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Proposed modification to DA2020/0110 at No. 12/20-22 Cross Street, Brookvale

Statement of Environmental Effects

November 2022

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1 EXECUTIVE SUMMARY

This Statement of Environmental Effects (SEE) has been prepared for the owners of No. 12/20-22 Cross Street, Brookvale by AK Planning to accompany a modification pursuant to Section 4.55 of the EP&A Act 1979, to Development Application (DA2020/0110) to Northern Beaches Council. The approved development is located at **No. 12/20-22 Cross Steet, Brookvale** this being **Lot 12 in SP39226**. The subject site has an area of **545.6m²** and is zoned **IN1 General Industrial** under the Warringah Local Environmental Plan 2011 (WLEP 2011).

The application seeks consent for the modification to the hours of operation under Section 4.55(2) of the Environmental Planning and Assessment Act to the approved indoor recreation facility (gym) under DA2020/0110. A detailed description of the proposal is provided under **Section 3**.

This SEE has been prepared pursuant to Section 4.55(2) and (3) of the Environmental Planning and Assessment Act, 1979 and Clause 24 of the Environmental Planning and Assessment Regulation, 2021. The purpose of this document is to: -

- describe the proposed modifications on the site;
- review the applicable planning regime relating to the proposal;
- assess the degree of compliance; and
- examine the environmental effects of the development when measured against the Evaluation Criteria prescribed under Section 4.15 of the Environmental Planning and Assessment Act, 1979.

The SEE concludes that the proposed modification is considered to be substantially the same development, without adversely impacting on the amenity of adjoining land. Accordingly, it is considered that the proposal will deliver a suitable and appropriate development within Northern Beaches LGA and is worthy of approval.

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2 THE SITE AND CONTEXT

2.1 The Site

The site is located at No. 12/20-22 Cross Street, Brookvale and has a legal description of **Lot 12 in SP39226**. The subject site consists of a two (2) storey building with basement parking located at ground level and on the roof. The building consists of twelve units. The building is located on the eastern side of Cross Street with vehicular access also provided from Cross Street.

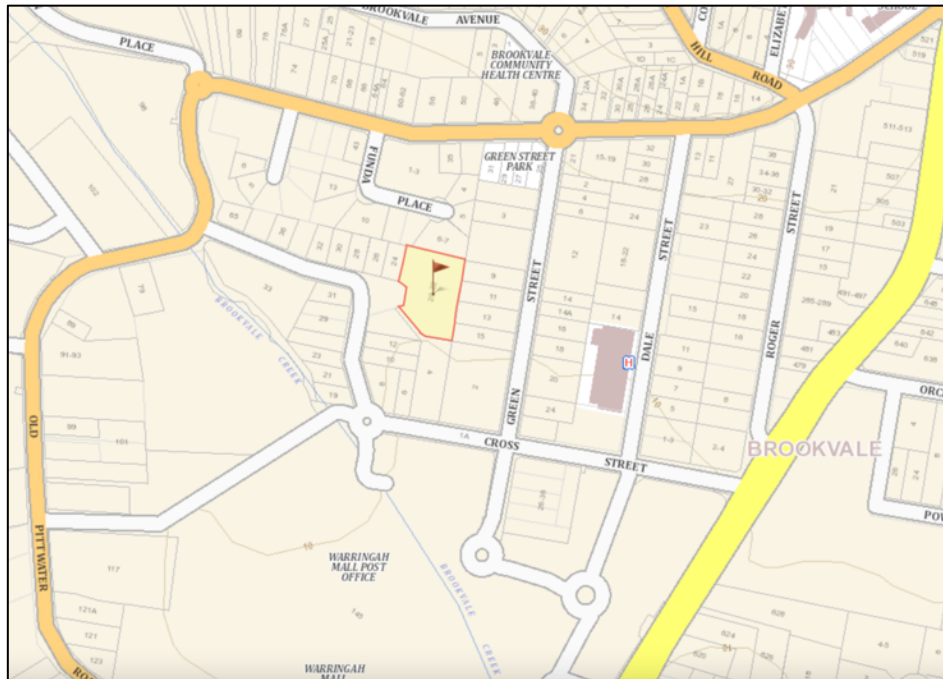


Figure 1 – Site location plan Source: SIX Maps



Figure 2: Aerial View of site Source: SIX Maps

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The subject site is irregular in shape with the subject unit measuring 545.6sqm. The site has a total surveyed area of 4000sqm – see **Photo 1**.

The use and fit out of the premises for an indoor recreation facility (gym) were approved on 21 September 2021 and is better known as Enliven Coaching. Enliven is located within the north-eastern corner of the site – see **Photo 2 and 3**.



Photo 1: View of existing building from Cross Street



Photo 2: View of existing entry to Gym

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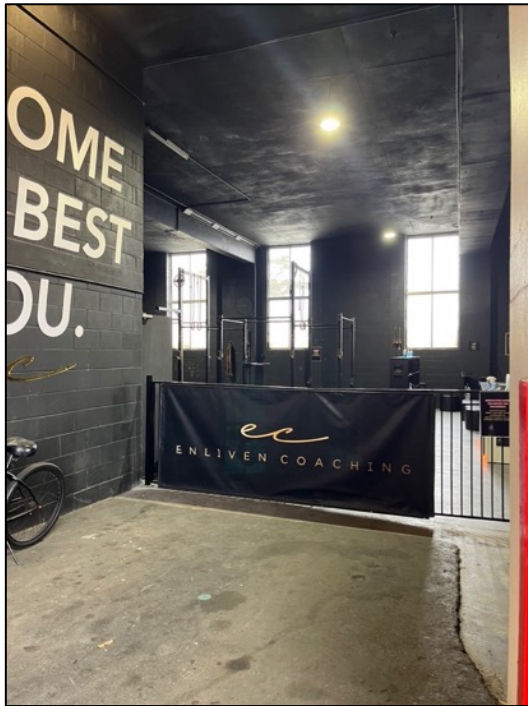


Photo 3: View of existing Gym

2.2 Surrounding Development

The site directly abuts the R3 Medium Density Residential zone to the north, containing residential flat buildings and single dwellings along Funda Place (see **Photo 4**). Buildings of a similar size and scale to the subject building are located along Cross Street with Warringah Mall located within walking distance.



Photo 4: View of No. 6-7 Funda Place

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Photo 5: View of No 28 Cross Street

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3 DESCRIPTION OF THE DEVELOPMENT

3.1 General description

The proposed application seeks consent for the modification to the hours of operation under Section 4.55(2) and (3) of the EP& A Act 1979, of DA2020/01110 approved under delegated authority on 21 September 2020 for the use of the premises as a Recreation Facility Indoor (gymnasium).

The proposed application seeks consent to amend the approved hours of operation as granted under Condition 13 to allow operation from 5:30am to 7pm Mondays to Saturdays.

Current approved hours of operation under Condition 13 reads as follows:-

On-going – Hours of operation

Hours of operation must only occur during the following hours:

Monday to Friday – 7:00am – 6:00pm

Saturday – 7:00am – 12:00pm

Sunday – Closed

Reason: To minimise disruption to neighboring properties.(DACHPGOG5)

The proposed application seeks to amend Condition 13 to read as follows:-

On-going – Hours of operation

Hours of operation must only occur during the following hours:

Monday to Friday – **5:30am – 8:00pm**

Saturday – 7:00am – 12:00pm

Sunday – Closed

4 STATUTORY PLANNING CONSIDERATIONS

4.1 Environmental Planning and Assessment Act 1979

The Act is the principle planning and development legislation in New South Wales. In accordance with Section 1.3, the relevant objectives of the Act in relation to the proposed development are:-

- “(a) to encourage:*
- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
 - (ii) the promotion and co-ordination of the orderly and economic use and development of land,*
 - (iii) the protection, provision and co-ordination of communication and utility services,*
 - (iv) the provision of land for public purposes,*
 - (v) the provision and co-ordination of community services and facilities, and*
 - (vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and*
 - (vii) ecologically sustainable development, and*
 - (viii) the provision and maintenance of affordable housing, and...”*

The proposal is consistent with the objects of the Act as:

- The proposal modifications will continue to result in the orderly and economic use and development of land as the site is of an appropriate size, location and land use zoning to enable the proposed development;
- Appropriate utility services are available; and
- There will be no unreasonable adverse impacts on the environment.

4.2 Section 4.55 of the Environmental Planning and Assessment Act, 1979

DA2020/0110 was approved under delegated authority by Northern Beaches Council on 21 September 2020 for: -

“use of premises as a Recreational Facility Indoor (gymnasium).”

This modification is being proposed under Section 4.55(2) & (3) of the *Environmental Planning and Assessment Act, 1979*. Section 4.55(2) of the *Environmental Planning and Assessment Act, 1979*, enables a consent authority to modify a development consent upon application being sought by the applicant or any other person entitled to the act on the consent, provided that the consent authority as part of the assessment process take into consideration the following matters:

- 1. it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which consent was**

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originally granted and before that consent as originally granted was modified (if at all), and

In my view, “*substantially the same developments*” means “*essentially or materially or having the same essence*” as defined by Pearlman C.J. in ***Schroders Australian Property Management Ltd v Shoalhaven City Council and Anor (1999) NSWLEC 251***. Accordingly, it is the substance of the proposal relative to the substance of the development as originally approved. The development, as modified would essentially and materially have the same essence.

The proposed amendments will not result in any of the following: -

- Significant change to the nature or intensity of the use;
- Significant change to the relationship to adjoining properties;
- Adverse impact on neighbours from the changes proposed;
- Significant change to streetscape; and
- Change to the scale or character of the development

Accordingly, the proposed modifications do not change the essential features of the approved development. The proposal does not alter the use and function of the site. Moreover, the nature or intensity of the commercial use remains unchanged.

Accordingly, it is considered that the modification results in substantially the same development as originally approved under DA2020/0110 on 21 September 2020.

2. it has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent, and

This S4.55(2) application concerns modifications to an approved residential development and does not require the concurrence of the relevant Minister, public authority or other approval body.

- 3. it has notified the application in accordance with:***
- i. the regulations, if the regulations so require, or***
 - ii. a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent, and***
- d) it has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.***

Surrounding properties will be notified of the proposed modifications in accordance with Council's notification policy. Consideration of any submissions made will be made during the assessment process.

- 4. S4.55(3) In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters***

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referred to in section 4.15(1) as are of relevance to the development the subject of the application.

- i. The likely impacts of the development, including environmental impacts on both the natural and built environments, and the social and economic impacts in the locality.*

The discussion below addresses the anticipated environmental impacts. In addition, in order to demonstrate no adverse impact, consistency with the applicable WLEP 2011 and WDCP controls are provided at Sections 4.3 and Section 5.1 below.

- **Noise**

During the original DA assessment the environmental health officer recommended physical or engineered mitigation measures in lieu of operational controls, in order to minimise noise impacts to sensitive receivers. This included allowing for acoustically treated window fixtures as opposed to acoustic blinds, and was included as a conditions of consent, refer to Condition 6 dot point 1.

Condition 6: Prior to construction certificate – Noise fixtures, fittings and finishes prior to construction

Details of the fixtures being used for the windows, floors, internal walls and external doors are to be provided to the PCA for approval prior to the issuing of any Construction certificate. Fixtures are to meet the following minimum requirements as specified in the acoustic report by Rodney Stevens Acoustics Report R190629R0 Revision 2:

- *Windows facing the residences are to be blocked with Wavebar 4 kg/m² or similar and achieve an A weighted sound reduction index of Rw28 dB.*
- *Aerobic flooring to be 8mm thick rubber with no gaps.*
- *Lifting platforms 50mm thick on top of 8mm rubber*
- *Internal walls to be a minimum weighted sound reduction index of Rw45 dB.*

All of the above has been implemented at the time of the occupation certificate and remains in place.

The modification application does not seek to increase the capacity beyond the approved 20 people at any one time, nor does it seek to amend the night time trading but rather it seeks to allow for additional 1.5 hour trading in the morning period from 5:30am Monday to Saturday as well as 2 hour additional trading during the late afternoon early evening from 6pm to 8pm Monday to Saturday.

An acoustic report accompanies the application at **Appendix 1**, which includes noise sensitive time periods for the evening (6pm to 10pm) and night time (shoulder period 5am to 7am) in order to demonstrate the noise impact during the extended trading hours.

In this regard the Acoustic report under Section 6 recommends as follows:-

In order to preserve acoustic amenity, the following measures are recommended to be incorporated within the Gym design:

- *All external doors to have self-closing mechanism to allow for self-closing. All external doors to be full acoustic perimeter seals.*
- *Acoustic curtains on the northern window to be closed during the morning and evening class.*

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- *The PA is to be used for background music only and to have a maximum output of 65 dB at the centre of the room. All speakers are to face internally. PA system is to have an electronic limiter with a maximum output of 65 dBA SPL during the morning and evening shoulder period*
- *Signs should also be posted at exit doors reminding patrons to leave the premises in an orderly and quiet manner when leaving the Gym.*
- *Roller door to be closed during the extended hours*
- *Maximum of 20 patrons inside the premises*
- *Flooring to be as follows:*
 - *Lifting platforms are 50mms thick on top of 15mm rubber*
 - *Aerobic flooring to be 8mm thick rubber*
- *Rooftop car park is not to be utilised during the 5am-7am trading hours. It is understood that the rooftop car park is for the use of the entire commercial complex. The patrons of the gym will only be using the carpark during the daytime and evening periods*

Notably much of these recommendations are already implemented.

Amenity impact by way of noise, light spillage and traffic is to be expected when living in an area directly adjoining an established industrial zone. Whilst this is not to say that residents in such locations must accept any amount of noise, they must reasonably expect some greater noise levels than would be expected in many other predominantly residential neighbourhoods across the Northern Beaches.

Currently there is a separation distance of approximately 7m between the structures of No 6-7 Funda Place and No 20-22 Cross street. No 20-22 Cross Street is not located on the common boundary but rather there is a small gap between the existing northern wall and the common 1.8m high boundary fence with No 6-7 Funda Place. The fence is backed by a large dense hedge reaching up to first floor (see **photos 6-8**). The separation distance as well as the existing established hedge assist in mitigating noise transfer from the existing industrial uses.



Photo 6 & 7: Existing separation between boundary and existing hedge along No 6-7 Funda Place.

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Photo 8: Existing hedge from roof of No 20-22 Cross Street

There are many other similar indoor recreational centres within Brookvale and more specially within 400m of Warringah Mall – see **Figure 3**.



Figure 3: Gyms in close proximity to Warringah Mall Source: Google Maps

A desk-top analysis of the morning trading hours for these gym's demonstrates the following:-

Name	Morning trading	Evening trading
Code 5 Fitness	5am start	6pm
Tone Athletica	5:30am start	6pm
J-Train Athletic Performance Gymnasium	5:30am	8:30pm

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NBFC Northern Beaches Fitness Community	5:30am	8pm
Fight Gym	5am	8pm
Plus Fitness	24hours	
Stunt Gym	10am	9:30pm
The Gube Gym	5:15am	7:30pm
Body Shape Female Fitness	6am	8pm
Anytime Fitness	24hours	

An indoor recreational centre (gym) is considered a good transitional use between industrial uses (noise generating uses) and more sensitive land uses such as dwellings.

A new Gym (J-Train) were recently approved at No. 28 Cross street under DA2021/2629 on 24 June 2022 with hours of operation restricted to Monday to Friday – 5:30am to 8:30pm and Saturday – 7:00am to 12:00pm. This premises has very similar site circumstances as the subject site, also directly adjoining residential premises to the north. Notwithstanding the hours of operation allows trading from 5:30am compared to the subject sites 7am start.

The existing trading hours noted above as well as the recent approval set a clear precedent for morning trading from 5:30am and evening until 8pm.

- **Traffic and Parking**

Eight (8) car parking spaces are designated to the subject unit, located on the roof of the subject building with access provided via a ramp from Cross Street. No changes to the current parking arrangement are proposed.

The proposed additional trading during the morning period will not alter the approved parking arrangement. Public transport is a convenient travel option for clients of the existing gym and the 5:30am start will continue to be well serviced by public transport and patrons will not need to rely on cars.

- ii. ***The suitability of the site for the development.***

The suitability of the site has been comprehensively addressed and considered by virtue of the granting of development consent. The proposed development is considered substantially the same development because there is no change to the location and function, the suitability of the site, as such, remains unchanged.

- iii. ***The public interest.***

Pursuant to case law of Ex Gratia P/L v Dungog Council ([2005] NSWLEC 148), the question that needs to be answered is “Whether the public advantages of the proposed development outweigh the public disadvantages of the proposed development?”

There are no unreasonable impacts that will result from the proposed development; therefore, the benefits outweigh any disadvantage and as such the proposed development will have an overall public benefit.

4.3 Warringah Local Environmental Plan 2011

The subject site is located within the Local Government Area (LGA) of Northern Beaches and is subject to the provisions within the Warringah Local Environment Plan (WLEP) 2011.

Permissibility and Zoning

The subject site is zoned **IN1 General Industrial** under the provisions of the Warringah LEP 2011 (WLEP 2011) see **Figure 4**. Development for the purposes of an indoor recreational facility (gym) is permissible with the consent of Council.

Clause 2.3 specifies the following objectives for the zone:-

- *“To provide a wide range of industrial and warehouse land uses.*
- *To encourage employment opportunities.*
- *To minimise any adverse effect of industry on other land uses.*
- *To support and protect industrial land for industrial uses.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*
- *To enable a range of compatible community and leisure uses.*
- *To maintain the industrial character of the land in landscaped settings”.*

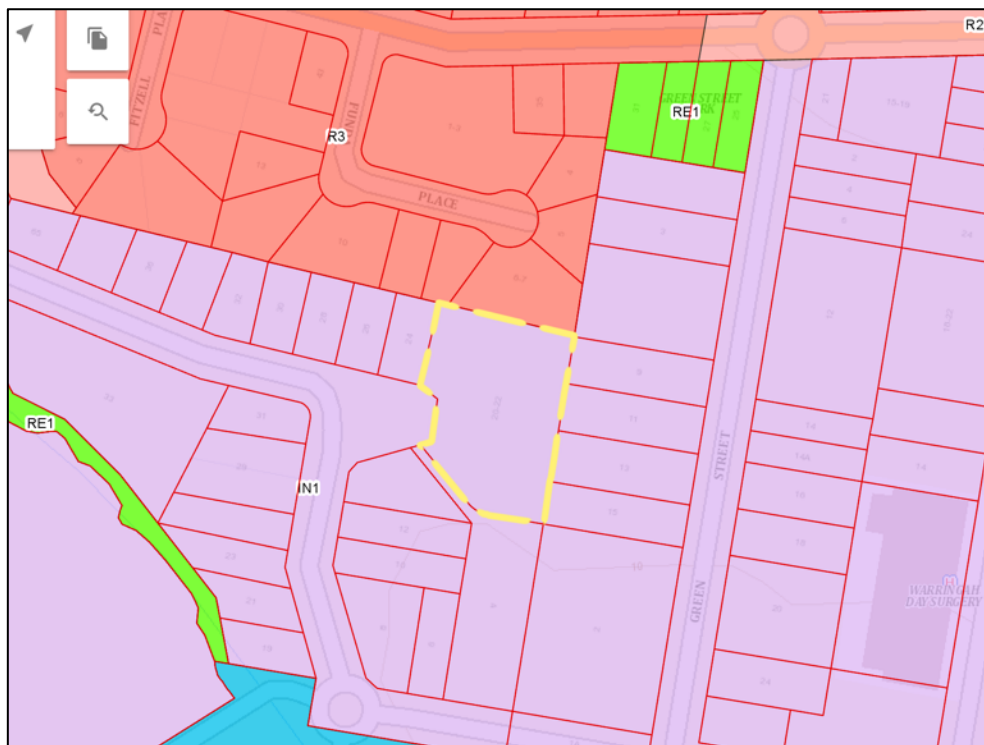


Figure 4: Zoning IN1 General Industrial

The proposed modification is considered consistent with the zone objectives for the following reasons: -

- The proposed modification to the approved hours of operation provides for facilities and/or services to meet the day to day needs of workers in the area
- continue to provide for compatible leisure uses within the industrial area
- continues to allow for employment opportunities

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- The proposed modification does not impact adversely on the amenity of adjoining properties in terms of solar access, privacy; noise or views.

Currently the 7am Monday to Saturday start is not conducive to allow the trades people within the area to come to Enliven before work, especially when compared with other gyms in the area. This is placing a financial burden on the current operations of Enliven Coaching.

Table 1: Compliance with WLEP 2013

CLAUSE	COMMENT	Comply
Clause 4.3: Height of Buildings 8.5m	No change to the existing building height	N/A
Clause 4.4 FSR	N/A	N/A
Clause 5.9 Preservation of trees or vegetation	None proposed as the works relate to the hours of operation only	Yes
Clause 5.10 Heritage conservation	The subject site is not heritage nor is it located within a Heritage Conservation Area.	N/A
Clause 6.3 Flood Planning	The proposed development is limited to the hours of operation only with no change to the existing built form or flood affectation.	N/A
Clause 6.10 Earthworks	None proposed as the works relate to the hours of operation only	N/A

5 NON-STATUTORY CONSIDERATION

5.1 Warringah Development Control Plan 2013

The table below demonstrates the consistency with Warringah Development Control Plan.

Table 4: Consistency with DCP

CLAUSE	COMMENT	COMPLY
Part B: Built Form Controls		
	The proposed development is limited to the hours of operation only with no change to the existing built form.	N/A
Part C Sitting Factors		
C2 Traffic, Access and Safety	<p>The subject site is located in an area that has convenient access to public transport facilities with a number of bus services located within walking distance of the site on Cross Street and along Pittwater Road. The site is also within walking distance (<400m) from Warringah Mall.</p> <p>Public transport is a convenient travel option for clients of the existing gym and the extended trading hours, will continue to be well serviced by public transport and patrons will not need to rely on cars.</p>	Yes
C3 Parking Facilities	<p>The existing situation allows for 8 spaces on site. The proposal does not seek to alter the approved floor area, nor does it seek to increase the number of customers with the premises at any one time.</p> <p>The proposal does not seek to alter the existing arrangement.</p>	Yes
C9 Waste Management	The proposed development is limited to the hours of operation only with no change to the existing waste management procedures in place.	N/A
Part D Design		
D3 Noise	<p>An acoustic report accompanies the application at Appendix 1 and concludes as follows:-</p> <p><i>“Rodney Stevens Acoustics has conducted Noise Impact Assessment for the proposed extended trading hours to the Enliven Coaching located at 16 - 22 Cross Street, Brookvale NSW. The assessment has predicted noise impact to the nearest premises. The noise modelling resulted in compliance to the NSW EPA Noise Policy for Industry with provisions of the noise control measures in this report”.</i></p>	Yes
D8 Privacy	The proposed development is limited to the hours of operation only with no change to the existing window openings. There is no change to existing overlooking opportunities.	Yes
D12 Glare and Reflection	<p>The proposed development is limited to the hours of operation only with no change to the existing roof or existing window openings.</p> <p>A condition of consent was imposed on the approval, requiring the level of illumination and/or lighting intensity of the site is to be minimised to ensure that excessive light spill or nuisance is not caused to any nearby residential premises.</p> <p>The current situation allows for internal blinds and block-out curtains to minimise any light spill consistent with the condition of consent.</p>	Yes

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D18 Accessibility and Adaptability	The proposed development is limited to the hours of operation only with no change to the accessibility or adaptability as originally approved.	Yes
D20 Safety and Security	The proposed development is limited to the hours of operation only with no change to the existing safety and security measures in place.	N/A
D22 Conservation of Energy and Water	The proposal is for a change to the approved hours of operation only with no change to energy savings or water measures.	Yes
Part E The Natural Environment		
E11 Flood Prone Land	The proposal is for a change to the approved hours of operation only to an existing commercial tenancy and would have no impact on flood affectation.	Yes

Planning Principle

The Planning Principles for the assessment of an extension or intensification of a use including extended hours of operation, which may have an adverse impact on residential amenity, as established in ***Randall Pty Ltd v Leichhardt Council* [2004] NSWLEC 277** are:

1. *First, is the impact of the operation of the existing use on residential amenity acceptable?*
2. *Second, if the answer is yes, is the impact of the proposed extension or intensification still acceptable?*

Comment:

In seeking additional hours of operation beyond the approved hours (intensification of the use), the application is assessed against these principles in order to demonstrate whether the impact of the operation of the existing use is acceptable.

First question is ***what the impacts of the existing trading hours are***, which potentially affect the amenity of surrounding residential premises. These may include:-

- a) Noise; and
- b) Light spill

What measures are in place to address those impacts?

a) Noise

Physical measures which are currently in place to mitigate noise include:-

- limiting class sizes to a maximum of 20 participants at any one time
- appropriate rubber flooring for aerobic and weight lifting
 - lifting platforms are 50mm on top of 15mm flooring as compared with the 8mm required under the condition of consent;
 - Aerobic flooring is 8mm with 50mm foam mats used under all weighted equipment during class;
- all external doors have self-closing mechanisms
- window treatment with an acoustic rating of Rw28
- Signage to remind participants to leave the premises in orderly and quiet manner
- the weight lifting section has been relocated further away from the northern windows

The Plan of Management (refer to **Appendix 2**) includes operational measures to further mitigate any impacts which may arise including :

- Noise and patron management

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- Incident records
- Complaint management

The ongoing implementation of the operational management practises within the PoM ensures that the premises will have minimal adverse impacts on the amenity of residential or other sensitive land uses.

Additional measures recommended by the noise report include:-

- the roller shutter door is to be closed during 5:30am and 7am morning period
- The PA is to be used for background music only and to have a maximum output of 65 dB for the shoulder period, at the centre of the room. All speakers are to face internally. PA system is to have an electronic limiter with a maximum output of 65 dBA SPL during the morning and evening shoulder period
- Rooftop car park is not to be utilised during the 5am-7am trading hours.

Accordingly, the application demonstrates the premises' ability to accommodate the intensification of the use through proposing trading hours beyond those as approved.

b) Light Spill

A condition of consent was imposed as part of the approval, requiring the *level of Illumination and/or lighting intensity of the site is to be minimised to ensure that excessive light spill or nuisance is not caused to any nearby residential premises.*

The current situation allows for internal weighted sound blinds/curtains to minimise any light spill and sound transfer (see **Photos 9 & 10**) consistent with the condition of consent. The proposed change to the hours of operation will not alter the existing arrangement.



Photo 9: Existing hedge above window height Photo 10: Weighted sound and light reduction

6 CONCLUSION

The proposed modification to the approved hours of operation under S4.55 of the EP& A Act 1979 to the DA2020/0110 at **No. 12/20-22 Cross Street, Brookvale** is considered to:

- constitute substantially the same development under Section 4.55(2) of the EP& A Act;
- adhering to the acoustic report recommendations ensures that the premises will have minimal adverse impacts on the amenity of residential or other sensitive land uses
- The ongoing implementation of the operational management practises within the PoM ensures that the premises will have minimal adverse impacts on the amenity of residential or other sensitive land uses
- be consistent with the surrounding existing developments;
- not adversely impact on the amenity of adjoining properties by way of noise intrusion;
- be in accordance with the aims, objectives and provisions of the relevant statutory and non-statutory planning instruments; and
- have no adverse environmental impacts to adjoining properties.

Based on the above assessment, is it recommended to the Council that consent be granted to the application.