

4.1 563 Pittwater Road, Brookvale – Construction and Use of a Gym and Children's Play Centre

Purpose

To gain Council determination of an application referred from the Acting Group Manager Development and Compliance Services and the Warringah Development Assessment Panel.

Summary

The above Development Application was detailed in the report of the Acting Group Manager Development and Compliance Services and was referred to the Warringah Development Assessment Panel (WDAP) Meeting on 14 December 2011 as the proposal is a Category 3 development in the F2 Brookvale Service Centre Locality under WLEP 2000 and is required to be the subject of an independent public hearing pursuant to Clause 15 of WLEP 2000. The WDAP Minutes and the report of the Acting Group Manager Development and Compliance Services to the WDAP Meeting are attached as Attachment's 'A' and 'B' respectively.

The applicant requested to have the Deferred Commencement Condition in relation to Fire Safety Matters removed from being a deferred matter and dealt with at a later time. The Panel agreed and the condition in relation to Fire Safety Matters is now condition No. 6 which is to be complied with prior to issue of a Construction Certificate.

The Panel concurred with the recommendation of the Acting Group Manager Development and Compliance Services that this application be approved and the conditions have been amended to reflect the change to the conditions in relation to Fire Safety Matters.

RECOMMENDATION OF ACTING DEPUTY GENERAL MANAGER STRATEGIC AND DEVELOPMENT SERVICES

THAT Development Application No. DA2011/1254 for construction and use of a gym, children's play centre and restaurant on land at Lot 563, DP 707422, No.563 Pittwater Road, Brookvale be approved subject to the conditions in the recommendation in the Minutes of the Warringah Development Assessment Panel, dated 14 December 2011, No.1 - 16 (Attachment A).

Adopted

Rik Hart
General Manager

Date

Minutes of Warringah Development Assessment Panel Meeting held on 14 December 2011

WARRINGAH DEVELOPMENT ASSESSMENT PANEL MEETING

4.1	563 Pittwater Road, Brookvale – Construction and Use of a Gym and Children’s Play Centre
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Panel Member

Mary-Lynne Taylor, Chair (Environmental Law)

Patrick O’Carrigan, Urban Design Expert

Marcus Sainsbury, Environmental Expert

Nick Lawther, Community Representative

DA2011/1254

Application Details

Construction and use of a gym and children’s play centre and restaurant.

Site Description

Lot 563 DP 707422, 563 Pittwater Road BROOKVALE, (Manly Warringah Leagues Club building)

Independent Public Hearing

This report is of an independent public hearing that has been convened pursuant to clause 15 of WLEP 2000 because this application is for Category 3 development. The application was advertised as such and there were no objections.

The Chairperson informed the hearing that applications for Category 3 development entail additional requirements. In particular, the Panel can only recommend that consent be granted if it is satisfied that the proposed development is consistent with the desired future character of the locality as described in the F2 Brookvale Service Centre Locality Statement [WLEP2000 cl 12(3)(b)]. Further, the Panel must consider the Statement of Environmental Effects, prepared by the applicant, that addresses the items listed in Schedule 15 [WLEP2000 cl 15(1)].

Desired Future Character

For this application being a Category 3 item to be satisfactory, the application has to be consistent with the desired future character of the F2 Brookvale Service Centre Locality.

“The Brookvale Service Centre locality will be characterised by light industries, warehouses and bulky goods retailing. The land at Lot 11 DP1009998, 7–9 Federal Parade Brookvale may be occupied by an office building.

The locality will be characterised by generous setbacks and wide frontages to Pittwater Road.

The Brookvale Park frontage to Pittwater Road is characterised by mature, predominantly Poplar trees which are to be retained.”

Site Visit

An inspection of the site was undertaken by the Panel and staff members prior to the Public Hearing.



Minutes of Warringah Development Assessment Panel Meeting held on 14 December 2011

Proceedings in Brief

In this matter, the public hearing was held. There were no objections to this application. No objectors appeared at the hearing. The applicant was represented by its architect who advised the applicant was happy with the report and the conditions but wished to speak against the deferred nature of the Deferred Commencement Condition. In his opinion, sufficient evidence had been given to Council about a whole of building upgrade by the Fire Expert and a follow up letter addressing specific uses for the first floor had also be given. In his opinion, there needed to be no further evidence required. The Panel agrees that this need not necessarily be a Deferred Commencement Condition but could be incorporated in the General Conditions to be supplied (if not already supplied to the satisfaction of Council) prior to the issue of a Construction Certificate. Otherwise, the Panel agrees with the Council Assessment Report reasoning for approval and agrees with the other conditions of consent.

RECOMMENDATION OF WARRINGAH DEVELOPMENT ASSESSMENT PANEL (CATEGORY 3 ITEM)

THAT the General Manager approve Development Application for No. DA2011/1254 for construction and use of a recreation facility (gym and children's play centre) and cafe on land at 563 Pittwater Road, Brookvale subject to the conditions printed below:

GENERAL CONDITIONS

CONDITIONS THAT IDENTIFY APPROVED PLANS

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:

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Project No. 5403, Drawing No. 10	8/11	David Liddy & Associates
Project No. 5403, Drawing No. 11	8/11	David Liddy & Associates
Project No. 5403, Drawing No. 12A	11/11	David Liddy & Associates

No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.

Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

2. Compliance with External Department, Authority or Service Requirements

The development must be carried out in compliance with the following:

External Department, Authority or Service	E-Services Reference	Dated
Ausgrid	Response Ausgrid Referral	12 October, 2011

Minutes of Warringah Development Assessment Panel Meeting held on 14 December 2011

(NOTE: For a copy of the above referenced document/s, please see Council's 'E-Services' system at www.warringah.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of External Department, Authority or Bodies. (DACPLB02)

3. No Approval for any Signage

No approval is granted under this Development Consent for signs (as defined under Warringah Local Environment Plan 2000 and State Environmental Planning Policy No. 64). A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

Reason: Control of signage. (DACPLB06)

4. 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



Minutes of Warringah Development Assessment Panel Meeting held on 14 December 2011

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. (DACPLB09)

5. 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) 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.
- (c) 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.
- (d) 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.
- (e) 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



Minutes of Warringah Development Assessment Panel Meeting held on 14 December 2011

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 building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) 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.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

6. Fire and Rescue NSW Approval

Fire and Rescue NSW is to provide endorsement, or conditional endorsement of the Alternative Solution report prepared by Defire (NSW) Pty Ltd dated 26/08/2011; Report number SY100125, the BCA Assessment Report prepared by Blackett Maguire + Goldsmith dated 6 September 2011; Project number 110417, and Architectural plans prepared by David Liddy & Associates dated 8/11; Drawing number 12A is to be submitted to the Principal Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate provision is made for fire safety in the premises for building occupant safety.

7. Section 94A Contributions

The Section 94A Contributions are required to be paid for this development. This amount has been calculated using the Warringah Section 94A Development Contributions Plan. The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index).

The basis for the contributions is as follows:

Warringah Section 94A Development Contributions Plan		
Contribution based on total development cost of \$		530,000.00
Contribution - all parts Warringah	Levy Rate	Contribution Payable

Minutes of Warringah Development Assessment Panel Meeting held on 14 December 2011

Total S94A Levy	0.95%	5,035
S94A Planning and Administration	0.05%	265
Total	1.0%	\$5,300

Details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To retain a level of service for the existing population and to provide the same level of service for the population resulting from new development. (DACPLC01)

8. Fire and Rescue NSW Requirements

All building works are to be carried out in accordance with the Fire and Rescue NSW endorsed (or as amended by Fire and Rescue NSW) Alternative Solution report prepared by Defire (NSW) Pty Ltd dated 26/08/2011; Report number SY100125, the BCA Assessment Report prepared by Blackett Maguire + Goldsmith dated 6 September 2011; Project number 110417, and Architectural plans prepared by David Liddy & Associates dated 8/11; Drawing number 12A.

Reason: To ensure adequate provision is made for fire safety in the premises for building occupant safety.

9. 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. (DACPLC02)

Advice to Applicants: At the time of determination in the opinion of Council, the following (but not limited to) Australian Standards are considered to be appropriate:

- (a) AS2601.2001 - Demolition of Structures**
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
- (e) AS 4970 - 2009 'Protection of trees on development sites'**
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**
- (g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities**
- (h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities**
- (i) AS 2890.5 - 1993 Parking facilities - On-street parking**
- (j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities**
- (k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set**
- (l) AS 1428.1 - 2009* Design for access and mobility - General requirements for access - New building work**
- (m) AS 1428.2 - 1992*, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities**



Minutes of Warringah Development Assessment Panel Meeting held on 14 December 2011

***Note:** *The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website*

http://www.humanrights.gov.au/disability_rights/buildings/good.htm

****Note:** the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to.

10. Bonds

Security Bond

A bond (determined from cost of works) of \$2000 and an inspection fee in accordance with Council's Fees and Charges paid as security 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, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate protection of Council infrastructure. (DACENC01)

11. Food Premises

The premises shall comply with the requirements of Australian Standards 4674 (Design, Construction and Fit Out of Food Premises).

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure compliance with the applicable food standards. (DACHPC06)

12. Mechanical ventilation

Mechanical ventilation must comply with AS 1668 Parts 1 and 2 and the exhaust hood and air conditioning system has been installed in accordance with AS 1668 and AS1055.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure compliance with applicable standards. (DACHPC07)

**CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO ISSUE OF OCCUPATION
CERTIFICATE**

Minutes of Warringah Development Assessment Panel Meeting held on 14 December 2011

13. 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. (DACPLF07)

14. Mechanical ventilation

Prior to issue of the Occupation Certificate provide certification from a suitably qualified mechanical engineer that the mechanical ventilation complies with AS 1668.

Reason: To ensure compliance with applicable standards.

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

15. Hours of Operation

The hours of operation of the recreation facility (gym) are to be restricted to:

- Monday to Wednesday 5.30am to 10pm
- Thursday to Friday 5.30am to 9pm
- Saturday to Sunday 7am to 7pm

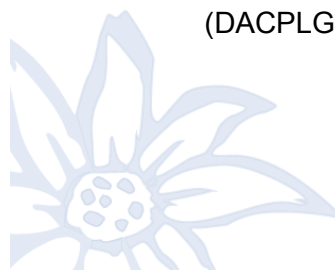
Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

The hours of operation of the recreation facility (children's play centre) are to be restricted to:

- Saturday to Thursday 9am to 5.30pm
- Friday 9am to 9pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained. (DACPLG08)



Minutes of Warringah Development Assessment Panel Meeting held on 14 December 2011

16. Use of Restaurant

The restaurant is only to be used in conjunction with the children's play centre. Should the play centre cease operation, so to must the restaurant.

Reason: To ensure consistency with the provisions of the Warringah Local Environment Plan 2000.

Voting 4/0



4.1 563 Pittwater Road, Brookvale – Construction and Use of a Gym and Children's Play Centre

DEVELOPMENT ASSESSMENT REPORT

Assessment Officer: David Auster
Address / Property Lot 563 DP 707422
563 Pittwater Road BROOKVALE, (Manly Warringah Leagues Club building)
Description: Construction and use of a gym and children's play centre and restaurant

Development Application No: DA2011/1254
Application Lodged: 28/09/2011
Plans Reference: Project Number 5403, Drawing Numbers 10 (dated 8/11), 11 (dated 8/11), 12 (dated 8/11), Prepared by David Liddy & Associates.
Amended Plans: Project Number 5403, Drawing Number 12A (Issue B dated 11/11)
Applicant: David Liddy & Associates
Owner: Penn Sport Pty Limited
C/- Geoff Day - General Manager

Locality: F2 Brookvale Service Centre
Category: The children's play centre and gym are category 2 uses. The restaurant component of the children's play centre is category 3.
Draft WLEP 2009 Permissible or Prohibited Land use: Zone B5 Business Development. The play centre and gym are classified as a 'recreation facility (indoor)'. The kitchen and seating area is classified as a 'restaurant'. Recreation facilities (indoor) are permissible as 'Any other development not specified in item 2 or 4'. Restaurants fall under the category of 'Retail Premises' which are prohibited.
Variations to Controls (CI.20/CI.18(3)): No
Referred to ADP: No
Referred to WDAP: Yes (Category 3 – public hearing required)
Land and Environment Court Action: No

SUMMARY

Submissions: None
Submission Issues: N/A
Assessment Issues: Desired Future Character, Car parking
Recommendation: Approval – Deferred Commencement
Attachments: A. Pre-lodgement Notes
B. Site & Elevation Plans

LOCALITY PLAN (not to scale)



Subject Site: Lot 563, DP 707422, No. 563 Pittwater Road BROOKVALE

Public Exhibition: The subject application has been publicly exhibited in accordance with the EPA Regulation 2000, Warringah Local Environment Plan 2000 and Warringah Development Control Plan. As a result, the application was notified to 35 adjoining land owners and occupiers for a period of 21 calendar days commencing on 14 October 2011 and being finalised on 8 November 2011. Furthermore, the application has been advertised within the Manly Daily on 15 October 2011 and a notice was placed upon the site.

SITE DESCRIPTION

The subject site is described as Lot 563 in DP 707422 and is commonly known as No. 563 Pittwater Road, Brookvale. The building on site is the premises of the Manly Warringah Leagues Club.

The site is irregular in shape and has an approximate area of 4,632m². The site slopes from the north to the south with a cross fall of 6m. The site has a frontage towards Pittwater Road, Federal Parade and Victor Road of approximately 97m, 91m and 54m in length respectively. The southern boundary of the site measures approximately 46m in length.

The site currently accommodates a three (3) storey club building including a registered club and a restaurant and associated gaming and leisure facilities. The ground floor is occupied by the Manly-Warringah Rugby Leagues Club. The lower ground floor has a commercial pool and gym, and the first floor is vacant. The main pedestrian entrance is located on Federal Parade, including a separate entrance to a lift and stairwell for the upper levels. Vehicular access to the site is provided on Federal Parade to the existing multi level carparking area on the land on the northern side of Federal Parade, which is also part of the Manly Warringah Leagues Club site. The club building proper, provides a service vehicle access from Pittwater Road which leads to an undercover loading area at the southernmost end of the site.

The site is adjoined on its southern boundary by a car wash facility with an ancillary cafe (559 Pittwater Road). A Medium Density Area as defined in Warringah Local Environmental Plan 2000 is located approximately 30m to the north-west of the site. A multi-storey hotel building (4 Victor Road) is situated on Victor Road, approximately 20m to the south-west of the site. Developments along Pittwater Road incorporate a range of commercial, showroom and car sales uses. Areas to the north and north-west of the site comprise detached style housing and residential flat developments.

SITE HISTORY

Previous Applications Relating to the Site

Council records show the following applications on the subject site which are relevant to the current development:

Development Application	Description of Application
DA2010/1067	The application involved alterations and additions at ground level and first floor level, including a new separate entrance, stairwell and elevator to the first floor accessible from Federal Parade.
	Date of Consent
	The application was approved by WDAP on 18 November 2010. Council approved minor modifications to the application on 25 March 2011.

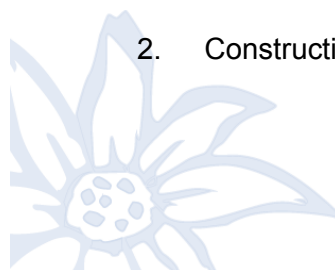
PROPOSED DEVELOPMENT

The proposal involves a change of use of a portion of the existing first floor from a Registered Club to a Recreation Facility comprising a gym, children's play centre and restaurant.

The proposal involves the following:

Description of Proposal

1. Construction and use of a gymnasium including weights, cardio and aerobics areas, and locker rooms.
2. Construction and use of a children's play centre including a crèche.



3. The proposal also involves the provision of a kitchen and eating area which constitutes a “restaurant”, which is intended to provide facilities for parents to have light refreshments whilst waiting for their children in the play centre. This facility is not proposed to be operated independently of the children’s play centre, and having the same operating hours.
4. No signs are proposed. The applicants have indicated they intend to lodge a separate signage application at a later stage.
5. The proposed operating hours for the gym are as follows:
 - Monday to Wednesday 5.30am to 10pm
 - Thursday to Friday 5.30am to 9pm
 - Saturday to Sunday 7am to 7pmThe proposed hours for the children’s play centre are:
 - Saturday to Thursday 9am to 5.30pm
 - Friday 9am to 9pm
6. The gym and play centre will employ 20 staff.

Physical Works

The physical works to the building include the following:

- (a) Demolition works on Level One, including:
 - The demolition of the former auditorium stage and stairs,
 - Demolition of the former auditorium bar, kitchen area and bistro servery, including all walls and floor tiles,
 - Demolition of stairs located to the southwest and northwest of the existing auditorium,
 - Demolition of internal partition walls.
- (b) Internal construction of and fit out works to Level One including:
 - Installation of new walls, doorways and sliding panels,
 - Refurbishment of existing floors, walls and ceilings,
 - Provision of office facilities,
 - Provision of a kitchen,
 - Reconfiguration of existing bathroom facilities.

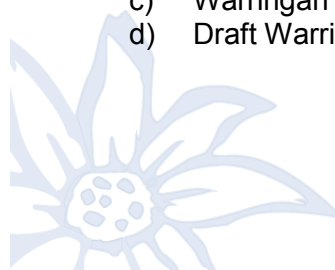
All works are internal and will not result in any change to the external appearance of the building or landscaping.

AMENDMENTS TO THE SUBJECT APPLICATION

The applicants submitted an amended floor plan on 9 November 2011, which included minor changes to the internal floor plan. Re-notification of the application was not considered necessary due to the minor nature of the amendments, which do not change the scale or intensity of the proposed development.

STATUTORY CONTROLS

- a) Environmental Planning and Assessment Act 1979 (EPA Act 1979); and
- b) Environmental Planning and Assessment Regulations 2000.
- c) Warringah Local Environmental Plan 2000
- d) Draft Warringah Local Environmental Plan 2009



PUBLIC EXHIBITION

As a result of the public exhibition process Council received no submissions.

LAND AND ENVIRONMENT COURT ACTION

There is no Land and Environment Court Action associated with this application.

REFERRALS

Internal Referrals

1. Building Assessment and Compliance:

"The plans submitted with the development application on 28.09.2011 have been assessed as well as the amended plans submitted to Council on 9.11.2011."

Given the involvement of the Fire and Rescue NSW throughout this process, this development application has been sent to them for their comments on the alternate solutions prior to Council determining the application. At this stage no response has been received from Fire and Rescue NSW therefore the following conditions are recommended."

These conditions are included in the draft Notice of Determination.

2. Natural Environment Unit:

"NEU raised no objection to the proposed development."

3. Environmental Health and Protection:

"This referral has been reviewed by Environmental Health & Protection. I contacted the applicant who advised that the new kitchen is near existing kitchen where existing mechanical ventilation duct work may be accessed. There are no objections subject to the following conditions."

These conditions are included in the draft Notice of determination.

External Referrals

1. Ausgrid:

"Based on the information provided in your correspondence the proposed development will comply with statutory clearances from Ausgrid's electrical mains and accordingly there is no objection to this development."

2. Fire and Rescue NSW:

The application has been referred to Fire and Rescue NSW in accordance with the Building Assessment and Compliance comments above. No response has been received at the time of writing. Due to the lack of response Building Assessment and Compliance has recommended a deferred commencement condition to ensure that the development can comply with fire safety requirements, prior to the consent becoming active. This condition has been included in the draft Notice of Determination.



ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979 (EPAA)

The proposal has been considered against the relevant matters for consideration under Section 79C of the EP&A Act 1979. This assessment has taken into consideration the submitted plans, Statement of Environmental Effects, all other documentation supporting the application and public submissions.

The relevant matters for consideration under Section 79C of 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	See discussion on “Draft Environmental Planning Instruments” in this report.
Section 79C (1) (a)(iii) – Provisions of any development control plan	Warringah Development Control Plan applies to this proposal.
Section 79C (1) (a)(iia) – Provisions of any planning agreement	None applicable.
Section 79C (1) (a)(iv) – Provisions of the regulations	The EPA Regulations 2000 requires the consent authority to consider the provisions of the Building Code of Australia. This matter has been addressed via a condition of consent. Clause 92 of the EPA Regulations 2000 requires the consent authority to consider AS 2601 - 1991: <i>The Demolition of Structures</i>. This matter has been addressed via a condition of consent. Clause 93 of the EPA Regulation 2000 requires the consent authority to consider the fire safety upgrade of development. This matter has been addressed via a condition of consent.
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	(i) The environmental impacts of the proposed development on the natural and built environment are addressed under the General Principles of Development Control in this report. (ii) The proposed development will not have a detrimental social impact in the locality considering the sporting and leisure nature of the proposal. (iii) The proposed development will not have a detrimental economic impact on the locality considering the sporting and leisure nature of the existing and proposed land use.
Section 79C (1) (c) – the suitability of the site for the development	The site is considered suitable for the proposed development. The proposal is consistent with the Desired Future Character Statement and will not have any unreasonable negative impacts on the locality.
Section 79C (1) (d) – any submissions made in accordance with the EPA Act or EPA Regs	No submissions were received. See discussion on “Public Exhibition” in this report.
Section 79C (1) (e) – the public interest	No matters have arisen that would justify the refusal of the application in the public interest.



DRAFT ENVIRONMENTAL PLANNING INSTRUMENTS:

Draft Warringah Local Environmental Plan 2009 (Draft WLEP 2009)

Definition: Recreation facility (indoor), and a Restaurant.

Land Use Zone: B5 Business Development

Permissible or Prohibited: The recreation facility (indoor) component of the development is permissible with consent as 'Any other development not specified in item 2 or 4'. The restaurant component of the facility falls under the category of 'retail premises' which is prohibited.

Additional Permitted used for particular land – Refer to Schedule 1: N/A

Principal Development Standards:

Development Standard	Required	Proposed	Complies	Clause 4.6 Exception to Development Standard
Height of Buildings:	11m	No change	Yes	N/A

The relevance of DWLEP 2009, and the weight to be given to it, relies on the facts of the particular case and circumstances which have been highlighted by numerous Land and Environment Court cases including *Mathers v North Sydney Council* [2000] NSWLEC 84; *Haywood and Bakker Pty Ltd v North Sydney Council* [2000] NSWLEC 138; *Blackmore Design Group Pty Ltd v North Sydney Council* [2001] NSWLEC 279; and *Trustees of the Sisters of the Good Samaritan v Warringah Council* [2011] NSWLEC 1181.

In summary, the primary principles arising from the above cases are that the weight to be placed upon a draft LEP, when determining a development application, depends on:

1. The imminence of the draft LEP and the degree of certainty that it will come into force;
2. The extent of conflict between proposed development and planning objectives contained in the draft LEP; and
3. The existence and applicability of savings provisions in the draft LEP.

Council's Assessment

1. The imminence of the draft LEP and the degree of certainty that it will come into force.

Comment: The DWLEP 2009 has completed the public exhibition process, has been adopted by Council and was subsequently forwarded to the Department of Planning for gazettal. In this regard, reference is made to the Land and Environment court case, *Trustees of the Sisters of the Good Samaritan v Warringah Council* [2011] NSWLEC 1181 where the judgement in Clause 61 summarises the weight to be given to a draft LEP, particularly in the circumstances of consideration against its imminency, certainty and consistency with the planning objectives of the zone.

61. If the weight to be given to the draft LEP is considered against its imminency, certainty and consistency with the expressed future planning objectives for the area, we are satisfied that the draft LEP should be given determinative weight.



Having regard to the above judgement, the plan is considered both imminent and certain. On this basis, the DWLEP 2009 is required to be given weight under Section 79C of the EP & A Act, 1979.

2. The extent of conflict between the proposed development and the planning objectives contained in the draft LEP.

Comment: Any application lodged before the making of DWLEP 2009 that will become prohibited after the making of that plan must be evaluated against the objectives of the plan. Assessments of the restaurant component of the proposed development in relation to the objectives of the B5 – Business Development zone are addressed as follows:

- *To enable a mix of business and warehouses uses, and specialised retail uses that require a large floor area, in locations that are close to, and that support the viability of, centres.*

Comment: The restaurant component of the development is ancillary to the main recreational facilities that are permissible in the zone. The refusal of the restaurant component of the proposal would not mean that the recreational facilities would be unacceptable. It is simply an area internal to the recreation facilities, for the use of the patrons of these facilities. The proposal will provide recreational facilities for nearby residents and workers, thereby contributing to the quality of life and health in the area, and supporting the viability of the centre. The removal of the restaurant component from the proposal would not enable another business or warehouse use to utilise the area on the first floor.

- *To provide for the location of vehicle sales or hire premises and bulky good premises.*

Comment: Again, the restaurant component of the development is ancillary to the main recreational facilities that are permissible in the zone. The refusal of the restaurant component of the proposal would not mean that the recreational facilities would be unacceptable. It is simply an area internal to the recreation facilities, for the use of the patrons of these facilities. The restaurant area will not take up a space that could otherwise be used for vehicle sales or hire premises and bulky good premises.

- *To create a pedestrian environment that is safe, active and interesting by incorporating street level retailing and business uses.*

Comment: The proposal is entirely internal and at the first floor level. No external change to the existing building is proposed. Based on the above, it is concluded that the proposed development is consistent with the objectives of the B5 - Business Development zone.

3. The existence and applicability of savings provisions in the draft LEP.

Comment: In relation to the third principle, the DWLEP 2009 contains a savings provision under Clause 1.8A which states:

"If a development application has been made before the commencement of this Plan in relation to land to which this Plan applies and the application has not been finally determined before that commencement, the application must be determined as if this Plan had not commenced".

Reference is made to the Land and Environment Court case, *Blackmore Design Group Pty Ltd v North Sydney Council* [2001] NSWLEC 279, where the judgement summarises the weight to be given to a draft LEP, particularly in the circumstance when the document was a draft when the application was lodged and has since been gazetted with a transitional provision.



"The fact that LEP 2010 has been made ensures that the plan is certain and imminent and accordingly, that plan must be given significant weight in the determination of the application. However, due to the savings provision, the inquiry does not stop there. In Blackmore at [30], Lloyd J states:

Whether one applies the test of "significant weight", or "some weight", or "considerable weight" or "due force" or "determining weight" to the later instrument is not, however, the end of the matter. The savings clause still has some work to do. The proposed development is a permissible development by dint of the savings clause. In giving the 2001 LEP the weight of being imminent and certain, that does not mean that there is no further inquiry. It is necessary to look at the aims and objectives of the later instrument and then see whether the proposed development is consistent therewith. Various expressions have been used to define this concept, but the approach which has been favoured in the Court of Appeal is to ask whether the proposal is "antipathetic" thereto (Coffs Harbour Environment Centre Inc v Coffs Harbour City Council [1991] 74 LGRA 185 at 193)."

- Comment: The DWLEP 2009, at the time of preparation of this document, remains a draft plan and has not commenced. The judgement is relevant in relation to the role of the savings clause and the need to look at the aims and objectives of the DWLEP 2009. The proposal is consistent with the aims and objectives of the zone.

ENVIRONMENTAL PLANNING INSTRUMENTS (EPI's)

State Environmental Planning Policies (SEPPs)

State Environmental Planning Policy No 55 – Remediation of Land

Clause 7 (1) (a) of SEPP 55 requires the Consent Authority to consider whether land is contaminated. Council records do not indicate any evidence of contamination. 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 residential land use.

SEPP No. 64 – Advertising and Signage

No signage is proposed as part of this application.

State Environmental Planning Policy - Infrastructure

Clause 45 of SEPP Infrastructure requires the Consent Authority to consider any development application (or an application for modification of consent) for any development carried out as a result the application was referred to Energy Australia who provided the following comments:

"Based on the information provided in your correspondence the proposed development will comply with statutory clearances from Ausgrid's electrical mains and accordingly there is no objection to this development."

Regional Environment Plans (REPs)

No REPs are applicable to the application.



Local Environment Plans (LEPs)

Warringah Local Environment Plan 2000 (WLEP 2000)

Desired Future Character (DFC) – F2 Brookvale Service Centre Locality

The subject site is located in the F2 Brookvale Service Centre Locality under Warringah Local Environmental Plan 2000.

The Desired Future Character Statement for this locality is as follows:

“The Brookvale Service Centre locality will be characterised by light industries, warehouses and bulky goods retailing. The land at Lot 11 DP1009998, 7–9 Federal Parade Brookvale may be occupied by an office building.

The locality will be characterised by generous setbacks and wide frontages to Pittwater Road.

The Brookvale Park frontage to Pittwater Road is characterised by mature, predominantly Poplar trees which are to be retained.”

The proposed gym and children’s play centre are defined as “recreation facilities” under the WLEP 2000 dictionary. “Recreation facilities” are identified as Category 2 development in this locality.

The restaurant component of the development is classified as a Category 3 land use, due to the size and location of the use, rather than simply being an ancillary component and not separately defined under the WLEP 2000.

Clause 12(3)(b) of WLEP 2000 requires the consent authority to be satisfied that the proposed development is consistent with the Locality’s DFC statement for Category 2 or 3 developments.

Accordingly, an assessment of consistency of the proposed development against the locality’s DFC is provided hereunder:

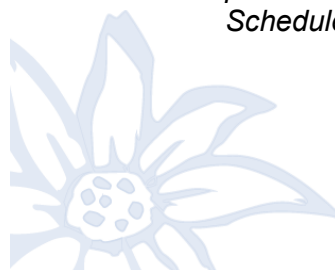
“The Brookvale Service Centre locality will be characterised by light industries, warehouses and bulky goods retailing.”

Applicants Comments:

The applicant has provided the following arguments in favour of the proposal in relation to the DFC:

Within Locality F2 (Brookvale Service Centre), ‘recreation facilities’ are identified as Category Two development (i.e. development that may be consistent with the desired character of the locality). The gym is an existing use of the site, and is therefore considered acceptable and consistent with the desired future character of the area. The children’s play area is also classified as a Category Two ‘recreation facility’, providing the opportunity for indoor recreation / leisure activities for children. Whilst the proposed level one uses are not part of the Club’s functioning, they provide an extension to the facilities provided on the site. The proposed gym and children’s play area contained within the existing building, which is compatible with the existing character of the area.

Council considers that the café/kitchen associated with the children’s play area is a ‘restaurant’. Restaurants are considered a Category 3 development (i.e. development that is generally considered to be inconsistent with the desired future character of the locality) within Locality F2. It is noted that the proposed café/kitchen is ancillary to the recreation facility, and is not an independent ‘restaurant’ use in its own right. Rather, the café facility is intended to provide simple food and beverages for children at the play centre and their parents/minders. Notwithstanding this, a specific assessment of the proposal against Schedule 15 of WLEP 2000 has been prepared.



Assessment Officer's Comments:

The arguments are concurred with. A restaurant is defined under the WLEP 2000 as *a building or place, the principal purpose of which is the provision of food to paying customers for consumption on the premises*. The applicants have indicated they intend to sell food from the kitchen, to paying customers, and in this regard it must be considered as a 'restaurant' for the purposes of assessment. The area has previously been used as a bistro for the Manly Leagues Club and as such the food service use in the building has been long established. The kitchen will only be accessible via the Reception Area on Level One, meaning it will only be available to users of the gym and play centre, rather than be able to be separately accessed and conducted. In practical terms it will operate as an ancillary use to the play centre and gym.

This requirement of the Locality Statement seeks to ensure that the area remain *characterised* by light industries, warehouses and bulky goods retailing, but does not limit the area to **only** these uses in an exclusive manner. Only that such uses should be the predominant or primary uses, hence the classification of these as Category 1 uses. In this regard, other uses must demonstrate consistency with the elements of the Desired Future Character. The proposed recreation facilities and ancillary restaurant may be considered compatible uses with the registered club on the ground level, and indeed with other nearby businesses, and will not detract from the ability of this site and existing development to maintain consistency with the desired future character of the area. The proposal is compatible with the registered club in the sense that it will largely operate at times when the club is not at peak demand. The gym may be expected to provide a valuable recreational resource for workers at nearby businesses, and the play centre will provide a valuable recreational resource for nearby residents. As noted above, the restaurant will operate as an ancillary use to serve patrons of the play centre and gym, and not as a separate restaurant use, despite technically being defined as such by the WLEP 2000.

"The locality will be characterised by generous setbacks and wide frontages to Pittwater Road."

Comment: The proposed development does not involve any alterations to the external appearance of the building.

As detailed above the proposed development is considered to be consistent with the Locality's DFC statement.

Built Form Controls (Development Standards)

The following table outlines compliance with the Built form Control of the above locality statement:

Built Form Compliance Table			
Built Form Standard	Required	Proposed	Compliance
Front building setback	The minimum front building setback is to be consistent with the setback of adjacent buildings.	No change is proposed to the external appearance of the building.	Yes
Building appearance	Building design is to: - articulate long facades by breaking the elevation into distinct segments, - detail new development by incorporating similar patterns and proportions where established by existing buildings, - ensure larger infill sites reflect the general height, form, alignment and facade character of the street,	No change is proposed to the external appearance of the building.	Yes

Built Form Compliance Table			
Built Form Standard	Required	Proposed	Compliance
	• create active street fronts, • continue footpath awnings where appropriate, and • address both street frontages on corner sites.		

The proposed development is considered to satisfy the Locality's Built Form Controls, accordingly, no further assessment will be provided in this regard.

General Principles of Development Control

The following General Principles of Development Control as contained in Part 4 of Warringah Local Environmental Plan 2000 are applicable to the proposed development:

General Principles	Applies	Comments	Complies
CL38 Glare & reflections	No		N/A
CL39 Local retail centres	No		N/A
CL40 Housing for Older People and People with Disabilities	No		N/A
CL41 Brothels	No		N/A
CL42 Construction Sites	Yes	Standard conditions of consent have been included in the draft Notice of Determination to ensure construction does not unreasonably impact on the surrounding amenity, pedestrian or road safety, or the natural environment.	Yes
CL43 Noise	Yes	The operation of the proposed gym, play centre and café/kitchen will not result in any unreasonable noise impacts. The operations will be contained internally. The proposed operating hours for the gym are as follows: • Monday to Wednesday 5.30am to 10pm • Thursday to Friday 5.30am to 9pm • Saturday to Sunday 7am to 7pm The proposed hours for the children's play centre are • Saturday to Thursday 9am to 5.30pm • Friday 9am to 9pm No dwellings are in close proximity to the existing building, and the passage of early morning gym users from the car park to the building is unlikely to cause any disturbance. Standard conditions of consent will ensure that mechanical plant and equipment does not generate noise levels that exceed the ambient background noise level by more than 5 dB (A) when measured in accordance with the Environment Protection Authority's Industrial Noise Policy at the receiving boundary of residential and other noise-sensitive land uses.	
CL44 Pollutants	Yes	No pollution is likely to be caused by the proposed uses.	Yes
CL45 Hazardous Uses	No		N/A
CL46 Radiation Emission Levels	No		N/A

General Principles	Applies	Comments	Complies
CL47 Flood Affected Land	No		N/A
CL48 Potentially Contaminated Land	Yes	All works are internal and will not disturb the ground on site. A search of Council records and a site visit did not reveal any evidence of contamination.	Yes
CL49 Remediation of Contaminated Land	No		N/A
CL49a Acid Sulfate Soils	No		N/A
CL50 Safety & Security	Yes	The proposed works and uses will not alter or detract from the safety and security in the area. The presence of more patrons between the car park and building may be expected to increase the feeling of safety and security.	Yes
CL51 Front Fences and Walls	No		N/A
CL52 Development Near Parks, Bushland Reserves & other public Open Spaces	No		N/A
CL53 Signs	No		N/A
CL54 Provision and Location of Utility Services	Yes	The existing building is provided with all required utilities.	Yes
CL55 Site Consolidation in 'Medium Density Areas'	No		N/A
CL56 Retaining Unique Environmental Features on Site	No		N/A
CL57 Development on Sloping Land	No		N/A
CL58 Protection of Existing Flora	No		N/A
CL59 Koala Habitat Protection	No		N/A
CL60 Watercourses & Aquatic Habitats	No		N/A
CL61 Views	No		N/A
CL62 Access to sunlight	No		N/A
CL63 Landscaped Open Space	No		N/A
CL63A Rear Building Setback	No		N/A
CL64 Private open space	No		N/A
CL65 Privacy	Yes	The proposal does not involve altering the existing windows, which do not currently cause any unreasonable privacy impacts in any case.	Yes
CL66 Building bulk	No		N/A

General Principles	Applies	Comments	Complies
CL67 Roofs	No		N/A
CL68 Conservation of Energy and Water	No		N/A
CL69 Accessibility – Public and Semi-Public Buildings	Yes	No objections have been raised by Council's Building Assessment and Compliance department. The proposed alterations are contained within the existing first floor which is accessed by a previously approved elevator and pedestrian access from the street. Standard conditions of consent have been included in the draft Notice of Determination to ensure that the development complies with the requirements of the Disability Discrimination Act 1992 of the Commonwealth and with Australian Standard AS 1428.2—1992, <i>Design for access and mobility—Enhanced and additional requirements—Buildings and facilities</i> .	Yes
CL70 Site facilities	Yes	The existing site facilities are adequate to service the proposed alterations and additions.	Yes
CL71 Parking facilities (visual impact)	No	The proposal will rely on the existing car park across Federal Parade to the North.	N/A
CL72 Traffic access & safety	No	The existing traffic access will remain unchanged.	N/A
CL73 On-site Loading and Unloading	Yes	The existing loading dock areas will be adequate to continue servicing the building. The gym, play centre and small kitchen/café are unlikely to require any regular major loading or unloading.	Yes
CL74 Provision of Carparking	Yes	Schedule 17 requires 4.5 spaces per 100sqm GFA for a gym. No requirement is given for a play area of the type proposed in this application. No additional parking is proposed, and the proposed new uses would rely on the existing parking structure to the north. Schedule 17 does not give a specific requirement for registered clubs, but requires that comparisons be drawn with similar developments. The applicants have provided a Traffic and Parking Assessment from a Transport Consultant which makes the following points: - The entire building was previously used by the Manly Leagues Club which has reduced in size to now only occupy the lower floors. The first floor is currently vacant. There were 490 spaces allocated for the use of the club. - The registered club's area has been reduced from 2929sqm to 1400sqm i.e. by more than half. - The new gym would have a new floor area of 1215sqm. - The play centre would have a floor area of 1019sqm. - The report estimates that the gym and play centre would create a demand for 105 parking spaces. - Assuming the club continues to use 245 spaces (i.e. 490 spaces divided by two due to the reduction in club floor space) there would be 245 spaces available for the new gym and play centre. There is therefore likely to remain a significant surplus of parking available. Further to this report, it is considered that the proposed gym and play centre will generally operate at peak capacity at times when the registered club is not operating at peak capacity, and vice versa. The uses are complementary in parking terms. Although the kitchen and seating area is technically defined as a restaurant, it is situated behind the reception area and will only be accessible to patrons of the gym and play centre. In this regard no further parking for a 'restaurant' component is required.	Yes

General Principles	Applies	Comments	Complies
CL75 Design of Carparking Areas	No	No change to the existing parking structure located across the road to the north.	N/A
CL76 Management of Stormwater	No		N/A
CL77 Landfill	No		N/A
CL78 Erosion & Sedimentation	No		N/A
CL79 Heritage Control	No		N/A
CL80 Notice to Metropolitan Aboriginal Land Council and the National Parks and Wildlife Service	No		N/A
CL81 Notice to Heritage Council	No		N/A
CL82 Development in the Vicinity of Heritage Items	No		N/A
CL83 Development of Known or Potential Archaeological Sites	No		N/A

SCHEDULES

Schedule 8 - Site analysis

Site Analysis	The applicant has provided a written site analysis within the statement of environmental effects, thereby fulfilling the requirements of this Schedule.
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Schedule 15 - Statement of Environmental Effects

Clause 15(1) of Warringah Local Environmental Plan 2000 requires that the consent authority must consider a Statement of Environmental Effects prepared in accordance with the criteria listed in Schedule 15. In addition, Clause 15(2) requires the consent authority to consider the findings of an independent public hearing prior to the determination of the application.

The applicant has submitted a Statement of Environmental Effects, prepared by JBA Planning Pty Ltd, which addresses Schedule 15 of WLEP 2000. The following is provided having regard to these provisions:

Consideration	Proposed
(1) Summary of the Statement of Environmental Effects (SEE)	With regard to Point 1 of Schedule 15 the applicant has provided the following: <i>"The proposal relates to a development application for the change of use and fit-out of the first floor of the existing building at 563 Pittwater Road, Brookvale. The proposal makes use of the currently vacant space, providing updated gym facilities and a new children play centre in the building.</i> <i>The fit-out works are internal, and will not result in any change to the building's external appearance. The SEE and supporting technical documents demonstrate that the proposed development is generally compliant with the relevant strategic plans, statutory policies and development controls and will not generate any unacceptable impacts on the surrounding area or local environment. The proposal meets the principles of the Warringah Local Environmental Plan 2000.</i>

Consideration	Proposed
	<i>The proposal is located in the same building as the Manly-Warringah Leagues Club, which has recently consolidated its functions into the building's ground floor. The proposed uses complement the existing use of the building.</i> Comment: The provision of this summary satisfies this consideration.
(2) Consistency of the proposal with the desired future character statement and general principles of development control established by the plan.	With regard to Point 2 of Schedule 15 the applicant has provided the following: <i>"The desired future character of the Brookvale Service Centre will continue to be achieved as a result of the proposed development. The proposal relates to the use and fit-out of a vacant space within an existing building. The proposed gym is simply replacing the existing, out-dated facility on the building's lower-ground floor. The new children's play centre provides a complementary facility, offering a new recreation facility in the locality.</i> <i>The existing building is of a size, design, style and built form that is representative of other commercial, light industrial, and warehouse buildings in the locality. The proposal will not affect the appearance or character of the building or locality.</i> <i>The proposal is consistent with the relevant general principles of development control. In summary:</i> ☐ ☐ <i>The development is contained within the existing building and will not result in overspill or glare.</i> ☐ ☐ <i>The bulk and scale of the existing building will not be affected by the proposal.</i> ☐ ☐ <i>Noise levels will remain unchanged as a result of the proposed uses. No uses are proposed that would increase the level of noise emanating from the existing building. An acceptable level of amenity in the area and to occupants of adjoining buildings will be maintained.</i> ☐ ☐ <i>A new, access complaint entry has recently been constructed as part of the Leagues Club works. Access arrangements for Level One will be assessed by a qualified access consultant prior to the issue of a Construction Certificate to ensure compliance with the relevant provision of the BCA and DDA.</i> ☐ ☐ <i>No changes are proposed to existing waste management or loading facilities.</i> ☐ ☐ <i>No changes to existing traffic, access and carparking arrangements are proposed. Existing off-street parking arrangements are not proposed to be altered as a result of the development. Ample parking is available within the open air and multi-storey car park adjoining the Leagues Club."</i> Comment: The proposal involves both category 2 and category 3 components. The category 3 component (restaurant) is incorporated into the category 2 areas (gym and play centre), and will only be accessible to the patrons of these uses. The development will not alter the external appearance of the building, and as discussed under the Desired Future Character section of this report the proposal is considered to be consistent with the Desired Future Character.
(3) Objectives of the proposed development.	With regard to Point 3 of Schedule 15 the applicant has provided the following: <i>"The proposed development has the following objectives:</i> ☐ ☐ <i>to utilise a vacant space within an existing building, and make use of existing services and infrastructure;</i> ☐ ☐ <i>to provide updated and improved gym facilities on the site, for use by the local community; and</i> ☐ ☐ <i>to provide a children's recreation use that will enhance the range of facilities on the site."</i> Comment: The applicant has fulfilled the requirements of this Section of the Schedule as the objectives of the proposal are consistent with Councils Policies.
(4) An analysis of feasible alternatives. (including (a) Consequences of not carrying out the development and (b) Justification for the development)	With regard to Point 4 of Schedule 15 the applicant has provided the following: <i>"The works are making use of a vacant space, and so support the principles of sustainable development. The standard of facilities currently provided to members and visitors of the gym is dated and in need of improvement and modernisation. The proposed gym will provide modern health facilities for use by the local community. Similarly, the children's play centre is a new use on the site, and will enhance the range of facilities provided on the site, and in the locality.</i> <i>Should the proposed works not proceed, the provision of health and children's recreation facilities in the locality would be impeded. If the works do not go ahead, the space would remain vacant and under utilised."</i> Comment: The applicant has adequately explored alternatives and has satisfied the requirements of this section.

Consideration	Proposed
(5) Development and context analysis.	With regard to Point 5 of Schedule 15 the applicant has provided the following: <i>“The proposed development consists of the following elements:</i> ☐ ☐ <i>the relocation of the existing gym from Lower Ground to Level One (which formerly housed an auditorium, bistro games lounge and other functions associated with the Leagues Club and is currently vacant);</i> ☐ ☐ <i>the provision of a children’s play centre on Level One; and</i> ☐ ☐ <i>the installation of a café/kitchen as part of the children’s play centre to provide food and beverages for parents and children, as well as catering for children’s parties.</i> <i>Accordingly, this application seeks approval for the following development:</i> ☐ ☐ <i>the change of use of a portion of Level One from a Registered Club to a Recreation Facility comprising a gym and children’s play centre;</i> ☐ ☐ <i>demolition works on Level One, including:</i> - the demolition of the former auditorium stage and stairs; - demolition of the former auditorium bar, kitchen area and bistro servery, including all walls and floor tiles; - the demolition of stairs located to the southwest and northwest of the existing auditorium; and - the demolition of internal partition walls. ☐ ☐ <i>internal construction and fit-out works to Level One, including:</i> - the installation of new walls, doorways and sliding panels; - the refurbishment of existing floors, walls and ceilings; - the provision of office facilities; - the provision of a kitchen; and - the reconfiguration of existing bathroom facilities. <i>The site is located at 563 Pittwater Road, Brookvale. The site has three road frontages, being Pittwater Road, Federal Parade, and Victor Road. Pittwater Road is a six (6) lane main arterial linking Brookvale and Manly to Palm Beach. The immediate surrounds are characterised predominately by light industry, warehousing, bulky goods retailing, and car yards. Residential areas are located towards the north and west of the site.</i> <i>The site is dominated by a mainly two storey building which occupies approximately 95% of the site. The existing building has a mixed commercial/ light industrial aesthetic, with the ground floor occupied by the Manly-Warringah Leagues Club.</i> <i>The proposed development relates to change of use and fit-out of Level One, which has been vacant since the Leagues Club consolidated its function onto the ground floor. No changes are proposed to bulk, scale or the external appearance of the building. Similarly, no changes are proposed to building signage or existing parking arrangements/numbers. Impacts on the environment are therefore considered to be minimal.</i> <i>There will be minimal adverse effects on the environment as a result of the proposed change of use and fit-out. Appropriate measures will be implemented to mitigate construction impacts.”</i> Comment: The applicant has considered the site context and the likely impacts of the proposed development, and in so doing has satisfied this requirement.
(6) Biophysical, economic and social considerations and the principles of ecologically sustainable development.	With regard to Point 6 of Schedule 15 the applicant has provided the following: “Biophysical <i>The proposed development demonstrates that:</i> ☐ ☐ <i>there will be no change to the existing on-site waste collection and storage methods being used;</i> ☐ ☐ <i>there will not be any adverse impact on flood levels as a result of the fit-out works and change of use;</i> ☐ ☐ <i>there will be no changes to existing landscaping on the site; and</i> ☐ ☐ <i>there will be no impact on heritage items.</i> Economic <i>The proposed development demonstrates that:</i> ☐ ☐ <i>the proposal will generate 20 additional jobs on the site;</i> ☐ ☐ <i>the proposal will generate a number of construction jobs;</i> ☐ ☐ <i>there will be no adverse economic impacts.</i>

Consideration	Proposed
	Social The proposed development demonstrates that: ☐ the site is well located in terms of access to transport (public and private); ☐ the proposal will not impact upon the operation of surrounding land uses; ☐ the gym and children's play centre will provide new health and recreation facilities for the community; ☐ the proposal relates to the modernising facilities and utilising a currently vacant space; and ☐ the proposal will not generate any adverse social impacts. Principles of ecologically sustainable development The proposed works support the principles of sustainable development, as they are contained within the existing building, and make use of a space that is currently vacant and falling into disrepair. Precautionary principle Given the nature of the proposal, involving in the fit-out of a vacant space within an existing building located within a built up urban area, there is a high degree of certainty and understanding as to what environmental impacts will occur. In this regard, as demonstrated in the original Statement of Environment Effects and this additional assessment, there is not likely to be any adverse impacts or degradation to the environment. Intergenerational equity The proposed development will not prevent the local environment from being maintained or enhanced for future generations. Conservation of biological diversity and ecological integrity The nature of the proposed development, involving the fit-out of part of an existing building, long established on the site and heavily modified from its natural state, will not affect the conservation of biological diversity or the achievement of ecological integrity. Improved valuation, pricing, and incentive mechanisms The value of the environmental resources affected by the proposed works is not considered to be of significance." Comment: The economic, social and biophysical considerations have been addressed by the proposal. All works are internal and the proposed uses are likely to provide health benefits to the local community.
(7) Measures to mitigate any adverse effects of the development on the environment	With regard to Point 7 of Schedule 15 the applicant has provided the following: <i>"The proposed works are contained within the existing building envelope, and are not expected to generate any adverse effects. Further, the works largely involve the replacement of existing, out-dated gym facilities from the lower ground floor of the building.</i> <i>Notwithstanding this, measures proposed to be implemented to mitigate against impacts of the proposed works include:</i> ☐ operating within the Leagues Club's existing hours of operation; and ☐ minimising any construction impacts by preparing a Construction Management Plan once a building contractor has been appointed." Comment: The measures implemented by the applicant as part of the proposal are considered to address these requirements of the Schedule.
(8) Other approvals required	With regard to Point 7 of Schedule 15 the applicant has provided the following: <i>"The proposed development is local development and subject to assessment and determination under Part 4 of the EP&A Act. There are no other apparent permits, approvals, licences etc required in relation to the proposed works."</i> Comment: Council concurs with this assessment.

It is considered that the submitted Statement of Environmental Effects prepared by JBA Planning dated September 2011 and in response to the provisions of Clause 15/Schedule 15 adequately addresses the compatibility of the of the development with the Locality and the DFC.

Schedule 17 - Carparking Provision

Carparking Provision	See discussion under Clause 74 in this report. The Traffic Consultant report provided with the application demonstrates that adequate parking currently exists in the parking structure located to the north of the site across Federal Parade to cater for the proposed gym and play centre.
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POLICY CONTROLS

Warringah Section 94A Development Contribution Plan

The proposal is subject to the application of Council's Section 94A Development Contributions Plan.

The following monetary contributions are applicable:

<i>Warringah Section 94A Development Contributions Plan</i>		
Contribution based on total development cost of		\$ 530,000.00
Contribution - all parts Warringah	Levy Rate	Contribution Payable
Total S94A Levy	0.95%	5,035
S94A Planning and Administration	0.05%	265
Total	1.0%	\$5,300

CONCLUSION

The site has been inspected and the application assessed having regard to the provisions of Section 79C of the Environmental Planning and Assessment Act, 1979, the provisions relevant Environmental Planning Instruments including Warringah Local Environment Plan 2000, Draft Warringah Local Environmental Plan 2009 and the relevant codes and policies of Council.

It is considered that the proposed development satisfies the appropriate controls and that all processes and assessments have been satisfactorily addressed. Due to inadequate referral response times from Fire and Rescue NSW, Council's Building Assessment and Compliance Department have recommended a deferred commencement condition. This condition is included in the draft Notice of Determination. The application has been referred to the Warringah Development Assessment Panel because it technically falls within the definition of a Category 3 development. However as discussed in this report, the 'restaurant' component of the proposal will be a small ancillary use to the play centre and gym. The overall proposal (gym, play centre and restaurant) is consistent with the Desired Future Character Statement, and for this reason is considered to be acceptable within the locality.

As a direct result of the application and the consideration of the matters detailed within this report it is considered that Council as the consent authority grant approval for the reasons detailed within the "Recommendation" section of this report.



RECOMMENDATION - APPROVAL

THAT the Warringah Development Assessment Panel recommend to the General Manager to approve Development Application for Deferred Commencement Consent to DA2011/1254 for construction and use of a recreation facility (gym and children's play centre) and cafe on land at 563 Pittwater Road, Brookvale subject to the conditions printed below:

GENERAL CONDITIONS

DEFERRED COMMENCEMENT CONDITIONS

This consent shall not operate until the following deferred commencement conditions have been satisfied.

1. Fire and Rescue NSW Approval

Evidence of Fire and Rescue NSW endorsement, or conditional endorsement of the Alternative Solution report prepared by Defire (NSW) Pty Ltd dated 26/08/2011; Report number SY100125, the BCA Assessment Report prepared by Blackett Maguire + Goldsmith dated 6 September 2011; Project number 110417, and Architectural plans prepared by David Liddy & Associates dated 8/11; Drawing number 12A is to be submitted to Council in order to activate the consent.

Reason: To ensure adequate provision is made for fire safety in the premises for building occupant safety.

Evidence required to satisfy these conditions must be submitted to Council within 5 years of the date of this consent, or the consent will lapse in accordance with Section 95 of the Environmental Planning and Assessment Regulation 2000.

Upon satisfaction of the deferred commencement condition/s, the following conditions apply:

CONDITIONS THAT IDENTIFY APPROVED PLANS

2. 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:

Architectural Plans - Endorsed with Council's stamp		
Drawing No.	Dated	Prepared By
Project No. 5403, Drawing No. 10	8/11	David Liddy & Associates
Project No. 5403, Drawing No. 11	8/11	David Liddy & Associates
Project No. 5403, Drawing No. 12A	11/11	David Liddy & Associates

No construction works (including excavation) shall be undertaken prior to the release of the Construction Certificate.



Reason: To ensure the work is carried out in accordance with the determination of Council and approved plans. (DACPLB01)

3. Compliance with External Department, Authority or Service Requirements

The development must be carried out in compliance with the following:

External Department, Authority or Service	E-Services Reference	Dated
Ausgrid	Response Ausgrid Referral	12 October, 2011

(NOTE: For a copy of the above referenced document/s, please see Council's 'E-Services' system at www.warringah.nsw.gov.au)

Reason: To ensure the work is carried out in accordance with the determination and the statutory requirements of External Department, Authority or Bodies. (DACPLB02)

4. No Approval for any Signage

No approval is granted under this Development Consent for signs (as defined under Warringah Local Environment Plan 2000 and State Environmental Planning Policy No. 64). A separate Development Application for any signs (other than exempt and signs permitted under Complying Development) must be submitted for the approval prior to the erection or display of any such signs.

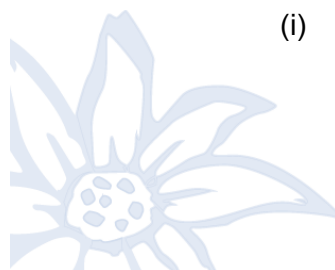
Reason: Control of signage. (DACPLB06)

5. 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. (DACPLB09)

6. 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) 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.
- (c) 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.



- (d) 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.
- (e) 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 building, demolition, excavation or material of any nature shall be placed on Council's footpaths, roadways, parks or grass verges without Council Approval.
- (i) All sound producing plant, equipment, machinery or fittings will not exceed more than 5dB(A) above the background level when measured from any property boundary and will comply with the Environment Protection Authority's NSW Industrial Noise Policy.)
- (j) No trees or native shrubs or understorey vegetation on public property (footpaths, roads, reserves, etc.) 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.

Reason: To ensure that works do not interfere with reasonable amenity expectations of residents and the community. (DACPLB10)

CONDITIONS TO BE SATISFIED PRIOR TO THE ISSUE OF THE CONSTRUCTION CERTIFICATE

7. Section 94A Contributions

The Section 94A Contributions are required to be paid for this development. This amount has been calculated using the Warringah Section 94A Development Contributions Plan. The amount will be adjusted at the time of payment according to the quarterly CPI (Sydney - All Groups Index).

The basis for the contributions is as follows:

Warringah Section 94A Development Contributions Plan		
Contribution based on total development cost of		\$ 530,000.00
Contribution - all parts Warringah	Levy Rate	Contribution Payable
Total S94A Levy	0.95%	5,035
S94A Planning and Administration	0.05%	265
Total	1.0%	\$5,300

Details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To retain a level of service for the existing population and to provide the same level of service for the population resulting from new development. (DACPLC01)

8. Fire and Rescue NSW Requirements

All building works are to be carried out in accordance with the Fire and Rescue NSW endorsed (or as amended by Fire and Rescue NSW) Alternative Solution report prepared by Defire (NSW) Pty Ltd dated 26/08/2011; Report number SY100125, the BCA Assessment Report prepared by Blackett Maguire + Goldsmith dated 6 September 2011; Project number 110417, and Architectural plans prepared by David Liddy & Associates dated 8/11; Drawing number 12A.

Reason: To ensure adequate provision is made for fire safety in the premises for building occupant safety.

9. 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. (DACPLC02)

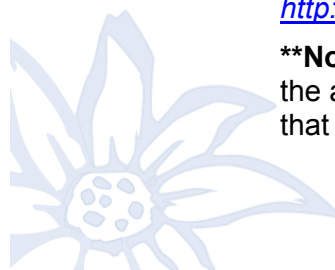
Advice to Applicants: At the time of determination in the opinion of Council, the following (but not limited to) Australian Standards are considered to be appropriate:

- (a) AS2601.2001 - Demolition of Structures**
- (b) AS4361.2 - Guide to lead paint management - Residential and commercial buildings**
- (c) AS4282:1997 Control of the Obtrusive Effects of Outdoor Lighting**
- (d) AS 4373 - 2007 'Pruning of amenity trees' (Note: if approval is granted) **
- (e) AS 4970 - 2009 'Protection of trees on development sites'**
- (f) AS/NZS 2890.1:2004 Parking facilities - Off-street car parking**
- (g) AS 2890.2 - 2002 Parking facilities - Off-street commercial vehicle facilities**
- (h) AS 2890.3 - 1993 Parking facilities - Bicycle parking facilities**
- (i) AS 2890.5 - 1993 Parking facilities - On-street parking**
- (j) AS/NZS 2890.6 - 2009 Parking facilities - Off-street parking for people with disabilities**
- (k) AS 1742 Set - 2010 Manual of uniform traffic control devices Set**
- (l) AS 1428.1 - 2009* Design for access and mobility - General requirements for access - New building work**
- (m) AS 1428.2 - 1992*, Design for access and mobility - Enhanced and additional requirements - Buildings and facilities**

***Note:** The Australian Human Rights Commission provides useful information and a guide relating to building accessibility entitled "the good the bad and the ugly: Design and construction for access". This information is available on the Australian Human Rights Commission website

http://www.humanrights.gov.au/disability_rights/buildings/good.htm

****Note:** the listed Australian Standards is not exhaustive and it is the responsibility of the applicant and the Certifying Authority to ensure compliance with this condition and that the relevant Australian Standards are adhered to.



10. Bonds

Security Bond

A bond (determined from cost of works) of \$2000 and an inspection fee in accordance with Council's Fees and Charges paid as security 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, details demonstrating payment are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure adequate protection of Council infrastructure. (DACENC01)

11. Food Premises

The premises shall comply with the requirements of Australian Standards 4674 (Design, Construction and Fit Out of Food Premises).

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure compliance with the applicable food standards. (DACHPC06)

12. Mechanical ventilation

Mechanical ventilation must comply with AS 1668 Parts 1 and 2 and the exhaust hood and air conditioning system has been installed in accordance with AS 1668 and AS1055.

Details demonstrating compliance are to be submitted to the Certifying Authority prior to the issue of the Construction Certificate.

Reason: To ensure compliance with applicable standards. (DACHPC07)

CONDITIONS WHICH MUST BE COMPLIED WITH PRIOR TO ISSUE OF OCCUPATION CERTIFICATE

13. 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. (DACPLF07)

14. Mechanical ventilation

Prior to issue of the Occupation Certificate provide certification from a suitably qualified mechanical engineer that the mechanical ventilation complies with AS 1668.

Reason: To ensure compliance with applicable standards.

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

15. Hours of Operation

The hours of operation of the recreation facility (gym) are to be restricted to:

- Monday to Wednesday 5.30am to 10pm
- Thursday to Friday 5.30am to 9pm
- Saturday to Sunday 7am to 7pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

The hours of operation of the recreation facility (children's play centre) are to be restricted to:

- Saturday to Thursday 9am to 5.30pm
- Friday 9am to 9pm

Upon expiration of the permitted hours, all service (and entertainment) shall immediately cease, no patrons shall be permitted entry and all customers on the premises shall be required to leave within the following 30 minutes.

Reason: Information to ensure that amenity of the surrounding locality is maintained. (DACPLG08)

16. Use of Restaurant

The restaurant is only to be used in conjunction with the children's play centre. Should the play centre cease operation, so to must the restaurant.

Reason: To ensure consistency with the provisions of the Warringah Local Environment Plan 2000.



Report to Warringah Development Assessment Panel on 14 December 2011

Application No: PLM2011/0077

Meeting Date: 28 July 2011

Property Address: 563 Pittwater Road Brookvale
Manly Warringah Leagues Club

Proposal: Alterations and additions to a registered club, and change of use of premises for a children's play centre, gym and café/restaurant.

Attendees for Council: Alex Keller – Senior DAO
David Auster - DAO

Attendees for applicant: Matthew Dominello - Applicant
David Liddy - Architect

Plans 'Demolition', dated 2/11 drawn by David Liddy & Associates
'First Floor Plan', dated 7/11 drawn by David Liddy & Associates

General Comments:

All applications are assessed on individual merit, however a failure to comply with Council or a State Planning controls will generally indicate an over development of the site and may result in adverse impacts upon adjoining and nearby land and the streetscape.

You are advised to carefully read these notes. If there is an area of concern or non-compliance, you are strongly advised to review and reconsider the appropriateness of the design of your development for your site and the adverse impacts that may arise as a result of your development prior to the lodgement of any development application.

Council will seek to ensure that the development of land meets all provisions of all legislation and the relevant Environmental Planning Instrument/s, in addition to providing appropriate levels of amenity to surrounding and nearby lands.

Failure to achieve this may ultimately lead to the refusal of any application lodged without notice.



Report to Warringah Development Assessment Panel on 14 December 2011

Consideration of proposal against Warringah Local Environment Plan 2000

‘The fundamentals’	
Definition of proposed development: (ref. WLEP 2000 Dictionary)	Recreation facility (including gym and child play centre) and Restaurant.
Locality:	F2 Brookvale Service Centre
Category of Development:	The recreation facility is Category 2 and the restaurant component is Category 3.

Desired Future Character
The Desired Future Character Statement for this locality is as follows: <i>“The Brookvale Service Centre locality will be characterised by light industries, warehouses and bulky goods retailing. The land at Lot 11 DP1009998, 7–9 Federal Parade Brookvale may be occupied by an office building.</i> <i>The locality will be characterised by generous setbacks and wide frontages to Pittwater Road.</i> <i>The Brookvale Park frontage to Pittwater Road is characterised by mature, predominantly Poplar trees which are to be retained”</i>
Comments on the DFC: <i>“The Brookvale Service Centre locality will be characterised by light industries, warehouses and bulky goods retailing. The land at Lot 11 DP1009998, 7–9 Federal Parade Brookvale may be occupied by an office building.</i> The proposal is not for light industry, warehouse or bulky goods retailing. The application will therefore need to demonstrate why a recreation facility, and in particular the restaurant component of the development is acceptable in this case. The application should address the history of the use of the building as a food service area, and the compatibility of the proposed use with existing surrounding uses. <i>The locality will be characterised by generous setbacks and wide frontages to Pittwater Road.</i> <i>The Brookvale Park frontage to Pittwater Road is characterised by mature, predominantly Poplar trees which are to be retained</i> The works are all internal meaning setbacks and frontages to Pittwater Road will remain unchanged.

Built Form Control Compliance Table			
Built Form Control	Requirement	Compliance	Comment
Building Height: Natural ground to upper ceiling (metres)	11 Metres	N/A	No change
Front Setback	Consistent with adjoining buildings	N/A	No change
Building Appearance	Articulation and consistency with adjoining buildings	N/A	No change

General Principles of Development Control	
Division 1 General 38 Glare and reflection 39 Local retail centres 40 Housing for older people or people with disabilities 41 Brothels 42 Construction sites	GP 42 Construction sites – Construction management information will need to be provided with the statement of environmental effects (SEE). Indicate loading/unloading areas, traffic management, areas for footpath hoardings and the construction access intended with estimated construction phases. Construction planning must rely on adequate time to avoid the need for ‘special permits’ for out-of-hours work due to inadequate project management.

Report to Warringah Development Assessment Panel on 14 December 2011

General Principles of Development Control	
Division 2 Health and safety 43 Noise 44 Pollutants 45 Hazardous uses 46 Radiation emission levels 47 Flood affected land 48 Potentially contaminated land 49 Remediation of contaminated land 49A Acid sulfate soils	GP 43 Noise - The DA will require consideration in the design for noise in relation to acoustic amenity as per the BCA. The use of double glazing as protection from road noise should be considered for the front elevation facing Pittwater Road. GP 48 Contamination – Investigation of the site is required as part of the assessment to identify any contamination risks. Council has no detailed information regarding possible sources of contamination therefore the applicant will be required to conduct a site investigation to address this issue. This should include any potential issues of asbestos within the existing building.
Division 3 Public domain 50 Safety and security 51 Front fences and walls 52 Development near parks, bushland reserves and other public open spaces 53 Signs	GP 50 Safety – The SEE should address safety for clientele to visit the site in that the main parking area is remote from the building. The SEE should address evening access and safety of the carparking area. GP 53 Signs – No new signage is proposed with the current proposal to be submitted however the applicant will be considering new or replacement signage under a separate DA. Any replacement signage must be for an APPROVED sign structure. Consent may be considered under a separate DA to rationalise the signage for the building.
Division 4 Site planning and building design 54 Provision and location of utility services 55 Site consolidation in “medium density areas” 56 Retaining distinctive environmental features on sites 57 Development on sloping land 58 Protection of existing flora 59 Koala habitat protection 60 Watercourses and aquatic habitat 61 Views 62 Access to sunlight 63 Landscaped open space 63A Rear building setback 64 Private open space 65 Privacy 66 Building bulk 67 Roofs 68 Conservation of energy and water 69 Accessibility—premises available to the public 70 Site facilities	GP 68 Conservation of energy and water – Development is to make the most efficient use of energy and water. Details are to be provided regarding energy and water conservation for the fit out and fixtures. GP 69 Accessibility – public and semi-public buildings – The siting, design and construction of premises available to the public are to ensure an accessible continuous path of travel, so that all people can enter and use the premises. Such access is to comply with the requirements of the <i>Disability Discrimination Act 1992</i> of the Commonwealth and with Australian Standard AS1428.2 – 1992, <i>Design for access and mobility – Enhanced and additional requirements – Buildings and Facilities</i>. Note: There have been recent changes to the Standards for disabled persons parking requirements that may be applicable to the proposal.
Division 5 Traffic, access and carparking 71 Parking facilities (visual impact) 72 Traffic access and safety 73 On-site loading and unloading 74 Provision of carparking 75 Design of carparking areas	GP71 to GP 75 Traffic Access and Carparking - The application must include a Traffic & Parking Report prepared by a suitably qualified traffic engineer. This report should include a comparison with other similar developments and discuss the compatibility with the existing use of the building to demonstrate suitability and availability of the carparking to service the proposal. Details should include a 7 day break down of parking demand and demonstrate the adequacy of parking to service the entire building given the various concurrent operations within the premises. Hours of operation and number of staff should also be included to address staff parking. Parking and traffic issues should also be summarised in the Statement of Environmental Effects.
Division 6 Soil and water management 76 Management of stormwater 77 Landfill 78 Erosion and sedimentation	GP 78 Erosion / Sediment control – an erosion and sediment plan is required for the DA. Considerations detailed in the general principle are to be incorporated into the soil and erosion control plans.

Report to Warringah Development Assessment Panel on 14 December 2011

General Principles of Development Control

Division 7 Heritage

79 Heritage control
80 Notice to Metropolitan Aboriginal Land Council and Department of Environment and Conservation
81 Notice to Heritage Council
82 Development in the vicinity of heritage items
83 Development of known or potential archaeological sites

GP 79 – 83 Heritage - No known Aboriginal heritage items, potential archaeological sites for the subject land and adjacent land.

Other Relevant WLEP 2000 Clauses

The proposal will have to be considered by an independent public hearing (Warringah Development Assessment Panel) due to the Category 3 component.

Clause 10 – What development is prohibited?
Clause 12 – What matters are considered before consent is granted?
Clause 15 – Does Category Three development involve extra procedures?
Clause 14 – How will development of land be controlled?
Clause 18 – How will the built form of development be controlled?
Clause 20 – Can development be approved if it does not comply with a development standard?
Clause 22 – When is a site analysis required?
Clause 23 – What development is advertised development?
Clause 32 – What effect to covenants and similar instruments have on development permitted by the plan?

Schedule 4 – Prohibited Signs
Schedule 8 – Site Analysis
Schedule 15 – Statement of environmental effects.
Schedule 17 – Carparking Provision.

Other Relevant Environmental Planning Instruments / Council Policies

You are advised of the following (but not limited to all) Council's policies available at www.warringah.nsw.gov.au:

- [Applications for Development - Policy for the handling of unclear, non conforming, insufficient and Amended applications: PDS-POL 140](#)
- [Stormwater drainage for low level properties PDS-POL 135](#)
- [Building over or adjacent to constructed Council drainage systems and easements: PAS-PL 130](#)
- [Common vehicular access to multiple properties: LAP-PL 310](#)
- [Development Applications relating to trading hours under the Liquor Act 1982: LAP-PL 610](#)
- [Onsite stormwater detention rainwater reuse policy for single residential dwellings: PAS-PL 100](#)
- [Vehicle access to all roadside development: LAP-PL 315](#)

Draft Environmental Planning Instruments

Draft Warringah LEP 2009 – The site is zoned B5 Business Development under the Draft Standard Instrument WLEP 2009. The proposed uses are defined in the Draft WLEP as a *Recreation facility (indoor)* and a *restaurant*. The proposal will therefore be permitted with consent as “any other development not specified in item 2 or 4” (land use table Zone B5 Business Development).

The Objectives of the Zone to be addressed are:

- *To enable a mix of business and warehouse uses, and specialised retail uses that require a large floor area, in locations that are close to, and that support the viability of, centres.*
- *To provide for the location of vehicle sales or hire premises and bulky goods premises.*
- *To create a pedestrian environment that is safe, active and interesting by incorporating street level retailing and business uses.*

Report to Warringah Development Assessment Panel on 14 December 2011

Required Documentation

- All information required to be submitted under Schedule 1 of the Environmental Planning and Assessment Regulation 2000.
- All information as required on the Development Application form checklist
- Site Analysis (prepared in accordance with Schedule 8 of WLEP 2000)
- Site Survey (prepared by a registered Surveyor)
- Statement of Environmental Effects addressing:
 - Section 79C of EPA Act,
 - Schedule 15 of the WLEP 2000
 - all relevant sections of WLEP 2000, including demonstrating consistency with the locality's Desired Future Character Statement, Built Form Controls and General Principles of Development Control;
 - and other relevant Environmental Planning Instruments
- Architectural Plans, clearly showing demolition work and configuration of new work (delineated by colour)
- Access Report
- Building Code of Australia report
- Fire Safety Report
- Traffic and Parking Report
- Construction/Site Management Plan
- Waste Management Plan

Concluding Comments

In conclusion, the application would be considered a category 3 development under the WLEP 2000 due to the café restaurant component. This will require the Statement of Environmental Effects to specifically address Schedule 15, and will mean the application can only be determined by the Warringah Development Application Panel (WDAP). This panel usually meets once per month, so the likely timeframe for determination may be greater than what could generally be expected with a category 1 or 2 development.

The application will need to demonstrate that adequate parking will be provided to cater to the proposed use.

The applicant also questioned whether demolition works could start before the application had been determined, i.e. as non-structural exempt development. Demolition may be undertaken without consent where the works would not require consent if they were to be erected.

In summary, the proposal should proceed to DA lodgement, subject to adhering to the above advice.

Other Matters

• Requirement to Submit Correct, Clear and Accurate Information at Lodgement

You are advised, that if an application is Unclear, NonConforming, provides Insufficient information or if Council requests additional information in accordance with Clause 54 of the EPA Regulations 2000 and it is not provided within the specified time frame – your application may be rejected or refused without notice.

The time to discuss and amend your design is prior to lodgement of your Development Application, as there will be no opportunity to do so during the assessment process

• Privacy and Personal Information

You are advised that Council is legally obliged to make Development Applications and supporting documents available for public inspection – see section 12 of the Local Government Act 1993. We do this at the Customer Service Centre and by placing copies of the applications and supporting documents on the Council website.

Should this proposal result in a development application being lodged these notes will form part of the development application documentation that will appear on Council's website – DA's online. www.warringah.nsw.gov.au

• Monitoring DA progress after lodgement

Once lodged you can monitor the progress of your application through Council's website – DA's online. www.warringah.nsw.gov.au

Report to Warringah Development Assessment Panel on 14 December 2011

