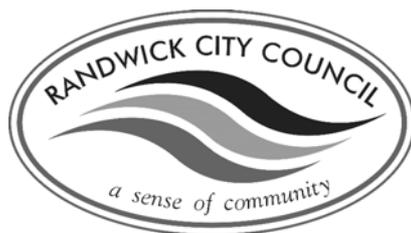


PLANNING COMMITTEE MEETING

BUSINESS PAPER

TUESDAY 8 JULY 2008

Administrative Centre 30 Frances Street Randwick 2031
Telephone: 02 9399 0999 or
1300 722 542 (for Sydney metropolitan area)
Fax: 02 9319 1510
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1st July, 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, 8 July 2008 at 6:30pm.

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 - 10 June 2008

Declarations of Pecuniary and Non-Pecuniary Interests

Address of Committee by Members of the Public

Urgent Business

Development Application Reports

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Miscellaneous Reports

Nil

Notice of Rescission Motions

Nil

Closed Session

Nil

.....
Ray Brownlee
GENERAL MANAGER

Development Application Report No. D34/08



Subject: 8A Kitchener Street, Maroubra
Folder No: DA/72/2005/A
Author: Myall Stevens, Development Assessment Officer

1. Introduction

The application has been referred to Planning Committee for determination at the request of Councillors Bastic, Andrews and Seng. The subject application was submitted on 30 October 2007 to install an air conditioning unit on the roof of an existing dwelling at 8A Kitchener St Maroubra. The application was notified to the surrounding properties in accordance with the DCP for Public Notification. A submission was received from the owner of 1 Byng St Maroubra advising Council that the air conditioning unit had already been installed on the roof. As a result, the applicant was requested to remove the air conditioning unit from the roof and nominate a new location for the unit.

Council resolved at the Planning Committee meeting on 10 June 2008 that the applicant lodge amended plans to have the air conditioning unit remain on the roof.

The original complainant was advised of Council's resolution and has submitted a further objection to the location of the air conditioning unit on the roof.

This report assesses the impact associated with retaining the air conditioning unit on the roof.

2. The Proposal

It is proposed to locate the air conditioning unit on the roof of the first floor of 8A Kitchener Street Maroubra. The unit is 900mm long, 320mm wide and stands 1200mm high. It will be located in a position towards the rear of the roof.

3. Community Consultation

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

5.1 Objections

Randal Parsons – 1 Byng St Maroubra

Objection	Response
The air conditioning unit on the roof is disconcerting as there are frequent high wind gusts in the area and its ability to withstand continuing strong wind conditions is questionable and the unit could be blown off.	Suitable conditions could be include to ensure the structural stability of the unit.
The air conditioning unit is an eye-sore and the visual pollution created by its location is not desirable and could impact on the value of the surrounding properties.	The air conditioning unit will be visually intrusive detracting from the view to the skyline will adversely affect the visual amenity of the surrounding locality

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

5. 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.

5.1 Development Control Plan - Dwelling Houses and Attached Dual Occupancies



The location of the air conditioner on the roof of the existing building will adversely affect the visual amenity of the locality by introducing an unattractive element in the skyline. The location of the air conditioning unit will increase the overall height of the structure from 7.9m to 8.3m. While this is still within the applicable control for overall building height it is not considered acceptable that the air conditioning unit alone protrudes above the built structure. The additional height does not relate to the existing surrounding streetscape, and introduces a visually intrusive element in the streetscape.

Conclusion

The proposed location of the air conditioning unit on the roof of the subject premises will result in a visually intrusive element in the skyline that will adversely impact on visual amenity and character of the locality. The application is recommended for refusal.

Recommendation

That Council, as the consent authority, refuse its consent under Section 96 of the Environmental Planning and Assessment Act 1979 (as amended) to Development Application No. DA/72/2005/A for permission to modify the approved development by installing an air conditioning unit on the roof of the dwelling for the following reasons:

1. The proposed air conditioner on the roof of the existing building represents a visually intrusive element in the skyline that will detract from the visual amenity of the locality.

Attachment/s:

Nil

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Development Application Report No. D35/08



Subject: 2-40 Gumara Street, Randwick
Folder No: DA/71/2008
Author: David Ongkili, Coordinator Major Assessment

Introduction

At the Planning Committee Meeting on 10 June 2008, the Committee resolved that, in relation to DA 71/2008, the *"matter be deferred to allow the applicant the opportunity to withdraw this application as the other approved DA for this site is a far more preferable option for both the applicant and the community."*

Issues

A meeting was held with the applicants on 13 June 2008 in which Council's resolution was discussed. At this meeting the applicants indicated that they would defer any decision to withdraw DA 71/2008 as they were intending to submit a Section 96 amendment to the other approved DA (No. 73/2008) for the subject site. The proposed Section 96 application will essentially seek to delete Condition No. 3 (a) (Part 1) of that development consent which required the deletion of one dwelling unit fronting Bundock Street to provide for a landscaped gap and view corridor. The applicant advised that the requirement for deletion of one unit in the development consent for DA 73/2008 represented a significant financial cost to the proposed development. The applicants further indicated that the proposed Section 96 amendment would include a revised scheme to provide for the required landscaped gap and view corridor without the need for loss of one dwelling unit.

In essence, the applicants advised that they would defer any decision to withdraw DA 71/2008 until a determination of the proposed Section 96 application is made by Council.

To date, no Section 96 application has been lodged in respect of DA 73/2008.

Relationship to City Plan

The relationship with the City Plan is as follows:

Outcome 5: Excellence in urban design.

Direction 5a & associated key action: Improved design and sustainability across all developments.

Outcome 11: A healthy environment.

Direction 11a & associated key action: Council is a leader in fostering sustainable practices.

Financial impact statement

There is no direct financial impact for this matter.

Conclusion

The applicants request that their decision/action to withdraw DA 71/2008, as resolved by the Planning Committee on 10 June 2008, be deferred until a Section 96 amendment to DA 73/2008 is lodged by the applicants and determined by Council.

Recommendation

That Council defer the determination of DA 71/2008 until the proposed Section 96 application to modify the development consent for DA 73/2008 is determined by Council.

Attachment/s:

1. Development Application Report submitted to Planning Committee Meeting on 10 June 2008

Item D35/08

Development Application Report No.



Subject: 2-40 Gumara Street, Randwick
Folder No: DA/71/2008
Author: David Ongkili, Coordinator Major Assessment

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Conclusion

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Recommendation

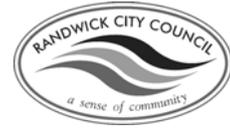
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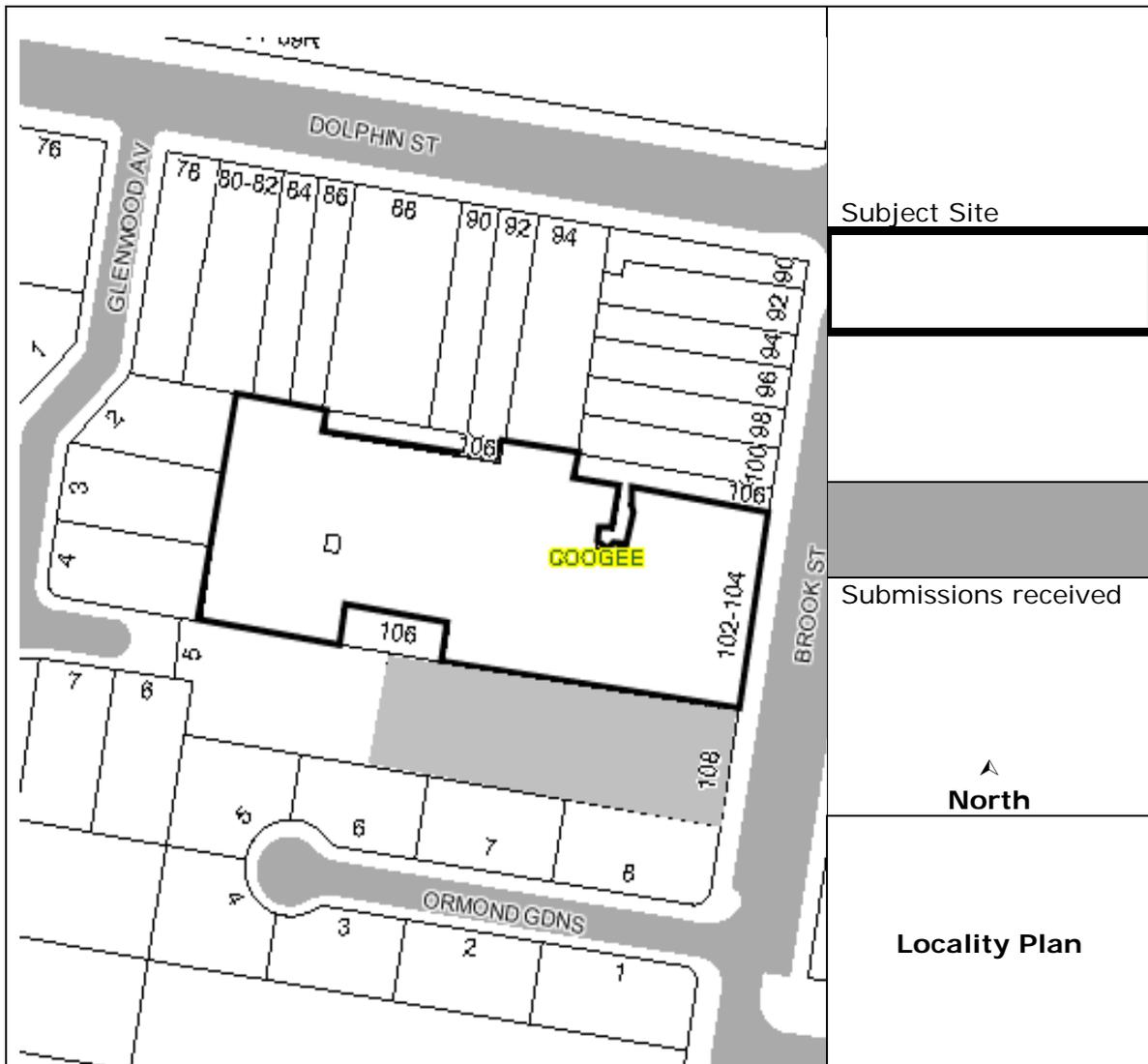
Item D35/08

Development Application Report No. D36/08



Subject: 102 - 104 Brook Street, Coogee (Randwick Rugby Club)
Folder No: DA/194/2008
Author: David Mooney, Environmental Planning Officer
Proposal: Relocate gaming lounge and restaurant, new smoker's area, and various façade treatments.
Ward: East Ward
Applicant: Randwick Rugby Club Ltd
Owner: The Owners SP70446

Summary Recommendation: Approval



Item D36/08

1. Executive Summary

The application has been referred to the Planning Committee for determination at the request of Councillors Woodsmith, Matson and Hughes.

The proposal involves internal and external alterations to the Randwick Rugby Club. The restaurant and gaming lounge would be swapped, and a new smoker’s area (with gaming machines) recessed into the new gaming lounge. The existing outdoor terraces facing Brook Street would be installed with operable awnings to control sunlight and provide weather protection.

The proposal does not involve an increase in floor area or an expansion of gaming facilities. The hours of operation would remain the same. The smoker’s area would be open when-ever the Club is open, but the adjacent outdoor terrace would continue to close at 6pm in accordance with a previous consent (DA/1165/2002).

The new gaming lounge and smoker’s area would have frontage to Brook Street. To resolve the potential social impacts, the existing outdoor terrace would be installed with a 2 metre high timber batten screen and a hedgerow concealing the gaming lounge from view. The existing pedestrian access to the terrace would be installed with a gate allowing general egress and ‘swipe’ access to Club members only. These matters are included as a condition in the recommendation.

The applicant submitted technical reports for noise and smoke impacts because the new gaming lounge and smoker’s area are nearby to residential buildings. The reports conclude that the impacts are within recognised standards. The recommendations of the acoustic report are included as consent conditions in the recommendation to this report.

The Coogee Precinct Committee and 7 nearby residents objected to the proposal. The main issues include noise impact, social impact and visual impact. These issues are addressed in the report.

Approval subject to conditions is recommended.

2. The Proposal

The proposal involves internal and external work to the Randwick Rugby Club shown in **table 1**

Table 1 Proposed internal and external work

Location	Description
External	remove the existing fixed sun-louvre on the Brook Street elevation and replace with an operable awning to control sunlight into the front bar area and provide an all-weather environment for patrons
	remove the glass bi-fold doors opening onto the existing Brook Street terrace and replace with recessed smokers’ area (17m2) with a louvred façade and automatic sliding glass door
	install an acoustic screen divider separating the existing outdoor terrace from the residential entry to the building.
	install a 2 m high timber slat fence on the existing outdoor terrace
Internal	swap the existing restaurant with the existing gaming lounge. The recessed smokers area forms part of the new gaming lounge
	extend the kitchen into the lobby storage space
	create a lobby space between the toilets and the gaming lounge

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The proposal was amended during assessment to include a gate on the pedestrian access to the existing outdoor terrace allowing member’s-only access. This was in response to concerns about the social impact of the proposal.

The proposal does not involve an increase in floor area or an expansion of gaming facilities. There is no change to the operating hours. The smoker’s area would be open when-ever the Club is open, but the adjacent outdoor terrace would continue to close at 6pm in accordance with a previous consent (DA/1165/2002). The approved operating hours for the Club (from the original DA/295/2000) are shown in **table 2**.

Table 2 – Approved operating hours (DA/295/2000)

Days	Open	Close
Sunday to Thursday	11:00am	11:00pm
Friday and Saturday	11:00am	12 Midnight

The trading hours specified in the liquor licence are carried over from the original Club before it was redeveloped. They generally allow a 10am opening and a require a 11:30pm closing Monday to Friday and a 12:30am closing Saturday. The operating hours in the original consent (DA295/2000) are repeated as a condition in the recommendation.

The development application is accompanied by;

- an Environmental Tobacco Smoke assessment detailing concentrations of nicotine and smoke particles at a residence directly above an outside area of the Club where smokers presently congregate to smoke
- an Acoustic Assessment detailing noise impact and noise mitigation measures for the proposed smoker’s area
- an Operational Plan of Management detailing the Club’s security, complaints reporting and liquor licence obligations.

3. The Subject Site and Surrounding Area

Located opposite Coogee Oval, the site has frontage to Brook Street of approximately 36 metres and a depth of approximately 100 meters. The land slopes moderately toward Brook Street with an easterly aspect. The surrounding area has a mixed residential character. There are detached dwellings to the rear (west) and multi-dwelling buildings to the north and south. There are also heritage listed terrace houses in Brook Street to the north. **Figure 1** shows an aerial photograph of the site and surrounds. **Figure 2** shows a photograph of the front of the Club.

Figure 1 – An aerial photograph of the site (highlighted in pink)



Figure 2 – A photograph of the street elevation of the Club, the recessed smoker's area would be in the area outlined in pink. The residential entry to the site is shown by the green arrow.



4. Site History

Operating as a Club from the early 1950's, the site was completely redeveloped in 2002-03 and now comprises a 5-storey building with the Randwick Rugby Club at ground floor facing Brook Street and 56 residential units above and to the rear. **Table 3** shows the development application history for the site since the redevelopment.

Table 3 – Application history for the site since 2002 redevelopment

Application No	Description	Approval
DA/295/2000	New club facility, 54 new residences, parking for 158 cars & outdoor landscaped area including lap pool.	16-2-01

Application No	Description	Approval
DA/985/2001	Strata subdivision of units into 50 lots plus common property.	23-11-01
DA/990/2001	Torrens stratum subdivision of land 3 lots into 2 lots to separate the club and multi	22-1-01
DA/295/2000/A	To delete condition 80 of existing consent relating to the height of loading dock	26-10-01
DA/295/2000/B	Modification to basement car-parking area	12-3-02
DA/295/2000/C	Section 96 application to provide two additional one bedroom dwellings & conversion of a one bedroom dwelling to a two bedroom dwelling (Refused 10-12-2002)	
DA/1165/2002	Internal fit-out for Randwick Rugby Club including bar, gaming lounge, gym and associated activities within the approved building	28-2-03
DA/990/2001/A	Section 96 - application to delete Condition no.2 relating to compliance with all development consent conditions for DA 295/00 prior to release of the plans of subdivision	23-4-08
DA/990/2001/B	Sect96-application to amend location of lot boundaries of approved stratum subdivision	13-5-03
DA/407/2003	Front boundary fence and hedging adjacent to club lounge (Eastern side), new pedestrian entry to cafe/ bistro area of club and alterations to front doors and paving	11-7-03
DA/295/2000/D	Section 96 application to provide two additional one bedroom dwellings	10-12-02
DA/1165/2002/A	Section 96 - application to include new signage at front	24-7-03
DA/1180/2003	New signage to the Randwick Rugby Club	2-2-04
LA/210/2003	Place of public entertainment for between 250-500 people	25-2-05
LA/1109/2007	POPE - Randwick Rugby Club - 430 patrons	10-8-07

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5. Community Consultation

The proposal was notified in accordance with the Local Environmental Plan 1998. The Coogee Precinct Committee and 7 residents objected. **Table 4** shows a summary of the issues raised and the Council Officer’s response.

5.1 Objections

Table 4 – Summary of public submissions and Council Officer comments

Issue	Council Officer response
The noise impacts will be even worse for residents within the building and nearby.	The development application is accompanied by an acoustic report showing noise impact to be acceptable. This matter is discussed in more detail under section 9.1
The social impacts will be even worse with the potential of exposing gamers, drinkers and smokers to passers-by, and	The proposal does not involve an increase in the total or gaming areas of the Club. The social impact of the proposal is assessed under section 8.2(a) and found to be acceptable, subject to

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Issue	Council Officer response
children using the playground diagonally opposite	conditions
Extending the licensed area to the footpath will impact negatively on the neighbours and general public	There is no change to the licensed area. The terrace areas facing Brook Street are already approved for use. The proposed awning will provide some weather protection
The existing restaurant is more visually appealing. Changing part of the continuous glass doors fronting Brook Street with a blank façade will have a negative impact on streetscape amenity and safety	The existing terrace facing Brook Street will be installed with a 2 metre high timber batten screen to conceal the gaming lounge from view. Also planted with a hedge, the proposed treatment will be inoffensive to the streetscape. Active frontage is retained with the remainder of the Brook Street terrace and Club entry
The proposed timber slats [to conceal the gaming area] are not in keeping with the design of the building	The timber slats are common on contemporary buildings and would not look out of place on the existing terrace
The new awnings will cause the building to encroach the original setback, which is in-line with the heritage listed terraces. The proposed awnings are not compatible with the adjacent heritage items.	Council's heritage consultant's advises; "the lightweight design and location of the proposed awnings would ensure that there is no visual impact on the settings of Nos 90-100 and 108 Brook Street"
The separate entry to the gaming room would mean that anyone could use the smoker's area even if they are not using the Club facilities. The entry would also allow a direct line of sight from the street to the gaming lounge	The separate entry would be installed with a gate that allows general egress and 'member's only' access with a swipe card. This matter is detailed in section 8.2(a)
The need for the proposal is not discussed in the development application	There are many licensed premises in the Randwick City and elsewhere that are carrying out refurbishments to create areas where people can smoke and drink and/or gamble
The new awnings will cause the building to encroach the original open space requirements	The awnings are operable louvres and are not considered to enclose an open space.
There would be a problem with passive smoking	The development application is accompanied by an environmental tobacco smoke assessment that finds nicotine and smoke particle emissions within world health standards. This matter is discussed in more detail under section 9.2
The entrance to the apartments above and to the rear of the club shall become unseemly.	The entrance to the apartments will be isolated from the gaming facilities by a solid timber wall, a timber baton screen and a hedgerow.
Concern for the impact of additional signage	No additional signage is proposed. New signage would need to be the subject of another development application, unless exempt.
The original consent requires lighting to not cause a nuisance. The condition should	The condition on lighting is included in the recommendation.

Issue	Council Officer response
be carried over.	

6. Technical Officers Comments

The application was referred to the relevant technical officers, including where necessary external bodies and the following comments have been provided. Recommended conditions are included in the recommendation to this report.

6.1 Heritage Officer

Table 5 – Heritage Officer’s comments

Heading	Description
Proposal	<p>The subject site is located on the western side of Brook Street between Dolphin Street and Ormand Gardens, Coogee.</p> <p>The existing contemporary building comprises four storeys with attic at its northern end (adjoining 100 Brook Street) and steps up to five storeys at its southern end (adjoining 108 Brook Street). The subject site is located in the vicinity of a number of heritage items identified in the Randwick Local Environmental Plan (LEP) 1998. These include 90-100 Brook Street, 108 Brook Street and 1 Alfreda Street. The subject site is not located within a heritage conservation area. The proposal involves refurbishment of the existing building which includes the following external works:</p> <ul style="list-style-type: none"> • Replacement of the existing awnings (x3) at ground level to the Brook Street frontage; and • Replacement of the existing bi-fold doors to the Brook Street frontage with powder coated louvres, recessed lobby and sliding doors.
Heritage Assessment	<p>The proposal includes external works to the principal Brook Street frontage. The replacement steel framed awnings at ground level to the Brook Street frontage would project further than the existing awnings. The lightweight design and location of the proposed awnings would ensure that there is no visual impact on the settings of Nos. 90-100 and 108 Brook Street, which are located in the immediate vicinity of the subject site. Number 1 Alfreda Street is located a considerable distance from the subject site and would not be impacted by the proposal. Conclusions and Recommendations</p> <p>The proposal would not result in any heritage impact on the identified significance of the items located in the vicinity of the subject site.</p>

6.2 Building Officer

Table 6 – Building Officer’s comments

Heading	Description
The Proposal	Alterations the ground floor level Randwick Rugby Club premises in the existing multi storey mixed residential/commercial building. The subject development is used for the purposes of a registered club with a current Place of Public Entertainment approval.
BCA Building Classification	Class -9b (Club premises) Class -2 (Residential units) Class -7a (Carpark)

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Heading	Description
Description of the Building	In summary, the building incorporates: <ul style="list-style-type: none"> • A 'rise in storeys' of 5 • Masonry walls, metal roof and concrete floors • One commercial tenancy at ground floor level • Residential sole occupancy unit/s located above the commercial level • External balconies & stairway
Background	The existing building on site is a 5 storey mixed residential/commercial building bounded by residential development.
Building Code of Australia (BCA):	Details of compliance with BCA and fire safety provisions are not included in the DA documentation and therefore further detailed information would need to be incorporated in the documentation for a construction certificate.
Access for people with a disability:	The existing building appears to satisfy the current BCA requirements and Disability Discrimination Act (D) objectives, in relation to access and facilities for people with a disability. The applicant or other person having the benefit of the consent is also advised to fulfil their obligations under the DDA.
Site Management:	Standard conditions are proposed to be included in the consent to address construction site management issues, such as the location of stock piled material or the storage and disposal of excavated materials, sediment and erosion control and public safety.

6.3 Engineering Officer

Council’s Engineering Officer did not provide comment on the proposal, but did recommended consent conditions. These are included in the recommendation at the end of this report.

6.4 Eastern Beaches Local Area Command

The Licensing Sergeant at Maroubra Police offers the following comments;

“The DA applies to proposed alterations to ground level façade of existing club, addition of awning, creation of outdoor smokers’ area adjacent to existing terrace and internal reconfiguration and modification of Club.

The only concern Police have is in relation to possible noise from outdoor patrons disturbing the quite and good order of the neighbourhood. It is noted that the outdoor terrace is already being used by patrons for smoking. I am unaware of any complaints re the usage of the terrace area since the opening of the new club. As long as the noise being emitted from the premises complies with LA noise levels Police have no objections to the application.

It might also be noted there could be an issues re the management of the entrance from Brook Street on to the terrace. It would be of concern as to how the club would manage compliance with the Registered Clubs Act in relation to entry of members, guests of members and visitors. Currently entry is gained through the main entrance where patrons are checked for entitlement to enter the club. Police would ask for the Club to propose how they would manage the

entrance to prevent illegal entry to the premises. There is no objection to the granting of the DA"

The Sergeant's concern about the separate entry the gaming lounge is addressed in **section 8.2(a)**. The proposal was amended to include a gate that allows general egress and member's only access with a swipe card. The Licensing Sergeant later advised the following'

"The strategy outlined to me ... would suffice in regards to preventing patrons who are not entitled to enter the premises from doing so. Police would make regular visits to the premises to ensure an open door policy does not exist. There will be no further objection from police in relation to gate entry to the terrace."

6.5 Environmental Health Officer

Table 7 – Environmental Health Officer's comments

Heading	Description
The proposal	The proposal consists of a development application for the relocation of the existing restaurant and gaming lounge, and the construction of an enclosed smoking gaming area with an associated outdoor smoking terrace.
Food safety requirements	Food safety requirements in relation to Food Act 2003, Food Regulation 2004 and the Food Standards Code are addressed in the following standard conditions and are to be included in any consent given.
Hand wash basin	The location of the designated hand washbasin/s was requested through additional information however was not received. Therefore a condition has been included detailing that a hand washbasin is to be located in the new kitchen servery area.
Noise from gaming lounge and patrons	<p>The potential for a noise nuisance to be created from the proposed gaming lounge and patrons has been considered.</p> <p>The acoustic report prepared by Wilkinson Murray, titled Randwick Rugby Club, Acoustic Assessment of Proposed Smokers Lounge, report No. 02093-R, Version A, dated February 2008 was submitted in support of this application.</p> <p>The report identified that the main source of noise emissions would be from noise transmitting from the gaming lounge (via glass sliding doors) and noise produced by patrons using the new smoking area and existing terrace.</p> <p>The following noise mitigation measures have been recommended in the acoustic report and are to be included in any consent given:</p> <ul style="list-style-type: none"> • Gaming machines located in the Smokers Area are to have the sound switched off at all times. • The floor finish of the Smokers Area is to be carpet. • The ceiling construction of the Smokers Area is to include 5m2 of proprietary paneling such as Sontext Serenity (25mm thick) panels. • All penetrations through the ceiling are to be minimised and acoustically treated. <p>The Environmental Health Team recommends that the entry onto the terrace via the stairs from Brook Street be blocked off. The reason for this is so these stairs do not become a second</p>

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Heading	Description
	<p>entrance/exit/thoroughfare for patrons into the Rugby Club's Gaming Lounge potentially creating a noise nuisance to the surrounding area. Anti-social behaviour may also occur as a result of patrons "flowing" out directly onto Brook Street.</p> <p>It is also suggested that a condition be imposed on the development consent requesting for the automatic sliding doors separating the gaming lounge and new smokers area not be obstructed, allowing for them to close, creating an acoustic barrier so noise from the gaming lounge does not travel out onto the street.</p> <p>Standard noise conditions have also been included in the following referral to safeguard the potential for a noise nuisance being created.</p>

7. Master Planning Requirements

The site is less than 4000m² and does not require a masterplan.

8. Relevant Environmental Planning Instruments

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

Environmental Planning and Assessment Act 1979
 Randwick Local Environmental Plan 1998
 Draft Randwick Local Environmental Plan 2008

(a) Randwick Local Environmental Plan 1998

The site is zoned Residential 2C under Randwick Local Environmental Plan 1998 and the proposed activity is permissible with Council's consent under the incorporated provisions for existing uses.

Section 108(3) of the Environmental Planning and Assessment Act 1979 states that the provisions of any environmental planning instrument that derogate from the existing use rights provisions have no force or effect whilst existing use rights remain.

(b) Draft Randwick Local Environmental Plan 2008

The proposal is not inconsistent with the draft LEP.

8.1 Policy Controls

a. Development Control Plan Parking

The proposal does not increase or result in a net reallocation of floor space. Therefore, no additional parking spaces are required.

8.2 Council Policies

a. Social Impact Assessment - Guidelines for Assessing Development Applications, 30 June 2006

These guidelines encourage Council to consider social consequences when making development decisions. The guidelines specify 2 levels of assessment, depending on the complexity and type of proposal. For most proposals, social

impact requires a basic level of assessment. Major development proposals require an in-depth assessment.

The development proposal does not involve an expansion either to the gaming facilities or the total area of the Randwick Rugby Club and is considered to be minor. However, the relocation of the gaming lounge does require more attention. The newly relocated lounge would be exposed to and accessed directly from Brook Street. There is a negative social impact that would result from this change

To resolve the potential social impacts, the existing outdoor terrace would be installed with a 2 metre high timber batten screen and a hedgerow concealing the gaming lounge from view. The existing pedestrian access to the terrace would be installed with a gate allowing general egress and 'swipe' access to Club members only. These matters are included as a condition in the recommendation.

b. Section 94a Contributions

Section 94A contributions of \$2193.97 are payable for the proposed development. The recommendation includes a consent condition requiring payment.

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 Noise

The applicant submitted an Acoustic Assessment prepared by Wilkinson Murray Pty Ltd; an acoustic consulting firm. The report examined background and predicted noise levels for the 2-storey dwelling at 100 Brook Street, which is considered to be the worst affected dwelling. The acoustic report shows that the expected noise levels from the smoker's area would be within noise emission limits set by the Liquor Administration Board.

The acoustic assessment noted the following noise mitigation measures and these are included as consent conditions in the recommendation.

- no change in trading hours, specifically, the existing terrace facing Brook Street adjacent to the new smoker's area would continue to close at 6pm. The smoker's area would be open while-ever the Club is open
- the smoker's area would be separated from the main gaming lounge by automatic sliding glass doors
- there will be a fully louvred wall between the existing outdoor terrace and the proposed smoker's area
- the existing outdoor terrace would be fitted with a solid full height screen on its northern side
- if gaming machines are located in the smoker's rea, all sound effects will be turned off,
- floor finish of the recessed smoker's area would be carpet,
- 5m² of acoustic panelling would be added to the smokers area

- the acoustic integrity of the existing ceiling would not be compromised. New penetrations through the ceiling would be minimised and acoustically treated

9.2 Environmental smoke

The applicant submitted an Environmental Tobacco Smoke monitoring report prepared by Heggies Pty Ltd; an environmental engineering firm. The report examined the concentrations of nicotine and smoke particles at a residence (apartment A101) directly above an area outside the Club where smokers presently congregate to smoke. The sampling equipment was located on the edge of the resident's outdoor area, 6 metres above the pavement. The sampling equipment operated for 1 week from Friday 15 February 2008.

The monitoring showed that the nicotine and smoke particle concentrations were well below the relevant human health thresholds established by the World Health Organisation and the United States Occupational Safety and Health Administration.

9.3 Smoke-free Environment Act 2000

The Smoke-free Environment Act 2000 bans smoking in enclosed areas of pubs and clubs. From 2 July 2007, proprietors are also required to prevent smoke drifting from open places such as terraces, into non-smoking areas.

In a 22 June 2007 letter to the Local Government Association, the Chief Health Officer and Deputy Director General of the NSW Health Department advised;

"I would like to clarify that there is nothing in the Smoke-free Environment Act, the Local Government Act or the Environmental Planning and Assessment Act that imposes on local Government any role or responsibility in assessing proposed development for compliance with the Smoke-free Environment Act. Local Government authorities should therefore make it clear to applicants that a development approval cannot be relied upon as proof that a proposed facility complies with the guidelines in the Smoke-free Environment Regulation."

Nevertheless, it is no use to approve building work that cannot be used for its intended purposes. Therefore, an advisory clause is included in the recommendation directing the applicant to ensure the smoker's area will comply with the Smoke-free Environment Act 2000 before building work starts.

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.

Financial Impact Statement

There is no direct financial impact for this matter.

Conclusion

The proposal involves internal and external alterations to the Randwick Rugby Club. The restaurant and gaming lounge would be swapped, and a new smoker's area (with gaming machines) recessed into the new gaming lounge. The existing outdoor terraces facing Brook Street would be installed with operable awnings to control sunlight and provide weather protection.

The proposal does not involve an increase in floor area or an expansion of gaming facilities. The hours of operation would remain the same. The smoker's area would be open when-ever the Club is open, but the adjacent outdoor terrace would continue to close at 6pm in accordance with a previous consent (DA/1165/2002).

The new gaming lounge and smoker's area would have frontage to Brook Street. . To resolve the potential social impacts, the existing outdoor terrace would be installed with a 2 metre high timber batten screen and a hedgerow concealing the gaming lounge from view. The existing pedestrian access to the terrace would be installed with a gate allowing general egress and 'swipe' access to Club members only. These matters are included as a condition in the recommendation.

The applicant submitted technical reports for noise and smoke impacts because the new gaming lounge and smoker's area are nearby to residential buildings. The reports conclude that the impacts are within recognised standards. The recommendations of the acoustic report are included as consent conditions in the recommendation to this report.

The Coogee Precinct Committee and 7 nearby residents objected to the proposal. The main issues include noise impact, social impact and visual impact. These issues are addressed in the report.

Approval subject to conditions is recommended.

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. DA/194/2008 for permission to construct internal and external alterations to the existing club at 102-104 Brook Street, Coogee, subject to the following conditions:

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

1. The development must be implemented substantially in accordance with the plans numbered DA101, DA102, DA103 and DA201 dated December 2007 and received by Council on 26 March 2008, 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 on the attached plans:
2. The external stair to the existing outdoor terrace must be installed with a gate that allows general egress and 'member's only' access in accordance with plan numbered DA201 revision B. The gate must match the height and style of the timber batten screen described in condition 3.
3. The proposed timber batten screen on the eastern edge of the existing terrace must be 2 metres high above the level of the terrace. The timber battens must be spaced evenly and such that the surface area of the screen is not more than 25% open.
4. The operating hours of the Club shall be limited to 11am – 11pm Sunday – Thursday and 11am to 12 midnight Friday and Saturday.
5. The covered smoker's terrace may remain open for the duration of the approved operating hours of the Club.

6. The existing outdoor terrace facing Brook Street must only be used between the hours of 11am and 6pm. Access or egress (except for fire egress) onto the existing outdoor terrace must not be permitted after 6:00pm.
7. Any gaming machine located in the new smoker's area must be silent. All sound effects must be turned off.
8. The normal operation of the automatic sliding glass doors must not be obstructed. The doors must not be held open.
9. The floor of the new smoker's area must be carpeted.
10. The ceiling of the new smoker's area must be installed with 5 square metres of a proprietary acoustic panel in accordance with the recommendation of the acoustic assessment submitted with the application.
11. Building work must not compromise the acoustic integrity of the existing ceiling. New penetrations through the ceiling must be minimised and acoustically treated.
12. External lighting must not cause a nuisance to nearby residents.

The following condition/s are applied to meet additional demands for public facilities

13. In accordance with Council's Section 94A Development Contributions Plan effective from 2 July 2007, the following monetary levy must be paid to Council.

Category	Cost	Applicable Levy	S94A Levy
Development cost \$100,001 - \$200,000		0.5%	
Development Cost More than \$200,000	\$219,397.00	1.0%	\$2193.97

The levy must be paid in cash, bank cheque or by credit card prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment.

Council's Section 94A Development Contribution Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at www.randwick.nsw.gov.au.

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:

14. 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 (LA90), 15 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 LAeq, 15 min and adjusted in accordance with the NSW Environmental Protection Authority's Industrial Noise Policy 2000 and

Environmental Noise Control Manual (sleep disturbance).

15. The L10 noise level emitted from the licensed premises shall not exceed the background noise level (L90) in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5dB between 7.00am and 12.00 midnight at the boundary of any affected residence. The background noise level shall be measured in the absence of noise emitted from the licensed premises.

The LA10 noise level emitted from the licensed premises shall not exceed the background noise level (LA90) in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) between 12.00 midnight and 7.00am at the boundary of any affected residence. The background noise level shall be measured in the absence of noise emitted from the licensed premises.

16. Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12.00 midnight and 7.00am.
17. The licensee must establish and maintain a formal and documented system for the recording and resolution of complaints made to the licensed premises by residents. All complaints are to be attended to in a courteous and efficient manner and referred promptly to the licensee or duty manager. The appropriate remedial action, where possible, is to be implemented immediately and the licensee or duty Manager is to contact the complainant within 48 hours to confirm details of action taken.
18. Upon reasonable prior notice, the licensee must make available the incident book to the police and Council officers.
19. The use of the premises shall be generally in accordance with the Operational Plan of Management submitted with the development application.
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. The acoustic report submitted in support of this application, prepared by Wilkinson Murray, titled Randwick Rugby Club, Acoustic Assessment of Proposed Smokers Lounge, report No. 02093-R, Version A, dated February 2008 and the noise control recommendations stated in this report form part of this development consent.

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 nuisance to the adjoining/nearby premises or environment.
23. There are to be no emissions or discharges from the premises, which will 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 ensure compliance with the Food Act 2003 and to ensure public health and safety:

24. The premises is to be designed, constructed and operated in accordance with the Food Act 2003, Food Regulation 2004, Australia & New Zealand Food Standards Code and Australian Standard AS 4674-2004, Design, construction and fit-out of

food premises and details of compliance are to be included in the documentation for the construction certificate to the satisfaction of the certifying authority.

25. Food safety practices and operation of the food premises must be in accordance with the Food Act 2003, Food Regulation 2004, Food Standards Code and Food Safety Standards at all times, including the requirements and provisions relating to:

- Food handling – skills, knowledge and controls.
- Health and hygiene requirements.
- Requirements for food handlers and businesses.
- Cleaning, sanitising and maintenance.
- Design and construction of food premises, fixtures, fitting and equipment.

A failure to comply with the relevant food safety requirements is an offence and may result in legal proceedings, service of notices and/or the issuing of on-the-spot penalty infringement notices.

26. The food premises must be registered with Council's Environmental Health section and the NSW Food Authority must also be notified of the food business in accordance with the Food Safety Standards, prior to commencement of food business operations.

27. Upon completion of the work and prior to the issuing of an occupation certificate, the premises must be inspected by Council's Environmental Health Officer to ascertain compliance with relevant Food Safety Standards and the written approval of Council (being the relevant Food Authority for this food business) must be obtained prior to the operation of the food business.

28. The Proprietor of the food business and all staff carrying out food handling and food storage activities must have appropriate skills and knowledge in food safety and food hygiene matters, as required by the Food Safety Standards.

29. 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, to facilitate cleaning.
- Walls of the kitchen preparation areas and the like are to be of suitable construction finished in a light colour with glazed tiles, stainless steel, laminated plastics or similar approved material adhered directly to the wall adjacent to cooking and food preparation facilities or areas, to provide a smooth even surface.

The glazed tiling or other approved material is to extend up to the underside of any mechanical exhaust ventilation hoods and a minimum of 450mm above bench tops or other facilities and equipment.

- Walls where not tiled are to be cement rendered or be of rigid smooth faced non-absorbent material (i.e. fibrous cement sheeting, plasterboard or other approved material) 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 particleboard 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 external door and window openings. An electronic insect control device must also 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.
 - Wash hand basins must be 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.
30. Liquid trade waste materials are to be disposed of in accordance with the requirements of the Sydney Water, Trade Waste Department and details of compliance are to be submitted to the certifying authority prior to the commencement of works.
31. Trade/commercial waste materials must not be disposed via council's domestic garbage service. All trade/commercial waste materials must be collected by Council's Trade Waste Service or a waste contractor authorised by the Waste Service of New South Wales and details of the proposed waste collection and disposal service are to be submitted to Council prior to occupation of the building.
32. Adequate provisions are to be made within the premises for the storage, collection and disposal of trade/commercial waste and recyclable materials, to the

satisfaction of Council.

The following conditions are applied to ensure that the development satisfies the provisions of the Environmental Planning and Assessment Act 1979 and Regulations and to provide for reasonable levels of safety and amenity:

33. 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.
34. 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.
36. Prior to the commencement of any building works (including fit-out works), a construction certificate must be obtained from the Council's Building Certification Services or an Accredited Certifier, in accordance with the provisions of the Environmental Planning & Assessment Act 1979 and Environmental Planning & Assessment Regulation 2000.
37. 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.
38. Prior to the commencement of any building works, the person having the benefit of the development consent must:-
 - i) appoint a Principal Certifying Authority, 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.
39. 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.
40. The Principal Certifying Authority must specify the relevant stages of construction to be inspected in accordance with section 81A (2) (b1) (ii) of the Environmental Planning & Assessment Regulation 2000 and a satisfactory inspection must be carried out, to the satisfaction of the Principal Certifying Authority, prior to proceeding to the subsequent stages of construction or finalisation of the works (as applicable).

41. 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.
42. The principal contractor or owner-builder (as applicable) must ensure that the required critical stage and other inspections, as specified in the Principal Certifying Authority's "Notice of Critical Stage Inspections", are carried out to the satisfaction of the Principal Certifying Authority and at least 48 hours notice (excluding weekends and public holidays) is to be given to the Principal Certifying Authority, to carry out the required inspection, before carrying out any further works.
43. 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".
44. 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.
45. 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.
46. 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.
47. 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.
48. All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.
49. The approved Construction Certificate plans must be submitted to a Sydney Water Quick Check agent or Customer Centre prior to commencing any building or excavation works, to determine whether the development will affect Sydney Water's sewer and water mains, stormwater drains and/or easements, and if any further requirements need to be met.

50. If suitable, the plans will be appropriately stamped. For Quick Check agent details please refer to Sydney Water's web site at www.sydneypwater.com.au and go to the Building, Developing and Plumbing, then Quick Check or Building and Renovating or telephone 13 20 92.

51. The principal certifying authority must ensure that a Quick Check Agent/Sydney Water has appropriately stamped the plans before commencing any works.

Fire safety

52. A Fire Safety Certificate must be submitted to Council prior to the issuing of an Occupation Certificate, in accordance with the requirements of the Environmental Planning and Assessment Regulation 2000.

A single and complete Fire Safety Certificate must be provided which includes details of all of the fire safety measures contained in the building and as detailed in the fire safety schedule attached to the Construction Certificate.

Prior to issuing any Occupation Certificate the Principal Certifying Authority must be satisfied that all of the relevant fire safety measures have been included and are sufficiently detailed within the Fire safety Certificate.

A copy of the fire safety certificate must be displayed in the building near the entrance and a copy must be forwarded to Council and to the NSW Fire Brigades.

Structural adequacy

53. A Certificate prepared by a professional engineer, shall be submitted to the Council prior to the issuing of an occupation certificate, certifying the structural adequacy of the awnings.

Building & demolition works

54. Demolition work and the removal, storage, handling and disposal of building materials must be carried out in accordance with the following requirements (as applicable):

- Occupational Health and Safety Act 2000
- Occupational Health and Safety (Hazardous Substances) Regulation 2001
- Occupational Health and Safety (Asbestos Removal Work) Regulation 2001
- WorkCover NSW Code of Practice and Guidelines
- Australian Standard 2601 (2001) – Demolition of Structures
- The Protection of the Environment Operations Act 1997 and Protection of the Environment Operations (Waste) Regulation 1996.
- Randwick City Council Asbestos Policy (adopted 13 September 2005)

55. 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 (except as detailed below) between 8.00am to 5.00pm on Saturdays.

All building, demolition and associated site works are strictly prohibited on Sundays, Public Holidays and also on Saturdays adjacent to a Public Holiday.

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.

56. Noise and vibration emissions during the construction of the building and associated site works must not result in damage to nearby premises or result in an unreasonable loss of amenity to nearby residents and the relevant provisions of the Protection of the Environment Operations Act 1997 must be satisfied at all times.
57. Public safety and convenience must be maintained at all times during demolition, excavation and construction works.
- a) The roadway, footpath and nature strip must be maintained in a good, safe condition and free from any obstructions, materials, soils or debris at all times. Any damage caused to the road, footway or nature strip must be repaired immediately, to the satisfaction of Council.
 - b) 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.
 - c) Building materials, sand, soil, waste materials or construction equipment must not be placed upon the footpath, roadway or nature strip at any time and the footpath, nature strip and road must be maintained in a clean condition and free from any obstructions, soil and debris at all times.
 - d) 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 & Regulatory Services department.
 - e) 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. Sediment and erosion control measures must be implemented prior to the commencement of any site works and be maintained throughout construction.
 - f) Public safety must be maintained at all times and public access to demolition/building works, materials and equipment on the site is to be restricted. If required, a temporary 1.8m high safety fence or hoarding is to be provided to protect the public, located between the work site and the public place. An awning may also be required to prevent any substance from, or in connection with, the work from falling into the public place or adjoining premises.

Temporary fences or hoardings or the like 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 or hoardings 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 any part of the footpath, nature strip or any public place, the written consent from Council's Health, Building & Regulatory Services department 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.

- g) A separate local approval application must be submitted to and be approved by Council's Building Services section prior to commencing any of the following activities upon any part of the 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 on the road, footpath or nature strip.

58. A plan detailing the revised Place of Public Entertainment and the relevant registration form being completed and submitted to Council and approved by the Manager of Health Building and Regulatory Services prior to an occupation certificate being issued.

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

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

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

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

Advisory Conditions

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

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

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

The applicant/owner is advised that this approval does not guarantee compliance with the provisions of the Disability Discrimination Act 1992 and the applicant should therefore consider their liability under the Act. In this regard, the applicant is advised that compliance with the requirements of the Building Code of Australia and Australian Standard 1428.1 - Design for Access and Mobility does not necessarily

satisfy the objectives of the Disability Discrimination Act 1992.

The applicant/owner is requested to give consideration to providing access and facilities for people with disabilities in accordance with Australian Standard 1428 Parts 1, 2, 3 and 4 - Design for Access and Mobility, which may be necessary to satisfy the objectives of the Disability Discrimination Act 1992.

Attachment/s:

Nil

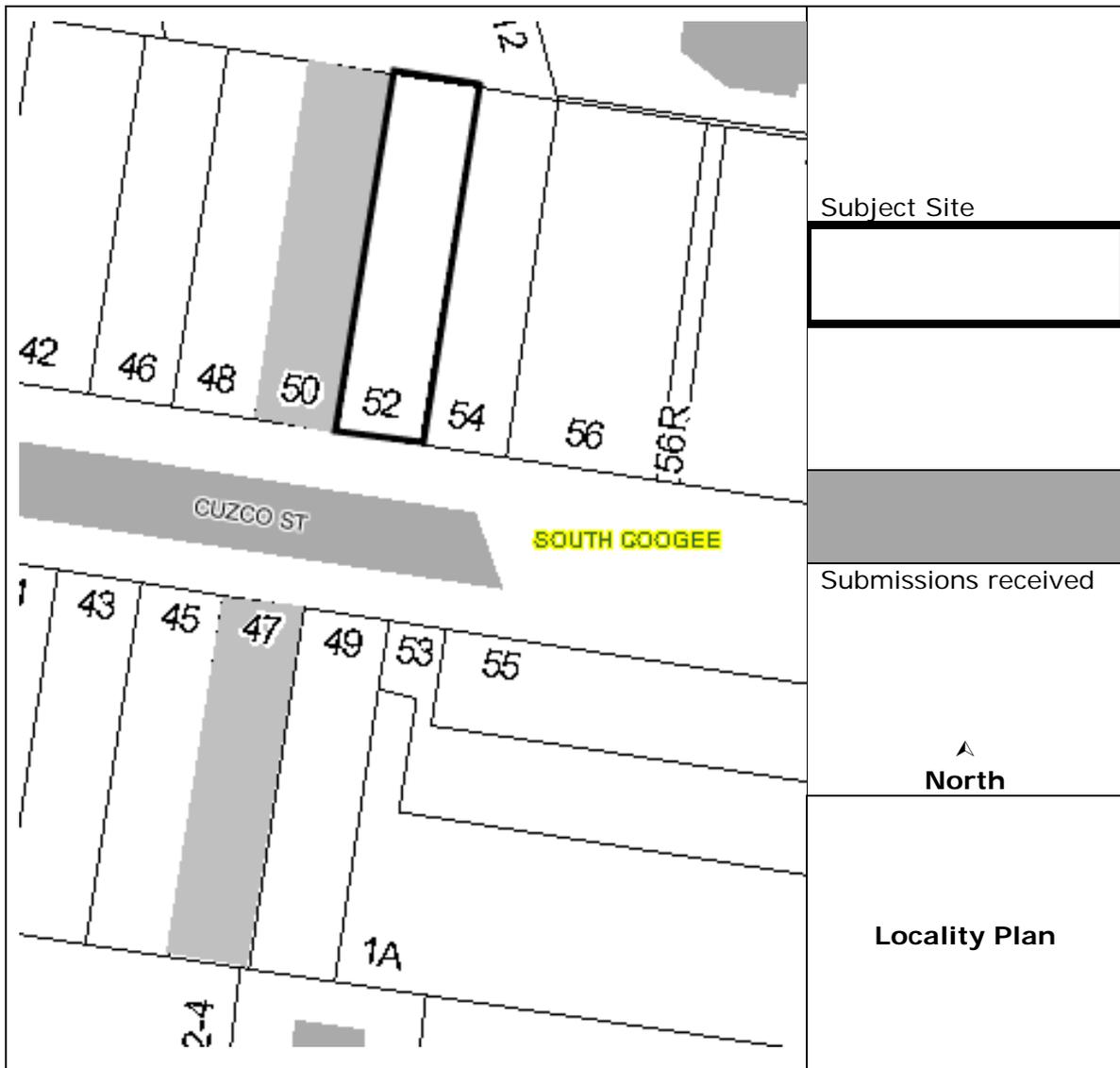
Item D36/08

Development Application Report No. D37/08



Subject: 52 Cuzco Street, South Coogee
Folder No: DA/197/2008
Author: Adrian McKeown, Environmental Planning Assessment Officer
Proposal: Use of part of the existing dwelling for a bed & breakfast accommodation.
Ward: East Ward
Applicant: Mrs E J Zonneveld and Mr J Zonneveld
Owner: Mrs E J Zonneveld and Mr J Zonneveld

Summary Recommendation: Approval



Item D37/08

1. Executive Summary:

The application has been referred to the Planning Committee for determination at the request of Councillors Notley-Smith, Belleli and Kenny.

The Development Application seeks Council consent for the use of part of the basement level of the existing dwelling for bed & breakfast accommodation. Council received a noise complaint from a neighbour in December 2007 relating to noise emanating from an exhaust fan to the western side of the dwelling. Neighbour submissions allege that the basement level of the dwelling has been used for the purpose of bed & breakfast accommodation for several years without the consent of Council. The current Development Application was received following Council's investigations into the noise complaint and the discovery that the premises were being used for bed & breakfast accommodation without consent. The owner of the premises subsequently lodged a development application seeking authorisation of the bed & breakfast use, and this report forms the basis of the assessment of the proposal on its merits and against all relevant policies.

The proposal does not comply with the maximum FSR control of the Randwick LEP 1998. The proposal has an FSR of 0.65:1 which exceeds the maximum FSR control of 0.5:1. An objection under State Environmental Planning Policy No.1 (SEPP No.1) has been submitted in relation to the breach of this control. The non-compliance has been assessed and found acceptable as the breach in the FSR is minor and relates to what is essentially a ventilated below ground section of the dwelling. The proposed use will not add to the perceived bulk and scale of the dwelling and the use will not give rise to any detrimental impacts to surrounding uses in terms of solar access, ventilation, privacy and views.

The application was notified to the surrounding properties and two objections were received during the notification period. One objection contained a petition of 20 signatures from the occupants of 14 different dwellings, primarily on Cuzco Street. The objections raised concerns regarding:

- Errors contained within originally submitted plans,
- The adequacy of off-street parking to the property,
- The site being within the Foreshore Scenic Protection Area,
- The intention by the owner, at the time of a previous Development Application, that the basement level be used for storage space. At the time, it was argued that the space should therefore not be included in Floor Space Ratio Calculations,
- That the area proposed to be used for the bed & breakfast accommodation was restricted to 'storage area' by a Land and Environment Court determination,
- That the site had been used for bed & breakfast accommodation for several years without consent,
- Noise concerns regarding the proposed use and
- That approval of the proposed use may lead to additional backpackers hostels and cafes being approved to the street and general area.

In response to the above submissions, original plans submitted with the Development Application were verified to be inaccurate during a site visit. Council has since received accurate plans. With regard to the adequacy of off-street parking to the property, Council's Parking DCP states that bed & breakfast accommodation must provide one off-street car space for the dwelling component and one off-street car space for the bed & breakfast accommodation component. The amended plans submitted with the Application show a double garage capable of housing two cars.

The proposed bed & breakfast Accommodation is therefore compliant with Council's Parking DCP.

Clause 29 of the Randwick Local Environment Plan relates to the Foreshore Scenic Protection Area. Clause 29 does not apply to development which, in the opinion of the Council, is of a minor nature and will not adversely affect the amenity or the character of the locality. Although the subject site is located within the Foreshore Scenic Protection Area, it is considered that the proposal for bed & breakfast accommodation will not impact on visually prominent residential areas along the coast, will protect and enhance the visual qualities of the area, is minor in nature and will not adversely affect the amenity or the character of the locality.

In response to the intention by the owner that the basement level be used for storage space during a previous Development Application (thereby not being included in Floor Space Ratio Calculations), the report accompanying the assessment of DA/197/1996 considered the under-floor area now proposed to be used for the bed & breakfast accommodation not to be habitable floor area, stating that a substantial amount of structural work including further excavation would be necessary for the area to comply with appropriate floor to ceiling heights as contained in the Building Code of Australia (BCA). The area was therefore not considered in floor space calculations. Since that time, the Applicant has converted this space to habitable space which complies with the BCA. Although no Council consent was sought for these works, there is no increase in the perceived bulk and scale of the building as viewed from neighbouring properties as all spaces are ventilated underground rooms.

In relation to the assertion by the neighbours that the premises have been used for bed & breakfast accommodation for several years without consent, there are no specific complaints about the use in Council's records other than the one received in relation to the exhaust fan. It is noted that the owners of the dwelling will be living on site and will be in a position to closely monitor and respond to any nuisances and that there is not sufficient space for more than 2 guests to be accommodated at any one time.

With regard to the claim that approval of the proposed use may lead to additional backpackers hostels and cafes being approved to the street, it shall be noted that backpackers' hostels and cafes are currently not permissible land uses in 2A Residential areas.

The proposal complies with the relevant assessment criteria and the objectives of the LEP and Council's Parking DCP and will not result in any adverse impacts upon either the amenity of the adjoining premises or the character of the locality.

2. The Proposal:

The proposal involves the use of part of the basement level of the existing dwelling as bed & breakfast accommodation.

- The basement level consists of two rooms. Room 1 is a furnished bedroom with a double bed and ensuite bathroom. Room 2 consists of a small dining room with a sink, kettle, microwave oven and washing machine.
- There is sufficient space for 2 guests. The Applicant estimates 6 couples will stay in the bed & breakfast per year.
- Both Room 1 & Room 2 have access to a north-facing deck area with ocean views. The deck area measures 5.4m x 6.6m.
- Guests are able to privately access the bed & breakfast accommodation from the street via a side passage with a timber gate.
- During initial inspections of the premises, Council Officers advised the Applicant that in order to provide a cooked breakfast for their guests and comply with health regulations, they would be required to install a commercial kitchen. The Applicant advised on 8 April 2008 that they are unwilling to provide such a kitchen

and that they will be instructing their guests to source their own refrigerated breakfast or purchase breakfast from one of the local cafes.

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Figure 1: The subject site from Cuzco Street.

3. Description of the Site & Locality:

The subject site slopes steeply to the rear and is located on the northern side of Cuzco Street between Close Street to the west and foreshore cliffs to the east. The site is presently occupied by an existing two/three storey dwelling and enjoys views to the north and east. The site has a frontage width of 9.1m, a side boundary depth of 39.8m and has an overall site area of 362.2m². As a result of the steep topography of the site, the existing dwelling and dwellings neighbouring the subject site consist of single, two and three storey residential dwellings. **Figure 2** is an aerial view of the subject site and surrounding area.



Figure 2: The subject site at 52 Cuzco Street and surrounding area. The diagonal hatching indicates the area covered by Cl. 29 of the LEP – Foreshore Scenic Protection Area.

4. Site History:

Applications submitted for development on the site include:

Development No. :	Description:	Determination:
BA/1087/1996	Alterations/first floor addition & garage to dwelling	Approved 6 January 1997
BA/1087/1996/A	To alter the balustrade at basement level from glass & aluminium to render brickwork	Approved 31 December 1997
DA/197/1996	To make alterations and additions to the subject property	Approved 9 September 1996 following an unsuccessful appeal by the owner of a neighbouring property in the Land and Environment Court.

5. Community Consultation – Objections:

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

Owner of No. 47 Cuzco Street, received 14 April 2008

Issue	Comment
<ul style="list-style-type: none"> • Plans are not to scale and no measurements are shown. • Plans appear to show the original 1920s dwelling to the site and are not a true reflection of the existing dwelling. • Plans show no balcony as stated in the Application details. • Stated measurements are too small. 	Original plans submitted with the Development Application were verified to be inaccurate during a site visit. Council has now received accurate plans.
Plans submitted with the Development Application show one or possibly two off-street car spaces to the front driveway. There is not sufficient car parking provided to the site and the one or possibly two off-street car spaces to the front driveway are too small to safely park cars. The owner of the dwelling already has 2 cars.	Council's Parking DCP states that bed & breakfast Accommodation must provide one car space for the dwelling and one for the bed & breakfast Accommodation. The plans submitted with the Application show a double garage capable of housing two cars. The proposed bed & breakfast Accommodation is therefore compliant with Council's Parking DCP.
A condition of consent was imposed on our Development Consent stating that we were not permitted to use our kitchen as a flat or for the purposes of dual occupancy. This led us to believe that the Foreshore Scenic Protection area should prohibit the use of a site for the purposes of bed & breakfast accommodation.	The purpose of Clause 29 of the Randwick LEP is to identify visually prominent residential areas along the coast and establish consent requirements for development in these areas to protect and enhance their visual qualities. Council may only grant consent after it has considered the probable aesthetic appearance of the proposed building in relation to the foreshore.

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Issue	Comment
	<p>Clause 29 does not apply to development which, in the opinion of the Council, is of a minor nature and will not adversely affect the amenity or the character of the locality</p> <p>The subject site is located within the foreshore scenic protection however it is considered that the proposal for bed & breakfast accommodation will not impact on visually prominent residential areas along the coast, will protect and enhance the visual qualities of the area, is minor in nature and will not adversely affect the amenity or the character of the locality</p>
<p>Parking is at a premium on the street at present. The proposed bed & breakfast accommodation will worsen the current situation.</p>	<p>Council's Parking DCP specifies that off-street parking must be provided in order to meet an anticipated parking demand. For the purpose of bed & breakfast accommodation, Council's Parking DCP requires parking to be provided at the rate of one space for guest use plus one space for the dwelling component.</p> <p>The site has an existing double garage to the front of the property thereby satisfying the requirements of Council's Parking DCP. Council also supports the Applicant's statement that public transport is available within a short walk on Malabar Road and that swimming pools and shops are located within a 15 minute walk.</p>
<p>The area proposed to be used for the bed & breakfast accommodation was conditioned to be 'bricked up' and converted to storage area in order to comply with Floor Space Ratio requirements of a previous Development Application assessment (DA/197/1996).</p>	<p>The report accompanying the assessment of DA/197/1996 considered the under-floor now proposed to be used for the bed & breakfast accommodation to be uninhabitable, stating that a substantial amount of structural work including further excavation would be necessary for the area to comply with appropriate floor to ceiling heights as contained in the Building Code of Australia (BCA). The area was therefore not considered in floor space calculations.</p> <p>Since that time, the Applicant has converted this space to habitable space which complies with the BCA. Although no Council consent was sought for these works, there is no increase in the perceived bulk and scale of the building as viewed from neighbouring properties as all spaces are ventilated underground rooms.</p>

Issue	Comment
We were of the understanding that the Foreshore Scenic Protection clause prevents the use of part of a dwelling as a flat or unit.	As stated above, the purpose of Clause 29 of the RLEP relating to the Foreshore Scenic Protection Area is to identify visually prominent residential areas along the coast and establish consent requirements for development in these areas to protect and enhance their visual qualities. Clause 29 does not apply to the proposed bed & breakfast Accommodation.
We believe the subject site has been used for bed & breakfast Accommodation for several years.	The current Development Application is for bed & breakfast Accommodation and was received following a noise complaint to Council from a neighbouring dwelling in December 2007. Council has accepted the Development Application and this report forms the basis of the assessment of the proposal on its merits and against all relevant policies.
If this proposal is allowed to proceed, we believe that it will lead to the subject site and other properties on the street being used as backpackers' hostels and or coffee shops.	As above, the current Development Application is for bed & breakfast Accommodation. Council has accepted the Development Application and this report forms the basis of the assessment of the proposal on its merits and against all relevant policies. Backpackers' hostels and coffee shops are currently not permissible land uses in 2A Residential areas.

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Petition signed by the following owners and tenants from residences at Cuzco Street and Bunya Parade, South Coogee:

Petition from the owners of No.s:

- 15 Cuzco Street, South Coogee
- 19 Cuzco Street, South Coogee
- 21 Cuzco Street, South Coogee
- 25 Cuzco Street, South Coogee
- 28 Cuzco Street, South Coogee
- 31 Cuzco Street, South Coogee
- 35 Cuzco Street, South Coogee
- 36 Cuzco Street, South Coogee
- 41 Cuzco Street, South Coogee
- 42 Cuzco Street, South Coogee
- 46 Cuzco Street, South Coogee
- 47 Cuzco Street, South Coogee
- 50 Cuzco Street, South Coogee
- 12 Bunya Parade, South Coogee

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Issue	Comment
<p>The submitted plans falsely show two off-street car spaces to the front driveway. There is not sufficient space to park additional vehicles to the driveway of the site and the owner of the dwelling already has 2 cars. This violates Council's Parking DCP which states that bed & breakfast Accommodation must provide one car space for the dwelling and one for the bed & breakfast Accommodation.</p> <p>Also, given the lack of parking on the street, there is no additional space to accommodate the parking requirements of the proposed bed & breakfast accommodation.</p>	<p>There is a general lack of parking on Cuzco Street. Many residences have one or no off-street parking spaces yet own more than 2 cars. Nevertheless, Council's Parking DCP states that bed & breakfast Accommodation must provide one car space for the dwelling and one for the bed & breakfast Accommodation (2 spaces in total). The plans submitted with the Application show a double garage capable of housing two cars. The proposed bed & breakfast Accommodation therefore complies with Council's Parking DCP.</p>
<p>The subject site has been used for bed & breakfast Accommodation for several years. On many occasions, short-term renters have parked their cars on the footpath and driveway. This endangers the lives of pedestrians and children who play on the footpath. This also contravenes the Guidelines for bed & breakfast Operations (Local Government and Shires Association of NSW) which recommends that parking should be accessible for guests without inconveniencing neighbours or causing safety problems.</p>	<p>As above, the proposed bed & breakfast Accommodation is compliant with Council's Parking DCP. Parking can therefore be provided which is accessible for guests without inconveniencing neighbours or causing safety problems.</p>
<p>The area proposed to be used for the bed & breakfast accommodation was restricted to 'storage area' by a Land and Environment Council (sic) determination. This contravenes Part 3 of Council's Exempt and Complying DCP – alterations and additions to Single Dwellings and Attached Dual Occupancies.</p>	<p>Council consent was not sought for the works converting the storage area into habitable space. The current Development Application is for the use of part of the dwelling as a bed & breakfast Accommodation and the above matter cannot be considered as part of this DA.</p>
<p>Properties along Cuzco Street have narrow frontages and are close together. Noise from the tenants at the proposed bed & breakfast accommodation will cause severe problems for neighbours, particularly those adjacent to the basement level of the subject site. Noise problems have been an on-going problem for neighbours over several years. A recent noise complaint (Ref No. 267280-D00505985) was submitted to Council in December 2007.</p>	<p>Council received a noise complaint in December 2007, substantially in relation to an extractor fan which the Applicant had installed to the bathroom on the western wall of the property. The complaint also mentioned a general loss of amenity because of noise created by casual tenants over a period of years but gave no specific examples. No other noise complaints are on record. Since being made aware of the complaint, the Applicant has disconnected the extractor fan and Council's Regulatory Section has confirmed that the bathroom to the proposed bed & breakfast accommodation complies with the BCA with the fan disconnected. Also as a</p>

Issue	Comment
	<p>result of the complaint, the Applicant lodged this Development Application.</p> <p>With regards to general noise created by the proposed bed & breakfast accommodation, the owners will be living on site and will be in a position to closely monitor and respond to any nuisances. There is insufficient space for more than 2 guests to be accommodated at any one time and a condition of consent has also been included regarding the protection of the amenity of neighbours with regard to noise.</p>
<p>The pathway used for access to the proposed bed & breakfast accommodation is adjacent to the neighbour's wall which impacts on the privacy and security of neighbours.</p>	<p>The pathway used to access the proposed bed & breakfast accommodation is adjacent to the western wall of the neighbour's dwelling. Due to the steep topography of the site, it is possible to overlook some areas of private open space to the neighbouring properties from the terrace outside the proposed bed & breakfast accommodation. It is noted however, that substantial vegetative screening is in place. It is not possible to access the private open space to the neighbouring properties from the area proposed to be used for bed & breakfast accommodation. It is therefore considered that there is minimal adverse impact on neighbouring properties with regard to privacy and security.</p>

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6. Technical Officers:

6.1 – Development Engineer

The application has been referred to Development Engineering for comment, conditions have been provided for inclusion with any consent granted.

Parking Comments

Council's DCP- *Parking* requires that bed & breakfast establishments provide 1 carspace for guest use plus 1 space for the dwelling component. The submitted Statement of Environmental Effects indicates that there are 2 onsite parking spaces and the proposed development achieves compliance with the requirements of the DCP.

Development Engineer does not impose any conditions on the development due to the fact that no physical alterations are proposed.

6.2 – Environmental Health

Council's Environmental Health Officer provided conditions of consent and the following comments:

Through discussions with the owners of the subject premises, it has been revealed that no preparation of food will be carried out by the owners and only minimal handling of food will be carried out if required and therefore standard conditions in relation to the storage and handling of food should be attached to the consent.

A letter has been received by Council from the applicant, confirming that if food is required by visitors it will be made available and they will have to prepare it themselves.

7. Environmental Assessment

7.1 Section 79c 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.

The site has been assessed as being suitable for dwelling house development in the previous development consent granted by Council. The current proposal for bed & breakfast accommodation does not involve any significant change to the floor space, built form or landscaped area provision of the approved development.

The modification is not considered to result in any significant impact on the streetscape or amenity of the surrounding residences. Therefore, the modified development is considered satisfactory in public interest terms.

7.2 Relevant Environmental Planning Instruments

The proposal has been assessed in relation to compliance with the following controls:

- Environmental Planning and Assessment Act 1979 as amended.
- State Environment Planning Policy No.1 – *Development Standards*
- Randwick Local Environmental Plan 1998.
- Development Control Plan - *Parking*.
- Building Code of Australia.

7.3 Randwick Local Environmental Plan 1998

The proposal is consistent with the general aims of RLEP 1998 and the specific objectives of the zone in that the proposed activity and built form will enhance and compliment the aesthetic character, environmental qualities and social amenity of the locality.

The site is zoned Residential 2A (Residential A Zone) under Randwick Local Environmental Plan 1998 and the proposed activity is permissible with Council's consent. The following clauses of the Randwick Local Environmental Plan 1998 are applicable to the proposed development:

Clause 10 - 2A Zones

Clause 10 of the LEP sets out the objectives of the 2A residential zone which are to maintain the character of the established residential areas, allow for a range of community facilities to serve the needs of residents, workers and visitors, to enable development for low density housing where such development does not compromise the amenity of surrounding residential areas and to allow for people to carryout a range of activities from their homes where such activities are not likely to adversely affect the environment of the locality.

Bed & breakfast accommodation is defined within the LEP as a building which provides temporary accommodation for not more than 5 persons and where the owner of the building is a permanent resident. Bed & breakfast accommodation is permissible within this zone and the use of a portion of the existing dwelling for bed and breakfast accommodation utilising two rooms of the existing dwelling will not result in any adverse impact upon the amenity of the surrounding residential areas. It is considered that the proposed use will not be inconsistent with the objectives of this clause.

Clause 29 Foreshore Scenic Protection Area

Clause 29 of the LEP requires that Council can only grant consent after consideration has been given to the aesthetic appearance of the proposed building in relation to the foreshore. The proposal does not seek to alter the external appearance of the dwelling and there will not be any impact upon the existing appearance of the building within the foreshore scenic protection area. It is considered that the proposed use will not be inconsistent with the objectives of this clause.

Clause 32 Floor space ratios

Council's requirement for Floor Space Ratio for buildings, other than buildings erected for the purpose of a dwelling house, on land zoned 2A Residential is 0.5:1. The purpose of the requirement is to establish reasonable upper limits for development in residential, business, industrial and special uses zones through a limit on the amount of floor space that can be provided. This will help to reduce the potential for adverse impact on nearby and adjoining development while still providing for reasonable levels of development and redevelopment.

The proposal does not comply with the maximum FSR control of the Randwick LEP 1998. The proposal has an FSR of 0.65:1 which exceeds the maximum FSR control of 0.5:1. An objection under State Environmental Planning Policy No.1 (SEPP No.1) has been submitted in relation to the breach of this control which is discussed below.

7.4 State Environmental Planning Policy No. 1 Development Standards

The proposal seeks to vary development standards contained within RLEP 1998. A SEPP 1 objection has been submitted with the development application. In assessing the applicant's SEPP 1 objection, the following matters are addressed:

Whether or not the planning control is a development standard?

The proposal seeks variation to the following control contained in RLEP 1998:

- Clause 32(1): 0.5:1 maximum floor space ratio standard for buildings, other than buildings erected for the purpose of a dwelling house.

The above provision is a numerical development standard contained in the statutory plan.

What are the underlying objectives or purpose of the standards?

- The stated purpose of the FSR standard as outlined in the LEP is:

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

Consistency of the development with the aims of SEPP 1, the local planning objectives for the locality and objects of the Environmental Planning and Assessment Act 1979, as amended

The aims and objectives of SEPP 1 are:

Clause 3

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 aims and objects of Section 5(a)(i) and (ii) of the Environmental Planning and Assessment Act 1979, 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 purpose of promoting the social and economic welfare of the community and a better environment.
- (ii) The promotion and coordination of the orderly and economic use and development of land.

The variations from the aforementioned controls are not inconsistent with the aims of SEPP 1 as they would not detract from the objects of the Environmental Planning and Assessment Act embodied in Section 5(a)(i) and (ii). Specifically, the resultant development would promote the orderly and economic use of the land, and would not result in significant adverse environmental or social impacts.

The proposal is also consistent with the relevant objectives of Residential 2A Zone in that it will allow bed & breakfast accommodation, which is permissible development with Council consent.

Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Floor Space Ratio (FSR)

Pursuant to Clause 32(1) of RLEP 1998, the maximum floor space ratio for buildings, other than buildings erected for the purpose of a dwelling house, within Zone No. 2A is 0.5:1 or 181.1m² gross floor area. The following is proposed:

Proposed total gross floor area (a)	237.2m ²
Permissible gross floor area (b)	181.1m ²
Excess gross floor area (a) – (b)	56.1m²
Proposed floor space ratio (c)	0.65:1
Permissible floor space ratio (d)	0.5:1
Non-compliance with floor space ratio (c) – (d)	0.15:1

The proposal has a floor space ratio of 0.65:1 or 237.2m² gross floor area, and exceeds Council's control by 0.15:1 or 56.1m² gross floor area. It is considered that the proposal is satisfactory and compliance with the development standard is unreasonable and unnecessary based on the following reasons:

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- The existing dwelling has a height and scale, which are compatible with the existing residential developments in the surrounding built environment, and do not detract from the prevailing character of the locality. The area being used for bed & breakfast accommodation is essentially a partly subterranean section of the previously approved dwelling which has since been converted to habitable space. The proposed use of part of the dwelling as bed & breakfast accommodation will therefore not increase the perceived bulk and scale of the dwelling from that which was approved previously by Council.
- Discussion within previous sections of this report has demonstrated that the proposal does not result in unreasonable adverse impacts on the adjoining residential properties in terms of off-street parking, noise generated by the proposed use, privacy and visual bulk and scale.
- The extent of the non-compliance is minor in nature having regard to the prevailing form and scale of existing residential developments in the locality and that the proposed use as a bed & breakfast accommodation is permissible in the area with Council consent.

Is the objection well founded?

The submitted SEPP 1 Objection has addressed the consistency of the proposed development with the underlying and stated purposes of the standards, the local planning objectives for the locality and objectives of the Act. As such, it is considered that the objection is well founded.

7.5 Draft Environmental Planning Instruments

7.5.1 Draft Randwick Local environmental Plan 2007

The proposal is not inconsistent with the general aims and objectives of the draft RLEP 2007.

7.6 BCA Classification

Under the building code of Australia, the classification of the building is: -

- Dwelling House – Class 1a
- Guest House – Class 3

7.7 Policy Controls

7.7.1 Parking Development Control Plan

Bed and breakfast accommodation attracts a parking requirement of 1 space for guest use and 1 space for the dwelling component. Under these controls 2 parking spaces are required. The premises has a total of 2 off street parking spaces and therefore complies with the requirements of the parking DCP. A condition of consent has been included to this effect.

7.7.2 Suitability of the Site for the Intended Use

The site has been assessed as being suitable for dwelling house development in previous development consent granted by Council. The current proposal for bed & breakfast accommodation does not involve any significant changes to the floor space, built form or landscaped area provision of the approved development. The modification will not result in any significant impact on the streetscape or amenity of the surrounding residences. Therefore, the site is considered to be suitable for the proposed development.

The proposal, subject to conditions, will not adversely impact on the environmental amenity of the neighbourhood. It is considered that the potential for noise and antisocial behaviour is minimised by the owners of the dwelling living on site and in a position to closely monitor and respond to any nuisances. It is also considered that there is insufficient space for more than 2 guests to be accommodated at any one time and that there is sufficient parking provided to the site to accommodate the intended use.

8. Relationship to City Plan

The relationship with 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.

Financial Impact Statement

There is no direct financial impact for this matter.

8 Conclusion:

The proposed use of part of the existing dwelling for a bed & breakfast accommodation complies with the relevant assessment criteria and will not result in any adverse impacts upon either the amenity of the adjoining premises or the character of the locality.

Recommendation

That:

- A. Council supports the objections under State Environmental Planning Policy No. 1 – Development Standards in respect to non-compliance with Clause 32(1) of the Randwick Local Environmental Plan 1998, relating to floor space ratio, on the grounds that the proposed development complies with the objectives of the above clause, and will not adversely affect the amenity of the locality.
- B. Council, as the consent authority, grants development consent under Sections 80 and 80A of the Environmental Planning and Assessment Act, as amended, to Development Application DA/197/2008 for the use of part of the existing dwelling for a bed & breakfast accommodation for 52 Cuzco Street, South Coogee, 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 'Plan 1', received by Council on 16 June 2008, 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. No cooking facilities or sanitary fittings other than those indicated on the approved plans are to be installed in the premises without the prior written consent of the Council.

3. The maximum number of visitors to be accommodated within the bed & breakfast accommodation at any time shall not exceed two (2).
4. One (1) off-street car space within the existing garage shall be provided for the exclusive use of visitors staying at the bed & breakfast accommodation, only at times when the bed & breakfast accommodation is occupied.

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:

5. 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 (LA90), 15 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 LAeq, 15 min and adjusted in accordance with the NSW Environmental Protection Authority's Industrial Noise Policy 2000 and Environmental Noise Control Manual (sleep disturbance).

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:

6. The use and operation of the premises shall not give rise to an environmental health nuisance to the adjoining/nearby premises or environment.
7. There are to be no emissions or discharges from the premises, which will 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 ensure compliance with the Food Act 2003 and to ensure public health and safety:

8. Food safety practices and operation of the premises must be in accordance with the Food Act 2003, Food Regulation 2004, Food Standards Code and Food Safety Standards at all times, in relation to the requirements and provisions for:
 - Food handling – skills, knowledge and controls.
 - Health and hygiene requirements.
 - Requirements for food handlers and businesses.
 - Cleaning, sanitising and maintenance.
9. The premises must be registered with Council's Environmental Health section and the NSW Food Authority must also be notified of the food business in accordance with the Food Safety Standards, prior to commencement of the business.
10. Any persons carrying out any food handling and/or food storage activities must have appropriate skills and knowledge in food safety and food hygiene matters, as required by the Food Safety Standards.
11. A numerically scaled indicating thermometer or recording thermometer, accurate to the nearest degree Celsius being provided to refrigerators, cool rooms, other cooling appliances or other heated food storage/display

appliances.

12. 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.
13. Adequate provisions are to be made within the premises for the storage, collection and disposal of trade/commercial waste and recyclable materials, to the satisfaction of Council.
14. The bed and breakfast facilities, including the kitchen facilities and associated equipment must be maintained in a safe, clean and healthy condition at all times.

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

15. 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.

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

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

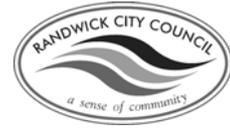
The smoke alarms are to be installed in suitable locations on or near the ceiling, in any storey containing bedrooms; located between each part of the dwelling containing the bedrooms and the remainder of the dwelling, or where bedrooms are served by a hallway, the smoke alarms are to be located in that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

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

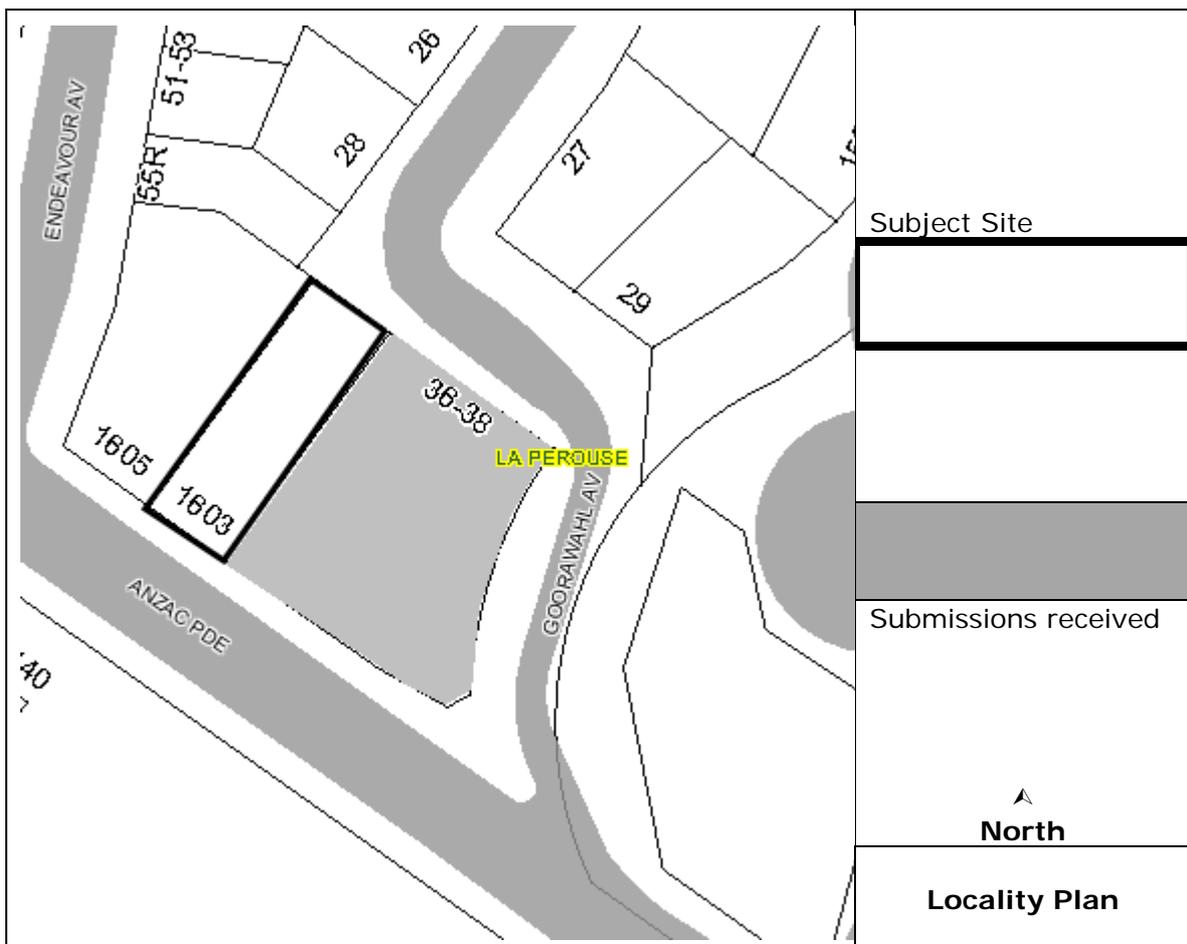
Attachment/s:

Nil

Development Application Report No. D38/08



Subject: 1603 Anzac Parade, La Perouse
Folder No: DA/520/2006/B
Author: Perry Head, Environmental Planning Officer
Proposal: Section 96 application to modify of Development Consent 520/07 to alter the balustrade and parapet to the upper level terrace and replace the strip drainage with grated drainage.
Ward: South Ward
Applicant: Cracknell & Lonergan Architects
Owner: G & A Cardakaris
Summary Recommendation: Approval



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1. Executive Summary

The application is for a Section 96(2) Modification of Development Consent 520/07 to alter the balustrade and parapet to the upper level terrace and replace the strip drainage with grated drainage.

The application is referred to the Council for determination as the original application was determined at the Planning Committee meeting on the 21 November 2006.

The main issues are any additional impacts upon the amenity of the adjoining residents in terms of privacy and views, which may result from the external changes to the approved development.

The application is recommended for approval.

2. The Proposal

The proposed modification seeks consent to;

- a) Delete the concrete block parapet to the Anzac Parade façade,
- b) Replace that parapet with a concrete block and glass balustrade parapet 200mm from the edge of the terrace slab,
- c) Replace the approved strip drainage with 6 grates within the terrace.

3. The Subject Site and Surrounding Area

The property is on the northern side of Anzac Parade directly opposite Botany Bay National Park and has rear access off Goorawahl Avenue. The site is rectangular in nature and has a total area of 527m², a frontage of 13.22m in width and a depth of 40.23m, the site falls from the rear to street with a difference in levels of up to 4.5m.

4. Site History

The existing approval details the construction of a new three bedroom dwelling above the existing mixed use premises. Approval was granted to the original application at the Planning Committee meeting on the 21st November 2006. The application was subsequently the subject of an application to modify that consent to provide new windows, delete sky lights, extend roof over outdoor terrace, which was approved on the 22nd May 2007.

5. Section 96 Assessment

Under the provisions of Section 96 of the Environmental Planning and Assessment Act 1979, as amended, Council may only agree to a modification of an existing Development Consent if the development is substantially the same development. The proposed modifications to the approved plans will result in the development being substantially the same development.

6. Community Consultation

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

Owner/resident of 8/36-38 Goorawahl Avenue La Perouse

Issue	Comment
The extra size will obstruct views.	The provision of glass within the balustrade will increase the view corridor across the site.
The development will impact upon visual and acoustic privacy.	At present there is very little privacy between the existing buildings in the immediate locality as every building has been designed to take advantage of the extensive views to the south and west across to Botany and Frenchmans Bays, and at present each property looks across the others towards the view, and there are very limited examples of privacy screens being provided as in common with other locations which have the advantage of views the erection of privacy screens would result in the views being obscured. An assessment of the modification reveals that the existing terrace looks upon the adjoining property, as do terraces to the adjoining buildings upon this one, and that the additional degree of over looking cannot be regarded as being significant and resulting in such additional adverse impact to warrant the refusal of the modification.
This will substantially affect the building setback.	The building envelope towards the front of the site is not altered.
The proposal increases the floor area of the terrace.	Noted.
This affects the general landscape, harmony and open space of the area.	The proposed modifications to the approved development do not impact upon the existing levels of landscaping on the site or the open space within the locality.

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Issue	Comment
The proposal extends the roof terrace will result in a further loss of privacy.	At present there is very little privacy between the existing buildings in the immediate locality as every building has been designed to take advantage of the extensive views to the south and west across to Botany and Frenchmans Bays, and at present each property looks across the others towards the view, and there are very limited examples of privacy screens being provided as in common with other locations which have the advantage of views the erection of privacy screens would result in the views being obscured. An assessment of the modification reveals that the existing terrace looks upon the adjoining property, as do terraces to the adjoining

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	buildings upon this one, and that the additional degree of over looking cannot be regarded as being significant and resulting in such additional adverse impact to warrant the refusal of the modification.
There will be further impacts upon views.	The provision of glass within the balustrade will increase the view corridor across the site.
The development has a negative impact upon the value of their property.	There is no evidence to suggest that the modification to the approved development, which remains substantially the same development, will have any impact upon the value of the adjoining property.
The whole application should be reviewed.	An application to modify development consent does not allow for an opportunity to revisit the merits of the original application which has been determined and the building has almost been completed.

Owner/resident of 5/36-38 Goorawahl Avenue La Perouse

Issue	Comment
The works which are the subject of this application have been carried out.	The upper level of the building has been completed with the exception of the area of terrace which is the subject of this application.

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 3B Local Business 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.

Building Height

The proposed amendment will result in an encroachment of the height limit due to the extension of the front parapet. The encroachment of 600mm only occurs at one end of the parapet and would not result in any significant impacts on the amenity of the streetscape or adjoining properties as the modified parapet incorporates a glass balustrade.

Relationship to City Plan

The relationship with the City Plan is as follows:

- Outcome 4: Excellence in urban design and development.
- Direction 4b: Improved design and sustainability across all development.

Conclusion

The proposed modifications to the approved development are relatively minor and will not result in any significant additional impacts upon the amenity of the adjoining properties.

That the application to modify the consent be approved.

Recommendation

That Council 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/520/2006/B to alter the parapet and balustrade at the front of the building, extend the roof terrace and alter the drainage within the roof terrace at 1603 Anzac Parade, La Perouse in the following manner:

The development must be implemented substantially in accordance with the plans numbered DA01 to DA04, dated 2 June 2006 and received by Council on the 20 June 2006, the application form and on any supporting information received with the application, as amended by the Section 96 plans dated 23/4/07 and received by Council on the 30th April 2007, **as further amended by the Section 96 plans dated 31st January 2008 received by Council on the 25th February 2008, 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.

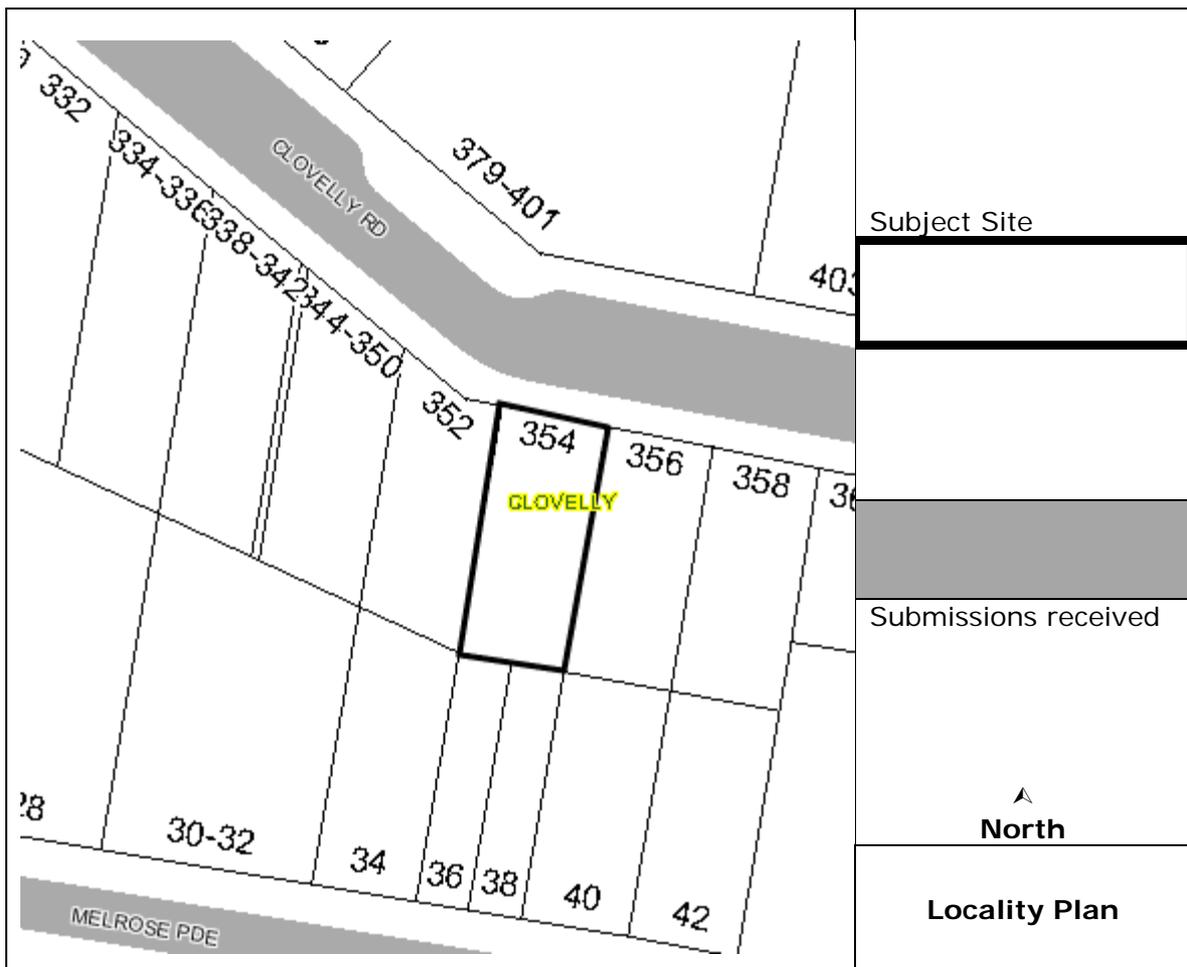
Attachment/s:

Nil

Development Application Report No. D39/08



Subject: 354 Clovelly Road, Clovelly
Folder No: DA/814/2007
Author: Perry Head, Environmental Planning Officer
Proposal: Section 96 application to modify Development Consent No.814/2007 to reinstate car spaces 1 & 4 which were deleted by a condition of the original consent
Ward: North Ward
Applicant: Stead Holdings Pty Ltd
Owner: Stead Holdings Pty Ltd
Summary Recommendation: Refusal



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1. Executive Summary

The application is referred to the Planning Committee meeting for determination at the request of Councillors Andrews, Tracey & Sullivan.

The application seeks to modify the approved Development Consent to delete a deferred commencement condition which deleted two car spaces.

The main issue is the impact upon the streetscape amenity by the provision of two additional hard stand car spaces to the front of the building with no component of soft landscaping.

The application is recommended for refusal.

2. The Proposal

The application seeks to modify the approved Development Consent to delete Deferred Commencement condition No.1 which stated;

- "1. The proposed car spaces numbered 1 and 4 as shown on the approved plans are to be DELETED, with the areas in question landscaped with suitable Australian native trees, shrubs and/or grass species.

In addition, a fixed garbage storage enclosure capable of accommodating four (4) x standard 240-litre bins is to be provided within the front setback area, which is conveniently accessible by the occupants and collectors. The garbage enclosure should not be roofed unless sufficient clearance is provided to enable the opening of garbage lids. No doorways to the enclosure are to be provided.

Amended plans are to be submitted to demonstrate compliance with the above requirements. "

3. The Subject Site and Surrounding Area

The subject site is on the southern side of Clovelly Road, between Walker Avenue and Donnellan Circuit, the site has a frontage of 13.415m, a side boundary depth of 31.51m to 31.615m and an area of 423m². The site is currently occupied by a part 2, part 3 storey Inter-War residential flat building with a basement garage and detached garage to the front. The building contains 4 dwellings. The locality is generally residential in nature and contains a mixture of low scale residential flat buildings, a strip of local business uses and the Clovelly Hotel is directly opposite.

4. Site History

Approval was granted under Deferred Commencement conditions on the 11th March 2008 for alterations and additions to the existing building including a new balcony, stairs and landing at rear, juliette balconies to the front, internal floor plan reconfiguration, altered window openings, changes to external materials and finishes and the strata subdivision of the building into 4 lots.

5. Section 96 Assessment

Under the provisions of Section 96 of the Environmental Planning and Assessment Act 1979, as amended, Council may only agree to a modification of an existing Development Consent if the development is substantially the same development. The proposed modifications to the approved plans will result in the development being substantially the same development.

6. Community Consultation

The proposal has been notified in accordance with the Local Environmental Plan 1998. No response has been received.

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 2C 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.

The existing building is within a group of other two and three storey inter war flat buildings which are in differing states of repair, with some having been rendered and painted and substantially altered, while others such as the subject premises remaining in essentially original condition.

The replacement of two car spaces to the front of the building with deep soil planting will substantially improve the streetscape presentation of the proposed development by providing for a degree of visual relief against the hard stand car spaces in the front of the building. The landscaping will also provide a degree of privacy screening to the lower level units and improve the amenity of those residents.

In addition, the existing streetscape presentation of these buildings is very poor and to allow for the subject site to be redeveloped without the inclusion of at least some soft landscaping would set an undesirable precedent in this locality.

9. Relationship to City Plan

The relationship with the City Plan is as follows:

Outcome 4: Excellence in urban design and development.
Direction 4b: Improved design and sustainability across all development.

10. Conclusion

That the application to modify the approved Development Consent be refused.

Recommendation

That Council, as the consent authority, refuse its consent under Section 96 of the Environmental Planning and Assessment Act 1979 as amended to modify Development Consent No.814/07 for alterations and additions to the existing multi unit housing development at 354 Clovelly Road, Clovelly for the following reason:

1. The deletion of the approved landscaping to the front of the property will detract from the appearance of the building as viewed in the local streetscape, will result in an adverse impact upon the amenity of the residents in the lower level of the building and will set an undesirable precedent for the redevelopment of existing buildings.

Attachment/s:

Nil

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