

REVIEW OF DETERMINATION ASSESSMENT REPORT

Application Number:	REV2017/0020
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Responsible Officer:	Kevin Short
Land to be developed (Address):	Lot 51 SP 58961, 51 / 1 - 5 Collaroy Street COLLAROY NSW 2097
Proposed Development:	Review of Determination of Development Application DA2016/0933 for use of premises as a Recreation Facility and Signage
Zoning:	LEP - Land zoned B2 Local Centre
Development Permissible:	Yes
Existing Use Rights:	No
Consent Authority:	Development Determination Panel
Land and Environment Court Action:	No
Owner:	Virak Sik Thary Um Phonrith Um
Applicant:	Urbanesque Planning Pty Ltd

Application lodged:	13/06/2017
Application Type:	Local
State Reporting Category:	Refer to Development Application
Notified:	16/06/2017 to 03/07/2017
Advertised:	Not Advertised, in accordance with A.7 of WDCP
Submissions:	5
Recommendation:	Refusal

Estimated Cost of Works:	\$ 95,000.00
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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 all lands whether nearby, adjoining or at a distance;
- Consideration was given to all documentation provided (upto the time of determination) by the applicant, persons who have made submissions regarding the application and any advice provided by relevant Council / Government / Authority Officers on the proposal.

SUMMARY OF ASSESSMENT ISSUES

Environmental Planning and Assessment Act 1979 - Section 82A - Environmental Planning and Assessment Act 1979 - Section 82A

Warringah Local Environmental Plan 2011 - Warringah Local Environmental Plan 2011

Warringah Local Environmental Plan 2011 - Zone B2 Local Centre

Warringah Development Control Plan - C2 Traffic, Access and Safety

Warringah Development Control Plan - C3 Parking Facilities

Warringah Development Control Plan - D3 Noise

SITE DESCRIPTION

Property Description:	Lot 51 SP 58961 , 51 / 1 - 5 Collaroy Street COLLAROY NSW 2097
Detailed Site Description:	<p>The subject site consists of one commercial unit (Unit 51) within a multi storey mixed use development located on the northern side of Collaroy Street.</p> <p>The unit is located within the ground level adjacent to the carpark within the development and has an area of 149m².</p> <p>The site is located within the B2 Local Centre zone and accommodates a four storey shop top housing development with parking on the ground floor level adjacent to the shops.</p> <p>Surrounding development consists of other shop top developments, residential flat buildings, backpackers hostel and retail developments.</p>

Map:



SITE HISTORY

Development Application DA2016/0933

Development Application DA2016/0933 was lodged with Council on 7 September 2016.

No pre-lodgement meeting was held in relation to the proposal.

The preliminary assessment of the application resulted in a letter dated 14 November 2016 being sent to the applicant requesting that the application be withdrawn given the non-compliance with WDCP 2011 Clauses, specifically C3 - Parking Facilities and D3 - Noise. A parking and traffic report and acoustic report was not submitted with the application. In response to this letter, a traffic report and acoustic report was submitted to Council.

However, the application was subsequently refused on traffic, parking and noise grounds (refer to Proposed Development in Detail for reasons for refusal).

Section 82A Review Application REV2017/0020

Section 82A Review Application REV2017/0020 was lodged with Council on 13 June 2017.

No pre-lodgement meeting was held in relation to the review application.

A review of the application resulted in a letter dated 12 July 2017 being sent to the Applicant requesting that the application be withdrawn as strata owners' corporation consent was not provided with the application and in relation to the non-compliances with WDCP 2011 Clauses C2 - Traffic Access and Safety and C3 - Parking Facilities.

On 19 July 2017 the applicant responded to the withdrawal letter and provided the following supporting documentation to the application;

- *The original development application was approved with the consent of the individual strata lot owner and not the owners' corporation and therefore the review application does not require owners' corporation consent;*
- *Consistent with relevant case law, Owners Strata Plan No 50411 & Ors v Cameron North Sydney Investments Pty, Ltd [2003] NSWCA 5, the application is for a use that is contained entirely within the lot boundaries (including the allocated parking), and therefore the consent of the owners' corporation to the application is not required; and*
- *There is no change to the parking arrangement under the review application and Council's Traffic Engineer does not raise concern with the parking and traffic arrangement as provided under the second referral comments for the original development application.*

As provided throughout this report, the review application has been assessed with consideration of the additional supporting documentation provided with the application and cannot be supported for the reasons of non-compliances with WDCP Clauses C2 - Traffic Access and Safety and C3 - Parking Facilities and the fact that owners' corporation consent is required and has not been provided.

PROPOSED DEVELOPMENT IN DETAIL

Section 82A Review Application

This Section 82A review application is for the review of the determination of DA2016/0275 for a swim school which was refused for the following reasons;

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local

Environmental Plan 2011.

2. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the objectives of the B2 Local Centre Zone under of the Warringah Local Environmental Plan 2011.

3. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C2 Traffic, Access and Safety of the Warringah Development Control Plan 2011.

4. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause D3 Noise of the Warringah Development Control Plan 2011.

5. Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, the

As part of the request for a review of DA2016/0933, the applicant has made the following amendments in relation to the equipment capacity and time of operations, relief air opening and management procedures. Specifically, the following amendments have occurred to the original development application;

- Reduction in the the size of the heat pump from 19 kW to 12 kW;
- No operation of heat pump between 10.00pm and 7.00am;
- Glass louvers on the north and northeast face (side of entrance door) of the shop are to be kept closed at all times;
- Glass louvers on the east face (behind the change rooms) are to be left open for natural ventilation;
- Entering and leaving entrance doors is to be managed by staff with the doors remaining open during the day period (7.00am to 6.00pm) and left closed 6.00pm to 8.00pm; and
- Provision of an open cavity to allow free flow of natural ventilation between Shop 5 and outside.

A revised Acoustic Report was also submitted with the review application.

Original Development Application

The proposal involves the change of use of the existing commercial unit to a Swim School.

The premises have a floor area of approximately 149m² and provision is made for an above ground swimming pool, change room facilities, reception / foyer and a store room / plant and equipment room.

The proposed swim school is to operate as follows;

- Hours of operation: 8:00am to 8:00pm Monday to Sunday (7 Days a week)
- Staff: Maximum of 2 staff members
- Typical class sizes: Maximum of 4 children per teacher. Maximum of 2 classes at the same time. Maximum of 6 children in parent / infant classes.
- Length of classes: 30 minutes
- On-site parking: 8 reserved tandem parking spaces
- Signage measuring 4.8m² (4.0m x 1.2m) on the front façade of the premises.
- Construction work involved is internal fit out only.

In consideration of the application a review of (but not limited) documents as provided by the applicant in support of

the application was taken into account detail provided within Attachment C.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

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

Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (a)(i) – Provisions of any environmental planning instrument	See discussion on “Environmental Planning Instruments” in this report.
Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument	None applicable.
Section 79C (1) (a)(iii) – Provisions of any development control plan	<p>Warringah Development Control Plan applies to this proposal.</p> <p>The proposal is found to be inconsistent with WDCP - C2 Traffic, Access and Safety and C3 Parking Facilities.</p> <p>Please refer to the WDCP - C2 Traffic, Access and Safety and C3 Parking Facilities sections of the report for further details.</p>
Section 79C (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&A Regulation 2000 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent should the application be approved.</p> <p><u>Clauses 54 and 109</u> of the EP&A Regulation 2000, Council requested additional information and has therefore considered the number of days taken in this assessment in light of this clause within the Regulations. No additional information was requested.</p> <p><u>Clause 92</u> of the EP&A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This is not a relevant matter.</p> <p><u>Clauses 93 and/or 94</u> of the EP&A Regulation 2000 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 should the application be approved.</p> <p><u>Clause 98</u> of the EP&A Regulation 2000 requires the consent authority to consider the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent should the application be approved.</p>
Section 79C (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) 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) The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p>

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Section 79C 'Matters for Consideration'	Comments
	(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development. Please refer to the WDCP - C2 Traffic, Access and Safety and C3 Parking Facilities sections of the report for further details.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	<p>A total of five (5) submissions were received in relation to the proposed development and are considered under the “Public Exhibition” section of this report. Concerns raised in submissions relate to adverse traffic and parking impacts, noise impacts and the absence of owners' corporation consent.</p> <p>In summary, the concerns raised in submissions in relation to traffic, parking and owners' consent missions are concurred with and it is recommended that these reasons for refusal be maintained.</p> <p>However, the concerns raised in relation to noise have been satisfactorily addressed by the applicant and it is recommended that this reason for refusal is not maintained.</p>
Section 79C (1) (e) – the public interest	<p>Matters have arisen in this assessment that would justify maintaining the reasons for refusal of the original development application in the public interest.</p> <p>Please refer to the WDCP - C2 Traffic, Access and Safety and C3 Parking Facilities sections of the report for further details.</p> <p>Also, as per Clause 50 of the Environmental Planning and Assessment Regulation 2000, and the Development Application Checklist, strata owners consent has not been provided and therefore development consent cannot be granted. This deficiency will form a new reason for refusal.</p> <p>Having regard to the above, the proposal is found not to be in the public interest.</p>

Section 82A of the Environmental Planning and Assessment Act 1979

In accordance with Section 82A of the Act, an applicant may request Council to review the determination of a development application, other than for a complying development, integrated development, designated development or a determination made by Council in respect to an application by the Crown. The development application does not fall into any of these categories, therefore the applicant may request a review.

In accordance with Section 82A of the Act, the request for the review must be made and determined within 6 months after the date of determination of the development application.

The application was determined on 19 April 2017 and the Notice of Determination was issued on 26

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April 2017. The review was lodged on 13 June 2017 and is to be considered by the Development Determination Panel on 6 September 2017, which is within 6 months of the date of determination.

Section 82A(4)(c) provides that the Council may review a determination if in the event that the applicant has made amendments to the development described in the original application, the consent authority is satisfied that the development, as amended, is substantially the same as the development described in the original application.

The amendments to the proposal are outlined in the 'Detailed Description of Works' section of this report.

A review of the original and amended plans has found that there are fundamental similarities between the original and the amended proposal (being subject of the S82 review) and the nature of the intended land use remains the same. Accordingly, it is concluded that the amended scheme is substantially the same as the original proposal and the proposal satisfies the requirement of Section 82A (4) (c) of the Act.

EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

NOTIFICATION & SUBMISSIONS RECEIVED

The subject development application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and Warringah Development Control Plan.

As a result of the public exhibition process council is in receipt of 5 submission/s from:

Name:	Address:
Robyn Janice Jurd	3 / 1 - 5 Collaroy Street COLLAROY NSW 2097
Fresh Strata Pty Ltd	3 / 529 Pittwater Road BROOKVALE NSW 2100
Mr Stephen Lydiate	11 / 1125 - 1127 Pittwater Road COLLAROY NSW 2097
Ms Margaret Jean Stanley	11 / 1 - 5 Collaroy Street COLLAROY NSW 2097
Mrs Maureen Wannell	12 / 1125 - 1127 Pittwater Road COLLAROY NSW 2097

The following issues were raised in the submissions and each have been addressed below:

- Parking, traffic and pedestrian safety
- Noise
- Ventilation
- Owners' corporation consent

The matters raised within the submissions are addressed as follows:

- **Parking, traffic and pedestrian safety**

Comment:

The submissions raise concerns in relation to insufficient parking, the parking arrangements, vehicular and pedestrian movements, timing of the classes (back to back) and the loading and unloading of children within the carpark. The overall concern is that this will create a

significant safety concern, particularly as the parking spaces are tandem and located at the end of the car parking area.

As detailed under the WDCP - C3 Parking Facilities section of the report, the proposal requires a total of eight (8) carparking spaces. The proposal provides eight (8) on-site carparking spaces, comprising four (4) tandem spaces, which complies with the numerical requirements of the control.

However, the original development application was refused on the basis that; *"despite the traffic engineers raising no objections to the proposal, the parking numbers, arrangement (stacked) and the proposed numbers of classes, staff and parking arrangements are inadequate for the proposed use and should be a reason for refusal of the application."*

The review application has not provided any additional supporting information, traffic report or other amendments to the parking arrangements.

The concerns raised in response to the review application are concurred with and warrant the original reasons for the refusal of the application to be maintained.

- **Noise**

Comment:

The submissions raise concerns in relation to adverse noise impacts that would be generated on adjoining and surrounding residential development.

The original development application not supported by Council's Environmental Investigations (Industrial) Officer and was refused on the basis that compliance with the Industrial Noise Policy would not be achieved and that offensive and intrusive noise would impact on sensitive receivers (residential units).

The review application has proposed amendments to the original development application, including limits on equipment capacity, time of operations, relief air opening and management procedures to reduce noise generated from the operation of the swimming school. Full details of the amendments are provided under the Proposed Development in Detail section of the report.

Further, a revised Acoustic Report prepared by West and Associates dated 10 April 2017 accompanied the application.

Council's Environmental Investigations (Industrial) Officer reviewed the acoustic report and raises no concern subject to the implementations of the measures detailed in the report. On this basis, it is considered that the operation of the swimming school can be managed so that it does not generate offensive and intrusive noise on adjoining and surrounding commercial and residential properties.

Should the application be approved, suitable conditions are recommended for the implementation of the measures detailed in the acoustic report, as well as a requirement for a 24 hour hotline phone number to be distributed to all surrounding residential units so that any complaints received in relation to noise are logged and provided to an acoustic engineer for corrective action.

For the reasons given above, the noise impacts from the original proposal have been addressed by the Applicant and so the concerns raised by the residents in relation to noise

are not concurred with and do not warrant the reason for refusal of the original application to be maintained.

- **Ventilation**

Comment:

A submission requests that chlorine odour and the control of humidity be addressed to Council's satisfaction.

As detailed previously in this report, the review application has provided amendments to the original development application in terms of equipment capacity, time of operations and relief air opening of louvers. These amendments will improve internal and external ventilation of chlorine odour, and in this regard, chlorine odour is not expected to generate unacceptable impacts on adjoining and surrounding commercial and residential development.

Therefore, the concerns raised in relation to chlorine odour do not warrant a new reason for refusal of the application.

- **Owners' corporation consent**

Comment:

The concern is that owners' corporation consent is required for the review application and has not been provided.

As discussed in detail under the "Other Planning Matters" section of this report, owners' corporation consent is required as the proposal involves works and use which affects common property.

Therefore, the concern raised in relation to owners' corporation consent is concurred with and warrants a new reason for refusal of the application.

MEDIATION

No requests for mediation have been made in relation to this application.

REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The Review application has been investigated with respects to aspects relevant to the Building Certification and Fire Safety Department. There are no objections to approval of the development subject to inclusion of the original conditions recommended for DA2016/0933.
Environmental Investigations (Industrial)	Referral Comments on the original Development Application DA2016/093 Review of the acoustic report prepared by West & Ass. PTY LTD job no. 2211/4 dated 18 November 2016 determined that there was non-compliance with the noise generated by equipment and general operation of the property: <ul style="list-style-type: none"> • Pool pump levels - comply;

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Internal Referral Body	Comments
	<ul style="list-style-type: none"> • WC Exhaust Fan - no details of fans are provided, so compliance cannot be determined; • Heat pump does not comply at the boundary, it is suggested in the report to relocate to an alternative location, however the alternative location does not comply; and • Noise levels from the premises (general operation) does not comply at the boundary. <p>It is determined in the report there will be non-compliance with the Industrial Noise Policy, therefore Environmental Health recommends refusal on the basis that offensive and intrusive noise may be created to sensitive receivers.</p> <p>Referral Comments on Section 82A Review Application REV2017/0020</p> <p>Environmental health has reviewed that acoustic report prepared by West and Associates titled Jump Swim School, Unit 51,1-5 Collaroy Strett, Acoustic Services. Jon No. 2211/4 dated 10 April 2017.</p> <p>No objections to the acoustic report subject to the implementations of the measures detailed in the above mentioned acoustic report.</p> <p>Planners Comment</p> <p>The review application proposes amendments to the original proposal in terms of equipment capacity, time of operations, relief air opening and management procedures to reduce noise generated from the operation of the swimming school. Full details are provided under the Proposed Development in Detail section of the report.</p> <p>As Council's Environmental Investigations (Industrial) Officer has carried out a review and raises no objections to the acoustic report, it is considered that the operation of the swimming school can be appropriately managed so that it does not generate offensive and intrusive noise on adjoining and surrounding commercial and residential properties.</p> <p>Additional Recommended Condition: Section 82A Review Application REV2017/0020</p> <p>Having regard to the above and should the application be approved, an additional condition is recommended for a 24 hour hotline phone number manned at all times is to be distributed to all surrounding residential units so that any complaints received in relation to noise are logged and provided to an acoustic engineer for corrective action.</p>
Traffic Engineer	<p>Comments on Development Application DA2016/0933</p> <p>The parking report provided by the applicant was reviewed. No objection is raised on the proposal to traffic grounds subject to allocation of the rear space of the stacked modules to staff parking and subject to the Development Assessment Officer being satisfied with the parking provision.</p> <p>Planners Comments</p>

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Internal Referral Body	Comments
	<p>The Statement of Environmental Effects submitted with the S82A application provides that <i>"the original Traffic Report supports the on-site car parking arrangement, and as a result has not been amended"</i>.</p> <p>As such, the S82A Review Application was not required to be referred to Council's Traffic Engineer.</p> <p>Consistent with the planning assessment of the original development application, the tandem parking arrangement is not supported and warrants the original reasons for refusal to be maintained. Further details are provided under the WDCP 2011 - C2 Traffic, Access and Safety and C3 Parking Facilities sections of the report.</p>

ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)*

All, Environmental Planning Instruments (SEPPs, REPs 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, REPs 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)

Nil

Warringah Local Environment Plan 2011

Is the development permissible?	Yes
After consideration of the merits of the proposal, is the development consistent with:	
aims of the LEP?	No
zone objectives of the LEP?	No

Detailed Assessment

Warringah Local Environmental Plan 2011

WLEP 2011 - Clause 1.2 Aims of Plan

Relevant to this review application is WLEP 2011 Section (2) (e). The particular aims of this Plan, which are relevant to this application read as follows:

"(2) The particular aims of this Plan are as follows:

(e) in relation to non-residential development, to:

- (i) ensure that non-residential development does not have an adverse effect on the amenity of
- (ii) maintain a diversity of employment, services, cultural and recreational facilities"

As detailed in the Submissions, WLEP 2011 - Zone B2 Local Centre and WDCP 2011 - C2 Traffic, Access and Safety and C3 Parking Facilities sections of this report, the proposed traffic and parking arrangements will cause adverse amenity impacts on adjoining residential properties and public places.

Therefore, as per the original application, the proposal is not consistent with the aims of the WLEP 2011 and the reason for refusal of the application on these grounds should be maintained.

Zone B2 Local Centre

Proposed Use	Permitted or Prohibited
Recreation Facilities (Indoor)	Permitted

The underlying Objectives of the B2 Local Centre zone

- ***To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.***

Comment: The proposal would provide a recreational service to service the needs of people within the local area.

- ***To encourage employment opportunities in accessible locations.***

Comment: Employment opportunities would be provided by the proposed swim school. Also, the premises is accessible from public bus services and a pedestrian footpath from Pittwater Road and vehicle access from Collaroy Street. Also, pedestrian access to the premises is also possible by traversing the driveway on Collaroy Street.

- ***To maximise public transport patronage and encourage walking and cycling.***

Comment: It is expected that access to the premises will be predominantly from private car use given the young age of the students in the swim classes (i.e. infants), the transporting of childrens' equipment (i.e. prams) and multiple trips prior and after swim lessons.

- ***To provide an environment for pedestrians that is safe, comfortable and interesting.***

Comment: The proposal provides eight (8) on-site carparking spaces, comprising four (4) tandem spaces. The operation of the swim school at maximum capacity would be individual thirty (30) minute swim classes between 8am to 8pm seven days a week with a total of eight (8) students and two (2) teachers. This would result in a total of 192 students a day, seven (7) days a week.

Given the tandem parking arrangement, expected private car use and the operation of the swim school at maximum capacity, overflow from the allocated parking area into other areas of the carpark would result causing additional vehicular movements, queuing and congestion, particularly as the parking area is not proposed to be regulated or managed.

Therefore, the additional vehicular movements will create a less than safe environment for pedestrians traversing the driveway on Collaroy Street and within the carpark of the mixed-use development.

- ***To create urban form that relates favourably in scale and in architectural and landscape treatment to neighbouring land uses and to the natural environment.***

Comment: The proposal involves a fit-out within a existing tenancy and signage.

- ***To minimise conflict between land uses in the zone and adjoining zones and ensure the amenity of any adjoining or nearby residential land uses.***

Comment: Given the use and the number of possible vehicle movements, pedestrian / vehicle conflict would occur and adversely effect the amenity of adjoining and nearby residential land uses.

These impacts are unacceptable and unreasonable and therefore the proposal fails this consideration. Therefore, it is considered that the original concerns with the objectives of the zone are relevant and should be maintained as a reason for refusal.

Warringah Development Control Plan

Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	No	Yes
D3 Noise	Yes	Yes

Detailed Assessment

C2 Traffic, Access and Safety

Original Development Application

Inconsistencies with the requirements of this control formed a reason for refusal of the original development application. Specifically, the original assessment of the development application did not support the tandem parking arrangement, as it would generate additional vehicular movements which in turn would cause vehicle/pedestrian conflict from queuing and congestion, particularly when dropping off and picking up children.

Review S82A Application

The review application proposes no changes to the on-site carparking arrangements as shown in the original development application. The assessment of this application relies on Council's Traffic Engineer referral comments on the original development application, which did not raise concerns with the parking and traffic arrangement .

Despite Council's Traffic Engineer not raising concerns with the tandem parking arrangements, the tandem parking arrangement is not supported for a use with the levels of intensity and vehicle turnover associated with the proposal and so warrants the reason for refusal on traffic grounds to be maintained.

Assessment against the Objectives of the control is provided as follows;

- ***To minimise traffic hazards.***

Comment: The proposal provides eight (8) on-site carparking spaces, comprising four (4) tandem spaces. As detailed under the WLEP 2011 section of the report, the tandem parking arrangement, expected private car use and the operation of the swim school at maximum capacity, would cause additional vehicular movements, queuing and congestion, particularly as the parking area is not proposed to be regulated or managed.

Individually accessible parking spaces would be more suited for the proposed operation of the swim school and would minimise additional vehicular traffic movements.

The proposal does not satisfy this Objective.

- ***To minimise vehicles queuing on public roads.***

Comment: The proposed tandem parking arrangement and additional vehicular movements will cause congestion in the carpark and therefore potential queuing on Collaroy Street.

The proposal does not satisfy this Objective.

- ***To minimise the number of vehicle crossings in a street.***

Comment: The proposal will use the existing crossing.

- ***To minimise traffic, pedestrian and cyclist conflict.***

Comment: The proposed tandem parking arrangement will create vehicular and pedestrian conflict within the carpark, particularly from the dropping off and picking up of children.

The proposal does not satisfy this Objective.

- ***To minimise interference with public transport facilities.***

Comment: Use of the premises will not interfere with public transport facilities.

- ***To minimise the loss of "on street" kerbside parking.***

Comment: Given the tandem parking arrangement, expected private car use and the operation of the swim school at maximum capacity, on-street carparking is expected to increase on Collaroy Street and the Collaroy Street Council Carpark located on the southern side of Collaroy Street.

The proposal does not satisfy this Objective.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant Objectives of the control. Therefore, it is considered that the original concerns with the Objectives of the control are relevant and should be maintained as a reason for refusal.

C3 Parking Facilities

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Gymnasium (175m ² GFA)	4.5 spaces/100m ² GFA	7.8 (8) spaces	8 spaces (tandem)	Nil
Total		8 spaces	8 spaces	Nil

Council's Traffic Engineer has reviewed the tandem arrangement and has not raised any objections subject to a condition which requires that the rear (inner) spaces of each tandem bay is allocated as staff parking.

However, due to concerns in relation to the practicality, convenience and functionality of the carparking arrangements, the provision of parking for the proposal raises concerns which go to the suitability of the site and adequacy of the parking arrangements with respect to practicality, convenience and safety.

D3 Noise

S82A Review Application

Environmental Investigations Officer has reviewed the S82A application and concludes that based on the assessment in the revised Acoustic Report (and associated recommendations) that noise emissions generated from the use of the premises are not expected to unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors. In this regard, should the application be approved, a suitable condition can be imposed requiring the implementation of the measures detailed in the submitted Acoustic Report prepared by West and Associates dated 10 April 2017.

The revised Acoustic Report provides measures which when implemented would result in the swimming school to be managed so that it does not generate offensive and intrusive noise on adjoining and surrounding commercial and residential properties.

Specifically, the review application includes amendments to the original proposal, including equipment capacity and time of operations, relief air opening and management procedures.

Full details of the amendments are provided under the Proposed Development in Detail section of the report.

Other Matters

Owners Consent

The application has been lodged without the correct owners' Consent. The premises is a unit within a strata titled building and therefore in addition to the individual unit owners consent, owners' corporation consent is also required to be provided for the review application to be made.

It is also noted that the full owners' consent should have been lodged with the original development application.

The Applicant contends that consistent with relevant case law, *Owners Strata Plan No 50411 & Ors v Cameron North Sydney Investments Pty, Ltd [2003] NSWCA 5*, the application is for a use that is contained entirely within the lot boundaries (including the allocated parking), and therefore the consent of the owners, corporation to make the application is not required.

However, the matters involved in the proposed development differ to the case law referred to in that the operation of the premises will effect, utilise and interfere with common areas and adjoining premises in the following ways; .

- Signage is proposed on the front facade of the building which is considered common area;
- Ventilation and noise management is reliant on louvers which are required to be opened above and over common areas;
- Potential noise and ventilation impacts (i.e. odour) from the operation of the premises on adjoining unit owners; and
- Traffic, parking and pedestrian impacts on adjoining premises arising from the use of common areas (i.e. parking overflow, pedestrian/vehicle conflict and the like).

Having regard to the above, strata owners' corporation consent is required and insufficient evidence or documentation has been provided to demonstrate that this has been satisfied.

Therefore, the deficiency in owners' consent warrants the imposition of a new reason for refusal of the application.

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 2000;
- 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, in this regard the application is not considered to be acceptable and is recommended for refusal.

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

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

It is considered that the proposed development does not satisfy the appropriate controls and that all processes and assessments have been satisfactorily addressed.

RECOMMENDATION

THAT Council, as the consent authority REFUSE Development Consent to Development Application No REV2017/0020 for the Review of Determination of Development Application DA2016/0933 for use of premises as a Recreation Facility and Signage on land at Lot 51 SP 58961,51 / 1 - 5 Collaroy Street, COLLAROY, for the reasons outlined as follows:

NORTHERN BEACHES COUNCIL

1. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the Clause 1.2 Aims of The Plan of the Warringah Local Environmental Plan 2011.
2. Pursuant to Section 79C(1)(a)(i) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the objectives of the B2 Local Centre Zone under of the Warringah Local Environmental Plan 2011.
3. Pursuant to Section 79C(1)(a)(iii) of the Environmental Planning and Assessment Act 1979 the proposed development is inconsistent with the provisions of Clause C2 Traffic, Access and Safety of the Warringah Development Control Plan 2011.
4. Pursuant to Clause 49 C (1)(a)(i) of the Environmental Planning and Assessment Regulation 2000 owners' corporation consent has not been provided.
5. Pursuant to Section 79C(1)(e) of the Environmental Planning and Assessment Act 1979, the proposed development is not in the public interest.