

## APPLICATION FOR MODIFICATION ASSESSMENT REPORT

<b>Application Number:</b>	Mod2024/0616
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<b>Responsible Officer:</b>	Anaiis Sarkissian
<b>Land to be developed (Address):</b>	Lot 1 DP 15295, 681 Barrenjoey Road AVALON BEACH NSW 2107
<b>Proposed Development:</b>	Modification of Development Consent DA2023/0710 granted for Use of Premises as a Recreation Facility (indoor), including fit-out and signage
<b>Zoning:</b>	E1 Local Centre
<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>Applicant:</b>	Grey Industries Pty Limited

<b>Application Lodged:</b>	19/11/2024
<b>Integrated Development:</b>	No
<b>Designated Development:</b>	No
<b>State Reporting Category:</b>	Refer to Development Application
<b>Notified:</b>	27/11/2024 to 11/12/2024
<b>Advertised:</b>	Not Advertised
<b>Submissions Received:</b>	2
<b>Clause 4.6 Variation:</b>	Nil
<b>Recommendation:</b>	Approval

### PROPOSED DEVELOPMENT IN DETAIL

Development Application DA2023/0710 approved fit-out and use of the existing building as a gym with a 6-month trial period for 24-hour operation. This modification application seeks permanent approval for 24/7 operation of the gym.

### 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

Pittwater 21 Development Control Plan - B6.3 Off-Street Vehicle Parking Requirements

## SITE DESCRIPTION

<b>Property Description:</b>	Lot 1 DP 15295 , 681 Barrenjoey Road AVALON BEACH NSW 2107
<b>Detailed Site Description:</b>	<p>The subject site consists of one allotment located on the western side of Barrenjoey Road.</p> <p>The site is an irregular shape with a frontage of approximately 17m along Barrenjoey Road, 16.3m frontage to Edmund Hock Avenue, and a depth of up to 45m.</p> <p>The site is located within the E1 Local Centre zone and accommodates a two-storey 'Anytime Fitness' gymnasium with basement car parking.</p> <p>The site is relatively flat and has basement carpark access from Edmund Hock Avenue.</p> <p><b>Detailed Description of Adjoining/Surrounding Development</b></p> <p>Adjoining and surrounding development is characterised by commercial and medium-density residential development.</p>

Map:



## SITE HISTORY

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

### **DA1984/33 (Consent No. 84/207)**

Development Application for the erection of professional consulting rooms.  
Approved 22 May 1984

### **DA1988/294 (Consent No. 88/450)**

Development Application to erect professional consulting rooms.  
Approved 22 December 1988

### **DA1989/655**

Development Application for erection of two free standing signs for the existing professional consulting rooms.  
Refused 5 April 1990

### **DA1991/541**

Development Application for change in use of premises from professional consulting rooms to hospital by including a 'day procedure centre'.  
Refused 2 April 1992

### **N0278/00**

Development Application for alterations and additions to existing commercial premises including new internal stairs, roof skylight, office fit out and new pergola and water feature  
Approved 26 July 2000

### **DA2023/0710**

Use of Premises as a Recreation Facility (indoor), including fitout and signage.  
Approved 11 October 2023

In approving that development, a condition was imposed allowing for a trial period of 24/7 operations

for a 6 month period, with the hours of operation to revert to more conservative hours of operation unless the a modification application was lodged within 6 months of operation. From the information available to Council, the gym was operating on 11 May 2024, with the Modification Application lodged with Council on 6 November 2024, within the 6 month period.

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

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

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 and is attached taking into all relevant provisions of the Environmental Planning and Assessment Act 1979 and 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 (up to the time of determination) by the applicant, persons who have made submissions regarding the application and any advice given by relevant Council / Government / Authority Officers on the proposal;

In this regard, the consideration of the application adopts the previous assessment detailed in the Assessment Report for DA2023/0710, in full, with amendments detailed and assessed as follows:

The relevant matters for consideration under Section 4.55(1A) of the Environmental Planning and Assessment Act, 1979, are:

Section 4.55(1A) - Other Modifications	Comments
A consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the consent authority and subject to and in accordance with the regulations, modify the consent if:	
(a) it is satisfied that the proposed modification is of minimal environmental impact, and	<p><b>Yes</b></p> <p>The modification, as proposed in this application, is considered to be of minimal environmental impact for the following reasons:</p> <ul style="list-style-type: none"> <li>• No built form changes are proposed.</li> <li>• The proposal involves only permanently extending the 24/7 operation following the expiration of the approved 6-month trial period.</li> <li>• The 24/7 hour operation is considered acceptable from a traffic and acoustic perspective, and is supported by Council's Traffic Engineer and Environmental Health Officer.</li> </ul>
(b) it is satisfied that the development to which the consent as modified relates is substantially the same	The consent authority can be satisfied that the development to which the consent as modified relates is substantially the same as the development for which the consent was originally granted

Section 4.55(1A) - Other Modifications	Comments
development as the development for which consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>under DA2023/0710 for the following reasons:</p> <ul style="list-style-type: none"> <li>• No built form changes are proposed.</li> <li>• The proposal involves only permanently extending the 24/7 operation following the expiration of the approved 6-month trial period.</li> </ul>
<p>(c) it has notified the application in accordance with:</p> <p>(i) the regulations, if the regulations so require,</p> <p>or</p> <p>(ii) a development control plan, if the consent authority is a council that has made a development control plan under section 72 that requires the notification or advertising of applications for modification of a development consent, and</p>	The application has been publicly exhibited in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021, and the Northern Beaches Community Participation Plan.
(d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.	See discussion on “Notification & Submissions Received” in this report.

### Section 4.15 Assessment

In accordance with Section 4.55 (3) of the Environmental Planning and Assessment Act 1979, in determining an modification application made under Section 4.55 the consent authority must take into consideration such of the matters referred to in section 4.15 (1) as are of relevance to the development the subject of the application.

The relevant matters for consideration under Section 4.15 of 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	There are no current draft environmental planning instruments.



Section 4.15 'Matters for Consideration'	Comments
environmental planning instrument	
Section 4.15 (1) (a)(iii) – Provisions of any development control plan	Pittwater 21 Development Control Plan applies to this proposal.
Section 4.15 (1) (a)(iiia) – Provisions of any planning agreement	None applicable.
Section 4.15 (1) (a)(iv) – Provisions of the Environmental Planning and Assessment Regulation 2021 (EP&A Regulation 2021)	<p><u>Part 4, Division 2</u> of the EP&amp;A Regulation 2021 requires the consent authority to consider "Prescribed conditions" of development consent. These matters have been addressed via a condition of consent.</p> <p><u>Clauses 36 and 94</u> of the EP&amp;A Regulation 2021 allow Council to request additional information. Additional information was requested on 6 January 2025 in relation to acoustic review and reporting.</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>(i) <b>Environmental Impact</b> The environmental impacts of the proposed development on the natural and built environment are addressed under the Pittwater 21 Development Control Plan section in this report.</p> <p>(ii) <b>Social Impact</b> The proposed development will not have a detrimental social impact in the locality considering the character of the proposal.</p> <p>(iii) <b>Economic Impact</b> The proposed development will not have a detrimental economic impact on the locality considering the nature of the existing and proposed land use.</p>
Section 4.15 (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development.
Section 4.15 (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	See discussion on "Notification & Submissions Received" in this report.
Section 4.15 (1) (e) – the public interest	No matters have arisen in this assessment that would justify the refusal of the application in the public interest.

## EXISTING USE RIGHTS

Existing Use Rights are not applicable to this application.

## BUSHFIRE PRONE LAND

The site is not classified as bush fire prone land.

## NOTIFICATION & SUBMISSIONS RECEIVED

The subject application has been publicly exhibited from 27/11/2024 to 11/12/2024 in accordance with the Environmental Planning and Assessment Act 1979, Environmental Planning and Assessment Regulation 2021 and the Community Participation Plan.

As a result of the public exhibition process council is in receipt of 2 submission/s from:

Name:	Address:
Mr Malcolm Arthur Long	6 / 679 Barrenjoey Road AVALON BEACH NSW 2107
Ms Claire Joanna Worlidge	8 / 679 Barrenjoey Road AVALON BEACH NSW 2107

The issues raised within the submissions are summarised and addressed as follows:

- **Complaint logging**

*The submissions requested that the reporting system that has been in place for the residents of 679 Barrenjoey Road with regard to noise and disturbance from the gym is upheld, and the complaint logging system continues. A 24-hour response and appropriate subsequent action is expected.*

Comment:

Condition 8 of DA2023/0710 required a Plan of Management to be prepared with provisions for a 24 hour hotline to be distributed to all neighbouring residences. Complaints received through the hotline are to be logged and provided to an acoustic engineer for potential corrective action. Condition 24 requires ongoing compliance with the Plan of Management. Both Conditions 8 and 24 are to be retained as part of this modification application.

- **Traffic and parking**

*The submissions raised concerns that there has been increased traffic on Edmund Hock Avenue, and it has been difficult to access the road on a few occasions, particularly with garbage bins. Patrons of the gym need to be mindful of parking illegally or too close to driveways.*

Comment:

Condition 23 of DA2023/0710 limits occupancy of the site to 40 people at any one time to ensure that all parking generated by the site is contained on site. Condition 23 is to remain as part of this modification application. The approved Plan of Management limits the maximum number of patrons at any one time to 25 members. Council's Traffic Engineer has reviewed the proposal and determined that it is acceptable without any additional conditions.

- **Acoustic**

*The submissions raised acoustic concerns in relation to patrons of the gym dropping weights and leaving barking dogs outside.*

Comment:

A number of conditions were included as part of DA2023/0710 pertaining to acoustic

management, and the approved Plan of Management also includes noise mitigation measures to be complied with at all times, including prohibiting dropping of weights. An acoustic review was submitted as part of this modification application and the proposal is determined to be acceptable by Council's Environmental Health Officer from an acoustic perspective.

## REFERRALS

Internal Referral Body	Comments
Environmental Health (Industrial)	<p><b>General Comments</b></p> <p>Environmental Health has sighted the acoustic review.</p> <p><b>Recommendation</b></p> <p>No additional conditions recommended.</p> <p><b>Planner Comment:</b></p> <p>Acoustic Dynamics undertook a site inspection on 14 January 2025 to verify the recommendations contained within the Operational Noise Emission Assessment dated 4 August 2023 have been implemented. Acoustic Dynamics also performed inspections to determine if any adverse noise or vibration emission was occurring during a busy period of training.</p> <p>Following inspection, Acoustic Dynamics confirms the following, contained within the submitted Certification of Acoustic Design for Ongoing Compliance dated 22 January 2025:</p> <ol style="list-style-type: none"> <li><b>Management Plan</b> – Acoustic Dynamics has received and reviewed a copy of the facility's <i>Plan of Management</i> and is satisfied with the operational measures incorporated as part of this plan/policy, with particular regard to: <ul style="list-style-type: none"> <li>Closing of windows and doors at all times;</li> <li>Monitoring of patron behaviour to minimise noise emissions;</li> <li>Restricting the use of free weights to the Free Weights Area only;</li> <li>Use of the equipment and free weights in a correct and controlled manner;</li> </ul> </li> <li><b>Audio System</b> – Speakers are appropriately isolated from the building structure and low-frequency speakers are not installed. Internal background music has been calibrated by a sound engineer such that a level of 75 dB(A) is not exceeded;</li> <li><b>Signage</b> – Clear signage has been installed advising patrons that they must not generate excessive noise when entering and leaving the premises, and advising patrons not to drop their weights;</li> <li><b>Flooring</b> – Appropriate flooring has been installed to minimise structure-borne noise emission to neighbouring receivers;</li> <li><b>Flooring</b> – Appropriate rubber isolation has been installed beneath gym and exercise equipment to minimise structure-borne sound transmission through the building;</li> <li><b>Construction/Fit-out</b> – All penetrations addressed in our report have been infilled and are sealed airtight. All gaps along the perimeter of ceilings and wall junctions are appropriately sealed; and</li> <li><b>Mechanical Plant</b> – All plant has been appropriately located and installed to minimise noise emission to the nearest sensitive receivers.</li> </ol>



Internal Referral Body	Comments
	<p>The submitted acoustic review notes that noise from the use of equipment and music played throughout the gym was not audible at the boundaries of the development; the only noise from the development that was audible was noise from patron ingress and egress from the entry facing Barrenjoey Road, and cars entering and leaving the basement carpark. The acoustic review concludes that Acoustic Dynamics is satisfied that the premises will sufficiently mitigate noise and vibration emission to the nearby receivers, provided the management plan and weight drops policy are enforced as detailed.</p> <p>It is also important to note that a review of Council's files have not identified any complaints about the trial period. Given the purpose of the trial period was to assess and determine the suitability of 24/7 operations, it is considered both reasonable and acceptable that the approved operating capacity of the facility continue.</p>
Traffic Engineer	No traffic engineering concerns with the proposed modification and no changes to the previously applied traffic engineering conditions

#### **ENVIRONMENTAL PLANNING INSTRUMENTS (EPIs)\***

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

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

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

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

Nil

#### **Pittwater Local Environmental Plan 2014**

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

#### Compliance Assessment

Clause	Compliance with Requirements
1.9A Suspension of covenants, agreements and instruments	Yes
5.10 Heritage conservation	Yes

## Pittwater 21 Development Control Plan

### Compliance Assessment

Clause	Compliance with Requirements	Consistency Aims/Objectives
A1.7 Considerations before consent is granted	Yes	Yes
A4.1 Avalon Beach Locality	Yes	Yes
B6.3 Off-Street Vehicle Parking Requirements	No	Yes
B6.7 Transport and Traffic Management	Yes	Yes
C2.2 Safety and Security	Yes	Yes
C2.10 Pollution Control	Yes	Yes
D1.2 Character - Avalon Beach Village	Yes	Yes

### Detailed Assessment

#### **B6.3 Off-Street Vehicle Parking Requirements**

Off-street parking was assessed as part of DA2023/0710. The gym provides 12 parking spaces in the basement, which is a shortfall of 11 spaces; however, Council's Traffic Officer reviewed the Applicant's Traffic Report and considered the amount of parking suitable for the site, with the following factors contributing to the case for varying the DCP requirement, including:

- The site is well serviced by public transport, being close to the Avalon Town Centre.
- The use of public transport to access the gym is positive for environmental sustainability.
- The 24-hour use of the gym is likely to spread the patronage and reduce peak patronage.
- 4 bicycle parking spaces are provided.
- Traffic generation surveys commissioned by Transport for NSW in 2014 found that traffic generation associated with gym uses was now considerably lower with an average peak vehicle trips per 100m<sup>2</sup> GFA of 3.6 trips (as stated by Council's Traffic Officer)

This modification application does not propose any changes to the approved parking condition for the site.

#### **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 2024**

Section 7.12 contributions were levied on the Development 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 2021;
- All relevant and draft Environmental Planning Instruments;
- Pittwater Local Environment Plan;
- Pittwater 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 approval to Modification Application No. Mod2024/0616 for Modification of Development Consent DA2023/0710 granted for Use of Premises as a Recreation Facility (indoor), including fit-out and signage on land at Lot 1 DP 15295,681 Barrenjoey Road, AVALON BEACH, subject to the conditions printed below:

## **Modification Summary**

The development consent is modified as follows:

### MODIFICATION SUMMARY TABLE

Application Number	Determination Date	Modification description
PAN-485633 MOD2024/0616	The date of this notice of determination	Modification of Development Consent DA2023/0710 granted for Use of Premises as a Recreation Facility (indoor), including fit-out and signage  Modify Condition 1 - Approved Plans and supporting documentation Modify Condition 25 - Hours of Operation

### Modified conditions

#### A. Modify Condition 1 - Approved Plans and supporting documentation, to read as follows:

Development must be carried out in accordance with the following approved plans (stamped by Council) and supporting documentation, except where the conditions of this consent expressly require otherwise.

Approved Plans				
Plan Number	Revision Number	Plan Title	Drawn By	Date of Plan
A_SP_A00_01	01	Site Plan	Studio_P	29 May 2023
A_SP_A01A_03	03	Basement Plan	Studio_P	29 May 2023
A_SP_A01_07	07	Floor Plan	Studio_P	27 July 2023
-	-	External Signage	Steve Hegarty	23 May 2023

Approved Reports and Documentation			
Document Title	Version Number	Prepared By	Date of Document
Plan of Management	-	Prestige Town Planning	9 August 2023
Operational Noise Emission Assessment	2	Acoustic Dynamics	4 August 2023
BCA and Fire Safety	R1.0	Hontas and Hatzi & Co	29 May 2023
Parking Demand Assessment	1.1	Auswide Consulting	June 2023
Waste Management Plan	-	Prestige Town Planning	2 June 2023
Certification of Acoustic Design for Ongoing Compliance	0	Acoustic Dynamics	22 January 2025

In the event of any inconsistency between the approved plans, reports and documentation, the

approved plans prevail.

In the event of any inconsistency with the approved plans and a condition of this consent, the condition prevails.

Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

**B. Modify Condition 25 - Hours of Operation, to read as follows:**

The gymnasium may be open for business 24 hours a day, 7 days a week.

Reason: To ensure all parties are aware of the permitted hours of operation.

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

**Signed**



**Anais Sarkissian, Planner**

The application is determined on 05/02/2025, under the delegated authority of:



**Adam Richardson, Manager Development Assessments**