

Development Consent No. 381/17

Section 4.55 Application

Applicant's Name

College House Pty Ltd

Land to which this applies

Shop 1, 156-158 Pacific Highway, North Sydney
Lot No.: 60, SP: 89685

Proposal

To modify Consent No. 381/17 to use premises as yoga and self-defence studio; increase numbers to 18 clients; modify hours of operation Monday to Friday 7am - 9pm and Saturday and Sunday 7am-3pm.

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. **381/17** and registered in Council's records as Application No. **381/17/4** relating to the land described as **Shop 1, 156-158 Pacific Highway, North Sydney**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 1 February 2017, has been determined in the following manner:

To delete Condition A1 of the consent and insert in lieu thereof the following new condition:

Development in accordance with Plans/documentation

- A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Plan no.	Title	Drawn by	Received
DA01 - Plan	-	Mike Hanna Curve 9	8 November 2018
DA02 - Elevation Signage	-	Mike Hanna Curve 9	8 November 2018

(Reason: To ensure that the form of the development undertaken is in accordance with the determination of Council, Public Information)

To delete Condition A3 of the consent and insert new condition G4:

Compliance with Acoustic Report

G4. A statement from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, certifying that the acoustic mitigation measures outlined in the acoustic report prepared by Pulse Acoustic Consultancy, dated 1 November 2018 and received by Council on 8 November 2018 have been suitably incorporated into the development and that relevant noise criteria have been satisfied, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The Principal Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

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

To delete Condition I1 of the consent and insert in lieu thereof the following new condition:

Hours of Operation

I1. The hours of operation are restricted to:

- 7am to 9pm Monday to Friday;
- 7am to 3pm Saturday; and
- 8am to 3pm Sunday.

Upon expiry of the permitted hours:

- (a) all fitness activity must immediately cease;
- (b) no person shall be permitted entry; and
- (c) all persons who are not employees of the premises must be required to leave the premises 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 I2 of the consent and insert in lieu thereof the following new condition:

Hours of Operation – trial period

I2. Notwithstanding the Condition titled ‘Hours of Operation’ the approved use may operate 7am to 3pm Sunday for a trial period of six 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 the performance of the operation in relation to compliance with development consent conditions.

The trial hours of operation can be confirmed as ongoing, through a modification application and subsequent approval by Council, for a maximum period of 5 years. A modification application must be lodged every 5 years should the applicant seek to renew these trading hours.

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)

To delete Condition I8 of the consent and insert in lieu thereof the following new condition:

Maximum Capacity

I8. The capacity of the premises is to be no more than 20 persons at any one time, including clients and employees.

(Reason: To clarify the approval.)

To delete Condition I9 of the consent and insert in lieu thereof the following new condition:

Plan of Management

I9. The management of the premises shall be conducted in accordance with the Plan of Management prepared by Mod Urban, dated November 2018 and received by Council on 14 November 2018, and must comply with the following requirements:

(a) The name, phone number and email of the manager of the premises shall be published on a website, displayed on the front door and displayed at the front desk. The manager must be available, on this phone number and through this email during the operation of the premises, to receive any complaints.

- (b) The Complaints Register where any complaints associated with the premises are recorded must identify, within a reasonable time, how each complaint is subsequently acted upon.
- (c) There must be no shouting or use of whistles within the premises at any time.
- (d) The external doors and windows of the shop are to remain closed at all times during use.

(Reason: To ensure the ongoing operation of the premises does not cause nuisance to neighbours.)

To delete Condition I10 of the consent and insert in lieu thereof the following new condition:

Noise and Vibration Control (Recreational facility (Indoor))

I10. The use of the premises shall be in accordance with the acoustic report prepared by Blackett Acoustics, dated January 2018 and received by Council on 16 January 2018 and including the following:

- (a) All exercise floor areas shall be covered by 40mm Judo Tatami Mat on the under layer of 10mm EVA (Ethylene Vinyl Acetate).
- (b) There must be no use of equipment (machinery/weights) or music.

(Reason: To ensure the ongoing operation of the premises does not cause nuisance to neighbours.)

To delete Condition I12 of the consent and insert in lieu thereof the following new condition:

Use of Fitness Premises

I12. The use of the premises shall be for the purpose of yoga and self-defence under staff supervision. No consent is granted or may be implied for the use of the premises as a gymnasium or other recreation facility.

(Reason: To ensure appropriate ongoing management of the use and premises)

Reason for approval

The application has been considered against the relevant provisions of the *Environmental Planning and Assessment Act 1979, North Sydney Local Environmental Plan 2013, North Sydney Development Control Plan 2013*.

The application does not propose music. The application and acoustic report describes that the use does not involve fighting, shouting, whistles or high level noise. The acoustic report recommends specific flooring.

The application, subject to conditions, is not considered to adversely affect local and residential amenity in terms of acoustic privacy.

Having regard to the provisions of sections 4.15 and 4.55 of the Act, the application proposes substantially the same development as originally approved.

How were community views taken into account in making the decision

The owners of adjoining properties and the local community precinct were notified of the proposed development in accordance with section A4 of NSDCP 2013.

The notification resulted in one submission. The application was amended addressing concerns raised, and other concerns are addressed in the assessment report.

The conditions attached to the original consent for Development Application No. 381/17 by endorsed date of 1 February 2017 still apply.

ADVISINGS

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