Development Consent D92/21 for a five storey shop top housing (mixed use) development to permit additional construction hours.

At its meeting of 25 October 2023, the **Sydney North Planning Panel (SNPP)**, as the consent authority, considered PPSSNH-409 - North Sydney - Section 4.55 Application No. **92/21/6**.

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. **92/21** and registered in Council's records as Application No. **92/21/6** relating to the land described as **12-14 Waters Road, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated **2 November 2021**, has been determined in the following manner:

1. To amend Condition E47 as follows:

Construction Hours

E47. Building construction and works must be restricted to within the hours of 7.00 am to ~~5.00 pm~~ **6.00 pm** Monday to Friday and on Saturday to within the hours of 8.00 am to 1.00 pm inclusive, with no work on Sundays and Public Holidays.

Demolition and excavation works must be restricted to within the hours of 8.00 am to 5.00 pm Monday to Friday only. For the purposes of this condition:

- a) "Building construction" means any physical activity on the site involved in the erection of a structure, cladding, external finish, formwork, fixture, fitting of service installation and the unloading of plant, machinery, materials or the like.
- b) "Demolition works" means any physical activity to tear down or break up a structure (or part thereof) or surface, or the like, and includes the loading of demolition waste and the unloading of plant or machinery.
- c) "Excavation work" means the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders, or the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site and includes the unloading of plant or machinery associated with excavation work.

All builders, excavators must display, on-site, their twenty-four (24) hour contact telephone number, which is to be clearly visible and legible from any public place adjoining the site.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

Reasons for Approval:

The subject S4.55(2) application seeking extension of construction hours has been assessed against the *North Sydney LEP 2013* and *North Sydney DCP 2013* and found to be generally satisfactory subject to modifications to Condition E47 to permit construction hours to be extended to 6.00pm, Monday to Friday.

The applicant also seeks additional demolition/excavation and construction hours on Saturdays, however, it is found that the extended work hours would cause further nuisance, particularly noise nuisance, for the adjoining properties on Saturdays. Therefore, the proposed extended work hours on Saturdays are not supported.

The issues raised in the submissions received have been addressed in this assessment report.

Having regard to the merits of the proposal, the application is recommended for approval subject to modifications to Condition E47.

How community views were taken into account:

The subject S4.55 application was notified between 26 May and 9 June 2023. A total of fifteen (15) submissions have been received objecting the proposed changes to the construction hours. The issues raised in the submission have been addressed throughout the assessment report.

The conditions attached to the original consent for Development Application No. 92/21 by endorsed date of 2 November 2021 still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and, in this regard, please do not hesitate to contact **Mr Robin Tse**. 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 November 2023

DATE



Signature on behalf of consent authority
ISOBELLA LUCIC
TEAM LEADER (ASSESSMENTS)