

Item 6.**Development Application: 49 Henderson Road, Eveleigh - D/2025/299****File Number:** D/2025/299**Summary****Date of Submission:** 8 April 2025**Applicant:** The Council of the City of Sydney**Owner:** Whelan Property Group**Planning Consultant:** HMUP Helen Mulcahy Urban Planning**Cost of Works:** \$40,000.00**Zoning:** R1 - General Residential. The proposed removal of the outdoor gym equipment is permitted with consent.**Proposal Summary:** The application seeks development consent for removal of existing outdoor gym equipment within privately owned land.

Development consent is required for the removal as it does not meet the requirements for exempt development under the State Environmental Planning Policy (Exempt and Complying) Codes 2008, subdivision 13 Demolition, or Subdivision 29 Playground Equipment.

The space is maintained by the Council of the City of Sydney, known as 'South Sydney Rotary Park #2' under an informal agreement. The existing outdoor gym equipment is located on a private landscaped setback area constructed by the developer. The City has been maintaining the park on an informal basis for over 20 years.

The application is referred to the Local Planning Panel because the City is the applicant and more than one objection has been received.

The application was notified for 28 days in accordance with the City of Sydney Community Participation Plan 2022 and Schedule 1, Section 9B of the EP&A Act 1979 regarding Council-related development. 10 submissions were received, which raised concerns about the removal of the

gym equipment and recommending upgrade or replacement of the equipment.

The proposed development does not have significant negative impact to the locality and the removal is acceptable, subject to conditions.

Summary Recommendation: The development application is recommended for approval, subject to conditions.

Development Controls:

- (i) Sydney Local Environmental Plan 2012
- (ii) Sydney Development Control Plan 2012
- (iii) SEPP (Transport and Infrastructure) 2021
- (iv) SEPP (Resilience and Hazards) 2021

Attachments:

- A. Recommended Conditions of Consent
- B. Selected Drawings
- C. Submissions

Recommendation

It is resolved that consent be granted to Development Application Number D/2025/299 subject to the conditions set out in Attachment A to the subject report.

Reasons for Recommendation

The application is recommended for approval for the following reasons:

- (A) The proposal satisfies the objectives of the Environmental Planning and Assessment Act 1979, in that, subject to the recommended conditions of consent, it achieves the objectives of the planning controls for the site for the reasons outlined in the report to the Local Planning Panel.
- (B) The development is permissible with consent in the R1 - General Residential Zone and is consistent with the objectives of the zone.
- (C) The proposal is consistent with the relevant objectives and controls of the Sydney Local Environmental Plan 2012 and the Sydney Development Control Plan 2012.
- (D) The outdoor gym equipment is at the end of its useful life and its removal will not have significant adverse impacts on the locality, as outlined in the report to the Local Planning Panel.

Background

The Site and Surrounding Development

1. The site has a legal description of Lot 121 DP 1030021, Lots 1-120 SP 77095 and is known as 49 Henderson Road, Eveleigh. It was previously known as 121 Henderson Road, Alexandria. It is irregular in shape with an area of approximately 9,597sqm. It has a primary frontage to Henderson Road to the south and secondary frontages to Explorer Street to the west, Rowley Street to the north and Alexander Street to the east.
2. The site contains 4 buildings comprising residential apartments, terrace, private and communal open spaces and car parking. The land is in private ownership. The outdoor gym equipment is located with a landscape setback area on the corner of Henderson Road, Progress Road, Explorer Street or Station Place. The space is maintained by Council on an informal basis for over 20 years and identified as 'South Sydney Rotary Park #2'.
3. Council's maintenance responsibility to the subject site includes cutting grass, picking up litter, check-up and general maintenance of the gym equipment.
4. The surrounding area is characterised by a mixture of land uses, primarily being residential. As seen in Figure 1, the western side of Progress Street is a park owned by New South Wales Land and Housing Corporation identified as 'South Sydney Rotary Park #1', and further north along Station Place is 'South Sydney Rotary Park #3' owned by the City of Sydney Council. Figure 9 demonstrates directly east from the site is a childcare centre, part of the Australian Technology Park, which is privately owned and located approximately 350m east from the subject site.
5. The site is not a heritage item and is not located within a heritage conservation area.
6. The site is located within the Erskineville Oval locality and is not identified as being subject to flooding.
7. A site visit was carried out on 14 May 2025. Photos of the site and surrounds are provided below.



Figure 1: Aerial view of the site, with South Sydney Rotary Park 1, 2, and 3 marks. Outdoor gym equipment located at Park 2 circled in red.



Figure 2: Subject site viewed from Progress Road facing east



Figure 3: View of subject site facing west



Figure 4: View of subject site facing south-west



Figure 5: View of retained outdoor play equipment at South Sydney Rotary Park #1 located approximately 135m west of subject site, facing north. This equipment is to remain in place and is not part of the subject application.



Figure 6: View of South Sydney Rotary Park #3 located approximately 50m north of subject site, facing north

Development Applications

8. The following applications are relevant to the current proposal:

- **D/2000/121** – Development consent was granted on 16 May 2001 for the land subdivision of 9 lots.
- **DA 134-5-2002** - Development consent was granted on 16 May 2003 by the Minister of Planning for the construction of four integrated buildings comprising 115 residential units and related facilities comprising private and communal open space, car parking and communal gym. The application has subsequently been modified.
- **MOD 21-2-2006** - Modification of Condition A2 to DA 134-5-2002 to reflect the extension and conversion of bedrooms.
- **D/2005/1110** – Development consent was granted on 11 October 2005 for the Strata subdivision of site (Lot 121 in DP 1030021).

Relevant history

9. As outlined above, the existing residential development was approved in 2003 under DA 134-5-2002. Condition 9 relating to open space requires an arrangement to be in place that allows unrestricted public access to the open space area.
10. There was an informal agreement between former South Sydney City Council and the private landowner that Council would be responsible for the maintenance of the gym equipment and turf as an extension of South Sydney Rotary Park #1.

Amendments

11. Following a preliminary assessment of the proposed development by Council Officers, a request for additional information was sent to the applicant on 1 May 2025 regarding the minor excavation works.

12. The applicant responded to the request on 5 May 2025 with a statement that addresses and confirms the proposed works and contamination of the site.

Proposed Development

13. The application seeks consent for the following:
- removal of existing outdoor fitness equipment, soft fall, edging materials, and footings of the outdoor fitness equipment, within an area of approximately 55sqm
 - resurfacing the space with soil and turf with approximately 300mm of topsoil
14. This proposal does not include to change the use of the landscape area, which will remain under private ownership.
15. The fitness equipment and the soft fall surface is in poor condition and the outdoor gym is at the end of its useful life. Given the location on private land and the proximity to other facilities, it is not intended to renew the outdoor gym. Instead, the City has lodged this application for its removal, with owner's consent. There is no obligation for the landowner to replace the equipment.
16. Plans of the proposed development are provided below.

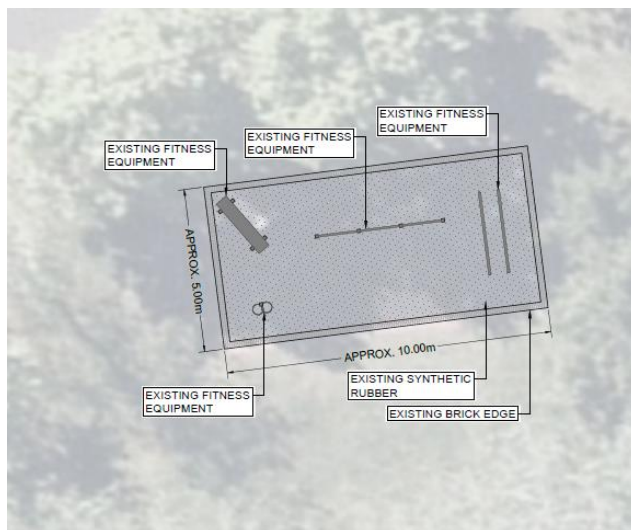


Figure 7: Existing site plan and equipment layout



Figure 8: Proposed site plan

Assessment

17. The proposed development has been assessed under Section 4.15 of the Environmental Planning and Assessment Act 1979 (EP&A Act).

State Environmental Planning Policies

State Environmental Planning Policy (Transport and Infrastructure) 2021

18. The provisions of SEPP (Transport and Infrastructure) 2021 have been considered in the assessment of the development application.
19. A train railway corridor is located underground and intersecting the site.
20. Section 2.99 applies to development that involves the penetration of ground to a depth of at least 2m below ground level above a rail corridor. The proposal does not involve excavation over 2m into the ground surface level. Proposed works to the concrete footings will not exceed 200mm to remove the slab and associated base materials of the outdoor gym and its brick surroundings.

State Environmental Planning Policy (Resilience and Hazards) 2021

21. The provisions of the SEPP (Resilience and Hazards) 2021 regarding contamination has been considered with this application.
22. Council's Health and Building team advised that the desktop assessment provided by the applicant regarding contamination is sufficient as there are no changes to the use of the land.

Local Environmental Plans

Sydney Local Environmental Plan 2012

23. An assessment of the proposed development against the relevant provisions of the Sydney Local Environmental Plan 2012 is provided in the following sections.

Part 2 Permitted or prohibited development

Provision	Compliance	Comment
2.3 Zone objectives and Land Use Table	Yes	The gym equipment is within in the R1 General Residential zone. The proposed removal of gym equipment is located on privately owned land which consists of landscaped area. The removal of the gym equipment retains existing residential use of the site, which is permissible with consent in the zone. The proposal generally meets the objectives of the zone.

Part 6 Local provisions – height and floor space

Provision	Compliance	Comment
Division 4 Design excellence		
6.21 Design excellence	Yes	This clause applies to the erection of a new building or external alterations to an existing building and does not apply.

Part 7 Local provisions – general

Provision	Compliance	Comment
Division 4 Miscellaneous		
7.14 Acid Sulfate Soils	Yes	The site is located on land with class 5 Acid Sulfate Soils. The application does not propose works requiring the preparation of an Acid Sulfate Soils Management Plan.

Development Control Plans

Sydney Development Control Plan 2012

24. An assessment of the proposed development against the relevant provisions within the Sydney Development Control Plan 2012 is provided in the following sections.

Section 2 – Locality Statements

25. The site is located within the Erskineville Oval locality. The proposed development is in keeping with the unique character and the design principles of the Erskineville Oval locality. The future Erskineville Oval neighbourhood will remain a predominantly low scale residential area with a cohesive built form and scale within a small lot subdivision pattern.

Section 3 – General Provisions

Provision	Compliance	Comment
3.1 Public Domain Elements	Yes	The site is located on private land and is accessible to the public. It is not defined as public open space. However the land functions as open space and is maintained by council.
3.5 Urban Ecology	Yes	The proposed development does not involve the removal of any trees and will not have an adverse impact on the local urban ecology.
3.14 Waste	Yes	A condition is recommended to ensure the proposed development complies with the relevant provisions of the City of Sydney Guidelines for Waste Management in New Development.

Discussion

26. The proposal involves the removal of existing outdoor gym equipment located on private land. The equipment was installed by the developer of the site,
27. Condition 9 of development consent DA 134-05-2002 included details for the arrangement of the space.
28. The applicant submits that:
- (a) The removal of the outdoor gym equipment is required due to the poor condition of the existing materials.
 - (b) The safety surfacing beneath the equipment has deteriorated, which presents poorly to the public domain and does not perform its intended purpose of impact attenuation.
 - (c) The equipment has reached the end of its asset lifespan and any future repairs to replace the worn and broken parts or resurfacing is not cost-effective.

- (d) There is alternative existing outdoor gym equipment at the nearby South Eveleigh Wellness Precinct (Australian Technology Park) which includes a skatepark, exercise equipment and a sports court. This newer equipment has enhanced utility, a broader range of training equipment and is more accessible with wheelchair access into and around the facility, seating, and public toilets nearby.
 - (e) The City's Park Fitness Equipment Plan, sets out the City's vision for the provision of publicly accessible outdoor gyms and aims to provide an outdoor gym within 10-minute walk for the majority of residential properties. A recent internal review of the plan has identified that the outdoor gym on the subject site is no longer required due to the close proximity of the Australian Technology Park outdoor facilities.
 - (f) The City will also be refurbishing the adjacent playground at South Sydney Rotary Park #1 with new play equipment as shown in Figure 5.
29. The outdoor gym is not a City of Sydney asset and remains under private ownership. Therefore, formal condition inspections and assessments have not been undertaken or recorded in the asset management system.
30. The proposal to demolish the outdoor gym is considered to be acceptable as there is no requirement under the planning controls for an outdoor gym to be provided on private land at this location.
31. Supporting the removal of the outdoor equipment will deter uncertainty of ownership and responsibility for maintenance and upkeep of the space. There is no obligation for the landowner to maintain the equipment resulting in risk.

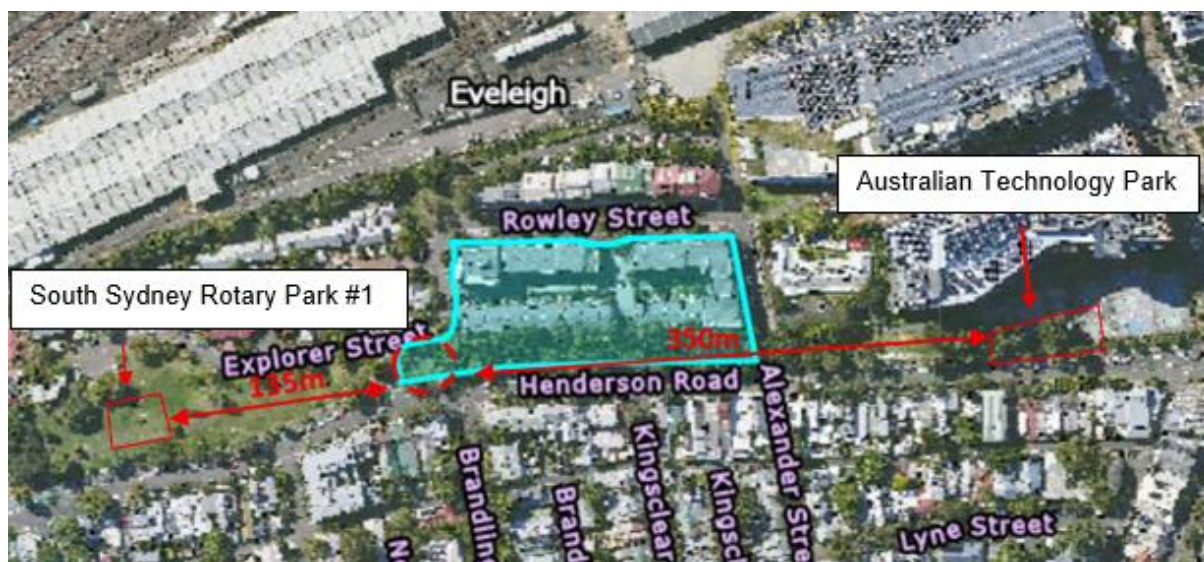


Figure 9: Aerial view of nearby outdoor gym equipment

Advertising and Notification

32. In accordance with the City of Sydney Community Participation Plan 2019, the proposed development was notified for a period of 28 days between 1 May 2025 and 30 May 2025. A total of 345 properties were notified and 10 submissions were received.

33. The submissions raised the following issues:

- (a) **Issue:** Shortage of outdoor exercise equipment in the area. Nearby skatepark facilities are not sufficient and residences require more facilities

Response: At South Sydney Rotary Park #1, adjacent to the subject site, Council will be refurbishing the playground with new play equipment.

Additionally, the subject site is located near multiple outdoor gym equipment, particularly at South Eveleigh Wellness precinct/ Australian Technology Park which is approximately 350m from the subject site. The Australian Technology Park consists of a skatepark, exercise equipment, sports court and public toilets.

- (b) **Issue:** More facilities are needed to promote health and fitness

Response: Council recognises the benefits of outdoor gyms and is working to install facilities at neighbourhood parks throughout the LGA including a facility at Waterloo Oval, which complements the outdoor gym at Australian Technology Park. The City is also planning to install new outdoor gym at a public park in the adjoining suburb of Newtown. The City's Park Fitness Equipment Plan, sets out the City's vision for the provision of publicly accessible outdoor gyms and aims to provide an outdoor gym within 10-minute walk for the majority of residential properties. A recent internal review of the plan has identified that the outdoor gym on the subject site is no longer required due to the close proximity of the Australian Technology Park outdoor facilities.

- (c) **Issue:** Redirecting the community to use the skate park within proximity to the subject site (South Eveleigh Skatepark/ Australia Technology Park) is not efficient as the equipment is basic, consists of opening hours, and maintains security guards, therefore subject to discrimination

Response: The outdoor gym equipment at the nearby South Eveleigh Wellness Precinct/Australian Technology Park largely replicates the exercise equipment at 49 Henderson Road. Common items include pull-up bars (various heights), parallel bars and benches. Additional equipment at Eveleigh Wellness Precinct (not provided at 49 Henderson Road) includes climbing nets and climbing wall.

The outdoor gym at Australian Technology Park is located on publicly accessible land. The site is not enclosed or gated, and access is available at all times despite lights out at 9pm. The regulations for use of the site are displayed on entry signage and do not restrict use by the public and ensure that the site is used responsibly and safely. The Australian Technology Park has a larger footprint, more equipment and park furniture than the 49 Henderson Road facility thus there is ample circulation space and equipment to accommodate many active and passive users and bystanders.

- (d) **Issue:** Suggestions for the improvement of the existing park

Response: Council does not own the outdoor gym equipment or the land at the site and the City's Greening and Leisure team have advised that they have no obligation to repair or replace the equipment which has reached the end of its useful life. The Council's agreement was to maintain the grass, pick up litter and maintain the existing equipment.

- (e) **Issue:** Location of subject site is ideal for a park, and is used for playing, eating lunch with people sitting on the equipment, grass or concrete blocks.

Response: The site will still be available for passive recreation as the grass and concrete blocks will remain.

Financial Contributions

Contribution under Section 7.11 of the EP&A Act 1979

34. The City of Sydney Development Contributions Plan 2015 applies to the site. The development is undertaken by or on behalf of Council which is excluded from the need to pay a contribution.

Relevant Legislation

35. Environmental Planning and Assessment Act 1979.

Conclusion

36. The application seeks to remove the outdoor gym equipment due to the fitness equipment and the soft fall surface being in poor condition and the outdoor gym being at the end of its useful life.
37. The space is located on privately owned land.
38. The City has been maintaining the park on an informal basis for over 20 years. Grass, litter, and equipment bolts are maintained by the Council of the City of Sydney, known as 'South Sydney Rotary Park #2' within the Maintenance team.

39. The proposed development does not have significant negative impact to the locality of the site.
40. The application is recommended for approval, subject to the conditions of consent outlined in Attachment A.

ANDREW THOMAS

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