

**Original signed by Kim Rothe on 22/6/2020**  
**Date determined 22/6/2020**  
**Date operates 22/6/2020**  
**Date lapses 22/6/2025**

James Ferguson  
C/- Fragor Planning  
PO Box 7228  
LEURA NSW 2780

D27/20  
KRR (CIS)

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

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| <b>Development Application Number:</b> | <b>27/20</b> |
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| <b>Land to which this applies:</b> | G05/225-235 Pacific Highway, North Sydney<br>Lot No.: 5, DP: 91868 |
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| <b>Applicant:</b> | James Ferguson |
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| <b>Proposal:</b> | Change of use from retail to recreation facility (indoor),<br>hours of operation 6am - 8pm Monday to Saturday. |
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| <b>Determination of Development Application:</b> | 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. |
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| <b>Date of Determination:</b> | 22 June 2020 |
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| <b>Reason for approval:</b> | <p>The development application has been assessed against the North Sydney Local Environmental Plan 2013 and the North Sydney Development Control Plan 2013.</p> <p>The proposed recreation facility is permissible within the zone and compatible within the character of North Sydney Centre in which the site is located. The premises are located in an approved mixed use building within a tenancy designed for commercial use with facilities separated from residential users.</p> <p>The proposed use will not result in any adverse impact on residential amenity, in consideration of its scale, nature of use and central location, subject to conditions including operational conditions relating operation and premises management. The acoustic report impacts have been reviewed by Council's Environmental Health Manager and is considered to be satisfactory.</p> |
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The issues raised by the submitters have been addressed in the report. The matters are not considered to be well founded or otherwise may be addressed by way of conditions of any consent.

Having regard to the provisions of Section 4.15 of the Environmental Planning & Assessment Act 1979, the application is considered to be satisfactory and therefore can be approved.

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**Consent to operate from:** 22 June 2020

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**Consent will lapse on:** 22 June 2025

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**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 by 22 June 2025.

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**How community views were taken into account:**

The owners of adjoining properties and the **Stanton Precincts** were notified of the proposed development for a 14-day period, between **21 February to 6 March 2020**, in accordance with section A4 of NSDCP 2013. The notification resulted in **two (2) submissions** which were addressed in the delegated report.

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**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.

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

**Endorsed for and on behalf of North Sydney Council**

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DATE

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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 & Assessment Act 1979 (“the *Act*”) and the provisions of the Environmental Planning & 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.

| <b>Plan No.</b> | <b>Dated</b>    | <b>Issue</b> | <b>Title</b>                            | <b>Drawn by</b>         | <b>Received</b> |
|-----------------|-----------------|--------------|---|-------------------------|-----------------|
| DA-001          | 13 January 2020 | B            | Existing Strata Plan – Ground Level D   | Council Approval Design | 6 February 2020 |
| DA-002          | 13 January 2020 | B            | Existing Strata Plan – Basement Level B | Council Approval Design | 6 February 2020 |
| DA-003          | 13 January 2020 | B            | Existing Floor Plan – subject unit      | Council Approval Design | 6 February 2020 |
| DA-004          | 13 January 2020 | B            | Existing floor Plan Common Property     | Council Approval Design | 6 February 2020 |

(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)

**Separate DA**

A3. Approval is granted for “building identification signs” or “business identification signage”, as defined in North Sydney Local Environmental Plan 2013. No consent is granted or implied for any displays in the nature of an “advertisement” or for any “advertising structures” as defined in the North Sydney Local Environmental Plan 2013. All signage shall relate to the building or occupant businesses in occupation within the site.

A separate development application is required to be lodged for any changes to the signage in relation to:

- (a) Enlargement/alteration of display area;
- (b) Signage content for advertising;
- (c) Animation, flashing, rapid changing, scrolling and/or moving imagery;

(Reason: To clarify the scope of development approval and to ensure that the approved signage remains “building or business identification signage” rather than “advertisement” or general advertising)

### **Noise Control (Fitness Centres)**

A4. 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 6.00am and 7.00pm 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 7.00pm and 6.00am 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 7.00pm and 6.00am 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**

- A5. The recommendations contained in the acoustic report prepared by Rodney Stevens Acoustics dated 18 March 2020, must be implemented during construction and use of the development.

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 implemented and that relevant noise criteria have been satisfied, must be submitted to the Council within 6 weeks of the commencement of this consent.

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

### **G. *Prior to Issue of Occupation Certificate***

#### **Access to Premises**

- G1. Prior to the issue of any Occupation Certificate, a certificate must be prepared by an appropriately qualified and practising consultant certifying that access and facilities for persons with a disability in accordance with the Building Code of Australia and AS Disability (Access to Premises – buildings) Standards 2010 (Premises Standards) has been provided. This certificate must be submitted to, and approved by, the Certifying Authority prior to issue of the Occupation Certificate.

(Reason: Equitable access and facilities for people with a disability)

#### **Noise Certification**

- G2. 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 herein.

(Reason: To ensure acoustic amenity)

### **I. *On-Going / Operational Conditions***

#### **Hours of Operation**

- I1. The approved hours of operation are Monday to Saturday, 6:00 am to 8:00 pm

Upon expiry of the permitted hours:



- (a) all restaurant service must immediately cease;
- (b) no person shall be permitted entry; and
- (c) all customers 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**

- I2. The on-going 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)

### **Waste Collection**

- I3. Waste and recyclable material, generated by this premises, must not be collected between the hours of 10pm and 6am on any day.

(Reason: To ensure the amenity of surrounding properties)

### **No activities outside of the premises**

- I4. All activities associated with the Indoor Recreation Facility are to occur within the premises / tenancy and not from any public place or footpath.

(Reason: To ensure noise generating activity is only generated from within the premises, protection of amenity to adjoining premises)

### **Patron Behaviour**

- I5. The proprietors/management of the premises must take all steps necessary to ensure that no noise nuisance occurs from persons entering or leaving the premises. The proprietors/management must ensure that:

- (a) A sign is placed in clearly visible position adjacent to the entry/exit of the premises requesting patrons upon leaving the premises to do so quickly and quietly, having regard to maintaining the amenity of the area.
- (b) The management must ensure that the behaviour of patrons entering and leaving the premises does not detrimentally affect the amenity of the neighbourhood, particularly after 6:00 pm weekdays or weekends.
- (c) The management must be responsible for the control of noise and litter generated by patrons of the premises and must ensure that patrons leave the vicinity of the premises in an orderly manner to the satisfaction of Council.

(Reason: To ensure patrons do not interfere with the acoustic amenity in the immediate locality)

**Daily Cleaning**

- I6. The management is to ensure that all rubbish including loose papers, cigarette butts, bottles etc which may be left on the subject premises, site or immediately adjacent area is picked up and placed in the operator's rubbish bins on a daily basis.

(Reason: To ensure waste generated by the approved use or activity is properly managed by the person acting upon this consent, to prevent unsightly build up of waste material)