

## DEVELOPMENT APPLICATION ASSESSMENT REPORT

<b>Application Number:</b>	DA2020/0110
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<b>Responsible Officer:</b>	Penny Wood
<b>Land to be developed (Address):</b>	Lot 12 SP 39226, 12 / 20 - 22 Cross Street BROOKVALE NSW 2100
<b>Proposed Development:</b>	Use of premises as a Recreation Facility Indoor (gymnasium)
<b>Zoning:</b>	Warringah LEP2011 - Land zoned IN1 General Industrial
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Northern Beaches Council
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Dordane Pty Ltd
<b>Applicant:</b>	Urbanesque Planning Pty Ltd

<b>Application Lodged:</b>	10/02/2020
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Commercial/Retail/Office
<b>Notified:</b>	25/02/2020 to 10/03/2020
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	4
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

<b>Estimated Cost of Works:</b>	\$ 50,000.00
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### PROPOSED DEVELOPMENT IN DETAIL

The development application proposes the following details for the new use:

- Change of use to a gymnasium;
- Fit out of the premises for fitness equipment and flooring
- Removal of the existing roller door and replace with an aluminum framed glass door and windows to the main entrance of the unit.
- Fill in an existing door opening in the upper level area which is proposed to be used as the office in the association with the proposed gym.

Hours of Operation:

- Monday to Friday: 5.00am - 8.00pm.
- Saturday and Sunday: 7.00am to 12.00pm Midday.
- Public Holidays: Closed.

#### Number of Staff:

The gym proposes two (2) staff members to be employed on site at any one time.

#### Number of Patrons:

The use proposes a maximum 20 patrons to be in the gym at any one time.

#### Car parking spaces

8 car parking spaces are designated to the subject unit. The spaces area located on the roof of the subject building with access provided via a ramp from Cross Street. No changes to the current parking arrangement are proposed.

### **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**

Warringah Development Control Plan - C2 Traffic, Access and Safety

Warringah Development Control Plan - C3 Parking Facilities

Warringah Development Control Plan - D3 Noise

Warringah Development Control Plan - D12 Glare and Reflection

Warringah Development Control Plan - D18 Accessibility and Adaptability

Warringah Development Control Plan - E11 Flood Prone Land

### **SITE DESCRIPTION**

<b>Property Description:</b>	Lot 12 SP 39226 , 12 / 20 - 22 Cross Street BROOKVALE NSW 2100
<b>Detailed Site Description:</b>	<p>The subject site consists of a two (2) storey building with basement parking located at ground level and on the roof. The building consists of twelve units. The building is located on the eastern side of Cross Street with vehicular access also provided from Cross Street.</p> <p>The subject unit is irregular in shape with the unit measuring 545.6sqm. The site has a surveyed area of 4000m<sup>2</sup>.</p> <p>The site is located within the IN1 General Industrial Zone within the WLEP 2011 and directly abuts the R3 Medium Density Residential to the north. Residential flat buildings and single dwellings are located to the north along Funda Place. Buildings of a similar size and scale to the subject building are located along Cross Street with Warringah Mall located within walking</p> <p>The site is relatively flat and is not affected by key environmental considerations of bushfire, biodiversity, geotechnical risk, heritage or acid sulfate soils.</p>

Map:



## SITE HISTORY

A search of Council's records has revealed that there are no recent or relevant applications for this site.

The land has been used for industrial purposes for an extended period of time.

## 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	Draft State Environmental Planning Policy (Remediation of Land) seeks to replace the existing SEPP No. 55 (Remediation of Land). Public consultation on the draft policy was completed on 13 April 2018. The subject site has been used for light industrial purposes for an extended period of time. The proposed development retains the industrial use of the site, and is not considered a contamination risk.
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 2000 (EP&A Regulation 2000)	<p><u>Division 8A</u> of the EP&amp;A Regulation 2000 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 50(1A)</u> of the EP&amp;A Regulation 2000 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 54 and 109</u> of the EP&amp;A Regulation 2000 allow Council to request additional information. No additional information was requested in this case.</p> <p><u>Clause 92</u> of the EP&amp;A Regulation 2000 requires the consent authority to consider AS 2601 - 1991: The Demolition of Structures. This clause is not relevant to this application.</p> <p><u>Clauses 93 and/or 94</u> of the EP&amp;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.</p> <p><u>Clause 98</u> of the EP&amp;A Regulation 2000 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 98</u> of the EP&amp;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.</p>

Section 4.15 Matters for Consideration'	Comments
	<p>Clause 143A of the EP&amp;A Regulation 2000 requires the submission of a design verification certificate from the building designer prior to the issue of a Construction Certificate. This clause is not relevant to this application.</p>
<p>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>	<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>
<p>Section 4.15 (1) (c) – the suitability of the site for the development</p>	<p>The site is considered suitable for the proposed development.</p>
<p>Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs</p>	<p>See discussion on “Notification &amp; Submissions Received” in this report.</p>
<p>Section 4.15 (1) (e) – the public interest</p>	<p>No matters have arisen in this assessment that would justify the refusal of the application in the public interest.</p>

## 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 25/02/2020 to 10/03/2020 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2000 and the relevant Development Control Plan.

As a result of the public exhibition process council is in receipt of 4 submission/s from:

Name:	Address:
Withheld	BROOKVALE NSW 2100
Sharon Amanda Murphy	11 / 6 - 7 Funda Place BROOKVALE NSW 2100
Mr Walter Cotutsca	10 / 6 - 7 Funda Place BROOKVALE NSW 2100
Ms Lisa Ann Kelshaw	48 Collins Lane CASUARINA NSW 2487

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

- Noise/vibration
- Parking
- Light Spill

The matters raised within the submissions are addressed as follows:

- Noise

Comment:

Concern has been raised from four (4) submissions in relation to excessive noise emanating from the proposed use. The noise issues relate to amplified music, dropping of weights, talking and yelling from gym patrons. The gym is located in a IN1 Industrial Zone and is a permissible use under the WLEP 2011. The subject unit is located adjacent to the R3 Medium Density Residential to the north with a residential flat building know as 6-7 Funda Place located approximately 6.0m north of the subject unit. The development application has been referred to Council's Environmental Health Team and was not supported given the lack of information provided in the acoustic report by Rodney Stevens Acoustics. Given the proximity to the residential flat building located at 6-7 Funda Place it was assessed that for the sound attenuating window recommendations to be effective, the windows would need to remain closed and the development is likely to require mechanical ventilation in accordance with AS1668. Given the lack of information provided within the acoustic report provided to appropriately condition the development, the application was not supported.

An amended acoustic report was received by Council on 7 July 2020 and was referred back to Council's Environmental Health Team for comment. It was assessed that the amended acoustic report was deficient in the level of detail required to adequately address noise during the night time period (10pm - 7am) or evening (6pm - 10pm) and that the the report did not sufficiently address the noise attenuation recommendations. The application was not supported.

An amended acoustic report dated 10 August 2020 by Rodney Stevens Acoustics was submitted to Council along with a Plan of Management (POM) referenced as Operation Management Plan Development Application d/2019/1400. The POM references the recommendations in the amended acoustic report and provides additional recommendations also. The reports provided a number of administrative controls for the control of noise. Comments from Council's Environmental Health Team stated that the administrative "controls are appropriate with operation during the night period defined in noise policy for industry (10pm - 7am). However the hierarchy of controls of the control of noise should use administrative controls as a last resort." Given the location of the gym within close proximity to a residential use, the recommendations in the report do not provide adequate noise attenuation to the residential receivers which is especially important during night hours when residents expect peace and quiet. The application was not supported with a recommendation to the applicant to propose acoustically treated window fixtures as opposed to acoustic blinds to remove the administrative aspects of noise curtains. Environmental Health did however state that the application could be looked at favourably whereby the hours of operation were reduced to within day hours 7am - 6pm or by using physical engineered noise controls rather than relying on administrative controls for reduction of noise.

After discussions with the applicant, an amended POM was submitted to Council proposing a reduction in the hours of operation to be consistent with the day hours as defined in the

industrial noise policy. These hours are Monday - Friday: 7am - 6.00pm, Saturday: 7.00am - 12.00pm (midday) and closed on Sunday and Public Holidays. The recommendations as specified in the acoustic report by Rodney Stevens Acoustic Report R190629R0 Revision 2 are to be incorporated into the use of the unit. The use of the gym is therefore supported by Council's Environmental Health Team subject to appropriate conditions imposed in the consent.

- **Traffic/Parking**  
Comment: Council's Manager of Transport Network has reviewed the documentation provided in the application and supports the application, despite the non-compliance with the parking requirements of WDCP 2011. A detailed discussion of the proposal against the objectives of Part C3 Parking Facilities is provided elsewhere in this report. In summary, there is sufficient parking on the site to accommodate the proposed use, subject to condition to restrict the number of customers.
- **Light Spill**  
Comment: Concern was raised in the submissions in regard to the level of light emitted from the subject unit as a result of the use of the gym towards adjoining properties. A condition is imposed in the consent to ensure the amenity of the neighbouring properties is protected.

## REFERRALS

Internal Referral Body	Comments
Building Assessment - Fire and Disability upgrades	The 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 attached conditions of approval and consideration of the notes below.
Environmental Health (Industrial)	<p><b>General Comments</b></p> <p>Environmental Health has reviewed the acoustic report and plan of management associated with the proposed development. Noise assessment outcomes for equipment, weights, patron voices, etc. have been calculated for a maximum of 20 patrons at any one time. Structural vibration noise was also taken into account for the proposed use during assessment.</p> <p>While much of the application is acceptable, the recommendations made by Rodney Stevens Acoustics (R190629R0) are essential in ensuring the use does not adversely impact industrial and residential receivers. Most importantly, for sound attenuating window recommendations to be effective, the windows would need to remain closed and the development is likely to require mechanical ventilation in accordance with AS1668.</p> <p>The application has not proposed any mechanical ventilation and therefore, has not been considered in the acoustic assessment other than a recommendation to review prior to CC.</p>

Internal Referral Body	Comments
	<p>Council is in receipt of noise and building complaints alleging that the use commenced before development consent was obtained and has received several submissions regarding noise impacts on industrial and residential receivers since the application was submitted.</p> <p>To appropriately condition the development, Council's Environmental Health Team would require an amended acoustic report that includes, but is not limited to the following:</p> <ul style="list-style-type: none"> <li>- Assessment of vehicle noise associated with use of roof top parking</li> <li>- A reviewed assessment of music, equipment and weights taking into consideration sound sensitive time periods (night-time 10pm-7am)</li> <li>- Revised operational hours</li> <li>- Assessment of mechanical ventilation.</li> </ul> <p>A detailed proposal for mechanical ventilation should also be included unless more stringent operational or physical noise attenuation can be implemented.</p> <p><b>17/07/2020 - Amended Comments</b></p> <p>Further information was provided by the applicant in the form of an amended noise assessments and a PoM.</p> <p>The amended acoustic report still does not address noise during the night-time period (10pm-7am) or evening (6pm-10pm). The acoustic consultants have selected an amenity criteria for Day-time periods (60dB) and have not considered more sensitive time periods for during the night and evening (45dB and 50dB).</p> <p>We also find that it does not adequately address noise attenuation recommendations e.g. by providing necessary Rw ratings for windows/blind and doors, calibrated noise limiter.</p> <p>The Plan of Management is a administrative control only and a more comprehensive assessment of noise from the proposed use is necessary for Council to make a determination. This should include modelling on how the noise will impact receivers with and without noise attenuation measures in place.</p> <p><b>19/08/2020 – Amended Comments</b></p> <p>An amended acoustic report was submitted to Council in support of the development application of a Gym at 12/ 16-22 Cross Street, Brookvale. The acoustic report is referenced as R190629R0 Revision 2 by Rodney Stevens Acoustics dated 10 August 2020.</p>

Internal Referral Body	Comments
	<p>A plan of management has also been submitted referenced as Operational management plan development application d/2019/1400 unit 12 / 16-22 Cross Street Brookvale “enliven coaching” which references the recommendations in the amended acoustic report and provides additional ones.</p> <p>The reports provide a number of administrative controls for noise including;</p> <ul style="list-style-type: none"> <li>- “quiet hours of work 5AM-7:30AM”</li> <li>- Installation of Acoustic blinds with an RW rating of 28</li> <li>- Keeping acoustic blinds closed before 7am</li> <li>- Electronic limiter on speakers to 70dB</li> <li>- Not to use the rooftop carpark before 7 am</li> </ul> <p>As well as other controls.</p> <p>These controls are appropriate with operation during the night period defined in noise policy for industry. (10pm-7am). However the hierarchy of controls of the control of noise should use administrative controls as a last resort. A preferred option is either elimination of the noise source or engineered controls which can be found as a recommendation from the initial acoustic report submitted with the development. “Windows facing the residences are to have a minimum acoustic rating of Rw 30dB which could be in the form of 6.38mm laminate on acoustically sealed frames.”</p> <p>As total noise elimination is not feasible with a gym operation engineered acoustic controls on industrial premises directly adjacent to residential receivers are especially important for operation during night hours when residents expect peace and quiet.</p> <p>The application has not proposed any mechanical ventilation and therefore, has not been considered in the acoustic assessment other than a recommendation to review prior to CC.</p> <p>Environmental Health recommend the refusal of the development application with a recommendation to the applicant to propose acoustically treated window fixtures as opposed to acoustic blinds to remove the administrative aspect of noise curtains.</p> <p>Environmental Health notes that it would also look favourably towards an application that further reduced proposed hours of operation that fall within the night period in the industrial noise policy to within day hours 7am – 6pm or physical engineered noise controls rather than relying on administrative controls for reduction in noise.</p>

Internal Referral Body	Comments
	<p><b>24/08/2020 Amended Comments</b></p> <p>The applicant has provided an amended plan of management which proposes a reduction in the hours of operation to fall in line with the day hours as defined in the industrial noise policy. The proposal also aims to incorporate the existing noise control strategies during these hours.</p> <p>Environmental Health notes that if an earlier period of operation is desired through a new DA or modification of the consent then fixed controls such as acoustically treated windows will be required.</p> <p>Based on the provided information Environmental Health recommend approval subject to conditions being imposed.</p> <p><b>Recommendation</b></p> <p>APPROVAL - Subject to conditions</p>
Traffic Engineer	<p>Manager Review.</p> <p>The Parking Commentary statement provided by the applicant on 9.9.2020 has been reviewed and the methodology excepted. Whilst the proposed change of use and minor modification application would trigger the need to comply with the DCP requirement, it is apparent that there is sufficient parking available within the 200 metre comfortable walking distance to satisfy the parking demands of the proposed operation.</p> <p>Conditions provided.</p> <p>The Traffic generation of the proposed change of use is acceptable given the other nearby uses and proximity to the Westfield entries. The parking provision needs to be quantified as the allocated 8 spaces and "visitor" spaces within the complex and reliance on the on-street parking to make up the deficiency in parking provisions raises concerns on the impact to the other businesses operating in the vicinity.</p> <p>Under the DCP requirements 23 parking spaces need to be provided for the proposed usage which means that 15 spaces need to be allocated to allow the proposal to proceed. This provision has not been satisfied other than to say that overflow can be accommodated within the area, including potentially using Westfield car park 200 metres away.</p> <p>The applicant needs to demonstrate the ability to achieve the parking requirements under the DCP and this needs to be provided in a suitable documented form to the satisfaction of Council.</p> <p>The proposed is therefore not supported in its current form.</p>

Internal Referral Body	Comments
	<p>Planner's Note: The reference in the commentary to the methodology being "excepted" should be "accepted". The estimated parking demand of 23 spaces is derived from only calculating the ground floor area, which will be used for the gymnasium. Whilst the technical estimate is 25 by adding the upstairs office, the estimate derived from only the ground floor is reasonable.</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)

### SEPP 55 - Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records indicate that the subject site has been used for light industrial 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 Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the gymnasium land use as permitted within the *IN1 General Industrial* zone.

### SEPP (Infrastructure) 2007

#### Ausgrid

Clause 45 of the SEPP 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. No response has been received within the 21 day statutory period and therefore, it is assumed that no objections are raised and no conditions are recommended.

### 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

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
There are no principal development standards under Part 4 of the Warringah LEP to consider as part of this assessment.				

### Compliance Assessment

Clause	Compliance with Requirements
4.3 Height of buildings	Yes
6.3 Flood planning	Yes

### Warringah Development Control Plan

#### Built Form Controls

There are no development controls under Warringah DCP to consider as part of this assessment.

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A.5 Objectives	Yes	Yes
C2 Traffic, Access and Safety	Yes	Yes
C3 Parking Facilities	No	Yes
C9 Waste Management	Yes	Yes
D3 Noise	Yes	Yes
D8 Privacy	Yes	Yes
D12 Glare and Reflection	No	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
D22 Conservation of Energy and Water	Yes	Yes
E11 Flood Prone Land	Yes	Yes

### Detailed Assessment

## C2 Traffic, Access and Safety

The subject site is located in an area that has convenient access to public transport facilities with a number of bus services located within walking distance of the site on Cross Street and along Pittwater Road. Public transport (including 'B-line' at Pittwater Road) is expected to be a substantial and convenient travel option used for clients of the proposed new gym. The site is also within walking distance (<400m) from Warringah Mall, surrounding industrial employment and nearby residential area. Consideration includes the use of the gym in association with employment work routines or shopping trips to Warringah Mall.

## C3 Parking Facilities

### Merit consideration

The development is considered against the underlying Objectives of the Control as follows:

- *To provide adequate off street carparking.*

#### Comment:

The development provides the following on-site car parking:

Use	Appendix 1 Calculation	Required	Provided	Difference (+/-)
Gymnasium	4.5 spaces per 100 m <sup>2</sup> GFA @ 546m <sup>2</sup> of floor space*	25 spaces	8	-17

\* including the 34m<sup>2</sup> of office space on the 1st floor.

The proposed gym will result in a deficiency of 17 spaces, based on the total gross floor area of the subject unit, and the 8 spaces that are allocated for the proposed use within the existing building. Based on these circumstances, the application was referred to Council's Manager Transport Network for comment. It was advised that the 8 spaces would be sufficient to cater for the customers of the proposed use, conditional upon there being no more than 20 customers within the premises at any one time. Other factors to consider was the relevance of the current RMS guidelines, which sets a lower rate of 3 spaces per 100m<sup>2</sup> for gymnasiums, compared to WDCP 2011. Also a factor is the proximity of the subject site to the free parking (time limited) area of Westfield to the south, which can be used to accommodate any parking overflow. If the office is excluded from the calculations and only the ground floor (512m<sup>2</sup>) is counted at the lower RMS rate, then a total 16 spaces is required and the effective deficit in parking is reduced to 8 spaces. Hence, there is sufficient parking provided on the site to achieve this objective, subject to condition.

- *To site and design parking facilities (including garages) to have minimal visual impact on the street frontage or other public place.*

Comment: Not applicable to the application.

- *To ensure that parking facilities (including garages) are designed so as not to dominate the street frontage or other public spaces.*

Comment: Not applicable to the application.

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP 2011 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.

### **D3 Noise**

#### Merit consideration

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

- *To encourage innovative design solutions to improve the urban environment.*

#### Comment:

The proposed use of the unit as a gym raised concern in regard to the level of noise generated from the proposed use particularly in relation to the close proximity of a residential flat building located directly north of the subject unit at 6-7 Funda Place, Brookvale which is located within the R3 Medium Density Residential zone. Given the surrounding residential uses, appropriate measures are required to ensure that noise emission does not unreasonably diminish the amenity of the residents of the adjoining residential properties. As discussed within the report, the proposed hours and acoustic measures submitted with the application were not supported by Council's Environmental Health Team in that they did not effectively protect the amenity of the surrounding residents. The most recently update acoustic report (by Rodney Stevens Acoustic Report R190629R0 Revision 2) received by Council was not supported given the upgrade required to the building to ensure the adjoining amenity of the residents is protected particularly during night hours when residents expect peace and quiet.

In consideration of Council's position, the applicant submitted an amended Plan of Management which proposed to reduce the hours of operation to be in line with the day hours of the Industrial Noise Policy. These hours (Monday - Friday: 7.00am - 6.00pm, Saturday: 7.00am - 12.00pm midday and closed on Sundays and Public Holidays) along with the recommendations imposed in the most updated acoustic report and conditions imposed by Council are considered to mitigate the potential noise issues. Any amendments to the proposed hours will require the submission of a new DA or modification of the consent to acoustically treat the windows.

- *To ensure that noise emission does not unreasonably diminish the amenity of the area or result in noise intrusion which would be unreasonable for occupants, users or visitors.*

#### Comment:

Council's Environmental Health Team have assessed the proposed use in relation to the documentation submitted with the subject development application. The subject unit is located within the IN1 General Industrial zone and within close proximity (approximately 6.0m) to a residential flat building located to the north at 6-7 Funda Place zoned R3 Medium Density Residential under the WLEP 2011. Given the location of the subject unit and the number of noise complaints made to Council during the assessment process, Environmental Health could not support the application in it's current form. The acoustic report was updated twice with an updated POM provided and referred for further comments to Environmental Health. The applicant has reduced the hours of operation for the gym to be consistent with the recommended day hours as defined in the industrial noise policy being 7.00am - 6.00pm

Monday to Friday and 7.00am to 12.00pm (midday) on Saturdays. The gym will not be granted consent to operate on Sundays and Public Holidays. The recommendations as outlined in the acoustic report by Rodney Stevens Acoustic Report R190629R0 Revision 2 are to be imposed as part of the development consent

Having regard to the above assessment, it is concluded that the proposed development is consistent with the relevant objectives of WDCP and the objectives specified in s1.3 of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

### **D12 Glare and Reflection**

Concern has been raised within a submission objecting to the light spill associated with the use. To ensure any lighting emanating from the subject unit does not impact on the amenity of the adjoining properties, a condition is imposed in the consent.

### **D18 Accessibility and Adaptability**

Whilst the development will not strictly comply with the requirements for accessibility, this is an issue for the unit complex as a whole and not for the internal areas of the tenancy itself. Requiring a single tenancy to upgrade the common areas for accessibility would result in unjustifiable hardship and the application is supported in this regard.

### **E11 Flood Prone Land**

Comments from Council's Floodplain Planning and Response Team were received on 7 September 2020 stating that the proposed development is only the fit-out of an existing commercial tenancy we would have no flood related objections to the proposal.

## **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 consistent with the principles of Crime Prevention Through Environmental Design.

## **POLICY CONTROLS**

### **Northern Beaches Section 7.12 Contributions Plan 2019**

As the estimated cost of works is less than \$100,001.00 the policy is not applicable to the assessment of this 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, 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 DA2020/0110 for Use of premises as a Recreation Facility Indoor (gymnasium) on land at Lot 12 SP 39226, 12 / 20 - 22 Cross Street, 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 (except as amended by any other condition of consent) with the following:

##### a) Approved Plans

<b>Architectural Plans - Endorsed with Council's stamp</b>		
<b>Drawing No.</b>	<b>Dated</b>	<b>Prepared By</b>
22A Sheet 1	19 December 2019	Peter Formosa
22A Sheet 2	19 December 2019	Peter Formosa

<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>

Building Code of Australia Compliance Assessment Issue No. 1	13 August 2020	BCA Vision
Acoustic Report - R190629R0 (Revision 2)	10 August 2020	Rodney Stevens Acoustics

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

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. **Approved Land Use**

Nothing in this consent shall authorise the use of site/onsite structures/units/tenancies as detailed on the approved plans for any land use of the site beyond the definition of a

A recreational facility (indoor) - is defined as:

“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”

(development is defined by the Warringah Local Environment Plan 2011 (as amended) Dictionary)

Any variation to the approved land use and/occupancy of any unit 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.

## 3. **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 Certifying Authority 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 Certifying Authority 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 Certifying Authority 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.

#### 4. **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 a final 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 \$25,000. The Long Service Levy is calculated on 0.35% 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 2008
    - (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

### 5. Security Bond

A bond (determined from cost of works) of \$1,000 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 Certifying Authority 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

### 6. **Prior to construction certificate - Noise fixtures, fittings and finishes prior to construction**

Details of the fixtures being used for the windows, floors, internal walls and external doors are to be provided to the PCA for approval prior to the issuing of any Construction certificate. Fixtures are to meet the following minimum requirements as specified in the acoustic report by Rodney Stevens Acoustics Report R190629R0 Revision 2:

- Windows facing the residences are to be blocked with Wavebar 4 kg/m<sup>2</sup> or similar and achieve an A weighted sound reduction index of Rw28 dB.
- Aerobic flooring to be 8mm thick rubber with no gaps.
- Lifting platforms 50mm thick on top of 8mm rubber
- Internal walls to be a minimum weighted sound reduction index of Rw45 dB.

### 7. **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 Certifying Authority 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

### 8. **Structural Adequacy**

A Certificate of Adequacy signed by a practicing structural engineer certifying that the structural capacity of the building will be appropriate to the buildings proposed use as required by Section 93 of the Environmental Planning and Assessment Regulations. Such Certificate is required prior to release of the Development Approval.

Reason: To ensure the existing building is capable of supporting any additional loadings.

### 9. **Building Code of Australia Upgrade requirements and Fire Safety Upgrade**

The Building Code of Australia works and fire safety measures to upgrade the building as detailed and recommended in the Building Code of Australia Compliance Report prepared by BCA Vision, dated 13 August 2020, Report Ref No.P20115 are to be carried out in full to the building.

Details demonstrating implementation and compliance are to be submitted to the Principal Certifier prior to the issue of any Final Occupation Certificate.

Reason: To ensure adequate provision is made for Health, Amenity, access and Fire safety for building occupant safety.

10. **Prior to occupation certificate - Noise fixtures, fittings and finishes prior to occupation**

Details are to be submitted to the PCA who is to certify that fixtures fitting and finishes have met the minimum requirements as specified in the acoustic report by Rodney Stevens Acoustic Report R190629R0 Revision 2.

- Windows facing the residences are to be blocked with Wavebar 4 kg/m<sup>2</sup> or similar and achieve an A weighted sound reduction index of Rw28 dB.
- Aerobic flooring to be 8mm thick rubber with no gaps.
- Lifting platforms 50mm thick on top of 8mm rubber
- Internal walls to be a minimum weighted sound reduction index of Rw45 dB.
- External door, be installed with a self closing mechanism and fitted with perimeter acoustically rated seals.
- Signs posted at exit doors reminding patrons to leave the premises in an orderly and quiet manner when leaving the Gym.

Reason: To protect surrounding residence from any noise generated by the operation of the development.

11. **Fire Safety Matters**

At the completion of all works, a Fire Safety Certificate will need to be prepared which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Interim / Final Occupation Certificate.

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Reason: Statutory requirement under Part 9 Division 4 & 5 of the Environmental Planning and Assessment Regulation 2000.

12. **Allocated Parking Spaces**

Parking allocated to this development must be clearly signposted and linemarked as being of the exclusive use of this development

Reason: To ensure parking availability(DACTRFPOC1)

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

13. **On-going - Hours of operation**

Hours of operation must only occur during the following hours:

- Monday to Friday – 7:00am – 6:00pm
- Saturday – 7:00am – 12:00pm
- Sunday - Closed

Reason: To minimise disruption to neighboring properties.(DACHPGOG5)

14. **On going - amplified noise management**

All speakers or any sound equipment used as part of the development, must face inwards and not exceed an output of 70dB at the centre of the gym floor.

PA system is to have an electronic limiter with a maximum output of 70 dBA SPL when measured at the centre of the gym floor. The limiter is to be installed in a tamper proof enclosure (or in the case of a DSP based limiter) with no access to the limiter controls by staff or management of the hotel.

Reason: To protect surrounding residence from any noise generated by the operation of the development. (DACHPGOG6)

15. **On-going - Compliance with the plan of management**

The requirements of the operational management plan referenced as Unit 12/16-22 Cross street Brookvale "Enliven Coaching" is to be fully implemented in perpetuity from the issue of any interim / final occupation certificate.

Reason: To ensure the premises a maintained in an appropriate manner in perpetuity. (DACHPGOG6)

16. **Lighting**

The level of illumination and/or lighting intensity of the site is to be minimised to ensure that excessive light spill or nuisance is not caused to any nearby residential premises.

Reason: To ensure any lighting does not interfere with the amenity of surrounding properties.

17. **Site Occupancy**

That the number of customers on the site at any one time be limited to 20.

Reason: To ensure that all parking demand generated by the development can be managed in line with the documentation submitted.(DACTRGOG1)

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

**Signed**



**Penny Wood, Planner**

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



**Anna Williams, Manager Development Assessments**