

PENRITH CITY COUNCIL

MAJOR ASSESSMENT REPORT

Application number:	DA16/0587
Proposed development:	Fit Out & Use as Swim School
Property address:	7 / 2 - 10 Gallipoli Street, ST MARYS NSW 2760
Property description:	Lot 7 SP 71778
Date received:	22 June 2016
Assessing officer	Clare Aslanis
Zoning:	Zone B6 Enterprise Corridor - LEP 2010
Class of building:	Class 9b
Recommendations:	Approve

Executive Summary

Council is in receipt of a development application for Fit Out & Use as Swim School at 7 / 2 - 10 Gallipoli Street, St Marys. Under Penrith Local Environmental Plan 2010, the proposal is defined as a *business premises*. The subject site is zoned B6 Enterprise Corridor and the proposal is a permissible land use in the zoning with Council consent.

The application has been notified to adjoining properties and exhibited between 29 June and 13 July 2016.

An assessment under Section 79C of the Environmental Planning and Assessment Act 1979 has been undertaken and the application is recommended for approval, subject to recommended conditions.

Site & Surrounds

The subject site is situated on the corner of Hall Street and Gallipoli Street in St Marys. The site contains a number of commercial and approximately 60 unallocated car parking spaces. The unit subject to this development application is situated in the south eastern corner of the site and is adjacent to an existing service station. The unit is 440m2 inclusive of ancillary office/reception.

The surrounding area is characterised by industrial/commercial business including a gym, cross fit studio, McDonalds restaurant, Hungry Jack's restaurant and other service industry businesses.

Proposal

The proposed development involves:

- Internal fit-out and use as a swim school, including the construction of an above ground swimming pool
- Trading Hours from 8:00am to 7:00pm Monday to Sunday
- Maximum class sizes of 4 children per instructor (maximum of 8 students on-site at any point in time)
- Maximum of 2 staff on-site

Plans that apply

- Local Environmental Plan 2010 (Amendment 4)
- Development Control Plan 2014
- Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

Planning Assessment

• Section 79C - Evaluation

The development has been assessed in accordance with the matters for consideration under Section 79C of the Environmental Planning and Assessment Act 1979, and having regard to those matters, the following issues have been identified for further consideration:

Section 79C(1)(a)(i) The provisions of any environmental planning instrument

Sydney Regional Environmental Plan No.20 - Hawkesbury Nepean River

An assessment has been undertaken of the application against relevant criteria within Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997) and the application is satisfactory subject to recommended conditions of consent.

Local Environmental Plan 2010 (Amendment 4)

Provision	Compliance
Clause 2.3 Permissibility	Complies - See discussion
Clause 2.3 Zone objectives	Complies - See discussion

Clause 2.3 Permissibility

The site is zone B6 Enterprise Corridor and the proposed use is defined as a business premises, which is permissible with Council's consent under the Penrith Local Environmental Plan 2010.

business premises means a building or place at or on which:

(a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or

(b) a service is provided directly to members of the public on a regular basis,

and includes a funeral home and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, internet access facilities, betting agencies and the like, but does not include an entertainment facility, home business, home occupation, home occupation (sex services), medical centre, restricted premises, sex services premises or veterinary hospital.

Note. Business premises are a type of **commercial premises**—see the definition of that term in this Dictionary.

The proposed swim school operates by appointment only for 4 children per class. The swimming pool will be used for these classes and will not be open for any leisure activities. All classes will be run by trained swim instructors and therefore is consistent with the definition as the training is a service provided directly to members of the public on a regular basis.

Clause 2.3 Zone objectives

The B6 Enterprise Corridor aims to:

- To promote businesses along main roads and to encourage a mix of compatible uses.
- To provide a range of employment uses (including business, office, retail and light industrial uses).
- To maintain the economic strength of centres by limiting retailing activity.

The proposal improves the mix of businesses in the vicinity of Mamre Road and the M4 Motorway. This use is likely to positively contribute to the economic strength of St Marys.

Section 79C(1)(a)(ii) The provisions of any draft environmental planning instrument

There are no draft Environmental Planning Instruments that apply to the proposal.

Section 79C(1)(a)(iii) The provisions of any development control plan

Development Control Plan 2014

Provision	Compliance
C1 Site Planning and Design Principles	Complies
C2 Vegetation Management	N/A
C3 Water Management	Complies
C4 Land Management	N/A
C5 Waste Management	Complies
C6 Landscape Design	N/A
C7 Culture and Heritage	N/A
C8 Public Domain	N/A
C9 Advertising and Signage	Complies
C10 Transport, Access and Parking	Complies - see Appendix - Development Control Plan Compliance
C11 Subdivision	N/A
C12 Noise and Vibration	Complies
C13 Infrastructure and Services	Complies

Section 79C(1)(a)(iiia) The provisions of any planning agreement

There are no planning agreements applying to this application.

Section 79C(1)(a)(iv) The provisions of the regulations

Fire safety

In accordance with Section 143 of the Environmental Planning and Assessment Regulation 2000, an assessment of the fire protection and structural capacity of the proposed building is necessary.

The application has been referred to Council's Building Surveyors for assessment with no objections raised and an existing FSS dated 12/1/2016 is in place.

The proposed development complies with the requirements of the Regulations.

Section 79C(1)(b)The likely impacts of the development

The proposed swim school is unlikely to have any significant adverse impact on the locality. The use is consistent with the surrounding land uses and adequate off street car parking is available on the site.

Section 79C(1)(c)The suitability of the site for the development

The site is suitable for the development as it is compatible with nearby and adjoining land uses. The proposed swim school contributes to the diverse services offered within the Gallipoli Street commercial complex.

Section 79C(1)(d) Any Submissions

Community Consultation

In accordance with Clause 4.4 of Appendix F4 of Penrith Development Control Plan 2014, the proposed development was notified to nearby and adjoining residents.

Council notified 6 occupants in the area and the exhibition period was between 29 June and 13 July 2016. Council has received no submissions in response.

Referrals

The application was referred to the following stakeholders and their comments have formed part of the assessment:

Referral Body	Comments Received
Building Surveyor	No objections - subject to conditions
Environmental - Environmental management	No objections - subject to conditions
Environmental - Public Health	No objections - subject to conditions

Section 79C(1)(e)The public interest

The proposed development is unlikely to generate any significant issues of public interest.

Conclusion

In assessing this application against the relevant environmental planning policies, being Penrith local Environmental plan 2010 and Development Control plan 2014, the proposal satisfies the aims, objectives and provisions of these policies.

The proposed design is site responsive, complies with key development standards and is in the public interest.

The site is suitable for the proposed development, the proposal is in the public interest, and there is unlikely to be negative impacts arising from the proposed development.

Therefore, the application is worthy of support, subject to recommended conditions.

Recommendation

1. That DA16/0587 for Fit Out & Use as Swim School at 7 / 2 - 10 Gallipoli Street, St Marys, be approved subject to the attached conditions

General

1 [A001](#)

The development must be implemented substantially in accordance with the plans tabled below and 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.

Plan	Numbered	Drawn By	Dated
Floor Plan	077/01 (Issue A)	Yalda Soroush	13 June 2016
Elevation and Signage Plan	077/02 (Issue A)	Yalda Soroush	13 June 2016
Site Plan	077/03 (Issue A)	Yalda Soroush	13 June 2016

2 [A019 - Occupation Certificate](#)

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

A satisfactory inspection from an authorised officer of Council's Environmental Health Department is required prior to the issue of the Occupation Certificate. The occupier is to contact the Environmental Health Department to organise an appointment at least 72 hours prior to the requested inspection time.

3 [A029 - HOURS OF OPERATION AND DELIVERY TIMES](#)

The operating hours of this facility are from **8am to 7pm Monday to Sunday**.

4 [A030 - No retail sales](#)

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

5 [A032 - Goods in buildings](#)

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

6 [A046 - Obtain Construction Certificate before commencement of works](#)

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

7 [A special](#)

Class sizes will be restricted to 4 students per instructor, with a maximum of 8 children on-site at any point in time.

Environmental Matters

8 [D009 - Covering of waste storage area](#)

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.

9 [D010 – Appropriate disposal of excavated or other waste](#)

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 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.

10 [D014 - Plant and equipment noise](#)

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 offensive noise.

11 **D special**

Waste materials associated with the development are to be classified and disposed of at a lawful waste facility, or, if suitable, re-used or recycled.

Waste is to be stored in a designated storage area prior to removal for disposal or recycling. Where possible, the waste storage area is to be located so that it is not visible to the occupiers of adjoining properties. The waste storage area is to be undercover, or is to be provided with a weatherproof cover, when it is unattended or not in use. The waste storage area is to be maintained to ensure that no waste materials are allowed to enter the stormwater system or neighbouring properties.

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.

BCA Issues

12 **E009 - Annual fire safety-essential fire safety (Class 2-9 buildings)**

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.

13 **E01A - BCA compliance for Class 2-9**

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

14 **F151 - Registration & Notification**

Public swimming pool and spa pools (as defined in the Public Health Act 2010) are to be registered with Penrith City Council by completing the registration form for public swimming pool and spa pools. This form is to be returned to Council prior to the issuing of the occupation certificate and operation of the premises.

The occupier of any premises at which a public swimming pool or spa pool is situated must notify Council using the NSW Ministry of Health Notification Form available from www.health.nsw.gov.au prior to the pool or spa being used. The occupier of the premises must notify Council within 7 days of any change of details.

15 **F152 - Construction & operation compliance**

The construction and operation of the public swimming pool/s and spa pool/s and associated premises shall comply with the Public Health Act 2010, Public Health Regulation 2012 and any relevant standards, guidelines or codes of practice published or endorsed by the NSW Ministry of Health

16 **F153 - Disinfection - water**

The occupier of premises at which a public swimming pool or spa pool is situated must not allow a person to use the pool unless the water in the pool is disinfected in such a way as to minimise the transmission of disease to the other users of the pool as required by the Public Health Act 2010 and Public Health Regulation 2012.

Commercial swimming pool quality oxidation-reduction potential (ORP) measuring equipment is to be installed with automated dosing equipment and data logging capability. The ORP shall be set to the equivalence of the minimum free chlorine concentration at a pH of 7.2 and shall not be less than 720 mV for chlorine or 700 mV for bromine. All equipment associated with the ORP system and chemical dosing is to be maintained and calibrated in accordance with the manufacturer's specifications and maintenance manuals. Probes should be calibrated at least every 6 months or more often if recommended by the manufacturer or service technician. Processes to reduce chloramines shall be implemented such as secondary disinfection (UV light or ozone), practicing breakpoint chlorination and superchlorination, and/or oxy shocking.

Advisory note:

- Concentration of free available chlorine in the water in a chlorine disinfected pool must be equal to or greater than 2.0 mg/L or if the pH is greater than 7.6 3.0 mg/L
- The concentration of combined chlorine in the water in a chlorine disinfected pool **must not** exceed 1.0 mg/L.
- The total chlorine level of the water in a chlorine disinfected pool must not exceed 10.0 mg/L.

17 **F154 - Facilities**

The occupier of premises at which a public swimming pool or spa pool is situated must ensure that the pool surrounds, including any toilets or change rooms, are kept clean and in such condition as to minimise the transmission of disease.

18 **F special**

Superchlorination and backwashing shall occur a minimum of once per week in accordance with NSW Health guidelines. Superchlorination, backwashing and shock dosing events shall be recorded in the pool log books along with chemical concentrations.

19 **F special**

Minimum sampling frequency for microbiological analysis shall be monthly and shall be completed in accordance with NSW Health guidelines. Microbiological criterion shall include (1) heterotrophic plate count, (2) *E. coli*, and (3) *Pseudomonas aeruginosa*. Results from the sampling shall be kept at the pool for inspection by NSW Health or Council Environmental Health Officers.

20 **F special**

Prior to the issue of the Construction Certificate the proposed ventilation system and design is to be certified as complying with the Building Code of Australia and Australian Standards by a suitably qualified ventilation professional such as a ventilation engineer and submitted to Council for approval. The design must demonstrate that the ventilation system will be capable of adequately removing volatile chemicals such as chloramines and other air impurities. Consideration in the design needs to be give ventilation requirements when shock dosing and superchlorination in addition to maintaining a healthy environment for staff and students.

Prior to the issuing of an Occupation Certificate, and operation of the business, the exhaust system shall be certified by a suitably qualified ventilation professional such as a ventilation engineer as being installed and compliant with the above design and Building Code of Australia.

If during the operation of the pool Council or NSW Health receives complaints about poor ventilation or chloramines the business owner will be required to complete further works to address these issues.

21 **F special**

Swimming pool waste and overflow waters must be collected and directed to the sewer in accordance with the requirements of Sydney Water, and details are to be submitted with the application for a Construction Certificate to the satisfaction of Council or the accredited certifier and approved by the certifying authority.

A hand wash basin must be provided to the baby change area. The hand wash basin must be immediately adjacent to the change table and the hand wash basin is to have a supply of clean, warm, potable water provided through a single spout. The hand wash basin is also to be supplied with appropriate hand cleaning and drying equipment (i.e. pump pack antibacterial soap and disposable paper towels).

Hand wash basins in the toilets must have a supply of clean, warm, potable water provided through a single spout. The hand wash basins are also to be supplied with appropriate hand cleaning and drying equipment (i.e. pump pack antibacterial soap and disposable paper towels).

The shower must be provided with warm water. The construction of the change rooms, toilets, showers and baby change area/room is to comply with all relevant codes and standards.

Construction

23 H001 - Stamped plans and erection of site notice

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.

24 H002 - All forms of construction

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.

25 H041 - Hours of work (other devt)

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.

Swimming Pools

26 J003 - Pool fence (commercial)

The swimming pool is to be surrounded at all times by a child-resistant barrier that:

- is located immediately around the swimming pool, and
- contains within its bounds no structure apart from the swimming pool and such other structures (such as diving boards and pool filtration plants) as are wholly ancillary to the swimming pool, and
- is designed, constructed, installed and maintained in accordance with the standards prescribed by AS 1926 "Swimming Pool Safety".

27 [J010 - Pool board/ sign \(add J009\)](#)

A sign must be erected in a prominent position in the immediate vicinity of the swimming pool and must:

- be erected in accordance with the provisions relating to instructional posters of the document entitled "Policy Statement No. 9.4.1: Guidelines for the Preparation of Posters on Resuscitation" published by the Resuscitation Council. (A copy may be purchased from Penrith City Council's Civic Centre, 601 High Street, Penrith), and
- bear a notice that contains the words "YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS SWIMMING POOL", together with details of resuscitation techniques (for adults, children and infants) set out in the relevant provisions of the document entitled "CardioPulmonary Resuscitation" published by the Australian Resuscitation Council. (A copy may be purchased from Penrith City Council's Civic Centre, 601 High Street, Penrith).

Certification

28 [Q01F - Notice of Commencement & Appointment of PCA2 \(use for Fast Light only\)](#)

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.

29 [Q05F - Occupation Certificate for Class10](#)

An Occupation Certificate is to be obtained from the Principal Certifying Authority on completion of all works and prior to the occupation/use of the swim school.

The Certificate shall not be issued if any conditions of this consent, but not the conditions relating to the operation of the development, are outstanding.

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

Appendix - Development Control Plan Compliance

Development Control Plan 2014

Part C - City-wide Controls

9.4 Advertising signs - Commercial, Mixed Use and Industrial Zones

The proposed above awning, business identification signage is consistent with the controls of this plan. It measure 2m X 4m, is not illuminated and fits with the character of the locality.

10.5.1 Parking

The minimum car parking rate required for business premises is 1 space per 40m² and the proposed area is 440m². This calculates at a minimum of 11 car parking spaces required for the proposed swim school.

As the strata units do not have allocated car parking spaces, the 60 car parking spaces are used by the staff and patrons of all units on the site. It is noted that the proposed swim school has expected peak attendance on weekends when some other tenancies have fewer patrons/customers or do not operate at all. With the staggered class times and small numbers of attendees, the proposed car parking arrangement is acceptable.