

# **PLANNING COMMITTEE MEETING**

## **BUSINESS PAPER**

**TUESDAY 10 MARCH 2009**

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3 March 2009

**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, 10 March 2009 at 6:00 p.m.

Committee Members: The Mayor, B Notley-Smith, Andrews, Belleli, Bowen, Hughes, Matson (Deputy Chairperson), Matthews, Nash (Chairperson), Procopiadis, Seng, Smith, Stevenson, 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 February 2009

**Declarations of Pecuniary and Non-Pecuniary Interests**

**Address of Committee by Members of the Public**

**Urgent Business**

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## Closed Session

Nil

## Notices of Rescission Motions

Nil

.....  
Ray Brownlee  
**GENERAL MANAGER**

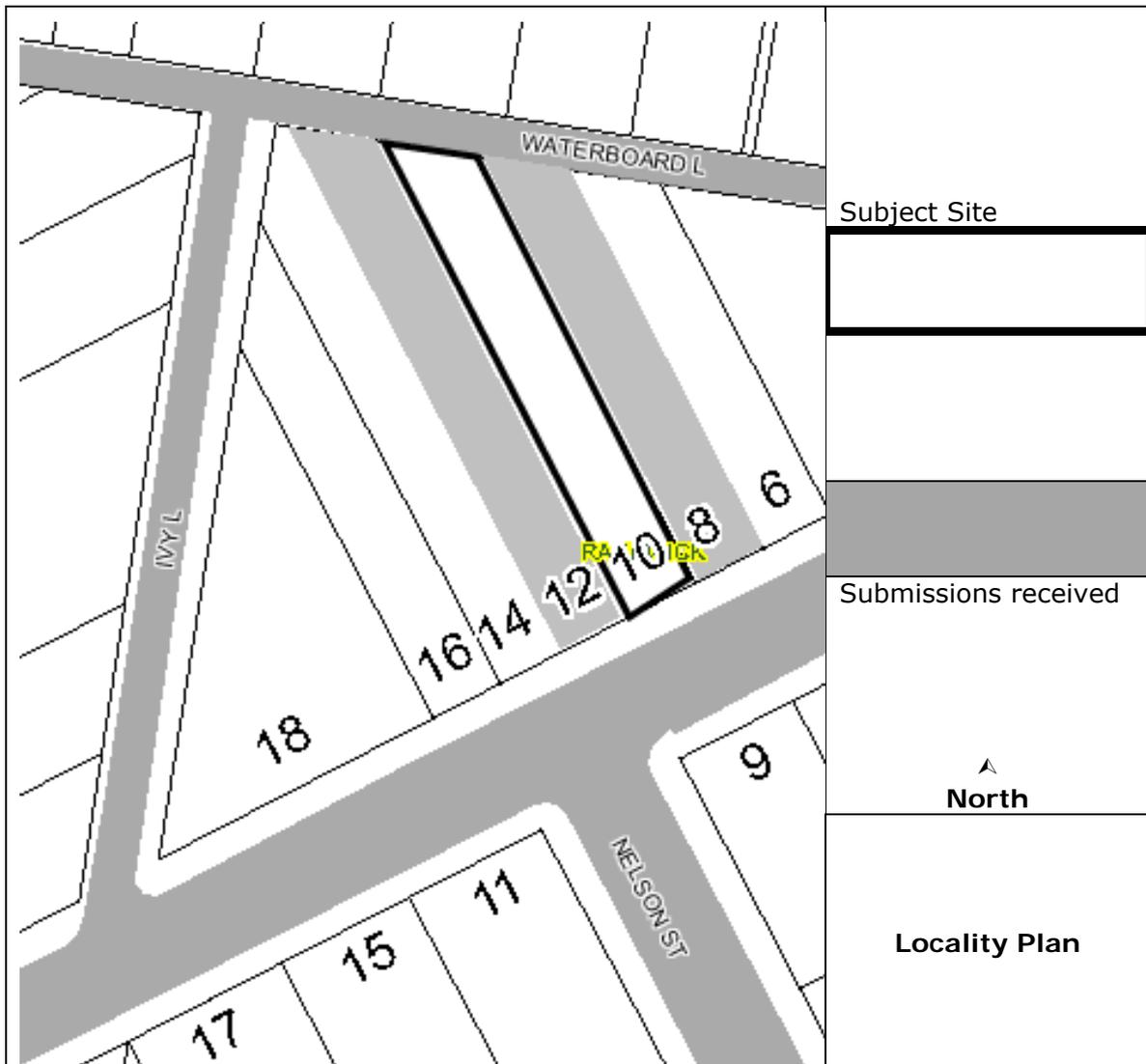
# Development Application Report No. D14/09



**Subject:** 10 Ivy Street, Randwick  
**Folder No:** DA/937/2007  
**Author:** Perry Head, Environmental Planning Officer  
**Proposal:** Section 96 (2) application to modify Conditions Nos. 8 & 9 of Development Consent. No. 937/2007  
**Ward:** East Ward  
**Applicant:** N Stanford  
**Owner:** N Stanford

**Summary Recommendation:** Approval

D14/09



## 1. Executive Summary

The Section 96(2) application is referred to the Planning Committee for determination as the original Development Application detailing a home activity for piano teaching was determined at the Planning Committee meeting held on 11 March 2008.

The application seeks to modify conditions 8 & 9 of Development Consent in relation to the hours of operation and the prohibition of recitals.

The main issue for consideration is the impact upon the amenity of the adjoining premises in terms of noise resulting from the proposed variation of hours and the allowing of group lessons on weekends.

The modification of condition 8 in relation to hours of operation is recommended for approval. However, the portion of the application to modify condition 9 to permit group lessons on weekends is recommended for refusal.

## 2. The Proposal

This application seeks to modify Conditions Nos 8 and 9 of the approval which related to the restriction of the hours of operation of piano teaching and prohibition of recitals and group lessons.

Condition 8 of consent stated;

"The hours of operation for the home piano teaching business shall be restricted to:

Tuesday: 3.15pm - 6.00pm  
Thursday: 3.15pm - 6.00pm  
Friday: 3.15pm - 6.00pm, and only during NSW School Terms"

The applicant seeks to modify this condition to read as follows;

The hours of operation for the home piano teaching business shall be restricted to a maximum of 12 hours per week and conducted during the following periods:

Monday to Friday: 9.00am -12.00pm and 3.15pm - 6.00pm.

In support of this modification the applicant states that it is not the intention to teach in all of these hours, but to allow for flexibility to change hours and days as required by their schedule and those of pupils, which does include adult pupils and school age students that also have other after school activities.

Condition 9 of consent stated;

"No group lessons or recitals are permitted to be conducted within the premises"

The applicant seeks to modify this condition to read as follows;

Group lessons are not permitted to be conducted within the premises. Four performance practises are permitted once a school term on a weekend afternoon between 1.00pm and 5.00pm.

The applicants justification for this change to the condition is that it will allow pupils to play in a group setting for a few minutes each for a total of one hour, with the level of sound no more than during piano lessons during the week and coinciding with the times of other busy activity.

**3. The Subject Site and Surrounding Area**

The subject site is on the western side of Ivy Street between Perouse Road and Lee Street and is occupied by an existing semi detached two storey dwelling. The site has a street frontage of 6.035m, a side boundary depth of up to 44.06m and an overall site area of 253m<sup>2</sup>. The locality is residential in nature and contains a mixture of semi detached and free standing dwellings and multi unit housing development. The locality as a whole is within a conservation area known as "The Spot Conservation area."

**4. Site History**

Development consent, DA/818/2007, was approved for alterations and additions to the existing dwelling and during that time Council as part of the notification process received complaints from neighbours that the home was used as a home activity for the teaching of piano playing. As a result of that complaint the owner lodged the original application seeking consent to conduct piano teaching at this premises.

At the Planning Committee meeting of the 11<sup>th</sup> March 2007 development consent was granted to the application subject to conditions, including the two conditions which are the subject of this application.

**5. Section 96(2) Assessment**

Under the provisions of Section 96(2) of the EP & A Act (as amended), Council may only agree to amend an existing development consent if the following criteria have been complied with:

*It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted.*

The proposed development is substantially the same development as there will be no fundamental change to the overall scope and nature of the approved use.

**6. Community Consultation**

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

**6.1 Objections**

**Owner/resident of 12 Ivy Street Randwick**

Objections	Comment
Ivy Street is not a street that a noise creating commercial activity should be allowed to operate from 9.00am until 6.00pm at night five days a week, which has the potential for 35 hours of operation.	The modification to condition 8 seeks to allow for flexibility of the hours in which piano teaching is conducted. The total number of hours during this time period in which piano teaching is conducted is proposed to be a maximum of 12 hours per week between Monday to Friday, which would be an increase in the total hours of teaching of 3.45 hours in comparison with the existing approval.
There is no way in which the hours of operation can be policed and there are already examples of the current	The objector has been advised to document any times and periods when the existing conditions, or as modified,

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<b>Objections</b>	<b>Comment</b>
conditions not being complied with in relation to the hours of operation. There are already issues of noise nuisance by the current operation which will be increased by the proposed modifications.	are not being complied with and to forward this information to Council's Regulatory Officers for investigation.
There is no evidence that the sound proofing of the teaching area has been completed and the teaching carried out in accordance with the approval.	An inspection of the subject dwelling and the front living room in which the piano lessons are permitted to be carried out indicated that the door to the room has seals surrounding the door which closely seal the door when closed and the transom window above the door in that room has been sealed shut and is not able to be opened. This is consistent with the terms of the original consent which restrict the use to the front living room and require that the door be closed during lessons to reduce noise transmission to the adjoining properties.
The use of the space for teaching groups of students is inappropriate.	It is recommended that group teaching remain prohibited.
Performances on weekends will restrict the quiet enjoyment of their dwelling.	It is recommended that weekend teaching or performances are prohibited.
A proper environmental impact assessment of the activity needs to be undertaken to take into account noise pollution to adjoining properties, the significant impact by expanding hours and weekend performances and the impact of parking in the street.	The impact upon the amenity of the adjoining properties has been undertaken during the assessment of the original application. The proposed expansion of hours to permit an additional 3.45 hours of teaching during Monday to Friday, for a maximum of 12 hours during this period, does not substantially increase the potential impact upon the adjoining residents. The additional teaching hours will not increase parking demand as teaching is primarily for school students and it is a reasonable expectation that these students will be dropped off and collected by parents rather than occupying street parking spaces for any length of time.
Other music schools in the area are conducted in either free standing homes or commercial precincts, not in semi detached dwellings in quiet residential streets.	An application to modify development consent does not provide for an opportunity to revisit the merits of the original approval.
The operation of the piano school and any proposed expansion will have an impact upon the value of their dwellings.	There is no evidence that the approval of this application to modify an existing approval will have any impact upon the monetary value of adjoining properties.

**6.2 Support**

<p><b>Owner/resident of 8 Ivy Street Randwick</b> There are no objections to extending the hours of operation to a maximum of 12 hours per week and holding performance</p>	Noted.
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<p>practices on weekends once per school term as the proposal is reasonable as sound intrusion is minimal and does not disturb their household.</p>	
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**7. Technical Officers Comments**

The application has been referred to Council’s Environmental Health Officer for comment. Advice has been provided that on the basis that a single piano will be used there is no requirement for an amended acoustic report, an inspection of the premises and discussion with the owner indicates that within the approved area there is only one piano at present and no room for an additional piano.

**8. Relevant Environmental Planning Instruments**

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

**Randwick Local Environmental Plan 1998**

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

**9. Environmental Assessment**

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

**9.1 Home Activity**

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

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

The assessment of the original application determined that the use of a portion of the dwelling for piano teaching satisfies the definition of a home activity and that subject to conditions of approval to restrict the hours of teaching, the number of pupils and how the use is conducted will not result in any significant adverse impact upon the amenity of the adjoining and surrounding residents.

The proposed modifications to the approved development to increase the total number of hours by an additional 3.45 hours over the course of Monday to Friday does not represent a substantial departure from the approved development and the use still falls within the definition of a home activity.

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With respect to the proposed modification of condition 9, to permit performances in a group setting on weekends during school terms on four occasions a year, it is considered that this will be an unreasonable impost upon the amenity of the adjoining properties as the activity would be carried out during a weekend period when one would expect that there would be no potential for any noise nuisance to any adjoining residents.

### Relationship to City Plan

The relationship with the City Plan is as follows:

Outcome 8: A strong local economy.  
Direction8a: The proposal will contribute positively to the diversity of business opportunities and the survival of small businesses in the City of Randwick.

### Conclusion

That approval be granted to modify the development consent to modify condition 8 be approved. However, it is recommended that the modification of condition 9 not be approved as to do so would likely lead to an adverse impact upon the amenity of the adjoining residents.

### 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/937/2007/A for 10 Ivy Street, Randwick in the following manner:

#### A. Condition No 1 be altered to read as follows;

The development must be implemented substantially in accordance with the plans and application received by Council on the 1<sup>st</sup> November 2007, the application form and on any supporting information received with the application, as amended by the Section 96 application received by Council on the 14<sup>th</sup> November 2008, ***only in so far as they relate to the modifications detailed in the Section 96 application***, except as may be amended by the following conditions and as may be shown in red on the attached plans.

#### B. Condition No.8 be amended to read;

The hours of operation for the home piano teaching business shall be restricted to a maximum of 12 hours per week and conducted during the following periods:

Monday to Friday: 9.00am -12.00pm and 3.15pm – 6.00pm.

#### C. Condition No. 9 is retained in its current form on the development consent.

#### Attachment/s:

Nil

# Development Application Report No. D15/09



**Subject:** 8-18 Brodie Avenue & 8-18 Curie Street & 6-16 Darwin Avenue & 18-20 Darwin Avenue & 22-32 Darwin Avenue, Little Bay

**Folder No:** DA/207/2008/B

**Author:** David Ongkili, Coordinator Major Assessment

**Proposal:** Section 96 Application to delete condition 4 relating to planting against the walls of the building and condition 73 relating to landscape concept masterplan and landscape design statement

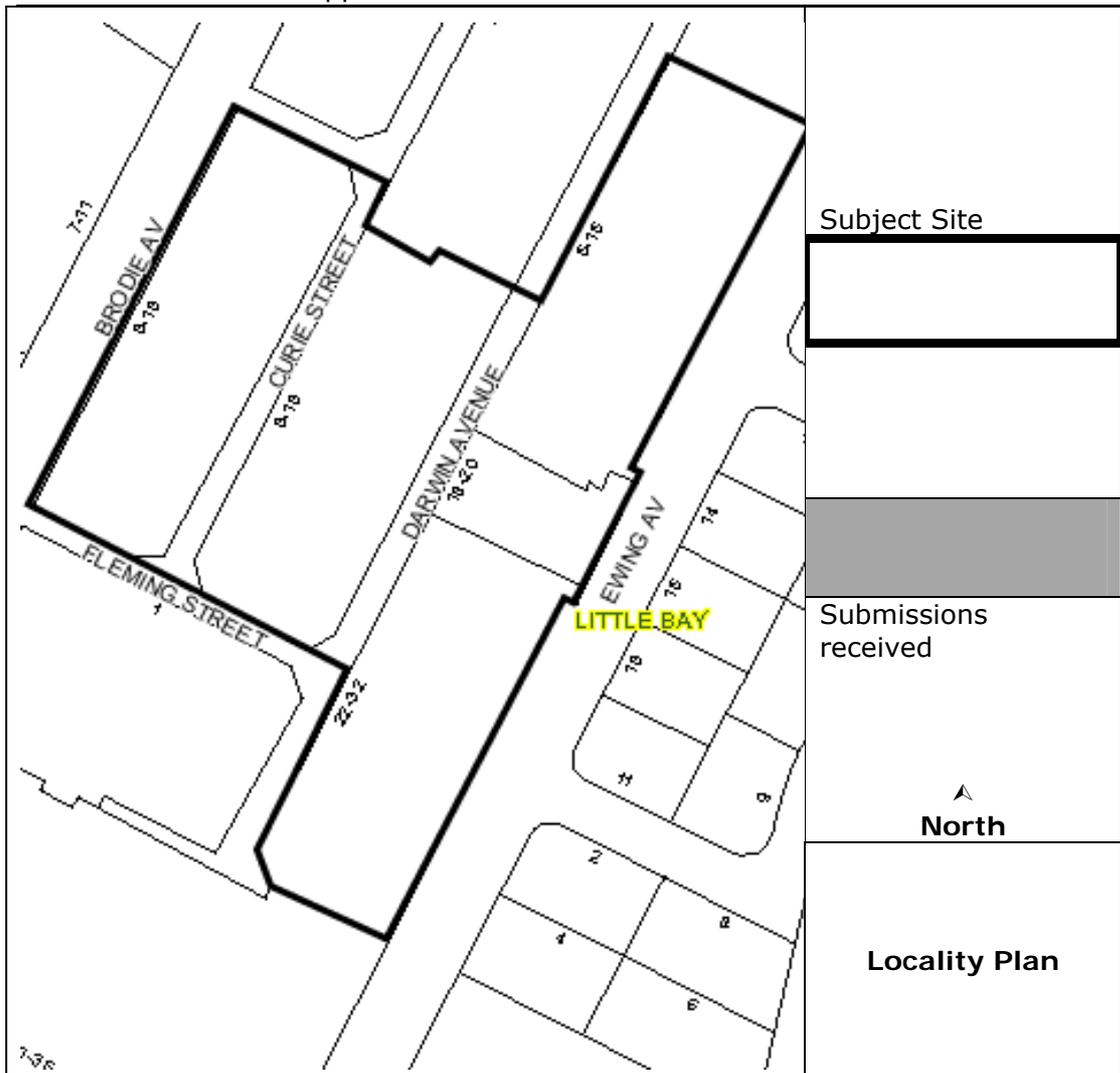
**Ward:** South

**Applicant:** Little Bay South 1 Pty Ltd

**Owner:** Landcom - Little Bay

**Summary Recommendation:** Approval

D15/09



## 1. Executive Summary

The Section 96 application is referred to the Planning Committee for determination as the original application was determined at the Ordinary Council meeting of 21 October 2008. The approved development (DA No. 207/2008) comprised the adaptive reuse of Flowers Wards 2, 4, 5, 6 and the Hill Theatre 2 for residential development comprising 18 residential dwellings with associated car parking for 45 vehicles.

The assessment of the Section 96 application indicates that the part of the amendments relating to the introduction of new hedges, trees and planting beds in the lawn areas of the Flowers Ward Complex are not supportable essentially for the following reasons:

- It would be detrimental to the historic open landscape setting of the Flowers Wards buildings such that it would detract from the open character of this setting.
- It would be inconsistent with the General Terms of Approval (GTA) issued by the NSW Heritage Council for the original/approved DA. This has been reinforced in the Heritage Council's advice on the current Section 96 amendments where the Council indicated that it is not agreeable to any modification to the GTA to accommodate the section 96 amendments.
- It would be inconsistent with the Conservation Management Plan for the Prince Henry Site and the Specific Element Conservation Policy for the Flowers Ward group.

Accordingly, this part of the subject Section 96 application is not supported.

The Section 96 application also proposes the installation of plantings (climbers) on stainless steel trellis to screen the existing weathered brick foundations along the eastern façade of the Flowers Ward 5 and 6. This component of the Section 96 application has been considered reasonable and acceptable by the Heritage Council and supported by Council's Heritage Planner. Accordingly, this part of the section 96 application is recommended for approval.

## 2. The Proposal

The application is for a Section 96(2) Modification of Development Consent No. 207/2008 for the following changes:

Delete Condition No. 4:

Condition No. 4 : "There shall be no hedges, fences, shrubs, trellises, ground cover plants or other fixtures including, but not limited to, accent planting against the walls of the buildings. Details shall be submitted to and approved by Council's Director City Planning, in accordance with Section 80A(2) of the Environmental Planning and Assessment Act 1979 prior to construction certificate being issued for the development."

Condition No. 73 : "The Landscape Concept Masterplan + Landscape Design Statement, drawing number L-102, Landscape Concept Plan – Enlargement Flowers Wards 2, drawing number L-103, Landscape Concept Sections + Indicative Planting Selection, drawing number

L-014, by EDAW, project number 08502795.01, issue A, dated 28.02.2008, and stamped 3<sup>rd</sup> April 2008, shall be submitted to the NSW Heritage Office in order to ensure consistency with the General Terms of Approval (GTA), prior to the commencement of any site works."

Modify Condition No. 1 by adding the words *"and landscape drawings L-100 to L-105 revision C prepared by EDAW AECOM dated 4 November 2008"* after the reference to the architectural drawings in this condition.

Condition No. 1 : "The development must be implemented substantially in accordance with the plans numbered AR-DA-1-002, AR-DA-2-200, AR-DA-2-400, AR-DA-2-500, AR-DA-2-600, AR-DA-2-700, AR-DA-5-210, AR-DA-5-410, AR-DA-5-510, AR-DA-5-610, AR-DA-5-710, AR-DA-6-001, all Revision 1, stamped received by Council on 3 April 2008, the application form, and on any supporting information received with the application, except as may be amended by the following conditions and the details approved pursuant to the deferred commencement conditions and as may be shown in red on the attached plans:"

The proposed modification as outlined above essentially seeks to allow for additional landscape features namely 1m wide and 0.5m high hedges, climbers on stainless steel trellises, trees and planting beds in the landscaped areas of the Flowers Ward as shown in the landscape drawings L-100 to L-105 revision C prepared by EDAW AECOM dated 4 November 2008.

The applicant advises that the proposed modification provides for an ability to *"acknowledge and accommodate the adaptive re-use of the Flowers Ward buildings as private residences"* by allowing for, amongst other things, some degree of separation of the private open spaces of adjoining apartments and providing residents with horticultural interest within these spaces.

### **3. The Subject Site and Surrounding Area**

The existing Flowers Ward 2, 4, 5 and 6 and Hill Building No. 2 complex is located in the southern part of the Prince Henry site, between Ewing Avenue to the east and Brodie Avenue to the west. It contains four originally identical buildings (of a group of six) that are referred to as the Flowers Ward buildings. The Hill Building No.2 (formerly Hill Theatre 2) is located between Flowers Wards Nos. 5&6. The subject site forms part of a Historic Precinct within the Prince Henry site.

Development in the locality is as follows:

#### **To the North:**

To the north of the subject site, moving from west to east are Flowers Wards No.1&3 and the site of a demolished building that is located to the north of Flowers Ward No.5 (Lot 43). Further to the north is the former Nurses Dining Hall (Lot 42) and Pine Avenue.

#### **To the East:**

To the east of the site is Ewing Avenue, with the sites of demolished buildings on the opposite side (Lot 75), and The Coast Golf Course beyond.

#### **To the South:**

To the south behind Flowers Ward Nos.2 & 4, are Fleming Street and Heffron House (formerly a ward building). To the south of Flowers Ward No.6 is Gull Street and the Delaney Building, which was also a former ward building.

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**To the West:**

To the west of the site is Brodie Avenue and vacant land that is elevated above the subject site and adjoins Anzac Parade.

**4. Site History**

The original DA for the adaptive reuse of Flowers Wards 2, 4, 5, 6 and the Hill Theatre 2 for residential development comprising 18 residential dwellings with associated car parking for 45 vehicles was approved at the Ordinary Council meeting of the 21 October 2008. Prior to this, a DA (DA No. 187/2006) for external works including restoration and reconstruction of the Flowers Wards.

A Section 96 (1A) application to delete condition no. 7 in relation to the reflectivity index of glass used in the external facade of the development was approved on 13 February 2009.

**5. Community Consultation**

Given that the application is made under Section 96(1A) of the Environmental Planning and Assessment Act 1979, which relates to modifications which have minimal environmental impact, formal notification of the proposal is not necessary under Council's Development Control Plan for Public Notification of Development Proposals.

**6. Technical Comments**

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

**6.1 Heritage Comments**

Council's Heritage Planner advises as follows:

**"Background**

The subject site is located within the Prince Henry Hospital Conservation Area under Randwick Local Environmental Plan Amendment No.28. The site and a number of buildings on it are listed on the State Heritage Register for its Aboriginal, natural, landscape and built heritage values.

DA/187/2006 for external works to Flowers Wards 2, 4, 5 and 6 and Hill Theatre 2 to adapt the buildings to residential use was approved in June 2006. The submission included Specific Elements Conservation Policies prepared by Godden Mackay Logan covering the Flowers Ward group, Flowers Ward 6 and Hill Building 2.

**The Subject Site**

The site is within the Historic Precinct as identified in the Prince Henry Site Development Control Plan, between Brodie Avenue and Ewing Avenue, and is occupied by Flowers Ward 2, Flowers Ward 4, Flowers Ward 5, and Flowers Ward 6 (exceptional significance), and Hill Theatre Building 2 (high significance).

**The Proposal**

The original proposal was for adaptive reuse of Flowers Wards 2, 4, 5 and 6 and Hill Theatre 2, for residential purposes. The proposal generally comprised internal works, but included a number of changes to external works approved in the previous development application. Each of the Flowers Wards is to be divided into four separate units and the Hills Theatre will also be divided into two units. External

works include pedestrian entry paths, ramps and steps, and landscaping on eastern side of the buildings including fencing and plantings.

A Section 96 application has now been received which proposes amended landscaping plans and changes to consent conditions relating to landscaping included in the General Terms of Approval from the NSW Heritage Council. The GTA generally prohibited hedges, shrubs, ground cover plants, fences, trellises, or other fixtures. The current landscaping plans propose 0.5m high hedge plantings to the edge of all lawn areas, canna planting beds to the ends of Flowers Wards 2, 4 and 6, climbers on wire frames to the base of the eastern elevations of Flowers Wards 2 and 6, as well as additional trees on the eastern side of the Flowers Wards.

### Submission

The current development application has been accompanied by a Heritage Report on Proposed Landscaping, and includes landscape drawings prepared by EDAW/AECOM. The Heritage Report includes historic photographs of the Flowers Ward buildings and notes that the landscape around the Flowers Wards has always been very simple comprising lawns with widely spaced pohutakawas. A bed of cannas existed at the northern end of Flowers Ward 1 at one time. The Heritage Report concludes that the proposed landscape proposal will maintain an essentially open setting for the Flowers Wards and provide a separation between private and public space.

### Approvals

As the site is listed on the State Heritage Register, the proposal generally needs to be the subject of an Integrated Development Application or a prior application under S60 of the Heritage Act. As the NSW Heritage Council is the consent authority for the application, Council cannot issue approval until the Heritage Council has provided conditions of consent. A letter has been received from the NSW Heritage Council advising that it objects to the proposed amendments and does not agree to modify its general terms of approval.

### Comments

The CMP for the site includes a requirement that the open landscape character of the Flowers Ward curtilage be retained. The Section 96 application proposes additional trees and low level hedges. At present there is only one tree in the vicinity of the Flowers Wards. The proposal will considerably increase the number of trees within this section of the historic precinct. The proposal also includes low hedges parallel and adjacent to the roadways and perpendicular to the roadways. **There are concerns that the proposed plantings including additional trees, canna planting beds and low level hedges will considerably alter the historic open landscape setting of the buildings.**

### Recommendations

It is recommended that the proposed additional trees, canna planting beds and low level hedges be refused. There are no heritage objections to the proposed climbers on wire frames to the base of the eastern elevations of Flowers Wards 2 and 6."

### 6.2 Development Engineering Comments

Council's Development Engineer advises that Condition No. 73 was applied to ensure that all landscaping works proposed as part of the adaptive re-use of the Flowers Wards Complex are consistent with the General Terms of Approval (GTA) issued by the NSW Heritage Council for the proposed development. Accordingly, any changes to the landscaping works approved under the original DA must be consistent with the GTA and, if not, be accompanied by commensurate changes in the GTA as authorised by the Heritage Council. In this regard, it is noted that the proposed Section 96 modification to the approved landscaped works, namely, the introduction of new hedges, trees and planting beds in the lawn areas of the Flowers Ward Complex are inconsistent with the GTA. Until changes to the GTA are made and approved by the

Heritage Council to accommodate the applicant's proposed modifications, the proposed modifications are not supported.

### 6.3 Environmental Health and Building Comments

No referral/comments in relation to environmental, health and building issues are required for this application.

### 6.4 External Referral

The Section 96 application was referred to the NSW Heritage Council for comments and a response letter dated 30 January 2009 was received which advised that the Heritage Council objects to the proposed modification of the approved development and does not agree to modify its General Terms of Approval to allow for the proposed landscaping works for the following reasons:

- a) Clause 4.3.4 of the SECP 'Landscaping Layout' states the need to 'preserve and reinstate the significant character of the early landscape layout throughout the Flowers Ward buildings including the open areas of lawn and formal plantings'.
- b) The Sub-heading 'Plantings' contains a specific clause which states that 'Additional garden beds, tree or shrub plantings, hedges, trellised plantings or plants in containers are not recommended for the main lawn areas on the east and west of the wards'
- c) The Flowers Wards buildings as a group were predominantly situated in an open space lawned setting with access roads. It is important to note that the historic road alignments are categorised as being of Exceptional Significance and the curtilage is categorised as High Significance. The Conservation Management Plan (CMP) contains policies that emphasise the need to maintain the integrity of the buildings within their historical spatial setting including the maintenance of the vista lines between the building
- d) Agreement among the Heritage Branch, the developer and their consultants was reached that the areas would remain as communal lawned spaces prior to the approval of DA 207/2008.
- e) The delineating of private open spaces abutting the east and west ward buildings by using fences, ascent hedging, ground cover or any other measures will create an unacceptable impact on the integrity of the spatial setting of the buildings in the historic precinct and is contrary to the policies set out in the CMP and SECP.

Further, the Heritage Council advises that it "does not object to the proposed modification of the development consent to screen the weathered brick foundations with plantings on stainless steel trellis on the eastern façade of Flowers Ward 5 and 6 as shown on drawing L105, Issue C dated 4/11/2008."

## 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  
Environmental Planning and Assessment Act 1979 as amended  
Building Code of Australia.

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## 8. Section 96 Assessment

Under the provisions of Section 96(1A), a consent authority may modify a development consent if it is satisfied that the development to which the development as modified is substantially the same development as the development for which the consent was originally granted; and has considered any submissions made concerning the proposed modifications.

### 8.1 Substantially the same

The development as proposed to be modified will be substantially the same development as that for which consent was originally granted. Notwithstanding this, the proposed changes to the approved development relating to the introduction of new hedges, trees and plantings beds in the lawn areas of the Flowers Wards (that is, excluding the changes relating to the installation of climbers on steel trellises) is not acceptable, primarily, for the reasons set out in the NSW Heritage Council letter dated 30 January 2009 (see Section 6.4 above). Additionally, the proposed new hedges, trees and plantings beds would be inconsistent with relevant provisions and policies in the Conservation Management Plan for the Prince Henry Site and the Specific Element Conservation Policy for the Flowers Ward group; and relevant objectives and controls in the Prince Henry Master Plan/deemed DCP and the Prince Henry DCP.

### 8.2 Consideration of submissions

As indicated in Section 5 above, the application was not required to be advertised/notified.

## 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 Environmental Planning Instruments

#### 9.1.1 Randwick Local Environmental Plan 1998

##### **Clause 12A Zone No 2D (Residential D – Comprehensive Development Zone)**

The proposed modification to the landscaped areas of the Flowers Ward are inconsistent with Objective (b) of the zoning which reads as follows:

“(b) to enable development that is not inconsistent with a master plan adopted under clause 40A”

As indicated in the next point below, the proposed modification will be contrary to the provisions of the Master Plan for the subject site as amended and adopted by Council on 27 May 2003.

##### **Clause 40A Master plans**

A Master Plan for the subject site was adopted by Council on 27 May 2003. The adopted Master Plan is now a Deemed DCP pursuant to amendments to the Environmental Planning and Assessment Act 1979 gazetted on 16 June 2005. On the 18 October 2005, Council adopted amendments to the Deemed DCP subject to variations. The proposal will be inconsistent with the Master Plan/Deemed DCP in that it will be contrary to the Historic Precinct Principle (section 8.6a of the Master Plan) which requires as follows:

## “Historical Precinct

### Landscape Elements:

Heritage character is to be respected through a simple landscape character comprised of small coastal trees, **informal lawn setting with occasional ornamental shrubs** and seasonal colour in defined planters”

### Clause 43 Protection of heritage items, heritage conservation areas and relics

Clause 43 of the RLEP relates to protection of heritage items and heritage conservation areas. The subject site lies within the Prince Henry Site which is located within a conservation area that has been gazetted in the State Heritage Register. A Heritage Impact Assessment has been prepared and lodged with the Section 96 application which has been assessed by Council’s Heritage Planner who has raised concerns that the proposed new hedging, trees and planting beds in the open lawn areas will considerably alter the historic open landscape setting of the Flowers Ward buildings. It is noted also that the HIA submitted with the application, fundamentally, has not provided adequate justification for the proposal’s inconsistency with, and breach of, the landscaping provisions of the Prince Henry CMP and Flowers Ward group SECP as noted by the Heritage Council in its comments (see Section 6.4 above).

### 9.2 Policy Controls

The Prince Henry DCP applies to the developable land within the Prince Henry Site and contains controls that are specifically precinct based. The subject site lies within the Historic Precinct. The proposal to introduce new hedging, trees and planting beds in the lawn areas of the Flowers Ward has been assessed in relation to the DCP and is considered to be inconsistent with relevant objectives/controls of the DCP including, but not limited to, the following:

- (1) it does not comply with the Performance Criteria and Control No. iii in Section 7.6 Historic Precinct of the DCP which requires new developments to be in accordance with the policies contained within (amongst other things) any relevant Specific Elements Conservation Policies (SECP) as indicated by the Heritage Council and Council’s Heritage Planner (see Section 6 above).
- (2) it does not comply with the Performance Criteria and Control No. ix in Section 7.6 Historic Precinct of the DCP which requires that the historical open character of the landscape in the precinct to be retained as indicated by the Heritage Council and Council’s Heritage Planner (see Section 6 above).
- (3) it conflicts with, and does not support, all the Precinct Objectives in Section 7.6 Historic Precinct of the DCP, which are:
  - “to conserve the heritage significance of the Historic Precinct and its setting
  - to conserve significant built and landscape elements while adapting them to suitable new uses
  - “to ensure that new development respects the historic structure and layout of the precinct and relates sympathetically to significant built and landscape elements within the precinct.”
- (4) it conflicts with, and does not support, the general objectives in Section 4.7 Landscaped Area and Open Space of the DCP, specifically dot point 4 *“to ensure that new landscaping does not visually dominate significant built and landscape heritage items, or obscure key views”*.

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### 9.3 Urban Design

The proposed modification to introduce new hedges, trees and planting beds into the lawn areas of the Flowers Wards will adversely affect the heritage significance of the existing Flowers Wards in that the installation of these new landscaped elements will considerably alter the historic open landscape setting of the buildings such that it would detract from this open character.

The Heritage Council and Council's Heritage Planner have raised objections to these changes. The Heritage Council's General Terms of Approval specifically prohibit the installation of the above proposed features.

The proposal also includes the installation of plantings (climbers) on stainless steel trellis to screen the weathered brick foundations along the eastern façade of the Flowers Ward 5 and 6. The Heritage Council has raised no objections to this component of the proposed modifications and, therefore, are considered acceptable.

#### Relationship to City Plan

The relationship with the City Plan is as follows:

- Outcome 5: Excellence in urban design and development.
- Direction 5a: Improved design and sustainability across all development.
- Outcome 11: A healthy/sustainable environment.
- Direction 11a: Council is a leader in fostering sustainable practices.

#### Conclusion

The proposed amendment relating to the installation of new hedging, trees and planting beds in lawn areas of the Flowers Wards is not acceptable as it will result in an adverse impact on the historic open landscape setting of the Flowers Wards buildings such that it would detract from this setting. Specifically, the NSW Heritage Council has noted that this adverse impact will be contrary to the terms of the GTA issued for the original approved development and will not support any amendment to the GTA to accommodate the proposed changes. Furthermore, this amendment will be in conflict with relevant provisions and principles of the Prince Henry Master Plan/Deemed DCP and relevant objectives and precinct specific controls of the Prince Henry DCP. Accordingly, the proposed installation of new hedging, trees and planting beds in the lawn areas of the Flowers Wards is not supported.

However, the proposed amendments relating to the installation of plantings (climbers) on stainless steel trellises on the eastern facades of the Flowers Wards are considered acceptable in screening the existing weathered brick foundations of the buildings. Accordingly, only the Landscape Plan relating to this aspect of the Section 96 application is recommended for inclusion and approval in the amendment to Condition No. 1. Further, to ensure consistency, condition No. 4 is recommended to be modified to allow for these trellis structures/works to be undertaken insofar as these are commensurate with those proposed in this Section 96 application.

#### 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 Application No. 207/2008 relating to 8-18 Brodie Avenue & 8-18 Curie Street & 6-16 Darwin Avenue & 18-20 Darwin Avenue & 22-32 Darwin Avenue, Little Bay, to allow for the installation of plantings (climbers) on stainless steel trellis to screen the weathered brick foundations along the eastern façade of the Flowers Ward 5 and 6 **with the exception** of the installation of hedging, trees and planting beds in lawn areas of the Flowers Wards in the following manner:

Amend Condition No. 1 to read as follows:

1. The development must be implemented substantially in accordance with the plans numbered AR-DA-1-002, AR-DA-2-200, AR-DA-2-400, AR-DA-2-500, AR-DA-2-600, AR-DA-2-700, AR-DA-5-210, AR-DA-5-410, AR-DA-5-510, AR-DA-5-610, AR-DA-5-710, AR-DA-6-001, all Revision 1, stamped received by Council on 3 April 2008, the application form, and on any supporting information received with the application, **as amended by the Section 96(1A) plan, L-105, Issue C, dated 4/11/2008 received by Council on the 20 November 2008 only in so far as they relate to the modifications highlighted on the Section 96 plan and detailed in the Section 96 application**, except as may be amended by the following conditions and the details approved pursuant to the deferred commencement conditions and as may be shown in red on the attached plans:

Amend Condition No. 4 to read as follows:

4. There shall be no hedges, fences, shrubs, trellises (with the exception of the trellises and associated climbers proposed in plan L-105, Issue C, dated 4/11/2008 received by Council on the 20 November 2008), ground cover plants or other fixtures including, but not limited to, accent planting against the walls of the buildings. Details shall be submitted to and approved by Council's Director City Planning, in accordance with Section 80A(2) of the Environmental Planning and Assessment Act 1979 prior to construction certificate being issued for the development.

**Attachment/s:**

Nil

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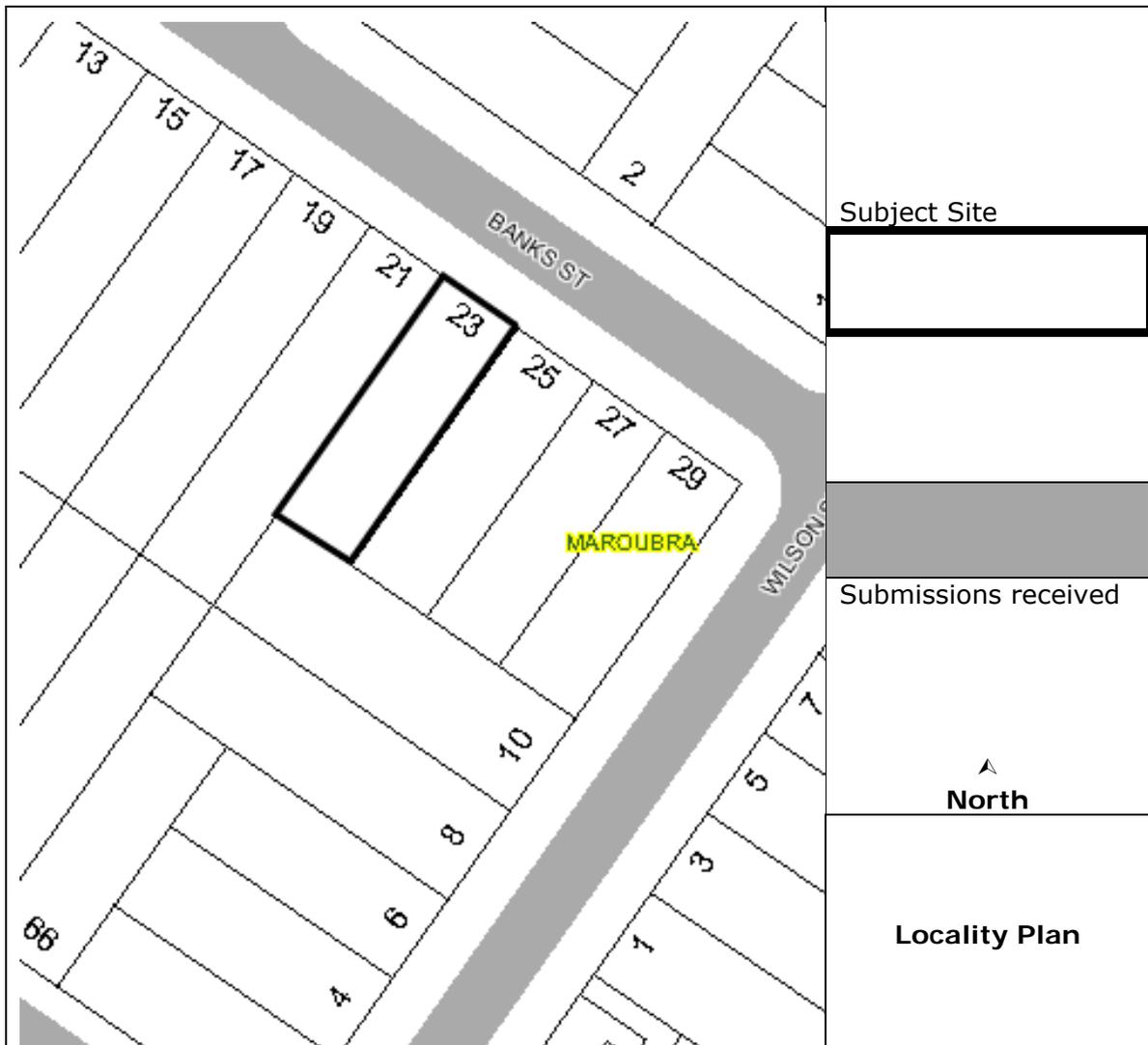
**Development Application Report No.  
D16/09**



**Subject:** 23 Banks Street, Maroubra  
**Folder No:** DA/26/2009  
**Author:** Chahrazad Rahe, Assessment Planner  
**Proposal:** Enclosure of first floor balcony for unit 1  
**Ward:** Central Ward  
**Applicant:** David John & Kim Susan Turner  
**Owner:** David John & Kim Susan Turner

**Summary**  
**Recommendation:** Approval

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**1. Executive Summary**

The Department of Planning requires that applications with greater than 10% variation to development standards be referred to Council for determination; and as this application varies in floor space ratio in excess of 10% it has been referred to the Planning Committee.

The application proposes to enclose the first floor balcony to unit 1 on the first floor level to the attached dual occupancy. Although the proposal has an FSR of 0.7:1 and exceeds the floor space ratio standard of 0.5:1, the proposed enclosure is not considered to result in any unreasonable adverse impacts on the neighbouring properties. The balcony enclosure will not add any significant bulk and scale to the building as it is already partially enclosed and is located within the existing foot print of the building. It should also be noted that the existing building has an FSR of 0.62:1

The proposal is to the side of the building and will not be significantly visible from the streetscape, and therefore will not affect the street presentation of the existing building, the streetscape character and the immediate locality.

The SEPP 1 Objection to the FSR is considered to be well founded and the relevant objectives of the LEP standards are satisfied. The application is recommended for approval subject to conditions.

**2. The Proposal**

The application proposes to enclose the sun court balcony on the first floor level to unit 1 which faces north western to the side of the building, which has an area of 22.2m<sup>2</sup>.

**3. The Subject Site and Surrounding Area**

The subject site is located on the south western side of Banks Street between Wilson Street and Inman Street in Maroubra. The site is currently occupied by an existing two storey dual occupancy, with a ground floor unit and a unit predominantly on the first floor with a portion on the ground floor level. The site has two car spaces; one garage space accessed from the front of the building and the other at the rear through a side driveway. The site has a frontage width of 11.315m, a side boundary depth of 36.58m and an overall site area of 413.5m<sup>2</sup>.

Immediately adjoining the subject property are two storey dwelling houses. The surrounding area is residential in character and the predominant form of development within the locality consists of single and two storey dwelling houses.



**Figure 1:** View of subject and adjoining Buildings.



**Figure 2:** Side view of dwelling where enclosure addition is to be located.

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#### 4. Site History

An application (DA/388/1991) was approved on 8 December 1992, for alterations and additions to the existing dwelling house for convert into a dual occupancy.

An application (DA/576/1997) was approved on 28 November 1997, to construct a garage and pergola structure to the rear of the existing dual occupancy building.

#### 5. Community Consultation

The proposal has been notified in accordance with the DCP – Public Notification. No submissions were received.

#### 6. Relevant Environmental Planning Instruments

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

##### 6.1 Randwick Local Environmental Plan 1998

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

Clause	Requirement	Proposal	Compliance
31 (1): Landscaped Area	40% of the site must be provided as landscaped area.	No changes to the landscaped area.	Complies
31 (3): Landscaped Area	Landscaped areas over podiums or excavated basement areas must not exceed 50% of the landscaped area requirements.	n/a	Complies
32 (1): Floor space ratios	Maximum 0.5:1.	0.7:1	Does not comply – SEPP 1 Objection supplied
33(1): Building heights	Maximum height is 9.5m.	No change to the building’s maximum height.	Complies
33(3): Building wall heights	Maximum height is 7m.	6.7m, no change to the building’s maximum wall height.	Complies

##### 6.2 State Environmental Planning Policy No.1 – Development Standards

The proposal seeks to vary the following development standard contained with Randwick Local Environmental Plan 1998.

###### 6.2.1 SEPP 1 Objection to Clause 32 – Floor Space Ratio

The subject site has an area of 413.5m<sup>2</sup> with an existing FSR of 0.62:1, and the proposal seeks to increase the FSR to 0.7:1, which does not comply with the standard of 0.5:1 for dual occupancies within Zone 2A. To address this non-compliance, the applicant has lodged a SEPP 1 Objection which has been tested

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against the following criteria established in *Winten Property v North Sydney Council* (2001) 130 LGERA 79 as follows:

**1) First, is the planning control in question a development standard?**

Clause 32 of the Randwick Local Environmental Plan 1998 ('the LEP') as amended is expressed as a numerical control and as such is a development standard not a prohibition.

**2) Second, what is the underlying object or purpose of the standard?**

The purpose of the standard is to establish reasonable upper limits for development without compromising the amenity of adjoining developments through a limit on the amount of floor space that can be provided. The proposed enclosure is to the north western side of the building within the existing foot print; and thus the resultant bulk of the proposal will not be significantly visible from the streetscape. The variation has no bearing on the amenity currently enjoyed by neighbouring properties particularly as the existing balcony is within the envelope of the building and is setback 2.325 metres from the side north western boundary.

**3) Third, is compliance with the standard consistent with the aims of the policy, and in particular does compliance with the development standard tend to hinder the attainment of the objects specified in section 5(a)(i) and (ii) of the EP&A Act?**

Compliance with the development standard would not be consistent with the aims of the policy and would tend to hinder the objects specified in the EP&A Act for the orderly and economic use of the land.

**4) Fourth, is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?**

It is considered that strict compliance with the standard would be unnecessary given that the objectives of the standard are met as follows:

- There are no adverse impacts on adjacent properties in respect of privacy, overshadowing or bulk and scale;
- The addition will not be significantly visible from the streetscape, so will not affect streetscape character and the immediate locality;
- The balcony is already partially enclosed on three sides and the forth side has a 1.8m high glass brick wall with a timber beam above at 2.4m;
- The enclosure is setback 2.325 metres and is in line with the existing footprint of the building; and
- The proposal will improve privacy between 21 & 23 Banks Street.

**5) Is the objection well founded?**

The applicant has provided the following arguments in support of the SEPP 1 Objection:

- The bulk and scale of the building does not change as a consequence of the proposed alteration;
- The bulk and scale of the proposal is in keeping and relates to the street and public domain within the surrounding area;
- The proposal will be improving privacy between 21 & 23 Banks Street; and
- The character of the established residential area is maintained; and
- The addition is to the side of the building and will not be significantly visible from the streetscape, and therefore will not affect streetscape character and the immediate locality.

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**Comments**

It is considered that the arguments put forward by the applicant are valid and demonstrate that strict compliance with the development standard would be unnecessary in the circumstances of the case. As such, the objection is considered well founded and the variation to the development standard is supported.

**6.3 State Environment Planning Policy (Building sustainability Index: BASIX) 2004.**

SEPP: BASIX requirements came into force for development applications lodged on or after 1 July 2007, involving:

- alterations and additions valued at \$50,000 or more:  
or
- installation of a swimming pool with a capacity greater than 40,000 litres

The proposal is for a balcony enclosure valued at less than \$50,000, and therefore does not require a BASIX certificate.

**7. Draft Environmental Planning Instruments**

**7.1 Draft Randwick Local environmental Plan 2007:**

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

**8. Policy Controls**

**8.1 Development Control Plan – Dwelling Houses and Attached Dual Occupancies**

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

**Building Setbacks**

	<b>Preferred Solution</b>	<b>Assessment</b>
S1	Front setback is average of adjoining dwellings or 6m.	Not applicable.
S2	No part of the building is closer than 4.5m from rear boundary.	Not applicable.
S3	Side setbacks be 900mm for any part of the building at ground level.	Not applicable.
S3	Side setbacks be 1.5m at second floor level.	The addition is setback 2.325m from the north western side boundary. Complies.
S3	Side setbacks be 3.0m at third floor level.	Not applicable.

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**Visual and Acoustic Privacy**

	<b>Preferred Solution</b>	<b>Assessment</b>
S1	Habitable room windows within 9m of another dwelling’s windows are offset by 45 degrees or fixed obscure glazing below 1.5m above floor level.	The proposal will improve the privacy between the properties. There will be no additional privacy impacts as a result of the enclosure. The new windows are fixed frosted glazing and open hopper highlight windows. Complies.
S1	Direct view into open space of an adjoining dwelling is obscured or screened within 9m and is beyond a 45 degree angle.	Discussed above. The proposal will be improving the privacy between the properties. Complies.
S1	Windows have sill heights of 1.5m or more or fixed obscure glazing below that height.	Discussed above. The proposal will be improving the privacy between the properties. Complies.

**8.2 Section 94A Development Contributions:**

This application is EXEMPT from a levy under Council’s s94A Development Contributions Plan as the estimated cost of works is less than \$100,000.

**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. The application satisfies the relevant objectives and performance requirements of the DCP in that the proposed development will not result in any unreasonable adverse impacts on the amenity of the adjoining dwellings and the character of the locality. The proposal is suitable for the site and therefore recommended for approval.

**Relationship to City Plan**

The relationship with the City Plan is as follows:

Outcome 4: Excellence in urban design and development.

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

**Financial Impact Statement**

There is no direct financial impact for this matter.

**Conclusion**

The proposed alterations and additions satisfy the relevant assessment criteria of the Development Control Plan for Dwellings and Attached Dual Occupancies and will not result in any significant adverse impact upon the amenity of the adjoining properties. The SEPP 1 Objection to the FSR is well founded and the relevant objectives of the LEP standards are satisfied.

**Recommendation**

- A. That the Council support the objection under State Environmental Planning No. 1 (SEPP No.1) in respect to non-compliance with Clauses 32 of the Randwick Local Environmental Plan 1998 (as amended), relating to maximum floor space ratio, on the grounds that the proposed development is consistent with

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the relevant objectives of the clauses and will not adversely affect the amenity of the surrounding locality and that the Department of Planning be advised accordingly.

and

- B. 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/26/2009 for enclose the first floor balcony for unit 1 at 23 Banks Street, Maroubra 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 A-001 DA CC to A-005 DA CC, dated December 2008, and received by Council on the 19 January 2009, the application form and on any supporting information received with the application, except as may be amended by the following conditions and as may be shown in red on the attached plans:
2. The colours, materials and finishes of the external surfaces to the proposed building works are to be compatible with the existing building and adjacent development to maintain the integrity and amenity of the building.

**The following condition is imposed to satisfy relevant requirements of the Sydney Water Corporation.**

3. All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.

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.

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

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

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

4. In all new and upgraded building work, external timber or metal framed and brick veneer walls and roofs are to be provided with insulation (i.e. bulk insulation and a reflective building membrane/reflective sarking/foil insulation), having a minimum total thermal resistance R-value of 3.0 in roofs and 1.5 in external walls. The insulation and reflective building membrane is to be installed in accordance with the relevant requirements of the Building Code of Australia and the manufacturer's details.

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Details of compliance with the requirements for insulation are to be included in the **construction certificate** application.

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

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

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

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

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

6. 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.

7. 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*.

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

A copy of the construction certificate, the approved plans & specifications and development consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.

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

- i) appoint a *Principal Certifying Authority* for the building work; and
- ii) appoint a *principal contractor* for the building work, or in relation to residential building work, obtain an *owner-builder* permit in accordance with the requirements of the Home Building Act 1989, and notify the *Principal Certifying Authority* and Council accordingly in writing; and
- iii) unless the person having the benefit of the consent is the *principal contractor* (i.e. *owner-builder*), notify the *principal contractor* of the

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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.

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

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

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

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

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

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

An Occupation Certificate must not be issued for the development if the

development is inconsistent with the development consent. The requirements of the Environmental Planning & Assessment Act 1979 and conditions of development consent must be satisfied prior to the issuing of an occupation certificate.

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

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

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

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

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

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

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

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

15. 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.*

16. The building is required to be provided with a smoke alarm system complying with Clause 3 of Specification E2.2a of the Building Code of Australia or a smoke detection system complying with Clause 4 of Specification E2.2a of the Building Code of Australia or a combination of a smoke alarm system within

the sole-occupancy units and a smoke detection system in areas not within the sole-occupancy units. The smoke detectors located within the stairway, corridors or the like must be interconnected.

Additional requirements regarding the design and installation of the smoke detection and alarm system may be specified in the construction certificate for the development.

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

17. The demolition of buildings and the removal, storage, handling and disposal of building materials must be carried out in accordance with the following regulations:
  - The requirements and Guidelines of WorkCover NSW
  - Occupational Health and Safety Act 2000
  - Australian Standard 2601 (2001) – Demolition of Structures
  - The Protection of the Environment Operations Act 1997
  - Protection of the Environment Operations (Waste) Regulation 1996
18. Except with the written approval of Council's Manager of Health, Building & Regulatory Services, all building, demolition and associated site works (including site deliveries) must only be carried out between the hours of 7.00am to 5.00pm on Monday to Friday inclusive and between 8.00am to 5.00pm on Saturdays and all building activities are strictly prohibited on Sundays and Public Holidays.
19. 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.
20. A Construction Site Management Plan is to be developed and implemented prior to the commencement of demolition, excavation or building works. The site management plan must include the following measures, as applicable to the type of development:
  - location and construction of protective fencing / hoardings to the perimeter of the site;
  - location of site storage areas/sheds/equipment;
  - location of building materials for construction;
  - provisions for public safety;
  - dust control measures;
  - site access location and construction
  - details of methods of disposal of demolition materials;
  - protective measures for tree preservation;
  - provisions for temporary sanitary facilities;
  - location and size of waste containers/bulk bins;
  - details of proposed sediment and erosion control measures;
  - construction noise and vibration management;
  - construction traffic management details.

The site management measures are to be implemented prior to the commencement of any site works and be maintained throughout the works, to maintain reasonable levels of public health, safety and amenity to the

satisfaction of Council. A copy of the approved Construction Site Management Plan must be maintained on site and be made available to Council officers upon request.

21. Public safety and convenience must be maintained at all times during demolition, excavation and construction works and the following requirements must be complied with:
- a. Building materials, sand, soil, waste materials, construction equipment or other activities must not be placed upon the footpath, roadway or nature strip at any time and the footpath, nature strip and road must be maintained in a clean condition and free from any obstructions, soil and debris at all times.
  - b. Building operations such as brick cutting, washing tools or equipment and mixing mortar are not permitted on public footpaths, roadways, nature strips, in any public place or any location which may lead to the discharge of materials into the stormwater drainage system.
  - c. Bulk bins/waste containers must not be located upon the footpath, roadway or nature strip at any time without the prior written approval of the Council. Applications to place a waste container in a public place can be made to Council's Health Building and Regulatory Services section.
  - d. Any part of Council's road, footway or nature strip which is damaged as a result of the work must be repaired or replaced to Council's satisfaction prior to occupation or finalisation of the development.

#### **ADVISORY MATTERS:**

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

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

- A2 A local approval application must be submitted to and be approved by Council's Building Services section prior to commencing any of the following activities on a footpath, road, nature strip or in any public place:-

- Install or erect any site fencing, hoardings or site structures
- Operate a crane or hoist goods or materials over a footpath or road
- Placement of a waste skip (greater than 3m in length) or any container or other article.

#### **Attachment/s:**

Nil

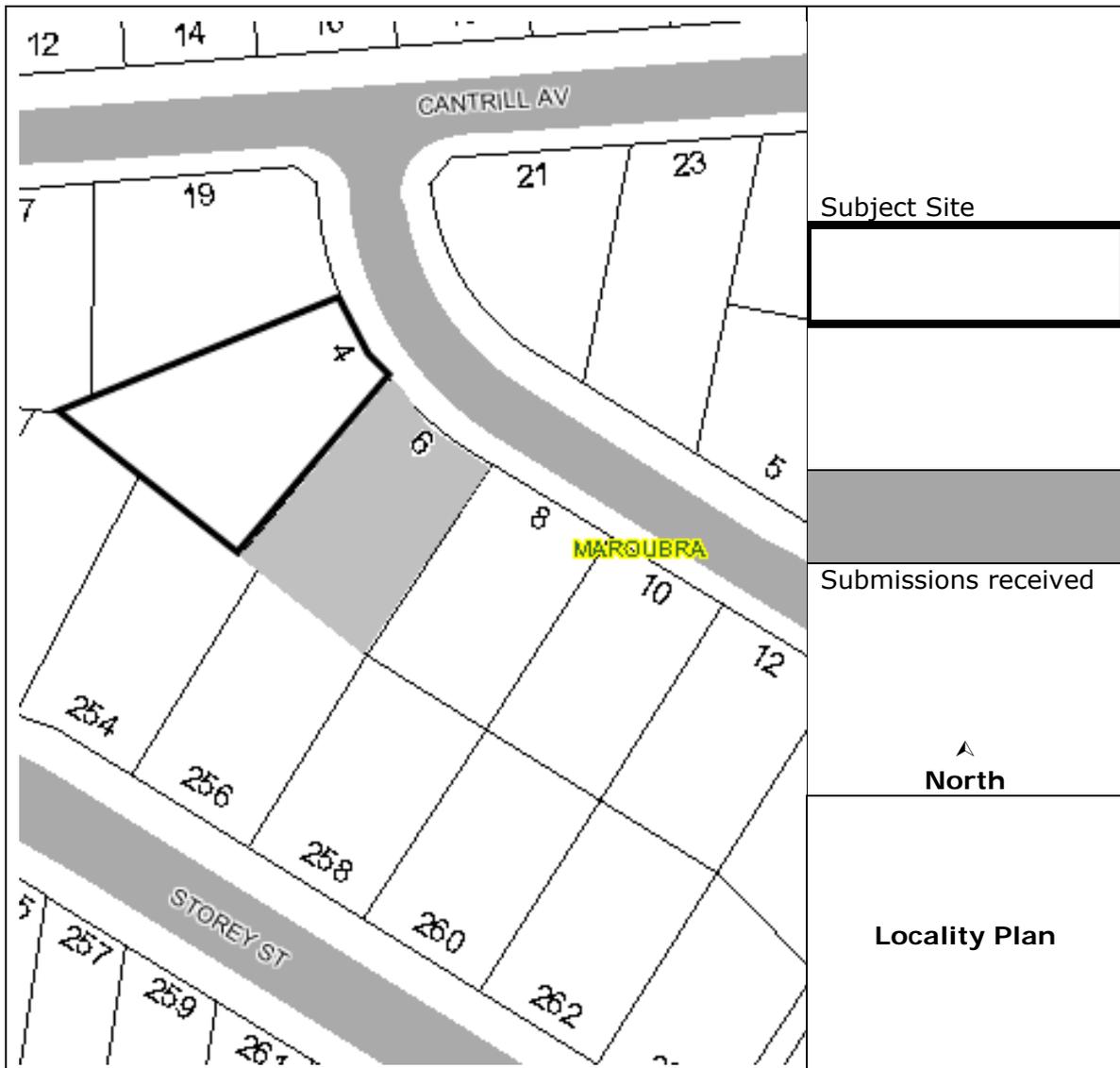
# Development Application Report No. D17/09



**Subject:** 4 Ryan Avenue, Maroubra  
**Folder No:** DA/866/2008  
**Author:** Perry Head, Environmental Planning Officer  
**Proposal:** Alterations and additions to dwelling, including new first floor level to the rear, new boundary fence and new front entry  
**Ward:** Central Ward  
**Applicant:** S & N Angelos  
**Owner:** S & N Angelos

**Summary Recommendation:** Approval

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**1. Executive Summary**

The application is referred to the Planning Committee for determination at the request of Councillors Ted Seng, Scott Nash and John Procopiadis.

The application details alterations and additions including a new first floor level to the rear of the dwelling, a new boundary fence and new entry.

The main issue is the potential impact upon the amenity of the adjoining properties in terms of solar access, privacy and visual bulk and scale.

The application is recommended for approval.

**2. The Proposal**

The application details alterations and additions to the dwelling to provide for an upper level addition to the rear portion of the dwelling comprising a new bedroom, walk in robe and bathroom and rumpus room and an extension of the existing rear balcony to the upper level of the dwelling. The application also includes alterations to the existing front entry to provide for a new entrance, enlarged upper level front balcony and new front fence and return to garage to create a courtyard area. The proposal will provide for 69m<sup>2</sup> of additional floor area to the dwelling.

**3. The Subject Site and Surrounding Area**

The subject site is on the southern side of Ryan Avenue adjacent to the corner of Cantrill Avenue. The site has a frontage of 12.19m, a depth of 31.325m and overall area of 741m<sup>2</sup>. At present on site there is an existing single and two storey dwelling and in ground swimming pool. The locality is residential in nature and is characterised by substantial two storey dwellings on relatively large allotments.

**4. Community Consultation**

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

**4.1. Objections**

<p>Owner/resident of 6 Ryan Avenue, Maroubra</p> <ul style="list-style-type: none"> <li>-the proposed additions will block their view.</li> <li>-the proposed additions will block sunlight.</li> <li>-the proposed additions will compromise their privacy.</li> </ul>	<p>The view from the rear of the objector’s property is across the subject property and is a district view towards the south and west. The view alone is not regarded as having any significant value.</p> <p>There will be additional overshadowing to the adjoining property, however the extent of solar access complies with the preferred solution of the DCP.</p> <p>It is not considered that the proposed addition to the rear of the dwelling will result in any significant loss of privacy to the adjoining property as the new windows are to a bedroom and walk in robe and the window to the stair is of highlight style. A condition is also included in the recommendation requiring the new bedroom and walk in robe windows to the fixed and obscured glazing to a height of 1.5m above floor level.</p> <p>It should be noted that the proposal as originally submitted has been amended to reduce the height of the wall to the eastern elevation by 400mm which will reduce the extent of wall as viewed from the adjoining property.</p>
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**5. Technical Officers Comments**

The application has been referred to Council’s Development Engineers for consideration and comments and conditions have been providing for inclusion with any consent granted.

**6. Relevant Environmental Planning Instruments**

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

**Randwick Local Environmental Plan 1998**

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

**7. Environmental Assessment**

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

**7.1 DCP – Dwelling Houses & Attached Dual Occupancies.-**

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

**Floor Area**

	<b>Preferred Solution</b>	<b>Assessment</b>
S1	The preferred solution for an allotment of this size is a maximum floor space ratio of (Site area 741m <sup>2</sup> ) maximum FSR 0.5:1	The proposal has an FSR of 0.53:1. Does not comply, refer to assessment comments below.  The floor area of the dwelling exceeds the preferred solution of the DCP, however in this instance there are no major objections as the resultant bulk and scale of the dwelling will not be out of character with the established nature of the locality which include a number of very substantial dwellings of much larger floor area. The bulk and scale of the proposal as viewed from No. 6 Ryan Avenue has also been reduced by the reduction in height of the eastern elevation and greater articulation of the façade with the increased size of the windows. Therefore whilst the preferred solution is not satisfied the objectives and performance requirements of the DCP are complied with.

**Height, Form & Materials**

	<b>Preferred Solution</b>	<b>Assessment</b>
S1	External wall height of the building not exceed 7m	Maximum 6.7m. Complies.
P1	Front setback average of adjoining dwellings or 6m	The proposal has a front set back of 6.8m. Complies.

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	<b>Preferred Solution</b>	<b>Assessment</b>
P2	Rear boundary setback at least 4.5m	<p>The proposal has a rear set back of 3.75m. Does not comply, refer to assessment comments below.</p> <p>The upper floor extension maintains the existing rear setback of the existing ground floor of the dwelling. Due to the lot configuration and siting of the existing dwelling on the site, the private open space of the subject dwelling is provided to the east, where a large area exists for recreational use. An increased setback of 0.75m to comply with the 4.5m preferred solution would not significantly reduce impacts to any adjoining properties. The length of the proposed rear wall to the upper floor addition is relatively small in proportion to the length of the rear boundary and complies with the wall height requirement.</p>
P3	Side setbacks be 1.5m at second floor level.	<p>The proposal has a side setbacks of 1100mm. Does not comply</p> <p>The new upper level does not satisfy the preferred solution setback, however the setback maintains the existing side boundary setback of both the ground and existing upper level. The proposed setback does not result in any significant adverse impacts upon the amenity of the adjoining properties and will maintain reasonable access to light and fresh air. Similarly, because of the separation between the rear of the dwelling and those directly behind in Storey Street being in excess of 18m, the rear boundary setback will not have any significant impact upon the amenity of the properties at rear. The apparent scale of the addition as viewed from No. 6 Ryan Ave is also minimised by the proposed skillion roof.</p>
	Privacy	<p>The proposed upper level subject to conditions requiring obscuring of windows will not result in any significant loss of privacy to the adjoining properties in that the new windows in the eastern side elevation serve the new bedroom and walk in robe and the window to the stairwell is of high light style.</p>

	<b>Preferred Solution</b>	<b>Assessment</b>
	Fencing	The new front fence to the property is of solid rendered and painted masonry and varies in height from 1320mm and 1500mm. The style and height of the front fence is consistent with the established fencing within the immediate locality which complies with the objectives and performance requirements of the DCP
	Solar Access and Energy	New dwellings comply with 3.5 stars on the NatHERS.
		Private open space receive at least 3 hours sunlight 9am - 3pm on 21 June. No reduction to sunlight to private open space within the north western portion of the site.
	North-facing living areas receive at least 3 hrs sunlight 9am - 3pm 21 June.	Complies
	Solar access to existing or future solar collectors on adjacent buildings is maintained 9am - 3pm.	No impact to solar collectors
	North-facing windows to living areas of neighbouring dwellings receive at least 3 hours sunlight 9am - 3pm 21 June, or not further reduced.	No impact to north facing living room windows
	Principal outdoor recreation space of neighbouring dwellings receive at least 3 hours sunlight 9am- 3pm 21 June, or not further reduced.	The existing level of sunlight within the principal outdoor recreation space to the adjoining properties maintains the minimum of 3 hours during the period between 9.00am and 3.00pm on 21 <sup>st</sup> June.

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**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.

**Conclusion**

It is recommended that the development application be approved.

**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/866/2008 for alterations and additions to dwelling, including new first floor level, new boundary fence and new front entry 4 Ryan Avenue, Maroubra 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 db113-1, sheets 2 & 3 revision A, dated 2/2/09 and received by Council on the 5<sup>th</sup> February 2009, the application form and on any supporting information received with the application, except as may be amended by the following conditions and as may be shown in red on the attached plans:
2. The colours, materials and finishes of the external surfaces to the building are to be compatible with the adjacent development to maintain the integrity and amenity of the building and the streetscape.

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

3. Metal roof sheeting is to be painted or colour bonded to minimise reflection and to be sympathetic and compatible with the building and surrounding environment.
4. To maintain a reasonable degree of privacy to the adjoining property at No. 6 Ryan Avenue the windows to the bedroom and walk in robe are to be of fixed obscured glazing to a height of 1.5m above floor level.

**The following condition is imposed to satisfy relevant requirements of the Sydney Water Corporation.**

5. All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.

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.

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

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

**The following condition is applied to meet additional demands for public facilities;**

6. 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	\$ 145 000	0.5%	\$ 725.00

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](http://www.randwick.nsw.gov.au).

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

7. In accordance with Section 80A (11) of the Environmental Planning and Assessment Act 1979 and Clause 97A of the Environmental Planning and Assessment Regulation 2000, it is a prescribed condition that all of the required commitments listed in the relevant BASIX Certificate for this development are fulfilled.
8. In accordance with the provisions of the Environmental Planning & Assessment Regulation 2000, a relevant BASIX Certificate and associated documentation must be submitted to the Certifying Authority with the Construction Certificate application for this development.

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

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

9. The following provisions are to be implemented in accordance with the relevant BASIX Certificate and details are to be included in the Construction Certificate documentation (as applicable), to the satisfaction of the Certifying Authority:
  - Stormwater management (i.e. rainwater tanks)
  - Water efficiency (i.e. triple A rated taps and showers, dual flush toilets and water re-use)
  - Landscaping provisions
  - Thermal comfort (i.e. construction materials, glazing and insulation)
  - Energy efficiency (i.e. cooling & heating provisions and hot water systems)
10. In accordance with Clause 154B of the Environmental Planning & Assessment Regulation 2000, a Certifying Authority must not issue a final Occupation Certificate for this development, unless it is satisfied that each of the required BASIX commitments have been fulfilled.

Relevant documentary evidence of compliance with the BASIX commitments is

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to be forwarded to the Council upon issuing the final Occupation Certificate.

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

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

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

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

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

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

13. 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.

14. 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*.

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

A copy of the construction certificate, the approved plans & specifications and development consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.

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

- i) appoint a *Principal Certifying Authority* for the building work; and
- ii) appoint a *principal contractor* for the building work, or in relation to residential building work, obtain an *owner-builder* permit in accordance

with the requirements of the Home Building Act 1989, and notify the *Principal Certifying Authority* and Council accordingly in writing; and

- iii) unless the person having the benefit of the consent is the *principal contractor* (i.e. *owner-builder*), notify the *principal contractor* of the required *critical stage inspections* and other inspections to be carried out, as specified by the *Principal Certifying Authority*; and
- iv) give at least two days notice to the Council, in writing, of the person's intention to commence building works.

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

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

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

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

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

18. 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, or *owner-builder* permit details (as applicable);
  - name, address and telephone number of the *Principal Certifying Authority*; and
  - a statement stating that "unauthorised entry to the work site is prohibited".
19. An **Occupation Certificate** must be obtained from the Principal Certifying Authority **prior to any occupation of the building work** encompassed in

this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the Environmental Planning & Assessment Act 1979.

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

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

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

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

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

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

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

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

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

22. 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

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0.35% of the cost of the works.

23. 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.

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

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

24. The demolition of buildings and the removal, storage, handling and disposal of building materials must be carried out in accordance with the following regulations:
- The requirements and Guidelines of WorkCover NSW
  - Occupational Health and Safety Act 2000
  - Australian Standard 2601 (2001) – Demolition of Structures
  - The Protection of the Environment Operations Act 1997
  - Protection of the Environment Operations (Waste) Regulation 1996.
25. All excavations and backfilling associated with the erection or demolition of a building must be executed safely in accordance with appropriate professional standards and excavations are to be properly guarded and supported to prevent them from being dangerous to life, property or buildings.
26. The adjoining land and buildings located upon the adjoining land must be adequately supported at all times.

If an excavation associated with the erection or demolition of a building extends below the level of the base of the footings of any building located on an adjoining allotment of land, the person causing the excavation must:

- preserve and protect the building /s on the adjoining land from damage; and
- effectively support the excavation and building; and
- at least seven (7) days before excavating below the level of the base of the footings of a building on an adjoining allotment of land (including a public road or public place), give notice of the intention and particulars

of the works to the owner of the adjoining land.

**Notes**

- This consent and condition does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is proposed to be carried out upon any adjoining or supported land, the principal contractor or owner-builder must obtain:
  - a) the consent of the owners of such adjoining or supported land to trespass or encroach, or
  - b) an access order under the Access to Neighbouring Land Act 2000, or
  - c) an easement under section 88K of the Conveyancing Act 1919, or
  - d) an easement under section 40 of the Land & Environment Court Act 1979, as appropriate.
- Section 177 of the Conveyancing Act 1919 creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).

27. Except with the written approval of Council’s Manager of Health, Building & Regulatory Services, all building, demolition and associated site works (including site deliveries) must only be carried out between the hours of 7.00am to 5.00pm on Monday to Friday inclusive and between 8.00am to 5.00pm on Saturdays and all building activities are strictly prohibited on Sundays and Public Holidays.
28. 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.
29. Public safety must be maintained at all times and public access to the site and building works, materials and equipment on the site is to be restricted, when work is not in progress or the site is unoccupied.

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

30. A Construction Site Management Plan is to be submitted to and approved by the principal certifying authority **prior to the commencement** of demolition, excavation or building works. The site management plan must include the following measures, **as applicable** to the type of development:
  - location and construction of protective fencing / hoardings to the perimeter of the site;
  - location of site storage areas/sheds/equipment;
  - location of building materials for construction;
  - provisions for public safety;

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- dust control measures;
- site access location and construction
- details of methods of disposal of demolition materials;
- protective measures for tree preservation;
- provisions for temporary sanitary facilities;
- location and size of waste containers/bulk bins;
- details of proposed sediment and erosion control measures;
- construction noise and vibration management;
- construction traffic management provisions.

The site management measures are to be implemented prior to the commencement of any site works and be maintained throughout the works, to maintain adequate levels of public health and safety. A copy of the approved Construction Site Management Plan must be maintained on site and be made available to Council officers upon request.

31. During construction stages, sediment laden stormwater run-off shall be controlled using the sediment control measures outlined in the manual for Managing Urban Stormwater – Soils and Construction, published by the NSW Department of Housing.

Details of the proposed sediment control measures are to be detailed in the Construction Site Management Plan which must be submitted to and approved by the principal certifying authority **prior to the commencement of any site works.**

32. Public safety and convenience must be maintained at all times during demolition, excavation and construction works and the following requirements must be complied with:
- a. Building materials, sand, soil, waste materials, construction equipment or other activities must not be placed upon the footpath, roadway or nature strip at any time and the footpath, nature strip and road must be maintained in a clean condition and free from any obstructions, soil and debris at all times.
  - b. Building operations such as brick cutting, washing tools or equipment and mixing mortar are not permitted on public footpaths, roadways, nature strips, in any public place or any location which may lead to the discharge of materials into the stormwater drainage system.
  - c. Bulk bins/waste containers must not be located upon the footpath, roadway or nature strip at any time without the prior written approval of the Council. Applications to place a waste container in a public place can be made to Council's Health Building and Regulatory Services section.
  - d. Any part of Council's road, footway or nature strip which is damaged as a result of the work must be repaired or replaced to Council's satisfaction prior to occupation or finalisation of the development.

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

33. Certificate of Adequacy supplied by a *professional engineer* shall be submitted to the certifying authority (*and the Council, if the Council is not the certifying authority*) **prior to a construction certificate being issued** for the development, certifying the structural adequacy of the existing structure to

support the additional storey/upper floor addition.

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

34. 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:**

35. A public utility impact assessment must be carried out on all public utility services on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the development/building works and include relevant information from public utility authorities and exploratory trenching or pot-holing, if necessary, to determine the position and level of service.
36. The applicant must meet the full cost for telecommunication companies, gas providers, Energy Australia and Sydney Water to adjust/repair/relocate their services as required. The applicant must make the necessary arrangements with the service authority.

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

37. Detailed drainage plans shall be submitted to and approved by the certifying authority prior to the issue of a construction certificate. The drainage plans shall demonstrate compliance with the conditions of this development approval.
38. Stormwater runoff from the site shall be discharged either:
- To the kerb and gutter along the site frontage in Ryan Avenue by gravity (without the use of a charged system); OR
  - Through private drainage easements to Council's kerb and gutter (or underground drainage system); OR
  - To a separate suitably sized infiltration area. As a guide, infiltration areas shall be sized based on a minimum requirement of 1 m<sup>2</sup> of infiltration area (together with 1 m<sup>3</sup> of storage volume) for every 20 m<sup>2</sup> of roof/impervious area on the site. Infiltration systems shall be located a minimum 2.1 metres from any side or rear boundary and 3 metres from adjoining structures.

Prior to the use of infiltration in areas in rear draining lots (where there is no formal overland escape route to Council's kerb and gutter/street drainage system, a geotechnical investigation will be required to determine whether the ground is suitable for infiltration. Should rock and/or a water table be encountered within two metres of the proposed base of the infiltration pit, or the ground conditions comprise low permeability soils such as clay, infiltration may not be appropriate.

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NOTE: Should the applicant be unable to obtain a private drainage easement over properties to the rear of the development site (to facilitate stormwater discharge in accordance with option b)); and ground conditions preclude the use of infiltration (Option c), consideration may be given to the use of a charged system or a pump out system to drain that portion of the site that cannot be drained by gravity to the kerb and gutter at the front of the property.

39. Should a charged system be required to drain any portion of the site, the charged system must be designed with suitable clear-outs/inspection points at pipe bends and junctions.
40. Should a pump system be required to drain any portion of the site the system must be designed with a minimum of two pumps being installed, connected in parallel (with each pump capable of discharging at the required discharge rate) and connected to a control board so that each pump will operate alternatively. The pump wet well shall be sized for the 1 in 100 year, 2 hour storm assuming both pumps are not working.

The pump system must also be designed and installed strictly in accordance with Randwick City Council's Stormwater Code.

41. All pumps out water must pass through a stilling pit prior to being discharged by gravity to the kerb and gutter.

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

42. That part of the nature-strip upon Council's footway which is damaged during the construction of the proposed works shall be excavated to a depth of 150mm, backfilled with topsoil equivalent with 'Organic Garden Mix' as supplied by Australian Native Landscapes, and re-turfed with Kikuyu Turf or similar. Such works shall be installed prior to the issue of a final Occupation Certificate.

### **Tree Management**

43. Approval is granted for removal of the following trees, subject to the planting of 1 x 25 litre/300mm (pot/bag size at the time of planting) broad canopied replacement trees (not a palm) within the site. The species selected shall be one which will attain a minimum height of between 4-7 metres in height, with the nominated species and its proposed location to be clearly shown on the construction certificate plans:
  - a) Two *Syagrus romanzoffianum* (Cocos Palms), in the front yard, on the northern side of the existing driveway, and one *Olea europaea* (European Olive), also in the front yard, against the northeast corner of the existing dwelling, as all are exempt from the provisions of Council's Tree Preservation Order (TPO);
  - b) One *Archontophoenix cunninghamiana* (Bangalow Palm), also in the front yard, close to the northern edge of the existing dwelling, in order to avoid the likely conflict between this palm and the ground floor entry and first floor balcony works during the course of construction;
  - c) Three *Syagrus romanzoffianum* (Cocos Palms), in the rear yard, around the perimeter of the pool, as despite not being affected by the proposed works, this species is recognised as undesirable due to its low landscape

value, which is why it is exempt from Council's TPO.

**ADVISORY MATTERS:**

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

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

- A2 A local approval application must be submitted to and be approved by Council's Building Services section prior to commencing any of the following activities on a footpath, road, nature strip or in any public place:-

- Install or erect any site fencing, hoardings or site structures
- Operate a crane or hoist goods or materials over a footpath or road
- Placement of a waste skip (greater than 3m in length) or any container or other article.

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

**Attachment/s:**

Nil

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## Miscellaneous Report No. M3/09



**Subject:** 15 Peters Place, Maroubra  
**Folder No:** DA/69/2006/A  
**Author:** Kerry Kyriacou, Manager Development Assessment

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### Introduction

Mr Stuart Harding of Willana & Associates (planning consultant) was engaged by Council to assess a Section 96 application for the above site, as it was submitted by a Council employee. The Section 96 application generally proposes the following amendments to the consent: an extension to the ground floor level and garage, provision of a doorway on the side of the garage, provision of a raised planter, deletion of an eave over a clerestory and alteration of two sliding doors (one on the front elevation and one on the rear elevation) to windows. Mr Harding's assessment report (attached) raised a concern with the positioning of the garage onto the front boundary of the subject site that was at odds with the comments provided by Council's Development Engineer who raised no objection with the siting of the garage. In view of the differing opinion of the experts, Mr Gerard Turrisi of GAT & Associates was engaged to undertake a peer review of the assessment of the application.

The peer review supports the recommendation of the Mr Harding except for the requirement to have the garage setback a metre from the front boundary. Mr Turrisi supports the proposed extension of the approved garage up to the front boundary and does not consider the proposed change to the garage will have an impact on the character of the local streetscape or result in an unsafe situation with regard to vehicle and pedestrian conflict /safety.

### Peer Review

The following comments are provided by Gerard Turrisi of GAT & Associates:

I refer to your request to provide a peer review of the recommendation associated with the above section 96 modification.

I have reviewed Council's files, the consultant town planners report and carried out an inspection of the site and surrounding properties. Based on this review I provide the following comments.

I support the recommendation of the consultant town planner with the exception to the modification sought to the proposed garage.

Under the original approval issued by Council, the location of the garage had a setback of 1 metre from the street boundary. The approval also retained to the street boundary a high fence, being 1.8 metres in height. It is also noted that the adjoining property at No 13 also has a fence at the street boundary of at least 1.8 metres in height, which adjoins the proposed garage.

There are clearly two issues associated with the modification to alter the garage location. The first relates to vehicle and pedestrian conflict/safety and the second relates to the streetscape.

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In view of the location of the high fence to No 13 and on the subject site (No 15), I do not believe that there will be a change to sightlines having regard to the existing and approved situations, by extending the garage by 1 metre.

Therefore, I am satisfied there will be no impact. This view is also supported by Council's engineers.

Although I understand the consultant town planners concerns regarding the garages interface to the street and the application of Council's zone objectives and controls, one also needs to have regard to those controls within the context of the specific streetscape.

Peters Place is diverse in its built form. There is no specific character and the street is generally lined with high fences, garages and carport structures. In fact, it is these elements that dominant the streetscape. Although the consultant town planner acknowledges examples of other garages that have a setback off the street boundary there are also 5 other garages in the street that are also built to the street boundary.

Having regard to this fact and the high street fences that dominant Peters Place, I am not of the same opinion that the proposed change to the garage will have an impact on the streetscape in this instance.

Accordingly, I support the proposal as made by the applicant and as supported by Council's engineers.

### Conclusion

On the basis that the proposed modification to the garage is supported by Mr Turrisi and Council's Development Engineer, it is therefore considered appropriate that the subject application be approved without the requirement for the garage to be setback a metre from the front boundary.

### 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. 0069/2006 relating to 15 Peters Place, Maroubra in the following manner:

#### Amend Condition No. 1 to read as following:

1. The development must be implemented substantially in accordance with the amended plans numbered Sheets 1,1b,2,3,4,5,6,6.1,6(section), 7.1,7.2,7.3,8 and 9 and stamped as received by Council on 26 July 2006, the application form and on any supporting information received with the application, as amended by the *Section 96 plans received by Council on 16 October, 2008, only in so far as they relate to the modifications highlighted on the Section 96 plans and detailed in the Section 96 "A" application*, except as may be amended by the following conditions:

#### Add the following new condition:

50. The raised planter between the eastern side of the deck and common

boundary must:

- Be located wholly on the subject site,
- Be at or below the height of the top of the adjacent colourbond boundary fencing
- Be non-trafficable.
- Consist of screen planting along its length that will be maintained in a healthy condition and have a height at maturity consistent with the top of the adjacent lattice screen located above the colourbond boundary fencing.

Details shall be indicated on plans accompanying an application for a Construction Certificate to the satisfaction of Council.

**Attachment/s:**

1. REPORT 15 Peters Place, Maroubra

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# Development Application Report No.



**Subject:** 15 Peters Place, Maroubra (report by Stuart Harding, Planning Consultant)

**Folder No:** DA/69/2006/A

**Author:** Stuart Harding, Planning Consultant

**Proposal:** Section 96 Modification to extend the garage 1m and add a new side door, enclose the existing front roofed verandah area to increase the size of bedroom 1 and replace the front sliding door with a window, provide a raised planter box to rear, retain existing bedrooms 2 & 3 and existing window openings but minimise their size; and delete the eaves over clerestory roof.

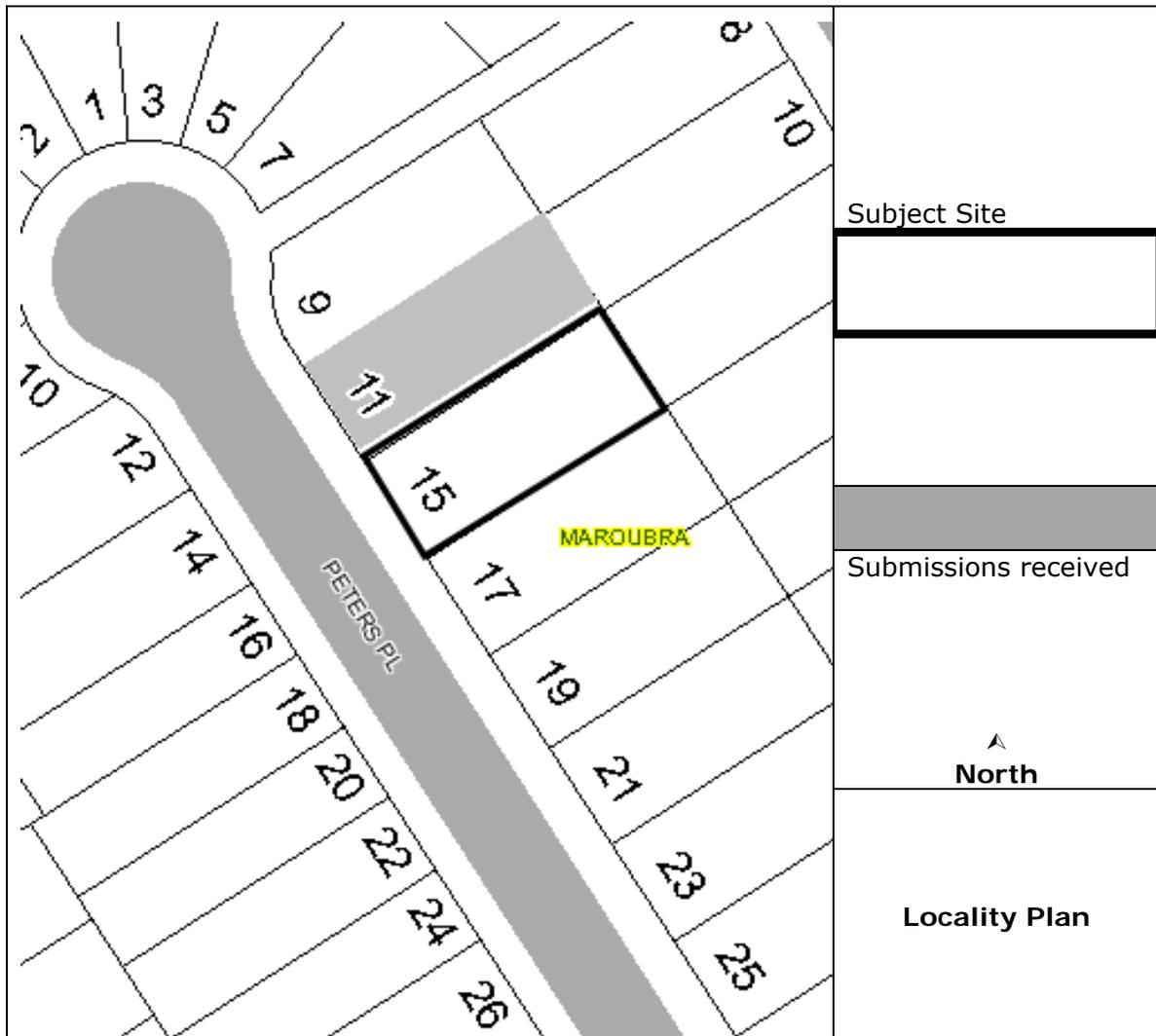
**Ward:** South Ward

**Applicant:** Mr G P Read

**Owner:** Mr G P Read & Ms E Langley

**Summary Recommendation:** Approval

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## 1. Executive Summary

This is a planning report relating to a Section 96(2) application to amend the consent of Development Application No. 0069/2006 for alterations and additions to the existing single storey dwelling house at 15 Peters Place, Maroubra. The matter is referred to the Planning Committee Meeting as one of the owners of the subject site is a Council staff member.

The consent of Development Application No. 0069/2006 was granted on 18 September 2006 and permits a first floor addition, modifications to the ground floor internal layout, conversion of a carport to a single garage, replacement of the existing rear deck with a new larger deck and installation of a swimming pool.

The Section 96 application generally proposes the following amendments to the consent: an extension to the ground floor level and garage, provision of a doorway on the side of the garage, provision of a raised planter, deletion of an eave over a clerestory and alteration of two sliding doors (one on the front elevation and one on the rear elevation) to windows.

The subject application was submitted on the 16 October 2008 and subsequently notified for a 14 day period. One objection has been received.

The assessment of the proposed amendments indicates they are supportable, except for the extension to the garage given the resultant streetscape interface and impact on sight lines. The extension will be at odds with Objective C of the Residential zone of the land listed under RLEP 1998, Objective B of the Residential zone of the land listed under draft RLEP 2008, as well as the requirements for 'Building Setbacks' and 'Garages & Driveways' of the *DCP for Dwelling Houses and Attached Dual Occupancies 2000*.

In the absence of appropriate details of the raised planter, a condition is recommended to require the height of the planter to be at or below the height of the top of the adjacent colourbond boundary fencing; the planter to be non-trafficable and located wholly on the subject site; the planter to consist of screen planting along its length that will be maintained in a healthy condition and have a height at maturity consistent with the top of the adjacent lattice screen located above the boundary colourbond fencing.

## 2. The Proposal

This application proposes to amend Development Consent No. 0069/2006 to allow for the following:

- Extension of the approved garage up to the front boundary and provision of a new doorway on the side elevation;
- Extension to Bedroom 1 by relocating the front elevation further forward to enclose the existing roofed verandah;
- Alteration of approved front sliding doors of Bedroom1 to a window and provision of cladding around window;
- Change to approved Bedroom 2 to provide Bedrooms 2 and 3 on the ground floor level (as per existing situation);
- Change of approved sliding door opening on rear elevation to two windows, one for Bedroom 2 and one for Bedroom3, (similar to the existing situation);
- Provision of a raised planter between the side of the rear deck and common side boundary; and
- Removal of 600mm wide eave over the clerestory roof.

The extension of Bedroom 1 will result in an increase in gross floor area by approximately 5.25m<sup>2</sup>. The approved garage will be lengthened from 6.894m to 7.894m. The deletion of the eaves will reduce the maximum RL of the approved dwelling from RL 39.28 to RL 38.9.

### 3. The Subject Site and Surrounding Area

The subject site, Lot 244 in DP 230712, has a total site area of 301m<sup>2</sup> (as per submitted survey). It is rectangular in shape, with a 10.975m frontage to Peters Place and a depth of 27.43m. The site currently consists of a single storey dwelling house, built in the early 1970's, mainly of brick construction with a gabled tiled roof. The dwelling extends up to both side boundaries and shares a common wall with the dwellings on neighbouring properties, 17 and 11 Peters Place.

The area within the front building line setback consists of some lawn area with surrounding planting, as well as some ancillary structures. A carport structure is attached to the front southern corner of the dwelling. At this corner of the dwelling is a single garage. Vehicular access is from Peter Place via concrete driveway strips located adjacent to the side boundary. A verandah extends along the remainder of the front elevation. The main pedestrian entry into the site consists of a concrete footway that extends from the public footpath to the veranda. Around the front yard, along the front and side boundaries, is a 1.8m high brick screen wall.

Attached to the rear of the dwelling is a raised timber deck. A set of steps provide access from the dwelling onto the deck and another set of steps provide access from the deck into the rear garden. Boundary fencing around the rear yard consists of colour bond fencing. The fencing along the southeast side has a height of 1.8m and a 0.8m high lattice screen above. The fencing along the northwest side has a height of 1.5m and a 0.8m lattice screen above. The fencing along the rear boundary has a height of 1.5m.

There are two easements that affect the site. They are easements for support and relate to the walls along the common side boundaries.

The existing ground level has a distinct slope in part. It is relatively flat within the front building line setback but then slopes under the dwelling to the rear yard. The dwelling is slightly raised above the ground level along its front elevation (approximately 0.2m by the footings) and more considerably raised above the ground level along its rear elevation (approximately 1.6m).

Peters Place is a cul-de-sac, with an almost north-south orientation and fall in a northerly direction along its length. It is located to the southern end of Maroubra, behind Malabar Road. The subject site is located on the most eastern side of Peters Place. It is adjoined by the three residential properties that are listed below:

- 17 Peters Place, Maroubra adjoins the southeast side boundary;
- 11 Peters Place adjoins the northwest side boundary; and
- 12 Meagher Ave adjoins the rear boundary.

The dwellings of 17 and 11 Peter Place are attached to the sides of the dwelling on the subject site. They are similar in appearance to the dwelling on the subject site having a tiled and gabled roof and face brick walls. The dwellings, either as a group and individually, have no significant architectural merit worthy of retention. They are not identified as being heritage items or within a conservation area.

The dwelling of 17 Peters Place is located on a slightly higher land level given the fall of the street. Its maximum ridge aligns in location with that of the dwelling on the subject site but is higher. The dwelling of 17 Peters Place has a ridge of RL of 37.21,

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whereas the dwelling on the subject has a ridge of RL of 36.61. The front and rear building lines of the dwelling of 17 Peters Place align with those of the dwelling on the subject site. The ridge height of the dwelling of 11 Peters Place is lower, at RL 35.97.

Other properties in Peters Place are both single and two storey in character. The southern side of the street generally consists of two storey dwelling houses with gabled roof forms.

#### 4. Site History

Development Application No. 0069/2006 was submitted to Council on the 8 February 2008. It was subject to amended plans during the assessment process to address design issues raised by Council's assessing officer. The amended plans were subsequently notified to neighbouring properties, which generated one submission.

The amended application proposed the alterations and additions listed below.

- A first floor addition to the rear of the existing single storey dwelling to accommodate a TV room, a study and two bedrooms, each with an ensuite and a Juliet balcony.
- Demolition of the front porch and carport.
- Erection of a single garage, attached to the dwelling.
- Provision of a deck and verandah in the front yard.
- Demolition of the existing front concrete pathway and 1.8m high screen wall around the front yard (along the front and side boundaries).
- Erection of a new front gate and fencing along the northwest side boundary and part of the front boundary.
- Change to the internal layout including altering the existing single garage to a laundry and kitchen and the demolition of some internal walls.
- Provision of new aluminium framed windows on the front and rear elevation, at ground level.
- Demolition of the existing rear deck and erection of a new larger timber deck.
- Installation of a fibreglass swimming pool to the side of the deck, including a safety fencing and a lockable gate.
- Installation of skylights in the front roof portion, one skylight in the new garage roof and four skylights in the rear first floor roof portion and one skylight in the rear ground level roof portion.

The development application was reported to the Health, Building and Planning Committee meeting held on the 12 September 2006. The Committee resolved to approve the application subject to the recommended conditions.

#### 5. Community Consultation

The Section 96 application has been notified to adjoining and neighbouring land owners for a period of 14 days from 22 October until 5 November 2008.

One submission was received during the notification period, from the owner of No. 11 Peters Place. The issues raised are addressed below.

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## 5.1 Objections

Owner of 11 Peters Place, Maroubra	
Objection	Comment
<p>The proposed building is too bulky and gives the appearance of a three storey building. The front elevation fails to address the streetscape and is not in harmony with the existing character. The proposed extension of the bedroom and the extension of the garage will increase the bulk of the whole structure and worsen the impact.</p> <p>The proposed garage projects outside the building line and has a roof form which is of entirely different character to the proposed building and overall character. The extension will have a negative impact on the overall character of Peters Place</p>	<p>The visual impact resulting from the increase to the size of Bedroom 1 will be satisfactory given it will not significantly alter the approved bulk, building lines / envelope as it will extend under a covered veranda area; it will result in a minimal increase in gross floor area; it will not be distinct from the public domain given its setback from the street frontage, behind a solid, 1.8m high front fence.</p> <p>Any measures that will reduce the dominance of the garage are supported. The extension is not supported based on the discussion below.</p> <ul style="list-style-type: none"> <li>• The garage initially proposed under Development Application No. 0069/2006 was altered to minimise its dominant impact on the streetscape. The proposed extension will cumulatively add to the size of the garage and bring it closer to the street interface.</li> <li>• The extension is not necessitated to meet compliance with any minimum car space / garage dimensions. A generous size of 6.894m in length and 3.235m in width has been approved.</li> <li>• There are other garage structures that are setback from the front boundary, similar to the approved situation.</li> <li>• <i>Objective C</i> of the Residential 2(a) zone of the site provides for 'redevelopment for low density housing forms, including dwelling houses, where such development does not compromise the amenity of surrounding residential areas and is compatible with the dominant character of existing development'. Given that garages built up to the front boundary are not a dominant feature of surrounding streetscape, allowing for the garage extension would result in an inconsistency with the objective.</li> <li>• The garage extension would adversely impact on sight lines along Peters Place creating unnecessary conflict points for pedestrians. (Refer to Section 9.2 below).</li> </ul>
<p>It is requested that the plot/ratio/floor space ratio/ built upon ratio be reviewed.</p>	<p>These have been reviewed with respect to the proposed amendments. Refer to Section 9.2 below.</p>

## 5.2 Support

No submissions of support received.

## 6. Technical Officers Comments

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

### Engineering Comments

An application has been received to modify development consent for alterations and additions to the existing dwelling at the above site. The proposed modifications include extending the garage up to the front boundary.

The Development Engineer has inspected the above site and particular attention has been given to potential vehicle/pedestrian conflict associated with the garage being built up to the street alignment and to determine if the proposal worsens the situation with respect to sight distance for the drivers of vehicles exiting the garage.

The Assessment Planner is advised of the following with respect to this application:

- The proposed garage replaces an existing carport and therefore does not increase traffic movements across the Peters Street footpath.
- Sight distance for the drivers of vehicles exiting the existing development is limited due to the presence of high boundary walls along the Peters Street frontage of the development site and the neighbouring property.
- Peters Street is a cul-de-sac with relatively low traffic and pedestrian movement.
- There is evidence of other garages/carports in the street being constructed on the front boundary.

### Recommendation

That Council not object to construction of the proposed garage up to the Peters Street frontage of the subject development on traffic/pedestrian safety grounds given that the development proposal in no way reduces sight distance for the drivers of exiting vehicles or increases the potential for vehicle / pedestrian conflict from that of the current development.

**Comment:** The assessment undertaken by Council's Engineer refers to the existing situation rather than that approved. The approved situation improves sightlines by setting back the garage and setting back the front fencing from the garage. The amendment of a development consent via a Section 96 application which results in a lesser outcome is supported from a planning perspective.

### 7. Master planning requirements

The site does not require a master plan.

### 8. Relevant Environmental Planning Instruments

The Section 96 Application has been assessed in accordance with the provisions of the following relevant environmental planning instruments:

- *Randwick Local Environmental Plan 1998.*
- *Draft Randwick Local Environmental Plan 2008*

#### (a) Randwick Local Environmental Plan 1998

The site is zoned Residential 2(a) under Randwick Local Environmental Plan 1998 and the proposed development is permissible with Council's consent. There are no development standards applicable in this case. The site is located within the Foreshore Scenic Protection Area. Clause 29 – Foreshore scenic protection area of the LEP 1998 applies.

**(b) Draft Randwick Local Environmental Plan 2008**

Draft Randwick Local Environmental Plan 2008 has been placed on public exhibition. It consolidates all amendments to Randwick LEP 1998, updates the zone map, incorporates clauses from the State Government's Standard LEP Template and provides minor changes to some development standards and the requirements for exempt and complying development.

**(b) Development Control Plans**

The following are relevant to the application:

- Development Control Plan - Dwelling Houses and Attached Dual Occupancies 2000
- Development Control Plan - Parking.
- Development Control Plan – Public Notification of Development Proposals and Council Plans

**8.1 Council Policies**

Nil.

**9. Environmental Assessment****9.1 Section 96(2) Assessment**

Under the provisions of Section 96(2) of the EP & A Act (as amended), Council may only agree to amend an existing development consent if the following criteria has been complied with:

- (a) *It is satisfied that the development to which the consent as modified relates is substantially the same development as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all)*

Comment: The proposed development is 'substantially the same' development. The following matters are of relevance:

- There will be no fundamental change to the use and definition of the approved development.
  - There will be no change to the size or description of the land to which the consent relates.
  - The original consent has not been previously modified pursuant to the provisions of Section 96 of the *Environmental Planning and Assessment Act, 1979 (as amended)*.
- (b) *It has consulted with the relevant Minister, public authority or approval body (within the meaning of Division 5) in respect of a condition imposed as a requirement of a concurrence to the consent or in accordance with the general terms of an approval proposed to be granted by the approval body and that Minister, authority or body has not, within 21 days after being consulted, objected to the modification of that consent.*

Comment: No consultation is required in this case.

- (c) *It has notified the application in accordance with:*
- (i) *the regulations, if the regulations so require, or*

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- (ii) a development control plan, if the consent authority is a council that has made a development control plan that requires the notification or advertising of applications for modification of a development consent.

Comment: The subject application has been notified in accordance with *Development Control Plan – Public Notification of Development Proposals and Council Plans*.

- (d) It has considered any submissions made concerning the proposed modification within any period prescribed by the regulations or provided by the development control plan, as the case may be.

The submissions received during the notification period have been considered in Section 5.1 of this report.

## 9.2 Section 79C Assessment

In determining an application for modification of a consent under Section 96 of the *Environmental Planning and Assessment Act, 1979 (as amended)*, the consent authority must take into consideration such of the matters referred to in Section 79C (1) that are of relevance to the Section 96 application.

The following is an assessment of the relevant matters of Section 79C (1).

### Randwick Local Environmental Plan 1998

The site is located within the Foreshore Scenic Protection Area. The proposed amendments will be of minimal consequence to the approved aesthetic appearance presented to the foreshore.

As indicated in Section 5.1 above, the garage extension would result in an inconsistency with Objective C of the Residential 2(a) zone of the land and therefore is not supportable in this regard.

### Draft Randwick Local Environmental Plan 2008

The garage extension will be inconsistent with Objective (b) of the Residential 2(a) Zone of the site. This objective states: *(b) to maintain the desirable attributes of established residential areas*. Providing enclosed garage structures along the front boundary is not a desirable attribute of the established area or any area and therefore should not be accepted/replicated, particularly in this case, where garage setbacks predominate along the street.

### Randwick Development Control Plan for Dwelling Houses and Attached Dual Occupancies 2000 (DCP)

The DCP states that a proposal is deemed to satisfy the Objectives and Performance requirements of the DCP if it complies with the corresponding Preferred Solutions. The tables below assess the proposed amendments against the relevant Preferred Solutions. Where a non-compliance results, an assessment is made against the relevant Objectives and Performance Requirements.

#### **Solar Access and Energy Efficiency**

	<b>Preferred Solution</b>	<b>Assessment</b>
S2	Private open space receives at least 3 hours sunlight over part of its area between 9am and 3pm on 21 June.	At least 3 hours of sunlight will be maintained. Complies.

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	Preferred Solution	Assessment
S2,8	North-facing windows to living areas receive at least 3 hours sunlight over part of its area between 9am and 3pm on 21 June.	North-facing windows that will receive at least 3 hours of sunlight will be maintained. Complies.
S9	Solar access to existing or future solar collectors on adjacent buildings is maintained between 9am and 3pm each throughout the year.	The amendments will not result in any additional impact. Complies.
S9	North-facing windows to living areas of neighbouring dwellings receive at least 3 hours sunlight over part of its area between 9am and 3pm on 21 June. If currently less than 3 hours, it is not further reduced.	The amendments will not reduce solar access to less than 3 hours on north-facing windows. Complies.
S9	Principal outdoor recreation space of neighbouring dwellings receive at least 3 hours sunlight over part of its area between 9am and 3pm on 21 June. If currently less than 3 hours, it is not further reduced.	The amendments will not reduce solar access to principal private open spaces of neighbouring properties to less than 3 hours. Complies.

### Landscaping

	Preferred Solution	Assessment
S1	40% of the total site area is provided as landscaped area.	No change to the approved situation (being 22%). The proposed garage and Bedroom 1 extensions will not affect any 'landscaped areas'. The garage is proposed to extend over the approved driveway area and Bedroom 1 is proposed to extend over a front verandah. These features do not constitute 'landscaped area' as per the definition in the DCP. (Also refer to S6 below).
S1	A minimum of 25m <sup>2</sup> of useable private open space is to be provided.	Complies.
S1	Each dwelling must provide an area of private open space capable of containing a rectangle of minimum dimensions of 3m x 4m with minor changes in level.	Complies.
S1	Private open space in the front yard area is located behind the building line.	Adequate private open space will be maintained, as approved in the rear yard. Complies.

	Preferred Solution	Assessment
S6	20% of the total site area has permeable treatment.	The applicant has stated that the proposed raised planter will not involve an extension to the deck; however insufficient details have been submitted on the elevation plans indicating the proposed treatment. It is assumed that the rear planter is likely to be raised by filling and retained by a timber or masonry barrier. This approach will maintain the amount of approved landscaped area and permeable treatment. A condition is recommended to require: <i>details (such as the height, amount of fill and method of retainment) to be submitted to the satisfaction of Council prior to obtaining a Construction Certificate; the planter be located wholly on the subject site; and the planter be non-trafficable.</i> (Also refer to Section Height, Form & Materials below).

**Floor Area**

	Preferred Solution	Assessment
S1	The preferred solution for an allotment of this area is that a maximum floor space ratio of 0.595:1 applies.	The approved FSR will increase from 0.66:1 to 0.68:1. Does not comply.

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

The additional floor space will not result in a distinct increase to the bulk of the approved dwelling, particularly that visible to the public domain. The additional floor space will result from the extension of Bedroom 1 onto a covered verandah. It will not extend the front building line, particularly to result in a reduction to the amount of built upon area or landscaped area.

The extension will be located behind a 1.8m high front fence and therefore will not be distinct from the streetscape. It will benefit the front facade by providing articulation to an otherwise 7.3m (approx.) long, straight building line. The extension will also will maintain a compliant front building line and a similar relationship with the building line of neighbouring properties to that of the approved development, i.e. a setback from the front building line of 11 Peters Place and matching alignment with that of 17 Peters Place. The proposed external cladding will match the approved cladding of the first floor level and provide an improved visual integration between the external finishes of the ground floor and first levels.

The extension will not result in any significant amenity impacts to the neighbouring properties. Additional overshadowing will not affect any main living areas or primary open spaces of neighbouring properties. As indicated above, compliance will be maintained with the relevant solar access requirements of the DCP.

**Height, Form & Materials**

	<b>Preferred Solution</b>	<b>Assessment</b>
S1	External wall height of the building not exceed 7m	No change will result to the approved situation.
S1	External wall height of buildings or additions to the rear does not exceed 3.5 m.	Not applicable.
S3	Cut or fill does not exceed 1m.	Any amount of fill for the raised planter is not indicated on the submitted plans. To avoid excessive fill and height, a condition is recommended to ensure that the raised planter is below the top of the adjacent colourbond fencing along the side boundary. This treatment will not result in any inconsistencies with the related objectives and performance requirements.
S3	No excavation within 900mm of a side boundary.	Not applicable.
S3	No excavation within 4m of a rear boundary.	Not applicable.
S4	The length of a second storey portion is no greater than 12m at less than 1.5m from a southern boundary.	Not applicable.
S5	The second storey portion of a semi-detached dwelling be confined to within the existing roof space or be set back from the front elevation behind a substantial portion of the existing roof form and the design respects the symmetry of the adjoining semi-detached dwelling.	Not applicable.

**Building Setbacks**

	<b>Preferred Solution</b>	<b>Assessment</b>
S1	Front setback is average of adjoining dwellings or 6m.	The extension to Bedroom 1 will comply with the average setback. The approved garage intrudes into this setback. The proposed extension will increase the non-compliance. As discussed above, the garage extension is not supported. Also refer to comments below under <i>Garages and Driveways</i> .
S2	No part of the building is closer than 4.5m from rear boundary.	No change is proposed to the approved situation.
S3	Side setbacks be 900mm for any part of the building at ground level.	No change is proposed to the ground level setback.

	Preferred Solution	Assessment
S3	Side setbacks be 1.5m at second floor level.	No change is proposed to the approved situation.
S3	Side setbacks be 3.0m at third floor level.	Not applicable.

#### Visual & Acoustic Privacy

	Preferred Solution	Assessment
S1	Habitable room windows within 9m of another dwelling's windows are offset by 45 degrees or have fixed obscure glazing below 1.5m above floor level.	No change to the approved situation.
S1	Direct view into open space of an adjoining dwelling is obscured or screened within 9m and is beyond a 45 degree angle.	Refer to assessment below.
S1	Windows have sill heights of 1.5m or more or fixed obscure glazing below that height.	No raised sill heights or fixed obscure glazing are warranted for the proposed openings. Refer to assessment below.
S3	Buildings comply with AS 371 and AS 2107.	Conditioned to comply with the BCA.

The Objective of the DCP is to ensure that new buildings and additions meet the occupant and neighbours requirements for visual and acoustic privacy. The Performance Requirements include that overlooking of internal private living areas is minimised through appropriate building layout, location and design of windows and balconies; and separation, screening devices and landscaping be used to assist in minimising privacy impacts.

The proposed alteration of the sliding door openings of Bedroom 1 on the front façade will not result in any privacy implications. The opening will maintain an outlook towards the front entry of the property for natural surveillance and provide an added sense of security.

The alteration to the approved opening of Bedroom 2 on the rear elevation will provide two bedroom windows in a similar location and size, (if not smaller) to the existing situation. They will not result in any additional privacy impacts in comparison.

Concerns relating to the visual and acoustic privacy from the rear pool and deck were raised in the assessment of Development Application No. 0069/2006. Plans were amended to reduce the pool bond beam and therefore minimise opportunities to congregate around the pool and close to neighbouring properties. To supplement this, screen planting between the deck and the side boundaries was provided. The raised planter proposed to the eastern side of the deck has the potential to maintain the approved outcome to the neighbouring property, 17 Peters Place, subject to the planter being non-trafficable. A condition is recommended accordingly.

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### Garages & Driveways

	Preferred Solution	Assessment
S1	Council's Parking DCP requires 1 space, for dwellings with 2 bedrooms or less, or 2 spaces, for dwellings with 3 bedrooms or more.	No change to the approved situation.
S1	Car parking spaces have a minimum dimension of 5.5m x 2.5m.	Complies.
S1	Driveways have minimum width of 3m and are set back at least 1m from the side boundary.	Not applicable. The garage extension will extend over the approved on-site driveway.
S1	Driveways have a maximum width of 3m at the property boundary.	Not applicable. The garage extension will extend over the approved on-site driveway.
S1	Driveway gradients should not exceed a maximum of 1 in 8 for the first 5m from street alignment and 1 in 6 thereafter.	Not applicable. The garage extension will extend over the approved on-site driveway.
S1	With respect to garages and carports to rear lanes these should be set back 1m to improve pedestrian visibility.	Not applicable.
S2	Parking and access is provided from the rear of the allotment where possible.	Not applicable.
S2	Garages and carports located behind the building line where parking only available from the front of the site.	Does not comply. The garage extension will increase the non-compliance of the approved garage. As discussed above, it will bring the garage closer to the street interface, which is not supported.
S2	Driveways, car parking spaces and structures do not occupy more than 35% of the width of the allotment	No change is proposed to the width.

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

The extension will add to the visual dominance of the garage structure by creating a more direct interface to the streetscape, as well as adding to its generous length. The garage initially proposed under Development Application No. 0069/2006 was amended to reduce its height. The impact of the amended form was accepted on the basis that its visual impact was reduced by its roof form, height and by the presence of screen fencing in front (along the front boundary). The extension will bring the garage in line with the screen fencing, which is not acceptable. The extension will also impact on some sight lines along Peters Place.

#### 9.2 Development Control Plan - Parking

The relevant matters have been addressed in the above assessment.

## 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.

The impact of the garage needs to be appropriately managed by prohibiting any cumulative impacts in comparison to the approved development. The impact of the raised planter near the side boundary must be managed via the inclusion of an additional condition to require certain matters to be met.

## Financial Impact Statement

There is no direct financial impact for this matter.

## Conclusion

All of the proposed amendments are acceptable with the exception of the garage extension and raised planter. The garage will add to the imposing streetscape impact of the approved form and affect sight lines along Peters Place. It will be at odds with Objective C of the Residential 2(a) zone of the land listed under RLEP 1998, Objective B of the Residential zone of the land listed under draft RLEP 2008, as well as the requirements for 'Building Setbacks' and 'Garages & Driveways' of the *DCP for Dwelling Houses and Attached Dual Occupancies 2000*.

The extension is not warranted to achieve compliance with any minimum car space/manoeuvring dimensions and will unnecessarily add to the generous length of the approved garage. Locating garages along the front boundary is not a predominant feature along the Peters Place streetscape and one that should be encouraged. Accordingly, the proposed extension of the approved garage is therefore not supported.

Insufficient details have been provided to confirm the amended planter will remain compliant with the objectives and performance requirements of the *DCP for Dwelling Houses and Attached Dual Occupancies 2000* and achieve the intent of the approved development (particularly privacy). To ensure compliance and consistency with the intent, a condition is recommended to require the planter to be located wholly on the subject site, be below the height of the top of the adjacent colourbond boundary fencing and be non-trafficable.

## 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 Application No. 0069/2006 relating to 15 Peters Place, Maroubra in the following manner to allow for the changes highlighted in yellow on the submitted Section 96 plans with the exception of the garage extension:

Amend Condition No. 1 to read as following:

1. The development must be implemented substantially in accordance with the amended plans numbered Sheets 1,1b,2,3,4,5,6,6.1,6(section), 7.1,7.2,7.3,8 and 9 and stamped as received by Council on 26 July 2006, the application form and on any supporting information received with the application, as amended by the ***Section 96 plans received by Council on 16 October, 2008, only in so far as they relate to the modifications highlighted on the Section 96 plans and detailed in the Section 96 "A" application,***

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except as may be amended by the following conditions:

Add the following new conditions:

50. The raised planter between the eastern side of the deck and common boundary must:

- Be located wholly on the subject site,
- Be at or below the height of the top of the adjacent colourbond boundary fencing
- Be non-trafficable.
- Consist of screen planting along its length that will be maintained in a healthy condition and have a height at maturity consistent with the top of the adjacent lattice screen located above the colourbond boundary fencing.

Details shall be indicated on plans accompanying an application for a Construction Certificate to the satisfaction of Council.

51. The garage is to be setback a minimum of 1000mm from the Peters Place boundary to maintain the amenity of the streetscape. Details of compliance are to be provided in the construction certificate plans.

**Attachment/s:**

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## Miscellaneous Report No. M4/09



**Subject:** Review of Mediation Programme  
**Folder No:** F2004/07467  
**Author:** Kerry Kyriacou, Manager Development Assessment

### Introduction

Council at its Planning Committee Meeting held on 8 March 2005 resolved to adopt a Mediation Policy and implement a programme aimed at resolving disputes that may arise in the development application process. The Mediation Programme has been operating for approximately four (4) years. A review of the Mediation Programme was reported to Council in 2006. The review indicated that it was operating effectively and was successful in resolving a number of disputes that arose out of the development application process.

This report provides Council with a further review and evaluation of the programme to determine whether it is still achieving its stated aims and objectives.

### Issues

#### Aim and Process of Mediation

Conflicts between Council and Applicants and Applicants and members of the Community, in regard to Development Applications (DAs) are often encountered in the Development Assessment Process. There is considerable pressure from the community to allow greater participation in the decision making process. There is also generally a public misunderstanding of the NSW merit based planning system. Consequently, the Development Assessment section has, over the past decade, increasingly taken a facilitating role in assisting to resolve disputes related to development applications and local planning issues. The practice has tended to be an informal one; mostly involving informal negotiations between applicants and objectors facilitated by a Council officer, but has also included the use of formal mediation.

Mediation as a policy initiative is aimed at encouraging parties to meet voluntarily on a face to face basis, empowering them to resolve disputes themselves, rather than relying on an outcome imposed by Council or the Land and Environment Court. It is important to note that mediation is based on voluntary participation; parties participate because they want to. The mediator has no coercive power to make the parties participate or disclose information. The mediation sessions are conducted by an independent mediator. Council officers do not participate in the session.

If an agreement is reached between the parties, the terms of the agreement are signed by the parties at the end of the session. The terms of the agreement are then included in the conditions of consent, subject to the final assessment of the application against all the statutory criteria by Council's assessment officer. It should be noted that a mediated agreement may not always be consistent with Council's planning controls and may have wider impacts than those that have been considered by immediate neighbours involved in the mediation process. Hence, Council or the delegated officer is always the final decision maker in relation to an application. Although, there have been no instances where an application has been refused where there has been a mediated agreement between the parties.

Council's Mediation Guidelines detail the specifics of mediation and the procedures involved. The guidelines explain the process of mediation i.e. details of persons

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involved, conflict of interest, the role of all parties, confidentiality and a range of procedural requirements.

An information sheet is provided to participants explaining the process and what is involved in mediation.

### **Success of Mediations**

There have been forty eight (48) mediations conducted since March 2005. Thirty two (32) mediations were initiated at the officer level whilst sixteen (16) were commenced as a result of resolutions by the elected Council. Fifty six (56%) percent of the total number of mediations have resulted on an agreed outcome between the parties involved with the mediation. Of the mediations initiated by Council Officers 66% were successful whilst 37% of the mediations resulting from a resolution of Council after consideration of the application were successful.

Whilst the overall success rate in mediations may appear low, it has increased marginally from 53% in 2006. It is also important to note the benefits that accrue to the parties in allowing a forum which reduces adversity, clarifies issues and enables opportunities to explore alternatives, as well as keeping the lines of communication open between parties that are in dispute.

This point is confirmed by Council's mediators who have advised that the participants in the mediation sessions are generally appreciative of the opportunity to meet face to face with the aim of resolving issues of concern. It is also apparent that mediations should be ideally conducted just after the public exhibition period for the development application and prior to any definite position being formed on the application and well before they are considered at a Committee or Council meeting. The success rate for mediations conducted after the matter has been referred to Council would further support this proposition.

A questionnaire has also been prepared that is provided to participants in the mediation sessions and will provide Council with further valuable feedback on the process.

### **Relationship to City Plan**

The relationship with the City Plan is as follows:

Outcome 4: An Informed and Engaged Community.  
Direction 4a: Innovative communication methods and technology are used to share and obtain information.

The continued use of mediation as alternative dispute resolution technique will contribute to the achievement of the above outcome and direction of the City Plan.

### **Financial impact statement**

The mediation programme has resulted in a total cost to Council of \$19,398.51. The ongoing costs have been budgeted for 2009/2010.

### **Conclusion**

The Mediation Program is operating effectively and has been successful in resolving a number of disputes that have arisen in the development application process. It would also appear that key contributing factors to the success of mediation are early intervention and the willingness of the parties to participate and negotiate.

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**Recommendation**

That Council continue to provide an independent mediation programme.

**Attachment/s:**

Nil

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## Miscellaneous Report No. M5/09



**Subject:** Affordable housing dwellings at 106/2-4 Jenner Street and 3/2 Millard Drive, Little Bay - Classification of land under the Local Government Act 1993.

**Folder No:** F2004/07991

**Author:** David Briant, Senior Social Planner

### Introduction

On 23 December 2008 Council received ownership of two affordable dwelling units in Little Bay. The dwellings are located at 106/2-4 Jenner Street, Little Bay and 3/2 Millard Drive, Little Bay (Prince Henry Development). These dwellings are in the process of being tenanted under Council's Affordable Rental Housing Program.

The Local Government Act, 1993, (the Act) contains provisions relating to land acquired by Council after 1 July, 1993. It provides that Council properties may be classified as either operational or community.

Should a decision not be taken by Council to classify the subject affordable housing dwellings by 23 March 2009 (3 months after transfer), they would automatically default to a 'community' land classification.

The decision to classify all affordable rental housing units as 'operational' land was supported by Council at its Health, Building & Committee Meeting of 13 June 2006. The report entitled "Affordable Rental Housing Program + Procedures" discussed the relative merits of an operational land classification. This classification will not change the status of the properties for use as affordable housing accommodation but will enable Council to make timely decisions relating to maintenance liabilities, as well as ensuring its affordable housing stock continues to match the target groups' needs.

A community classification would limit Council's capacity to cost effectively manage the affordable rental housing program on a cost neutral basis. Council's Solicitor has confirmed that an 'operational' classification is appropriate for Council's affordable rental housing properties.

In accordance with the provisions of the Act, the proposal to classify the dwellings was publicly advertised. No submissions were received.

This report recommends that Council supports the 'operational' classification of the two affordable housing units located within the Prince Henry development.

### Issues

#### Classification of Council land or properties

Section 25 of the Act requires that all land vested in a Council be classified - as either 'community' or 'operational' land. The major consequence of classification is that it determines the ease or difficulty with which land may be alienated by sale, leasing or some other means: community land must not be sold (except in limited circumstances); it cannot be leased or licensed for more than 21 years; and may only be leased or licensed for more than 5 years if public notice of the proposed lease or license is given, and in the event that an objection is made, the Minister's consent is obtained. No such restrictions apply to operational land.

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The classification of the properties does not alter the status of the dwellings which, in accordance with Council's resolutions, are set aside solely for affordable housing.

### **Methods of classification**

The Act provides for two methods for classifying land:

1. By local environmental plan (LEP), which is considered to be a more resource and time consuming process.
2. By resolution of the Council – for land or properties acquired after 1 July, 1993 and only within the 3 month "window" opportunity from the acquisition date.

In the current case, method 2 is preferred as it can be achieved most efficiently.

### **Public notice**

Section 34 of the Act requires Council to give public notice of a proposed resolution to classify public land. The public notice must give at least twenty eight (28) days for the receipt of submissions.

Formal notice to classify the subject dwelling units as operational land was given in the Southern Courier for an extended period from 27 January 2009 until 25 February 2009, for public submissions to be received. Information was also on display at Council's customer service centre, libraries and on its web site. No submissions were received by Council as a result of the public notification process.

### **Relationship to City Plan**

The relationship with the City Plan is as follows:

- Outcome 6: A Liveable City.  
 Direction 6a: Our public assets are planned, managed and funded to meet the community expectations and defined levels of service.  
 Outcome 6c: Housing diversity, accessibility and adaptability to support our diverse community is enhanced.

### **Financial impact statement**

There is no direct financial impact associated with the proposed resolution. However, should Council not adopt the resolution, it will affect the ease with which the dwelling units may be sold or leased. This will have long term financial implications for Council's asset management, as well as the success of its Affordable Rental Housing Program.

### **Conclusion**

The affordable housing units are required to be classified under the Local Government Act, 1993.

An 'operational' land classification can be achieved by a resolution of Council, and is consistent with Council's Affordable Rental Housing Program + Procedures (endorsed on 13 June 2006).

In the current case, classification needs to be done promptly to avoid a default to community classification.

The proposed resolution was publicly notified in accordance with the requirements of the Act, and no submissions were received.

**Recommendation**

That Council resolve to classify the affordable housing units located at 106/2-4 Jenner Street, Little Bay and 3/2 Millard Drive, Little Bay as 'operational' land in accordance with the provisions of the Local Government Act 1993.

**Attachment/s:**

Nil

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