

PENRITH CITY COUNCIL

NOTICE OF DETERMINATION

DESCRIPTION OF DEVELOPMENT

Application number:	DA19/0522
Description of development:	Change of Use to an Indoor Recreation Facility in Tenancy T10 & T11
Classification of development:	Class 6

DETAILS OF THE LAND TO BE DEVELOPED

Legal description:	Lot 3 DP 30354
Property address:	78 - 88 Tench Avenue, JAMISONTOWN NSW 2750

DETAILS OF THE APPLICANT

Name & Address:	Atmosphere Health & Fitness C/- Level 3, 2 Glen Street MILSONS POINT NSW 2061
-----------------	---

DECISION OF CONSENT AUTHORITY

In accordance with Section 4.18(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	31 October 2019
Date the consent expires	31 October 2024
Date of this decision	31 October 2019

POINT OF CONTACT

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

Assessing Officer:	Paul Anzellotti
Contact telephone number:	+612 4732 8606

NOTES

Reasons

The conditions in the attached schedule have been imposed in accordance with Section 4.17 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 Division 8.2 of the Environmental Planning and Assessment Act 1979 within six months of receiving this Notice of Determination.

These provisions do not apply to designated development, complying development or crown development pursuant to Section 8.2(2) of the Environmental Planning and Assessment Act 1979.

Appeals in the Land and Environment Court

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

There is no right of appeal to a decision of the Independent Planning Commission or matters relating to a complying development certificate pursuant to clause 8.6(3) of the Environmental Planning and Assessment Act 1979.

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.

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 Western City Planning Panels

If the application was decided by the Sydney Western City Planning Panel, please refer to Section 2.16 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 and documents stamped approved by Council, the application form and any supporting information received with the application, except as may be amended in red on the attached plans and by the following conditions.

Doc No.	Revision	Title	Prepared By	Dated
0553-DA100	01	Title Page	PopovBass	23 July, 2019
0553-DA101	01	Site and Parking Plan	PopovBass	23 July, 2019
0553-DA102	01	Tenancy Location Plan	PopovBass	23 July, 2019
0553-DA103	01	Detail Tenancy Plan	PopovBass	23 July, 2019
0553-DA104	01	Elevations	PopovBass	23 July, 2019
0553-DA105	01	Sections	PopovBass	23 July, 2019
0553-DA106	01	Sections	PopovBass	23 July, 2019

- DA Noise Impact Assessment prepared by Rodney Stevens Acoustics, Revision, Report No. 190348R1, dated 22 July, 2019, and
- Waste Management Plan prepared by Elephants Foot, Revision E, dated 22 February, 2018.

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

- 3 The approved operating hours shall be from 5am to 10pm weekdays, 5.00am to 6pm Saturday and 6.00am to 6.00pm Sundays, for a trial period of 12 months from the date of this consent. The continuation of the hours of operation will require Council's further approval for any time period following the expiry of this trial period. The applicant is to submit an application to Council prior to the expiration of the 12 month trial period for Council's consideration. If no application is received, the opening hours of operation for the indoor recreation facility are to be in line with the approved hours of operation provided for by way of Development Consent No. DA15/0335 at the expiry of the 12 month trial period.

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

- 5 A baby care room shall be provided to the male and female change rooms and/or within the disabled facilities. The change tables shall be smooth, impervious and easy to clean and disinfect. Safe and adequately installed wall mounted fold down facilities would be acceptable. Plastic bag lined bins with a lid that closes shall be provided within close proximity to the change tables.

- 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 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.

- 9 There shall be a combined maximum of fifty (50) participants in the gymnasium at any one time. Furthermore, the following facilities are to be provided;

- A total of three (3) training studios providing for one (1) functional group training (up to 20 people at one time), one (1) spin cycle class (up to 25 people) and one (1) low impact boxing group (up to 25 people),
 - One (1) yoga studio (up to 25 people), and
 - One (1) infrared sauna (up to 7 people).
- 10 No public address audio systems are to be used. Background music is to be played only through a small hi fi or stereo system. Speaker systems are to be controlled only by staff, not patrons.
- 11 A facility that is easily accessible to members and visitors (not located within staff areas) to refill drinking containers with cool potable water shall be provided. This should be a designated sink, bubbler or water cooler used entirely for this purpose. Toilet hand wash basins must not be used for filling drinking containers.
- 12 No open food is to be sold on-site and no food preparation is to occur on-site without prior approval from Penrith City Council
- 13 **Prior to the issue of a Construction Certificate**, a Noise Management Plan is to be submitted to Council for approval. The Noise Management Plan is to be prepared by a suitably qualified person and is to:
- address all noise related aspects of the development's operational phases;
 - recommend systems and 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; and
 - use of music, microphones, AV equipment and speakers.

The approved Noise Management Plan is to be implemented and adhered to during all operations.

- 14 A separate development application for the erection of a sign or advertising structure, other than advertising listed as exempt development, is to be submitted to Penrith City Council, complying with the requirements of Penrith Development Control Plan 2014.

Demolition

- 15 All demolition works are to be conducted in accordance with the provisions of AS 2601-1991 "The Demolition of Structures". **Prior to demolition**, all services shall be suitably disconnected and capped off or sealed to the satisfaction of the relevant service authority requirements.

All demolition and excavated material shall be disposed of at a Council approved site or waste facility. Details of the proposed disposal location(s) of all excavated material from the development site shall be provided to the Principal Certifying Authority **prior to commencement of demolition**.

- 16 You should read Council's Fact Sheet titled "Handling and Disposal of Fibrous Cement Products" **before any demolition works commence on the site.**

Prior to commencement of demolition works on site, a portaloo with appropriate washing facilities shall be located on the site and the Principal Certifying Authority is to be satisfied that:

- Measures are in place so as to comply with the WorkCover Authority's "Short Guide to Working with Asbestos Cement" and
- The person employed to undertake the works is a licensed asbestos removal contractor and is holder of a current WorkCover Asbestos Licence.

Any demolition works involving the removal of all asbestos shall only be carried out by a licensed asbestos removal contractor who has a current WorkCover Asbestos Licence.

All asbestos laden waste, including asbestos cement flat and corrugated sheeting must be disposed of at a tipping facility licensed by the Environmental Protection Authority to receive asbestos wastes.

- 17 Dust suppression techniques are to be employed during demolition and construction works to reduce any potential nuisances to surrounding properties and tenancies.
- 18 Demolition works will 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 demolition work is permitted on Sundays and Public Holidays.

In the event that the demolition relates to works inside the building and do not involve external walls or the roof, and do not involve the use of equipment that emits noise then the demolition works are not restricted to the hours stated above.

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

Environmental Matters

- 19 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.

- 20 All waste 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.

- 21 Noise levels from the premises shall not exceed the relevant noise criteria detailed in the Da Noise Impact Assessment prepared by Rodney Stevens Acoustics, Revision 0, Report No. R190348R1, dated 22 July, 2019. The recommendations provided in the above-mentioned acoustic report shall be implemented and incorporated into the design and construction of the development, and shall be shown on plans accompanying the Construction Certificate application.

A certificate is to be obtained from a qualified acoustic consultant certifying that the building has been constructed to meet the noise criteria in accordance with the approved acoustic report. This certificate is to be submitted to the Principal Certifying Authority **prior to the issue of an Occupation Certificate**.

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

- 22 Only clean and unpolluted water is to be discharged into Penrith City Council's stormwater drainage system. Liquid wastes suitable for discharge to the mains sewer are to be discharged in accordance with Sydney Water requirements.

If mains sewer is not available or if Sydney Water will not allow disposal to the sewer then a licensed waste contractor is to remove the liquid waste from the premises to an appropriate waste facility.

The waste contractor and waste facility are to hold the relevant licenses issued by the NSW Environment Protection Authority.

- 23 Any liquid discharge from the air handling system, resulting from operation, maintenance and/or cleaning operations, are to be disposed of into the sewer system. Discharge into the stormwater disposal system is not permitted.

- 24 **Prior to the issue of the Construction Certificate**, further details on the type and location of all mechanical plant and equipment associated with the development is to be provided to the Principal Certifying Authority for consideration and approval. Suitable data and information on the noise impacts associated with this plant and equipment is also to be supplied to demonstrate compliance with the established noise criteria.

- 25 **Six (6) months after the issue of an Occupation Certificate**, an Acoustic Compliance Report is to be submitted to and approved by Council. The report is to be prepared by a suitably qualified acoustic consultant and is to address, but not limited to, all noise generating activities on the site and the level of compliance with the noise criteria set within the DA Noise Impact Assessment (prepared by Rodney Stevens Acoustics, dated 22 July 2019, REF:190348R1, Rev 0). It is also to consider the requirements of the NSW Environment Protection Authority's Noise Policy for Industry, other relevant guideline documents and the conditions of this development consent.

Should the Compliance Report identify any non-compliance issues, the Report is to provide suitable recommendations for the mitigation of those issues. Any mitigation works are to be undertaken within thirty (30) days from the date of the notice from Council, unless otherwise specified.

- 26 The on-waste infrastructure provided within the development is to be maintained in accordance with the details provided on the approved architectural plans and Waste Management Plan prepared by Elephants Foot, Revision E, dated 22 February, 2018. On-site waste infrastructure permissible to change only in accordance with conditions stipulated by Councils Waste Service department.

BCA Issues

- 27 Access and sanitary facilities for persons with disabilities are to be provided and maintained in accordance with the requirements of the Building Code of Australia and AS 1428 "Design for Access and Mobility". Details of compliance are to be provided in the relevant plans and specifications accompanying the Construction Certificate application.

- 28 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.

- 29 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

- 30 The construction and operation of the premises shall comply with the NSW Smoke-free Environment Act 2000 and Smoke-free Environment Regulation 2000.
- 31 Public areas and toilets in the premises shall be maintained in a clean and hygienic condition, free from a build-up of waste at all times.
- 32 All garbage shall be stored in accordance with the requirements of *Protection of the Environment Operations Act 1997* to prevent the harborage of vermin or generation of odours.
- 33 Disinfectant spray and paper towel or disinfectant wipes shall be provided throughout the facility for patrons to wipe down equipment before and/or after use.

Construction

- 34 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.

35 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) 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.

36 Construction 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

37 An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and prior to the occupation of the building/tenancy and commencement of the approved use. The Occupation Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding, and the development does not comply with the provisions of the Environmental Planning and Assessment Act and Regulation.

Before the Occupation Certificate can be issued for the development, Fire Safety Certificates issued for the building are to be submitted to Penrith City Council and the New South Wales Fire Brigades.

A copy of the Occupation Certificate and all necessary documentation supporting the issue of that Certificate including the above mentioned documents shall be submitted to Penrith City Council, if Council is not the Principal Certifying Authority.

- 38 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 4.19 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 4.19 of the Environmental Planning and Assessment Act 1979.

SIGNATURE

Name:	Paul Anzellotti
Signature:	

For the Development Services Manager