



## ASSESSMENT REPORT

Local Development Application No: LDA2020/0367

Assessment Officer: Sandra McCarry  
Report to Manager Assessment: 14 December 2022  
Consent Authority functions exercised by: Delegate

### EXECUTIVE SUMMARY

#### Application details

Subject land:	459 Victoria Road Gladesville
Lot and DP Number:	Lot 2 DP 1008105
Site Area and dimensions:	1,540m <sup>2</sup> ; frontage of 49m to Victoria Road
Proposal:	Extension of operating hours of the food and drink premises from 7am-7pm to 6am-10pm Monday to Sunday.
Applicant:	Jingwei Lin
Owner:	Anna Circosta & Salvatore Circosta
Date lodged:	29 October 2020
Date clock stopped:	N/A
Date clock started again:	N/A
No. of days on STC:	N/A
Value of Works:	Nil
Submissions:	1 <sup>st</sup> round of notification:  8 submissions received: 6 against and two supporting the proposal.  2 <sup>nd</sup> Notification (amended no sale of liquor):  1 submission was received about noise.  Trim Checked on: 14 December 2022.
Zoning:	IN2 Light Industrial under RLEP 2014
DCP Non-Compliances:	<ul style="list-style-type: none"><li>• Nil</li></ul>
Clause 4.6 RLEP 2014	No
Objection Required:	
Councillor Representations	None
<b>Report Recommendation:</b>	Approval

## REPORT

### THE SITE



Figure 1: Aerial photograph of the subject site

The site is located at No. 459 Victoria Road, Gladesville, and is legally described as Lot 2 in DP 1008105. The site is irregular in shape, with a frontage of approximately 49m to Victoria Road and an area of approximately 1,540m<sup>2</sup>.

The site is adjoined by 'Enterprise Park' to the north west, which is an industrial development complex. The site is adjoined to the east by a vehicle repair station. Low density residential development is located at the rear of the site, with frontages to College Street. The site is heavily screened by landscaping along the northern boundary, providing a buffer between Enterprise Park and the residential development at the rear (see **Figures 2 and 3** below).

The site presently accommodates a three level building used for a car wash facility and associated café (**Figure 3**). Vehicular access is attained from Victoria Road with an egress driveway provided adjacent to the south eastern corner of the property. All vehicles enter the site and make a left hand turn within the site and there is a ramp access adjacent to the north western boundary to the basement level of the building. The basement level of the building contains three (3) workshops, plant rooms, storage rooms, staff facilities, staff parking, five (5) vacuuming and pre wash cleaning bays and stair access to upper levels.





**Figure 2: Photograph of the site showing landscaping along northern boundary**



**Figure 3: Photograph of existing cafe facing north east**

The site currently accommodates a car wash/café as approved under DA2003/307. This application was approved on 2 December 2003, with the following description:

*Demolition, construction of three level building for use as a car wash facility and café.*

The café is located entirely within the ground floor of the building (as it presents to Victoria Road) and has approved hours of operation between 7am and 7pm daily.



**Figure 4:** Photograph of existing café looking toward Victoria Road

## THE PROPOSAL (AS AMENDED)

The proposal is for the extension of the approved operating hours of the existing cafe. The current approved hours are 7am to 7pm daily. The applicant is seeking an extension of hours to 6am to 10pm daily for the café only. The hours of operation for the carwash are proposed to remain unchanged at 7am to 7pm.

It is noted the application originally sought approval for the premises to be licenced. The NSW Police and submitters raised concern regarding the information provided to support a licenced premises. In response, the applicant amended the application to remove the liquor licence and for the extension of hours to 10pm for the café only.

## HISTORY OF THE SITE

- 2 December 2003: Development Consent 2003/307 approved for demolition, construction of three level building for use as a car wash facility and café.
- LDA2006/181 approved for erection of pylon and fascia signage to existing building.
- LDA2019/195 approved on 11 September 2019 for change of use of part of existing car wash premises for sale of motor vehicles.

## HISTORY OF THE APPLICATION

29 October 2020	Application lodged.
4 November 2020 – 26 November 2020	Application notified. Six (6) submissions received objecting to the inclusion of a liquor licence in the application.
11 March 2021	A request for information was sent to the applicant requesting that a Plan of Management be provided given a liquor licence was sought. NSW Police had raised concerns with the service of alcohol, and

	requested a POM be provided.
12 April 2021	The applicant requested additional time to provide a plan of management and address the concerns raised by the NSW Police.
14 September 2021	The applicant submitted a POM, and also requested that the hours be extended as follows: <ul style="list-style-type: none"> <li>- Sunday to Wednesday 6am – 10pm (no sale of liquor prior to 6pm)</li> <li>- Thursday to Saturday: 6am – 10:30pm (no sale of liquor prior to 6pm)</li> </ul>
14 September 2021 – 5 October 2021	The amended proposal was notified. One (1) submissions were received objecting to the amended application.
28 October 2021	A further request for information was made, raising the following issues: <ul style="list-style-type: none"> <li>• NSW Police were not satisfied with the POM. Concerns raised included the failure to include CCTV, and that the POM did not address the rapid consumption of alcohol.</li> <li>• Concern was raised with the hours of operation extending beyond 10pm. It was requested that an Acoustic Report be provided to demonstrate that the proposal would not result in any “inaudible noise” between the hours of 10pm and 7am in the adjoining sleep disturbance areas of residential properties at the rear of the site.</li> </ul>
10 December 2021	A follow up 14 day letter was sent to the applicant requesting they provide the information requested on 28 October 2021. The applicant sought additional time to confirm their client agreed to: <ol style="list-style-type: none"> <li>1. Remove the request for a liquor licence from the application</li> <li>2. Confirm they will reduce the proposed hours to 6am to 10pm.</li> </ol> It was agreed that due to the deletion of the sale of alcohol and reduced the hours to 10pm, an acoustic report was not required.
1 August 2022	The applicant confirmed they were seeking to amend the application to reduce the hours of operation to 6am to 10pm and to remove the liquor licence. The amended application was not required to be notified again in accordance with the Community Participation plan.

## REFERRALS:

**NSW Police:** As mentioned earlier in this report, a referral was made to the NSW Police given the applicant was seeking a liquor licence. The amended application, which no longer included a liquor licence, did not require re-referral to the NSW Police.

**Development Engineer:** A referral was originally made to Council’s Development Engineer. It has since been confirmed that no comments are required from the Development Engineer, given the amended proposal relates to an extension of hours only, and the parking arrangements on the site and the existing use will not change.

**Heritage Advisor:** A referral was made to Council’s Heritage Advisor given the subject site is within the vicinity of Great North Road (Victoria Road) which is an item of heritage significance. No issues were raised by Council’s Heritage Advisor.



**Environmental Health:** The proposal was referred to Environmental Health who has made the following comments:

*Apart from some concerns received as submissions relating to noise from the use of the premises for what appeared to be functions that are no longer occurring, there has been no concerns raised directly to Environmental Health surrounding noise.*

*Considering the premises is no longer pursuing a liquor license, and will cease trading at 10:00pm, I support the previous recommendation from December 2021 not to require an acoustic assessment. As a safeguard I have included a condition of consent that will require an acoustic assessment upon receipt of a justified noise complaint.*

*The application can be supported with the inclusion of conditions of development consent*

## **STATUTORY PROVISIONS**

### **Environmental Planning and Assessment Act, 1979**

The existing carwash and café falls under the definition of “business premises” under the Ryde LEP 2014. It is noted that “business premises” falls under the definition of “commercial premises”, which is prohibited in the zone.

This section provides an assessment of the DA against Division 4.11 *Existing Uses* of the *Environmental Planning and Assessment (EP&A) Act 1979*. This consideration is required as commercial premises are not a permitted use in the IN2 Light Industrial zone under the Ryde Local Environmental Plan 2014 (RLEP 2014), which commenced on 12 September 2014.

Sections 4.65 & 4.66 of the EP&A Act 1979 states that “existing use” means:

- (a) *The use of a building, work or land for a lawful purpose immediately before the coming into force of an environmental planning instrument which would, but for this Division, have the effect of prohibiting that use, and*
- (b) *The use of a building, work or land –*
  - (i) *For which development consent was granted before the commencement of a provision of an environmental planning instrument having the effect of prohibiting the use, and*
  - (ii) *That has been carried out, within one year after the date on which that provision commenced, in accordance with the terms of the consent and to such an extent as to ensure (apart from that provision) that the development consent would not lapse.*

#### **4.66 Continuance of and limitations on existing use**

- (1) *Except where expressly provided in this Act, nothing in this Act or an environmental planning instrument prevents the continuance of an existing use.*
- (2) *Nothing in subsection (1) authorises-*
  - (a) *any alteration or extension to or rebuilding of a building or work, or*

- (b) any increase in the area of the use made of a building, work or land from the area actually physically and lawfully used immediately before the coming into operation of the instrument therein mentioned, or*
  - (c) without affecting paragraph (a) or (b), any enlargement or expansion or intensification of an existing use, or*
  - (d) the continuance of the use therein mentioned in breach of any consent in force under this Act in relation to that use or any condition imposed or applicable to that consent or in breach of any condition referred to in section 4.17(1)(b), or*
  - (e) the continuance of the use therein mentioned where that use is abandoned.*
- (3) Without limiting the generality of subsection (2)(e), a use is to be presumed, unless the contrary is established, to be abandoned if it ceases to be actually so used for a continuous period of 12 months.*
- (4) During the period commencing on 25 March 2020 and ending on 25 March 2022, the reference to 12 months in subsection (3) is taken to be a reference to 3 years.*

In order to establish that the site benefits from existing use rights provisions under the EP&A Act 1979, it is necessary to establish that the site is currently being used for a prohibited use, the prohibited use was lawfully commenced and that the use has not been abandoned.

The site benefits from Development Consent LDA2003/307 dated 2 December 2003, with a development description of "Demolition, construction of three level building for use as a car wash facility and café."

The onus is on the applicant to establish that the existing use has not been abandoned. However, from site inspections and from google maps (street view dated March 2022) it can be confirmed that the use as a car wash and café have not been abandoned.

Based on the above it has been established that the site benefits from existing use rights and that the existing use has not been abandoned and therefore assessment against the relevant provisions of the Regulations is possible by virtue of Section 4.67(1)(b) of the Act.

The Act provides that an existing use may be changed, enlarge or intensify - Section 4.67 which states:

#### **4.67 Regulations respecting existing use**

- (1) The regulations may make provision for or with respect to existing use and, in particular, for or with respect to—*
  - (a) the carrying out of alterations or extensions to or the rebuilding of a building or work being used for an existing use, and*
  - (b) the change of an existing use to another use, and*
  - (c) the enlargement or expansion or intensification of an existing use.*
  - (d) (Repealed)*

The proposal for the "expansion" of trading hours and the following assessment is provided.

## Environmental Planning and Assessment Regulation 2000

The Act provides that an existing use may be changed or altered from the existing to include another use with the provisions found in Part 7 of Environmental Planning and Assessment Regulations 2021.

### 163 Certain development allowed

(1) *An existing use may, subject to this Division—*

- (a) be enlarged, expanded or intensified, or*
- (b) be altered or extended, or*
- (c) be rebuilt, or*
- (d) be changed to another use, but only if that other use is a use that may be carried out with or without development consent under the Act, or*
- (e) if it is a commercial use—be changed to another commercial use (including a commercial use that would otherwise be prohibited under the Act), or*
- (f) if it is a light industrial use—be changed to another light industrial use or a commercial use (including a light industrial use or commercial use that would otherwise be prohibited under the Act).*

(2) *However, an existing use must not be changed under subclause (1)(e) or (f) unless that change—*

- (a) involves only alterations or additions that are minor in nature, and*
- (b) does not involve an increase of more than 10% in the floor space of the premises associated with the existing use, and*
- (c) does not involve the rebuilding of the premises associated with the existing use, and*
- (d) does not involve a significant intensification of that existing use.*
- (e) (Repealed).*

(3) *In this clause—*

The approved hours of the carwash/café and vehicle sales are 7am to 7pm each day as per the current approval DA307/2003. It is now proposed to extend the hours of the cafe to 6am to 10pm.

An assessment of the provisions of **Sections 164 to 167** is provided below:

<b>164 Enlargement, expansion and intensification of existing uses</b> (1) Development consent is required for any enlargement, expansion or intensification of an existing use. (2) The enlargement, expansion or intensification must be— (a) for the existing use and for no other use, and (b) carried out only on the land on which the existing use was carried out immediately before the relevant day.	Yes – the proposal is for intensification of the existing café.  Yes – The “intensification” is for the hours of operation, increasing it by additional 1 hour in the morning and 3 hours in the evening. The increase in hours is for the existing café.
<b>165 Alteration of buildings and works</b>	



<p>Development consent is required for an alteration of a building or work used for an existing use.</p> <p>The alteration must be—</p> <p>for the existing use of the building or work and for no other use, and</p> <p>erected or carried out only on the land on which the building or work was erected or carried out immediately before the relevant day.</p>	<p>N/a – no building/alterations to the building are proposed.</p>
<p><b>166 Rebuilding of buildings and works</b></p> <p>(1) Development consent is required for any rebuilding of a building or work used for an existing use.</p> <p>(2) The rebuilding must be—</p> <p>(a) for the existing use of the building or work and for no other use, and</p> <p>carried out only on the land on which the building or work was erected or carried out immediately before the relevant day.</p>	<p>N/A – not rebuilding.</p>
<p><b>167 Change of existing uses</b></p> <p>(1) Development consent is required for—</p> <p>(a) a change of an existing use to another use, and</p> <p>(b) for a building, work or land that is used for different existing uses—a change in the proportions in which the various parts of the building, work or land are used for the different existing uses.</p> <p>(2) This Part does not prevent the granting of a development consent referred to in another provision of this Part at the same time as the granting of a development consent referred to in subsection (1).</p>	<p>N/A – not changing the approved use.</p>

## SECTION 4.15 HEADS OF CONSIDERATION

### (a) The provisions of

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

#### Ryde LEP 2014

Under Ryde LEP 2014, the property is zoned IN2 Light Industrial zone under the Ryde Local Environmental Plan 2014 (RLEP 2014), which commenced on 12 September 2014.

Commercial premises are prohibited within the zoning.

The site however benefits from existing use rights under the Environmental Planning and Assessment Act 1979 and the applicant is seeking consent under the existing use rights provisions contained within the Act and Regulations. This is discussed above.

#### Objectives of zone

- *To provide a wide range of light industrial, warehouse and related land uses.*
- *To encourage employment opportunities and to support the viability of centres.*
- *To minimise any adverse effect of industry on other land uses.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of workers in the area.*
- *To support and protect industrial land for industrial uses.*

The development is to an existing café which provide a service to meet the need of workers and users of the facility.

#### **Any proposed instrument (Draft LEP, Planning Proposal)**

There are no relevant Draft Environmental Planning Instruments for the subject site.

#### **(ii) Any development control plan**

##### Ryde DCP 2014:

Non applicable to this proposal.

#### **(b) The likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality**

##### *Noise and Hours of Operation*

The application is seeking to amend the hours of operation of the cafe

From 7.00am to 7.00pm 7 days per week  
To 6.00am to 10.00pm 7 days per week.

The applicant was originally requested to demonstrate that the noise impact from the proposed use will not result in noise above "inaudible noise" between the hours of 10pm and 7am in the adjoining sleep disturbance areas of residential properties at the rear of the site. An Acoustic Report/Statement from a qualified acoustic consultant was requested to demonstrate this. As the cost of getting an acoustic report was too prohibitive, the applicant deleted the liquor licence component and agreed to reduce the hours to 10pm only.

Council's Environmental Health Officer was requested to review the proposal and has raised no objections to the proposal to the proposed extension of hours.

*Apart from some concerns received as submissions relating to noise from the use of the premises for what appeared to be functions that are no longer occurring, there has been no concerns raised directly to Environmental Health surrounding noise.*

*Considering the premises is no longer pursuing a liquor license, and will cease trading at 10:00pm, I support the previous recommendation from December 2021 not to require an acoustic assessment. As a safeguard I have included a condition of consent that will require an acoustic assessment upon receipt of a justified noise complaint.*

#### Planner's comments

The site adjoin residential properties at the rear with the dwelling houses located approximately 47m from the café.

Residents from College Street and Tennyson Road has raised objections about loud music and use of the café for parties. See **Figure 5** below illustrating location of nearest residential properties.



**Figure 5: Location of residential properties in relation to the carwash and café.**

The café was approved (LDA2003/307) for used by people whose cars are being washed or detailed on the site, and include a kitchen and servery.

It is now proposed to extend the hours of the café to 10pm, whilst the carwash will still close at 7pm. If Council was of a mind to support the extended hours, this effectively allows the operation of the café as a separate entity to the carwash.

The café is existing (benefits from exiting use rights) and is located within an industrial zone which serves the community.

Environmental Health Officer has advised that it would appear that *“functions are no longer occurring. There have been no concerns raised directly to Environmental Health surrounding noise.”*

In light of the fact that the premises will not be serving alcohol and that the café will cease at 10pm, a reasonable time and noise conditions will be imposed, the proposal can be supported.

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

The site continues to be suitable for the extended use of the approved development (café).

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

In accordance with DCP 2014 Part 2.1 Community Participation Plan, owners of surrounding properties were given notice of the application. In response, to the first round of notification, 8 submissions were received, two of which were in support of the proposal.

The issues raised in the submissions related to the servicing of alcohol and noise.

In the second round of notification (deletion of the liquor licence and reduced hours): one submission received raising concerns about noise and loud music.

It is considered with the imposition of conditions to control the noise and use of the café, and the fact that the premises will not be serving alcohol with the café ceasing at 10pm, the proposal can be supported.

#### **(e) The public interest**

Having regard to the assessment contained in this report, it is considered that approval of the development is not contrary to the public interest. The site benefits from existing use rights and the proposal has been considered on its merits against the relevant environmental planning instruments and the concerns raised in the submission, Council considers the proposal to be acceptable subject to conditions.

#### **Objects of EP&A Act**

Section 1.3 of the EP & A Act contains the following relevant objects:

- to promote the orderly and economic use and development of land,
- to provide increased opportunity for community participation in environmental planning and assessment.

The proposal achieves the relevant objectives.

#### **CONCLUSION**

After consideration of the development against section 4.15 of the Environmental Planning and Assessment Act 1979 and the relevant statutory and policy provisions, the application is approved for the following reasons:

- The proposal complies with the statutory provisions set out in the Environmental Planning and Assessment Act 1979;
- The proposal is considered to contain no adverse impact to adjoining properties and the surrounding environment; and
- The proposal is not contrary to the public interest.

#### **RECOMMENDATION:**



That LDA No. LDA2020/0367 at 459 Victoria Rd Gladesville be approved subject to the conditions in the attached draft consent.



**Sandra McCarry**  
**Assessing Officer**



**Holly Charalambous**  
**Senior Co-ordinator – West**

**Agreed. Application approved.**



**Sandra Bailey**  
**Manager – Assessment**

**Date of consent: 14 December 2022**