

Statement of Environmental Effects

**Section 96(2): Modification of the approved
development to amend condition no. 6 to
extend the hours of operation**

Lot 1 in DP 9900

**UNDER THE
ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979
(AS AMENDED) AND REGULATIONS 2000**

Property: Unit 2, 874 Pittwater Road,
Dee Why, NSW 2099

Applicant: Mr. Tony Ashcroft
(c/o Tomasy Planning pty. ltd.)

Prepared by:

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1. Introduction

This Statement of Environmental Effects has been prepared by Tomasy Pty. Ltd. on behalf of the applicant, Mr. Tony Ashcroft. The Statement is to accompany a Section 96 modification which seeks to amend condition no. 6 relating to the hours of operation.

Condition no. 6 currently reads as follows:

6. **Hours of Operation**

The hours of operation are to be restricted to:

Monday to Sunday: 5.30am – 10.30pm

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 (DACPLG08)

The subject Section 96 application seeks to amend condition no. 6 to read as follows:

6. **Hours of Operation**

The hours of operation are to be restricted to:

Monday to Sunday: 5.00am – 10.30pm

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 (DACPLG08)

In preparing this document, consideration has been given to the following:

- Environmental Planning and Assessment Act 1979 (as amended);
- Environmental Planning and Assessment Regulation 2000;
- Warringah Local Environmental Plan 2011;
- Warringah Development Control Plan 2011; and
- Noise Impact Assessment prepared by Acoustic Logic (prepared on the 16/01/2018)

The increase in the hours of operations by extending the opening trading hours by 30 minutes, Monday to Sunday will not result in any adverse amenity impacts to the neighbouring commercial premises or the residential dwellings in close proximity of the subject site.

The conclusions of the Statement are that the proposed Section 96 modifications including the increase to the hours of operation by an additional 30 minutes is permissible with consent and will not compromise the environmental amenity of the neighbouring properties. Accordingly, the Section 96 application will succeed on its

merits and should be approved by the Northern Beaches Council subject to conditions as may be deemed appropriate.

2. Background

A Development Application (DA2014/0731) was approved on the 21 August 2014 for a change of use and an associated internal fit-out of the premises as a gymnasium including new signage details. A condition of consent (no. 6) was included within the notice of determination which prescribed the following:

6. **Hours of Operation**

The hours of operation are to be restricted to:

Monday to Sunday: 5.30am – 10.30pm

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. (DACPLG08).

An email was received by Council's Environmental Health Officer, Omar El-Ahmad to the operator Mr. Tony Ashcroft on the 10 December 2017. The email specifies the following:

I have recently reviewed the F45 Dee Why schedule on your website and found that the gymnasium also provides classes which commence at 5:15am.

Please be advised that these classes also are operating outside of the approved hours of operation.

You are directed to immediately cease all classes which are operating outside of the approved hours of operation.

*The development consent conditions for the gymnasium states:
"Hours of Operation*

The hours of operation are to be restricted to:

Monday to Sunday: 5:30am – 10:30pm

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."

It is an offense under the Environmental Planning and Assessment Act 1979 not to comply with the development consent which carries a penalty of \$3,000 for individuals and \$6,000 for corporations.

Subsequently, the subject Section 96 application seeks to address the increased hours of operation to 5.00am – 10.30pm, Monday to Sunday.

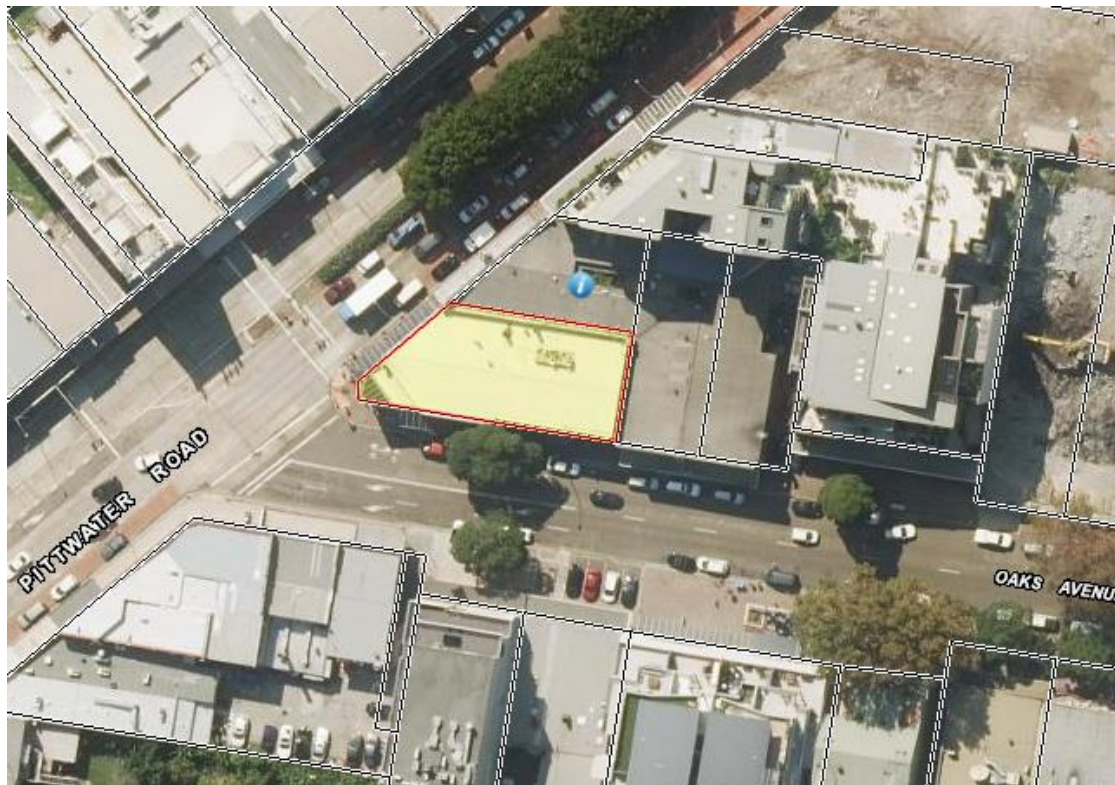
3. Site Profile

The subject site is legally described as Lot 1 in DP9900 and is also known as no. 2/874 Pittwater Road, Dee Why. The subject site is located on the road intersection of Pittwater Road and Oaks Avenue and currently provides a dual street frontage.

The subject site adjoins an existing two-storey commercial premises (comprising a mixture of retail, business and office premises) immediately to the north and east at no. 876 Pittwater Road. The locality contains a mixture of commercial premises and shop-top housing developments varying between one and five storeys in building height all of which are located within the nominated Dee Why Town Centre as per the Warringah Development Control Plan 2011.

The subject site does not contain any item of heritage significance or located within a heritage conservation area.

The existing improvements consists of a two-storey mixed use development containing commercial premises at the ground floor level and a recreation facility (indoor) at the first floor level.



Location of the existing subject site

4. The Proposal

The subject Section 96 modification seeks to amend conditions of consent to the originally approved development pursuant of the Environmental Planning and Assessment Act, 1979 for the following:

Condition no. 6 currently reads as follows:

6. **Hours of Operation**

The hours of operation are to be restricted to:

Monday to Sunday: 5.30am – 10.30pm

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 (DACPLG08)

The subject Section 96 application seeks to amend condition no. 3 to read as follows:

6. **Hours of Operation**

The hours of operation are to be restricted to:

Monday to Sunday: 5.00am – 10.30pm

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 (DACPLG08)

The proposed Section 96 modification seeks to increase the opening trading hours by 30 minutes with hours of operation from 5.00am – 10.30pm, Monday to Sunday.

5. Statutory Planning Controls

The relevant statutory planning instruments that are applicable to the subject Section 96 modification application is as follows:

- Environmental Planning and Assessment Act 1979 (as amended);
- Warringah Local Environmental Plan 2011; and
- Warringah Development Control Plan 2011.

5.1 *Environmental Planning and Assessment Act, 1979 (as amended)*

Section 96(2) Modification of Consents:

Under the provisions of Section 96(2) of the Environmental Planning and Assessment Act, 1979, as amended, Council may only agree to a modification of an existing development consent if the following criteria has been complied with:-

Substantially the Same Development:

‘the consent authority is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent as originally granted was modified’.

The proposal will not result in a change to the nature of the original application and the changes sought under the Section 96 application will result in a development that is substantially the same as that for which consent was originally granted. The proposal involves a modification to condition no. 6 of the approved development consent to increase the hours of operation by an additional 30 minutes to 5am – 10.30pm, Monday to Sunday. The Section 96 modifications will remain in keeping with the approved use as a recreational facility (indoor) and does not involve any alterations to the internal fit-out or the external façade of the building.

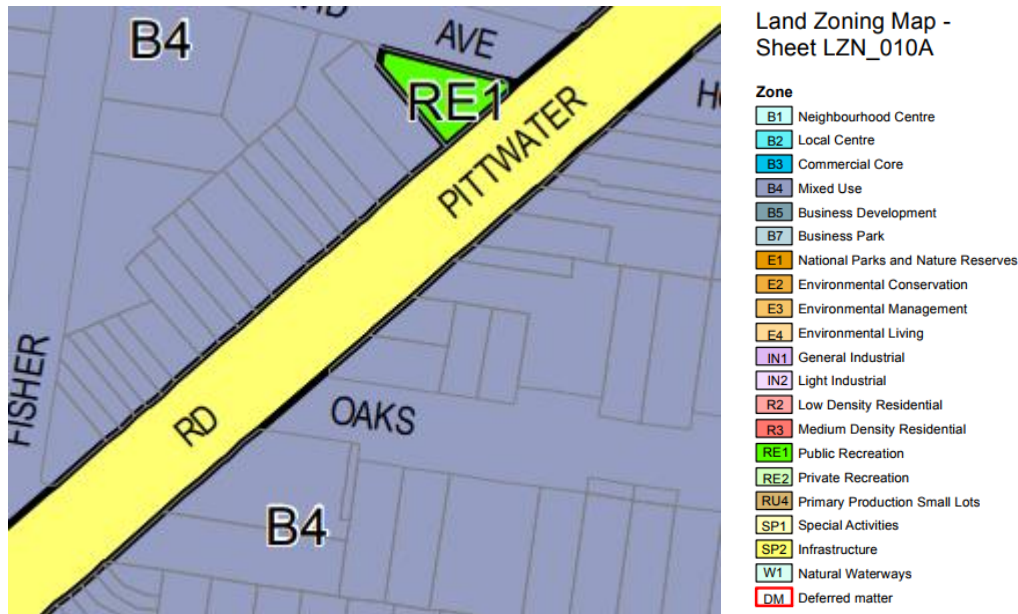
The minor increase to the hours of operation will not compromise the acoustic amenity of the neighbouring properties. The immediately adjoining premises consists predominately of commercial uses all of which commence trade between 8 – 9am and will be unaffected by the extended hours of operation which commence at 5am. Notwithstanding this, an acoustic statement has been prepared by Acoustic Logic to accompany the Section 96 modification which identifies that the proposed background noise will not fall within an ‘intrusiveness criteria’ and will not impact the amenity of the closest receiver to the neighbouring residential dwellings. In considering the above, the Section 96 modifications will not result in any adverse environmental amenity impacts to the adjoining neighbour.

Notification and Consideration of Submissions:

The owners of the adjoining and neighbouring properties will be notified in accordance with the Notification Policy of the Warringah Development Control Plan 2011.

5.2 Warringah Local Environmental Plan 2011

Land Zoning:



The subject site is located in an 'B4' Mixed Use Zone.

The Section 96 modification involves extending the hours of operation from 5.30am – 10.00pm, Monday to Sunday to 5.00am – 10.00pm, Monday to Sunday. The proposed modifications does not seek to modify the existing use of the premises as a recreation facility (indoor) and will remain a permissible form of development within the B4: Mixed Use Zone.

5.3 Warringah Development Control Plan 2011

In preparing this application, consideration has been given to the Warringah Development Control Plan 2011 (WDCP2011). The Warringah DCP 2011 identifies objectives and provisions for new development within the Dee Why Town Centre locality. These outcomes require new development that responds to, reinforces and sensitively relates to the spatial characteristics of the existing and built environment. The table below sets out the general provisions of the Warringah Development Control Plan 2011 that apply to the subject site and proposed Section 96 modification to amend condition no. 6 and increase the hours of operation.

The relevant provisions of the DCP are addressed in the table below. (Note: a number of control provisions that are not related to the proposal have been deliberately omitted.)

Compliance Table Warringah Development Control Plan 2011			
Control	Requirement	Proposal	Compliance
D3: Noise			
1.	Noise from combined operation of all mechanical plant and equipment must not generate noise levels that exceed the ambient background noise by more than 5dB(A) when	The proposal does not involve the installation of any additional mechanical plant and equipment on the premises. Condition no. 3(j) of the original development	Complies.

	measured in accordance with the <i>NSW Industrial Noise Policy</i> at the receiving boundary of residential and other noise sensitive land uses.	consent prescribes that all sound producing plant, equipment, machinery or fittings and the use will not exceed more than 5dB(A) above the background level when measured from any property boundary and/or habitable room(s) consistent with the Environmental Protection Authority's NSW Industrial Noise Policy and/or Protection of the Environment Operations Act 1997. The subject Section 96 modification does not seek to amend or delete this condition and will ensure noise generated from the development does not impact the amenity of the neighbouring properties.	
2.	Development near existing noise generating activities, such as industry and roads, is to be designed to mitigate the effect of that noise.	The subject Section 96 modification does not seek to alter the internal configuration of the existing floor layout of the recreation facility (indoor). The floor arrangement will remain as existing.	Complies.
3.	Waste collection and delivery vehicles are not to operate in the vicinity of residential uses between 10pm and 6am.	No changes to waste collection and delivery vehicles.	Not applicable.
4.	Where possible, locate noise sensitive rooms such as bedrooms and private open space away from noise sources. For example, locate kitchens or service areas closer to busy road frontages and bedrooms away from road frontages.	The subject Section 96 modifications does not involve the construction of any new rooms or private open spaces.	Not applicable.
5.	Where possible, locate noise sources away from the bedroom areas of adjoining dwellings/properties to minimise impact.	The increase to the hours of operation are not located in close proximity to existing bedrooms of adjoining properties.	Complies.

6. Section 79C Considerations

In considering the development application, Council must consider the relevant planning criteria in Section 79C of the Environmental Planning and Assessment Act, 1979. Section 79C is addressed as follows:

6.1 Statutory Policy and Compliance – S.79C(1)(a)

The relevant statutory planning policies have been assessed with respect to the relevant LEP and DCP as above in the Statement of Environmental Effects.

The planning provisions relevant to the proposed development include the following:

- Environmental Planning and Assessment Act, 1979.
- Warringah Local Environmental Plan 2011 and
- Warringah Development Control Plan 2011.

6.2 Natural Environmental Impacts – S.79C(1)(b)

The subject Section 96 modifications to amend condition no. 6 to increase the hours of operation for the existing use of a recreation facility (indoor) will not result in any impacts to the natural environment.

6.3 Built Environment Impacts – S.79C(1)(b)

In addition to the above, the subject Section 96 modifications to amend condition no.6 to increase the hours of operation for the existing use of a recreation facility (indoor) will not result in any impacts to the built environment. The modifications will not give rise to any adverse environmental amenity impacts including visual bulk and scale; visual privacy; solar access and overshadowing or view loss impacts to the neighbouring commercial or residential properties.

With respect to the noise impacts, the Section 96 modifications to extend the opening hours of operation by an additional 30 minutes from 5.30am – 10.00pm, Monday to Sunday to 5.00am -10.00pm, Monday to Sunday will not contribute to significant noise intrusion to the adjoining premises. The siting and design of the development is immediately adjacent to an existing major arterial road, Pittwater Road and currently generates significant background noise. An acoustic statement prepared by Acoustic Logic indicates that the proposed increased hours of operation will not exceed 5dB(A) above the background noise level provided the following acoustic measures are incorporated into the operations of the premises.

The measures are inclusive as follows:

1. *The external windows shall be closed during the proposed extended hours.*
2. *No free weight is allowed to be dropped before 5.30am.*
3. *PA is not allowed to be used before 5.30am.*

The noise emissions that are generated from the 30-minute increase between the hours of 5am – 5.30am, Monday to Sunday from the approved development will comply with the noise emission criteria and will not adversely impact the noise criteria of the nearest affected residential or commercial receiver.

The modification to the approved development will not contribute to any adverse built environment impacts.

6.4 *Social and Economic Impacts – S.79C(1)(b)*

The Section 96 modifications will improve and enhance the social and economic viability of the Dee Why Town Centre. The increase in the hours of operation by an additional 30 minutes will ensure increase hours of trading and patronage on a day-to-day basis.

6.5 *Suitability of the Site for Development – S.79(1)(c)*

The subject Section 96 modification does not seek to change the use of the premises and will remain as a recreational facility (indoor). Recreational Facility (indoor) is a permissible form of development within the Warringah Local Environmental Plan 2011 and the increase to the hours of operation will relate to the existing use and is suitable for the site.

7. Conclusion

The proposed modification to amend the wording of condition no. 6 to increase the hours of operation from 5.30am – 10.30pm, Monday to Sunday to 5.00am – 10.30pm, Monday to Sunday has been assessed against the requirements of the relevant planning guidelines including the Warringah Local Environmental Plan 2011; the Warringah Development Control Plan 2011; Section 96 of the Environmental Planning and Assessment Act, 1979 and Section 79(c) of the Environmental Planning and Assessment Act 1979 as amended.

The modifications to increase the hours of operation by an additional 30 minutes does not involve any changes to the existing building footprint or the use of the premises and is considered to be substantially the same as that previously approved. With respect to the additional noise impacts, an acoustic statement prepared by Acoustic Logic prescribes that the minor intensification of the use will continue to comply with the noise emission requirements of the NSW Industrial Noise Policy. The modified development will not result in any unreasonable adverse impacts upon either the amenity of the adjoining premises or the character of the locality.