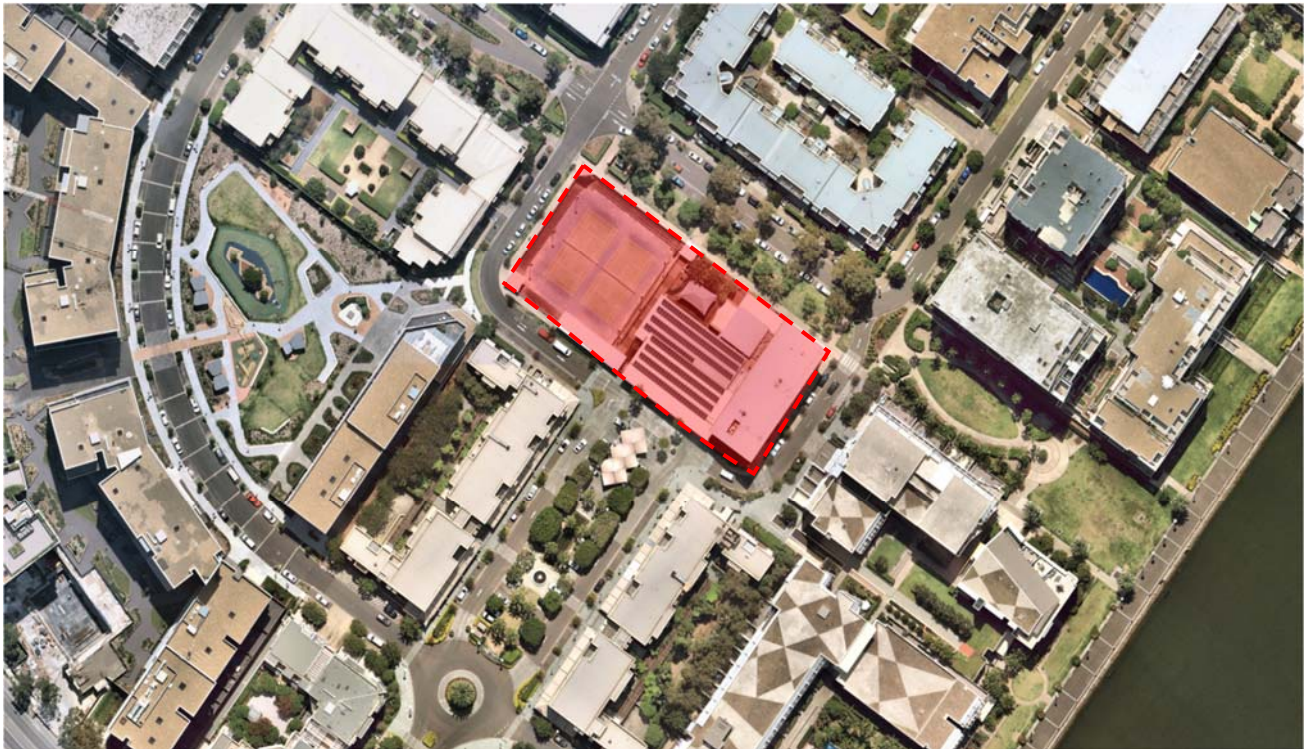




1 – 3, 9 The Crescent, Wentworth Point Modification Application

A Section 4.55(1A) application to extend the operational hours of an existing private recreation centre
(DA –11–1–2004 MOD 2)

May 2020



Published by the NSW Department of Planning, Industry and Environment

dpie.nsw.gov.au

Title: 1- 3 and 9 The Crescent, Wentworth Point

Subtitle: Section 4.55 (1A) Modification Application (DA-11-1- 2004 MOD 2)

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Glossary

Abbreviation	Definition
AHD	Australian Height Datum
BCA	Building Code of Australia
CIV	Capital Investment Value
CPP	Community Participation Plan
Council	City of Parramatta Council
Crown Lands	Crown Lands, DPIE
Department	Department of Planning, Industry and Environment
DPI	Department of Primary Industries, DPIE
DRG	Division of Resources & Geoscience, DPIE
EESG	Environment, Energy and Science Group, DPIE
EIS	Environmental Impact Statement
EPA	Environment Protection Authority
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2000
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPI	Environmental Planning Instrument
EPL	Environment Protection Licence
ESD	Ecologically Sustainable Development
FRNSW	Fire and Rescue NSW
Heritage	Heritage NSW, Department of Premier and Cabinet
LEP	Local Environmental Plan
Minister	Minister for Planning and Public Spaces
NPWS	National Parks & Wildlife Service, DPIE
NRAR	Natural Resources Access Regulator, DPIE

RMS	Roads and Maritime Services, TfNSW
SEARs	Planning Secretary's Environmental Assessment Requirements
Planning Secretary	Secretary of the Department of Planning, Industry and Environment
SEPP	State Environmental Planning Policy
SRD SEPP	State Environmental Planning Policy (State and Regional Development) 2011
SSD	State Significant Development
SSI	State Significant Infrastructure
TfNSW	Transport for NSW

Contents

1	Introduction	1
	1.1 Background	1
2	Proposed modification	3
3	Statutory context	4
	3.1 Scope of modifications	4
	3.2 Consent authority	5
	3.3 Environmental planning instruments	5
	3.4 Objects of the Act	5
	3.5 Section 4.15 (1) matters for consideration	5
	3.6 Reason for grant of the original consent	6
4	Engagement	8
	4.1 Department's engagement	8
	4.2 Summary of submissions	8
	4.3 Response to submissions	8
5	Assessment	9
	5.1 Noise impacts	9
	5.2 Light spill	10
6	Evaluation	11
7	Recommendation	12
8	Determination	13
	Appendices	14
	Appendix A – Modification report	14
	Appendix B – Submissions	14
	Appendix C – Instrument of Modification	14

1 Introduction

This report provides an assessment of an application to modify the consent for a private recreation centre referred to as Pulse Gym at 1 - 3 and 9 The Crescent, Wentworth Point (the site).

The modification application seeks approval to extend the existing operational hours for the recreation centre, more specifically the indoor pool and indoor gym components, by an additional hour in the morning and in the evening.

The application was lodged on 14 January 2020 by Bright and Duggan on behalf of the Pulse Club Combined Waterfront Community (the Applicant) pursuant to section 4.55(1A) of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.1 Background

Site Context

The site is located in the suburb of Wentworth Point within the City of Parramatta Local Government Area (LGA). The site forms a part of a broader residential estate known as 'The Waterfront' estate (the estate) which occupies the southern end of the peninsula (refer to **Figure 1**).

The site is bound by Stromboli Strait (to the east) and The Crescent (to the north, west and south).

The site is located in a residential estate and therefore predominantly surrounded by residential uses in the form of medium density residential flat buildings. To the south of the site, along the Piazza, are a strip of retail shops with above ground residential uses (3 Pizza). These dwellings are the closest residences to the gym and pool facility (nearest to the pool entrance).



Figure 1 | Local Context Map (Source: the Applicant's SEE)

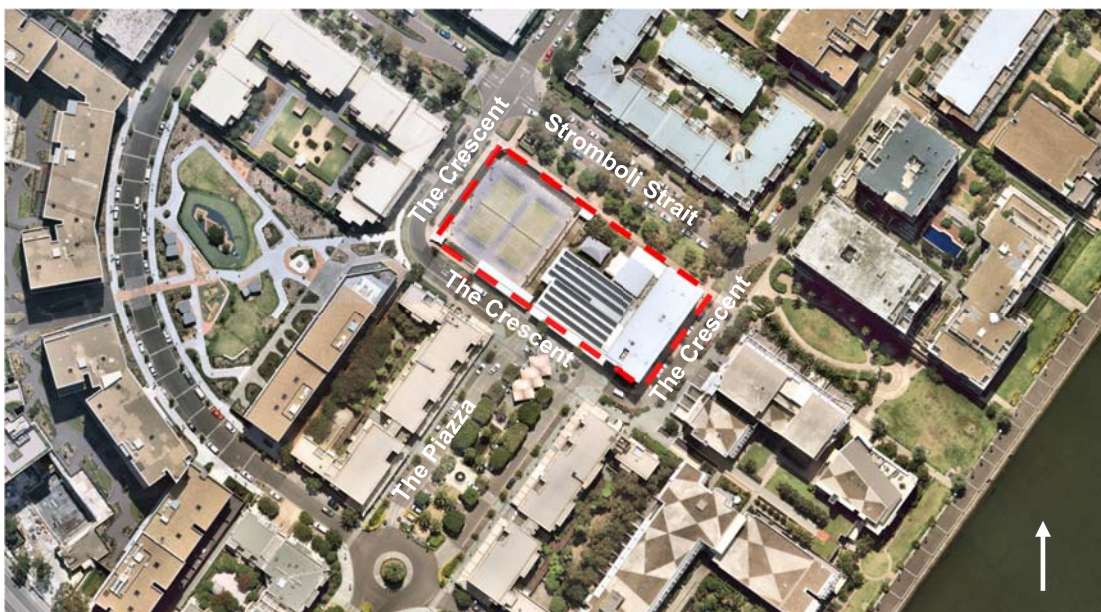


Figure 2 | The Site (Source: DPIE)

Existing development

The site currently accommodates an existing 4 storey private recreation centre comprising an indoor gym, an indoor swimming pool, a steam room, multi-purpose community hall, an art room, outdoor tennis courts and 20 commercial office spaces.

The gym, indoor pool, steam room, art room and multi-purpose hall are located at ground level while the commercial office spaces are located on the levels above.

Access to the pool and gym is via the main entrance for the recreation centre, being off The Crescent (western elevation).

The centre is owned by Waterfront Community Association, and membership to the centre is limited to residents of the estate. The centre is managed and operated by the Pulse Club.

The centre is currently open from 6am to 10pm, 7 days a week including public holidays.

Approval history

On 22 June 2005, development consent (DA-11-01-2004) was granted by the (then) Minister for Infrastructure and Planning for construction and use of a 4 storey recreation centre, associated facilities (indoor gym, swimming pool and outdoor tennis courts) and commercial offices.

On 26 October 2005, a modification application (DA-162-10-2005) was lodged for minor internal and external modifications such as deletion of a pergola and filling in of internal voids. Approval was granted for the application on 22 June 2005.

This Section 4.55 application represents the second modification of DA-11-01-2004 (the consent).

2 Proposed modification

The recreation centre is currently open from 6am to 10pm, 7 days a week including public holidays in keeping with approved operating hours under DA-11-1-2004 (the consent).

The Applicant seeks approval to modify the consent to extend the operating hours, to allow the indoor pool and gym facility to open ahead of the remaining centre by an hour in the morning and close an hour later in the evening. More specifically, approval is sought to allow the pool and gym to operate from 5am to 11pm, 7 days a week including public holidays.

The Applicant notes that the extended hours will promote use of the existing facility among residents that are otherwise unable to access the facility during current operational hours, particularly those who have early or late commitments for work, care and other activities.

The Applicant notes that no group classes will run or be held in the gym or the pool facility during the extended hours (i.e. between 5am and 6am in the morning and between 10pm and 11pm in the evening).

3 Statutory context

3.1 Scope of modifications

Section 4.55(1A) of the EP&A Act outlines the matters that a consent authority must take into consideration when determining an application that seeks to modify an SSD application. The matters for consideration under section 4.55(1A) of the EP&A Act that apply have been considered in **Table 1**.

Table 1: Assessment against Section 4.55 of the EP&A Act

Section 4.55 (1A) Evaluation	Consideration
a) that the proposed modification is of minimal environmental impact, and	<p>Section 6 of this report provides an assessment of the impacts associated with the modification application.</p> <p>The Department is satisfied that the proposed modification will have minimal environmental impacts given the extended operating hours are minor and the gym and pool facilities are located indoors and fully enclosed within the recreation centre.</p> <p>The Department is also satisfied that there are appropriate noise mitigation measures under the original consent that will continue to apply to the operation of the centre and manage noise impacts and protect residential amenity of residences adjoining the entrance of the recreation centre (i.e. 3 Piazza).</p>
b) that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and	<p>The Department is satisfied that the modification application is substantially the same development as it only seeks to change the operating hours of the indoor gym and pool to promote use among residents who are otherwise unable to access these facilities within the current operational hours of the centre, as approved under the original consent.</p>
c) the application has been notified in accordance with the regulations, and	<p>The application was placed on notification in accordance with the regulations from 19 February to 3 March 2020</p> <p>The Department also notified Council on this application</p>
d) any submission made concerning the proposed modification has been considered.	<p>The Department received a response from the City of Parramatta Council. The comments provided are discussed in Section 4.0 of this report.</p>

3.2 Consent authority

Minister's delegate as consent authority

DA-11-01-2004 was lodged under the provisions of the State Regional Environmental Plan No 24 – Homebush Bay Area (SREP) whereby, at the time, the Minister for Planning was the consent authority for the application. While this provision of the SREP has now been repealed, the Minister continues to be the consent authority for this modification application on the basis that the Minister was the consent authority for the original development and determined the respective consent.

Under the Minister's delegation, the Director, Key Sites Assessments, may determine this application as:

- the application has not been referred to the independent Planning Commission
- a political disclosure statement has not been made
- there are no public submissions in the nature of objection

3.3 Environmental planning instruments

The following Environmental Planning Instruments (EPIs) and Development Control Plans are relevant to the applications:

- Sydney Regional Environmental Plan No. 24 – Homebush Bay Area
- Auburn Local Environmental Plan 2010 (ALEP)
- Homebush Bay West Development Control Plan 2004 (Homebush Bay DCP)

The Department undertook a comprehensive assessment of the proposal against relevant EPIs in its original assessment. The Department has considered the above EPIs in this regard and is satisfied the modification application is in keeping with the relevant provisions and remains consistent with these EPIs.

3.4 Objects of the Act

The Minister or delegate must consider the objects of the EP&A Act when making decisions under the EP&A Act. The Department is satisfied the proposed modifications are consistent with the objects of the EP&A Act.

3.5 Section 4.15 (1) matters for consideration

Under Section 4.55(3) of the EP&A Act the consent authority must consider the matters referred to in Section 4.15(1) of relevance to the development. **Table 2** identifies the matters for consideration that apply to the proposed modification.

Table 2 : Section 4.15 Evaluation

Section 4.15 (1) Evaluation	Consideration
(a)(i) any environmental planning instrument	The modified proposal is consistent with the relevant legislation, ALEP 2010.
(a)(ii) any proposed instrument	Not applicable
(a)(iii) any development control plan	The Homebush Bay DCP applies to the site. The Department has considered the DCP and finds the application acceptable.
a)(iv) any planning agreement	Not applicable
(a)(iv) the regulations	The application meets the relevant requirements of the EP&A Regulation, including the procedures relating to applications (Part 6), the requirements for notification (Part 6, Division 6) and fees (Part 15, Division 1AA)
(b) the likely impacts of that development including environmental impacts on both the natural and built environments, and social and economic impacts in the locality	The Department considers the likely impacts of the development are acceptable and have been appropriately addressed (refer to Section 6 of this report).
c) the suitability of the site for the development	The site remains suitable for the development as assessed in the original application.
(d) any submissions	The Department has considered the submissions received (refer to Sections 5 and 6 of this report)
(e) the public interest	The Department considers the modified proposal to be in the public interest as it will promote the function and ongoing use of the recreation centre.

3.6 Reason for grant of the original consent

Under Section 4.55(3) of the EP&A Act the consent authority must have regard to the reasons for the grant of the original consent. Specific reasons for grant of the consent has not been provided as part of the original approval, however it can generally be assumed that consent was granted to enable the construction and use of the recreation centre for the health and wellbeing of residents at the

Waterfront estate. The modification is considered to be in keeping with this reason and the Department is therefore satisfied that the modification has met the requirements of Section 4.55(3) of the consent.

4 Engagement

4.1 Department's engagement

The application was placed on notification from 19 February 2020 to 3 March 2020 and referred to Council for comments. The application was also made publicly available on the Department's website.

4.2 Summary of submissions

The Department received a submission from Council. Council did not object to the proposal but advised that it be referred to the Department's noise specialist in light of the residential nature of the site's surrounds. The proposal was duly referred to the noise specialist. Noise impacts associated with the proposal are discussed further under **Section 5.1** of this report.

No other submissions were received for this application. A link to Council's submission is provided in **Appendix A**.

4.3 Response to submissions

No additional information was required from the Applicant following notification. A response to submissions was not warranted for this application.

5 Assessment

This modification application seeks approval to allow the indoor pool and gym to operate from 5am to 11pm, 7 days a week including public holidays. The associated environmental impacts resulting from this modification are considered below.

5.1 Noise impacts

The Department notes that the pool and gym are located indoors and are fully enclosed within the recreation centre (See **Figure 3** below). There is also no residential property located on the same block as the facility which is bounded by The Crescent and Stromboli Street.

The Department notes that the recreation centre is for the exclusive use of residents of the estate only and has a limited catchment (approximately 400m to 800m). It is anticipated that most residents of the estate will access the facility by foot due to its proximity and central location, reducing the likelihood any significant noise impacts associated with parking of private vehicles.

No change is proposed to delivery / service vehicle hours for the recreation centre, which will be managed in keeping with condition G6 of the existing consent and will be limited from 7.00am to 6.00pm, Monday to Friday and between 8.00am and 4.00pm on Saturdays, Sundays and public holidays.

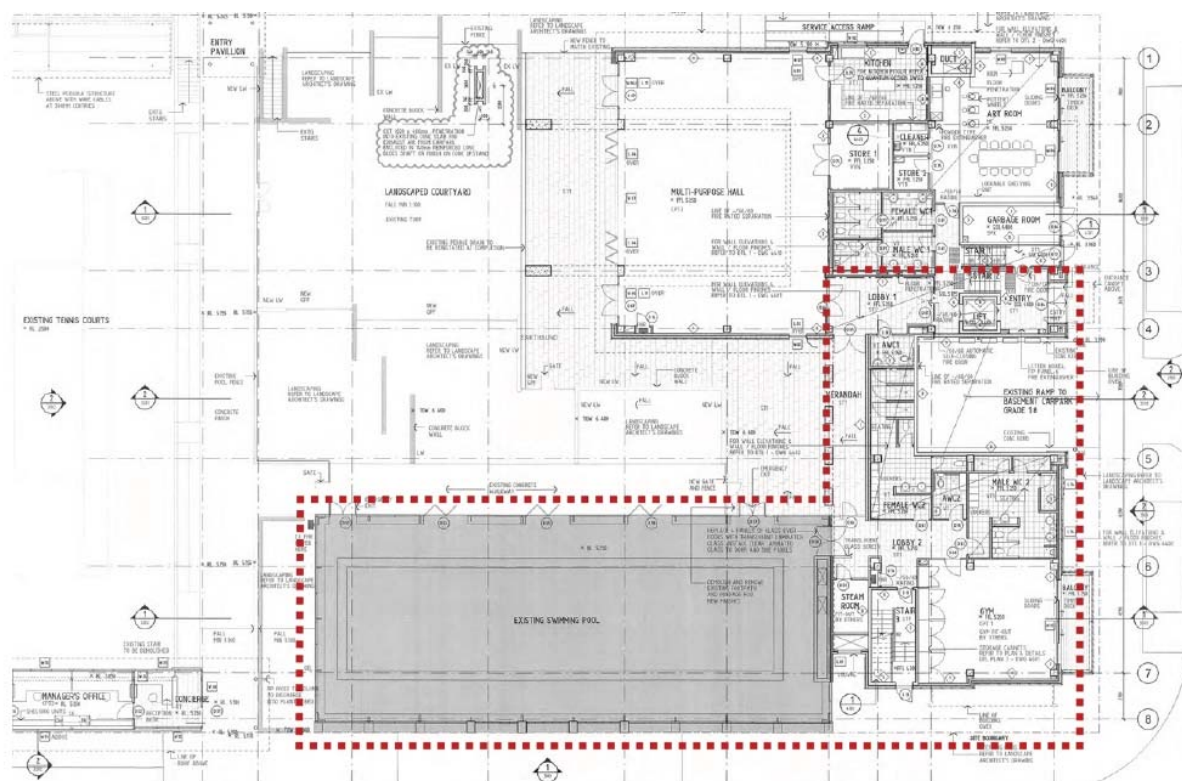


Figure 3| Extract of the architectural plans illustrating the location of the indoor gym and pool (Source: the Applicant's SEE)

In response to Council's comments, the application was also referred to the Department's internal noise specialist. The Department's noise specialist is satisfied that the existing conditions of consent are sufficient to mitigate and manage potential noise impacts arising from the extended hours of operation. More specifically, Condition G8 of the consent currently requires that operational noise generated by the recreation centre between 6am to 10pm not exceed 5dB above the background noise. The Applicant accepts the condition be modified to apply to the proposed extended hours to mitigate any noise impacts.

The Department therefore concludes the proposed modification to extend the hours of operation of the pool and gym would be acceptable because:

- the subject indoor pool and gym are fully enclosed within the recreation centre
- the facility is for the exclusive use of residents of the estate only
- noise generating activities such as group classes will not be held during the extended hours (modified **Condition G5**)
- existing noise mitigation and management conditions can apply to the proposed extended hours to sufficiently mitigate potential impacts.

5.2 Light spill

No new lighting fixtures are proposed under this application. Existing lighting associated with the recreation centre is considered to be minimal and not of a degree that could result in any significant light spill impacts to surrounding residents. The Applicant notes that the lighting from the recreation centre will offer a positive outcome from a CPTED perspective as it lights the immediate public domain surrounding the centre.

6 Evaluation

The Department has reviewed the proposed modification and supporting information in accordance with the relevant requirements of the EP&A Act. The Department's assessment concludes that the proposed modification is appropriate as:

- the extended hours will have acceptable environmental impacts.
- existing noise mitigation and management conditions can apply to the proposed extended hours to sufficiently mitigate potential impacts.
- it is substantially the same development as originally approved and does not result in adverse environmental impacts.
- no objections to the proposed modification have been raised by Council.

Consequently, the Department concludes the modification request is in the public interest and should be approved, subject to the recommended changes to existing conditions of consent as outlined in **(Appendix B)**

7 Recommendation

It is recommended that the Director, Key Sites Assessments as delegate of the Minister for Planning and Public Spaces:

- **considers** the findings and recommendations of this report; and
- **determines** that the modification application DA11-1-2004 MOD 2 falls within the scope of section 4.55(1A) of the EP&A Act; and
- **accepts and adopts** all the findings and recommendations in this report as the reasons for making the decision to grant approval to the application; and
- **modifies** the consent DA11-1-2004; and
- **signs** the attached modification of the Development Consent (Appendix B).

Recommended by:



Joina Mathew
Planning Officer
Key Sites Assessments

Recommended by:



Annie Leung
Team Leader
Key Sites Assessments

8 Determination

The recommendation is **Adopted** / Not adopted by:



Anthony Witherdin

Director

Key Sites Assessment

as delegate of the Minister for Planning and Public Spaces

Appendices

Appendix A – Modification report

Link to the Applicants SEE -

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10142

Appendix B – Submissions

Link to Council's submission -

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10142

Appendix C – Instrument of Modification

Link to the instrument of modification -

http://www.majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=10142