

**REPORT TO APPLICATION DETERMINATION PANEL**

**Meeting held on 19 April 2017**

**51 / 1 - 5 Collaroy Street Collaroy - Use of Premises as a Recreation Facility (indoor) and signage**

**DEVELOPMENT APPLICATION ASSESSMENT REPORT**

<b>Application Number:</b>	DA2016/0933
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<b>Responsible Officer:</b>	Phil Lane
<b>Land to be developed (Address):</b>	Lot 51 SP 58961, 51 / 1 - 5 Collaroy Street COLLAROY NSW 2097
<b>Proposed Development:</b>	Use of Premises as a Recreation Facility (indoor) and signage
<b>Zoning:</b>	LEP - Land zoned B2 Local Centre
<b>Development Permissible:</b>	Yes
<b>Existing Use Rights:</b>	No
<b>Consent Authority:</b>	Application Determination Panel
<b>Land and Environment Court Action:</b>	No
<b>Owner:</b>	Virak Sik Thary Um Phonrith Um
<b>Applicant:</b>	Swim Loops Pty Ltd

<b>Application lodged:</b>	07/09/2016
<b>Application Type:</b>	Local
<b>State Reporting Category:</b>	Other
<b>Notified:</b>	23/09/2016 to 12/10/2016
<b>Advertised:</b>	24/09/2016
<b>Submissions:</b>	5
<b>Recommendation:</b>	Refusal

<b>Estimated Cost of Works:</b>	\$ 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:

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- 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

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

<b>Property Description:</b>	Lot 51 SP 58961 , 51 / 1 - 5 Collaroy Street COLLAROY NSW 2097
<b>Detailed Site Description:</b>	<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 149m<sup>2</sup>.</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:



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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	Warringah Development Control Plan applies to this proposal.
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&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>Clauses 54 and 109</u> of the EP&amp;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. Additional information was requested from the applicant which consisted of a Traffic Report and Acoustic Report. The Acoustic Report was only received by Council on 17 February 2017.</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 matter has been addressed via a condition of consent.</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 the provisions of the Building Code of Australia (BCA). This matter has been addressed via a condition of consent.</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> <p>(iii) The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 79C (1) (c) – the suitability of the site for the development	The site is considered unsuitable for the proposed development.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on “Public Exhibition” in this report.

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Section 79C 'Matters for Consideration'	Comments
Section 79C (1) (e) – the public interest	Matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## 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:
Miss Debra Marie Sellars	41 / 1 - 5 Collaroy Street COLLAROY NSW 2097
Ms Karen Anne Alexanderson	67 Cowells Lane ERMINGTON NSW 2115
Mr Matthew James Panozzo	10 / 2 Fielding Street COLLAROY NSW 2097
Mrs M Joana	8 / 2 Fielding Street COLLAROY NSW 2097
Kelsey Jane Hunter	2 / 1125 - 1127 Pittwater Road COLLAROY NSW 2097

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

- Parking/traffic
- Noise
- Safety and security (child safety within a basement carpark)
- Vehicular access to Fielding Street
- Litter/Vandalism
- Suitability of the site
- Hours of operations
- Inadequate amenities
- Adequacy of Pool Water Bunding and Drainage
- Ventilation and Dehumidification Systems
- Waste Disposal
- Privacy
- Necessity of the development

The matters raised within the submissions are addressed as follows:

- **Parking/traffic**

Comment: Concerns were raised in relation to parking, vehicular movements and safety given the position of parking spaces (stacked and at the end of the car parking area).

The application was originally submitted without a traffic report and the comments from the Traffic Engineer were as follows:



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*"The proposal is for establishment of a swimming school at unit 51/1-5 Collaroy St, Collaroy. The Statement of Environmental Effects report indicates that the swimming center will operate with maximum of 2 classes at the same time with the maximum capacity of 4 patrons in each class and 2 staff members. The length of classes is proposed to be 30 minutes. There are 4 modules of stacked parking spaces allocated to the premises.*

*The proposed development application has not provided sufficient information to enable the traffic engineers to assess the proposal. No parking rate is specified in the DCP for the swimming school use, therefore a parking comparison study on the same use is required to identify the parking requirements for the proposal. The study is to consider that with the proposed 30 minutes classes, there will be an overlap for the classes which requires further provision of parking spaces on site.*

*Also, no information has been provided about the allocation of stacked parking spaces. The stacked parking spaces may be considered subject to allocation of the rear spaces to the staff.*

*In view of the above, the proposal is not supported on traffic grounds due to lack of information."*

A Traffic Report from APEX Engineers was finally lodged with Council on 12 December 2016 and a review by Council's Traffic Engineer was completed on 15 December 2016 with the following comments:

*"The parking report provided by the applicant was reviewed. No objection is raised on the proposal on traffic grounds subject to allocation of the rear space of the stacked modules to staff parking and subject to the Development Assessment Officer to approve the parking provision."*

A number of submissions raised concerns about the parking, number of parking spaces, type of parking arrangement (stacked) and the number of students, staff, swimming lessons one after another versus the parking arrangements. One of the submissions sums up the concerns of other objectors as follows:-

*"To meet the parking needs, an area containing maximum 8 spaces (4 x tandem spaces) is nominated by the applicant. The number of parking spaces is clearly insufficient and the location unsuitable for the proposed development purpose. Assuming that 3 staff occupy 3 of the tandem car parking spaces for their entire shift (which, in and of itself, is inconvenient and impractical), this will only leave a maximum of 5 spaces for client use (which, practically speaking, will translate to 4 spaces for client use).*

*With the Applicant contemplating two classes of four children operating at any one time, the parking demand will require 8 parking spaces minimum to simply service the clientele of one 30 minute session. This means the 4 spaces available (after accounting for staff) will not be enough even for the first class. This will then involve eight vehicles arriving prior to their session commencing, 4 looking for parking and unable to park, and hence congestion conditions will prevail.*

*In addition, the Applicant has failed to account for client 'change over' periods between swim sessions. The Applicant has assumed that parents will not park and attend the 30 minute swimming session, but will drop off and pick off their young children. This is unlikely to be the case, given the short duration of the session. The client change over period between swim sessions will not be quick. Parents will typically elect to shower and redress their children following a session (noting that there is only 1 open shower and one toilet provided in the Application so that there is likely to be delays), meaning that available parking spaces will remain occupied beyond each session conclusion and will not be available for*

*immediate occupation by the next session attendees."*

Upon review of the above concerns, it is considered 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.

- **Noise**

Comment: A number of concerns were raised to the proposed use and the equipment needed to facilitate the use. Key issues were traffic noise (vehicles in and out, turning etc), mechanical equipment (such as heat pumps, filtration system, dehumidifiers and ventilation systems).

The unit is located adjacent to an open concrete carpark with no sound walls/attenuation systems to prevent noise to adjoining properties at the boundaries. The application was accompanied with an Acoustic Report, which is critical for such a use and so a withdrawal letter was sent to the Applicant on 14 November 2016 stating that the application did not address Clause D3 - Noise of the Warringah Development Control Plan 2011.

The letter states the following:

*"It is noted that an Acoustic Report has not been submitted with the application which details anticipated noise levels generated by the proposed use and the effects of such noise upon nearby residential receivers.*

*Given the close proximity of the proposal to residential land uses, concern is raised with respect to noise generation and transmission and this reporting is therefore a critical component of the application which is required before any determination can be made."*

An Acoustic Report was received on 17 February 2017, prepared by West & Associates Pty Ltd (Acoustic Engineers). Within the report, it states that the proposed use and equipment would fail the noise requirements of Clause D3. On these grounds, the proposed development cannot be supported and this will be included as a reason for refusal.

- **Safety and security (child safety within a basement carpark)**

Comment: As stated previously, the parking arrangements are less than desirable and given the proposed number of staff, students and parents parking is considered inadequate. Vehicles will have to drive in and out through the same driveway which will create congestion and lessen safety. Combined with timing of the classes (back to back) and the limited parking, the number of traffic and pedestrian movements and loading and unloading of children within the carpark will create a significant safety concern.

Based on the above, it is considered that the proposal cannot be supported on the basis of the requirements of C2 Traffic, Access and Safety of the WDCP 2011.

- **Vehicular access to Fielding Street**

Comment: An issue was raised by one objector that the 'Site Plan' includes a reference to 'ROAD TO FIELDING STREET', which is incorrect as the only access is via a walkway for pedestrians.

- **Litter and vandalism**

Comment: The proposed operations would have sufficient rubbish collection bins within the facility and a waste contractor would be engaged to pick up rubbish and recyclables (if approved). The issue of vandalism is considered to be reduced given the proposed hours of operation and it maybe a need for surveillance and/or security services to be engaged by the strata body(s) to prevent these occurrences.

- **Suitability of the site**

Comment: A number issues were raised in relation to the proposal being located with a B2 Local Centre (shop top housing development) and the site being within close proximity to residential units, in particular the shop top housing building itself (1 - 5 Collaroy Street), 2 and 4 Fielding Street and 1125 - 1127 Pittwater Road. As discussed previously, the proposal fails to satisfy the requirements of Clause D3 Noise and concerns are raised in relation to parking and safety.

It is noted that the applicant has referred to their website in the application which provides details of the nature of the business. Within one of the submissions it was raised as follows:

*"A review of the Jump Swim web site, <http://jumpswimschools.com.au/>, shows existing Jump Swim schools established in the Sydney Metropolitan area at the locations itemised in Table 1: below, including one at Belrose within the Northern Beaches Council area.*

*All these recently approved Jump Swim Schools are located in large business or bulky goods precincts, which are more suitable for this type of development. Their location does not have the adverse impact upon adjacent residential amenity as what is proposed at Collaroy."*

A review of the various locations of swim schools on the company's website provides supporting information that the subject site is not a suitable site given the nature of the business, parking/traffic issues and the impacts on the surrounding residential amenity. This fundamental issue was raised with the Applicant and an invitation to withdraw was made but not accepted.

Given the above, it considered that the site is not suitable and will form a reason for refusal.

- **Hours of operations**

Comment: Issues were raised in relation to the hours of operation by a number of objectors. The proposed hours of operation 8am to 8pm (7 days a week). It is noted that within one of the residents submissions which had reviewed the Jump Swim Schools website, the following was stated:

*"Belrose: Located in Business Park/ Bulky Goods precinct: M- F 8.30/9.00 am to 6pm, Sat: 7.30am - 12.30 pm, Sunday: 8.00 am - 11.30 am*  
*Bella Vista: Located in Norwest Business Park: M - F 9 am - 12, 3.30- 6pm Sat: 8.30am -12, 3-4pm Sunda*  
*Campbelltown: Located in Bulky Goods Centre precinct: M-F 9.00 am - 5.30/6pm Sat: 8.30am -12 Sunday: Closed*  
*Guildford: Located in Yennora District Business Centre: M-F 9.30/10am - 6.30pm Sat: 9am - 6pm Sunday: Closed*  
*Seven Hills: Located in Powers Road Business Park: M-F 9.00 - 6.30pm Sat: 7.30 am - 1pm Sunday: Closed*



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*Council should, at the very least, limit the hours of operation to 9am - 6pm Monday to Friday, 8*

It is agreed that the proposed hours of operation are not appropriate and the hours detailed above (9am - 6pm Monday to Friday, 8.30am to 12pm Saturday and closed Sunday are a more suitable hours of operation (if approved).

Given the above, it is considered that this issue has been addressed.

- **Inadequate amenities**

Comment: Issues were raised in relation to the adequacy of the amenities within the proposed swim school. It is noted that there is only one (1) disabled toilet and one (1) shower proposed. A review was completed by Council's Building Assessment Team recommended approval subject to suitable conditions. The assessment revealed that the number of toilets and showers appears to be inadequate and combined with the number of students (maximum 8) and number of parents (possibility maximum 16) could be an issue. Combined with the parking arrangements proposed it is considered that delays would be experienced.

- **Adequacy of Pool Water Bunding and Drainage**

Comment: The submission has raised concerns in regards to pool water in the event that the pool develops a leak. Suitable conditions could be imposed to ensure adequate bunding is provided in such an event. Furthermore, the swimming pool will be connected to the sewer and therefore this issue is addressed.

- **Ventilation and Dehumidification Systems**

Comment: The proposed dehumidification system will require mechanical systems and this will contribute to noise levels. Additionally, odours such as chemical smells could be an issue for adjoining residential and retail occupants. Given the nature of the pool (heated), air conditioning cannot be used and therefore the doors of the unit and the glass shutters/vents will be open to allow for adequate ventilation within the unit. This will add to the noise transmission from the site concerns in relation to impacts on residential amenity and site suitability.

- **Waste Disposal**

Comment: The plan shows a storage area is proposed . A Waste Management Plan would be conditioned (if recommended for approval) to ensure adequate disposal of materials.

- **Privacy**

Comment: Casual surveillance would be possible from the ground floor unit and this is considered to be an existing situation and not a reason for refusal.

- **Necessity of the development**

Comment: The applicant, states that this service is a 'much needed facility' to the community. However, it is considered that there are other services of this nature within more suitable locations which would not generate the impacts on surrounding residential properties from noise, traffic and safety. Therefore, not providing this facility in this location would not be detrimental to the community due to the availability of other facilities in the area.

## MEDIATION

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

## REFERRALS

Internal Referral Body	Comments																		
Building Assessment - Fire and Disability upgrades	<p>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.</p> <p><i><u>Note:</u> The proposed development may not comply with some requirements of the BCA and the Premises Standards. Further, public swimming pools have different dynamics such as access for people with disabilities, increased gate usage and supervision requirements. Compliance with BCA and issues such as airlock requirements for bathrooms etc, together with pool fencing details and access for disabilities and Premises Standards however may be determined at Construction Certificate stage.</i></p>																		
Development Engineers	No objection to approval, subject to condition as recommended.																		
Environmental Investigations (Acid Sulphate)	<table> <tr> <td>Was sufficient documentation provided appropriate for referral?</td><td>YES</td></tr> <tr> <td>Are the reports undertaken by a suitably qualified consultant?</td><td>YES</td></tr> <tr> <td>What class is the site in on the WLEP2011 Acid Sulfate Soils Map?</td><td>Class 4 &amp; 5</td></tr> <tr> <td>Is there risk of acid sulfate soil disturbance?</td><td>NO</td></tr> <tr> <td>Will the excavations exceed the depth determined in the risk map?</td><td>NO</td></tr> <tr> <td>Does the report adequately address acid sulfate risk mitigation?</td><td>N/A</td></tr> <tr> <td>Have you considered disposal of water during excavation, pump out etc.</td><td>N/A</td></tr> <tr> <td>Have you considered disposal of contaminated soil.</td><td>N/A</td></tr> <tr> <td colspan="2"> <b>General Comments</b> <p>There are no objections to this referral as the proposal is made for an above ground swimming pool, therefore there is no risk of acid sulfate soil disturbance</p> </td></tr> </table>	Was sufficient documentation provided appropriate for referral?	YES	Are the reports undertaken by a suitably qualified consultant?	YES	What class is the site in on the WLEP2011 Acid Sulfate Soils Map?	Class 4 & 5	Is there risk of acid sulfate soil disturbance?	NO	Will the excavations exceed the depth determined in the risk map?	NO	Does the report adequately address acid sulfate risk mitigation?	N/A	Have you considered disposal of water during excavation, pump out etc.	N/A	Have you considered disposal of contaminated soil.	N/A	<b>General Comments</b> <p>There are no objections to this referral as the proposal is made for an above ground swimming pool, therefore there is no risk of acid sulfate soil disturbance</p>	
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Internal Referral Body	Comments	
	<b>Recommendation</b>	APPROVAL - no conditions
Environmental Investigations (Industrial)		
	Is the proposal for an industrial use?	YES
	Was sufficient documentation provided appropriate for referral?	YES
	Are the reports undertaken by a suitably qualified consultant?	YES
	Have you reviewed the Statement of Environmental Effects, and consider ongoing use, such as: - Processes with emphasis on potential pollution (air, noise, water and land) - Hazardous Materials, liquids stored on site - Waste storage, disposal. - Mechanical ventilation	YES
	Have you Consider impact of noise, hours of operation, location to nearest residential, location of equipment, times of deliveries, noise management plans, acoustic reports etc.	YES
	If the proposal is a scheduled premises have you recommended that the DAO refer the proposal to OEH?	N/A
	<b>General Comments</b>  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"> <li>Pool pump levels - comply</li> <li>WC Exhaust Fan - no details of fans are provided, so compliance cannot be determined?</li> <li>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</li> <li>Noise levels from the premises (general operation) does not comply at the boundary.</li> </ul> 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	

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Internal Referral Body	Comments		
	<p>to sensitive receivers.</p> <table border="1" data-bbox="523 394 1442 439"> <tr> <td data-bbox="523 394 1166 439"><b>Recommendation:</b></td><td data-bbox="1166 394 1442 439">Refusal</td></tr> </table>	<b>Recommendation:</b>	Refusal
<b>Recommendation:</b>	Refusal		
Health and Protection (Food Premises, Skin Pen.)	<p>Comments:</p> <p>Conditions for compliance with the Public swimming pool and spa pool advisory document (2013) and Australian Standard AS1668.2 will apply.</p> <p>The operator will also be required to engage Sydney Water to obtain a trade wastewater agreement for backwash water discharged to sewer. The re-use of backwash water for cleaning, irrigation, re-filling the pool and for toilet flushing may require separate approval from NSW Health or Council.</p> <p>The application should be referred to Building Surveyors to assess the viability of installing adequate ventilation for the swimming pool.</p> <p>Recommendation: Approval, subject to conditions.</p>		
Natural Environment (Riparian Lands/Creeks)	<p>No referral for Waterway and Riparian Lands necessary for this DA. No objection to approval with no conditions recommended.</p>		
Traffic Engineer	<p><u>Original Traffic Comments:</u></p> <p>The proposal is for the establishment of a swimming school at unit 51/1-5 Collaroy St, Collaroy. The Statement of Environmental Effects report indicates that the swimming centre will operate with maximum of 2 classes at the same time with the maximum capacity of 4 patrons in each class and 2 staff members. The length of classes is proposed to be 30 minutes. There are 4 modules of stacked parking spaces allocated to the premises.</p> <p>The development application has not provided sufficient information to enable the traffic engineers to assess the proposal. No parking rate is specified in the DCP for the swimming school use, therefore a parking comparison study on the same use is required to identify the parking requirements for the proposal. The study is to consider that with the proposed 30 minutes classes, there will be an overlap for the classes which requires further provision of parking spaces on site.</p> <p>Also, no information has been provided about the allocation of stacked parking spaces. The stacked parking spaces may be considered subject to the allocation of the rear spaces to staff.</p> <p>In view of the above, the proposal is not supported on traffic grounds due to lack of information.</p> <p><u>Revised Traffic Comments:</u></p> <p>The parking report provided by the applicant was reviewed. No</p>		

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Internal Referral Body	Comments
	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.

External Referral Body	Comments
Ausgrid: (SEPP Infra.)	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.
NSW Police - Local Command (CPTED)	The application was referred to the NSW Police for consideration against the principles of Crime Prevention through Environmental Design (CPTED). The following comments have been received:  <i>"Given the nature of the development, we do not believe a Crime Risk Assessment and CPTED assessment is required."</i>

## 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 mixed use (residential/commercial) purposes for a significant period of time with no prior land uses. In this regard it is considered that the site poses no risk of contamination and therefore, no further consideration is required under Clause 7 (1) (b) and (c) of SEPP 55 and the land is considered to be suitable for the commercial land use.

### SEPP 64 - Advertising and Signage

Clauses 8 and 13 of SEPP 64 require Council to determine consistency with the objectives stipulated under Clause 3(1)(a) of the aforementioned SEPP and to assess the proposal against the assessment criteria of Schedule 1.

The objectives of the policy aim to ensure that the proposed signage is compatible with the desired amenity and visual character of the locality, provides effective communication and is of high quality

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having regards to both design and finishes.

In accordance with the provisions stipulated under Schedule 1 of SEPP 64, the following assessment is provided:

Matters for Consideration	Comment	Complies
<b>1. Character of the area</b> Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located?	The sign is compatible with the existing character of the area.	YES
Is the proposal consistent with a particular theme for outdoor advertising in the area or locality?	The sign is consistent with the theme for outdoor advertising.	YES
<b>2. Special areas</b> Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas?	The sign will not detract from the amenity or visual quality of the mixed use area.	YES
<b>3. Views and vistas</b> Does the proposal obscure or compromise important views?	The sign will not obscure or compromise important views.	YES
Does the proposal dominate the skyline and reduce the quality of vistas?	The sign will not dominate the skyline or reduce the quality of vistas.	YES
Does the proposal respect the viewing rights of other advertisers?	The signage will respect the viewing rights of other advertisers.	YES
<b>4. Streetscape, setting or landscape</b> Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?	The signage is of a scale which appropriate for the locality and use.	YES
Does the proposal contribute to the visual interest of the streetscape, setting or landscape?	The signage has minimal impact on the streetscape or locality.	YES
Does the proposal reduce clutter by rationalising and simplifying existing advertising?	The signage will replace the existing above door signage for the previous use 'Active Lifestyles'	YES
Does the proposal screen unsightliness?	The signage will screen the existing front facade over the doorway.	YES
Does the proposal protrude above buildings, structures or tree canopies in the area or locality?	The signage will not protrude above buildings, structures or tree canopies.	YES
<b>5. Site and building</b> Is the proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is	The signage is compatible with the scale, proportion of the unit.	YES



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to be located?		
Does the proposal respect important features of the site or building, or both?	The signage respects the existing building.	YES
Does the proposal show innovation and imagination in its relationship to the site or building, or both?	The signage demonstrates adequate innovation in its relationship to the building.	YES
<b>6. Associated devices and logos with advertisements and advertising structures</b> Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?	The signage is considered to demonstrate consistency with this consideration.	YES
<b>7. Illumination</b> Would illumination result in unacceptable glare, affect safety for pedestrians, vehicles or aircraft, detract from the amenity of any residence or other form of accommodation?	No illumination is proposed.	YES
Can the intensity of the illumination be adjusted, if necessary?	No illumination is proposed.	YES
Is the illumination subject to a curfew?	No illumination is proposed.	YES
<b>8. Safety</b> Would the proposal reduce the safety for any public road, pedestrians or bicyclists?	The signage is considered not reduce safety of any public road users.	YES
Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas?	The signage is considered not reduce safety of any public road users.	YES

Accordingly, the proposed signage is considered to be of a scale and design suitable for the locality. The proposal is therefore deemed to be consistent with the provisions of the SEPP and its underlying objectives.

## 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:

# NORTHERN BEACHES COUNCIL

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.

## Roads and Maritime Service (RMS)

Clause 104 and Schedule 3 of the SEPP requires that the following development(s) are referred to the RMS as Traffic Generating Development:

Purpose of Development	Size or Capacity (Site with access to any road)	Size of Capacity (Site with access to classified road or to a road that connects to classified road if access is within 90m of connection, measured along alignment of connecting road)
Tourist facilities, recreation facilities, showgrounds or sportsgrounds	200 or more motor vehicles	50 or more motor vehicles

**Note:** Under Clause 104(2) of the SEPP, 'relevant size of capacity' is defined as meaning:

*"(2) (a) in relation to development on a site that has direct vehicular or pedestrian access to any road - the size or capacity specified opposite that development in Column 2 of the Table to Schedule 3, or*

*(b) in relation to development on a site that has direct vehicular or pedestrian access to a classified road or to a road that connects to a classified road where the access (measured along the alignment of the connecting road) is within 90m of the connection - the size or capacity specified opposite that development in Column 3 of the Table to Schedule 3."*

### Comment:

As the proposal does not require a parking provision of 50 or more vehicles under Column 3, the application was not required to be referred to the RMS.

## 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

### Principal Development Standards

Standard	Requirement	Proposed	% Variation	Complies
4.3 Height of Buildings	11m	No change	N/A	No change

### Compliance Assessment

Clause	Compliance with Requirements
Part 1 Preliminary	Yes

## Detailed Assessment

### 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 service that may serve the needs of people within the local area.

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

Comment: The proposal will involve minimal employment opportunities (2 staff) within the area, which is accessible by foot, vehicle and public transport services.

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

Comment: People may utilise these modes of transport, however, the norm for people transporting children (especially young children) to the school is via car. This is due to a number of reasons including time, equipment (such as prams etc.) and multiple trips prior and/or after the event/lesson.

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

Comment: There would be a number of additional vehicle movements within the carpark if the swim school was in full operation with back to back classes from 8am to 8pm. If there were two (2) classes of four (4) students per class (eight (8)) and 30 mins per session, and then add the twenty four (24) lessons that could be squeezed in a day of operations, that could equate to a maximum of 192 students a day (seven (7) days a week).

The number of vehicular movements may create a less than safe environment for pedestrians long traversing the driveway on Collaroy Street.

- ***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 therefore considered to satisfy this merit consideration.

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

# NORTHERN BEACHES COUNCIL

Comment: Given the use, the number of possible vehicle movements, noise impacts created by both mechanical equipment and users of the facility, it is considered that the conflict that would occur and the effect on the acoustic amenity of adjoining and nearby residential land uses is unacceptable and unreasonable.

Given the above it is considered that the proposal fails this merit consideration.

## Warringah Development Control Plan

### Built Form Controls

Built Form Control	Requirement	Proposed	% Variation*	Complies
B2 Number of storeys	3	No change	N/A	No change
B5 Side Boundary Setbacks	Merit Assessment	No change	N/A	No change
B7 Front Boundary Setbacks	Ground: Nil First: Nil Second: 5.0m	No change	N/A	No change
B9 Rear Boundary Setbacks	Merit Assessment	No change	N/A	No change

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
Part A Introduction	Yes	Yes
A.5 Objectives	No	Yes
Part C Siting Factors	Yes	Yes
C2 Traffic, Access and Safety	No	No
C3 Parking Facilities	Yes	Yes
C8 Demolition and Construction	Yes	Yes
C9 Waste Management	Yes	Yes
Mixed Use Premises (Residential/Non-Residential)	Yes	Yes
Part D Design	Yes	Yes
D3 Noise	No	No
D8 Privacy	Yes	Yes
D14 Site Facilities	Yes	Yes
D18 Accessibility	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
D23 Signs	Yes	Yes
Part E The Natural Environment	Yes	Yes
E10 Landslip Risk	Yes	Yes
Part F Zones and Sensitive Areas	Yes	Yes
F1 Local and Neighbourhood Centres	Yes	Yes

## Detailed Assessment

### **C2 Traffic, Access and Safety**

#### Merit consideration

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

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

Comment: The proposal relies on eight (8) parking spaces within a tandem arrangement, which is a method of parking that creates traffic issues in itself. It is considered that individually accessible parking spaces would be suited to the use and a better outcome, which would prevent possible hazards of queuing and congestion created by people waiting for others to leave and others entering, given the number of students (maximum 8) and the crossover of people coming and going.

It is considered that the proposal fails this merit consideration.

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

Comment: The additional vehicular movements and associated congestion in the carpark may result in difficulties entering the site.

It is considered that the proposal fails this merit consideration.

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

Comment: The proposal will use the existing crossing and therefore demonstrates compliance with this merit consideration.

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

Comment: The proposed tandem parking arrangements have the potential to create vehicular and pedestrian conflict within the carpark. The unloading and loading of children into a car and waiting to leave and enter within a confined carpark area will lead to conflict and therefore fails this merit consideration.

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

Comment: The proposed use is considered not to create interference with public transport facilities given its location and proximity to Pittwater Road ensuring compliance with this merit consideration.

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

# NORTHERN BEACHES COUNCIL

Comment: The proposal was submitted with a Traffic Report which was reviewed by the Council's Traffic Engineer. The report argues that the tandem arrangement is satisfactory based on the size and scale of the use, however, concerns remain that people will find the carparking impractical and inconvenient and resort to kerbside parking in the public street or in the Council carpark on the southern side of Collaroy Street.

Given the above it is considered that the proposal fails this merit consideration.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

## C3 Parking Facilities

The development provides the following on-site car parking:

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

Council's Traffic Engineer has reviewed the tandem arrangement and has not raised any objections subject to a condition which requires that the rear 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 parking.

## 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 application does not present practical solutions to ensure the acoustic environment for residential receivers will be acceptable and hence does not satisfy Council's and the residents concerns. It is noted that the proposal relies upon air-conditioning of the internal space given the humidity created by the heated swimming pool and the use of chemicals to treat the water. Therefore, there is a reliance on natural ventilation within the premises and so noise break-out is an issue.

The proposal will result in excessive noise emissions to adjoining and surrounding properties.



The noise created by the swimming heat pump is also an issue. It is noted that a letter from the applicant received on 21 March 2017 states *"so called issues (e.g. noise) ...(raised by Council)...can be mitigated to the satisfaction of all parties (e.g. a smaller heat pump can be installed in a different location, smaller class sizes)."*

No actual evidence has been submitted to support the above statement made by the applicant. Given the information lodged with the application, it is deemed that the proposal does not satisfy this merit consideration.

- ***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: The proposed use nominates that the premises will be naturally ventilated, using the door and the existing high level glass louvers installed on the east and northern sides which comprises perimeter glazing. It is considered that the noise generated from the heat pump and noise associated with the swimming lessons would fail to comply with the provisions of this clause. It is noted that the Acoustic Report prepared by West & Associates Pty Ltd. determined that the proposal will not comply with the relevant noise criteria.

Given the current information, it is deemed that the proposal does not satisfy this merit consideration.

Having regard to the above assessment, it is concluded that the proposed development is inconsistent with the relevant objectives of WLEP 2011 / WDCP and the objectives specified in section 5(a) of the Environmental Planning and Assessment Act, 1979. Accordingly, this assessment finds that the proposal is not supported, in this particular circumstance.

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

The proposal will not significantly effect 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.

## **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:

- 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

In summary, a detailed assessment has been undertaken of the following issues:

- Zoning : Clause B2 Local Centre Zone within the WDCP 2011
- Traffic : Clause C2 Traffic, Access and Safety within the WDCP 2011
- Parking : Clause C3 Parking Facilities within the WDCP 2011
- Noise : Clause D3 Noise within the WDCP 2011

The proposed development fails to satisfy the fundamental concerns associated with a swim school which is in close proximity to residential development. The impacts on residents, particularly in relation to noise, will be excessive and the use cannot be supported in this location. The predicted noise levels fail to comply with the relevant noise standards.

There are concerns in relation to the practicality and functionality of the tandem parking arrangements. Additionally, the location of the parking spaces at the end of the carpark is considered undesirable and will result in customers becoming frustrated by this arrangement and ultimately resorting to on-street (kerbside) parking or using the Council carpark in Collaroy Street. This will create issues in relation to the availability of parking on local streets within the area and cause further amenity issues for local residents.

On balance, whilst the use as a Recreation Facility (Indoor) is a permissible use, the proposed swim school is not suited to the site as a retrofit in this shop top housing development. The proposed use is better suited to a commercial or industrial zone which has no sensitive residential receivers within close proximity and provides more practical and convenient parking arrangements for their customers. The potential for conflict with surrounding residential amenity is significant and the application does not allay the concerns in relation to noise and parking impacts.

It is accepted that a swim school is a facility that is much needed in the community, however it is not suited to this site for these reasons given in this report and is not in the public interest.

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 DA2016/0933 for the Use of Premises as a Recreation Facility (indoor) and signage on land at Lot 51 SP 58961,51 / 1 - 5 Collaroy Street, COLLAROY, subject to the reasons outlined as follows:


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 proposed development is not in the public interest.

# NORTHERN BEACHES COUNCIL

## ATTACHMENT A

Notification Plan	Title	Date
 2016/302671	Plan - Notification	01/09/2016

## ATTACHMENT B














Notification Document	Title	Date
 2016/317289	Notification Map	22/09/2016

## ATTACHMENT C

Reference Number	Document	Date
 2016/302699	Report - Annex A - Fran Info Brochure	26/02/2016
 2016/302689	Report - Statement of Environmental Effects	31/08/2016
 2016/302695	Report - Waste Management Plan	01/09/2016
 2016/302679	Plans - Master Set	01/09/2016
 2016/302671	Plan - Notification	01/09/2016
 DA2016/0933	51/1-5 Collaroy Street COLLAROY NSW 2097 - Development Application - Change of Use	07/09/2016
 2016/300315	DA Acknowledgement Letter - Swim Loops Pty Ltd	07/09/2016
 2016/302642	follow up letter to applicant for digital requirements	08/09/2016
 2016/302663	Development Application Form	08/09/2016
 2016/302665	Applicant Details	08/09/2016
 2016/302685	Title Search and Strata Plans	08/09/2016
 2016/309043	Environmental Investigations (Industrial) - Assessment Referral - DA2016/0933 - 51 / 1 - 5 Collaroy Street COLLAROY NSW 2097	14/09/2016
 2016/307932	Sent Request further information	14/09/2016
 2016/310392	Development Application Advertising Document - Swim Loops Pty Ltd	16/09/2016
 2016/311617	Health and Protection (Food Premises, Skin Pen.) - Assessment Referral - DA2016/0933 - 51 / 1 - 5 Collaroy Street COLLAROY - EB	19/09/2016
 2016/314339	Referral Response - Building Assessment	20/09/2016
 2016/316486	Notification Letter - 215	22/09/2016
 2016/317289	Notification Map	22/09/2016
 2016/317774	Referral Response - Environmental Investigations	22/09/2016
 2016/318755	Referral Response - Environmental Health and Protection	23/09/2016
 2016/319220	Advertising signs 23-09-16	23/09/2016
 2016/321813	Online Submission - Sellars	27/09/2016
 2016/322006	Referral Response - Development Engineering	27/09/2016
 2016/324209	Online Submission - Alexanderson	29/09/2016
 2016/325339	Online Submission - Panozzo	30/09/2016
 2016/325795	Online Submission - Joana	30/09/2016
 2016/326541	Email response - Submission - Panozzo	04/10/2016
 2016/330097	Online Submission - Hunter	06/10/2016
 2016/350024	Referral Response - NSW Police Force	25/10/2016
 2016/359621	Referral Response 1 - Traffic Engineering	03/11/2016
 2016/367587	Request for Withdrawal of Development Application -	10/11/2016

# NORTHERN BEACHES COUNCIL

Swim Loops Pty Ltd

	2016/368969	Request for update on DA - 51/1-5 Collaroy Street Collaroy	11/11/2016
	2016/387660	Email exchange between applicant and TC re request and granting of extension of time	29/11/2016
	2016/408638	Referral Response 2 - Traffic Engineering	05/12/2016
	2016/403504	Email from applicant with attached Traffic Report	12/12/2016
	2016/403507	Report - Parking Assessment	12/12/2016
	2017/003015	Email from applicant advising of delay in Acoustic Report	19/12/2016
	2016/420029	Working Plans	29/12/2016
	2017/046518	Acoustic Report	17/02/2017
	2017/067484	Withdrawal letter (Second)	09/03/2017
	2017/080125	response - 1-5 Collaroy Street,Collaroy DA2016/0933	21/03/2017
	2017/090655	DA2016/0933 - 51/1-5 Collaroy Street Collaroy	31/03/2017
	2017/099703	ADP Plans	10/04/2017
	2017/100178	ADP Report 20170413 Item 3.1	10/04/2017

## PANEL PLANS

No plans titled 'ADP Panel Plans' found in TRIM.