

Adam Spiteri
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D204/17
LD (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
SECTION 4.55 MODIFICATION 204/17/2 – APPROVAL**

Development Consent Number: 204/17/2

Land to which this applies: 100 Walker Street, North Sydney
Lot No.: 1, DP: 542915

Applicant: Adam Spiteri

Proposal: Section 4.55 (2) application to modify consent DA No. 204/17 to formalise the hours of operation of the gymnasium to 24 hours, 7 days per week

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. **204/17** and registered in Council's records as Application No. **204/17/2** relating to the land described as **100 Walker Street, North Sydney**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 22 February 2018, has been determined in the following manner: -

1. Modified Conditions A1 and I3 as follows:

Clarification of Consent

A1. The gymnasium must at all times operate in accordance with the conditions of the Development Consent 1026/1994 and the requirements of this consent and as modified. In the event of any inconsistency between the requirements of this consent and as modified and any preceding consent still in force; the requirements of this consent and as modified prevail to the extent of the inconsistency.

(Reason: To ensure consistency with the terms of the different consents on the site)

Hours of Operation

I3. The hours of operation for the gymnasium:

24 hours a day, 7 days a week

(Reason: to ensure compliance with the terms of this consent)

2. Add Conditions 16, 17 and 18 as follows:

Safety Management Plan

16. The gymnasium shall operate in accordance with the terms of the '24.7 Safety Management Plan – 100 Walker Street, North Sydney' received by Council on 5 December 2019 except where amended by the following conditions.

Note: The terms 'after hours' and 'extended hours' referred to in the above Plan refer to the times when the gymnasium is not staffed i.e. before 9am and after 5pm.

A copy of this document is to be retained on Council's file.

(Reason: To minimise adverse impacts on the surrounding locality)

Waste Collection

17. Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.

(Reason: To ensure the amenity of surrounding properties)

Delivery Hours

18. No deliveries, loading or unloading associated with the premises are to take place between the hours of 10pm and 6am on any day.

(Reason: To ensure the acoustic amenity of surrounding properties)

3. Delete Condition 14 'Hours of Operation – trial period'

Reason for approval:

The proposed formalisation of the hours of operation of the gymnasium to 24 hours a day 7 days a week is considered reasonable as there are unlikely to be any adverse amenity impacts on surrounding properties. It is noted that no formal complaints were made to Council during the trial period. The Safety Management Plan, as amended, demonstrates a strong commitment to good management of the gymnasium when it is not staffed at night.

How community views were taken into account:

The subject S4.55 application was notified to surrounding property owners between 8 November and 22 November 2019. No submissions were received.

The conditions attached to the original consent for Development Application No. 204/17 by endorsed date of 22 February 2018 still apply.

ADVISINGS

- (a) Council is always prepared to discuss its decisions and in this regard, please do not hesitate to contact **the undersigned**. 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
LUKE DONOVAN
SENIOR ASSESSMENT OFFICER