

PENRITH CITY COUNCIL

NOTICE OF DETERMINATION

DESCRIPTION OF DEVELOPMENT

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| Application number: | DA15/0592 |
| Description of development: | Fit-Out & Use as Fitness Training Centre (Shop 20) |
| Classification of development: | Class 6 |

DETAILS OF THE LAND TO BE DEVELOPED

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|--------------------|---------------------------------------|
| Legal description: | Lot 4021 DP 851358 |
| Property address: | 4 Endeavour Avenue, ST CLAIR NSW 2759 |

DETAILS OF THE APPLICANT

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| Name & Address: | While We Sleep Pty Ltd 317 Concord Road CONCORD WEST NSW 2138 |
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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.

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| Date from which consent operates | 17 September 2015 |
| Date the consent expires | 17 September 2017 |
| Date of this decision | 7 September 2015 |

POINT OF CONTACT

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

| | |
|---------------------------|------------------|
| Assessing Officer: | Lauren Van Etten |
| Contact telephone number: | (02) 4732 8222 |

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 a Joint Regional 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.

Joint Regional Planning Panels

If the application was decided by a Joint Regional Planning Panel, please refer to 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 floor plan drawn by Bold Collective, dated June 2015, the toilet plan dated 19/7/15, drawn by James Sanders, the signage plans drawn by James Sanders, dated 18/6/15, the waste management plan dated 18/6/15, the application form and any supporting information received with the application, except as may be amended by the following conditions.

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

- 3
The operating hours are:
 - *Monday to Thursday:* 5:30am to 10:00pm
 - *Friday:* 5:30am to 9:00pm
 - *Saturday and Sunday:* 7:00am to 5:00pmDelivery and service vehicles generated by the development are limited to between 7.00am and 5pm.

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

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

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

- 7 There shall be a maximum of 18 participants per class and a minimum of 15 minute intervals between group classes. Additionally, there shall be no individual usage of other exercise zones when 2 classes are operating simultaneously.

- 8 Management shall be available at a mutually convenient time, at the invitation of Penrith City Council and/or the NSW Police, to discuss and action agreed community safety, security or other issues in conjunction with other local stakeholders in the area should the need arise.

- 9 **Prior to the issue of an Occupation Certificate**, the proposed security system shall be installed and operational.

- 10 The operation of the fitness training centre shall not interfere with the operation of other businesses in the complex.

- 11 Council reserves the right to review car parking arrangements for the fitness training centre should staff and client numbers increase to a level which results in car parking and related vehicle manoeuvring adversely impacting on local traffic flow.

Environmental Matters

12 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.

13 All excavated material and other wastes 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 Occupation 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.

14 Noise levels from the premises shall not exceed the relevant noise criteria detailed in "Noise Assessment Report: Proposed Gymnasium, Maxzone Fitness, St Clair Shopping Centre, Shop 2, 155 Bennett Road, St Clair NSW" prepared by Rodney Stevens Acoustics Pty Ltd, dated 15 June 2015 (Ref. 150154R0). The recommendations provided in the above-mentioned acoustic report shall be implemented and incorporated into the design and construction of the development. 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.

15 Amplified music shall not be audible at the property boundary of the nearest affected residence.

16 The gymnasium activities shall not produce audible echo or any reverberation that can be experienced outside of the gymnasium.

17 In the "Weights Zone" section:

- Signs are to be installed advising members not to drop weights on the floor.
- Weights are not permitted to be dropped on the floor.
- 15mm impact (rubber) mat is to be placed on the floor.

18 All external doors are to be adequately sealed when closed to minimise noise leaking.

All external doors are to be closed with the gymnasium is in operation.

19 An electronic frequency dependent limiting device is to be installed to the sound system to ensure that the amplified music is set to the limits outlined in Section 7 of the "Noise Assessment Report: Proposed Gymnasium, Maxzone Fitness, St Clair Shopping Centre, Shop 2, 155 Bennett Road, St Clair NSW" prepared by Rodney Stevens Acoustics Pty Ltd, dated 15 June 2015 (Ref. 150154R0).

20 Speakers for the PA system are to be installed on walls only. Rubber padding is to be used to isolate the speak mounts to the walls. No speaker is to be installed in the ceiling space. The speakers are to be installed in the locations marked in Figure 7.1 of the "Noise Assessment Report: Proposed Gymnasium, Maxzone Fitness, St Clair Shopping Centre, Shop 2, 155 Bennett Road, St Clair NSW" prepared by Rodney Stevens Acoustics Pty Ltd, dated 15 June 2015 (Ref. 150154R0).

BCA Issues

21 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.

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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.

22 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

23 Barrierboard composite wall is to be installed in the locations and manner described in Figure 7-1 and Section 7 of the "Noise Assessment Report: Proposed Gymnasium, Maxzone Fitness, St Clair Shopping Centre, Shop 2, 155 Bennett Road, St Clair NSW" prepared by Rodney Stevens Acoustics Pty Ltd, dated 15 June 2015 (Ref. 150154R0).

Construction

24 Construction works that are carried out in accordance with an approved consent that involve the use of 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

25 An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and **prior to the commencement of the fitness training centre**. 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.

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.

26 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 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

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| Name: | Kate Smith Acting Principal Planner |
| Signature: | |

For the Development Services Manager