



Development Assessment Unit Report Residential Zone

DA #	196/08
Site Address	19 -23 (part), 25, 27 & 31(part) The Corso. Manly
Proposal	Alterations and additions to the Ivanhoe Hotel and extend to adjoining premises including new façade, coffee shop, poker machine area, bottle shop and TAB –Section 96 (AA) Modification
Officer	

<u>Application Lodged:</u>	31 March 2009
<u>Applicant:</u>	Hilrock Properties Pty Ltd & TW & FT Peterson
<u>Owner:</u>	Hilrock Properties Pty Ltd; London Fashions P/L & Henry R Roth Charitable Foundation P/L
<u>Estimated Cost:</u>	\$2.7M
<u>Zoning:</u>	Manly Local Environmental Plan, 1988 - Business And within the Foreshore Scenic Protection Area
<u>Surrounding Development:</u>	Retail, Commercial and Residential Developments
<u>Heritage:</u>	Item of Environmental Heritage, within The Town Centre Conservation Area and in the vicinity of Items of Environmental Heritage.

SUMMARY:

1. Development consent is sought to modify the consent issued by the NSW Land & Environment Court on 17 December 2008 for alterations and additions to the Ivanhoe Hotel and extend to adjoining premises including new façade, coffee shop, poker machine area, bottle shop and TAB.
2. The application was notified to all adjoining and nearby property owners and two (2) submissions received – one (1) in support of the application and the other objecting to the development.
3. The application was referred to all the precinct committees and comments received from two (2) Precinct Community Forums.
4. Site inspection is recommended.
5. The application is recommended for conditional approval.

RECOMMENDATION

That pursuant to Section 96 (2) of the Environmental Planning and Assessment Act 1979 the Development Application No. 196/08 for alterations and additions to the Ivanhoe Hotel and extend to adjoining premises including new façade, coffee shop, poker machine area, bottle shop and TAB at 19 -23 (part), 25, 27 & 31 (part) The Corso. Manly be approved, subject to the original conditions of consent, with Condition No. 1, 7 & 55 amended and addition of Condition Nos. 59 to 64 as follows:-

- 1 This approval relates to the following documents and drawings/plans Nos. 08007 – DA02-C dated 27 November 2008; 03-A dated 2 May 2008, 04-C dated 27 November 2008, 05-A dated 2 May 2008, finishes schedule drawing DA 101C dated 27 November 2008 prepared by NBRS & Partners as amended by the conditions of this consent.
 - Statement of Environmental Effects prepared by Design Collaborative Pty Limited, dated June 2008 and received by Council on 20 June 2008.

- Peer Review of the Statement of Environmental Effects prepared by Urbis, dated May 2008 and received by Council on 20 June 2008.

The submitted Statement of Environmental Effects includes the following documents:-

- Statement of Heritage Impacts prepared by NBRS + Partners dated April 2008 and received by Council on 20 June 2008.
- Traffic and Parking Assessment prepared by Michael Grosvenor Consulting dated May 2008 and received by Council on 20 June 2008.
- Acoustic Assessment prepared by The Acoustic Group dated 28 May 2008 and received by Council on 20 June 2008.
- Social Impact Statement prepared by Design Collaborative Pty Limited dated May 2008 and received by Council on 20 June 2008.
- Plan of Management for the operation of the Ivanhoe Hotel prepared by Design Collaborative dated June 2008 and received by Council on 20 June 2008.
- Building Code of Australia 2007 Assessment Report (draft) prepared by Dix Gardner Pty Ltd dated 23 April 2008 and received by Council on 20 June 2008.

Except as modified by

- 1 This approval relates to drawings/plans Nos. AG – 100 Rev A, AG – 101 Rev A, A1 - 100 Rev A, A1 – 101 Rev A, A 200 - Rev A, A – 201 Rev A all dated February 2009 and received by Council on 31 March 2009. This approval also includes the following documents:-

- Statement of Environmental Effects (SoEE), prepared by Design Collaborative Pty Limited dated March 2009 and received by Council on 31 March 2009. The SoEE includes the following:-

1. *Letter from NBRS+Partners dated 11 March 2009 addressing the potential heritage impacts of the Section 96 Modifications.*
2. *Building Code of Australia 2008 Assessment Report prepared by Dix Gardner Pty Ltd dated 30 March 2009.*
3. *Letter from The Acoustic Group dated 16 March 2009 addressing the issue of noise from the outdoor areas.*
4. *Plan of Management for the operation of the Ivanhoe Hotel, prepared by Design Collaborative Pty Ltd dated April 2009.*

7. The proposed accessible toilets located at the basement and first floor levels are to be in accordance with AS 1482.2 with direct complying access from the lift. Lift access to all levels of the Hotel shall be available for persons with a disability at all times the Hotel is trading without the need of an accompanying staff member.

Reason: To comply with Council's Development Control Plan for Access and Disability Discrimination Act 1992.

55. This approval shall expire if the development hereby permitted is not commenced within 2 years of the original date of consent, being 17 December 2008. Any extension of consent beyond that period is to be the subject of an application to Council, with appropriate fees, before the expiry of the consent, i.e. 17 December 2010.

Reason: Council policy to give two (2) year consent, with a possibility of an extension of one (1) year, if the applicant can provide justifiable cause.

59. First use of the new shop premises at No. 23 The Corso is to be the subject of a new Development Application to Council.

Reason: The applicant has not indicated the use of the subdivided premises.

60. The outdoor area on the first floor level of No. 25 The Corso is not to be enclosed, except for the provision of a retractable awning, without the prior consent of the Council.

Reason: This is to comply with the Smoke-free Environment Act 2000. It is to be noted that any enclosing of the area will create additional floor area as per Council's Development Control Plan for the Business Zone, 1989, Amendment 5.

61. All garbage and recycling associated with the businesses, including storage of garbage and recycling bins, are to be wholly contained within the subject premises. Plans are to be notated accordingly prior to the issue of Construction Certificate.
Reason: To provide an uncluttered and clean streetscape both to The Corso and Market Lane and provide unobstructed pedestrian movement.
62. Outdoor smoking areas are to be clearly sign posted and patrons made aware of smoking and non-smoking areas. Plans are to be notated accordingly prior to the issue of Construction Certificate.
Reason: To make patrons of the premises aware of the existence/availability of the outdoor smoking areas.
63. The opening between the café and the Ivanhoe Hotel is to be interpreted by limiting the height of the opening to 2.4 metres.
Reason: This is to maintain the heritage character of the building, being an Item of Environmental Heritage under the Manly Local Environmental Plan 1988.
64. Works in connection with this Section 96 modification are not to be commenced/carried out until a new Construction Certificate is issued.
Reason: Modification of original works requires a new Construction Certificate.

Introduction

Ivanhoe Hotel is located on the northwestern side of The Corso, approximately 20m east of its junction with Darley Road. The Ivanhoe Hotel, at No. 27 The Corso, is a three storey building with a basement level, and is legally known as Lot 1 DP 87793. The area of the site is 383m². The hotel site is a rectangular allotment and has a frontage of 12.47 m to The Corso and has access to Market lane at the rear. The depth of the site is approximately 31.2 m.

The Commonwealth Bank building at No 31 The Corso is a three storey building that adjoins the Ivanhoe Hotel to the east. The legal description of this site is Lot 910 in DP 875567 and has a site area of 726m². The current application proposes to use only part of this site.

The existing St. George Bank building at No. 25 The Corso is a single storey building and is legally known as Lot 2 DP 877793. The site has a frontage of 7.58 m and site area of 237m².

The Soul Pattinson Chemist is located at Nos. 19 – 23 The Corso and adjoins the St George building to the west. Its legal description is SP 12989. The proposal is to incorporate only the two storey section of the site (having a frontage of 4.64m) and not the four (4) storey building. The two storey building has a site area of 136m². No indication has been given in the Section 96 Modification application as to the proposed use of this premises.

The area in and around The Corso forms the Manly Town Centre. The Corso is the main retail street, comprising of mixed use developments (retail shops, commercial premises, cafes, restaurants, take away food outlets, and dwellings). The Corso is flanked by water on both ends and provides a pedestrian promenade that links the Manly Wharf, ferry, bus and taxi terminals at the south western end to the Manly Ocean Beach at the north eastern end. The buildings in the immediate area in The Corso consist predominantly of a mixture of two and three storey buildings. The Corso is closed to vehicular traffic to the east of its intersection with Darley Road. Opposite the subject site is the historic St Mathews Church.

The whole of The Corso is in The Corso Conservation Area and all the buildings on The Corso are identified as Items of Environmental Heritage in the Manly Local Environmental Plan (LEP) 1988.

Background

On 8 July 2005, Council approved a Development Application **DA 92/05** for alterations and additions to Ivanhoe Hotel, including the conversion of the bottle shop into a pizza kitchen,

relocation of the ground floor gaming room to the basement and to replace existing gaming room with expanded bar area and a new stage.

On 31 September 2005, Council received an application from Bovis Lend Lease for alterations and additions to the existing building including new ground floor sub-tenancy at No. 31 The Corso

On 25 January 2006, Council refused a Section 96 application to amend Condition 5 of the consent to permit the number of patrons on the ground floor from 250 persons to 350 persons and to amend Condition 9 of the consent (DA 92/05) to enable the sale of takeaway food from 9am to 3am Monday to Saturday and 9am to 12 midnight on Sundays.

The applicant appealed against the refusal of the Section 96 application. On 1 May 2006, the NSW Land & Environment Court upheld the appeal by increasing the number of patrons on the ground floor to 300 persons and allowing the pizza kitchen to sell take away food until 11pm. The Court also allowed trading for a trial period of twelve months for up to midnight on Sunday night and up to 1am on other nights.

On 6 June 2006, Council received an application (**DA 231/06**) for Alterations to the Ivanhoe Hotel and expand to the adjoining building to the east to part 31 The Corso. The applicant lodged an appeal under deemed refusal and on 2 April 2007, the NSW Land & Environment Court upheld the appeal.

On 16 March 2007, Council received an application (**DA 90/07**) for the alterations and additions to extend the Hotel use at No. 27 The Corso (Ivanhoe Hotel) into the adjoining St George Bank building at No. 25 and No. 23 (containing part of the existing Soul Pattinson Chemist at Nos. 19 – 21 The Corso). The consent for this application was issued on 21 October 2008.

On 20 June 2008, the applicant lodged an application (**DA 196/08**) for the alterations and additions to extend the Hotel use at no. 27 The Corso (Ivanhoe Hotel) into the adjoining St George Bank building at No. 25, Bottle Shop at No. 23 (containing part of the existing Soul Pattinson Chemist at 19 – 23 The Corso) and new TAB at part No. 31 The Corso. The details of the changes were as follows:-

Basement Level (RL 2.87)

- Removal of the existing nightclub use, bar and toilets within the existing basement of the Hotel at No. 27 The Corso.
- The new basement at No. 27 The Corso is to provide for Keg room, office, hoist, beer package room, empty keg storage, storage/ cellar, storage area, BOH storage, garbage room, new steps and landing and lift.

Basement Level (RL 3.17)

- Retain existing audio room
- New male and female WC.

Ground Floor Level (RL 6.01)

No. 23 The Corso (Part Existing Soul Pattinson Pharmacy)

- New wall to separate the building from the existing pharmacy located on Nos. 19-23 The Corso.
- Internal fit-out for relocated Ivanhoe Hotel bottle shop.
- New cool room and garbage room to the rear
- Existing garbage room and MSB retained

No. 25 The Corso (Existing St George Bank)

- Demolition of existing front and rear facades
- New Coffee shop adjoining the existing Ivanhoe hotel with seating for twelve customers.

- New opening on the side wall to connect to No. 27 The Corso.
- New front facade and new entry to proposed Poker Machine area.
- New Poker machine area with open smoking area at the rear.
- New internal dividing wall with sliding doors to separate the poker machine area with the open smoking area.
- Demolish wall and create opening for new side door to the poker machine area to connect to the existing hotel at No. 27 The Corso.
- Demolish wall and create new opening to install side door and windows to the smoking area to connect with the existing hotel at No. 27 The Corso.
- New stair to upper level and new door to Market Lane.

No.27 The Corso (Existing Ivanhoe Hotel)

- Replacement of existing bottle shop with new Pizza kitchen and associated servery with direct access from The Corso
- New egress door to The Corso to connect the existing stairs from the basement.
- Relocation of existing column.
- New accessible WC
- New openings on the eastern and western walls to connect the existing hotel to the adjoining buildings at Nos. 25 and 29 The Corso.
- Widening of the existing opening to Market Lane and provision of bi-fold doors.
- New stackable windows to Market Lane frontage.

No. 31 The Corso (part existing Commonwealth Bank)

- Erection of a new fire rated wall to separate the premises from the existing bank (remainder of the building)
- Relocation of the existing TAB, currently operating at No. 41 The Corso to the subject site.
- Demolish existing shop front and provide new walls to create new entry.
- New stackable windows to The Corso frontage.
- New opening on the western wall to connect with existing Ivanhoe Hotel
- New bar, plasma screen and counter, open smoking area with sliding door to Market Place.
- New stackable windows to the Market Place frontage.
- New door to Market Lane.

Level 1 (RL 9.59)

No. 25 The Corso (Existing St George Bank)

- New outdoor Bistro and smoking terrace
- New dishwashing area and cold room with roof over
- New walls, piers and windows to The Corso façade
- New sliding doors to connect to existing bistro and pool table area of the existing hotel at No. 27 The Corso.
- New glazed panels and zinc cladding on rear façade
- New stair at the rear to connect to ground level.

No. 27 The Corso (Existing Hotel)

- New timber and wrought iron balustrades to the existing balcony over The Corso.
- New timber framed windows to the eastern and western ends of the balcony over The Corso.
- Replacement of existing roof over balcony with a new metal roof.
- Three (3 new openings, with sliding doors, on the western wall to connect with No. 25 The Corso.
- Renovations to the existing kitchen
- Refurbishment of existing male and female toilets,
- New sliding door to existing balcony fronting The Corso.

Level 1 (RL 10.02)

No. 23 The Corso

- No change is proposed to the existing office space with direct access to The Corso.

Level 2 (RL 13.22)

No.25 The Corso

- No building works are proposed to this level, except for repairs and repainting.

The applicant appealed to the NSW Land and Environment Court against the deemed refusal of the application. The application was dealt with by the Development Assessment Unit on 9 October 2009 where it was recommended for approval subject to conditions. The matters dealt with by the L & E Court related to conditions of consent, noise, hours of operation, use of roof top for dining, heritage issues and maintaining subdivision pattern. The judgement on the appeal was issued by Commissioner C Murrell on 17 December 2008 and the appeal was upheld.

In particular, Condition No. 1A (a) of the given consent stated as follows:-

“the development consents granted with respect to development applications **92/05**, **231/06** and **90/07** shall be surrendered prior to the issue of any construction certificate for the development approved in this consent.”

The applicant on 3 June 2009 **surrendered** the following documents (copy on file) to Council:-

- 1). Original applicant's copies of DA consent documents and plans as well as the original (Dix Gardner) Construction Certificate and stamped plans that relate to **DA 92/05**.
- 2). Original Court Orders of the Land & Environment Court upholding an appeal relating to **DA231/06** which had expired on 2/4/09.
- 3). Original applicant's copy of the DA consent documents and stamped plans for **DA 90/07**.

Current Proposal

The current proposal is to modify the given consent. The proposed modifications are as follows:-

Basement Level (RL 2.87)

- Reconfiguration of the Male and Female toilets and garbage room.
- Location of a disabled toilet, as required by Condition No. 7 of the consent issued by the Land & Environment Court.

Ground Floor Level (RL 6.01)

- Deletion of the bottle shop at No. 23 – use of No. 23 The Corso is unknown (currently being used as part of Soul Pattinson chemist)
- Approved poker machine area at No. 25 The Corso replaced by bottle shop and cool room.
- Connection to outdoor area at the rear of No. 25 The Corso deleted from the proposed bottle shop at the front.
- Enlargement of the approved coffee shop (renamed Café) and extension of the counter to join the pizza kitchen at No. 27 The Corso.
- New side entry (sliding door) to the south-west of the proposed café at No. 25 The Corso.
- Retail pizza area at No. 27 The Corso merged with the approved coffee shop (new café).
- External door to the retail pizza area converted to curved fixed glass window, similar to the one approved to the north-eastern side of the doors.
- Egress door to The Corso replaced with fixed glass.
- New door between pizza kitchen and lift at No. 27 The Corso.

- New door between bottle shop at No. 25 and bar area at No 27 The Corso.
- Sliding door and windows in new opening between No. 25 and No. 27 replaced by new sliding glass swing door and sliding doors.
- Accessible toilet at the rear of No. 27 The Corso converted to store.
- Size of opening between No. 27 and No. 29 The Corso reduced and Sliding panel replaced with swing doors.
- Column and new fish tank deleted and column incorporated in partition wall.
- New bar and cashier on north western wall of No. 29 The Corso, serving the TAB.
- Rear section of TAB converted to Gaming room.
- Sliding door and windows between smoking area replaced with new door and wall.
- Existing granite cladding to columns retained at No. 29 The Corso.
- New swing doors to the front facade of No. 29 The Corso, centrally located between columns.

First Floor Level (RL 9.59)

- New masonry wall along the south western side adjoining No.23 The Corso.
- New raised area (3.5 x 8.5m) above No. 25 The Corso, raised area RL 9.91.
- Enlargement of the opening between Nos. 25 & 27 The Corso and provide new bi-fold glass doors.
- New opening and swing glass door between Nos. 25 & 27 The Corso, next to the bi-fold doors.
- Enlargement of the opening between Nos. 25 & 27 The Corso towards the rear and provision of new sliding doors and a swing door.
- Entry to wash area revised.
- New pass through for the kitchen at No. 27 The Corso.
- Existing bar area re-configured.
- Existing male and female toilets removed and new male and female toilets located to the rear of No. 27 The Corso.
- New disabled toilet proposed to the rear of No. 27 The Corso, adjoining the stairs.
- New retractable awning on timber truss over the front section of No. 25 The Corso.
- New adjustable louvres over the over 2.0m x 13.5m passage section at the rear of No. 25 The Corso and open type pergola over the rest.
- New planter over the roof of dish washing area and cool room on No. 25 The Corso.

Applicant's Supporting Statement

In support of the application, the applicant has submitted the following:-

- Statement of Environmental Effects (SoEE) dated March 2009 and prepared by Design Collaborative Pty Limited and received by Council 8 April 2009.

The submitted SoEE includes the following:-

- (i) NSW Land and Environment Court Judgement and consent with respect to appeal No. 10831 of 2008 dated 17 December 2008.
- (ii) Approved plans/drawings, prepared by NBRS + Partners.
- (iii) Section 96 Modification plans/drawings prepared by Paul Kelly Design dated February 2009.
- (iv) Letter from NBRS + Partners dated 11 March 2009 regarding Heritage Impact Statement.
- (v) BCA Assessment Report, prepared by Dix Gardner dated 30 March 2009
- (vi) Letter from Acoustic Group dated 16 March 2009 confirming the original acoustic report and conditions of consent.
- (vii) Revised Draft Plan of Management, prepared by Design Collaborative dated March 2009.

Precinct Community Forum Comments

The application was referred to all the precincts and comments received from the following precincts:-

Clontarf Precinct Community Forum

No applicant present. No neighbours present.

Comment: A resident expressed that the Council would consider a potential increase in the alcohol consumption on The Corso.

Motion: "This precinct makes no comment of the application."

Proposed: Walter Giles. Seconded: Steve Schinagel

Votes: In favour: 20 Against: 2 Abstain: 2 Motion Carried.

Ivanhoe Park Precinct

The Precinct opposes this S96 application and notes the application should be forced to comply with Council conditions as per the original DA approval.

Building Comments

No objections from a building point of view to the proposed modifications to a Class 6 & 9b building subject to the inclusion of the following condition in any consent: DA 267A.

Heritage Comments

There are no further objections to the proposal subject to the following condition being imposed:

The opening between the café and the Ivanhoe Hotel is to be interpreted by limiting the height of the opening to 2.4 metres.

Access Committee Comments

The following comments were received from Council's Access Committee on 13 May 2009:

"The removal of the disabled WC from the ground floor and replacing it with one to the basement is a retrograde move as the only access will be via the lift.

We should stress the importance of Clause 7 in the Land & Environment Court's Consent 1526 for this project dated 17/12/08 as this refers to the requirement that the lift must be freely available and operable without the need of an accompanying staff member."

Planning Comments

Environmental Planning & Assessment Act 1979 – Section 79C(1)

In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application:

Section 79 C (1)(a) the provisions of:

(i) any environmental planning instrument,

Manly Local Environmental Plan 1988:

The site is in zone No 3 – The Business Zone which permits retail, commercial and residential flat buildings with the consent of Council.

The proposal is for alterations and additions to extend the Hotel use from the existing Hotel at No. 27 The Corso, into the adjoining St George Bank building at No.25 on the western side and into No. 31 The Corso on the eastern side (Commonwealth Bank building). The Section 96 application proposes to modify the consent to incorporate the TAB into the front section of the ground floor level and Gaming room to the rear section of No. 31 The Corso; a cafe at the front section, bottle shop in the middle and outdoor area at the rear of the ground floor level No. 25 The Corso. The proposed uses are permissible with Council consent

Manly Local Environmental Plan 1988 Clause 10 Objectives

The following comments are made in regard to the objectives for the Business Zone as stated in Clause 10 of the Manly Local Environmental Plan 1988;

- (a) *to provide for and encourage the development and expansion of business activities which will contribute to the economic growth and employment opportunities within the Manly Council area;*

The proposed redevelopment of the sites includes existing hotel, new pizza retail, new pizza kitchen, bar, relocated TAB, poker machine area, coffee shop, bistro and relocated bottle shop. It is considered that with the new bistro and smoking areas, the development will contribute to the economic growth and provide employment opportunities within the Manly Council area.

- (b) *to accommodate retail, commercial and professional services in established locations in the residential neighbourhoods where such development is compatible with the amenity of the surrounding areas;*

The subject site is located on land that is zoned Business where mixed business, as proposed, is compatible with the amenity of the surrounding area.

- (c) *to ensure there is adequate provision for car parking in future development in the business areas; and*

The proposal does not provide for any parking on the site. No change is proposed to the ground, first and second floors of the existing Ivanhoe Hotel at No. 27 The Corso, except for the replacement of the current bottle shop with a pizza kitchen and pizza retail area. The changes to the two adjoining properties of the hotel relate to the property at No. 25 The Corso, currently used as St. George Bank being converted to a café at the front, bottle shop in the middle section and outdoor area at the rear and part No. 31 The Corso, currently used as part of Commonwealth Bank, being converted to TAB at the front section and gaming room at the rear section. As the current sites are used for business purposes the number of parking spaces required would not change. Currently there are no carparking spaces on site and therefore it is concluded that no additional carparking would be required. It is to be noted that the proposed development deletes the basement night club and replaces with additional toilets and storage area. This would help in the decrease in the number of customer numbers. A Traffic and Parking Report submitted with the original application was assessed at that time.

Any further increase on the floor area would however, require Section 94 Contributions to be paid.

- (d) *to minimize conflicts between pedestrians and vehicular movement systems within the business areas.*

The proposed modification will lead to some conflict between pedestrians and vehicular movement systems, as no loading/unloading bays are proposed and all loading/unloading is proposed to be carried out on the rear lane. It is to be noted that currently the Ivanhoe Hotel gets its deliveries through Market Lane and carries out loading/unloading on Market Lane. With the proposed redevelopment and intensification of business use the conflict between pedestrians and vehicular movement will exacerbate. The proposal has not indicated any loading/unloading area within the site. Pedestrian conflict could arise as a result of the new openings to the Market Lane from the premises.

79C(1)(a)(ii) - any draft environmental planning instrument that is or has been placed on public exhibition and details of which have been notified to the consent authority (unless the Director-General has notified the consent authority that the making of the draft instrument has been deferred indefinitely or has not been approved), and

There is no draft environmental planning instrument that is or placed on exhibition applicable to the sites.

Section 79C(1)(a)(iii) - any development control plan,

Manly Development Control Plan for the Residential Zone 2007 Amendment 1:

The following is an assessment of the proposal's compliance with the numerical standards of the Development Control Plan. Where a variation is proposed to the standards an assessment is included in the Planning Comments.

Total Site Area= 1110.00m ²	<u>Permitted/ Required</u>	<u>Proposed</u>	<u>Complies Yes/No</u>
Floor space ratio	2.5:1 (2775m ²)	No change	No
Wall height	10.0m	7.59m (No. 23 The Corso) 9.11m (No. 25 The Corso) 12.45m (No. 27 The Corso) 11.70m (No. 31 The Corso)	Yes-existing Yes-existing No-existing No-existing
Setback	0 setback	Built to the boundary	Yes
Car Parking	1 space/40m ² - commercial 15 spaces/100m ² - restaurant	0 spaces 0 spaces	No-existing No-existing

Comment:

The subject sites are located within the 10m height zone under the Manly Development Control Plan (DCP) 1989, Amendment 5. The current Section 96 Modification application is to re-arrange various activities approved under the original application by the NSW Land & Environment Court on 17 December 2008. The proposed Section 96 Modification application will not change the proposal's compliance with the requirements of the DCP.

Concern has been raised by the Access Committee regarding the removal of the proposed accessible toilet from the ground floor level of the Ivanhoe Hotel. It is to be noted that two (2) accessible toilets have been provided in the proposal – one (1) in the basement level and the other at the first floor level and this is considered to be satisfactory. A condition has been included within the Recommendation to provide lift access to all levels of the Hotel for persons with a disability at all times the Hotel is trading without the need of an accompanying staff member. This will provide access to the toilets at all times.

Section 79C(1)(a)(iiia)- any planning agreement that has been entered into under section 93F, or any draft planning agreement that a developer has offered to enter into under section 93F,

There is no planning agreement relating to this development.

Section 79C(1)(a) (iv)- the regulations

The proposal has been considered under the regulations.

Section 79C(1) (b)- the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality

The proposed Section 96 Modification application will not alter the developments impacts on the natural and built environment of The Corso.

Section 79C(1) (c)- the suitability of the site for the development,

The proposed development is considered to be suitable for the site, as it is located in The Corso Business area and the subject uses are permissible with Council consent.

Section 79C(1) (d)- any submissions made in accordance with this Act or the regulations

The application was notified to nearby and adjoining property owners in accordance with Council's Notification Policy with two (2) submissions received (one in support and the other raising concern). The letter of support has been received from B J Neville of C G M B Company, 19 Woolrych Crescent Davidson 2085 and raised the following comments in support:-

- It will bring a higher level of quality hospitality to the entertainment area of The Corso.
- We would like to see more emphasis at the rear of the development in Market Lane. Market Lane is scheduled for an upgrade to provide an escape from the mainstream tourist trail down The Corso to create a "European Style" market place.
- To assist with this transformation we would ask that the rear of the development, into Market Lane, be made as attractive as possible and not have the "Back Alley" look. If it is possible an open full glass look into the outdoor entertainment area from the lane it would be most appreciated by all interested parties.
- This is a good opportunity to add to the Jig Saw mix of rear access buildings and I feel confident it would increase the developments appeal to the tourist trade and local inhabitants.

The other letter objecting to the development was received from The Fawcetts of 406/54 West Esplanade. Concerns raised include the following:-

- We the Fawcett family of Manly object to the above huge development
- The Corso will just be one huge alcohol selling outlet.
- There is no need for larger grog and gambling facilities in our small community.
- The whole proposal as planned by the Peterson family is to further line their pockets with grog and gambling money at the cost of the Manly Community and the reputation that Manly once had as a fun place for day trippers and holiday makers.
- The larger premises attract larger crowds adding to the already overloaded facilities and services that the Manly rate payers and tax payers can afford, ie., police presence, clean up staff, hospital workers, taxi congestion.
- The huge pub sits smack bang opposite St Mathews and denigrates the location.
- The huge development further reduces the retail area of The Corso which will force further retail outlets to close, no doubt to have their vacated premises snapped up by further pub development plans.
- Once approved and built the pub will attract more ratbags and alcohol rage that is synonymous of Manly.

Comment on submissions:

The issues raised above relate to the original development application. The original application was approved by the NSW Land and Environment Court on the 17 December 2008. The Section 96 Modification application is to re-configure the internal layouts only and there is no increase to the floor area or any additional use. It is agreed that the proposal will create a huge development all internally linked but this was already considered as part of the original development and the Section 96 modification application does not change this.

Environmental Planning and Assessment Act 1979 - Section 96 (AA) Modification

Section 96 (AA) (1) of the Environmental Planning and Assessment Act 1979 states that "a consent authority may, on application being made by the applicant or any other person entitled to act on a consent granted by the Court and subject to and in accordance with the regulations, modify the development consent if:

- (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), and*
 - (b) *it has notified the application in accordance with:*
 - (i) *the regulations, if the regulations so require, and*
 - (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, and*
 - (c) *it has notified, or made reasonable attempts to notify, each person who made a submission in respect of the relevant development application of the proposed modification by sending written notice to the last address known to the consent authority of the objector or other person, and*
 - (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.*
- (1A) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 79C (1) as are of relevance to the development the subject of the application."*

With regards to the above, it is considered that the proposed modifications to the original consent, is not substantially the same development as the original development that has been consented to. The modifications requested were notified in accordance with Council's DCP for Notification, and two (2) submissions received – one (1) in favour of the application and the other raising objection to it. All matters relating to the proposed modification in terms of impact on neighbouring properties and streetscape have been considered.

Section 79C(1) (e) *the public interest.*

The proposed changes are in the public interest.

CONCLUSION:

The application has been assessed having regard to Section 79C and 96 (2) of the Environmental Planning and Assessment Act 1979, the Manly Local Environmental Plan 1988; Development Control Plan for the Business Zone 1989 Amendment 5; Development Control Plan for The Corso 2005; Development Control Plan for Late Night Venues 2005 and Development Control Plan for Access. The proposal is considered to be satisfactory and recommended for conditional approval.

ATTACHMENTS

Please list any attachments for this report.

Assessment Planner:

Date: 3 July 2009