

Myrtle 29 Pty Ltd
PO Box 222
CAMMERAY NSW 2062

D287/20
DWH (CIS)

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 AS AMENDED
NOTICE OF DETERMINATION – Refusal

*Issued under Section 4.18 of the Environmental Planning and Assessment Act 1979 (“the Act”).
Clause 100 of the Environmental Planning and Assessment Regulation 2000 (“the Regulation”)*

Development Application Number: 287/20

Land to which this applies: 13 Eden Street, North Sydney
Lot No.: 7, SP: 96224

Applicant: Myrtle 29 Pty Ltd

Proposal: To extend operating hours of ground floor tenancies G01 to G07 – (inclusive) to a 24 hours a day, seven days a week.

Determination of Development Application: The development application was considered by the **North Sydney Local Planning Panel (NSLPP)** on 5 May 2021 Subject to the provisions of Section 4.17 of the Environmental Planning and Assessment Act 1979, the subject application has been refused for the reasons stated below.

Date of Determination: 5 May 2021

Reason for refusal:

The Panel considers that the application to extend the trading hours for the commercial suites is inappropriate having regard to the close proximity of the residential apartments above and the common courtyard.

The reasons for refusal are detailed below:

1. The proposed extension of operating hours to 24 hours a day, seven days a week is contrary to clause 1.2 2(a) of the North Sydney Local Environmental Plan because it has not been demonstrated that the proposal is appropriate to its context and enhances the amenity of the North Sydney community and environment.

2. The proposed extension of operating hours to 24 hours a day, seven days a week is contrary to clause 1.2 2(b) (ii) of the North Sydney Local Environmental Plan because it has not been demonstrated that the proposal will maintain a diversity of activities while protecting residential accommodation and local amenity.
3. The proposed extension of operating hours to 24 hours a day, seven days a week is contrary to clause 1.2 2(d) (ii) of the North Sydney Local Environmental Plan because the development will adversely affect the amenity of residential properties in terms of acoustic privacy.
4. The proposed extension of operating hours to 24 hours a day, seven days a week is contrary to the stated aim of the B4 Mixed Use zone which is to create interesting and vibrant mixed use centres with safe, high quality urban environments with residential amenity.
5. The proposed extension of operating hours to 24 hours a day, seven days a week is contrary to Objective 5 of Part 1.1.1 (General) of the North Sydney DCP which requires that any development does not have adverse impacts on residential amenity or environmental quality.
6. The proposed extension of operating hours to 24 hours a day, seven days a week is contrary to the objective O12 of Part 2.1.1 (General Objectives) of the North Sydney DCP as it would not minimise the acoustic impacts on residents from non-residential activities,
7. The proposed extension of operating hours to 24 hours a day, seven days a week is contrary to the objective of Part 2.3.9 (Acoustic Privacy) of the North Sydney DCP which requires that a development ensures all residents within a mixed use development are provided with a reasonable level of acoustic privacy. In this case, a Plan of Management is not considered to be a satisfactory mechanism to ensure compliance with this objective.
8. The proposed extension of operating hours to 24 hours a day, seven days a week is contrary to the objectives and provisions of Part B Section 7- Late Night Trading of the North Sydney DCP which requires that a development ensures that late night trading premises will have minimal adverse impacts on the amenity of residential or other sensitive land uses and to ensure that operators of late night trading premises commit to good management practices through the implementation of robust plans of management;

How community views were taken into account:

The submissions received by Council were addressed in the NSLPP report (see Council's website: https://www.northsydney.nsw.gov.au/Council_Meetings/Meetings/NSLPP/2021/5_May_2021)

Review of determination and right of appeal:

Within 6 months after the date of notification of the decision, a review of this determination can be requested under Division 8.2 of the Act or an appeal to the Land and Environment Court made pursuant to the provisions of Section 8.7 of the Act. A review of determination should be lodged as soon as possible, and preferably no later two months after the date of notification of the decision to enable the review to be completed within the six-month period.

Endorsed for and on behalf of North Sydney Council

DATE

Signature on behalf of consent authority
DAVID HOY
TEAM LEADER (ASSESSMENTS)
