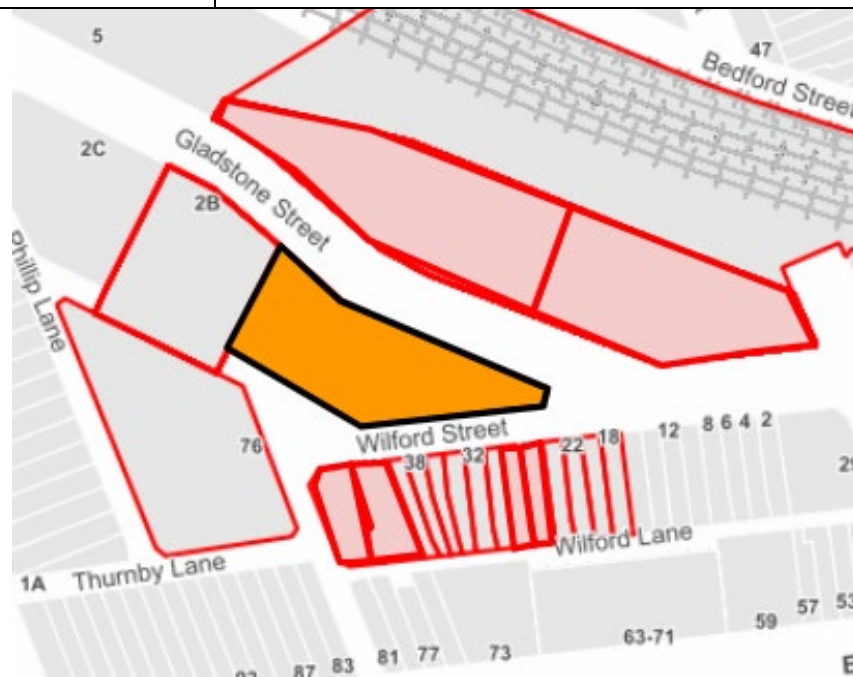






# INNER WEST

## DEVELOPMENT ASSESSMENT REPORT

<b>Application No.</b>	DA/2021/1348
<b>Address</b>	2 Gladstone Street NEWTOWN NSW 2042
<b>Proposal</b>	Fitout and use of the ground floor tenancies as an indoor recreation facility (gym) operating 5.00am to 9.00pm Mondays to Saturdays and 7.00am to 5.00pm Sundays and provide two accessible bathrooms to the first floor creative commercial tenancies
<b>Date of Lodgement</b>	29 December 2021
<b>Applicant</b>	AVM Project Management Pty Ltd
<b>Owner</b>	Australian Village No. 12 - Gladstone St Pty Ltd
<b>Number of Submissions</b>	15
<b>Value of works</b>	\$200,000.00
<b>Reason for determination at Planning Panel</b>	Number of submissions
<b>Main Issues</b>	Acoustic issues
<b>Recommendation</b>	Approved with conditions
<b>Attachment A</b>	Recommended conditions of consent
<b>Attachment B</b>	Plans of proposed development
<b>Attachment C</b>	Plan of Management



### LOCALITY MAP

Subject Site		Objectors		↑ N
Notified Area		Supporters		

Note: Objectors are also located within the subject site. Due to scale of map, not all objectors could be shown.

## 1. Executive Summary

This report is an assessment of the application submitted to Council for fitout and use of the ground floor tenancies as an indoor recreation facility (gym) operating 5.00am to 9.00pm Mondays to Saturdays and 7.00am to 5.00pm Sundays and provide two accessible bathrooms to the first floor creative commercial tenancies at 2 Gladstone Street NEWTOWN NSW 2042.

The application was notified to surrounding properties and 15 submissions were received in response to the initial notification.

The main issues that have arisen from the application include:

- Acoustic impacts;
- Clause 6.12 of *MLEP 2011*; and
- Parking.

The proposal is considered to generally consistent with the planning controls and therefore the application is recommended for approval.

## 2. Proposal

The proposed development is for change of use to the ground floor tenancies to a recreational facility (indoor) and associated fit out. The proposal seeks hour of operation from 5.00am to 9.00pm Mondays to Saturdays and 7.00am to 5.00pm Sundays. The proposed development also includes the provision of two additional bathrooms on the first floor.

## 3. Site Description

The subject site is located between Gladstone Street and Wilford Street. The site consists of one allotment and is irregular in shape with a total area of 1,445sqm and is legally described as Lot 1 DP 1260210.

The site has a frontage to Gladstone Street of 73 metres and a secondary frontage of approximate 86 metres to Wilford Street.

The site contains a mixed use development consisting of commercial tenancies and shop top housing in the form of housing required to be used for affordable housing for a period of 10 year as per the repealed infill provisions of *SEPP ARH*. To the south are single storey attached dwellings. To the north is the Flourmills site (an adaptive reuse of an industrial building). To the west is a multi-dwelling housing development.

The site is identified as a flood prone lot. The nearby Flourmills site is listed as an item of environmental heritage under the *MLEP 2011*.



Zoning Map

#### 4. Background

##### 4(a) Site history

The following application outlines the relevant development history of the subject site and any relevant applications on surrounding properties.

##### Subject Site

Application	Proposal	Decision & Date
DA201600060	Demolish existing improvements and construct a 4 x storey mixed use development with creative commercial uses on the ground floor, first and second floors, 18 x dwellings (including 3 live work dwellings) on the upper floors, with basement car parking and strata subdivision of the development.	Approved under delegated authority - 24 January 2017
DA201900242	Demolition of existing buildings on the site and construct a mixed use development comprising ground and first floor level creative use commercial tenancies and 21 x community housing dwellings and external communal open space, with associated basement parking	Appeal upheld by Land and Environment Court (Section 34 Agreement) - 19 March 2020

DA/2020/0366	Development comprising the change of use of level 1 and minor alterations to the development approved by the development consent granted by the Court on 8 April 2020 to development application DA/2019/00242 (for demolition of existing buildings and construction of a mixed use development comprising ground and first floor level creative use commercial tenancies and 21 community housing dwellings and external open space with associated basement parking)	Appeal dismissed by Land and Environment Court 18 February 2021
MOD/2021/0059	Section 4.56 Modification of consent to DA201900242 including minor internal and external changes	Approved under delegated authority 27 May 2021

#### 4(b) Application history

The following table outlines the relevant history of the subject application.

Date	Discussion / Letter / Additional Information
08/04/2022	Request that the plan of management be amended to address the objectors concerns around acoustic impacts.
14/4/2022	Amended plan of management and acoustic report submitted.

### 5. Assessment

The following is a summary of the assessment of the application in accordance with Section 4.15 of the *Environmental Planning and Assessment Act 1979*.

#### 5(a) Environmental Planning Instruments

The application has been assessed against the relevant Environmental Planning Instruments listed below:

- *State Environmental Planning Policy (Resilience and Hazards) 2021*
- *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*

The following provides further discussion of the relevant issues:

#### 5(a)(i) *State Environmental Planning Policy (Resilience and Hazards) 2021* ('SEPP RH')

##### Chapter 4 Remediation of land

Section 4.16 (1) of *SEPP RH* requires the consent authority not consent to the carrying out of any development on land unless:

*“(a) it has considered whether the land is contaminated, and  
 (b) if the land is contaminated, it is satisfied that the land is suitable in its contaminated state (or will be suitable, after remediation) for the purpose for which the development is proposed to be carried out, and*

*(c) if the land requires remediation to be made suitable for the purpose for which the development is proposed to be carried out, it is satisfied that the land will be remediated before the land is used for that purpose.”*

In considering the above, there is no evidence of contamination on the site. The previous applications considered contamination

**5(a)(ii) State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004**

A BASIX Certificate was submitted with the application although it is not apparent that one is required as the works do not relate the residential areas of the development.

**5(a)(iii) Marrickville Local Environment Plan 2011 (MLEP 2011)**

The application was assessed against the following relevant clauses of the *MLEP 2011*:

- Clause 1.2 - Aims of the Plan
- Clause 2.3 - Zone objectives and Land Use Table
- Clause 5.10 - Heritage
- Clause 5.21 - Flood Planning
- Clause 6.12 – Business and office premises in certain zones
- Clause 6.13- Dwellings and residential flat buildings in Zone B7 Business Park

**Clause 2.3 - Land Use Table and Zone Objectives**

The site is zoned B7 under the *MLEP 2011*. The *MLEP 2011* defines the proposed development as:

**“recreation facility (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.”

The development is permitted with consent as an innominate use within the land use table. It should be noted that residential flat buildings are permitted with consent and the housing above the ground floor is not required to be shop top housing.

The objectives of the B7 Business Park zone are:

- *To provide a range of office and light industrial uses.*
- *To encourage employment opportunities.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*
- *To provide for limited residential development in conjunction with permissible active ground floor uses.*
- *To provide business and office premises for the purposes of certain art, technology, production and design sectors.”*

The proposed development does not provide office or light industrial use but provides for another use that is permitted with consent. The proposal will provide employment opportunities. The proposal will provide other land uses that provide facilities that meet the needs of residents. The proposal is not for business or office premises. The proposal is consistent with the objectives of the B7 zone.

#### Part 4 Development Standards

The proposed development does not alter the sites compliance with the height of buildings or floor space ratio development standards.

#### Clause 5.10 Heritage

The proposed development is located within the vicinity of the nearby Flourmills site is listed as an item of environmental heritage under the *MLEP 2011*. As the works are internal there is no impact on the heritage value of the item.

#### Clause 5.21 Flood Planning

The site is partially within a flood planning area. In terms of the preconditions within Clause 5.21(2) of *MLEP 2011*, the proposal has been considered by Council's development engineers as satisfying the clauses. The consideration of the matters within clause 5.21(3) of the *MLEP 2011* has occurred and the proposal is considered acceptable.

#### Clause 6.12 – Business and Office Premises in Certain Zones

This clause applies to the B7 Business Park. The Clause contains the following precondition to development consent being issued:

*“Development consent must not be granted to development for the purpose of business premises or office premises on land to which this clause applies unless the consent authority is satisfied that the development will be used for a creative purpose such as media, advertising, fine arts and craft, design, film and television, music, publishing, performing arts, cultural heritage institutions or other related purposes.”*

With regard to the above, the proposed development is for a recreational facility (indoor) which is a miscellaneous permissible use and does not fall within the definition of a business premises or office premises.

Business premises is defined as:

**“business premises** means a building or place at or on which—  
(a) an occupation, profession or trade (other than an industry) is carried on for the provision of services directly to members of the public on a regular basis, or  
(b) a service is provided directly to members of the public on a regular basis,  
and includes funeral homes, goods repair and reuse premises and, without limitation, premises such as banks, post offices, hairdressers, dry cleaners, travel agencies, 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.”

Office Premises is defined as:

**“office premises** means a building or place used for the purpose of administrative, clerical, technical, professional or similar activities that do not include dealing with members of the public at the building or place on a direct and regular basis, except where such dealing is a minor activity (by appointment) that is ancillary to the main purpose for which the building or place is used.”

The Department of Planning LEP practice note [‘Preparing LEPs using the Standard Instrument: definitions’](#) indicates that recreational facilities (indoor) is a recreational land use that is not within the terms ‘business premises’ or ‘office premises’.

Based on the above, the precondition within clause 6.12(3) on *MLEP 2011* is not applicable as the proposal is not for the purpose of business premises or office premises. Clause 6.12 of *MLEP 2011* is therefore not an impediment to consent being granted.

It should be noted that condition 75 of DA201900242 (approved by the LEC in *Tricon Management Group Pty Ltd v Inner West Council* [2020] NSWLEC 1159) that stated:

*“75. Use of commercial tenancies*

*The use of the commercial tenancies must be for used for a creative purpose such as media, advertising, fine arts and craft, design, film and television, music, publishing, performing arts, cultural heritage institutions or other related purposes.”*

Having regard to section 4.17(1)(c) of the *EPA Act 1979* a condition of consent is recommended that requires condition 75 of DA201900242 to be amended prior to the issue of an occupation certificate to remove any conflict between the consents.

#### Clause 6.13- Dwellings and Residential Flat Buildings in Zone B7 Business Park

The proposal does not alter the balance between residential and commercial development as the hallways of the commercial areas (as well as the residential areas) which are now used for commercial uses were included in the calculations of commercial area. Compliance with clause 6.13(3)(c) of *MLEP 2011* is therefore not impacted by the proposal. The preconditions to consent being issued within the remainder of clause 6.13(3) of *MLEP 2011* are satisfied.

#### 5(b) Draft Environmental Planning Instruments

Draft EPI’s have been considered and do not impact the proposed development.

#### 5(c) Draft Inner West Local Environmental Plan 2020 (Draft IWLEP 2020)

The Draft IWLEP 2020 was placed on public exhibition commencing on 16 March 2020 and accordingly is a matter for consideration in the assessment of the application under *Section 4.15(1)(a)(ii) of the Environmental Planning and Assessment Act 1979*.

The amended provisions contained in the Draft IWLEP 2020 are not relevant to the assessment of the application. Accordingly, the development is considered acceptable having regard to the provisions of the Draft IWLEP 2020.

#### 5(d) Development Control Plans

The application has been assessed and the following provides a summary of the relevant provisions of Marrickville Development Control Plan 2011.

MDCP 2011 Part of MDCP 2011	Compliance
Part A.26- Plan of Management (PoM)	Yes
Part 2.3 – Site and Context Analysis	Yes
Part 2.5 – Equity of Access and Mobility	Yes
Part 2.6 – Acoustic and Visual Privacy	Yes
Part 2.10 – Parking	Yes - see discussion
Part 2.21 – Site Facilities and Waste Management	Yes
Part 5 – Commercial and Mixed Use Development	Yes - see discussion
Part 8 – Heritage	Yes – in the vicinity of an item but works are internal
Part 9 – Strategic Context Enmore North and Newtown Central	Yes

The following provides discussion of the relevant issues:

#### Part 2.10 – Parking

The car parking rate within part 2.10.5 table 1 indicates a carparking rate of 1 space per 100m<sup>2</sup> for Recreational Facilities (Indoor) in car parking area 1. The existing court approval indicates that the space is for the purpose of either business premises or office premises. Business premises has a higher carparking rate of 15 + 1 per 35m<sup>2</sup> GFA over 1000m<sup>2</sup> GFA for customers & staff. Office premises has a carparking rate of 1 space per 100m<sup>2</sup>. The proposal therefore does not increase the carparking generation of the site from the existing consent and thereby complies with the control.

#### Part 5.3.1.1 Plan of Management

The application includes a plan of management. During the assessment of the application the applicant was asked to amend the plan of management to detail how the sound equipment will be managed in relation volume and noise levels. This has been submitted and is considered acceptable. The remainder of the plan of management is compliant with the provisions of part 5.3.1.1 of MDCP 2011.

#### Part 5.3.1.2 Noise and vibration generation

Council's Environmental Health Team has reviewed the acoustic report and subject to the recommended conditions of consent have no objections.

#### Part 5.3.1.4 Hours of operation

The proposed hours of operation are 5am-9pm Monday to Saturday and 7am-5pm Sunday. The plan of management and the acoustic report provide Council with the necessary certainty that the proposed trading hours will not unreasonably impact the amenity of neighbours. Given the nature of the use, the zoning, the acoustic control measures and plan of management the proposed hours are considered appropriate.

### 5(e) The Likely Impacts

The likely acoustic impacts of the proposal have been considered. The proposal is considered to have acceptable likely impacts.



### 5(f) The suitability of the site for the development

Provided that any adverse effects on adjoining properties are minimised, this site is considered suitable to accommodate the proposed development, and this has been demonstrated in the assessment of the application.

### 5(g) Any submissions

The application was notified in accordance with the Community Engagement Framework for a period of 14 days to surrounding properties.

15 submissions were received in response to the notification.

The submissions raised the following concerns which are discussed under the respective headings below:

Issue: Already sufficient gyms in the local area

Comment: Not a relevant consideration. Competition with other business is not a matter that can be used to refuse consent.

Issue: Impact on car parking

Comment: Council's development engineers have reviewed the application and do not object to the proposal based on carparking generation or carparking availability.

Issue: Original consent was approved for creative community uses on the ground floor and was approved on that basis. The proposal is not a creative use.

Comment: The applicable precondition within clause 6.12 of the *MLEP 2011* does not apply to an application for a recreational facility (indoor) or other land use that is permitted with consent. A condition is recommended that required a modification to be submitted to modify condition 75 the previous consent prior to the occupation certificate being issued on this consent. If a proposed use is a use that is permitted with consent, then it would be inappropriate for consent authority to refuse the change of use on the basis of a precondition in the *MLEP 2011* that does not apply to that use.

Issue: Acoustic impacts on surrounding residents / businesses.

Comment: The application is supported by an acoustic report and the application has been reviewed by the Council's Environmental Health team who advise that the proposal is acceptable subject to conditions that have been included in the recommendation. The applicant has revised the plan of management to include additional measures to control the volume of the audio equipment.

Issue: Does not fit into the character of the area

Comment: The use does not change the exterior appearance of the building which has been assessed as being compatible with the character of the area in the original consent. The use is permitted with consent under *MLEP 2011*.

Issue: Impact on wellbeing of surrounding residents

Comment: The proposal is assessed as having acceptable impacts on the amenity of the area and any impacts on persons who are partially susceptible to impacts is not a relevant consideration.

Issue: Cumulative impact with other developments in the area such as Young Henrys  
Comment: The impact of the proposed development is acceptable with the conditions of consent noting the zoning of the site and the mitigation measures proposed.

Issue: Original consent already impacts solar access and objects to further impacts.  
Comment: Each application is assessed on its own merits. The impact of the proposed development is considered to be acceptable, and the conditions of consent seek to minimise any impacts.

Issue: Acoustic report does not consider the acoustic impacts from gym goes trying to find a park at 5am.  
Comment: The plan of management includes suitable measures to minimise noise from gym users coming and going from the premises.

Issue: Acoustic report is out of date.  
Comment: Council's Environmental Health Team have reviewed the acoustic report and the application in relation to its acoustic impacts and provided conditions of consent.

Issue: Increase in litter.  
Comment: Nothing in the application indicates that the proposed use would result in a significant increase in litter in the area.

#### 5(h) The Public Interest

The public interest is best served by the consistent application of the requirements of the relevant Environmental Planning Instruments, and by Council ensuring that any adverse effects on the surrounding area and the environment are appropriately managed.

## 6 Referrals

The application was referred to the following internal sections/officers and issues raised in those referrals have been discussed in section 5 above.

- Building Certification
- Development Engineering
- Environmental Health
- Waste Management (Commercial)

## 7. Section 7.11 Contributions/7.12 Levy

Section 7.12 levies are payable for the proposal.

The carrying out of the development would result in an increased demand for public amenities and public services within the area. A contribution of \$2,000 would be required for the development under Marrickville Section 94/94A Contributions Plan 2014. A condition requiring that contribution to be paid is included in the recommendation.

## 8. Conclusion

The proposal generally complies with the aims, objectives and design parameters contained in *Marrickville Local Environmental Plan 2011* and Marrickville Development Control Plan 2011.

The development will not result in any significant impacts on the amenity of the adjoining premises/properties and the streetscape and is considered to be in the public interest.

The application is considered suitable for approval subject to the imposition of appropriate conditions.

## 9. Recommendation

- A. That the Inner West Local Planning Panel exercising the functions of the Council as the consent authority, pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*, grant consent to Development Application No. DA/2021/1348 for Fitout and use of the ground floor tenancies as an indoor recreation facility (gym) operating 5.00am to 9.00pm Mondays to Saturdays and 7.00am to 5.00pm Sundays and provide two accessible bathrooms to the first floor creative commercial tenancies at 2 Gladstone Street, Newtown subject to the conditions listed in Attachment A.

## Attachment A – Recommended conditions of consent

### Attachment A – Recommended conditions of consent

#### DOCUMENTS RELATED TO THE CONSENT

##### 1. Documents related to the consent

The development must be carried out in accordance with plans and documents listed below:

Plan, Revision and Issue No.	Plan Name	Date Issued	Prepared by
DA.1090 Revision B	Proposed Basement Plan	30 November 2021	Nordon Jago Architects
DA. 1100 Revision A	Proposed Ground Floor	30 November 2021	Nordon Jago Architects
DA. 1101 Revision A	Proposed Level 1 Plan	30 November 2021	Nordon Jago Architects
	Statement of Environmental Effects	December 2021	The Planning Studio
20166-R1.1	Access Report	December 2021	Code Performance
7382-1.1R Revision A	Environmental Noise Assessment	13 April 2022	Day Design Pty Ltd
	Plan of Management	April 2022	The Planning Studio

As amended by the conditions of consent.

#### FEES

**2. Security Deposit - Custom**

Prior to the commencement of demolition works or prior to the issue of a Construction Certificate, the Certifying Authority must be provided with written evidence that a security deposit and inspection fee has been paid to Council to cover the cost of making good any damage caused to any Council property or the physical environment as a consequence of carrying out the works and as surety for the proper completion of any road, footpath and drainage works required by this consent.

<b>Security Deposit:</b>	2254.00
<b>Inspection Fee:</b>	\$241.50

Payment will be accepted in the form of cash, bank cheque, EFTPOS/credit card (to a maximum of \$10,000) or bank guarantee. Bank Guarantees must not have an expiry date.

The inspection fee is required for the Council to determine the condition of the adjacent road reserve and footpath prior to and on completion of the works being carried out.

Should any of Council's property and/or the physical environment sustain damage during the course of the demolition or construction works, or if the works put Council's assets or the environment at risk, or if any road, footpath or drainage works required by this consent are not completed satisfactorily, Council may carry out any works necessary to repair the damage, remove the risk or complete the works. Council may utilise part or all of the security deposit to restore any damages, and Council may recover, in any court of competent jurisdiction, any costs to Council for such restorations.

A request for release of the security may be made to the Council after all construction work has been completed and a final Occupation Certificate issued.

The amount nominated is only current for the financial year in which the initial consent was issued and is revised each financial year. The amount payable must be consistent with Council's Fees and Charges in force at the date of payment.

**3. Section 7.12 (formerly section 94A) Development Contribution Payments**

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that a monetary contribution to the Inner West Council has been paid, towards the provision of infrastructure, required to address increased demand for local services generated by additional development within the Local Government Area (LGA). This condition is imposed in accordance with Section 7.12 of the *Environmental Planning and*

*Assessment Act 1979* and in accordance with *Marrickville Section 94/94A Contributions Plan 2014*.

Note:

Copies of these contribution plans can be inspected at any of the Inner West Council Service Centres or viewed online at <https://www.innerwest.nsw.gov.au/develop/planning-controls/section-94-contributions>

Payment amount\*:

\$2,000.

\*Indexing of the Section 7.12 contribution payment:

The contribution amount to be paid to the Council is to be adjusted at the time of the actual payment in accordance with the provisions of the relevant contributions plan. In this regard, you are recommended to make contact with Inner West Council *prior to arranging your payment method* to confirm the correct current payment amount (at the expected time of payment).

Payment methods:

The required contribution must be paid either **by BPAY (to a maximum of \$500,000); unendorsed bank cheque (from an Australian Bank only); EFTPOS (Debit only); credit card (Note: A 1% credit card transaction fee applies to all credit card transactions; cash (to a maximum of \$10,000))**. It should be noted that personal cheques or bank guarantees cannot be accepted for the payment of these contributions. **Prior to payment contact Council's Planning Team to review charges to current indexed quarter, please allow a minimum of 2 business days for the invoice to be issued before payment can be accepted.**

#### 4. Long Service Levy

Prior to the issue of a Construction Certificate, written evidence must be provided to the Certifying Authority that the long service levy in accordance with Section 34 of the *Building and Construction Industry Long Service Payments Act 1986* has been paid at the prescribed rate of 0.35% of the total cost of the work to either the Long Service Payments Corporation or Council for any work costing \$25,000 or more.

#### GENERAL CONDITIONS

**5. Noise – Consultant’s Recommendations**

All noise emission criteria, assumptions and recommendations contained in the acoustic report prepared by Day Design Pty. Ltd., reference 7382-1.1R Rev A, dated 13 April 2022 must be implemented and complied with at all times. No approval is given for the provision or use of free weights as part of the indoor recreation facility (gym) use.

**6. Works Outside the Property Boundary**

This development consent does not authorise works outside the property boundaries on adjoining lands.

**PRIOR TO CONSTRUCTION CERTIFICATE****7. Dilapidation Report – Pre-Development – Minor**

Prior to the issue of a Construction Certificate or any demolition, the Certifying Authority must be provided with a dilapidation report including colour photos showing the existing condition of the footpath and roadway adjacent to the site.

**8. Acoustic Verification Report - Prior to CC**

Prior to the issue of any Construction Certificate, the Certifying Authority must be provided with an acoustic verification report prepared by suitably qualified acoustic consultant which demonstrates and certifies that noise and vibration emissions from the development will comply with the relevant provisions of *the Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority’s Noise Policy for Industry, and conditions of Council’s approval including all assumptions, criteria and recommendations of the DA approved acoustic report prepared by Day Design Pty. Ltd., reference 7382-1.1R Rev A, dated 14 April 2022. The acoustic verification report is to be prepared by a suitably qualified and experienced acoustic consultant and any recommendations must be consistent with the approved plans.

**DURING DEMOLITION AND CONSTRUCTION****9. Documentation of Demolition and Construction Waste**

All waste dockets from the recycling and/or disposal of any demolition and construction waste generated from the works must be retained on site.

**10. Construction Hours – Class 2-9**

Unless otherwise approved by Council, excavation, demolition, construction or subdivision work must only be permitted during the following hours:

- a. 7:00am to 6.00pm, Mondays to Fridays, inclusive (with demolition works finishing at 5pm);
- b. 8:00am to 1:00pm on Saturdays with no demolition works occurring during this time; and
- c. at no time on Sundays or public holidays.

Works may be undertaken outside these hours where they do not create any nuisance to neighbouring properties in terms of dust, noise, vibration etc. and do not entail the use of power tools, hammers etc. This may include but is not limited to painting.

In the case that a standing plant or special out of hours permit is obtained from Council for works in association with this development, the works which are the subject of the permit may be carried out outside these hours.

This condition does not apply in the event of a direction from police or other relevant authority for safety reasons, to prevent risk to life or environmental harm.

Activities generating noise levels greater than 75dB(A) such as rock breaking, rock hammering, sheet piling and pile driving must be limited to:

- a. 8:00am to 12:00pm, Monday to Saturday; and
- b. 2:00pm to 5:00pm Monday to Friday.

The person acting on this consent must not undertake such activities for more than three continuous hours and must provide a minimum of one 2 hour respite period between any two periods of such works.

“Continuous” means any period during which there is less than an uninterrupted 60 minute respite period between temporarily halting and recommencing any of that intrusively noisy work.

**PRIOR TO OCCUPATION CERTIFICATE**



**11. Acoustic Verification Report - Prior to OC**

Prior to the issue of any Occupation Certificate, the Principal Certifier must be provided with an acoustic verification report prepared by suitably qualified acoustic consultant which demonstrates and certifies that noise and vibration emissions from the development comply with the relevant provisions of *the Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority's Noise Policy for Industry and Noise Guide for Local Government, and conditions of Council's approval including all criteria and recommendations of the DA approved acoustic report prepared by Day Design Pty. Ltd., reference 7382-1.1R Rev A, dated 14 April 2022). The acoustic verification report is to be prepared by a suitably qualified and experienced acoustic consultant and any recommendations must be consistent with the approved plans.

**12. Resolution of conflict with DA201900242**

Prior the issue of an Occupation Certificate, the Principal Certifier must be provided with evidence that condition No. 75 of DA201900242 (approved by the Land and Environment Court in *Tricon Management Group Pty Ltd v Inner West Council* [2020] NSWLEC 1159) has been amended so that this consent is not in conflict with the condition.

**ON-GOING****13. Commercial Bin and Re-usable Item Storage**

All commercial bins and re-usable items such as crates are to be stored within the site.

**14. Documentation of Businesses Waste Services**

All businesses must have written evidence of all valid and current contracts and/ or tip dockets for the disposal and/ or processing of all waste streams generated from the site.

**15. Noise - General**

The development must not give rise to 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and Regulations, and must comply with the relevant noise criteria contained in the NSW EPA Noise Policy for Industry and NSW EPA Noise Guide for Local Government.

**16. Plan of Management - Operation**

The development must at all times be operated in accordance with the approved Plan of Management prepared by The Planning Studio and dated April 2022. The Plan of Management is not to be further amended without the prior written approval of the Council. If there is any inconsistency between the Plan of Management and the conditions of this consent, the conditions of consent shall prevail to the extent of that inconsistency.

**17. Hours of Operation**

The hours of operation of the premises must not exceed the following:

Day	Hours
Monday - Saturday	5:00am-9:00pm
Sundays and Public holidays	7:00am-5:00pm

**ADVISORY NOTES**

**Permits**

Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent must obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the *Local Government Act 1993* and/or Section 138 of the *Roads Act 1993*. Permits are required for the following activities:

- a. Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application;
- b. A concrete pump across the roadway/footpath;
- c. Mobile crane or any standing plant;
- d. Skip Bins;
- e. Scaffolding/Hoardings (fencing on public land);
- f. Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.;
- g. Awning or street veranda over the footpath;
- h. Partial or full road closure; and
- i. Installation or replacement of private stormwater drain, utility service or water supply.

If required contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. Applications for such Permits must be submitted and approved by Council prior to the commencement of the works associated with such activity.

#### **Insurances**

Any person acting on this consent or any contractors carrying out works on public roads or Council controlled lands is required to take out Public Liability Insurance with a minimum cover of twenty (20) million dollars in relation to the occupation of, and approved works within those lands. The Policy is to note, and provide protection for Inner West Council, as an interested party and a copy of the Policy must be submitted to Council prior to commencement of the works. The Policy must be valid for the entire period that the works are being undertaken on public property.

#### **Prescribed Conditions**

This consent is subject to the prescribed conditions of consent within clause 98-98E of the *Environmental Planning and Assessment Regulations 2000*.

#### **Notification of commencement of works**

At least 7 days before any demolition work commences:

- a. the Council must be notified of the following particulars:
  - i. the name, address, telephone contact details and licence number of the person responsible for carrying out the work; and
  - ii. the date the work is due to commence and the expected completion date; and
- b. a written notice must be placed in the letter box of each directly adjoining property identified advising of the date the work is due to commence.

#### **Storage of Materials on public property**

The placing of any materials on Council's footpath or roadway is prohibited, without the prior consent of Council.

#### **Toilet 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.

Facilities must be located so that they will not cause a nuisance.

**Other Approvals may be needed**

Approvals under other acts and regulations may be required to carry out the development. It is the responsibility of property owners to ensure that they comply with all relevant legislation. Council takes no responsibility for informing applicants of any separate approvals required.

**Failure to comply with conditions**

Failure to comply with the relevant provisions of *the Environmental Planning and Assessment Act 1979* and/or the conditions of this consent may result in the serving of penalty notices or legal action.

**Other works**

Works or activities other than those approved by this Development Consent will require the submission of a new Development Application or an application to modify the consent under Section 4.55 of the *Environmental Planning and Assessment Act 1979*.

**Obtaining Relevant Certification**

This development consent does not remove the need to obtain any other statutory consent or approval necessary under any other Act, such as (if necessary):

- a. Application for any activity under that Act, including any erection of a hoarding;
- b. Application for a Construction Certificate under the *Environmental Planning and Assessment Act 1979*;
- c. Application for an Occupation Certificate under the *Environmental Planning and Assessment Act 1979*;
- d. Application for a Subdivision Certificate under the *Environmental Planning and Assessment Act 1979* if land (including stratum) subdivision of the development site is proposed;
- e. Application for Strata Title Subdivision if strata title subdivision of the development is proposed;
- f. Development Application for demolition if demolition is not approved by this consent;  
or
- g. Development Application for subdivision if consent for subdivision is not granted by this consent.

**Disability Discrimination Access to Premises Code**

The *Disability Discrimination Act 1992* (Commonwealth) and the *Anti-Discrimination Act 1977* (NSW) impose obligations on persons relating to disability discrimination. Council's determination of the application does not relieve persons who have obligations under those Acts of the necessity to comply with those Acts.

**National Construction Code (Building Code of Australia)**

A complete assessment of the application under the provisions of the National Construction Code (Building Code of Australia) has not been carried out. All building works approved by this consent must be carried out in accordance with the requirements of the National Construction Code.

**Notification of commencement of works**

Residential building work within the meaning of the *Home Building Act 1989* must not be carried out unless the PCA (not being the council) has given the Council written notice of the following information:

- a. In the case of work for which a principal contractor is required to be appointed:
  - i. The name and licence number of the principal contractor; and
  - ii. The name of the insurer by which the work is insured under Part 6 of that Act.
- b. In the case of work to be done by an owner-builder:
  - i. The name of the owner-builder; and
  - ii. If the owner-builder is required to hold an owner-builder permit under that Act, the number of the owner-builder permit.

**Permits from Council under Other Acts**

Where it is proposed to occupy or carry out works on public roads or Council controlled lands, the person acting on this consent must obtain all applicable Permits from Council in accordance with Section 68 (Approvals) of the *Local Government Act 1993* and/or Section 138 of the *Roads Act 1993*. Permits are required for the following activities:

- a. Work zone (designated parking for construction vehicles). Note that a minimum of 2 months should be allowed for the processing of a Work Zone application;
- b. A concrete pump across the roadway/footpath;
- c. Mobile crane or any standing plant;
- d. Skip bins;
- e. Scaffolding/Hoardings (fencing on public land);
- f. Public domain works including vehicle crossing, kerb & guttering, footpath, stormwater, etc.;
- g. Awning or street verandah over footpath;
- h. Partial or full road closure; and
- i. Installation or replacement of private stormwater drain, utility service or water supply.

Contact Council's Road Access team to ensure the correct Permit applications are made for the various activities. A lease fee is payable for all occupations.

**Noise**

Noise arising from the works must be controlled in accordance with the requirements of the *Protection of the Environment Operations Act 1997*.

**Amenity Impacts General**

The use of the premises must not give rise to an environmental health nuisance to the adjoining or nearby premises and environment. There are to be no emissions or discharges from the premises, which will give rise to a public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and Regulations. The use of the premises and the operation of plant and equipment must not give rise to the transmission of a vibration nuisance or damage other premises.

**Useful Contacts**

BASIX Information	1300 650 908 weekdays 2:00pm - 5:00pm <a href="http://www.basix.nsw.gov.au">www.basix.nsw.gov.au</a>
Department of Fair Trading	13 32 20 <a href="http://www.fairtrading.nsw.gov.au">www.fairtrading.nsw.gov.au</a> Enquiries relating to Owner Builder Permits and Home Warranty Insurance.
Dial Prior to You Dig	1100 <a href="http://www.dialprior toyoudig.com.au">www.dialprior toyoudig.com.au</a>
Landcom	9841 8660 To purchase copies of Volume One of "Soils and Construction"
Long Service Corporation	Payments 131441 <a href="http://www.lspc.nsw.gov.au">www.lspc.nsw.gov.au</a>
NSW Food Authority	1300 552 406 <a href="http://www.foodnotify.nsw.gov.au">www.foodnotify.nsw.gov.au</a>
NSW Government	<a href="http://www.nsw.gov.au/fibro">www.nsw.gov.au/fibro</a>

[www.diySAFE.nsw.gov.au](http://www.diySAFE.nsw.gov.au)  
 Information on asbestos and safe work practices.

NSW Office of Environment and Heritage 131 555  
[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

Sydney Water 13 20 92  
[www.sydneywater.com.au](http://www.sydneywater.com.au)

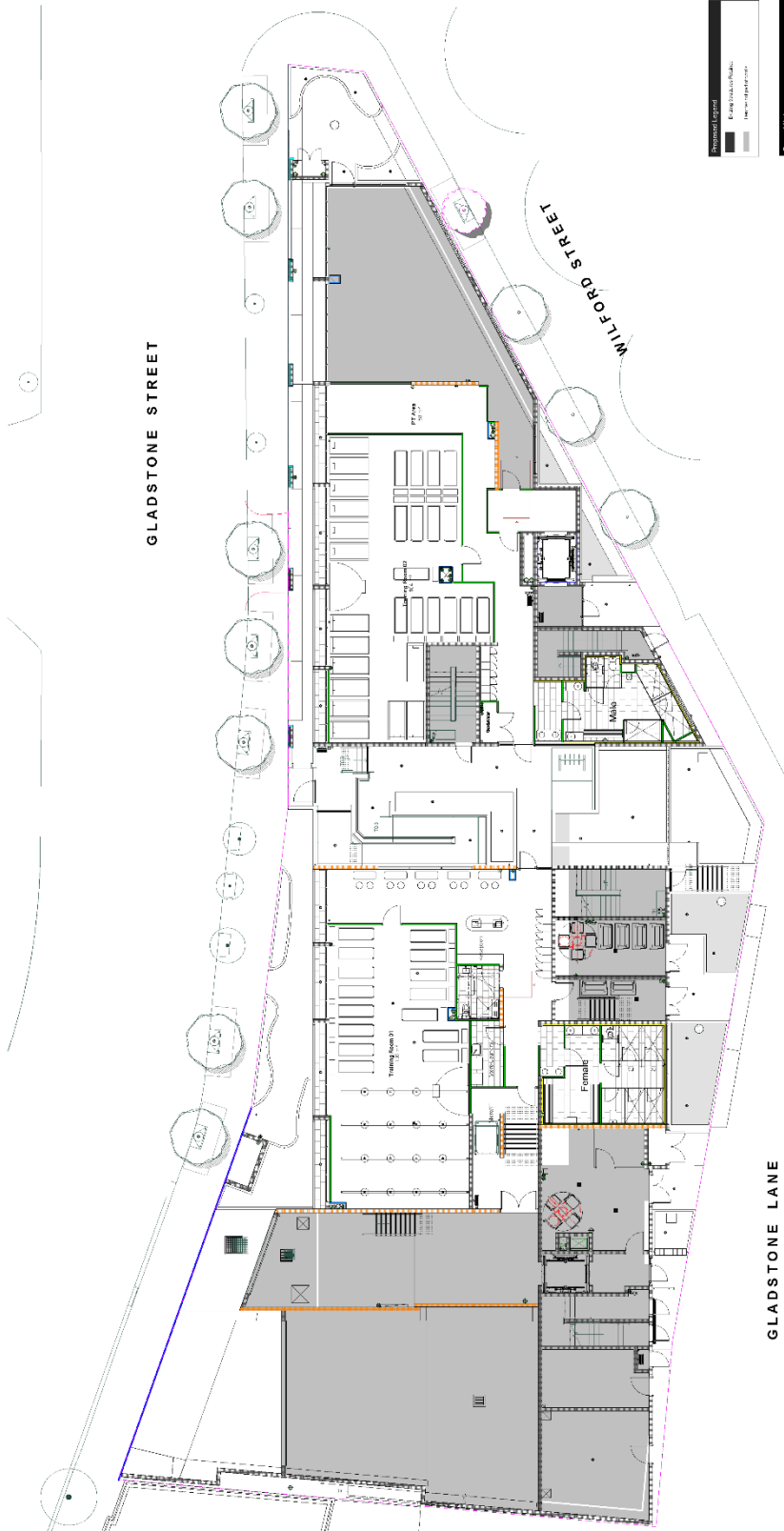
Waste Service - SITA Environmental Solutions 1300 651 116  
[www.wasteservice.nsw.gov.au](http://www.wasteservice.nsw.gov.au)

Water Efficiency Labelling and Standards (WELS) [www.waterrating.gov.au](http://www.waterrating.gov.au)

WorkCover Authority of NSW 13 10 50  
[www.workcover.nsw.gov.au](http://www.workcover.nsw.gov.au)  
 Enquiries relating to work safety and asbestos removal and disposal.







**Dimensions Legend**

Existing Structure  
New Structure

**Notes**

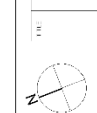
1. All dimensions are to the face of the wall unless otherwise stated.  
2. All dimensions are to the centerline of the wall unless otherwise stated.  
3. All dimensions are to the centerline of the wall unless otherwise stated.  
4. All dimensions are to the centerline of the wall unless otherwise stated.  
5. All dimensions are to the centerline of the wall unless otherwise stated.

2-2A GLADSTONE STREET, NEWTOWN NSW 2042

PROPOSED GROUND FLOOR

DATE	17/11/2023
DRAWN BY	J.G.
CHECKED BY	J.G.
SCALE	1:100

DA 1100 A



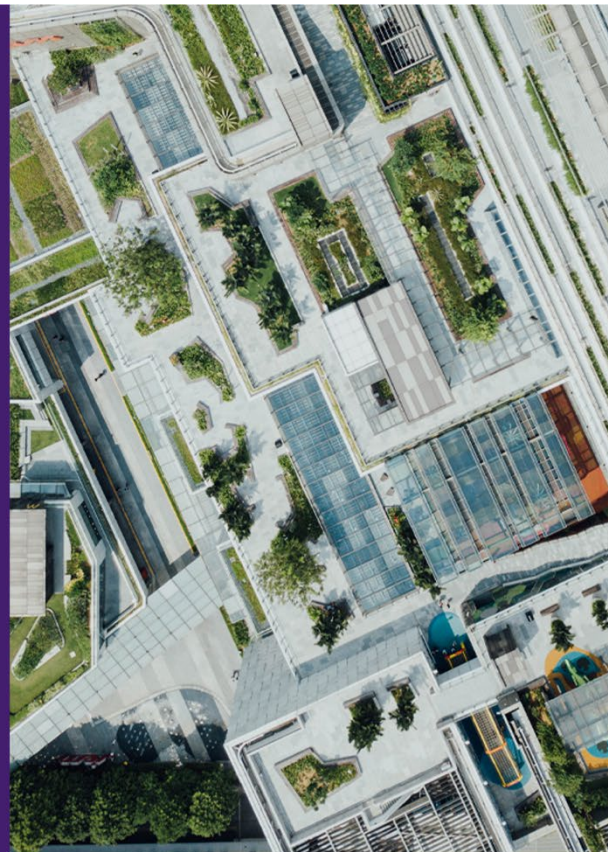
DEVELOPMENT APPLICATION NOT FOR CONSTRUCTION

**NORDON · JAGO**  
ARCHITECTS

11/11/2023 10:00 AM  
11/11/2023 10:00 AM  
11/11/2023 10:00 AM  
11/11/2023 10:00 AM  
11/11/2023 10:00 AM  
11/11/2023 10:00 AM  
11/11/2023 10:00 AM  
11/11/2023 10:00 AM  
11/11/2023 10:00 AM  
11/11/2023 10:00 AM



Attachment C – Plan of Management



## 2 Gladstone St Newtown

Plan of Management

AVM Project Management P/L

April 2022

## Table of Contents

1	Introduction.....	3
1.1	Council Requirements .....	3
1.2	Site and Development Details.....	3
2	Plan of Management.....	6
2.1	Objective.....	6
3	Controls.....	6
3.1	Operational Details .....	6
3.2	Hours of operation.....	6
3.3	Staffing details .....	6
3.4	Guidelines for staff .....	6
3.5	Deliveries and loading/unloading .....	6
3.6	Managing Customers or patrons.....	6
3.7	Security details.....	7
3.8	Complaint recording and handling process .....	7
3.9	Cleaning and Maintenance procedures.....	7
3.10	The review process to continuously improve the PoM .....	7
3.11	Acoustic Treatment.....	7

## 1 Introduction

### 1.1 Council Requirements

The Marrickville LGA contains a variety of land uses. In some cases, the historical development of land has led to residential and commercial/industrial uses occurring in close proximity to each other.

Assessing the impacts of commercial/industrial activities on nearby residential land uses in the Marrickville LGA forms an essential part of Council's consideration of any development application for industrial development. Failure to identify and mitigate potential amenity impacts can lead to ongoing conflict between industrial and residential land users.

Interface amenity controls are important for the operational aspects of industrial developments. They apply to all new development and impose a high standard of control to protect the amenity of residential and other sensitive land uses.

In assessing the impacts of commercial/industrial development on nearby residential amenity Council will take into account a number of considerations including the following:

- Proposed hours of operation;
- Type of use proposed on site to enable an assessment of the potential of the development to cause noise, vibration or pollution which may affect residential areas, and any mitigation measures proposed;
- Traffic movements to and from the proposed development site, including all proposed deliveries;
- Proposed use of parking areas, for example for customers and staff, to ensure the proposed development does not unduly impact on off-street parking demand in nearby residential areas;

Details will need to be provided within a Plan of Management (POM) required for any premises which have the potential to negatively impact on the amenity of nearby residential properties. More details regarding the PoM specific to this site are provided below.

### 1.2 Site and Development Details

The subject site at 2 Gladstone Street, Newtown is located within the Inner West Local Government Area (LGA) and approximately 4km south-west of Sydney's CBD. It has a site area of 1,445m<sup>2</sup> and primarily triangular in shape with street frontages to Gladstone Street (northern boundary) and Wilford Street (southern boundary). The figure below identifies the site's location.





Figure 1: Existing building at corner of Wilford and Gladstone Streets (Nordon Jago Architects)

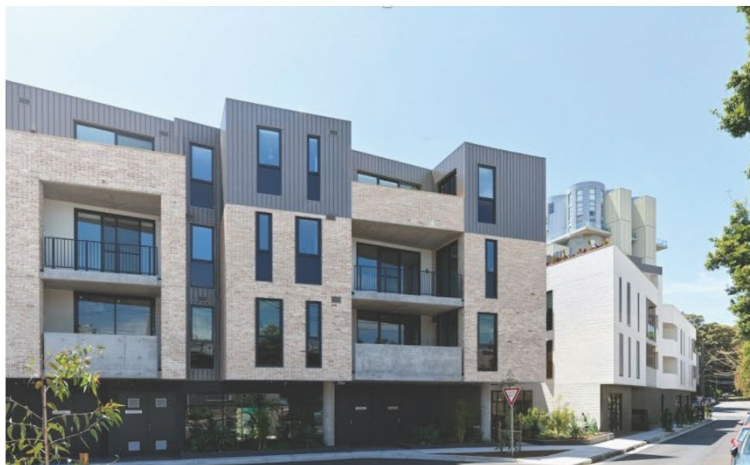


Figure 2: Existing building looking east (Nordon Jago Architects)





Figure 3: Subject site (Six Maps)



## 2 Plan of Management

A Plan of Management is a written document which describes how the ongoing operation of industrial premises will be managed to reduce its impact upon the amenity of surrounding properties.

### 2.1 Objective

To ensure industrial premises operate in the most efficient way without unreasonable amenity impacts on nearby residential land uses.

## 3 Controls

The following controls outline key provisions for managing the operation of the premises to manage any impacts on surrounding uses, including Wicks Place.

### 3.1 Operational Details

The ground-floor use is as a gym (indoor recreation)

### 3.2 Hours of operation

The ground-floor use will be subject to hours of operation as follows:

- 5am -9pm Monday to Saturday
- 7am to 5pm Sunday

### 3.3 Staffing details

There will be 4 staff members on site at all times including reception staff.

### 3.4 Guidelines for staff

Staff will have appropriate training relevant to their role prior to commencement of the role. Ongoing management training will occur as needed by relevant legislation and the users. All staff as part of their training will be made aware of the Plan of Management and their need to adhere to it at all times.

### 3.5 Deliveries and loading/unloading

- The site will be subject to the requirements of the Waste Management Plan prepared by Barker Ryan Stewart June 2019 to manage waste collection times and movements.
- The development has been designed to prevent inappropriate noise for surrounding residents through the requirements outlined in the Acoustic Report prepared by Day Design December 2021.

### 3.6 Managing Customers or patrons

The staff and management of the gym shall take all reasonable steps to control the behaviour of patrons as they enter and leave the premises insuring patrons do not congregate outside the premises or in the entrance / exit ways. Signs will be placed in the





clearly visible positions within the gym requesting patrons upon leaving the premises to do so quickly and quietly, having regard to the amenity of the area.

### 3.7 Security details

The site will have security managed through the Building Management. This will include 24 hour CCTV security monitoring.

### 3.8 Complaint recording and handling process

Management will be responsible for maintaining a complaints register on site that includes the following information:

- Complaint date and time
- Name, address and contact details of person making the complaint
- Nature of the complaint
- Action undertaken to resolve the complaint
- Follow up and outcome

All complaints will be dealt with by management with 24 hours of notification.

If residents from surrounding properties, have complaints of enquiries, Management will listen to and address those. If required, Management will liaise between residents, other users and and the owner of the property.

### 3.9 Cleaning and Maintenance procedures

The premises shall be kept in a clean and tidy condition and regularly maintained internally and externally.

Management shall ensure that the surrounds of the building including the garden beds are to be kept clean and free of litter at all times.

### 3.10 The review process to continuously improve the PoM

The Plan of Management will be reviewed every 12 months, with a copy of the updated Plan provided to all staff.

### 3.11 Acoustic Treatment

The premise is to be designed and constructed in accordance with the updated recommended noise control measures as set out in the Acoustic Assessment prepared by Day Design dated 13 April 2022.

In particular, the following measures, referred to in Section 5.0 of the acoustic report, must be implemented to manage noise during the operation of the premises:

- Implementation of sound lock doors for training rooms;
- Access door to the stairs and the loading dock to be a sound rated acoustic door;
- Acoustically improved glazed façade;



- Acoustic ceiling be constructed in the two training rooms;
- Acoustic rated wall to be constructed between Training Room 2 and the retail space;
- No punching/kicking bags to be suspended from the ceiling;
- Appropriate acoustic treatment of the mechanical plant;
- Speakers to be vibration isolated from the building structure; and
- Music controls to control the level of music within the gym, including:
  - Speakers in the training rooms of the gym to be set to a volume such that the sound pressure level does not exceed 95dBA at 1 metre (equivalent to a sound power level of 103dBA);
  - Controls of the audio system to be accessed by senior management only;
  - Controls to be located within a lockable cabinet; and
  - If complaints arise from the playing of music within the gym, the volume is to be lowered immediately and an acoustic consultant to be engaged to reassess noise compliance / set a volume of music that meets the acceptable noise criteria.

