

**PART 3A CONCEPT PLAN APPLICATION
EPAA 1979**

Response to Preferred Project Report

396 LANE COVE ROAD

MACQUARIE PARK

February 2012



response to preferred project report

Submission to

NSW DEPARTMENT OF PLANNING

396 LANE COVE ROAD (32 – 46 WATERLOO ROAD) & 1 GIFFNOCK AVENUE
MACQUARIE PARK

Peter Le Bas

BA (Geog) (UNE) LLB (Hons1) GradCertLegP (UTS) MTCP (Syd) MPIA CPP

Urban Planner, Geographer and Lawyer

Practising Certificate No 2881



Town Planners

Suite 2301

Quattro Building 2

Level 3

4 Daydream Street

WARRIEWOOD NSW 2102

Phone: 02 9979 4922

Fax: 02 9979 4811

January 2012

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www.turnbullplanning.com.au

info@turnbullplanning.com.au

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TABLE 1 – COMMENTS BY SUBMITTOR



1. INTRODUCTION

1.1 History of Application

This document deals with a Preferred Project Report (PPR) dated November 2011 and prepared by JBA Planning on behalf of Winten Property Group and Australand Holdings, in respect of a property located at 396 Lane Cove Road in Macquarie Park.

The PPR follows from the public exhibition of a Concept Plan for a period of 31 days between 1 December 2010 and 31 December 2010.

The proponent's application provides for four (4) commercial buildings and ancillary basement parking containing over 1000 parking spaces in a development scheme that wraps itself around the Hyundai Motor Company Australia (HMCA) property.

The HMCA site is located to the south and east of the subject which is in turn located at 394 Lane Cove Road Macquarie Park.

Turnbull Planning International (TPI) made a public submission in respect of the Concept Plan dealing with gross non compliances with the planning controls and key merit issues that, in our view, cast significant doubt on the merits of the development proposal. Indeed it appears that the comments on the proposal have been treated with contempt, as the PPR actually proposes an increase in height from that which was contemplated in the earlier Concept Plan.

Subsequent to the public submission, TPI made representations to the Department of Planning and Infrastructure (DOPI) Officers in a formal meeting held on 13 December 2011 to further elaborate on the issues raised.

As a result of those representations TPI was invited to make further written submissions prior to consideration of the proposal by DOPI in assessment of the proposal.

1.2 Hyundai Motor Company of Australia

Our client's details are as follows:

Name	Address
Hyundai Motor Company of Australia (HMCA)	394 Lane Cove Road Macquarie Park

In preparing this further submission we have consulted with DOPI representatives and Senior HMCA staff.



1.3 Overview Part 3A EPAA and Changes to the Existing Planning Regime

Part 3A of the Environmental Planning & Assessment Act (EPAA) was repealed on 1 October 2011. This notwithstanding, Part 3A continues to apply to certain projects subject to the transitional provisions identified in Schedule 6A of the Act.

Clause 3 of Schedule 6A of the EPAA provides that Part 3A continues to apply to 'transitional' Part 3A projects, relevantly including undetermined projects where Director General's Requirements (DGRs) were issued prior to 1 October 2011 and where a current major project declaration remains in force.

The DGRs for MP09_0209 were issued 26 May 2010 and a current major project declaration remains in force. As such, the Macquarie Park Commerce Centre Concept Plan is a transitional Part 3A project.

It is trite to suggest that Part 3A has now been replaced by planning controls that place greater emphasis on the public interest rather than private interests; planning controls where only development that is of State significance is considered; planning controls that are more transparent and where planning rules are more certain and decisions are taken on the merits.

We are of the view that the current proposal, notwithstanding that it may still be legally considered under the transitional arrangements, should, by virtue of the new policy direction being taken, have additional scrutiny by the local community, particularly in circumstances where the proposal is not genuinely of State significance, as is the current situation. In this matter the relevant local environmental plan and council development standards should be fundamental to the comprehensive environmental assessment of this development proposal. The proponents in this case pay mere lip service to the local controls and have basically ignored the rules that applied when the concept plan was lodged and which continue to apply.

In this further submission, consideration has again been given to the following legislation and other planning documents:

NSW State Plan;

Metropolitan Transport Plan 2010;

Ryde Bicycle Strategy and Masterplan 2007;

Draft Inner North Subregional Strategy;

Macquarie Park Pedestrian Movement Study;

State Environmental Planning Policy No 55 – Remediation of Land (SEPP 55);

State Environmental Planning Policy (BASIX) 2004;
State Environmental Planning Policy (Infrastructure) 2007;
The NSW Environmental Planning and Assessment Act, 1979 (EPAA);
Ryde Local Environmental Plan 2010 (RLEP 2010);
Ryde Development Control Plan 2010 (DCP 2010).

2. SITE LOCATION AND DESCRIPTION

2.1 Location

Annexure 1 provides a palette of photographs showing the locality and including the land which is the subject of this further submission.

The site is located in the heart of the Macquarie Park Corridor and enjoys excellent transport linkages by road and rail to the City, Sydney's North Shore, the Western sector and the developing Sydney North West Corridor.

Macquarie Park contains a mixture of new business parks and older industrial type buildings. Scattered in various locations along Lane Cove Road there is also 'remnant' residential development that is being progressively re-developed for purposes permitted under the latest regime of planning controls. Significant major road upgrades have been undertaken around the new Macquarie Park Railway Station (MPR).

The subject property lies to the west of Lane Cove Road adjacent to MPR. The land comprises an irregular shaped parcel located on the corner of Waterloo Road and Lane Cove Road in Macquarie Park. The property could be described as a gateway to the Macquarie Park Precinct.

The property falls from east (Lane Cove Road) to west (Coolinga Street). The change in grade is approximately 6m.

2.2 Description

The subject site is described as Lot 5 in DP 1130105 and Lot 21 in DP 602327.

Lot 1 in DP 11WW30105 (the Macquarie Park Railway Station Portal adjacent to the site) has been used by the proponent in terms of transfer of FSR and GFA, following an agreement with the former TIDC (now TCA). This latter Lot does not, however, form part of the development site.

The land, the subject of the concept plan application has an area of approximately 16,289 sqm and abuts our client's property to its west (in terms of the 'dog leg') and north.



There are two (2) buildings currently erected on the land, both of which present as two (2) storeys. The existing buildings are used for commercial/industrial purposes.

Existing vegetation on the land comprises some 80 trees of varying species size and health. The trees are predominantly located on the northern part of the site where it fronts Waterloo Road.

Annexures 2 and 3 provide a locality plan and aerial photograph respectively.

Annexure 4 is a plan that depicts the relationship of the subject property with our client's property.

3. THE PREFERRED PROJECT

3.1 Concept Proposal (CP)

The development involves large floorplate high rise commercial floorspace to replace existing low rise commercial/industrial development.

The scheme currently on exhibition, involves the erection of four (4) buildings and a total of 83,368 sqm Gross Floor Area (GFA). Parking would be provided for 1042 vehicles in a shared basement car park. Buildings would achieve a height of up to RL 127.9 (refer s3.2 JBA EA). The overall FSR proposed appears to be some 5.12:1 based on site area and stated GFA.

Landuses proposed include office purposes and ancillary retail at ground floor level (restaurants and cafes). It appears that a helipad is proposed on the top of the east most building fronting Lane Cove Road (described by the proponent as Building A).

3.2 Preferred Project (PPR)

The PPR describes the changes made to the scheme as 'key refinements' that have been undertaken as a result of submissions made during public exhibition. These include:

A second driveway access point on Coolinga Street has been provided to manage the flow of vehicles entering and exiting the site. The additional driveway resulted in minor changes to the public domain on Coolinga Street and landscaping within the site.

A 1.5m deep soil zone has been provided along the southern boundary with the Hyundai Building to ensure that a landscape setting with the adjacent site is maintained. The creation of the deep soil zone also results in an increased basement envelope setback to the boundary and revised indicative internal configuration of the basement.

The indicative ground plane concept includes covered connections between the buildings fronting Waterloo Road.

The Landscape Concept Plan has been updated to include greater variety and diversity in the treatment and design of the open space areas around the site.

3.3 Significant Components to be Maintained

The Concept Plan seeks approval for:

- Demolition of the existing structures on the site.
- Building envelopes for four commercial buildings with a shared basement car park.
- A maximum Gross Floor Area (GFA) of 83,368 sqm.
- An increase in maximum height to RL129.3 (higher than proposed in the Concept Plan).
- A mix of permissible land uses.
- Slight changes in pedestrian and vehicle access arrangements.
- 1042 car parking spaces to service the tenants of the building (per the CP).
- It is apparent that no meaningful regard has been had for the public submission made on behalf of HMCA, indeed the maximum height of the development has increased marginally (s3.4 JBA PPR).



4. FURTHER SUBMISSIONS

The Table below summarises the manner in which the submission earlier prepared on behalf of HMCA, has been dealt with by the proponent. Suffice to say, we consider the responses grossly inadequate in justifying the virtually unchanged PPR, now submitted.

TABLE 1
COMMENTS BY SUBMITTOR

Nature of Submission	Response by Proponent	Further Comment by Submitter
Gross Non Compliances with Objectives of Statutory EPI	Not addressed by proponent	The proposal fails to address the inconsistencies with the relevant objectives as regards height and FSR contained within the local statutory controls. Indeed the PPR proposes a marginal increase in height of the proposal, whilst GFA remains as it was.
Gross Non Compliances with Virtually all Relevant Statutory Controls	This is acceptable because the Council purportedly raised no objections.	The statutory controls represent the framework from which schemes are developed and reflect Councils and the community's vision for improvements on the land. The current proposal makes a mockery of these controls that were only recently made into law. The scheme contains gross breaches of FSR and height to the extent that it reads as an 'ambit claim' rather than a serious proposal, taking advantage of the brief period in which State legislation provided a mechanism to overcome appropriate local planning controls.
Gross Breaches of DCP Controls	This is acceptable because the Council purportedly raised no objections	The proposal does not reflect the intent of DCP controls at all, as they were formulated on the basis of statutory controls to which the proponent's scheme bears little or no resemblance. The buildings reflect an absence of articulation, do not adopt a 'slender form' and lack of overall design merit. The building form is squat and heavyset. The buildings could not be described as 'touching the ground lightly'



Nature of Submission	Response by Proponent	Further Comment by Submitter
Proposal Contrary to Public Interest	Because no other public submissions were made there is no public opposition to the proposal. The variations proposed to the controls will not undermine confidence in the NSW Planning System.	<p>This proposal must be contrary to the public interest as it is at odds with the relevant planning controls in force and that have been promulgated through a process involving extensive community consultation. The outcome of the plan making process represents the desire of the community in terms of future development of the land. The proponent ignores this obvious conclusion. The scheme by itself contributes almost 10% of the target for new floorspace on this single site in the Macquarie Park Area under the Governments Metropolitan Strategy to 2031. This is instructive in demonstrating that the proposal represents too much, too soon and on too smaller site and as such is even at odds with the current planning model at State level. The proponent argues that because the DCP controls exceed those referred to in the RLEP, then this somehow justifies this proposal (refer iii EA). It is a well established and settled principle, supported by a variety of legal judgements, that a DCP cannot derogate from a statutory control as is sought to be justified in this case. To do so amounts to undermining public confidence in the planning system.</p>
Visual Impacts	Scale is considered appropriate because of location in gateway position	<p>The PPR does not satisfactorily address the fact that the HMCA building (which was erected in conformity with the controls in the relevant EPI) will be at odds with that which is now proposed because the Part 3A proposal completely disregards the legitimate planning controls that currently apply and are in force. It is relevant to note that the planning laws now applying, only came into effect in mid 2010 (RLEP 2010). There is a significant scale change as between that proposed and the HMCA building recently erected, that causes adverse visual impact.</p>



Nature of Submission	Response by Proponent	Further Comment by Submitter
Helipad Will Cause Impacts that have Not Been Addressed	There is an existing approval in another location on the land and if the helipad is to be relocated, an assessment will be undertaken.	The Concept Proposal contradicts the PPR with the former stating 'that it is sought to gain approval to relocate the helipad to the roof of Building A'. What exactly is the proponents position given that there is no stated variation in the PPR?; is this use permissible in the B3 zone as a passenger transport facility?; if not, does this aspect enjoy EUR?; is it possible to relocate a helipad under existing use provisions under the EPAA?; does the proponent even seek approval to this component of the proposal given comments in the PPR.
Shadow Impacts Caused by Large Overbearing Structures	This is acceptable because overshadowing of a commercial building is not considered an 'adverse impact'. Furthermore, the proposal does not overshadow any 'key areas'. The HMCA building contains no open space therefore there will be no adverse effect on amenity of workers.	The proposal is inconsistent with objectives of height controls in the EPI which seek to 'minimise overshadowing and ensure a desired level of solar access to all properties [emphasis added]. The impacts caused by overshadowing to the HMCA building are a negative impact notwithstanding the current commercial landuse of our client's property. Clearly the HMCA building is not a key area as far as the proponent is concerned. The PPR completely fails to deal with this significant impact in any meaningful way.
Neighbourhood Fit	Not specifically addressed	This development, in respect to the adjoining and nearby properties, fails to recognise key elements relating to achievement of appropriate neighbourhood fit



Nature of Submission	Response by Proponent	Further Comment by Submitter
Clause 4.6 – Exceptions to Development Standards	The concept plan does not need to comply with the LEP because it is a Part 3A proposal.	It is submitted that Clause 4.6 of the RLEP 2010 (Exceptions to development standards) does not in any way contemplate a breach of the FSR controls of this magnitude. As such no amount of 'justification' or 'explaining away' can lead to a conclusion other than that the proposal is based on a flawed understanding by the proponent of what it considers are 'strong environmental planning grounds'. It is to be noted that Part 3A has now been repealed on the basis that it was seen as 'poor public policy'.
Parking and Traffic Generation	The proponent acknowledges that additional delays to traffic will occur at 'key intersections'.	This additional modelling appears to support objections raised. We reiterate our opinion that the parking provision for the site is excessive given the location near a transport node. Furthermore, however, the basis for the calculation should be made based on the maximum FSR permitted on the site per the legitimate planning controls, not on the basis of the ambit claim for floorspace made by the proponent. The whole basis for calculation of allowable parking is flawed in the PPR.
Traffic Access to Site	An additional access point to be provided.	This aspect has been addressed appropriately
Sky Sign	Sky signs to the south will still be visible	This comment does not address the submission made. If the proposal adopted a 'slender form' as is called up in the MPDCP 2010, visibility of the HMCA signage would be partially maintained.

5. CONCLUSION

Part 3A EPAA as it applies to residential, commercial and retail projects with a capital value of greater than \$100 million are no longer identified as a class of development to which Part 3A applies as these projects are not considered to be of genuine State Significance. But for transitional arrangements, the current proposal would not be possible. In line with the change in Policy, in our opinion the Concept Plan proposal requires significant modifications and reduction in scale to render it acceptable and at least in part consistent with the legitimate statutory controls.

The PPR proposes no significant modifications as a result of public exhibition, despite detailed submissions by a number of parties (including various government agencies and this firm). Furthermore however the PPR does not properly respond to DGR's issued as far back as mid 2010.

We maintain that the development proposal is so far removed from the development standards applying (bearing in mind also that these controls are very current, having only been gazetted mid 2010) and what could be argued as being acceptable in a planning context, that it should not be supported by DOPI or the Planning Assessment Commission (PAC) in its present form.

The mantra of providing a maximum benefit in terms of 'employment opportunities' per the Environmental Assessment Report should not come at the cost of a sound planning approach to development and the proposal makes a mockery of current planning controls and at the same time impacts severely on the local neighbourhood, including our clients property. This potential outcome is due to the inbuilt inequities created by the recently repealed Part 3A EPAA planning controls that the proponent has utilised to its own benefit and which would, if agreed to, result in a very poor planning outcome.

The proponent has failed to demonstrate that compliance with the relevant statutory controls is unreasonable and unnecessary in the particular circumstances of the matter and has completely failed to address the legitimate concerns that our client has, regarding this proposal.

We consider that provision of a significantly 'scaled down' version of the current proposal with landuses as suggested, may be acceptable (subject to significant design improvements, paying regard to the Macquarie Park DCP 2010). This notwithstanding the proposal as it has currently been promulgated, is breathtaking in terms of its disregard for the comprehensive masterplanning and urban design work orchestrated by Ryde City Council over a period of many years.

The PPR comprehensively fails to address the matters raised in our earlier submission and it is difficult not to conclude that the proposal represented in the current application is nothing but an 'ambit claim' based on 'loopholes' created by the now repealed Part 3A EPAA.



Our client remains more than willing to participate with the developers or its representatives in meaningful dialogue, in order to achieve an acceptable development outcome. HMCA awaits an approach by the proponent.

A handwritten signature in black ink, appearing to read 'Peter A Le Bas'.

Peter A Le Bas

BA (Geog) (UNE) LLB (Hons1) GradCertLegP (UTS) MTCP (Syd) MPIA CPP

TURNBULL PLANNING INTERNATIONAL PTY LIMITED

ANNEXURE 1

PHOTOGRAPHIC PALETTE



Photo Plate 1: 396 Lane Cove Road viewed from Hyundai Building roof level, looking north east towards intersection of Waterloo Road and Lane Cove Road.



Photo Plate 2: 396 Lane Cove Road viewed from Hyundai Building roof level, looking north.



Photo Plate 3: Looking north west towards 396 Lane Cove Road from roof level of Hyundai building.



Photo Plate 4: Looking west towards 396 Lane Cove Road from roof level of Hyundai building.



Photo Plate 5: Looking south west towards 'dog leg' portion of 396 Lane Cove Road from roof level of Hyundai building.



Photo Plate 6: Looking west towards 396 Lane Cove Road from roof level of Hyundai building and showing part of common boundary between properties.



Photo Plate 7: Looking west from ground level of Hyundai building and showing landscaping on common boundary with 396 Lane Cove Road.

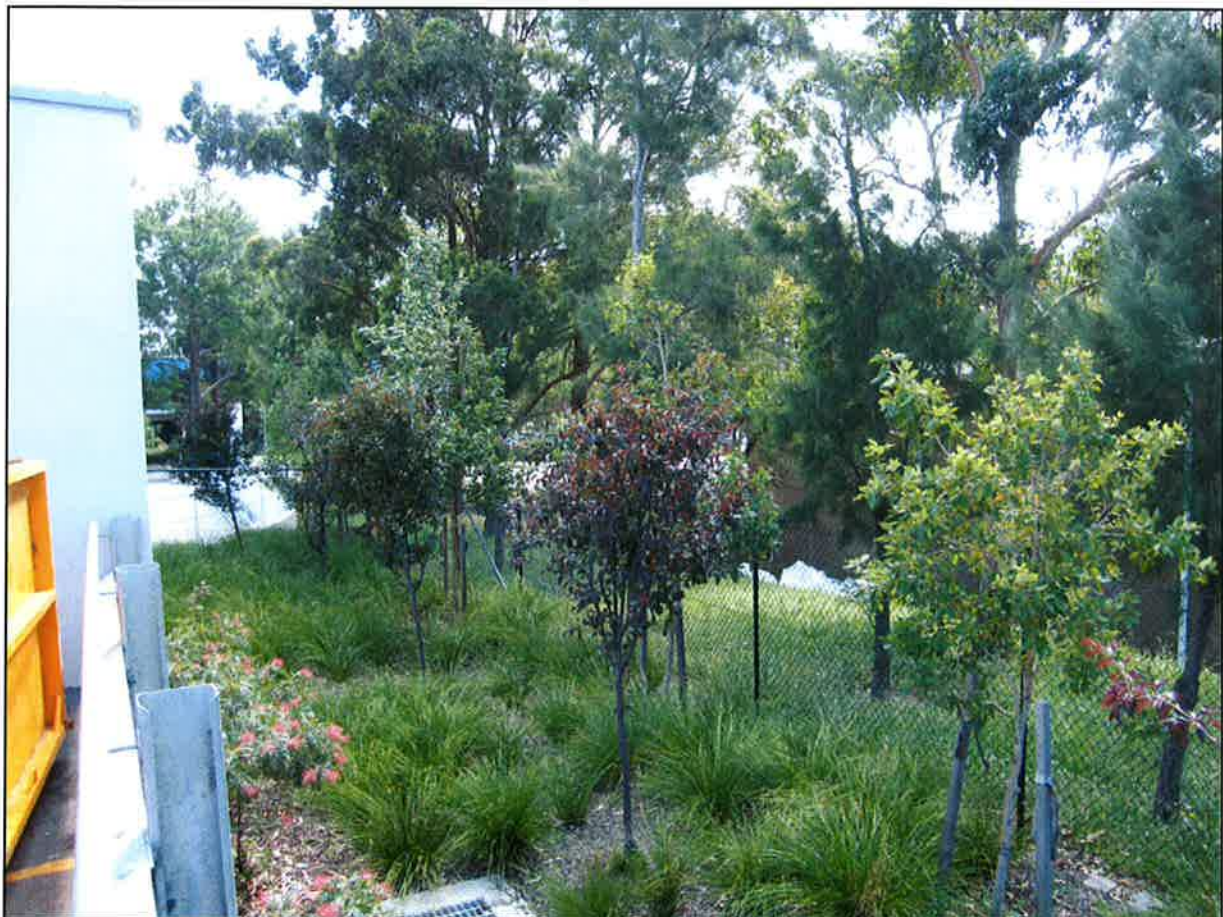


Photo Plate 8: Looking south from ground level of Hyundai building and showing common boundary with 396 Lane Cove Road.



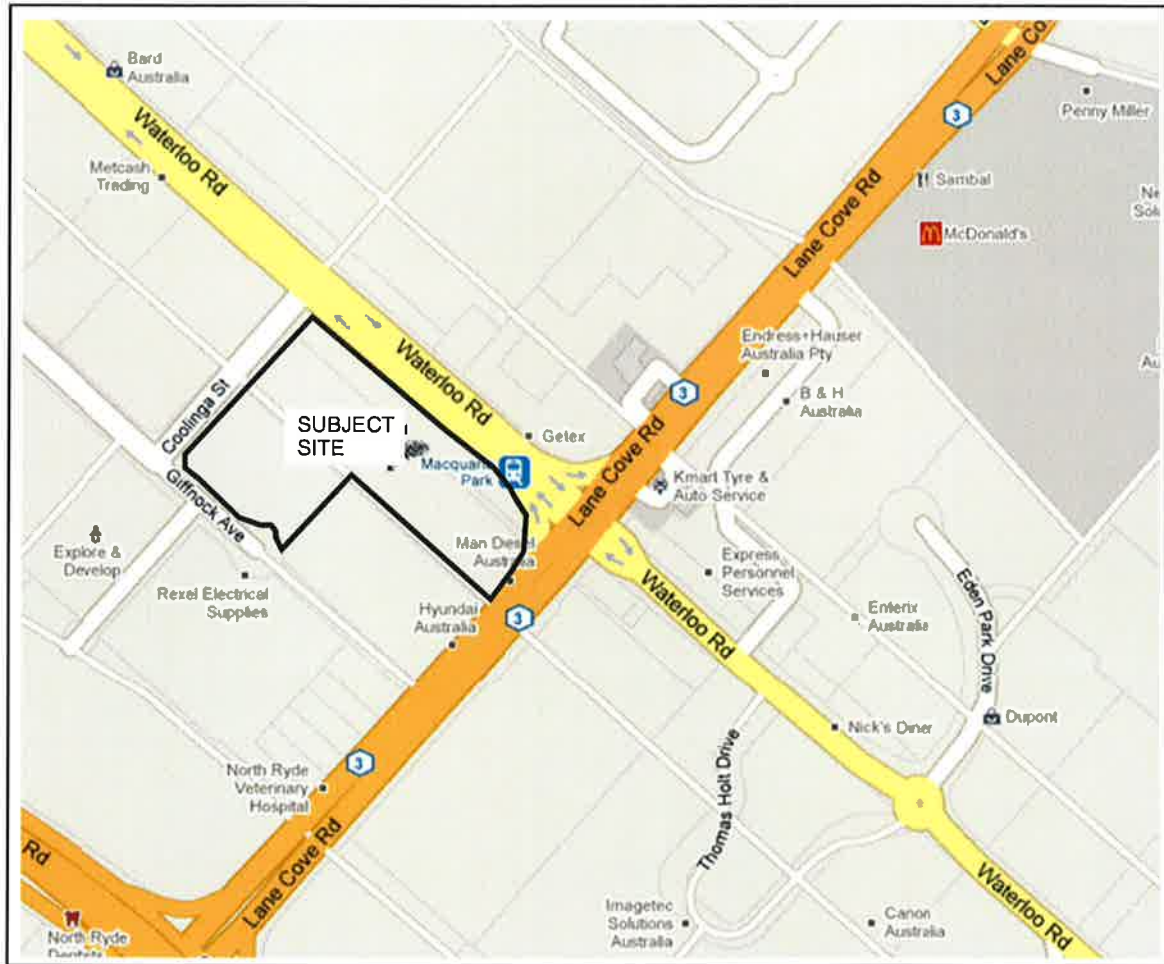
Photo Plate 9: Looking west from ground level of Hyundai building and showing common boundary with 396 Lane Cove Road at junction of 'dog leg'.



Photo Plate 10: Looking west from ground level of Hyundai building and showing common boundary with 396 Lane Cove Road viewed from Lane Cove Road sidewalk.

ANNEXURE 2

LOCATION OF PROPERTY



LOCATION PLAN

Courtesy of Google Maps

ANNEXURE 3

AERIAL PHOTOGRAPH

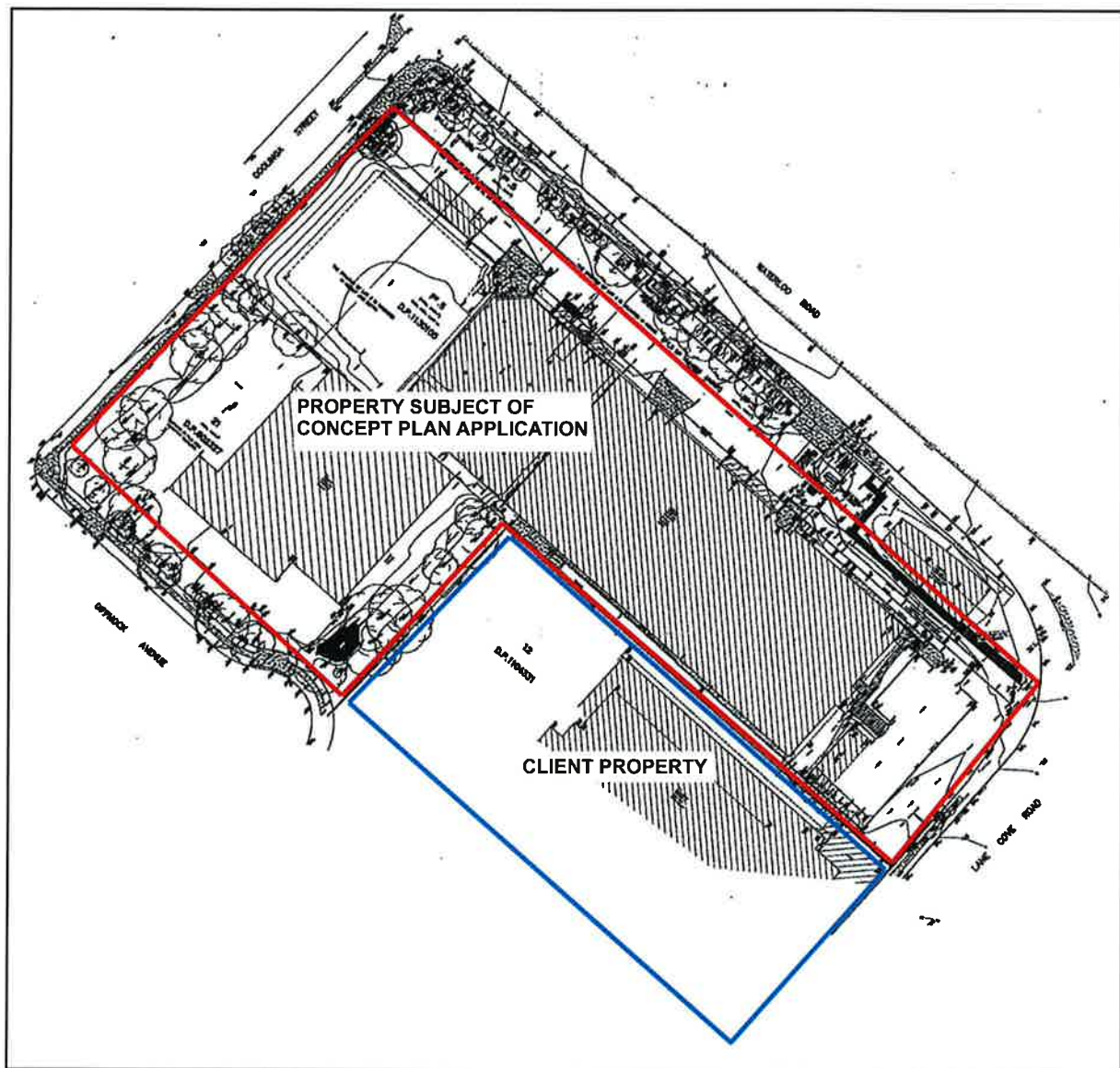


AERIAL PHOTOGRAPH

Courtesy of Google Maps

ANNEXURE 4

CLIENT SITE RELATIONSHIP WITH 396 LANE COVE ROAD



PLAN SHOWING RELATIONSHIP OF SUBJECT WITH CLIENT PROPERTY

Base Plan Courtesy of Adam Clerke Surveyors Pty Limited