

Original signed by	Luke Donovan	on	16/08/2021
Date determined:	13/08/2021		
Date operates:	16/08/2021		
Date lapses:	16/08/2026		

Damian O'Toole
9/35 Buckingham Street
SURRY HILLS NSW 2010

D195/21
LD (CIS)

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

Development Application Number: 195/21

Land to which this applies: 150 Pacific Highway, North Sydney
Lot No.: 3, DP: 98539

Applicant: Damian O'Toole, 9/35 Buckingham Street, Surry Hills

Proposal: Change to operating hours to permit a 5.30 am opening of the existing gym

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: 13 August 2021

Reasons for Approval

The proposal was considered under the relevant Environmental Planning Instruments and policies including NSLEP 2013 and NSDCP 2013 and generally found to be satisfactory subject to conditions of consent.

The application proposes a change to the opening hours of the recreational facility (indoor) that is a permissible form of development in B4 Mixed Use zone.

The application proposes an opening time of 5.30am for seven days of the week. In light of the zoning and close proximity to residential properties, it is recommended that there be a twelve-month trial period for the opening time of 5.30 am on Monday to Friday and 6.30 am on Saturday, Sunday and Public Holidays.

	<p>The amended plan of management and acoustic report will also form part of the conditions of consent to require the operator and Council to monitor and assess the management performance of a premises and its impact on neighbourhood amenity.</p> <p>Council received two (2) submission that raised concerns about noise from persons entering and leaving the gym particularly on weekends and this has been addressed in this report and with appropriate conditions of consent.</p> <p>Having regard to the merits of the proposal, the application is recommended for approval subject to appropriate standard and site-specific conditions.</p>
Consent to operate from:	16 August 2021
Consent will lapse on:	16 August 2026
Period of Consent	<p>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 12 August 2026.</p>
How community views were taken into account:	<p>The subject application was notified to adjoining properties and the Edward, Stanton and CBD Precincts 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.</p>
Review of determination and right of appeal:	<p>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.</p>

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

Endorsed for and on behalf of North Sydney Council

13 August 2021

DATE

Signature on behalf of consent authority
LUKE DONOVAN
SENIOR ASSESSMENT OFFICER

(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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I. Ongoing/Operational Conditions

Noise from Plant and Equipment

I1. The use of all plant and equipment installed on the premises must not:

- (a) Contribute an LAeq(15 min) which will cause the total LAeq(15 min) 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 the EPA Noise Policy for Industry 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 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 Noise Policy for Industry published by the NSW Environment Protection Authority.

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

Noise Control (Fitness Centres)

I2. 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 Noise Policy for Industry published by the NSW Environment Protection Authority.

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

Compliance with Acoustic Report

- I3. The recommendations and physical measures to mitigate noise and vibration impacts contained in the acoustic report prepared by Acoustic Works, dated 1 July 2021, must be implemented within the premises and be maintained at all times during the operation of the recreation facility (indoor).

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

Noise and Vibration Impact

14. 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)

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)

Waste Collection

16. Waste and recyclable material, generated by this premises, must not be collected between the hours of 10.00 pm and 6.00 am on any day.

(Reason: To ensure the amenity of surrounding properties)

Hours of Operation

17. The hours of operation of the gym are restricted to:

Day	Hours of Operation
Sunday	7.00 am - 8.00 pm
Monday	7.00 am - 10.00 pm
Tuesday	7.00 am - 10.00 pm
Wednesday	7.00 am - 10.00 pm
Thursday	7.00 am - 10.00 pm
Friday	7.00 am - 10.00 pm
Saturday	7.00 am - 10.00 pm
Public Holidays	7.00 am - 8.00 pm

Upon expiry of the permitted hours:

- (a) all customers on the premises must leave.

(Reason: To ensure that amenity of the surrounding locality is maintained)

Hours of Operation - Trial Period

18. The hours of operation are restricted to:

Notwithstanding **Condition I7** above, the gym may open at 5.30 am (Monday to Friday) and 6.30 am (Saturday, Sunday and Public Holidays) for a trial period of twelve (12) months from the date of this consent.

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 surrounding areas the performance of the operation in relation to compliance with development consent conditions.

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 protect the amenity of surrounding areas)

Operational Plan of Management

19. The management of the gym shall be conducted in accordance with the Plan of Management - June 2021 - Gymnasium (Indoor recreation facility) and received by Council on the 21 July 2021 except where otherwise amended by the conditions of this consent.

(Reason: To ensure ongoing operation of the gym is in accordance with the terms of consent)