

Daniel Barber  
68 Kareena Road  
MIRANDA NSW 2228

D318/15  
MS3 (CIS)

**ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED  
SECTION 4.55 MODIFICATION 318/15/2 – APPROVAL**

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**Development Consent Number:** 318/15

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**Land to which this applies:** 155-159 Military Road, Neutral Bay  
Lot No.: 11, DP: 828335

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**Applicant:** Daniel Barber

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**Proposal:** Section 4.55(1A) – Adopt trial period hours as ongoing hours of operation for a gym.

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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. **318/15** and registered in Council's records as Application No. **318/15/2** relating to the land described as **155-159 Military Road, Neutral Bay**.

Your request for the modification of the Development Consent as set out in Notice of Determination dated 14 December 2015, has been determined in the following manner: -

**1. Condition 11 is to be amended as follows:**

**Operational Plan of Management**

11. The gym shall operate in accordance with the terms of the Operational Plan of Management prepared by Paro Consulting, dated January 2020, received by Council on 11 February 2020, in particular noting or amended as follows:

- a limit of 40 persons per class must be adhered to; and
- that background music must not exceed the background noise level (LA90) in any Octave Band Frequency by more than 5dB between the hours of 5.00am and 7.00am when assessed at the boundary of any affected residence.

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

**2. Condition I2 is to be amended as follows:**

**Hours of Operation**

I2. The hours of operation are restricted to: 6.00am to 8.30pm, Monday to Sunday

Upon expiry of the permitted hours:

- (a) all gym activity must immediately cease;
- (b) no person shall be permitted entry; and
- (c) 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)

**3. Condition I4 is to be amended as follows:**

**Noise and Vibration (Compliance)**

I4. Within 60 days of the gym recommencing its operation, following the issue of the modified consent, further acoustic testing must be undertaken and a report from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, prepared to demonstrate that the use of the premises complies with the conditions of this consent and the Acoustic Report prepared by Noise and Sound Services, dated September 2015.

**Council is to be advised in writing of the date that the gym recommences operation given that Public Health (COVID-19 Restrictions on Gatherings and Movement) Order 2020 [NSW] resulted in the closure of the gym. This date shall be utilised as the first day of the 60 day period referenced in this condition.**

The testing must be carried out when the premises is operating at full capacity and includes the additional trial period hours. A copy of the report must be submitted to Council within 14 days of its completion.

If the use is found not to comply with the noise conditions, the use must cease immediately until appropriate measures to remedy the breach are implemented to the satisfaction of Council.

(Reason: To ensure compliance with acceptable noise levels to maintain the amenity of adjoining land uses)

**4. Condition I8 is to be added to the consent:**

**Hours of Operation – trial period (Standard condition I2)**

I8. Notwithstanding Condition I2 above the approved use may operate between:

Monday to Sunday: 5am and 8.30pm

for a trial period of 12 months from the date of issue of the first the modified development consent. 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.

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 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)

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The matters for consideration as outlined in section 4.15(1) and section 4.55(1A) 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.

**Reason for approval:**

The gym has changed owners since the development consent was granted and occupation certificate issued. The operational requirements of the new businesses have changed since the issue of the consent. The new operators have therefore also submitted an amended operational plan of management to address the current operational requirements of the gym.

The operation of a trial period for a period of 12 months would allow Council the opportunity to confirm that there are no unreasonable impacts created as a result of the operation of the gym between 5.00am and 6.00am.

The applicant would also be required to revalidate the standards to be achieved as outlined in the acoustic report submitted in support of the application.

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**How community views were taken into account:**

The proposed development was notified in accordance with Council's Community Engagement Protocol from 6 December 2019 until 13 January 2020. One submission was received, and the issues raised in the submission were addressed by appropriate conditions of consent to maintain residential amenity.

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The conditions attached to the original consent for Development Application No. 318/15 by endorsed date of 14 December 2015 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**

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DATE

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