



Miss Olive Veale-Wright
Project Flow Pty Ltd
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PARRAMATTA NSW 2150

D149/22
RW (CIS)

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

Development Application Number:	149/22
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Land to which this applies:	59 Hume Street, Crows Nest Lot No.: 36, SEC: 4, DP: 2872
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Applicant:	Olive Veale-Wright from Project Flow
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Proposal:	Change of use from a commercial office to a personal training studio and extend hours of operation
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Determination of Development Application:	Subject to the provisions of Section 4.17 of <i>the Environmental Planning and Assessment Act 1979</i> , approval has been granted subject to conditions in the notice of determination.
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Date of Determination:	21 October 2022
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Reasons for Approval

The development application has been assessed against the North Sydney Environmental Plan 2013 and the North Sydney Development Control Plan 2013 and generally found to be satisfactory.

From the reasons listed above, the proposal is unlikely to cause adverse material impacts to adjoining properties with the imposition of conditions.

Having regard to the provisions of Section 4.15 (1) of *the Environmental Planning and Assessment Act 1979*, the proposed development will not result in any unreasonable amenity or environmental impacts. The application is considered satisfactory and is recommended for approval.

Consent to operate from: 21 October 2022

Consent will lapse on: 21 October 2027

Period of Consent

Subject to Section 4.20 of the Act, this consent becomes effective and operates from the date listed above. The consent lapses five years after the date of consent in accordance with Section 4.53 of the Act and cannot be extended. To activate this consent, works must physically commence onsite 21 October 2027.

How community views were taken into account:

The subject application was notified to adjoining properties and the Holtermann Precinct for 14 days where a number of issues were raised that have been addressed in this report where appropriate conditions of consent have been recommended to maintain the amenity of adjoining properties.

Review of determination and right of appeal:

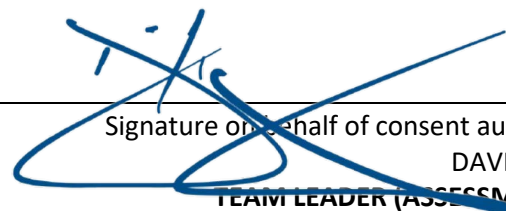
Within six months after the date of notification of the decision, a review of this determination can be requested under Division 8.2 of the Act or an appeal to the Land and Environment Court made pursuant to the provisions of Section 8.7 of the Act. A review of determination should be lodged as soon 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.

Plans endorsed by the consent authority - please refer to condition A1.

Endorsed for and on behalf of North Sydney Council

21 October 2022

DATE



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

(i) **Conditions**

Consent is granted subject to the following conditions imposed pursuant to Section 4.17 of the *Environmental Planning and Assessment Act 1979* ("the Act") and the provisions of the *Environmental Planning and Assessment Regulation 2000* ("the Regulation") such conditions being reasonable and relevant to the development as assessed pursuant to Section 4.17 of the Act.

(ii) **Definitions**

Unless specified otherwise, words have the same meaning as defined by the Act, the Regulation and the *Interpretation Act 1987* as in force at the date of consent.

Applicant means the applicant for this consent.

Approved Plans means the plans endorsed by Council referenced by this consent as amended by conditions of this consent.

AS or **AS/NZS** means Australian Standard® or Australian/New Zealand Standard®, respectively, published by Standards Australia International Limited.

NCC means the National Construction Code as published by the Australian Building Codes Board as in force at the date of issue of any *Construction Certificate*.

Council means North Sydney Council.

Court means the Land and Environment Court.

Local Native Plants means species of native plant endemic to North Sydney LGA.

Stormwater Drainage System means all works, facilities and documentation relating to:

- The collection of stormwater,
- The retention of stormwater,
- The reuse of stormwater,
- The detention of stormwater,
- The controlled release of stormwater; and
- Connections to easements and public stormwater systems.

Owner means the owner of the *site* and successors in title to the *site*.

Owner Builder has the same meaning as in the *Home Building Act 1989*.

Principal Certifier for building or subdivision work means the certifier appointed as the principal certifier for the building work under section 6.6 (1) or for the subdivision work under section 6.12 (1).

Principal Contractor for building work means the person responsible for the overall coordination and control of the carrying out of the building work.

Note: If any residential building work is involved, the principal contractor must be the holder of a contractor licence under the *Home Building Act 1989*.

Professional Engineer has the same meaning as in the *NCC*.

Public Place has the same meaning as in the *Local Government Act 1993*.

Road has the same meaning as in the *Roads Act 1993*.

SEE means the final version of the Statement of Environmental Effects lodged by the *Applicant*.

Site means the land being developed subject to this consent.

NSLEP 2013 means *North Sydney Local Environmental Plan 2013*

NSDCP 2013 means *North Sydney Development Control Plan 2013*

Work for the purposes of this consent means:

- the use of land in connection with development,
- the subdivision of land,
- the erection of a building,
- the carrying out of any work,
- the use of any site crane, machine, article, material, or thing,
- the storage of any waste, materials, site crane, machine, article, material, or thing,
- the demolition of a building,
- the piling, piercing, cutting, boring, drilling, rock breaking, rock sawing or excavation of land,
- the delivery to or removal from the *site* of any machine, article, material, or thing, or
- the occupation of the *site* by any person unless authorised by an *occupation certificate*.

Note: **Interpretation of Conditions** - Where there is any need to obtain an interpretation of the intent of any condition this must be done in writing to Council and confirmed in writing by Council.

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A. Conditions that Identify Approved Plans

Development in Accordance with Plans/Documentation

- A1. The development must be carried out in accordance with the following drawings and documentation and endorsed with Council's approval stamp, except where amended by the following conditions of this consent.

Plan No.	Rev	Description	Prepared by	Dated
PO1	A1	Proposed P.T. Studio	Project Flow	10/05/2022

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

Plans on Site

- A2. A copy of all stamped approved plans, specifications and documents (including the plans, specifications and documents submitted and approved with the Construction Certificate) must be kept on site at all times so as to be readily available for perusal by any officer of Council or the Principal Certifying Authority.

All documents kept on site in accordance with this condition must be provided to any officer of the Council or the certifying authority upon their request.

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

No Demolition of Extra Fabric

- A3. Alterations to, and demolition of the existing building shall be limited to that documented on the approved plans.

(Reason: To ensure compliance with the approved development)

C. Prior to the Issue of a Construction Certificate (and ongoing, where indicated)

Noise from Plant and Equipment

- C1. The use of all plant and equipment installed on the premises must not:

(a) Contribute an LAeq(15min) which will cause the total LAeq(15min) from all plant and equipment operating contemporaneously on the site or in the strata scheme or in the mixed strata schemes to exceed the RBL by more than 5dB when measured at the boundary of any affected receiver. The modifying factor adjustments in Section 4 of the EPA Industrial Noise Policy shall be applied.

(b) Cause "offensive noise" as defined in the *Protection of the Environment Operations Act 1997*.

"affected receiver" includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship, commercial premises and parks and such other affected receiver as may be notified by the Council in writing.

"boundary" includes any window or elevated window of an affected receiver.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

Noise Control (Fitness Centres)

C2. The use of the premises shall comply with the following:

Music and Vocal

- (a) The LA10 noise level emitted from the use of the premises must not exceed the background noise level (LA90) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) by more than 5dB between the hours of 6.00 am and 7.00 pm when assessed at the boundary of any affected residence.
- (b) The LA10 noise level emitted from the use must not exceed the background noise level (LA90) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) between the hours of 7.00 pm and 6.00 am on the following day when assessed at the boundary of any affected residence.
- (c) Notwithstanding compliance with (a) and (b) above, the noise from the use must not be audible within any habitable room or sleeping area in any affected residence between the hours of 7.00 pm and 6.00 am on the following day.
- (d) The LA10 noise level emitted from the use must not exceed the background noise level (LA90) in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) by more than 3dB when assessed indoors at any affected commercial premises with windows closed.
- (e) The use of the premises must be controlled so that any emitted noise is at a level so as not to create an “*offensive noise*” as defined in the *Protection of the Environment Operations Act 1997*.

LA10 is the average maximum A-weighted Fast Response sound level emitted from the premises.

LA90 shall be measured in the absence of all noise from the premises (including mechanical plant noise).

Use of Gym Equipment

The LAavmax noise level emitted from the use of gym equipment must not exceed the background noise level (LA90) by more than 5dB when assessed inside any affected residence with the windows of the affected residence closed.

LAavmax is the average maximum A-weighted Fast Response sound level emitted from use of gym equipment on the premises.

LA90 shall be measured in the absence of all noise from the premises (including mechanical plant noise) with the windows of the affected residence closed and any air-conditioning in the residence turned off. If the LA90 is less than 20dB then it is taken to be 20dB.

General

“affected residence” includes residential premises (including any lot in the strata scheme or another strata scheme), premises for short-term accommodation and hospitals.

“boundary” includes any window or elevated window of an affected residence.

Terms in this condition have the same meaning as in the Noise Guide for Local Government and the Industrial Noise Policy published by the NSW Environment Protection Authority.

(Reason: To ensure the amenity of surrounding land uses)

Compliance with Acoustic Report

- C3. All recommendations contained in the acoustic report prepared by Rodney Stevens Acoustics Pty Ltd, dated 18 July 2022, must be implemented during construction, and use of the development as an on-going requirement.

A statement from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants, certifying that the acoustic mitigation measures outlined in the above stated report have been suitably incorporated into the development and that relevant noise criteria have been satisfied, must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate.

The Principal Certifying Authority must ensure that the building plans and specifications submitted, referenced on and accompanying the issued Construction Certificate, fully satisfy the requirements of this condition.

(Reason: To maintain an appropriate level of amenity for adjoining land uses)

F. Prescribed Conditions imposed under EP&A Act and Regulations and other relevant Legislation

National Construction Code

- F1. All building work must be carried out in accordance with the provisions of the National Construction Code.

(Reason: Prescribed - Statutory)

Appointment of a Principal Certifying Authority (PCA)

- F2. Building work, demolition or excavation in accordance with the development consent must not be commenced until the developer has appointed a Principal Certifying Authority for the building work in accordance with the provisions of the EP&A Act and its Regulations.

(Reason: Statutory: To ensure appropriate safeguarding measures are in place prior to the commencement of any building work, demolition or excavation)

G. Prior to the Issue of an Occupation Certificate

Noise Certification

- G1. Prior to issue of the any Occupation Certificate a certificate from an appropriately qualified acoustical consultant eligible for membership of the Association of Australian Acoustic Consultants is to be submitted to, and approved by, the Certifying Authority certifying that the noise and vibration from use of the development complies with the conditions of consent here-in.

(Reason: To ensure acoustic amenity)

I. Ongoing/Operational Conditions

Hours of Operation

11. The hours of operation are restricted to:

Day	Operating Hours
Monday to Thursday	5.30 am to 8.00 pm
Friday	5.30 am to 7.00 pm
Saturday	6.30 am to 7.00 pm
Sunday	Closed

Upon expiry of the permitted hours:

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

Noise and Vibration Impact

12. The ongoing use of the premises approved under this consent must comply with all conditions pertaining to noise and vibration specified in this consent.

(Reason: To ensure compliance with the specified levels of noise and vibration and to maintain the amenity of surrounding land uses)

No Illumination

13. No consent is given or implied for any form of illumination or floodlighting to the building or any sign. A separate development application must be lodged and approved prior to any external floodlighting or illumination of the building, approved sign or site landscaping.

(Reason: To ensure appropriate forms of signage that are consistent with Council's controls and those that are desired for the locality, and do not interfere with amenity of nearby properties)

Trade Waste Collection (Crows Nest Trade Waste Policy)

14. All trade waste and recycling generated from the premises must be managed and disposed of in accordance with the Crows Nest Trade Waste Policy available on Council's website at www.northsydney.nsw.gov.au.

Arrangements for the collection and storage of trade waste bins must comply with the following:

- (a) Bins must be placed out for collection no earlier than 5.00 pm and no later than 10.00 pm on the day before collection.
- (b) All trade waste must be collected between the hours of 6.00 am and 10.00 am.

- (c) Waste and recycling bins are not to be stored permanently in streets and laneways unless specifically prescribed by Council in writing.

(Reason: To ensure compliance with Council's waste controls for the Crows Nest commercial area)

Delivery Hours

15. No deliveries, loading or unloading associated with the premises are to take place between the hours of 10.00 pm and 6.00 am on any day.

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

Windows/Doors during Fitness Centre Operation

16. The windows and doors of the proposed fitness centre/studio must be closed during operation.

(Reason: Neighbouring amenity related to acoustic impact)