

Original signed by: Robyn Pearson Dated: 24/7/2019.

Woolworths Group Limited
C/- HDC Planning
Haskew de Chalain, Mezzanine Level
50 Carrington Street
SYDNEY NSW 2000

D370/18
MS1(CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 370/18/2 – APPROVAL**

Development Consent Number: 370/18

Land to which this applies: 23-25 Broughton Street, Kirribilli
Lot No. 1, DP 119391

Applicant: Woolworths Limited
C/- HDC Planning

Proposal: Modification – Change of hours, signage in relation to
“Woolworths Metro”

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. **370/18** and registered in Council’s records as Application No. **370/18/2** relating to the land described as **23-25 Broughton Street, Kirribilli**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 21 December 2018, has been determined in the following manner: -

1. Condition II Hours of operation is to be deleted and replaced as follows:

Hours of Operation

II The hours of operation are restricted to:

Sunday till Wednesday inclusive: 7:00am to 10:00pm
Thursday till Saturday inclusive: 7:00am to 11:00pm

Upon expiry of the permitted hours:

(a) no person shall be permitted entry; and

(b) 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)

2. Condition 12 Hours of Operation – Trail Period is to be deleted and replaced as follows.

Hours of Operation – Trail Period

I2 Notwithstanding Condition 11 *Hours of Operation* above, the approved shop may operate between **6:00am – 11:00pm Monday to Sunday inclusive** for a trial period of 12 months from the granting of the consent as modified. Council must be informed in writing of the commencement of the trial period.

In order for the above trial hours of operation to be confirmed as ongoing, a modification application pursuant to s4.55 of the *Environmental Planning and Assessment Act, 1979* 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 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 condition 11 of 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 forty (40) 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)

3. Condition 13 Hours of Illumination is to be deleted and replaced as follows.

Hours of Illumination

I3 The illuminated signage approved by this consent may operate only between:

**7:00am till 10:00pm - Sunday to Wednesday (inclusive); and
7:00am till 11:00pm - Thursday to Saturday (inclusive).**

Except for the illuminated Fascia Sign on Burton Street which must cease at 8:00pm daily.

The illumination of signage approved by this consent must cease at all other times.

(Reason: To ensure appropriate forms of signage that are consistent with Council's controls and those that are desire for the locality.)

4. Condition I4 Hours of Illumination – Trial Period is to be deleted and replaced as follows.

Hours of Illumination - Trial Period

- I4 Notwithstanding Condition I3 Hours of Illumination above, the illuminated signs must cease between **11:00pm – 6:00am Monday to Sunday** inclusive for a trial period of 12 months from the granting of the consent as modified. Council must be informed in writing of the commencement of the trial period. 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 pursuant to s4.55 of the *Environmental Planning and Assessment Act, 1979* 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 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.

Should the trial period for the opening hours as listed in Condition: I2 Hours of Operation – Trial Period be extended, this does not oblige Council to continue with the trial period hours for signage illumination. 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 forty (40) 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)

5. Condition I6 - Operational Plan of Management is to be added to the Consent

Operational Plan of Management

- I6 At all times the operator of the store must comply with the Operational Plan of Management submitted with the application and dated May 2019 that is endorsed with Council's Approval Stamp.

(Reason: To ensure the amenity of the surrounding locality is maintained.)

6. Condition I7 - Offensive Noise is to be added to the Consent

Use of the premises must not result in Offensive Noise.

- I7 The use of the premises must not give rise to offensive noise within the meaning of the *Protection of the Environment Operations Act, 1997*.

(Reason: To ensure the amenity of the surrounding locality is maintained)

Reason for approval:

The matters for consideration as outlined in Section 4.15(1) of the Act have been satisfied. The proposed development is permissible, meets the development standards and relevant provisions of NSLEP 2013 and is generally in accordance with the objectives of the NSDCP 2013.

The additional hour of operation extending the closing time from 10:00pm until 11:00pm is considered reasonable and as it would increase the convenience of the surrounding residential area, provide passive surveillance of the public domain area and would not adversely impact the residential amenity of the surrounding shop top housing or residential area given the nature of the use of the premises.

The modification to the hours of operation is subject to a trial period to ensure that should there be any adverse impacts to the surrounding area, then there would be an opportunity for review.

How community views were taken into account:

The development application was notified in accordance with Council's notification policy. The proposed modification received two submissions. Whilst it is not anticipated that there would be adverse amenity impacts as a result of the additional opening hour each day, a trial period is recommended to provide an opportunity for review.

The conditions attached to the original consent for Development Application No. 370/18 by endorsed date of 21 December 2018 still apply.

ADVISINGS

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

Endorsed for and on behalf of North Sydney Council

DATE

Signature on behalf of consent authority
ROBYN PEARSON
TEAM LEADER(ASSESSMENTS)