

**COUNCIL ASSESSMENT OFFICER'S RESPONSE TO APPLICANT'S LETTER DATED
12 AUGUST 2011 TO MODIFY WITHOUT PREJUDICE DRAFT CONDITIONS OF
CONSENT**

**JRPP 2011SYE021/DA201100072
21-23 ENMORE ROAD AND 1 CRESCENT LANE NEWTOWN**

Council's Proposed Condition:

2. A separate Development Application being submitted to, and approved by, Council for the use of the ground floor café/food tenancies prior to the occupation of those parts of the premises.

Reason: To advise the applicant of the necessity of obtaining Council approval for the use of the premises prior to occupation.

Applicant's Response:

The use of the ground floor commercial areas as café / food tenancies is an integral part of the application submitted to council as part of this D.A. The applicant has provided the required information with respect to the location, hours of operation, parking and loading facilities, etc, in both the submitted plans and the application form. There is no reason for another application process to review this information again.

Consequently, the applicant requests that this condition be removed.

Council's Response:

Council's without prejudice conditions of consent did not include any conditions governing the operation of the ground floor commercial tenancies.

No objection is raised in principle to the deletion of the subject condition subject to appropriate conditions be included in the determination in relation to the commercial tenancies. In this regard the following conditions are recommended:

- 16A. All machinery being installed in accordance with the manufacturer's specifications and being maintained at all times if in use.

Reason: To ensure that such machines are properly installed and maintained so as to prevent noise generation, vibration and any other disturbances to adjoining premises.

- 16B. The hours of operation of the cafes being restricted to between the hours of 7:00am to 9:00pm Mondays to Sundays including Public Holidays.

Reason: To confirm the hours of operation as requested.

- 16C. All trade waste being stored within the site boundaries and contained in such a manner so as not to cause a nuisance.

Reason: To provide for correct storage of wastes.

- 16D. The storage and/or handling of food products externally of the approved food premises is prohibited.

Reason: To ensure that the premises comply with the relevant Acts and standards so as to promote sound hygiene and public health.

- 47A. All wastewater arising from the use of the premises being directed to the Sewers of the Sydney Water Corporation (SWC) under a Trade Waste License Agreement. The person acting on this consent is advised that pre treatment of wastewater may be a

requirement of the corporation prior to the discharge to sewer. Details of the Corporation's requirements should be obtained prior to the commencement of work.

Reason: To comply with the requirements of Sydney Water Corporation for the installation and maintenance of grease traps.

- 76A. The construction, fitout and finishes of the food premises must comply with Standard 3.2.3 of the Australian and New Zealand Food Standards Code under the Food Act 2003 and AS 4674 - Design, Construction and Fitout of Food Premises in accordance with details to be submitted to the Certifying Authority's satisfaction before the issue of a Construction Certificate for the cafes.

Note: Copies of AS 4674-2004 may be obtained from the Standards Australia Customer Service on telephone 1300 65 46 46 or by visiting the website www.standards.com.au

Copies of the Food Standards Code (Australia) may be obtained by contacting the Food Standards Australia and New Zealand Authority on telephone (02) 6271 2222, email info@foodstandards.gov.au or by visiting the website www.foodstandards.gov.au.

Reason: To ensure that the premises comply with the relevant Acts and standards so as to promote sound hygiene and public health.

148. Before the issue of an Occupation Certificate, Council's Environmental Health Unit must be notified that the premises is being used for the preparation, manufacture or storage of food for sale so that the premises can be registered on Council's food premises database.

Reason: To notify Council of your intention to commence the business so as to be included on Councils Food Safety register.

149. Before the commencement of food handling operations, the food business operator must notify the NSW Food Authority. You may notify the NSW Food Authority via the Internet on www.foodnotify.nsw.gov.au or by contacting the Council for a notification form.

Reason: To comply with the requirements of the Food Act 2003.

Council's Proposed Condition:

7. Five (5) car parking spaces, for persons with a disability, required as part of the total parking required under this Determination being provided and marked as disabled car parking spaces.

Reason: To ensure that disabled car parking spaces are provided and marked accordingly and that disabled persons are advised and directed to such parking.

Applicant's Response:

The applicant has proposed providing 5 car spaces which are capable of being used by a person with a disability (i.e. meet the appropriate size and access requirements in the code). Four of those spaces are to be allocated to the 4 adaptable apartments. It is noted that the adaptable apartments are designed to be used by people without a disability but easily adapted if a person with a disability occupies them. Consequently, they will not always be occupied by persons with a disability, and marking the spaces with "disabled only" signage will prevent the occupant of the apartment from accessing their own parking space if they are not disabled. It is noted that if the occupant does have a disability, they will still be fully

catered for as they will have exclusive use over their own parking space which will be fully compliant with size and access requirements in the code.

Consequently, the applicant requests that this condition is modified as follows:

- “7. Five (5) car parking spaces, which are adaptable to disabled car parking spaces are required as part of the total parking required under this Determination.

Reason: To ensure that disabled car parking spaces are able to be provided to the adaptable apartments if those apartments are adapted in the future.”

Council's Response:

Council's Assessing Officer recommends Condition No. 7 be modified to read as follows:

7. Five (5) car parking spaces, for persons with a disability, required as part of the total parking required under this Determination being provided. One (1) of those car parking spaces being allocated to each adaptable dwelling, with the remaining space marked as a visitor disabled car parking space.

Reason: To ensure that disabled car parking spaces are provided and marked accordingly and that disabled persons are advised and directed to such parking.

Council's Proposed Condition:

10. A minimum of four (4) adaptable dwellings being provided in accordance with Marrickville Development Control Plan No. 31 - Equity of Access and Mobility. One disabled parking space being allocated to each adaptable dwelling.

Reason: To make reasonable provision in the development to provide residential accommodation suitable for people with a disability.

As noted above, occupants of the adaptable dwellings will not always be people with a disability. To enable the occupants of the adaptable units to use their own parking space if they are not disabled, the parking associated with these units should be adaptable.

Consequently, the applicant requests that this condition is modified as follows:

- “10. A minimum of four (4) adaptable dwellings being provided in accordance with Marrickville Development Control Plan No. 31 - Equity of Access and Mobility. One adaptable parking space being allocated to each adaptable dwelling.

Reason: To make reasonable provision in the development to provide residential accommodation suitable for people with a disability.”

Council's Response:

As the issue of the allocation of the disabled car parking has been addressed in the proposed revised Condition 7, Council's Assessing Officer recommends Condition No. 10 be modified to read as follows:

10. A minimum of four (4) adaptable dwellings being provided in accordance with Marrickville Development Control Plan No. 31 - Equity of Access and Mobility.

Reason: To make reasonable provision in the development to provide residential accommodation suitable for people with a disability.

Council's Proposed Condition:

14. A separate application being submitted to, and approved by, Council prior to the erection of any advertisements or advertising structures.

Reason: To ensure the compliance of any advertisements or advertising structures with the requirements of Council's Advertising Code.

Applicant's Response:

The inclusion of 3 under awning signs was included as part of the application submitted to council as part of this D.A. The applicant has provided the required information with respect to the location, size and orientation of these signs in both the submitted plans and the application form. There is no reason for another application process to review this information again.

Consequently, the applicant requests that this condition is removed.

Council's Response:

Council's without prejudice conditions of consent did not include any conditions in relation to the under awning signs.

No objection is raised in principle to the deletion of the subject condition subject appropriate conditions be included in the determination in relation to the under awning signs. In addition the description of the development also needs to be amended to include the signs. In this regard the following conditions are recommended:

- 14A. A separate application being submitted to, and approved by, Council prior to the erection of any advertisements or advertising structures other than the signage approved in this consent. The shop windows are not to be painted with advertisements and no flashing lights are to be installed on the premises.

Reason: To confirm the terms of Council's approval.

- 14B. The proposed advertising structures and associated advertisements being properly and safely maintained at all times.

Reason: To ensure that the proposed advertising structures and advertisements do not have any detrimental effect upon the amenity of the area or endanger the safety of the public.

- 14C. Any advertisement to be displayed being only to identify the premises, the occupier of the site, the activity conducted thereon or the goods and services available on the premises associated with the use approved in this development consent.

Reason: To ensure that all signs on the premises relate to the approved use.

- 14D. The signage must:

- a) not flash, move, be animated, or be decorated with rotating or flashing lights at any time without the consent of Council;
- b) not have any apparatus attached to it which will provide sound of any description whether associated with the sign or other object or activity;
- c) be neatly affixed to the building and any damage to the building caused to the exterior of the building by the erection of the advertising structure shall be promptly repaired with materials to match those of the existing building;
- d) comply with the Advertising Code of Ethics; and
- e) comply with the requirements of the Roads and Traffic Authority.

Reason: To confirm the terms of Council's approval.

- 14E. No signs or goods to be displayed for sale or stored on the footpath in front of the premises at any time without the prior approval of Council.
Reason: To prevent the public footpath from being obstructed.
-

Council's Proposed Condition:

54. An Interpretation Plan being prepared by the person acting on this consent and submitted to the satisfaction of Council's Heritage and Urban Design Advisor before any works commence on site. At a minimum, the plan shall include a draft of the text and images to be used on a panel interpreting the history of the Andrews Family and their funeral business located at the site. The final panel shall be (approximately) A2 size, aluminium, and shall be erected on the Enmore Road frontage at approx 1200-1500 above ground level, in a publically accessible location.
Reason: To enable the history of the site to be conveyed for posterity.

Applicant's Response:

Notwithstanding the fact that the subject site is not a Heritage Item, the applicant does not object to procuring an Interpretation Plan to enable the history of the site to be conveyed for posterity. However, the occupants of the site are unlikely to want their dwellings to be permanently associated with death and funerals. Therefore, the applicant suggests providing a written work for council's library and archives rather than a sign on people's dwellings.

Consequently, the applicant requests that this condition is modified as follows:

- "54. An Interpretation Plan shall be prepared by a suitably qualified Heritage Expert and submitted to council before any works commence on site. At a minimum, the plan shall include text and images, interpreting the history of the Andrews Family and their business located at the site.
Two copies of the final plan shall be provided to council for their use.
Reason: To enable the history of the site to be conveyed for posterity."

Council's Response:

Council's Heritage and Urban Design Advisor has reviewed the above and agrees to the condition to be modified to read as follows:

54. An Interpretation Plan shall be prepared by a suitably qualified Heritage Expert and submitted to Marrickville Council before any works commence on site. At a minimum, the plan shall include text and images, interpreting the history of the Andrews Family and their business located at the site.
Two copies of the final plan shall be provided to Council for their use.
Reason: To enable the history of the site to be conveyed for posterity.
-

Council's Proposed Condition:

62. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained. Application must be made through an authorised Water Servicing Coordinator. Please refer to "Your Business" section of Sydney Water's website at www.sydneywater.com.au then the "e-developer" icon or telephone 13 20 92.

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

Sydney Water written advice that you have obtained the Notice of Requirements must be submitted to Council’s satisfaction before the issue of a Construction Certificate.

Reason: To comply with the requirements of that Act.

Applicant’s Response:

This condition is contrary to Sydney Water’s procedures. Sydney Water removed this requirement in 2005. Sydney Water has written to all council’s requiring them to remove this standard condition from their Development Consents (see Appendix A).

Consequently, the applicant requests that this condition is removed.

Council’s Response:

Council’s Assessing Officer recommends Condition No. 62 to be modified to read as follows:

62. A Section 73 Compliance Certificate under the Sydney Water Act 1994 must be obtained and submitted to Council’s satisfaction before the issue of a Construction Certificate.

Reason: To comply with the requirements of that Act.

Council’s Proposed Condition:

63. The separate lots comprising the development being consolidated into one lot and under one title and registered at the NSW Department of Lands before the issue of a Construction Certificate.

Reason: To prevent future dealing in separately titled land, the subject of one consolidated site development.

Applicant’s Response:

The registration of consolidation of lots at the NSW Department of Lands can take a long time. The applicant intends to consolidate the lots, but does not wish construction to be delayed whilst this process is undertaken. Most council’s require the lot consolidation to be done prior to Occupation Certificate rather than Construction Certificate and the applicant requests the same time frame for this consent.

Consequently, the applicant requests that this condition is modified as follows:

“63. The separate lots comprising the development being consolidated into one lot and under one title and registered at the NSW Department of Lands before the issue of an Occupation Certificate.

Reason: To prevent future dealing in separately titled land, the subject of one consolidated site development.”

Council's Response:

Council's Assessing Officer raises no objection to the condition being modified as above. Consequently no objection is raised to Condition No. 63 being deleted and a new condition being incorporated into any consent granted reading as follows:

121A. The separate lots comprising the development being consolidated into one lot and under one title and registered at the NSW Department of Lands before the issue of an Occupation Certificate.

Reason: To prevent future dealing in separately titled land, the subject of one consolidated site development.

Council's Proposed Condition:

69. The waste storage room(s) being designed in such a way that waste removalist trucks can enter the site, remove waste and replace empty bins/dumpsters, in accordance with details being submitted to Council's satisfaction before the issue of a Construction Certificate.

Reason: To ensure that the waste storage rooms are designed in such a manner to enable for future waste collection methods.

Applicant's Response:

The applicant met with Marrickville Council's waste coordinator (Rebecca Abela) prior to lodging this D.A. Council's waste coordinator informed us that their waste removalist trucks do not enter Crescent Lane as the lane is too narrow for their vehicle's ingress and egress. Consequently, Council's established practice is to pick up waste from Station Street for all the properties that back on to Crescent Lane. As a result, this condition is not applicable to the subject property.

Consequently, the applicant requests that this condition is removed.

Council's Response:

In view of the above Council's Assessing Officer raises no objection to Condition No. 69 being deleted.

Council's Proposed Condition:

96. The person acting on this consent is to design and construct a water system connection to the available 225mm water main on the eastern side of Enmore Road. The connection will need to be sized and configured according to the Water Supply Code of Australia (Sydney Water Edition WSA 03-2002). Evidence of Code compliance should be attached with the extension design. Measures to be implemented are to be installed and indicated on development plans to the satisfaction of Certifying Authority before the issue of a Construction Certificate.

Reason: To ensure compliance with Sydney Water requirements.

Applicant's Response:

The water mains are owned by Sydney Water and they decide where the development shall connect to. Sydney Water issues their decision and includes it as part of the Section 73 Notice of Requirement Certificate. Sydney Water will not accept a requirement from council which indicates which part of their water system a new development should connect in to.

Consequently, the applicant requests that this condition be modified as follows:

- “96. The person acting on this consent is to design and construct a water system connection in consultation with Sydney Water and it shall be sized and configured according to the Water Supply Code of Australia (Sydney Water Edition WSA 03-2002). Evidence of Code compliance should be attached with the design. Measures to be implemented are to be installed and indicated on development plans to the satisfaction of Certifying Authority before the issue of a Construction Certificate.
Reason: To ensure compliance with Sydney Water requirements.”

Council's Response:

Sydney Water, in their submission dated 28 March 2011, requested that the subject condition be imposed on any consent granted. In view of the above, Council's Assessing Officer recommends that the subject condition remain.

A Revised Without Prejudice Conditions of Consent has been prepared incorporating the above changes.

Note: The changes to the original document are highlighted in red text

Sophia Chin
Development Assessment Town Planner
Marrickville Council
17 August 2011