

Prevention Notice



NORTH SYDNEY COUNCIL
ABN 32 353 260 317
PO Box 21
NORTH SYDNEY NSW 2059

Attention: Mr Matthew Pearce, Senior Counsel on behalf of the Acting General Manager

Notice Number 1539862
File Number EF13/8777
Date 15-Apr-2016

BY: EMAIL

NOTICE OF PREVENTIVE ACTION

BACKGROUND

1. The Environment Protection Authority ("EPA") has responsibility for the administration and enforcement of environment protection legislation including the *Protection of the Environment Operations Act 1997* ("POEO Act");
2. Under the POEO Act the EPA is the Appropriate Regulatory Authority ("ARA") for works carried out by a local government authority and is the ARA for works being carried on by or on behalf of North Sydney Council;
3. North Sydney Council has commissioned the works commonly referred to on Councils website as "Berry Street Public Domain Upgrade" at North Sydney ("The Works");
4. The Works are being carried out on behalf of North Sydney Council by Head Contractor CA&I PTY LTD (ABN 40 158 442 436) in Berry Street between the Pacific Highway and Walker Street, North Sydney. The works include new footpath paving, new kerb and gutter, paved service utility pits, public seating, bins and new tree surrounds and are due to be completed by July 2016;
5. The advertised hours for the works are 7pm-5am Sunday to Friday; 7am-5pm Monday to Friday and 8am-1pm Saturday;
6. On Monday 14 March 2016 the EPA began receiving complaints through its Environment Line alleging offensive noise associated with night time activities as part of the works including continuous jack hammering, concrete cutting and constant deliveries from trucks using loud reversing beepers 6 nights per week;
7. Since Monday 14 March 2016 the EPA has received more than 20 complaints from 9 different complainants residing in the "Beau Monde" apartment block at 77 Berry Street, alleging significant sleep disturbance for more than 4 weeks due to constant noise between 7pm and 5am associated with the works;

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8. The EPA met with representatives of North Sydney Council on Thursday 14 April 2016 to inspect the works and discuss the issues being raised by residents. After considering the details of those discussions and the proximity and duration of night works to residents the EPA is of the opinion that North Sydney Council is not implementing all reasonable and feasible measures to minimise and mitigate noise and vibration from the works and therefore the EPA believes the works are being conducted in an environmentally unsatisfactory manner.
9. The EPA provided North Sydney Council with a copy of the draft notice on Friday 15 April 2016 for comment.

DIRECTION TO TAKE PREVENTIVE ACTION

The Environment Protection Authority (EPA) directs NORTH SYDNEY COUNCIL to cease all night time noise generating activities associated with the works from 5pm Friday 15 April 2016 until the following actions have been undertaken:

1. Develop and implement a Noise Management Plan ("the Plan") that has been prepared by a suitably qualified and independent consultant in the field of noise management and mitigation for the duration of the works in accordance with the principles and recommendations outlined EPA's *Interim Construction Noise Guidelines* which includes but is not limited to:
 - 1.1 providing details of the reasonable and feasible noise mitigation measures including respite periods for out of hours noisy activities that Council and its Head Contractor will implement for the duration of the works;
 - 1.2 including evidence of adequate consultation with the affected community and the provision of a 24/7 complaints line with appropriately trained staff to manage and respond to noise complaints at the time they are made;
2. The plan must be submitted to the Manager Sydney Industry by **5pm Friday 22nd of April 2016** via the email address metro.regulation@epa.nsw.gov.au
3. North Sydney Council and/or its Head Contractor must not recommence night time noise generating activities associated with the works until the EPA provides formal written comments on the plan required to be submitted by condition 2 above and the EPA's comments, if any, have been incorporated into the revised plan.

FEE TO BE PAID

1. You are required by law to pay a fee of \$506 for the administrative costs of issuing this notice.
2. It is an offence not to pay this fee. However you can apply for an extension of time to pay the fee or for the fee to be waived. At the end of this notice there is information about how and when to pay the fee and how to apply for an extension or a waiver of the fee.

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David Gathercole

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Acting Manager
Metropolitan - Sydney Industry
(by Delegation)

INFORMATION ABOUT THIS PREVENTION NOTICE

- This notice is issued under section 96 of the Protection of the Environment Operations Act 1997.
- It is an offence against the Act not to comply with this notice.
- Details provided in this notice will be available on the Public Register in accordance with section 308 of the Protection of the Environment Operations Act 1997.

Penalty for not complying with this notice

- The maximum penalty for a corporation is \$1,000,000 and a further \$120,000 for each day the offence continues. The maximum penalty for an individual is \$250,000 and a further \$60,000 for each day the offence continues.

Appeals against this notice

- You can appeal to the Land and Environment Court against this notice. The deadline for lodging your appeal is 21 days after you were served with the notice.

When this notice begins to operate

- This notice operates from the day the notice is given, unless a later date is specified in the notice.
- If an appeal is made against the notice, and the Land and Environment Court directs that the notice is stayed, the notice does not operate until the stay ceases to have effect, or the Land and Environment confirms the notice, or the appeal is withdrawn (whichever occurs first).

Deadline for paying fee

- The fee must be paid by **no later than 30 days after the date of this notice unless you appeal** to a court against the notice, or unless the EPA extends the time for payment of the fee or waives the fee. If you do appeal this notice the fee does not have to be paid unless and until the court confirms the notice.

How to pay fee

- Possible methods of payment are listed on the last page of the attached invoice/statement.
- Please include the payment slip from the attached invoice/statement with your payment.

How to apply for extension of time to pay/waiver of fee

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- Any application for an extension of time to pay the fee, or waive the fee should be made in writing to and sent to . The application should set out clearly why you think the application should be granted.

Other costs

- The Protection of the Environment Operations Act allows the EPA to recover from you reasonable costs and expenses it incurs in monitoring action taken under this notice, ensuring the notice is complied with and associated matters. (If you are going to be required to pay these costs and expenses you will be sent a separate notice called a “Notice Requiring Payment of Reasonable Costs and Expenses”.)

Continuing obligation

- Under section 319A of the Act, your obligations to comply with the requirements of this notice continues until the notice is complied with, even if the due date for compliance is passed.

Variation of this notice

- This notice may only be varied by subsequent written notices issued by the EPA.