



Professional Planning Group Pty Ltd
PO Box 340
HAMILTON CENTRAL QLD 4007

D35/22
JV1 (PE)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 35/22/3 - APPROVAL**

Development Consent Number: 35/22

Land to which this applies: Unit 101, 132 Military Road, Neutral Bay
Lot No.: 8, DP: 93684

Applicant: Professional Planning Group Pty Ltd

Proposal: Modification application to amend Conditions A4 and I1, and deletion of Condition I4 for the changes to hours of operation.

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. **35/22/3** relating to the land described as **Unit 101, 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:

1. Condition A4 is amended as follows:

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 number: Two
- Maximum client numbers: Twelve
- Hours of operation: 6.00 am to 7.45 pm Saturday, Sunday, and Public Holidays
- Hours of operation: 6.00 am to 7.45 pm Monday to Friday
- No change is permitted to the hours of illumination signage which is to remain 7.00 am to 7.45 pm
- The use as a Pilates studio must not intensify without further approval of Council

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

2. Condition I1 is amended as follows:

Hours of Operation

11. The hours of operation are restricted to:

- 6.00 am to 7.45 pm Saturday, Sunday, and Public Holidays
- 6.00 am to 7.45 pm Monday to Friday
- No change is permitted to the hours of illumination 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)

3. Condition I4 is deleted as follows:

~~Hours of Operation – Trial Period (12 months)~~

~~14. 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)~~

Reasons for Approval:

The proposed modifications satisfy the provisions of Section 4.55(1A) in that the proposed development remains substantially the same as what was approved by DA 35/2022. The proposed modifications will not alter the use of the development as originally approved and will have a minimal environmental impact.

The proposed modifications would not significantly change the level of compliance with the relevant development standards and controls as contained in the *North Sydney LEP 2013* and *North Sydney DCP 2013*. There would be no significant long-term impacts on the residential amenity of any adjoining properties, or on the character of the locality, and the proposal remains consistent with the objectives of the MU1 Mixed Use zone, and the original reasons for granting consent. The proposal was found to be acceptable in the site circumstances and is recommended that the subject Section 4.55(1A) application be approved.

How community views were taken into account:

The subject application was notified to adjoining properties and the Harrison Precinct for 14 days where the issue of acoustic impacts was raised that have been addressed in this report where appropriate conditions of consent have been recommended to maintain the amenity of adjoining properties and the character of the streetscape.

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 **Mr Jack Varka**. 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

18 June 2024



DATE

Signature on behalf of consent authority
ISOBELLA LUCIC
TEAM LEADER ASSESSMENTS