
From: Jimmy Fransiscus
Sent: 11/12/2022 9:00:30 PM
To: Council Northernbeaches Mailbox
Cc: Premysl Botek
Subject: RE: MOD2022/0634 - 12/20-22 Cross St, Brookvale
Attachments: Attachment1.pdf; Attachment2.pdf;

ATTN: M. French

Re.: Objections to the proposed modification (MOD2022/0634) to DA2020/0110 at 12/20-22 Cross St, Brookvale

Dear Mr French,

We live in 14/6-7 Funda place, a unit with all our windows, balcony and air intake directly facing the gym venue at a distance of 7 meters. This is one of 6 units most affected by the daily operation of this gym.

We vehemently object to any extension or continuation of this gym operation, based on a hellish experience this gym has been giving in the past 3 years on a daily basis to the residents of units in its immediate neighbourhood.

We trust such approval would:

1. Make the life in a half a dozen of units in residential building 6-7 Funda place that are facing the gym's windows at a distance of 6-8 meters, even more unbearable than the original DA approval had. I.e.:
 - a. Majority of noise controls set in the original DA were not met or were interfered with by the gym operators over the time. E.g.: The heavy lifting weights were operated outside of the set drop rubber area, "noise insulating" fabric window blinds were rolled to the side of the windows and rendered ineffective, volume limiting on their hifi speakers PA system was overcome, approved gym operating hours are always ignored. The gym windows that are facing us still have gaps in glass, allowing the drumbeats/thuds a free pass towards our units, despite residents being assured by the gym operators that double-glazed windows were to be installed in the gym back in 2020.
 - b. During the past 3 years of this gym operation, the Council has demonstrated it has no capacity and no process to effectively regulate and enforce the operation of this type. I.e.:
 - When we raised complaints that the gym regularly operates outside of

permitted hours - on weekends, early mornings and in evenings - Council has responded they have no staff that could inspect the gym operational breaches outside of Council's own hours Mon-Fri 9-5.

- When we indicated that vibrations from heavy lifting weights dropped inside the gym's venue in a 7 meter distance from our bedrooms/living rooms are among the major disturbance pollution problems, the Council responded they did not have any technical means to measure low frequency thuds and vibrations residents are exposed to. We have submitted multiple videos of windows aggressively shaking with these heavy lifting weight drop repeats, however this was ignored by the Council.

- c. The communication between the gym owners and surrounding neighborhood residents is catastrophic. Back in 2020, we have extended and attempted constructive cooperation of the kind we have with most businesses that are residing in the same industrial building (20-22 Cross street) and are bordering with our south-facing residential units. However, we soon noted that the attitude of the Enliven gym operators is "we can do anything we want and if you do not like it, go complain to Council." and so we do not communicate anymore. Every new resident that moved into our residential building in the past 3 years and tried to make a friendly attempt to work out the gym noise/vibration issues, has made a similar experience. Please refer to Attachment 1 for more information.
- d. We do not understand how the provided positive Building Assessment Referral Response could have considered aspects relevant to the Building Certification - with existing gaps in venue window glass, no airconditioning present thus requiring gym windows to be kept open to manage moist and mould buildup from the exercising crowd (we could see gym windows covered in condensed moisture when closed), echoing bare gym walls multiplying outwards-emitted noise, vibrations/thuds propagating to neighboring residential building via shaking gym's concrete floor, non-existent physical barrier/wall to separate this venue from a half a dozen of residential units in a 7 meter distance, paperthin walls of this formerly storage-purpose-built warehouse. We wonder whether anyone actually visited that venue before granting the OC back in 2020 and now before giving a Building Assessment consent.

2. It would arbitrarily place the residents of southern facing units of 6-7 Funda into living conditions no responsible dutiful government would put its citizens into. Please review Attachment 2 to access videos of the gym's operations recorded from units of 6-7 Funda place, across our backyard mini garden. Please pay special attention to very early morning and evening videos from times that are proposed in this DA. The gym has previously attempted to operate in these times illegally.

3. Increase of extreme inconvenience of residents living in surrounding units. I.e.:
 - a. Some residents of our building had to seek a long term refuge away from their own bedrooms that are located the closest to the gym, and sleep in their lounges instead
 - b. During covid lockdowns, bed-bound residents were forced to fight their acute covid illness in their bedrooms filled by the gym noise, live in unventilated rooms despite official medical advice to ventilate as much as possible - as windows were impossible to open during daytime due to the gym noise
 - c. Our usual daily routines, hobbies and ways of life have been severely impacted as we are no longer in control of the sound levels within our own apartments. Liveability of our households became dependent on the whims of the gym's operators 12 hours a day, 6 days every week for 3 years now. The proposal to extend this insanity to 14.5 hours a day is unacceptable.
 - d. The disturbance indoors of our unit has severely impacted our communication and relationship. We have stopped talking to each other in the noise filled rooms. We wait in agony, counting minutes for the gym's noise to seize for the day - to start our overnight recovery before the next day's dose of noise comes again. 3 years of this terror and still counting.
4. Cause exacerbation of health consequences this operation is giving to the exposed neighboring residents already. I.e.:
 - a. Some residents spent months and years with earplugs worn for most of the daytime as there were no other ways to escape the gym noise inside of their apartments. This long-term earplug wearing had caused ear infections and hearing loss confirmed by the medical professionals.
 - b. In the past years of the gym operation, some residents have recorded unusual migraines and neurosis.
 - c. Other residents reported insomnia, mood swings, and panic attacks, regularly waking up late into the nights/early mornings, in anticipation of the unbearable noise they will be exposed to again in a few hours.
 - d. Other residents are showing signs of Vibroacoustic Disease.
5. Cause exacerbation of property damage in the neighboring buildings. I.e we have noted new cracks in the tiles in our rooms located the closest to this gym. We allege this was due to the gym operation, and we have submitted videos of our residential walls/windows shaking due to dropping of heavy lifting weights on the gym's concrete floor by patrons in our closest proximity, outside of their designated weights dropping area. We have also recorded building shakes when a crowd of 20 people jumps up and down in the same

rhythm during their early mornings aerobic exercises (they did it from 5 am onwards during the first 6 months of their illegal operation in early 2020)

6. Cause further intrusions into our privacy and dignity. E.g.:
 - a. For 3 years, we have been exposed to living in a continuous drumbeat disturbance, crowds screaming and heavy lifting weight-drop-bangs filled units with no way of escape, specially during lockdowns. Some are 1 bedroom units that only face the gym at a distance of 7 meters.
 - b. We have experienced multiple counts of a large group of half naked exercising gym patrons staring us off face to face through their open windows via unrolled sound barriers and window curtains.
 - c. Not even to mention the excesses of the gym member groups leaning over their building's rooftop parking edge wall, staring into our windows from above, pointing at us in our bedrooms with their fingers and laughing.

7. Cause exacerbation of long term extreme stress this operation is causing to the neighboring residents in their noise-filled units. E.g.:
 - a. A resident threatened to commit suicide if the senseless daily gym noise that penetrates walls and windows into their apartment does not stop
 - b. The additional exhaustion from being continually exposed to gym noise, inability to focus while working from home and severely reduced opportunity to rest at home after work.
 - c. Some of the most vulnerable community members have been exposed to the gym's disturbance on a long hour daily basis: laboring mother and her newborn in the first days of their life exposed to this extreme disturbance 12 hours a day in 7 meter distance from this gym, children under 5 in other unit, resident forced to work from home during lockdowns facing unbearable noise during his engineering work that requires focus, other resident who works night shifts and needs to sleep over day, pensioner that is recovering from multiple chronic illnesses, mostly bound to the bed, unable of any peaceful enjoyment in her own unit in the past 3 years due to the gym daily insane disturbance.
 - d. To gain more context on the scale of the problem, please review video recordings provided via Attachment 2, e.g. "20201103 172056" in Video Batch 2.

8. The raised argument that other gyms in the same street have been permitted to operate from 5:30am already, so Enliven should be too, is invalid for the following reasons:
 - a. It would be imprudent to follow a precedent of allowing one gym in the street to operate from 5:30am where it is operated responsibly and does not bother its neighbors - and then automatically allow the same for all other gyms, regardless of

their specific circumstance. (Whose genius idea was it to turn our street into a street with density of 5 gyms per 100 meter in the matter of the past few years, anyway? Did they not notice there are already people living in residential houses right next to industrial buildings without any space separation or physical barriers built?)

- b. We understand each case is to be assessed separately and its specific circumstances considered with caution. Back of our building is normally quiet and would be quiet again if there were not for the intrusion from the Enliven business
- c. The fact that there is another gym in our street that operates from 5:30am that provides yoga services to mainly elderly people exercising quietly on their mats, with no heavy lifting weights, machines, shouting/jumping crowds, loud PA speakers and open windows, does not mean that Enliven business with its 3 years of horrid track record of neighborhood irresponsibility should be permitted to operate from 5:30am too.
- d. The operating nature of Enliven gym is incomparable with 'quieter' gyms. Enliven gym is a "power gym" where heavy lifting weights are being used, heavy exercise machinery is being used, PA system plays drumbeats during operation and crowds/instructor are shouting continually
- e. The gym entry-door DA-proposed front side noise controls are irrelevant - as there are no residents living in the purely industrial Cross street. However, there are us living in residential houses bordering with the northern edge of the gym venue that are subjected to unbearable noise/vibrations - caused by the ignorance of DA rules, combined with insufficient noise controls in the former DA and with the structural decay of this old storage warehouse itself. (Why are double-glazed windows mentioned by the Council's Environmental Investigations officers only now? How about the first 3 years of this unbearable Council-approved disturbance impacting the residents?)
- f. Furthermore, the "double glazed windows" requirement requested by the Council's Environmental Investigations officers is inadequate since the gym operators arbitrarily open any windows regularly during the gym operation due to not having an air conditioning installed. Double glazed windows will simply not suffice unless:
 - An a/c is installed in this old storage warehouse
 - All existing noise controls are boosted up by a factor of 10 due to immediate proximity to the residential units
 - All noise controls are made safe from sabotage/circumvention, e.g. windows are locked up and heavy-lifting weights are chained up within the perimeter of the weight drop area. Please refer to Attachment 2 for videos of noise controls being circumvented.
- g. The behavior of the Enliven gym operators can not be compared to others by far.

No other business facing the windows of our units operates as irresponsibly, intrusively and with as little consideration towards its neighborhood as Enliven has been for the past 3 years.

9) We do not trust a single point proposed in the Operation Management Plan would be implemented and adhered to by the Enliven management and instructors. The 3 years of our intimate experience with their operational pollution in our rooms, has bitterly taught us they care little about people living around them, they can not be trusted in any kind of self-policing and they show oblivious arrogant attitude towards anyone raising concerns. Please refer again to Attachment 1 for more information. Please also consult with Mr Blake Cousemacker from Council's Compliance department on the nature and frequency of breaches this gym was found to be in during the past 3 years of its operation, and fines it has been issued.

In conclusion, as residents living in the gym's most severely impacted area, we politely request that the Council denies any applications for further expansion of this gym's operations. Also we request that Council considers to revoke its existing consent with any operation of this gym at this address - in order to prevent further damages to the neighboring residents. Placing a business of this type and this conduct in an old storage warehouse within a few meter distance from people's living places, was a grave mistake with catastrophic consequences in the making.

If you require any additional information, please contact us back.

Kind regards,

Jimmy Fransiscus and Premysl Boteck, unit 14/6-7 Funda place, Brookvale, NSW.

Contact [REDACTED]

Commonwealth of Australia

STATUTORY DECLARATION Statutory Declarations Act 1959

I, ALAN CRAIG of 7/6-7 FUNDA PL. BROOKVALE NSW do solemnly and sincerely make the following declaration under the Statutory Declarations Act 1959:

1. On 24/10/2022 at 6:30pm, I approached the Enliven Gym owner to discuss why there was still loud music playing past their hours of consent as shown in their DA.
2. The owners response was "I don't give a CENSORED about the noise- that's the least of your worries I have applied for a DA to operate from 5:30am. If you don't like it you can move out."
3. I have experienced a similar attitude/response from the owner on multiple occasions over the past 12 months.

Declared at: Dee Why police state on 8/12/22
[place] [date]

[signature of declarant]

in the presence of an authorised witness, who states:

I, P/DET WIGGINS, a NSW POLICE OFFICER,
[name of authorised witness] [qualification of authorised witness]

certify the following matters concerning the making of this statutory declaration by the person who made it:

[* please cross out any text that does not apply]

1. * I saw the face of the person OR *I did not see the face of the person because the person was wearing a face covering, but I am satisfied that the person had a special justification for not removing the covering, and
2. * I have known the person for at least 12 months OR *I have not known the person for at least 12 months, but I have confirmed the person's identity using an identification document and the document I relied on was

[signature of authorised witness]
[signature of authorised witness]

[describe identification document relied on]

08/12/22
[date] NSW Police Force
www.police.nsw.gov.au
Northern Beaches
Police Area Command

Video Batch 1 (Gym disturbance recorded from 14/6-7 Funda pl. in early 2020 and forwarded to the Council on a USB stick) :

https://www.youtube.com/playlist?list=PL75iff8taoExTWhrBHLrE4k_KDr6PY2qE

Video Batch 2 (Gym disturbance recorded from 14/6-7 Funda pl. 2020 - 2021 and gradually forwarded to the Council via email) :

<https://youtube.com/playlist?list=PL75iff8taoEyE7XuRIMR7pPxsrEyi2vIQ>

- E.g.: "20210424 074623" - the nature of gym thuds and vibrations residents of 6-7 Funda place have been exposed to in the past 3 years
- E.g.: "20201203 094447" - windows being open and sound barriers removed during the gym operation
- E.g. "20200616 062841" - gym operating outside of hours
- E.g. "20201103 172056" - aggressive gym noise inducing cry on a distressed baby

Video Batch 3 (Gym disturbance recorded from 14/6-7 Funda pl. 2020 - 2022 via other phones) :

<https://youtube.com/playlist?list=PL75iff8taoEy6woCXJmI3wkPU5ObbTqsf>

Video Batch 4 (Most recent gym disturbance recorded from 7/6-7 Funda pl.) :

<https://youtube.com/playlist?list=PL75iff8taoEyZ9mBngAk-cx3p22QWaQN4>