



7th March, 2006

HEALTH, BUILDING AND PLANNING COMMITTEE MEETING

NOTICE IS HEREBY GIVEN THAT A HEALTH BUILDING AND PLANNING COMMITTEE MEETING OF THE COUNCIL OF THE CITY OF RANDWICK WILL BE HELD IN THE COUNCIL CHAMBER, TOWN HALL, 90 AVOCA STREET, RANDWICK, ON TUESDAY, 14TH MARCH, 2006 AT 6.30 P.M.

Committee Members: His Worship the Mayor, Cr T. Seng, Cr B. Notley-Smith (Chairperson), Crs Andrews, Bastic, Belleli, Daley, Hughes, Kenny, Matson (Deputy Chairperson) Nash, Procopiadis, Sullivan, Tracey, White & Woodsmith.

Quorum: Eight (8) members.

NOTE: AT THE EXTRAORDINARY MEETING HELD ON 28TH SEPTEMBER, 2004, THE COUNCIL RESOLVED THAT THE HEALTH, BUILDING AND PLANNING COMMITTEE BE CONSTITUTED AS A COMMITTEE WHOSE MEMBERSHIP CONSISTS OF ALL MEMBERS OF THE COUNCIL AND WITH FULL DELEGATION TO DETERMINE MATTERS ON THE AGENDA.

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2 Minutes

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GENERAL MANAGER

Development Application Report



REPORT BY: DIRECTOR, CITY PLANNING

DATE: 21 February, 2006 **FILE NO:** DA/863/2005

PROPOSAL: Construct new rear retaining walls and deck and raise the level of the rear yard (by approximately maximum height of 900mm).
PROPERTY: 93 Boundary Street, CLOVELLY.
WARD: North Ward.
APPLICANT: Classic Plans.
OWNER: Greg & Lynne O’Sullivan.

	Subject Site
	Submissions received
	▲ North
	LOCALITY PLAN

1. EXECUTIVE SUMMARY

The application has been referred to the Health, Building and Planning Committee for determination at the request of Councillors Murray Matson, Ted Seng, Margaret Woodsmith.

The application was notified to adjoining and nearby property owners. An objection was received from SPD Town Planners on behalf of the adjoining owner at No. 36 Park Street, Clovelly. The main issues raised in the submission are as follows:

- Significant privacy loss due to the height of the deck and its close proximity to the rear boundary. The provision of a privacy screen or additional screen planting will result in overshadowing and a sense of enclosure to the objectors property;
- Inadequate survey plans (the proposal does not indicate the RL for the finished level of the fill nor the finished level of the proposed deck level);
- Significant amount of fill in rear yard and no engineering certificate is provided in respect of the structural adequacy of the retaining walls proposed;
- No information is provided in respect of the management of stormwater from the site, given the topography of the site and downward flow into the objectors property;

The recommendation is for approval subject to a number of conditions requiring the deck to be reduced in height by 200mm, privacy screens provided along part of the rear and eastern sides of the finished deck level and the existing conifers planted around the perimeter of the rear yard are to be retained.

2. THE PROPOSAL

It is proposed to construct new timber retaining walls and raise the level of the rear portion of the rear yard by up to approximately 900mm above the natural ground level to provide for a new timber deck area.

3. THE SUBJECT SITE AND SURROUNDING AREA:

The subject site is located on the southern side of boundary Street between Park Street and Blackwood Avenue in Clovelly and is presently occupied by an existing two storey dwelling. The site has a frontage width of 9.145m, a side boundary depth of 38.25m and has an overall site area of 350m².

Neighbouring the property to the east is a single storey dwelling, to the west is a single storey dwelling and to the rear is a two storey dwelling. The surrounding area is residential in character and consists predominantly of single and two storey dwellings. Opposite the site is Waverley Cemetery.

4. SITE HISTORY

a. APPLICATION HISTORY

On the 25 August 1998 (DA/308/1998), was approved for a new part-two/part three storey dwelling house.

Construction of the retaining walls has already commenced with posts installed almost hard up against the western side of the existing tree trunk with the associated increased soil levels.

A notice and order under the Environmental Planning and Assessment Act 1979 was issued by the Environmental Health and Building Section to the current owners of the site regarding the above unauthorised works.

5. COMMUNITY CONSULTATION:

The owners of the adjoining and neighbouring properties were notified of the proposed development in accordance with the DCP – Public Notification. As a result of this notification, the following submission was received:

5.1 Objections

Prepared by SPD Town Planners on Behalf of Mr Paul Say and Mrs L Say at Nos. 36 Park Street, Clovelly

<i>Issue</i>	<i>Comment</i>
No survey plan (containing RLs) was provided, making it impossible to determine existing ground level within the rear yard, the proposed finished level of the fill and deck area.	A survey plan has been submitted since, confirming that the RLs on the plans are correct. The details provided are adequate to make a proper assessment of the proposal.
No information has been provided in respect of the management of stormwater from the site. Due to the increase in impervious area and the topography of the site the proposal is likely to discharge onto the adjoining dwelling at No. 36 Park Street resulting in adverse impacts.	Provided that the new deck area is not covered and the pervious ground conditions retained, it is considered that the proposed works should not increase stormwater runoff onto adjoining properties.
The proposed fill and deck area are setback only 900mm from the rear boundary not complying with the DCP rear setback, which states that no part of the building is to be closer than 4.5m from the rear boundary.	The DCP notes that unroofed terraces, landings, steps or ramps may encroach beyond the rear setback control. However, the location of the deck and additional fill will result in additional privacy concerns. Therefore, it is recommended that the deck area and proposed ground level be lowered by approximately 200mm so that no part of the deck is higher than 700mm from the natural ground level. Furthermore, with the inclusion of privacy screens to the south eastern corner of the deck any privacy concerns to the adjoining dwellings will be

	<p>mitigated and solar access to the adjoining dwellings should not be compromised. Therefore the proposal is considered reasonable and satisfies the performance requirement.</p>
<p>The proposal incorporates a significant amount of fill within the rear yard of the site. No engineering certification has been provided in respect of the structural adequacy of the retaining walls proposed.</p>	<p>The significant amount of fill in the rear yard area has been since removed. The owner has advised that the deck area will not be totally filled and will be supported by timber structures. A condition will be imposed to ensure that there will be no additional fill on the site from that now already placed on site and the area beneath the timber deck and trampoline are kept pervious to ensure stormwater runoff is able to infiltrate into the ground.</p>
<p>Given the topography of the site the construction of the deck and the additional fill will result in the finished ground level of the deck being approximately only 400mm lower than the top of the dividing wall between the subject site and the adjoining dwelling at No. 36 Park Street resulting in significant opportunities for direct overlooking into their clients property.</p> <p>The consultant notes that the provision of privacy screens built onto the dividing fence is not appropriate and would result in overshadowing and a sense of enclosure to their client's property. The consultant also notes that the provision of additional landscaping is not considered appropriate, given that landscaping has the capacity to be pruned and there are no guarantees in respect of the density of leaves, hence the privacy of their clients' property will be compromised.</p>	<p>It is recommended that the deck be lowered by 200mm to address the objectors concerns.</p> <p>It seems that the finished ground level of the deck is approximately 900mm lower than the top of the dividing fence between the subject site and the adjoining dwelling at No. 36 Park Street not 400mm as indicated by the consultant. Once lowered by 200mm the deck would be approximately 1.1m lower than the top of the dividing fence. Whilst overlooking to the adjoining property would still be experienced, the inclusion of the privacy screens to the eastern and southern corner of the deck should mitigate any privacy loss as a result of the proposal to an acceptable level.</p> <p>It is not considered that the inclusion of privacy screens will cause any significant additional overshadowing or enclosure to the adjoining property than already exists. To the rear boundary the dividing fence and the existing vegetation on the subject site is quite dense and will cause the majority of the overshadowing to the adjoining property at no. 36 Park Street. The DCP also states that at least 3 hours of natural light is to be provided to the private rear</p>

	yard areas of the adjoining dwellings and this is satisfied.
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5.2 Support

No letters of support were received.

6. TECHNICAL OFFICERS COMMENTS

The application has been referred to the relevant technical officers, including where necessary external bodies and the following comments have been provided:-

6.1 Development Engineer

The application was referred to the Development Engineer for comment. No objections were raised subject to conditions with any approval. The following comments were made:

Drainage Comments

'It is understood that concerns have been raised by the adjoining property regarding stormwater runoff from the new deck. To address this issue, the following drainage conditions have been included in this report:

1. *The proposed timber deck shall be open form to ensure that stormwater runoff can fall to the underlying ground.*
2. *The area beneath the timber deck and trampoline shall be kept pervious to ensure that stormwater is able to infiltrate into the ground.*
3. *Any stormwater runoff from the new deck area and seepage from behind the retaining walls shall be dispersed into a suitably sized infiltration area.*

Provided that the new deck area is not covered and the pervious ground conditions retained, it is considered that the proposed works should not increase stormwater runoff onto adjoining properties.

Landscape Comments

*The conifers planted around the perimeter of the rear yard, presumably for screening/privacy are too small to be covered by Council's Tree Preservation Order, and therefore, conditions relating to them will not be included in this report; however, in the southeast corner of the site, there is one *Ulmus parvifolia* (Chinese Weeping Elm) of approximately 5 metres in height and 5 metres in width which provides screening and privacy between this site and adjoining properties to the south and southeast, and is covered by the Order.*

Construction of the retaining walls has already commenced with posts installed almost hard up against the western side of its trunk, with the increase in soil levels associated with the proposed terracing likely to cause this tree further stress as it will alter existing

air and moisture exchange rates to its rootzone.

This tree has not yet reached maturity and has the capacity to at least double its current height and width, which would dominate this relatively small open space, and combined with its excessive leaf fall will restrict the ability to establish lawn beneath its canopy and will cause the owners of the pool in the adjoining property to the south some degree of inconvenience.

Despite being shown for retention on the plans provided, this tree is considered inappropriate in the context of such a small sized yard due to its large size at maturity, and the fact that it is likely to decline in health in the future due to the restricted area it is growing within as well as the fact it is in direct conflict with the proposed works.

Therefore, conditions in this report recommend that this tree be removed and more appropriate replacement native trees be provided which will maintain the existing screen around the perimeter of the rear yard while also being more beneficial to native fauna than the current exotic species.'

7. MASTER PLANNING REQUIREMENTS

The site is under 4000m² and therefore a master plan is not necessary.

8. RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS

The Development application has been assessed in accordance with the provisions of the following relevant planning documents:

(a) Randwick Local Environmental Plan 1998

The site is zoned 2A under Randwick Local Environmental Plan 1998 and the proposed activity is permissible with Council's consent.

9. ENVIRONMENTAL ASSESSMENT

The site has been inspected and the application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act, 1979, as amended.

9.1 Development Control Plans – *Dwelling Houses and Attached Dual Occupancies*

The DCP for Dwelling Houses and Attached Dual Occupancies states that a proposal is deemed to satisfy the Objectives and Performance requirements of the DCP if it complies with the corresponding Preferred Solutions. Therefore, the tables below assess the proposal against the Preferred Solutions, and where non-compliance results, assessment is made against the relevant Objectives and Performance Requirements.

Landscaping

	<i>Preferred Solution</i>	<i>Assessment</i>
S1	40% of the total site area is provided as landscaped area.	The landscaped area will be maintained in the rear yard as a result of the proposal and more than 40% of the site is landscaped area. Complies.
S1	A minimum of 25m ² of useable private open space is to be provided.	The rear yard has an area of 104.65m. Complies.
S1	Each dwelling must provide an area of private open space capable of containing a rectangle of minimum dimensions of 3m x 4m with minor changes in level.	The above area has dimensions of 11.5 x 9.1 metres. Complies.
S1	Private open space in the front yard area is located behind the building line.	The above area is located in the rear yard. Complies.
S6	20% of the total site area has permeable treatment.	More than 20% of the site area is permeable treatment. Complies.

Building Setbacks

	<i>Preferred Solution</i>	<i>Assessment</i>
S1	Front setback is average of adjoining dwellings or 6m.	Not applicable.
S2	No part of the building is closer than 4.5m from rear boundary.	<p>No part of the building is closer than 4.5m from the rear boundary. However, the proposed rear deck area is 0.9 metres from the rear boundary.</p> <p>The DCP notes that unroofed terraces, landings, steps or ramps may encroach beyond the rear setback control provided it is less than 1m in height and where neighbouring privacy, solar access and the like are not adversely affected.</p> <p>It is recommended that the deck area and proposed ground level be lowered by approximately 200mm so that no part of the deck is higher than 700mm at any point from the natural ground level. With the inclusion of privacy screens to the south east corner of the deck it is considered unlikely that the proposed raised deck area will have any impact on the adjoining properties privacy levels. The existing conifers plants around the</p>

		south and western perimeter of the rear yard provides sufficient privacy to the neighbouring properties and a condition is imposed to ensure they are retained.
S3	Side setbacks be 900mm for any part of the building at ground level.	Not applicable.
S3	Side setbacks be 1.5m at second floor level.	Not applicable.
S3	Side setbacks be 3.0m at third floor level.	Not applicable.

Visual & Acoustic Privacy

	<i>Preferred Solution</i>	<i>Assessment</i>
S1	Habitable room windows within 9m of another dwelling's windows are offset by 45 degrees or have fixed obscure glazing below 1.5m above floor level.	Not applicable.
S1	Direct view into open space of an adjoining dwelling is obscured or screened within 9m and is beyond a 45 degree angle.	The proposed rear deck will overlook the private living area and rear yard areas of the adjoining properties, particularly the property at No. 36 Boundary Street. Does not comply – see assessment below.
S1	Windows have sill heights of 1.5m or more or fixed obscure glazing below that height.	Not applicable.
S3	Buildings comply with AS 371 and AS 2107.	Conditioned to comply with the BCA.

The Objective of the DCP is to ensure that new buildings and additions meet the occupant and neighbours requirements for visual and acoustic privacy.

The Performance Requirements include that overlooking of internal private living areas is minimised through appropriate building layout, location and design of windows and balconies; and separation, screening devices and landscaping be used to assist in minimising privacy impacts.

Given its close proximity to the rear and side boundaries, the proposed detached rear deck area in its current form and location will have the potential to impact on the privacy levels of the adjoining dwellings private living space and part of the rear yard area at No. 36 Park Street and rear yard area at No. 95 Boundary. Substantial screening (conifer trees) exists around the perimeter of the rear yard mainly to the south western corner of the site; these trees are to be retained to preserve the privacy levels of the rear yard areas of the adjoining dwellings. It is recommended that the level of the deck be lowered by 200mm

so that the deck is no higher than 700mm at any point from the natural ground level (natural ground level as indicated in the survey and submitted plans). Privacy screens are to be provided along the east and south corners of the deck area to mitigate any privacy concerns to the adjoining dwellings resulting from the deck. Subject to the recommended conditions, the proposal will satisfy the objectives and performance requirements of the DCP – Dwelling Houses and Attached Dual Occupancies.

10. FINANCIAL IMPACT STATEMENT

There is no direct financial impact for this matter.

11. CONCLUSION

Provided the deck is lowered and privacy screens are provided to the southern and eastern edges of the deck and appropriate drainage measures are implemented, the proposal will satisfy the relevant assessment criteria and the objectives and performance requirements of the DCP for Dwellings and Attached Dual Occupancies. The application is therefore recommended for approval.

RECOMMENDATION:

- A. THAT Council as the responsible authority grant its development consent under Section 80 and 80A of the Environmental Planning and Assessment Act 1979 (as amended) to Development Application No. 863/2005 for the completion of the retaining walls and for a new rear deck to the rear yard at 93 Boundary Street, CLOVELLY subject to the following conditions:-
1. The development must be implemented substantially in accordance with the plans numbered 0011/05 sheets 1 and 2, dated 10/10/05 and received by Council on 19 October 2005, the application form and on any supporting information received with the application, except as may be amended by the following conditions and as may be shown in red on the attached plans:

The following conditions are applied to satisfy the provisions of section 79C of the Environmental Planning and Assessment Act 1979 and to maintain reasonable levels of environmental amenity:

2. The colours, materials and finishes of the external surfaces to the building are to be compatible with the adjacent development to maintain the integrity and amenity of the building and the streetscape.
3. The finished ground level of the proposed deck shall be reduced by 200mm, so that the maximum height of the deck does not exceed 700mm at any point above the natural ground levels as indicated on the submitted survey plan and site plan. Details of compliance are to be provided with the construction certificate plans.
4. A louvered privacy screen measuring 1.8m in height from the finished level of the proposed deck shall be provided to the recessed section of its south eastern corner. The privacy screen shall also extend for a length of 1.5m along the southern edge of the deck and for a length of 2.4m along its eastern edge, both measured from the

recessed corner. The louvers of the privacy screen shall be appropriately spaced and angled to prevent downward views into the adjoining properties to the south and east. Details of the privacy screen and its location shall be submitted to and approved by Council's Director City Planning prior to construction certificate being issued.

5. The finished ground levels to the rear yard of the site are to be consistent with the development consent and no additional fill is to be provided to the rear yard or raised without the written consent of Council.
6. The existing conifers planted around the perimeter of the rear yard are to be retained to ensure that the privacy levels of the adjoining properties are maintained.
7. There must be no encroachment of any part of the infill and deck structures onto the adjoining premises.

The following group of conditions have been applied to ensure that adequate drainage is provided from the premises and to maintain adequate levels of health and amenity in the locality:

8. External paths and ground surfaces are to be constructed at appropriate levels and be graded and drained away from the building and adjoining premises, so as not to result in the entry of water into the building, or cause a nuisance or damage to the adjoining premises.

The following conditions are applied to ensure that the development satisfies the provisions of the Environmental Planning and Assessment Act 1979 and Regulations:

9. The requirements and provisions of the Environmental Planning & Assessment Act 1979 and Environmental Planning & Assessment Regulation 2000, must be fully complied with at all times.

Failure to comply with these legislative requirements is an offence and may result in the commencement of legal proceedings, issuing of `on-the-spot` penalty infringements or service of a notice and order by Council.

10. All new building work must be carried out in accordance with the provisions of the **Building Code of Australia** (BCA), in accordance with Clause 98 of the *Environmental Planning and Assessment Regulation 2000*.
11. **Prior to the commencement of any building works**, a construction certificate must be obtained from the Council or an accredited certifier, in accordance with the provisions of the Environmental Planning & Assessment Act 1979 and Environmental Planning & Assessment Regulation 2000.
12. **Prior to the commencement of any building works**, the person having the benefit of the development consent must: -
 - i) appoint a *Principal Certifying Authority* for the building work; and

- ii) appoint a *principal contractor* for the building work, or in relation to residential building work, obtain an *owner-builder* permit in accordance with the requirements of the Home Building Act 1989, and notify the *Principal Certifying Authority* and Council accordingly in writing; and
- iii) unless the person having the benefit of the consent is the *principal contractor* (i.e. *owner-builder*), notify the *principal contractor* of the required *critical stage inspections* and other inspections to be carried out, as specified by the *Principal Certifying Authority*; and
- iv) give at least two days notice to the Council, in writing, of the persons intention to commence building works.

In relation to residential building work, the principal contractor must be the holder of a contractor licence, in accordance with the provisions of the Home Building Act 1989.

13. The building works must be inspected by the *Principal Certifying Authority* (or another *certifying authority* if the *Principal Certifying Authority* agrees), in accordance with sections 109 E (3) of the Environmental Planning & Assessment Act 1979 and clause 162A of the Environmental Planning & Assessment Regulation 2000, to monitor compliance with the relevant standards of construction, Council's development consent and the construction certificate.

The *Principal Certifying Authority* must specify the relevant stages of construction to be inspected in accordance with section 81A (2) (b1) (ii) of the Environmental Planning & Assessment Regulation 2000 and a satisfactory inspection must be carried out, to the satisfaction of the *Principal Certifying Authority*, prior to proceeding to the subsequent stages of construction or finalisation of the works (as applicable).

Documentary evidence of the building inspections carried out and details of compliance with Council's consent is to be maintained by the *Principal Certifying Authority*. Details of *critical stage inspections* carried out and copies of certification relied upon must also be forwarded to Council with the *occupation certificate*.

The *principal contractor* or *owner-builder* (as applicable) must ensure that the required critical stage and other inspections, as specified in the *Principal Certifying Authority's* "Notice of Critical Stage Inspections", are carried out to the satisfaction of the *Principal Certifying Authority* and at least 48 hours notice (excluding weekends and public holidays) is to be given to the *Principal Certifying Authority*, to carry out the required inspection, before carrying out any further works.

14. A sign must be erected and maintained in a prominent position on the site, which contains the following details:
 - name, address, contractor licence number and telephone number of the *principal contractor*, including a telephone number at which the person may be contacted outside working hours, or *owner-builder* permit details (as applicable);

- name, address and telephone number of the *Principal Certifying Authority*; and
 - a statement stating that “unauthorised entry to the work site is prohibited”.
15. An **Occupation Certificate** must be obtained from the Principal Certifying Authority **prior to any occupation of the building work** encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the Environmental Planning & Assessment Act 1979.

An Occupation Certificate must not be issued for the development if the development is inconsistent with the development consent. The requirements of the Environmental Planning & Assessment Act 1979 and conditions of development consent must be satisfied prior to the issuing of an occupation certificate.

16. **Prior to the issuing of an interim or final occupation certificate**, a statement is required to be obtained from the Principal Certifying Authority, which confirms that the development is not inconsistent with the development consent and the relevant conditions of development consent have been satisfied.

Details of *critical stage* inspections carried out by the principal certifying authority together with any other certification relied upon and must also be provided to Council with the occupation certificate.

17. In accordance with clause 98 of the Environmental Planning and Assessment Regulation 2000, it is a prescribed condition, that in the case of residential building work, a contract of insurance must be obtained and in force, in accordance with the provisions of the Home Building Act 1989.

Where the work is to be done by a licensed contractor, excavation or building work must not be carried out unless the Principal Certifying Authority (PCA): -

- has been informed in writing of the licensee’s name and contractor number; and
- is satisfied that the licensee has complied with the insurance requirements of Part 6 of the *Home Building Act 1989*, or

Where the work to be done by any other person (i.e. an *owner-builder*), excavation or building work must not be carried out unless the Principal Certifying Authority:

- has been informed of the person’s name and *owner-builder* permit number; or
- has been given a declaration, signed by the owner of the land that states that the market cost of the labour and materials involved in the work does not exceed \$5,000.

Details of the principal building contractor and compliance with the provisions of the *Home Building Act 1989* (i.e. *Details of the principal licensed building contractor and a copy of the Certificate of Insurance*) are to be submitted to Council **prior to the commencement of works**, with the notice of appointment of the PCA / notice of intention to commence building work.

18. The required Long Service Levy payment, under the Building and Construction Industry Long Service Payments Act 1986, is to be forwarded to the Long Service Levy Corporation or the Council, **prior to the issuing of a Construction Certificate**, in accordance with Section 109F of the Environmental Planning & Assessment Act 1979.

At the time of this development consent, Long Service Levy payment is applicable on building work having a value of \$25,000 or more, at the rate of 0.2% of the cost of the works.

The following conditions are applied to ensure that the development satisfies relevant standards of construction, and to maintain adequate levels of health, safety and amenity during construction:

19. Demolition work is to be carried out in accordance with the provisions of AS2601-1991. The Demolition of Structures, as in force at 1 July 1993.
20. A copy of the construction certificate, the approved plans & specifications and development consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.
21. All excavations and backfilling associated with the erection or demolition of a building must be executed safely in accordance with appropriate professional standards and excavations are to be properly guarded and supported to prevent them from being dangerous to life, property or buildings.

Retaining walls, shoring or piling must be provided to support land which is excavated in association with the erection or demolition of a building, to prevent the movement of soil and to support the adjacent land and buildings, if the soil conditions require it. Adequate provisions are also to be made for drainage.

Retaining walls, shoring, or piling must be designed and installed in accordance with appropriate professional standards and the relevant requirements of the Building Code of Australia and Australian Standards. Details of proposed retaining walls, shoring or piling are to be submitted to and approved by the Principal Certifying Authority for the development prior to commencing such excavations or works.

22. All building, demolition and associated site works must only be carried out between the hours of 7.00am to 5.00pm on Monday to Friday inclusive, between 8.00am to 5.00pm on Saturdays and all building activities are strictly prohibited on Sundays and public holidays, except with the specific written authorisation of Council's Manager of Environmental Health and Building Services.

The use of any rock excavation machinery or any mechanical pile drivers is restricted to the hours of 8.00am to 5.00pm (maximum), Monday to Friday inclusive and from 8.00am to 1.00pm on Saturday, to minimise the noise levels during construction and loss of amenity to nearby residents.

23. Noise and vibration emissions during the construction of the building and associated site works must not result in damage to nearby premises or result in an unreasonable loss of amenity to nearby residents and the relevant provisions of the *Protection of the Environment Operations Act 1997* must be satisfied at all times.
24. Building materials, sand, soil, waste materials or construction equipment must not be placed upon the footpath, roadway or nature strip at any time and the footpath, nature strip and road must be maintained in a clean condition and free from any obstructions, soil and debris at all times.
25. Bulk bins/waste containers must not be located upon the footpath, roadway or nature strip at any time without the prior written approval of the Council, unless the waste container is located upon the road in accordance with the Roads & Traffic Authority Guidelines and Requirements, and the container is exempt from an approval under Development Control Plan for Exempt & Complying Development and Council's Local Approvals Policy. Applications to place a waste container in a public place can be made to Council's Building Services section.
26. Stockpiles of soil, sand, aggregate or other materials must not be located on any footpath, roadway, nature strip, drainage line or any public place and the stockpiles must be protected with adequate sediment control measures.

Building operations such as brick cutting, washing tools or equipment and mixing mortar are not permitted on public footpaths, roadways, nature strips, in any public place or any location which may lead to the discharge of materials into the stormwater drainage system.

A warning sign for soil and water management must be displayed in a prominent position on the building site, visible to both the public and site workers. The sign must be displayed throughout the construction period. Copies of a suitable warning sign are available at Council's Customer Service Centre for a nominal fee.

CIVIL WORKS CONDITIONS

The following conditions are applied to provide adequate provisions for access, transport and infrastructure:

27. The applicant must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.

Service Authority Conditions

The following conditions are applied to provide adequate consideration for service authority assets:

28. The applicant must meet the full cost for telecommunication companies, gas providers, Energy Australia and Sydney Water to adjust/repair/relocate their services as required. The applicant must make the necessary arrangements with the

service authority.

Drainage Conditions

The following conditions are applied to provide adequate provisions for drainage and associated infrastructure:

29. The proposed timber deck shall be open form to ensure that stormwater runoff can fall to the underlaying ground.
30. The area beneath the timber deck and trampoline shall be kept pervious to ensure that stormwater is able to infiltrate into the ground.
31. Any stormwater runoff from the new deck area and seepage from behind the retaining walls shall be dispersed into a suitably sized infiltration area.

Landscape Conditions

The following conditions are applied to provide adequate provisions for landscaping and to maintain reasonable levels of environmental amenity:

32. That part of the naturestrip upon Council's footway which is damaged during the construction of the proposed works shall be excavated to a depth of 150mm, backfilled with topsoil equivalent with 'Organic Garden Mix' as supplied by Australian Native Landscapes, and re-turfed with Kikuyu turf or similar. Such works shall be completed at the applicants expense prior to the issue of a final Occupation Certificate.
33. The naturestrip upon Council's footway shall be maintained by the applicant in accordance with Council guidelines. Such maintenance shall include, but not be limited to, watering, mowing, fertilising, and the removal of weeds.

Tree Management

34. The following tree shall be removed subject to the planting of 2 x 25 litre broad canopied replacement trees (not palms) in/near the southeast corner of the site. The species selected shall be those that will attain a minimum height of between 4-7 metres at maturity.

a) *Ulmus parvifolia* (Chinese Weeping Elm) in the southeast corner of the site.

ADVISORY MATTERS:

- A1 Building or excavations works must not be commenced until a construction certificate has been obtained from Council's Building Certification Services or an Accredited Certifier and either Council's Building Certification Services or an Accredited Certifier has been appointed as the Principal Certifying Authority (PCA) for this development.

Failure to obtain a Construction Certificate and appoint a PCA before commencing works is an offence, which renders the responsible person liable to a maximum penalty of \$1.1 million under the Environmental Planning & Assessment Act 1979.

- A2 The applicant is advised that the Construction Certificate plans and specification must comply with the provisions of the Building Code of Australia (BCA) and the construction certificate must not be inconsistent with the development consent.

In this regard, the development consent plans do not show compliance with the deemed-to-satisfy provisions of the BCA.

Details of compliance with the relevant provisions of the Building Code of Australia and conditions of development consent are to be provided in the plans and specifications for the construction certificate.

You are therefore advised to ensure that the development is not inconsistent with Council's consent and to consult with Council's Building Certification Services or an accredited certifier prior to submitting your construction certificate application to enable these matters to be addressed accordingly.

- A3 The applicant is to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.

ATTACHMENT/S:

Nil

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 SIMA TRUUVERT
 DIRECTOR, CITY PLANNING


.....
 CHAHRAZAD RAHE
 ASSESSMENT OFFICER

Development Application Report

REPORT BY:	DIRECTOR, CITY PLANNING
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DATE:	21 February, 2006	FILE NO:	DA/0522/2005
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PROPOSAL:	Section 82A application to review the refusal of development consent to make alterations and ground & first floor additions to the existing dwelling house including amended plans.
PROPERTY:	8 Paton Street, Kingsford
WARD:	West Ward
APPLICANT:	Drawtech Group Pty Ltd
OWNERS:	Mrs C L Giles & Mr B H Giles

	Subject Site
	Submissions received
	 North
	LOCALITY PLAN

1. EXECUTIVE SUMMARY

The application has been referred to the Health, Building and Planning Committee for determination at the request of Councillors Robert Belleli, Bradley Hughes and Scott Nash. The estimated cost of the works is \$227,000.

The application is a Section 82A review of the original application which sought to make alterations and ground & first floor additions to the existing dwelling house. The application was refused under delegated authority on 28 July 2005 for seven reasons primarily relating to the inappropriate form, scale, siting and potential amenity impacts, namely the level of overshadowing and access to natural light to particularly No. 10 Paton Street to the south. The application for review includes amended plans.

The original application was notified in accordance with the Development Control Plan for Public Notification and three submissions received from the owners of Nos. 10 and 13 Paton Street, and the Kingsford South Precinct Committee, the latter on behalf of 10 Paton Street. The original reasons for objection were largely those stated above.

The current Section 82A review application has been notified as required by the Notification DCP and submissions received from 10 Paton Street and the Kingsford Precinct Committee on behalf of 10 Paton Street. The main concerns are the level of overshadowing of 10 Paton Street, the siting of a rear pergola, the unsympathetic form of the additions in relation to the architectural character of the existing dwelling house and the streetscape, and apparent errors in the applicant's survey and shadow diagrams.

A mediation between the applicants and the owners of 10 Paton Street was held on 27 October 2005 and agreement reached on two points (from the six issues raised) namely, the upper rear bedroom window to be reduced to 2.1m wide and the rear ground floor pergola was to be amended to provide for a single 90mm support and the structure over to consist of a single timber beam 200mm x 50mm with approximate spacing of 600mm. Correspondence since received confirms that the owner of 10 Paton Street still raises concern to all other matters raised.

The main issues for consideration are whether or not the proposal as amended is now satisfactory in terms of its form, siting, streetscape impact and the likely level of overshadowing and privacy loss to No. 10 Paton Street. In relation to overshadowing and privacy, the proposal could be conditioned to allow for acceptable level of impacts and compliance with the relevant objectives, performance requirements and preferred solutions of the DCP.

The assessment of the application reveals that the revised proposal fails to satisfy the relevant assessment criteria of the planning controls (i.e. the massing and roof design of the first floor addition will have negative impact on the streetscape and will not integrate with the character of the existing dwelling house) and is recommended that Council's determination of the original application be confirmed.

2. THE REVIEW

STATUTORY REQUIREMENTS UNDER SECTION 82A:

Section 82A of the Environmental Planning and Assessment Act 1979, as amended, enables an applicant to request a Review of a Determination of a Development Application or condition/s of Development Consent. Council may accept amendments to the original development proposal if the proposed amendments result in substantially the same development as that originally described in the development application. Council may review the Determination, and as a consequence of the review, may confirm or change the Determination.

The original proposal sought to make alterations and first floor additions to the existing dwelling house including a new covered rear patio and new fencing. By comparison, the amended proposal provides for a greater front setback of the first floor addition (the first floor addition has been shortened by 4m), reduced floor space ratio, greater setback from the southern boundary (common boundary with No 10 Paton Street) and privacy to No 10 addressed. It is considered that the proposal as amended remains substantially the same development.

3. THE SUBJECT SITE AND SURROUNDING AREA:

The subject site is located on the south-western corner of Paton Street and McNair Avenue in Kingsford and is presently occupied by a single storey dwelling house with a separate garage structure at the rear of the site which is accessed from McNair Avenue. The site has a 9.1m frontage to Paton Street, a side boundary depth of 36.575m and an overall area of 334.5m². The surrounding area is residential in character and consists predominantly of single storey detached dwelling houses of the Californian Bungalow style. The adjoining site to the south is occupied by a single storey detached dwelling house. The only two-storey dwelling in the immediate vicinity is on the north-eastern corner of Paton Street and Rigney Avenue, which is diagonally opposite the site.



Subject Site from Paton Street



Subject site and adjoining dwellings to the south.



Dwellings opposite the subject site looking south.



Dwellings opposite the subject site looking north.



Adjoining dwellings looking north from Paton Street.

4. APPLICATION HISTORY

The original proposal was assessed and the application refused under delegated authority on 28 July 2005 for the following reasons:

- 1. The proposed development is not consistent with objective (a) of the Residential 2A zone as stated in Randwick Local Environmental Plan 1998, in that the development will not maintain the character of the existing residential area. The development will be out of scale with adjoining properties and will also be sited and have form, character and dimensions that are incompatible with the existing development in the area.*
- 2. The proposed development exceeds the maximum permitted FSR contained in Preferred Solution S1 and does not satisfy the Objective and Performance Requirement of Part 4.2 of Council's Development Control Plan for Dwelling Houses and Attached Dual Occupancies. The proposed development will have an excessively bulk appearance in the streetscape and will be out of scale with adjoining development. It will also have adverse impacts on the streetscape and the adjoining property to the south in terms of overshadowing and loss of privacy.*
- 3. The proposed development exceeds the length at which a building can be set back at less than 1.5 metres from the side boundary, as stipulated in Preferred Solution S4, and does not satisfy the Objectives and Performance Requirements of Part 4.3 of Council's Development Control Plan for Dwelling Houses and Attached Dual Occupancies. The proximity of the development to the neighbouring dwelling to the south will cause loss of natural light to that adjoining dwelling. It will also result in a building that is out of scale with neighbouring development and does not contribute/enhance the predominant neighbourhood character.*
- 4. The proposed development does not comply with the minimum side setbacks, as stipulated in Preferred Solution S3, and does not satisfy the Objectives and Performance Requirements of Part 4.4 of Council's Development Control Plan for Dwelling Houses and Attached Dual Occupancies. The development will have*

adverse impacts on the amenity of the dwelling to the south in respect of loss of natural light. It will also result in a building that does not maintain the environmental amenity of the streetscape.

5. *The proposed development does not comply with the visual privacy requirements for adjoining open space, as stipulated in Preferred Solution S1, and does not satisfy the Objectives and Performance Requirements of Part 4.5 of Council's Development Control Plan for Dwelling Houses and Attached Dual Occupancies. Inadequate consideration has been given to the design of the building in respect of its relationship to the private open space area of the adjoining property.*
6. *The proposed development does not comply with the maximum fence height requirements, as stipulated in Preferred Solution S1, and does not satisfy the Objectives and Performance Requirements of Part 4.8 of Council's Development Control Plan for Dwelling Houses and Attached Dual Occupancies. All other properties in the vicinity of the site on Paton Street have front fences that are about 1.0 or less in height. This is a strong characteristic of the streetscape and the proposed front fence will be incompatible with the existing streetscape appearance.*
7. *The proposed development does not comply with the solar access requirements to adjoining dwellings, as stipulated in Preferred Solution S9, and does not satisfy the Objectives and Performance Requirements of Part 3.1 of Council's Development Control Plan for Dwelling Houses and Attached Dual Occupancies. Due to its side setbacks, the proposed development is not sited in a manner that will minimise loss of solar access to that adjoining property.*

A mediation session was held on 27 October 2005, between the applicant, the owners of Nos. 8 and 10 Paton Street and the son of owner of No. 10. At this meeting, a number of issues had been raised by the owners of No. 10, such as overshadowing, bulk and scale of the upper level, loss of privacy and accuracy of the shadow diagrams. Notwithstanding, the following agreements were reached:

- The upper rear bedroom window to be reduced to 2.1m wide.
- The rear ground floor pergola was to be amended to provide for a single 90mm support and the structure over to consist of a single timber beam 200mm x 50mm with approximate spacing of 600mm.

Following the mediation session, an issue was raised regarding the accuracy of the submitted shadow diagrams. The applicant was advised of the issue and a set of revised shadow diagrams were submitted to Council on 14 November 2005.

5. REASONS FOR REVIEW

The applicant has addressed in some detail the seven reasons for the Council's refusal and maintains that the design has been amended to meet the Council's requirements. The amendments include:

- The first floor addition has been reduced in size and the original front portion of the single storey dwelling house has been kept to maintain the character of the area and scale of the adjoining properties.

- The existing enclosed sunroom at the front of the dwelling has been converted back to an open porch form of the adjoining single storey dwellings.
- The main first floor addition has been setback approximately 1.4m-1.5m from the southern boundary to reduce its bulk and scale.
- The floor space ratio has been reduced to 0.6:1 and now meets the preferred solution.
- The proposed first floor additions have been reduced in length by 4m to increase the solar access and natural light to No 10 Paton Street.
- The proposed first floor master bedroom has been setback 3.9m – 4m from the southern boundary to reduce overshadowing to the rear open space area of No 10 (to the south).
- The rear windows located in the retreat area of the master bedroom have been changed to highlight windows to increase privacy to No 10.
- The front section and portion of the north eastern section of fencing has been reduced to 1m in height to match with other dwellings in Paton Street.

6. COMMUNITY CONSULTATION:

Section 82A Review

The Section 82A Review application (including the amended plans) was notified to surrounding owners on 15 August 2005 and a letter of objection received from the owner of 10 Paton Street and a lengthy submission objecting to the proposal received from the Kingsford South Precinct Committee. Both submissions are available for perusal on the file and given the length of the latter submission, the writer was requested to provide a summary of that submission which was submitted by letter of 1 November 2005. Given the contention that the shadow diagrams were still inaccurate, the applicant subsequently provided further shadow diagrams which were renotified to the above objectors on 18 November 2005 and one further submission received from the Kingsford South Precinct Committee. Below is a summary of the concerns raised:

6.1 Objections

Patricia Roydhouse – 10 Paton Street

<i>Issue</i>	<i>Comment</i>
The development will seriously overshadow her dwelling during winter. Contends that the shadow diagrams are inaccurate.	The proposal will cause minimal additional overshadowing of north-facing windows on the objector's property. This issue and the accuracy of the shadow diagrams are discussed further in Section 9 of this report.
The dwelling is out of character with the streetscape.	The dwelling has a different architectural style to other dwellings in the street. This is discussed further in Section 9 of this report.

<i>Issue</i>	<i>Comment</i>
The dwelling is too large and too near the objector's northern side boundary. Particular reference is made to the proposed rear ground floor pergola which is shown 300mm from the common property.	The proposed first floor additions essentially comply with the preferred solutions in terms of side setback requirements on the southern side (objector's side), however, it is acknowledged that the pergola does not meet the preferred solution. These issues are addressed in Section 9 of this report.
The proposed development will result in loss of privacy.	The proposed development will have overlooking impacts from the west-facing, master-bedroom window. It was agreed at the mediation that this window be reduced to 2.1m wide and the window changes on the southern elevation are discussed further in Section 9 of this report.
The construction would require the use of the objector's property which is not acceptable.	Due to the proximity of the development to the side boundary, the applicant may require access over the objector's site. Permission for such access would need to be agreed, but this is not a matter for assessment with this application.

Kingsford South Precinct Committee on behalf of 10 Paton Street – letter of 9 September and summary of 1 November 2005

<i>Issue</i>	<i>Comment</i>
Loss of sunlight and siting of the proposed rear ground floor pergola 300mm from the boundary of No10 Paton Street.	The issues of overshadowing and the siting of the pergola are addressed in Section 9 of this report.
The offset roof design will cause greater overshadowing and total loss of access for potential solar water heating. In addition, the unusual roof design is out of character with the existing streetscape.	Whilst the envelope of the proposed additions may not be much greater than a conventionally design form (i.e. gable roof), the issue of the design is not without question. The proposed design and streetscape impact is addressed in Section 9 of this report.
The western end of the roof could be redesigned to decrease the loss of solar access.	The issue of overshadowing is addressed in Section 9 of this report.
Apparent errors in the applicant's survey diagram and shadow diagrams.	It appears that the contention that the applicants survey incorrectly shows the pergola on the same alignment as the southern wall of the existing dwelling when actually it is offset about 250mm-300mm. The applicants provided a further set of shadow diagrams which appear accurate.

<i>Issue</i>	<i>Comment</i>
The development will result in excessive overshadowing of the objector's property. Specific reference was made to the Planning Principles enunciated by the Land and Environment Court that overshadowing resulting from poor design should not be accepted.	An assessment of the applicant's shadow diagrams indicates that the proposal will cause additional overshadowing of north-facing windows on the objector's property. This is discussed further in Section 9 of this report.
The proposal has visual privacy impacts on the objector's property.	The issue of privacy loss is addressed in Section 9 of this report.

Kingsford South Precinct Committee-letter of 5 December 2005- in response to the notification of the revised shadow diagrams.

Points out that the revised shadow diagrams substantiate the objections previously made to this development and contends that the development increases overshadowing by a factor of approximately 400%. The submission reiterates the objections and issues raised in their previous letters of 9 September 2005 and 1 November 2005 which were addressed above and in Section 9 of this report.

7. TECHNICAL OFFICERS COMMENTS

The application for the Section 82A Review has not been referred to the relevant technical officers, as the original comments received remain applicable. The following comments were received with the original application:

Director of Assets and Infrastructure

The application was referred to the Director of Assets and Infrastructure for comment. No objections were raised subject to appropriate nominated conditions being included with any approval. The following comments were made:

Landscape Comments

There are no existing trees, (covered by Council's Tree Preservation Order), that will be affected by this proposal.

Drainage Comments

The application was referred to Council's Drainage Development Engineer as flooding problems may occur in this vicinity, however after reviewing the application and noting it was for a second floor addition she advised that a Flood Study for the site was not required and also advised that permeable paving would not be required for the small internal driveway section leading into the existing garage as this has been compensated by the proposed installation of an absorption drainage pit in the rear yard.

8. RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS

The Development application has been assessed in accordance with the provisions of the following relevant planning documents:

- Environmental Planning and Assessment Act 1979 (as amended)
- Randwick Local Environmental Plan 1998
- Development Control Plan- Dwelling Houses and Attached Dual Occupancies
- Building Code of Australia

9. ENVIRONMENTAL ASSESSMENT

The site has been inspected and the application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act, 1979, as amended.

9.1 Randwick Local Environmental Plan 1998 (RLEP)

The site is zoned Residential 2A under Randwick Local Environmental Plan 1998 and the proposed development is permissible with Council's consent. The relevant objective to the proposed development is '*to maintain the character of established residential areas.*' The revised proposal is out of character in terms of its architectural style with the existing dwelling house and other dwellings in the street. It is therefore not considered that the revised proposal is consistent with the relevant objective of the RLEP.

9.2 Draft Local Environmental Plan (LEP) Amendment No. 36

The public exhibition for Draft LEP Amendment 36 has concluded on 4 November 2005.

The key LEP changes affect the Residential 2A Zone includes:

- Reducing the minimum subdivision size from 900m² to 800m²;
- Increasing minimum frontage requirements for the development of an attached dual occupancy from 12m to 15m; and,
- Increasing minimum landscaped area from 40% to 50% of the site area.

LEP Standards do not apply to this application. Further consideration of the Draft is not required in this instance.

9.3 Development Control Plan – Dwelling Houses and Attached Dual Occupancies

The DCP for Dwelling Houses and Attached Dual Occupancies states that a proposal is deemed to satisfy the Objectives and Performance Requirements of the DCP if it complies with the corresponding Preferred Solutions. Therefore, the tables below assess the proposal against the Preferred Solutions, and where non-compliance results, assessment is made against the relevant Objectives and Performance Requirements.

Landscaping

	<i>Preferred Solution</i>	<i>Assessment</i>
S1	40% of the total site area is provided as landscaped area.	47% of the site is landscaped area. Complies.
S1	A minimum of 25m ² of useable private open space is to be provided.	The rear yard has an area of 108m ² . Complies.

	<i>Preferred Solution</i>	<i>Assessment</i>
S1	Each dwelling must provide an area of private open space capable of containing a rectangle of minimum dimensions of 3m x 4m with minor changes in level.	The above area has dimensions of 12.3 m x 8.8m. Complies.
S1	Private open space in the front yard area is located behind the building line.	The above area is located in the rear yard. Complies.
S6	20% of the total site area has permeable treatment.	40% of the site is permeable. Complies.

The Objectives of the DCP with regard to landscaping are that existing significant trees and landscaping are retained and enhanced; dwellings are provided with usable outdoor recreation space; storm water management and the appearance, amenity and energy efficiency of the dwelling is improved through integrated landscape design; and the native wildlife populations are preserved and enhanced through appropriate planting of indigenous vegetation.

The Performance Requirements are that the size and dimensions of landscaping suit the needs of the occupants; location and design of open space takes advantage of aspect for year round use; indigenous species are used and existing vegetation is recycled where possible; planting does not obstruct or interfere with entries; and unpaved areas are maximised to allow stormwater infiltration.

The proposal satisfies all of Council's preferred solutions with regard to landscaping. Compliance will ensure the objectives of the landscaping controls are achieved.

Floor Area

	<i>Preferred Solution</i>	<i>Assessment</i>
S1	The preferred solution for an allotment of this area is that a maximum floor space ratio of 0.6:1 applies.	The proposed FSR is 0.6:1. Complies.

Height, Form & Materials

	<i>Preferred Solution</i>	<i>Assessment</i>
S1	External wall height of the building not exceed 7m	The proposed dwelling has a maximum external wall height of 7.5 metres. Does not comply. See comment below.
S1	External wall height of buildings or additions to the rear does not exceed 3.5 m.	6.5m-7.5m. Does not comply.
S3	Cut or fill does not exceed 1m.	Not required.
S3	No excavation within 900mm of a side boundary.	Complies, minimal changes to existing levels near side boundaries.
S3	No excavation within 4m of a rear boundary.	Complies, minimal changes to levels near side boundaries.

	<i>Preferred Solution</i>	<i>Assessment</i>
S4	The length of a second storey portion is no greater than 12m at less than 1.5m from a southern boundary.	The entire southern elevation of the proposed dwelling at first floor level is 11.6m in length and 1.4m-1.5m from the side boundary. Complies.
S5	The second storey portion of a semi-detached dwelling be confined to within the existing roof space or be set back from the front elevation behind a substantial portion of the existing roof form and the design respects the symmetry of the adjoining semi-detached dwelling.	Not applicable.

The Objectives of the DCP are that developments should not be excessive in height and scale and be compatible with the existing character of the locality; to ensure impacts in terms of privacy, natural light and views are minimised; and with respect to additions that they not detract from the individual character and appearance of the existing dwelling.

The relevant Performance Requirements are that the height of buildings should relate to those in the existing streetscape and the topography; buildings be designed to enhance the existing desirable built form character of the street by adopting where relevant characteristics of mass and proportion, materials and finishes, roof form and pitch, facade articulation, window and door location and proportions, and verandahs, eaves and parapets; with respect to additions to semi-detached dwellings they integrate with the attached dwelling; and views are shared.

The proposal complies with the above preferred solutions apart from external wall height. The proposal is articulated and there is more than one external wall height that can be measured using this definition.

At first floor level, the southern external wall of the development is setback a minimum of 1.4m-1.5m from the southern side boundary and has a maximum external wall height of 3.45m measured from existing ground level, which complies with the preferred solution under the DCP. That part of the proposed additions that exceed the maximum wall height of 7m (up to 7.5m), are setback approximately 3.5m from the southern side boundary. This setback significantly exceeds the preferred solution of 1.5m and notwithstanding its exceedance of the 7m maximum of the preferred solution is considered acceptable. The issue of overshadowing is addressed separately in this report.

In terms of the urban design and streetscape impacts, it is noted that the dwellings on the western side of Paton Street between Rainbow and Sturt Streets exhibit a notable degree of consistency in terms of building types and characteristic (free standing, single storey, Californian Bungalows), siting, setbacks, scale and form. One of the predominant characteristics is the repeated pattern of dual gable ends and roof forms. Individually, however, each residence in this section of the street has been modified to varying degrees. Common alterations include painting or rendering of face brickwork, modified window openings and removal of original veranda details. These changes are demonstrated by the subject dwelling and those adjoining. Consistency therefore lies in the general character

of the existing pattern of development, rather than the combined original integrity of individual dwellings.

The revised proposal makes some reference to the context in terms of the first floor level setback from the street frontage which helps to maintain the prevailing pattern of single storey building forms in the street. However, the characteristic gable end forms, which are an important element in the streetscape, are not referenced.

The proposed roof form is inconsistent with the distinctive and consistent pattern of gable ends to facades in the street and will adversely affect the character of the local streetscape. Given the site is also a corner allotment, the first floor additions will be prominent and the impacts on the streetscape will be exacerbated. Furthermore, the massing and proportion of the proposed first floor addition appears to be incongruous with the remaining existing ground floor and will further detract from the individual character and appearance of the existing dwelling. For these reasons, it is considered that the proposal does not satisfy the relevant objectives and performance requirements of the DCP and should not be supported in its current form. The proposed first floor additions should be designed to enhance the existing desirable built form character of the street by adopting the characteristics of mass, proportion, roof form & pitch. However, any proposed addition should not mimic the traditional features of buildings in the streetscape, but should translate these characteristics into a contemporary building form.

Building Setbacks

	<i>Preferred Solution</i>	<i>Assessment</i>
S1	Front setback is average of adjoining dwellings or 6m.	The existing street (front) setback is maintained by the proposal and the first floor addition is setback between 3.4m and 4m. Complies.
S2	No part of the building is closer than 4.5m from rear boundary.	The proposed additions are setback 14.5 metres from the rear boundary. Complies.
S3	Side setbacks be 900mm for any part of the building at ground level.	The proposed rear pergola including a section of brick wall to the BBQ bench is setback about 350mm from the southern side boundary. Does not comply – see assessment below.
S3	Side setbacks be 1.5m at second floor level.	The proposed additions are in the main setback a minimum of 1.4m-1.5m (southern side) and maintain the ground floor setback of 900mm on the northern side. Does not comply - See comments below.
S3	Side setbacks be 3.0m at third floor level.	Not applicable.

The Objectives and Performance Requirements of the DCP seek to ensure that there is adequate access to sunlight, daylight and fresh air to building occupants and neighbours; and with respect to front boundary setbacks the proposal generally conform to the adjoining development or dominant streetscape.

The proposed additions achieve compliance with Council's preferred solutions for setbacks to all boundaries with the exception of the proposed rear pergola structure which is proposed to be sited on the same alignment as the existing dwelling house (350mm from the southern boundary) and the setback of the northern wall of the first floor addition is to maintain the ground floor setback of 900mm.

In respect of the above non compliances with the preferred solutions, it is noted that the existing pergola is sited about an additional 200mm from the southern boundary and that the proposed pergola structure will be both a deeper and higher structure than the existing structure and will be fitted with sunshade clothes. It is considered that the height and siting of the proposed pergola structure is inappropriate as it will cast additional shadows to the adjoining dwelling at No. 10 and further reduce the amount of sunlight access to the primary living and open space of No. 10. It is therefore recommended that should Council decide to approve the application, there should be a condition requiring the rear pergola to remain open and be constructed as agreed at the mediation and be setback a minimum of 900mm from the southern boundary to address the siting relative to No. 10 Paton Street and to reduce the level of overshadowing to the rear of that property.

Visual & Acoustic Privacy

	<i>Preferred Solution</i>	<i>Assessment</i>
S1	Habitable room windows within 9m of another dwelling's windows are offset by 45 degrees or have fixed obscure glazing below 1.5m above floor level.	South side: The three windows proposed are highlight windows with the two eastern windows being to a bathroom and ensuite having opaque glass.
S1	Direct view into open space of an adjoining dwelling is obscured or screened within 9m and is beyond a 45 degree angle.	The proposed first floor window at the rear of the dwelling overlooks the adjoining yard to the south. Does not comply – see assessment below.
S3	Buildings comply with AS 371 and AS 2107.	Not applicable.

The Objective of the DCP is to ensure that new buildings and additions meet the occupant and neighbours requirements for visual and acoustic privacy.

The Performance Requirements include that overlooking of internal private living areas is minimised through appropriate building layout, location and design of windows and balconies; and separation, screening devices and landscaping be used to assist in minimising privacy impacts.

The proposed window to Bedroom 1 on the western elevation of the dwelling is within 9 metres of the adjoining property to the south and will overlook the primary private open space of that adjoining property. Inadequate consideration has been given to the design of the building in respect of its relationship to the primary private open space area of the adjoining property. On that basis, it is considered that the development does not satisfy the relevant objective and performance requirement and, accordingly, non-compliance with the preferred solution is not acceptable. However, it should be noted that it was agreed at the mediation that this window be reduced to 2.1m wide. It is therefore

considered appropriate that if Council decide to approve the subject application, an appropriate condition should be included in the consent requiring the size of the window to be amended as agreed at the mediation meeting to address the potential loss of privacy to No. 10 Paton Street. In addition, the reduction in window size would comply with the preferred solution of the DCP.

Safety & Security

	<i>Preferred Solution</i>	<i>Assessment</i>
S1,2,3	Front doors of dwellings are visible from the street.	The existing front door faces the street. Complies.
S1,3	Dwellings have at least one habitable room window overlooking the street.	The dwelling has windows that overlook the street. Complies.
S2	A Council-approved street number is conspicuously displayed at the front of the dwelling or front fence.	Not applicable.

The Objectives and Performance Requirements of the DCP seek to ensure that a safe physical environment and crime prevention is promoted through design, including that buildings are designed to face the street and other public areas to provide for surveillance; dwellings and their entrances are readily identifiable by street numbering and design of front fences; and landscaped areas allows for safe access to the dwelling.

The proposal meets the preferred solutions under the DCP for safety and security. The development is satisfactory with regard to these requirements.

Garages & Driveways

	<i>Preferred Solution</i>	<i>Assessment</i>
S1	Council's Parking DCP requires 1 space, for dwellings with 2 bedrooms or less, or 2 spaces, for dwellings with 3 bedrooms or more.	The proposed dwelling has parking for 1 car. Does not comply-see comments below.
S1	Car parking spaces have a minimum dimension of 5.5m x 2.5m.	The dimensions of the parking spaces are 3.6m x 6.3m. Complies.
S1	Driveways have minimum width of 3m and are set back at least 1m from the side boundary.	New 3m wide driveway proposed setback 1.25m from the side boundary. Complies.
S1	Driveways have a maximum width of 3m at the property boundary.	Driveway is 3m wide at the property boundary. Complies.
S1	Driveway gradients should not exceed a maximum of 1 in 8 for the first 5m from street alignment and 1 in 6 thereafter.	The proposed driveway gradient is less than 1 in 8. Complies.
S1	With respect to garages and carports to rear lanes these should be set back 1m to improve pedestrian visibility.	Not applicable.
S2	Parking and access is provided from the rear of the allotment where possible.	Not applicable.

	<i>Preferred Solution</i>	<i>Assessment</i>
S2	Garages and carports located behind the building line where parking only available from the front of the site.	Not applicable.
S2	Driveways, car parking spaces and structures do not occupy more than 35% of the width of the allotment	Not applicable.

The Objectives and Performance Requirements of the DCP include that car parking and driveways are not visually obtrusive and do not detract from the appearance of the dwelling and the street scape; and structures are compatible in scale, form, materials and finishes with the associated dwelling.

Fences

	<i>Preferred Solution</i>	<i>Assessment</i>
S1	Existing sandstone fences and walls are retained/recycled.	Not applicable.
S1	Solid front fences on street frontages in front of the building line are no higher than 1.2m.	Taking into account the site is a corner allotment, the front fence and a 7.5m return along the McNair Avenue side boundary of the same height is proposed. Complies.
S1	Fences in front of the building line or on street frontages may be up to 1.8m provided that the upper two thirds is at least 50% open.	Complies.

Generally, the Objectives and Performance Requirements for fences in the DCP are to ensure that front fencing is integrated with the streetscape and is compatible with the appearance of the dwelling and any established local fence form and material.

Side boundary fencing (fronting McNair Avenue) has been indicated on the plans as being 1.8m high, the top half being of timber slats between evenly spaced 350mmx350mm rendered brick piers.

The development is satisfactory with regard to fencing.

Solar Access and Energy Efficiency

	<i>Preferred Solution</i>	<i>Assessment</i>
S1	New dwellings comply with a minimum of 3.5 stars on the NatHERS.	Not Applicable.
S2	Private open space receives at least 3 hours sunlight over part of its area between 9am and 3pm on 21 June.	The rear yard will receive at least 3 hours of sunlight. Complies.
S2,8	North-facing windows to living areas receive at least 3 hours sunlight over part of its area between 9am and 3pm on 21 June.	The proposal includes north-facing windows that will receive at least 3 hours of sunlight. Complies.

	<i>Preferred Solution</i>	<i>Assessment</i>
S9	Solar access to existing or future solar collectors on adjacent buildings is maintained between 9am and 3pm each throughout the year.	The proposal will not overshadow solar collectors on adjoining properties. Complies.
S9	North-facing windows to living areas of neighbouring dwellings receive at least 3 hours sunlight over part of its area between 9am and 3pm on 21 June. If currently less than 3 hours, it is not further reduced.	The proposal will reduce solar access to a north-facing window of the adjoining dwelling to the south at No. 10 Paton Street. Does not comply – see assessment below.
S9	Principal outdoor recreation space of neighbouring dwellings receive at least 3 hours sunlight over part of its area between 9am and 3pm on 21 June. If currently less than 3 hours, it is not further reduced.	The proposal will not reduce solar access to private open space to less than 3 hours. Complies.

The overall Objectives of the DCP seek to ensure that development promotes and has regard to the concept of Ecologically Sustainable Development. In this respect the objectives promote energy efficiency in design and construction; encourage the use of appropriate resources and passive solar design; and protect solar access enjoyed by the adjoining premises.

As noted previously, the applicant has provided shadow diagrams which indicate the shadows cast by the revised proposal in plan and elevational form. The elevational shadow diagrams compare the shadows cast by the proposal to those cast by the existing single storey dwelling on the site.

	Existing	Proposed
Northern wall of No. 10 Paton Street	The diagrams indicate that the three windows on the northern elevation of No. 10 Paton Street are presently overshadowed at 9am, two of the three windows are totally in shadow at 12 noon and at 3pm with the remaining window (at the rear, which it is understood is used as a sunroom), being largely overshadowed at both 12 noon and 3pm.	Almost the total northern wall of No 10 will be in shadow at 9 am and 12 noon and at 3pm there will only be a small portion of the rear northern window and the rear northern wall that will not be overshadowed. Notwithstanding this fact, taking into account the level of overshadowing cast by the existing building, the level of additional overshadowing cast on the northern wall of No 10 is of modest extent.
Other overshadowing impacts:		
9am (June 21)	At present, about a third of the rear yard of No. 10 receives	Between a third and half of the rear yard of No. 10 which

	sunlight.	presently receives sunlight will be in shadow.
12noon (June 21)	The rear yard of No. 10 receives sunlight over its surface apart from the shadow cast from the existing fencing and separate garage structure on No 8 at the rear.	There will be a marginal increase in overshadowing of the front yard of No. 10 and the primary private open space in the rear yard and over the roof of that property.
3pm (June 21)	The rear yard receives sunlight apart from the existing level of overshadowing from the existing fencing and the garage of No 8. The existing front yard of No 10 is presently overshadowed by either the shadow cast by No 8 or by the existing building at No 10 itself.	There will be a minor increase to the northern side passage of No. 10 from the pergola and increased overshadowing of the roof of No. 10.

Preferred Solution S9 of the Dwelling Houses and Attached Dual Occupancies DCP provides the following with regard to solar access:

S9 North-facing windows to living areas of neighbouring dwellings receive at least 3 hours of sunlight over at least part of their surface between 9.00am and 3.00pm on 21 June. If less than 3 hours is available under current conditions, access to sunlight is not reduced.

The only existing window to a living area of the dwelling at No. 10 is the window to a sunroom/family room at the rear of that dwelling. Although this window only receives sunlight to a small section at the top of the window from about 10am and to 3.30pm, this sunlight will be lost. The proposal therefore does not satisfy the preferred solution. Notwithstanding the loss of essentially the remaining sunlight access to the subject window, it should be noted that this room, being at the rear of the dwelling (No. 10), also has a window on its western facade which will have sunlight access over all or part of its surface for a significant portion of the afternoon. However, as noted previously, due to the height and siting of the proposed rear pergola including the brick wall will reduce the amount of sunlight access to that window. On that basis, it is considered that the revised proposal does not satisfy the relevant objectives and performance requirements of the DCP. However, the proposal would be acceptable if the pergola structures are deleted or constructed as per agreement reached at the mediation meeting. Should Council consider approving the application, the above options should be taking into consideration.

10. FINANCIAL IMPACT STATEMENT

There is no direct financial impact for this matter.

11. CONCLUSION

The amended proposal fails to comply with the relevant assessment criteria and the objectives and performance requirements of the *DCP for Dwellings and Attached Dual Occupancies* and will have adverse impacts upon the amenity of the adjoining premises at

No. 10 Paton Street and the character of the locality. It is therefore considered that Council's original determination of Development Consent No 522/2005 should be confirmed.

RECOMMENDATION:

That Council's original determination of Development Application No. 522/2005 dated 28 July 2005 for the alterations and ground and first floor additions to the existing dwelling house at 8 Paton Street, Kingsford, be confirmed for the following reasons:

- 1) The proposal is not consistent with the objective (a) of the Residential 2A zone as stated in Randwick Local Environmental Plan 1998, in that the development will not maintain the character of the established residential area. The design of the proposed first floor additions will not be compatible with the existing desirable built form character of the street.
- 2) The proposed development does not comply with the relevant objectives and performance requirements of Part 4.3 of Council's Development Control Plan for Dwelling Houses and Attached Dual Occupancies in that the design of the proposed first floor additions will detract from the individual character and appearance of the existing dwelling and will not be consistent with the existing characteristics of the streetscape.
- 3) The proposed development does not comply with the minimum requirement for side setback, as stipulated in Preferred Solution S3, and does not satisfy the Objectives and Performance Requirements of Part 4.4 of Council's Development Control Plan for Dwelling Houses and Attached Dual Occupancies. The development will have adverse impact on the amenity of the dwelling to the south in respect of loss of sunlight.
- 4) The proposed development does not comply with the visual privacy requirements for adjoining open space, as stipulated in Preferred Solution S1, and does not satisfy the Objectives and Performance Requirements of Part 4.5 of Council's Development Control Plan for Dwelling Houses and Attached Dual Occupancies. Inadequate consideration has been given to the design of the building in respect of its relationship to the private open space area of the adjoining property.
- 5) The proposed development does not comply with the solar access requirements to adjoining dwelling at No. 10 Paton Street, as stipulated in Preferred Solution S9, and does not satisfy the Objectives and Performance Requirements of Part 3.1 of Council's Development Control Plan for Dwelling Houses and Attached Dual Occupancies. The proposed development will further reduce the amount of sunlight access to the adjoining property at No. 10 Paton Street.

ATTACHMENT/S:

Nil

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SIMA TRUUVERT
DIRECTOR, CITY PLANNING


.....
FRANK KO
ENVIRONMENTAL PLANNING
OFFICER

Development Application Report

REPORT BY:	DIRECTOR, CITY PLANNING
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DATE:	22 February, 2006	FILE NO:	D/1101/2003
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PROPOSAL:	Section 96 (2) application to modify the proposed design by reconfiguration of storage areas to the basement, internal unit reconfiguration, provision of new terrace and roof terrace for Unit 12, including spiral stair (Heritage Conservation Area)
PROPERTY:	70-72 Perouse Road, Randwick
WARD:	East Ward
APPLICANT:	Perouse Road Developments P/L
OWNER:	Perouse Road Developments P/L

	Subject Site
	Submissions received
	 North
	LOCALITY PLAN

1. EXECUTIVE SUMMARY

The application, under Section 96 (2) of the Environmental Planning and Assessment Act, 1979, as amended, is referred to Council as the original development application (DA 1101/2003) was determined by Council at its meeting of 14 December, 2004, by way of a deferred commencement consent. The consent became active on 31 March, 2005 and construction is nearing completion.

The application seeks to alter the approved external materials and finishes; change window detailing and position of roof light, various internal re-configuration of apartments and add a new second floor balcony and roof terrace to rear building (Building B) with inter-connecting external spiral staircase. The building is nearing completion and the majority of the changes have (at the time of the inspection for this report) been undertaken and as such retrospective consent is sought. Remaining works not yet undertaken include the new roof terrace and spiral staircase, which the applicant has now verbally agreed to conditions deleting these aspects from the proposal.

No submissions were received as a result of the notification and advertising of the proposal.

The Section 96 (2) application was referred to Design Review Panel at its meeting on The design was considered by the Panel at its meeting on the 6 February, 2006, in relation to the design quality principles for residential flat buildings, as set out in State Environmental Planning Policy No. 65. The Panel's comments were taken into consideration by the applicant and amended plans were lodged on 21 February, 2006. Given that the amended plans reduce the impacts of the application as previously notified and advertised, no further notification or advertising was undertaken.

The modifications proposed are considered to be a result of fine tuning in the building construction and generally minor relating to internal apartment layout, minor changes to window positions which do not substantially increase the level of overlooking and in the case of external materials and finishes do not substantially alter the impact of the building appearance to the street. Modifications as a result of the Design Review Panel's recommendations, have been beneficial to the design and amenity of future occupants of the development, without having any significant impact to surrounding properties or the streetscape of the conservation area. Accordingly, the recommendation is for approval subject to amendments to the conditions of consent.

2. THE PROPOSAL

The application is made pursuant to Section 96 (2) of the Environmental Planning and Assessment Act, 1979, as amended (EPA Act) to amend the consent to Development Application No. 1101/2003 by the submission of a revised Sample Board for external materials, finishes and colours (originally approved by way of the satisfaction of Deferred Commencement Condition No. 1) and the modification of Condition No. 1 relating to the amendments to the approved plans. Amended plans have been submitted that include the following:-

- Addition of new second floor balcony and roof terrace to rear building (Building B) with inter-connecting external spiral staircase.
- Replacement of plywood cladding with 50mm London face brickwork to all elevations.
- increasing the ceiling height of Unit 12 from RL 63.56 to RL 63.66 to achieve a 2.7m floor to ceiling height and a consequent increase in parapet height of Building B from RL 63.86 to RL64.365.
- Revised window detailing to south elevation of Building A and north and south elevations of Building B.
- South elevation of stair of Building B changed from plywood cladding to cement render.
- Sliding louvred timber screens replaced with operable louvred powder coated aluminium screens.
- Glazed awning in lieu of metal louvred sunshade to second floor south elevation of Building B.

Changes floor by floor are listed below:

Basement

- Reconfiguration of store room, garbage area and WC.
- Relocation of bicycle storage from rear of shop at ground floor level to adjacent to stairs in Basement, this reduces the number of bicycle spaces from five to three.
- The basement car park has been extended to the rear (west) for a detention tank
- The excavation for the driveway has been extended to the southern boundary at the front (east) of the site.

Ground

- An accessible toilet has been provided to the rear of the ground floor shop and the garbage store for the shop has been relocated into the courtyard area at its rear which previously provided bicycle storage.
- The internal bi-fold doors from the shop to its courtyard area at the front have been deleted.
- The study of Unit 1 reconfigured in size from 2.3m x 2.8m to 2.575m x 2.4m.
- Bathroom of Unit 1 reconfigured to an accessible bathroom.

- New west facing window provided to living room of Unit 9
- Baths deleted from bathrooms of Units 8 and 9 (showers only provided)
- Minor change to location of north facing kitchen window of Unit 8.
- Internal storage within Units 8 and 9 reconfigured.
- External planter adjacent Unit 8 reconfigured but not coloured or noted.

First

- Reconfiguration of Unit 4, with location of study and bedroom swapped and dimensions altered.
- Bathroom and laundry reconfigured, with bathroom now a two-way bathroom. Bathroom window decreased in size.
- Separate balcony areas of Unit 4 now opened up to form a continuous balcony along the front of the building.
- New east facing window to bedroom of Unit 10.
- Minor change to location of north facing kitchen window of Unit 10.

Second

- Unit 5 bathroom and study reconfigured and external wall of study increased in length from 4.3m to 4.36m.
- Reconfiguration of internal stairs, ensuite, laundry, cupboards and storage of Unit 6.
- Bathroom of Unit 7 changed to two way bathroom and stairs reconfigured and window deleted.
- Reconfiguration of Bedrooms 1 and 2 of Unit 12 and provision of ensuite to Bedroom 1.
- Minor positional change in window of Bathroom of Unit 12 and living room windows.
- Minor reconfiguration of Kitchen Unit 12.
- Roof slab to south of Bedroom 1 of Unit 12 converted to roof terrace with planter boxes to perimeter and spiral stair added to access new roof terrace above bedrooms.

Third

- New roof terrace above bedrooms of Unit 12
- Bathroom added to Unit 7 and internal spaces reconfigured
- Position of roof light over Unit 7 altered.
- Bathroom of Unit 6 reconfigured.
- New window to stair of Unit 7 (south)

3. THE SUBJECT SITE AND SURROUNDING AREA:



Figure 1: Locality map

The subject site is located on the western side of Perouse Road, between St Pauls Street to the north and Barker Street to the south, with construction work on the approved development in progress. The site is identified as Lots 1 and 2 in DP 218640 and is irregular in shape, having a total site area of 861.9m² (refer Figure 1). The site is located within “The Spot” Heritage Conservation Area. The site falls from the Perouse Road at the front to the rear (western) boundary by between approximately 2m to 2.57m

Located on the adjoining site to the north (Nos. 66-68 Perouse Road) is a two (2) storey brick commercial building built to the front (street) boundary containing a dry cleaners and a Thai restaurant on the ground floor level and dwellings above. This building generally presents a solid wall, approximately 30.6m in length, along the common boundary with the subject site, apart from a window opening high-up approximately two thirds of the way along its length in from the front boundary.

Located on the adjoining the site to the south on Perouse Road is a two (2) storey Federation style residential building (No. 74 Perouse Road), with driveway access along

its northern side to a garage being the common boundary with the subject site. Located to the rear of the garage and built to the boundary is a single storey metal shed.

The site is adjoined to the rear (west) by a four storey brick and tile residential flat building, which fronts onto Dine Street (No. 9 Dine Street). On the opposite side of Perouse Road, are two (2) storey commercial buildings (No. 65 Perouse Road), with shops at their ground floor level and dwellings above, with part one/part two storey residential semi-detached dwelling houses (Nos. 73 and 75 Perouse Road) located on the adjoining property to the south.

4. APPLICATION HISTORY

Council at its Ordinary Meeting of 14 December, 2004, granted a deferred commencement consent to Development Application No. 1101/2003 for the demolition of the existing semi-detached dwellings and the construction of a mixed use commercial and multi-unit housing development in the form of two (2) buildings, containing a shop and thirteen (13) apartments and basement parking for nineteen vehicles.

The consent was subject to three (3) deferred commencement conditions, which related to the submission of a sample board of materials, colours and finishes; detailed landscape drawings and specifications; and amended architectural plans for the redesign of the carpark level (Lower Ground Floor Plan), driveway and shop (Ground Floor Plan).

In order to satisfactorily achieve the required driveway width with suitable gradients as required by Deferred Commencement Condition No. 2, it was necessary, by way of consent to a Section 96 (1A) application, to reduce the setback of the driveway from the southern boundary from 1.5m to 0.5m, with a shared pedestrian and vehicle zone on the southern side of the driveway. As well, the Section 96(1A) approval created a new storage room providing secure storage for twelve (12) apartments within the basement in order to satisfy one of the requirements of Deferred Commencement Condition No. 2. As a consequence of the approval of the Section 96 (1A) and the submission of other material in satisfaction of the deferred commencement conditions, the consent was activated from 31 March, 2005.

Prior to the current application, a previous Section 96 (2) application was approved by Council at its Ordinary Council Meeting on 28 June, 2005. This approval included amalgamation of two (2) studio units into a one bedroom unit, reducing the total number of units in the development from thirteen to twelve; minor adjustments to the building footprint and corresponding changes to unit sizes; inclusion of studies into a number of units (Units 8-11) and other (minor) internal configuration changes; a minor increase in height (0.6m) of the front building; and minor elevational changes, including provision of solid walls between balconies instead of louvred screens for increased acoustic privacy.

The subject application was referred to the Design Review Panel convened to consider the design quality of residential flat buildings under State Environmental Planning Policy No. 65 (SEPP 65). As a result of this meeting amendments were made to the design and amended plans received by Council on 21 February. Given that the amended plans reduce the impacts of the application as previously notified and advertised, no further notification or advertising was undertaken.

5. COMMUNITY CONSULTATION:

The proposal was notified and advertised in accordance with the Development Control Plan – Public Notification of Development Proposals and Council Plans, until 1 February, 2006. No submissions were received as a result of the notification and advertising of the proposal.

6. TECHNICAL OFFICERS COMMENTS

The application has been referred to the relevant technical officers, including where necessary external bodies and the following comments have been provided:-

6.1 Heritage Planner

Council's Heritage Planner has provided the followed comment in relation to the proposal:-

The subject site is within The Spot Conservation Area and was originally occupied by a pair of somewhat altered semi-detached cottages. To the north of the site is a single storey retail/commercial building with generous parapets above awning level. To the west of the site is a two storey semi-detached pair.

The original application proposed to demolish the existing dwellings and to construct a new residential flat building comprising four levels above a lower ground floor level basement. The development was generally in the form of two separate buildings, one at the front of the site and one at the rear of the site, above a continuous ground floor podium. Concerns were raised in relation to the height and bulk of the new buildings. Amended plans were received indicating an elevational treatment which reduced the apparent scale to the Perouse Road, and the side and rear elevations.

The original application was accompanied by a Heritage Impact Statement prepared by Rappoport Pty Ltd. The HIS argued that the existing dwellings are unremarkable and not a distinctive component of the Conservation Area, that due to alterations, their contribution to the streetscape is limited, and that they do not demonstrate the principle characteristics of early twentieth century residential dwellings.

A Section 96 application has now been received which proposes internal and external changes, including changes to materials and finishes, and to a number of openings. In relation to proposed internal changes, it is noted that these do not significantly impact on the exterior of the building in terms of window placement and size.

In relation to proposed external changes, these will generally not be apparent from the streetscape of Perouse Road, other than the changes to materials and finishes. In relation to the Perouse Road façade, the S.96 application now proposes replace the proposed cladding panels to the second floor balconies with dark face brickwork. In relation to the north and south elevations, the S.96 application proposes to replace the proposed plywood cladding with dark face brickwork generally and a cement rendered panel to the stair. Louvred timber screens are to be replaced with louvred metal screens. The proposed materials and finishes will assist in breaking up the building and relating it to

the scale of surrounding development. The use of different treatments for different parts of the elevations relates to the views of development from the surrounding area.

6.2 Development Engineers

The application was referred to Council's Co-ordinator Development Engineers and the following comments were received:-

A Section 96 application has been received to modify Development Approval 1101/03, which was for demolition of the existing semi-detached dwellings and the construction of two multi unit housing buildings (1 x three level and 1 x 4 level) containing 13 apartments and 1 retail tenancy, plus basement carpark for 19 vehicles.

The proposed modifications relate to minor reconfiguring on all floors and some changes to the proposed exterior. It is noted that the proposed amendments do not affect any of the previous comments and conditions issued by the Development Engineer in conjunction with the development approval.

7. MASTER PLANNING REQUIREMENTS

The total site area (861.9m²) is less than required for the submission of a master plan (4000 m²).

8. RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS

The Development application has been assessed in accordance with the provisions of the following relevant planning documents:

- Environmental Planning and Assessment Act, 1979, as amended
- Environmental Planning and Assessment Regulation 2000
- State Environmental Planning Policy No.65
- Randwick Local Environmental Plan 1998.
- Development Control Plan No. 22: The Spot and surrounds Coogee Precinct
- Randwick Development Control Plan – Parking
- Building Code of Australia.

9. SECTION 96 AMENDMENT

Under the provisions of Section 96 (2) of the Environmental Planning and Assessment Act, 1979, as amended, Council may only agree to a modification of an existing development consent if the following criteria have been complied with:-

9.1 Substantially the same development

Council must be satisfied, in the first instance, that the development to which the consent as modified relates is substantially the same development as the development for which consent was originally granted and before that consent was originally granted was modified.

In respect to the above requirement, it is considered that the development, the subject of the Section 96 (2) application, is fundamentally and materially the same as the development for which consent was originally granted. The proposed modifications do not substantially alter the envelope of the two approved buildings as defined by their height, and footprint, the landscaped area of the development or its floor space ratio. Notwithstanding changes proposed to the external materials and finishes of the building, it is considered that overall, the appearance and character of the development will remain essentially the same as the development as originally approved.

9.2 Consideration of submissions

The Section 96 (2) application was notified in accordance with the provisions of Council's Development Control Plan for Public Notification of Development Proposals and Council Plans from 18 January, 2006 until 1 February, 2005. No submissions were received as a result of the notification and advertising of the proposal.

9.3 Section 79C Assessment

Council, in determining a Section 96(2) modification, must take into consideration relevant matters referred to in Section 79C of the Environmental Planning and Assessment Act, 1979, as amended (EPA Act). The site has been inspected and the application has been assessed having regard to Section 79C of the EPA Act, including the following relevant environmental planning instruments and policies:-

9.3.1 State Environmental Planning Policy No. 65

The application was referred to the Design Review Panel convened under State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development (SEPP 65). The design was considered by the Panel at its meeting on the 6 February, 2006, in relation to the design quality principles for residential flat buildings, as set out in Part 2 of SEPP 65. The Panel's comments were taken into consideration by the applicant and amended plans were lodged by the applicant on 21 February, 2006.

Panel Comments

1. *Relationship to the Context of the Proposal*

Not applicable to proposal

2. *The Scale of the Proposal*

The proposal for a large roof terrace creates issues of overlooking and is considered to reduce the amenity of Units 6 and 7. The addition of the spiral stair is acceptable if it is suitably screened and detailed.

3. *The Built Form of the Proposal*

Areas of brickwork have been substituted for the plywood cladding and the metal cladding on the upper floor has changed to a finer profile and a grey colour. The proposed changes are acceptable

The applicant is to prepare a proposal for the shopfront glazing as an alternative for the concertina door system. A good quality shopfront glazing system and detailing is warranted within this quality restaurant precinct in the event of the proposed use being changed.

4. The Proposed Density

Not applicable to proposal

5. Resource and Energy Use and Water Efficiency

Not applicable to proposal

6. The Proposed Landscape

Planter boxes have been proposed for some of the terrace edges. A permanent sub soil irrigation system is recommended to ensure plant survival.

7. The Amenity of the Proposal for its Users

Visual and acoustic separation issues with regard to the additional roof terrace have to be resolved before the Panel can support the proposal

8. The Safety and Security Characteristics of the Proposal

Not applicable to proposal

9. Social issues

Not applicable to proposal

10. The Aesthetics of the Proposal

Not applicable to proposal

Summary and Recommendations

The Panel recommends that the area of the roof terrace be substantially reduced and that the distance of the roof terrace from apartments 6 and 7 be increased to be a minimum of 12m. The design of the additional spiral stair needs input from the architects rather than a proprietary item that is not tailored to the overall aesthetic of the development.

If these concerns are addressed to the satisfaction of the assessing officer, the Panel considers that the application conforms to the requirements of SEPP 65.

Planning Comment

The concertina door system has been redesigned at the front of the shop to a system of fixed glazing with an operable door at its northern end, thereby giving a similar

appearance to the front elevation as originally approved. The roof terrace proposed on Building B has been reduced from approximately 28m² to 16m² and the distance separating its trafficable area from the third floor balconies at the rear of the front building (Building A) has been increased from 9.5m to 12m approximately. Notwithstanding the reduction in size, the applicant has now agreed to delete the roof terrace altogether from the proposal.

10.1.1 Randwick Local Environmental Plan 1998

The site is a consolidation of two separate allotments, each with a different zoning. No. 70 Perouse Road is zoned 3B Local Business and No. 72 is zoned 2B Residential under the Randwick Local Environmental Plan 1998 (LEP) and the proposed activity is permissible within both zones with Council's consent.

No. 70 Perouse Road has the benefit of the existing use rights provisions of the Environmental Planning and Assessment Act, 1979 (EP&A Act) and the Environmental Planning and Assessment Regulation 2000 (EP&A Regulation), due to the fact that the previous 'existing use' was a 'dwelling house', which was a prohibited or non conforming use in the 3B Local Business Zone.

Accordingly, as the proposal has the benefit of existing use rights in the 3B Zone, other provisions of the LEP, such as its aims, objectives and development standards regarding floor space ratios, building heights and landscaped areas are not applicable to that portion of the site occupied by No. 70 Perouse Road, while the clauses of the LEP 1998 pertaining to building heights, floor space ratios and landscaped area apply only to that portion of the site occupied by No. 72 Perouse Road.

The modifications proposed do not increase the approved floor space ratio of the development and only increase the overall height to the building parapet of the rear building by 505mm and the overall height to the balustrade of the roof terrace by a further 300mm approximately, with the maximum height of the building at any one point being 10.2m.

Only a small area of the parapet/balustrade, where it is located over the entrance to the top floor unit and the adjacent spiral staircase are located on that portion of the site which is zoned 2B, with the majority of the top floor of the rear building located in that portion of the site where existing use rights pertain. Notwithstanding the resultant impacts of the height increase in terms of visual impact and overshadowing are relatively insignificant.

The increase in the overall height of the rear building by less than 1m is considered minor and will not be visually discernible from the street. The development as modified, will therefore appear consistent with the height already approved and does not result in any additional amenity impacts of any significance. Over looking aspects associated with the roof terrace and spiral staircase are discussed below.

The change in location of the detention tank and rainwater tank to the rear of the basement garage, technically increases the area of landscaping over a podium in the 2B zoned portion of the site by approximately 5m² but as the detention/rainwater tank is proposed to be covered with soil to a depth of 600mm above the slab, this is considered more that

sufficient to sustain substantial plantings and does not effectively reduce the quality of open space or the landscape amenity of the site with respect to surrounding properties.

Heritage Conservation Area

The changes discussed above with respect to the height and landscaped area, nor the changes to approved external materials and finishes will not significantly alter the visual appearance of the building or its impact within The Spot Conservation Area as previously assessed with regard to the approved development (refer Heritage Planner's comments in Section 6.1 of the report). Accordingly the proposed modifications are considered satisfactory when considered in relation to Clause 43 of the LEP.

10.1.2 Development Control Plan –Multi-Unit Housing

Council's Development Control Plan – Multi-Unit Housing (DCP-Multi-Unit Housing) only applies to that portion of the site zoned 2B Residential (No. 72 Perouse Road).

The proposed amendments introduce no significant changes with respect to the Development Control Plan – Multi-Unit Housing other than already assessed in the original application, although storage arrangements are varied slightly in the amended proposal with further storage provided within a number of units and less capacity provided in the basement.

10.1.3 Development Control Plan -Parking

The changes proposed do not result in any additional carparking requirements under Council's Development Control Plan – Parking.

10.1.4 Section 94 Contributions Plan

The amended proposal does not give rise to any change in the Section 94 levies as previously conditioned.

Overlooking/Privacy

The main issue arising from the proposed Section 96 modifications relate to the provision of an addition balcony located off the master bedroom of the top floor unit (Unit 12) of the rear building, as well as spiral staircase access to the roof terrace proposed above this unit. Issues of internal overlooking from the balcony and roof terrace back into the top floor rear balconies of the front building are adequately addressed by the increased horizontal separation (12m) provided in the amendments received by Council following the Design Review Panel comments.

Similarly overlooking to adjoining properties is limited by the location of planter boxes to the balcony and roof top perimeter, which will limit the angle of vision directly down into the immediately adjoining properties. These will need to be fixed, with a permanent sub soil irrigation system installed to ensure plant survival. As well, restrictions would be required on having any fixed items such as umbrellas or shade structures being installed on the roof terrace, while in accordance with the Design Review Panel recommendations, the spiral stair access to the roof terrace would need to be screened and painted to match

the metal wall cladding behind in order to minimise overlooking from and visibility of the structure. Given these restrictions, the applicant has now agreed to conditions deleting the roof terrace and spiral staircase.

10. FINANCIAL IMPACT STATEMENT

There is no direct financial impact for this matter.

11. CONCLUSION

The modifications sought are considered to be beneficial to the design and amenity of the development, whilst not generating any significant additional impacts to surrounding properties or the streetscape of the conservation area, subject to appropriate additional conditions of consent.

RECOMMENDATION:

- A. THAT Council as the responsible authority grant its development consent under Section 80 and 80A of the Environmental Planning and Assessment Act 1979 (as amended) to Development Application No DA/1101/2003/C for Section 96 (2) application to modify the proposed design by reconfiguration of storage areas to the basement, internal unit reconfiguration, provision of new terrace for Unit 12, at 70-72 Perouse Road, Randwick, in the following manner:-

Amend Condition No. 1 to read:

1. The development must be implemented substantially in accordance with the plans with Job Number 04032 and undated Drawing Nos. DA01, Revision F; DA02, Revision K; DA03, Revision H; DA04 and DA05, both Revision G; and DA06, Revision E, and all received by Council on 17/11/2004; the application form and on any supporting information received with the application, except as may be amended by the details approved with the deferred commencement conditions and as amended by the Section 96 plans numbered with Job No. 04032 and Drawing Nos. DA01, Revision K, DA02, Revision Q, DA04, Revision I, DA05, Revision I, DA06, Revision G, all dated 24 May, 2005 and DA03, Revision M, dated 9 June 2005; and *as amended by the Section 96 plans numbered with Drawing Nos. A202, 203, 204, 301, 302, all Issue 6, dated 14 February, 2006, only in so far as they relate to the modifications highlighted on the Section 96 plans and detailed in the Section 96 application*, except as may be amended by the following conditions and as may be shown in red on the amended plans.

Additional conditions:

146. Planters as shown on the second floor balcony of Unit 12 shall be fixed to the roof and demonstration of compliance shall be provided to the Certifying Authority prior to the issue of the occupation certificate.
147. The roof terrace and spiral stair access associated with Unit 12 shall be deleted from the proposal.

- 149. Soil depth above the slab level of the detention/rainwater tank shall be a minimum of 600mm and certification of compliance shall be provided to the Certifying Authority prior to the issue of the Occupation Certificate.
- 150. The kitchen window of Unit 11 and the study window of Unit 10 on the northern elevation of the rear building shall have a minimum sill height of 1.5m above floor level.

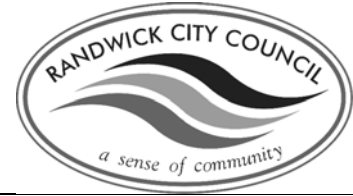
ATTACHMENT/S:

Nil

.....
SIMA TRUUVERT
DIRECTOR, CITY PLANNING

.....
DAVID PIRIE
SENIOR ASSESSMENT PLANNER


Development Application Report



REPORT BY:	DIRECTOR, CITY PLANNING
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DATE:	16 February, 2006	FILE NO:	D/0068/2005 'A'
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PROPOSAL:	Section 96(2) application to increase the size of the basement to accommodate an additional three parking spaces (total of 22 spaces), extend the building to the rear and enclose ground and first floor balconies to Dudley Street. Modifications to the internal layout including provision of study areas to dwellings and resulting changes to the fenestration of the building are also proposed. Modification of Condition 64 relating to submission of an acoustic report in relation to proposed rock excavation
PROPERTY:	47-53 Dudley Street, Coogee
WARD:	East Ward
APPLICANT:	CSA Architects Pty Ltd
OWNER:	Leystreet Pty Ltd

	Subject Site
	Submissions received
	 North
	LOCALITY PLAN

1. EXECUTIVE SUMMARY

The application is referred to the Health Building and Planning Committee as the original application was determined by Council.

The application proposes modification of the approved development by extending the basement and reorganising the basement storage spaces to provide an additional three parking spaces. The application also proposes the minor extension of the easternmost and westernmost units within the building to the rear to provide enlarged living areas and studies to some units and enclosure of balconies on ground and first floor level to provide enlarged bedrooms. The modification of the internal layout of kitchens and bathrooms to top floor units is also proposed resulting in changes to the location of approved skylights.

The application has been notified to surrounding residents and advertised. No submissions have been received as a result of this notification.

The main issues for consideration are the increased parking and resulting change to landscaping and the impact of the proposed modifications on the streetscape presentation of the development.

The recommendation is for approval subject to conditions.

2. THE PROPOSAL

The applicant seeks modification of the existing approval as follows:

- Increase basement footprint by 20m² and reorganisation of basement storage spaces to provide for a total of 22 carparking spaces (increase of 3 spaces over existing approval).
- Extend all floors 800mm - 1.5 metres towards the rear boundary
- Extend ground and first floor bedrooms towards Dudley Street by enclosing approved balconies
- Include studies to easternmost and westernmost units at all floors.
- Extend second floor balconies and internal spaces of easternmost and westernmost units 1.5 metres towards rear boundary
- Internal layout modifications to kitchen and bathroom layouts and consequent changes to skylights at second floor units.
- Revision of eastern and western fenestration to reflect internal layout changes including new windows to the western elevation relating to the new study areas.

The applicant has also requested modification of Condition 64 of the original consent, which was imposed by Council's Manager Environmental Health and Building and reads as follows:

64. *A report prepared by a suitably qualified and experienced consultant in acoustics/vibration shall be submitted to the Principal Certifying Authority and the Council **upon commencement of works**, certifying that noise and vibration emissions from the construction of the development complies with the*

provisions of the Protection of the Environment Operations Act 1997, the Noise Control Manual published by the Environment Protection Authority and relevant conditions of approval. In support of the above it is necessary to submit all relevant readings and calculations made.

Should noise and vibration emissions not comply with the terms and conditions of consent, work must cease forthwith and is not to recommence until details of compliance are submitted to Council.

The reason for the requested modification is that the applicant's acoustic consultant has advised that the condition is not achievable in its current form.

3. THE SUBJECT SITE AND SURROUNDING AREA:

The proposal relates to a regular shaped corner site with frontages to Asher Street and Dudley Street in Coogee. The site has a total site area of 1,231.5m² and consists of four properties as follows:-

- No. 47 Dudley Street identified as Lot 3 in DP 165538 and Lot 1 in DP 1070296;
- No. 49 Dudley Street identified as Lot 1 in DP 620973;
- No. 51 Dudley Street identified as Lot 2 in DP 620973;
- No. 53 Dudley Street (also known as 14 Asher Street) and identified as Part Lots 12 and 13, Section 3, Volume 10497 in Folio 184.

Existing on the site are four (4) dwellings, with 49 and 51 Dudley Street being a pair of semi-detached dwelling houses.

The subject site is bounded by Dudley Street on its south with a frontage of 36.5m, Asher Street on its east with a frontage of 33.635m. The northern (rear) and western side boundaries measure 24.315m and 31.765m, respectively. The site has a common boundary, to the north, with No. 16 Asher Street (alternately known as 12 Asher Street) containing a single storey doctor's surgery and to its west, with No. 45 Dudley Street, containing a two storey duplex. The site falls from the west to the east approximately 2 metres, with low points on its eastern boundary with Asher Street to its south-east corner with Dudley Street.

Located to the east opposite on the north-east corner of Dudley and Asher Street (55 Dudley Street) is a single storey dwelling house (refer Figure 6). On the opposite (southern) side of Dudley Street are a variety of dwelling types: single storey detached dwelling houses, two storey older style residential flat buildings and recent three storey multi-unit housing developments above raised basement carparking.

4. SITE HISTORY

Development Application 68/2005 was considered at the Ordinary Council meeting of 23 August 2005. Amended plans were tabled by the applicant at this meeting and forwarded to Council officers after completion of the assessment report. The resolution of the Council at this meeting was that the application be deferred so that the amended plans could be formally lodged and considered by the surrounding

residents and so that a mediation could be organised between the applicant and objectors to try and resolve outstanding issues. A mediation session was held on 13 October 2005. There was no resolution as a result of the mediation and the mediator concluded that the matter was not suitable for further mediation. The application (as amended) was approved (subject to 5 deferred commencement conditions) by the Health Building and Planning Committee at its meeting of 8 November 2005.

The existing approval provides for demolition of the existing dwelling houses on the site, excavation and construction of a new 3 storey multi unit housing development comprised of 13 dwellings (3 x 1, 9 x 2 and 1 x 3 bedroom units) over basement parking for 19 vehicles. The deferred commencement conditions noted above have not been complied with as yet and therefore the consent is not currently operational.

The application to modify the consent was lodged on 7 December 2005. Due to the Christmas period and incorrect payment of fees by the applicant notification was delayed and concluded on 15 February 2006.

5. COMMUNITY CONSULTATION:

The proposal has been notified and advertised in accordance with the *DCP for Public Notification of Development Proposals and Council Plans*. As a result of this notification and advertising no submissions were received. The notification procedure has been checked and has been accurately carried out.

6. TECHNICAL OFFICERS COMMENTS

The application has been referred to the relevant technical officers, including where necessary external bodies and the following comments have been provided:-

6.1 Manager, Environmental Health and Building

Council's Manager, Environmental Health and Building has reviewed the applicant's request to have Condition 64 modified and discussed the condition with the applicant's acoustic consultant. As a result of these discussions, the following condition wording has been proposed (and advised to the applicant with no objection):

- 64. Noise and vibration from any rock excavation machinery and pile drivers (or the like) must be minimised by using appropriate plant and equipment and silencers and a construction noise and vibration minimisation strategy, prepared by a suitably qualified consultant is to be implemented during the works, to the satisfaction of the Principal Certifying Authority.*

An amended Condition 64 has been included in the recommendation section of this report.

6.2 Development Engineer

Council's Development Engineer has provided the following comment in relation to the application:

A Section 96 application has been received to modify development approval 68/2005 which was for the construction of a three storey residential flat building at the above site containing 13 units with associated strata subdivision, and basement carparking for 19 vehicles.

The proposed modifications relate to:

- *Extending six of the rear units by 1500mm;*
- *Extending the front bedrooms on the ground and first floors into the balcony areas;*
- *Providing an additional three car spaces in the basement carpark; and*
- *Various internal modifications.*

Traffic Comments

The Planning Officer should determine whether the proposed modifications to the basement car park are appropriate, given it would result in a surplus of 3 car spaces above the requirements of Council's DCP – Parking.

It is noted that the proposed amendments do not affect any of the previous comments and conditions issued by the Development Engineer in conjunction with the development approval.

Parking has been discussed in section 10.5 below.

6.3 Design Review Panel

Council's Design Review Panel was required to review this Section 96(2) application as the previous application required review under SEPP 65. The application was considered at the February panel meeting with the following comments being received:

1. Relationship to the Context of the Proposal

As the application relates to minor extensions and internal alterations there is considered to be no impact on the relationship to the context, except for the sense of definition or articulation of the façade along Dudley Street. Refer below to Aesthetics of the proposal.

2. The Scale of the Proposal

NA

3. The Built Form of the Proposal

NA

4. The Proposed Density

NA

5. Resource and Energy Use and Water Efficiency

The insulation to the roof should be carefully designed to maximize comfort levels to the top floor apartments.

6. The Proposed Landscape

The proposal also increases the basement level by extending the floor level on the south west of the basement. The roof of this increased basement area should be dropped so that a maximum soil depth above it can be achieved for landscaping.

7. The Amenity of the Proposal for its Users

The alterations to the rear are considered satisfactory in principle and provide better sized living rooms. It is considered that the edge between the courtyards could be reworked with regard to the wall separating the courtyards in terms of the amenity of the residents. The proposed scheme does not provide the same level of amenity as the approved scheme.

Privacy between the new balcony areas on the north should be attended to.

8. The Safety and Security Characteristics of the Proposal

NA

9. Social issues

NA

10. The Aesthetics of the Proposal

The approved scheme has balconies along Dudley Street at each of the three levels. It is proposed to incorporate the balconies at ground and first floor into the interior of the bedrooms, associated with other internal changes.

It is considered that the proposed change to the façade, on Dudley Street, will be detrimentally affected by the change. Whilst it is considered that the internal changes and the increase in the size of the bedrooms is an acceptable outcome in terms of internal design and amenity it is considered that the loss of the full height windows and the deep reveal on the façade is not acceptable. The design needs to be altered to provide at least a narrow balcony so that there is real set back from the façade. The windows may be screened by a louvred system if required. The windows should be full length so that doors can be opened from the bedroom. If this is considered then the BCA requirements will need to be checked with respect to the depth of the reveal/narrow balcony.

SUMMARY AND RECOMMENDATIONS

It is considered that the overall concept is acceptable subject to a redesign of the Dudley Street elevation to incorporate a deeper reveal/balcony and to resolve the relationship of the rear courtyards on the ground floor.

The applicant has agreed to delete the changes to the balconies on Dudley Street from the application, subject to deletion of the timber louvres from the approved balconies. The comments made in relation to the levels of the rear courtyards and the relationship between the courtyards and communal open space will be addressed by the previously imposed deferred commencement condition 2, which required the following changes to the proposal:

2. *Planter boxes along the northern edge of the ground floor north facing balconies are to be lowered so that they are no higher than 1.3 metres above the level of the communal open space. This is to be achieved by lowering the floor to ceiling height of the carparking level to 2.1 metres for a width of 1.3 metres along the northern edge of the basement parking. Any balustrading required to the balconies is to be provided behind the planter boxes and is to be constructed of timber, glass or other lightweight material to minimise the bulk and scale of the walls and maximise the amenity of the public open space. Appropriate signage warning that the clearance at the end of the parking spaces is low is to be provided and proposed wording and location is to be indicated on the plans submitted to satisfy this condition.*

The Panel also raised concern regarding separation of the extended balconies to the rear of the development on upper levels. The applicant has agreed to construct full height blade walls to address this issue and this has been imposed as an additional condition of consent (see Condition 141). Comment was also made by the Panel in relation to the podium which would result from the extension of the basement. The Panel's suggestion of lowering the slab in this location is difficult to construct from a technical perspective. An appropriate compromise is considered to be the continuation of the approved planter box on the western elevation around the corner to soften the appearance of the podium from the street and surrounding properties (see Condition 142).

7. MASTER PLANNING REQUIREMENTS

As the site is less than 4,000m² in area there is no requirement for a master plan under clause 40A of RLEP98.

8. RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS

The Development application has been assessed in accordance with the provisions of the following relevant planning documents:

- Randwick Local Environmental Plan 1998
- State Environmental Planning Policy 65 – Design Quality of Residential Flat Buildings (SEPP65)
- Multi Unit Housing DCP
- DCP - Parking

a) Randwick Local Environmental Plan 1998

The site is zoned 2(c) under Randwick Local Environmental Plan 1998 and the proposed activity is permissible with Council's consent. The following Clauses of the LEP 1998 apply to the proposal:-

Clause	Requirement	Existing Approval	Proposed Modification	Complies
31 (2)– Landscape Area	50% of site area (615.75m ²)	57% (707.8m ²)	55% (681.3 m ²)	Yes
31 (3)- Landscaped Area over basements (maximum)	Not to exceed 50% of landscaped area requirement (307.87m ²)	41% (292.2m ²)	42% (284.46m ²)	Yes
32 – FSR	0.9:1 (1,108.35m ²)	1.12:1 (1,385.8m ²)	1.18:1 (1,462.38m ²)	No
33 (2)– Building Height	12m	10.7m (lift overrun)	10.7m (lift overrun)	Yes
33 (4)- External Wall Height	10m	10m	10m	Yes

b) State Environmental Planning Policy No. 1

The non-compliance with FSR was originally supported by a SEPP 1 objection. There is no requirement for further SEPP 1 objections in relation to section 96 applications as the development is substantially the same as originally proposed.

The modifications to enlarge the dwellings to provide study areas and enlarged bedrooms to some units would result in an FSR of approximately 1.18:1. As noted by the Design Review Panel, the most significant impact of such an increase is the enclosure of balconies and reduction of articulation on the Dudley Street façade. In order to address these issues, Condition 145 requires that the balconies remain and balconies and as a result the additional FSR proposed would be reduced by 31m² to result in an FSR of approximately 1.16:1 (an increase of 46m². An additional 7m² of this additional floor space is provided in basement storage and will not contribute to the visible bulk of the building above ground level.

The aim of the FSR standard is to reduce the potential for adverse impact on nearby and adjoining development while still providing for reasonable levels of development and redevelopment. Despite the increased FSR as a result of the proposed amendments, the development as modified will not result in any significant additional overshadowing or privacy impacts to surrounding properties as compared to the approved development. The additional floorspace is contained to the rear of the site and will not affect views from surrounding properties or the visual bulk of the building as perceived by the street.

Despite the increased non-compliance with the FSR standard, the proposal maintains the high degree of compliance with Council's controls for landscaping, setbacks and carparking achieved by the existing approval indicating the proposal is not an overdevelopment of the site.

The additional floor space will not result in significant impacts to surrounding properties and will still result in a building which achieves the objectives of the FSR standard.

c) SEPP 65

The development is subject to the provisions of State Environmental Planning Policy No. 65 (SEPP 65) – Design Quality of Residential Flat Buildings. Under the SEPP, Section 96(2) applications where the original application was subject to SEPP 65 are required to be re-assessed in accordance with the ten design quality principles. In accordance with the SEPP a review of the application has been undertaken by Council's Design Review Panel. As discussed under Section 6.3, the issues raised by the Panel can be addressed via conditions consent. The proposal (subject to compliance with conditions of consent) is considered satisfactory with regard to SEPP 65.

8.1 Policy Controls

a. Multi Unit Housing Development Control Plan

The DCP for Multi-Unit Housing states that a proposal is deemed to satisfy the Objectives and Performance requirements of the DCP if it complies with the corresponding Preferred Solutions. Therefore, the tables below assess the proposal against the Preferred Solutions, and where non-compliance results, assessment is made against the relevant Objectives and Performance Requirements.

The minor nature of the modifications requires an assessment of the relevant sections of the DCP as undertaken below:

Performance Requirement	PREFERRED SOLUTION	COMPLIANCE <i>(Whether proposal meets Performance Requirements or Preferred Solutions.)</i>
Building Setbacks		
<p>P3 Rear Boundary Setbacks</p> <p>Ensure that:</p> <ul style="list-style-type: none"> ▪ solar access and overshadowing are minimised. ▪ Privacy between neighbouring dwellings and their open spaces provided. ▪ Landscaping, communal recreation facilities and outdoor clothes drying spaces provided. ▪ Building built across site. 	<p>S3 Zone 2C</p> <p>Minimum average setback 8 metres.</p> <p>No part closer than 6 metres.</p> <p>Maximum length of wall without articulation 10 metres.</p>	<p>Northern Side (rear)</p> <p>Complies 8.72m to 10.81m</p> <p>Complies Minimum 6.5m</p> <p>Complies Maximum 9.9m</p>
Privacy		
<p>P1 Visual Privacy</p> <p>Windows and balconies of main living areas are located to avoid overlooking windows in adjoining dwellings and private open space.</p>	<p>S1 Offset, angle or screen windows with less than 10m separation. Sill level of 1.6 metres above floor level.</p>	<p>Generally Complies. Conditions imposed on original DA where compliance could be improved. Changes to setbacks above will not significantly reduce separation between properties.</p>
<p>P2 Private open space design and location ensure privacy.</p>		<p>Conditioned to comply. Design Review Panel has suggested changes to improve privacy between dwellings in development. Condition proposed to satisfy requirements (See condition 141)</p>
Parking		
Complies. Refer to discussion under <i>DCP - Parking</i>		
Storage		

Performance Requirement	PREFERRED SOLUTION	COMPLIANCE <i>(Whether proposal meets Performance Requirements or Preferred Solutions.)</i>
P1 Accessible and separate storage for each dwelling.	S1 10m ² of storage space is provided for each dwelling. Minimum clearance height of 2.1m. At least 50% of storage space is within dwelling and is readily accessible from either the hallway or main living area. Storage facilities may be in basement areas, or attached to garages .	Conditioned to comply. Plans do not indicate storage to each dwelling due to changes to layout to provide additional parking. Storage spaces for each dwelling can be accommodated and will be imposed via condition of consent (see Condition 144).

b. DCP - Parking

Standard	Requirement	Provided	Compliance
Car Parking a) number	1.5 spaces required for each three bedroom dwelling (1 x 1.5 = 2 spaces)	2 spaces	Yes
	1.2 spaces required for each two bedroom dwelling (9 x 1.2 = 11 spaces)	14 spaces	Yes
	1.0 spaces required for each one bedroom dwelling (3 x 1.0 = 3 spaces)	3 spaces	Yes
	1space/4 dwgs or part thereof for visitors (3 spaces required)	3 spaces	Yes
Total	19 spaces	22 spaces	Yes
Accessible Parking	1 per accessible unit required (0 spaces)	0 spaces	N/A
b) layout	As per DCP.	Adequate turning areas provided.	Yes

Bicycle Storage	1space per 3 units plus 1 visitor space per 10 units (5 bike spaces)	Bike racks indicated in basement. Conditioned to ensure 8 spaces are provided (see Condition 143).	Yes
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As indicated above, the proposal complies with the number of resident, visitor and bicycle spaces required for a development of this size. The proposal will increase the number of stacked spaces in the basement. Condition 2 of the original consent requires that the stacked spaces in the basement are allocated to the 2 and 3 bedroom units to ensure these spaces can be utilised effectively and the allocation shown in the table above reflects this. The labelling of the parking spaces has changed and as such Condition 2 has been amended to reflect the amended layout shown in the plans submitted with this application.

8.1 Council Policies

a) Section 94 Contributions Plan, 1999

The original development has been assessed against Council's Section 94 Contributions Plan. As no new dwellings or bedrooms are proposed there is no need to adjust the Section 94 Contributions as a result of the proposed modifications.

b) Rainwater Tanks Policy, 2003

The modifications do not propose any changes that require assessment against Council's Rainwater Tanks Policy.

9. SECTION 96 AMENDMENT

9.1 Substantially the same

The proposed modifications are considered to be minor in their scope and the proposed increase in the building footprint and FSR will not result in significant additional non-compliances with Council's statutory standards. The proposal will not result in additional dwellings or bedrooms. The modifications will result in a development that is substantially the same as that currently approved. The proposed modifications may therefore be considered under section 96 of the Environmental Planning and Assessment Act.

9.2 Consideration of submissions

No submissions have been received in relation to this application.

10. ENVIRONMENTAL ASSESSMENT

The site has been inspected and the application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act, 1979, as amended.

10.1 Visual and Acoustic Privacy

The extension of all floors 800mm -1.5m towards the rear boundary will not result in significant additional privacy impacts on properties to the rear and adjacent to the development site. The minimum setback will not change as a result of the modification and the average setback will maintain compliance with the preferred solution under the Multi Unit Housing DCP. The Design Review Panel has indicated that the additional area provided by the increases will allow for larger living areas, which is of additional benefit to the amenity of the dwellings.

Windows on the eastern elevation have been relocated as a result of layout changes to the dwellings. The windows retain their approved size and general location and this change will not result in any additional privacy impacts to dwellings across Asher Street.

On the western elevation, windows have been added at the first and second floor level to the proposed studies. The plans indicate the window will be directly in front of the main work space of the study. This has the potential to result in sustained overlooking of the adjoining property to the west. A condition of consent has been proposed to provide obscure glazing below 1.5m above finished floor level to prevent outlook from a seated position in the study to the adjoining property to the west.

As a result of the extension of the rear balconies northwards, there is greater overlapping of the balconies of adjacent tenancies within the development. This has the potential to compromise the privacy of the balcony areas and the security of the units. The Design Review Panel has also raised this concern. In order to address this issue the applicant has suggested full height blade walls between the affected balcony areas. This change has been incorporated as an additional condition of consent (see Condition 141).

The proposed modifications (subject to compliance with conditions of consent) are satisfactory with regard to visual and acoustic privacy.

10.2 Landscaping and Private Open Space

The proposal will increase the basement footprint of the building by approximately 20m². While this change will not substantially reduce the landscaping provision on the site nor the compliance of the development with Council's landscaping standards it will result in additional podium areas on the western side of the development which have not been addressed in the submitted plans. Bare podium areas can be visually intrusive and detract from the streetscape presentation of developments. In order to address this issue the applicant has agreed to continue the above podium planting from the northwestern corner of the building along the western elevation to the south western corner of the building to provide planting to this new podium area. This is considered to be satisfactory in terms of alleviating the visual bulk and potential impact on the street and surrounding properties. Condition 142 has been recommended to address this issue.

Balconies and private open spaces to the development will remain at the sizes previously approved or slightly enlarged. There will be no reduction in the amenity of the private open spaces provided to the dwellings.

Subject to compliance with conditions of consent, the proposed modifications are satisfactory with regard to landscaping.

10.3 Amenity

The proposed inclusion of the study areas to all units will not result in any significant amenity impacts as a result of the extension of the building to the rear and will improve the amenity of the dwellings without significantly increasing of the development. The study areas are open in design and would not be easily adapted to use for bedrooms.

The internal layout modifications to kitchen and bathroom layouts and consequent changes to skylights of the second floor units will be beneficial in terms of amenity of the development and will not result in any increase in height, FSR or substantial changes to the external appearance of the building.

The applicant has provided 10 storage areas as a result of the re-organisation of the basement areas to provide additional parking. This does not comply with the Multi Unit Housing DCP, which requires a storage space for each dwelling. The applicant has advised additional storage areas can be provided under the westernmost stair, in the room marked as 'services' on the plans which is no longer required and by dividing Storage area 8 into 2 spaces. These changes will provide 13 storage areas of adequate size and this requirement has been included as a condition of consent (see Condition 144).

The proposed internal changes to the building are satisfactory.

10.4 Streetscape Appearance

The extension of the ground and first floor bedrooms towards Dudley Street by enclosing approved balconies is not supported as it will provide a more bulky presentation to the street, minimise opportunities for casual surveillance of the street and will reduce opportunities for light and ventilation. The bedrooms are sufficiently sized as approved and further extension resulting in the loss of the balcony areas which provided articulation to the elevation is considered unreasonable. The applicant has agreed to remove this change from the application (via condition of any consent granted), subject to removal of the timber louvres from the balconies. The removal of the louvres is not significant in this instance, as the balconies face south and will not require substantial shading. In addition, the deep recess and elevation of the balconies from the street will prevent overlooking of the balconies and bedrooms from the street and minimise the potential for security issues, further reducing the need for the louvres. The removal of the louvres from the balconies is likely to lighten the elevation to the street further and reduce the visual bulk and scale of the development as viewed from the street and as such is supported.

The enclosure of the ground and first floor south facing balconies is not supported and a condition clarifying that these elements are to remain as per the original approval has been recommended (see Condition 145).

10.5 Traffic and Parking

The proposed modifications will provide an additional 3 carparking spaces on the site without significantly reducing the landscape provision. The additional three spaces will be allocated to two bedroom units as they are provided in a stacked or tandem arrangement. Bicycle parking has also been provided in the basement (which will be conditioned to provide 8 spaces in accordance with Council's DCP requirement) to assist in encouraging use of sustainable modes of transport. Many of the submissions received from surrounding residents in relation to the original application considered that the parking provision (whilst complying with the DCP requirement) was insufficient for the density of development and the proximity of the site to Coogee. While the parking is not required under the DCP and the site is well serviced by public transport, there will be minimal additional impacts in providing additional parking to the development and therefore the parking provision is supported.

11. FINANCIAL IMPACT STATEMENT

There is no direct financial impact for this matter.

12. CONCLUSION

It is considered that the proposed modifications to the parking, floor area, internal layout and fenestration of the development are satisfactory. The modification does not result in any addition to the maximum height of the development or significant decrease in landscaping and the development as modified will be substantially the same as the approved scheme.

The removal of balconies from the southern elevation of the site in favour of increased floor area is not supported as it will detract from the streetscape quality of the building and the articulation and visual relief of the façade to Dudley Street.

As such the application is recommended for approval (with the exception of the removal of balconies from the southern elevation) subject to imposition of conditions of consent.

RECOMMENDATION:

- A. THAT Council as the responsible authority grant its consent under Section 96 of the Environmental Planning and Assessment Act 1979 (as amended) to Modify Development Consent No. 68/2005 on property 47-53 Dudley Street, Coogee in the following manner:

- **Amend Condition Nos. 1, 2 and 64 to read:**

1. The development must be implemented substantially in accordance with Revision C of the plans drawn by CSA Architects and numbered LEY-01 through to LEY-09,

dated 22/06/05 and stamped received by Council on 30 June 2005, the landscape plan prepared by Taylor Brammer numbered Revision A of LA01 dated 21.01.05 and stamped received by Council on 4 February 2005, the Flood Assessment Verification Report (including revised pages 1-4) prepared by AKY Civil Engineering dated December 2004 and stamped received by Council on 4 February 2005, the draft subdivision plans in 4 sheets Surveyor's Reference 031002 DSP drawn by Denny Linker & Co and stamped received by Council on 4 February 2005, the application form and on any supporting information received with the application, except as may be amended by the Section 96 plans drawn by CSA Architects, Issue E of the plans numbered LEY-01 to LEY-09 dated 6 December 2005 all stamped received by Council on 7 December 2005, only in so far as they relate to the modifications highlighted on the Section 96 plans and detailed in the Section 96 application, except as may be amended by the details submitted to satisfy the deferred commencement conditions and the following conditions and as may be shown in red on the attached plans:

2. Parking spaces are to be allocated as follows:

Unit	Parking Spaces
1	17, 18
4	12, 22
11	15, 20
12	16, 19
13	13, 21

on the plans submitted for Construction Certificate and Strata Subdivision Certificate approval. All other units are to be allocated a minimum of 1 space. This condition is imposed to ensure the proper use of the stacked parking spaces.

64. Noise and vibration from any rock excavation machinery and pile drivers (or the like) must be minimised by using appropriate plant and equipment and silencers and a construction noise and vibration minimisation strategy, prepared by a suitably qualified consultant is to be implemented during the works, to the satisfaction of the Principal Certifying Authority.

- **Add the following conditions:**

141. The common wall between Units 5 and 6, 10 and 11 is to be extended 1.3m northwards to protect the adjacent balconies of these dwellings from visual privacy impacts. The common wall between Units 8 and 9, 12 and 13 is to be extended 1.0m northwards to protect the adjacent balconies of these dwellings from visual privacy impacts. Details are to be included in plans submitted with the Construction Certificate application.
142. The planter box on the western side of the development is to be extended over the area of the basement in the southwestern corner of the site highlighted in green on approved basement plan Revision E of LEY-01. This condition is imposed to soften the visual impact of the development and maintain the landscaped character of the site. Details are to be provided with the Construction Certificate application.

143. A minimum of eight (8) secure bicycle spaces are to be provided in the basement of the development.
144. Thirteen (13) storage spaces are to be provided in the basement of the development. In addition to the spaces shown on the approved basement plan Revision E of LEY-01, storage spaces are to be provided under the westernmost stair, in the room marked 'Services' on that plan and Space 8 is to be equally divided in two to achieve a total of 13. Details are to be provided with the Construction Certificate application.
145. The proposed enclosure of the front (south) facing balconies of Units 1,4,5,7 and 9 and enlargement of adjacent bedrooms shall be deleted from the plans and these areas are to remain as per the approved plan Revision D of drawings LEY-02 and LEY-03 dated 22 September 2005. The approved timber louvres on these balconies may be deleted.
146. The sill height of the west facing windows to the studies on Levels 1 and 2 of the building are to be increased to be a minimum height of 1.5m above finished floor level, or alternatively, the windows are to be fixed and provided with translucent, obscured, frosted or sandblasted glazing below 1.5m above finished floor level.

ATTACHMENT/S:

Nil

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SIMA TRUUVERT
DIRECTOR, CITY PLANNING


.....
RACHEL AITKEN
SENIOR ASSESSMENT OFFICER

Development Application Report

REPORT BY:	DIRECTOR, CITY PLANNING
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DATE:	27 February, 2006	FILE NO:	DA 1051/05
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PROPOSAL:	Alterations and additions to existing dwelling including new upper level deck and swimming pool.
PROPERTY:	40 Hughes Avenue Maroubra
WARD:	South Ward
APPLICANT:	K Koepl
OWNER:	K & L Koepl

	Subject Site
	Submissions received
	 North
	LOCALITY PLAN

1. EXECUTIVE SUMMARY

The application details alterations and additions to the existing dwelling house including a new upper level deck to the front of the dwelling. The proposal also includes the construction of a study at first floor level, the extension of the existing ground rear family room, the installation of an in ground swimming pool in the front yard and the erection of a small deck off the rear ground floor family room.

The application is referred to Council for determination at the request of Councillor's Woodsmith, Matson and Hughes.

The main issues are the loss privacy to the adjoining properties and the bulk and scale of the building and the impact upon the amenity and outlook of the adjoining properties.

The application is recommended for approval subject to conditions.

2. THE PROPOSAL

It is proposed to remove the existing carport roof and erect a trafficable roof deck in its place, construct a study at first floor level, extend the existing ground rear family room, install an inground swimming pool in the front yard and erect a small deck off the rear ground floor family room. The proposed works will provide for an additional 18m² of floor area to the dwelling.

3. THE SUBJECT SITE AND SURROUNDING AREA:

The subject site is located on the southern side of Hughes Avenue adjacent to the corner of Broome Street and is presently occupied by an existing two storey dwelling which is sited up to the western side boundary and is sited up to 375mm from the eastern side boundary. The site has a frontage width of 8.655m, a side boundary depth of 28.09m and has an overall site area of 233m², the site falls from the rear towards the street with a difference in level of up to 1.5m. Neighbouring the property are predominantly two storey dwellings which have all been modified to some extent and were originally erected as a group of dwellings in the late 1960's.

4. SITE HISTORY

A previous development application DA 257/05 which detailed alterations and additions to the dwelling was refused for the following reasons;

1. *The proposal does not comply with the Objectives and Performance Requirements of the Development Control Plan for Dwellings and Attached Dual Occupancies with respect to landscaping in that the conversion of the whole front yard area into hard landscaping does not retain the existing landscaping and will not facilitate infiltration of stormwater.*
2. *The proposal does not comply with the Objectives and Performance Requirements of the Development Control Plan for Dwellings and Attached Dual Occupancies with respect to floor area in that the development will be excessive in bulk and scale and will not minimise adverse effects of bulk on the neighbours.*

3. *The proposal does not comply with the Objectives and Performance Requirements of the Development Control Plan for Dwellings and Attached Dual Occupancies with respect to building setbacks in that the front and side boundary setbacks of the addition will not integrate with the established setbacks of the street and adjoining premises and will not maintain adequate access to natural light, daylight and fresh air.*
4. *The proposal does not comply with the Objectives and Performance Requirements of the Development Control Plan for Dwellings and Attached Dual Occupancies with respect to visual and acoustic privacy in that the new deck to the front of the premises will allow for the direct overlooking of the adjoining premises which will result in a severe loss of privacy to the adjoining premises.*
5. *The proposal does not comply with the Objectives of Clause 10 of the Randwick LEP 1998 in that the development does compromise the amenity of the surrounding premises.*

As a result of that refusal the owners have met with Council Officers to discuss an amended proposal and this application has been lodged for consideration. This application differs from the application which was refused in that the upper level side boundary setbacks of the proposed deck and study have been increased to 970mm from the western side and 1570mm from the eastern side boundary respectively.

5. COMMUNITY CONSULTATION:

The proposal has been notified in accordance with the DCP – Public Notification . The following submissions were received:

5.1 Objections

E F Manning of 128 Broome Street Maroubra

<p>There is no change to the size of the wall (in comparison with the previous application) which will take up almost the entire width of their property and affect views to the north west.</p>	<p>The actual length of the proposed walls to the front and rear addition are at the same length as originally proposed, however the setback of the upper level addition to the front of the dwelling is set back 1570mm from the boundary of the objectors property. There will be an impact upon the outlook view towards the north, however the views to the west across the rear of the subject property remain primarily unaffected.</p>
<p>What is the justification for a building of this size and it's proximity to so many neighbours.</p>	<p>Most of the dwellings in this locality are relatively large dwellings on small allotments of land with many dwellings being sited much closer than the standard 900mm side boundary setback, with some dwellings, including this one being sited up to one or both boundaries. The nature of this proposed development will result in a building with a bulk and scale and siting on</p>

	the allotment that is not incompatible with the surrounding development.
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J Clifford of 38 Hughes Avenue Maroubra

Issue	Comment
The proposed deck will result in a loss of privacy in that anyone on that deck will be able to look directly into her bedroom and bathroom.	A condition of consent is included to reduce the depth of the balcony to a maximum of 2m, which in combination with the side boundary setback of 970mm and the 1800mm high louvre privacy screen will maintain privacy to the objector's property.
There have already been a number of approved additions to this dwelling and is there any limit to the number of additions which may be undertaken to a dwelling.	Each application is assessed on its own merits and there is no limit on the number of applications that can be lodged for one premises, however the cumulative impact of incremental additions is taken into account.

ABC Planning Pty Ltd on behalf of Mrs Clifford of 38 Hughes Avenue Maroubra

Issue	Comment
The proposal does not comply with the objectives of the LEP in that it will have a detrimental effect upon the amenity of the adjoining premises.	It is considered that the proposal subject to conditions, including the reduction in size of the deck to the front of the dwelling will not result in such a significant detrimental impact upon the amenity of the adjoining properties and therefore the objectives of the relevant clauses of the LEP are satisfied.
The proposed works do not comply with the DCP for Dwellings and Attached Dual Occupancies in relation to soft landscaping.	The proposal does not alter the extent of the existing soft landscaping in the rear yard and a new garden bed is proposed within the existing paved courtyard within the front yard.
The proposed floor space ratio of the dwelling exceeds the maximum allowable of 0.65:1.	The existing dwelling and most of the adjoining dwellings already exceed the maximum preferred solutions of the DCP for Dwellings, and having regard to the bulk and scale of the adjoining dwellings it is considered that the dwelling will not be inconsistent with the bulk and scale of the adjoining dwellings and therefore the objectives and performance requirements of the DCP for Dwellings are satisfied.
The proposed front setback to the dwelling is inadequate and will cause negative amenity impacts upon the adjoining premises with respect to overshadowing,	A condition of consent is recommended to reduce the depth of the upper level deck at the front of the dwelling from 4.5m to 2m which will reduce the impact upon the

loss of light, overlooking and privacy.	adjoining property at 38 Hughes Avenue.
The proposal does not meet the objectives of the DCP in that there will be an impact upon visual and acoustic privacy.	As discussed the recommended reduction in depth of the upper level deck will restrict the use of the deck and reduce the potential for loss of privacy.
In conclusion the application fails to satisfy the local planning controls and therefore should be refused.	On balance subject to a condition to reduce the depth of the upper level deck it is considered that the overall development is not unreasonable and is recommended for approval.

6 RELEVANT ENVIRONMENTAL PLANNING INSTRUMENTS

The Development application has been assessed in accordance with the provisions of the following relevant planning documents:

Randwick Local Environmental Plan 1998

The site is zoned 2A under Randwick Local Environmental Plan 1998 and the proposed activity is permissible with Council's consent.

7 ENVIRONMENTAL ASSESSMENT

The site has been inspected and the application has been assessed having regard to Section 79C of the Environmental Planning and Assessment Act, 1979, as amended.

7.1 Randwick LEP 1998 Amendment No.36

Clause 10

The objectives of this clause of the LEP, as amended, include that within 2A zones the amenity and characteristics of low density residential is enhanced and that such development is compatible with surrounding development. The proposed alterations and additions to the dwelling are not inconsistent with the objectives of the LEP as the resultant development would be visually compatible in bulk and scale with neighbouring development and will not adversely impact on the amenity of adjoining and neighbouring properties.

7.2 Development Control Plans

Development Control Plan - Dwelling Houses and Attached Dual Occupancies

The DCP for Dwelling Houses and Attached Dual Occupancies states that a proposal is deemed to satisfy the Objectives and Performance Requirements of the DCP if it complies with the corresponding Preferred Solutions. Therefore, the tables below assess the proposal against the Preferred Solutions, and where non-compliance results, assessment is made against the relevant Objectives and Performance Requirements.

Landscaping

	<i>Preferred Solution</i>	<i>Assessment</i>
S1	40% of the total site area is provided as landscaped area.	At present 35% of the site is landscaped area and this is not being further reduced by the proposal.
S6	20% of the total site area has permeable treatment.	At present less than 5% of the site is permeable, and the proposal increases the permeable area to approximately 10%.

The Objectives of the DCP with regard to landscaping are that existing significant trees and landscaping are retained and enhanced; dwellings are provided with usable outdoor recreation space; storm water management and the appearance, amenity and energy efficiency of the dwelling is improved through integrated landscape design; and the native wildlife populations are preserved and enhanced through appropriate planting of indigenous vegetation.

The Performance Requirements are that the size and dimensions of landscaping suit the needs of the occupants; location and design of open space takes advantage of aspect for year round use; indigenous species are used and existing vegetation is recycled where possible; planting does not obstruct or interfere with entries; and unpaved areas are maximised to allow stormwater infiltration.

There are no objections to the proposal not complying with the landscaping preferred solutions in that the extent of existing landscaping is not being reduced and the amount of soft landscaping, whilst not complying is being increased from that existing.

With respect to the position of the swimming pool within the front yard area, there are no objections in that there is an existing 1800mm high masonry wall to the front boundary and the swimming pool and users will be screened from the street.

Floor Area

	<i>Preferred Solution</i>	<i>Assessment</i>
S1	The preferred solution for an allotment of this area is that a maximum floor space ratio of 0.65:1 applies.	The proposed FSR is 0.74:1. Does not comply – see assessment below.

The Objectives and Performance Requirements of the DCP are that developments are not excessive in bulk or scale; are compatible with the existing character of the locality; and minimise adverse effects of bulk on neighbours and the street.

There are no major objections to the proposed floor space exceeding the preferred solutions of the DCP in that the existing and adjoining buildings already exceed these preferred solutions and given the nature of the surrounding development which includes two and three storey dwellings of similar bulk and scale it is considered that the objectives and performance requirements of the DCP are satisfied.

Height, Form & Materials

	<i>Preferred Solution</i>	<i>Assessment</i>
S1	External wall height of the building not exceed 7m	The proposed dwelling has a maximum external wall height of 5.8metres. Complies.

Building Setbacks

	<i>Preferred Solution</i>	<i>Assessment</i>
S3	Side setbacks be 900mm for any part of the building at ground level.	The proposed addition to the rear of the dwelling is sited up to 375mm from the eastern side boundary which does not comply with the preferred solution minimum of 900mm.
S3	Side setbacks be 1500mm at second floor level.	The proposed second floor level setback to the eastern side boundary is 1570mm and 970mm to the western side.

The Objectives and Performance Requirements of the DCP seek to ensure that there is adequate access to sunlight, daylight and fresh air to building occupants and neighbours; and with respect to front boundary setbacks the proposal generally conform to the adjoining development or dominant streetscape.

There are no major objections to the eastern side boundary setback at ground level not complying with the preferred solution minimum in that the wall is a continuation of the existing eastern wall at that setback for approximately 2m, and the additional overshadowing from this small extension of the wall would be negligible given the orientation of the site and the fact that the additional shadow would fall within that already cast by the existing upper level of the building.

With respect to the second floor level setback to the western side boundary this is 970mm which does not comply with the preferred solution minimum of 1500mm. It is not considered that there will be any significant adverse impact upon the amenity of the adjoining premises as a result of the setback of 970mm in that the deck is essentially an open structure and is not roofed and a condition of consent is recommended to reduce the depth of the deck to a maximum of 2m.

Subject to the reduction in the size of the upper level deck, the proposal will meet the objectives and performance requirements of the DCP – Dwelling Houses.

Visual & Acoustic Privacy

The Objective of the DCP is to ensure that new buildings and additions meet the occupant and neighbours requirements for visual and acoustic privacy.

The Performance Requirements include that overlooking of internal private living areas is minimised through appropriate building layout, location and design of windows and

balconies; and separation, screening devices and landscaping be used to assist in minimising privacy impacts.

The proposal includes the removal of the existing carport roof and the replacement with in part a new metal deck roof and fibre cement sheeting with tiles above to form a new deck to the front of the dwelling. The deck as proposed has dimensions of 3.53m x 4.4m and is sited 970mm from the western side boundary. It is considered that a deck of those dimensions sited this close to the side boundary has the potential to result in a both a nuisance to the adjoining property and loss of privacy. The reduction of the depth of the balcony to a maximum of 2m will significantly reduce the potential for loss of privacy and any nuisance that would be caused by the use of the deck for entertaining and a condition to reduce the depth of the deck to a maximum of 2m as measured from the front of the building is included in the recommendation. The resulting deck will also be consistent with the depth of balconies and decks to the front of other dwellings in this group. The deck already includes a timber privacy screen having a total height of 1800mm to the western side boundary which will restrict overlooking into the adjoining property.

Subject to the proposed condition restricting the size of the deck, the proposal will satisfy the objectives and performance requirements of the DCP for Dwellings Houses.

Solar Access and Energy Efficiency

	<i>Preferred Solution</i>	<i>Assessment</i>
S2	Private open space receives at least 3 hours sunlight over part of its area between 9am and 3pm on 21 June.	The rear yard will receive at least 3 hours of sunlight. Complies.
S2,8	North-facing windows to living areas receive at least 3 hours sunlight over part of its area between 9am and 3pm on 21 June.	The proposal includes north-facing windows that will receive at least 3 hours of sunlight. Complies.
S9	Solar access to existing or future solar collectors on adjacent buildings is maintained between 9am and 3pm each throughout the year.	The proposal will not overshadow solar collectors on adjoining properties. Complies.
S9	North-facing windows to living areas of neighbouring dwellings receive at least 3 hours sunlight over part of its area between 9am and 3pm on 21 June. If currently less than 3 hours, it is not further reduced.	The proposal will not reduce solar access to less than 3 hours on north-facing windows. Complies.
S9	Principal outdoor recreation space of neighbouring dwellings receive at least 3 hours sunlight over part of its area between 9am and 3pm on 21 June. If currently less than 3 hours, it is not further reduced.	The proposal will not reduce solar access to private open space to less than 3 hours. Complies.

8 CONCLUSION

The proposal subject to the reduction in the size of the proposed deck will comply with the relevant assessment criteria and the objectives and performance requirements of the DCP for Dwellings and Attached Dual Occupancies and will not result in any adverse impacts upon either the amenity of the adjoining premises or the character of the locality.

RECOMMENDATION:

THAT Council as the consent authority, grant development consent under Section 80 and 80A of the Environmental Planning and Assessment Act 1979 (as amended) to Development Application No.1051/2005 for permission to carryout alterations and additions to the dwelling at 40 Hughes Avenue Maroubra including the removal of the existing carport roof and replacement with a trafficable deck, construct a study to the front of the dwelling at first floor level, extend the existing rear ground level family room including a new deck to the family room and install an in ground swimming pool within the front yard subject to the following conditions: -

The following conditions are applied to satisfy the provisions of section 79C of the Environmental Planning and Assessment Act 1979 and to maintain reasonable levels of environmental amenity:

1. The development must be implemented substantially in accordance with the plans numbered DA-01 to DA-12 inclusive, dated December 2005 and received by Council on the 20th December 2005, the application form and on any supporting information received with the application, except as may be amended by the following conditions and as may be shown in red on the attached plans:
2. The colours, materials and finishes of the external surfaces to the building are required to match as closely as possible the existing building.

Details of the proposed colours, materials and textures (i.e. a schedule and brochure/s or sample board) are to be submitted to and approved by Council's Director of City Planning, in accordance with section 80A (2) of the *Environmental Planning and Assessment Act 1979* prior to a construction certificate being issued for the relevant building works.

- 3 The design, materials and colour of the roofing to the proposed building/s are required to match, as closely as possible, the existing roof.
- 4 Metal roof sheeting is to be painted or colour bonded to minimise reflection and to be sympathetic and compatible with the building and surrounding environment.
- 5 There must be no encroachment of any part of the structures onto the adjoining premises or onto Council's road reserve, footway or public place and a registered surveyor is to accurately establish the property boundaries prior to the commencement of any building works.

- 6 No cooking facilities or sanitary fittings other than those indicated on the approved plans are to be installed in the premises without the prior written consent of the Council.
7. The proposed upper level deck to the front of the dwelling shall be reduced in depth to a maximum of 2m as measured from the existing upper level northern façade to reduce the potential for overlooking of the adjoining properties. The remaining roof to the carport shall be non trafficable and a continuation of the proposed new metal deck roof. Plans accompanying the Construction Certificate are to be amended accordingly.

The following conditions are imposed to promote ecologically sustainable development and energy efficiency.

- 8 The consumption of water within the building shall be minimised by the use of triple A rated water efficient plumbing fixtures (taps and shower roses) and water efficient dual flush toilets. Details of compliance are to be noted in the **construction certificate** plans or specifications.
- 9 New external timber or metal framed and brick veneer walls and roofs are to be provided with insulation (i.e. bulk insulation and a reflective building membrane/reflective sarking/foil insulation), having a minimum total thermal resistance R-value of 3.0 in roofs and 1.5 in external walls. The insulation and reflective building membrane is to be installed in accordance with the relevant requirements of the Building Code of Australia and the manufacturers details.

Details of compliance with the requirements for insulation are to be included in the **construction certificate** application.
- 10 New hot water service pipes are to be provided with insulation and must also satisfy any relevant requirements of Building Code of Australia and AS 3500.

The following group of conditions have been applied to ensure that adequate drainage is provided from the premises and to maintain adequate levels of health and amenity in the locality:

- 11 Surface water/stormwater must be drained and discharged to the street gutter or suitably designed absorption pit, to the satisfaction of the Certifying Authority and details are to be included in the construction certificate application for the development.

Absorption pits must be located not less than 3m from any adjoining premises and the stormwater must not be directed or flow onto any adjoining premises or cause a nuisance.

Details of any works proposed to be carried out in or on a public road/footway are to be submitted to and approved by Council prior to commencement of works.

The following conditions are applied to ensure that the development satisfies the provisions of the Environmental Planning and Assessment Act 1979 and Regulations:

- 12 The requirements and provisions of the Environmental Planning & Assessment Act 1979 and Environmental Planning & Assessment Regulation 2000, must be fully complied with at all times.

Failure to comply with these legislative requirements is an offence and may result in the commencement of legal proceedings, issuing of `on-the-spot` penalty infringements or service of a notice and order by Council.

- 13 All new building work must be carried out in accordance with the provisions of the **Building Code of Australia** (BCA), in accordance with Clause 98 of the *Environmental Planning and Assessment Regulation 2000*.

- 14 **Prior to the commencement of any building works**, a construction certificate must be obtained from the Council or an accredited certifier, in accordance with the provisions of the Environmental Planning & Assessment Act 1979 and Environmental Planning & Assessment Regulation 2000.

- 15 **Prior to the commencement of any building works**, the person having the benefit of the development consent must: -

- i) appoint a *Principal Certifying Authority* for the building work; and
- ii) appoint a *principal contractor* for the building work, or in relation to residential building work, obtain an *owner-builder* permit in accordance with the requirements of the Home Building Act 1989, and notify the *Principal Certifying Authority* and Council accordingly in writing; and
- iii) unless the person having the benefit of the consent is the *principal contractor* (i.e. *owner-builder*), notify the *principal contractor* of the required *critical stage inspections* and other inspections to be carried out, as specified by the *Principal Certifying Authority*; and
- iv) give at least two days notice to the Council, in writing, of the persons intention to commence building works.

In relation to residential building work, the principal contractor must be the holder of a contractor licence, in accordance with the provisions of the Home Building Act 1989.

- 16 The building works must be inspected by the *Principal Certifying Authority* (or another *certifying authority* if the *Principal Certifying Authority* agrees), in accordance with sections 109 E (3) of the Environmental Planning & Assessment Act 1979 and clause 162A of the Environmental Planning & Assessment Regulation 2000, to monitor compliance with the relevant standards of construction, Council's development consent and the construction certificate.

The *Principal Certifying Authority* must specify the relevant stages of construction to be inspected in accordance with section 81A (2) (b1) (ii) of the Environmental Planning & Assessment Regulation 2000 and a satisfactory inspection must be carried out, to the satisfaction of the *Principal Certifying Authority*, prior to proceeding to the subsequent stages of construction or finalisation of the works (as applicable).

Documentary evidence of the building inspections carried out and details of compliance with Council's consent is to be maintained by the *Principal Certifying Authority*. Details of *critical stage inspections* carried out and copies of certification relied upon must also be forwarded to Council with the *occupation certificate*.

The *principal contractor* or *owner-builder* (as applicable) must ensure that the required critical stage and other inspections, as specified in the *Principal Certifying Authority's* "Notice of Critical Stage Inspections", are carried out to the satisfaction of the *Principal Certifying Authority* and at least 48 hours notice (excluding weekends and public holidays) is to be given to the *Principal Certifying Authority*, to carry out the required inspection, before carrying out any further works.

- 17 A sign must be erected and maintained in a prominent position on the site, which contains the following details:
- name, address, contractor licence number and telephone number of the *principal contractor*, including a telephone number at which the person may be contacted outside working hours, or *owner-builder* permit details (as applicable);
 - name, address and telephone number of the *Principal Certifying Authority*; and
 - a statement stating that "unauthorised entry to the work site is prohibited".
- 18 An **Occupation Certificate** must be obtained from the Principal Certifying Authority **prior to any occupation of the building work** encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the Environmental Planning & Assessment Act 1979.

An Occupation Certificate must not be issued for the development if the development is inconsistent with the development consent. The requirements of the Environmental Planning & Assessment Act 1979 and conditions of development consent must be satisfied prior to the issuing of an occupation certificate.

- 19 **Prior to the issuing of an interim or final occupation certificate**, a statement is required to be obtained from the Principal Certifying Authority, which confirms that the development is not inconsistent with the development consent and the relevant conditions of development consent have been satisfied.

Details of *critical stage* inspections carried out by the principal certifying authority together with any other certification relied upon and must also be provided to Council with the occupation certificate.

- 20 In accordance with clause 98 of the Environmental Planning and Assessment Regulation 2000, it is a prescribed condition, that in the case of residential building work, a contract of insurance must be obtained and in force, in accordance with the provisions of the Home Building Act 1989.

Where the work is to be done by a licensed contractor, excavation or building work must not be carried out unless the Principal Certifying Authority (PCA): -

- has been informed in writing of the licensee's name and contractor number; and
- is satisfied that the licensee has complied with the insurance requirements of Part 6 of the *Home Building Act 1989*, or

Where the work to be done by any other person (i.e. an *owner-builder*), excavation or building work must not be carried out unless the Principal Certifying Authority: -

- has been informed of the person's name and *owner-builder* permit number; or
- has been given a declaration, signed by the owner of the land that states that the market cost of the labour and materials involved in the work does not exceed \$5,000.

Details of the principal building contractor and compliance with the provisions of the *Home Building Act 1989* (i.e. *Details of the principal licensed building contractor and a copy of the Certificate of Insurance*) are to be submitted to Council **prior to the commencement of works**, with the notice of appointment of the PCA / notice of intention to commence building work.

- 21 he required Long Service Levy payment, under the Building and Construction Industry Long Service Payments Act 1986, is to be forwarded to the Long Service Levy Corporation or the Council, **prior to the issuing of a Construction Certificate**, in accordance with Section 109F of the Environmental Planning & Assessment Act 1979.

At the time of this development consent, Long Service Levy payment is applicable on building work having a value of \$25,000 or more, at the rate of 0.35% of the cost of the works.

- 22 Smoke alarms are required to be installed in each Class 1 building or dwelling in accordance with the relevant provisions of Part 3.7.2 of the B.C.A. – Housing Provisions.

Smoke alarms must comply with AS3786 – Smoke alarms and be connected to the consumer mains electric power supply and provided with a battery back-up.

The smoke alarms are to be installed in suitable locations on or near the ceiling, in any storey containing bedrooms; located between each part of the dwelling containing the bedrooms and the remainder of the dwelling, or where bedrooms are served by a hallway, the smoke alarms are to be located in that hallway; and smoke alarms are to be installed in any other storey not containing bedrooms, to the satisfaction of the certifying authority.

Smoke alarms are not to be located in 'dead-air-spaces', in the corner junction of walls and ceilings between exposed rafters/joists or at the apex of raked ceilings, as detailed in Part 3.7.2 of the Building Code of Australia – Housing Provisions.

Details of compliance with the provisions of the Building Code of Australia must be included in the plans/specification for the **construction certificate**.

The following conditions are applied to ensure that the development satisfies relevant standards of construction, and to maintain adequate levels of health, safety and amenity during construction:

- 23 Demolition work is to be carried out in accordance with the provisions of AS2601-1991. The Demolition of Structures, as in force at 1 July 1993.
- 24 A copy of the construction certificate, the approved plans & specifications and development consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.
- 25 All excavations and backfilling associated with the erection or demolition of a building must be executed safely in accordance with appropriate professional standards and excavations are to be properly guarded and supported to prevent them from being dangerous to life, property or buildings.
- 26 All building, demolition and associated site works must only be carried out between the hours of 7.00am to 5.00pm on Monday to Friday inclusive, between 8.00am to 5.00pm on Saturdays and all building activities are strictly prohibited on Sundays and public holidays, except with the specific written authorisation of Council's Manager of Environmental Health and Building Services.
- 27 Noise and vibration emissions during the construction of the building and associated site works must not result in damage to nearby premises or result in an unreasonable loss of amenity to nearby residents and the relevant provisions of the *Protection of the Environment Operations Act 1997* must be satisfied at all times.
- 28 Public safety and convenience must be maintained at all times during demolition, excavation and construction works.

The roadway, footpath and nature strip must be maintained in a good, safe condition and free from any obstructions, materials, soils or debris at all times. Any damage caused to the road, footway or nature strip must be repaired immediately, to the satisfaction of Council.

A Road Opening Permit must be obtained from the Council and other relevant Authorities prior to excavating or opening-up the road or footway for services or the like.

- 29 Building materials, sand, soil, waste materials or construction equipment must not be placed upon the footpath, roadway or nature strip at any time and the footpath, nature strip and road must be maintained in a clean condition and free from any obstructions, soil and debris at all times.
- 30 Bulk bins/waste containers must not be located upon the footpath, roadway or nature strip at any time without the prior written approval of the Council, unless the waste container is located upon the road in accordance with the Roads & Traffic Authority Guidelines and Requirements, and the container is exempt from an approval under Development Control Plan for Exempt & Complying Development and Council's Local Approvals Policy. Applications to place a waste container in a public place can be made to Council's Building Services section.
- 31 During construction stages, sediment laden stormwater run-off shall be controlled using the sediment control measures outlined in the manual for Managing Urban Stormwater – Soils and Construction, published by the NSW Department of Housing
- 32 Stockpiles of soil, sand, aggregate or other materials must not be located on any footpath, roadway, nature strip, drainage line or any public place and the stockpiles must be protected with adequate sediment control measures.

Building operations such as brick cutting, washing tools or equipment and mixing mortar are not permitted on public footpaths, roadways, nature strips, in any public place or any location which may lead to the discharge of materials into the stormwater drainage system.

A warning sign for soil and water management must be displayed in a prominent position on the building site, visible to both the public and site workers. The sign must be displayed throughout the construction period. Copies of a suitable warning sign are available at Council's Customer Service Centre for a nominal fee.

- 33 Public safety must be maintained at all times and public access to the site and building works, materials and equipment on the site is to be restricted, when work is not in progress or the site is unoccupied.

A temporary safety fence is to be provided to protect the public, located to the perimeter of the site (unless the site is separated from the adjoining land by an existing structurally adequate fence, having a minimum height of 1.5 metres). Temporary fences are to have a minimum height of 1.8 metres and be constructed of cyclone wire fencing, with geotextile fabric attached to the inside of the fence to provide dust control, or other material approved by Council.

Temporary site fences are to be structurally adequate, safe and be constructed in a professional manner and the use of poor quality materials or steel reinforcement mesh as fencing is not permissible.

The public safety provisions and temporary fences must be in place **prior to the commencement of any demolition, excavation or building works** and be maintained throughout construction.

If it is proposed to locate any site fencing, hoardings or amenities upon a footpath or public place, the written consent from Council's Building Services section must be obtained beforehand and detailed plans are to be submitted to Council for consideration, together with payment of the weekly charge in accordance with Council's adopted fees and charges.

- 34 Any part of Council's nature strip which is damaged as a result of the work must be back-filled, top-soiled and re-turfed with kikuyu turf prior to occupation or finalisation of the development, to Council's satisfaction.
- 35 A local approval application must be submitted to and be approved by Council's Building Services section prior to commencing any of the following activities on a footpath, road, nature strip or in any public place:-
- Install or erect any site fencing, hoardings or site structures
 - Operate a crane or hoist goods or materials over a footpath or road
 - Placement of a waste skip (grater than 3m in length) or any container or other article.

The following conditions are applied to maintain reasonable levels of public health, amenity and safety:

- 36 The demolition, removal, storage, handling and disposal of products and materials containing asbestos must be carried out in accordance with Randwick City Council's Asbestos Policy and the relevant requirements of WorkCover NSW and the NSW Department of Environment & Conservation (formerly the Environment Protection Authority), including:
- Occupational Health and Safety Act 2000
 - Occupational Health and Safety (Hazardous Substances) Regulation 2001
 - Occupational Health and Safety (Asbestos Removal Work) Regulation 2001
 - WorkCover NSW Code of Practice for the Safe Removal of Asbestos
 - Australian Standard 2601 (2001) – Demolition of Structures
 - The Protection of the Environment Operations Act 1997 and Protection of the Environment Operations (Waste) Regulation 1996.
 - Relevant Department of Environment & Conservation (DEC) / Environment Protection Authority (EPA) and WorkCover NSW Guidelines.

A copy of Council's Asbestos Policy is available on Council's web site at www.randwick.nsw.gov.au in the Building & Development section or a copy can be obtained from Council's Customer Service Centre.

37 A WorkCover licensed demolition or asbestos removal contractor must undertake removal of more than 200 m² of bonded asbestos (or as otherwise specified by WorkCover or relevant legislation). Removal of friable asbestos material must only be undertaken by contractor that holds a current friable asbestos removal licence.

38 Asbestos waste must be stored, transported and disposed of in compliance with the Protection of the Environment Operations Act 1997 and the Protection of the Environment Operations (Waste) Regulation 1996.

Asbestos waste must be disposed of at an approved waste disposal depot (refer to the DEC or Waste Service NSW for details of sites). Copies of all receipts detailing method and location of disposal must be maintained on site and be provided to Council officers upon request, as evidence of correct disposal.

The following conditions are applied to ensure compliance with the Swimming Pools Act 1992 and to maintain public safety and amenity:

39 Swimming pools are to be provided with childproof fences and self-locking gates, in accordance with the *Swimming Pools Act 1992* and regulations.

The swimming pool is to be surrounded by a fence having a minimum height of 1.2m, that separates the pool from any residential building situated on the premises and from any place (whether public or private) adjoining the premises; and that is designed, constructed and installed in accordance with AS 1926-1986.

Gates to pool area shall be a maximum width of 1 metre, and be self-closing and latching; the gate is required to open outwards from the pool area and prevent a small child opening the gate or door when the gate or door is closed.

Temporary pool safety fencing is to be provided pending the completion of all building work and the pool must not be filled until a fencing inspection has been carried out and approved by the principal certifying authority.

A sign shall be erected in a prominent position in the immediate vicinity of the swimming pool, in accordance with the document entitled "Policy Statement No.9.4.1: Guidelines for the Preparation of Posters on Resuscitation", published in 1985 by the Australian Resuscitation Council and the sign must bear a notice that contains the words "YOUNG CHILDREN SHOULD BE SUPERVISED WHEN USING THIS SWIMMING POOL", together with details of resuscitation techniques (for adults, children and infants) set out in accordance with the document entitled "Cardio Pulmonary Resuscitation" published by the Australian Resuscitation Council.

40 Swimming pools are to be designed, installed and operated in accordance with the following general requirements: -

- Backwash of the pool filter and other discharge of water is to be drained to the sewer in accordance with the requirements of the Sydney Water

Corporation; and

- All pool overflow water is to be drained away from the building and adjoining premises, so as not to result in a nuisance or damage to premises.

- 41 Pool plant and equipment is to be enclosed in a sound absorbing enclosure or installed within a building, to minimise noise emissions and possible nuisance to nearby residents.

The operation of swimming pool/spa pool pump and equipment is restricted, if the noise emitted can be heard within a habitable room in any other residential premises, the equipment shall not be operated during the following hours, or, as otherwise specified in relevant Noise Control Regulations: -

- before 8.00am or after 8.00pm on any Sunday or public holiday; or
- before 7.00am or after 8.00pm on any other day.

The following conditions are applied to provide adequate provisions for access, transport and infrastructure:

- 42 The applicant must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.

The following conditions are applied to provide adequate consideration for service authority assets:

- 43 The applicant must meet the full cost for telecommunication companies, gas providers, Energy Australia and Sydney Water to adjust/repair/relocate their services as required. The applicant must make the necessary arrangements with the service authority.

ADVISORY MATTERS:

- A1 Building or excavations works must not be commenced until a construction certificate has been obtained from Council's Building Certification Services or an Accredited Certifier and either Council's Building Certification Services or an Accredited Certifier has been appointed as the Principal Certifying Authority (PCA) for this development.

Failure to obtain a Construction Certificate and appoint a PCA before commencing works is an offence, which renders the responsible person liable to a maximum penalty of \$1.1 million under the Environmental Planning & Assessment Act 1979.

- A2 The applicant is advised that the Construction Certificate plans and specification must comply with the provisions of the Building Code of Australia (BCA) and the construction certificate must not be inconsistent with the development consent.

In this regard, the development consent plans do not show compliance with the deemed-to-satisfy provisions of the BCA.

Details of compliance with the relevant provisions of the Building Code of Australia and conditions of development consent are to be provided in the plans and specifications for the construction certificate.

You are therefore advised to ensure that the development is not inconsistent with Council's consent and to consult with Council's Building Certification Services or an accredited certifier prior to submitting your construction certificate application to enable these matters to be addressed accordingly.

- A3 The applicant is to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.

ATTACHMENT/S:

Nil

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SIMA TRUUVERT
DIRECTOR, CITY PLANNING

.....
PERRY HEAD
SENIOR ASSESSMENT OFFICER

Director, City Services' Report 11/2006

SUBJECT:	COOGEE BEACH TOILET BLOCK REFURBISHMENT TENDER NO. T049/05
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DATE:	3 March, 2006	FILE NO:	F2005/00788
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REPORT BY: DIRECTOR, CITY SERVICES

INTRODUCTION:

At the Ordinary Council meeting held on Tuesday 28 February 2006, the following resolution was made in relation to Item 14.1 *“Confidential Director City Services' Report 9/2006 – Coogee Beach Toilet Block Refurbishment Tender No. T049/05”*:

“That this matter be referred to the Health, Building & Planning Committee.”

Section 377 of the Local Government Act, however, stipulates a number of functions that the Council is unable to delegate (even to one of its Committees) and one of those function is:

“the acceptance of tenders which are required under this Act to be invited by the Council.”

The Health, Building & Planning Committee does not have the authority to consider the report on the Coogee Beach Toilet Block Refurbishment Tender.

CONCLUSION:

This matter will be referred to the next Ordinary Council Meeting (on 28 March 2006).

RECOMMENDATION:

That the report be received and noted.

ATTACHMENT/S:

Nil

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JORDE FRANGOPLES
DIRECTOR, CITY SERVICES

Director, City Planning Report 9/2006

SUBJECT:	Update on energy conservation initiatives via Council's Sustaining our City Program
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DATE:	1 March, 2006	FILE NO:	F2005/00230
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REPORT BY: DIRECTOR, CITY PLANNING

INTRODUCTION:

The purpose of this report is to update Council on energy conservation initiatives underway via the Sustaining our City Program funded through the Special Environmental Levy, including the Residential Incentive funding of \$200,000 approved for Randwick by Department of Planning, Transgrid and Energy Australia.

ISSUES:

One of the major strategies targeted by Council's Sustaining our City Program is energy conservation and the long term reduction of greenhouse gas emissions from Council's operations. This strategic outcome is in keeping with priorities identified in Randwick's 20-year City Plan, the 20 percent energy reduction target approved by Council late in 2005, and in the new mandatory requirements expected of local councils to prepare and implement Energy Savings Plan (currently underway) for the NSW Department of Energy, Utilities and Sustainability (DEUS).

Council's environmental levy program and Sustaining our City initiative have been proactively tackling both energy and water conservation measures across Council operations since commencing late in 2004. Successful projects funded to date include the installation of solar blankets and heating at the Des Renford Aquatic Centre and the green globe giveaway to residents of 50,000 energy efficient globes. This latter initiative provides Randwick residents with the potential to save a total of \$2.4million off their energy bills over the life of the globes and reduces community greenhouse emissions by around 25,000 tonnes, the equivalent of taking approximately 5,500 cars off the road in a year.

The major new initiatives currently underway include:

- Installation of solar hot water systems at Storey St Depot;
- Quotations for solar hot water systems at Maroubra beach amenities and Des Renford Aquatic Centre;

- Proposal for solar panel demonstration project at Storey St Depot; and
- Randwick Council's Energy Conservation Campaign from Autumn 2006.

Randwick's Energy Conservation Campaign

Sustaining our City staff are currently preparing a program for the commencement of a residential energy campaign across Randwick City to begin during Autumn 2006. The campaign will target a number of potentially straightforward actions that residents can take to reduce their energy costs and greenhouse emissions.

In addition Council has just been formally advised of its successful application for funding to the Department of Planning Residential Demand Management Program. As a result Randwick is one of only two Councils in NSW to receive funding of \$200,000 to assist in monitoring and changing residential energy behaviour. The residential incentive funding is provided for Council to work with residents and enable owner / occupiers to receive advice and follow up on recommendations to make physical changes within the dwelling that reduce energy consumption. Council officers will be developing a detailed project and implementation plan with Dept Planning staff. The process will include a free energy audit of homes and flats that have a minimum level of energy consumption. Following the audit, householders willing to contribute towards installation of specific energy saving measures will be able to receive financial rebates or incentives eg. roof insulation, solar heating or solar power. Further information will be provided to Council prior to commencement of the overall energy conservation campaign.

FINANCIAL IMPACT STATEMENT:

Council's energy saving initiatives are being funded via the Environmental Levy Program. The Residential Incentives Scheme will be funded directly from the \$200,000 grant provided to Randwick from the Department of Planning.

CONCLUSION:

The various energy and water saving initiatives proposed and underway via Council's Sustaining our City Program are substantial. These initiatives and subsequent results will be promoted as widely as possible to assist in attracting additional resources and recognition.

RECOMMENDATION:

That the report be received and noted.

ATTACHMENT/S:

Nil

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SIMA TRUUVERT
DIRECTOR, CITY PLANNING

.....
PETER MAGANOV
TEAM LEADER -
SUSTAINABILITY

Director, City Planning Report 10/2006

SUBJECT:	Draft Sydney Coastal Council's Group Strategic Plan 2005-2008
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DATE:	7 February, 2006	FILE NO:	F2004/00949
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REPORT BY: DIRECTOR, CITY PLANNING

EXECUTIVE SUMMARY:

The Sydney Coastal Councils Group (SCCG) has prepared a draft Strategic Plan for 2005 – 2008 to highlight and focus the SCCG and member council's coastal management responsibilities over the next three years.

The draft Plan seeks to further involve the community in managing our coastal areas, improve Council's capacity to manage the coastal areas and create a sustainable coastal environment by the achievement of Key Outcomes and implementation of a number of guiding Principles for coastal management.

This Report is recommending:

- Council endorse the draft Plan,
- Council commit to implementing a set of Coastal Management Guiding Principles, when undertaking future planning and decision making, and
- Council's ongoing commitment to being a SCCG Member and delegate.

ISSUES:

The SCCG aims to promote cooperation between, and coordination of actions, by member Councils in consultation with the broader community on issues of regional significance concerning the sustainable management of the urban coastal environment. The Group represents the entire Sydney Coastal Region from Broken Bay to Port Hacking, including Sydney Harbour, Middle Harbour and Botany Bay.

Randwick City has been a member of the SCCG since its inception in 1989 and the other members are the Councils of:

-
- Botany Bay
- Hornsby
- Leichhardt
- Manly
- Mosman
- North Sydney
- Pittwater
- Rockdale
- Sutherland
- Sydney
- Warringah
- Waverley

- Willoughby
- Woollahra

A number of highly regarded educational, informational and environmental programs for our community, members and staff involved and successful partnerships with community groups and the University have been established have arisen from being part of the SCCG.

The draft SCCG Strategic Plan 2005 – 2008 (see Attachment 1)

The SCCG prepares a Strategic Plan every 3 years to focus the activities of the group. The draft Plan outlines the structure of the Group, the Principles it adheres to, the desired outcomes and the expectations of member councils.

Section 5 of the draft Plan discusses the key activities to be achieved by the SCCG over the next 3 years through a Strategic Implementation Program. This is underpinned by the achievement of 5 key outcomes, listed below. The Outcomes are consistent with Council's vision and current and future planning through the City Plan, in that they seek to involve the community, improve our capacity to manage the coastal areas and create a sustainable environment.

The 5 key Outcomes are:

Outcome 1: The exchange of information on urban coastal management to member councils is coordinated and facilitated

This will ensure the SCCG continues to function. To date Council has supported this Outcome by being a financial member and attending and participating in SCCG committees, projects and programmes.

Outcome 2: Community Awareness on matters related to the urban coastal management is enhanced

Community involvement, ownership and assistance in caring for our coastal areas is essential for effective management and in ensuring a sustainable coastal environment. The draft Plan aims to continue developing educational materials, raise the profile of the SCCG and promote community involvement in coastal management.

Outcome 3: The role and capacity of member councils to manage the coastal environment is improved.

The draft Plan seeks to build Council's coastal management abilities by providing training opportunities, encouraging the incorporation of best practice by members, assisting in grant opportunities and facilitating partnerships with key organisations, such as the University of NSW.

Outcome 4: Member council interests are represented on issues relating to regional, national and international coastal management

The aim of this Outcome is for the SCCG to assist Council, by making representations on our behalf to Government and non government organisations on coastal issues that concern Randwick City (and other member councils).

Outcome 5: Sustainable and integrated coastal zone management is facilitated

This Outcome seeks to encourage consideration of, and planning for a range of coastal sustainability issues, such as public access, climate change, water quality, cultural heritage and stormwater management, most of which are reflected as outcomes and directions in the City Plan.

The projects listed in the draft Plan to implement the Outcomes are broad and do not commit any individual council to a particular project.

Sydney Regional Coastal Management Guiding Principles for ensuring sustainable resource use across the Sydney Coastal Region

To ensure that the Strategy will be implemented by member councils, the SCCG seeks support from Council to commit to considering the Coastal Management Guiding Principles (Section 4 of the draft Plan and summarised below) in our future planning and management responsibilities.

The principles are based on, and are consistent with, the NSW Coastal Policy, Commonwealth Coastal Policy (both of which apply to parts of Randwick City and have been implemented by Council since their gazettal) and a MoU for the Coastal Action Program signed by the Commonwealth, NSW State Government and the Local Government and Shires Association of NSW.

The Principles are:

- Integrated Assessment and Decision Making
 - maintaining ecological integrity,
 - balancing environmental, social, economic and cultural values,
 - considering the long term and cumulative impacts, and
 - monitoring and reviewing.
- The Precautionary Approach
 - Avoiding activity that has a risk of serious harm, unless the effects can be mitigated.
- Resource Allocation
 - Resources should be allocated to those projects with the greatest long term community benefit,
 - Activities should not diminish the value of coastal areas,
 - Development should occur within a strategic framework,

- Access to the coast should be managed to mitigate adverse impacts, maintain ecological and physical integrity and maintain public safety.
- User pays (optional)
 - Managing the costs associated with the use of coastal resources, through levies, section 94 developer contributions, etc
- Resource Conservation
 - Development should take into account natural processes,
 - Use of the coastal zone should have no or minimal impacts,
 - Pollution discharges should be progressively reduced.
- Public Participation
 - Effective community consultation and participation, including local indigenous peoples, is essential and decision processes should be transparent, and
 - Local communities should be encouraged to take responsibility for managing coastal areas.

Given the legislative status of the NSW Coastal Policy and ongoing involvement in the SCCG, Council has already been giving consideration to these Principles. Through the Randwick City Plan and its associated directions and actions, and the Sustaining our City Environmental Levy Program, the majority of these Principles have already been taken into account to be implemented by Council in our long term planning and management for the coming years.

Further detail on the Principles is contained on pages 8 to 10 in the attached draft Plan.

Requirements and Expectations of Sydney Coastal Council Members and Delegates

The draft Plan seeks Council's support in being an ongoing member and therefore supporting the requirements and expectations of being a member (as outlined in Section 8, pages 31 and 32 of the attached draft Plan).

Membership of the SCCG requires Council to send up to three delegates to Ordinary and full Group meetings. The Ordinary meeting takes place on a quarterly basis. Council's delegates are Councillor Margaret Woodsmith and Councillor Anthony Andrews. The Technical Committee meetings, which take place on a bi monthly basis is attended by a Council officer. Delegates are expected to attend meetings and nominate alternative delegates when they can not attend.

Financial contributions are on a voluntary and cooperative basis. Randwick City hosted the SCCG secretariat between 2001 and 2004.

Randwick City Councillors and staff have consistently attended meetings and contributed to discussions and follow up actions.

FINANCIAL IMPACT STATEMENT:

There is no direct financial impact for endorsing the Strategic plan and implementing the Guiding Principles. Resources involved amount to approximately one (1) staff day per month. Work on the Randwick City Plan and the preparation of the Annual Management Plan has already been funded.

Individual projects that result from this Plan will be considered, including consideration of funding, as they arise.

CONCLUSION:

The draft SCCG Strategic Plan will help continue the consistent approach to managing our coastal resources across the entire Sydney Coastal Region. Council has been a keen active member for a number of years, benefiting from our participation, in terms of projects achieved, community involvement and raised local awareness of coastal issues, including establishing the annual Summer Activities Programme and a research partnership with UNSW's Institute for Environmental Studies.

The Principles and implementation outcomes are generally consistent with Council's current planning and management activities and services and with the Randwick City Plan, guiding Council's future direction.

RECOMMENDATION:

That:

1. Council endorse the draft Sydney Coastal Councils Group Strategic Plan 2005 – 2008;
2. Council note that the Guiding Principles, as outlined in the draft Plan, will be considered in future planning and coastal management responsibilities; and
3. Council note its continuing membership of the Sydney Coastal Councils Group.

ATTACHMENT/S:

1. Draft Sydney Coastal Councils Group Strategic Plan 2005-2008 - UNDER SEPARATE COVER

.....
SIMA TRUUVERT
DIRECTOR, CITY PLANNING

.....
ROSS ANTHONY
SENIOR STRATEGIC PLANNER

Director, City Planning Report 11/2006

SUBJECT:	Prince Henry Masterplan (Deemed DCP) - Proposed Amendment 2006
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DATE:	23 February, 2006	FILE NO:	F2006/3189
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REPORT BY: DIRECTOR, CITY PLANNING

EXECUTIVE SUMMARY:

On 25 January 2006, Landcom lodged an application for an amended Masterplan (now called a deemed development control plan) which proposes to have a small parcel of land (Lot 76 and 77) on the corner of Pine Avenue and Coast Hospital Road placed under the management of the Prince Henry Reserve Trust, rather than dedicating the land to Council.

The purpose of the proposal is to enable the subject site to be managed in conjunction with the adjoining land to the immediate south and west, already managed by the Trust.

The proposal does not affect the zoning of the site and it will remain zoned for public open space and be publicly accessible.

Council notified the surrounding residents and consulted with 15 State and Federal Government Authorities. Three submissions were received, indicating no objection.

This report notes that the proposal is acceptable and recommends that Council approve the proposed amendment.

BACKGROUND:

A summary of key stages in the planning for the redevelopment of the site, including the Masterplan (Deemed DCP) and LEP/DCP process to date is provided below.

March 2003	Revised master plan for the Prince Henry Site lodged with Council.
May 2003	Council adopted that master plan with variations and reaffirmed its resolution to prepare a draft LEP/DCP for the site.
December 2003	Council endorsed the exhibition of the draft LEP/DCP.

Jan-Feb 2004	Public exhibition of draft LEP/DCP.
July 2004	Draft LEP/DCP reported to Council
November 2004	Randwick LEP Amendment No 28 – Prince Henry Site gazetted (26 November), rezoning the site to a mix of 2D Residential Comprehensive Development, Open Space and Environmental Protection.
December 2004	Prince Henry Site DCP became effective (8 December).
September 2005	Masterplan Amendment lodged with Council, proposing a rezoning, removing the Harvey Street access to Jennifer Street, changing the mix of dwelling types, increasing a building height and increasing the proportion of open space across the site.
October 2005	Masterplan Amendment adopted (with variations) by Council.
January 2006	Second proposed Amendment lodged with Council (subject of this report) requesting a change in the requirement to dedicate Lot 76 and 77 to Council.

In the past two years, a number of development applications, mainly relating to remediation, infrastructure, subdivision and community facilities have been determined.

The draft amendment proposes to amend the Masterplan (deemed DCP) as adopted (with variations) by Council in October 2005, by seeking a change to Resolution 440 No. A(8), which requires the dedication of land to Council when Council is satisfied that there is no unreasonable risk to the general public resulting from its proximity to the Coast Golf Course.

THE SUBJECT SITE:

The draft Masterplan (Deemed DCP) Amendment relates to a minor part of the Prince Henry Site only, being Lots 76 and 77 (refer to Attachment 1) on the corner of Pine Avenue and the Coast Hospital Road, currently the 7th green of the Coast Golf and Recreation Club, which is to be relocated in accordance with the existing Masterplan. This land comprises approximately 5500m².

THE PROPOSED AMENDMENT:

The current Masterplan (as adopted by Council in October 2005) provides for the extension of Pine Avenue Park east to Coast Hospital Road, land that is currently the 7th green of the Coast Golf Course and to be dedicated to Council following remediation.

This Amendment proposes that this additional parkland will be managed by the Prince Henry Reserve Trust, when the park is established, rather than be dedicated to Council.

The lots would remain publicly accessible and zoned for public open space as per the adopted Masterplan and LEP 1998 and the land would be remediated to a standard that is consistent with the other publicly accessible open space managed by the Trust. The Amendment will not result in any additional physical works to the site not already identified in the current Masterplan.

The extension of Pine Avenue Park and the subsequent dedication of the site to Council, was proposed in the previous Amendment (2005) to compensate for the additional development being considered at that stage, including development on Lot 50, an area of natural vegetation. Council's resolution on 18 October 2005 varied the proposal, and as a result the 2005 Amendment reduced that development potential across the site by 12 apartments and 8 town houses and excluded development on Lot 50.

Given the variations made by Council to the Masterplan, Landcom notes that the dedication of the land is no longer feasible, however the land will remain publicly accessible and be remediated to standards consistent with other areas of open space that are managed by the Trust. This would provide a more cost effective remediation approach for Landcom.

ISSUES FOR CONSIDERATION:

Site Suitability

The proposed Amendment will not result in further physical changes to the site to those adopted in the current 2005 Masterplan. It will not affect traffic, infrastructure, accessibility or parking and therefore has no additional impacts.

Heritage Impacts

This Amendment was assessed by Godden Mackay Logan, the applicant's heritage consultants, who have indicated that the proposal will not have an impact on the heritage values of the Prince Henry Site.

Natural Environmental Impacts

This Amendment will not result in any further physical changes to the site to those adopted in the current 2005 Masterplan and therefore has no additional impacts.

Built Environment Impacts

As the proposal is consistent with the existing zoning, no significant structures, other than those permitted in an open space zoning and consistent with the adopted Masterplan (such as paths, landscaping and lighting) will be constructed on this site.

STATUTORY CONTROLS:

Commonwealth and State Legislation

The proposed Amendment will not result in any physical works not already adopted in the current Masterplan (2005), therefore the proposed Amendment is considered to be consistent with the relevant Commonwealth and State Legislation and State Environmental Planning Policies.

Randwick LEP 1998

Under the Randwick LEP 1998, the subject site is zoned 6A Open Space. The proposed Amendment is consistent with this zone and will not require an LEP amendment.

Prince Henry Site Development Control Plan 2004

The DCP for the Prince Henry Site came into effect on 8 December 2004, but does not apply to Lots 76 and 77. The site was still part of the golf course then and Lots 76 and 77 were only included in the Prince Henry development area with the adoption of the Amended Masterplan in October 2005.

Planning Reforms

A number of NSW Government legislative planning reforms commenced on 30 September 2005, including changes to Parts 3 and 4 of the Environmental Planning and Assessment Act. These changes affect Council's Masterplan provisions in LEP 1998, in that the process of master planning must now be undertaken through existing tools in the legislation, such as site specific DCPs and staged development applications. Existing Masterplans are now known as a 'Deemed DCP'.

The Amendment must be assessed within 60 days. Council may request further information from the relevant land owner and extend the 60-day time limit. In this case, no additional information is required and the application has addressed all relevant heads of consideration in Clause 40A of LEP 1998. The usual appeal rights would be available in relation to the development application.

The new legislation also requires that from 30 April 2006, only one DCP may apply to any site. This was considered in the 2005 Amendment and Council resolved to consolidate the Masterplan, Amendments and DCP into a single DCP and this Amendment will also be incorporated into the single DCP for the site.

CONSULTATION:

The draft Amendment was placed on exhibition at Council's Administrative Centre and Bowen Library. Details of the public exhibition period and exhibition locations were also placed on Council's website. An advertisement was placed in the local paper and approximately 220 residents and landowners in the surrounding areas were notified in accordance with Council's notification policy. The Metropolitan Land Council, La Perouse Local Aboriginal Land Council, Guriwal Aboriginal Corporation and 15 State and Federal Government authorities were also notified.

The draft Amendment was on public exhibition from 7 February until 24 February 2006.

Three submissions were received, from the NSW Heritage Office, Department of Natural Resources and Department of Environment and Conservation, raising no objections to the proposal.

SECTION 94 CONTRIBUTIONS:

The Prince Henry Masterplan identifies certain works (community facilities, open space, roads and services) that would be provided as works in kind via conditions of consent and/or a developer agreement with Council in lieu of a monetary Section 94 contribution. Landcom's proposal report indicates that as this Amendment does not constitute a population increase, and the subject site remains open space, the developer agreement between Council and Landcom remains unaltered.

FINANCIAL IMPACT STATEMENT:

There is no direct financial impact.

CONCLUSION:

The proposed Masterplan Amendment is considered to fit within the framework of the adopted Prince Henry Masterplan. Given the minor nature of the Amendment, it is considered that the proposal will not have any effect on built form and heritage and will be a positive environmental and community outcome given the continued use of the land as public open space.

RECOMMENDATION:

That:

1. Council adopt the proposed Masterplan Amendment, dated January 2006, by removing from the Masterplan references to the dedication of the extension to Pine Avenue Park (Lot 76 and 77) to Council; and
2. Council agrees that Lots 76 and 77 be managed as public open space by the Prince Henry Reserve Trust.

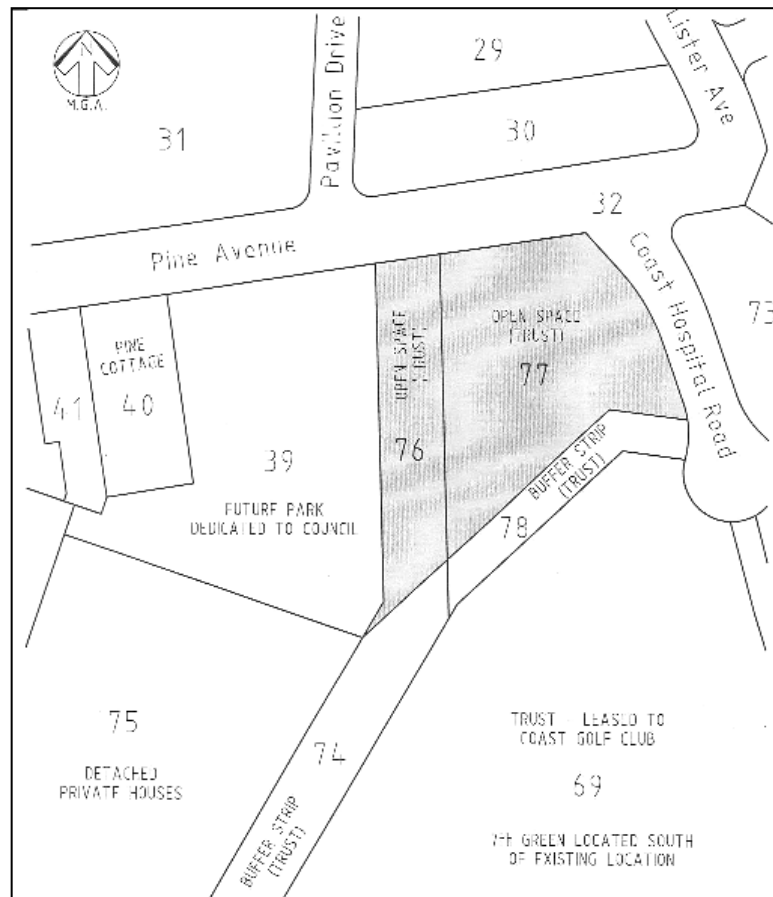
ATTACHMENT/S:

1. Site Plans

.....
SIMA TRUUVERT
DIRECTOR, CITY PLANNING

.....
ROSS ANTHONY
SENIOR STRATEGIC PLANNER

ATTACHMENT 1
Site Maps



Director, City Planning Report 12/2006

SUBJECT:	RETROSPECTIVE CONSTRUCTION CERTIFICATES
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DATE:	24 February, 2006	FILE NO:	F2004/08241
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REPORT BY: DIRECTOR, CITY PLANNING

INTRODUCTION:**Background**

On 4 November, 2004, Council's Manager, Environmental Health and Building Services refused to issue a Construction Certificate for alterations and additions to an existing multi-unit housing building at 48 Kennedy Street, Kingsford, principally on the grounds that the majority of the building work contained in the Construction Certificate had already been completed.

Without a valid Construction Certificate for the subject works, the owner was unable to obtain an Occupation Certificate, and in turn, the owner was apparently unable to satisfy the requirements of the conveyancing legislation for the sale of the subject unit/s.

The owner subsequently lodged an appeal with the Land and Environment Court of New South Wales in relation to Council's refusal of the Construction Certificate and on 11 January 2005, His Honour, Justice Talbot J determined the following preliminary question of law:-

"Whether the Council may lawfully issue a Construction Certificate pursuant to s.109F of the Environmental Planning and Assessment Act 1979 after the work has been carried out in the circumstances that pertain in this case."

After hearing representations by Counsel on behalf of both parties, His Honour determined that Council may lawfully issue a Construction Certificate pursuant to Section 109F of the *Environmental Planning and Assessment Act, 1979* after the work has been carried out, in the circumstances that pertain in this case.

Following this judgement, a Construction Certificate and Occupation Certificate was subsequently issued for the subject works by an accredited certifier.

ISSUES:

Justice Talbot's determination in this case (*Marvan Properties Pty Ltd and Another v. Randwick Council [2005] NSWLEC 9, 11 January 2005*) had far reaching implications on the Construction Certificate process and it, in effect, opened the door for accredited certifiers and Councils to issue retrospective construction certificates.

In March 2005, Council resolved to write to the Department of Infrastructure, Planning and Natural Resources and the Local Government Association raising concerns about the potential implications of this judgement.

Council raised concerns regarding this legal precedent which had the potential to undermine the intent and integrity of the building approval, certification and inspection process throughout New South Wales.

If a Construction Certificate could readily be obtained after building work is completed, why would one bother with trying to obtain one beforehand?

This could result in the construction of buildings without the prior verification of compliance with the Building Code of Australia, Council's development consent conditions and other regulatory requirements.

This loop hole certainly had the potential for developers to unduly influence certifiers to issue a Construction Certificate after commencement or upon completion of the works, which could result in the subsequent acceptance of development as a *fait-a-compli*, which may or may not fully comply with the relevant legislative requirements and building standards.

On 13 February 2006 the New South Wales Department of Planning issued a Circular (a copy of which is attached) titled "Prohibition of retrospective Construction Certificates and changes concerning Compliance Certificates."

The Circular notifies Councils, private certifiers, developers and the community that the *Environmental Planning and Assessment Act 1979* has been amended to make it clear that Construction certificates cannot be issued for building or subdivision work, after work has commenced.

The Circular makes reference to the *Marvan Properties Pty Ltd and Another v. Randwick City Council [2005]* and it advises that Section 109F of the Act has been amended to confirm that a Construction Certificate issued after building or subdivision work has physically commenced, will have no effect.

The amendment of the Act comes into effect on 3 March 2006.

FINANCIAL IMPACT STATEMENT:

There is no direct financial impact for this matter.

CONCLUSION:

The determination made by His Honour Justice Talbot J in *Marvan Properties Pty Ltd and Another v. Randwick City Council [2005]*, had the potential to affect the intent and integrity of the building certification and construction process in NSW.

This loop hole in the *Environmental Planning and Assessment Act 1979* has now been removed, with the assistance of Randwick City Council. This change will help ensure that Construction Certificates are only able to be issued for building work before work commences, which in turn, will help ensure that compliance with relevant building regulations and development consent conditions are verified beforehand.

RECOMMENDATION:

That the report be received and noted.

ATTACHMENT/S:

- Resolution H21 – Director of City Planning Report 10/2005 – Retrospective Construction Certificates
- New South Wales Department of Planning Circular PS-06-004 issued 13 February, 2006. (UNDER SEPARATE COVER)

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ROMAN WERESZCZYNSKI
MANAGER
ENVIRONMENTAL HEALTH
AND BUILDING SERVICES

.....
SIMA TRUUVERT
DIRECTOR
CITY PLANNING

7.1 DIRECTOR, CITY PLANNING REPORT 10/2005 - RETROSPECTIVE CONSTRUCTION CERTIFICATES. (F2004/06353)

H21 **RESOLUTION:** *(Nash/His Worship the Mayor, Cr M. Matson) that:*

- a) *Council officers prepare and forward to DIPNR, correspondence advising of this recent Court decision and the ramifications of such, upon the Certification of Development process under Part 4A of the Environmental Planning and Assessment Act 1979,*
- b) *Council officers prepare written representations to the Department of Local Government and the Local Government and Shires Association seeking support in respect to the necessary legislative reform to expressly require the issuing of prospective Construction Certificates; and*
- a) *Council officers prepare and forward written submissions to the Department of Local Government and the Local Government Association of New South Wales, calling for necessary legislative reform so that, whilst not encouraging or facilitating the carrying out of building work without a prior construction certificate, the Environmental Planning and Assessment Act 1979 (NSW) provide for a scheme which:*
 1. *Is able to manage and effectively deal with such occurrences as in the Marvan Properties Pty Limited v. Randwick City Council case;*
 2. *Resolves the stalemate between a Council and a developer in circumstances such as that case;*
 3. *Allows a building to be legally occupied, notwithstanding the fact that such building works have been unlawfully commenced and in the absence of a construction certificate having been obtained prior to the commencement of such works (for example, through a revised building certificate process under section 149E of the Environmental Planning and Assessment Act 1979 (NSW)); and*
 4. *Allows for the full cost recovery by a Council in considering and issuing a building certificate as contemplated by point 3 above.*

MOTION: (Nash/His Worship the Mayor, Cr M. Matson) SEE RESOLUTION.

General Business

Notice of Rescission Motions