

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2022/1822
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<b>Responsible Officer:</b>	Maxwell Duncan
<b>Land to be developed (Address):</b>	Lot 103 DP 1247294, 145 Old Pittwater Road BROOKVALE NSW 2100
<b>Proposed Development:</b>	Minor alterations and additions to Westfield Warringah Mall Shopping Centre ('Warringah Mall')
<b>Zoning:</b>	Warringah LEP2011 - Land zoned B3 Commercial Core Warringah LEP2011 - Land zoned IN1 General Industrial
<b>Development Permissible:</b>	Yes - Zone B3 Commercial Core Yes - Zone IN1 General Industrial
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Dexus Warringah Mall Pty Ltd Scentre Management Ltd
<b>Applicant:</b>	Scentre Management Ltd

<b>Application Lodged:</b>	11/11/2022
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Commercial/Retail/Office
<b>Notified:</b>	18/11/2022 to 02/12/2022
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	1
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 20,490,000.00
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### PROPOSED DEVELOPMENT IN DETAIL

The development application seeks consent for the change of use from a existing retail premise to a recreation facility (indoor) and co-working space, new ground floor tenancy, demolition works and alterations and additions to the existing building pursuant to Warringah Local Environmental Plan 2011 (WLEP 2011).

Specifically, the development involves:

- Change of use of existing retail tenancy (David Jones (level 2)) to a **recreation facility**

**(indoor)** (Gymnasium) and **office premise** (co-working space).

- New tenancy at ground floor level.
- Alterations and additions to existing building; including
  - New glazed windows and door to level 2.
  - New common walkway.
  - New pedestrian bridge from level 2 to existing car park.
  - New internal stair access
  - Roof sheeting with skylights.

The proposed operational details are as follows:

- Hours of Operation
  - Gymnasium and office premise: 24 Hours Monday - Sunday (including public holidays)

### **ADDITIONAL INFORMATION**

On 9 February 2023 Council wrote to the applicant to request additional information to address concerns raised by Environmental Health. The applicant provided an acoustic report on 17 February 2023. Council's Environmental Health team reviewed the acoustic report and supports the proposal, subject to conditions.

### **ASSESSMENT INTRODUCTION**

The application has been assessed in accordance with the requirements of the Environmental Planning and Assessment Act 1979 and the associated Regulations. In this regard:

- An assessment report and recommendation has been prepared (the subject of this report) taking into account all relevant provisions of the Environmental Planning and Assessment Act 1979, and the associated regulations;
- A site inspection was conducted and consideration has been given to the impacts of the development upon the subject site and adjoining, surrounding and nearby properties;
- Notification to adjoining and surrounding properties, advertisement (where required) and referral to relevant internal and external bodies in accordance with the Act, Regulations and relevant Development Control Plan;
- A review and consideration of all submissions made by the public and community interest groups in relation to the application;
- A review and consideration of all documentation provided with the application (up to the time of determination);
- A review and consideration of all referral comments provided by the relevant Council Officers, State Government Authorities/Agencies and Federal Government Authorities/Agencies on the proposal.

### **SUMMARY OF ASSESSMENT ISSUES**

Assessment - Concurrence - Roads and Maritime Service - SEPP (Transport and Infrastructure) 2021, s2.118

Warringah Development Control Plan - G4 Warringah Mall

### **SITE DESCRIPTION**

**Property Description:**

Lot 103 DP 1247294 , 145 Old Pittwater Road BROOKVALE

	NSW 2100
<b>Detailed Site Description:</b>	<p>The subject site is occupied by Westfield Warringah Mall Shopping Centre and is located on the western side of Old Pittwater Road.</p> <p>The site is irregular in shape with a total surveyed area of 170,600m<sup>2</sup>.</p> <p>The site is located within the B3 Commercial Core zone, pursuant to the Warringah Local Environmental Plan 2011 and accommodates a major retail centre with a number of adjoining parking facilities.</p> <p>The site does not slope significantly and contains limited vegetation. There are no details of any threatened species within the site.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by a mix of commercial, industrial and residential development.</p>

Map:



## SITE HISTORY

The land has been used for commercial purposes for an extended period of time. A search of Council's records has revealed the following relevant history:

- DA2022/0144 - Use of Premises as a recreation centre (indoor) including associated fit out and ancillary licensed food and drinks premises. (Approved 19 April 2022)
- DA2018/1514 - Major additions to Warringah Mall Shopping Centre. (Approved by the Sydney North Planning Panel on 10 December 2019)

- Numerous applications for signage, use and fit out of commercial premises including supermarkets, shops, gymnasiums, medical centres and the like.

## ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The relevant matters for consideration under the Environmental Planning and Assessment Act, 1979, are:

Section 4.15 Matters for Consideration	Comments
Section 4.15 (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 4.15 (1) (a)(ii) – Provisions of any draft environmental planning instrument	There are no current draft environmental planning instruments.
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clause 29</u> of the EP&amp;A Regulation 2021 requires the submission of a design verification certificate from the building designer at lodgement of the development application. This clause is not relevant to this application.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested in relation to acoustic impacts</p> <p><u>Clause 61</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This matter has been addressed via a condition of consent.</p> <p><u>Clauses 62 and/or 64</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the upgrading of a building (including fire safety upgrade of development). This matter has been addressed via a condition of consent.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider insurance requirements under the Home Building Act 1989. This clause is not relevant to this application.</p> <p><u>Clause 69</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed</p>

Section 4.15 Matters for Consideration	Comments
	via a condition of consent.
Section 4.15 (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Warringah Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Notification & Submissions Received” in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited from 18/11/2022 to 02/12/2022 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 1 submission/s from:

Name:	Address:
Mr Patrick Thomas Lillas	178 Old Pittwater Road BROOKVALE NSW 2100

The following issues were raised in the submissions:

- **Access/Ingress**



The above issues are addressed as follows:

- **Access/Ingress**

The submissions raised concerns that the existing access issues to the mall from Old Pittwater Road.

Comment:

The development does not propose any change to access to and from the mall and Old Pittwater Road under this application. The works are largely internal and will not alter the existing situation.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	<p>The application has been investigated with respect to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development.</p> <p>Note: The proposed development may not comply with some requirements of the BCA. Issues such as these however may be determined at Construction Certificate stage.</p>
Environmental Health (Industrial)	<p><b>General Comments</b></p> <p>Environmental Health has reviewed the Pulse White Noise Acoustics Pty Ltd 220498-Warringah Mall - Gym Noise Assessment - R0 and Pulse White Noise Acoustics Pty Ltd Acoustic Design Report Ref: 220498_Westfield Warringah Mall_David Jones Conversion</p> <p>EH will recommend conditions for compliance with these documents with other relevant conditions.</p> <p><b>Recommendation</b></p> <p>APPROVAL - subject to conditions</p>
NECC (Stormwater and Floodplain Engineering – Flood risk)	<p>The development proposes minor alteration and addition to Westfield Warringah Mall Shopping Centre located at 145 Old Pittwater Road, Brookvale. The proposed works are at the northern portion of the subject site including works on the ground, first and second floor and the roof. The proposed ground floor works are outside the 1% AEP flood extent and involve a new tenancy.</p> <p>The proposed modifications are not considered to increase flood risk.</p>
Strategic and Place Planning	<p>This advice is provided as an internal referral from the Urban Design</p>

Internal Referral Body	Comments
(Urban Design)	<p>Unit to the Development Assessment Officer for consideration and coordination with the overall assessment.</p> <p>The application seeks consent for proposed works at the northern portion of the subject site including works on the ground, first and second floor and the roof for future tenant's needs including the downsizing of the existing David Jones department store. The proposal is minor in nature relative to the size of the whole shopping complex. The proposal will enhance the function and internal amenity of the site, resulting in minor changes to the built form which will only be slightly visible on the roof.</p> <p>Urban Design raises no objection to the proposed development.</p>

External Referral Body	Comments
Ausgrid - SEPP (Transport and Infrastructure) 2021, s2.48	The proposal was referred to Ausgrid who provided a response stating that the proposal is acceptable subject to compliance with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice. These recommendations will be included as a condition of consent.

## ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\*

All, Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the merit assessment of this application.

In this regard, whilst all provisions of each Environmental Planning Instruments (SEPPs and LEPs), Development Controls Plans and Council Policies have been considered in the assessment, many provisions contained within the document are not relevant or are enacting, definitions and operational provisions which the proposal is considered to be acceptable against.

As such, an assessment is provided against the controls relevant to the merit consideration of the application hereunder.

## State Environmental Planning Policies (SEPPs) and State Regional Environmental Plans (SREPs)

### SEPP (Transport and Infrastructure) 2021

#### Ausgrid

Section 2.48 of Chapter 2 requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out:

- within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists).
- immediately adjacent to an electricity substation.
- within 5.0m of an overhead power line.
- includes installation of a swimming pool any part of which is: within 30m of a structure supporting an overhead electricity transmission line and/or within 5.0m of an overhead electricity power line.

Comment:

The proposal was referred to Ausgrid who raised no objections, subject to conditions which have been included in the recommendation of this report.

Roads and Maritime Service (RMS)

Section 2.118 - Development with frontage to classified road states:

*The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that—*

- (a) where practicable and safe, vehicular access to the land is provided by a road other than the classified road, and*
- (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of—*
  - (i) the design of the vehicular access to the land, or*
  - (ii) the emission of smoke or dust from the development, or*
  - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
- (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road.*

Comment:

The application was referred to the TfNSW for concurrence as required by Clauses 2.118 of the SEPP. TfNSW has provided their comments, which raised no objection to the proposed development subject to advisory notes to be included as conditions of consent.

**SEPP (Resilience and Hazards) 2021**

**Chapter 4 – Remediation of Land**

Sub-section 4.6 (1)(a) of Chapter 4 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for commercial purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under sub-section 4.6 (1)(b) and (c) of this Chapter and the land is considered to be suitable for the commercial land use.

**Warringah Local Environmental Plan 2011**

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	Yes
zone objectives of the LEP?	Yes



### Compliance Assessment

Clause	Compliance with Requirements
5.3 Development near zone boundaries	Yes
5.8 Conversion of fire alarms	Yes
5.21 Flood planning	Yes
6.1 Acid sulfate soils	Yes
6.2 Earthworks	Yes
6.4 Development on sloping land	Yes
6.11 Affordable housing	Yes

### **Warringah Development Control Plan**

#### Built Form Controls

The built form control does not apply to the subject site as Part G4 of the WDCP 2011 contains the site specific development controls for Warringah Mall. An assessment of the application against the requirement Part G4 is provided within the report.

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	Yes	Yes
C4 Stormwater	Yes	Yes
C6 Building over or adjacent to Constructed Council Drainage Easements	Yes	Yes
C7 Excavation and Landfill	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D6 Access to Sunlight	Yes	Yes
D7 Views	Yes	Yes
D8 Privacy	Yes	Yes
D9 Building Bulk	Yes	Yes
D10 Building Colours and Materials	Yes	Yes
D11 Roofs	Yes	Yes
D12 Glare and Reflection	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility and Adaptability	Yes	Yes
D20 Safety and Security	Yes	Yes
D21 Provision and Location of Utility Services	Yes	Yes

Clause	Compliance with Requirements	Consistency Aims/Objectives
D22 Conservation of Energy and Water	Yes	Yes
E2 Prescribed Vegetation	Yes	Yes
E6 Retaining unique environmental features	Yes	Yes
Part G Special Area Controls	Yes	Yes
G4 Warringah Mall	Yes	Yes

### Detailed Assessment

#### **G4 Warringah Mall**

##### Description of non-compliance and/or inconsistency

Part G4 of the WDCP 2011 applies to Lot 100, DP 1015283, 145 Old Pittwater Road, Brookvale which is commonly referred to as 'Warringah Mall Shopping Centre'.

##### **Building Height**

Part G4 Warringah Mall of Warringah DCP 2011 contains controls relating to building height. The controls stipulate maximum building heights across the site by way of a building envelope plan. The building envelope plan shows a maximum of RL25 and RL.25.3 for the area proposed for the level two aspect of the development. The proposed development proposes a maximum height of RL29.990 for the proposed new parapet and RL26.528 for the proposed skylights, non-compliant with the numeric control. It is noted that the proposed parapet and skylights match the height of the existing building.

##### **Car parking**

Part G4 Warringah Mall control sets out the following parking control relevant to the site:

- Car parking is to be provided at a rate of 4.1 spaces per 100m<sup>2</sup> GFLA.

The proposal is reliant upon the existing carpark that adjoins the level 2 development to the east. The proposed development will result in an overall decrease in traffic generation then compared to the existing retail premise, noting the total reduction of gross leaseable floor space. Council's traffic engineer has reviewed the application and has raised no concerns regarding the proposal.

##### **Landscaping**

No landscaping is required for this part of the site.

##### **Hours of Operation**

The gymnasium and office premise proposed for the site, proposes 24 hours operating hours Monday to Sunday. It is considered that given the surrounding commercial developments, proximity to a public carpark and that the site is adjacent to a relatively busy road, the hours conditioned are appropriate for the site. The additional operation of the gymnasium and office premise will not present any unreasonable or detrimental acoustic impacts given the area is not in close proximity of any residential development. Zero submissions or queries relating to hours of operations or noise arose from the public consequent of the notification period of this application.

##### Merit consideration

With regard to the consideration for a variation to the building height control, the development is considered against the underlying Objectives of the Control as follows:

- *To provide street edge definition along the main eastern frontage of the site.*

Comment:

The additional height introduces a modern and contemporary element to the existing visual quality of the Mall site and this part of Brookvale. The design has architectural merit and affords visual interest to the relatively uniform and uninteresting roofscape of the site and the valley and low-lying areas

- *To provide street edges which reinforce, improve or support the hierarchy and character of streets.*

Comment:

The additional height) will not have a significant overbearing effect on street which adjoin the mall. The development proposed under this application is centralised on the site.

- *To achieve comfortable street environments for pedestrians in terms of daylight, human scale, sense of enclosure and wind mitigation as well as a healthy and sustainable environment for street trees.*

Comment:

The area of the Warringah Mall site where the additional height is proposed accounts for a relatively small aspect of the entire development. The proposed development will not unreasonably impact street environments for pedestrians in terms of daylight, human scale, sense of enclosure and wind mitigation as well as a healthy and sustainable environment for street trees.

- *To ensure solar access to residential properties and public spaces is protected.*

Comment:

The additional height can be accommodated in this portion of the site without there being any significant overshadowing of the private open space areas on the adjoining residential properties. In this regard, the adjoining properties will continue to receive at least 3 hours of sunlight to 50% of their private open space areas.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the aims and objectives of WLEP 2011, WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is supported, in this particular circumstance.

## **THREATENED SPECIES, POPULATIONS OR ECOLOGICAL COMMUNITIES**

The proposal will not significantly affect threatened species, populations or ecological communities, or their habitats.

## **CRIME PREVENTION THROUGH ENVIRONMENTAL DESIGN**

The proposal is inconsistent with the principles of Crime Prevention Through Environmental Design.

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2022**

The proposal is subject to the application of Northern Beaches Section 7.12 Contributions Plan 2022.

A monetary contribution of \$204,900 is required for the provision of new and augmented public infrastructure. The contribution is calculated as 1% of the total development cost of \$20,490,000.

## **CONCLUSION**

The site has been inspected and the application assessed having regard to all documentation submitted by the applicant and the provisions of:

- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2021;
- All relevant and draft Environmental Planning Instruments;
- Warringah Local Environment Plan;
- Warringah Development Control Plan; and
- Codes and Policies of Council.

This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions, and does not result in any unreasonable impacts on surrounding, adjoining, adjacent and nearby properties subject to the conditions contained within the recommendation.

In consideration of the proposal and the merit consideration of the development, the proposal is considered to be:

- Consistent with the objectives of the DCP
- Consistent with the zone objectives of the LEP
- Consistent with the aims of the LEP
- Consistent with the objectives of the relevant EPIs
- Consistent with the objects of the Environmental Planning and Assessment Act 1979

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed.

## **RECOMMENDATION**

THAT Council as the consent authority grant Development Consent to DA2022/1822 for Minor alterations and additions to Westfield Warringah Mall Shopping Centre ('Warringah Mall') on land at Lot 103 DP 1247294, 145 Old Pittwater Road, BROOKVALE, subject to the conditions printed below:

## **DEVELOPMENT CONSENT OPERATIONAL CONDITIONS**

1. **Approved Plans and Supporting Documentation**

The development must be carried out in compliance with the endorsed stamped plans and documentation listed below, except as amended by any other condition of consent:

a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
SDC-01.0012/ Revision A	16 December 2022	Scentre Group
SDC-01.0014/ Revision A	16 December 2022	Scentre Group
SDC-01.0015/ Revision A	16 December 2022	Scentre Group
SDC-01.0511/ Revision A	16 December 2022	Scentre Group
SDC-01.0513/ Revision A	16 December 2022	Scentre Group
SDC-01.0514/ Revision A	16 December 2022	Scentre Group
SDC-01.0811/ Revision A	16 December 2022	Scentre Group
SDC-01.0812/ Revision A	16 December 2022	Scentre Group
SDC-01.0813/ Revision A	16 December 2022	Scentre Group
SDC-01.0814/ Revision A	16 December 2022	Scentre Group
SDC-01.2010/ Revision A	16 December 2022	Scentre Group
SDC-01.2011/ Revision A	16 December 2022	Scentre Group
SDC-01.2012/ Revision A	16 December 2022	Scentre Group
SDC-01.2013 / Revision A	16 December 2022	Scentre Group
SDC-01.2510/ Revision A	16 December 2022	Scentre Group
SDC-01.2511/ Revision A	16 December 2022	Scentre Group
SDC-01.2550/ Revision A	16 December 2022	Scentre Group
SDC-01.3010/ Revision A	16 December 2022	Scentre Group

<b>Engineering Plans</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
HYD-10.0001/ Revision A	31 October 2022	Scentre Group
HYG-10.0002/ Revision A	31 October 2022	Scentre Group
HYG-10.0003/ Revision A	31 October 2022	Scentre Group
HYD-00.0000/ Revision A	31 October 2022	Scentre Group

<b>Reports / Documentation – All recommendations and requirements contained within:</b>		
<b>Report No. / Page No. / Section No.</b>	<b>Dated</b>	<b>Prepared By</b>
Acoustic Noise Assessment	10 February 2023	PWNA
BCA Assessment	8 March 2022	Steve Watson and Partners

b) Any plans and / or documentation submitted to satisfy the Deferred Commencement

Conditions of this consent as approved in writing by Council.

c) Any plans and / or documentation submitted to satisfy the Conditions of this consent.

d) The development is to be undertaken generally in accordance with the following:

Waste Management Plan		
Drawing No/Title.	Dated	Prepared By
Waste Management Plan	8 November 2022	Tim Parker

In the event of any inconsistency between conditions of this consent and the drawings/documents referred to above, the conditions of this consent will prevail.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans.

## 2. Compliance with Other Department, Authority or Service Requirements

The development must be carried out in compliance with all recommendations and requirements, excluding general advice, within the following:

Other Department, Authority or Service	EDMS Reference	Dated
Ausgrid	Ausgrid Referral Response	N/A
TfNSW	SYD21/01523/02	10 March 2023

(NOTE: For a copy of the above referenced document/s, please see Application Tracking on Council's website [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au))

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of other departments, authorities or bodies.

## 3. Approved Land Use

Nothing in this consent shall authorise the use of the tenancies as detailed on the approved plans for any land use of the site beyond the definition of a , in accordance with the Dictionary of the Warringah Local Environmental Plan 2011, as follows:

**recreation facility (indoor)** means a building or place used predominantly for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice rink or any other building or place of a like character used for indoor recreation, but does not include an entertainment facility, a recreation facility (major) or a registered club.

and

**office premises** means a building or place used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.

Any variation to the approved land use and/occupancy of any tenancy beyond the scope of the above definition will require the submission to Council of a new development application.



Reason: To ensure compliance with the terms of this consent.

4. **No Approval for Land Use**

No approval is granted under this Development Consent for any land use for the ground floor tenancy shown on the approved plans.

Reason: To ensure compliance with the relevant Local Environmental Plan.

5. **Prescribed Conditions**

- (a) All building works must be carried out in accordance with the requirements of the Building Code of Australia (BCA).
- (b) BASIX affected development must comply with the schedule of BASIX commitments specified within the submitted BASIX Certificate (demonstrated compliance upon plans/specifications is required prior to the issue of the Construction Certificate);
- (c) A sign must be erected in a prominent position on any site on which building work, subdivision work or demolition work is being carried out:
  - (i) showing the name, address and telephone number of the Principal Certifier for the work, and
  - (ii) showing the name of the principal contractor (if any) for any building work and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.

Any such sign is to be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

- (d) Residential building work within the meaning of the Home Building Act 1989 must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the following information:
  - (i) in the case of work for which a principal contractor is required to be appointed:
    - A. the name and licence number of the principal contractor, and
    - B. the name of the insurer by which the work is insured under Part 6 of that Act,
  - (ii) in the case of work to be done by an owner-builder:
    - A. the name of the owner-builder, and
    - B. if the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

If arrangements for doing the residential building work are changed while the work is in progress so that the information notified under becomes out of date, further work must not be carried out unless the Principal Certifier for the development to which the work relates (not being the Council) has given the Council written notice of the updated information.

- (e) Development that involves an excavation that extends below the level of the base of the footings of a building on adjoining land, the person having the benefit of the development consent must, at the person's own expense:
  - (i) protect and support the adjoining premises from possible damage from the excavation, and
  - (ii) where necessary, underpin the adjoining premises to prevent any such

damage.

- (iii) must, at least 7 days before excavating below the level of the base of the footings of a building on an adjoining allotment of land, give notice of intention to do so to the owner of the adjoining allotment of land and furnish particulars of the excavation to the owner of the building being erected or demolished.
- (iv) the owner of the adjoining allotment of land is not liable for any part of the cost of work carried out for the purposes of this clause, whether carried out on the allotment of land being excavated or on the adjoining allotment of land.

In this clause, allotment of land includes a public road and any other public place.

Reason: Legislative requirement.

## 6. General Requirements

- (a) Unless authorised by Council:  
Building construction and delivery of material hours are restricted to:
  - 7.00 am to 5.00 pm inclusive Monday to Friday,
  - 8.00 am to 1.00 pm inclusive on Saturday,
  - No work on Sundays and Public Holidays.

Demolition and excavation works are restricted to:

- 8.00 am to 5.00 pm Monday to Friday only.

(Excavation work includes the use of any excavation machinery and the use of jackhammers, rock breakers, excavators, loaders and 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).

- (b) Should any asbestos be uncovered on site, its demolition and removal must be carried out in accordance with WorkCover requirements and the relevant Australian Standards.
- (c) At all times after the submission the Notice of Commencement to Council, a copy of the Development Consent and Construction Certificate is to remain onsite at all times until the issue of an Occupation Certificate. The consent shall be available for perusal of any Authorised Officer.
- (d) Where demolition works have been completed and new construction works have not commenced within 4 weeks of the completion of the demolition works that area affected by the demolition works shall be fully stabilised and the site must be maintained in a safe and clean state until such time as new construction works commence.
- (e) Onsite toilet facilities (being either connected to the sewer or an accredited sewer management facility) for workers are to be provided for construction sites at a rate of 1 per 20 persons.
- (f) Prior to the release of the Construction Certificate, payment of the Long Service Levy is required. This payment can be made at Council or to the Long Services Payments Corporation. Payment is not required where the value of the works is less than \$250,000. The Long Service Levy is calculated on 0.25% of the building and construction work. The levy rate and level in which it applies is subject to legislative change. The applicable fee at the time of payment of the Long Service Levy will apply.

- (g) The applicant shall bear the cost of all works associated with the development that occurs on Council's property.
- (h) No skip bins, building materials, demolition or excavation waste of any nature, and no hoist, plant or machinery (crane, concrete pump or lift) shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) Demolition materials and builders' wastes are to be removed to approved waste/recycling centres.
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) or on the land to be developed shall be removed or damaged during construction unless specifically approved in this consent including for the erection of any fences, hoardings or other temporary works.
- (k) Prior to the commencement of any development onsite for:
  - i) Building/s that are to be erected
  - ii) Building/s that are situated in the immediate vicinity of a public place and is dangerous to persons or property on or in the public place
  - iii) Building/s that are to be demolished
  - iv) For any work/s that is to be carried out
  - v) For any work/s that is to be demolished

The person responsible for the development site is to erect or install on or around the development area such temporary structures or appliances (wholly within the development site) as are necessary to protect persons or property and to prevent unauthorised access to the site in order for the land or premises to be maintained in a safe or healthy condition. Upon completion of the development, such temporary structures or appliances are to be removed within 7 days.
- (l) A "Road Opening Permit" must be obtained from Council, and all appropriate charges paid, prior to commencement of any work on Council property. The owner/applicant shall be responsible for all public utilities and services in the area of the work, shall notify all relevant Authorities, and bear all costs associated with any repairs and/or adjustments as those Authorities may deem necessary.
- (m) The works must comply with the relevant Ausgrid Network Standards and SafeWork NSW Codes of Practice.
- (n) Requirements for new swimming pools/spas or existing swimming pools/spas affected by building works.
  - (1) Child resistant fencing is to be provided to any swimming pool or lockable cover to any spa containing water and is to be consistent with the following;
 

Relevant legislative requirements and relevant Australian Standards (including but not limited) to:

    - (i) Swimming Pools Act 1992
    - (ii) Swimming Pools Amendment Act 2009
    - (iii) Swimming Pools Regulation 2018
    - (iv) Australian Standard AS1926 Swimming Pool Safety
    - (v) Australian Standard AS1926.1 Part 1: Safety barriers for swimming pools
    - (vi) Australian Standard AS1926.2 Part 2: Location of safety barriers for swimming pools.
  - (2) A 'KEEP WATCH' pool safety and aquatic based emergency sign, issued by Royal Life Saving is to be displayed in a prominent position within the pool/spa

area.

- (3) Filter backwash waters shall be conveyed to the Sydney Water sewerage system in sewered areas or managed on-site in unsewered areas in a manner that does not cause pollution, erosion or run off, is separate from the irrigation area for any wastewater system and is separate from any onsite stormwater management system.
- (4) Swimming pools and spas must be registered with the Division of Local Government.

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

## FEES / CHARGES / CONTRIBUTIONS

### 7. Policy Controls

Northern Beaches Section 7.12 Contributions Plan 2022

A monetary contribution of \$204,900.00 is payable to Northern Beaches Council for the provision of local infrastructure and services pursuant to section 7.12 of the Environmental Planning & Assessment Act 1979 and the Northern Beaches Section 7.12 Contributions Plan (as amended).

The monetary contribution is based on a development cost of \$20,490,000.00.

The total amount payable will be adjusted at the time the payment is made, in accordance with the provisions of the Northern Beaches Section 7.12 Contributions Plan (as amended).

Details demonstrating compliance, by way of written receipts issued by Council, are to be submitted to the Certifier prior to issue of any Construction Certificate or, if relevant, the Subdivision Certificate (whichever occurs first).

A copy of the Contributions Plan is available for inspection at 725 Pittwater Road, Dee Why or on Council's website at Northern Beaches Council - Development Contributions.

Reason: To provide for contributions in accordance with the Contribution Plan to fund the provision of new or augmented local infrastructure and services.

### 8. Security Bond

A bond (determined from cost of works) of \$10,000 and an inspection fee in accordance with Council's Fees and Charges paid as security are required to ensure the rectification of any damage that may occur to the Council infrastructure contained within the road reserve adjoining the site as a result of construction or the transportation of materials and equipment to and from the development site.

An inspection fee in accordance with Council adopted fees and charges (at the time of payment) is payable for each kerb inspection as determined by Council (minimum (1) one inspection).

All bonds and fees shall be deposited with Council prior to Construction Certificate or demolition work commencing, and details demonstrating payment are to be submitted to the Certifier prior to the issue of the Construction Certificate.

To process the inspection fee and bond payment a Bond Lodgement Form must be completed with the payments (a copy of the form is attached to this consent and alternatively a copy is located on Council's website at [www.northernbeaches.nsw.gov.au](http://www.northernbeaches.nsw.gov.au)).

Reason: To ensure adequate protection of Council's infrastructure.

## CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

### 9. Stormwater Drainage Disposal

The stormwater drainage systems for the development are to be designed, installed and maintained in accordance with Council's Water Management for Development Policy.

All stormwater drainage systems must comply with the requirements of Council's Water Management for Development Policy. Any recommendations identified within a Geotechnical Report relevant to the development are to be incorporated into the design of the stormwater drainage system. Details demonstrating compliance from a qualified and practising Civil Engineer and where relevant a Geotechnical Engineer must be submitted to and approved by the Certifier prior to the issue of a Construction Certificate.

When the proposed discharge point for the development in this consent cannot strictly comply with the Water Management for Development Policy, the Applicant must apply to verify the proposed discharge point by gaining Council approval via a Stormwater Drainage Application. Council approval must be provided to the Certifier prior to the issue of a Construction Certificate when a Stormwater Drainage Application is required. The Stormwater Drainage Application form can be found on Council's website.

Compliance with this condition must not result in variations to the approved development or additional tree removal.

Reason: To ensure satisfactory management of stormwater.

### 10. Acoustic Design Recommendations

Prior to the issuing of any Construction Certificate, documentation is to be submitted to the satisfaction of the Principal Certifier that design recommendations within the Pulse White Noise Acoustics Pty Ltd 220498-Warringah Mall - Gym Noise Assessment - R0 and Pulse White Noise Acoustics Pty Ltd Acoustic Design Report Ref: 220498\_Westfield Warringah Mall\_David Jones Conversion have been implemented / incorporated into the design of the premises.

Reason: To prevent noise nuisance by using mitigation measures in design

### 11. Compliance with Standards

The development is required to be carried out in accordance with all relevant Australian Standards.

Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Certifier prior to the issue of the Construction Certificate.

Reason: To ensure the development is constructed in accordance with appropriate standards.

## CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO THE ISSUE OF THE OCCUPATION CERTIFICATE

12. **Stormwater Drainage Disposal Certification**

Certification from an appropriately qualified and practising Civil Engineer demonstrating the stormwater drainage systems have been designed and installed in accordance with the requirements of Council's Water Management for Development Policy and where relevant a Geotechnical Engineer shall be provided to the Principal Certifier prior to the issue of an Occupation Certificate, and;

If any on site stormwater detention system is installed the Applicant shall lodge the Legal Documents Authorisation Application with Council.

The application is to include the completed request forms (NSW Land Registry standard forms 13PC and/or 13RPA) and a copy of the Works-as-Executed plan (details overdrawn on a copy of the approved drainage plan), hydraulic engineers' certification. A guide to the process and associated Legal Document Authorisation Application form can be found on Council's website. The Applicant shall create on the Title a positive covenant in respect to the ongoing maintenance and restriction as to user over the on-site stormwater detention system within this development consent.

The terms of the positive covenant and restriction are to be prepared to Council's standard requirements at the applicant's expense and endorsed by Northern Beaches Council's delegate prior to lodgement with the NSW Land Registry Services. Northern Beaches Council shall be nominated as the authority to release, vary or modify such covenant. A copy of the certificate of title demonstrating the creation of the positive covenant and restriction as to user for the on-site stormwater detention system is to be submitted.

Details demonstrating compliance are to be submitted to the Principal Certifier prior to the issue of an Occupation Certificate.

Reason: To ensure satisfactory management of stormwater.

## ON-GOING CONDITIONS THAT MUST BE COMPLIED WITH AT ALL TIMES

13. **Hours of Operation - Ground floor tenancy**

No hours of operation are approved for the ground floor tenancy under this consent.

Reason: To ensure compliance with the terms of this consent.

14. **Acoustic controls - Noise prevention**

All items within SPulse White Noise Acoustics Pty Ltd 220498-Warringah Mall - Gym Noise Assessment - R0 and Pulse White Noise Acoustics Pty Ltd Acoustic Design Report Ref: 220498\_Westfield Warringah Mall\_David Jones Conversion must be maintained in perpetuity.

Reason: To prevent noise nuisance by using mitigation measures.

15. **Hours of Operation**

The hours of operation are to be restricted to:

**Indoor recreation facility (indoor) gymnasium**

- Monday to Sunday and Public Holidays – 24 Hours

**Office Premise co working space**

- Monday to Sunday and Public Holidays – 24 Hours



Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained.

16. **Classified Road Network**

All buildings and structures, together with any improvements integral to the future use of the site are to be wholly within the freehold property (unlimited in height or depth), along the Condamine Street/ Pittwater Road boundary.

Reason: To ensure compliance with the terms of this consent

In signing this report, I declare that I do not have a Conflict of Interest.

**Signed**



**Maxwell Duncan, Principal Planner**

The application is determined on 05/04/2023, under the delegated authority of:



**Jordan Davies, Acting Development Assessment Manager**