

<b>JRPP No.</b>	<b>2009SYE018</b>
<b>DA No.</b>	<b>DA200900410</b>
<b>Proposed Development</b>	<b>52-60 Enmore Road, Newtown - Newtown RSL redevelopment</b>
<b>Applicant:</b>	<b>Gordon King</b>
<b>Report By:</b>	<b>Ali Hammoud (Marrickville Council)</b>

## **Assessment Report and Recommendation**

### **Synopsis**

Application to demolish the existing improvements, consolidate the land and erect a five (5) storey mixed use building containing a new club premises, café, shop and accommodation hotel comprising sixty six (66) rooms over a basement level with off street car parking for seventeen (17) vehicles.

A total of twenty four (24) submissions were received in response to Council's notification of the proposal, of which twenty (20) submissions raised objections and concerns regarding the proposal and four (4) submissions were in support of the proposed development.

The proposed development has a floor space ratio (FSR) of approximately 3.44:1 which exceeds the maximum 2:1 FSR prescribed for the General Business zone under Clause 33 of Marrickville Local Environmental Plan 2001 (MLEP 2001) and is a significant departure from Council's FSR development standard. The proposed five (5) storey height of the development is inconsistent with the prevailing two (2) to three (3) storey height of adjoining and surrounding developments found along this section of Enmore Road and consequently contrary to the height controls contained in Marrickville Development Control Plan No. 34 - King Street and Enmore Road Heritage and Urban Design (DCP 34). The proposed five (5) storey building would contribute to an unacceptable level of additional overshadowing and loss of available solar access to the residential building situated to the south of the subject site.

Only seventeen (17) of the eighty one (81) parking spaces required under the provisions of Marrickville Development Control Plan No. 19 - Parking Strategy (DCP 19) are proposed as part of the development which would result in a significant undersupply of off street parking spaces. The proposed loading and unloading space situated at the rear of the building parallel to Reiby Lane is considered impractical and unacceptable due to the narrowness of the space caused by the placement of bollards within the loading space, on the outside of a fire exit situated on the rear of the building. The narrowness of the loading and unloading space would require delivery vehicles and trucks to partially park over Reiby Lane which would inhibit the safe movement of vehicles through Reiby Lane and is contrary to the delivery and service area provisions of DCP 19.

The waste storage areas for the proposed retail shop and café are located within the proposed clubs' back of house area which is an unsuitable location considering the tenants of the proposed retail shop and café would be independent to the club operators. Consequently, the proposed waste storage arrangements for the development are inconsistent with the provisions of Marrickville Development Control Plan No. 27 - Waste Management.

The existing RSL building on the site currently achieves a FSR of 2.83:1 and is four (4) storeys in height therefore already exceeding the maximum permitted FSR development standard of MLEP 2001 and height controls contained in DCP 34. Notwithstanding this, the proposed development was initially presented to Council as a Pre-Development Application to which Council Officers

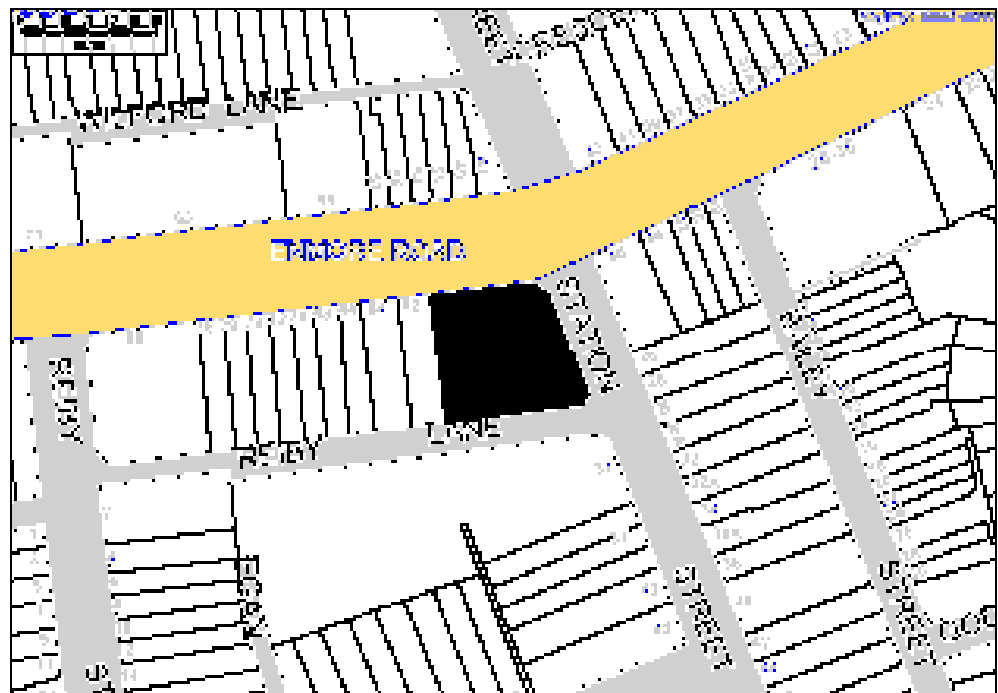
provided advice to the applicant recommending that the proposal not exceed the existing RSL building's Gross Floor Area (GFA) and FSR and existing four (4) storey building height.

The Capital Investment Value of the development is \$10.5 million which consequently classes the proposed development as a development of regional significance under the provisions of State Environmental Planning Policy (Major Development 2005). Accordingly, the consent authority for the purpose of determining the subject application is the Sydney East Region Joint Regional Planning Panel.

Given the circumstances, the proposed development is considered unsuitable for the site and is unsupportable in its current form. The application proposes significant departures from Council's FSR development standard and other development controls which together contribute to a development that is unsuitable for the subject site and would result in a gross overdevelopment of the site. Approval of the subject application in its current form would not be in the public interest. Consequently, refusal of the application is recommended.

### **PART A - PARTICULARS**

**Location:** The subject property is situated on the south western corner of Enmore Road and Station Street, Enmore and has a secondary frontage to Reiby Lane at the rear.



*Image 1: Location Map*

**D/A No:** 200900410

**Application Date:** 16 October 2009 (additional information submitted on 6 November 2009)

**Proposal:** To demolish the existing improvements, consolidate the land and erect a five (5) storey mixed use building containing a new club premises, café, shop and accommodation hotel comprising sixty six (66) rooms over a basement level with off street car parking for seventeen (17) vehicles.

**Applicant:** Club Innovations

**Estimated Cost:** \$10.45 million

**Zoning:** General Business

**PART B - THE SITE AND ITS CONTEXT**

**Improvements:** A four (4) storey commercial building currently occupies the site.



*Image 2: The Site as viewed from Enmore Road*



*Image 3: The rear of the Site as viewed from the Intersection of Station Street/Reiby Lane*



*Image 4: The Site looking down Reiby Lane from Station Street*



*Image 5: The Site as viewed from Station Street looking to Enmore Road*

**Current Use:**

The existing building on the site is currently used as the @Newtown RSL which includes a foyer, plant rooms, back of house facilities and thirteen (13) car parking spaces on the ground floor; lounge, dining, bar and gaming

areas, toilet facilities, a kitchen and offices on the first floor; an auditorium, lounge and bar areas and toilet facilities on the second floor and administration areas, a board room, plant rooms and storage facilities on the third floor.

**Prior Approval:**

Determination No. 7914/62, 18 February 1963, approved an application to erect a 3 part 5 storey building for the use of meals and recreation amenities for members including bowling rinks on the roof.

Determination No. 10536, dated 2 September 1986, approved an application to carry out alterations and additions to the RSL Club.

Determination No. 13196, dated 13 July 1990, approved an application to erect a projecting wall sign.

Determination No. 16886, dated 16 December 1996, approved an application to carry out alterations to the RSL Club.

Modified Determination No. 16886, dated 21 June 1999, approved an application to extend the hours of operation of the club.

Modified Determination No. 16886, dated 26 November 1999, approved an application to extend the hours of operation of the club for New Years Eve.

Modified Determination No. 16886, dated 4 April 2001, approved an application to extend the hours of operation of the club.

Modified Determination No. 16886, dated 6 September 2001, approved an application to extend the hours of operation of the club for a period of two years.

Modified Determination No. 16886, dated 31 October 2002, approved an application to reduce the number of car spaces required for the club.

Determination No. 200300386, dated 10 September 2003, approved an application to carry out internal refurbishment works to the former Newtown RSL building. That Determination was modified on 8 December 2003 by granting a staged consent approving the modification of conditions on the consent relating to the approved plans, security guard numbers, loading details and the hours of operation and refusing the deletion of conditions relating to litter patrols, stormwater requirements and footpath reconstruction. The Determination was further modified on 6 May 2004 by extending the hours of operation of the club to between the hours of 9.00am to 12.00 midnight Sundays to Tuesdays and Public Holidays, 9.00am to 2.00am the following day Wednesdays and Thursdays, and 9.00am to 3.00am the following day Fridays and Saturdays with the hours of operation on New Year's Eve being restricted to 5.00am the following day, New Year's Day with a trial period of 12 months imposed on the modified consent. The Determination was further modified on 7 September 2005 by extending the hours of operation of the club to between the hours of 9.00am to 3.00am the following day Mondays to Saturdays, 9.00am to 12.00 midnight Sundays and Public Holidays, with the hours of operation on New Year's Eve being restricted to 5.00am the following day, New Year's Day with a trial period of 12 months imposed on the modified consent. The Determination was further modified on 10 April 2007 approving the relocation of certain functions on level 2 of the existing premises. The Determination was further modified on 9 October 2008 by

granting a staged consent approving extended hours of operation of the club to between the hours of 9.00am to 12.00 midnight Sundays to Tuesdays and Public Holidays; 9.00am to 2.00am (the following day) Wednesdays and Thursdays; and 9.00am to 3.00am (the following day) Fridays and Saturdays with the hours of operation on New Year's Eve being restricted to 5.00am (the following day being New Year's Day) with a trial period of two years being imposed on the modified consent and refusing a reduction in the number of security guards required to be on the premises.

Determination No. 200600558, dated 12 March 2007, granted a staged consent approving an application to carry out alterations and refurbishment works to the premises to create a shop and café on the ground floor and erect a balcony and awning on the Enmore Road frontage of the premises and granting a deferred commencement approval for an application to occupy the balcony on the Enmore Road frontage. That Determination was modified on 28 June 2007 by deleting condition 29 of the consent which required the person acting on the consent to enter into a suitable formal lease with Council pursuant to Section 149 of the Roads Act 1993 to lease the air rights over the footpath in Enmore Road in respect of the balcony.

Determination No. 200800275, dated 8 July 2008, refused an application to erect a projecting wall sign on the club.

**Environment:** The surrounding area is characterised by the Enmore Road retail shopping strip to the north, east and west of the site with residential uses situated to the south of the site along Station Street.

### **PART C - REQUIREMENTS**

1. **Zoning:**  
Is use permissible in zoning? Yes
  
2. **Development Standards (Mandatory Requirements):**

<b>Type</b>	<b>Required</b>	<b>Proposed</b>
Floor Space Ratio (max)	2:1	3.44:1
  
3. **Departures from Council's Codes and Policies:**

<b>Type</b>	<b>Required</b>	<b>Proposed</b>
Parking	Eighty One (81) spaces	Seventeen (17) spaces
  
4. **Community Consultation:**  
 Required: Yes (newspaper advertisement, on-site notice and resident notification)  
 Submissions: A total of twenty four (24) submissions were received, of which twenty (20) submissions raised objections and concerns regarding the proposal and four (4) submissions were in support of the proposal
  
5. **Other Requirements:**  
 ANEF 2029 Affectation: 20 - 25 ANEF

## **PART D - ISSUES**

### **1. Background**

The proposed development, in a slightly different form, was initially presented to Council as a Pre-Development Application. Council's Assessing Officer provided, in part, the following advice and recommendations to the applicant in relation to the proposal presented in the Pre-Development Application:

*"A preliminary assessment of your proposal has identified a number of departures from Council's planning controls and a number of matters for further consideration before the lodgement of a Development Application for the proposal. The issues raised in this letter would need to be appropriately addressed before the lodgement of any Development Application. Of particular note:*

- (i) The GFA of the proposed development is approximately 2,982sqm equating to a FSR of 3.44:1 which exceeds the maximum 2:1 FSR permitted in the General Business zone under Clause 33 of MLEP 2001. Concern is raised over the extent of the proposed variation and the related bulk and scale and streetscape impacts of the proposed development on the surrounding locality. Although it is acknowledged that the existing building on the site has a GFA of approximately 2,455sqm which equates to an existing FSR of 2.83:1 and also exceeds the maximum FSR permitted in the zone, further exceeding the maximum permitted FSR is not advisable;*
- (ii) Concern is raised over the impacts that the proposed five (5) storey development will have on adjoining buildings and the streetscape. Consideration should be given to reducing the height of the building to a maximum of four (4) storeys at the street level in line with the existing building; and*
- (iii) The proposal includes the provision of seventeen (17) parking spaces on the basement level of the building resulting in a shortfall of sixty four (64) parking spaces which is a substantial departure from Council's parking requirements under DCP 19."*

These three issues were summarised at the end of the advice as the main issues and concerns with the application. The issues have not been adequately addressed in the proposal submitted in the subject Development Application. Those issues are discussed in detail throughout the assessment contained in this report.

The subject Development Application was submitted to Council in October 2009 with an estimated cost of the proposed development stated as \$9.5 million. However, information submitted with the application was unclear as to whether the estimated cost related to the capital investment value (CIV) of the proposed development. In order to determine whether the proposed development constitutes a development of regional significance and be subject to the provisions of State Environmental Planning Policy (Major Development) 2005 (Major Development SEPP), further details regarding the estimated cost of development were required to be submitted to Council. The applicant submitted a revised estimated cost of the development for the proposal in November 2009 which indicated that the CIV of the development is \$10.5 million which consequently classes the proposed development as one of regional significance under the provisions of the Major Development SEPP. Accordingly, the consent authority for the purpose of determining the subject application is the Sydney East Region Joint Regional Planning Panel.

### **2. The Site and Surrounds**

The subject site is known as 52-60 Enmore Road, Newtown and the legal description of the land is Lot A in Deposited Plan 333296 and Lot 1 in Deposited Plan 784868. The subject property is more commonly referred to as the "@Newtown RSL" and is situated on the south western corner of Enmore Road and Station Street, Enmore and has a secondary frontage to Reiby Lane at the rear.

The site is irregular in shape with irregular frontages measuring approximately 27.15m to Enmore Road, a secondary frontage to Station Street measuring approximately 28.5m and a rear frontage to Reiby Lane measuring approximately 31m. The site has a total site area of approximately 866.4sqm.

A four (4) storey commercial building currently occupies the entire site and is used as the @Newtown RSL club which includes a foyer, plant rooms, back of house facilities and thirteen (13) car parking spaces on the ground floor; lounge, dining, bar and gaming areas, toilet facilities, a kitchen and offices on the first floor; an auditorium, lounge and bar areas and toilet facilities on the second floor and administration areas, a board room, plant rooms and storage facilities on the third floor.

As mentioned above, off street parking is available within the ground floor of the building for thirteen (13) vehicles. Access to the parking spaces is achieved via the existing vehicle crossing situated at the rear of the building on Reiby Lane.

The site is situated in an area that is predominately characterised by the Enmore Road retail shopping strip to the north, east and west with most of the buildings along Enmore Road having a two (2) storey height with parapet or three (3) storey building height. A couple of larger style recent developments can also be found along this section of Enmore Road including a three (3) storey mixed use development situated to the west of the site at 80 Enmore Road and a four (4) storey mixed use development situated to the north west of the site at 63-71 Enmore Road. Development surrounding the subject site to the south in the block bound by Station Street, Don Street, Reiby Street and Reiby Lane is predominately characterised by low scale residential lots. Immediately to the south of the subject site is an eight (8) storey residential flat building which was built by the NSW Department of Housing in the 1960's and is an unusual type of development that can be found in the area. It is noted that this site was situated within the former South Sydney Local Government Area at the time that the building was constructed. A similar unusual development can be found on the former Crago Flour Mill site situated to the north of the site at 1-3 Gladstone Street which has been converted into a part twelve (12) storey residential flat building.

### **3. The Proposal**

Approval is sought to demolish the existing improvements, consolidate the land and erect a five (5) storey mixed use building containing a new club premises, café, shop and accommodation hotel comprising sixty six (66) rooms over a basement level with off street car parking for seventeen (17) vehicles.

Further details of the proposed development, as provided by the applicant in the Statement of Environmental Effects submitted with the application, are provided below:

*"This application seeks development consent for:*

- *the demolition of the existing building on the land;*
- *the construction of a five (5) storey mixed-use building containing:*
  - *new licensed club premises to be occupied by Newtown RSL Club, a café and a shop fronting Enmore Road at the ground floor level;*
  - *a boutique accommodation hotel comprising sixty-six (66) hotel rooms at the upper levels of the building; and*
  - *basement car parking accommodating a total of seventeen (17) car parking spaces, including one (1) capable of being used by people with a disability;*
- *the consolidation of the two (2) allotments forming the site into one (1) allotment.*

*The project has been designed by Jackson Teece Architecture and the development is depicted on Plan No. 2009033, Drawings No. DA00 to DA25, inclusive.*



*The design has been formulated following pre-application consultations held with Council's Pre-Lodgement Advisory Panel on 14 August 2009.*

*The development has been designed with modulated and articulated elevations and architectural elements and finishes that will create an attractive and interesting facade and vista when viewed from the public domain in Enmore Road, Station Street and Reiby Lane.*

*The topmost floor of the building is to be contained within a mansard roof designed to reduce the perceived height of the building.*

*There is to be a synergy between the uses to be conducted on the site, with the food, beverage and leisure facilities supplied by the Club, café and shop being used by the visitors accommodated in the hotel.*

*This will supplement and economically support the provision of these facilities to the local community.*

*The main walls of the building are to largely abut the boundaries of the land, with the exception of:*

- *an element at the Enmore Road/Station Street corner, which has been modulated and articulated to provide architectural expression to the corner of the building;*
- *Levels 3 and 4, which are to be setback 2.5m from its Enmore Road façade; and its ground floor level to Reiby Lane, which is to be setback to accommodate vehicular manoeuvring areas and loading facilities.*

*The proposal has been designed to significantly improve the built form and architectural expression of the existing building.*

*All of the levels in the building, including the basement car parking area, are to be vertically connected by lifts.*

*The existing building, which is to be demolished, has a gross floor area of some 2,455m<sup>2</sup> and a floor space ratio of 2.83:1, when compared to the site area of 866.4m<sup>2</sup>.*

*The proposed development is to have a gross floor area of some 2,890.4m<sup>2</sup> including:*

- *657.6m<sup>2</sup> in the ground floor Club, cafe, shop and hotel reception areas; and*
- *2,232.8m<sup>2</sup> in the hotel accommodation section of the building.*

*This represents a floor space ratio of 3.34:1.*

*The Club premises are to be downsized from its current gross floor area of 2,455m<sup>2</sup> to 390m<sup>2</sup>.*

*The existing building has parapet heights ranging from RL 42.08 to RL 46.18 along its Enmore Road elevation and from RL 44.75 to RL 52.39 along its Reiby Lane elevation.*

*The parapet of the proposed building is to be at RL 47.6.*

*The overall height of the building will not be markedly different to the height of the existing building.*

*Seventeen (17) off street car parking spaces, including one (1) capable of being used by people with a disability, are to be provided in a basement level under the building.*

*The car parking area has been designed in accordance with Australian/New Zealand Standard AS/NZ 2890.12004 Parking Facilities Part 1: Off-Street Car Parking.*

*In addition, provision is to be made for bicycle parking in the basement area for the parking of twenty (20) bikes.*

*The loading facilities associated with the building and garbage storage facilities servicing the development are to be provided at the ground floor level off Reiby Lane.*

*The vehicular access way to the basement parking and loading facilities is to be located adjacent to the site's south-western corner off Reiby Lane.*

#### *Operational Details*

*[...]*

*The new Club premises is to discontinue its auditorium functions and downsize its lounge, dining, bar and gaming facilities.*

*The gross floor area of the building to be devoted to Club use is to be reduced from 2,455m<sup>2</sup> to 390m<sup>2</sup>.*

*The Club is to operate between the hours of 10.00am and 1.00am on Sundays to Thursdays and 10.00am and 2.00am on Fridays and Saturdays.*

*The number of poker machines in the Club are to be reduced from forty-nine (49) to thirty (30).*

*The Club in its new configuration will not provide for any auditorium facilities within which public entertainment is to be provided.*

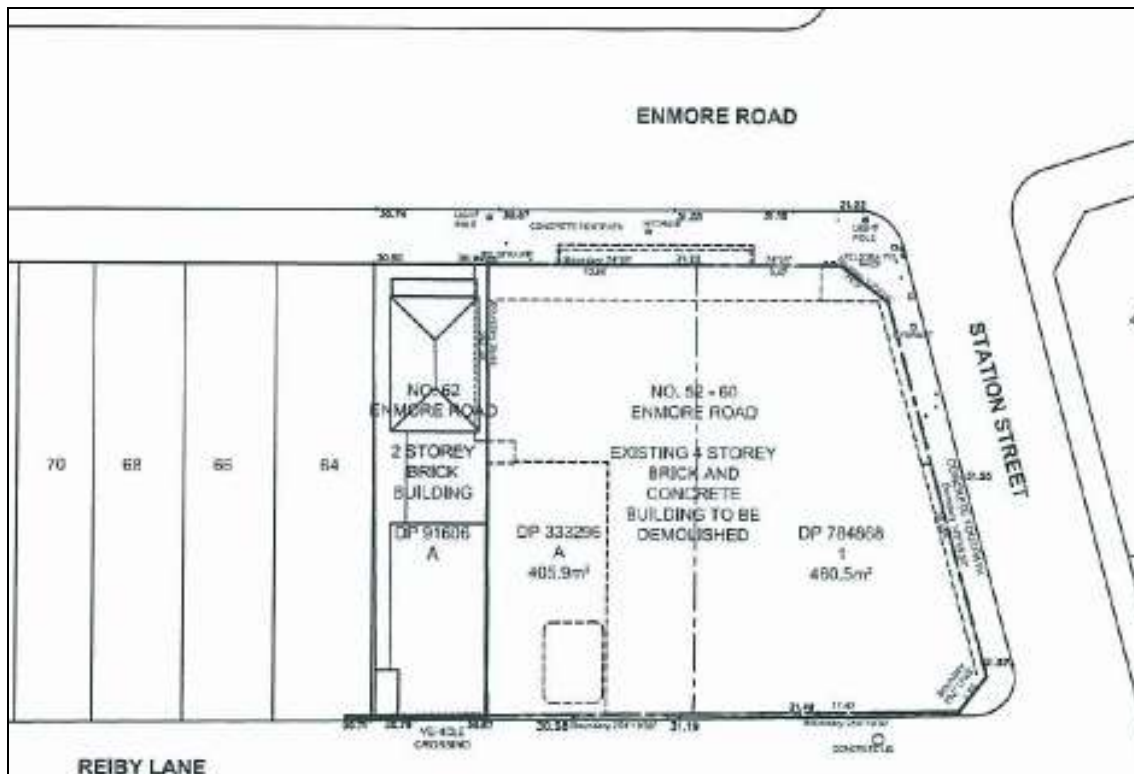
*The Club is to employ a maximum of six (6) people on site at any one time.*

*The cafe and shop are to operate between the hours of 7.00am and 11.00pm daily and employ a total of five (5) people.*

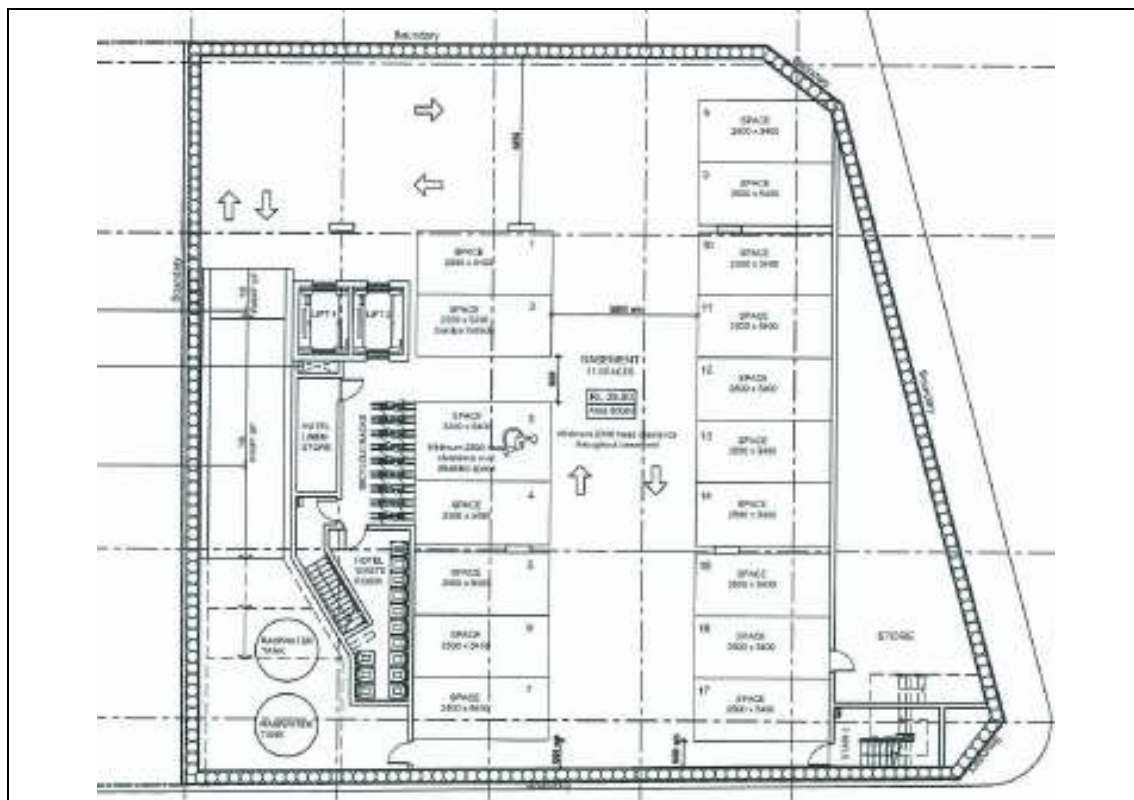
*The accommodation hotel is to be accessible on a 24/7 basis and three (3) people are to be employed in its operation at all times.*

*In addition, three (3) people would be employed for housekeeping duties during the hotel changeover period, generally between 9.00am and 5.00pm."*

A copy of the site and floor plans and elevations of the proposed development submitted with the application are reproduced below:



*Image 6: Site Plan*



*Image 7: Basement Floor Plan*

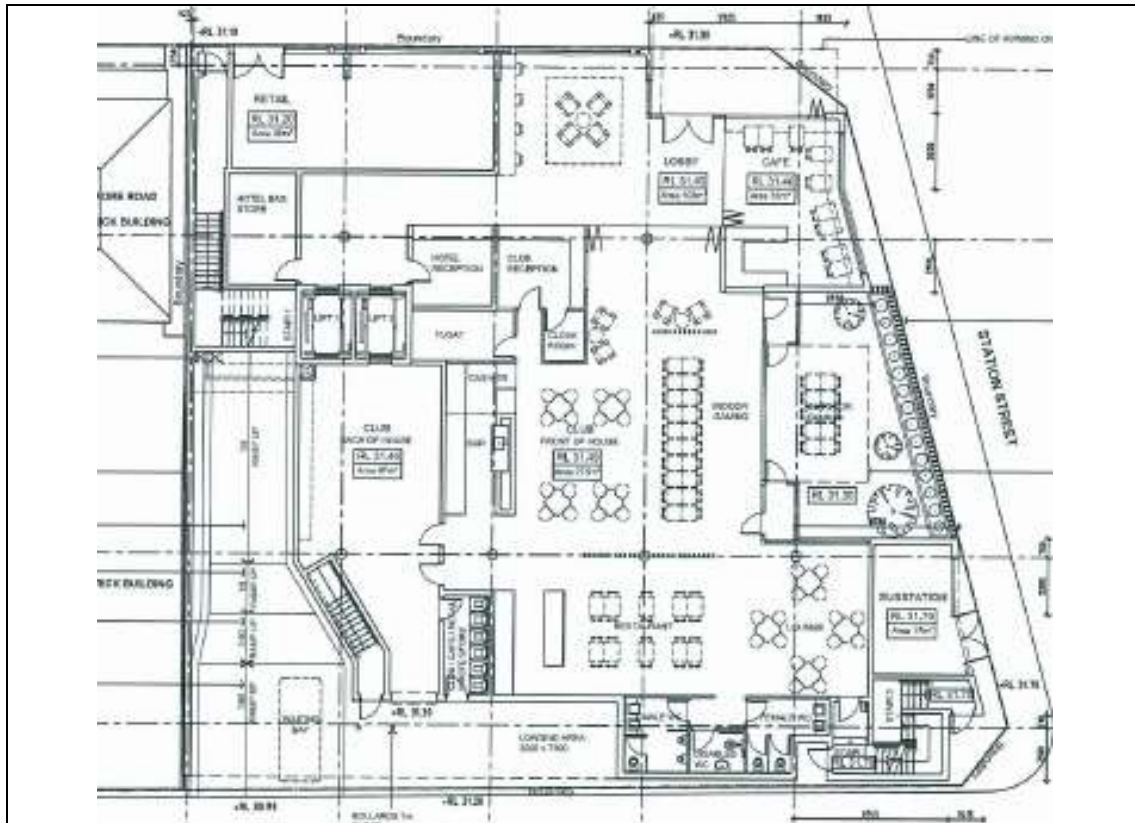


Image 8: Ground Floor Plan (Hotel Foyer, RSL Club, Café and Shop)

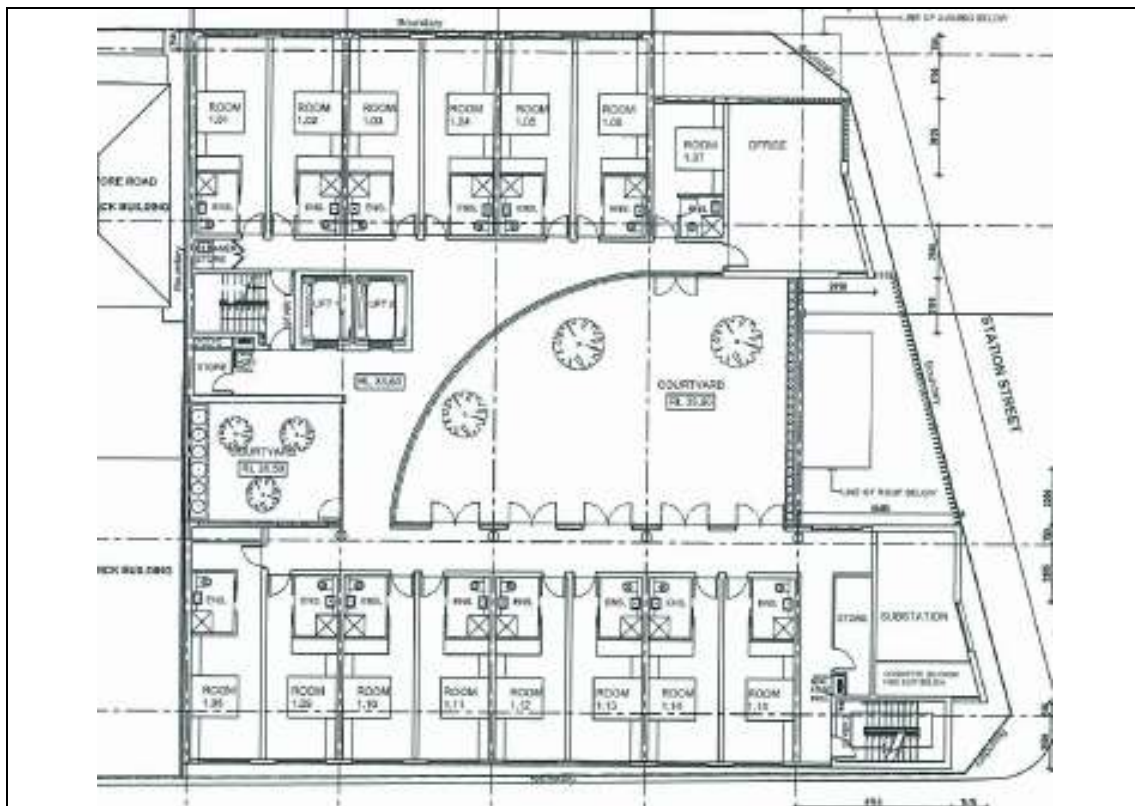


Image 9: First Floor Plan (15 Hotel Suites)



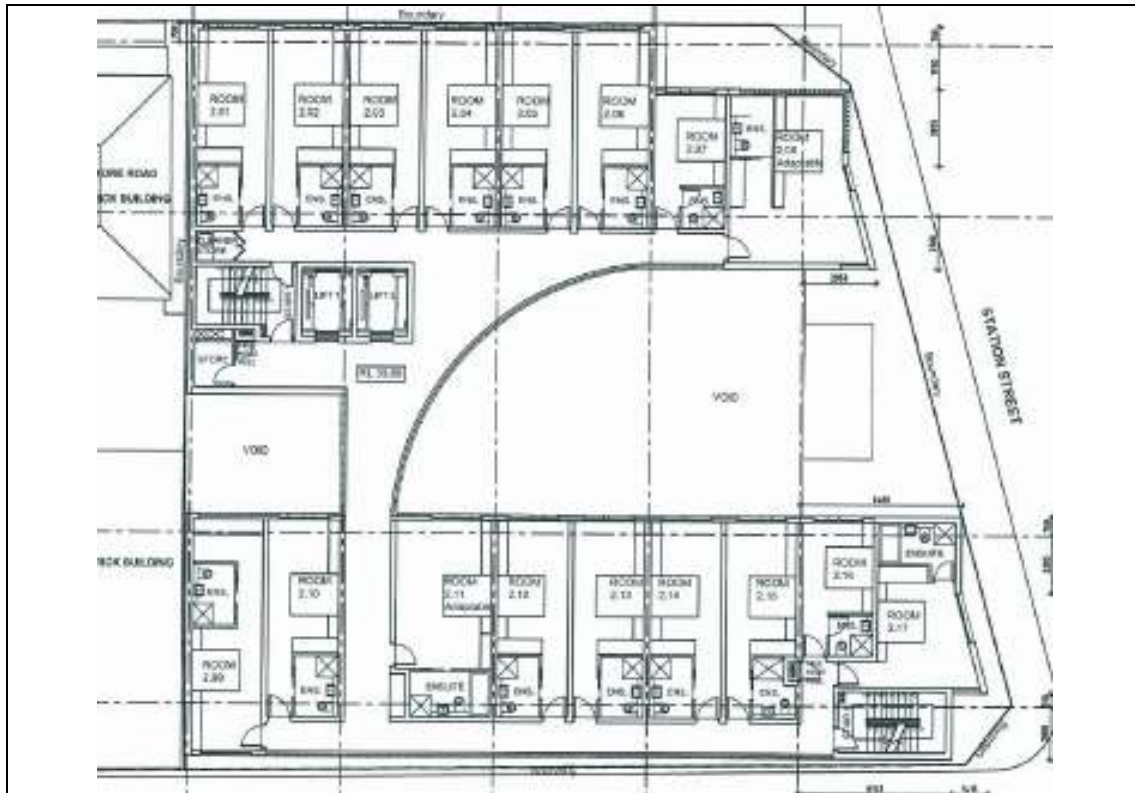


Image 10: Second Floor Plan (17 Hotel Suites)

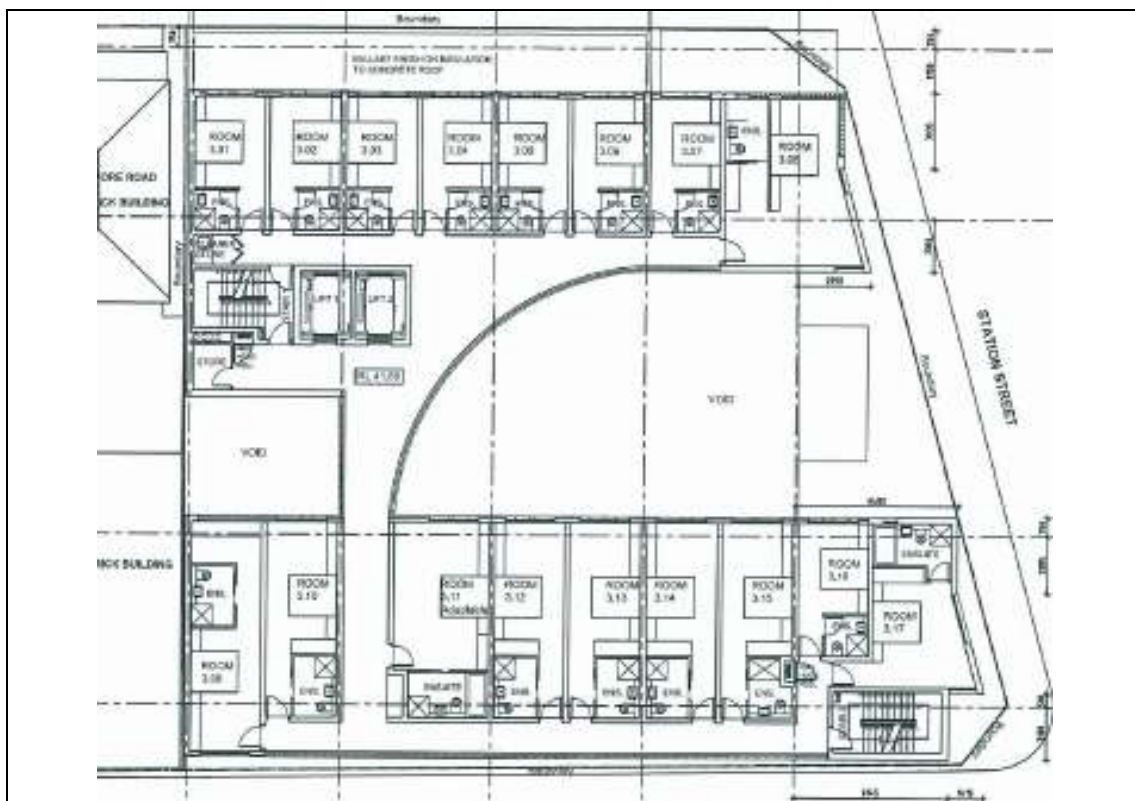


Image 11: Third Floor Plan (17 Hotel Suites)

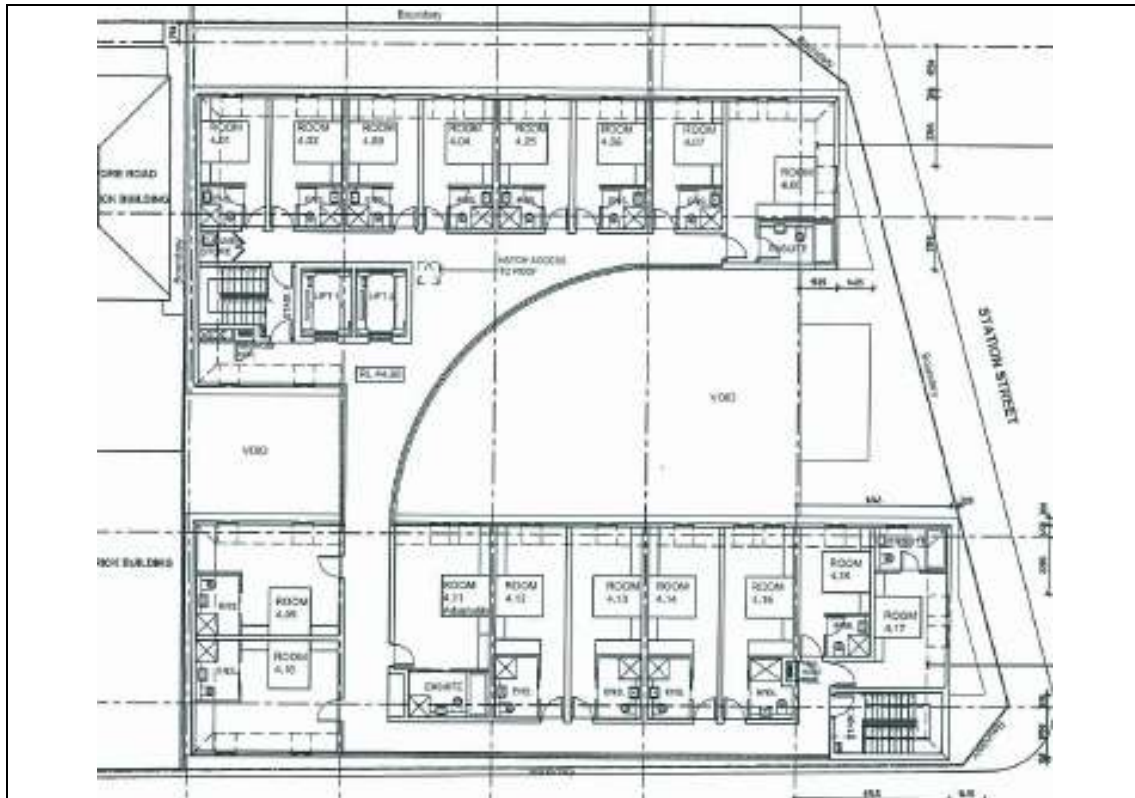


Image 12: Fourth Floor Plan (17 Hotel Suites)

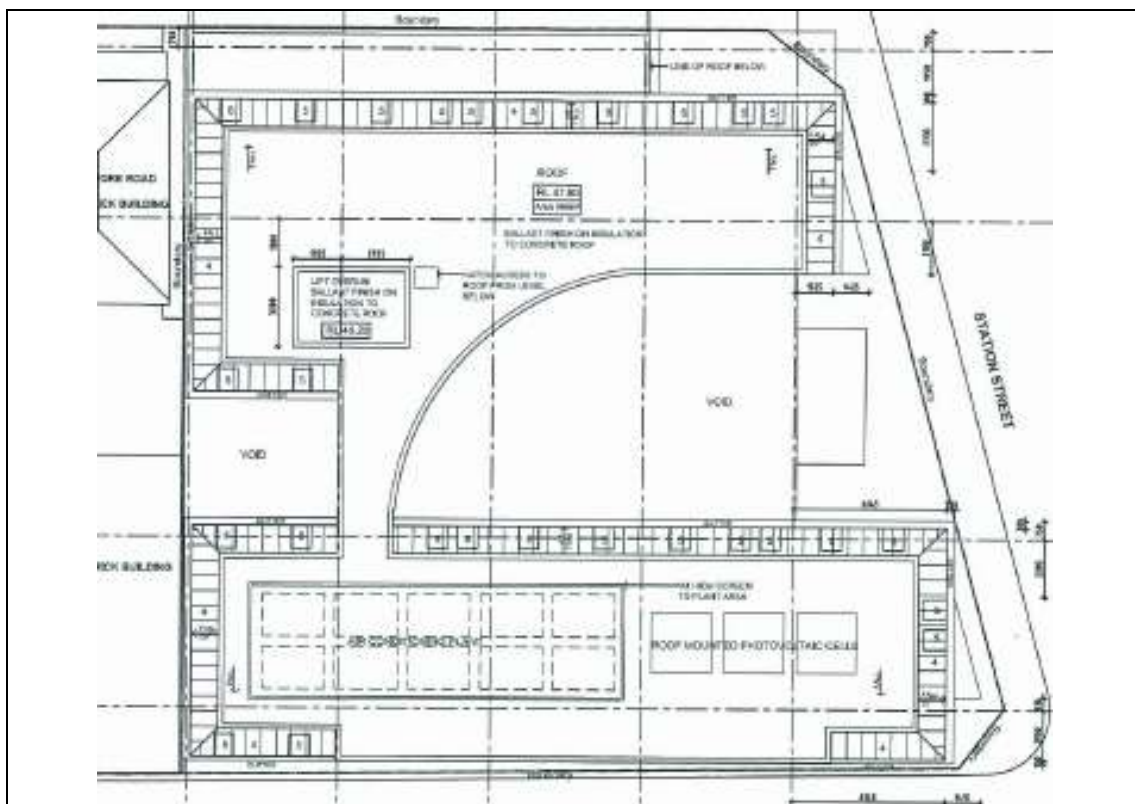
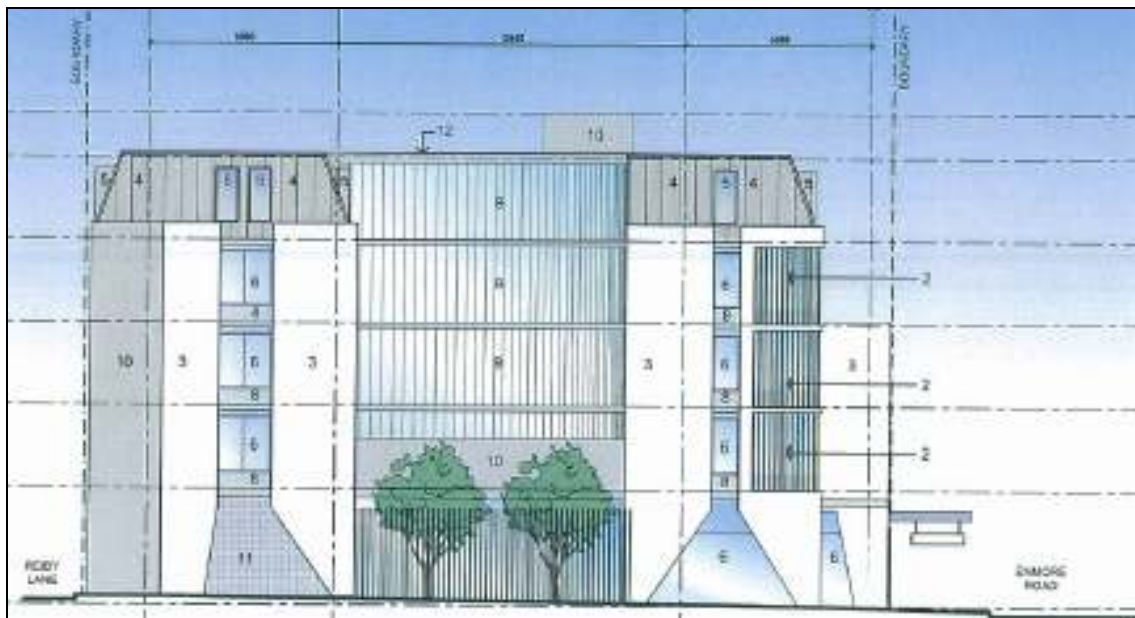


Image 13: Roof Plan

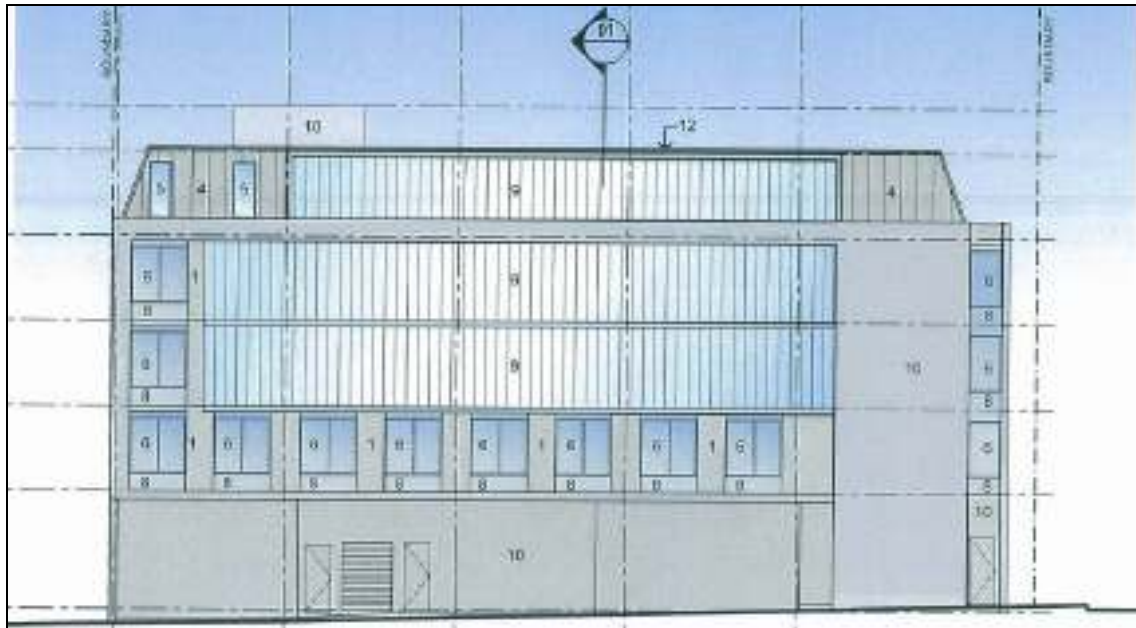


*Image 14: Enmore Road (North) Elevation*

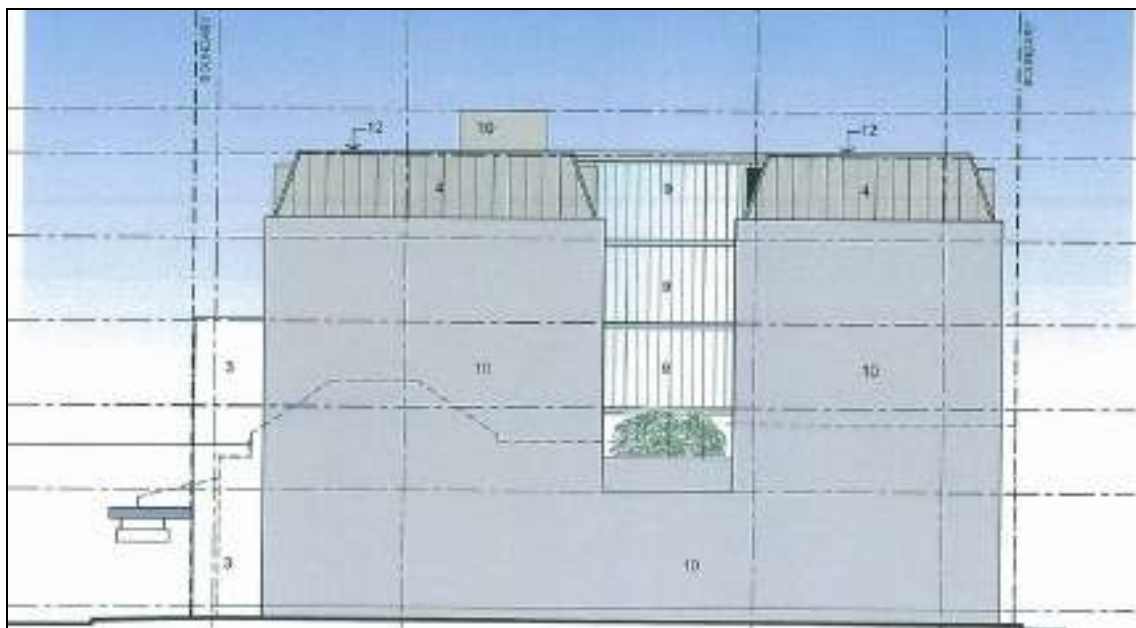


*Image 15: Station Street (East) Elevation*

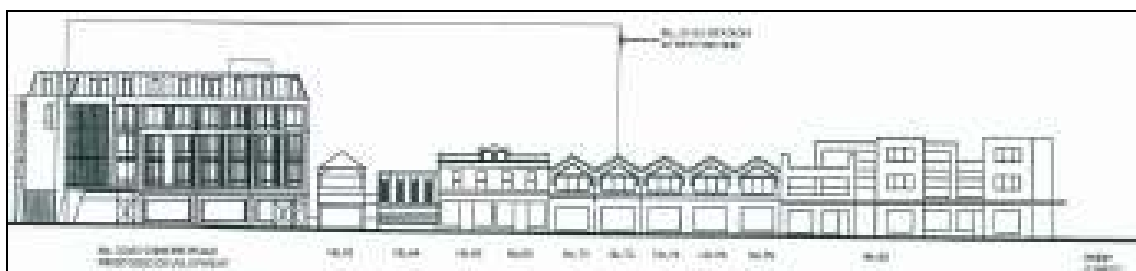




*Image 16: Reiby Lane (South) Elevation*



*Image 17: Side Elevation with Visible Portions of Building to Enmore Road*



*Image 18: Enmore Road Streetscape Plan*

#### 4. Planning Instruments and Controls



The following Planning Instruments and Controls apply to the development:-

- (ii) State Environmental Planning Policy No. 1 - Development Standards;
- (iii) State Environmental Planning Policy No. 55 - Remediation of Land;
- (iv) State Environmental Planning Policy (Infrastructure) 2007;
- (v) Marrickville Local Environmental Plan 2001;
- (vi) Marrickville Development Control Plan No. 19 - Parking Strategy;
- (vii) Marrickville Development Control Plan No. 27 - Waste Management;
- (viii) Marrickville Development Control Plan No. 28 - Urban Design Guidelines for Business Centres;
- (ix) Marrickville Development Control Plan No. 31 - Equity of Access and Mobility;
- (x) Marrickville Development Control Plan No. 32 - Energy Smart Water Wise;
- (xi) Marrickville Development Control Plan No. 34 - King Street and Enmore Road Heritage and Urban Design;
- (xii) Marrickville Development Control Plan No. 38 - Community Safety; and
- (xiii) Marrickville Development Control Plan No. 39 - Development Notification Policy.

## **5. State Environmental Planning Policy No. 1 - Development Standards**

A maximum Floor Space Ratio (FSR) of 2:1 applies to developments within a General Business zone under Clause 33 of Marrickville Local Environmental Plan 2001 (MLEP 2001). Information submitted with the application indicates the proposed development has a Gross Floor Area (GFA) of approximately 2,890sqm and the subject property has a total site area of approximately 866.4sqm. The proposed development therefore proposes a FSR of 3.44:1 which exceeds the maximum FSR of 2:1 prescribed for the General Business zone under Clause 33 of MLEP 2001.

As the FSR control is a development standard under an Environmental Planning Instrument, an objection to the non compliance with the development standard was submitted in accordance with the requirements of State Environmental Planning Policy No. 1 - Development Standards (SEPP 1). The applicant's SEPP 1 objection to the FSR development standard considers compliance with the development standard unreasonable on the following grounds:

*"The provisions of Clause 33 (1) of Marrickville Local Environmental Plan 2001 are considered unnecessary and unreasonable for the reasons that:*

- 1. The proposal will result in:*
  - the downsizing of the floor space required to meet the contemporary needs of the RSL Club to satisfy the demands of the local community wishing to use its services and facilities from 2,455m<sup>2</sup> to 390m<sup>2</sup>;*
  - the establishment of complementary uses to serve the needs generated by the surrounding area in terms of the shop and the café and the accommodation needs of people attending health, educational, leisure and entertainment facilities located in the Newtown/Enmore area;*
  - the revitalisation of the area in terms of its urban design, public domain and streetscapes; and*
  - the achievement of these outcomes in an economically viable manner.*
- 2. The height, bulk and scale of the existing and proposed buildings are not markedly dissimilar.*
- 3. The gross floor area of the proposed building is to be achieved within a profile similar to the existing building.*
- 4. The proposed building's design represents an appropriate and satisfactory response to the opportunities and constraints offered by the site and its setting and will result in the construction of a building which is consistent with the objectives of building form and character elements contained in Development Control Plan No. 34.*
- 5. The proposal is consistent with the desired role and function of the King Street and Enmore Road business centre identified on the map accompanying Development Control Plan No. 28.*

6. *The traffic likely to be generated by the proposed development is within the capacity and capability of the local road network.*
7. *The proposal will not have any undue or unreasonable effect on the amenity enjoyed by residents of surrounding properties in terms of privacy, solar access, views or visual impact.*
8. *The proposal will significantly enhance the amenity of the area in terms of its streetscape presentation in Enmore Road and its public domain and the visual amenity of the area.*
9. *The additional floor space proposed will facilitate the economically viable redevelopment of the land and enable the construction of a building much more sympathetic to the character and streetscape of Enmore Road.*
10. *The proposal is consistent with the objectives for the floor space ratio standard as expressed in Development Control Plan No. 28 and Development Control Plan No. 34, despite it not strictly complying with the numerical value of that standard contained in Clause 33 (1) of Marrickville Local Environmental Plan 2001.*
11. *The proposal will not have any adverse visual impact when viewed from the surrounding public and private domain.*
12. *The proposal will not adversely effect development on adjoining properties and will not, in terms of its floor space, have any adverse impact on the visual amenity of this locality.*
13. *The proposal is consistent with the objectives for the General Business 3 (A) zone under Marrickville Local Environmental Plan 2001.*
14. *The variation to the standard would promote the orderly and economic use and development of the land and the proper management of resources, promoting the social and economic welfare of the community and a better environment, in accordance with the objects of Section 5 (a) (i) and (ii) of the Environmental Planning and Assessment Act 1979."*

Council, when considering an application to which an objection to a development standard in accordance with the requirements of SEPP 1 has been lodged, may grant consent *"Where the consent authority is satisfied that the objection is well founded and is also of the opinion that granting of consent to that development application is consistent with the aims of this Policy as set out in clause 3"*. The aims of SEPP 1 as contained in Clause 3 of the policy are as follows:

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

The specific aims contained under section 5 (a) (i) and (ii) of the Act are:

- "(i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,*
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,"*

It is acknowledged that a redevelopment of the site presents an opportunity to improve the appearance of the existing building or construct a new building that would be more compatible with the surrounding streetscape than the existing building currently on the site.

While no objection is raised in relation to the applicant's contention that *"the height, bulk and scale of the existing and proposed buildings are not markedly dissimilar"*, the contention is not considered a valid reason to support the proposed departure from the FSR development standard. The existing building on the site is an unusual building and one that would not ordinarily be supported in its current form. The existing building does not fit into the surrounding streetscape,

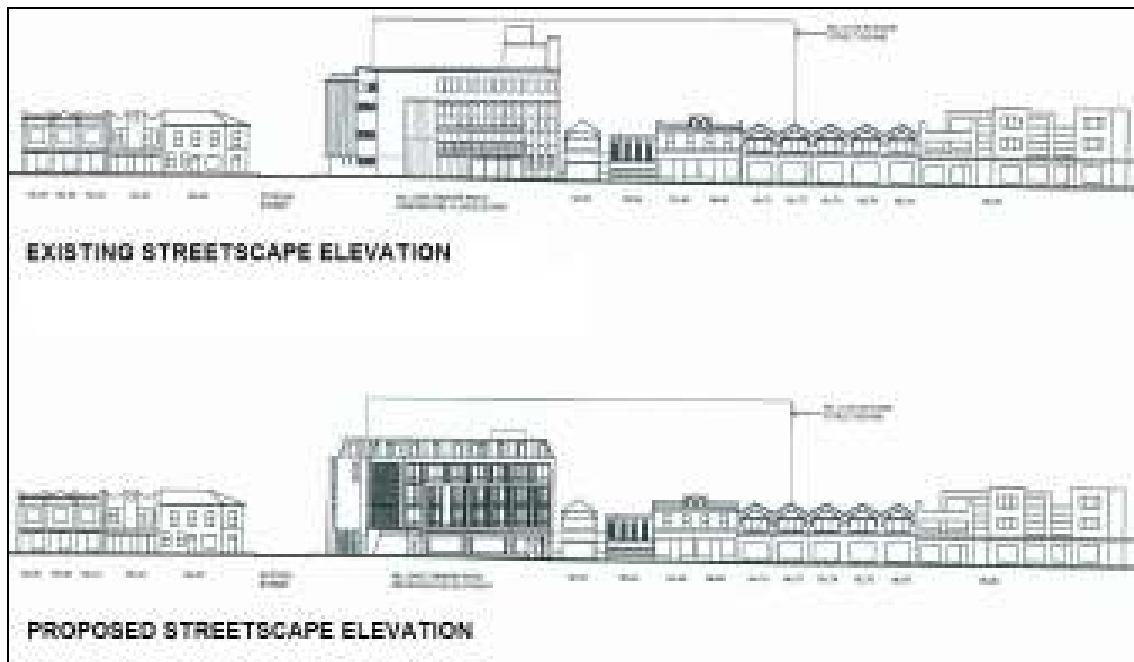
even with large developments currently under construction and recently completed nearby. This is emphasised in Marrickville Development Control Plan No. 34 - King Street and Enmore Road Heritage and Urban Design (DCP 34) with the significance of this part of Enmore Road (Precinct Four - Enmore Road) identified, in part, as *"The precinct comprises predominantly late nineteenth - early twentieth century buildings of two storeys in height, plus parapet. ... On the southern side of this part of Enmore Road, the buildings vary considerably, ranging in height from one to three storeys and are of distinctly different styles. ... It lacks visual cohesion due to a number of "gaps" in the street and a variety of modern infill buildings. Examples of this are the RSL building, ..."* The existing RSL building is identified in the DCP as being unusual and one of many sites contributing to a lack of visual cohesiveness in the area. Consequently, basing the height, bulk and scale of any new development on the site on the height, bulk and scale of the existing building on the site will result in that new building also being inconsistent with the surrounding streetscape and continuing to contribute to a lack of cohesiveness in the streetscape. To use such a building as a benchmark for any new development on the site, notwithstanding its current existence on the site, is not an appropriate approach to redeveloping this site.

In point 4 above, the applicant further contends that *"The proposed building's design represents an appropriate and satisfactory response to the opportunities and constraints offered by the site and its setting and will result in the construction of a building which is consistent with the objectives of building form and character elements contained in Development Control Plan No. 34"*. The site is not considered to have any significant constraints resulting in the need for such a development proposal. The subject property is situated on a corner site with secondary frontages to two other streets, one of which provides rear lane access for the site which is considered a positive attribute of the site. The site is not affected by flooding, acid sulfate soils or any other environmental constraints, does not contain any native vegetation and does not contain an item of heritage significance imposing as a constraint on the redevelopment of the site. Therefore, the applicant's aforementioned contention is not supported.

Section 7 of DCP 34 details the significance of the building form and character controls contained within that section of the DCP. Of particular note is the statement that *"The treatment of the building envelope - how high it is, how far set back from the road, its general bulk and massing, and its roofline - is therefore critical."* The subject application fails to satisfactorily address two of these matters being the height of the building and the building's bulk and massing. Council's Assessing Officer, through correspondence provided in the Pre-Development Application process, indicated that a redevelopment of the site would be limited to the height, bulk and scale of the existing building on the site to which the proposed development does not appropriately respond and proposes a taller, bulkier and larger sized building than that currently existing on the site. The proposed development would result in a gross overdevelopment of the site.

The applicant's contention that *"The proposal will not have any undue or unreasonable effect on the amenity enjoyed by residents of surrounding properties in terms of privacy, solar access, views or visual impact"* is not supported as the proposed development would increase the amount of overshadowing onto adjoining residential properties that are situated to the south of the subject site, consequently reducing the amount of solar access available to those residential properties.

Although the proposed development would somewhat improve the streetscape presentation of this site to this section of Enmore Road, the proposed development would result in a poorer streetscape relationship with existing developments adjoining and surrounding the subject site. The applicant's contentions that *"The proposal will significantly enhance the amenity of the area in terms of its streetscape presentation in Enmore Road and its public domain and the visual amenity of the area"* and that *"The additional floor space proposed will ... enable the construction of a building much more sympathetic to the character and streetscape of Enmore Road"* are not substantiated as reinforced by the existing and proposed streetscape elevations submitted with the application which have been reproduced below:



*Image 19: Existing and Proposed Streetscape Elevations*

The plan clearly shows additional bulk on the top of the building which results in the proposed building further exacerbating the disproportionate height, bulk and scale relationship of the existing building with the streetscape along this section of Enmore Road.

As has been mentioned throughout this report, the proposed building height and built form are considered inappropriate in the streetscape. For the reasons outlined above, the proposed development fails to satisfy FSR objective O2 of Marrickville Development Control Plan No. 28 - Business Centres (DCP 28). The proposed development is not within the acceptable bulk and scale parameters for Enmore Road as prescribed by DCP 34 and consequently, the proposed development fails to satisfy the density objective contained in DCP 34. Therefore, the contention by the application that *"The proposal is consistent with the objectives for the floor space ratio standard as expressed in Development Control Plan No. 28 and Development Control Plan No. 34, despite it not strictly complying with the numerical value of that standard contained in Clause 33 (1) of Marrickville Local Environmental Plan 2001"* is not supported.

The applicant's final contention is that *"The variation to the standard would promote the orderly and economic use and development of the land and the proper management of resources, promoting the social and economic welfare of the community and a better environment, in accordance with the objects of Section 5 (a) (i) and (ii) of the Environmental Planning and Assessment Act 1979"*. Although the applicant submits that the proposal would promote the economic development of the land, the proposal in its current form is not considered to promote the orderly development of the land in accordance with the other part of objective 5 (a) (ii) of the Act. The applicant was advised through the Pre-Development Application process and throughout the assessment of this application that the proposed building would need to be reduced in height. It is considered that a reduction in height by one floor would achieve a more appropriate streetscape appearance and relationship with surrounding development and would reduce the amenity impacts on adjoining residential properties through reduced overshadowing and increased solar access provision.

The existing RSL building on the site currently comprises approximately 2,455sqm of GFA (722.2sqm additional gross floor area above what is otherwise permitted under MLEP 2001) achieving a FSR of 2.83:1. The existing building on the site therefore already exceeds the maximum permitted FSR development standard of 2:1 prescribed by MLEP 2001 by 41.5%. The proposed development was initially presented to Council as a Pre-Development Application to which Council Officers provided advice to the applicant recommending that the proposal not

exceed the existing RSL building's GFA and FSR and existing four (4) storey building height. The proposed development clearly does not respond to that advice as the proposed development has a GFA measuring 2,890sqm (1157.2sqm additional gross floor area above what is otherwise permitted under MLEP 2001) resulting in a FSR of 3.44:1. The proposal would therefore exceed the maximum FSR prescribed under Clause 33 of MLEP 2001 by 72% which is an additional departure of 30.5% from that of the existing building on the site.

Given the above, the proposed development fails to comply with the numerical component of the FSR control as well as the objectives for the control prescribed by DCP 28 and DCP 34. It is considered that supporting the SEPP 1 objection for the additional GFA and FSR proposed would result in a gross overdevelopment of the site. The applicant's SEPP 1 objection is not considered to have merit or be well founded for the reasons provided above and for the reasons provided in the further assessment of the proposal contained within the subsequent sections of this report. Referring back to the aims of SEPP 1 mentioned earlier, it is considered appropriate to apply some flexibility in the application of the FSR development standard applicable for this particular site, however, not to the degree proposed in this application. Accordingly, refusal of the application is recommended.

## **6. State Environmental Planning Policy No. 55 - Remediation of Land**

The history of land use for the site has been considered as an indicator for potential contamination. The subject site has contained a commercial building and has been used as a RSL club since 1963 which is not a potentially contaminating land use activity identified in the SEPP 55 Guidelines for Managing Land Contamination. Council's records do not indicate that the site is contaminated. The proposed development has been assessed against the provisions of State Environmental Planning Policy No. 55 - Remediation of Land (SEPP 55) and the NSW Department of Planning's guidelines "Managing Land Contamination - Planning Guidelines for SEPP 55 - Remediation of Land". The development application is satisfactory having regard to the relevant matters for consideration under SEPP 55 and the associated guidelines. Accordingly, there is no reason to suspect contamination of the site and the development application may be processed in the usual way as outlined in the guidelines.

## **7. State Environmental Planning Policy (Infrastructure) 2007**

The subject site has a frontage to Enmore Road which is a classified road under the jurisdiction of the NSW Roads and Traffic Authority. Under Clause 101 (2) of State Environmental Planning Policy (Infrastructure) 2007 (the Infrastructure SEPP):

- "2) The consent authority must not grant consent to development on land that has a frontage to a classified road unless it is satisfied that:*
- (a) where practicable, vehicular access to the land is provided by a road other than the classified road, and*
  - (b) the safety, efficiency and ongoing operation of the classified road will not be adversely affected by the development as a result of:*
    - (i) the design of the vehicular access to the land, or*
    - (ii) the emission of smoke or dust from the development, or*
    - (iii) the nature, volume or frequency of vehicles using the classified road to gain access to the land, and*
  - (c) the development is of a type that is not sensitive to traffic noise or vehicle emissions, or is appropriately located and designed, or includes measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road."*

Pursuant to Clause 2, parts (a) and (b) above, vehicular access to the property is proposed from Reiby Lane at the rear of the site and as such *"is provided by a road other than the classified road."*

It is considered that the proposed development would not affect *“the safety, efficiency and on going operation of the classified road.”*

It is considered that the proposed development for the purpose of an accommodation hotel is a type of development that is sensitive to traffic noise and vehicle emissions. Consequently, the proposed development would need to include *“measures, to ameliorate potential traffic noise or vehicle emissions within the site of the development arising from the adjacent classified road”*. An Acoustic Report, prepared by Day Design Pty Ltd for the proposal includes noise control recommendations to be incorporated into the design and construction of the development to ameliorate the noise impacts that the proposed outdoor gaming area would have on the hotel rooms. The report does not however address the impacts that traffic noise and emissions arising from Enmore Road would have on the hotel rooms. The Statement of Environmental Effects submitted with the application states that *“Issues relating to the attenuation of traffic noise within the proposed hotel rooms are capable of being resolved within the scope of established acoustic engineering and construction practice and can be addressed by the imposition of appropriate conditions requiring prescribed standards to be observed”*.

## 8. Marrickville Local Environmental Plan 2001

Marrickville Local Environmental Plan 2001 (MLEP 2001) is the principal planning instrument which applies to the site. The following is an assessment of the proposed development against the applicable provisions from MLEP 2001.

### (i) Zoning (Clause 13)

The property is zoned General Business under the provisions of MLEP 2001. The proposed development, with the exception of the hotel accommodation, would constitute a *“club”*, *“refreshment room”* (café) and *“shop”*. Although Schedule 1 of MLEP 2001 contains a definition of *“hotel”*, it does not include hotel accommodation. Schedule 1 of MLEP 2001 defines a hotel as *“premises to which a hotelier’s licence granted under the Liquor Act 1982 relates”*. Accordingly, the definition of a *“hotel”* is intended for a pub hotel as opposed to the hotel accommodation proposed in this application. Hotel accommodation is not a form of development that is specifically defined elsewhere in the schedule and so the proposal needs to be appropriately defined in accordance with the definitions contained in Schedule 1 of MLEP 2001.

Development for the purpose of hotel accommodation would be most akin to *“backpackers’ hostel”*, *“motel”* or *“tourist facilities”* types of development. However, those definitions are prescriptive and would exclude the hotel accommodation in the form proposed in this application. Consequently, a more generic definition of the proposed hotel accommodation use as a *“commercial premises”* is considered appropriate. Notwithstanding this, it should be noted that backpackers’ hostels, motel and tourist facilities are all permissible forms of development within the General Business zone. Therefore, there is no issue with respect to the permissibility of the use, rather, the use is required to be appropriately defined to confirm its permissibility within the zone.

Pursuant to the definitions contained in Schedule 1 of MLEP 2001, the specific uses identified above are defined as follows:

*“club means a building used by persons associated, or by a body incorporated, for social, literary, political, sporting, athletic or other lawful purposes, whether of the same or a different kind and whether or not the whole or part of such a building is the premises of a club registered under the Registered Clubs Act 1976.”*

*“commercial premises means a building or place used as an office or for other business or commercial purposes, but (in Part 3) does not include a building or place elsewhere specifically defined in this Schedule or a building or place used for a land use elsewhere specifically defined in this Schedule.”*

***“refreshment room means a restaurant, café, tea room, eating house or the like.”***

***“shop means a building or place used for the purpose of selling, exposing or offering for sale by retail, goods, merchandise or materials, but (in Part 3) does not include a building or place elsewhere specifically defined in this Schedule, or a building or place used for a land use elsewhere specifically defined in this Schedule.”***

The various proposed uses are consistent with the definitions above and therefore permissible with Council's consent under the zoning provisions applying to the land.

The objectives of the General Business zone are:

- “(a) to identify areas suitable for business and commercial activities, and*
- (b) to permit a variety of ancillary and complementary land uses, and*
- (c) to facilitate residential development in conjunction with other permissible uses in the zone.”*

The proposed development complies with the zone objectives for the General Business zone under MLEP 2001.

(ii) Aircraft Noise (Clause 28)

The subject property is located within the 20 - 25 Australian Noise Exposure Forecast 2029 Contour. Under Clause 28 of MLEP 2001, Council is required to take into consideration the guidelines provided in Australian Standard AS2021 - 2000 - Acoustics - Aircraft noise intrusion - Building Siting and Construction (AS2021 - 2000) regarding noise reduction for hotels, commercial premises and shops where the ANEF exceeds 25. As the ANEF noise levels do not exceed 25 for the subject site, noise attenuation measures would not be required for the proposal. It is noted that an Aircraft Noise Intrusion Report, prepared by Day Design Pty Ltd was submitted with the application for the proposed development and incorrectly identifies the site as being situated within the previous 25 - 30 ANEF 2023/24 contours. The report recommends a number of acoustic treatments to be incorporated into the design and construction of the building which are not required given the location of the subject site being within the 20 - 25 ANEF 2029 contours.

(iii) Flood Prone Land (Clause 29)

The property is not located in an area identified as flood prone land on Council's "Approximate 100 Year (1% AEP) Flood Extent" Map.

(iv) Floor Space Ratio (Clause 33)

A maximum Floor Space Ratio (FSR) of 2:1 applies to developments within a General Business zone under Clause 33 of MLEP 2001. Information submitted with the application indicates the proposed development has a Gross Floor Area (GFA) of approximately 2,890sqm and the subject property has a total site area of approximately 866.4sqm. The proposed development therefore has a FSR of 3.44:1 which exceeds the maximum FSR of 2:1 applicable to the development under Clause 33 of MLEP 2001. The existing RSL building on the site currently comprises approximately 2,455sqm of GFA resulting in a FSR of 2.83:1 therefore already exceeding the maximum permitted FSR development standard of MLEP 2001.

The applicant lodged a SEPP 1 objection to the subject development standard which has been discussed earlier in this report under the heading "State Environmental Planning Policy No. 1 - Development Standards".

(v) Heritage (Clauses 47 to 55)

The subject property is not listed as a heritage item under MLEP 2001 or a proposed heritage item under the Marrickville heritage review. The subject site is however located within the vicinity of a number of heritage items situated to the north and west of the site including:

- (a) No's 1 - 3 Gladstone Street known as the "*Cragos Flour Mill*";
- (b) No's 82 - 84 Enmore Road known as "*The Dispensary Hall*" situated on the north western corner of Enmore Road and Reiby Street;
- (c) No's 88 - 92 Enmore Road known as "*Stanmore House*" situated at the rear of the properties; and
- (d) No's 118 - 132 Enmore Road known as the "*Enmore Theatre*".

The subject property is also situated within the King Street/Enmore Road Heritage Conservation Area under MLEP 2001 (Amendment No. 25).

The application was referred to Council's Heritage and Urban Design Advisor for assessment as the proposal is situated with the King Street/Enmore Road Heritage Conservation Area and within close proximity to a number of heritage items. The following comments, in part, were provided:

*"... if the general planning concerns are met regarding bulk, scale, FSR, parking etc, then the building is likely to respond to the area, without the need to stress any particular heritage requirements. As Clause 1.4 of DCP 34 says: unique and innovative architectural expression should be encouraged and assessed on its merits where it deviates from the standards."*

Accordingly, no objections to the proposed development were raised by Council's Heritage and Urban Design Advisor.

The existing building on the site is an unusual building and one that would not ordinarily be supported if presented to Council as an application for a new building in its current form. DCP 34 identifies certain buildings along Enmore Road as providing an 'intrusive' contribution to the streetscape and recommends that such buildings "*shall preferably be replaced by more sympathetic development or, alternatively, enhanced, where possible*". It is noted that although not specifically listed as an 'intrusive' building in the DCP, the existing building on the site was identified as non-contributory to the Enmore Road streetscape in the King Street and Enmore Road Heritage and Urban Design Study which was the foundation study used when drafting DCP 34. Accordingly, to use the existing incompatible building as a benchmark to design any new development on the site is not an appropriate approach to redeveloping the site.

Notwithstanding the above and due to the inconsistency of the existing building on the site with the streetscape, it would be unreasonable for Council to strictly enforce the controls of DCP 34 on any application that proposes a redevelopment of the site. It is considered appropriate that a reasonable degree of variation is applied for any redevelopment of the site involving the construction of a new building, but not to the degree proposed in this application.

A further detailed assessment of the impacts of the proposed development on the King Street and Enmore Road Heritage Conservation Area is provided later in this report under the heading Marrickville Development Control Plan No. 28 - Urban Design Guidelines for Business Centres and Marrickville Development Control Plan No. 34 - King Street and Enmore Road Heritage and Urban Design.

(vi) Acid Sulfate Soils (Clause 57)

The property is not located within an area identified as being subject to acid sulfate soil risk under MLEP 2001.

(vii) Waste Management (Clause 58)



Clause 58 of MLEP 2001 requires consideration of waste management for any proposed development. A Site Waste Management Plan in accordance with Council's requirements was submitted with the application and is considered to be adequate. The issue of waste management is addressed in more detail later in this report under the heading "Marrickville Development Control Plan No. 27 - Waste Management".

(viii) Energy, Water & Stormwater Efficiency (Clause 59)

Clause 59 of MLEP 2001 requires consideration to be given to the energy, water and stormwater efficiency of any proposed development. The following matters, as of relevance to the subject proposal, are required to be taken into consideration:

- "(a) opportunities for alternative energy sources,*
- (b) energy efficiency of site planning,*
- (c) building layout, envelope and materials,*
- (d) provision of solar hot water,*
- (e) the efficiency fixtures and appliances,*
- (f) conservation of embodied energy,*
- (g) bicycle and pedestrian access,*
- (h) landscaping,*
- (i) stormwater collection, storage, detention and treatment."*

An Energy and Water Conservation Report was submitted with the application which addresses each of the above matters in detail. The report makes the following comments regarding the proposal's compliance with the abovementioned requirements:

- a) Opportunities for alternative energy sources  
The proposal includes the installation of roof mounted photovoltaic cells as shown on DA09 Roof Plan.*
- b) Energy efficiency of site planning  
The proposed development occupies a similar footprint at ground level to the existing building.*
- c) Building Layout, envelope and materials  
The building layout and envelope has been designed to maximise opportunities for solar access and natural ventilation. At street level the cafe benefits from a north facing orientation while the Club gains natural light and ventilation through access to a private courtyard alongside Station Street.*

*The four storeys of Hotel accommodation have been designed around a large courtyard and light well with the majority of hotel rooms enjoying optimum northern orientation. Large operable windows provide natural ventilation to all hotel rooms, allowing hotel guests to benefit from cooling north-easterly breezes in summer while protecting them from adverse southerly winds in winter. All rooms would be fitted with internal blinds or curtains to provide shading when required.*

*Thermal mass is provided through the use of concrete block walls and concrete floor and roof slabs. Lightweight FC sheet clad walls and precast concrete panel walls would be lined with insulation internally. R3 insulation would also be provided to roofs over internal spaces. Lighter colours have been used externally to reduce heat gain in summer.*

- d) Provision of solar hot water  
Solar hot water systems are to be provided throughout. Solar panels would be located on the roof. In accordance with Marrickville Council DCP 32 Energy Smart Water Wise all hot water systems would have a minimum 3.5 star rating.*

e) *The efficiency of fixtures and appliances*

*The proposal is to comply with the controls of Marrickville Council DCP 28 Part 4 Environmental Management and DCP 32 Energy Smart Water Wise. These include the following:*

- *Water efficient fixtures are to be used throughout the development including water efficient showerheads and taps, dual flush toilets.*
- *All fixtures to be AAA rated (or the equivalent WELS rating).*
- *The proposal incorporates passive solar measures such as solar access, shading, insulation and access to natural ventilation to minimise the use of electricity.*
- *All lighting and electrical appliances are to be energy efficient. Timers and movement sensors are to be used where appropriate to ensure that lights are not left on when not required.*
- *Energy efficient cooking appliances and refrigeration are to be used in the Club and cafe.*
- *New air conditioning is proposed in the club and hotel. All air conditioners are to be energy efficient SEDA rated air conditioners with a minimum 4 star rating for cooling.*
- *Air conditioning is to be appropriately zoned.*
- *All air conditioning is to operate on demand. Hotel Cards may be used to ensure that air conditioning and lighting are switched off when exiting a room.*

f) *Conservation of embodied energy*

*The existing building is not suited to the proposed uses of the new development and as such it is to be demolished. As noted in the Waste Management Plan construction materials such as bricks, concrete and timber, from the existing building are to be taken to recycling centres.*

g) *Bicycle and pedestrian access*

*The proposed development is located on a major road with good access to public transport. Enmore Road has a high degree of pedestrian traffic which the proposal addresses with direct pedestrian access from Enmore Road to the cafe, Club, retail tenancy and Hotel lobby.*

*The basement car park includes a dedicated bicycle parking area with provision of 20 bicycle parking spaces against bicycle racks.*

h) *Landscaping*

*There are no existing trees on the site. The new development proposes three paved courtyard areas with shading provided by new trees. New vegetation will be planted in planter boxes or plant beds sized to provide the required amount of soil volume for each tree.*

*All new plants are to be native and low water use vegetation. As outlined below, these plants will be watered with rainwater collected from the roof and stored in rainwater tanks located in the basement.*

i) *Stormwater collection, storage and detention and treatment*

*In addition to the use of water efficient fixtures, the proposal allows for rainwater harvesting and reuse. Rainwater will be drained from the roof and stored in rainwater tanks located in the basement, as shown on DA03 Basement Plan. The water stored in these tanks may then be reused in toilets and showers throughout the building as well as in the landscaped areas of the courtyards. The rainwater collection and storage will be regularly maintained to minimise health risks.*

*The proposal will not result in any increase in stormwater runoff from the site. For further details on stormwater collection, detention and treatment refer to the Stormwater Management Plan."*

Overall, the proposed development is considered to have been designed in an energy, water and stormwater efficient manner and is considered satisfactory having regard to Clause 59 of MLEP 2001. The proposed energy, water and stormwater efficiency measures incorporated into the proposal are further discussed later in this report under the heading "Marrickville Development Control Plan No. 32 - Energy Smart Water Wise".

(ix) Landscaping and Biodiversity (Clause 60)

Clause 60 of MLEP 2001 requires consideration be given to conservation of biodiversity as is of relevance to the subject application. The subject site does not contain any native vegetation and the proposal represents only a limited opportunity for landscaping with native plants. The proposal includes some landscaping as indicated on the landscape plan submitted with the application. The applicant's Statement of Environmental Effects states *"The site is to be landscaped in accordance with the plan prepared by the Project Architects. See Plan No. DA25"*.

(x) Community Safety (Clause 62)

Clause 62 of MLEP 2001 requires consideration to be given to community safety before granting development consent. To this extent the following matters are to be considered:

- "(a) the provision of active street frontages where appropriate,*
- (b) the provision of lighting for pedestrian site access between public and shared area, parking areas and building entrances,*
- (c) the visibility and legibility of building entrances from streets, public areas or internal driveways."*

The proposed development includes active street frontages along Enmore Road and part of Station Street, provides a visible and legible building entrance on Enmore Road and includes appropriate lighting details to increase community safety.

Further assessment of the community safety aspect of the proposal is provided later in this report under the heading "Marrickville Development Control Plan No. 38 - Community Safety".

(xi) Accessibility (Clause 64)

Clause 64 of MLEP 2001 requires consideration to be given to accessibility before granting development consent. The issue of accessibility is discussed in detail later in the report under the heading "Marrickville Development Control Plan No. 31 - Equity of Access and Mobility".

## **9. Marrickville Development Control Plan No. 28 - Urban Design Guidelines for Business Centres and Marrickville Development Control Plan No. 34 - King Street and Enmore Road Heritage and Urban Design**

The following is an assessment of the proposed development under the relevant provisions contained in Marrickville Development Control Plan No. 28 - Urban Design Guidelines for Business Centres (DCP 28) and Marrickville Development Control Plan No. 34 - King Street and Enmore Road Heritage and Urban Design (DCP 34).

Most of the relevant controls contained in DCP 28 are reproduced and more relevantly applicable in DCP 34. DCP 28 notes that *"for development on King Street and Enmore Road, applicants should refer to Council's DCP No. 34 King Street and Enmore Road, Heritage & Urban Design"*.

The subject site is located within Precinct Four - Enmore Road as identified in DCP 34 with one of the significant attributes of the area identified as *“The precinct comprises predominantly late nineteenth - early twentieth century buildings of two storeys in height, plus parapet.”*

(i) Floor Space Ratio and Density

These matters have been discussed under the provisions of Marrickville Local Environmental Plan 2001 and State Environmental Planning Policy No. 1 - Development Standards.

(ii) Building Massing

The objectives of the building massing controls contained within Section 7 of DCP 34 include the following:

- *To preserve the prevailing pattern of buildings built to the front boundary and massed to their full height at the street frontage.*
- *To reinforce the topography of King Street and Enmore Road as ridge roads, visible at their highest points to adjacent uses and neighbourhoods.”*

The performance criteria for building massing states that *“buildings are massed towards the street frontage, stepping down to the rear”*.

The proposed building envelope presents as a box with the massing evenly distributed towards the street and the rear of the site. The building is not proposed to be stepped down at the rear in line with the above requirement. Notwithstanding this, it would be inappropriate to require a stepping down of the proposed building to the rear due to the significant variations already proposed to the FSR and height of the development. The appropriate response for this site would be the deletion of the entire top floor of the building to reduce the bulk and scale and massing of the building and consequently reduce the FSR of the development.

(iii) Building Height

The proposed development includes a building height of 16.2m (to the roof line) above street level comprising five (5) storeys. The existing RSL building on the site has a height of 14.5m (to the roof line) and comprises four (4) storeys. The adjoining building immediately to the west of the subject site measures approximately 8m on elevation and is a two (2) storey building without parapet. The height of the tallest building within this block on the southern side of Enmore Road is approximately 10.5m and comprises three (3) storeys at 80 Enmore Road. The buildings between 80 Enmore Road and the subject site are all two (2) storey buildings, some with parapets as illustrated in the streetscape elevation plan reproduced as Image 19 earlier in this report.

As is evident by the building heights and reinforced by the existing streetscape elevation plan, the height of the existing RSL building on the site is inconsistent with the heights of adjoining buildings along this section of Enmore Road. As mentioned above, the proposed building has a greater height than the existing building which would further exacerbate the inconsistent height relationship between the subject site and adjoining buildings along the streetscape.

Council's Assessing Officer, through correspondence provided in the Pre-Development Application process, indicated that a redevelopment of the site should be limited to the height, bulk and scale of the existing building on the site. The proposed development proposes a taller, bulkier and larger sized building than that currently existing on the site. Consequently, the proposed development would result in a gross overdevelopment of the site. As mentioned above, an appropriate response to the existing inconsistent building height would be to reduce the height of the proposed building by deleting the entire top floor of the proposal to reduce the building height.

Council's controls require that the building steps down to a 7.5m external wall height towards the rear. A special note is provided following this requirement in DCP 28 stating that *“Council may*

*consider an application for a building which departs from the 7.5m rear height control, if the adjoining building context, contains buildings of a greater height".* The building is not proposed to be stepped down at the rear in line with the above requirement.

As mentioned in the earlier sections of this report, an eight (8) storey residential flat building is situated on the land immediately to the south of the subject site which was built by the NSW Department of Housing in the 1960's and is an unusual type of development that can be found in the area. Given the unusual eight (8) storey height of that building, it is considered appropriate that the proposed building is not stepped down at the rear. Notwithstanding this and as mentioned above, the proposed building height should not exceed that of the existing RSL building on the site to ensure that adequate levels of solar access are maintained to the dwellings within the building on the adjoining site. The overshadowing and solar access matters are discussed in more detail later in this report.

(iv) Setbacks

The proposed development has nil boundary setbacks with the building to be built to the boundaries which is consistent with other buildings fronting Enmore Road. Part of the front of the building, close to the corner intersection of Enmore Road and Station Street is setback into the site at a distance of 2.5m. The proposed setback allows for the site's splay corners and sightlines to be maintained and provides some articulation to the ground floor corner of the building. The setback also emphasises the building entry which is a positive attribute encouraged by Clause 62 of MLEP 2001 and DCP 38. The proposed development is considered acceptable having regard to the setback requirements of DCP 28 and DCP 34.

(v) Corners

DCP 34 permits buildings located on corner sites to have *"some variation in height and setback for corner features along the building frontage on both streets, to a maximum of 5 metres from the corner, subject to a satisfactory resolution of the form in terms of scale, proportion, materials and finishes"*. The proposal includes a significant variation to the building height permitted for the entire building as opposed to the maximum 5 metres prescribed in DCP 34. The objective of the corners control is *"To encourage new corner developments which respond to the visually interesting corner buildings characterising King Street and Enmore Road"*.

The following comments, in part, were provided by Council's Heritage and Urban Design Advisor in relation to the design of the proposed development and its relation to the site's corner position:

*"I am pleased they are creating a colourful building, as I think this is responsive to the colour and vibrancy of the area. I think the three vertical white boxes at the front are successful, however the entry and style of the building as it goes around the corner is weaker by being too complicated, and driven by the maximization of internal area, not a strong design concept."*

Consequently, the proposed development is inconsistent with the objective and controls for corner buildings contained in DCP 34.

(vi) Building Façade

The proposed building façade responds positively to the controls and objectives contained in Section 7.5 of DCP 34 through the division of the building into vertical bays and use of vertical and proportionate windows.

(vii) Roofs and Parapets

The proposed roof form is inconsistent with the roof forms prevalent in Enmore Road and includes a number of dormer windows within the roof along the Enmore Road and Station Street frontages.

Consequently, the proposed roof form is inconsistent with the roof and parapet controls contained in DCP 34 and is contrary to the objective for such controls *"To ensure that new development does not detract but rather contributes to the streetscape in a sympathetic manner"*.

(viii) Awnings, Verandahs and Balconies

The proposal development includes the introduction of an awning to span along the Enmore Road frontage of the building. DCP 34 describes the Enmore Road precinct as lacking visual cohesion *"due to a number of "gaps" in the street and a variety of modern infill buildings. ... As a result, awnings are noticeably absent from the eastern end of the precinct. Awnings are present and generally continuous throughout the western part of the streetscape"*. The proposed awning along the Enmore Road frontage of the building is considered appropriate as it would promote the reinstatement of further awnings along this eastern precinct of Enmore Road.

The proposed development does not include any verandahs or balconies as part of the proposal. Although encouraged by DCP 34, the provision of balconies for the proposed building would present additional concerns in relation to privacy impacts and the building façade and streetscape appearance, in particular to Enmore Road.

(ix) Retail Frontages

The proposed development includes the introduction of two (2) retail frontages. A retail shop is proposed on the north western side of the ground floor of the building on Enmore Road and a café is proposed on the corner of the ground floor of the building. The introduction of these retail frontages would contribute to further activation of the street frontage of the overall building and promote casual surveillance from within the building to the public domain. The proposed café on the corner of the building is consistent with the performance criteria of DCP 34 which encourages retail frontages on corner buildings to wrap around the corner into the side street to provide a more active frontage.

(x) Materials and Finishes

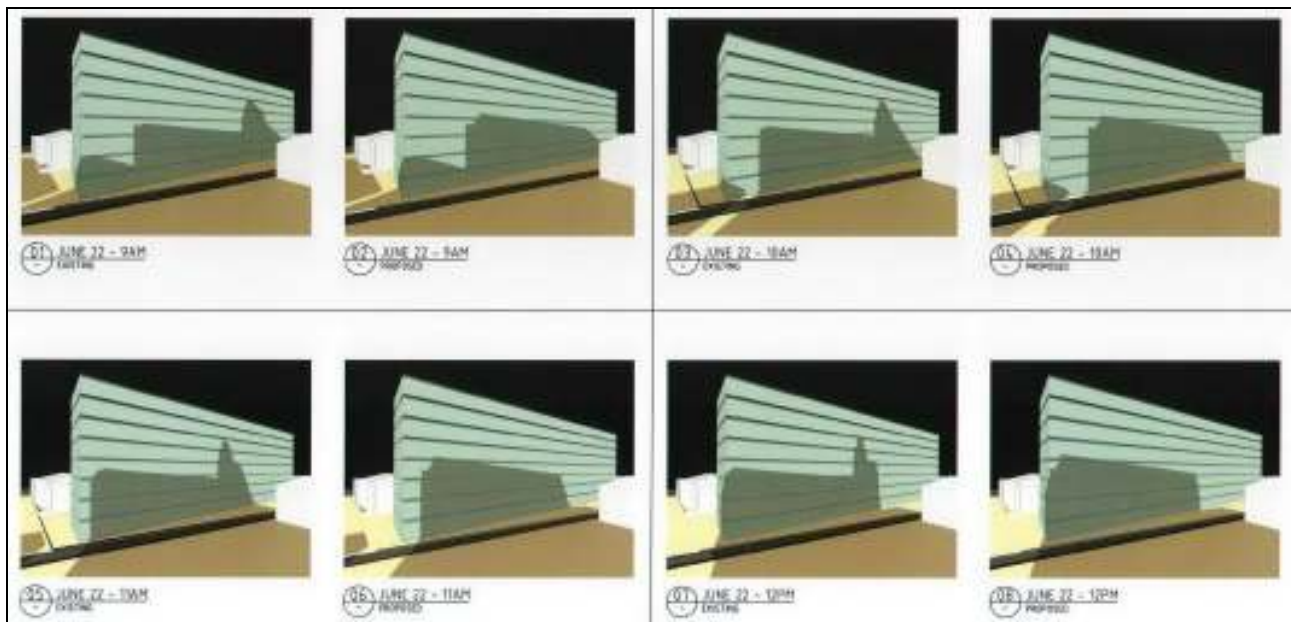
The proposed development is generally acceptable in terms of the proposed materials and finishes.

Given the height relationship between the proposed building and the adjoining building to the west, the side walls of the proposed building would be highly visible from Enmore Road as illustrated in the side elevation plan reproduced as Image 17 earlier in this report.

The proposed materials and finishes include the use of a single painted colour finish for the side wall of the building as opposed to the use of numerous colours or materials to break up the massing of the wall. Although not detrimental to the overall development, this is an issue which remains unresolved with the proposal.

(xi) Solar Access, Ventilation, Energy and Water Efficiency

As the proposed building has a greater height than the existing building on the site, the proposed building would cast additional overshadowing onto the adjoining eight (8) storey residential flat building situated on the adjoining property to the south at mid winter. The extent of additional overshadowing caused onto that residential building at the winter solstice on 22 June is illustrated on the elevation shadow diagram submitted with the application which is reproduced below.



*Image 20: Existing and Proposed Elevation Shadow Diagram for 22 June*

The diagram illustrates that there would be a slight reduction in the overshadowing caused onto the upper levels of the adjoining building but also clearly illustrates that the proposed building would cause greater levels of additional overshadowing onto the residential flat building to the south at mid winter. The extent of additional overshadowing onto that building exceeds the reductions achieved to the upper half of the building with up to one additional level of the building being overshadowed.

Council's Assessing Officer, through correspondence provided in the Pre-Development Application process, indicated that a redevelopment of the site would require the proposed development to maintain the existing solar access provided to dwellings on adjoining sites. The additional overshadowing and loss of solar access to the residential building to the south is unacceptable. It is noted that the additional overshadowing impacts are attributed to by the additional building height being sought in the proposal. The issue regarding the proposed height of the building has been discussed earlier in this report where it has been recommended that the height of the building be reduced by deleting the proposed top floor of the building. This would result in a building height that is less than that of the existing RSL building on the site which is envisaged to increase solar access to the building at the rear and subsequently reduce the overshadowing impacts.

The internal configuration of the hotel suites have been orientated to maximise solar access into the rooms with most rooms orientated to the north. Central courtyards are proposed on the first floor of the building which are open vertically to the sky to allow for maximum solar access penetration and provision of ambient light at the very least where direct solar access provision is not achievable.

The matter of energy and water efficiency has been discussed throughout other sections of this report.

#### (xii) Stormwater Management

Stormwater Drainage Plans were submitted with the application and referred to Council's Development Control Engineer for comment. Given that the application is recommended for refusal, further perusal of these plans was not undertaken.

#### (xiii) Visual & Acoustic Privacy

The visual privacy impacts on the adjoining property to the south are considered to be reduced by locating the hotel suites away from the rear boundary with the access corridors running along the rear building elevation.

Although no specific area has been nominated in this proposal as a smokers' area for the club, the proposed outdoor gaming area would be the most logical place for smokers. Consequently, the proposed outdoor gaming room would cause additional acoustic privacy impacts on those properties located opposite the subject site along Station Street. These concerns were further supported by comments received from the Newtown Police Local Area Command who, in part, provided the following comments regarding the proposal:

*"I have also received noise complaints from local residents in relation to smokers on the balcony of the current club. It is difficult for me to ascertain the location of balconies from the supplied site plan but I concerns in relation to noise to residents on both Enmore Road and 31 Station Street from both smokers and live entertainment etc."*

An Acoustic Report, prepared by Day Design Pty Ltd for the proposal was submitted with the application and assesses the noise impacts that the proposed outdoor gaming area would have on the hotel rooms and surrounding area. The report identifies the outdoor gaming area as a noise source which would contribute to noise levels *"in excess of the acceptable noise criteria"*. The report also recommends noise control recommendations to be incorporated into the design and construction of the development to ameliorate the noise impacts from the proposed outdoor gaming area and includes a sound barrier wall to be constructed along the ground floor Station Street boundary, an airlock door to be provided for the access to the outdoor gaming area, configurations to the machines to be placed in that area and other building specifications to absorb the noise that would be produced from the use of that area. It is considered that these measures may aid in reducing the noise levels to an acceptable level. However, the location of the outdoor gaming area having an interface with residential uses opposite is considered unacceptable.

(xiv) Signage

The application does not include the installation of any signage on the premises.

## **10. Marrickville Development Control Plan No. 19 - Parking Strategy**

Marrickville Development Control Plan No. 19 - Parking Strategy (DCP 19) prescribes parking requirements for proposed developments. In order to determine the number of parking spaces required for this proposal, the proposed development needs to be appropriately defined in terms of the uses contained within DCP 19. It is considered that the various components of the development are akin to a licensed/non licensed club, licensed hotel and retail shops, which require the following parking spaces:



Component	DCP 19 Car Parking Rate	DCP 19 Bicycle Parking Rate
Licensed/Non Licensed Club	1 space per 6sqm of bar, lounge and dining floor areas; plus 1 space per 6 seats in any auditorium; plus 1 space per 3 employees	4 bicycle spaces per 100sqm of lounge, bar & beer garden area
Licensed Hotel	1 space per 6sqm of bar, lounge and dining floor areas; plus 1 space per 2 bedrooms plus 1 space per manager/caretaker	4 bicycle spaces per 100sqm of lounge, bar & beer garden area 1 space per 10 dwellings*
Retail	1 space per 45sqm GFA	1 space per 300sqm GFA for staff

\* The bicycle parking space requirements for the hotel accommodation have been calculated based on the rates for “small” dwellings in Business Zones.

*Table 1: Components of the Development and DCP 19 Car and Bicycle Parking Rates*

The following table summarises the proposed components and areas of the proposed development along with the required parking spaces generated by the requirements of DCP 19:

Component	Gross Floor Area / No. of Rooms	Car Parking Spaces Required	Bicycle Spaces Required
Club area including bar, lounge, restaurant and both indoor and outdoor gaming areas	275sqm	46 spaces	11 spaces
Hotel accommodation	Sixty six (66) rooms	33 spaces	7 spaces*
Retail Shop	49sqm	1 space	1 space (staff)
Café	33sqm	1 space	1 space (staff)
<b>Total Spaces Required:</b>		<b>81 spaces</b>	<b>20 spaces</b>

\* The bicycle parking space requirements for the hotel accommodation have been calculated based on the rates for “small” dwellings in Business Zones.

*Table 2: Components of the Development and Car and Bicycle Parking Space Requirements*

As table 2 above illustrates, the proposed development would require the provision of eighty one (81) off-street car parking spaces plus twenty (20) bicycle parking spaces. Assessment of the bicycle parking space requirements and the applications compliance with those requirements is provided later in this section of the report.

#### (i) Parking

The proposal includes the provision of seventeen (17) parking spaces on the basement level of the building resulting in a shortfall of sixty four (64) parking spaces, which is a substantial departure from Council’s parking requirements under DCP 19. The information submitted with the application is unclear as to which component of the development would utilise the parking spaces. However, it is considered that the basement level parking area would be most appropriately utilised for staff parking in association with the club, hotel and retail shop uses. Consequently, no on site car parking spaces would be provided for the patrons to the club, hotel or retail shops.

A Traffic and Transport Assessment, prepared by Hlacrow MWT accompanied the Development Application lodged and makes the following conclusion regarding the proposed parking:

*“This traffic and parking assessment has been undertaken to consider the implications of the proposed redevelopment of the Newtown RSL Club on Enmore Road, Newtown.*

*The Newtown RSL Club site is situated within the Enmore / Newtown town centre. The site is located within easy access of a range of good quality high frequency public transport services, namely bus rail and taxis.*

*The proposed redevelopment would convert a portion of the Club floor space to create a boutique hotel (accommodation).*

*The DA traffic assessment has determined that satisfactory provision can be made for:*

- *Promotion and utilisation of public transport services to access the site's proposed land uses;*
- *On site car and bicycle parking provisions;*
- *Traffic generation potential of the site;*
- *Road network capacity and site access arrangements; and*
- *Service vehicle access.*

*In summary the analysis presented in this report concludes that traffic and parking can be satisfactorily accommodated and thus supports the proposed redevelopment of the Newtown RSL Club.”*

The above conclusions are discussed in detail throughout the Traffic and Transport Assessment submitted with the application and discussed below.

The Traffic and Transport Assessment outlines the existing uses of the site as follows:

- *Lounge and bar areas;*
- *Dining / Bistro;*
- *Auditorium;*
- *Office / Administration;*
- *Back of House areas; and*
- *On site car parking (13 spaces).*

*The existing Club has a Place of Public Entertainment (POPE) licence for up to 600 people.*

*On site car parking spaces (13 spaces) are provided at the ground floor level and are accessed via a single driveway located at Reiby Lane. This parking is typically used for staff. No dedicated on site parking is provided for patrons of the Club.”*

The Traffic and Transport Assessment provides the following table which details the parking requirements and spaces provided on the site for the existing uses:

Table 3.1 – Existing Parking Provision Comparison									
Land Use	GFA m2	Car Parking Requirements				Bicycle Parking Requirements			
		DCP Rate	DCP Req. Spaces	Existing Spaces (Approved)	Net Difference	DCP Rate	DCP Req. Spaces	Existing Spaces	Net Difference
Club	2107	16.7	351			4	84		
Hotel (rooms)	0	0.5	0			0.1	0		
Retail / Café	348	2.2	8			0.5	2		
<b>TOTAL</b>	<b>2455</b>		<b>359</b>	<b>13</b>	<b>-346</b>		<b>86</b>	<b>0</b>	<b>-86</b>

*Table 3: Parking Rates and Provision for Existing RSL Building*

As table 3 above illustrates, the existing uses on the site generate a demand for three hundred and fifty nine (359) parking spaces in accordance with the rates prescribed under DCP 19. The site contains thirteen (13) parking spaces which results in an existing undersupply of three hundred and forty six (346) parking spaces. The assessment also provides the following table which details the parking requirements for the proposed development:

Land Use	GFA m2	Car Parking Requirements				Bicycle Parking Requirements			
		DCP Rate	DCP Req. Spaces	Proposed Spaces	Net Difference	DCP Rate	DCP Req. Spaces	Existing Spaces	Net Difference
Club	275	16.7	46			4	11		
Hotel (rooms)	66	0.5	33			0.1	7		
Retail / Café	82	2.2	2			0.5	0		
<b>TOTAL</b>			<b>81</b>	<b>17</b>	<b>-64</b>		<b>18</b>	<b>18</b>	<b>0</b>

*Table 4: Parking Rates Required for Proposed Development*

As table 4 above illustrates and mentioned earlier in this report, the proposed development generates demand for eighty one (81) parking spaces and proposes seventeen (17) parking spaces, resulting in a shortfall of sixty four (64) parking spaces. The Traffic and Transport Assessment submitted with the application contends that based on the above, the proposed development would significantly reduce the demand for parking spaces by two hundred and eighty two (282) parking spaces. The contention is supported on the basis that the use of the entire existing premises as a club would generate a significantly larger demand for parking spaces with shorter turnover times as opposed to the proposed hotel accommodation which would require a smaller number of parking spaces for longer periods of time.

The Traffic and Transport Assessment further notes that DCP 19 allows for parking credits to be applied which has been used to justify the shortfall of parking spaces for the development. Section B.7.3 of DCP 19 states the following in relation to Parking Credits:

*“The Council will apply parking credits where there is a change of use to an existing building, or an existing building is being altered.*

*Except in exceptional circumstances, credits will not be applied where a site is being significantly or fully redeveloped.”*

There is no uncertainty that the above clause is clear where it states that parking credits would not be applied in circumstances where the site *“is being significantly or fully developed”*. The proposed development includes demolition of the existing building on the site and construction of a new mixed use building which is considered a full redevelopment of the site. The proposal also seeks to reintroduce a smaller version of the RSL use into the new building. Consequently, parking credits cannot be applied to the proposal.

Notwithstanding the above, the existing significantly larger than the proposed club premises has operated from the site with a reduced car parking capacity of thirteen (13) spaces since 2002. The proposal includes a reduction in the floor area of the club and an increase in the number of parking spaces provided on site for staff. Accordingly, the proposed shortfall in the provision of the required number of parking spaces is considered acceptable.

## (ii) Delivery and Service Areas

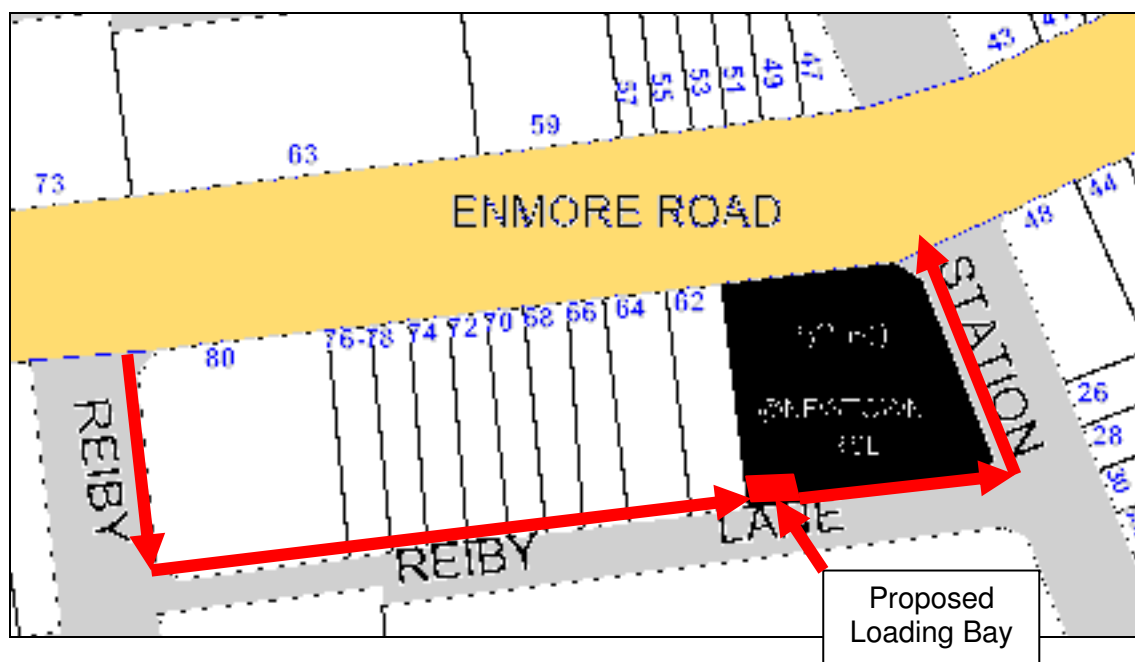
Section B2 of DCP 19 sets out the delivery and service area requirements for developments. The following table summarises the proposed components and areas of the proposed development along with the delivery and service area requirements of DCP 19:

Component	Gross Floor Area / No. of Rooms	Delivery / Service Space Required	Space/s Proposed
Club including bar, lounge, restaurant and both indoor and outdoor gaming areas	275sqm	1 truck space per 1,000sqm of bar, tavern, lounge and restaurant (1 space)	1 delivery / service space for the entire building
Hotel accommodation	Sixty six (66) rooms	1 service vehicle space per fifty (50) bedrooms (1 service vehicle space)	
Retail Shop and Café	82sqm	1 truck space per 400sqm GFA (1 space)	
<b>Total Spaces Required:</b>		<b>2 truck and 1 service vehicle spaces</b>	<b>1 space</b>

*Table 5: Components of the Development and Delivery and Service Area Requirements*

As table 5 above illustrates, the proposed development would require the provision of two (2) truck spaces for the club and retail components and one (1) service vehicle space for the hotel accommodation component.

The proposed development includes one (1) loading bay situated on street level at the rear of the building, which runs parallel to the rear laneway to service the entire building. A waiting bay is also provided and is situated perpendicular to the proposed loading bay. The Traffic and Transport Assessment submitted with the application outlines that the position of the proposed loading bay would facilitate forward entry and exit movements to and from the site where delivery vehicles will use Reiby Street, Reiby Lane and Station Street to loop the site and access and leave the site in a forward direction as illustrated in the image below:



*Image 21: Plan Showing Delivery Vehicle Access using Loop*

Although street level is the preferred option for providing a loading bay, some of the other elements of the proposed building are considered to hinder the ability for delivery vehicles to practically use the space without having to utilise parts of the adjacent laneway. This includes the placement of bollards in front of the fire door located within the loading space area, which in effect creates an obstacle for delivery vehicles accessing the loading space. Although not detrimental to the overall development, this is an issue which remains unresolved with the proposal.

Access to the proposed loading bay at the rear of the site by the tenants of the retail shops and hotel would only be achievable through the proposed club's back of house area. It is envisaged that the back of house area of the club would include secure areas which would not be readily accessible by people other than the operators of the club itself or employees of the club. Consequently, concern is raised that the loading bay at the rear of the building would not be accessible by the tenants of the retail shop, cafe and the hotel accommodation. The Statement of Environmental Effects submitted with the application states "*small delivery vehicles (eg. linen deliveries) and couriers would be able to access the basement car parking area as well as the at grade service vehicle bay*". However, the proposal does not include any suitable delivery/service spaces in the basement and the application is considered unacceptable in this regard.

The applicant was advised through the Pre-Development Application process that the proposed development should include at least one (1) loading bay, preferably at street level and a minimum of two (2) smaller delivery/service spaces in the basement level to be used for service vehicles to the hotel and for loading and unloading of deliveries for the proposed café and retail areas. The basement level of the building includes a linen store room for the hotel which would be most appropriately serviced from within the basement level of the building. The proposal does not include any delivery/service spaces in the basement and is considered unacceptable in this regard.

### (iii) Bicycle Parking

The application proposes eighteen (18) bicycle parking spaces located within the basement area in the building which would not comply with the minimum requirement of twenty (20) spaces prescribed by DCP 19. Given the substantial departures from the car parking requirements being sought for this application, it is considered appropriate that additional bicycle parking facilities be provided for the proposal. Such spaces should be provided within the basement level for use by employees of the various uses within the proposal. Although not detrimental to the overall development, this is an issue which remains unresolved with the proposal.

## **11. Marrickville Development Control Plan No. 27 - Waste Management**

Marrickville Development Control Plan No. 27 - Waste Management (DCP 27) prescribes the waste management requirements for developments. The proposed mixed use development would require separate waste/recycling storage facilities for the various aspects of the proposal including a separate waste/recycling storage area/room for the club, hotel and retail shop and cafe.

The proposed development includes two (2) waste/recycling storage rooms, one (1) of which is situated in the basement level to be used by the proposed hotel and the other situated within the proposed club's back of house area to be used by the proposed club and retail shop and cafe. Control C3 of DCP 27 requires "*convenient access from each tenancy to the waste/recycling storage room/s or area/s*". The combined waste/recycling storage area for the proposed club and retail shop and cafe being situated within the proposed clubs' back of house area is considered unacceptable and located in an unsuitable location considering the tenants of the proposed retail shop and café would be independent to the club operators. Consequently, the proposed waste/recycling storage arrangements for the development are inconsistent with the provisions of DCP 27.

Further to the above, access to the proposed combined club/retail shop/café's waste/recycling storage area by the tenants of the retail shop and cafe would only be achievable through the proposed club's back of house area. As previously mentioned, it is envisaged that the back of

house area of the club would include secure areas which would not be readily accessible by people other than the operators of the club itself or employees of the club. Consequently, the waste/recycling storage area within the proposed club's back of house is not in a conveniently accessible location and contrary to the provisions of DCP 27. Concern is raised that the waste/recycling storage area would not be accessible by the tenants of the retail shop or cafe. The proposed retail shop and cafe on Enmore Road are not provided with direct internal access to the building service areas including the waste/recycling storage areas and sanitary facilities. This would require the tenants of the retail shop and café to exit the shop onto Enmore Road, re-enter the building and travel through other parts of the building to get to these areas which is considered unacceptable.

In accordance with control C4 of DCP 27, the size of the development and given that the proposal entails various uses, it is considered necessary to include a separate waste/recycling storage room/area for each tenancy in the development.

Overall, the proposed waste management aspects of the development are inconsistent with the provisions of DCP 27 and consequently, the proposed development is considered unacceptable in this regard.

## **12. Marrickville Development Control Plan No. 31 - Equity of Access and Mobility**

### **(i) Access and Mobility**

Marrickville Development Control Plan No. 31 - Equity of Access and Mobility (DCP 31) requires access and facilities to be provided for persons with a disability to all components of the proposed development. The Statement of Environmental Effects submitted with the application provides the following summary of the proposed development's compliance with the access and mobility requirements of DCP 31:

*"The access facilities to the building have been designed to make it accessible by all members of the community, including people with a disability and older people.*

*Access to the building from the surrounding roads is to be provided in accordance with Australian Standard AS 1428-2001 - Access for Design and Mobility - New Building Work, while all of the levels within the building, including the basement car park, are to be vertically connected by two (2) lifts.*

*The Club is to include an accessible toilet designed to comply with AS 1428. 1.*

*Four (4) of the sixty-six (66) hotel rooms have been designed in accordance with Australian Standard AS4299-1995 - Adaptable Housing.*

*One (1) of the proposed seventeen (17) car spaces, or 6% of the total parking provision, has been designed for use by people with a disability.*

*A statement of consistency of the proposal with Disability Discrimination Act 1992, prepared by the Project Architects, is contained in Appendix 4.*

*The proposal satisfactorily addresses issues relating to access and mobility associated with the proposed development and is consistent with the objectives and controls contained in DCP 31."*

Further to the above, an Access Statement was submitted with the application which includes the following Statement of Consistency with the Disability Discrimination Act:

*"Disability Discrimination Act (DDA) Statement of Consistency  
52-60 Enmore Road, Newtown*

*The proposal has been designed to ensure that all facilities within the building are accessible to all members of the public, including older people and people with a disability.*

*Access from the street has been designed to comply with AS 1428.1 - Design for Access and Mobility.*

*Two lifts provide equal access to all floors within the building.*

*The ground floor Club facilities include one accessible toilet designed to comply with AS1428.1 - Design for Access and Mobility.*

*In accordance with Marrickville Council DCP 31 - Equity of Access and Mobility, four of the sixty six hotel rooms have been identified as adaptable rooms. The design of these rooms is to comply with AS 4299 - Adaptable Housing.*

*One of the seventeen car spaces provided has been designed for use by people with a disability.*

*The proposal does not discriminate against people with a disability and is therefore consistent with the Disability Discrimination Act."*

As stated above and illustrated on the plans, all levels of the proposed premises would be accessible by persons with a disability. The proposed lifts would ensure that equitable access to the hotel rooms is available at all times for persons with a disability.

(ii) Adaptable Rooms

Under DCP 31, places of shared accommodation (including hotels) with a total floor area exceeding 300sqm or more than 12 persons have additional requirements for the provision of adaptable rooms depending on the number of persons to be accommodated. Table 6 below summarises the requirements:

<b>No. of Persons Accommodated</b>	<b>Adaptable Rooms</b>	<b>General Access Requirements</b>	<b>Parking Requirements</b>
More than 49 but less than 99 persons	Four (4) rooms	Access in accordance with AS1428.2 (including access to any laundry, kitchen, sanitary and common facilities)	One space per 100 spaces shall be provided for visitor parking, and designed in accordance with AS2890 Part 1
More than 99 persons	Six (6) rooms		

*Table 6: Adaptable Room Requirements for Proposed Hotel*

Details including the mix of rooms and maximum number of occupants expected to occupy the hotel rooms were not submitted with the Development Application lodged for the proposal. Consequently, the plans submitted with the application have been relied upon to determine the maximum number of persons to be accommodated in the hotel to determine the appropriate number of adaptable rooms required. The plans illustrate that each room is to be provided with a double bed which would enable up to two (2) persons to occupy any one room and could result in up to one hundred and thirty two (132) people being accommodated within the hotel accommodation at any one time.

Given the above and considering the requirements for the provision of adaptable rooms, it is considered appropriate that a minimum of six (6) adaptable rooms be provided for this development proposal. The application proposes only four (4) adaptable rooms as part of the proposal. Accordingly, the proposed development does not comply with the adaptable room requirements of DCP 31.

### **13. Marrickville Development Control Plan No. 32 - Energy Smart Water Wise**

Marrickville Development Control Plan No. 32 - Energy Smart Water Wise (DCP 32) requires consideration to be given to the use of passive and active design and water efficiency principles in the development. A comprehensive list of the energy, water and stormwater efficiency measures incorporated into the proposal is provided in Section 8 (viii) earlier in this report. The proposed development is considered to have been designed in an energy, water and stormwater efficient manner and is considered satisfactory having regard to the requirements of DCP 32.

### **14. Marrickville Development Control Plan No. 38 - Community Safety**

Marrickville Development Control Plan No. 38 - Community Safety (DCP 38) requires consideration to be given to a number of community safety matters, as of relevance to the proposed development. The community safety matters contained in DCP 38 are more broadly related to the Crime Prevention Through Environmental Design (CPTED) principals and include surveillance, access control, territorial reinforcement and space management/maintenance. Each of these principles is addressed in detail in the Statement of Environmental Effects submitted with the application. Overall, the proposed development is considered acceptable having regard to the CPTED principles and the matters for consideration prescribed by DCP 38.

### **15. Internal Amenity**

As mentioned throughout this report, there are various aspects of the ground floor layout which would require the tenants of the shop premises and hotel to travel through the proposed club's back of house area to access the loading bay and waste/recycling storage areas and through the club's restaurant/lounge area to access sanitary facilities.

The proposed development does not provide adequate sanitary facilities for patrons and employees of the club premises, retail shops or the hotel. The only available sanitary facilities within the building (other than private hotel room facilities) are situated on the ground floor within the proposed club's restaurant/lounge area. They include male facilities with a single cubicle and two urinals, female facilities containing two cubicles and a single disabled WC. The proposed facilities are inadequate considering they would be shared by both patrons and employees of the various uses in the building. It is considered appropriate that individual sanitary facilities be provided for the retail shops, hotel and club premises with separate facilities being provided for employees and patrons.

As previously mentioned, the proposed retail shop on Enmore Road is not provided with direct internal access to the building service areas including the sanitary facilities. This would require the tenants of the retail shop to exit the shop onto Enmore Road, re-enter the building and travel through other parts of the building to get to these areas which is considered unacceptable.

### **16. Social Impacts**

The proposed development includes a reduction in the size of the existing club premises from the existing four (4) levels to part of the proposed ground floor level area comprising a combined bar, lounge, restaurant and indoor and outdoor gaming areas. The reduced size of the club would consequently result in a reduced gaming area with a reduced number of gaming machines. The



proposed development was referred to Council's Community Services Section for comment who raised no objection to the proposal and provided the following comments:

*"The provision of accommodation in the area is greatly needed to support the creative businesses in the area and other businesses generally... Changes to the existing club premises, with the reduction in gaming machine numbers is supported."*

## **17. Community Consultation**

The application was advertised, an on-site notice was erected and residents/property owners in the vicinity of the subject property were notified of the proposed development in accordance with Council's Policy. A total of twenty four (24) submissions were received in response to Council's notification of the proposal, of which twenty (20) submissions raised objections and concerns regarding the proposal and four (4) submissions were in support of the proposal.

The submissions raised the following concerns in relation to the proposed development which have been discussed throughout the relevant sections in this report:

- (i) The height of the proposed building is excessive and the building does not step down to the rear as required by Marrickville Development Control Plan No. 34 - King Street and Enmore Road Heritage and Urban Design;
- (ii) The density and bulk and scale of the proposed development are inappropriate;
- (iii) The proposed departure from the floor space ratio control is excessive;
- (iv) The proposed development is an overdevelopment of the site;
- (v) The proposed development would have overshadowing impacts on neighbouring properties;
- (vi) The proposed development does not provide a sufficient number of parking spaces;
- (vii) The lack of parking proposed for the development would result in decreased availability of on street parking spaces and increased traffic congestion in the area;
- (viii) The proposed development would have negative impacts on the health of residents through traffic congestion and aircraft noise;
- (ix) The proposed development is out of character with the Enmore Road streetscape;
- (x) The design of the facades are out of scale and do not reflect the architectural character of the surrounding area;
- (xi) The proposed development would result in unacceptable noise impacts on surrounding residents;
- (xii) The proposed roof is out of character with this section of Enmore Road;
- (xiii) The proposed development does not comply with the aims of Marrickville Development Control Plan No. 34 - King Street and Enmore Road Heritage and Urban Design;
- (xiv) The proposed development does not comply with the requirements of Section 4 - Summary Statement of Significance and Section 5 - Management Policy contained in Marrickville Development Control Plan No. 34 - King Street and Enmore Road Heritage and Urban Design;
- (xv) The proposed development is inconsistent with the provisions contained in Section 7 of Marrickville Development Control Plan No. 34 - King Street and Enmore Road Heritage and Urban Design relating to building massing, building heights, corners, building façade, roofs and parapets, awnings and verandahs, retail frontages and materials and finishes;
- (xvi) The proposed development would result in increased levels of pollution in the surrounding area; and
- (xvii) The proposed club premises would exclusively cater for gamblers.

In addition to the above, the submissions raised the following concerns which are not relevant matters for consideration under Section 79C of the Environmental Planning and Assessment Act or no evidence was provided to support the assertions:

- (i) The proposed lack of parking provided is an indication that the hotel would be provided as accommodation for gamblers using the club premises;

- (ii) The proposed development does not offer a vision statement or community charter as the club has closed facilities over time;
- (iii) The proposed development would lead to increased use of illegal drugs, brothels and antisocial behaviour which would change the nature of the community;
- (iv) A resident parking scheme should be provided for residents of the surrounding area;
- (v) The proposed development would have negative impacts on surrounding property values; and
- (vi) The large reduction in floor space in the club premises will have a significant effect on live music in the locality as this proposal will remove an important music venue which was part of the @Newtown RSL entertainment.

The submissions raised the following additional concerns which are discussed under their respective headings below:

- (i) Residents in the surrounding area were not notified of the proposal.

The application was advertised in the local paper, available for viewing on Council's website, an on-site notice was displayed on the property and residents/property owners in the vicinity of the subject property were notified of the application in accordance with Council's Marrickville Development Control Plan No. 39 - Development Notification Policy. The catchment area for the purpose of giving written notification of the application was determined by Council Officers in accordance with Section 8.2 of the DCP. It is noted that the written notification catchment area was a wider area than would otherwise be used for more routine Development Application.

- (ii) The size of the proposed hotel accommodation suggests that the hotel accommodation would be low quality in the style of a backpackers hostel.

There is no evidence to support this assertion. The application form details the proposed hotel as a "boutique hotel". Information submitted with the application indicates that the hotel accommodation would be serviced by an independent operator to the club premises and a Plan of Management was also submitted with the application which provides details regarding the operation of the hotel.

- (iii) The subject site would be better suited as a supermarket or shopping centre development.

The proposed development is to demolish the existing improvements, consolidate the land and erect a five (5) storey mixed use building containing a new club premises, café, shop and accommodation hotel comprising sixty six (66) rooms over a basement level with off street car parking for seventeen (17) vehicles which is permissible within the General Business zone under the zoning provisions applying to the land.

- (iv) The proposed building height is 16.20 metres with an additional 1.6 metre lift overrun whereas a maximum height of 14 metres applies.

There is no numerical height limit prescribed for this type of development under the current Marrickville Local Environmental Plan 2001 or any of the relevant applicable Development Control Plans. The height control mentioned by the submitter is a proposed height control contained in the preliminary Marrickville draft Local Environmental 2010 which has no statutory weighing and is not a relevant plan required to be taken into consideration under Section 79C of the Act. Notwithstanding this, it is acknowledged that Council envisages and the plan proposes a reduced FSR of 1.5:1 and a 14m height limit for the site, both of which the existing or proposed developments would not comply with.

- (v) The proposed development indicates that it will use solar panels for hot water and harvest rainwater for use within the complex however the plans do not give any specific information regarding the size and capability of either the solar panels and roof tanks or the rainwater tanks which is information that should be included in the Development Application.

It is acknowledged that this information was not submitted with the application. The information was not requested as the application is recommended for refusal on other grounds.

All relevant matters raised in the submissions able to be considered under the provisions of Section 79C of the Environmental Planning and Assessment Act have been discussed throughout this report.

## **18. Conclusion**

The heads of consideration under Section 79C of the Environmental Planning and Assessment Act of relevance to the application have been taken into consideration. The proposed development is considered unsuitable for the site and is unsupportable in its current form. The application proposes significant departures from Council's FSR development standard and other development controls which together contribute to a development that is unsuitable for the subject site and would result in a gross overdevelopment of the site. Approval of the subject application in its current form would not be in the public interest. Consequently, refusal of the application is recommended.

### **PART E - RECOMMENDATION**

**A. THAT** the development application to demolish the existing improvements, consolidate the land and erect a five (5) storey mixed use building containing a new club premises, café, shop and accommodation hotel comprising sixty six (66) rooms over a basement level with off street car parking for seventeen (17) vehicles be **REFUSED** for the following reasons:

1. The proposed development has a floor space ratio of approximately 3.44:1 which is well in excess of the maximum 2:1 floor space ratio permitted in the General Business zone under Clause 33 of Marrickville Local Environmental Plan 2001.
2. The floor space ratio of the proposed development does not comply with the objectives for the floor space ratio control prescribed by Marrickville Development Control Plan No. 28 - Urban Design Guidelines for Business Centres and Marrickville Development Control Plan No. 34 - King Street and Enmore Road Heritage and Urban Design.
3. The proposed development includes a building height of 16.2m (to the roof line) above street level comprising five (5) storeys which is greater than the height of the existing building on the site. Consequently, the proposed development is inconsistent with the building height objectives and controls contained in Marrickville Development Control Plan No. 34 - King Street and Enmore Road Heritage and Urban Design. The proposed development would further exacerbate the inconsistent height relationship between the subject site and adjoining buildings along the streetscape.
4. The proposed development fails to adequately respond to the corner site objectives and controls contained in Marrickville Development Control Plan No. 34 - King Street and Enmore Road Heritage and Urban Design in relation to the design and appearance of the proposed building.
5. The proposed roof form is inconsistent with the roof forms prevalent along this section of Enmore Road and includes a number of dormer windows within the roof along the Enmore Road and Station Street frontages. Consequently, the proposed roof form is inconsistent with the roof and parapet objectives and controls contained in Marrickville Development Control Plan No. 34 - King Street and Enmore Road Heritage and Urban Design.

6. The proposed development would create unacceptable levels of additional overshadowing and loss of solar access to the residential building on the adjoining site to the south. The proposal therefore does not comply with the solar access requirements of Marrickville Development Control Plan No. 34 - King Street and Enmore Road Heritage and Urban Design.
7. The proposed outdoor gaming room would cause additional acoustic privacy impacts on those properties located opposite the subject site along Station Street.
8. Some of the design elements of the proposed building would hinder the ability for delivery vehicles to practically use the proposed loading space at the rear of the site without having to utilise parts of the adjacent laneway. Consequently, the proposed development fails to comply with the delivery and service area objectives and controls contained in Marrickville Development Control Plan No. 19 - Parking Strategy.
9. The proposed waste/recycling storage areas are not located in a conveniently accessible location and consequently fail to comply with the provisions of Marrickville Development Control Plan No. 27 - Waste Management.
10. The proposed development does not provide an adequate number of sanitary facilities in suitable locations for patrons and employees of the proposed club premises, retail shops or the hotel.
11. In view of the above and given the number of submissions received against the proposal, approval of the application would not be in the public interest.

**B. THAT** those persons who lodged submissions in respect to the proposal be advised of the Joint Regional Planning Panel's determination of the application.