

Development Consent No. 487/15

Section 4.55 Application

Applicant's Name

Edward Araklyans

Land to which this applies

229 Miller Street, North Sydney
Lot No.: 0, SP: 11322

Proposal

Modify DA 487/15 to amend Condition E5 and allow extension of construction hours 7am-6pm 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. **487/15** and registered in Council's records as Application No. **487/15/4** relating to the land described as **229 Miller Street, North Sydney**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 23 December 2015, has been determined in the following manner:

To delete condition E15 of the consent and insert in lieu thereof the following new condition namely:

Construction Hours

E15. Building construction and works must be restricted to within the hours of 7.00 am to 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)”

Reason for approval

The proposed development as modified is considered to be substantially the same development as approved.

The extended hours will reduce overall construction timeframes. Allowing extended construction hours will speed up the overall construction programme, meaning that impacts on all receivers will occur over a shorter period of time. Notably, it will reduce the impact on residential and commercial receivers who are the most affected by the construction due to their immediate proximity. Notwithstanding this, there are established precedents for approving works to 6.00pm. Accordingly, the recommendation of the report allows for extended hours, but only those consistent with other recent approvals in the CBD.

How were community views taken into account in making the decision

The owners of adjoining properties and the Stanton Precinct were notified of the proposed development from between 20 July 2018 to 3 August 2018. The notification resulted in five (5) submissions which were addressed in the delegated report.

The conditions attached to the original consent for Development Application No. 487/15 by endorsed date of 23 December 2015 still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **Kim Rothe**. 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. The use of the Section 34 Conference approach requires the appellant to agree, in advance and in writing, that the Court appointed assessor will be given the full authority to completely determine the matter at the conference.
- (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 Certifying Authority 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 & 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 & Assessment Act.

DATE

Signature on behalf of consent authority
DAVID HOY
TEAM LEADER ASSESSMENTS