

Original signed by David Hoy on 10/7/2020
Date determined: 8/7/2020
Date operates: 10/7/2020
Date lapses: 10/7/2025

Australian Fitness Management
PO Box 76
CAMDEN NSW 2570

D53/20
DWH (CIS)

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

Development Application Number: 53/20

Land to which this applies: 398-400 Pacific Highway, Crows Nest
Lot No.: 1, DP: 1258791

Applicant: Australian Fitness Management

Proposal: Fit out and use of ground floor tenancy as a Recreation Facility (Indoors) operating 24 hours, 7 days and business identification signage

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: 8 July 2020

Reason for approval: The development application has been assessed against *North Sydney Local Environmental Plan 2013* and *North Sydney Development Control Plan 2013*.

The proposed extended trading hours are subject to a reviewable trial period consistent with Provisions P6 of Cl. 7.3 and Clause 7.2 under NSDCP 2013 which provides that extended trading hours may be considered for non-licensed premises including indoor recreational facilities.

A plan of management applies to the site which proposes Peak occupancy is to be typically 17 persons [5am-8am and 6pm-9pm], and 3 persons 10pm-5am.

The use does not involve in-person group instruction & classes. During late night and early morning hours, the use is low frequency and unlikely to include one-on-one personal training. The proposed hours are commensurate with the nature of the use. The hours and use are not considered to alter the character of the Pacific Highway.

The proposal is permissible with Council consent and the proposal will not have any unreasonable amenity impacts. Having regard to the provisions of Section 4.15 of the Act, the application is considered to be satisfactory and therefore can be approved.

Consent to operate from: 10 July 2020

Consent will lapse on: 10 July 2025

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 10 July 2025.

How community views were taken into account:

Submission/s raised concerns that the notification plans were inadequate.

Council's notification letters however contained an extract of the proposed development and correctly identified the site.

The proposal is otherwise permissible with Council consent and the proposal will not have any unreasonable amenity impacts. Having regard to the provisions of Section 4.15 of the Act, the application is considered to be satisfactory and therefore can be approved.

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.

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

Endorsed for and on behalf of North Sydney Council

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 & 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.

INDEX OF CONDITIONS

	Page No.
A. <i>Conditions that Identify Approved Plans</i>	
A1. Development in Accordance with Plans/documentation	8
A2. Plans on Site	8
A3. No Demolition of Extra Fabric	8
C. <i>Prior to the Issue of a Construction Certificate (and ongoing, where indicated)</i>	
C1. Windows Signs	8
C2. Waste Management Plan	9
C3. Sanitary, Shower & Change Facilities	9
C4. Noise from Plant and Equipment	10
C5. Noise Control (Fitness Centres)	10
C6. Compliance with Acoustic Report	11
C7. Plan of Management	12
D. <i>Prior to the Commencement of any Works (and continuing where indicated)</i>	
D1. Public Liability Insurance – Works on Public Land	12
D2. Commencement of Works Notice	12
E. <i>During Demolition and Building Work</i>	
E1. Water Conversation	13
E2. Parking Restrictions	13
E3. Road Reserve Safety	13
E4. Noise and Vibration	14
E5. Developer's Cost of Work on Council Property	14
E6. No Removal of Trees on Public Property	14
E7. Special Permits	14
E8. Construction Hours	15
E9. Out of Hours Work Permits	16
E10. Site Amenities and Facilities	16
E11. Health and Safety	17
E12. Prohibition on Use of Pavements	17
E13. Plant & Equipment Kept Within Site	17
F. <i>Prescribed Conditions imposed under EP&A Act and Regulations and other relevant Legislation</i>	
F1. Building Code of Australia	17
F2. Appointment of a Principal Certifier (previously known as a PCA)	18
F3. Construction Certificate	18
F4. Occupation Certificate	18
F5. Critical Stage Inspections	18
F6. Commencement of Works	18
F7. Demolition	19
F8. Site Sign	19

G. Prior to the Issue of an Occupation Certificate

G1.	Infrastructure Repair and Completion of Works	19
G2.	Noise Certification	19
G3.	Damage to Adjoining Properties	20
G4.	Use and Allocation of Car Parking	20

I. On-Going / Operational Conditions

I1.	Maximum Capacity	20
I2.	Hours of Operation	21
I3.	Hours of Operation – trial period	21
I4.	Noise and Vibration Control (Fitness Centres)	22
I5.	No Activity Outside Premises	22
I6.	Plan of Management	22
I7.	Noise and Vibration Impact	23
I8.	No Illumination	23
I9.	Waste Collection	23
I10.	Trade Waste Collection (Crows Nest Trade Waste Policy)	23
I11.	Delivery Hours	24

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.	Issue	Date	Title	Drawn by	Received
2/10	B	18.02.2020	Existing floor plan	Macarthur Architectural Drafting Services	16 March 2020
3/10	B	18.02.2020	Ground floor plan	Macarthur Architectural Drafting Services	16 March 2020
4/10	B	18.02.2020	Ground fitout plan	Macarthur Architectural Drafting Services	16 March 2020
5/10	B	18.02.2020	Disabled details	Macarthur Architectural Drafting Services	16 March 2020
6/10	B	18.02.2020	Disabled details	Macarthur Architectural Drafting Services	16 March 2020
7/10	B	18.02.2020	Ambulant details	Macarthur Architectural Drafting Services	16 March 2020
8/10	B	18.02.2020	Details	Macarthur Architectural Drafting Services	16 March 2020
10/10	B	18.02.2020	Safety notes	Macarthur Architectural Drafting Services	16 March 2020
101	B	4/5/2020	Signage plans-	Bannershop	5 May 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)

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)

Window Signs

C1. This Notice of Determination approves the proposed multi-coloured angled banners, logos and content at the top and bottom of the front windows and upon the front door, however this notice does not approve the proposed frosted band across the middle of the windows. The frosted band must be deleted from the plans, and these areas of the windows must not be obscured with signage, film or the like.

The Certifying Authority must ensure that the building plans and specifications submitted by the Applicant, referenced and accompanying the issued Construction Certificate, fully satisfy the above.

(Reason: To reduce visual clutter and ensure light spill of, surveillance of and interest & activity to the public domain)

Waste Management Plan

C2. A Waste Management Plan is to be submitted for approval by the Certifying Authority prior to the issue of any Construction Certificate. The plan must include, but not be limited to:

- a) The estimated volume of waste and method of disposal for the construction and operation phases of the development;
- b) The design of the on-site waste storage and recycling area; and
- c) Administrative arrangements for waste and recycling management during the construction process.

The approved Waste Management Plan must be complied with at all times in the carrying out of the development.

(Reason: To encourage the minimisation of waste and recycling of building waste)

Sanitary, Shower & Change Facilities

C3. The premises must meet the Building Code of Australia's number and design requirements for sanitary, shower and change facilities and must include adequate change facilities (including through the provision of areas, benches and lockers that do not unreasonably inhibit access to sanitary and shower facilities) for the proposed use and maximum occupancy permitted under this Notice of Determination.

No consent is granted or may be implied for the use of any toilet or amenity located within common property associated with the residential areas of the building.

Plans and specifications which comply with this condition must be submitted to the Certifying Authority for approval prior to the issue of any Construction Certificate. The 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 provide adequate facilities for occupants)

Noise from Plant and Equipment

C4. 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, in a strata scheme and in any mixed strata scheme, 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 residence” includes residential premises (including any lot in a strata scheme for the subject building or in another strata scheme), premises for short-term accommodation, schools, hospitals, places of worship 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 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 maintain an appropriate level of amenity for adjoining land uses)

Noise Control (Fitness Centres)

C5. 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 a strata scheme for the subject building or in 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

- C6. The recommendations contained in the acoustic report prepared by Acoustic Consulting Engineers, dated 1 May 2020, and received by Council on 5 May 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 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)

Plan of Management

C7. The Plan of Management prepared by Plus Fitness, dated March 2020 and received by Council on 16 March 2020 must be updated to include that the maximum capacity of the premises shall be

- (a) no more than seventeen (17) clients/ customers/ patrons/ members/ visitors during normal hours of operation referred to in Condition I2;
- (b) no more than three (3) staff/ employees/ personal trainers and the like; and
- (c) no more than three (3) people may be in the premises between 10pm and 5am on any night.

at any one time.

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

D. Prior to the Commencement of any Works (and continuing where indicated)

Public Liability Insurance – Works on Public Land

D1. Any person or contractor undertaking works on public land must take out Public Risk Insurance with a minimum cover of \$20 million in relation to the occupation of public land and the undertaking of approved works within Council's road reserve or public land, as approved by this consent. The Policy is to note, and provide protection/full indemnification for North Sydney Council, as an interested party. A copy of the Policy must be submitted to Council prior to commencement of any works. The Policy must be valid for the entire period that the works are being undertaken.

(Note: Applications for hoarding permits, vehicular crossings etc will require evidence of insurance upon lodgement of the application.)

(Reason: To ensure the community is protected from the cost of any claim for damages arising from works on public land)

Commencement of Works Notice

D2. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least 2 days notice to North Sydney Council of the person's intention to commence building work, demolition or excavation in accordance with this development consent.

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

E. During Demolition and Building Work

Water Conservation

E1. The development is to comply with the following:

- (a) Any shower roses, taps and toilets to be installed are to be the highest WELS star rating available at the time of development.
- (b) Any urinal installed is to be a waterless urinal.
- (c) Recycled water (serviced by dual reticulation) should be utilised for permitted non-potable uses such as toilet flushing.

(Reason: To minimise the use of potable water and to encourage the reuse of greywater, rainwater and stormwater.)

Parking Restrictions

E2. Existing public parking provisions in the vicinity of the site must be maintained at all times during works. The placement of any barriers, traffic cones, obstructions or other device in the road shoulder or kerbside lane is prohibited without the prior written consent of Council. Changes to existing public parking facilities/restrictions must be approved by the North Sydney Local Traffic Committee. The Developer will be held responsible for any breaches of this condition, and will incur any fines associated with enforcement by Council regulatory officers.

(Reason: To ensure that existing kerbside parking provisions are not compromised during works)

Road Reserve Safety

E3. All public footways and roadways fronting and adjacent to the site must be maintained in a safe condition at all times during the course of the development works, with no obstructions caused to the said footways and roadways. Construction materials and plant must not be stored in the road reserve without approval of Council. A safe pedestrian circulation route and a pavement/route free of trip hazards must be maintained at all times on or adjacent to any public access ways fronting the construction site.

Where public infrastructure is damaged, repair works must be carried out in when and as directed by Council officers (at full Developer cost). Where pedestrian circulation is diverted on to the roadway or verge areas, clear directional signage and protective barricades must be installed in accordance with AS1742-3 (1996) "Traffic Control Devices for Work on Roads". **If pedestrian circulation is not satisfactorily maintained across the site frontage, and action is not taken promptly to rectify the defects, Council may undertake proceedings to stop work.**

(Reason: Public Safety)

Noise and Vibration

- E4. The works must be undertaken in accordance with the “Interim Construction Noise Guideline” published by the NSW Environment Protection Authority, to ensure excessive levels of noise and vibration do not occur so as to minimise adverse effects experienced on any adjoining land.

(Reason: To ensure residential amenity is maintained in the immediate vicinity)

Developer's Cost of Work on Council Property

- E5. The developer must bear the cost of all works associated with the development that occurs on Council’s property, including the restoration of damaged areas.

(Reason: To ensure the proper management of public land and funds)

No Removal of Trees on Public Property

- E6. No trees on public property (footpaths, roads, reserves, etc.) unless specifically approved by this consent shall be removed or damaged during construction including for the erection of any fences, hoardings or other temporary works.

(Reason: Protection of existing environmental infrastructure and community assets)

Special Permits

- E7. Unless otherwise specifically approved in writing by Council, all works, processes, storage of materials, loading and unloading associated with the development must occur entirely on the property.

The developer, owner or builder may apply for specific permits available from Council’s Customer Service Centre for the undermentioned activities on Council’s property. In the event that a permit is granted by Council for the carrying out of works, processes, storage of materials, loading and unloading associated with the development on Council’s property, the development must be carried out in accordance with the requirements of the permit. A minimum of forty-eight (48) hours notice is required for any permit: -

1) **On-street mobile plant**

Eg. cranes, concrete pumps, cherry-pickers, etc. - restrictions apply to the hours of operation, the area of operation, etc. Separate permits are required for each occasion and each piece of equipment. It is the developer's, owner’s and builder’s responsibilities to take whatever steps are necessary to ensure that the use of any equipment does not violate adjoining property owner’s rights.

(Reason: Proper management of public land)

2) **Hoardings**

Permits are required to erect Class A and Class B hoardings. If an 'A' Class hoarding is to alienate a section of Council's property, that section will require a permit for the occupation of Council's property.

(Reason: Proper management of public land)

3) **Storage of building materials and building waste containers (skips) on Council's property**

Permits to utilise Council property for the storage of building materials and building waste containers (skips) are required for each location. Failure to obtain the relevant permits will result in the building materials or building waste containers (skips) being impounded by Council with no additional notice being given. Storage of building materials and waste containers on open space reserves and parks is prohibited.

(Reason: Proper management of public land)

4) **Kerbside restrictions, construction zones**

Attention is drawn to the existing kerbside restrictions adjacent to the development. Should alteration of existing kerbside restrictions be required, or the provision of a construction zone, the appropriate application must be made and the fee paid to Council. Alternatives to such restrictions may require referral to Council's Traffic Committee and may take considerable time to be resolved. An earlier application is suggested to avoid delays in construction programs.

(Reason: Proper management of public land)

Construction Hours

E8. Building construction and works must be restricted to within the hours of 7.00 am to 5.00 pm Monday to Friday and on Saturday to within the hours of 8.00 am to 1.00 pm inclusive, with no work on Sundays and Public Holidays.

Demolition and excavation works must be restricted to within the hours of 8.00 am to 5.00 pm Monday to Friday only. For the purposes of this condition:

- a) "Building construction" means any physical activity on the site involved in the erection of a structure, cladding, external finish, formwork, fixture, fitting of service installation and the unloading of plant, machinery, materials or the like.
- b) "Demolition works" means any physical activity to tear down or break up a structure (or part thereof) or surface, or the like, and includes the loading of demolition waste and the unloading of plant or machinery.
- c) "Excavation work" means the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders, or the like, regardless of whether the activities disturb or alter the natural state of the existing ground stratum or are breaking up/removing materials from the site and includes the unloading of plant or machinery associated with excavation work.

All builders, excavators must display, on-site, their twenty-four (24) hour contact telephone number, which is to be clearly visible and legible from any public place adjoining the site.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

Out of Hours Work Permits

E9. Where it is necessary for works to occur outside those hours allowed by these conditions, an application may be made to Council's Customer Services Centre for a permit to carry out works outside of the approved hours. If a permit is issued the works approved must be carried out in accordance with any requirements specified in the permit. Permits will only be approved if **public safety is at risk**. Applications which seek a variation to construction hours solely to benefit the developer will require the lodgement and favourable determination of a modification application pursuant to the provisions of Section 96 of the Environmental Planning and Assessment Act 1979.

Notes:

- 1) Failure to obtain a permit for work outside of the approved hours will result in on the spot fines being issued, or Council pursuing any action required (including legal proceedings) to have the out of hours work cease, without prior warning.
- 2) Applications for out of hour's works should be lodged with Council no later than seven (7) calendar days prior to the date of the intended works.
- 3) Examples of activities for which permits may be granted include:
 - the erection of awnings,
 - footpath, road and other infrastructure works which cannot be carried out for public convenience reasons within normal hours,
 - the erection and removal of hoardings and site cranes, and
 - craneage of materials which cannot be done for public convenience reasons within normal working hours.
- 4) Examples of activities for which permits WILL NOT be granted include:
 - extended concrete pours
 - works which are solely to convenience the developer or client, and
 - catch up works required to maintain or catch up with a construction schedule.
- 5) Further information on permits can be obtained from the Council website at www.northsydney.nsw.gov.au.

(Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community)

Site Amenities and Facilities

E10. Where work involved in the erection and demolition of a building is being carried out, amenities which satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements, must be provided and maintained at all times. The type of work place determines the type of amenities required.

Further information and details can be obtained from the Internet at www.workcover.nsw.gov.au.

(Reason: To ensure the health and safety of the community and workers on the site)

Health and Safety

- E11. All work undertaken must satisfy applicable occupational health and safety and construction safety regulations, including any WorkCover Authority requirements to prepare a health and safety plan. Site fencing must be installed sufficient to exclude the public from the site. Safety signs must be erected that warn the public to keep out of the site, and provide a contact telephone number for enquiries.

Further information and details regarding occupational health and safety requirements for construction sites can be obtained from the internet at www.workcover.nsw.gov.au.

(Reason: To ensure the health and safety of the community and workers on the site)

Prohibition on Use of Pavements

- E12. Building materials must not be placed on Council's footpaths, roadways, parks or grass verges, (unless a permit is obtained from Council beforehand). A suitable sign to this effect must be erected adjacent to the street alignment.

(Reason: To ensure public safety and amenity on public land)

Plant & Equipment Kept Within Site

- E13. All plant and equipment used in the undertaking of the development/ works, including concrete pumps, wagons, lifts, mobile cranes, hoardings etc, must be situated within the boundaries of the site (unless a permit is obtained from Council beforehand) and so placed that all concrete slurry, water, debris and the like must be discharged onto the building site, and is to be contained within the site boundaries.

Details of Council requirements for permits on public land for standing plant, hoardings, storage of materials and construction zones and the like are available on Council's website at www.northsydney.nsw.gov.au.

(Reason: To ensure public safety and amenity on public land)

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

Building Code of Australia

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

(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)

Construction Certificate

F3. Building work, demolition or excavation in accordance with the development consent must not be commenced until a Construction Certificate for the relevant part of the building work has been issued 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)

Occupation Certificate

F4. A person must not commence occupation or use of the whole or any part of a new building (*new building* includes an altered portion of, or an extension to, an existing building) unless an Occupation Certificate has been issued in relation to the building or part. Only the Principal Certifying Authority appointed for the building work can issue an Occupation Certificate.

(Reason: Statutory)

Critical Stage Inspections

F5. Building work must be inspected by the Principal Certifying Authority on the critical stage occasions prescribed by the EP&A Act and its Regulations, and as directed by the appointed Principal Certifying Authority.

(Reason: Statutory)

Commencement of Works

F6. Building work, demolition or excavation in accordance with this development consent must not be commenced until the developer has given at least 2 days notice to North Sydney Council of the person's intention to commence the erection of the building.

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

Demolition

F7. Demolition work must be undertaken in accordance with the provisions of AS2601-Demolition of Structures.

(Reason: To ensure that work is undertaken in a professional and responsible manner and protect adjoining property and persons from potential damage)

Site Sign

- F8. 1) A sign must be erected in a prominent position on the site
- a) stating that unauthorised entry to the work site is prohibited;
 - b) showing the name of the principal contractor (or person in charge of the work site), and a telephone number at which that person may be contacted at any time for business purposes and outside working hours; and
 - c) showing the name, address and telephone number of the Principal Certifying Authority for the work.
- 2) Any such sign must be maintained while to building work or demolition work is being carried out, but must be removed when the work has been completed.

(Reason: Prescribed - Statutory)

G. Prior to the Issue of an Occupation Certificate

Infrastructure Repair and Completion of Works

- G1. Prior to the issue of any Occupation Certificate any and all works relating to the development:
- a. in the road reserve must be fully completed; and
 - b. to repair and make good any damaged public infrastructure caused as a result of any works relating to the development (including damage caused by, but not limited to, delivery vehicles, waste collection, contractors, sub-contractors, concrete vehicles) must be fully repaired;

to the satisfaction of Council Engineers at no cost to Council.

(Reason: Maintain quality of Public assets)

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)

Damage to Adjoining Properties

- G3. All precautions must be taken to prevent any damage likely to be sustained to adjoining properties. Adjoining owner property rights and the need for owner's permission must be observed at all times, including the entering onto land for the purpose of undertaking works.

(Reason: To ensure adjoining owner's property rights are protected)

Use and Allocation of Car Parking

- G4. The use and allocation of parking space within the basement is to be in accordance with the approved basement plan prepared by CPD, drawing reference A-100 (Rev A) issue date 6 May 2016, and endorsed by Council's approval stamp under development Application No. 324/10/4.

A total of two (2) car parking spaces may be allocated to the approved recreation facility for the use of staff and employees to the ground floor tenancy.

No consent is granted or may be implied for any non-residential use of other car parking spaces within the basement. All storage, parking spaces and bicycle parking is to be allocated to residential units within the building only.

The car parking spaces permitted to be used for commercial use in accordance with this condition are to be identified on-site by signage and numbering upon the completion of the works and prior to issue of Occupation Certificate.

The spaces must not otherwise be allocated, sold, licensed or leased for any other person, use or strata lot.

(Reason: To ensure that adequate parking facilities to service the development are provided on site)

I. On-Going / Operational Conditions

Maximum Capacity

- II. Notwithstanding any requirements under the Plan of Management or otherwise, the maximum capacity of the premises shall be

- (a) no more than seventeen (17) clients/ customers/ patrons/ members/ visitors during normal hours of operation referred to in Condition I2;
- (b) no more than three (3) staff/ employees/ personal trainers and the like; and
- (c) no more than three (3) people may be in the premises between 10pm and 5am on any night.

at any one time. A notice must be displayed at all times on the front door of the premises identifying the maximum capacity described in (a) and (b) above:

(Reason: Protection of residential amenity, provision of public information, and to assist in assessing ongoing compliance)

Hours of Operation

12. The hours of operation are restricted to:

- 7am to 11pm Monday to Wednesday;
- 7am to 12pm Thursday to Saturday; and,
- 7am to 10pm Saturday and Sunday.

Upon expiry of the permitted hours:

- (a) all fitness activity must immediately cease;
- (b) no person shall be permitted entry; and
- (c) all persons who are not staff/ employees or the like of the premises are required to leave the premises 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)

Hours of Operation – trial period

13. Notwithstanding the Condition titled ‘Hours of Operation’ the approved use may operate 24 hours for seven days a week over a trial period of 12 months from the date of issue of the first Occupation Certificate, being interim or otherwise. Council must be informed in writing of the date of commencing the trial period.

In order for the above trial hours of operation to be confirmed as ongoing, a modification application must be lodged with Council prior to the expiration of the trial period. The assessment of the application to continue the use in accordance with the trial will consider, amongst other things, the impact of the use on adjoining residences and surrounding areas (including above and rear neighbouring properties) and the performance of the operation in relation to compliance with development consent conditions.

The trial hours of operation can be confirmed as ongoing, through a modification application and subsequent approval by Council, for a maximum period of five years. A modification application must be lodged every five years should the applicant seek to renew these trading hours.

In the event that no modification application is lodged, or an application is not approved, then the hours of operation for the premises must revert to the standard hours of operation identified by this consent.

Note: Any person acting on this consent is advised that any modification application to the trial hours of operation period should be submitted to Council a minimum of thirty (30) days prior to the expiration of the trial period otherwise the trial period must lapse.

(Reason: To ensure safety and security and protect the amenity of surrounding areas)

Noise and Vibration Control (Fitness Centres)

14. The on-going use of the premises approved under this Notice of Consent must comply with all conditions pertaining to noise and vibration specified in this consent.

No alternative types of equipment may be used in the premises than the equipment that was physically tested and detailed in the letter and acoustic report prepared by Acoustic Consulting Engineers, each dated 1 May 2020, and each received by Council on 5 May 2020, and:

- (a) All weights must consist of rubber or rubber-like material.
- (b) The floor system shall comprise the flooring specified in the report or a further insulated floor system.
- (c) No barbell can weigh more than 50kg unless it is upon an Olympic Platform (i.e. additional layers of rubber shock absorption pads on plywood platform).

(Reason: To ensure the ongoing operation of the premises does not cause nuisance to neighbours.)

No Activity Outside Premises

15. All fitness instruction and activities associated with the use of the premises must be contained wholly within the premises at all times. Nothing in this consent authorised the group running sessions to operate on adjoining public land.

(Reason: To ensure activities remain only within the premises.)

Plan of Management

16. The management of the premises shall be conducted in accordance with the Plan of Management prepared by Plus Fitness, dated March 2020 and received by Council on 16 March 2020, and must comply with the following requirements:

- (a) The name, phone number and email of the manager of the premises shall be published on a website and displayed on the front door. The manager must be available, on this phone number and through this email during the operation of the premises, to receive any complaints.
- (b) The Complaints Register where any complaints associated with the premises are recorded must identify, within a reasonable time, how each complaint is subsequently acted upon.
- (c) The front door is to remain closed at all times during use (except when person/s are entering and exiting the premises).
- (d) There must be no shouting or use of whistles within the premises at any time.
- (e) The plan of management must be updated to reflect the maximum venue capacity as required by condition I1 of this consent.

A copy of the updated Plan of management required by this condition must be provided on site at all times during operation.

(Reason: To ensure the ongoing operation of the premises does not cause nuisance to neighbours)

Noise and Vibration Impact

17. 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)

No Illumination

18. 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)

Waste Collection

19. 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)

Trade Waste Collection (Crows Nest Trade Waste Policy)

110. 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 5.00pm and no later than 10.00pm on the day before collection.
- (b) All trade waste must be collected between the hours of 6.00am and 10.00am.
- (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

I11. No deliveries, loading or unloading associated with the premises are to take place between the hours of 10pm and 6am on any day.

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