



Louis Goulimis
Solid Void Design
PO Box 110
BANKSIA NSW 2216

D183/23
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 87 of the Environmental Planning and Assessment Regulation 2021 (“the Regulation”)

Development Application Number: 183/23

Land to which this applies: Shop 7, 599 Pacific Highway, St Leonard
Lot No.: 197, SP: 71980

Applicant: Louis Goulimis
Solid Void Design

Proposal: Change of use of premises to an indoor recreation facility (Gym) with hours of operation 5:30am to 8:00pm (Monday to Friday) and 5:30am to 1:00pm (Saturday), no trade Sunday.

Determination of Development Application: The development application was considered by the **North Sydney Local Planning Panel (NSLPP)** on 6 December 2023. 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: 6 December 2023

Reason for refusal:

The Panel endorses the Council Officer’s Report and Recommendations and the application is refused for the reasons set out below:

Unreasonable noise and vibration impact

1. The proposed use is considered likely to result in unreasonable impacts on residential amenity for existing units within the building, contrary to the provisions for development in the MU1 Mixed Use zone.

Particulars:

- i. The application has not demonstrated that compliance could be achieved with acoustic standards required by Council's Development Control plan 2013 and therefore is considered to be unreasonable in the circumstances.
- ii. Acoustic testing submitted with the application is insufficient for the premises, noting the construction standard of the building includes the use of post-tensioned concrete slabs of 250mm or less between the premises and the residential unit located above the first floor.
- iii. The operation of non-residential premises or non-residential components of a building must not exceed 5 dBA above the background maximum 1 hour noise level (LAeq 1 Hour) during the day and evening and not exceeding the background level at night when measured at the boundary of the property.
- iv. The noise and vibration measures recommended by the acoustic consultant are based on assumptions and have not taken into account the high potential for noise transfer through vibration through structural columns.
- v. The mitigation measures outlined in the submitted plan of management would be insufficient to ensure reasonable residential amenity for adjoining units could be maintained;
- vi. The proposed plan of management could not reasonably be enforced at all times during operation.

Hours of operation incompatible with residential amenity

2. The proposed hours are not consistent with the stipulated late night trading hours for the MU1 (Mixed Use) Zone as outlined in Section 7.3 of the North Sydney DCP 2013.

Particulars:

- i. Late night trading hours permit use of premises from 7am in the MU1 Mixed-Use zone.
- ii. The proposed commencement of training sessions from 5:30am, with groups of 20 people within the premises from 6am, on six days a week would unreasonably and regularly impact on the residential amenity of units directly above the tenancy.
- iii. The mitigation measures outlined in the submitted plan of management would be insufficient to ensure reasonable residential amenity for adjoining units could be maintained;

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/downloads/file/2961/lpp10-shop-7-599-pacific-hwy-st-leonards-da18323-rpt>)

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

13 December 2022

DATE


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