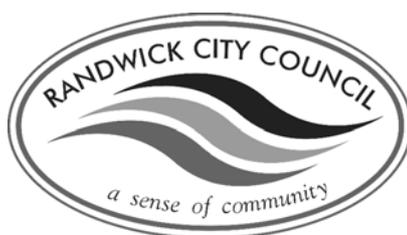


PLANNING COMMITTEE MEETING

BUSINESS PAPER

TUESDAY 11 MARCH 2008

Administrative Centre 30 Frances Street Randwick 2031
Telephone: 02 9399 0999 or
1300 722 542 (for Sydney metropolitan area)
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4th March, 2008

PLANNING COMMITTEE MEETING

Notice is hereby given that a 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, 11 March 2008 at 6:00pm.

Committee Members: The Mayor, B Notley-Smith, Andrews, Bastic, Belleli, Daley, Hughes, Kenny, Matson (Deputy Chairperson), Nash (Chairperson), Procopiadis, Seng, Sullivan, Tracey, White, Woodsmith.

Quorum: Eight (8) members.

NOTE: At the Extraordinary Meeting held on 28 September 2004, the Council resolved that the Planning Committee whose membership consists of all members of the Council be constituted as a committee with full delegation to determine matters on the agenda.

Apologies/Granting of Leave of Absences

Confirmation of the Minutes

Planning Committee Meeting - 12 February 2008

Declarations of Pecuniary and Non-Pecuniary Interests

**Address of Council by Members of the Public
Urgent Business**

Development Application Reports

| | | |
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| D10/08 | 7 Kyogle Street, Maroubra | 1 |
| D11/08 | 10 Ivy Street, Randwick | 9 |
| D12/08 | 5R-33R Koorngai Avenue, Phillip Bay, 3, 5R & 7-11 Elaroo Avenue, La Perouse and 13R Murrong Place, La Perouse..... | 17 |
| D13/08 | 390-396 Anzac Parade, Kingsford | 59 |

Miscellaneous Reports

Nil

Closed Session

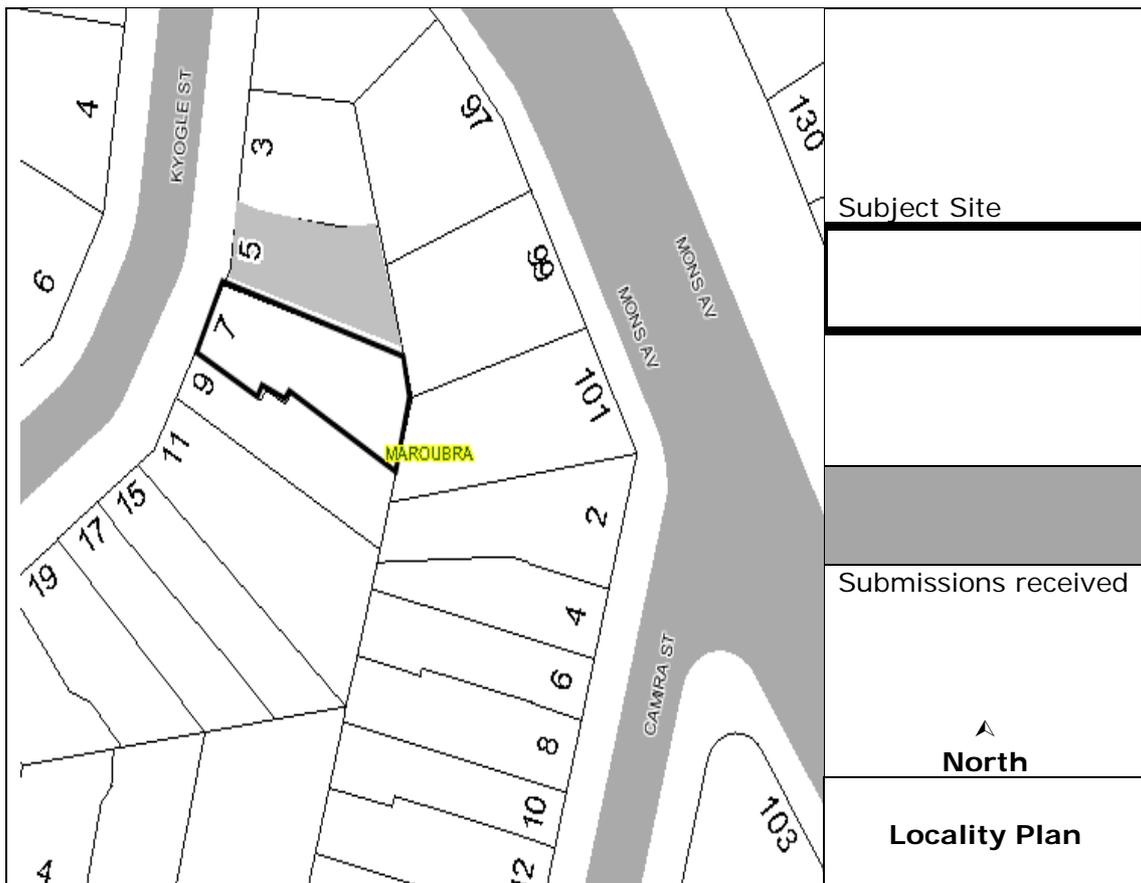
Notices of Rescission Motions

.....
Ray Brownlee
GENERAL MANAGER

Development Application Report No. D10/08



Subject: 7 Kyogle Street, Maroubra
Folder No: DA/17/2006/B
Author: Chahrazad Rahe, Assessment Planner
Proposal: Section 96(2): Increase the height of the front fence with new gate and relocate driveway sliding gate, new 1.8m high wall on the northern side of the driveway, alter rear deck design, reconfiguration of internal layout, new BBQ area with pergola over at the rear, new 1.8m high wall along the southern side of the pool area and new skylight window over study
Ward: Central Ward
Applicant: Mr P Lirantzis and T Lirantzis
Owner: Mr P Lirantzis and T Lirantzis
Summary Recommendation: Approval



1.

Item D10/08

Executive Summary

The application is referred to the Planning Committee as the original application was determined by Council. The original application was referred to the Health, Building & Planning Committee meeting on 13 June 2006 at the request of Councillors Anthony Andrews, Paul Tracey & Alan White. The original proposal consisted of alterations and additions to the existing single storey semi-detached dwelling including new garage, swimming pool, landscaping and a first floor addition.

The current application is for a Section 96(2) modification of the original consent by increasing the height of the front fence with new gate and relocate driveway sliding gate, new 1.8m high wall on the northern side of the driveway, alter rear deck design, reconfiguration of internal layout, new BBQ area with pergola over at the rear, new 1.8m high wall along the southern side of the pool area and new skylight window over study.

The application was notified to adjoining and nearby property owners and one objection was received from No.5 Kyogle Street. The main issues raised in the submissions related to privacy, encroachment of rear BBQ wall, noise from front motorised sliding gate for the driveway and width of the front wall and encroachment on their driveway.

The recommendation is for approval subject to conditions.

2. The Proposal

The proposed modifications are as follows:

- Increase the height of the front fence from 1m to 1.8m with new driveway sliding gate;
- Construction of a new 1.8m high rendered & painted masonry wall on the southern side of the pool;
- Construction of a new 1.8m high rendered & painted brick wall on the northern side of the driveway;
- Alteration to the rear deck design by reducing the step width and increase the deck size;
- increase the size of the front sail shade structure;
- reconfiguration of internal layout;
- windows to the study on the eastern elevation to the first floor level adjusted in size;
- new BBQ area with 1.8m high rendered & painted brick wall and pergola structure over at rear; and
- new skylight window over study.

The applicant is also seeking retrospective approval for the already constructed deck extension to the rear and southern side boundary fence to the rear of the building.

3. The Subject Site And Surrounding Area:

The subject site is located on the eastern side of Kyogle Street between Mons Avenue and Glenugie Street in Maroubra. The site is an irregular shaped block with a street frontage of 8.84 metres and a maximum depth of approximately 32.2 metres. The site has a total area of 351.4m². The party wall between the two halves of the semi is also irregular stepping three times along the length of the existing dwelling.

Currently works have been under taken to the existing single dwelling for a two storey addition to the existing semi-detached dwelling with a garage on its northern side to the front of the dwelling.

4. Site History

a. Application History

The original DA for the alterations and additions to the existing single storey semi-detached dwelling including new garage, swimming pool, landscaping and a first floor addition was approved by Council’s Health, Building and Planning Committee on 13 June 2006 subject to conditions.

A Section 96(1A) application was approved under delegated authority on 24 November 2006 for two new windows to the ground floor living room, alterations to the layout of the kitchen, new larger obscure glazed window to the first floor ensuite, redesign and relocate some rooms on the first floor level, relocate skylight roof, pool coping reduced in height and relocation of pool equipment to below the rear deck.

5. Community Consultation:

The owners of 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 Objection

Owner of 5 Kyogle Street, Maroubra

| Issue | Comment |
|--|---|
| The rear deck is elevated, concerned that the deck will overlook into their privacy back yard. Suggests that a privacy screen could eliminate this concern. | A condition is included requiring a privacy screen to be installed to the northern side of the deck extension. |
| The objector requested that council note that the proposed BBQ and pergola structure be sited wholly within the property and the current fence on the boundary not be removed. This is unclear on the submitted plans. | A condition is included requiring the rear northern boundary fence to be retained, and the proposed BBQ & pergola structure to be sited within the property boundary of the subject site. |
| Concerned that the noise from the motorised sliding gate for the driveway will impact on the noise levels as the bedroom window is next to the driveway. Would like to be assured that the noise levels for the motorised gates is in accordance with the standards. | A standard condition is included in the consent to ensure that the noise generated from any equipment associated with the sliding gate maintains reasonable levels amenity. |

| Issue | Comment |
|---|--|
| Concern that the width of the proposed 1.8m high fence on the northern side boundary next to the driveway will narrow the objectors driveway significantly and will make it difficult to open their car door. The objectors understand the fence is on the boundary, however it is unclear on the plans as to the width of the fence. | The distance of the proposed north side boundary fence starts from the street alignment and ends at the front of the garage. It is not considered that the proposed fence height will compromise the car door from being opened. There is sufficient room for a car door to be opened. |
| The objector has suggested that any windows proposed on the northern side are to be opaque to maintain privacy levels to the objectors back yard. | No new windows have been proposed to the northern side elevation. |
| On the original plans the garage appears to be built on the boundary; however the Statement of Environmental Effects submitted for the Section 96(a) in November 2007 states that council guidelines for garages in relation to boundaries will be adhered to. It is unclear as to the distance of the garage from the boundary. | The garage was approved as part of the original proposal to the front of the dwelling. There is no change to the garage positioning. |

6. Technical Officers Comments

The application was referred to the Development Engineers for comment. No objections were raised subject to conditions imposed on the previous Section 96 application. The following comments were made:

6.1 Development Engineers

A section 96 application has been received to modify the consent conditions for the residential development at the above site.

This report is based on the following plans and documentation:

- Architectural plan by Steven N. Koturic dated December 2005, stamped by Council 18 December 2007;
- Statement of Environmental Effects by Steven N. Koturic dated November 2007, stamped by Council 18 December 2007.

The alterations that relate to the Development Engineer are:

- Amendments to the front fence.

The assessing officer is advised that no modifications to the consent conditions are proposed by the Development Engineer.

7. 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. The proposal is permissible with consent.

Clause 10 – Zone no 2A (Residential A zone)

The proposed amendments will continue to meet the objectives of the Residential 2A Zone, which include 'maintaining the character of established residential areas' and 'not compromis[ing] the amenity of surrounding residential areas'. The proposed modifications are minor and will not result in any significant adverse impacts upon either the amenity of the adjoining premises or the character of the locality.

8. Section 96 Amendment**8.1 Substantially the same**

Council may only approve an application under section 96(2) of the Act if "it is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all) under this section."

The proposal will not change the nature of the original application and the works will result in an application that is substantially the same as that for which consent was originally granted. The proposed modifications will not result in any unreasonable impact upon either the amenity of the adjoining premises or the streetscape.

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 Plan No. 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.

The proposed amendments will comply with the objectives and performance requirements of the DCP – Dwelling Houses & Attached Dual Occupancies. The character of the building will be maintained and the modifications subject to conditions are not considered to impact on the amenity of the adjoining properties and streetscape.

Height, Form & Materials

It is not considered that the increased shade sail structure to the front of the garage will detract from the individual character and appearance of the existing building nor will it impact on the streetscape.

The proposed BBQ to the rear of the site will also not impact on the amenity of the adjoining dwellings or streetscape. However, a condition is included requiring the wall to be wholly within the subject property and the north boundary fence to be retained.

The height of the structures will comply with the preferred solutions.

Visual & Acoustic Privacy

The proposed window openings to the rear on the first floor level to the study room are changing from a sill height of 1.3m to a full height window. It is not considered this will result in any additional privacy concerns to the adjoining properties as the increased section is to the lower part of the wall.

The proposed rear deck extension is already constructed on the site and overlooks the rear yard of the adjoining properties. It is recommended that a privacy screen with a height of 1.8m be provided along the northern side of the deck extension to minimise any potential privacy concerns between the properties.

Fences

The proposed front fencing is 1.8m high along the front street alignment and to the northern side at the front of the dwelling. The fence is constructed of brick piers and timber slats.

The majority of the fencing form and height within the streetscape is relatively low and is constructed of masonry. To the northern side the fencing height is approximately 1.8m. However, there is no council record of approval for the fence immediately adjoining the site at No. 5 Kyogle Street. There are existing piers approximately 1.8m in height and masonry base of 600mm.

Given that there are a number of properties immediately adjoining the subject site along the southern side where there is low fencing to the front of the properties a fence height of 1.5m and constructed of 50% open design would be more compatible with the existing fencing form in the immediate locality. This will reduce the excessive scale of the fence and will contribute positively to the street character, whilst also providing adequate privacy and security for the property owners. A condition is included to the above affect.

To the southern side at the rear of the dwelling the masonry boundary fence is already constructed. It is not considered that this fence will impact on the amenity of the adjoining properties. The fence will provide privacy between the properties and will comply with the objectives and performance requirements in the DCP for fencing.

9.2 Site Suitability

The proposed modifications are reasonable and will not have a significant environmental impact on the surrounding dwellings and streetscape. Subject to additional conditions, the proposed modifications are suitable in the zone and will not impact on the overall form and design of the dwelling.

10. Relationship to City Plan

The relationship with the City Plan is as follows:

Outcome 4: Excellence in urban design and development.

Direction: 4a. Improved design and sustainability across all development.

Key Actions:

- Council policies maximise the environmental performance of new buildings
- Encourage and reward design excellence and sustainability.

Direction: 4b. New and existing development is managed by a robust framework.

Key Action: Develop and implement effective processes and strategies to manage the impact of new and existing development.

11.

Financial Impact Statement

There is no direct financial impact for this matter.

12. Conclusion

The proposed modifications to the existing development have been assessed against the requirements of the relevant planning guidelines of the RLEP and Council policies and plans as well as in regard to Section 79C of the Environmental Planning and Assessment Act, 1979, as amended. The proposed modifications are considered to be substantially the same development as that previously approved. Subject to conditions, the proposed amendments will not result in any significant adverse impacts upon either the amenity of the adjoining premises or the character of the locality.

Recommendation

That Council's Coordinator/Manager Development Assessment under delegated authority from the General Manager, as the consent authority, grant its consent under Section 96 of the Environmental Planning and Assessment Act 1979 as amended to modify Development Consent No DA/17/2006 for permission to increase the height of the front fence with new gate and relocate driveway sliding gate, new 1.8m high wall on the northern side of the driveway, alter rear deck design, reconfiguration of internal layout, new BBQ area with pergola over at rear, new 1.8m high wall along the southern side of the pool area and new skylight window over study for 7 Kyogle Street, Maroubra in the following manner:

A Amend Condition 1 to read:

1. The development must be implemented substantially in accordance with the plans drawn by Steven N. Koturic numbered SA01/A, dated April 2006 in the amendments box and DA02/A, dated March 2006 in the amendments box and stamped received by Council on 7 April 2006, the external Schedule of Finishes & Materials stamped received by Council on 16 January 2006, the application form and on any supporting information received with the application, as amended by the:
 - Section 96 'A' plans drawn by Steven N. Koturic number DA-01/B & DA-02/A, dated December 2005 and received by Council on 30 October 2006; and
 - Section 96 'B' plans drawn by Steven N. Koturic number DA-01/C & DA-02/C, dated November 2007 and received by Council on 18 December 2007 and additional plan numbered DA-03/C, dated November 2007 and received to Council on the 27 February 2008; and

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 attached plans:

B The following conditions are added:

48. A privacy screen comprising of timber slats with a maximum 10mm gap and having a minimum height of 1.8m shall be provided to the northern side of the ground floor rear deck extension, to maintain reasonable levels of privacy between the properties. The plans submitted for the Construction Certificate

shall demonstrate compliance with this requirement.

49. The existing fence to the north side boundary shall be retained and the proposed 1.8m high brick wall to the BBQ is to be located wholly with the subject site. The plans submitted for the Construction Certificate shall demonstrate compliance with this requirement.
50. The proposed front fencing on the street alignment shall be reduced in height so that the maximum height of the fence is 1.5m measured at any point above the existing ground level and is to be at least 50% open design, (excluding piers). The first 4m of the northern side boundary fence along the driveway shall be tapered down to a height of 1.5m to match the height of the front fence. The plans submitted for the Construction Certificate shall demonstrate compliance with this requirement.
51. The operation of all equipment associated with the front motorized sliding gate shall not give rise to an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 and Regulations.

Attachment/s:

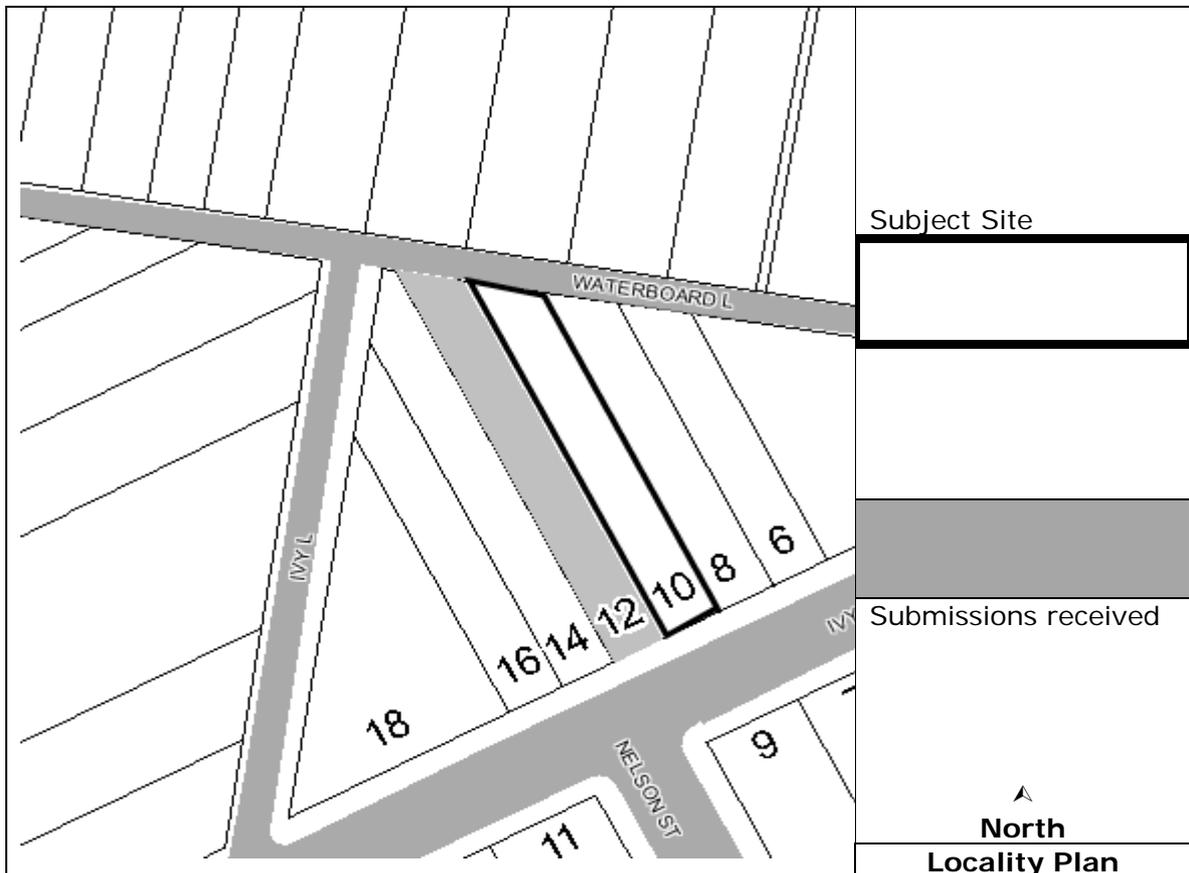
Nil

Item D10/08

**Development Application Report No.
D11/08**



Subject: 10 Ivy Street, Randwick
Folder No: DA/937/2007
Author: Perry Head, Environmental Planning Officer
Proposal: Home Activity – Piano Teaching
Ward: East Ward
Applicant: N Stanford
Owner: N Stanford
Summary Recommendation: Approval



1.

Item D11/08

Executive Summary

The application details the use of a portion of the existing dwelling for piano teaching.

The application has been referred to Council for determination at the request of Councillor's Bastic, Sullivan & White.

The main issue is the potential noise nuisance that may be caused to the adjoining residents.

The application is recommended for approval subject to conditions.

This report was originally prepared for the Council meeting of the 26th February 2008; however the General Manager has deferred the report until this meeting on compassionate grounds at the request of the objector.

2. The Proposal

The application details the use of one room within the dwelling for the purposes of piano lessons. The proposed hours for teaching are;

Tuesday: 8.30am to 11.30am, 3.15pm to 6.00pm.
Thursday: 3.15pm to 6.00pm.
Friday: 8.30am to 11.30am, 3.15pm to 6.00pm.

It is proposed to teach pupils on an individual basis.

3. The Subject Site And Surrounding Area:

The subject site is located on the western side of Ivy Street between Perouse Road and Lee Street and is presently occupied by an existing semi detached two storey dwelling. The site has a frontage width of 6.035m, a side boundary depth of up to 44.06m and has an overall site area of 253m². The locality is residential in nature and contains a mixture of free standing and semi detached dwellings and multi unit housing development, the locality as a whole is within a conservation area known as "The Spot Conservation area".

4. Site History

Development Consent has recently been granted for alterations and additions to this dwelling, DA/818/2007. During the consideration of that application Council received a complaint that the owner of the subject site was conducting piano teaching within the dwelling, which sometimes resulted in noise nuisance. As a result of that complaint this application was lodged by the applicant.

5. Community Consultation:

The proposal has been notified in accordance with the Local Environmental Plan 1998. The following submissions were received:

Owner of 12 Ivy Street Randwick

| Issue | Comment |
|---|--|
| The noise of the piano playing permeates through their dwelling which is exacerbated by the non cavity party wall between the two dwellings. | Conditions of consent are recommended to require that the piano teaching shall not give rise to an environmental nuisance, and restrict the hours of operation, number of pupils and that doors and windows in the room in which teaching is to be conducted be closed when the piano is being played. |
| The hours of operation nominated in the Statement of Environmental Effects do not correspond to when piano teaching is being carried out. | A condition of consent is recommended to restrict the hours in which the use is to be conducted. |
| The applicant has advised them that in conjunction with the recently approved alterations to the dwelling that it is their intention to conduct music recitals with their pupils. | A condition of consent is recommended to restrict the number of pupils to one at a time and prohibit group playing or recitals. |
| The proposed use is not consistent with a home activity in that it will result in noise emissions to their dwelling. | The report prepared by the applicant's acoustic consultant has stated that if the doors to the room in which the piano is to be played have acoustic seals fitted that the noise levels and impact upon the adjoining property at 12 Ivy Street will not be unacceptable. |
| If the piano teaching was approved it would result in a significant devaluation of their dwelling. | Impact of development upon the value of adjoining properties is not a relevant matter for consideration under Section 79C of the Environmental Planning and Assessment Act 1979. |
| Allowing a music school to operate fundamentally changes the characteristics of the street. | Home activities are permissible with the consent of Council and the imposition of conditions of consent to restrict the hours of teaching and number of pupils will not alter the fundamental character of the residential locality. |

The applicant was advised to provide additional information to Council to demonstrate how the proposed use could be conducted without causing a nuisance to the adjoining residents. Upon receipt of this additional information the owners of 12 Ivy Street were invited to comment upon this additional information.

Owner of 12 Ivy Street Randwick

| Issue | Comment |
|--|--|
| The piano has been moved into the front room of the dwelling which has reduced the noise by a small degree; however it remains audible and annoying. | Conditions of consent are recommended to require that the doors and windows to the room in which the piano is to be played are to be closed and are to have acoustic seals fitted to the door. |
| The acoustic testing cannot be relied upon in that Ivy Street is quiet all day, not just in the evenings, the party wall has no cavity, the short time in which measurements were taken do not reflect the length of time in which lessons are conducted, the testing does | The acoustic report has been assessed by Council's Environmental Health Officers and recommended conditions of consent have been provided to ensure that the use will not cause an offensive noise to the adjoining dwellings. |

Item D11/08

| Issue | Comment |
|---|---|
| not take into account the owners intention to renovate the front of the dwelling and install an additional piano, and the measurements do not take into account lower noise frequencies and the annoyance factor. | |
| The noise report assumes that it is acceptable for noise to be produced between 7.00am and 10.00pm which is strongly objected to. | A condition of consent is recommended to require that the hours in which the piano teaching is conducted is restricted to 3 hours a day during the afternoon. |
| The operation of this business activity within a residential area which creates a noise nuisance to adjoining residents should be moved to a commercial zoned area. | The recommended conditions of consent will restrict potential noise nuisance and not conflict the objectives of the residential zone. |
| The impact of the noise nuisance has compromised the convalescence of their mother who is receiving cancer treatment. | The recommended conditions of consent to restrict the hours of operation and noise emissions will reduce the impact of the use upon the amenity of the adjoining dwellings. |

6. Technical Officers Comments

The application has been referred to the Council's Environmental Health Officer and the following comments have been provided: -

An acoustic report has been submitted with the development application titled 'Residential Piano Acoustics – 10 Ivy Street, Randwick Noise Compliance Report' reference: R\3872-R1.Doc dated 22 January 2008 produced by Day Design Pty Ltd.

The report has identified:

- the internal background noise level to be 20dBA,
- the predicted noise level at the closest residence (12 Ivy Street) to be no greater than 20dBA,
- the noise emission from piano with the doors closed will not be audible inside the adjacent dwelling (12 Ivy Street).

The recommendations detailed in the acoustic report has been taken into consideration and conditions are recommended to be placed on the consent should this development application be approved.

The number of students permitted at one time and hours of operation have been restricted to safeguard effected residents.

7. 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.

8. 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.

8.1 Home Activity

The definition of a home activity in the Randwick LEP is that the activity consists of any business, profession or industry carried on in a building or room or a number of rooms forming part of, attached to, or within the curtilage of, a dwelling, where:

- (a) only goods made or produced, or services offered, as a result of the activity or pursuit are displayed, sold or provided, and
- (b) the primary use of the dwelling is for residential purposes, and
- (c) the activity does not:
 - 1. interfere with the amenity of the locality by reason of the emission of excessive noise, vibration, smell, fumes, smoke, vapour, steam, soot, ash, dust, waste water, waste products, grit or oil or otherwise, or
 - 2. involve exposure to view from any public place of any matter, or
 - 3. require the provision of any essential service main of a greater capacity than that available in the locality, or
 - 4. generate traffic out of keeping with the surrounding area, and
- (d) the activity is carried out by the permanent residents of the dwelling.

Having regard to the definition of a home activity the proposed use of a portion of the dwelling for piano teaching satisfies the definition and, subject to conditions of consent to restrict the hours of operation, the number of pupils and how the use is conducted will not result in any significant adverse impact upon the amenity of the adjoining and surrounding residents.

8.2 Car Parking

With respect to additional parking generated, it is not possible to provide additional parking on site and on street parking is only available. There are no significant concerns in relation to additional parking demand in that the use if approved is for one pupil at a time and it would reasonably be expected that pupils would be dropped off and collected by parents. In any event there is ample street parking available in the immediate locality during the hours of the proposed use.

9. Relationship To City Plan

The relationship to the City Plan is as follows:

Outcome 8: A strong local economy.

Direction 8a: The proposal will contribute positively to the diversity of business opportunities and the survival of small businesses in the City of Randwick.

10. Financial Impact Statement

There is no financial impact for this matter.

11. Conclusion

That the proposed use of the front portion of the dwelling for the operation of piano teaching complies with the relevant assessment criteria and subject to conditions will not result in any significant 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 937/07 for permission to operate a home activity for piano teaching at 10 Ivy Street, Randwick 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 and application received by Council on the 1st November 2007 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 condition is applied to ensure that noise emissions from the development satisfy legislative requirements and maintain reasonable levels of amenity to the area:

- 2 The operation of all plant and equipment shall not give rise to an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 and Regulations.

In this regard, the operation of the plant and equipment shall not give rise to an $L_{Aeq, 15 \text{ min}}$ sound pressure level at any affected premises that exceeds the background $L_{A90, 15 \text{ min}}$ noise level, measured in the absence of the noise source/s under consideration by more than 5dB(A) in accordance with relevant NSW Department of Environment & Conservation Noise Control Guidelines.

The following conditions are applied to satisfy the relevant pollution control criteria and to maintain reasonable levels of health, safety and amenity to the locality:

- 3 The use and operation of the home piano teaching business shall not give rise to an environmental health or public nuisance.
- 4 There are to be no emissions or discharges from the home teaching business which give rise to a public nuisance or result in an offence under the Protection of the Environment Operations Act 1997 and Regulations.
- 5 The piano used for the home piano teaching business must be located in the living room.
- 6 The doors and windows to the living room where the piano is located for the home piano teaching business must have acoustic seals fitted and must be closed when the piano is being played.

- 7 The home piano teaching business is limited to one student per lesson.
- 8 The hours of operation for the home piano teaching business shall be restricted to:
 - Tuesday: 3:15pm – 6:00pm
 - Thursday: 3:15pm – 6:00pm
 - Friday: 3:15pm – 6:00pm, and only during NSW School terms
- 9 No group lessons or recitals are permitted to be conducted within the premises.

Attachment/s:

Nil

Item D11/08

Development Application Report No. D12/08



Subject: 5R-33R Kooringai Avenue, Phillip Bay, 3, 5R & 7-11 Elaroo Avenue, La Perouse and 13R Murrong Place, La Perouse

Folder No: DA/722/2007

Author: Simon Ip, Senior Environmental Planning Officer

Proposal: Remediation and rehabilitation of the former Frenchmans Bay landfill site for public recreational and residential uses, including excavation and reprofiling of waste, backfilling, revegetation, construction of footpath and provision of seating facilities

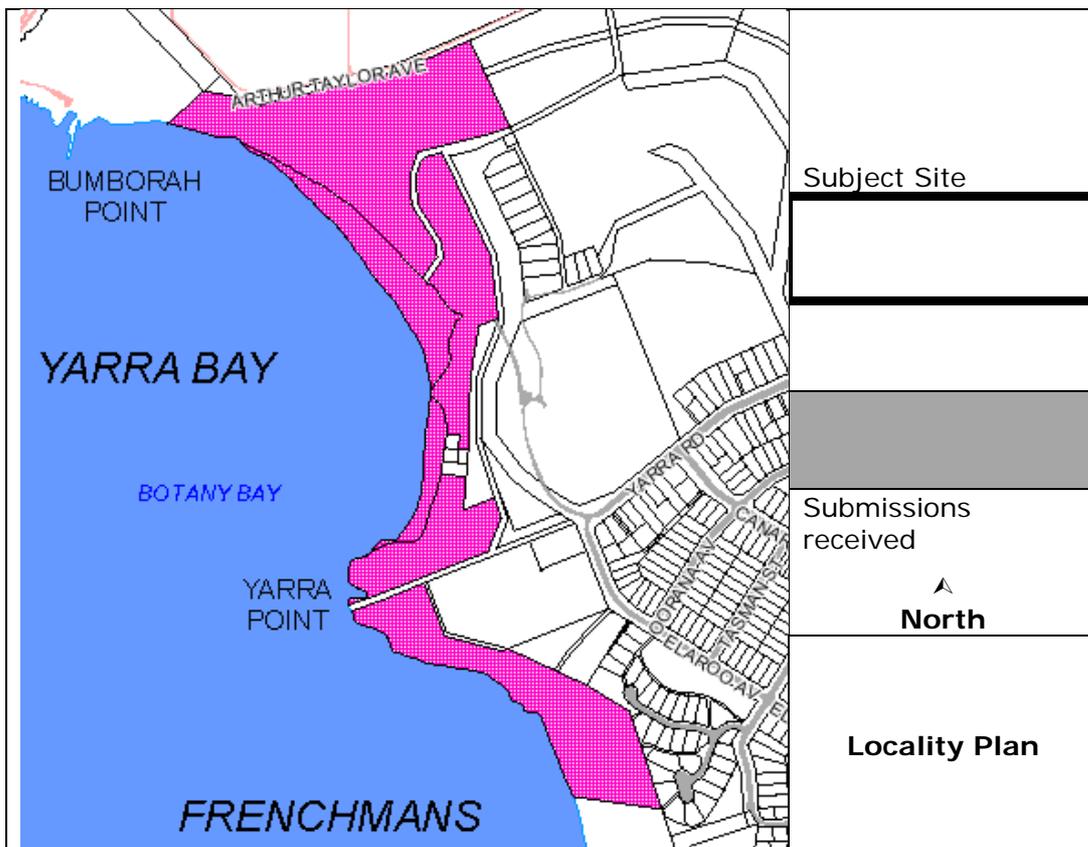
Ward: South Ward

Applicant: Randwick City Council

Owner: Randwick City Council, La Perouse Aboriginal Land Council

Summary

Recommendation: Approval



Item D12/08

1. Executive Summary

The application is referred to the Planning Committee as a substantial proportion of the subject land is under the care, control and management of Council and the external cost of the development exceeds \$2 million. The application is for the remediation and rehabilitation of the former Frenchmans Bay landfill site, including excavation and reprofiling of waste materials, backfilling, revegetation, construction of footpath and provision of seating facilities. The rehabilitated site will be generally used for public recreation purposes, with the exception of a small land parcel to the eastern extremity, which will be used for residential development in future.

The subject land is a disused landfill site, which is located predominantly within Frenchmans Bay Reserve (Lot 111 in DP 752015) and extends into the adjoining land parcels (Lots 5225, 5226 and 5227 in DP 728436; and Lot 29 in DP 251284). The site has an approximate area of 25,000m².

The application has been notified to the adjoining and nearby properties as well as advertised in the local newspaper. No submissions were received at the conclusion of the public notification period.

State Environmental Planning Policy No. 55 is applicable to the proposed development. The SEPP aims to promote the remediation of contaminated land for the purpose of reducing risk of harm to human health or any other aspect of the environment. The proposed remediation work is permissible with Council's consent pursuant to the provisions of SEPP 55. Council has previously engaged consultants to undertake a series of site environmental investigations and develop a preliminary remediation strategy, prior to the lodgement of the current application. The above studies are considered to have satisfied the relevant investigation requirements prescribed under the SEPP, Council's Contaminated Land Policy and the Contaminated Land Management Act 1997.

The majority of the site falls within Zone No. 6A (Open Space Zone) with the exception of Lot 29, which is zoned No. 2B (Residential B Zone), under Randwick Local Environmental Plan 1998. The proposed development is consistent with the zoning objectives stated in the LEP.

There is an Aboriginal site, known as "Frogs Hollow", and an associated area of potential archaeological deposit (PAD) located within the landfill remediation areas. "Frogs Hollow" was a gully area in which a shanty settlement, mainly occupied by Aboriginal communities, was developed during the Depression years and lasted into the 1950s. The settlement was subsequently demolished with the area used for landfill purposes. Based on the nature and extent of earth disturbance previously occurred on the remediation area, it is considered the potential for disturbance of any remaining relics of "Frogs Hollow" will be minimal. Therefore, the proposal is not considered to result in detrimental impacts on the heritage significance of the site.

The site falls within the Yarra and Frenchmans Bays Heritage Conservation Area and adjoins a local heritage item known as Yarra Bay House (No. 1 Elaroo Avenue, La Perouse). The proposed revegetation of the landfill site will significantly improve its visual and landscape character. The proposal will contribute to the visual setting of the wider Yarra and Frenchmans Bays coastal areas. Therefore, the development is not considered to result in detrimental impacts on the Conservation Area or the heritage item in the vicinity.

The Frenchmans Bay Plan of Management is applicable to the proposed development. The Plan of Management was developed to establish a framework for the management, use and enhancement of Frenchmans Bay. The Plan recognises Frenchmans Bay as a highly significant recreation reserve for its social, cultural,

historic and natural qualities. The proposal will ensure the safety of the Frenchmans Bay reserve, and satisfies the management objectives stated in the Plan.

The proposed development satisfies the matters of consideration under Section 79C of the Environmental Planning and Assessment Act 1979, as amended.

The proposed development satisfies the relevant legislations, State policies and local planning controls, and is recommended approval, subject to conditions.

2. The Proposal

Objective

Council has previously engaged consultants to undertake assessments of the conditions of the subject disused landfill site. The investigations indicate that the existing sandy cap has been subject to erosion, which exposes the originally covered waste materials. Additionally, the lower battered slopes are being undercut by erosion of the beach. There is potential for the landfill batter to become unstable.

The proposal aims to improve safety and stability of the site, and to reduce the likelihood of risks associated with the exposure of waste materials, particularly with respect to the intended use as public open space. The proposal will also rehabilitate the residentially zoned land parcel (Lot 29 in DP 251284) to a standard suitable for housing purposes.

The development will not remove any existing landfill waste to off-site locations. The proposal is to contain and reprofile the waste materials on site, to be overlain by suitable soil and vegetation cover. However, all waste fills within Lot 29 will be relocated elsewhere within the site.

- **Remediation of Lot 29 to residential standards**

An estimated 15,000 tonnes of waste materials over an area of approximately 0.1 hectare will be excavated and removed from Lot 29. The proposed excavation in Lot 29 will extend to 1m below the extent of the waste fills to remove any potentially contaminated subsoil. These materials will be relocated elsewhere within the site and reprofiled to create the final landscaping contours. Soil testing and certification will be undertaken in order to ensure that all of the waste has been removed from the allotment. The above processes will be followed by backfilling with Virgin Excavated Natural Materials (VENM).

- **Batter stabilisation and remediation**

The lower batters of the landfill site will be reprofiled to create an angle of approximately 1V (vertical):4H (horizontal). The existing gradient varies between 1V:1.5H and 1V:2.5H. The recontouring exercise aims to improve the slope stability, prevent exposure of waste materials and enhance the visual character of the landfill along the coastline.

- **Capping and vegetation**

In order to minimise surface erosion and improve groundwater quality, the reprofiled waste materials will be covered with clean soil layers and revegetated with selected native coastal grass and shrub species. The vegetation cover serves the dual purposes of stabilising the landfill surface and minimising water infiltration. The above capping system is referred to as "evapotranspiration cap" in the application.

- **Construction of footpaths and seatings**

The proposal includes the construction of a concrete footpath that connects with the existing coastal walkways to the north and south of the site. Concrete seating facilities will be provided along the proposed footpath.

The estimated total construction cost is \$2,350,000.

3. The Subject Site and Surrounding Area

The proposed development relates to a disused landfill site, which is located predominantly within Frenchmans Bay Reserve (Lot 111 in DP 752015) and extends into the adjoining land parcels (Lots 5225, 5226 and 5227 in DP 728436; and Lot 29 in DP 251284). The description and ownership details of the subject allotments are provided below:

| Lot Number | Plan Number | Address | Owner |
|------------|-------------|---|--|
| Lot 111 | DP 752015 | 5R – 33R Koorringai Avenue, Phillip Bay | Randwick City Council |
| Lot 5225 | DP 728436 | 3 Elaroo Avenue, La Perouse | La Perouse Local Aboriginal Land Council |
| Lot 5226 | DP 728436 | 7-11 Elaroo Avenue, La Perouse | La Perouse Local Aboriginal Land Council |
| Lot 5227 | DP 728436 | 5R Elaroo Avenue, La Perouse | Randwick City Council |
| Lot 29 | DP 251284 | 13R Murrong Place, La Perouse | La Perouse Local Aboriginal Land Council |

The site is irregular in shape and generally follows the coastline in a northwest to southeast orientation. The site has an approximate land area of 25,000m². The majority of the site falls within Zone No. 6A (Open Space Zone) with the exception of Lot 29, which is zoned No. 2B (Residential B Zone), under Randwick Local Environmental Plan 1998.

The site is bounded by Yarra Bay House, which is listed as a heritage item under Randwick Local Environmental Plan 1998, and Elaroo Avenue to the north, detached residential dwellings to the east, Endeavour Avenue to the south, and Frenchmans Bay to the west. The site is located within the suburbs of La Perouse and Phillip Bay. The locality is predominantly characterised by lower density residential developments and public open space.



Photo 1 View of Frenchmans Bay from the subject site



Photo 2 View of Yarra Bay House from the site



Photo 3 View of the lower batters of the landfill from the Frenchmans Bay beach area



Photo 4 Waste materials exposed by surface erosion of the landfill

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4.

4. Site History

4.1 Historical development of the site

It is believed that Frenchmans Bay Reserve had been used exclusively by Council as a landfill site. The exact period of operation is unknown; however, it may have received waste from the late 1960s to the early to mid 1970s. The landfill was subsequently closed with the operation transferred north to Yarra Bay. The types of waste received by the landfill were reportedly materials such as building refuse, car bodies, trees and grass cuttings and items collected during monthly Council clean-ups.

The submitted Statement of Environmental Effects has included information on the historical development of the site, based on inspections of aerial photographs taken in various periods, which is extracted as follows:

| | |
|------|--|
| 1931 | The site was largely undeveloped coastal land, mainly beach and vegetated sand dunes. |
| 1951 | By 1951, the site had undergone significant development, comprising approximately 25 structures of small residential appearance. The structures were present on either side of a gully traversing across the site. It is not known if the gully was formed naturally or as a result of human activity. |
| 1961 | By 1961, the 25 or so structures previously developed had now been removed, with the previously developed area vegetated with grass. The surrounding areas appeared largely unchanged. |
| 1970 | By 1970, vegetation to the south of the site appeared to have grown. The gully appeared to be mostly in-filled by 1970. The surrounding |

| | |
|------|---|
| | area appeared to have been raised, levelled and vegetated. This infilling of the gully is believed to be associated with the Council-operated landfill, which operated between the late 1960s to the early to mid 1970s. |
| 1978 | The site and surrounding areas remained largely unchanged compared to 1970, although a sea groyne had been developed along Frenchmans Bay. It has been reported that storm induced erosion to the landfill around 1978 required Council to undertake some restoration works involving stabilisation and the placement of imported fill. |

4.2 Previous investigations relating to the site

Council has previously engaged consultants to assess the environmental conditions of the landfill site. The details are summarised below:

| | |
|------|---|
| 2000 | <p>A preliminary environmental assessment was carried out by GHD Pty. Ltd. (Frenchmans Bay Plan of Management – Report on Draft Stage 1 Preliminary Environmental Assessment, July 2000). The investigation recommended that a landfill management program be implemented that comprises the following:</p> <ul style="list-style-type: none"> • Construction of a revegetated capping layer above the landfill materials. • Implementation of a groundwater monitoring detection program. • Implementation of a landfill gas monitoring program relating to the adjoining residential uses. |
| 2004 | <p>A further environmental assessment of the landfill site was carried out in 2004 by MPL Group Pty. Ltd. (Randwick Landfill Environmental Site Assessments, November 2004), which confirmed previous findings stated in the above-mentioned preliminary investigation. The report also identified the need for a long term solution to address potential batter instability.</p> |
| 2006 | <p>A Site Investigation and Concept Remediation Design report, dated May 2006, was prepared by GHD Pty. Ltd., which included detailed analysis on the groundwater condition, landfill gas emission, slope stability and excavation boundaries relating to the subject landfill site. The key findings of the study are as follows:</p> <ul style="list-style-type: none"> • Groundwater analysis: The site is having minimal impacts on the quality of the underlying groundwater. • Limit of waste: Exploratory pits were excavated to identify the lateral extent of the landfill materials and determine the presence of asbestos. The extent of the waste fills is provided in the submitted Statement of Environmental Effects. • Landfill gas monitoring: The landfill gas monitoring process did not detect any presence of landfill gas, such as methane and hydrogen sulphide. No exceedence of the threshold limits for subsurface or surface methane emissions prescribed by the NSW Department of Environment and Climate Change (the then Environment Protection Authority) were recorded. • Waste slope stability: The results of the investigation concluded that the existing waste slopes do not create any immediate threat of instability. Notwithstanding, in order to support the long term stability of the slope and minimise erosion and exposure of the underlying waste fills, it was recommended that the steep sections |

| | |
|--|--|
| | <p>of the waste be reprofiled to a gradient of approximately 1 in 3.</p> <p>The subject development proposal generally follows the recommendations provided in the investigation report.</p> |
|--|--|

5. Community Consultation

The subject application has been advertised in the local newspaper and notified by letter dated 6 September 2007 to 26 adjoining and nearby properties, in accordance with the provisions of the Public Notification of Development Proposals and Council Plans Development Control Plan. The notification period ended on 26 September 2007. No submissions were received at the conclusion of the public notification period.

6. Technical Officers Comments

The application has been referred to Council's Development Engineer, Landscape Development Officer, Heritage Planner and Environmental Health Officer for assessment. The comments provided are extracted as follows:

Development Engineer

On site stormwater detention is not required for this development.

Comments

Specific conditions have been recommended by the Development Engineer, which will be incorporated into any development consent granted by Council.

Landscape Development Officer

There are several environmental, cultural and heritage issues associated with this application, with the SEE detailing that the previous use of the site was a landfill, with significant remediation works required in order to transform this currently neglected and unused area into a more accessible and valued area of parkland.

The Frenchmans Bay area is included in SEPP 71 – Coastal Protection Zone, and while the majority of the site is Zoned 6A (Open Space) under Council's LEP, it also contains a smaller parcel known as Lot 29 DP 251284 is Zoned 2B (Residential 2B), which is the subject of the proposed works.

While the southern portion of the site is well maintained and contains community facilities such as BBQ's, playgrounds and formal access paths to Frenchmans Bay, the subject (northern) area is uneven, eroded and has been legally declared unhealthy and unsuitable for building upon on the basis that it was formerly used as a putrescible garbage landfill.

Council's Frenchmans Bay Plan of Management states the area is a "significant natural resource where opportunities for recreation are carefully integrated with the protection of the natural environment, cultural heritage values and needs of the local community", with this proposal assessed as being consistent with the objectives of this plan, as well as with the relevant legislative and policy requirements in that it is considered necessary, will promote the use of this area of open space and will be of benefit to the community.

It has been confirmed in both the Cultural Heritage Assessment, as well as during site meetings with members of the La Perouse Local Aboriginal Land Council (LALC), that while Frogs Hollow Valley (immediately north of the Aboriginal Reserve) may contain archaeological deposits, the subsequent demolition of the 'shanty town' and filling with waste material would have either destroyed or simply buried these potential deposits.

Further, an aboriginal midden and historic archaeological deposits relating to the Old Aboriginal Reserve are located close to, and beyond the southern end of the remediation area, with non-confirmed oral reports of Aboriginal rock engravings existing on the beach near the pipeline, and as such, it is recommended that the assessing officer incorporate the mitigation measures listed in the SEE in the form of conditions of consent.

Despite no works being conducted within Frenchmans Bay itself, this application still has the potential to indirectly impact inter-tidal and sub-tidal areas through sediment wash during the course of construction, and may result in the smothering of existing marine fauna and flora, which can lead to a change in species composition. Therefore, the stringent measures relating to erosion, sedimentation, groundwater and water quality (as detailed in the SEE), will also need to be imposed.

While this proposal has been assessed as not impacting any species, populations or communities listed under the NSW Threatened Species Conservation Act 1995 (TSC Act) and Commonwealth Environment Protection & Biodiversity Conservation Act 1999 (EPBC Act), there are pockets of existing native vegetation throughout the site; however, significant amounts of disturbance associated with the site's former use means it is not regarded as representative of the structure and floristic of the area, with heavy weed infestations also present.

It has been noted that clearing operations may result in a short term loss of habitat for native fauna (Orange Bellied Parrot & Striated Fieldwren), there are areas of better quality bushland either side of the study area which would offer better quality habitat, with removal of foreign and invasive weeds, and replacement with indigenous species seen to benefit the area.

The likely sequencing of construction activities is identified as:

- Removal of existing vegetation and surface waste material,
- Re-profiling and creation of landscaping contours,
- Placement of evapotranspiration cap and revegetation soils,
- Construction of footpaths and seating areas,
- Placement of selected soils, *mulch and associated planting*.

More specifically, the proposed landscape works (while completely devoid of any tree and shrub species, which are a naturally occurring characteristic of the area, and would also assist in the provision of shade for park users as can be seen with the southern portion of the developed reserve), is deemed appropriate for the site and surrounding area, and as such, should be fully implemented.

Comments

The subject site is not located within a Coastal Zone as defined in State Environmental Planning Policy No. 71 Coastal Protection. Therefore, the SEPP is not applicable to the proposed development. The referral comments have incorrectly made reference to the above SEPP.

Specific conditions have been recommended by the Landscape Development Officer in relation to landscaping and environmental protection issues, which will be incorporated into any development consent granted by Council.

Heritage Planner

The subject site comprises an area of land zoned Open Space located between Frenchmans Bay and a residential area which includes dwellings fronting Murrong Place and Goolagong Place. To the north of the site is a Special Uses zone which

includes Yarra Bay House. The land is vacant, with vegetation comprising grass and low scrub. The ground levels in western part of the site are very uneven, while the eastern part of the site slopes steeply down to the beach. In addition to Yarra Bay House to the north, the Mission Church to the east of the site, on the corner of Elaroo Avenue and Adina Avenue, is also listed as a heritage item under Randwick LEP 1998.

The application proposes remediation and rehabilitation of the land, formerly used as a Council landfill site. The works include recontouring and revegetating the site and provision of a new footpath above the shoreline.

Clause 46 of Randwick LEP 1998 requires Council to consider the likely effect of a proposal on the heritage significance of a heritage item in the vicinity. The Randwick Heritage Study Inventory Sheet for Yarra Bay House describes it as a "grand individually styled Edwardian mansion... A local landmark in an open setting on the foreshores of Phillip Bay." The Inventory Sheet for the Mission Church notes that it was moved from the site of the original Aboriginal Mission established by the Anglican Church on the shores of Frenchmans Bay in the 1880s.

The National Parks and Wildlife Act 1974 provides the legal basis for protection and management of Aboriginal sites in NSW.

The application has been accompanied by a Statement of Environmental Effects prepared by GHD which includes sections on Indigenous and Non-Indigenous heritage. Appendices to the SEE include a Cultural Heritage Review prepared by Navin Officer. The Cultural Heritage Review notes that a meeting was held with the La Perouse Aboriginal Land Council to discuss the works and potential impacts on cultural heritage values. The Cultural Heritage Review notes that the creation of the landfill site and the lack of action in relation to ameliorating its impact are a major issue and a source of continuing frustration to the Aboriginal community. The Cultural Heritage Review recommends that "Randwick Council should be mindful of the concerns expressed by the La Perouse Local Aboriginal Land Council in relation to the Frenchmans Bay landfill area and should continue dialogue with the Land Council".

In relation to Indigenous Heritage, the SEE notes that the Frenchmans Bay landscape is valued by the local Aboriginal community as a place of special cultural importance, independent of any material (or archaeological) manifestation of that history - the whole area is an important cultural landscape because of the interrelation between generations of Aboriginal people and its food and living resources, its homes and places of occupation, its graves, its story places, and the history of events which took place within it. The SEE notes that one Aboriginal site - Frogs Hollow, and an associated area of potential archaeological deposit are located within the landfill remediation area. Frogs Hollow was a valley immediately to north of the old Aboriginal Reserve occupied by Aboriginal people in the mid to late nineteenth century and up to the 1930s Depression. It was subsequently filled with waste materials. The SEE further notes that one Aboriginal site - a midden and historical archaeological deposit relating to the old Aboriginal Reserve is located to the south of the landfill remediation area. The complex of Mission buildings was located on the foredune towards the middle of the Bay. The SEE notes oral reports of Aboriginal rock engravings at the northern end of Frenchmans Bay, on the rock platform covered in sand (near the pipeline). The SEE provides an impact assessment and mitigation measures in relation to these sites. In relation to Frogs Hollow and the associated potential archaeological deposit (PAD), the LPALC noted that as there has been major land surface disruption and as these specific areas are not of high cultural value, that the proposed works do not pose an unacceptable impact on cultural heritage values. The LPALC further noted that there will be no impact on the PAD which is outside of the area of the works, and that only minimal excavation is proposed in the Frogs Hollow PAD with the rest of the landfill to be reprofiled and

capped, so that potential disturbance is expected to be minimal. The SEE notes however that reprofiling is proposed in the vicinity of the possible rock engraving. The SEE and the Cultural Heritage Review provide mitigation measures which can be included as consent conditions.

In relation to Non-Indigenous Heritage, the SEE notes that there will be no impacts on Yarra Bay House given that it is some distance from the boundary of the subject site. The SEE notes that given past activities on the site, that it is unlikely that any previously unidentified items of European heritage would be uncovered during the works. The SEE provides mitigation measures which can be included as consent conditions.

The following conditions should be included in any consent:

- A sites officer from the La Perouse Aboriginal Land Council is to be on site to monitor any remediation works (including site establishment such as fencing) in the vicinity of the foredune and beach at Frenchmans Bay.
- Should Aboriginal objects as defined under the National Parks and Wildlife Act be uncovered as a result of the remediation works, then work should stop in that area and advice sought from the La Perouse Aboriginal Land Council, the project archaeologist and the Department of Environment and Climate Change.
- Should human skeletal remains be uncovered as a result of the remediation works, then work should stop in that area and the Human Remains protocol provided in Appendix 1 of the Cultural Heritage Review prepared by Navin Officer Heritage Consultants Pty Ltd in June 2007.
- All construction activities, including the parking of plant and equipment, is to be undertaken on Council property, and should not encroach on Yarra Bay House property, located immediately to the north of the site. All construction workers should be made aware of this.
- In the event that any historical archaeological remains or deposits are exposed during the works, the excavation shall cease immediately and the Heritage Council notified under the requirements of the Heritage Act.

Comments

The special conditions recommended by the Heritage Planner will be incorporated into any development consent granted by Council.

Environmental Health Officer

No objections were raised by the Environmental Health Officer. Specific conditions have been recommended, which will be incorporated into any development consent granted by Council.

7. Master Planning Requirements

Clause 40A(1) of Randwick Local Environmental Plan 1998 provides that consent may be granted to a development application made in respect of a site consisting of more than 4,000m² only if: (a) a master plan has been adopted, and (b) the consent authority is satisfied that the development is not inconsistent with the provisions of that master plan.

Notwithstanding, sub-clause (2) provides that the consent authority may waive the requirement for a master plan only if it is satisfied: (a) that the proposed development is of a minor nature or is ancillary to the current use of the land, or (b) that adequate guidelines and controls applying to the land are already in place.

The subject site occupies more than 25,000m² of land area. No master plan for the site has been prepared or adopted by Council. It is considered that the master plan requirement can be waived pursuant to Clause 40(A) (2) based on the following reasons:

- The subject site is zoned Open Space 6A and Residential 2B under RLEP 1998. The proposal will improve the site to a standard suitable for public recreation and residential purposes, consistent with the objectives of the existing zoning.
- The site is subject to the provisions of Council's Frenchmans Bay Plan of Management. Accordingly, specific guidelines are already in place in relation to the proposed works.

8. Relevant Environmental Planning Instruments

The application has been assessed in accordance with the provisions of the following planning instruments:

8.1 State Environmental Planning Policy No. 55 – Remediation of Land

SEPP 55 aims to promote the remediation of contaminated land for the purpose of reducing the risk of harm to human health or any other aspect of the environment.

Clause 8 of the SEPP states that a person may carry out a remediation work in accordance with the Policy, despite any provision to the contrary in an environmental planning instrument. Therefore, the proposed remediation work is permissible under the SEPP.

The SEPP has defined two categories of remediation works: being categories 1 and 2. Clause 9 defines category 1 remediation works as those that require development consent. Specifically, clause 9(e) (ii) provides for the following:

9. Category 1 remediation work: work needing consent

For the purposes of this Policy, a category 1 remediation work is a remediation work that is:

- (e) carried out or to be carried out in an area or zone to which any classifications to the following effect apply under an environmental planning instrument:
- (ii) conservation or heritage conservation

The subject site falls within the Yarra and Frenchmans Bay Heritage Conservation Area under RLEP 1998. The site is also located in the vicinity of Yarra Bay House, which is a heritage item listed under the LEP. Therefore, the proposed remediation work is identified as category 1 under the SEPP and development consent from Council is required.

Clause 7 of the SEPP requires Council to consider contamination issues in determining development applications. Pursuant to Clauses 7(2) and (4) of the SEPP, a preliminary investigation is required to be submitted with a development application involving a change of use, where the land concerned is "land on which development for a purpose referred to in Table 1 to the contaminated land planning guidelines is being, or is known to have been, carried out".

The subject land accommodates a disused landfill site and is currently vacant. The proposal involves the remediation and revegetation of the majority of the site for the purposes of a public recreation facility. In addition, Lot 29 will be remediated to a standard suitable for housing purposes. Landfill uses are identified in Table 1 of the Managing Land Contamination Planning Guidelines 1998. Based on the above, a preliminary contamination investigation is required for the subject development application.

Council has previously commissioned various consultant studies relating to site contamination. They include:

- Frenchmans Bay Stage 1 Preliminary Environmental Assessment, July 2000, prepared by GHD Pty. Ltd.
- Randwick Landfill Environmental Site Assessments, November 2004, prepared by MPL Group Pty. Ltd.
- Frenchmans Bay Landfill Site Investigation and Concept Remediation Design, May 2006, prepared by GHD Pty. Ltd.

The above studies are considered to have satisfied the relevant investigation requirements prescribed under the SEPP, Council's Contaminated Land Policy and the Contaminated Land Management Act 1997.

8.2 Randwick Local Environmental Plan 1998

The majority of the site falls within Zone No. 6A (Open Space) under RLEP 1998, with a small portion of land known as Lot 29 in DP 251284 zoned as No. 2B (Residential B).

- **Clause 11 Zone No. 2B (Residential B Zone)**
The proposal is considered to be consistent with the zoning objectives prescribed under Clause 11, in that it will enable residential or community facilities development on Lot 29 in DP 251284.

Notwithstanding, land remediation is not identified as a permissible use under the zoning table of Clause 11, and the proposal is therefore prohibited under the LEP. However, as discussed in the previous section, the provisions of SEPP 55 will override this prohibition and the proposed remediation works are permissible with Council's consent.

- **Clause 18 Zone No. 6A (Open Space Zone)**
The proposal is considered to be consistent with the zoning objectives stipulated under Clause 18, in particular objective (b), as the remediation and landscape works will enable the use of the site for recreational purposes.

Notwithstanding, land remediation is not identified as a permissible use under the zoning table of Clause 18, and the proposal is therefore prohibited under the LEP. However, as discussed in the previous section, the provisions of SEPP 55 will override this prohibition and the proposed remediation works are permissible with Council's consent.

- **Clause 38 Development in open space zones**
Sub-clause (2) provides that when determining an application for consent to carry out development within Zone No. 6A, the Council must consider:
 - (a) The need for the proposed development on that land;
 - (b) Whether the proposed development promotes or is related to the use and enjoyment of open space;
 - (c) The impact of the proposed development on the existing or likely future use and character of the land; and
 - (d) The need to retain the land for its existing or likely future use.

The proposed remediation work will improve the safety and stability of the site for use as a public recreational facility. The proposal will improve public access to the foreshore by creating a new pedestrian footpath linking with the existing coastal walkways in the vicinity. The development will also enhance

the visual and landscape quality of the site. Therefore, the proposal is considered satisfactory having regard to the above provisions.

- **Clause 42B Contaminated land**

Clause 42B specifies matters relating to the development of contaminated land. Sub-clause (a) requires that the contaminated land will, after being remediated, be suitable for the purpose for which the development is proposed to be carried out. Furthermore, sub-clause (b) provides that the contaminated land will be remediated before the land is used for that purpose.

The proposal will remediate Lot 29, which is zoned Residential 2B under the LEP, to a standard suitable for residential uses. The remaining portions of the site, which are zoned Open Space 6A, will be remediated to a level suitable for public recreation purposes. The intended uses will only proceed after the remediation works have been completed. Therefore, the proposal is considered satisfactory having regard to the provisions of Clause 42B.

- **Clause 43 Protection of heritage items, heritage conservation areas and relics**

The subject site is located within the Yarra and Frenchmans Bays Conservation Area. The proposed recontouring and landscaping works are considered to improve the visual quality of the site and its surroundings, and will not adversely impact on the heritage significance of the conservation area as a whole. The proposed revegetation of the landfill site will improve views along the coastline of Frenchmans Bay. Council's Heritage Planner has assessed the proposal and raised no objections on heritage grounds, subject to conditions. Further discussions on heritage issues are provided in the following paragraphs.

- **Clause 44 Development of known or potential archaeological sites**

Clause 44 provides for the following:

- (1) The Council may grant consent to the carrying out of development on a known or potential archaeological site that is reasonably likely to have Aboriginal heritage significance only where:
 - (a) it has considered an assessment (prepared in accordance with any guidelines for the time being notified to it by the Director-General of National Parks and Wildlife) of how the proposed development would affect the conservation of the site and any relic reasonably likely to be located at the site, and
 - (b) it has notified the Director-General of its intention to do so and taken into consideration any comments received from the Director-General within 28 days after the notice was sent, and
 - (c) it is satisfied that any necessary consent or permission under the National Parks and Wildlife Act 1974 has been granted.

Clause 44 is relevant to the assessment of the subject proposal due to the presence of an Aboriginal site, known as "Frogs Hollow", and an associated area of potential archaeological deposit (PAD) being located within the landfill remediation areas.

The application has included a Cultural Heritage Review report, dated June 2007, prepared by Navin Officer Heritage Consultants. The consultant report has conducted a detailed assessment on potential heritage impacts as a result of the proposed works.

Section 4.2 of the Cultural Heritage Review report provides the following information:

Section 4.2 Aboriginal sites and PADs in the remediation area

One Aboriginal site – Frogs Hollow – and an associated area of potential archaeological deposit (PAD) are located within the Frenchmans Bay landfill remediation area.

Frogs Hollow was a small valley or gully area situated immediately north of the Aboriginal Reserve in which a shanty settlement developed during the Depression years and lasted into the 1950s. Frogs Hollow is one of three local and unofficial shanty town communities which developed from the time of the Depression. The other 'towns' were Hill 60, situated one kilometre to the north, and Happy Valley, five hundred metres to the southeast.

During the 1930s depression the Frogs Hollow population is remembered to have been predominantly Aboriginal. However, following the Second World War, the population was increased by many Russian, Baltic, German and Middle Eastern immigrants. By the mid 1950s many of the non-Aboriginal people had moved away, and Aboriginal residents had moved to housing in nearby Tasman Street. The last 'shacks and humpies' were bulldozed out of La Perouse in the early 1960s.

The Frogs Hollow valley was subsequently filled with waste materials. It is now a gradually sloping, elevated plane which extends from Elaroo Avenue to a steeply inclined seaward slope adjacent to the Botany Bay shoreline.

The mid to late nineteenth century Aboriginal occupation of this area and subsequent Depression 'shanty town' occupation may have left archaeological deposits. It is not known if the subsequent use of this area as a landfill site has obliterated or simply buried these potentially occurring deposits. If still extant, such deposits could potentially provide valuable information about the peripheral and 'fringe' occupation of the areas around the sanctioned Mission and government Reserve communities.

Section 6.4 of the Statement of Environmental Effects provides the following assessment:

6.4.2 Impact assessment

Navin Officer held a meeting with the La Perouse Local Aboriginal Land Council to discuss the remediation works and potential impacts to cultural heritage values.

The LALC also noted that the presence of the Frogs Hollow landfill, the history surrounding its creation, and the lack of action in ameliorating its impact are a major issue and source of continuing frustration for the Aboriginal community. It was noted that there has been major land surface disruption in the Frogs Hollow area, and the associated PAD. These specific areas are not of high cultural value. Consequently the remediation works proposed for these areas do not pose an unacceptable impact to cultural heritage values.

The possible presence of engraving sites obscured by sand, and archaeological deposits nearby to the remediation works area, were of some concern and the LALC indicated that monitoring of any works along and in the vicinity of the foredune should be conducted by Land Council representatives.

Based on the nature of the disturbance that has occurred previously in the proposed remediation works area, and the views of the La Perouse Local Aboriginal Land Council, it is concluded that there are no cultural heritage or cultural values constraints to the proposed works at Frenchmans Bay. In addition, the proposal would only involve excavation of waste from Lot 29 of which only a corner of the site

is located in the possible location of Frogs Hollow. The rest of the landfill will be reprofiled and capped. Therefore, potential disturbance to Frogs Hollow is expected to be minimal.

Specific mitigation measures have been recommended to minimise any potential for impact on any Aboriginal heritage items.

The proposal will involve excavation of waste from Lot 29, which only occupies a relatively small portion of the entire landfill site. The remaining landfill areas will be reprofiled and capped with vegetation. The potential for disturbance of any remaining relics of the "Frogs Hollow" is considered minimal. Based on the nature and extent of earth disturbance previously occurred in the remediation area, it is considered no significant adverse impacts on cultural heritage will result from the proposed development.

Council's assessment officer has approached the NSW Department of Environment and Climate Change for preliminary advice on Aboriginal heritage issues on 3, 19 and 23 October 2007. No objections or other responses were received.

Council's Heritage Planner has assessed the application and raised no objections on heritage grounds, subject to conditions that require specific mitigation measures to be implemented during works on the site. The proposal is considered to satisfy the provisions of Clause 44, subject to the above conditions.

- **Clause 46 Development in the vicinity of heritage items, heritage conservation areas and known or potential archaeological sites**
Clause 46 provides that:

When determining an application for consent to carry out development on land in the vicinity of a heritage item, a heritage conservation area or a known or potential archaeological site, the Council must take into consideration the likely effect of the proposed development on the heritage significance of the heritage item, heritage conservation area or known or potential archaeological site and on its setting.

Sections 6.4 and 6.5 of the submitted Statement of Environmental Effects have identified the heritage items located in the vicinity of the landfill site. Additional details are also included in the Cultural Heritage Review report. The relevant information contained in the SEE is extracted below:

(a) Non-Indigenous heritage items in the vicinity of the site:

Section 6.5 Non-Indigenous Heritage

Two items on the State Heritage Register are listed as occurring in the suburb of La Perouse. These were the Bare Island Fort and Chinese Market Gardens. Ten items are listed on the State Heritage Inventory as occurring in the suburb of La Perouse.

A search of the Australian Heritage Council's Register of the National Estate (RNE) was undertaken on 27 March 2007. Six items were listed as occurring in La Perouse. These included the Bare Island Fort, the Botany Bay Entrance, Cape Banks, La Perouse Memorial Group, La Perouse Monuments Historic Site and the Watchtower.

A search of Council's LEP was undertaken on 27 March 2007. The closest heritage items to the site are:

- Yarra Bay House (Inventory No. 237) (immediately north of the site);

- Yarra Bay Beach and Reserve, Phillip Bay (Inventory No. 428) (approximately 250m north of the Frenchmans Bay site);
- Mission Church, 46 Adina Avenue, La Perouse (Inventory No. 3) (approximately 300m east of the Frenchmans Bay site);
- Bare Island Fort (Inventory No. 298) (over 800m south of the site); and
- Our Lady of the Good Counsel Church, 11 Yarra Road, La Perouse (Inventory No. 429) (approximately 500m northeast of the Frenchmans Bay site).

The heritage item that is most likely to be affected by the proposal is the adjoining Yarra Bay House (No. 1 Elaroo Avenue, La Perouse), due to its close proximity to the landfill site. However, the heritage building is located more than 50m from the nearest boundary fence line. No works will be undertaken within the heritage site. Due to the degree of separation, the proposed works are not considered to adversely impact on the significance of the heritage item and its curtilage.

The proposed contouring and revegetation of the landfill site will significantly improve its visual and landscape character. The proposal will contribute to the visual setting of the wider Yarra and Frenchmans Bays coastal areas.

Given the degree of past and present land disturbance across the site due to previous landfill activities, it is unlikely that any previously unidentified items of European heritage will be uncovered during construction.

Furthermore, the on-going operation of the landscaped public open space will not result in any significant environmental impacts on heritage items in the vicinity.

(b) Indigenous heritage items in the vicinity of the site:

Section 6.4 of the submitted Statement of Environmental Effects provides the following information:

6.4.1 Existing environment

The Frenchmans Bay study area falls within the boundaries of the La Perouse LALC [Local Aboriginal Land Council]. The Land Council has a particular interest in the proposed remediation works as the remediation area is located immediately adjacent to the community settlement at La Perouse and some of the land to be remediated is owned by the Land Council.

The Aboriginal history and occupation of Frenchmans Bay relates to a geographical area which extends well beyond the former Reserve boundaries defined by the government. The Frenchmans Bay landscape is valued by the local Aboriginal community as a place of special cultural importance, independent of any material (or archaeological) manifestation of that history. The whole Bay landscape is an important cultural landscape because of the interrelation between generations of Aboriginal people and its food and living resources, its homes and places of occupation, its graves, its story places, and the history of events which took place within it.

The proposed landfill remediation area falls within the broader Aboriginal cultural landscape of the Frenchmans Bay area.

Sections 4.3 and 4.4 of the Cultural Heritage Review report provide the following information:

Aboriginal sites and PADs close to the remediation area

One Aboriginal site – a midden and historic archaeological deposit relating to the Old Aboriginal Reserve – **is located close to, and south of, the remediation area.**

This site includes the portion of the surviving Frenchmans Bay foredune deposit which was centred within the original Aboriginal Reserve area.

Various early photographs of the Bay show a complex of Mission buildings, homes and related structures on this section of foredune, including a wooden church. Oral tradition also confirms this area as the focus of the original Aboriginal encampment which subsequently became a church mission and then government defined reserve. The c1895 Crown Survey plan for Portion 181 identifies three buildings as 'Aborigines Quarters' on the foredune.

In 1985, McIntyre compiled a report documenting protection works conducted by Randwick Council at a large midden / campsite at Frenchmans Bay. This is the only site listed on the DECC Aboriginal Heritage Information Management System (AHIMS) as occurring close to the Frenchmans Bay study area. The site is (approximately) located on the foredune in the middle section of the embayment, about 50m south of the stone groyne. The location for the site is based on the site description, a photograph of the site included in McIntyre's report, and discussions with Ms McIntyre.

The visible extent of the site in 1985 was described as a large blowout, approximately 50 x 20m and several metres deep, in the dunes immediately in front of the Aboriginal settlement. Very little shell was visible at the site. Some in situ shell was noted in section towards the front of the dune, where shells including rock oyster, turban, periwinkle, cockle and mud oyster were embedded in a grey / black sandy matrix. Most of the artefacts appeared to be eroding out of the western side of the blowout. McIntyre postulated that 'undisturbed archaeological material may extend for some distance to the west'. A feature of particular interest, comprising an area of sandstone rubble packed with clay, was tentatively interpreted as the foundations of the old wooden mission church which was remembered to have stood immediately east of the blowout.

Material which was visible in the blowout included shell, stone artefacts, several pieces of clay smoking pipe and two teeth (probably macropod). The area was also strewn with more recent debris, mostly glass and metal.

Artefacts, including 'blackened blades, eloueras, grinding stones, axes, copper or brass pins which had been fashioned into fish hooks, ochre etc', had been collected from the site over a period of approximately fifteen years by a local resident. Some of his artefact collection is now housed at the Australian Museum.

It is considered likely that Aboriginal burials are situated within this area. These may relate both to the prehistoric and historic Aboriginal occupation of the area.

Aboriginal burials are generally found in soft sediments such as aeolian sand, alluvial silts and rock shelter deposits. They are often associated with shell middens on the NSW coast. Burials are generally only visible where there has been some disturbance of subsurface sediments or where some erosional process has exposed them. '

Unconfirmed Sites

There are oral reports of the existence of Aboriginal rock engravings at Frenchmans Bay **on the beach near the pipeline that traverse the foredune.** David Ingrey, senior sites officer, remembers engravings of a stingray (which was a major totem for the area), a man and a footprint on rock platforms that are now covered in sand.



Photo 5 Aboriginal engravings maybe present near the rock platforms and outfall pipe on the beach of Frenchmans Bay, according to the submitted documentation.

Impact assessment

Navin Officer held a meeting with the La Perouse Local Aboriginal Land Council to discuss the remediation works and potential impacts to cultural heritage values.

The possible presence of engraving sites obscured by sand, and archaeological deposits nearby to the remediation works area, were of some concern and the LALC indicated that monitoring of any works along and in the vicinity of the foredune should be conducted by Land Council representatives.

PAD 15 [the identified PAD to the south and south-west of the site as described in the paragraphs above] is outside the boundary of the proposal and therefore there would be no impact on this PAD. There is batter reprofiling work in the vicinity of the possible rock engraving. A fence would also need to be established to prevent beach access to the public during construction works.

The information contained in the Statement of Environmental Effects has been reviewed. The sites of potential archaeological deposits (PAD) and unconfirmed engravings are located outside of the remediation areas. Specific mitigation measures have been recommended by Council's Heritage Planner to ensure adequate procedures are in place where Aboriginal objects are discovered during works on the site. Additionally, standard conditions are recommended to prohibit the placement of building materials or equipment outside of the remediation site. The proposed development is not considered to adversely impact on any identified and possible Aboriginal heritage items in the vicinity of the site, subject to the above conditions.

8.3 Draft Randwick Local Environmental Plan 2007

The proposal is not inconsistent with the provisions of the Draft LEP.

9. Policy Controls

9.1 Development Control Plans

There are no development control plans that are applicable to the proposed development.

9.2 Council Policies

9.2.1 Contaminated Land Policy 1999

Council has published a contaminated land policy, which was prepared in accordance with the requirements of the Contaminated Land Management Act 1997 and SEPP 55. The policy aims to:

- Ensure that changes of land use will not increase the risk of harm to human health or the environment;
- Avoid inappropriate restrictions on land use; and
- Provide information to support decision making and to inform the community.

The compliance of the proposal with SEPP 55 has already been addressed in this report. The proposed remediation work is considered to deliver a net benefit to the community by ensuring the safety of a public open space area located in close proximity to the bay. It is considered that the development is consistent with the guidelines contained in the Policy.

9.2.2 Frenchmans Bay Plan of Management

The Frenchmans Bay Plan of Management was developed to establish a framework for the management, use and enhancement of Frenchmans Bay, pursuant to the requirements of the Crown Lands Act 1989. The subject landfill site falls within the Frenchmans Bay reserve area.

The Plan recognises Frenchmans Bay as a highly significant recreation reserve for its social, cultural, historic and natural qualities. Section 3.3 of the Plan identifies the vision and objectives for management of the reserve: “Frenchmans Bay is a significant natural resource where opportunities for recreation are carefully integrated with the protection of the natural environment, cultural heritage values and the needs of the local community”. Specific management objectives have been derived from the above vision statement, which are addressed as follows:

| Category | Management Objective | Comments |
|------------------------------------|--|--|
| Recreation and use | Provide opportunities for a range of low key, predominantly unorganised recreation activities, with a focus on water-based recreation. | The proposal will maintain the Frenchmans Bay reserve as a public open space, and hence will allow opportunity for low key recreational activities. |
| Natural environment and vegetation | Ensure that the natural environment is protected and enhanced, and that use of the reserve minimises impacts to the environment. | The proposal will revegetate the previously disturbed landfill areas using locally indigenous plant species. The vegetation cover will also minimise water infiltration to the underlying waste fills and resultant leachate production. In this respect, the proposal is considered to improve the water quality of Frenchmans Bay in the longer term. |
| Heritage | Recognise and protect the significance of Frenchmans Bay as part of a wider cultural landscape with significant heritage values. | <p>The proposal will significantly improve the visual and landscape character of the landfill area. The development is considered to enhance the visual setting and curtilage of Frenchmans Bay.</p> <p>Specific conditions are recommended to require the implementation of appropriate mitigation measures during works on the site. Subject to the above conditions, the proposal is not considered to adversely impact on the significance of identified and potential heritage items in the vicinity of the site.</p> |

| Category | Management Objective | Comments |
|---|---|--|
| Visual and landscape | Enhance and protect the scenic quality of the reserve, recognising the importance of the natural environment to the overall scenic quality of the area. | The proposal will enhance the scenic quality of the reserve by covering protruding waste and landscaping the area disturbed by the remediation works. |
| Facilities, services and infrastructure | Provide and maintain services and facilities to support the range of activities that take place, enabling a high quality recreation experience and appropriate community use consistent with the principles of Crown land management. | The development will provide a new pathway that improves public access along the coastal foreshore. Seatings will be installed for the public enjoyment and use of the open space. |

9.2.3 Mill Pond Catchment Plan

The site falls within the study area of the Mill Pond Catchment Plan. The Mill Pond Catchment covers an area of 3,416 hectares in the Randwick Local Government Area (including Frenchmans Bay). The plan aims to formulate a coordinated approach to managing stormwater to achieve ecological sustainability and to derive social and economic benefits from sound stormwater management practices. The plan has been prepared to comply with the requirements of the notice issued to Randwick City Council by the then Environment Protection Authority (the present Department of Environment and Climate Change) under Section 12 of the Protection of the Environment Operations Act 1997.

The relevant management objectives of this Plan include:

- An improvement in the receiving water quality of the Mill Pond Creek Catchment;
- An increase in the amount of sediment captured from the Mill Pond Creek Catchment; and
- An increase in the amount of litter captured from the Mill Pond Creek Catchment.

The proposal is considered to be consistent with the above objectives by improving the quality of water discharged from the landfill site in the following manner:

- The proposed revegetation of the landfill site following remediation works will stabilise the waste batters and loose sandy capping materials.
- The proposed evapotranspiration capping system will minimise water infiltration to the underlying waste fills and consequently reduce leachate production.
- Specific conditions will be recommended to require appropriate erosion and sedimentation control measures to be implemented during works on the site. The proposal is not considered to result in adverse impacts on stormwater quality subject to the recommended conditions.

10. Relevant State Environmental Legislations

10.1 National Parks and Wildlife Act 1974

The National Parks and Wildlife Act 1974, among other statutory controls, provides the basis for legal protection and management of Aboriginal sites in NSW. The implementation of the Aboriginal heritage provisions in the Act is the responsibility of the Department of Environment and Climate Change.

The Act, in conjunction with the policies of the Department, provides the following constraints and requirements on land owners and development proponents:

- It is an offence to knowingly disturb an Aboriginal artefact or site without an appropriate permit.
- Prior to instigating any action which may conceivably disturb a 'relic', appropriate archaeological survey and assessment are required.
- When the archaeological resource of an area is known or can be reliably predicted, appropriate land use practices should be adopted, which would minimise the necessity for the destruction of sites / relics, and prevent the destruction of sites / relics that warrant conservation.

The potential impacts on items of Aboriginal heritage significance have been addressed in this report. The development is unlikely to adversely impact on any such items. Accordingly, an approval from the Department of Environment and Climate Change will only be required should items of significance be discovered during construction works. This will be required as a condition of consent.

10.2 Heritage Act 1977

The Heritage Act contains provisions relating to the protection of items listed in the State Heritage Register. There are no items listed on the State Heritage Register either within or immediately adjacent to the subject site.

Section 139 of the Heritage Act prohibits a person from disturbing or excavating any land on which the person has discovered or exposed a relic, except in accordance with an excavation permit or a notification granting exception for the permit.

In addition, a person must not disturb or excavate any land knowing or having reasonable cause to suspect that the disturbance or excavation will or is likely to result in a relic being discovered, exposed, moved, damaged or destroyed, unless the disturbance or excavation is carried out in accordance with an excavation permit or a notification granting an exception.

The term "relic" under the Act means "any deposit, object or material evidence: (a) which relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and (b) which is 50 or more years old".

Due to the degree of land disturbance from the previous landfill activities, it is considered unlikely for the uncovering of relics on the site. Notwithstanding, a specific condition is recommended to require notification of the Heritage Council should relics be discovered during works on the site.

10.3 Threatened Species Conservation Act 1995

Section 5A of the Environmental Planning and Assessment Act specifies a number of factors in determining whether there is likely to be a significant impact on threatened species, populations or ecological communities or their habitats. Should a threatened species or community be impacted, a test of significance must be undertaken to determine the extent of the impact. A Species Impact Statement (SIS) is required to be submitted with a development application if there is likely to be a significant impact on a threatened species, population or ecological community or its habitat.

The Statement of Environmental Effects has included an assessment of the potential impacts on the identified threatened species:

Section 6.9 Flora and fauna

Threatened species

A number of threatened flora species listed under the Threatened Species Conservation Act and Environment Protection and Biodiversity Act have been recorded in the locality (i.e. 10km radius). It is unlikely that any of these species would occur due to the modified and weed infested nature of the site, except for

Sunshine Wattle (*Acacia terminalis* subsp. *Terminalis*). This species generally inhabits coastal scrub and dry sclerophyll woodlands on sandy soils. Most areas of habitat for this species are small and isolated, and often modified or disturbed as a result of surrounding development. The species is also large and easy to identify in the field, and none were seen during this current survey. As such it is unlikely to be present at the site.

The endangered ecological community, Eastern Suburbs Banksia Scrub, is known from the area and patches of this remnant community have been mapped within the locality. This community does not occur on the site.

A number of species of fauna have been recorded within the locality but many of these are marine species and are therefore unlikely to be impacted by the proposal. The Orange-bellied Parrot (*Neophema chrysogaster*) may occasionally overfly or even forage across the site, as its diet mainly comprises seeds and fruits of sedges and salt-tolerant coastal and saltmarsh plants. There is limited suitable vegetation for this species across the site. There is also potential habitat at the site for the Striated Fieldwren. This species mainly inhabits ground and understorey vegetation and can be found swampy, coastal heathlands, tussocky grasslands, low shrubby vegetation and the margins of swamps. The site is highly disturbed and vegetation of better quality exists either side of the study site.

Section 6.9.2 Impact Assessment

There is some potential habitat for both the Orange-bellied Parrot and Striated Fieldwren at the site. The remediation works would involve the loss of some habitat for both of these species. The study site is currently degraded and modified, and there is better quality bushland in areas either side of the study area. Thus, potential habitat, and better quality habitat, for these species would still be present in the immediate area, and removal of the small amounts of low quality potential habitat for these species, would have a negligible impact on the total amount of foraging habitat available for both these species in this locality. As such the remediation works are unlikely to significantly impact these species should they occur.

It is unlikely that rehabilitation of this site would significantly impact any species or endangered ecological community of conservation significance. Instead, this proposal is more likely to benefit remaining native vegetation and fauna species within the locality by removing noxious weeds and by replanting with locally endemic species. This would provide additional foraging habitat for fauna species and prevent the spread of weeds in the area.

This proposal is unlikely to have significant impacts on any species, population or endangered ecological community listed under the TSC Act or EPBC Act. Rehabilitation of the site has the potential to benefit the ecology of the area through removal of weeds and replanting with locally endemic species to provide additional habitat for fauna. Consequently no further provisions of the TSC Act or EPBC Act need apply for the proposed works at this site.

Based on the submitted information, it is noted that the site provides a potential habitat for a small number of threatened species. However, the natural landform and vegetation of the site have already been substantially modified, and represent a degraded environment for any endangered ecological community. There are alternative locations in the vicinity of the site, which can provide similar habitats for various flora and fauna.

The proposal includes the revegetation of the site with native endemic species, which can potentially create an improved habitat for native fauna.

Specific conditions will be recommended to require appropriate erosion and sedimentation measures to be implemented during the construction phase. These requirements will ensure the coastal marine ecology of Frenchmans Bay will not be affected by sediments washed down from the site during construction works.

The proposal is not considered to result in significant impacts on any species or communities listed under the Threatened Species Conservation Act and a Species Impact Statement is not required.

10.4 Protection of the Environment Operations Act 1997

Section 5 and Schedule 1 of the Protection of the Environment Operations Act specify activities that require the issue of a licence (known as "scheduled activities") by the Department of Environment and Climate Change, including the following:

Contaminated soil treatment works for on-site or off-site treatment (including, in case, incineration or storage of contaminated soil but excluding excavation for treatment at another site) that:

- (1) handle more than 1,000 cubic metres per year of contaminated soil not originating from the site on which the works are located, or
- (2) handle contaminated soil originating exclusively from the site on which the works are located and:
 - (a) incinerate more than 1,000 cubic metres per year of contaminated soil, or
 - (b) treat otherwise than by incineration and store more than 30,000 cubic metres of contaminated soil, or
 - (c) disturb more than an aggregate area of 3 hectares of contaminated soil.

The proposal will reprofile and contain the existing landfill materials on site. The waste fill will be capped with clean virgin soil layers and native vegetation. The proposed remediation method will not require any off-site or on-site treatment of contaminated soils. Therefore, a licence under the Act is not required.

10.5 Contaminated Land Management Act 1997

The Act aims to establish a process for investigating and (where appropriate) remediating land areas, where contamination presents a significant risk of harm to human health or some other aspects of the environment.

Under the Act, the Department of Environment and Climate Change can issue investigation and remediation orders for sites that are considered to be contaminated. No such orders have been issued in relation to the subject site.

10.6 Rivers and Foreshores Improvement Act 1948

Under Part 3A of the Rivers and Foreshores Improvement Act 1948, any excavation on, in or under protected lands, removal of material from protected lands, or to undertake anything that obstructs, or detrimentally affects, the flow of protected waters, will require the issue of a permit by the Department of Environment and Climate Change. Protected lands refer to those lands that are within 40m of a waterway. Protected water means any waterway.

Whilst the proposal will involve works on land within 40m of a waterway (that is, Frenchmans Bay), Clause 22H (1)(b) of the Act excludes public authorities from having to obtain a Part 3A Permit. Given that Randwick City Council is the development applicant for the proposal, a Part 3A Permit is not required in this instance.

10.7 Fisheries Management Act 1994

Section 200(1) of the Act provides that a local government authority must not carry out dredging or reclamation work except under the authority of a permit issued by the Minister.

The proposal will not involve any dredging or reclamation works in areas permanently or intermittently submerged by water. Accordingly, no permit under the Act is required.

10.8 Environment Protection and Biodiversity Conservation Act 1999

Under the Environment Protection and Biodiversity Conservation Act, environmental approvals may be required for an 'action' that has, will have or is likely to have a significant impact on:

- (a) matters of national environmental significance (known as "NES matters"), or
- (b) the environment on Commonwealth land (whether or not the action is occurring on Commonwealth land)

Approval for the above actions may be required from the Commonwealth Minister for Environment and Heritage.

The submitted Statement of Environmental Effects and the attached Ecological Assessment report, dated 8 March 2007, prepared by GHD, have indicated that the site does not contain any endangered ecological communities or threatened species listed under the Act. The site provides a potential habitat for a small number of threatened species. However, the natural landform and vegetation of the site have already been substantially modified, and represent a degraded environment for any endangered ecological community. There are alternative locations in the vicinity of the site, which can provide similar habitats for various flora and fauna.

There are no other matters of NES that are likely to be affected by the proposal. Therefore, the proposal has not been referred to the Commonwealth Minister for the Environment for approval under the Act.

11. Environmental Assessment

The site has been inspected and the application assessed having regard to the provisions of Section 79C of the Environmental Planning and Assessment Act 1979:

| Section 79C 'Matters for Consideration' | Comments |
|---|---|
| Section 79C (1) (a)(i) – Provisions of any environmental planning instrument | Refer to the "Environmental Planning Instruments" section of this report for details. |
| Section 79C (1) (a)(ii) – Provisions of any draft environmental planning instrument | The proposal is not inconsistent with the provisions of Draft Randwick Local Environmental Plan 2007. |
| Section 79C (1) (a)(iii) – Provisions of any development control plan | Not applicable. |
| Section 79C (1) (a)(iiia) – Provisions of any planning agreement that has been entered into under Section 93F, or any draft planning agreement that a developer has offered to enter into under Section 93F | Not applicable. |

| Section 79C 'Matters for Consideration' | Comments |
|---|--|
| Section 79C (1) (a)(iv) – Provisions of the regulations | <p>Clause 4(1) and Schedule 3 of the EP&A Regulation 2000 identify a range of development that is declared “Designated Development” for the purposes of the EP&A Act. Pursuant to the provisions of the Act, a Designated Development requires the submission of an Environmental Impact Statement (EIS) prepared in the prescribed format entailed in the Regulation.</p> <p>The proposed development does not fall within any of the identified development in Schedule 3, and therefore is not a declared Designated Development.</p> |
| Section 79C (1) (b) – the likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality | See the paragraphs below. |
| Section 79C (1) (c) – the suitability of the site for the development | <p>The subject site is suitable for the proposed development as it is a disused landfill ground and contains contaminated waste materials. The majority of the land in question is designated as a public reserve and zoned as 6A Open Space under RLEP 1998. There is a residential allotment, known as Lot 29 in DP 251284, that forms the eastern extremity of the landfill site, and is zoned 2B Residential under the LEP. The proposal will remediate the land to a standard that is suitable for its intended purposes.</p> <p>The proposed remediation and rehabilitation of the landfill site within the Frenchmans Bay reserve will achieve a number of management goals and objectives stated in Council’s Frenchmans Bay Plan of Management.</p> |
| Section 79C (1) (d) – any submissions made in accordance with the EP&A Act or EP&A Regulation | No submissions were received at the conclusion of the public notification period. |
| Section 79C (1) (e) – the public interest | <p>The proposal is within the public interest based on the following reasons:</p> <ul style="list-style-type: none"> • The development will ensure public health and safety by capping the fill materials and minimising the potential for exposure of waste to the general public. • The landfill site will be recontoured to ensure stability against erosion. The site will be improved with landscaping |

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| Section 79C 'Matters for Consideration' | Comments |
|---|---|
| | <p>and footpath and seating facilities to enable its use as a public reserve.</p> <ul style="list-style-type: none"> • The proposed vegetation over the landfill will reduce the amount of water infiltration to the underlying waste materials, and thereby minimise leachate production and its consequential impacts on the water quality of Frenchmans Bay. • The development will remediate a residential zoned land parcel (Lot 29 in DP 251284), owned by the La Perouse Local Aboriginal Land Council, to a standard suitable for its intended housing purpose. |

Likely Impacts of the Development

Environmental Impacts

(a) Traffic and access

Section 6.2 of the Statement of Environmental Effects provides the following information:

During construction, traffic accessing the site each day would include approximately 10 small vehicles of construction workers. These vehicles are likely to be parked in Elaroo Avenue during the construction period. There is sufficient parking available and this is unlikely to conflict with any resident’s use of the street for parking. In addition, the parking would only be temporary in nature during the 16 week construction period.

During the importing of clean fill, approximately 30 heavy vehicles would access the site each day. This is expected to continue for approximately four weeks. Trucks are likely to use Anzac Parade and would enter the site via Elaroo Avenue. This may cause some disruptions to local traffic during the 4 week period however this would be temporary in nature and the development of a Traffic Management Plan for construction works would need to address this issue.

A specific condition will be recommended to require the preparation of a Traffic and Parking Management Plan for the proposed works, prior to commencement of construction activities on site.

(b) Noise

Section 6.3 of the Statement of Environmental Effects provides the following information:

Construction activities such as excavation work and batter stabilisation work would generate the most noise during the construction period.

Construction is likely to go for a period of 16 weeks and would progressively move over the site. Therefore, nearby residences and beach users would not be impacted for the entire construction period.

Notwithstanding, the DEC's construction noise criteria would need to be considered. Section 171 of the DEC's Environmental Noise Control Manual (ENCM), states that for a construction period of between 4 weeks and 26 weeks, construction noise should not exceed background noise levels by more than 10dBA.

It is possible that some construction activities may exceed this criterion during certain periods of construction however mitigation measures outlined below would minimise any potential impacts.

Noise impacts during operation of the site are likely to be negligible. Recreational activities encouraged would be low key recreational activities such as walking or swimming at Frenchmans Bay beach area in front of the site.

Specific conditions will be recommended to specify the permissible working hours and to require appropriate noise mitigation measures to be implemented during works on the site.

(c) Erosion and sedimentation of waterways

Section 6.6 of the Statement of Environmental Effects provides the following information:

It is proposed to remove the waste from Lot 29 to another area of the landfill site. It is anticipated that all materials on site would remain on site and be capped with the proposed evapotranspiration cap. Any excavation of landfilled waste has the potential to encounter potential hazardous or suspected hazardous materials. Although this is not anticipated at the site, procedures would be implemented in the event that any suspected hazardous materials were encountered during construction works.

The site covers an area of 25,000m² and this entire area would be disturbed as a result of the proposal. During construction, there is potential for erosion to impact nearby waterways during earthworks due to runoff from the site, or mud and dirt particles may be tracked onto paved surfaces. Exposed surfaces may also be subject to wind erosion during construction works. Appropriate erosion and sediment controls would need to be implemented, as outlined in Section 6.6.3.

There is also limited potential for spills to occur during construction activities which may contaminate soils. Appropriate emergency response procedures would be developed to deal with such an event.

Operational impacts in relation to encountering suspected hazardous waste would improve as a result of the remediation. The proposal involves the capping of the waste with a vegetative and soil layer, which would minimise the potential for any contact with contaminants.

Section 6.8 provides the following additional information:

During construction, potential impacts are likely to be focused on erosion and sedimentation as a result of land disturbance. This is particularly going to be an issue with reprofiling works along the batter.

Erosion and sedimentation, if uncontrolled, could potentially increase sediment load and organic matter into local waterways as a result of construction site runoff. This could result in a decline in the water quality of Frenchmans Bay.

In the long term, the proposed remediation works have the potential to improve water quality of Frenchmans Bay as a result of “clean” runoff leaving the site. This would be achieved by capping the landfill and minimising the flow of groundwater into the fill material and hence the production of leachate.

It is noted that the proposal may result in sedimentation of nearby waterways by soil or fill materials during the construction phase. Specific conditions are recommended to require appropriate erosion and sedimentation control measures to be implemented during earth and construction works on site. The proposal is considered satisfactory subject to compliance with the above conditions.

(d) Groundwater quality

Section 6.7 of the Statement of Environmental Effects provides the following information:

Although the site is already having a minimal impact on groundwater quality, it is proposed to reprofile and cap the landfill site using an evapotranspiration cap. By reprofiling and capping the landfill, this substantially reduces the amount of surface water infiltration into the waste mass, thus reducing the amount of leachate generated and reducing the transfer of possible contaminants into the site’s underlying ground water.

Therefore, the proposal should have an overall positive impact on groundwater quality.

The proposed vegetation over the landfill will reduce the amount of water infiltration to the underlying waste materials, and thereby minimise leachate production and its consequential impacts on the water quality of Frenchmans Bay. Therefore, the proposal is considered satisfactory in this regard.

(e) Flora and fauna

The potential impacts on flora and fauna and threatened ecological species have already been addressed in the “Relevant State Environmental Legislations” of this report. The proposal is not considered to result in significant detrimental impacts on native flora and fauna.

(f) Air quality

Section 6.10 of the Statement of Environmental Effects provides the following information:

The proposal has the potential to generate dust emissions during construction. Any earthworks, particularly where large volumes are being moved, have the potential to result in emissions of particulate matter. The following activities are likely to generate dust during construction:

- Clearing of grass and topsoil;
- Earthworks and excavation associated with the remediation;
- Reprofiling the landfill; and
- Landscaping works

These impacts would be minimised by implementing mitigation measures in Section 6.10.3.

Long term air quality impacts are not anticipated as the site would be revegetated and landscaped as soon as possible after the remediation works.

Specific conditions relating to construction management will be recommended in order to minimise dust emission during works on the site. The proposal is considered satisfactory subject to the above conditions.

(g) Visual quality

Section 6.11 of the Statement of Environmental Effects provides the following information:

The Plan of Management lists some visual characteristics of Frenchmans Bay, some of which are relevant specifically for the landfill site. These are as follows:

- The beach and views of the water towards Botany Bay;
- Elevated headlands and exposed cliff faces;
- Long distance view across the water to other parts of the city; and
- Vegetation along the ridgeline that separates Yarra Bay to the north and Congwong Bay to the south from Frenchmans Bay.

However, there are also areas of exposed landfill and a number of weed species present at the site, which detracts from the visual quality of the landfill site itself.

Short term visual impacts may be experienced during the construction phase of the project, particularly for residences in Elaroo Avenue or Murrong Place, immediately adjacent to the site as well as for those members of the public using the beach area, or adjacent open space areas.

In the longer term, it is anticipated that the aesthetics of the site would be enhanced through removal of existing weed species, and landscaping of the site with appropriate locally indigenous vegetation species. Lookout areas and seating is proposed for the site, enabling appreciation of the views to Frenchmans Bay.

No additional lighting is proposed for the site and hence no associated impacts.

There is potential for rubbish to be illegally dumped at the site. However, this is no different from the existing situation and Council would need to deal with these incidents if they occurred.

The proposed landscaping work is considered to significantly improve the visual quality of the site. The proposed footpath and seating facilities will also enhance the functioning of the site as a public recreation reserve.

Social and economic impacts

Section 6.12 of the Statement of Environmental Effects provides the following information:

There would be some negative impacts on the community during the construction period including impacts on traffic, parking and access.

Other potential impacts associated with construction activities are noise, visual impacts, dust impacts, erosion and sedimentation impacts and impacts on water quality. In addition, the beach area adjacent to site would be closed during works for safety reasons. These impacts would be short term in nature (approximately 16 weeks) and the implementation of mitigation measures would minimise any impacts.

The long term impacts on the community would be positive. The proposal would rehabilitate the landfill site as a recreational area for the community. The landscaping works, including the installation of footpaths would enhance the amenity of the landfill site for the community.

The removal of waste from the LALC's Lot 29 to meet residential standards for remediation would be a positive impact to the LALC as this would allow development for residential purposes.

It is considered that the proposed development will not result in detrimental social or economic impacts on the locality. The potential impacts on the cultural heritage on the site and the surrounding areas have already been addressed in this report.

8 Relationship to City Plan

The relationship with the City Plan is as follows:

Outcome: Excellence in recreation and lifestyle opportunities, a liveable City, heritage that is protected and celebrated, a healthy environment.

Direction: Maximise opportunities for residents and visitors to enjoy both active and passive open space uses; a range of cultural, sporting and leisure activities; new open space is created as opportunities arise; our beaches and public places are safe, inviting, clean and support a recognisable image of our City; our heritage is recognised, protected and celebrated; environmental risks and impacts are strategically managed.

9 FINANCIAL IMPACT STATEMENT

The approval of this development application will entail no direct financial impact. The implementation of the proposed remediation and landscaping works will require funding from Council's Capital Works Programme.

10 CONCLUSION

The proposed development satisfies the provisions of SEPP 55 Remediation of Land, Randwick Local Environmental Plan 1998, Frenchmans Bay Plan of Management and other relevant legislation, planning instruments and policies.

The landfill site has been subject to erosion, which exposes the originally covered waste materials. Additionally, the lower battered slopes are being undercut by erosion of the beach. The proposal will improve the safety and stability of the site, and reduce the likelihood of risks associated with the exposure of waste materials, particularly with respect to the intended use as public open space. The proposal will also rehabilitate the residentially zoned land parcel (Lot 29 in DP 251284) to a standard suitable for housing purposes.

Having regard to all relevant matters for consideration, the proposal, subject to compliance with the recommended conditions, will not result in adverse impacts upon either the amenity of the nearby properties or the heritage significance of the Frenchmans Bay area. The development is considered to deliver a net benefit to the wider community. The application is therefore recommended for approval subject to the attached conditions of consent.

Recommendation

- A. That Council, as the consent authority, grant development consent under Sections 80 and 80A of the Environmental Planning and Assessment Act, as amended, to Development Application No. 722/2007 for remediation and rehabilitation of the former Frenchmans Bay landfill site for public recreational and residential uses, including excavation and reprofiling of waste, backfilling, revegetation, construction of footpath and provision of seating facilities, at 5R-

33R Kooringai Avenue, Phillip Bay; 3, 5R & 7-11 Elaroo Avenue, La Perouse; and 13R Murrong Place, La Perouse, 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 following plans received by Council on 30 August 2007:

| Plan Number | Prepared By | Dated |
|----------------------------|-------------------------------|----------|
| 21-15504-C001 (Revision B) | GHD | 22.06.07 |
| 21-15504-C002 (Revision B) | GHD | 22.06.07 |
| 21-15504-C003 (Revision B) | GHD | 22.06.07 |
| 21-15504-C004 (Revision B) | GHD | 22.06.07 |
| 21-15504-C005 (Revision B) | GHD | 22.06.07 |
| 21-15504-C006 (Revision C) | GHD | 22.06.07 |
| 21-15504-C007 (Revision B) | GHD | 22.06.07 |
| 21-15504-L001 (Revision D) | POD Landscape Architecture | 22.06.07 |
| 21-15504-L002 (Revision D) | POD Landscape Architecture | 22.06.07 |
| 21-15504-L003 (Revision D) | POD Landscape Architecture | 22.06.07 |
| 21-15504-L004 (Revision D) | POD Landscape Architecture | 22.06.07 |

the application form and 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 ensure that the development satisfies the provisions of the Environmental Planning and Assessment Act 1979 and Regulations:

2. 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.

3. 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.

4. **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.

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.

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5. **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, and notify the Principal Certifying Authority and Council accordingly in writing, and
 - iii) 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 person's intention to commence building works.
6. 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 clause 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 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.
7. A sign must be erected and maintained in a prominent position on the site for the duration of the works, 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,
 - name, address and telephone number of the Principal Certifying Authority,
 - a statement stating that "unauthorised entry to the work site is prohibited".
8. An **Occupation Certificate** must be obtained from the Principal Certifying Authority **prior to any occupation of the building work** encompassed in this development consent, 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 relevant requirements of the Environmental Planning & Assessment Act 1979 and conditions of development consent must be satisfied prior to the issuing of an occupation certificate.

9. **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 must also be provided to Council with the occupation certificate.

10. 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 0.35% 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:

11. A Construction Management Plan is to be submitted to and approved by the principal certifying authority **prior to the commencement** of demolition, excavation or building works. The management plan must include the following measures, as applicable to the type of development:
- The proposed order in which works on the site will be undertaken, and the method statements on how various stages of construction will be undertaken.
 - Location and construction of protective fencing / hoardings to the perimeter of the site.
 - Location of site storage areas/sheds/equipment.
 - Location of building materials for construction.
 - Provisions for public safety.
 - Dust control measures.
 - Details of methods of disposal of demolition materials.
 - Protective measures for tree preservation.
 - Provisions for temporary sanitary facilities.
 - Location and size of waste containers/bulk bins.
 - Details of proposed sediment and erosion control measures.
 - Construction noise and vibration management.
 - The proposed method of access to and egress from the site for construction vehicles, including access routes through the Council area.

The site management measures are to be implemented prior to the commencement of any site works and be maintained throughout the works, to maintain adequate levels of public health and safety. A copy of the approved

Construction Management Plan must be maintained on site and be made available to Council officers upon request.

12. The removal, storage, handling and disposal of building materials must be carried out in accordance with the following regulations:
- The requirements and Guidelines of WorkCover NSW
 - Occupational Health and Safety Act 2000
 - Australian Standard 2601 (2001) – Demolition of Structures
 - The Protection of the Environment Operations Act 1997
 - Protection of the Environment Operations (Waste) Regulation 1996.

13. All excavations and backfilling associated with the erection or demolition of a building / structure 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.

14. Except with the written approval of Council's Manager of Health, Building & Regulatory Services, all building, demolition and associated site works (including site deliveries) must only be carried out between the hours of 7.00am to 5.00pm on Monday to Friday inclusive and between 8.00am to 5.00pm on Saturdays and all building activities are strictly prohibited on Sundays and Public Holidays.

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

15. Noise and vibration emissions during the construction of the building / structures or other 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.

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.

16. Temporary toilet facilities are to be provided, at or in the vicinity of the work site throughout the course of demolition and construction, to the satisfaction of WorkCover NSW and the toilet facilities must be connected to a public sewer or other sewage management facility approved by Council.

17. 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 any part of the footpath, nature strip 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.

18. Details of the proposed sediment control measures are to be submitted to and approved by the principal certifying authority **prior to the commencement of any site works**. The sediment and erosion control measures must be implemented prior to the commencement of any site works and be maintained throughout construction. A copy of the approved details must be forwarded to the Council and a copy is to be maintained on-site and be made available to Council officers upon request.

Details of proposed sediment and erosion control measures shall include (where applicable): a site plan, indicating the slope of land, access points & access control measures, location and type of sediment & erosion controls, location of existing vegetation to be retained, location of material stockpiles and storage areas, location of building operations and equipment, methods of sediment control, details of drainage systems and details of existing and proposed vegetation.

19. Public safety and convenience must be maintained at all times during demolition, excavation and construction works and the following requirements must be complied with:
- a. Building materials, sand, soil, waste materials, construction equipment or other activities 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.
 - b. 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.
 - c. 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.

- d. 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.
- e. 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. Applications to place a waste container in a public place can be made to Council's Health, Building and Regulatory Services section.
- f. Any part of Council's road, footway or nature strip which is damaged as a result of the work must be repaired or replaced to Council's satisfaction prior to occupation or finalisation of the development.

The following conditions are applied to ensure that adequate provisions are made for the management of waste from the development:

- 20. A demolition and construction Waste Management Plan (WMP) must be developed and implemented for the development, to the satisfaction of Council, **prior to the commencement of works.**

The Waste Management Plan must provide details of the type and quantities of demolition and construction waste materials, proposed re-use and recycling of materials, methods of disposal and details of recycling outlets and land fill sites.

Where practicable waste materials must be re-used or recycled, rather than disposed and further details of Council's requirements including relevant guidelines and pro-forma WMP forms can be obtained from Council's Customer Service Centre or by telephoning Council on 9399 0999.

Details and receipts verifying the recycling and disposal of materials must be kept on site at all times and presented to Council officers upon request.

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

- 21. Site remediation must be carried out in accordance with the following general requirements (as applicable):
 - a) Remediation works shall be carried out in accordance with the requirements of the Contaminated Land Management Act 1997, environmental planning instruments applying to the site, guidelines made or approved by the NSW Department of Environment and Climate Change (formerly EPA) and the NSW Department of Planning (formerly Planning NSW), Randwick City Council's Contaminated Land Policy 1999 and the Protection of the Environment Operations Act 1997.
 - b) Any requirements contained within an Environmental Management Plan (EMP), form part of this consent and Council must be consulted with prior to the development of the EMP.
 - c) The remediation of the site including ground water must fully comply with

all relevant Commonwealth and State Legislation, Regulations and Standards.

- d) Any variations to the proposed remediation works or remediation action plan shall be approved by the independent environmental consultant and a written statement is to be provided to the Council by the environmental consultant prior to the commencement of such works, which confirms their acceptance of the amended remediation action plan / works.
- e) The Environmental Consultant, in their assessment of appropriate soil investigation levels, must take into account all environmental concerns (for example, the potential effects on wildlife) and the protection of ground and surface water.
- f) Should any underground tanks be discovered they shall be removed in accordance with relevant NSW DECC/EPA Guidelines; Australian Institute of Petroleum's (AIP) Code of Practice for the Design, Installation and Operation of Underground Petroleum Storage Systems (CP4-1998); and WorkCover NSW requirements. In the event of conflict between AIP Code of Practice and WorkCover requirements the latter shall prevail.
- g) Any odours from excavated materials shall be mitigated by the use of an odour suppressant, such as Biosolve, and shall not give rise to an offensive odour as defined in the Protection of the Environment Operations Act 1997. Stockpiles shall also be covered and dampened down to reduce odour and dust impacts.

On-site land farming of contaminated soil is not permitted, except with the written approval of Council's Manager of Health, Building & Regulatory Services.

- h) Any fill importation to the site is to be monitored and classified by the Site Auditor appointed for remediation of the site or a person with his qualifications. Only 'Virgin Excavated Natural Material' (VENM) is to be imported to the site, as defined within the NSW EPA 'Environmental Guidelines: Assessment, Classification and Management of Liquid and Non-Liquid Wastes. 1999'.
- i) A Site Remediation Management Plan must be prepared prior to the commencement of remediation works by a suitably qualified environmental consultant and be implemented throughout remediation works. A copy is to be forwarded to Council. The Site Remediation Management Plan shall include measures to address the following matters:
 - general site management, site security, barriers, traffic management and signage
 - hazard identification and control
 - worker health & safety, work zones and decontamination procedures
 - cross contamination
 - site drainage and dewatering
 - air and water quality monitoring
 - disposal of hazardous wastes
 - contingency plans and incident reporting
 - details of provisions for monitoring implementation of remediation works and persons/consultants responsible
- j) All trucks and service vehicles leaving the site shall go through a suitably constructed on shaker grids, to ensure no tracking of material occurs from

the site onto roads adjoining the site. Details are to be submitted to Council in the Site Management Plan.

- k) Prior to the commencement and throughout the duration of the remediation and construction works adequate sediment and stormwater control measures shall be in place and maintained on site at all times. Sediment laden stormwater shall be controlled using measures outlined in the manual Managing Urban Stormwater Soils and Construction produced by the NSW Department of Housing.
- l) Remediation work shall be conducted within the following hours:
 Monday – Friday 7am – 5pm
 Saturday 8am – 5pm
 No work permitted on Sundays or Public Holidays
- m) A sign displaying the contact details of the remediation contractor (and the site manager if different to remediation contractor) shall be displayed on the site adjacent to the site access. This sign shall be displayed throughout the duration of the remediation works.
- n) Any new information which comes to light during remediation, demolition or construction works which has the potential to alter previous conclusions about site contamination shall be notified to the Council and the Principal Certifying Authority immediately.
22. A Validation Report shall be prepared by a suitably qualified Environmental Consultant and be submitted to Council upon completion of the remedial works, and prior to commencing any building works. The Validation report shall be prepared in accordance with relevant NSW Department of Environment and Climate Change guidelines, including the guideline "Consultants Reporting on Contaminated Sites", and shall include:
- Description and documentation of all works performed.
 - Results of validation testing and monitoring.
 - Validation results of any imported fill onto the site.
 - Demonstrate how all agreed clean-up criteria and relevant regulations have been satisfied.
 - Confirmation and justification as to the suitability of the site for the proposed use and the potential for off-site migration of any residual contaminants.
23. The works shall not give rise to environmental pollution or public nuisance or, result in an offence under the Protection of the Environment Operations Act 1997 or NSW Occupational Health & Safety Act (2000) & Regulations (2001).
24. Hazardous or intractable wastes arising from the demolition, excavation and remediation process shall be removed and disposed of in accordance with the requirements of WorkCover NSW and the Department of Environment and Climate Change (the former Environment Protection Authority), and with the provisions of:
- New South Wales Occupational Health and Safety Act, 2000;
 - The Occupational Health and Safety (Hazardous Substances) Regulation 2001;
 - The Occupational Health and Safety (Asbestos Removal Work) Regulation 2001;
 - Protection of the Environment Operations Act 1997 (NSW); and
 - Environment Protection Authority's Environmental Guidelines:

Assessment, Classification and Management of Liquid and Non Liquid Wastes (1999).

The following condition is applied to satisfy the relevant pollution control criteria and to maintain reasonable levels of health, safety and amenity to the locality:

25. There are to be no emissions or discharges from the premises which give rise to a public nuisance or result in an offence under the Protection of the Environment Operations Act 1997 and Regulations.

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

27. Prior to the issue of a construction certificate the applicant shall submit for approval, and have approved by Council's Traffic Engineer, a detailed construction Traffic and Parking Management Plan. The plan shall demonstrate how construction and delivery vehicles will access the development site during the remediation, importing of clean fill, landscaping and construction phases of the development. All heavy vehicles shall use Bunnerong Road, Anzac Parade and Elaroo Avenue to enter / exit the site (i.e. use main roads and minimize the use of local roads). The plan shall also show proposed parking arrangements for construction workers.

All traffic associated with the subject development shall comply with the terms of the approved construction traffic management plan. All costs associated with the implementation of the approved Traffic and Parking Management Plan shall be borne by the applicant.

28. Sediment and erosion control measures must be implemented during all phases of the remediation and construction project. The applicant must comply with the "Mitigation Measures" specified in Section 6.6.3 of the submitted Statement of Environmental Effects (SEE), dated June 2007, prepared by GHD. The "erosion and sedimentation control plan" referred to in Section 6.6.3 of the SEE must be submitted to the Certifying Authority for approval, and be approved, prior to the commencement of any site works.
29. To minimize the potential impact of the remediation and construction project on water quality within and external to the development site, the applicant must comply with the "Mitigation Measures" listed in Section 6.8.3 of the submitted Statement of Environmental Effects (SEE), dated June 2007 and prepared by GHD.

The following condition is applied to provide adequate provisions for drainage and associated infrastructure:

30. Detailed drainage plans shall be submitted to and approved by the certifying authority prior to the issue of a construction certificate. Subject to the post development ground conditions being suitable, Council would support the use of infiltration as a means of stormwater discharge. Overland flows can be discharged to Frenchmans Bay subject to the applicant demonstrating that water quality within the receiving waters will not be adversely affected and that suitable scour protection measures are in place.

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

31. A public utility impact assessment must be carried out on all public utility services on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the development/building works and include relevant information from public utility authorities and exploratory trenching or pot-holing, if necessary, to determine the position and level of service.
32. 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.

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

33. Landscape works at the site shall be installed substantially in accordance with the Landscape Plans, drawing numbers 21-15504-L001-L004, Revision D, dated 22.06.07, prior to the issue of a final occupation certificate, and shall be maintained in accordance with those plans.
34. The "Mitigation Measures" contained in parts 6.6.3, 6.7.3, 6.8.3 & 6.9.3, of the submitted Statement of Environmental Effects, dated June 2007, prepared by GHD, relating to protection of the surrounding natural environment and implementation of landscape works, will need to be fully implemented throughout the course of the works.
35. Any areas of nature-strip upon Council's footway in Elaroo Avenue which are damaged as a result 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, prior to the issue of a Final Occupation Certificate.
36. Approval is granted for the removal of that existing vegetation which needs to be removed in order to accommodate the proposed works as shown, subject to full implementation of the approved landscape plans.

The following conditions are applied to protect the cultural heritage on and in the vicinity of the site:

38. A sites officer from the La Perouse Local Aboriginal Land Council is to be on site to monitor any remediation works (including site establishment such as fencing) in the vicinity of the foredune and beach at Frenchmans Bay.
39. Should Aboriginal objects as defined under the National Parks and Wildlife Act be uncovered as a result of the remediation works, then work shall stop in that area and advice sought from the La Perouse Local Aboriginal Land Council, the project archaeologist and the Department of Environment and Climate Change.
40. Should human skeletal remains be uncovered as a result of the remediation works, then work shall stop in that area and the Human Remains Protocol provided in Appendix 1 of the Cultural Heritage Review, dated June 2007, prepared by Navin Officer Heritage Consultants Pty. Ltd. (which is attached to the submitted Statement of Environmental Effects), be followed.
41. All construction activities, including the parking of plant and equipment, are to be undertaken on Council property, and are not to encroach on the Yarra Bay

House property, located immediately to the north of the site. All construction workers are to be adequately informed and made aware of this matter.

42. In the event that any historical archaeological remains or deposits are exposed during the proposed works, excavation activities shall cease immediately and the Heritage Council notified under the requirements of the Heritage Act.

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 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 or any other container or article.

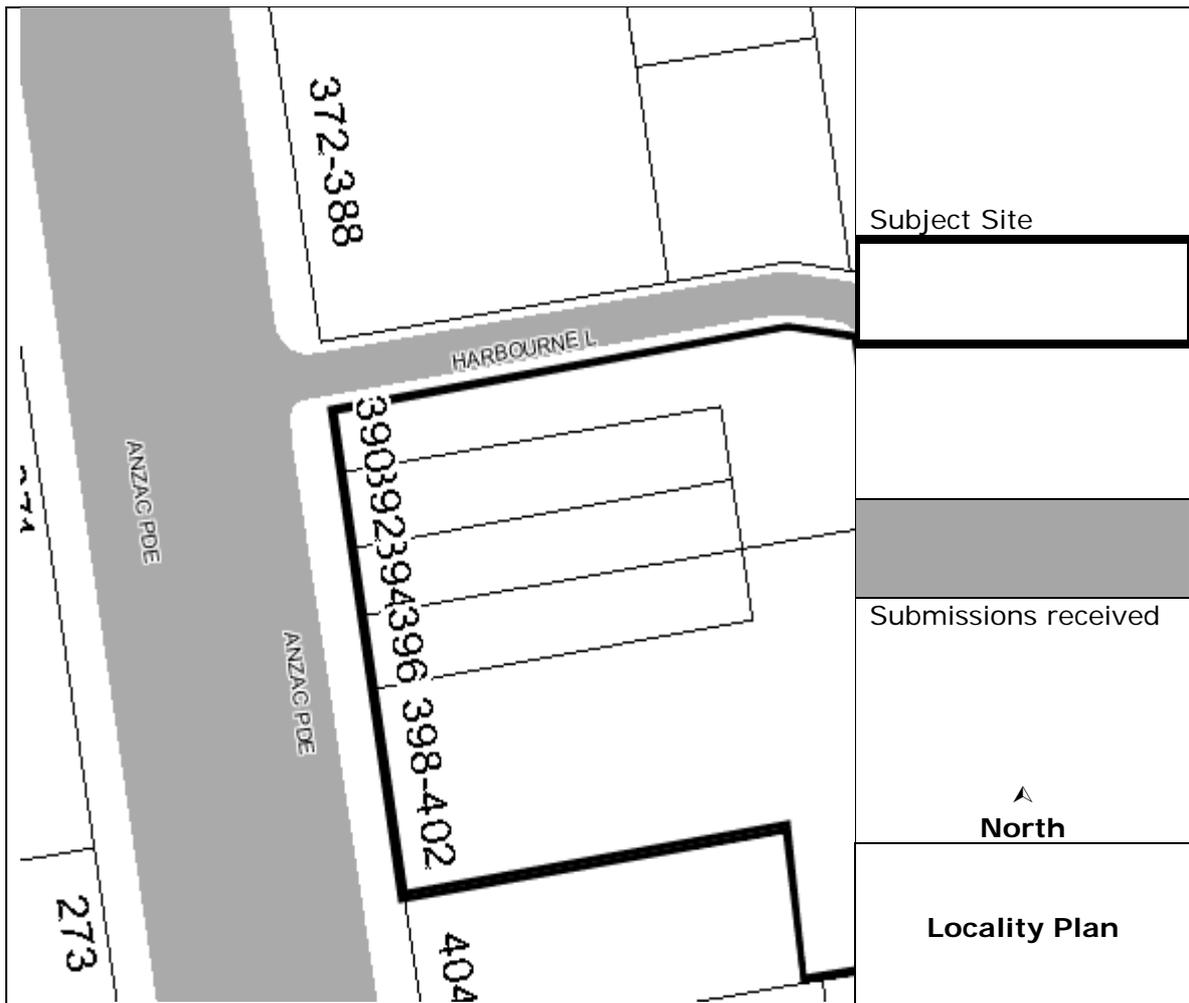
Attachment/s:

Nil

**Development Application Report No.
D13/08**



Subject: 390-396 Anzac Parade, Kingsford
Folder No: DA/254/2007
Author: David Ongkili, Senior Environmental Planning Officer
Proposal: Demolition of existing building on site & construction of 8 storey mixed use development comprising 5 retail tenancies, 8 commercial suites, 36 residential units & landscaping with 2 levels of basement carparking
Ward: West Ward
Applicant: Pioneer Consultants Pty Ltd
Owner: Mr T C Chow
Summary Recommendation: Approval



Item D13/08

1. Executive Summary

The application is referred to the Committee as it is valued at \$4,500,000.

The proposal is for demolition of the existing building and erection of a part-8 storey, part-7 storey and part-5 storey mixed residential and retail/commercial development comprising 5 shops, 8 commercial suites, 36 dwellings, and basement and above-ground car parking for 92 vehicles. The proposal comprises a building block with primary frontage to Anzac Parade and secondary frontages to Harbourne Lane and Middle Lane.

Following advice provided by the SEPP 65 Design Review Panel in relation to concerns about the internal layout of apartments, configuration of balconies, configuration of central landscape area and external articulation, and following concerns raised by Council regarding the status of an existing right of way in the proposal, amended plans were submitted on 12 September 2007, to address these issues. The amended plans which are the subject of this report, are considered to be satisfactory, showing an improved proposal addressing the Panel's concerns. Additionally, the amended plans also indicate the deletion/exclusion of the portion of land containing the existing right-of-way from the subject site and development proposal (that is, no works are proposed under this DA within the existing right-of-way and, accordingly, no consent is required from the owner of the land comprising the right of way, being the Owners of SP 69132, the adjoining multi-storey mixed residential/commercial block at No 398-402 Anzac Parade). The applicant has also adequately demonstrated that the subject development site benefits from the rights of carriageway over the portion of the land containing the existing right-of-way.

The proposal does not comply with numerical statutory controls applicable to the site in relation to the maximum 2:1 FSR control for the residential component and the maximum 24m building height control to which the applicant has submitted objections under the provisions of State Environmental Planning Policy No. 1 (SEPP No.1). The proposal will have a residential FSR of 2.11:1 and a maximum building height of 27.1m. An assessment of the objections indicates that strict compliance with the controls would be unreasonable and unnecessary.

The proposal does not comply with policy controls of the DCP No. 16 - Kingsford Commercial Centre relating to rear height plane, maximum building height and side setbacks requirements. The proposal also does not comply with the numerical car parking requirement of the DCP – Carparking relating to the commercial component by 2 car spaces. The variations from these requirements have been assessed in relevant sections of the report and are considered justified in the circumstances.

The proposal would be suitable for the site and would have acceptable impacts on the amenity of adjoining and surrounding properties.

The recommendation is for approval subject to conditions.

2. The Proposal

The current proposal is essentially an amended proposal to that originally submitted following the incorporation of changes recommended by the SEPP 65 Design Review Panel. It involves demolition of the existing building and erection of a part-8 storey, part-7 storey and part-5 storey mixed residential and retail/commercial development comprising 5 shops, 8 commercial suites, 36 dwellings, and basement and above-ground car parking for 92 vehicles.

The external finishes of the proposed building will be a combination of rendered and painted and face brick-work elements.

The residential component of the development comprises 5 x one bedroom dwellings, 16 x two bedroom dwellings, 14 x 3 bedroom dwellings and 1 x 4 bedroom dwelling.

Pedestrian access to the residential component of the building would be provided from Harbourne Lane whilst vehicular access is provided from Middle Lane.

Car parking for the development would be accommodated within two basement and two above ground levels of carparking containing a total of 92 car spaces.

3. The Subject Site And Surrounding Area:

The site is located on the eastern side of Anzac Parade, at the corner of Anzac Parade and Harbourne Lane and extending along Harbourne Lane to Middle Lane at the rear. The site is regularly shaped with a frontage of 26.185m to Anzac Parade, 46.375m to Harbourne Lane and approximately 15.79m to Middle Lane. The site slopes from east to west by approximately 2.5m and has a total site area of 1288 sqm.

Existing on the site are three single storey shops (used as an office, a restaurant and a used furniture shop) fronting Anzac Parade and a tyre and mechanical repair workshop at the rear on the corner of Harbourne and Middle Lane.

The surrounding development comprises a shopping strip along Anzac Parade with predominantly two storey retail shops, restaurants and services, and multi-storey mixed commercial/residential developments. Adjoining the site to the south, at No. 398-402 Anzac Parade, is a multi-storey mixed commercial/residential development, to the north on the opposite side of Harbourne Lane are two storey commercial developments with residential above fronting Anzac Parade, and a McDonalds store with vehicular access off Harbourne lane, to the east (at the rear) are the garages of dwelling houses fronting Harbourne Road, to the west on the opposite side of Anzac Parade are a number of multi-storey mixed commercial and residential building and two-storey shops with residential above.

4. Site History

Development Application No 236/1995 for demolition of existing buildings and erection of a part nine and part ten storey commercial/residential building containing retail areas, 52 dwellings and associated parking for 107 vehicles was approved on 13 December 1995. The approved proposal covered the subject site as well as the adjoining lands at 396 and 398-404 Anzac Parade.

Development Application No. 202/1998 for the demolition of existing buildings and construction of a nine storey mixed commercial/residential building comprising commercial area and 44 dwellings with associated parking was refused on 4 June 1998. This application was lodged in conjunction with DA No. 201/1998 for a similar development comprising a nine-storey mixed commercial/residential buildings comprising commercial area and 54 dwellings with associated carparking on the adjacent land at No. 398-402 Anzac Parade which was also refused on 4 June 1998. Both applications were subsequently approved by the Land and Environment Court on 30 April 2001 following appeal.

Development Application No.634/2002 for the demolition of existing building and erection of an 8 storey mixed-use development comprising 5 retail tenancies 8 commercial suites, 36 residential units and landscaping with two levels of basement and above ground carparking for vehicles was approved on 17 December 2002.

5. Community Consultation:

The original proposal has been notified and advertised from 23 April 2007 to 10 May 2007 in accordance with the DCP – Public Notification. In response, ten objections were received as listed in Section 5.1 below.

The amended proposal was also advertised/notified from 11 January to 30 January 2008. No submissions were received in response to the amended proposal.

5.1 Objections

The following submissions were received in relation to the original application:

1. P Ashton, 14 Harbourne Road, Kingsford
2. A Liu, 102 Florence Avenue, Eastlakes (on behalf of owner of 26/398-402 Anzac Parade, Kingsford)
3. A & K Wong, 16/398-402 Anzac Parade, Kingsford
4. V Uksi, 48/398-402 Anzac Parade, Kingsford
5. T & A Wong, 23A/398-402 Anzac Parade, Kingsford
6. P Ching, 9/398-402 Anzac Parade, Kingsford
7. S Wang & H Tao, 20/398-402 Anzac Parade, Kingsford
8. L Zhao, 31/398-402 Anzac Parade, Kingsford
9. L. Louinder, 398-402 Anzac Parade, Kingsford
10. D Bannerman, Bannermans Lawyers, PO Box 513, Parramatta (on behalf of The Owners – SP 69132, at 398-402 Anzac Parade, Kingsford)

Objections raised are as follows:

- **No consent given by the Owners – SP 69132, to lodgement of the DA as proposal includes development of land to which the Owners – SP 69132 are registered proprietors.**

Comment: The portion of land containing an existing right-of-way and owned by the owners of SP 69132 has been deleted/excluded from the DA. Accordingly, consent of the owners of SP69132 is not required for the proposed development.

- **Applicant's geotechnical report advises potential damage due to rock anchors, movement and damage to adjoining property at 398-402 Anzac Parade**

Comment: Standard conditions will be applied to ensure protection of adjoining sites during excavation and construction including requirements for consent of adjoining property owners to be obtained prior to ground or rock anchors being installed underneath adjoining premises, and submission of documentary evidence by a qualified professional geotechnical engineer certifying the suitability and stability of the site for the proposed building and certifying the suitability and adequacy of the proposed design and construction of the building for the site. Further, a condition

requiring a report by a professional engineer detailing the proposed methods of excavation, shoring or pile construction, including details of potential vibration emissions will be applied. This report also must demonstrate the suitability of the proposed methods of construction to overcome any potential damage to nearby land/premises.

- **Non-compliance with maximum FSR and height controls**

Comment: As discussed in Section 10.1 below, the height and scale of the proposal will not be incompatible or visually intrusive in the context of the existing streetscape especially given that the adjoining southern building at No. 398-402 Anzac Parade, in which a number of the objectors are resident owners, is also a compatible multi-storey mixed residential/commercial building. The applicant has submitted SEPP No. 1 objections to the FSR and height controls, the assessment of which indicates that strict compliance with the controls would be unreasonable and unnecessary (see Section 10.1 below).

- **Increased traffic congestion/pollution especially on Harbourne Lane/Middle Lane**

Comment: This issue is addressed in Section 10.6 below. The proposal is estimated to generate traffic at a rate of total 44 trips in the peak hour which is considered acceptable for the surrounding road network to accommodate. In addition, Council will require dedication of a 1.2 m wide strip and a 0.6m wide strip along the Middle Lane and Harbourne Lane frontages respectively for road widening purposes which will facilitate movement for both vehicles and pedestrians along this thoroughfare.

- **Loss of sunlight, views and privacy**

Comment: The amenity impacts of the proposal in terms of sunlight, views and privacy has been addressed in Section 10.5 below. In relation to loss of sunlight, whilst winter midday overshadowing will occur onto some of the north-facing living areas of the multi-storey building at No. 398-402 Anzac Parade, there will be a substantial separation between the two buildings in excess of 15m for the majority of the length of the side boundary because of location of the central common area between the two buildings which will allow good natural light between the two buildings. By 3.00 pm, a large section of No. 398-402 Anzac Parade will be free from overshadowing from the proposed development with overshadowing predominantly occurring on the rear sections of the residential properties fronting Harbourne Road. In terms of views, while the height, bulk and scale of the proposed building will be visible from the backyards of the existing residential properties fronting Harbourne Road, it is consistent with development that is permissible in the subject site under the zoning contained in the Randwick LEP 1998, as well as on adjoining sites fronting Anzac Parade. In relation to privacy, potential overlooking from the east facing balconies of the part-5 storey section of the proposed development onto the rear yards of dwellings fronting Harbourne Road will be mitigated by the following considerations:

- There will be provision of aluminium louvres on the eastern edge of the balconies to provide both privacy screening and shade
- The balconies will be separated from the rear yards by Middle Lane providing a separation distance of approximately 10m.
- The balconies generally will have a small widths of maximum 2m that will make the balconies less conducive for congregating and overlooking.

- **Devaluation of property**

Comment: The Property valuation is considered a complex issue because there are numerous factors that potentially can affect the monetary value of a property. These may range from the overall state of the property market and the policy of financial institutions to the physical and locational conditions of a particular property and how these are shaped by personal perceptions and preferences of potential buyers and sellers in the market. As such, it is considered that, strictly speaking, the issue of property valuation is a matter that goes beyond the scope of matters of consideration under Section 79C of the EP&A Act as any claim that the subject proposal would affect the value of adjoining and surrounding properties will be tenuous and a matter of speculation. Notwithstanding this, the assessment of the application indicates that the proposal will be consistent with all statutory and policy controls applicable to the site, will have minimal adverse impact on the amenity of adjoining and surrounding properties, and will not be visually intrusive or out of character in the existing streetscape. As such, it is considered that the proposed development would have positive physical, social and economic impacts on locality which could well be reflected in future property values in the area.

- **Increased rubbish and illegal dumping into Harbourne Lane and Middle Lane**

Comment: A waste management plan for the proposed development will be required as a condition of consent. Any illegal dumping and littering in the laneways can be addressed through Council's compliance controls. It would be unreasonable to attribute any potential future illegal dumping to the proposed development per se given that future residents of the proposed development will be required to abide by Council's policy for garbage collection and clean-up.

- **Potential noise, dust and damages due to construction**

Comment: Conditions addressing construction management and protection of surrounding residential amenity during construction, including the requirement for a Construction Management Plan will be applied in any consent to be granted. A dilapidation report will also be required by way of condition of consent.

- **Potential unlawful access from the proposed building**

- **Loss of security, safety and privacy from the central common area on Level 2 and balconies of the proposed development.**

Comment: The proposal has been designed to ensure that surveillance of the adjoining laneways is available from the balconies and living areas of the individual units within the proposed development. Decisions by external parties to illegally access the proposed development to further gain illegal entry of the objector's properties on the adjoining site is a security matter that is beyond the control of the proposed development. Accordingly, it is unreasonable to regard the proposed development per se as the future cause of any potential security breach into the objector's properties. The proposal itself provides for adequate control and security of access via main pedestrian and vehicular entry points to the proposed development.

- **Increased loitering in the adjoining McDonald carpark**

Comment: The proposal is for a mixed use residential/commercial/retail development that will improve the subject site's interface with Harbourne Lane and Middle Lane and, as such, is not considered to create an environment that will be

conducive for anti-social behaviour or loitering on these laneways. Any loitering in the nearby McDonald site is a matter related to the use of the McDonald site and its hours of operation. Accordingly, it is considered unreasonable to attribute increased loitering in the McDonald site to the subject proposal given the proposed acceptable and permissible use of the subject site and improvements to the adjoining laneways.

- **Proposed carpark entry conflicts with McDonalds carpark entry**

Comment: The proposed carpark entry is considered to be appropriately configured/designed and located sufficiently away from the McDonald carpark entry on Harbourne Lane. Council's Development Engineer raises no objections to the configuration and location of the proposal's carpark entry subject to appropriate conditions.

5.2 Support

No submission in support of the proposal was 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 Building and Construction Issues

No objection in relation to building and construction has been raised to the application subject to conditions should approval be granted.

6.2 Environmental Health Issues

No objections in relation to environmental and health are raised to the proposal subject to conditions to mainly address potential site contamination and potential noise sources (acoustic report).

6.3 Development Engineering Comments

Council's Development Engineer advises as follows:

Waste Management Issues

Details on Waste Management will be required as a condition of consent.

Landscape Issues

"There are four (4) *Acmena smithii* (Lilly Pilly), covered by Council's Tree Preservation Order, that will be affected by the proposed works. All four trees are located within the site, next to the existing dwelling on Harbourne Lane. They are in average health and are approximately 8 metres tall. Permission should be granted for the removal of these trees."

Drainage Issues

On site stormwater detention is required for this development. Flood levels have been established for the site previously. Conditions will be applied to ensure compliance including protection of openings to the 1 in 100 year storm event.

Traffic/Parking Issues

ROAD WIDENING COMMENTS/SPLAYED CORNERS

The applicant shall, at no cost to Council, dedicate a 1.2 metre wide strip of land for road widening purposes along the Middle Lane frontage of the site. This condition is required to maintain or improve existing traffic conditions in Middle Lane, to facilitate turning manoeuvres in and out of the site and to provide a provide a trafficable footpath along the Middle Lane frontage.

The applicant shall, at no cost to Council, dedicate a 0.6 metre wide strip of land for road widening purposes along the Harbourne Lane frontage of the site. This condition is required so as to provide a trafficable footpath along the Harbourne Lane frontage.

The applicant shall, at no cost to Council, dedicate a 2 metre x 2 metre splay corner for road widening purposes on the north/west corner of the development site, (intersection of Harbourne Lane & Anzac Parade). Note: the splayed corners are to be taken from the new property boundaries after road dedication in Harbourne Lane has been made.

The applicant shall, at no cost to Council, dedicate a 1.5 metre x 1.5 metre splay corner for road widening purposes on the north/east corner of the development site, (intersection of Harbourne Lane & Middle Lane). Note: the splayed corners are to be taken from the new property boundaries after road dedication in Harbourne & Middle Lanes have been made.

TRAFFIC

Vehicular entry is via Middle Lane with a separate entry for the loading dock. The Driveway 1 will link into an existing right-of-way (that has been excluded from the DA but will be available for access under the terms of the existing easement) providing access to the 76 spaces on ground and basement levels 1 and 2s, which is satisfactory. The ramp grades are considered satisfactory. Driveway 2 is 4.6 metres wide and provides access to 16 spaces on the Level 1 Car Park.

A large number of car parking spaces are provided by tandem parking which does not comply with Council's DCP-Parking.

It is estimated that the development will generate the following traffic in the peak hour

| | | |
|-------------|---------------|------------|
| Residential | 36 x 0.29 = | 10 trips |
| Retail | 410 x 5/100 = | 21 trips |
| Office | 642 x 2/100 = | 13 trips |
| Total | | = 44 trips |

The surrounding road network can accommodate the traffic generated by the development.

AWNING ISSUES

The proposed awning overhanging Council's footpath in Anzac Parade is to comply with the following;

Be a minimum 0.60m setback from the kerb line in Anzac Parade & Harbourne Lane

To be compatible with any approved street tree planting in Anzac Parade.

The underside of the awning is to be a minimum 3.00m clear of Council's issued alignment level for the Anzac Parade frontage (i.e – 125mm above the top of the Council kerb level)

6.4 Issues Raised by External Bodies

6.4.1 Federal Airports Corporation

Under the provisions of the Air Navigation (Building Control) Regulations the concurrence of the Federal Airports Corporation is required for any building to be constructed on the subject site, which lies within the Conical Surface of the Obstacle Limitation Surfaces for Sydney Airport. At the time of finalising this report the Corporation has yet to give its approval for the proposed development. It is recommended that the application, should it be approved, be subject to a condition requiring the FAC's approval of the proposed building height.

7. MASTER PLANNING REQUIREMENTS

Clause 40A of Randwick LEP requires the preparation and adoption of a master plan for the redevelopment of sites having an area in excess of 4,000 square metres. The subject site, being 1288 sqm in area, is not subject to the provisions of Clause 40A.

8. STATUTORY INSTRUMENTS AND CONTROLS

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

8.1 Randwick Local Environmental Plan 1998

The site is zoned Local Business 3A 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 No. | REQUIREMENT | PROVIDED | COMPLIANCE |
|----------------------|--|---|---|
| 32 – FSR | Max. Overall = 3:1 Max. Residential = 2:1 Max. Commercial= 1:1 | 2.87:1 2.11:1 0.76:1 | Yes No(SEPP1 Objection submitted) Yes |
| 33 – Building Height | 24m | 27.1m (to the top of the plant/service enclosure) Main building height will be 25.9m | No (SEPP 1 Objection submitted) |

8.2 Relevant State Environmental Planning Policies

State Environmental Planning Policies that are relevant to the proposal are :

- State Environmental Planning Policy 2004 – Application of Development Standard
- State Environmental Planning Policy No. 65 – Design Quality of Residential Flat Development
- State Environmental Planning Policy No. 55 –Remediation of Contaminated Land

The application of these policies to the proposal is addressed in Section 10.1 below.

9. POLICY CONTROLS

9.1 Development Control Plan No. 16 – Kingsford Commercial Centre.

Compliance with DCP No. 16 is as follows:

| Required | Provided / Proposed | Y / N |
|--|---|--|
| 1. Site Consolidation – Min. 800 sqm and frontage of 18m to permit development to FSR of 3:1. | 1. The site has an area of 1288 sqm and main frontage of 26.185m to Anzac Parade. | Yes |
| 2. On front boundary a vertical plane of 12m, then setback building by min. 5m to a maximum height of 24m. Building Height Plan of 45 degrees above 8m at rear. | Front vertical plane of 10.3m then building will be setback 3m to a height of 25.6m. Encroachment into the 45 degrees height plane above 18m along rear. | No (see assessment below) No (see assessment below) |
| 3. Retail / Commercial floor space along the length of Anzac Parade frontage to a depth of 10m to maintain / enhance retail continuity. | 3. Retail floor space on the ground level Anzac Parade frontage to a depth of 13.5m. | Yes |
| 4. 6m side setback (for that part of the building exceeding 12m) unless demonstrated to be impractical due to site conditions. | 4. Side setback on southern side (min. 10.25m and max. 12.25m) for the rear section only and for that part of the wall exceeding 6 m in height. | No (see assessment below) |
| 5. Build up to street alignment for at least the lower floors up to a maximum 12 m. | 5. Proposal will be built up to street alignment for the lower floors up to a maximum height of 10.3m. | Yes |
| 6. Provision of architectural detailing to add visual interest to façade and streetscape reflecting contributing façades along Anzac Parade. | 6. The architectural design of the podium level will add visual interest and draw from façades in Anzac Parade (see assessment below). | Yes |
| 7. Continuous cantilevered for suspended awning to street | 8. Continuous awning proposed along the Anzac | Yes |

| | | |
|---|--|-----|
| frontage 3 m deep and 3.5 m to 4.5 m above street. | Parade frontage 3.7m deep and 4m above street level. | |
| 8. Loading and unloading facilities not on the main street. | 11. Loading and unloading will be from rear lane. | Yes |

9.2 Development Control Plan – Parking

Compliance with DCP – Parking is as follows:

| Number of car parking spaces: | | | | |
|--------------------------------------|--|-----------------------------------|--------------------|--------------------------|
| USE | REQUIREMENT (DCP – Parking) | PROPOSED NUMBER AND/OR FLOOR AREA | REQUIRED PROVISION | PROPOSED PROVISION |
| Residential | 1 space per one bedroom dwelling | 5 x one bedroom dwelling | 5 space | 59 residential carspaces |
| | 1.2 spaces per two bedroom dwelling | 16 x two bedroom dwellings | 19.2 spaces | |
| | 1.5 spaces per three bedroom dwellings | 14 x three bedroom dwellings | 21 spaces | |
| | 2 spaces per four bedroom dwellings | 1 x four bedroom dwellings | 2 spaces | |
| | Visitor: 1 space per 4 units | Total dwellings = 36 | 9 spaces | 9spaces |
| Business | 1 space per 40 sqm GFA | 1052 sqm GFA | 26 spaces | 24 spaces |
| TOTAL | | | 83 spaces | 92 spaces |

10. ENVIRONMENTAL ASSESSMENT

10.1 Statutory Controls – S79C(1)(a)

10.1.1 Randwick Local Environmental Plan 1998

Clause 32 Floor Space Ratio

A floor space ratio of 3:1 is applicable to the subject site pursuant to Clause 32 of Randwick Local Environmental Plan 1998 comprising a maximum commercial FSR of 1:1 and a maximum residential FSR of 2:1.

The proposed development has a compliant overall floor space ratio of 2.87:1 but a non-complying residential FSR of 2.11:1. The commercial component will be 0.76:1 which complies.

The applicant has submitted an objection under State Environmental Planning Policy No.1 - Development Standards in relation to the breach in the FSR for the residential component, and has argued that strict compliance with clause 32 of Randwick LEP No 1998 is unreasonable and unnecessary. In assessing the applicant’s SEPP No. 1 objection the following matters are addressed:

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1. Whether or not the planning control is a development standard

The FSR control in question is a development standard contained in the Randwick LEP 1998.

2. The underlying object or purpose of the standard

The stated object/purpose of the standard, as outlined in Randwick LEP 1998, is:

"To establish reasonable upper limits for development in residential, business, industrial and special use zones through a limit on the amount of floor space that can be provided. This will help reduce the potential for adverse impact on nearby and adjoining development while still providing for reasonable levels of development and redevelopment."

3. Consistency of the development with aims of the SEPP, objectives of the EP&A Act 1979 and local planning objectives for the locality

Specifically in relation to FSR, the Randwick LEP, amongst other things, seeks to maintain a significant commercial component in the Kingsford Commercial Centre to ensure the vitality of the Business Zone 3A and the urban environment. Notwithstanding the increase residential FSR, the proposal will still provide for a retail shop on the ground floor to Anzac Parade which will ensure a commercial/retail presence thus supporting the objectives of the zone and aims of the Randwick LEP 1998.

Additionally, the proposed development will be consistent with planning objectives for the locality in that it will facilitate development of land in a location that has been identified by Council as suitable to be used as a business centre for mixed development (ie., commercial, retail and residential purposes) resulting in a more economically viable retail core for Kingsford which is centrally located and in close proximity to public transport, enhanced employment opportunities for the local community and an orderly and economic use of land for both residential and commercial/retail uses within the Centre.

The aims and objectives of SEPP No.1 are to :

"provide flexibility in the application of planning controls operating by virtue of development standards in circumstances where strict compliance with those standards would, in any particular case, be unreasonable or unnecessary or tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act."

The objects of the Act under Section 5 (a) (i) and (ii) are:

"to encourage:

- (i) The proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purposes of promoting the social and economic welfare of the community and better environment;

- (ii) The promotion and co-ordination of the orderly and economic use and development of land.”

The variation from the FSR control is not inconsistent with the aims of the SEPP No.1 because it would not detract from the objects of the Act under Section (a) (i) and (ii), specifically, in that the resultant development would promote the orderly use and development of the subject land in line with the overall Prince Henry Master Plan/Deemed DCP and DCP – Prince Henry.

4. Whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

It is considered that a development strictly compliant with the prescribed FSR control would be unreasonable in the subject site because the non-compliant proposal can readily achieve the associated objectives of the standards follows:

- the proposed development would allow for a reasonable redevelopment of the land with a bulk and scale that would be visually compatible with existing multi-storey mixed used developments in the Kingsford commercial centre. In particular, immediately to the south of the subject site, is a 9 storey mixed residential/commercial use building at No. 398 Anzac Parade and on the opposite side of Anzac Parade to the west is another 9 storey mixed residential/commercial use building at No. 301-303 Anzac Parade such that the proposal will match in height and scale this development as well as maintain the scale and rhythm of recently constructed development within the visual catchment of the site.
 - The non-compliance in the FSR occurs only in the residential component whereas the overall FSR complies. The residential component exceeds the allowable FSR for such a use by 0.11:1 or approximately 152 sqm., which will be distributed over a varied building envelope (ie. part 8, part 7 and part 5 storey builtform) which, combined with an articulation and modulation that emphasises the verticality of the buildings, will serve to break the visual bulk of the building form.
 - Redistributing the commercial component in this development will not create any additional benefit to the overall scale and bulk of the development. The building form will remain the same.
 - The breach in the residential FSR is a minor non-compliance that will not be discernible by way of additional bulk or scale from any view of the site particularly given the stepped form of the building from Middle Lane and the localised breach of the lift-override.
 - the proposal will distribute the proposed floor area over three varied height forms of the proposed building which, combined with an articulation and modulation that emphasises the verticality of the buildings, will serve to break the visual bulk of the building form.
 - the new building will not have an adverse impact on the amenity of adjoining and neighbouring properties in terms of solar access and privacy (see Section 10.5 below).

In view of the above it is considered that the compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

5. Whether the objection is well founded.

An assessment of the SEPP No. 1 objection indicates that the applicant has:

- Articulated the underlying and stated objectives of the standard clearly.
- Demonstrated that there are no adverse environmental impacts arising from the proposed development in terms of view loss, loss of privacy, overshadowing and general overbearing impacts.
- Addressed the consistency of the proposed development with the underlying stated objectives of the standard, the local planning objectives for the locality, and objectives of the Act.
- Stated why compliance with the development standard is unreasonable and unnecessary, namely, in that:
 - the proposal is an appropriate mix of residential/commercial landuse that results in a positive contribution to the streetscape along Anzac Parade with its contemporary builtform
 - the amended proposal is substantially in accordance with the design recommendations of the SEPP 65 Design Review Panel dated August 2007.
 - it is a minor non-compliance that will not be discernible in terms of bulk or scale from the street nor will the additional floor space result in any significant additional impact upon adjoining properties.
 - The proposed development will not compromise the planning intent for the site or the character and amenity of the surrounding area.
 - The departure provides an appropriate builtform response that fulfils the development potential of the site and provides for the orderly and economic use of land in accordance with applicable environmental planning control regime.

It is considered that SEPP 1 objection is well founded and should be supported.

Clause 33 Building Height

Clause 33 of the Randwick LEP 1998 sets a maximum 24 metre overall height limitation on buildings in the General Business 3A zone affecting the site, as measured from existing ground level. The proposal would have a maximum overall height of approximately 27.1m to the top of lift over-run roof over the building fronting Anzac Parade, which does not comply with the building height control. The top of roof to Level 8 at approximately 26m also does not comply.

The applicant has submitted an objection under State Environmental Planning Policy No. 1 - Development Standards (SEPP 1) in respect to the non-compliance with the maximum permissible overall height limit and has argued that strict compliance with clause 33 of Randwick LEP No 1998 is unreasonable and unnecessary. In assessing the applicant's SEPP No. 1 objection the following matters are addressed:

1. Whether or not the planning control is a development standard

The building wall height control in question is a development standard contained in the Randwick LEP 1998.

2. The underlying object or purpose of the standard

The underlying objectives of the standard, as outlined in Randwick LEP 1998, are to:

- Minimise the impact of the development adjoining the nearby land;
- Control the bulk and scale of development through the imposition of appropriate height limits and
- Ensure that there is a sympathetic transition between the prevailing scale and character of existing building in the locality and new development.

In addition, the underlying purpose of the building heights standard as stated in Randwick LEP 1998 is;

" to set upper limits for the heights of buildings in residential and business zones that are consistent with the redevelopment potential of land in those zones given other development restrictions, such as floor space and landscaping, and have regard for the amenity of surrounding area".

3. Consistency of the development with aims of the SEPP, objectives of the EP&A Act 1979 and local planning objectives for the locality

The proposed development will be consistent with planning objectives for the locality in that it will promote the development of land in a location that has been identified by Council as suitable to be used as a business centre for mixed development (ie., commercial, retail and residential purposes) resulting in a more economically viable retail core for Kingsford which is centrally located and in close proximity to public transport, enhanced employment opportunities for the local community, and an orderly and economic use of land for both residential and commercial/retail uses within the Centre with minimal adverse environmental and amenity impacts on neighbouring uses. Specifically, in relation to height, the proposed development will provide an appropriate builtform and edge to Anzac Parade generally consistent with the builtform and street edge effects envisaged in the DCP – Kingsford Commercial Centre and Randwick LEP 1998 given the commercial nature of the locality. Furthermore, the proposal will be similar in height with the existing multi-storey mixed residential/commercial developments in the adjoining site to the south at No. 398 Anzac Parade, and across Anzac Parade to the west at No. 301-303 Anzac Parade.

4. Whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

It is considered that a development compliant with the prescribed height control would be unreasonable in the subject site in that the additional height occurs only in the part-8 storey section of the building having frontage to Anzac Parade and Harbourne Lane. The 7-story middle block and 5-storey rear block will comply with the building height control. As such, the breach in height limit will be confined to the front block, which is considered acceptable to give the proposal an appropriate presentation to the Anzac Street frontage and the corner to Harbourne Lane. The front building block does not represent a distortion to the redevelopment potential of the land.

Furthermore, compliance with the development standard will be unnecessary given the significant height, bulk and scale of the existing multi-storey developments in the adjoining site at No 398 Anzac Parade. As such, the height, bulk and scale of the proposed building would be not be incongruous in

this setting and, in fact, would, in comparison, represent an improvement in terms of architecture and design.

A measure as to the suitability of the development is the extent of impact to adjoining properties in terms of overshadowing. The upper-most level of the proposal will not result in excessive overshadowing impacts to adjoining properties during the midwinter period as indicated in the accompanying shadow diagrams. The proposal will also have minimal impact in terms of loss of privacy and views (see Section 10.5 below)

The development meets the stated and underlying objectives of the height standard. As such it is unnecessary and unreasonable to enforce the height standard in the circumstances of the case.

5. Whether the objection is well founded.

An assessment of the SEPP No. 1 objection indicates that it has:

- Articulated the underlying stated objectives of the standard clearly.
- Demonstrated that there are no adverse environmental impacts arising from the proposed development in terms of view loss, loss of privacy, overshadowing and general overbearing impacts.
- Addressed the consistency of the proposed development with the underlying stated objectives of the standard, the local planning objectives for the locality, and objectives of the Act.
- Stated why compliance with the development standard is unreasonable and unnecessary, namely:
 - the excess height is mainly attributable to the top level which would not be prominent in the streetscape due to its setback from the front building alignment
 - The proposed height along Anzac Parade matches the height of the 10 storey development adjacent to the site, to the north.
 - The proposal provides for a consistent streetscape height along Anzac Parade.
 - The proposed height has no unreasonable overshadowing impacts
 - The height does not result in any adverse aural or visual privacy impacts.

It is considered that SEPP 1 objection is well founded and should be supported.

10.2 Relevant State Environmental Planning Policies – S79C(1)(a)

SEPP 2004 – Application of Development Standards

The Draft SEPP 2004 seeks to replace the provisions of SEPP 1 and has been publicly exhibited (concluding on 18 June 2004). The new SEPP will introduce new provisions for assessing whether flexibility of a planning standard are acceptable or not.

Clause 7 of the Draft SEPP specifies that an application for departure from a development standard must demonstrate that the departure will result in a better environmental planning outcome than that which could have been achieved on the site had the standard been complied with and that the proposed development will be in the public interest by being consistent with any aims and objectives expressed or

implied from the zone, the development standard, or any relevant environmental planning instrument. The additional tests include whether the proposal will result in a better environmental outcome than a complying development, design quality and whether the development meets the objectives of the controls. Notwithstanding, that the SEPP is a draft document requiring consideration under section 79C of the EP&A Act, Clause 14 of the Draft document includes savings provisions that any development application made and not determined when the draft SEPP is gazetted is to be assessed against the existing provisions of SEPP No. 1.

Further, legal advice provided to Council considers that the draft SEPP should not be given any significant weight, as its final form is neither imminent nor certain and would not apply given that it contains a provision saving the subject application. As such, further consideration of the Draft SEPP is therefore not required, however, it is considered that the proposal results in a better environmental outcome on the site than that which could have been achieved had the standards been complied with due to its design quality, in particular its scale and form within the streetscape.

SEPP 55 – Remediation of Contaminated Land

This SEPP provides a state wide practice for the remediation of contaminated land. In view of the use of part of the subject site for a car tyre and mechanical repair workshop, the applicant has provided a preliminary site contamination assessment prepared by David Lane Associates advising that “access for a more detailed style assessment of contamination is essential to the completion of a report that adequately defines contamination to the extent necessary for relative remediation strategies to be put in place .. We would recommend that the environmental assessment, with the exception of hazardous materials inspections, **be conducted following the demolition of structures to allow access to soils and sub-surface profiles**”. Accordingly, it is reasonable to allow for demolition of the existing buildings on site subject to a condition requiring the submission of the subject environmental assessment prior to issue of a construction certificate.

SEPP 65 – Design Quality of Residential Flat Development

SEPP 65 issues are addressed in Section 10.4 below.

10.3 Policy Controls

10.3.1 Development Control Plan No. 16 – Kingsford Commercial Centre

The proposal complies with all the requirements of DCP No. 16 – Kingsford Commercial Centres with the exception of the 18m minimum front vertical height plane, rear building height plane and side setback.

10.3.1.1 Vertical height plane

DCP No. 16 requires a vertical height plane of 12m, then setback by a minimum 5m and a wall height to a maximum height of 24m. The proposal has a front vertical plane of 10.9m at which the building will be setback 2m to a maximum height of 26.6m (inclusive of lift and stairwell). The proposed front vertical height plane is considered acceptable for the following reason:

- The proposed podium wall at the front will have a height of 10.3 m well below the allowable maximum of 12m. As such, the front podium will not be visually bulky nor overbearing on surrounding properties but will be appropriate in scale to the approved and proposed mixed development on the adjoining southern site at No. 398-402 Anzac Parade, and having

regard also to the transitory nature of the development in the adjoining and surrounding commercial zoned land to the north.

- The front elevation to Anzac Parade will present as a well proportioned and vertically orientated building block with a well-designed façade treatment that will visually improve the streetscape at the corner of Anzac Parade and Harbourne Lane.
- The front building block will have minimal overshadowing impact on adjoining and surrounding developments as discussed in Section 9.4.1 below. It should be noted that DCP No. 16 recognises that the vertical height plane may not adequately control the effect of overshadowing of a new building in some circumstances, and that in these cases Council can consider the individual circumstances or merits (page 6 of the DCP).

10.3.1.2 Rear building height plane

DCP No. 16 requires a building height plane of 45 degrees above 8m at the rear. The proposal has a building height plane of 45 degrees above 18m at the rear. An assessment of the proposal indicates that the non-compliance of the building height plane at the rear is considered acceptable for the following reason:

- The proposed 5 storey rear building block will have a height and scale that will not be visually bulky nor overbearing on surrounding properties but will be appropriate in scale to the approved and proposed mixed development on the adjoining southern site at No. 398-402 Anzac Parade and having regard also to the transitory nature of the development in the adjoining and surrounding commercial zoned land.
- The 5 storey rear section of the proposed development will have some minor overshadowing impact on adjoining and surrounding developments in the winter afternoon as discussed in Section 10.5 below. DCP No. 16 recognises that the building height plane may not adequately control the effect of overshadowing of a new building in some circumstances, and that in these cases Council can consider the individual circumstances or merits (page 6 of the DCP).
- The rear section of the proposed development will minimise the potential for overlooking into rear properties (see Section 10.5 below) by restricting the size of the rear balconies to minimum 2m wide by 8m long to limit opportunities for overlooking into adjoining properties.
- The rear elevation of the proposal will present as a well proportioned builtform with well articulated recessed balconies and angled roof-form that will visually improve the streetscape along Harbourne Lane.

10.3.1.3 Side Setback

DCP 16- Kingsford Commercial Centre requires a nil setback to the front boundary and side setbacks of 6 metres, where a wall exceeds 12 metres in height, except where site width makes setbacks impractical. A side setback (min. 10.25m and max. 12.25m) is provided in the form of the central common area on the southern side of the site. However, this side setback does not extend to Anzac Parade so that the side setback provision does not fully comply with the DCP. The lack of side setbacks upto Anzac Parade is not considered to result in any negative impacts on adjoining properties or the street. Due to the location of the site in a commercial centre, the nil setbacks to the Anzac Parade frontage are considered appropriate to ensure a stront building edge to the adjoining building at 398-402 Anzac Parade. A nil setback to the

side boundaries at Anzca Parade will allow a continuous street wall to be formed in accordance with best urban design practice for commercial centres.

10.3.2 Development Control Plan - Parking

The total carparking requirement for the proposal under the DCP – Parking is 85 carspaces. The proposal will provide 92 car parking spaces, which complies with the DCP. However, the proposal will have shortfall of 2 carspaces for the commercial component (compared with an excess of 12 spaces for the residential component) due to the physical restrictions of the designated commercial carparking areas on the ground level and Level 1. The shortfall in commercial carparking is considered minor and will not result in any adverse impact on the availability of on-street carparking given the existing restrictions applicable to parking on Anzac Parade, Middle Lane and Harbourne Lane, and given the ready availability of public buses on Anzac Parade. Notwithstanding this, a contribution under Council's Section 94 Contributions Plan will be levied to offset any potential impact on public parking should approval be granted.

Eight car spaces will be stacked car spaces each of which will be required to be allocated to individual dwelling units. A condition will be applied accordingly.

10.4 Urban Design

The proposal will have a design and visual character that will enhance the streetscape through the introduction of a building with a modern design, and a strong urban edge to Anzac Parade including the following:

- A clearly defined base, middle and top in the facade treatment as well as a vertical differentiation of building blocks (becoming lower as it goes east along Harbourne Lane) comprising a front 8 storey, middle 7 storey and rear 5 storey to articulate the façade and provide visual interest. By articulating different orientations of the building differently, the proposal will break the bulk of the building visually.
- A podium level built to Anzac Parade frontage, which will have varying but well proportioned bays containing recessed balconies to provide visual interest and break potential visual bulk.
- A prominent built edge and form to the corner of Anzac Parade and Harbourne Lane which will have well proportioned bays containing recessed balconies separated by well selective vertical elements to emphasis the prominence of the corner and provide a visual statement to the overall development.
- An overall façade treatment containing solid balustrades and select louvres to balconies, varying types of windows, solid vertical elements including separating walls and blade walls, and sloping roof form, all combine to give the proposal visual character and depth.

While the façade of the proposal will be a combination of rendered and painted and face brick-work elements, the application of appropriate colours to the different sections of the external wall and appropriately selected materials for openings such as louvres and window frames will be important to the outcome of the design. A condition will be applied requiring the submission of a sample board of the external colours and textures prior to issue of a construction certificate.

The proposal will have a common area on the Level 2 that will have planter boxes to the edge with enhanced landscaping, seating areas and paving.

The proposal was referred to the Design Review Panel for comment in May 2007 given its height, bulk and scale and the surrounding context. The Panel raised a number of issues in its comments to the original proposal which the applicant responded to by way of an amended proposal as follows:

- Reconfigured internal spaces to provide better residential amenity
- Wider and rationalised balconies especially in the part-5 storey section of the building fronting Anzac Parade.
- Provision of deeper and wider planter beds in the central courtyard by lowering the slab above the carpark.

The amended proposal was subsequently resubmitted to the Panel in August 2007 with the Panel providing the following further comments (in italics), followed by Council's comments wherever necessary:

INTRODUCTION

It was noted that this was a Development Application and the third Panel meeting with the applicant.

A copy of the ten SEPP 65 Design Quality Principles is attached. The Panel's comments, set out below, are to assist Randwick Council in its consideration of the application, and to assist applicants to achieve better design outcomes in relation to these principles.

The absence of a comment under any of the heads of consideration does not necessarily imply that the Panel considers the particular matter has been satisfactorily addressed, as it may be that changes suggested under other heads will generate a desirable change.

The Panel draws the attention of applicants to the Residential Flat Design Code, as published by Planning NSW (September 2002), which provides guidance on all the issues addressed below.

This document is available from the Department of Planning.

Note: The Panel members' written and verbal comments are their professional opinions, based on their experience.

To address the Panel's comments, the applicant may need to submit amended plans. Prior to preparing any amended plans, the applicant should discuss the Panel's comments and any other matter that may require amendment with the assessing Planning Officer.

When addressing the Panel's comments by way of amendments, if the applicant does not propose to address all or the bulk of the Panel's comments, and wishes to make minor amendments only, then it should be taken that the Panel considers the proposal does not meet the SEPP 65 requirements. In these instances it is unlikely the scheme will be referred back to the Panel for further review.

PANEL COMMENTS

The following comments are based on drawings labeled Revision B presented to the Panel at the meeting on 6/08/07. This report should be read in conjunction with the Panel's previous report and with the applicant's response to this, also submitted at the meeting.

The drawings submitted indicate that applicant has responded to most of the Panels comments, resolving many of the issues raised. There are, however, as noted below, number of matters that need further attention.

1. Relationship to the Context of the Proposal

The information submitted describing the context of the building is at a minimum standard but is now adequate to describe the relationship of the proposed building to its adjacent buildings, which is satisfactory.

2. The Scale of the Proposal

The scale of the proposed building is satisfactory.

3. The Built Form of the Proposal

The built form has been simplified, and consequently improved. However there are still a number of inconsistencies between the plans and elevations that need to be corrected. The following list is not comprehensive and it is recommended that they be further scrutinized. It is important that these be corrected, as once a determination is made by Council, interpretation is likely to be left to certifier, project manager or builder, and there is no certainty that design intent will be followed.

- Structure at ground level is not shown at corner of Anzac Parade and Harbourne Lane.
- Screens on balcony fronts to Middle Lane shown on elevations, but not plans.
- Screens on the south facing balconies are shown on plans, but not on elevations.
- The treatment of space at Level 1 above the westernmost entry lobby is unclear.
- Dimensioning of balcony widths is unclear and could be misinterpreted.
- Indents for footpath trees to Anzac Parade awning have not been shown and should be provided.
- Generally, the detailing of facades is inadequately described (see further note below).
- The cumulative width of the driveways to the lane is excessive, and should be reduced to a minimum. The effect of headlights on adjoining properties to the east needs to be considered.

Comment: The latest amended plans have provided adequate consistency with elevations, and appropriate dimensioning to balconies and detailing of facades.

4. The Proposed Density

This is satisfactory

5. Resource and Energy Use and Water Efficiency

To our knowledge the application is silent on these matters. Subject to the amendment to layout suggested below, the general configuration will provide good cross ventilation to a very high proportion of units.

There are however a few windows which should be provided with external sun control and sufficient overhang to allow to remain open in wet weather.

Windows and doors to balconies must be designed to permit secure cross ventilation for future occupants.

A BASIX assessment should be provided.

Comment: The amended proposal provides adequate sun control through the use of external louvres on the west north and east elevations. A condition will be applied requiring submission of a BASIX certificate for residential component of the amended proposal.

6. The Proposed Landscape

It is the Panel's strongly held view that the slab beneath the courtyard to the south of the building should be lowered to permit the establishment of more and larger trees with more room for root spread. The screen planting along the southern edge of this space could be in a raised planter. The soil volume in the planters should be consolidated, rather than split into small individual planters. The scale or quantum of the proposed small tree planting should be increased, as the greenery will improve the outlook for existing and future residents, and provide some screening.

Comment: The amended plans have provided for a deeper and more consolidated planter beds in the central common as requested by the Panel as shown in the Section DA30-02 Revision C.

7. The Amenity of the Proposal for its Users

As discussed it is recommended that the two units on and south of the corner of Anzac Parade and Harbourne Lane be reconfigured to provide the non cross-ventilated one bedroom unit on each floor with a north frontage, away from the direct western sun and Anzac Parade traffic noise. The corner, cross-ventilated three bed unit could still retain a north facing living room. The suggestion that plenum ventilation over the lobby to the non cross vented units be provided is supported.

Adequate storage does not appear to be provided.

Comment: The amended plans have reconfigured the subject two units such that the one bedroom unit now has a north frontage and the corner three bedroom unit has now become a two bedroom unit that retains a north-facing living rooms as recommended by the Panel.

Broad storage areas have been provided in the two basement level carpark, however, a condition will be applied requiring these spaces to be allocated and distributed to individual dwelling units.

8. The Safety and Security Characteristics of the Proposal

It is recommended that the western residential lobby be reconfigured to separate the residential entrance from the retail service entrance.

Comment: The western residential lobby has been reconfigure to separate the residential entrance from the retail service entrance.

9. Social issues

As previously suggested, the provision of a communal roof terrace would improve the amenity of the units.

Comment: The applicant maintains that the provision of a central common area on level 2 will provide adequate amenity to residents. The applicant's advice is

considered reasonable and acceptable especially given the generous size (amounting to approximately 250 sqm) and landscaping of this common area.

10. The Aesthetics of the Proposal

The Panel was not convinced of the logic of aspects of the façade treatment, in particular by the location of the areas of dark painted render on the Harbourne Lane façade and their relationship to the brick elements, awnings and shopfronts.

This is a very prominent building and it is the Panel's opinion that the amount of detail provided is not adequate to ensure that well resolved detail and materials of suitable quality will be used in its construction. The RFDC sets out submission standards for details of the facades. Too much is left to chance and it is therefore recommended that the applicant, to guide the certifier, provide typical details and tight materials specifications.

Comment: A condition will be applied requiring submission of a sample material and colour board for the external treatment of the proposed building.

SUMMARY AND RECOMMENDATIONS

The Panel requires to see this application when the above matters have been satisfactorily addressed.

Comment: The application has been before the Panel three times. The latest amended proposal has adequately addressed a majority of the Panel's concerns as noted above and represents a significant improvement over the earlier design of the original proposal. Where deficiencies still exist, conditions can be appropriately applied to ensure the provisions of SEPP 65 are met. Accordingly it is considered that the application does not require any further referral to the Panel.

10.5 Impact on adjoining development

10.5.1 Overshadowing

The submitted shadow diagrams indicate that at 9.00 am in the winter solstice, overshadowing will occur predominantly upon Anzac Parade and the commercial properties on the opposite side of Anzac Parade. By 12 noon the proposal will overshadow the southern adjoining multi-storey mix-used residential/commercial building currently under construction at No 398-402. Whilst overshadowing will occur onto some of the north-facing living areas of this multi-storey building, there will be a substantial separation between the two buildings in excess of 15m which will allow good natural light between the two buildings. By 3.00 pm, the proposal will overshadow the rear sections of the residential properties fronting Harbourne Road.

Overall the proposal's shadow impact on adjoining properties is considered to be reasonable and acceptable in context of the surrounding area and given the height, bulk and scale of the development proposed.

10.5.2 Overlooking

The proposed building will have balconies linked to living rooms and, in some cases bedrooms, for each unit on all elevations. The potential for overlooking from the west and north elevations will be minimal as the former faces Anzac Parade and the latter faces the roof areas of the existing shops on Anzac Parade. Whilst there is potential for overlooking into the backyards of residential properties fronting Harbourne Road, this overlooking will be mitigated by the small widths of the balconies and the distance from, and orientation to, these existing backyards which does not make it

conductive for overlooking (a condition will be applied requiring further reduction in the width of the east-facing balcony of Unit 28 on the upper most level, Level 5, of the building fronting Middle Lane). The commercially zoned area along Anzac Parade is in transition with the potential for redevelopment to higher densities in the future so that a degree of privacy invasion must be expected.

10.5.3 Loss of views

The subject site and surrounding land are relatively flat. There is no apparent loss of views enjoyed by adjoining and surrounding properties that would be affected by the proposed development. Notwithstanding this, an objection has been raised in relation to the visual bulk and scale of the proposed building when viewed from the backyards of the existing residential properties fronting Harbourne Road. The rear section of the proposed development has been set at 5 storeys to ensure a reasonable transition between the higher part-7/part-8 storey section on Anzac Parade and the low/medium density residential properties fronting Harbourne Road. As such the visual impact of the proposed development will be alleviated so as to maintain the visual amenity of residents in Harbourne Road. Accordingly, given the stepped height of the proposal at the rear, the visual impact of the proposal to adjoining properties fronting Harbourne Road is not considered to be overbearing or unreasonable.

10.6 Traffic and access

Concern has been raised by adjoining property owners regarding the impact of traffic on Harbourne Lane and Middle Lane. It is estimated that the development will generate a total of 44 trips in the peak hour which Council's Development Engineer advises is acceptable as the surrounding road network can accommodate the traffic generated.

In addition, Council will require the dedication of a 1.2 m wide strip and a 0.6m wide strip along the Middle Lane and Harbourne Lane frontages respectively for road widening purposes. Conditions will be applied accordingly to ensure that existing traffic conditions in Harbourne Lane and Middle Lane are maintained or improved, that manoeuvres for turning in and out of the site are facilitated, and trafficable footpaths along the Harbourne Lane and Middle Lane frontages are provided.

10.7 Social impacts– S79C(1)(b)

It is considered that the proposal will increase the availability of housing and promote the objectives of the zone. The effect of the proposal would be to bring more people to the site and the demographic characteristics of this population are likely to include, single persons or share households; young couples such as first home buyers; "empty nester" household; and young families. It is likely that there will be a mix of incomes amongst residents with some units being owner occupied and others being rented. The added population will generate additional needs for businesses, employees and patrons which will in turn encourage the location of services and facilities into the area. The increase in density is not considered to generate an unreasonable demand on the availability of services.

10.8 Ecologically Sustainable Development

In line with the Local Government Amendment (Ecologically Sustainable Development) Act 1997, Council requires appropriate consideration to be given to the principles of Ecologically Sustainable Development in the assessment of development applications.

The proposed development will be well served by public buses along Anzac Parade, linking the subject site to the CBD, Railway Square, Bondi Junction, and Randwick Junction. The introduction of residential uses close to commercial areas served by good public transport linkages is not only desirable but also in keeping with an increasing trend towards the promotion of public transport usage as a primary means of enhancing ecological sustainability and the reduction of greenhouse gases in the Sydney Region. The proposal would assist in encouraging the use of public transport in line with ESD principles.

A BASIX Certificate for the residential component in the original proposal was provided by the applicant which indicated achievement of the relevant water conservation, energy efficiency and thermal comfort criteria. A condition will be applied requiring the applicant to submit an amended BASIX Certificate for the amended proposal.

The proposal is considered acceptable in relation to Ecologically Sustainable Development issues.

10.9 Site Suitability– S79C(1)(c)

The proposal will be in a site located in the Kingsford Commercial Centre which is zoned General Business 3A and is well served by an existing road and services infrastructure, community facilities and retail and commercial uses in the locality. Mixed use development such as the subject proposal is a permissible use in the zone subject to Council's consent.

10.10 Issues raised in submissions - S79C(1)(d)

The issues raised in resident submissions have been addressed in Section 5 above and other relevant sections of this report.

10.11 The public interest – S79C(1)(e)

The proposed development is consistent with the Randwick LEP 1998 and DCP – Kingsford Commercial Centre and will provide the local community with a form of high quality housing and takes advantage of its proximity to the full range of transport services and urban facilities in the existing Kingsford town centre.

11 RELATIONSHIP TO CITY PLAN

11.1 Outcomes

Outcome : Excellence in urban design and development – The proposal has a good architectural quality in that it maximises the potential of the subject site in the context of the existing surrounding development in the Kingsford Commercial Centre whilst minimising impacts on adjoining and nearby residential properties.

11.2 Directions and Actions

Direction 4a & associated key action : Improved design and sustainability across all development – The proposal creates a good building design for a mixed residential commercial development in the subject site whilst maintaining the amenity of adjoining and surrounding properties.

12. FINANCIAL IMPACT STATEMENT

There is no direct financial impact for this matter.

13 CONCLUSION

The SEPP 1 objection lodged with respect to the non compliance with the maximum residential FSR of 2:1 and the maximum building height of 24 m is considered to be well founded in the circumstances.

The proposal complies with all policy controls applicable to the site with the exception of the vertical height plane, rear height plane and side setback requirements of DCP No. 16 - Kingsford Commercial Centre, and the numerical car parking requirement for the commercial component of the DCP - Carparking. The variations from these requirements have been assessed and are considered justified in the circumstances.

The proposed development is not considered to give rise to detrimental impacts on surrounding developments. Visually, the proposal will have a design that contributes to the existing streetscape whilst being consistent with the desired future character of the area having regard to the transitional nature of development in the area.

The application is recommended for approval.

Recommendation

- A. That the Council support the objection under State Environmental Planning Policy No.1 (SEPP No. 1) in respect to non-compliance with Clauses 32 and 33 of the Randwick Local Environmental Plan 1998 (relating to floor space ratio and building height) on the grounds that the proposed use complies with the objectives of the clauses and will not adversely affect the amenity of the surrounding locality and that the PlanningNSW be advised accordingly.

AND

- B. 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 D/254/2007 for demolition of the existing building and erection of a part-8 storey, part-7 storey and part-5 storey mixed residential and retail/commercial development comprising 5 shops, 8 commercial suites, 36 dwellings, and basement and above-ground car parking for 92 vehicles at 390-396 Anzac Parade, Kingsford subject to the following conditions:-
1. The development must be implemented substantially in accordance with the plans numbered DA10-00 and DA10-01 Revision B; DA10-02 Revision H; DA10-03 Revision G; DA10-04 to DA10-10, Revision C; DA20-00 to DA 20-03 Revision C; DA30-00 Revision F, DA30-02 Revision C; and stamped received by Council on 12 September 2007, 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 to be compatible with the adjacent development to maintain the integrity and amenity of the building and the streetscape.

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. Storage areas provided in basement levels 1 and 2 shall be allocated and distributed to individual dwelling units. Details shall be submitted to and approved by Council's Director City Planning, in accordance with Section 80A(2) of the Environmental Planning and Assessment Act 1979 prior to construction certificate being issued for the development.
4. Details of bicycle storage in the basement indicating compliance with the Development Control Plan – Parking shall 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 development.
5. Street numbering must be provided to the premises in a prominent position, to the satisfaction of Council.
6. The reflectivity index of glass used in the external façade of the development must not exceed 20 percent.
7. Lighting to the premises shall be designed so as not to cause a nuisance to nearby residents or motorists and to ensure that light overspill does not affect the amenity of the area.
8. All signage and advertising must be in accordance with Council's Development Control Plan for Outdoor Advertising and development consent must be obtained for all signage and advertising in accordance with Council's Local Environmental Plan 1998.
9. All advertising and signage must be written in English language or both English and relevant non-English language equally. The use of non-English language advertising only is not permissible.
10. In accordance with the provisions of clauses 143A and 154A of the Environmental Planning & Assessment Regulation 2000, a 'Design Verification Certificate' must be provided to the Certifying Authority and the Council, prior to issuing a construction certificate and an occupation certificate, respectively.
11. The enclosure of balconies is prohibited by this consent.
12. The east-facing section of the balcony to Unit 28 on Level 5 shall be reduced in width to 2m to ensure the privacy of adjoining properties. Details shall be submitted to and approved by Council's Director City Planning, in accordance with Section 80A(2) of the Environmental Planning and Assessment Act 1979 prior to construction certificate being issued for the development.
13. Internal or external clothes drying facilities are to be provided in accordance with the provisions of the Building Code of Australia.

Should external clothes drying facilities be provided, the facilities must be adequately screened by vegetation and details are to be incorporated into the landscaping plans, to the satisfaction of the certifying authority.
14. Vehicular access to the residential and commercial car parking within the development shall be readily accessible to visitors at all times. Where a security gate is provided restricting access to the basement carparking area, a suitable intercom system shall be installed adjacent to the vehicular entrance together with appropriate instructions signage to provide for access to visitor

spaces at all times.

15. The proposed commercial suites shall only be used for commercial purposes.
16. Development consent is required to be obtained in relation to the specific 'use and operation' of commercial tenancies/occupancies and 'shop fit out works', in accordance with the relevant requirements of the Environmental Planning & Assessment Act 1979
17. Each of the tandem carparking spaces shall be allocated to the same 2 or 3 bedroom unit.
18. In accordance with the provisions of the Environmental Planning & Assessment Regulation 2000, a relevant BASIX Certificate and associated documentation must be submitted to the Certifying Authority with the Construction Certificate application for this development.

The required commitments listed and identified in the BASIX Certificate are to be included on the plans, specifications and associated documentation for the proposed development, to the satisfaction of the Certifying Authority.

The design of the building must not be inconsistent with the development consent and any proposed variations to the building to achieve the BASIX commitments may necessitate a new development consent or amendment to the existing consent to be obtained, prior to a construction certificate being issued.

The following conditions have been applied to ensure that noise emissions from the development satisfy legislative requirements and maintain reasonable levels of amenity to the area:

19. The proposed use of the premises and the operation of all plant and equipment shall not give rise to an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 and Regulations.

In this regard, the operation of the premises and plant and equipment shall not give rise to a sound pressure level at any affected premises that exceeds the background ($L_{A90, 15 \text{ min}}$) noise level, measured in the absence of the noise source/s under consideration by more than 5dB(A). The source noise level shall be assessed as an $L_{Aeq, 15 \text{ min}}$ and adjusted in accordance with the NSW Environmental Protection Authority's Industrial Noise Policy 2000 and Environmental Noise Control Manual (sleep disturbance).

20. The use of the premises and the operation of plant and equipment shall not give rise to the transmission of a vibration nuisance or damage to other premises.
21. A report prepared by a suitably qualified and experienced consultant in acoustics shall be submitted to Council **prior to a construction certificate being issued for the development**, which demonstrates that noise and vibration emissions from the development will comply with the relevant provisions of the *Protection of the Environment Operations Act 1997*, Environmental Protection Authority Noise Control Manual & Industrial Noise Policy and relevant conditions of approval. The report is to be prepared in accordance with the NSW Environment Protection Guidelines, namely the Industrial Noise Policy and Environmental Noise Control Manual (sleep disturbance) and the relevant Australian Standard. Protection

The following conditions are applied to satisfy the relevant pollution control criteria and to maintain reasonable levels of health, safety and amenity to the locality:

22. The use and operation of the premises shall not give rise to an environmental health or public nuisance.
23. There are to be no emissions or discharges from the premises which give rise to a public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and *Regulations*.

The following conditions are applied to maintain reasonable levels of environmental amenity and public health safety.

24. Prior to issuing a construction certificate for the development, a detailed site contamination investigation must be undertaken by an independent appropriately qualified environmental consultant in order to provide information on land and ground water contamination and migration in relation to past and current activities and uses that may have occurred on the site.

The report is to be prepared in accordance with Council's Contaminated Land Policy 1999 and relevant Guidelines made or approved by the NSW Department of Environment and Conservation (formerly EPA), including the Guidelines for Consultants Reporting on Contaminated Sites and the National Environment Protection (Assessment of Site Contamination) Measure (NEPM) 1999. Also, as detailed in the Planning Guidelines to SEPP 55 – Remediation of Land, the report is to assess the nature, extent and degree of contamination upon the land. The detailed site contamination report must be sufficiently detailed and be submitted to and accepted by Council's Manager of Environmental Health & Building Services prior to issuing a construction certificate for the development.

- a) Should the Detailed Site Investigation Report demonstrate that the land and groundwater is not contaminated, the conclusion to the report must clearly state that 'the land is suitable for its intended land use, posing no immediate or long term risk to public health or the environment and is fit for occupation by persons, together with clear justification for the statement. The report must demonstrate that any site contamination satisfies the relevant criteria in the National Environment Protection (Assessment of Site Contamination) Measure 1999.

The written concurrence of Council must be obtained before a construction certificate is issued for the development.

- b) Should the Detailed Site Investigation Report identify that the land is contaminated and the land requires remedial works to meet the relevant criteria in the National Environment Protection (Assessment of Site Contamination) Measure (NEPM) 1999, the following matters must be complied with: -
 - i. A Remediation Action Plan (RAP) is required to be prepared and be submitted to Council prior to commencing remediation works. The RAP is also required to be reviewed by an independent NSW Department of Environment and Conservation (DEC) Accredited Site Auditor.

- ii. The RAP is to be prepared in accordance with the relevant Guidelines made or approved by NSW Department of Environment and Conservation (DEC), including the Guidelines for Consultants Reporting on Contaminated Sites.

This RAP is to include procedures for the following:

- Excavation of Hydrocarbon-contaminated soil,
 - Validation sampling and analysis,
 - Prevention of cross contamination and migration or release of contaminants,
 - Site management planning,
 - Ground water remediation, dewatering, drainage, monitoring and validation,
 - Unexpected finds.
- iii. Prior to commencing any remediation works, a written statement is to be provided to the Council by the Site Auditor, which confirms that the Remediation Action Plan satisfies the relevant legislative guidelines and requirements and that the land is able to be remediated to the required level and be suitable for the intended development and use.
 - iv. The applicant is to engage a NSW Department of Environment and Conservation Accredited Site Auditor, accredited under sections 49 & 50 of the *Contaminated Land Management Act 1997*. The Site Auditor is to assess the suitability of the site for its intended development and use. The Site Audit Statement and Summary Site Audit Report is to be submitted to Council and must verify that the land has been remediated and the site is suitable for the intended development and satisfies the relevant criteria in the NEPM 1999.

Any additional conditions that are specified in the Site Audit Statement and Summary Site Audit Report by the EPA accredited site auditor, form part of this consent and Council must be consulted with prior to the development and imposition of any conditions.

The Site Audit Statement must be submitted to Council, prior to the issuing of a construction certificate for the development.

- v. Remediation works shall be carried out in accordance with the requirements of the Contaminated Land Management Act 1997, environmental planning instruments applying to the site, guidelines made by the NSW Department of Environment and Conservation and Department of Infrastructure Planning & Natural Resources, Randwick City Council's Contaminated Land Policy 1999 and the Protection of the Environment Operations Act 1997.
- vi. The site remediation including ground water must fully comply with all relevant Commonwealth and State Legislation, Regulations and Standards.
- vii. Any fill importation to the site is to be monitored and classified by the Site Auditor appointed for remediation of the site or a person with his qualifications. Only 'Virgin Excavated Natural Material'

(VENM) is to be imported to the site, as defined within the NSW EPA 'Environmental Guidelines; Assessment, Classification and management of Liquid and Non-Liquid Wastes. 1999'.

- viii. A Site Remediation Management Plan must be prepared prior to the commencement of remediation works by a suitably qualified environmental consultant and be implemented throughout remediation works. A copy is to be forwarded to Council. The Site Remediation Management Plan shall include measures to address the following matters:
- general site management, site security, barriers, traffic management and signage
 - hazard identification and control
 - worker health & safety, work zones and decontamination procedures
 - cross contamination
 - site drainage and dewatering
 - air and water quality monitoring
 - disposal of hazardous wastes
 - contingency plans and incident reporting, and
 - details of provisions for monitoring implementation of remediation works including details of the person/consultant responsible.
- ix. Remediation must be completed to the satisfaction of the Accredited Site Auditor and the written concurrence of Council must be obtained prior to the issuing of the construction certificate.
- x. The works shall not give rise to environmental pollution or public nuisance or, result in an offence under the Protection of the Environment Operations Act 1997 or NSW Occupational Health & Safety Act (2000) & Regulations (2001).

The following condition is applied to meet the requirements of Sydney Airports Corporation Limited in relation to the Obstacle Limitation Surface for Sydney Airport

25. Advice from the Sydney Airports Corporation Limited, and/or any other relevant body, that no objection is raised, and approval is given, to the building height of the proposed development shall be obtained and submitted to 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 development.

The following conditions are applied to satisfy the provisions of Council's environmental plans, policies and codes for subdivision works:

26. A new development application shall be submitted for the strata sub-division of the proposed development.

The following group of conditions have been applied to ensure that adequate provisions are made for Section 94 Contributions:

27. In accordance with Council's Section 94 Contributions Plan adopted on September 1999 a monetary contribution is to be paid to Council for the provision or improvement of public open space in lieu of on site provision for

an amount of \$75,642.33 This amount shall be paid by cash or bank cheque prior to the issuing of the construction certificate. Council's Section 94 Contributions Plan may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick.

28. In accordance with Council's Section 94 Contributions Plan adopted on September 1999 a monetary contribution is to be paid to Council for the provision of community facilities in lieu of on site provision for an amount of \$33,443.52 This amount shall be paid by cash or bank cheque prior to the issuing of the construction certificate. Council's Section 94 Contributions Plan may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick.
29. In accordance with Council's Section 94 Contributions Plan adopted on September 1999 a monetary contribution is to be paid to Council for townscape provision/improvement for an amount of \$51,548.00 This amount shall be paid by cash or bank cheque prior to the issuing of the construction certificate. Council's Section 94 Contributions Plan may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick..
30. In accordance with Council's Section 94 Contributions Plan adopted on September 1999 a monetary contribution is to be paid to Council for parking in lieu of on site provision for an amount of \$13,230.00. This amount shall be paid by cash or bank cheque prior to the issuing of the construction certificate. Council's Section 94 Contributions Plan may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick.
31. In accordance with Council's Section 94 Contributions Plan adopted on September 1999 a monetary contribution is to be paid to Council for administration charges for an amount of \$425.00. This amount shall be paid by cash or bank cheque prior to the issuing of the construction certificate. Council's Section 94 Contributions Plan may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick.

The following conditions have been applied to ensure that noise emissions from the development satisfy legislative requirements and maintain reasonable levels of amenity to the area:

32. The proposed use of the premises and the operation of all plant and equipment shall not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and Regulations.

In this regard, the use of the premises and the operation of any plant or equipment on the site shall not give rise to an L₁₀ sound pressure level which is 5dB(A) greater than the A-weighted L₉₀ background sound pressure level, measured at any point on a residential boundary or within any residential dwelling.

33. The use of the premises and the operation of plant and equipment shall not give rise to the transmission of a vibration nuisance.

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

34. 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.

35. 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*.

The following group of conditions have been applied to ensure the structural adequacy and integrity of the proposed building and adjacent premises:

36. Documentary evidence prepared by a suitably qualified *professional geotechnical engineer* shall be submitted to the certifying authority **prior to the issuing of a construction certificate**, certifying the suitability and stability of the site for the proposed building and certifying the suitability and adequacy of the proposed design and construction of the building for the site.
37. A report shall be prepared by a professional engineer and submitted to the certifying authority prior to the issuing of a construction certificate, detailing the proposed methods of excavation, shoring or pile construction, including details of potential vibration emissions. The report, must demonstrate the suitability of the proposed methods of construction to overcome any potential damage to nearby land/premises.

Any practices or procedures specified in the engineer's report in relation to the avoidance or minimisation of structural damage to nearby premises, must be fully complied with and incorporated into the documentation for the construction certificate.

A copy of the engineers report is to be submitted to the Council, if the Council is not the certifying authority.

38. Driven type piles/shoring must not be provided unless a geotechnical engineer's report is submitted to the certifying authority, **prior to the issuing of a construction certificate**, which demonstrates that damage should not occur to any adjoining premises and public place as a result of the works.

Any practices or recommendations specified in the engineer's report in relation to the avoidance or minimisation of structural damage to nearby premises or land must be fully complied with and incorporated into the documentation for the **construction certificate**.

39. A dilapidation report prepared by a *professional engineer* or suitably qualified and experienced building surveyor shall be submitted to the certifying authority **prior to the commencement of demolition, excavation or building works** detailing the current condition and status of all buildings, including ancillary structures (*i.e. including dwellings, residential flat buildings, commercial/industrial building, garages, carports, veranda's, fences, retaining walls, swimming pools and driveways etc.*) located upon:
- a. all of the premises adjoining the subject site

The report is to be supported with photographic evidence of the status of the buildings and a copy of the report must also be forwarded to the Council and to the owners of each of the abovestated premises, **prior to the commencement of any works**.

40. The installation of ground or rock anchors underneath any adjoining premises including (a public roadway or public place) must not be carried out without specific written consent of the owners of the affected adjoining premises and (where applicable) details of compliance must be provided to the certifying authority **prior to the commencement of any excavation or building works.**
41. A Certificate of Adequacy prepared by a *professional engineer* shall be submitted to the certifying authority (*and the Council, if the Council is not the certifying authority*) **prior to occupation of the building**, certifying the structural adequacy of the building and that the building works satisfy the relevant structural design requirements of the Building Code of Australia.

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:

42. All 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 and details of compliance are to be prepared by a suitably qualified person and be submitted to the principal certifying authority, **prior to the commencement of any demolition works.**
43. 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.
44. 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 available to the Council officers upon request.
45. The building works are to be inspected by the *Principal Certifying Authority* (or other suitably qualified person, to the satisfaction of the *Principal Certifying Authority*), to monitor compliance with the relevant standards of construction and Council's development consent.

The *Principal Certifying Authority* shall specify the relevant stages of construction to be inspected 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 compliance with Council's approval is to be maintained by the *Principal Certifying Authority*.

Upon inspection of each stage of construction, the *Principal Certifying Authority* (or other suitably qualified person, to the satisfaction of the *Principal Certifying Authority*) is also required to ensure that adequate provisions are made for the following measures (*as applicable*), to ensure compliance with the terms of Council's consent:

- Sediment control measures.
- Provision of perimeter fences or hoardings for public safety and restricted access to building sites.
- Maintenance of the public place free from unauthorised materials, sand,

soil, debris, waste containers or other obstructions.

46. 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 protected to prevent them from being dangerous to life or property.
47. If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of a building on an adjoining allotment of land, the person causing the excavation must:
 - preserve and protect the building /s on the adjoining land from damage; and
 - if necessary, underpin and support the building in an approved manner; and
 - at least seven (7) days before excavating below the level of the base of the footings of a building on an adjoining allotment of land (including a public road or public place), give notice of the intention to do so to the owner of the adjoining land. Particulars of the excavation are to be provided to the owner of the adjoining land and also the owner of the land where the building is being erected or demolished.
48. Prior to the commencement of any building work, a *principal certifying authority* must be appointed and Council is to be notified accordingly and, at least 2 days notice of the intention to commence building work must be given to Council, in accordance with the provisions of the Environmental Planning & Assessment Act 1979 and Environmental Planning & Assessment Regulation 2000.
49. 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.

50. In addition to the matters contained in the *Environmental Planning and Assessment Regulation 2000*, the following matters are to be completed in accordance with the terms and conditions of this development consent, **prior to the occupation** of the building:
 - a) car parking and vehicular access
 - b) landscaping
 - c) stormwater drainage
 - d) external finishes and materials
51. A coloured *works-as-executed* fire services plan is to be submitted to the Council **prior to occupation** of the development, detailing the location of the essential fire safety measures installed within the building premises.
52. A Registered Surveyor's check survey certificate or *compliance certificate* is to be forwarded to the principal certifying authority (*and a copy is to be forwarded to the Council, if the Council is not the principal certifying authority*),

detailing compliance with Council's approval at the **following stage/s of construction:**

- a. Prior to construction of the footings or first completed floor slab (prior to the pouring of concrete), showing the area of the land, building and boundary setbacks.
- b. Prior to construction of the first completed floor/floor slab (prior to pouring of concrete), showing the area of land, building and boundary setbacks and verifying that the building is being construction at the approved levels.
- c. On completion of the erection of the building showing the area of the land, the position of the building and boundary setbacks and verifying the building has been constructed at the approved levels.

53. Building and demolition 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.

54. 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.

A report prepared by a suitably qualified and experienced consultant in acoustics shall be submitted to Council **prior to the commencement of any excavation or building works**, certifying that noise and vibration emissions from the construction of the development will comply 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 this approval.

55. A sign must be erected on the site in a prominent, visible position, prior to commencing any demolition, excavation or building works, stating that 'unauthorised entry to the site is prohibited' and showing the name of the person in charge of the work site and a telephone number at which the person may be contacted outside working hours.

In the case of residential building work, the sign is also required to detail the licence number of the building contractor or the permit number of the *owner-builder*, in accordance with the *Home Building Act 1989 and Regulations*.

56. Temporary toilet facilities are to be provided, at or in the vicinity of the work site throughout the course of demolition and construction, at the rate of one toilet for every 20 persons or part of 20 persons employed at the site and the toilet facilities must be connected to a public sewer or other sewage management facility approved by Council.

57. A report prepared by a suitably qualified and experienced consultant in acoustics shall be submitted to 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.

58. Noise emissions during the construction of the building and associated site works must comply with the relevant provisions of the *Protection of the Environment Operations Act 1997* & the Noise Control Manual published by the Environment Protection Authority, except as may be amended by the conditions of this approval.

59. Public safety and convenience must be maintained at all times during demolition, excavation and construction works.

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.

Any damage caused to the road or footway must be repaired immediately, to the satisfaction of Council.

60. 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 and debris at all times.

61. Bulk bins/waste containers must not be located upon the footpath, roadway or nature strip at any time without the prior written consent 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 Council's Local Approvals Policy.

62. Any building/demolition works involving asbestos cement are to be carried out in accordance with the Work Cover New South Wales "Guidelines for Practices Involving Asbestos Cement in Buildings".

63. A Construction Site Management Plan is to be submitted to and approved by the principal certifying authority **prior to the commencement of demolition, excavation or building works**. The site management plan must include the following measures, as applicable to the type of development:

- location and construction of protective fencing / hoardings to the perimeter of the site;
- location of site storage areas/sheds/equipment;
- location of building materials for construction;
- provisions for public safety;
- dust control measures;
- site access location and construction
- details of methods of disposal of demolition materials;
- protective measures for tree preservation;
- provisions for temporary sanitary facilities;
- location and size of waste containers/bulk bins;
- details of proposed sediment and erosion control measures;
- construction noise and vibration management.

The site management measures are to be implemented prior to the commencement of any site works and be maintained throughout the works, to maintain adequate levels of public health and safety. A copy of the approved

Construction Site Management Plan must be maintained on site and be made available to Council officers upon request.

64. 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.

A soil and water management plan (SWMP) must be submitted to and approved by the principal certifying authority and implemented **prior to the commencement of any site works or activities.**

The soil and water management plan must contain a site plan, detailing:

- the slope of the land
- site access points and access control measures
- location and type of all sediment control measures
- location of existing vegetation, to be retained
- material stockpile or storage areas and methods of sediment control
- location of existing and proposed drainage systems
- proposed disposal of site water
- location of building operations and equipment
- proposed re-vegetation details

All soil and water management measures must be maintained at all times throughout demolition, excavation, building and site works and a copy of the soil and water management plan is to be kept on-site and be made available to Council officers upon request.

65. Stockpiles of soil, sand, aggregate or other materials must not be located on any drainage line, natural watercourse, footpath, roadway 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, in any public place or any location which may lead to the discharge of materials into the stormwater drainage system.

66. 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.

67. If the work involved in the erection or demolition of a building is likely to cause pedestrian or vehicular traffic in a public place to be obstructed or rendered inconvenient or the building involves the enclosure of a public place, a hoarding or fence must be erected between the work site and the public place.

If necessary, an awning is to be erected sufficiently to prevent any substance from, or in connection with, the work from falling into the public place or adjoining premises.

The public place adjacent to the work site must be kept lit between sunset and sunrise if it is likely to be hazardous to persons in the public place and any

such hoarding, fence or awning is to be removed upon completion of the work.

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 hoardings, site fencing 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.

68. A 'B Class' overhead type hoarding is required is be provided to protect the public, located adjacent to the development, prior to the commencement of any works on the site which comprise: -

- any works or hoisting of materials over a public footway or adjoining premises, or
- any building or demolition works on buildings which are over 7.5m in height and located within 3.6 metres of the street alignment.

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 any part of the footpath, nature strip or any 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.

69. A temporary timber crossing is to be provided to the site entrance across the kerb and footway area, with splayed edges, unless access is via an existing concrete crossover.

70. 'B' Class' overhead type hoardings and public access are required to be designed in accordance with the following requirements (as applicable).

- The hoarding is to be designed so that the wind loads comply with AS1170.2. Superimposed loads from site sheds and materials not to exceed 40% of the design live loads. The structure should have a factor of safety of 1.5 against overturning and 2 against sliding.
- Footings to the hoarding are to be located and designed so as not to have an adverse affect upon underground services or the like. The hoarding is to be able to withstand a vehicle impact and removal of any one column anywhere in the structure and a minimum length of 2m of wall supporting the deck on any one side supporting the structure is required.
- Metal parts of the hoarding or associated structures to be not less than 4m from any power line, transmission line or transmission apparatus or 1.5m from part for non conductive materials, such as timber.
- Adequate artificial lighting is to be provided to the hoarding.
- A suitable system of buffer railing or barriers, particularly at locations such

as an intersection or sharp bend.

- A minimum overhead clearance of 2.2m is to be provided below the hoarding.
- The street side of the hoarding is to be open for at least 2/3 of its full height for the length of the structure to prevent a tunnel effect.
- Waterproofing of the deck above the footway is required to be provided and adequate provisions are to be made for the disposal of stormwater.
- The hoarding is to be painted white or other light colour acceptable to Council.
- Site sheds or accommodation located on top of a hoarding within a designated crane area or where materials are being lifted over are required to sustain a 10Kpa load and a protective fence and handrails are to be provided.
- The hoarding is to be erected and maintained fully in accordance with the requirements of Work Cover New South Wales.
- Unobstructed access must be maintained at all times for pedestrians and people with disabilities. If necessary, a stable and level, non-slip timber/metal walking platform or firm road base material is to be provided adjacent to the hoarding/fence across the front of the site.
- A certificate of structural adequacy prepared by a professional engineer is to be submitted to the certifying authority upon installation (*and a copy of the certificate is to be forwarded to the Council if it is not the certifying authority*) certifying the structural adequacy of the hoarding and compliance with Council's conditions of consent and relevant requirements of WorkCover New South Wales.

The following conditions are applied to provide access and facilities for people with disabilities:

71. Access and facilities for people with disabilities must (as a minimum) be provided in accordance with the relevant provisions of the Building Code of Australia.
72. Access, facilities and car parking for people with disabilities must be provided in accordance with Council's development control plan for multi-unit housing and in accordance with the relevant provisions of Part D3 of the Building Code of Australia and AS1428.1, AS4299 and 2890.1. Details of the proposed access, facilities and carparking for people with disabilities are to be submitted to and approved by Council's Director of Planning and Environment in accordance with Section 80 A (2) of the *Environmental Planning and Assessment Act 1979* **prior to a construction certificate being issued** for the development.
73. The building is required to be provided with a smoke alarm system complying with Clause 3 of Specification E2.2a of the B.C.A. or a smoke detection system complying with Clause 4 of Specification E2.2a of the B.C.A. or a combination of a smoke alarm system within the sole-occupancy units and a smoke detection system in areas not within the sole-occupancy units.

The following conditions are applied to ensure compliance with the *Food Act 1989* and Council's Food Premises Code:

74. The premises is to be designed and constructed in accordance with the Council's Food Premises Code and details of compliance are to be included in the plans and specification for the **construction certificate** to the satisfaction of the certifying authority.
75. The design and construction of food premises must comply with the following requirements, as applicable: -
- The floors of kitchens, food preparation areas and the like are to be constructed of materials which are impervious, non slip and non abrasive. The floor is to be finished to a smooth even surface, graded and drained to a floor waste connected to the sewer.
 - The intersection of walls with floor and plinths is to be coved, having a minimum radius of 25mm.
 - Walls of the kitchen preparation areas and the like are to be of solid construction finished in a light colour with glazed tiles, stainless steel, laminated plastics or similar approved material adhered directly to the wall to a minimum height of 2m above the floor level, to provide a smooth even surface.
 - Walls where not tiled are to be cement rendered and finished to a smooth even surface, painted with a washable paint of a light colour or sealed with other approved materials.
 - The ceilings of kitchens, food preparation areas, storerooms and the like are to be of rigid smooth-faced, non absorbent material i.e., fibrous plaster, plasterboard, fibre cement sheet, cement render or other approved material.
 - All stoves, refrigerators, bain-maries, stock pots, washing machines, hot water heaters, large scales, food mixers, food warmers, cupboards, counters, bars etc.... to be supported on wheels, concrete plinths a minimum 75mm in height, metal legs minimum 150mm in height, brackets or approved metal framework of the like.
 - Cupboards, cabinets, benches and shelving may be glass, metal, plastic, timber sheeting or other approved material. The use of particle board or similar material is not permitted unless laminated on all surfaces.
 - Adequate fly screens and doors with self-closing devices, (where applicable), are to be provided to all door and window openings, and an electronic insect control device is to be provided within the food premises.
 - Garbage storage enclosures are to be fitted with a hose cock and the floor is to be graded and drained to an approved floor waste connected to the sewer.
 - A mechanical ventilation exhaust system hood is to be installed where cooking or heating processes are carried out in the kitchen or in food preparation areas, in accordance with the relevant requirements of Clause F4.12 of the BCA and Australian Standard AS 1668 Parts 1 & 2.

- Wash hand basins being provided in convenient positions, with hot and cold water, together with a sufficient supply of soap and clean towels. Such hot and cold water shall be supplied to the wash hand basins through an approved mixing device.
- Ceramic tiles being provided to a height of 450mm above bench tops, wash hand basins and similar fittings.
- A numerically scaled indicating thermometer or recording thermometer, accurate to the nearest degree Celsius being provided to refrigerators, cool rooms, other cooling appliances and bain-maries or other heated food storage/display appliances. The thermometer is to be located so as to be read easily from the outside of the appliance.
- All food that is to be kept hot should be heated within one (1) hour from the time when it was prepared or was last kept cold, to a temperature of not less than 60°C and keep this food hot at or above the temperature. Food that is to be kept cold should be cooled, within four (4) hours from the time when it was prepared or was last kept hot, to a temperature of not more than 5°C and keep this food cold at or below that temperature.

The following conditions have been applied to ensure compliance with Local Government Legislation and Policies of Council:

76. Hairdressers, Beauty salons must comply with the *Local Government (Orders) Regulations 1999* and the *Public Health Act & Regulations 1991*, and the premises is to be registered with Council on an annual basis and the approved registration/inspection fee is to be forwarded to the Council **prior to occupancy**.
- b. Legionella control – cooling towers, evaporative cooling systems, humidifying systems, warm water systems, water cooling systems must be registered with the Council on an annual basis and the systems are to be maintained and certified in accordance with the provisions of the *Public Health Act, 1991*.

The premises is to be registered with Council together with payment of the approved fee, **prior to occupancy of the building**.

The following conditions are applied to maintain reasonable levels of environmental amenity.

77. The consent of Council must be obtained prior to the erection of any advertising unless exempted under Council's Development Control Plan - Exempt and Complying Development.
78. The storage of boxes, cartons, pallets, goods or any other material relating to the operation of the business other than a commercial garbage bin must be wholly contained within the premises.
79. The use of the premises is not to commence until all terms and conditions of this development consent have been satisfied.
80. The following conditions are applied to ensure adequate environmental protection.
81. All hazardous or intractable wastes (including asbestos) shall be removed and

disposed of in accordance with the requirements of WorkCover and the Environmental Protection Authority, and with the provisions of:

- Occupational health and Safety Act 1983 (NSW)
- Construction Safety Act 1912; Regulation 84A-J Construction Work Involving Asbestos or Asbestos Cement 1983 (NSW)
- Occupational Health and Safety (Hazardous Substances) Regulation 1996 (NSW).
- Occupational Health and Safety (Asbestos Removal Work) Regulation 1996 (NSW); and
- Waste Minimisation and Management Act 1995 and Regulations (NSW).

82. All site works shall comply with the occupational health and safety requirements of WorkCover NSW.

83. The applicant is advised that the Construction Certificate plans and specification must comply with the provisions of the Building Code of Australia (BCA).

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

- | | | |
|----------------|---|--|
| a) Part C3 | - | Protection of openings |
| b) Part D1 | - | Provisions for escape |
| c) Clause D1.2 | - | Number of exits required |
| d) Clause D1.3 | - | When fire-isolated exits are required |
| e) Part E1 | - | Fire fighting equipment |
| f) Part E2 | - | Smoke Hazard Management |
| g) Part E3 | - | Lift Installations |
| h) Part E4 | - | Emergency lighting, exit signs and warning systems |
| i) Part F5 | - | Sound Transmission and Insulation |

The following conditions are applied to provide adequate security against damage to Council's infrastructure:

84. The following damage/civil works security deposit requirement is to be complied with prior to a construction certificate being issued for the development, as security for making good any damage caused to the roadway, footway, verge or any public place; or as security for completing any public work; and for remedying any defect on such public works, in accordance with section 80A(6) of the Environmental Planning and Assessment Act 1979 and the following vehicular crossing deposit requirement is to be complied with prior to a construction certificate being issued for the development, as security for Council or a Council approved subcontractor to construct the vehicular crossing

- a) \$5000.00 - Security damage deposit

The damage/civil works security deposit may be provided by way of a cash or cheque with the Council and is refundable upon:

- A satisfactory inspection by Council that no damage has occurred to the Council assets such as roadway, kerb, guttering, drainage pits footway, or verge; and
- Completion of the civil works as conditioned in this development consent by Council.

The applicant is to advise Council, in writing, of the completion of all building works and/or obtaining an occupation certificate, if required.

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.

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

85. The applicant shall, at no cost to Council, dedicate a 1.2 metre wide strip of land for road widening purposes along the Middle Lane frontage of the site. This condition is required to maintain or improve existing traffic conditions in Middle Lane, to facilitate turning manoeuvres in and out of the site and to provide a provide a trafficable footpath along the Middle Lane frontage.
86. The applicant shall, at no cost to Council, dedicate a 0.6 metre wide strip of land for road widening purposes along the Harbourne Lane frontage of the site. This condition is required so as to provide a trafficable footpath along the Harbourne Lane frontage.
87. The applicant shall, at no cost to Council, dedicate a 2 metre x 2 metre splay corner for road widening purposes on the north/west corner of the development site, (intersection of Harbourne Lane & Anzac Parade). Note: the splayed corners are to be taken from the new property boundaries after road dedication in Harbourne Lane has been made.
88. The applicant shall, at no cost to Council, dedicate a 1.5 metre x 1.5 metre splay corner for road widening purposes on the north/east corner of the development site, (intersection of Harbourne Lane & Middle Lane). Note: the splayed corners are to be taken from the new property boundaries after road dedication in Harbourne & Middle Lanes have been made.

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

89. Prior to the issuing of an Occupation Certificate the applicant must meet the full cost for Council or a Council approved_contractor to:
 - a) Construct commercial strength concrete vehicular crossings and laybacks at kerb opposite the vehicular entrances to the site.
 - b) Remove any redundant concrete vehicular crossings and laybacks and to reinstate the area with concrete footpath, turf and integral kerb and gutter to Council's specification.
 - c) Construct new kerb and gutter for the full site frontage in Harbourne Lane & Middle Lane as required by Council's Asset Infrastructure Services Department.
 - d) Carry out a full depth, 3.50 metre wide, road construction in front of the kerb and gutter along the full site frontage in both Harbourne Lane & Middle St as required by Council's Asset Infrastructure Services Department.
 - e) Re/construct drainage pits in Harbourne Lane as required by Council's Drainage Engineer.

- f) Construct footpaths along the full site frontages to Council Urban Design Guideline specifications.
- g) Supply & install "No Standing" signs along both the Harbourne Lane & Middle Lane frontages.
90. 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.
91. A separate written approval from Council is required to be obtained in relation to all works which are located externally from the site within the road reserve/public place, in accordance with the requirements of the Roads Act 1993. Detailed plans and specifications of the proposed works are to be submitted to and approved by the Director of City Services prior to commencing any works within the road reserve/public place.
- All works within the road reserve/public place must be carried out to the satisfaction of Council and certification from a certified practicing engineer is to be provided to Council upon completion of the works.
- Relevant Council assessment and inspection fees, as specified in Council's adopted Pricing Policy, are required to be paid to Council prior to commencement of the works.
92. The vehicular access, ground level carparking and the basement carparks (including, but not limited to, the ramp grades, carpark layout and height clearances) are to be in accordance with the requirements of AS2890.1:2004. The Construction Certificate plans must demonstrate compliance with this requirement, particular attention should be given to the design of the single lane curved ramps.
93. All new walls adjacent to vehicular crossings must be lowered to a height of 600mm above the internal driveway level for a distance of 1.50m within the site or splayed 1.5 metre by 1.5 metre to provide satisfactory sight lines. Details are to be submitted to the Certifying Authority prior to the release of the construction certificate showing compliance with this condition.
94. Prior to the issuing of a Construction Certificate the applicant is to submit to the Certifying Authority for approval, and have approved, the proposed method for ensuring adequate sight distance for the drivers of vehicles exiting the ground level driveway and level 1 driveway, (i.e. when vehicles are exiting the respective driveways at the same time). This condition is required because the subject driveways are adjacent to one another.
95. Prior to the issuing of a Construction Certificate the applicant is to submit to the Certifying Authority for approval, and have approved, a detailed traffic management plan aimed at minimising potential vehicular conflict on the proposed single lane curved ramps. The TMP must be prepared by a suitably qualified traffic systems consultant and should include details on any proposed signalisation systems. The Construction Certificate plans must reflect the approved TMP.
96. A work zone is to be provided to the development site and details of the work zone location and the prescribed fee for the installation of a "work zone"

having a minimum length of 18 metres must be paid to Council at least four (4) weeks prior to the commencement of building works.

97. Prior to the issue of a construction certificate, the applicant shall submit for approval and have approved by Council's Traffic Engineer a detailed construction traffic management plan. The plan shall demonstrate how construction and delivery vehicles will access the development site during the demolition and construction phase of the development.

All traffic associated with the subject development shall comply with the terms of the approved construction traffic management plan.

The following conditions are applied to address proposed awnings:

98. The proposed awning overhanging Council's footpath in Anzac Parade is to comply with the following;
- Be a minimum 0.60m setback from the kerb line in Anzac Parade & Harbourne Lane.
 - To be compatible with any approved street tree planting in Anzac Parade.
 - The underside of the awning is to be a minimum 3.00m clear of Council's issued alignment level for the Anzac Parade frontage (i.e – 100mm above the top of the Council kerb level).

Compliance with the above requirements are to be shown on the plans submitted for the construction certificate.

The following conditions are applied to provide adequate provisions for future civil works in the road reserve:

99. The Council's Development Engineer has inspected the above site and has determined that the design alignment level (concrete/paved/tiled level) at the property boundary for driveways, access ramps and pathways or the like, shall be as follows:
- Anzac Parade Frontage - 100mm above the top of the kerb at all points opposite the kerb, along the Anzac Parade site frontage.
 - Harbourne Lane frontage - 25mm above the existing top of the kerb at all points opposite the kerb, along the Harbourne Lane site frontage.
 - Middle Lane Frontage - 25mm above the existing top of the kerb at all points opposite the kerb, along the Middle Lane site frontage.

Any enquiries regarding this matter should be directed to Council's Development Engineer on 9399 0923.

The design alignment level at the property boundary must be strictly adhered to.

100. The design alignment levels (concrete/paved/tiled level) issued by Council and their relationship to the kerb must be indicated on the building plans for the construction certificate.
101. The above alignment levels and the site inspection by Council's Development Engineer have been issued at a prescribed fee of \$1152 calculated at \$44.00 (inclusive of GST) per metre of site frontage to Anzac Parade. This amount is

to be paid prior to a construction certificate being issued for the development.

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

102. A public utility impact assessment must be carried out on all public utility services on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the development/building works and include relevant information from public utility authorities and exploratory trenching or pot-holing, if necessary, to determine the position and level of service.
103. 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.
104. Documentary evidence from the relevant public utility authorities confirming that their requirements have been satisfied, must be submitted to the certifying authority prior to a construction certificate being issued for the development.
105. Any electricity substation required for the site as a consequence of this development shall be located within the site and shall be screened from view. The proposed location and elevation shall be shown on all detailed landscape drawings and specifications. The applicant must liaise with Energy Australia prior to lodging the construction certificate to determine whether or not an electricity substation is required for the development.
106. The applicant shall meet the full cost of the overhead power lines and telecommunication cables located in the vicinity of the development site to be relocated underground and all redundant power poles to be removed. The applicant shall liaise directly with the relevant service utility authorities to organise for the wires/cables to be relocated. All wires cables must be relocated underground to the satisfaction of the relevant service utility authority prior to the issuing of an occupation certificate for the development.
107. A Section 73 Compliance Certificate under the Sydney water Act 1994 must be obtained. Application must be made through an authorised Water Servicing Coordinator. Please refer to "Your Business" section of Sydney Water's web site at www.sydneywater.com.au then the "e-developer" icon or telephone 13 20 92.

Following application a "Notice of Requirements" will detail water and sewer extensions to be built and charges paid. Please make early contact with the Coordinator, since building of water/sewer extensions can be time consuming and may impact on other services and building, driveway or landscape design.

The Notice must be issued to the Principal Certifying Authority prior to the construction certificate being issued.

The Section 73 Certificate must be submitted to the Principal Certifying Authority prior to occupation of the development.

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

Protection from flooding

108. The floor level of all habitable and storage areas shall be at a minimum RL of 26.85m (AHD) or suitably waterproofed up to this same level.
109. All structural walls on the ground floor level shall be designed to **structurally** withstand hydrostatic pressure/stormwater inundation from floodwater during the probable maximum flood (PMF) event as defined in the Floodplain Development Manual (New South Wales Government, April 2005). Structural Engineering certification confirming that this condition has been complied with shall be submitted to the certifying authority prior to the issuing of a construction certificate.

It is noted that this requirement does not necessitate the development being flood proof/water tight up to the PMF event, rather the requirement is to ensure that the development will not be **structurally** damaged in manner that could endanger lives during the PMF event.

Internal Drainage

110. **Stormwater drainage plans have not been approved as part of this development consent.** Engineering calculations and plans with levels reduced to Australian Height Datum in relation to site drainage shall be submitted to and approved by the certifying authority prior to a construction certificate being issued for the development. A copy of the engineering calculations and plans are to be forwarded to Council, prior to a construction certificate being issued, if the Council is not the certifying authority. The drawings and details shall include the following information:
- a) A detailed drainage design supported by a catchment area plan, at a scale of 1:100 or as considered acceptable to the Council or an accredited certifier, and drainage calculations prepared in accordance with the Institution of Engineers publication, Australian Rainfall and Run-off, 1987 edition.
 - b) A layout of the proposed drainage system including pipe sizes, type, grade, length, invert levels, etc., dimensions and types of all drainage pipes and the connection into Council's stormwater system.
 - c) Generally all internal pipelines must be capable of discharging a 1 in 20 year storm flow. However the minimum pipe size for pipes that accept stormwater from a surface inlet pit must be 150mm diameter. The site must be graded to direct any surplus run-off (ie. above the 1 in 20 year storm) to the proposed drainage system.
 - d) The separate catchment areas within the site, draining to each collection point or surface pit are to be classified into the following categories:
 - i. Roof areas
 - ii. Paved areas
 - iii. Grassed areas
 - iv. Garden areas
 - e) Where buildings abut higher buildings and their roofs are "flushed in" to the higher wall, the area contributing must be taken as: the projected roof area of the lower building, plus one half of the area of the vertical wall abutting, for the purpose of determining the discharge from the lower roof.

- f) Proposed finished surface levels and grades of car parks, internal driveways and access aisles which are to be related to Council's design alignment levels.
 - g) The details of any special features that will affect the drainage design eg. the nature of the soil in the site and/or the presence of rock etc.
111. On-site detention must be provided to ensure that the maximum discharge from the above site is not to exceed that which would occur during a 1 in 5 year storm of 1-hour duration for the existing site conditions. All other stormwater run-off from the above site for all storms up to the 1 in 20 year storm is to be retained on the site for gradual release to the kerb and gutter or drainage system as required by Council. Provision is to be made for satisfactory overland flow should a storm in excess of the above parameters occur.

Should no formal overland escape route be provided for storms greater than the design storm, the on-site detention system shall be sized for the 1 in 100 year storm event.

For small areas up to 0.5 hectares, determination of the required cumulative storage must be calculated by the mass curve technique as detailed in Technical Note 1, Chapter 14 of the Australian Rainfall and Run-off Volume 1, 1987 Edition.

Where possible the detention tank must have an open base to infiltrate stormwater to the groundwater. Note that the ground water and any rock stratum has to be a minimum of 2.0 metres below the base of the tank.

112. All site stormwater leaving the site must be discharged by gravity to the kerb and gutter or drainage system at the front of the property.
113. Prior to occupation of the development, a "restriction on the use of land" and "positive covenant" (under section 88E of the Conveyancing Act 1919) shall be placed on the title of the subject property to ensure that the onsite detention/infiltration system is maintained and that no works which could affect the design function of the detention/infiltration system are undertaken without the prior consent (in writing) from Council. Such restriction and positive covenant shall not be released, varied or modified without the consent of the Council.

Notes:

- a. The "restriction on the use of land" and "positive covenant" are to be to the satisfaction of Council. A copy of Council's standard wording/layout for the restriction and positive covenant may be obtained from Council's Development Engineer.
 - b. The works as executed drainage plan and hydraulic certification must be submitted to Council prior to the "restriction on the use of land" and "positive covenant" being executed by Council.
114. The detention area must be regularly cleaned and maintained to ensure it functions as required by the design.
115. Any onsite detention/infiltration systems shall be located in areas accessible by residents of all units.
116. Any above ground stormwater detention areas (and/or infiltration systems with

above ground storage) must be suitably signposted where required, warning people of the maximum flood level.

117. The maximum depth of ponding in above ground detention areas (and/or infiltration systems with above ground storage) shall be as follows:
- a) 300mm in landscaped areas (where child proof fencing is not provided around the outside of the detention area and sides slopes are steeper than 1 in 10)
 - b) 600mm in landscaped areas where the side slopes of the detention area have a maximum grade of 1 in 10.
 - c) 1200mm in landscaped areas where a childproof fence is provided around the outside of the detention area

Notes:

- It is noted that above ground storage will not be permitted in basement carparks or in any area which may be used for storage of goods.
- Mulch/bark must not be used in onsite detention areas

118. The stormwater detention area must be suitably signposted where required, warning people of the maximum flood level.
119. The floor level of all habitable and storage areas adjacent to the detention area must be a minimum of 300mm above the maximum water level for the design storm or alternately a permanent 300mm high water proof barrier is to be constructed.

(In this regard, it must be noted that this condition must not result in any increase in the heights or levels of the building. Any variations to the heights or levels of the building will require a new or amended development consent from the Council prior to a construction certificate being issued for the development).

120. A childproof and corrosion resistant fastening system shall be installed on access grates over pits/trenches where water is permitted to be temporarily stored.
121. A reflux valve shall be provided (within the site) over any pipelines discharging from the site into Council's underground drainage system to ensure that stormwater from Council drainage system does not surcharge back into the site stormwater system.
122. Should a pump system be required to drain any portion of the site the system must be designed with a minimum of two pumps being installed, connected in parallel (with each pump capable of discharging at the permissible discharge rate) and connected to a control board so that each pump will operate alternatively. The pump wet well shall be sized for the 1 in 100 year, 2 hour storm assuming both pumps are not working.

The pump system must also be designed and installed strictly in accordance with "Section 8.4 PUMP SYSTEMS" as stipulated in Randwick City Council's Private Stormwater Code.

123. Prior to the issuing of an occupation certificate, the applicant shall submit to Council, a works-as-executed drainage plan prepared by a registered surveyor and approved by a suitably qualified and experienced Hydraulic Engineer. The

works-as-executed drainage plan shall be to the satisfaction of the Principal Certifying Authority (PCA) and shall include the following details:

- a. The location of the detention basin with finished surface levels;
- b. Finished site contours at 0.2 metre intervals;
- c. Volume of storage available in the detention areas;
- d. The location, diameter, gradient and material (i.e PVC, RC etc) of all stormwater pipes;
- e. The orifice size(s) (if applicable);
- f. Details of any infiltration/absorption systems; and
- g. Details of any pumping systems installed (including wet well volumes).

124. A sediment/silt arrester pit must be provided:-

- a. within the site at or near the street boundary prior to the site stormwater discharging by gravity to the kerb/street drainage system; and
- b. prior to stormwater discharging into any absorption/infiltration system.

The sediment/silt arrester pit shall be constructed in accordance with the following requirements:-

- The base of the pit located a minimum 300mm under the invert level of the outlet pipe.
- The pit constructed from cast in-situ concrete, precast concrete or double brick.
- A minimum of 4 x 90 mm diameter weep holes located in the walls of the pit at the floor level with a suitable geotextile material with a high filtration rating located over the weep holes.
- A galvanised heavy-duty screen located over the outlet pipe/s (Mascot GMS multipurpose filter screen or equivalent).
- The grate being a galvanised heavy-duty grate that has a provision for a child proof fastening system.
- A child proof and corrosion resistant fastening system provided for the access grate (e.g. spring loaded j-bolts or similar).
- A sign adjacent to the pit stating:

"This sediment/silt arrester pit shall be regularly inspected and cleaned."

Note: Sketch details of a standard sediment/silt arrester pit may be obtained from Council's Drainage Engineer.

125. Any Absorption Trenches/Pits must be designed in accordance with "Section 8.5 ABSORPTION TRENCHES" as stipulated in Randwick City Council's Private Stormwater Code.

126. Two covered car-washing bays shall be provided for this development.

- a) The car washing bays must be drained to sewer to the requirements of Sydney Water and proof of compliance is to be submitted to the certifying authority, prior to a construction certificate being issued for

the proposed development.

- b) The car washing bays must be located outside any required/approved stormwater detention system and must be suitably signposted.
- c) The car washing bay/s may be located within the visitor parking spaces provided they are signposted with *'Exclusive Carwash Bay Use Sat 2:00pm – 5:00pm and Sunday 10:00am – 2:00pm, Visitor parking at other times'*
- d) The car washing bays must be constructed with a minimum 20mm bund around the perimeter of the car washing bays (or equivalent)

A water tap shall be located adjacent to the car washing bays.

127. Prior to the issuing of an occupation certificate, the applicant shall submit to the Principal Certifying Authority (PCA) and Council, certification from a suitably qualified and experienced Hydraulic Engineer confirming that the design and construction of the stormwater drainage system complies with the conditions of development consent. The certification must be provided following inspection/s of the site stormwater drainage system by the certifying engineers and shall be provided to the satisfaction of the PCA.
128. As the above site may be present within a fluctuating water table the basement carpark or similar structures are to be suitably tanked and waterproofed. A Structural Engineer\Geotechnical Engineer shall certify the tanking & waterproofed has been carried out to an acceptable standard and a copy of the certification is to be forwarded to Council.

Notes:-

- a) Any subsoil drainage is to be disposed of within the site and is not to be charged to Council's kerb & gutter and/or underground drainage system.
 - b) Adequate provision is to be made for the ground water to drain around the basement carpark (to ensure that the basement will not dam or slow the movement of the ground water through the development site). Seepage water must not be drained from the site.
129. A report must be submitted to and approved by the Certifying Authority or an accredited certifier, prior to issuing the Construction Certificate, detailing the proposed method of excavation and dewatering process. This report is to be prepared by suitably qualified and experienced Geotechnical, Hydrological and Structural Engineers and is to include but not limited to:
- The proposed method of shoring/piling and dewatering.
 - The zone of influence of any possible settlement.
 - The location of any proposed re-injection points in relation to the property boundaries (where re-injection equipment is to be located on land other than the subject premises, the written consent of the owner must also be provided to Council).
 - Monitoring of fluctuations of the water table during dewatering/construction to be undertaken by consulting engineers to ensure that the conditions of consent and other relevant requirements are satisfied.
 - The location of all proposed monitoring equipment in relation to the property boundaries (where monitoring equipment is to be located on

land other than the subject premises, the written consent of the owner must also be provided to Council).

- Details of any consultation and arrangements made with owners of any potentially affected nearby premises (ie in relation to access, monitoring and rectification of possible damage to other premises).
- Details of groundwater quality and proposed disposal of any potentially contaminated groundwater in accordance with relevant requirements of the Department of Environment & Conservation, Council and the Protection of the Environment Operations Act 1997, in an environmentally sensitive manner.
- The location of all pumping equipment in relation to the property boundaries.
- The proposed method of noise attenuation for all pumping equipment, so as not to be more than 5dB (A) greater than the A – weighted L90 background sound pressure level between the hours of 7am to 10pm within any residential premises and not to be audible at all between the hours of 10pm and 7am within any residential dwelling.
- Confirmation that the proposed methods of dewatering and excavation are appropriate and in accordance with 'best practice' principles and should not result in any unacceptable levels of settlement or damage of the adjoining or nearby buildings within the zone of influence.

The dewatering process must be monitored by the consulting Engineer/s to the satisfaction of the principal certifying authority and documentary evidence of compliance with the relevant conditions of consent and dewatering requirements must be provided to the principal certifying authority and the Council.

The site conditions and fluctuations in the water table are to be reviewed by the consulting Engineer prior to and during the excavation/construction process, to ensure the suitability of the excavation and dewatering process and compliance with Council's conditions of consent.

130. If any temporary dewatering of the site is required to facilitate construction of any part of the lower basement carpark a licence under Part V of the Water Act 1912 will be required. The licence must be obtained from the NSW Department of Water and Energy prior to installation of the works. A copy of the license agreement must be forwarded to Council prior to any dewatering being undertaken.

The following conditions are applied to provide adequate provisions for waste management:

131. The garbage storage areas are to be provided with a tap and hose and the floor is to be graded and drained to an approved floor waste to the requirements of the Sydney Water Corporation.
132. Prior to the issuing of a construction certificate for the proposed development the applicant is to submit to Council and have approved by Council's Manager of Waste Services, a Waste Management Plan detailing waste and recycling storage and disposal for the development site.

The plan shall detail the type and quantity of waste to be generated by the development; demolition waste; construction waste; materials to be re-used or recycled; facilities/procedures for the storage, collection recycling & disposal of waste and the on-going management of waste.

The following conditions are applied to provide adequate provisions for

landscaping and to maintain reasonable levels of environmental amenity:

133. Detailed landscape drawings and specifications, are to be submitted to, and approved by, the certifying authority, prior to the issue of a construction certificate. The landscape drawings and specifications are to be prepared by a qualified Landscape Architect who is eligible for membership with the Australian Institute of Landscape Architects (AILA). The documentation is to include:
- a. A site plan at an appropriate scale showing existing site boundaries, existing trees within the property (clearly identified as being retained or removed), proposed building envelope, proposed areas of pavement, and proposed landscaped areas.
 - b. A planting plan at a scale of 1:100 or 1:200 indicating the location of all proposed planting and existing trees to be retained. All plants are to be drawn at their mature size with a dense planting of shrubs, accent plants and ground covers within all garden beds so that a continuous planted cover is achieved. Plant spacings are to be clearly indicated for all accent and groundcovers.
 - c. A planting schedule listing all plants by botanic & common names, plant numbers, plant spacings for groundcovers and accent planting, pot sizes, the estimated size of the plant at maturity (height & spread) and proposed staking methods when applicable.
 - d. Additional notation showing soil and mulch details, irrigation details, edging, paving, fencing details, surface finishes, retaining wall details, and any other landscape elements in sufficient detail to fully describe the proposed landscape works.
 - e. Position of existing and proposed site services including water, gas, electricity, sewer, stormwater, etc.
 - f. All planter boxes and garden beds constructed on slab must have a minimum *soil depth* of 600mm and all lawn areas must have a minimum *soil depth* of 300mm. Planter box details shall be submitted with the detailed landscape plans.
134. The landscaping shall be installed in accordance with the approved documentation prior to the issue of a final occupation certificate and shall be maintained in accordance with those plans.

Documentary evidence is to be obtained from a suitably qualified Landscape Architect and submitted to the principal certifying authority (PCA) (and the Council, if the Council is not the PCA) prior to the issuing of a final occupation certificate which confirms that the landscaping works have been completed in accordance with the approved landscaping plans and relevant conditions of development consent, to the satisfaction of the PCA.

135. The applicant shall submit a landscape design for the Anzac Parade and Harbourne Lane street frontages of the development in accordance with Council's Urban Design Guidelines for Kingsford Commercial Center. The landscape design shall include Council's issued alignment levels, pavements, seat installations, bins and tree grates as required by Council's Landscape Architect.

The Landscape Design plans shall be submitted to and approved by Council's

Director City Services in accordance with Section 80A(2) of the Environmental Planning and Assessment Act 1979, prior to the certifying authority issuing a construction certificate for the development.

All street furniture is required to be purchased through Council. Due to supply constraints, the applicant is required to place an order and pay for the required furniture three months prior to the estimated date for the completion of street frontage works.

The applicant shall note that the approved landscape works carried out on Council property, shall be in accordance with Council's requirements for Civil Works on Council property. An application for the cost of the landscape works on Council property is to be submitted to Council at the completion of the internal building works. An application fee shall be payable to Council for the quotation of the required works. The applicant may elect to use his contractor for the required works, subject to Council approval, however a design checking and supervision fee based on the lowest quotation from Council's nominated contractor will be required to be paid prior to the commencement of any works.

A refundable deposit in the form of cash or cheque of \$6000 shall be lodged with Council prior to issue of a construction certificate for the proposed development in order to ensure the construction of the approved landscape works along the (name of street) site frontage.

136. To ensure satisfactory maintenance of the landscaped areas, an automatic irrigation system shall be installed throughout all the landscaped areas. Such system shall provide full coverage to all the landscaped areas with no overspray onto driveways and pathways. Details of the automatic irrigation system shall be shown on the detailed landscape plans and specifications. The system shall comply with all Sydney Water requirements, and relevant Australian Standards.
137. Any substation required shall be screened from view. The proposed location and elevation shall be shown on all detailed landscape drawings and specifications.
138. All detention tanks and stormwater infiltration systems located within the landscaped areas shall have a minimum soil cover of 600mm to ensure sufficient soil depth to permit the establishment of landscaping on top of these services as stipulated by these conditions of development consent.

All stormwater documentation submitted for the construction certificate application shall show the top of the detention tanks and stormwater infiltration devices being 600mm below the finished ground level of the landscaped areas.

Tree Management

139. The applicant shall submit a total payment of \$1200.00 to Council,
 - a. Being the cost for Council to supply and install 3 x 100 litre street trees at the completion of all works.

The contribution shall be paid into Account Number 43459939 Activity Code R36 at the Cashier on the Ground Floor of the Administrative Centre **prior to an occupation certificate being issued for the development.**

The applicant shall present the receipt at the Asset and Infrastructure Services counter on the First Floor to organise for the works to be undertaken.

140. Approval is granted for the removal of the following trees:

- a) Four (4) *Acmena smithii* (Lilly Pilly), located within the site, next to the existing dwelling on Harbourne Lane.

Advisory Matters

1. 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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