

Platino Properties Pty Ltd
11/20 Young Street
NEUTRAL BAY NSW 2089

D85/21
TH2 (CIS)

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

Development Application Number:	85/21
Land to which this applies:	89 Parraween Street, Cremorne Lot No.: 1, DP: 1267178
Applicant:	Platino Properties Pty Ltd
Proposal:	Proposed hours of operation 6.00 am - 6.00 pm Monday to Saturday and 7.00 am - 6.00 pm Sunday for a ground floor retail premises who supply paint 'Inspirations Paint'
Determination of Development Application:	Subject to the provisions of Section 4.17 of the Environmental Planning and Assessment Act 1979, approval has been granted subject to conditions in the notice of determination.
Date of Determination:	19 August 2021
Reasons for Refusal:	
1. The Complying Development Certificate (No. 212062) for the ground floor tenancy located at 89 Parraween Street has not been approved by the relevant Authority.	
(i) The development application proposes hours of operation for a retail premises trading as 'Inspirations Paint'. During assessment of DA Application No. 85/21 Council received confirmation on 28 May 2021 that the use and fit out of the retail premises to be operated by 'Inspirations Paint' is subject to a separate Complying Development Certificate (CDC) No. 212062. However, no consent has been granted to date for the use and fit out of the retail premises being assessed under CDC No. 212062. Development consent for the operating hours cannot be granted prior to the use being approved. Council is unable to fully consider the implications and potential adverse impact from operations of the retail premises operated by 'Inspirations Paint' including the implications from the final layout and design of the premises subject to CDC No. 212062.	

- (ii) A recommendation within the acoustic report requires the glazing of the retail tenancy is to be a minimum 6.38 mm laminate with a minimum Rw rating of 31. The conditions of this consent cannot make amendments to the design or fit out of the premises because the application is for operating hours only and not subject to a construction/occupation certificate. Council would require evidence that the appropriate glazing will be installed in approved plans of the respective CDC (No. 212062). Council cannot therefore assess the hours of operation prior to a consent granted for the use and fitout of the tenancy and evidence is provided confirming physical noise attenuation measures have been approved.

2. Adverse impact to residents due to hours of operation starting at 6.00 am

- (i) The hours of operation starting at 6.00 am is not considered compatible with the immediate residential locality including the R4 High Density Residential Zone opposite the site. The 6.00 am opening will have an adverse impact due to the early morning operating hours and associated noise from customers, vehicles parking on Parraween Street and general retail activity that is considered not compatible with residential uses in the locality therefore not meeting the objectives of the B4 Mixed Use Zone.
- (ii) There are residents in close proximity to the ground floor retail store including the upper residential levels of the subject site and opposite where land is zoned R4 High Density Residential. Due to the proximity of the retail store to residential receivers the implications from a 6am opening including the potential noise impact from customer activity arriving and leaving the premises a trading hour starting at 6am is likely to have an unreasonable impact to nearby residents including residents above the retail premises. The proposed operating hour at 6am Monday to Saturday is not acceptable due to the proximity to residential land uses and therefore not supportable considering Provision P1(a) in s7.2 'Matters for Consideration of the NSDCP 2013.
- (iii) The acoustic report prepared by Acoustic Logic submitted with the application considered the mechanical equipment associated with the use of the retail premises as 'Inspirations Paint' concluding that the mechanical plant satisfies Council's noise requirements. However, the acoustic report did not consider the likely noise and disturbance to residents within the subject building and/or adjoining sites arising from customers arriving, parking, and loading vehicles between the hours of 6.00 am - 7.00 pm. The acoustic report did not provide sufficient recommendations in relation to the likely impact upon residential properties between the operating hours of 6.00 am - 7.00 pm contrary to Objective O1, 2.3.2 'Noise' and Objective O1, 7.3.3 'Acoustic Impacts' of the NSDCP 2013.

3. Public Interest

- (i) The development application seeking operating hours starting at 6am Monday to Saturday for the paint store to be operated by 'Inspirations Paint' has attracted concerns from future owner/occupiers of the building. Submitters raised concerns regarding the adverse impact from trade related activity including arrival, departure of vehicles and loading of paint materials at an early hour disruptive to residents on Parraween Street. The submissions received raising concerns regarding the adverse impact to residents from operating at 6am Monday to Friday is concurred with by Council including Council's Environmental Health Officer. The operating hours are considered not in the public interest which is a matter for consideration in determining a development application as directed by s4.15(1)(e) 'Evaluation' of the Environmental Planning and Assessment Act 1979.
-

How community views were taken into account:

The subject application was notified to adjoining properties and the Harrison Precinct for 14 days where six submissions were received (four, no objection and, two, objection). The varied submissions particularly objections raised highlight the potential adverse impact and uncertainties regarding an early operating hour operating hour of 6.00 am Monday to Saturday.

Review of determination and right of appeal:

Within six 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

19 August 2021

DATE

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