

PENRITH CITY COUNCIL

NOTICE OF DETERMINATION

DESCRIPTION OF DEVELOPMENT

| | |
|--------------------------------|--|
| Application number: | DA17/0131 |
| Description of development: | Fit-Out & Use as Gymnasium for Fitness Classes |
| Classification of development: | Class 6 |

DETAILS OF THE LAND TO BE DEVELOPED

| | |
|--------------------|-------------------------------------|
| Legal description: | Lot 42 DP 242954 |
| Property address: | 129 Coreen Avenue, PENRITH NSW 2750 |

DETAILS OF THE APPLICANT

| | |
|-----------------|---|
| Name & Address: | Plan It Out Pty Ltd 20/458-470 High Street PENRITH NSW 2750 |
|-----------------|---|

DECISION OF CONSENT AUTHORITY

In accordance with Section 81(1) (a) of the Environmental Planning and Assessment Act 1979, consent is granted subject to the conditions listed in attachment 1.

Please note that this consent will lapse on the expiry date unless the development has commenced in that time.

| | |
|----------------------------------|------------|
| Date from which consent operates | 4 May 2017 |
| Date the consent expires | 4 May 2019 |
| Date of this decision | 3 May 2017 |

POINT OF CONTACT

If you have any questions regarding this determination you should contact:

| | |
|---------------------------|----------------|
| Assessing Officer: | Mahbub Alam |
| Contact telephone number: | +612 4732 7693 |

NOTES

Reasons

The conditions in the attached schedule have been imposed in accordance with Section 80A of the Environmental Planning and Assessment Act 1979 as amended.

Conditions

Your attention is drawn to the attached conditions of consent in attachment 1.

Certification and advisory notes

You should also check if this type of development requires a construction certificate in addition to this development consent

It is recommended that you read any Advisory Note enclosed with this notice of determination.

Review of determination

The applicant may request Council to review its determination pursuant to Section 82A of the Environmental Planning and Assessment Act 1979 within 6 months of receiving this Notice of Determination.

You cannot make this request if the development is Designated Development, Integrated Development or State Significant development or if the application was decided by Sydney West Planning Panel.

Appeals in the Land and Environment Court

The applicant can appeal against this decision in the Land and Environment Court within six (6) months of receiving this Notice of Determination.

You cannot appeal if a Commission of Inquiry was held for the subject development application, or if the development is a State Significant Development.

An appeal to the Land and Environment Court is made by lodging an application to the Court in accordance with the Rules of the Court.

Designated development

If the application was for designated development and a written objection was made in respect to the application, the objector can appeal against this decision to the Land and Environment Court within 28 days after the date of this notice. The objector cannot appeal if a Commission of Inquiry was held.

If the applicant appeals against this decision, objector(s) will be given a notice of the appeal and the objector(s) can apply to the Land and Environment Court within 28 days after the date of this appeal notice to attend the appeal and make submissions at that appeal.

Sydney West Planning Panels

If the application was decided by the Sydney West Planning Panel, please refer to Section 18 of the Greater Sydney Commission Act 2015 and Section 23H of the Environmental Planning and Assessment Act, 1979 (as amended) for any further regulations.

ATTACHMENT 1: CONDITIONS OF CONSENT

General

1 The development must be implemented substantially in accordance with the following plans

| Drawing Title | Drawing No. | Prepared By | Dated |
|--|--------------------|---------------|------------|
| Approval Drawing (Ground Floor and First Floor Plan, site location plan and signage details) | 0416-010 (Rev – C) | Plan It Out | 27-02-2017 |
| Waste Management Plan | - | Alisha Dippel | 19/04/2017 |

and any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

2 **The development shall not be used or occupied until an Occupation Certificate has been issued.**

3 The operating hours shall be from 5:00am to 8:30am and 5:00pm to 9:30pm Mondays to Fridays, from 5:00am to 10:30am Saturdays, from 7:00am to 10am Sundays and closed Public Holidays.

4 No retail sale of goods shall be conducted from the subject premises.

5 All materials and goods associated with the use shall be contained within the building at all times.

6 The finishes of all structures and buildings are to be maintained at all times and any graffiti or vandalism immediately removed/repaired.

7 A **Construction Certificate** shall be obtained prior to commencement of any building works.

8 One accessible parking space is to be provided on site with dimensions 2.4m wide with an adjoining 2.4m wide shared zone and bollard.

9 Prior to issue of an **Occupation Certificate** the existing car park must be line marked in accordance with AS2890.1 to clearly indicate the location of each car parking space including one (1) accessible car parking space.

10 Clients visiting the site will be arranged on an appointment only basis. Class sizes shall be limited to a maximum of twenty (20) participants and a maximum of one (1) instructor except for the following operating hours which will be limited to a maximum of ten (10) participants and a maximum of one (1) instructor:

- From 7:00am – 8:30am and 5:00pm to 6:00pm Mondays to Fridays and
- From 7:00am to 10:30am Saturdays.

There will not be more than one (1) group fitness class operating at any one time.

11 The occupier of the premises must ensure any toilets or change rooms, are kept in a clean condition.

Demolition

- 12 Dust suppression techniques are to be employed during works to reduce any potential nuisances to surrounding properties.
- 13 All works that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties, are restricted to the following hours in accordance with the NSW Department of Environment and Climate Change's "Interim Construction Noise Guideline" 2009:
- Mondays to Fridays, 7am to 6pm
 - Saturdays, 7am to 1pm (if inaudible on neighbouring residential premises), otherwise 8am to 1pm
 - No work is permitted on Sundays and Public Holidays.
- Other works that are carried out inside a building that do not involve the use of equipment that emits noise are not restricted to the construction hours stated above. The provisions of the Protection of the Environment Operations Act 1997 in regulating offensive noise also apply.

Environmental Matters

- 14 A Noise Management Plan (NMP) is to be prepared and submitted to Penrith City Council for consideration and approval **prior to the issue of an Occupation Certificate**. The NMP shall be prepared by suitably qualified persons, and may need to be amended to include any comments provided by Council. The NMP is to:
- address all noise related aspects of the development's operational phases
 - recommend any systems/controls to be implemented to minimise the potential for any adverse noise, reverberation and vibration impacts to nearby receivers, with consideration given to:
 - Floor and wall treatments, and other relevant building construction elements
 - Use of music, microphones, AV equipment and speakers
 - address the relevant conditions of this consent; and
 - incorporate a program for ongoing monitoring and review to ensure that the NMP remains contemporary with relevant environmental standards.

The approved Noise Management Plan is to be implemented and complied with at all times.

- 15 In the event of on-going complaints relating to the gymnasium facility being received by Council, the owner and/or occupier of the gymnasium may be required by Council to obtain the services of a suitably qualified acoustic consultant to undertake a noise impact assessment on the studio to address the Industrial Noise Policy and the concerns of the community. The noise impact assessment is to be prepared and provided to Council within 45 days of being requested. The assessment report is to be approved by Council, with any recommendations being implemented in accordance with the approved assessment report.
- 16 All waste materials stored on-site are to be contained within a designated area such as a waste bay or bin to ensure that no waste materials are allowed to enter the stormwater system or neighbouring properties. The designated waste storage areas shall provide at least two waste bays / bins so as to allow for the separation of wastes, and are to be fully enclosed when the site is unattended.
- 17 All waste materials generated as a result of the development are to be re-used, recycled or disposed of in accordance with the approved waste management plan.

Waste materials not specified in the approved waste management plan are to be disposed of at a lawful waste management facility. Where the disposal location or waste materials have not been identified in the waste management plan, details shall be provided to the Certifying Authority as part of the waste management documentation accompanying the Construction Certificate application.

All receipts and supporting documentation must be retained in order to verify lawful disposal of materials and are to be made available to Penrith City Council on request.

- 18 Amplified music and public address systems associated with the development are not to be audible external to the facility. No amplified music or public address systems are to be used externally, including in the carpark.

The provisions of the Protection of the Environment Operations Act 1997 apply to the development, in terms of regulating offensive noise.

BCA Issues

- 19 The owner of a building, to which an essential fire safety measure is applicable, shall provide Penrith City Council with an annual fire safety statement for the building. The annual fire safety statement for a building must:
- (a) deal with each essential fire safety measure in the building premises, and
 - (b) be given:
 - within 12 months after the last such statement was given, or
 - if no such statement has previously been given, within 12 months after a final fire safety certificate was first issued for the building.
 -
- As soon as practicable after the annual fire safety statement is issued, the owner of the building to which the statement relates:
- must also provide a copy of the statement (together with a copy of the current fire safety schedule) to the Commissioner of New South Wales Fire Brigades, and
 - prominently display a copy of the statement (together with a copy of the current fire safety schedule) in the building.
- 20 All aspects of the building design shall comply with the applicable performance requirements of the Building Code of Australia so as to achieve and maintain acceptable standards of structural sufficiency, safety (including fire safety), health and amenity for the on-going benefit of the community. Compliance with the performance requirements can only be achieved by:
- (a) complying with the deemed to satisfy provisions, or
 - (b) formulating an alternative solution which:
 - complies with the performance requirements, or
 - is shown to be at least equivalent to the deemed to satisfy provision, or
 - (c) a combination of (a) and (b).

It is the owner's responsibility to place on display, in a prominent position within the building at all times, a copy of the latest fire safety schedule and fire safety certificate/ statement for the building.

Health Matters and OSSM installations

- 21 No open food is to be sold on site and no food preparation is to occur on site without the prior approval of Penrith City Council.
- 22 If pre-packaged refrigerated drinks are to be sold on site, the refrigerated appliance must be capable of maintaining a temperature of less than 5°C and be provided with a digital thermometer accurate to 1°C that can be easily observed from outside the appliance.
- 23 The operating noise level of plant and equipment shall not exceed 5dB(A) above the background noise level when measured at the boundaries of the premises. The provisions of the *Protection of the Environment Operations Act 1997* apply to the development, in terms of regulating noise.

Construction

- 24 Stamped plans, specifications, a copy of the development consent, the Construction Certificate and any other Certificates to be relied upon shall be available on site at all times during construction.

The following details are to be displayed in a maximum of 2 signs to be erected on the site:

- the name of the Principal Certifying Authority, their address and telephone number,
- the name of the person in charge of the work site and telephone number at which that person may be contacted during work hours,
- that unauthorised entry to the work site is prohibited,
- the designated waste storage area must be covered when the site is unattended, and
- all sediment and erosion control measures shall be fully maintained until completion of the construction phase.

Signage but no more than 2 signs stating the above details are to be erected:

- at the commencement of, and for the full length of the, construction works onsite, and
- in a prominent position on the work site and in a manner that can be easily read by pedestrian traffic.

All construction signage is to be removed when the Occupation Certificate has been issued for the development.

25 Prior to the commencement of construction works:

(a) Toilet facilities at or in the vicinity of the work site shall be provided at the rate of one toilet for every 20 persons or part of 20 persons employed at the site. Each toilet provided must be:

- a standard flushing toilet connected to a public sewer, or
- if that is not practicable, an accredited sewage management facility approved by the council, or
- alternatively, any other sewage management facility approved by council.

(b) All excavations and backfilling associated with the erection or demolition of a building must be executed safely and in accordance with the appropriate professional standards. All excavations associated with the erection or demolition of a building must be properly guarded and protected to prevent them from being dangerous to life or property.

(c) If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation to be made:

- must preserve and protect the building from damage, and
- if necessary, must underpin and support the building in an approved manner, and
- 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. 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 condition, whether carried out on the allotment of land being excavated or on the adjoining allotment of land, (includes a public road and any other public place).

(d) If the work involved in the erection or demolition of a building is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient, or involves the enclosure of a public place, a hoarding or fence must be erected between the work site and the public place:

- if necessary, an awning is to be erected, sufficient to prevent any substance from, or in connection with, the work falling into the public place,
- the work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place, and
- any such hoarding, fence or awning is to be removed when the work has been completed.

26 Construction works or subdivision works that are carried out in accordance with an approved consent that involve the use of heavy vehicles, heavy machinery and other equipment likely to cause offence to adjoining properties shall be restricted to the following hours in accordance with the NSW Environment Protection Authority Noise Control Guidelines:

- Mondays to Fridays, 7am to 6pm
- Saturdays, 7am to 1pm (if inaudible on neighbouring residential premises), otherwise 8am to 1pm
- No work is permitted on Sundays and Public Holidays.

Other construction works carried out inside a building/tenancy and do not involve the use of equipment that emits noise are not restricted to the construction hours stated above.

The provisions of the Protection of the Environment Operations Act, 1997 in regulating offensive noise also apply to all construction works.

Certification

- 27 Prior to the commencement of any earthworks or construction works on site, the proponent is to:
- (a) employ a Principal Certifying Authority to oversee that the said works carried out on the site are in accordance with the development consent and related Construction Certificate issued for the approved development, and with the relevant provisions of the Environmental Planning and Assessment Act and accompanying Regulation, and
 - (b) submit a Notice of Commencement to Penrith City Council.

The Principal Certifying Authority shall submit to Council an "Appointment of Principal Certifying Authority" in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

Information to accompany the Notice of Commencement

Two (2) days before any earthworks or construction/demolition works are to commence on site (including the clearing site vegetation), the proponent shall submit a "Notice of Commencement" to Council in accordance with Section 81A of the Environmental Planning and Assessment Act 1979.

SIGNATURE

| | |
|------------|-------------|
| Name: | Mahbub Alam |
| Signature: | |

For the Development Services Manager