

**Meeting Date:** Tuesday 2 April 2013  
**Location:** Committee Room 2, Level 5, Civic Centre, 1 Devlin Street, Ryde  
**Time:** 5.00pm

**NOTICE OF BUSINESS**

| <b>Item</b> |  | <b>Page</b> |
|-------------|--|-------------|
| 1           | CONFIRMATION OF MINUTES - Meeting held on 19 March 2013 .....  | 1           |
| 2           | 6 CLARE STREET, GLADESVILLE. LOT 15 DP 7560. Section 96 application to delete condition of consent for new driveway and parking bay (Condition 49). MOD2012/0196.<br><i>INTERVIEW 5.00PM</i> ..... | 5           |
| 3           | 400- 426 VICTORIA ROAD, GLADESVILLE. LOT 1 DP 747541. Local Development Application for change of use, signage, and fitout for a gymnasium to operate 24 hours per day. LDA2012/0477. ....         | 43          |

**1 CONFIRMATION OF MINUTES - Meeting held on 19 March 2013**

---

**Report prepared by:** Section Manager - Governance  
**File No.:** CLM/13/1/3/2 - BP13/89

---

**REPORT SUMMARY**

In accordance with Council's Code of Meeting Practice, a motion or discussion with respect to such minutes shall not be in order except with regard to their accuracy as a true record of the proceedings.

**RECOMMENDATION:**

That the Minutes of the Planning and Environment Committee 4/13, held on Tuesday 19 March 2013, be confirmed.

**ATTACHMENTS**

- 1 Minutes - Planning and Environment Committee - 19 March 2013

**ITEM 1 (continued)**

**ATTACHMENT 1**

Planning and Environment Committee  
**MINUTES OF MEETING NO. 4/13**

**Meeting Date:** Tuesday 19 March 2013  
**Location:** Committee Room 2, Level 5, Civic Centre, 1 Devlin Street, Ryde  
**Time:** 5.00pm

**Councillors Present:** Councillors Pendleton (Chairperson), Chung and Yedelian OAM.

In the absence of Councillor Simon, the Deputy Chairperson – Councillor Pendleton chaired the meeting.

**Apologies:** Councillors Simon and Salvestro-Martin.

**Absent:** Councillor Maggio.

**Staff Present:** Group Manager – Environment and Planning, Service Unit Manager – Assessment, Service Unit Manager – Environmental Health and Building, Team Leader – Fast Track Team, Team Leader – Assessment, Assessment Officer and Councillor Support Coordinator.

**DISCLOSURES OF INTEREST**

There were no disclosures of interest.

**1 CONFIRMATION OF MINUTES - Meeting held on 5 March 2013**

**RESOLUTION:** (Moved by Councillors Chung and Yedelian OAM)

That the Minutes of the Planning and Environment Committee 3/13, held on Tuesday 5 March 2013, be confirmed.

**Record of Voting:**

For the Motion: Unanimous

Note: This is now a resolution of Council in accordance with the Committee's delegated powers.

**ITEM 1 (continued)**

**ATTACHMENT 1**

**2 6 GANORA STREET, GLADESVILLE. LOT 6 DP 27608. Local Development Application for alterations and first floor addition to dwelling. LDA2012/0426.**

Note: James Koulouris (objector) and John Denton (on behalf of the applicant) addressed the Committee in relation to this Item.

**RESOLUTION:** (Moved by Councillors Yedelian OAM and Chung)

- (a) That Local Development Application No. LDA2012/0426 at 6 Ganora Street Gladesville be approved subject to the conditions in **Attachment 2**.
- (b) That the persons who made submissions be advised of Council's decision.

**Record of Voting:**

For the Motion: Unanimous

Note: This is now a resolution of Council in accordance with the Committee's delegated powers.

**3 20 BEATRICE STREET, NORTH RYDE. LOT 73, DP 36618. Local Development Application for a new two storey dwelling. LDA2012/0408.**

Note: Karmen and Raymond Stepanian (objectors) and Balagai Ramamurthy (owner) addressed the Committee in relation to this Item.

**RESOLUTION:** (Moved by Councillors Chung and Yedelian OAM)

- (a) That Local Development Application No. LDA2012/0408 at 20 Beatrice Street North Ryde be approved subject to the conditions in **Attachment 2**.
- (b) That the persons who made submissions be advised of Council's decision.

**Record of Voting:**

For the Motion: Unanimous

Note: This is now a resolution of Council in accordance with the Committee's delegated powers.

**4 62 DARVALL ROAD EASTWOOD. LOT 11 DP 6247. Local Development Application for demolition of the existing dwelling and erection of an attached dual occupancy. LDA2011/380.**

Note: Jeff Brown (objector) and Hock Chua (applicant) addressed the Committee in relation to this Item.



**ITEM 1 (continued)**

**ATTACHMENT 1**

**RESOLUTION:** (Moved by Councillors Yedelian OAM and Chung)

- (a) That Local Development Application No. LDA2011/0380 at 62 Darvall Road, Eastwood, being LOT 11 DP 6247 be approved subject to the conditions contained in **Attachment 1** with an additional condition:
- (1b) that the bathroom window of Dwelling A at first floor be provided with frosted glass and bedroom window (Dwelling A, Bedroom 3) is to have a 1.5 metre sill height.
- (b) That the persons who made submissions be advised of Council's decision.

**Record of Voting:**

For the Motion: Unanimous

Note: This is now a resolution of Council in accordance with the Committee's delegated powers.

The meeting closed at 5.53pm.

CONFIRMED THIS 2ND DAY OF APRIL 2013.

Chairperson

**2 6 CLARE STREET, GLADESVILLE. LOT 15 DP 7560. Section 96 application to delete condition of consent for new driveway and parking bay (Condition 49). MOD2012/0196.**

**INTERVIEW: 5.00pm**

---

**Report prepared by:** Assessment Officer - Town Planner

**Report approved by:** Manager Assessment; Group Manager - Environment & Planning

**Report dated:** 18 March 2013

**File Number:** grp/09/5/6/2 - BP13/436

---

### 1. Report Summary

**Applicant: Tod Anderson & Taleen Tashjian**

**Owner: Tod Anderson & Taleen Tashjian**

**Date lodged: 11 December 2012**

This report considers a Section 96 (1A) application to modify LDA 2011/425, approved on 9 August 2012 for construction of a new driveway and parking bay. This approved development consists of works both within the subject property (ie an elevated/suspended parking bay with mechanical turntable) and works within Council's road reserve (ie the un-formed portion of Clare Street) including a new elevated driveway from the existing cul-de-sac bulb, the re-construction of the steps and path in front of the site, and a new driveway crossing.

Condition 49 of this consent requires the works associated with the construction of the driveway, including those within Council's road reserve, to be constructed and permanently maintained, and that a Restriction be placed on the Property Title requiring that the current and future property owners be required to maintain all the works to the standards required by the consent.

The current application seeks to modify the consent to delete this condition, as the applicants (the owners of the subject property) feel that the condition is unreasonable and onerous.

The main issue with the application is the reasonableness of condition 49. In this regard, legal advice has been sought and obtained from Council's General Counsel and external solicitors (Planning Law Solutions). The legal advice indicates that *"it is not unusual for private landowners to burden the responsibility of maintenance of a public asset where that asset has been constructed solely or predominantly for the benefit of a single private landowner"*. A copy of the legal advice from Planning Law Solutions is circulated to Councillors (as a confidential Attachment to this report).

**ITEM 2 (continued)**

It is considered (as discussed in the body of the report) that Condition 49 should be retained as the subject structures are to be constructed predominantly for the benefit of an individual landowner (to gain vehicle access to his property which presently does not exist), and on-going maintenance is required to ensure the safety of future users. It is therefore recommended that this Section 96 application to delete condition 49 be refused.

**Reason for Referral to Planning and Environment Committee:** Council's resolution of 12 March 2013 requests that this Section 96 application be referred to the Planning & Environment Committee.

Public Submissions: No submissions received.

SEPP 1 (or clause 4.6 RLEP 2010) objection required? No

Value of works? \$90,000 (Original DA)

**RECOMMENDATION:**

That Modification Development Application No. 2012/0196 at 6 Clare Street, Gladesville, being Lot 15 DP 7560 be refused for the following reasons:

1. Condition 49 is considered to be fair and reasonable in the circumstances of this development.
2. The approved structures are to be constructed solely or predominantly for the benefit of the owners of No 6 Clare Street – for vehicle access (which presently does not exist) to a private residence, and on-going maintenance would be required to ensure the safety of future users.
3. In the circumstances of the case, deletion of condition 49 would not be in the public interest.

**ATTACHMENTS**

- 1 Approved plans for LDA2011/0425
- 2 Previous Report
- 3 Legal Advice - CIRCULATED UNDER SEPARATE COVER - CONFIDENTIAL

**ITEM 2 (continued)**

Report Prepared By:

**Lauren Franks**  
**Assessment Officer - Town Planner**

Report Approved By:

**Liz Coad**  
**Manager Assessment**

**Dominic Johnson**  
**Group Manager - Environment & Planning**

**ITEM 2 (continued)**

**2. Site (Refer to attached map)**

|                                  |   |   |
|----------------------------------|---|---|
| <b>Address</b>                   | : | 6 Clare Street, Gladesville   |
| <b>Site Area</b>                 | : | 1,156m <sup>2</sup><br>Frontage: 20.115m<br>Depth: 57.63m northern side boundary and 57.37m southern side boundary.<br>Rear: 20.115m            |
| <b>Topography and Vegetation</b> | : | Steep slope of 10.5m from front north-western corner to rear south-eastern corner. Site is heavily vegetated with mature and large sized trees. |
| <b>Existing Buildings</b>        | : | Two (2) storey dwelling house.  |
| <b>Planning Controls</b>         | : | Ryde LEP 2010   |
| <b>Zoning</b>                    | : | Subject site: R2-Low Density Residential<br>Driveway connecting to Clare St: RE1-Public Recreation  |
| <b>Other</b>                     | : | None  |



**Aerial photo of subject site and surrounds**



**ITEM 2 (continued)**



**View from Clare Street looking towards the front boundary of subject site where the driveway has been approved.**

**3. Councillor Representations**

None.

**4. Political Donations or Gifts**

None disclosed in applicant's modification DA submission or in any submission received.

**5. Background**

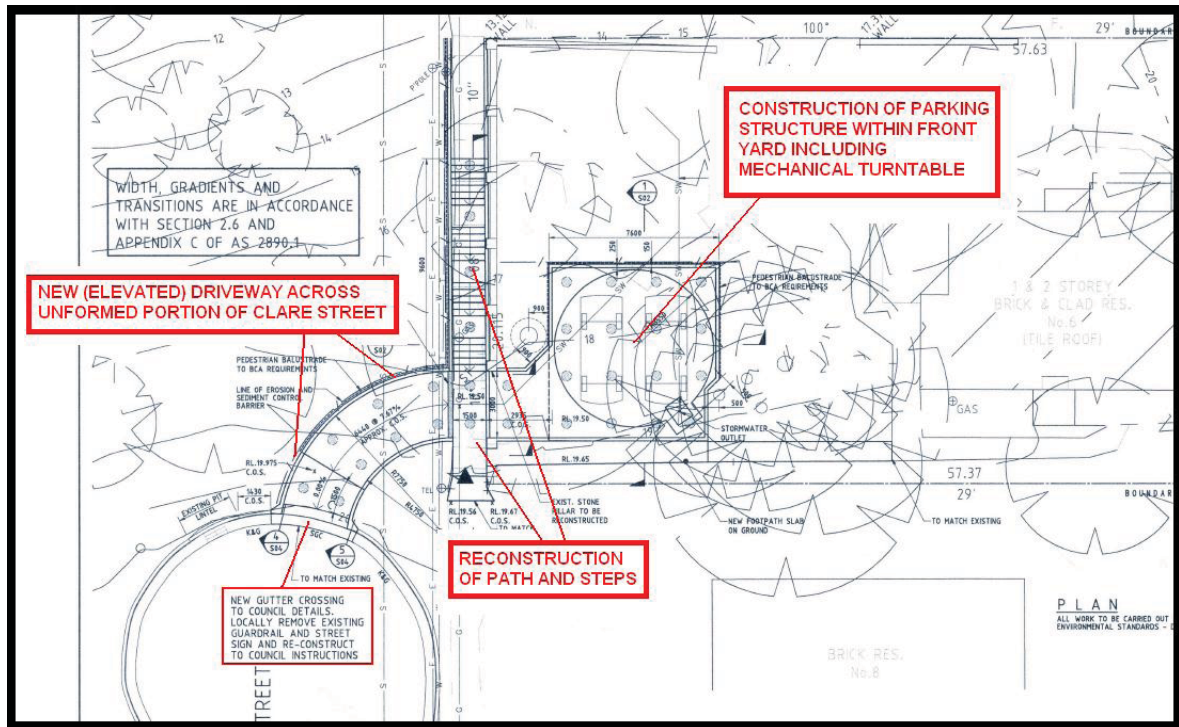
The original DA (LDA2011/425) was approved on 9 August 2012, under delegated authority. Components of the development included:

- Construction of a new elevated driveway from the existing cul-de-sac bulb in Clare Street, including re-construction of the steps and path at the front of the site (within the un-formed portion of Clare Street at the front of the site) and a new gutter crossing;

**ITEM 2 (continued)**

- Construction of an elevated / suspended concrete parking area within the front yard of the property, including a mechanical turntable to enable cars to enter / leave the site in a forward direction.

The following plan extract illustrates these approved works.



**6. Proposal**

The current Section 96 (1A) application requests the deletion of condition 49 which states:

49. ***On-going maintenance and Restriction on Title.*** All of the works as shown on the Approved Plans (Condition 1) shall be constructed and permanently maintained to the standards required by this consent. The submission of documentary evidence that a restriction on the Property Title has been created and registered in the office of NSW Land and Property Information, prior to the approval of any Occupation Certificate, to the effect that the current and future property owners shall be required to maintain all the works shown on the Approved Plans (Condition 1) to the standards required by this consent.

**ITEM 2 (continued)**

The applicant provided the following comments in a statement submitted with the application:

*Condition 49 “On-going maintenance and restriction on title” is unreasonable and onerous. The condition is unreasonable given the applicant is irrespective liable under Section 218 of the Roads Act 1993 for costs associated with constructing or repairing any crossing over a footway in the public road for the traffic of vehicles across the footway to or from the land as would apply to any other residence. As a result of the applicant replacing an existing public path in accordance with a Council approved design meeting Australian Standards in a manner consistent with the development consent it is onerous to require the applicant then maintain in perpetuity that public path situated entirely upon public land. The approved plans that are the subject of the consent compromise only two components to which condition 49 would apply, that being construction of a driveway and replacement of an existing public path on public land. Condition 49 of the consent is unreasonable and onerous with respect to those components.*

**Assessment of Section 96 Application**

The main issue for consideration in this application is whether or not Condition 49 is fair and reasonable.

According to town planning law (as supported by decisions in the Land and Environment Court), conditions imposed on development consents must satisfy a test of reasonableness known as “the Newbury Test” – which states that a condition of consent must:

- (a) have a planning purpose;*
- (b) fairly and reasonably relate to the permitted development; and*
- (c) not be so clearly unreasonable that no reasonable planning authority would have imposed the condition.*

The following section discusses each part of the Newbury Test (above) in regard to the subject development.

**(a) A condition must have a planning purpose:**

Comment: The reason why condition 49 was imposed is to ensure that the approved driveway and associated structures (both within private property and in Council’s road reserve) are constructed in accordance with the standards required in the consent, and also that they are maintained into the future so that they operate in a safe and convenient manner. This requirement is to be met by current and future owners of the property.



**ITEM 2 (continued)**

Safety and convenience are matters for consideration under Section 79C of the Environmental Planning & Assessment Act 1979 – and so it is concluded that the condition has a valid planning purpose.

**(b) A condition must fairly and reasonably relate to the permitted development:**

Comment: Condition 49 is directly related to the approved development, and the sole purpose of the development is to provide vehicle access to the property which presently does not exist. In approving the development which entails a substantial amount of work (ie new gutter, elevated driveway, re-constructed steps to replace existing footpath and steps within Council's road reserve, and also parking structure including mechanical turntable within the applicant's property), it was considered necessary to ensure that this work is both constructed and maintained in an appropriate manner.

**(c) A condition must not be so clearly unreasonable that no reasonable planning authority would have imposed the condition:**

Comment: As noted above, the approved development involves a substantial amount of work. Whilst some of this work is located on public land, it is required predominantly for access to a single private residence, and the approved structures will require on-going maintenance to ensure the safety of future users. The applicant has stated that the requirement to permanently maintain the path (and steps) is not reasonable, however this is not supported because the path and steps require significant works (to the gradients etc) to suit the driveway to which it adjoins. The works to the path and steps are inter-related to the works to the driveway.

The legal advice received from Council's Solicitors in this matter (circulated to Councillors as a Confidential attachment) indicates that it is not unusual for private landowners to burden the responsibility of maintenance of a public asset where that asset has been constructed solely or predominantly for the benefit of a single private landowner.

Overall, it is considered that condition 49 of the consent satisfies the above three parts of "the Newbury Test", and is considered to be a valid condition of consent. It is considered that this Condition should be re-affirmed by refusal of this Section 96 application which proposes to delete the condition from the consent.

**7. Submissions**

The Section 96 (1A) application was not required to be notified or advertised in accordance with Development Control Plan 2010 - Part 2.1, Notification of Development Applications.

**8. SEPP 1 (or clause 4.6 RLEP 2010) objection required?**

None required.

**ITEM 2 (continued)****9. Policy Implications****Relevant Provisions of Environmental Planning Instruments etc:****(a) Ryde Local Environmental Plan 2010**

The subject site is zoned R2 Low Density Residential (the owner's property at No 6 Clare Street), and RE1 Public Recreation (the un-formed portion within the Clare Street road reserve in front of the owner's property). The subject development was approved as permissible with consent within these zones.

There are no development controls within the Ryde LEP 2010 which relate to the Section 96 (1A) application to remove a condition of consent.

**(b) Relevant State Environmental Planning Policies (SEPPs)**

There are no SEPPs which relate to this Section 96 (1A) application to remove a condition of consent.

**(c) Any draft LEPs**

A Section 65 Certificate enabling the formal exhibition of Draft Local Environmental Plan 2011 was issued by the Department of Planning and Infrastructure on 23 April 2012. The Draft Plan has been placed on public exhibition between 30 May 2012 and 13 July 2012. Under this Draft LEP, the zoning of the property is R2 Low Density Residential with the zoning of the nature reserve which the driveway will be constructed being RE1 – Public Recreation. The proposed development is permissible with consent within these zonings under the Draft LEP, and it is considered that the proposal is not contrary to the objectives of the Draft LEP or those of the proposed zonings.

Draft LEP 2011 was adopted by Council on 12 March 2013 and is waiting gazettal by the Department of Planning and Infrastructure; as such LEP 2011 can be considered certain and imminent.

**(d) The provisions of any development control plan applying to the land****Ryde Development Control Plan 2010**

The relevant controls in Ryde DCP 2010 were considered at the time of approval of the original DA. The nature of the current Section 96 application to modify condition 49 does not require any further assessment in terms of Ryde DCP 2010.

**ITEM 2 (continued)****10. Likely impacts of the Development****(a) Built Environment**

Issues relating to impacts on the Built Environment were considered when the original DA was approved. The nature of the current application (for deletion of condition 49 regarding on-going maintenance of the works) does not require re-assessment in terms of impacts on the Built Environment.

**(b) Natural Environment**

An assessment of impacts associated with the driveway and pathway construction on existing vegetation and tree removal was undertaken as part of the original DA. Conditions imposed by Council's Consultant Landscape Architect were applied to the development consent of this application to mitigate against any potential impact to existing vegetation and tree removal.

**11. Suitability of the site for the development**

A thorough assessment of the suitability of the driveway, stairs and path in the road reserve and construction of a parking bay on the subject site was undertaken upon lodgement of the original DA. This assessment process considered comments provided by Council's Heritage Officer, Development Engineer, Traffic Engineer and Environmental Health Officer and a Consultant Landscape Architect who each were in support of the proposal.

**12. The Public Interest**

It is considered that approving the Section 96 (1A) application is not in the public interest. Deletion of condition 49 will have direct financial implications on Council's public works maintenance costs. As the beneficiary of the original application is solely or predominantly the occupants of No. 6 Clare Street, it is not considered acceptable for future maintenance costs to be borne by Council.

**13. Consultation – Internal and External**

17 December 2012: Legal advice has been provided from Council's Solicitors (Planning Law Solutions), which concludes that Condition 49 does not impose an unreasonable burden, and further that there appears to be no reason that suggests the (Land and Environment) Court would uphold an appeal against the merits of Condition 49.

A copy of the legal advice from Planning Law Solutions is circulated to Councillors (as a confidential Attachment to this report)

**ITEM 2 (continued)****14. Critical Dates**

There are no critical dates or deadlines to be met.

**15. Financial Impact**

Approval of this Section 96 (1A) application would result in an ongoing financial impact on Council through any required future maintenance of the parts of the approved structures located within the Clare Street road reserve (ie the gutter crossing, elevated driveway and re-constructed pedestrian steps and pathway).

Following a site inspection on 26 March 2013, Council's Service Unit Manager - Operations has provided the following estimate for future maintenance for the information of Councillors related to the reinforced driveway and adjacent steps within the road reserve. These costs are based on the life expectancy of the structure being replaced after 40 years, handrails 20 years and nominal annual maintenance for 20 to 40 years:-

- Replacement of entire structure, cost = \$90,000
- Replacement of handrails at 20 years = \$10,000
- Maintenance last 20 years @ \$500p.a = \$10,000 (joints, concrete spalling, fixtures, etc.)

**Total = \$110,000**

**16. Other Options**

None relevant.

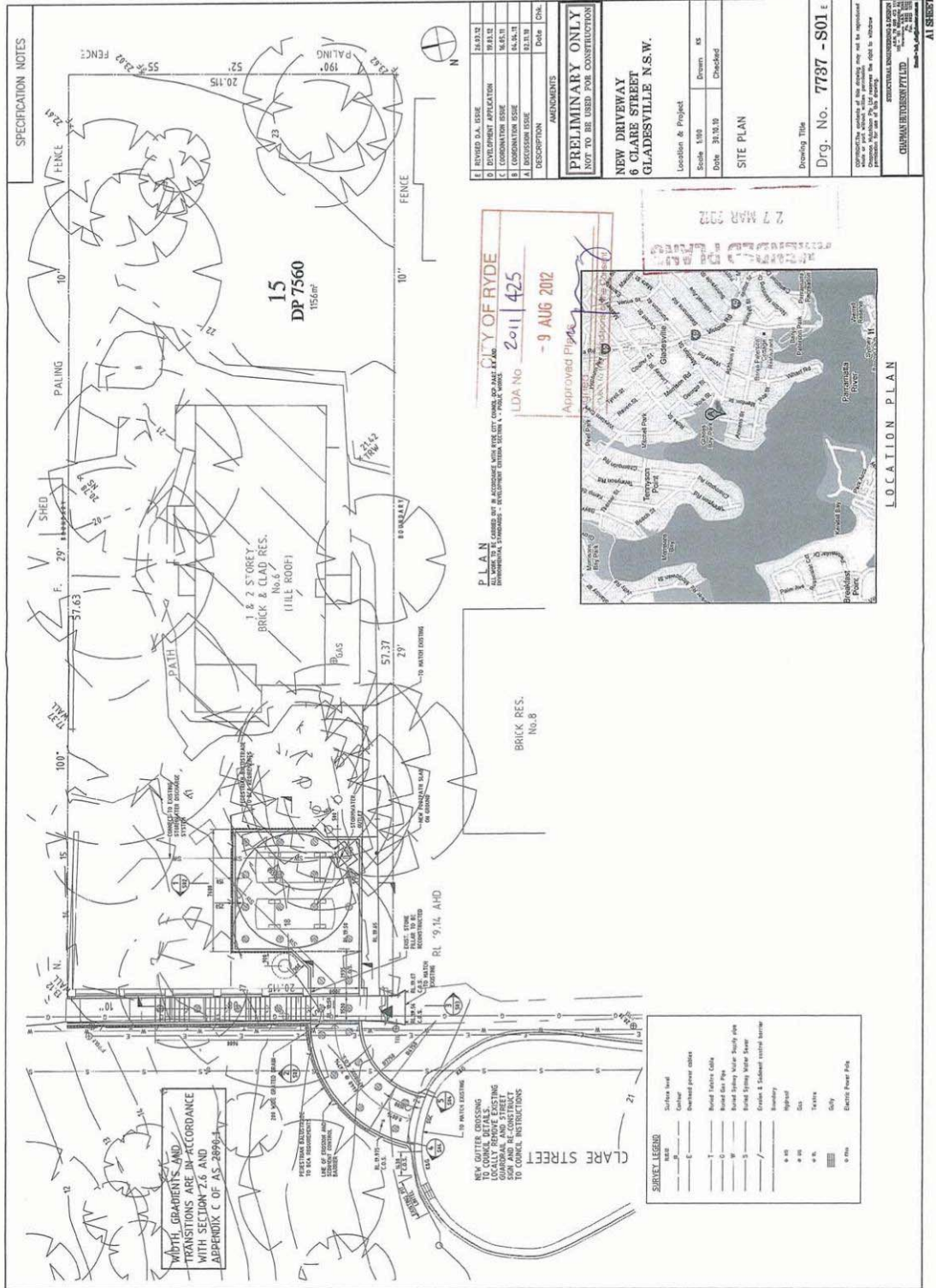
**17. Conclusion**

The original proposal (LDA 2011/425) had been assessed using the heads of consideration listed in Section 79C of the Environmental Planning & Assessment Act 1979 and pursuant to the conditions of consent imposed, was satisfactory for approval.

The Section 96 (1A) application is not supported and recommended for refusal for the reasons outlined in this report.

ITEM 2 (continued)

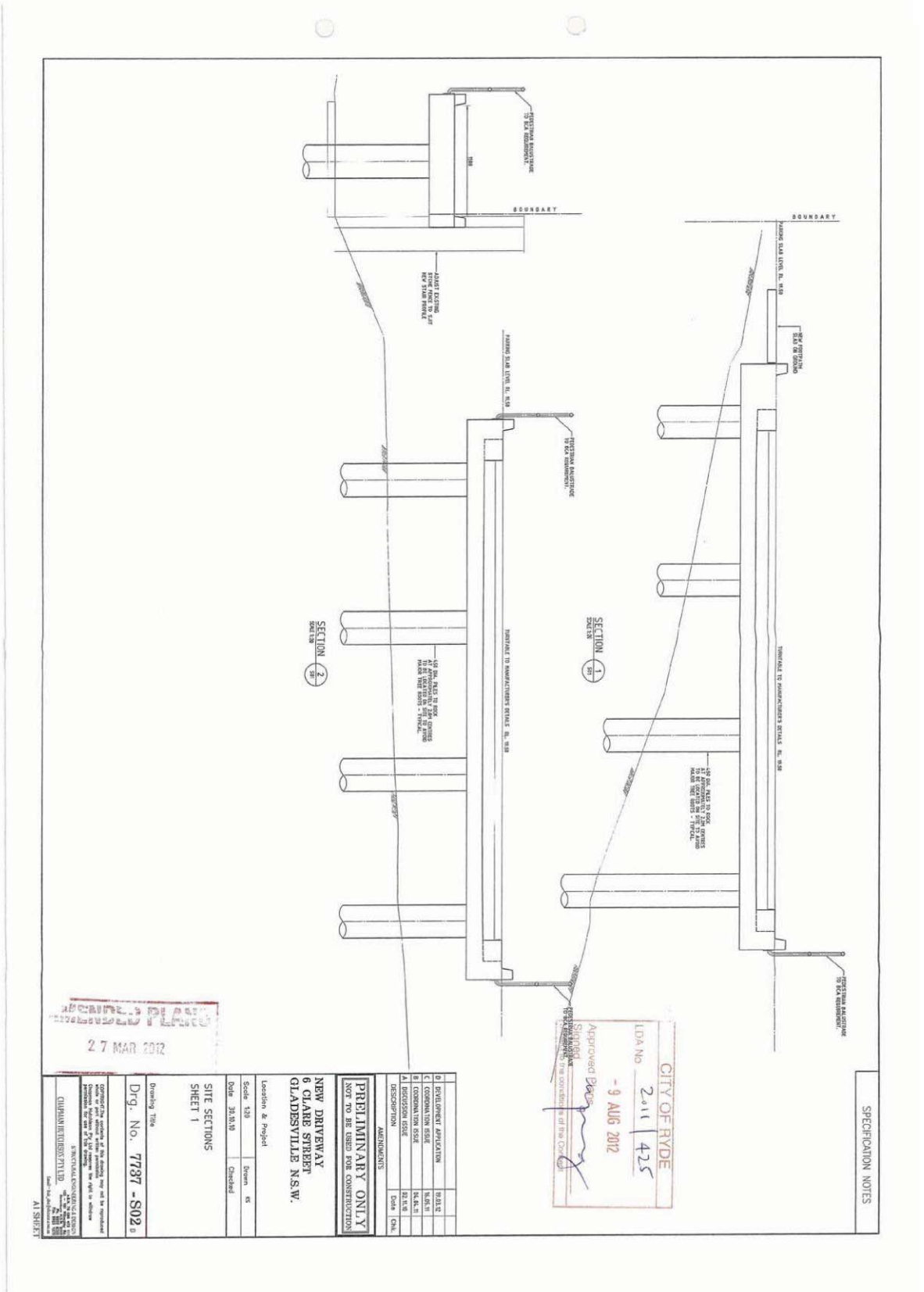
ATTACHMENT 1





ITEM 2 (continued)

ATTACHMENT 1



SPECIFICATION NOTES

CITY OF RYDE  
LDA No 2011 425  
- 9 AUG 2012  
Approved Date  
Signed  
[Signature]

|   |                         |             |
|---|-------------------------|-------------|
| D | DEVELOPMENT APPLICATION | D.A.1       |
| C | COMPLETION ISSUE        | N.A.S.1     |
| B | COMMUNICATION ISSUE     | N.A.S.1     |
| A | DISCUSSION ISSUE        | D.A.1       |
|   | DESCRIPTION             | Date   Chk. |

PRELIMINARY ONLY  
NOT TO BE USED FOR CONSTRUCTION

NEW DRIVEWAY  
6 CLARE STREET  
GLADSVILLE NSW.

Location & Project  
Scale: 1:50  
Date: 31.8.10  
Checked: [Signature]

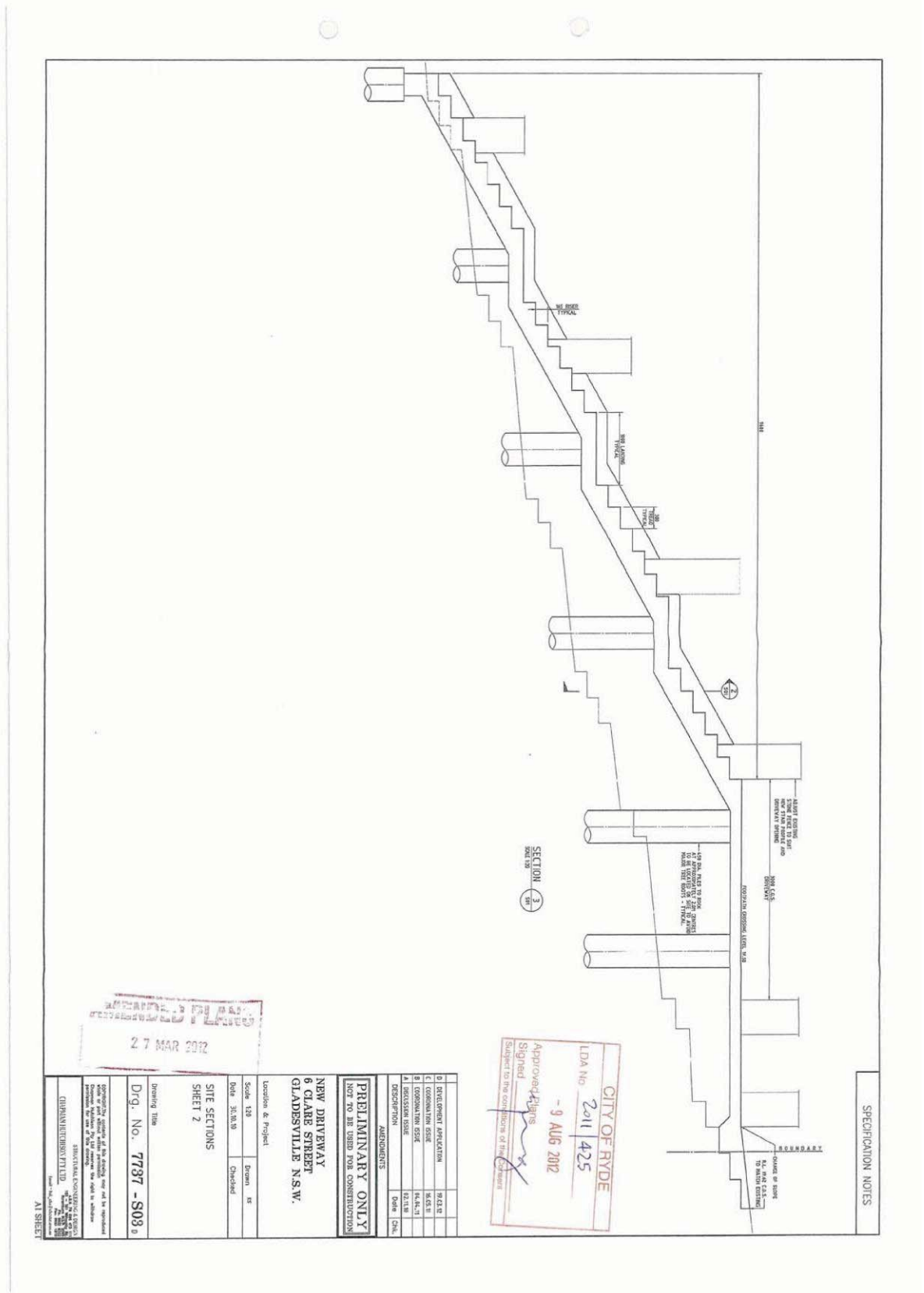
SITE SECTIONS  
SHEET 1

Drawing Title  
Dwg. No. 7737 - S02

27 MAR 2012  
STYFIELD CONSULTING ENGINEERS  
CLAREMOUNT ROAD, STYFIELD  
SYDNEY NSW 1570  
DATE: 27 MAR 2012  
TIME: 10:00 AM  
1/1

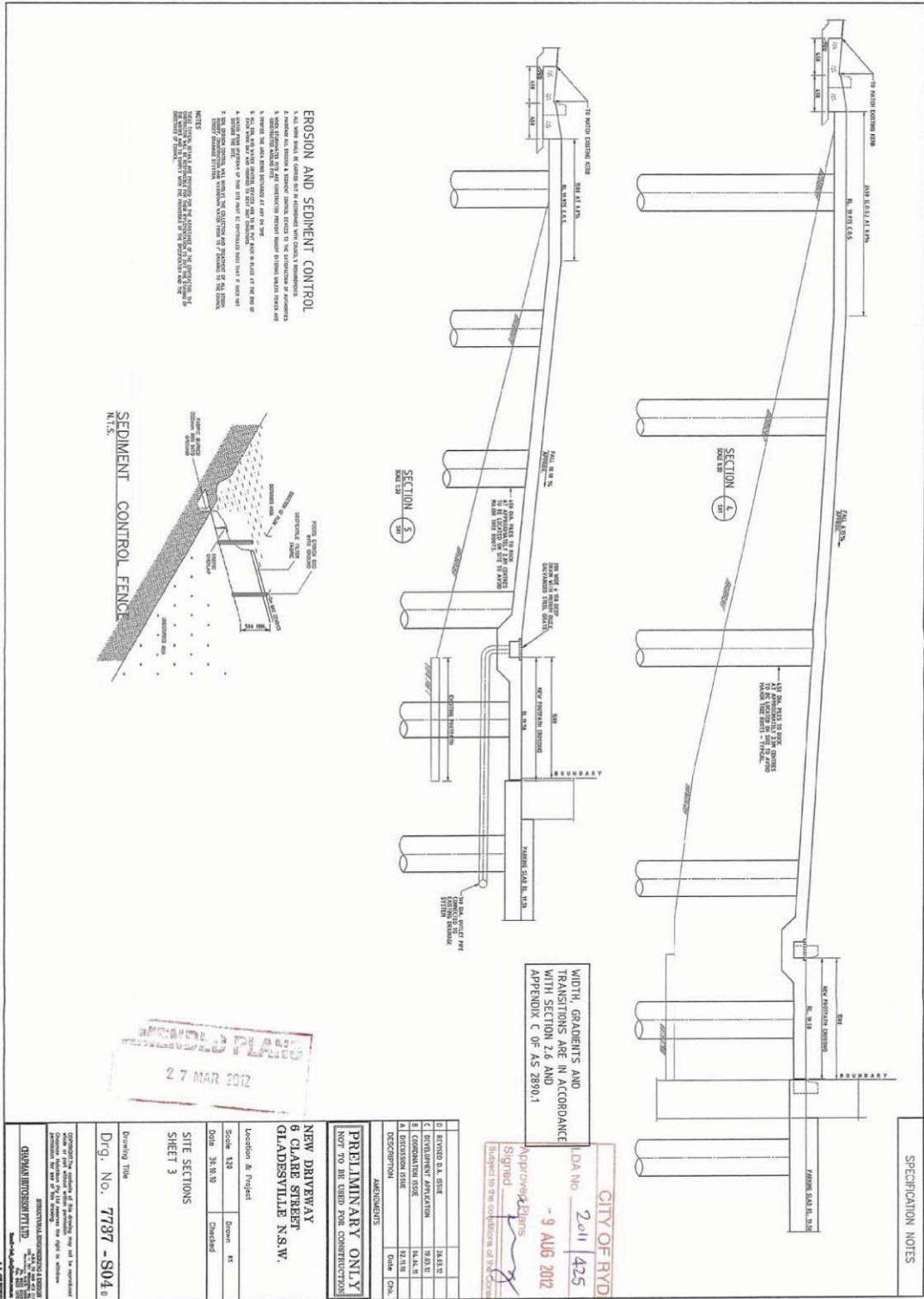
**ITEM 2 (continued)**

**ATTACHMENT 1**



**ITEM 2 (continued)**

**ATTACHMENT 1**





**ITEM 2 (continued)**

**ATTACHMENT 2**



**ASSESSMENT REPORT**

Local Development Application No: LDA2011/425

Assessment Officer: Chris Young: Team Leader – Assessment  
Report to Manager Assessment: 9 August 2012

**EXECUTIVE SUMMARY**

**Application details**

Subject land: 6 Clare St Gladesville  
Lot and DP Number: Lot 15 in DP 7560  
Site Area and dimensions: 1156m<sup>2</sup> – frontage 20.115m, and side boundaries of 57.37m and 57.63m.  
Proposal: Construction of a car parking bay with mechanical turntable within front yard (of No 6 Clare Street); new driveway and reconstruction of steps and path within Glades Bay Park (the un-formed portion of Clare Street at the front of the site).  
Applicant: Tod James Anderson  
Taleen Sebouh Tashjian  
Owner: Tod J Anderson & Taleen S Tashjian  
Date lodged: 15 August 2011.  
Value of Works: \$90,000  
Submissions: 1 submission received objecting to construction and operational impacts of the development.  
Zoning: R2 – Low Density Residential and,  
RE1 – Public Recreation  
DCP Non-Compliances: 

- Extent of fill >500mm outside building envelope (elevated parking spaces).

  
Clause 4.6 objection required: No  
Councillor Representations: Yes – the Mayor Councillor Etmekdjian (see report)  
**Report Recommendation:** Approval

**REPORT**

**SUBJECT SITE**

**ITEM 2 (continued)**

**ATTACHMENT 2**

The site is a regularly-shaped allotment with frontage to the unformed portion of Clare Street (just beyond where the formed portion terminates in a cul-de-sac bulb), as shown in the following photo:



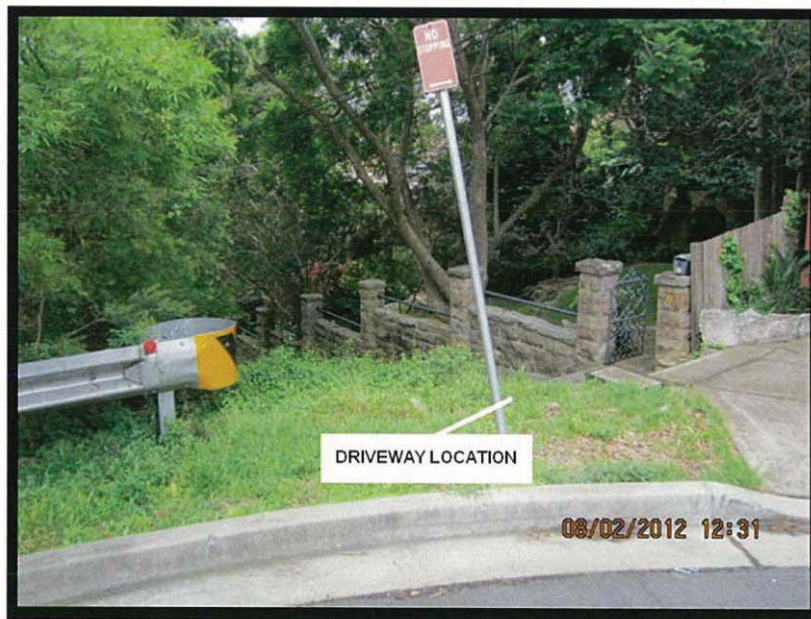
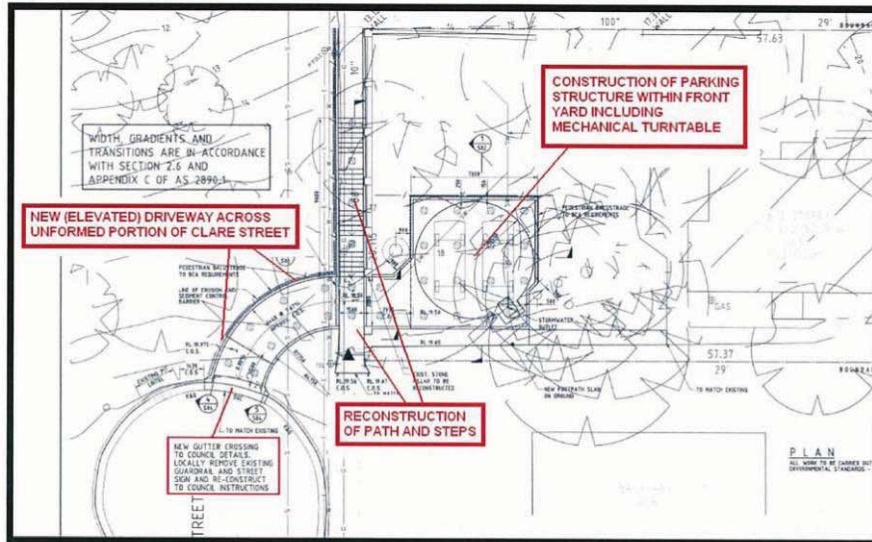
**THE PROPOSAL**

The development proposes the following:

- Construction of a new elevated driveway from the existing cul-de-sac bulb in Clare Street, including re-construction of the steps and path at the front of the site (within the un-formed portion of Clare Street at the front of the site) and a new gutter crossing;
- Construction of an elevated/suspended concrete parking area within the front yard of the property, including a mechanical turntable to enable cars to enter/leave the site in a forward direction.

ITEM 2 (continued)

ATTACHMENT 2



**HISTORY**

Proposed Driveway – Council Resolutions

**September 2002** – Previous owner makes request to Council to allow a new driveway access to this property.



**ITEM 2 (continued)**

**ATTACHMENT 2**

**November 2002** - Council's (then) Public Facilities and Services Committee considers a report regarding the previous owner's request, and resolves *"that the owner be advised that Council agrees in principle with the provision of vehicular access from Clare Street"*.

**May 2009** – Current owner lodges submission regarding the Draft LEP, which was on exhibition at the time, and which proposed to re-zone the un-made portion of Clare Street at the front of the site as RE1 Public Recreation. He was concerned that that this would not cater for his intention to construct a private driveway.

Subject DA – LDA2011/425

**15 August 2011** – DA lodged.

**22 August 2011** – DA considered at PAT, where it was noted that owner's consent had not been provided for the works within the un-formed portion of Clare Street. Memo was sent to Council's General Counsel requesting owners consent to be provided on **24**

**August 2011**.

**15 December 2011** – owner's consent provided (by the General Manager) for lodgement of DA.

**19 December 2011** – Referrals to other Council officers and neighbour notification commenced.

**7 February 2012** – Request for information received by Council's Traffic & Governance section, regarding construction details of the driveway (driveway gradients, crossfalls, and changes in grades, etc), and drainage disposal. A letter was sent to the applicant on **10 February 2012** to request this information.

**14 March 2012** – follow up letter sent to the applicant to request these details to be resolved.

**27 March 2012** – amended plans received to address the previous additional information request, which was re-referred to Traffic & Governance and Council's Development Engineers on **29 March 2012**.

**4 April 2012** – comments received from Traffic & Governance advising that the development is satisfactory for approval subject to conditions. These comments were returned via Council's Development Engineer on **12 April 2012**, who also provided draft Engineering conditions.

**30 April 2012** – draft report prepared and considered by the Team Leader – Assessment and Manager Assessment. At this stage, there were various issues requiring further assessment in the report, including:

- Access over Council land.
- Possible heritage issues – eg relationship of the structure with the existing sandstone fence and dwelling (also site is within 100m of heritage items in York St and Ameins Street)
- Review by Council's Landscape Architect regarding issues of Endangered Ecological Community and existing trees on site.
- Noise assessment by Council's Environmental Health Officers.

**ITEM 2 (continued)**

**ATTACHMENT 2**

**7 May 2012** – comments received from Council's Team Leader Environmental Health, see referrals below. Also – a referral was sent to Council's Manager – Properties requesting advice on Council's position (from a property owner's point of view) on the development, as well as details of the procedure for allowing the on-going use of the land for a private driveway.

**22 May 2012** – meeting held between Council's Manager Properties, Manager – Open Space, General Counsel and Assessment officers. The outcome of this meeting was that the General Counsel was to seek external legal advice on the status of the land and Council's ability to issue consent.

**11 July 2012** – DA called up to Planning & Environment Committee by the Mayor Councillor Etmekdjian.

**25 July 2012** - Legal advice received from external solicitors (Marsdens) confirming Council has power to approve the DA and that there is no legal issue regarding use of private land within Clare Street road reserve, and would be unlikely to be grounds for refusal of DA unless design of such access is deficient or unsafe.

**26 July 2012** – Internal meeting to discuss legal advice between Group Manager Environment & Planning, Group Manager Corporate Services, General Counsel, Manager Assessment & Team Leader – Assessment. At this meeting, it was resolved that the assessment would be finalised within 2 weeks and DA determined under delegation (subject to withdrawal of call-up from the Mayor), with matters including maintenance of driveway within Clare Street road reserve, creation of covenants etc to be resolved via conditions. Applicant updated by General Counsel of this internal meeting.

**COUNCILLOR REPRESENTATIONS:**

Name of Councillor: The Mayor Councillor Etmekdjian

Nature of the representation: Call up to Planning and Environment Committee.

Date: 11 July 2012

Form of the representation (e.g. via email, meeting, phone call): By email to Councillor HelpDesk

On behalf of applicant or objectors: Email on behalf of the applicant, requesting referral to next available PEC Meeting as a late item.

Any other persons (e.g. consultants) involved in or part of the representation: No

**NOTE:** This call-up to Planning & Environment Committee was withdrawn by the Mayor on 8 August 2012 – see email confirmation on the LDA File.

**REFERRALS:**

**Development Engineer (12 April 2012):** Council's Development Engineer has raised no objection to the application subject to 14 conditions of consent which have been included in the attached draft consent, and also provided the following comments (on file):

**ITEM 2 (continued)**

**ATTACHMENT 2**

*Council's Public Works Department has commented on the proposal and raises no objections to the approval subject to conditions.*

*..... you need to include all conditions from Traffic and Public Domain on the consent. I suggest that dot point two of Traffic Engineer's conditions be amended as:*

*"The applicant is required to submit a report on Road Safety Audit by a qualified Traffic Consultant to the Council for approval prior to issue of the Construction Certificate. The recommendations in the report shall be incorporated on to the plans and at site where necessary".*

The recommended amendment has been included in the draft consent (see condition 22).

**Public Works (4 April 2012):** Council's Public Works Division have assessed the proposal and have provided comments in response to issues related to drainage, traffic and public domain (on file). No objection to the application has been raised subject to conditions of consent detailed below:

**Traffic:** The following comments and recommended conditions have been provided in response to traffic issues regarding the development and as previously raised with the applicant in Council's memo dated 15 December 2010 (see issues (a) to (e) and (g) above):

*General comments: – Preliminary checking of the plans were carried out by Council's former Traffic and Transport Engineer and provided comments on 15 December 2010.*

*Issue –*

*The Traffic Unit required a number of traffic and access issues to be resolved. I make the following comments regarding the traffic and access issues that the applicant has addressed:*

*Issue (a) - The driveway geometry should conform to AS 2890.1-2004 Refer to Section 2.5. The min. width of the ramp should be 3.6m with a max. crossfall of 5%. The turning path of a B99 car design template should be shown on the plan view illustrating that the design vehicle can enter and exit in a forward direction.*

*According to the drawing DRG. NO. 7737-S01, the width of the ramp is 3.0m. Council has informed the applicant by email on 23 February 2012 that the 3.0m wide driveway conforms to AS 2890.1-2004 Section 2.6 Design of Domestic Driveways.*

*The applicant proposes a car turntable so that the car can enter and exit in a forward direction. The submitted drawing indicates on a plan view illustrating that the turntable can accommodate two B85 cars, which is acceptable.*

*The issue (a) has been resolved.*

*Issue (b) - The driveway changes in grade should not exceed 12.5%. Currently Section 5 – estimated 19.8% top and 16.8% bottom.*

*Issue (c) - The plan view, longitudinal profiles and sections of the driveway and public domain should show key levels e.g. at interface points, changes of grade etc.*

*Issue (d) - The plan view, longitudinal profile and sections of the driveway and public domain should show all dimensions.*



**ITEM 2 (continued)**

**ATTACHMENT 2**

*Although the applicant has indicated the driveway grades and the RL of the top of the layback and landings on the drawing submitted on 27 March 2012, the levels shown on the plans are to approximate AHD. Council do not accept such plans.*

*The issues (b), (c) and (d) remain unresolved.*

*Issue (e) - The applicant should undertake a Dial-Before –You-Dig and obtain utility service drawings. Utility services should be clearly shown on the plan view. Cover to services crossed by the driveway should be identified on the plan & sections. The applicant may need to discuss the proposal with the service authorities and obtain their requirements.*

*The plan indicating the utility services has been submitted.*

*Issue (e) has been resolved. However the applicant may need to discuss the proposal with the service authorities and obtain their requirements.*

*Issue (g) - The existing guard rail and signs will be impacted upon. Guard rail and sign adjustment details are to be detailed on the drawings.*

*No details of guard rail and sign adjustment details are indicated on the drawings. The applicant is required to submit a report on Road Safety Audit prior to issue of the Construction Certificate.*

**TRAFFIC CONDITION(S):**

*From a traffic perspective there are no objections to approval of this application subject to following condition.*

- The applicant must request the surveyor to make the height adjustment to AHD (Class D accuracy as a minimum) and added to the original survey detail plan (base survey plan). It is sufficient if the surveyor makes a notation on the survey plan indicating the value to be added to every level in the plan to obtain true AHD levels. Similarly, the same notation MUST appear on all design plans which have used heights derived from the base survey plan.*
- The applicant is required to submit a report on Road Safety Audit by a qualified traffic consultant prior to issue of the Construction Certificate.*

Assessing officers' comments: The above recommended conditions have been included and where necessary redrafted in accordance with Council's Development Engineers previous advice (see conditions 1(d), and 22).

Due to the unique nature of this development proposal, and principally because the development will take place over Council owned land, the applicant can only obtain a satisfactory Construction Certificate after final design plans have been stamped and approved by Council. Consequently, issues relating to the design of the driveway and submitted sections (being (b) to (d)) can be resolved prior to CC by the imposition of appropriate conditions (see conditions 1(a) to (c)).

Issue (e) has also been resolved by the imposition of appropriate conditions of consent (3 & 5).

Drainage: The following comments and conditions have been provided in response to the issue of drainage, and impacts of the development upon existing and proposed methods of stormwater disposal:

**ITEM 2 (continued)**

**ATTACHMENT 2**

*General comments – The proposed elevated driveway is not located within the 1 in 100 year ARI overland flowpath.*

*Preliminary checking of the plans were carried out by Council's former Traffic and Transport Engineer and provided comments related to access and drainage on 15 December 2010.*

*Due to the proximity of the driveway ramp to the stormwater pit there is a risk of damaging the pit by construction vehicles/ equipment during construction and ingress/ egress vehicles. The plan Drg No. 7737 S01 issue E of 26 March 2012 indicates that the kerb length between the end of the splay of the driveway at kerb line and the near end of the lintel is 1.43m which is satisfactory.*

*Issues –*

*Following are the issues related to stormwater extracted from the memo of 15 December 2010.*

*Issue (h) – Storm water runoff will be concentrated onto the public pathway. Drainage details are required.*

*A stormwater outlet is to be constructed in the parking bay. The connection point of the drainage pipe from the parking bay to the existing property drainage disposal line is not indicated on the submitted drawing. The applicant has been advised that the drawing indicating the existing property drainage and connection of the new pipeline from the parking bay can be submitted in the CC stage.*

*Issue (i) - Erosion & Sediment Control details are required.*

*The drawing indicating the proposed method of erosion and sediment control has been submitted.*

*The issue (i) has been resolved.*

**DRAINAGE CONDITION(S):**

*From a stormwater perspective there are no objections to approval of this application subject to the following condition:*

- 1. The applicant is required to submit a drawing indicating the method of disposal of the storm runoff into the existing line prior to issue of the construction certificate.*

Assessing officers' comments: The above recommended condition has been included in the attached draft consent (see condition 24).

Public Domain: The following comments and conditions have been provided in response to the issue of public domain:

**PUBLIC DOMAIN CONDITION(S):**

*From a public domain perspective there are no objections to approval of this application subject to the following conditions:*

- The design and construction of the stairs and handrails in the public pathway shall be in accordance with Australian Standard 1428.1*



**ITEM 2 (continued)**

**ATTACHMENT 2**

- *The applicant shall obtain written confirmation from Ausgrid that the clearance between the new driveway ramp and the overhead power cables meets Ausgrid minimum requirements.*
- *An Environmental assessment shall be prepared for the development, with particular reference to the adjacent zone of Critically Endangered Ecological Communities and trees within the Clare Street road reserve and the property.*
- *The traffic crash barrier and No Stopping sign is to be reinstalled behind the cul-de-sac kerb at a position nominated by Council's Traffic Engineer.*
- *The applicant shall obtain written approval from the Service Authorities to construct the elevated vehicle ramp and public stairs over their underground mains.*

Assessing officers' comments: The above recommended condition has been included in the attached draft consent (see conditions 3-5, 15) – except for the requirement for an “environmental assessment” of trees within the Clare Street road reserve, as these issues  have been assessed by Council's Consultant Landscape Architect.

**Environmental Health Comments (7 May 2012):**

*Reference is made to the architectural plans and acoustic consultant's report submitted to Council.*

*It is proposed to install a 6.5 metre diameter motorised turntable to enable cars to enter and leave the premises in a forward direction.*

*The turntable will be installed on a concrete platform adjacent to the south-western corner of the property and approximately 7 metres from the neighbouring residence at 8 Clare Street.*

*It is assumed that the turntable will operate at any time of the day or night.*

*No background noise levels have been provided for the locality. Also, the acoustic consultant's report is for a 4.0 metre turntable instead of a 6.5 metre turntable. It also unclear whether the turntable was under load at the time of the test or whether any adjustments need to be made for tonal, low-frequency or intermittent noise.*

*According to an email from the manufacturer of the turntable, the noise level from the 6.5 metre model is only 3dB(A) higher than the 4.0 metre model. However, no documentary evidence has been provided to support this claim.*

**RECOMMENDATION:**

*That the applicant be requested to submit a new acoustical consultant's report including:*

- 1. The measured night-time background noise level at the most affected location*
- 2. The acceptable noise level at the most affected location*
- 3. The measured noise level or sound power level of the proposed turntable*
- 4. Whether any modifications are required for tonal, low-frequency or intermittent noise*

**ITEM 2 (continued)**

**ATTACHMENT 2**

5. *The predicted noise level at the most affected location*
6. *An assessment of the likely noise impact.*

Assessment Officer's Comment: Whilst these comments have been noted, the additional information/detail has not been requested from the applicant considering the residential nature of the development. Using the RTA's traffic guidelines for residential development, residential dwelling houses generate an average of 9 vehicle trips per day (average 0.9 trips in peak periods), and therefore the turntable would be used at a similar frequency.

The turntable would also have a similar frequency of usage, noise output and actual length of time of operation/usage (maximum 30 seconds in this case, to rotate the vehicles to be in a forward position) as other mechanical devices associated with residential parking, such as a garage roller door or mechanically-operated gates – all of which are very common in this locality and in the City Of Ryde's residential areas generally.

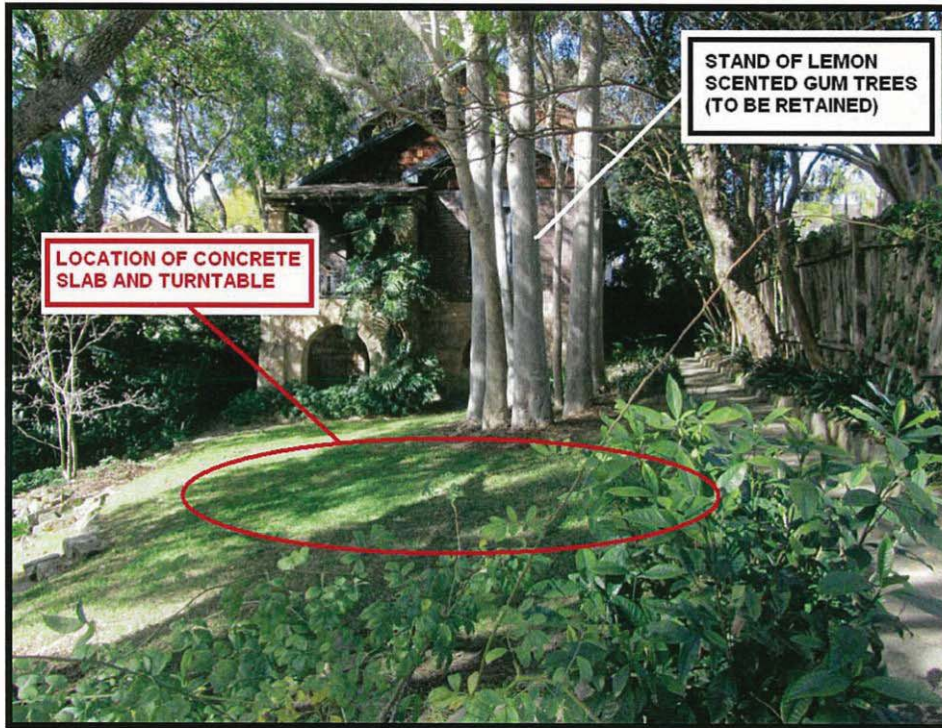
- Having regard to all of these matters, it is considered that the noise impacts of the development are satisfactory. Standard conditions are included in the consent to address noise and amenity impacts on neighbours (see condition 6A)

**Landscape Architect (7 August 2012):**

Council's Consultant Landscape Architect has undertaken an assessment of the proposal, having regard to the site's location within "Urban Bushland" and because the proposed parking bay slab/turntable structure is close to cluster of large trees on the site (see photo below).

ITEM 2 (continued)

ATTACHMENT 2



The Consultant Landscape Architect's comments are quite detailed and are held on the DA file. The more pertinent matters regarding landscaping and vegetation issues are summarised below.

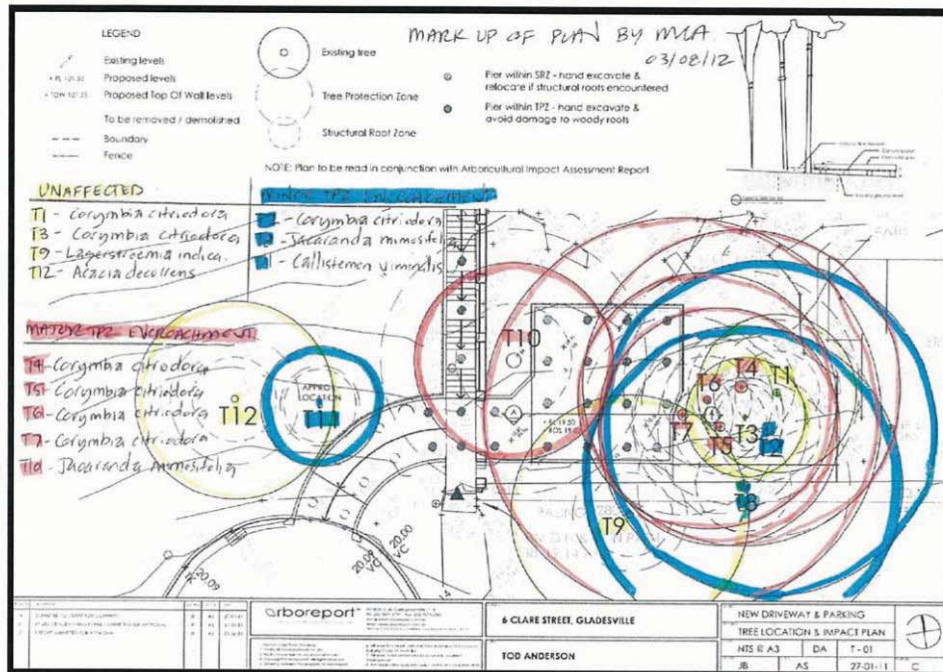
Existing Trees – Tree Protection Measures

The driveway and suspended concrete slab are to be constructed close to and within the tree protection zone of some 12 trees. Most of these are within the site although 2 of them (a bottle brush and a black wattle) are within the road reserve (unformed portion of Clare Street). The plan of the affected trees, marked up by Council's Consultant Landscape Architect to show which trees are affected and unaffected and to what extent, appears below:



ITEM 2 (continued)

ATTACHMENT 2



It is the applicant's intention to preserve all trees as part of the development, and the Consultant Landscape Architect has advised that this will be possible, subject to conditions for Tree Protection measures and a requirement for the Project Arborist to oversee the works. See condition 47.

**Supplementary Planting**

Given that the concrete slab will be elevated above natural ground level (particularly at the northern end), and also because the site adjoins a reserve (Glades Bay Park), the Consultant Landscape Architects were requested to provide details of preferred supplementary plantings to screen the visual impact of the structure.

These comments regarding screen planting have been formulated into a condition (see condition 23) requiring submission of a landscaping plan to be approved by Council prior to approval of the Construction Certificate.

**Legal Advice (Marsdens solicitors – 25 July 2012):**

As noted previously in this report, the advice of Council's external solicitors (Marsdens) was sought in the assessment of this DA. The full legal advice from Marsdens (dated 25 July 2012) is held on Council's file, and below is a summary of their advice:

1. Does the Council has the power to grant a right of carriageway over that part of the public road upon which the driveway to 6 Clare Street, Gladesville is proposed to be constructed?

Advice: Section 6(1) of the Roads Act 1993 relevantly provides:

**ITEM 2 (continued)**

**ATTACHMENT 2**

*“(1) The owner of land adjoining a public road is entitled, as of right, to access (whether on foot, in a vehicle or otherwise) across the boundary between the land and the public road.”*

Section 6(1) does not distinguish between parts of a public road that are made and unmade. Accordingly, where land adjoins a public road the owner of the land will have the right to access across the boundary between the land and the public road whether the road is made or unmade.

There is no need (or power) for a right of carriageway to be granted over the public road in order to establish a right of access or to enable a driveway to be constructed within the road reserve to provide a crossing between the formed part of the public road and the land adjoining the public road.

**2. On what grounds could Council reasonably refuse an application by the owners of 6 Clare Street, Gladesville to make provision for vehicular access to the property over the unconstructed part of the public road?**

Advice: The case of *Goldberg v Waverley Council [2008] NSWLEC 49* involved a similar factual situation to the matter presently being considered by the Council. One of the issues raised in the case was whether it was appropriate to convert a public asset for a private purpose and whether there was a necessity for the driveway.

Having regard to the above decision, unless the design of the proposed driveway crossing is deficient or unsafe, it is unlikely that there would be sustainable grounds upon Council could reasonably refuse an application by the owners of 6 Clare Street, Gladesville to make provision for vehicular access to the property over the unmade part of the public road.

Assessment Officer's Comment: As indicated in Marsdens advice above (and in full on Council's File), it is considered that there is no legal impediment to Council granting approval of the proposed development, subject to conditions including construction standards of the driveway and future maintenance (see condition 49).

**Heritage Officer:**

The site is not listed as a heritage item, and not within the visual catchment of any heritage items (although there are heritage items in nearby York Street and Amiens Street), and so no formal referral was required to Council's Heritage Officer.

The DA has been reviewed by Council's Heritage Officer and verbal comments provided. Given that the site is close to Glades Bay (within 150m), there is a possibility that aboriginal archaeological relics could be uncovered during construction works, and it is therefore recommended that condition 46 be imposed, requiring the applicant to contact the NSW Heritage Branch of the Department of Planning, and the Aboriginal Heritage Office if any such relics are uncovered during construction.

In regard to the sandstone fence at the front of the site (refer to photo earlier in report), given that most of the sandstone wall is to be preserved (only the portion between the 1<sup>st</sup> and 2<sup>nd</sup> columns need to be removed to enable construction of the driveway), and the

**ITEM 2 (continued)**

**ATTACHMENT 2**

applicant has confirmed that the existing sandstone columns will be re-used along the pathway (refer to Drawing No S03), there are no heritage issues or concerns.

**STATUTORY PROVISIONS**

**SECTION 79C HEADS OF CONSIDERATION**

**(a) The provisions of**

**(i) Any environmental planning instrument:**

State and Sydney Regional Environmental Planning Policies

SREPP (Sydney Harbour Catchment) 2005:

*Sydney Regional Environmental Plan (Sydney Harbour Catchment) 2005* applies to the subject site and has been considered in this assessment.

The site is located within the designated hydrological catchment of the Sydney Harbour and foreshores and waterways areas, and is therefore subject to the provisions of this SREP. With the exception of 'improved water quality', the remaining objectives of the SREP are not directly applicable to the proposed development. The objective of 'improved water quality' is satisfied through compliance with the provisions of Part 8.2 – Stormwater Management of DCP 2010 (condition 24).

The development proposal raises no other issues and otherwise satisfies the aims and objectives of the SREP.

The SREP also refers to 'matters for consideration' under Division 2, which have been used in the assessment of the proposed development.

| CONSIDERATION                                    | COMPLIANCE   |
|--|--|
| Biodiversity, ecology and environment protection | The site is a significant distance away from the water body (130m <sup>+</sup> ) & no impact is envisaged.   |
| Public access to and from waterways & foreshores | The proposed development will not inhibit access to the waterway or foreshore.   |
| Maintenance of working harbour                   | The proposal will cause no impact to the harbour or the foreshore.   |
| Interrelationship of waterway & foreshore        | Glades Bay Park exists in front of the subject site which acts as a 'buffer' between the site and the waterway, thereby not further affecting the interrelationship that currently exists. |
| Scenic quality                                   | Built form will be consistent with the locality and the existing major trees will be retained which enhances the existing natural environment.   |



**ITEM 2 (continued)**

**ATTACHMENT 2**

| CONSIDERATION           | COMPLIANCE                                  |
|-------------------------|---|
| Protection of views     | Existing views are unlikely to be affected. |
| Boat storage facilities | N/A.  |

Sydney Harbour Foreshore & Waterways Development Control Plan:

A Development Control Plan has been prepared to support the REP. The aims of this DCP are:

- *To protect ecological communities within the area covered by the SREP;*
- *Ensure that the scenic quality of the area is protected or enhanced;*
- *Provide siting and design principles for new buildings and waterside structures within the area; and*
- *Identify potential foreshore access locations in the area.*

The subject site immediately adjoins an area identified as being 'Landscape Character Type 14'. Development in these areas must consider:

*"Protecting key visual elements including rock outcrops, native vegetation, vegetation in and around dwellings and maintaining the density and spacing of development."*

No changes are proposed to the riverbank or the area between the mean high water mark and the foreshore building line. Glades Bay Park provides a sufficient buffer between the foreshore and the subject site. It is setback from the water body by an approximate distance of some 138m. The proposed development has minimal impact on the Sydney Harbour foreshore and will otherwise fulfil the aims and objectives of the DCP.

Ryde LEP 2010:

**Permissibility:**

The subject site is currently zoned *R2 – Low Density Residential* under the provisions of the Ryde LEP 2010. The proposal to construct 2 car parking spaces within the subject site is a permissible use within the zone.

That part of the development being the construction of the extension of roadway adjoining Clare St, will take place over land currently zoned *RE1 – Public Recreation*. The construction of 'roads' within RE1 land is a permissible use with Council consent.

**Aims and objectives for residential zones:**

- *To provide for the housing needs of the community within a low density residential environment.*
- *To enable other land uses that provides facilities or services to meet the day to day needs of residents.*
- *To ensure that the general low density nature of the zone is retained and that development for the purposes of dual occupancy (attached) and multi dwelling*

**ITEM 2 (continued)**

**ATTACHMENT 2**

*housing (attached) do not significantly alter the character of a location or neighbourhood.*

- *To ensure that new development complements or enhances the local streetscape.*
- *To maintain on sites with varying topography the two storey pitched roof form character of dwelling houses and dual occupancy (attached) developments.*
- *To ensure that land uses are compatible with the character of the area and responsive to community needs.*

The proposed development is considered to satisfy the objectives for residential developments.

**Aims and objectives for public recreation zones:**

- *To enable land to be used for public open space or recreational purposes.*
- *To provide a range of recreational settings and activities and compatible land uses.*
- *To protect and enhance the natural environment for recreational purposes.*
- *To provide adequate open space areas to meet the existing and future needs of the residents of Ryde.*
- *To protect and enhance the natural bushland in a way that enhances the quality of the bushland and facilitates public enjoyment of the bushland in a way that is compatible with its conservation.*

That part of the proposed development for the construction of the proposed roadway is considered to satisfy the above objectives. The existing dedicated recreational land, its setting, accessibility and its environment will not be adversely affected by the proposal.

**Other controls:**

The built form development controls relating to height and FSR (clauses 4.3 and 4.4) are not applicable in this case as there are no proposed amendments to the existing building on the subject site. The current application is for construction of a driveway from Clare Street and for the construction of 2 car parking spaces within the subject site only.

**(ii) Any proposed instrument (Draft LEP etc)**

A Section 65 Certificate enabling the formal exhibition of Draft Local Environmental Plan 2011 was issued by the Department of Planning and Infrastructure on 23 April 2012. The Draft Plan was publicly exhibited ending on 13 July 2012. Under this Draft LEP, the zoning of the property is *R2 - Low Density Residential*. The proposed development is permissible with consent within this zoning under the Draft LEP and it is considered that the proposal is not contrary to the objectives of the Draft LEP or those of the proposed zoning.

**(iii) Any development control plan**

Ryde DCP 2010:

The relevant sections of Ryde DCP 2010 are considered below:

Part 3.3 – Dwelling Houses and Dual Occupancy (attached)



**ITEM 2 (continued)**

**ATTACHMENT 2**

An assessment of the proposal and the relevant heads of consideration under Council's DCP 2010 is provided in the compliance table held at **Attachment 1**. The development proposal will not result in any changes to the existing floor space ratio, height or building envelope of the existing residence and so those specific controls have not been included in the assessment table.

The non-compliances identified in the table are assessed below.

**(1) Cut and Fill:** In accordance with *Section 2.5.2 – Topography and Excavation*, control '3(iii)' provides areas outside the dwelling footprint to be excavated and/or filled so long as *"the maximum height of fill is not more than 500mm."*

Officer's Comment: The proposed parking spaces will be located on concrete piers and elevated up to some 1.5m above the existing natural ground level of the subject site.

The subject site has a 3.7m cross fall from its southern front boundary (closest to the Clare St cul-de-sac) down to its northern end.

The car parking turntable will be built at RL19.5 which is almost at natural ground level at the entry point from the driveway. However, due to the existing cross fall will be elevated 1.5m above NGL at its highest point.

The development proposal will however fulfil this part of the DCP insofar as the existing natural ground levels throughout the site and under the car parking spaces will be maintained and the elevated car park will not result in an unreasonable loss of privacy or security for neighbours by virtue of its location and proximity to adjoining properties.

The variation is considered acceptable in this case having regard to the circumstances of the case, the nature of the development and its setting.

**(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**

All relevant issues regarding environmental impacts of the development are discussed elsewhere in this report (see DCP 2010 and Submissions sections). The development is considered satisfactory in terms of its environmental impacts.

**(c) The suitability of the site for the development**

A review of Council's Map of Environmentally Sensitive Areas (held on file) identifies the following constraints affecting the subject property:

Urban Bushland: The front portion of the site is identified as an area of urban bushland and the site is in close proximity to Glades Bay Park. While part of the construction of the driveway adjoining Clare St will be built immediately over a portion of land comprising Glades Bay Park.

An arborists report has been submitted with the development application recommending the retention of all trees within the site and outside the site that may be

Page 17 of 28

**ITEM 2 (continued)**

**ATTACHMENT 2**

affected by the development proposal. The arborists report also recommends specific tree protection measures required to be implemented to reduce the anticipated impact during the construction phase of the development.

A condition of consent has been imposed requiring the retention and protection of all trees within and outside the site and for works to be undertaken to ensure the protection of all trees in accordance with the recommendations of the arborists report (see condition 47).

The site is not otherwise classified as a heritage item or subject to any natural constraints such as flooding or subsidence. The proposal is considered to be suitable for the site in terms of the impact on the existing natural and built environments.

**(d) Any submissions made in accordance with this Act or the regulations**

In accordance with DCP 2010 - Part 2.1, Notice of Development Applications, the notification of the development application was undertaken in accordance with Council's DCP for a 14-day period ending on 17 January 2012, during which time 1 submission was received. The applicant was given a copy of the objection for an opportunity to address the issues therein. The issues raised in the original submissions and the manner in which they were responded to by the applicant (where applicable) are addressed below:

The submission raised the following issues:

- 1. *Impact on surrounding properties and environment during building works and future impact to the surrounding properties and locality in relation to the streetscape, scale of the proposal, landscaping, street parking, drainage, noise and access to neighbouring properties and to Glades Bay Park, and any other orders the Council may require to be undertaken in relation to the development.***

Officers' comments: In their submission dated 20 March 2012, the applicant provided a written response to the objectors' arguments regarding the impact of the proposal upon surrounding properties, by stating the following:

*The impact to surrounding properties, streetscape as well as the scale of the proposal, landscaping, street parking, drainage, noise, access to Glades Bay Park and neighbouring properties is represented in the plans and statement of environmental effects submitted by the applicant.*

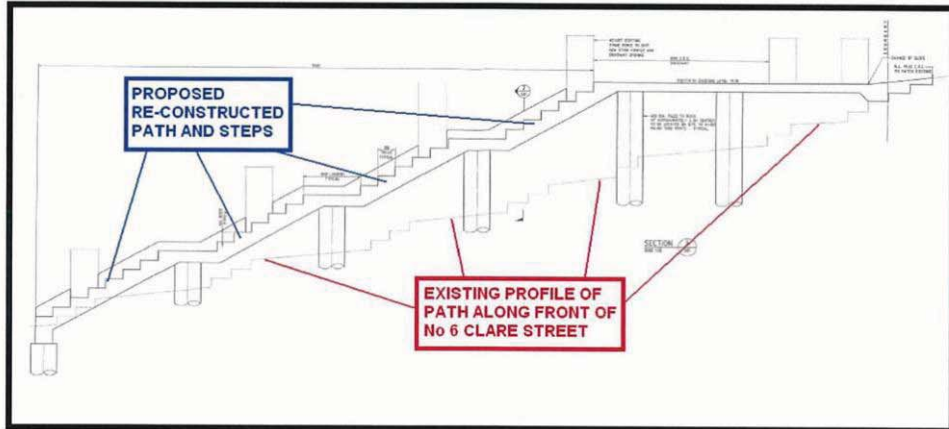
*The principal benefit of the proposed works will be to remove two passenger cars of the applicant presently parked within the public road enhancing public parking for local residents. Fundamental to the design is preservation of the existing pedestrian public pathway providing access to and from Glades Bay Reserve and more importantly rebuilding of the public path which is presently in a poor state of repair.*

*The proposed driveway and parking bay does not impact on the access of neighbouring properties and does not incorporate any structures that would impact on the privacy, daylight or views of other dwellings. The development proposal is the result of much thought and consideration as to minimising impacts on the natural environment and is designed in a manner as to maintain all existing trees.*

**ITEM 2 (continued)**

**ATTACHMENT 2**

The proposed development involves re-construction of the pathway and steps as shown in the following drawing (section 3 in the DA plans). This work will involve both steps and landings which will delete the sloping sections of path in between the steps (as presently exists), and will be an improvement on the existing path conditions.



Whilst the existing path will be unavailable during the construction period, there is an alternative path through Glades Bay Park to Delmar Parade (approx 100m to the west) for pedestrians and other users of the Park to use whilst the construction occurs – see air photo below.





**ITEM 2 (continued)**

**ATTACHMENT 2**

The proposal is considered will not have an adverse impact upon the locality in terms of streetscape, scale, landscaping, street parking, drainage or noise and is considered suitable having regard to the context of the site and its locality.

**2. Clarification of level of noise from turntable.**

Officers' comments: The applicant has provided an acoustical consultants report which accompanies the DA and provides advice on the expected noise emissions from the electric turntable.

Having regard to the level of background noise being at approximately 35dBA, it was determined that *"during periods when ambient noise levels increased above this background level due to passing aircraft, vehicles etc, the noise level from the turntable were found to be totally inaudible to a person standing 1m away from the circumference of the turntable."*

In addition to the above, it is considered that the noise impact of the turntable should be considered in the context of the frequency of usage as a private parking area associated with a residence. Using the RTA's traffic guidelines for residential development, residential dwelling houses generate an average of 9 vehicle trips per day (average 0.9 trips in peak periods), and therefore the turntable would be used at this frequency of use.

The turntable would also have a similar frequency of usage, noise output and actual length of time of operation/usage (maximum 30 seconds in this case, to rotate the vehicles to be in a forward position) as other mechanical devices associated with residential parking, such as a garage roller door or mechanically-operated gates – all of which are very common in this locality and in the City Of Ryde's residential areas generally.

Having regard to all of these matters, it is considered that the noise impacts of the development are satisfactory. Standard conditions are included in the consent to address noise and amenity impacts on neighbours – these include a requirement that the use of the premises must not cause "offensive noise" as defined in the *Protection of the Environment Operations Act 1997* (see condition 6A).

**3. Impact on neighbouring properties and the neighbourhood during period of construction including: access to the park and neighbouring properties; noise levels being kept to a minimum during construction; maintaining access to adjoining properties, the park, and street parking, in particular access to the driveway to 8A Clare St at all times and ensuring that garbage trucks can continue to access Clare St for the weekly garbage pickup; the generation of, control and removal of dirt, dust, water and effluent and that any debris is removed immediately for safety reasons; that the adjoining driveways, footpaths, road and park areas are kept clean and tidy during building works; the specific timeframe for the period of building works; and the span of hours for start and finish of building works each day.**

Officers' comments: In their submission dated 20 March 2012, the applicant provided a written response to the objectors' concerns regarding the impact of the proposal upon surrounding properties, by stating the following:



**ITEM 2 (continued)**

**ATTACHMENT 2**

*Points a) to f) would be addressed by Councils standard conditions of consent or are regulated by existing local government or work health and safety controls that as citizens the applicant is subject to as the points principally relate to noise levels during construction, hours of construction and removal of waste. The noted points are also addressed in the statement of environmental effects and within the plans submitted by the applicant.*

Appropriate conditions of consent have been imposed to ensure that all relevant issues during the construction period fulfil relevant statutory controls and building materials are stored and disposed of in the appropriate manner.

Access to the adjoining properties should not be compromised during the construction period, nor should access by service vehicles such as garbage collection and the like. Conditions of consent have been imposed to ensure the usual day-to-day functioning of Clare Street remains unaffected during the construction period.

**4. Responsibility to reinstate any damage to existing footpaths, driveways, fences and nature strips of adjoining properties.**

Officers' comments: It will be the responsibility of the applicant to pay appropriate damage deposits for the proposed works and to undertake the necessary reinstatement of damages attributable to the construction works after the works have been completed.

Inspection of the condition of existing footpaths, driveways and nature strips is ordinarily undertaken by Council officers prior to the commencement of works. Any complaints of damage caused to adjoining properties can be made directly to Council and the necessary inspection will be undertaken by the responsible officer/s.

In addition to the above, it is recommended that a condition be imposed requiring the creation of a restriction as to user on the property title for the applicant to maintain the driveway and pedestrian path within the presently un-formed portion of Clare Street.

**5. The neighbour would like to be given 1 weeks notice in writing of intention to commence works.**

Officers' comments: Part of the Construction Certificate approval for any building work requires the applicant to notify the Council at least 48hours prior to commencement. Except in the case of demolition, there are no mandatory requirements to notify the owner/s of adjoining properties prior to the commencement of any building works.

Condition 31A also requires the applicant to undertake a letterbox drop of all nearby property owners.(at this end of Clare Street) with details provided of the Principal Certifying Authority (PCA) responsible for ensuring compliance with Council's consent conditions.

**6. Clarification is sought with respect to the impact of the proposal upon existing landscaping (Council's Reserve).**

Officers' comments: This matter has been considered by Council's Landscape Architects who have recommended that the areas affected by the proposal (ie all disturbed areas and in particular within the un-formed portion of the Clare Street road

**ITEM 2 (continued)**

**ATTACHMENT 2**

reserve which is now part of Glades Bay Park) be re-vegetated with a mix of understorey and mid-storey species endemic to the local area. See condition 23.

**7. Erosion and sedimentation controls.**

Officers' comments: Suitable sediment and erosion controls measures in accordance with Council's requirements have been appropriately conditioned as part of the development consent.

**8. Impact of proposal on existing trees within the site and potential root damage.**

Officers' comments: An arborists report has been submitted with the development proposal and which was available for public display during the notification period. This report was considered by Council's Landscape Architect during their assessment of the proposal (see "Referrals" section). The report details specific measures to be implemented during the construction phase to ensure the retention of all trees within the site. Appropriate conditions of consent have been imposed requiring compliance with the recommendations of the arborists report to ensure the future well being of the existing trees within the site.

**9. Responsibility of reconstruction of the existing steps along Clare St. Will the replacement steps be steeper than the existing steps, what are the proposed materials of construction and have alternative materials have been considered?**

Officers' comments: The final construction plans still need to be approved by Council's Public Works division prior to Construction Certificate approval. As shown in the Section above, there will be more steps over a shorter lineal distance across the frontage of the site than presently exists, however the existing sections of path in between the steps (which are not level) will be removed. Overall, it is considered that the proposed path is an improvement on the existing path in terms of finished surface levels. It is also noted that condition 15 requires the construction of the stairs and handrails in the public pathway to be in accordance with Australian Standard AS1428.1.

**10. Council should seek the replacement of the existing telegraph pole(s) between 4 and 6 Clare St to be replaced due to deterioration. Council should be sought to request the utility providers underground the existing services or replacement of existing poles with taller ones.**

Officers' comments: As part of the development consent the applicant is required to contact all relevant utility providers and present their plans prior to construction to ensure that any existing infrastructure (above or below ground) will not be adversely affected by the proposal.

The replacement of dilapidated infrastructure to underground electricity is beyond the scope of the development assessment process for this proposal.

**11. Lighting of the new steps and pathway to the park to ensure the safety of the public.**

Officers' comments: There is presently no lighting within or adjacent to the existing pathway across the frontage of the site, and no proposal to provide such lighting within the re-constructed pathway. Council's Public Works Division would be

**ITEM 2 (continued)**

**ATTACHMENT 2**

responsible for the future lighting of the public pathway and will have an opportunity to consider such during the assessment of detailed plans which require Council approval prior to the release of the Construction Certificate.

**(e) The public interest**

Having regard to the assessment contained in this report, it is considered that approval of the development is in the public interest.

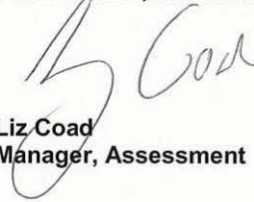
**CONCLUSION**

After consideration of the development against section 79C of the Environmental Planning and Assessment Act 1979 and the relevant statutory and policy provisions, and based on a merit assessment of these provisions, the application is considered suitable for the site, is in the public interest and acceptable for approval under delegated authority subject to conditions. Therefore, it is recommended that the application be approved.

**RECOMMENDATION**

That LDA No.2011/425 to construct an elevated new driveway from the end of Clare St and turntable parking bays within the front yard at 6 Clare St, Gladesville, be approved subject to the conditions in the attached draft consent.

  
**Chris Young**  
Team Leader, Assessment

  
**Liz Coad**  
Manager, Assessment

  
**Dominic Johnson**  
Group Manager – Environment & Planning

---

**3 400- 426 VICTORIA ROAD, GLADESVILLE. LOT 1 DP 747541. Local Development Application for change of use, signage, and fitout for a gymnasium to operate 24 hours per day. LDA2012/0477.**

---

**Report prepared by:** Assessment Officer - Town Planner

**Report approved by:** Manager Assessment; Group Manager - Environment & Planning

**Report dated:** 20/03/2013

**File Number:** grp/09/5/6/2 - BP13/452

---

## 1. Report Summary

**Applicant:** Stuart Pass - Run For It Pty Ltd

**Owner:** San Val - Sain & Co Pty Limited & Ramalah Pty Limited

**Date lodged:** 18 December 2012

This report considers a development application (DA) for the change of use and fitout for a gymnasium to operate 24 hours / 7 days ("Anytime Fitness") at the ground floor of the existing building. This is accompanied by two (2) business identification signs (ie a Flush Wall Sign and an internally illuminated pylon sign).

Assessment of the proposal against the controls in the Ryde Development Control Plan (DCP) 2010 has been undertaken, and there are two (2) non-compliances regarding the proposed signage – ie the hours of illumination of the pylon sign at the front, and the size of the flush wall sign. As discussed in the body of the report, this issue is considered to be relatively minor and would not justify refusal and can be mitigated via conditions of consent.

The DA has undergone notification and public exhibition. Two (2) submissions were received including one (1) petition containing seventeen (17) signatures from surrounding residents. The main issues of concern in the submissions were that the property was not intended for 24 hour/7 day operation; noise (from the usage and also from vehicles accessing the carpark); light spillage (from lights within the premises). The issues of concern, which are addressed in the body of the report, do not warrant refusal of the application and can be addressed via conditions of consent.

The proposal is recommended for approval subject to conditions.

**Reason for Referral to Planning and Environment Committee:** Nature of the development and submissions (petition) received.

Public Submissions: Two (2) submissions received (including petition with 17 signatures).

SEPP 1 (or clause 4.6 RLEP 2010) objection required? No

Value of works? \$80,000



**ITEM 3 (continued)**

A full set of the plans is **CIRCULATED UNDER SEPARATE COVER** as additional information provided to Councillors - subject to copyright provisions.

**RECOMMENDATION:**

- (a) That Local Development Application No. 2012/0477 at 400-426 Victoria Road, Gladesville, being LOT 1 DP 747541 be approved subject to the conditions in **Attachment 2**.
- (b) That the persons who made submissions be advised of Council's decision.

**ATTACHMENTS**

- 1 Compliance Table
- 2 Proposed Conditions of Consent
- 3 A4 Plans - extracts from site plan, floor plan, elevations, signage plan
- 4 Map
- 5 Applicant's Response to Submissions - CIRCULATED UNDER SEPARATE COVER
- 6 A3 Plans - subject to copyright provisions - CIRCULATED UNDER SEPARATE COVER

Report Prepared By:

**Lauren Franks**  
**Assessment Officer - Town Planner**

Report Approved By:

**Liz Coad**  
**Manager Assessment**

**Dominic Johnson**  
**Group Manager - Environment & Planning**

**ITEM 3 (continued)**

**2. Site (Refer to attached map)**

|                                  |   |  |
|----------------------------------|---|--|
| <b>Address</b>                   | : | 400-426 Victoria Road, Gladesville   |
| <b>Site Area</b>                 | : | Area of Premises: 620m <sup>2</sup> (540m <sup>2</sup> gym, 80m <sup>2</sup> office)<br>Frontage of Premises: 32m  |
|                                  |   | Site Area: 3,132.605 m <sup>2</sup><br>Frontage: 75.85m<br>Depth: 41.3m<br>Rear: 75.85m  |
| <b>Topography and Vegetation</b> | : | The subject site falls towards the rear, allowing a semi-basement level car park to be provided underneath the building. The rear portion of the subject site is classified as urban bushland. This vegetation exists on adjoining properties to the rear. |
| <b>Existing Buildings</b>        | : | Commercial building with semi-basement garage.   |
| <b>Planning Controls</b>         | : | Ryde LEP (Gladesville Town Centre and Victoria Road) 2010  |
| <b>Zoning</b>                    | : | B6 Enterprise Corridor   |
| <b>Other</b>                     | : | Ryde DCP 2010  |



Aerial photo of subject site and surrounds

**ITEM 3 (continued)**



Photo of the western side of the commercial building where gymnasium is proposed

**3. Councillor Representations**

None.

**4. Political Donations or Gifts**

None disclosed in applicant's DA submission or in any submission received.

**5. Proposal**

The proposal is to convert an existing (vacant) office space (Unit 3 at Ground Floor Level) into a gymnasium that will operate 24 hours a day, 7 days per week. The operator of the business is "Anytime Fitness". The premises will be comprised of 540m<sup>2</sup> of floor space used for the gym and 80m<sup>2</sup> for offices.

Associated with the proposed usage various works to the building including installation of a visitors and after hours members door; construction of a Manager's office, guest lobby and reconfiguration of current amenity suites; installation of lighting and security cameras; installation of a security system.



**ITEM 3 (continued)**

The development also proposes installation of a flush wall sign at the top of the front elevation, and also a 3m high pylon sign within the common property area (both facing Victoria Road).

In terms of car parking, the DA submissions states there will be 15 parking spaces in the basement and 13 spaces in the parking area at the front of the building allocated to the gymnasium.

The gymnasium will be staffed for approximately fifty (50) hours per week with the expectation that the maximum number of people in the gym at any one time being thirty (30) people, including staff.

**6. Background**

The DA was lodged on 18 December 2012. Shortly after, it was notified to neighbours for a period from 9 January to 7 February 2013 (extended Christmas notification applied), referred to other Council officers, and allocated to an assessment officer.

Given the nature of the proposed usage (24 hour / 7 day operation), the DA was referred to the NSW Police (Gladesville Local Area Command) for comment as discussed in the referrals section of this report.

An 'Anytime Fitness' gymnasium currently exists 7.7km south-east of the subject site, at 91-95 Victoria Road, Balmain. Approval of this gymnasium was granted on 22 September 2011 by Leichhardt Council and similar to the proposal, is located on the ground floor of an existing commercial building. A condition of consent was imposed restricting the operational hours for 24 hours to a period of 12 months. An application to modify this consent is currently with Leichhardt Council to lift this restriction. Notification of this application resulted in 423 submissions with 379 of these submissions in support of continuing the 24 hour operation. This gymnasium is shown in the photo below:



**ITEM 3 (continued)**



Within the Ryde local government area, an 'Anytime Fitness' gymnasium has been approved with operational hours of 24 hours / 7 days per week. This gymnasium is located at 2-6 Station Street, West Ryde (with a frontage to Victoria Road) and was approved on 17 April 2012. During the notification period, four (4) submissions were received. Consequently, a condition of approval was imposed restricting the 24 hour a day operation of the gym to a 12 month trial period. Since approval, Council has not received any complaints. This gymnasium can be seen in the photo below:



### ITEM 3 (continued)

Furthermore, approval of a 24 hour / 7 day week gymnasium named 'Plus Fitness' has been granted at 14-16 Glen Street, Eastwood on 10 November 2011. During the notification period, no submissions were received. A condition of approval was imposed restricting the 24 hour a day operation of the gym to a 12 month trial period. Since approval, no complaints have been received by Council. This gymnasium is shown in the photo below:



### 7. Submissions

In accordance with Development Control Plan 2010 – Clause 2.2 of Part 2.1, Notification of Development Applications, the DA was notified to neighbours for a period from 9 January to 7 February 2013.

Two (2) submissions were received during the notification period, including one (1) submission/petition signed by seventeen (17) surrounding properties. The submissions were provided to the applicant for his review, and the applicant's response to the submissions is provided in **ATTACHMENT 5** to this report. The issues of concern raised in the submissions are discussed below:

**ITEM 3 (continued)**

**1. Operation of the premises.** *The premises were not intended for twenty four hours operation.*

Assessment Officer's Comment: There is no restriction for hours of operation of this commercial building. Operational hours are assessed and restricted based on the type of business proposed on a premises.

In this regard, although the proposed gymnasium is proposed to operate 24 hours/7 days, the patronage figures provided by the applicant (based on other "Anytime Fitness" franchises) indicates that the peak periods would be in the evening (ie 4pm to 9pm), with a steady number of people during the day, and very few people (eg average 1 per hour) during the night (10pm to 5am).

To ensure any potential adverse impacts which may arise from operation of the premises for 24 hours can be re-assessed, it is recommended that the following condition is imposed:

**44. Limited consent of extended hours of operation.** *This consent permits the operation of the approved development for 24 hours / 7 days per week for a period of 12 months. An application to modify the consent to extend the trial period (or to make the consent permanent) is to be lodged prior to the end of the 12 month trial period.*

**2. Inappropriate use of existing ramp (to the basement carpark).** *The premises contains an underground car park and a ramp from the back of the building to Victoria Road. It has been known some drivers leaving the premises speed going up the ramp making loud screeching noises, this is unacceptable at the best of times and more so if allowed trading on a twenty four hours basis.*

Assessment Officer's Comment: The car parking allocation for this development is thirteen (13) parking spaces are located within the front of the building, with a further fifteen (15) spaces allocated in the basement. It is anticipated that patrons would park within the front parking area (for convenience) and the basement parking would become more of an "overflow" parking area. The following condition of consent has been recommended to request patrons to minimise vehicle noise when using the basement carpark:

**36. Carpark Signage.** *Appropriate signage shall be placed in the immediate vicinity of the premises (e.g. entry/exit to the building; in the car park) to the effect that patrons are to minimise noise from this area, in consideration of the neighbours.*

**3. Lighting.** *At present the surrounding neighbours are inconvenienced by the lighting when cleaners are in the premises at night time. Cleaning generally is conducted over a short period of time. Lighting over the entire night is not acceptable.*



**ITEM 3 (continued)**

Assessment Officer's Comment: No change in the existing lighting intensity or location of lighting external to the premises will occur.

Windows of the proposed gymnasium at the rear do not directly align with any dwelling adjoining the rear boundary of the subject site due to the elevation difference of the commercial building and these residential properties. However, as can be seen in the photos below, these large windows will be visible from Farm Street. With the gymnasium in operation 24 hours, illumination through these rear windows has the potential to adversely impact adjoining residential properties, particularly through the night.





**ITEM 3 (continued)**



Subsequently, it is recommended that the following condition be imposed to ensure illumination from these windows is contained within the premises as best as possible:

**37. Window coverage.** *Appropriate window coverings are to be fitted to all southern rear windows of the premises to ensure lighting arising from the premises is minimised, in consideration of surrounding residential properties.*

**ITEM 3 (continued)**

**4. Privacy.** *The premises in question, for privacy reasons, had all windows facing Farm Street blackened with adhesive material which has been removed and will now need to be replaced.*

Assessment Officer's Comment: As the subject site experiences a relatively steep fall away from Victoria Road towards the rear boundary shared with residential properties, windows of the gymnasium do not directly align with the any dwelling. The air photo (earlier in this report) also shows that there is a considerable distance (approx 50m) between the subject building and neighbouring dwellings to the rear. Also, mature, dense vegetation is located along the rear boundary shared with these properties which provides a barrier to any light, glare to the residential properties. This can be seen from the photo below:



**5. Noise impacts.** *The neighbours are also concerned that the “Rhapsody Studio” a dancing school, within the same premises, has been allowed to operate without submission being made. These premises are open for business seven days a week and no consideration has been afforded to the neighbours in relation to noise cause by children on weekends.*

Assessment Officer's Comment: Although the concerns regarding the operation of the dance school are understandable, they do relate to a different development, and as such they are not relevant to Council's consideration of the subject DA.

**ITEM 3 (continued)**

In terms of the proposed development, as indicated in the supporting documentation submitted with the application, the gymnasium will not produce or use amplified music with no classes held throughout the day. Outside office hours, televisions will be the only audio equipment in use. The volume of the televisions will be controlled from the Manager's office which will be locked and secured. This will prevent any gym member from altering the volume of the televisions. All cardio equipment only have facility for ear phones for use by patrons who control their own volume levels.

With the provision of thirteen (13) allocated car spaces in the front of the commercial building and the main entry to the gymnasium provided at the front, it is considered that use of the semi-basement parking would only be on an "overflow basis" as patronage is low during the night.

The following conditions have been included in the recommendation to specifically address the issue of noise from the development:

**34. Prior to the commencement of the use, all residents within a 100m radius of the premises are to be provided (via a "letterbox drop") with contact details of the Duty Manager, who be contacted in the event of any noise disturbances at the premises.**

**35. Offensive noise.** *The use of the premises must not cause the emission of 'offensive noise' as defined in the Protection of the Environment Operations Act 1997.*

**8. SEPP 1 (or clause 4.6 RLEP 2010) objection required?**

None required.

**9. Policy Implications****Relevant Provisions of Environmental Planning Instruments etc:****(a) Ryde Local Environmental Plan (Gladesville Town Centre and Victoria Road Corridor) 2010****Zoning**

The subject site is zoned B6 Enterprise Corridor. The objectives of the B6 zone are:

- *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).*



**ITEM 3 (continued)**

- *To maintain the economic strength of centres by limiting retailing activity.*
- *To promote the sustainable use of public transport, compact living and working environments.*
- *To provide for residential uses, but only as part of a mixed use development.*

Comment: The proposed development is considered to satisfy the objectives of the zone by providing a compatible mix to the existing uses along Victoria Road. Additionally, the increased surveillance both by CCTV and visitors to the site (some after business hours) will help in creating a safe and attractive environment for visitors to and residents within the locality.

The proposed development is defined as 'recreation facilities (indoor)' pursuant to the RLEP (Gladesville Town Centre and Victoria Road Corridor) 2010 and is permissible within the B6 Zone with Council's consent:

**recreation facilities (indoor)** means a building or place used predominantly for indoor recreation, whether or not operated for the purposes of gain, including a squash court, indoor swimming pool, gymnasium, table tennis centre, health studio, bowling alley, ice rink or any other building or place of a like character used for indoor recreation, but does not include an entertainment facility, a recreation facility (major) or a registered club.

**Mandatory Requirements****6.2 Ground floors of buildings within Zone B6 Enterprise Corridor**

- (1) *Development consent must not be granted for development on the ground floor of a building on land within Zone B6 Enterprise Corridor if the development would result in any part of that floor not being used for commercial activities, other than any parts of that floor used for the purposes of:*
  - (a) lobbies for any commercial, residential, serviced apartment or hotel component of the development, or*
  - (b) access for fire services, or*
  - (c) vehicle access.*
- (2) *In this clause, **commercial activities**, in relation to the use of a building, means using the building for the purposes of business premises, community facilities, hotel or motel accommodation, landscape and garden supplies, light industries, passenger transport facilities, timber and building supplies or warehouse or distribution centres.*



**ITEM 3 (continued)**

A 'business premises' pursuant to RLEP (Gladesville Town Centre and Victoria Road Corridor) 2010 is defined as 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.

Comment: The proposed gymnasium will be located on the ground floor of an existing office building and is considered to be a form of business premises, which is within the meaning of a form of commercial activity. Therefore, the location of the proposal is consistent with this clause.

**(b) Relevant State Environmental Planning Policies (SEPPs)**
SEPP No. 64 – Advertising and Signage:

The provisions of State Environmental Planning Policy No. 64 – Advertising and Signage came into force in March 2001.

Clause 6 indicates the types of signs that fall within the scope of the policy. The proposed signs are types of signs that are subject to the requirements of the policy.

Clause 8 provides the matters to be considered as part of the assessment of the development application. Council must consider the signs in terms of the objectives of the policy and the assessment criteria provided in Schedule 1. The proposed signs are considered acceptable having regard to these matters (see table below):

**Table 1:** Assessment Criteria under Schedule 1 of SEPP 64

| <b>SCHEDULE 1 – ASSESSMENT CRITERIA</b>   |   |
|---|---|
| <b>Character of the area</b>  |   |
| Is the proposal compatible with the existing or desired future character of the area or locality in which it is proposed to be located? | The proposed signage is compatible with the surrounding retail and commercial uses which is characterised by a range of sizes, colours and designs. |
| Is the proposal consistent with a particular theme for outdoor advertising  | There is no particular theme for outdoor advertising in the locality and the  |

**ITEM 3 (continued)**

| <b>SCHEDULE 1 – ASSESSMENT CRITERIA</b>   |  |
|---|--|
| in the area or locality?  | proposed signage does not include advertising, just business identification. The signage will be uniform in design and colour and does not conflict with other signage.  |
| <b>Special areas</b>  |  |
| Does the proposal detract from the amenity or visual quality of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways, rural landscapes or residential areas? | The proposed development is not located in or within proximity of any environmentally sensitive areas, heritage areas, natural or other conservation areas, open space areas, waterways or rural landscapes. Residential development is located on the southern side of the commercial building. Signage will not be visible from these properties. It is considered that the proposed signage is in keeping with the commercial nature of development along Victoria Road and will not adversely impact upon the visual quality of the environment. |
| <b>Views and vistas</b>   |  |
| Does the proposal obscure or compromise important views?  | The site is not located within any existing nominated vista. By virtue of the nominated size, location and orientation of the signs will not obscure or compromise any potential vista.  |
| Does the proposal dominate the skyline and reduce the quality of vistas?  | The proposed signage does not obscure or compromise any significant views or vistas or viewing rights of other advertisers and is integrated appropriately into the overall design.  |
| Does the proposal respect the viewing rights of other advertisers?  | The signage will not compromise the viewing rights of other advertisers.   |
| <b>Streetscape, setting or landscape</b>  |  |
| Is the scale, proportion and form of the proposal appropriate for the streetscape, setting or landscape?  | The scale, proportion and form of the proposed signage is appropriate for the existing streetscape of the site.  |
| Does the proposal contribute to the visual interest of the streetscape, setting or landscape?   | The signage is of a scale, proportion and form appropriate to the streetscape, which includes a mix of uses. The signage has been designed as an integral part of the building design, creating visual interest, through the use of colours appropriate for the commercial/retail setting.   |

**ITEM 3 (continued)**

| <b>SCHEDULE 1 – ASSESSMENT CRITERIA</b>   |   |
|---|---|
| Does the proposal reduce clutter by rationalising and simplifying existing advertising?   | The application provides a rational and unified signage scheme which reduces the impact of visual clutter.  |
| Does the proposal screen unsightliness?   | There is no particular “unsightliness” on the site and the signs will provide business identification rather than screening unsightliness.            |
| Does the proposal protrude above buildings, structures or tree canopies in the area or locality?  | The proposed signage is attached to the existing building and will not protrude above buildings, structures or tree canopies in the area or locality. |
| Does the proposal require ongoing vegetation management?  | Not applicable to the proposed development.   |
| <b>Site and building</b>  |   |
| The proposal compatible with the scale, proportion and other characteristics of the site or building, or both, on which the proposed signage is to be located?  | Yes   |
| Does the proposal respect important features of the site or building, or both?  | The signage is designed as an integral part of the proposed development.  |
| Does the proposal show innovation and imagination in its relationship to the site or building, or both  | The proposal demonstrates an appropriate level of imagination and innovation.   |
| <b>Associated devices and logos with advertisements and advertising structures</b>  |   |
| Have any safety devices, platforms, lighting devices or logos been designed as an integral part of the signage or structure on which it is to be displayed?   | Logo forms content of signage, in addition to the name of the gym.  |
| <b>Illumination</b>   |   |
| Would illumination result in unacceptable glare?<br>Would illumination affect safety for pedestrians, vehicles or aircraft?<br><br>Would illumination detract from the amenity of any residence or other form of accommodation?<br><br>Can the intensity of the illumination be adjusted, if necessary? | Illumination will be controlled and not result in any unacceptable glare. The intensity of the illumination can be altered if required.               |

**ITEM 3 (continued)**

| <b>SCHEDULE 1 – ASSESSMENT CRITERIA</b>   |   |
|---|---|
| Is the illumination subject to a curfew?  |   |
| <b>Safety</b>   |   |
| Would the proposal reduce the safety for any public road?   | The signage will not affect road safety.                                |
| Would the proposal reduce the safety for pedestrians or bicyclists?   | The signage will not affect pedestrian or cyclist safety                |
| Would the proposal reduce the safety for pedestrians, particularly children, by obscuring sightlines from public areas? | The proposed signage will not obscure any sightlines from public areas. |

Accordingly, the sign is considered to be satisfactory, having regard to the aims and objectives of SEPP 64 Advertising and Signage.

**(d) Any draft LEPs**

A Section 65 Certificate enabling the formal exhibition of Draft Local Environmental Plan 2011 was issued by the Department of Planning and Infrastructure on 23 April 2012. The Draft Plan has been placed on public exhibition between 30 May 2012 and 13 July 2012. Under this Draft LEP, the zoning of the property is B6 Enterprise Corridor. The proposed development is permissible with consent within this zoning under the Draft LEP, and it is considered that the proposal is not contrary to the objectives of the Draft LEP or those of the proposed zoning.

Draft LEP 2011 was adopted by Council on 12 March 2013 and is waiting gazettal by the Department of Planning and Infrastructure; as such LEP 2011 can be considered certain and imminent.

**(e) The provisions of any development control plan applying to the land**
Ryde Development Control Plan 2010

The proposal has been assessed using the development controls contained in Ryde DCP 2010. The DCP compliance table is held at **Attachment 1**.



### ITEM 3 (continued)

A summary of the non-compliances identified in the Compliance Table is discussed below:

#### 1. Part 9.1 Signage – Section 2.5 (f) Illuminated Signs

*Depending on its location and its relationship to residential properties, Council may require that illumination be controlled by automatic time clocks extinguishing illumination between 11pm and 6am, or as is considered reasonable in the circumstances.*

Proposed: The applicant has requested that the internally pylon sign and flush wall sign be illuminated throughout the night, extinguishing when the sun rises. The basis for this request summarised as follows:

*“visibility at all times (especially at night) is critically important to promote our business and all as a way sign for our members. It offers passing vehicle and pedestrian traffic a point of reference and highlights the fact that they are open 24 hours.*

*At present there are no residential neighbours that would see or be effected by the sign as the area is zoned Enterprise Corridor. The direct effect would be to light up the front of the building and shine out to Victoria Road. The commercial neighbours that would have visibility of the sign would be Dulux Inspirations, Materials in the Raw, McDonalds, and Millers Storage.”*

Assessment Officer’s Comment: The intent of this development control is to avoid any adverse impacts occurring on residential properties which have visibility of the signage. The applicant is correct in stating that currently no residential properties will see the sign, however; a DA was recently approved (2 May 2012) for the re-development of the site directly opposite (1-9 Monash Road, Gladesville) for a six (6) storey mixed use development comprising seventy (70) residential apartments. This development is currently under construction as can be seen from the following photo:



### ITEM 3 (continued)

The photomontage below illustrates what the development will look like upon completion:



Consequently, allowing illumination of the proposed signs 24 hours a day is not supported as there is a potential for lighting to adversely impact the amenity of future occupants of these apartments. It is therefore recommended that a condition of consent is included as follows:

**43. Signage – illumination.** *Illuminated signs shall be fitted with a timing device to switch off the illumination between 11pm and 6am.*

#### 2. Part 9.1 Signage – Section 4.0 Definitions

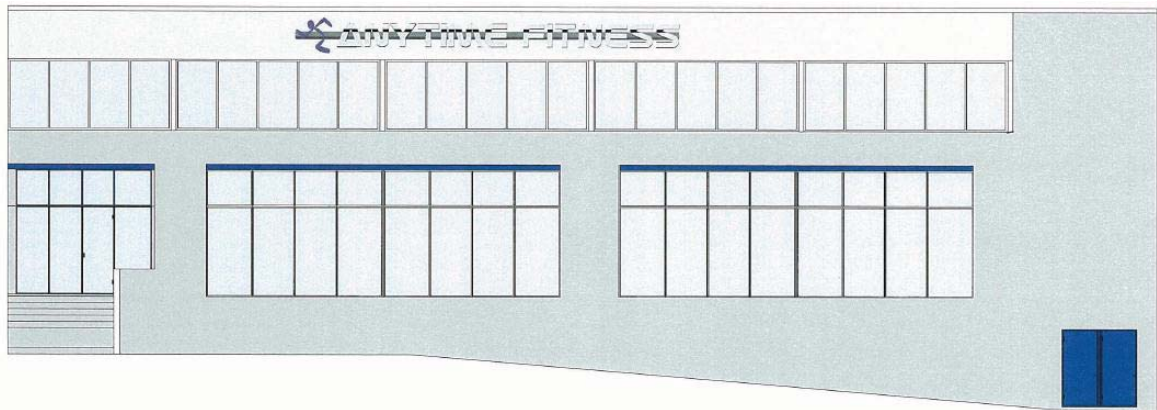
*Flush Wall Sign: Shall not exceed a maximum area of five (5) square metres*

Proposed: Signage area: 11.43m<sup>2</sup>

Comment: This proposed sign is for a large commercial building which has a width of 63m. This non-compliance is supported because the proposed signage area will not dominate the front façade and is in proportion with the size of the existing building. Additionally, the building has a front setback of approximately 15m therefore the sign is adequately distanced from Victoria Road. Restricting the size of this sign to 5m<sup>2</sup> is not considered necessary in this instance as no negligible impact is caused as a result of non-compliance with this control.

The following plan (elevation) extract shows the size of the sign in relation to the western half of the building which will be occupied by the proposed gymnasium.

### ITEM 3 (continued)



## 10. Likely impacts of the Development

### (a) Built Environment

With the exception of a free-standing illuminated sign and fixed wall sign, building works associated the proposal are confined to the internal areas of the existing commercial building. Accordingly, there will be no impacts on the amenity of the locality. As the proposed use of the building is permitted in the zone and is compatible with other surrounding uses along Victoria Road, there will be no adverse impact on the built environment.

### (b) Natural Environment

Placement of the free-standing illuminated sign within the front landscaping area aligning Victoria Road will have acceptable impacts on the natural environment subject to the imposition of standard conditions of consent as outlined within attachment 2 of this report.

## 11. Suitability of the site for the development

A review of Council's Map of Environmentally Sensitive Areas indicates the rear portion of the subject site is classified as urban bushland. As no external building works are proposed, with the exception of signage at the front of the site, further assessment in terms of this constraint was not necessary given the nature of the proposed development.

This proposal provides a commercial business in an appropriate zone that supports physical fitness that is available outside of normal business hours which is subject to conditions of consent and should not impact on the amenity of the locality.

## 12. The Public Interest

It is considered that approval of this DA would be in the public interest.

**ITEM 3 (continued)****13. Consultation – Internal and External**Internal Referrals

**Environmental Health Officer:** The proposal for the change of use and fitout for a gymnasium was referred to Council's Environmental Health Officer, who provided the following comments:

*These gymnasiums do not conduct classes and all aerobic equipment requires headphones in order to access the audio stream. The only sound generation will come from the gymnasiums surround audio system which is not amplified and provides general background noise which is controlled and monitored off site.*

*As the facility will also be air conditioned, noise from this plant needs to be considered & conditioned as well.*

Assessment Officer's Comment: If approved, six (6) conditions of consent were recommended for inclusion in the development consent, including a condition relating to noise levels emitting from plant or machinery installed (see conditions 13, 14, 15, 16, 24, and 33 in the recommendation).

External Referrals

**NSW Police:** Undertook an assessment of the proposal for the change of use and fitout for a gymnasium, and provided the following comments:

*We refer to your development application letter, for the development of DA2012/0477 for the proposed construction and fit out of a Gymnasium. After reviewing the application it appears that the primary factors of Crime Prevention through Environmental Design have been considered in this development, including surveillance, lighting, territorial reinforcement, environmental maintenance, space/activity management and in particular access control. Therefore police are satisfied that these have been met, and can see no potential crime issues regarding this application.*

Assessment Officer's Comment: If approved, no conditions have been recommended for inclusion in the development consent.

**14. Critical Dates**

There are no critical dates or deadlines to be met.



**ITEM 3 (continued)****15. Financial Impact**

Adoption of the option(s) outlined in this report will have no financial impact.

**16. Other Options**

None relevant.

**17. Conclusion**

The proposal has been assessed using the heads of consideration listed in Section 79C of the Environmental Planning & Assessment Act 1979 and is considered to be satisfactory for approval.

The main issue of concern with this proposal related to the strong opposition from surrounding residential properties with two (2) submissions received including; one (1) submission/petition containing seventeen (17) signatures. Issues raised in these submissions primarily relate to noise impacts, lighting and hours operation; all of which have been addressed in this report.

There are some minor areas of non-compliance with the DCP 2010; however these have been justified or addressed through imposition of a condition of consent.

The DA is recommended for approval subject to conditions of consent.

**ITEM 3 (continued)**

**ATTACHMENT 1**

**DCP COMPLIANCE TABLE**  
**400-426 Victoria Road, Gladesville**  
**LDA2012/0477**

**City of Ryde Development Control Plan 2010:**

*Part 7.2 – Waste Minimisation and Management*

*Part 9.1 – Signage*

Compliance with the above part/s of DCP 2010 is illustrated by the development standards below:

| DCP 2010   | Proposed   | Compliance |
|--|--|------------|
| <b>Part 9.1 Signage</b>  |  |            |
| <b>2.1 Signage Content</b>   |  |            |
| <ul style="list-style-type: none"> <li>- A sign must be either:               <ul style="list-style-type: none"> <li>i) A business identification sign or a building identification sign as defined in RLEP 2010;</li> <li>ii) A directional sign that is a sign which directs persons to development on the land to which it is displayed.</li> </ul> </li> </ul> | 2 business identification signs are proposed.        | Yes        |
| <b>2.2 Language</b>  |  |            |
| <ul style="list-style-type: none"> <li>- All advertising signs are to be displayed in the English language but may include a translation into another language using letters or characters that are no larger than the English language letters or characters.</li> </ul>  | All language will be the English language.           | Yes        |
| <ul style="list-style-type: none"> <li>- Any translated message must be accurate and complete.</li> </ul>  | No translation required. Signage will be in English. | Yes        |
| <b>2.3 Number of Signs</b>   |  |            |
| <ul style="list-style-type: none"> <li>- Visual clutter through the proliferation of signage and</li> </ul>  | Signage does not appear to clutter the streetscape.  | Yes        |

**ITEM 3 (continued)**

**ATTACHMENT 1**

| <b>DCP 2010</b>   | <b>Proposed</b>   | <b>Compliance</b> |
|---|---|-------------------|
| advertising structures are not permitted.   | Advertising structures not proposed.  |                   |
| <b>2.4 Design, Safety and Maintenance</b>   |   |                   |
| - All signs must be sympathetic to, and compatible with the architectural style and finishes of the building to which they are attached.  | Proposal is compatible with the architectural style and finishes of the building.   | Yes               |
| - Signs are to be unobtrusive in design, colour, height and scale   | Signage is unobtrusive in bulk and scale.   | Yes               |
| - Signs must be attractive and professionally written as well as being simple, clear and efficient.   | Signage will be professionally prepared and clearly written and efficient.  | Yes               |
| - Signs should be located at a height which avoids impact from footpath maintenance vehicles and discourages vandalism.   | Signage will be a minimum 8.3m above ground level, measured in the car park thereby deterring vandalism and footpath maintenance.     | Yes               |
| - Council will give due attention to all application with respect to possible distraction of motorists due to illumination, position, colours, design and proximity to traffic. | Signage will be adequately distanced from Victoria Road and traffic lights therefore signage is not considered to distract motorists. | Yes               |
| - Signs facing roads with high traffic volumes, traffic lights or major intersections may be referred to other relevant authorities.  | It is not considered necessary to refer proposal to the RTA.  | Yes               |
| - Signs must be kept in good and substantial repair and in clean and tidy condition.  | Signage will be kept in good condition at all times, with repairs undertaken when necessary.  | Yes               |
| - Council will not favour signs prone to deterioration  | High quality materials will be incorporated in the sign   | Yes               |

**ITEM 3 (continued)**

**ATTACHMENT 1**

| <b>DCP 2010</b>  | <b>Proposed</b>  | <b>Compliance</b>  |
|--|--|--|
| in appearance and condition, and may order removal of objectionable or unsightly advertisements.   | avoiding the potential for deterioration.  |  |
| <b>2.5 Illuminated Signs</b>   |  |  |
| - The lighting intensity and hours of illumination must not unreasonably impact on any residential properties adjoining the sign or that is within its locality.     | The lighting will not unreasonably impact on residential properties opposite the site.   | Yes – A condition of consent will be imposed to ensure intensity is managed. |
| - The lighting intensity of a sign must be capable of modification or control after installation.  | Illumination to be controlled via condition of consent.  | Yes – condition to be imposed allowing control of lighting intensity         |
| - Illuminated signs must minimise the spill effects or escape of light beyond the subject sign and must not compromise safety for pedestrians, vehicles or aircraft. | Illumination will occur from within the acrylic fabricated letters preventing spill effects and light to escape beyond the sign. | Yes  |
| - Illumination of a sign must not be external to the sign i.e. surrounding a sign. Illumination must be part of the advertisement.                                   | Signs will be internally LED illuminated.  | Yes  |
| - Electric wiring to illuminated signs is to be concealed.   | Wiring will be concealed.  | Yes  |
| - Illumination is to be controlled by automatic time clocks extinguishing illumination between 11pm and 6am, or as is considered reasonable in the circumstances.    | Illumination proposed for 24 hrs / 7 days.   | No (condition to be imposed restricting hours of illumination)               |
| <b>3.2 Business Zones</b>  |  |  |
| <b>Extent of signage permitted – For two or more storey buildings</b>  |  |  |



**ITEM 3 (continued)**

**ATTACHMENT 1**

| <b>DCP 2010</b>   | <b>Proposed</b>   | <b>Compliance</b>   |
|---|---|---|
| <ul style="list-style-type: none"> <li>- <b>Maximum Sign Area:</b> The total area of signs to be erected on a building (this includes all elevations) should not exceed 1.5m<sup>2</sup> per 1m of frontage of the property to the street.</li> </ul>   | <p>Signage area = 11.43m<sup>2</sup></p> <p>Frontage width = 32m<br/>(Calculates at a max. area of 17.145m<sup>2</sup>)</p>   | <p>Yes</p>  |
| <ul style="list-style-type: none"> <li>- <b>Front Elevation:</b> All signage above the ground floor or awning level of a building must relate to the activity or use of the building at the first floor level. The max. area of signs above the ground floor or awning level on the front elevation should not exceed 15% of the area of the elevation situated at that level.</li> </ul> | <p>Signage relates to 24hour fitness, the company utilising the ground floor of the building. The area of the flush wall sign will not exceed 15% of the area of this level.</p>                                    | <p>Yes</p>  |
| <ul style="list-style-type: none"> <li>- <b>Side and Rear Elevations:</b> The max. area of signs on side or rear walls should not exceed 15% of the area of each elevation visible from a public place.</li> </ul>  | <p>No signage is proposed along the side or rear elevations.</p>  | <p>Yes</p>  |
| <b>4.0 Definitions and requirements for different types of signage</b>  |   |   |
| <p><b>Internally Illuminated Sign</b><br/>A sign illuminated by internal lighting or which contains lights or illuminated tubes arranged as advertising.</p>  | <p>1 internally illuminated lightbox sign proposed along the front boundary.</p>  | <p>Yes</p>  |
| <p><b>Flush Wall Sign</b></p> <ul style="list-style-type: none"> <li>- Only 1 sign per building elevation;</li> <li>- Where it is illuminated, shall not be less than 2.6m above the ground;</li> <li>- Shall not exceed a max. area of 5m<sup>2</sup>;</li> <li>- Shall not extend laterally beyond the wall of the building to which it is</li> </ul>                                   | <p>1 flush wall sign proposed.</p> <p>Sign will be illuminated and is located 8.3m above ground.</p> <p>Signage area: 11.43m<sup>2</sup></p> <p>Sign will not extend laterally beyond the wall of the building.</p> | <p>Yes</p> <p>Yes</p> <p>No (variation supported)<br/>Yes</p> |

**ITEM 3 (continued)**

**ATTACHMENT 1**

| <b>DCP 2010</b>  | <b>Proposed</b>  | <b>Compliance</b> |
|--|--|-------------------|
| attached;  |  |                   |
| - Shall not project above the top of the wall to which it is attached;   | Sign will not project above the top of the wall.                               | Yes               |
| - Shall not be located on a building wall if there is an existing building or business identification sign;                  | No building or business identification sign exists on the commercial building. | Yes               |
| - Shall not extend over a window or other opening or architectural feature;  | Sign will not extend over a window or any other opening.                       | Yes               |
| - Shall not project horizontally more than 300mm from the wall;  | Sign will project 300mm from wall.   | Yes               |
| - Consideration must be given to design and aesthetics, so as to harmonise with the nature of the streetscape and townscape; | Sign's design is consistent with commercial properties along Victoria Road.    | Yes               |
| - Prohibited on end walls adjoining residential properties however, are permitted on end walls adjoining a public place.     | Sign is to be located on front façade and not on end walls.                    | Yes               |

**ITEM 3 (continued)**

**ATTACHMENT 2**

**DRAFT CONDITIONS OF CONSENT**  
**400-426 Victoria Road, Gladesville**  
**LDA2012/0477**

**GENERAL**

The following conditions of consent included in this Part identify the requirements, terms and limitations imposed on this development.

1. **Approved Plans/Documents.** Except where otherwise provided in this consent, the development is to be carried out strictly in accordance with the following plans (stamped approved by Council) and support documents:

| Document Description                     | Drawn by      | Drawing / Sheet No. | Dated       |
|--|---------------|---------------------|-------------|
| • Existing Floor Plan                    | -             | -                   | undated     |
| • Proposed Concept Layout                | ArchiSpectrum | 01                  | undated     |
| • Site Plan                              | SP            | 0.01                | undated     |
| • Front Elevation                        | -             | -                   | undated     |
| • Car parking spots sub level            | -             | -                   | undated     |
| • Car parking spots in front of building | -             | -                   | undated     |
| • Artwork for approval                   | Sign Wave     |                     | 11 Dec 2012 |
| • Photomontage of illuminated sign       | -             | -                   | -           |

The Development must be carried out in accordance with the amended plans approved under this condition.

2. **Building Code of Australia.** All building works approved by this consent must be carried out in accordance with the requirements of the Building Code of Australia.
3. **Energy Efficiency.** The fittings, fixtures and materials installed in association with the development (including but not limited to hot water systems, ceiling/roof insulation, shower heads, toilet cisterns and the like) shall comply with the requirements of Council's DCP. Details are to be noted on the plans submitted with the **Construction Certificate**.
4. **Fire Safety Matters/Changes in building use**
- a. A building in respect of which there is a change of building use must comply with the Category 1 fire safety provisions applicable to the proposed new use.

NOTE: The obligation under this clause to comply with Category 1 fire safety provisions may require building work to be carried out even though none is proposed or required in the relevant development consent.

**ITEM 3 (continued)**

**ATTACHMENT 2**

- b. This clause does not apply to the extent to which an exemption is in force under clause 187 and 188 in the Environmental Planning and Assessment Regulations 2000.
  - c. In this case clause, “Category 1 fire safety provision” has the same meaning as it has in Clause 3 in the Environmental Planning and Assessment Regulations 2000 subject to any terms of any condition or requirement referred to in Clause 187(6) or 188(4).
5. **Signage – not approved unless shown on plans.** This consent does not authorise the erection of any signs or advertising structures not indicated on the approved plans. Separate approval must be obtained from Council for any additional signs, unless such signage is “exempt development”.
6. **Security Grilles.** This consent does not authorise the erection of any security grilles or barriers on the shopfront. Separate approval must be obtained for any such works.

**Protection of Adjoining and Public Land**

7. **Hours of work.** Building activities (including demolition) may only be carried out between 7.00am and 7.00pm Monday to Friday (other than public holidays) and between 8.00am and 4.00pm on Saturday. No building activities are to be carried out at any time on a Sunday or a public holiday.
8. **Hoardings.**  
Any hoarding, fence or awning erected pursuant to this consent is to be removed when the work has been completed.
9. **Illumination of public place.** Any public place affected by works must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place.
10. **Development to be within site boundaries.** The development must be constructed wholly within the boundaries of the premises. No portion of the proposed structure shall encroach onto the adjoining properties. Gates must be installed so they do not open onto any footpath.
11. **Public space.** The public way must not be obstructed by any materials, vehicles, refuse, skips or the like, under any circumstances, without prior approval from Council.

**Works on Public Road**

12. **Public Utilities.** Compliance with the requirements (including financial costs) of any relevant utility provider (e.g. Energy Australia, Sydney Water, Telstra, RTA, Council etc) in relation to any connections, works, repairs, relocation, replacements and/or adjustments to public infrastructure or services affected by the development.



**ITEM 3 (continued)**

**ATTACHMENT 2**

Environmental Health Conditions

13. **Waste Storage and Handling Facilities** - An adequate number of suitable waste containers must be provided on the premises for the storage of all wastes generated on the premises between collections.
14. **Plumbing and Drainage Work** - All plumbing and drainage work must be carried out in accordance with the requirements of Sydney Water Corporation.
15. **Noise Pollution** - The use of the premises must not cause the emission of 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997*.
16. **Noise From Plant** - The operation of any plant or machinery installed on the premises must not cause:
  - (a) The emission of noise that exceeds the background noise level by more than 5dBA when measured at the most affected noise sensitive location in the vicinity. Modifying factor corrections must be applied for tonal, impulsive, low frequency or intermittent noise in accordance with the New South Wales Industrial Noise Policy (EPA, 2000).
  - (b) An internal noise level in any adjoining occupancy that exceeds the recommended design sound levels specified in Australian/New Zealand Standard AS/NZS 2107:2000 *Acoustics – Recommended design sound levels and reverberation times for building interiors*.
  - (c) The transmission of vibration to any place of different occupancy.

**PRIOR TO CONSTRUCTION CERTIFICATE**

A Construction Certificate must be obtained from a Principal Certifying Authority to carry out the relevant building works approved under this consent. All conditions in this Section of the consent must be complied with before a Construction Certificate can be issued.

Council Officers can provide these services and further information can be obtained from Council's Customer Service Centre on 9952 8222.

Unless an alternative approval authority is specified (eg Council or government agency), the Principal Certifying Authority is responsible for determining compliance with the conditions in this Section of the consent.

Details of compliance with the conditions, including plans, supporting documents or other written evidence must be submitted to the Principal Certifying Authority.

17. **Compliance with Australian Standards.** The development is required to be carried out in accordance with all relevant Australian Standards. Details demonstrating compliance with the relevant Australian Standard are to be submitted to the Principal Certifying Authority prior to the issue of the **Construction Certificate**.

**ITEM 3 (continued)**

**ATTACHMENT 2**

18. **Security deposit.** The Council must be provided with security for the purposes of section 80A(6) of the *Environmental Planning and Assessment Act 1979* in a sum determined by reference to Council's Management Plan prior to the release of the **Construction Certificate**. (category: other building with no delivery of bricks or concrete or machine excavation)
19. **Fees.** The following fees must be paid to Council in accordance with Council's Management Plan prior to the release of the **Construction Certificate**:
- a. Infrastructure Restoration and Administration Fee
  - b. Enforcement Levy
20. **Long Service Levy.** Documentary evidence of payment of the Long Service Levy under Section 34 of the Building and Construction Industry Long Service Payments Act 1986 is to be submitted to the Principal Certifying Authority prior to the issuing of the **Construction Certificate**.
21. **Sydney Water – quick check.** The approved plans must be submitted to a Sydney Water Quick Check agent or Customer Centre, prior to the release of the **Construction Certificate**, to determine whether the development will affect any Sydney Water assets, sewer and water mains, stormwater drains and/or easements, and if further requirements need to be met. Plans will be appropriately stamped.
- Please refer to the website [www.sydneywater.com.au](http://www.sydneywater.com.au) for:
- Quick Check agents details - see Building, Developing and Plumbing then Quick Check; and
  - Guidelines for Building Over/Adjacent to Sydney Water assets - see Building, Development and Plumbing then Building and Renovating.
- Or telephone 13 20 92.
22. **Reflectivity of materials.** Roofing and other external materials must be of low glare and reflectivity. Details of finished external surface materials, including colours and texture must be provided to the Principal Certifying Authority prior to the release of the **Construction Certificate**.
23. **Lighting of common areas (driveways etc).** Details of lighting for internal driveways, visitor parking areas and the street frontage shall be submitted for approval prior to issue of the **Construction Certificate**. The details to include certification from an appropriately qualified person that there will be no offensive glare onto adjoining residents.

**ITEM 3 (continued)**

**ATTACHMENT 2**

Environmental Health Conditions

24. **Mechanical Ventilation** - Details of all proposed mechanical ventilation systems, and alterations to any existing systems, must be submitted to Council or an accredited private certifier with the application for the **Construction Certificate**. Such details must include:

- (a) Plans (coloured to distinguish between new and existing work) and specifications of the mechanical ventilation systems;
- (b) A site survey plan showing the location of all proposed air intakes exhaust outlets and cooling towers, and any existing cooling towers, air intakes, exhaust outlets and natural ventilation openings in the vicinity; and
- (c) A certificate from a professional mechanical services engineer certifying that the mechanical ventilation systems will comply with the *Building Code of Australia* and setting out the basis on which the certificate is given and the extent to which the certifier has relied upon relevant specifications, rules, codes of practice or other publications

**PRIOR TO COMMENCEMENT OF CONSTRUCTION**

Prior to the commencement of any demolition, excavation, or building work the following conditions in this Part of the Consent must be satisfied, and all relevant requirements complied with at all times during the operation of this consent.

**25. Site Sign**

- a. A sign must be erected in a prominent position on site, prior to the commencement of construction:
  - (i) showing the name, address and telephone number of the Principal Certifying Authority for the work,
  - (ii) showing the name of the principal contractor (if any) or the person responsible for the works and a telephone number on which that person may be contacted outside working hours, and
  - (iii) stating that unauthorised entry to the work site is prohibited.
- b. Any such sign must be maintained while the building work, subdivision work or demolition work is being carried out, but must be removed when the work has been completed.

**DURING CONSTRUCTION**

Unless otherwise specified, the following conditions in this Part of the consent must be complied with at all times during the construction period. Where applicable, the requirements under previous Parts of the consent must be implemented and maintained at all times during the construction period.

**ITEM 3 (continued)**

**ATTACHMENT 2**

26. **Construction noise.** The L<sub>10</sub> noise level measured for a period of not less than 15 minutes while demolition and construction work is in progress must not exceed the background noise level by more than 20 dB(A) at the nearest affected residential premises.
27. **Sediment/dust control.** No sediment, dust, soil or similar material shall leave the site during construction work.
28. **Construction materials.** All materials associated with construction must be retained within the site.
29. **Site Facilities**  
The following facilities must be provided on the site:
- (a) toilet facilities in accordance with WorkCover NSW requirements, at a ratio of one toilet per every 20 employees, and
  - (b) a garbage receptacle for food scraps and papers, with a tight fitting lid.
30. **Site maintenance**  
The applicant must ensure that:
- a. approved sediment and erosion control measures are installed and maintained during the construction period;
  - b. building materials and equipment are stored wholly within the work site unless an approval to store them elsewhere is held;
  - c. the site is clear of waste and debris at the completion of the works.
31. **Work within public road.** At all times work is being undertaken within a public road, adequate precautions shall be taken to warn, instruct and guide road users safely around the work site. Traffic control devices shall satisfy the minimum standards outlined in Australian Standard No. AS1742.3-1996 "Traffic Control Devices for Work on Roads".

**PRIOR TO OCCUPATION CERTIFICATE**

An Occupation Certificate must be obtained from a Principal Certifying Authority prior to commencement of occupation of any part of the development, or prior to the commencement of a change of use of a building.

Prior to issue, the Principal Certifying Authority must ensure that all works are completed in compliance with the approved construction certificate plans and all conditions of this Development Consent.

Unless an alternative approval authority is specified (eg Council or government agency), the Principal Certifying Authority is responsible for determining compliance with conditions in this Part of the consent. Details to demonstrate compliance with all conditions, including plans, documentation, or other written evidence must be submitted to the Principal Certifying Authority.



**ITEM 3 (continued)**

**ATTACHMENT 2**

32. **Fire safety matters.** At the completion of all works, a Fire Safety Certificate must be prepared, which references all the Essential Fire Safety Measures applicable and the relative standards of Performance (as per Schedule of Fire Safety Measures). This certificate must be prominently displayed in the building and copies must be sent to Council and the NSW Fire Brigade.

Details demonstrating compliance are to be submitted to the Principal Certifying Authority prior to the issue of the Interim/Final Occupation Certificate.

Each year the Owners must send to the Council and the NSW Fire Brigade an annual Fire Safety Statement which confirms that all the Essential Fire Safety Measures continue to perform to the original design standard.

Environmental Health Conditions

33. **Certification of Mechanical Ventilation** - Where any mechanical ventilation systems have been installed or altered, a certificate from a professional mechanical services engineer certifying that the systems comply with the approved plans and specifications must be submitted to the Principal Certifying Authority before the issue of an **Occupation Certificate**.

**OPERATIONAL CONDITIONS**

The conditions in this Part of the consent relate to the on-going operation of the development and shall be complied with at all times.

34. **Prior to the commencement of the use**, all residents within a 100m radius of the premises are to be provided (via a "letterbox drop") with contact details of the Duty Manager, who be contacted in the event of any noise disturbances at the premises.

35. **Offensive noise.** The use of the premises must not cause the emission of 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997*.

36. **Carpark Signage.** Appropriate signage shall be placed in the immediate vicinity of the premises (e.g. entry/exit to the building; in the car park) to the effect that patrons are to minimise noise from this area, in consideration of the neighbours.

37. **Window coverage.** Appropriate window coverings are to be fitted to all southern rear windows of the premises to ensure lighting arising from the premises is minimised, in consideration of surrounding residential properties.

38. **Waste storage/disposal – hours of collection.** Waste and recyclable material generated by these premises must not be collected between the hours of 9pm and 8am on any day.

39. **Waste storage/disposal – method.** All wastes generated on the premises must be stored and disposed of in an environmentally acceptable manner.

**ITEM 3 (continued)**

**ATTACHMENT 2**

40. **Waste storage/disposal – containers.** An adequate number of suitable waste containers must be kept on the premises for the storage of garbage and trade waste.

41. **Waste storage/disposal – recycling.** Wastes for recycling should be the stored in separate bins or containers and transported to a facility where the wastes will be recycled or re-used.

42. **Signage – English language.** All advertising signs are to be displayed in the English language but may include a translation into another language using letters or characters that are no larger than the English language letters or characters.

Any translated message must be accurate and complete.

No amendment to the size of a sign will be permitted to allow for both the English and translated language to be displayed.

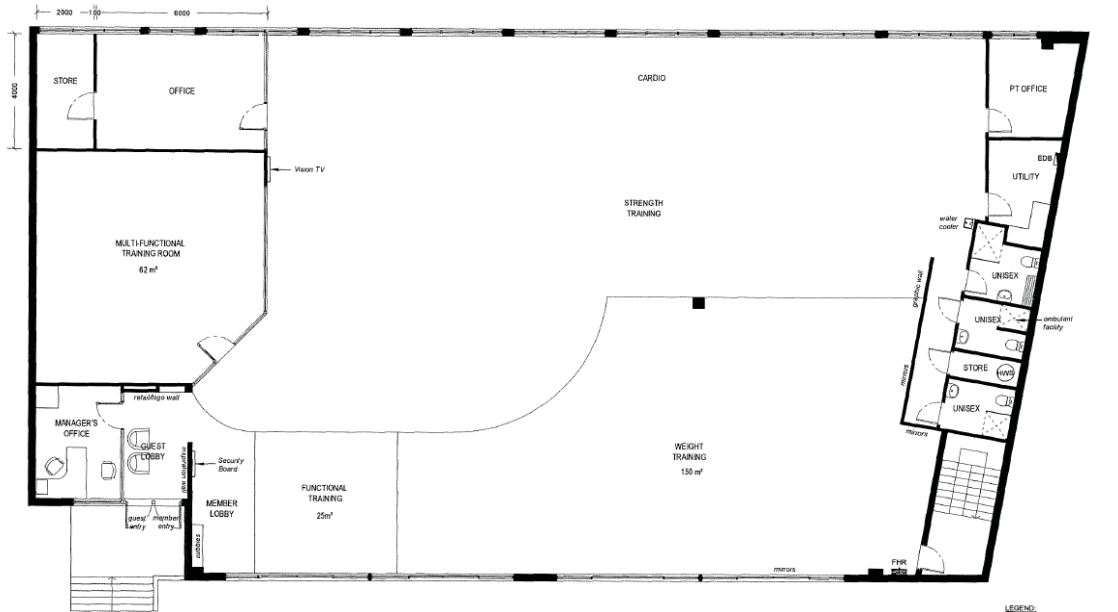
43. **Signage – illumination.** There shall be no illumination of any signs between 11pm and 6am.

44. **Limited consent of extended hours of operation.** This consent permits the operation of the approved development for 24 hours / 7 days per week for a period of 12 months. An application to modify the consent to extend the trial period (or to make the consent permanent) is to be lodged prior to the end of the 12 month trial period.

ITEM 3 (continued)

ATTACHMENT 3

DRAFT ISSUE FOR COMMENT 7 Dec 2012



Note:  
This is a concept design only for approval by Head office - NOT FOR CONSTRUCTION.  
No accurate on-site measure was carried out, hence this design is based on an indicative base plan of existing tenancy. Location of windows, services, and other openings is assumed only and may be incorrect.  
On-site measure will need to be carried out prior to finalising the layout for construction.

PROPOSED CLUB LAYOUT  
SCALE: 1:100

LEGEND:  
existing wall to remain  
new 12mm glassboard wall  
GL  
GL  
MFB  
FHR  
EDB  
fire hose reel  
electrical distribution board

ARCHISPECTRUM  
Suite 61, 8 Allen St, Westmead NSW 2115  
ph: (02) 8553 4334 fax: (02) 8553 1988  
tel: (02) 8553 3674 email: office@archispectrum.com.au  
A.B.N. 40 566 987 144

DESIGNS CONTAINED IN THESE DRAWINGS AND SPECIFICATIONS ARE THE PROPERTY OF ARCHISPECTRUM AND ARE SUBJECT TO COPYRIGHT LAWS. THIS DOCUMENT IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, WITHOUT THE WRITTEN CONSENT OF ARCHISPECTRUM. ALL DIMENSIONS SHOULD BE GIVEN ON THE DRAWING OR SPECIFICATION OF THE WORK, IN CASE OF ANY DISCREPANCIES IT SHALL BE THE RESPONSIBILITY OF THE CLIENT TO CLARIFY.

| DATE | DATE | DESCRIPTION                   |
|------|------|-------------------------------|
| N/A  | N/A  | PRELIMINARY FOR REVISION ONLY |

PROJECT: PROPOSED FITNESS CLUB FITOUT  
400-426  
ANYTIME FITNESS AUSTRALIA PTY LTD

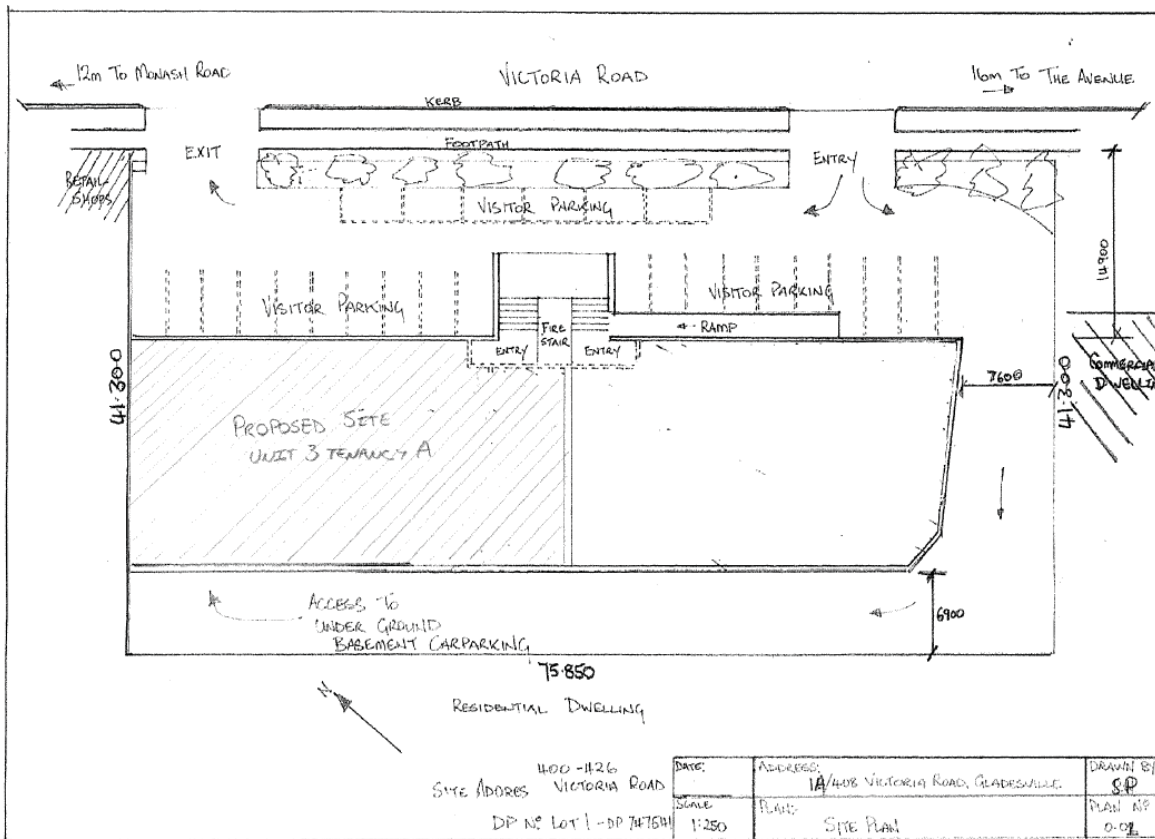
Proposed Concept Layout

SCALE: 1:100 @ A3  
DRAWN: MARTIN  
SHEET NO: A3  
DATE: 01  
REVISED: 01

Floor plan of proposed gymnasium

ITEM 3 (continued)

ATTACHMENT 3



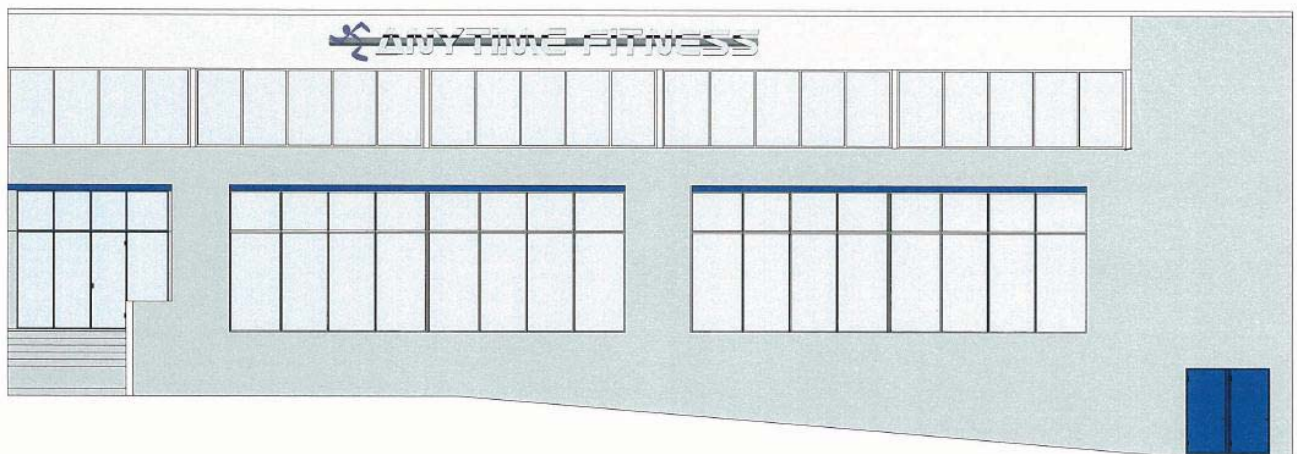
Location of gymnasium within existing commercial building.

ITEM 1

Acrylic Fabricated letters illuminated by LEDs with a 3mm opal face and vinyl running man + black stripe to match logo. 80mm black acrylic returns and 10mm foam PVC backs. Mounted to powdercoated purpose-built box rails to house power supply and wiring. Completely wired for electrical connection by others.

Overall Size: 10856mm W x 1053mm H

Quantity: 1



Proposed flush wall sign located on the front façade of the building.



ITEM 3 (continued)

ATTACHMENT 3



Photomontage of internally illuminated sign along front boundary.

ITEM 3 (continued)

ATTACHMENT 4

● Indicates submissions received  
● Petition also received

