

Original signed by Miguel Rivera on 1/4/2022

Date determined: 31/3/2022

Date operates: 1/4/2022

Date lapses: 1/4/2027

Georgina Andrews
C/- The Optimal Lab
Unit 1103, 229 Miller Street
NORTH SYDNEY NSW 2060

D444/21
MR3 (CIS)

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

Development Application Number: 444/21

Land to which this applies:

290-294 Pacific Highway, Crows Nest
Lot No.: 4, SEC: 2, DP: 1649

Applicant:

Georgina Andrews
C/- The Optimal Lab

Proposal:

Change of use of commercial building to recreation facility
(indoor) and medical centre.

**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:

31 March 2022

Reason 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
(subject to the imposition of conditions).

Having regard to the provisions of Section 4.15 (1) of the
Environmental Planning & 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: 1 April 2022

Consent will lapse on: 1 April 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 by 1 April 2027.

How community views were taken into account:

The subject application was notified to adjoining properties for 14 days. No submissions were received during this time.

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

DATE

Signature on behalf of consent authority
Miguel Rivera
SENIOR ASSESSMENT OFFICER

(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

Compliance with Acoustic Report

- A1. The recommendations contained in the acoustic report prepared by Dixon Andrews Architects dated November 2021, must be implemented during construction and use of the development.

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)

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)

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)

Occupation Certificate

- F2. 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)

I. Ongoing/Operational Conditions

Plan of Management (Gym/Fitness Centre)

11. The premises must be operated and managed in accordance with the Plan of Management prepared by Dixon Andrews Architects dated November 2021, and must comply with the requirements of the relevant legislation. The Plan of Management is to be updated to include all conditions of this consent and a copy maintained on site at all times during operation.

In the event of any inconsistency between the Plan of Management and the conditions of this consent or relevant legislation, then the stricter condition or regulation will prevail.

(Reason: Safety, security and amenity)

Use of Premises – Medical Centre to operate in conjunction with the Ground Floor

12. The recreational facility (indoor) – gym use and medical centre – sports medicine clinic use must operate in conjunction with each other with a medical consulting room to be provided and made available within the ground floor tenancy at all times during operation of the medical centre.

Should the recreational facility (indoor) – gym use cease to operate the medical centre must also cease and separate and further consent must be obtained for any further expansion of the medical centre use.

(Reason: To ensure both uses operate in conjunction with each other and to ensure appropriate and equitable access to facilities in the building)

Hours of Operation

13. The hours of operation of the approved uses are restricted to:

Recreation Facility (Indoor)/Gym

- Monday to Friday – 6.00am to 9.30pm
- Saturdays – 7.00am to 7.30pm
- Sundays – 10.00am to 1.00pm
- Public holidays – closed

Medical Centre/Sports Medicine Clinic

- Monday to Friday – 7.00am to 10.00pm
- Saturdays – 8.00am to 4.00pm
- Sundays – closed
- Public holidays – closed

The operations of the premises including any gym-related exercises must be undertaken within the building (internally). This consent does not grant approval for any operations (including exercises) outside/external of the existing building.

Upon expiry of the permitted hours:

- (a) all services (except the cleaning of the premises) must immediately cease;
- (b) no customers/visitors shall be permitted entry (except those undertaking cleaning of the premises); 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)

Maximum Staff and Patronage

14. The maximum staff and patronage at any one (1) time for the approved uses are as follows:

Recreation Facility (Indoor)/Gym

- Maximum three (3) staff/employees
- Maximum 15 patrons/customers

Medical Centre/Sports Medicine Clinic

- Maximum five (5) staff/employees
- Maximum 8 patrons/customers

(Reason: To protect the amenity of surrounding areas)

Restricted use of Car Park

15. Use of the open car park to the western part of the site shall be for the purposes of car parking associated with the use of the premises only. No consent is granted, or may be inferred for the use of the car park for any fitness classes.

(Reason: To ensure noise associated with the use of the premises is contained wholly within the building)

Noise and Vibration Impact

16. 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)

Trade Waste Collection (Crows Nest Trade Waste Policy)

17. 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

- 18. 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)