

## DETERMINATION AND STATEMENT OF REASONS

### SYDNEY EASTERN CITY PLANNING PANEL

<b>DATE OF DETERMINATION</b>	3 May 2024
<b>DATE OF PANEL DECISION</b>	2 May 2024
<b>DATE OF PANEL MEETING</b>	30 April 2024
<b>PANEL MEMBERS</b>	Carl Scully (Chair), Amelia Thorpe, Alice Spizzo, Joanne McCafferty and Danny Said
<b>APOLOGIES</b>	None
<b>DECLARATIONS OF INTEREST</b>	<p>Marea Wilson declared a conflict of interest as she has previously made a submission to the panel in objection to the development and did not participate as a Panel member in the meeting.</p> <p>Danny Said declared a non-pecuniary and not significant conflict, as Mayor of Randwick City Council September 2019- September 2021, he had met the proprietor of the Coogee Bay Hotel at various Charity functions and discussions on Coogee Bay Road activations. He has not spoken to or met Mr Chris Chueng since September 2021. He participated as a Panel member in the meeting.</p>

Public meeting held by teleconference on 30 April 2024, opened at 2.30pm and closed at 4.29pm.

#### MATTER DETERMINED

PPSSEC-143 – Randwick – DA/437/201 - 212 Arden Street, 227-233 Coogee Bay Road and 5-7 & 15A Vicar Street, Coogee – Demolition of buildings, works to the Coogee Bay Hotel, including refurbishment to provide for 18 hotel rooms, a new 3 storey building to the southern side of the beer garden with 13 new hotel rooms (resulting in a total of 31 hotel rooms), construction of a 5/6 storey shop top housing comprising 58 dwellings, 11 retail premises, internal laneway from Coogee Bay Road, basement parking for 159 spaces, subdivision, landscaping and associated works (Local Heritage Item, variations to FSR and height of buildings of the RLEP 2012, Integrated Development) (as described in Schedule 1).

#### PANEL CONSIDERATION AND DECISION

The Panel considered: the matters listed at item 6, the material listed at item 7 and the material presented at meetings and briefings and the matters observed at site inspections listed at item 8 in Schedule 1.

#### Application to vary a development standard

Following consideration of a written request from the applicant, made under cl 4.6 (3) of the Randwick Local Environmental Plan 2012 (LEP), that has demonstrated that:

- compliance with cl. 4.3 (Height of Buildings) and cl. 4.4 (Floor Space Ratio) is unreasonable or unnecessary in the circumstances; and
- there are sufficient environmental planning grounds to justify contravening the development standard

the Panel is satisfied that:

- the applicant's written request adequately addresses the matters required to be addressed under cl 4.6 (3) of the LEP; and
- the development is in the public interest because it is consistent with the objectives of cl. 4.3 (Height of Buildings) and cl. 4.4 (Floor Space Ratio) of the LEP and the objectives for development in the B2 Local Centre zone; and
- the concurrence of the Secretary has been assumed.

## **Development application**

The Panel determined to approve the development application pursuant to section 4.16 of the *Environmental Planning and Assessment Act 1979*.

The decision was 4:1 in favour, against the decision was Danny Said.

## **REASONS FOR THE DECISION**

The Panel determined to uphold the Clause 4.6 variation to building height and floor space ratio; and approve the application for the reasons outlined in the Council Assessment Report.

The Panel determined to approve the development application given the major changes made by the applicant to improve bulk and scale including a reduction in height and removal of the supermarket and improved urban form and amenity. It was noted by the Panel that view loss was reduced by the amended plans.

Danny Said disagreed with the majority decision for the following reasons:

Even though the applicant had made improvements to the original plans, unfortunately they still had not met the community expectations.

## **CONDITIONS**

The Development Application was approved subject to the conditions in the Council Assessment Report with the following amendments.

- Amend Condition A1 to read as follows:

### **COOGEE BAY HOTEL NOISE MASTERPLAN (Noise Masterplan)**

A1. A Noise Masterplan must be developed and implemented for the proposed development to effectively mitigate and manage noise associated with the development and to ensure an appropriate level of amenity for residents.

The Noise Masterplan must be in accordance with the following requirements and relevant noise conditions specified in this consent and must be submitted and approved by Council's Director of City Planning prior to the activation of this consent.

- a) The Noise Masterplan shall be prepared by a suitably qualified Acoustic Consultant and shall include full details of the acoustic assessment, measurements and calculations, including 3D modelling.

*Following the engagement of a suitably qualified acoustic consultant Council's Director City Planning (or a Council delegate) can provide additional guidance on the assessment methodology for the Noise Masterplan.*

- b) The Noise Masterplan shall set the parameters for all development of the site in terms of the building compliance and operation noise (excluding those matters which are regulated by the *Liquor Act 2007*).
- c) All future land uses within the site will be required to comply with the Noise Masterplan.
- d) Once approved, the Noise Masterplan will form part of this consent, subject to approved variations by Council (in writing).
- e) The operational outcomes of the Noise Masterplan shall be incorporated into the comprehensive Plan of Management as required under Condition 130.
- f) The assessment shall consider and address the noise sources identified below and their impacts on relevant residential receivers:
  - Noise emissions from the function/wine bar and pre-function rooms.
  - Noise emissions from each tenancy in Selina's Lane (Eat Street).

- Noise emissions from the Level 1 terrace and the outdoor dining area.
  - All new and existing mechanical plant noise sources such as HVAC units, and exhaust fans serving the kitchens and car park.
  - Noise produced by heavy vehicles, motorcycles and cars with loud exhausts in the basement carpark.
  - Structure-borne noise produced in the gymnasium on Level 1 by the dropping of weights and the use of weight-based equipment.
- g) The Noise Masterplan must be prepared in accordance with the following policies and procedures:
- NSW EPA Noise Policy for Industry 2017 (NPfI). Note the LAeq 15 min amenity level shall be calculated as 2 dB below the LAeq period amenity level.
  - The Association of Australasian Acoustical Consultants (AAAC) Licensed Premises Guideline V3.0
  - NSW Environmental Protection Authority Approved methods for the measurement and analysis of environmental noise in NSW 2022
  - Australian Standard (AS 1055:2018) Acoustics – Description and measurement of environmental noise
- h) The noise modelling shall show that the design and construction of the building will ensure that the following internal noise levels will be met:
- 1) The Coogee Bay Hotel building, apartments, commercial premises and associated structures shall be constructed so that the cumulative noise from the development will meet the following requirements:
- i. Residential apartments within the development shall be constructed so that, when windows are closed, the repeatable LA10-1 minute noise from intermittent or fluctuating noise sources inside habitable rooms does not exceed:
    - Between 7:00 am and 12:00 midnight, the internal background noise level in any octave band centre frequency (31.5Hz – 8kHz inclusive).
    - Between 12:00 midnight and 7:00 am, a level that is 10 dB below the internal background noise level in any octave band centre frequency (31.5Hz – 8kHz inclusive).
  - ii. The level LA1 Fast-15 min of structure-borne noise transmitted from the gymnasium on Level 1 to any apartment shall not exceed the LA90 background noise in any room.
- i) In addition to point (h) above, residential apartments within the development shall be constructed so steady noise sources such as mechanical plant and traffic inside habitable rooms does not exceed:
- i. In naturally ventilated spaces – the repeatable maximum LAeq (1 hour) does not exceed:
    - 35 dB(A) between 10.00pm and 7.00am and 8 am Sunday in sleeping areas when windows are closed,
    - 40 dB(A) in sleeping areas when windows are open (24 hours),
    - 40 dB(A) in living areas when windows are closed (24 hours),
    - 45 dB(A) in living areas when windows are open (24 hours).
  - ii. Where permitted, in mechanically ventilated spaces – the repeatable maximum LAeq (1 hour) when the mechanical ventilation system is operating, and doors and

windows are closed does not exceed:

- 38 dBA in sleeping areas between 10.00pm and 7.00am,
  - 42 dBA in sleeping areas between 7.00am and 10.00pm,
  - 45 dBA in living areas (24 hours).
- j) All recommendations and requirements included in the approved Noise Masterplan, shall be included in the relevant Construction Certificate for the development.

**NOTES:**

- i. *A suitably qualified Acoustic Consultant means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustical Society, Institution of Engineers Australia or the Association of Australian Acoustical Consultants at the grade of member.*
- ii. *Calculations of the outside-to-inside reduction of noise level from external sources through an open window in a residential room shall be made from first principles and not use the common assumption of a 10dB attenuation of noise level.*
- iii. *To ensure that noise levels in the as-built residences will not exceed the noise criteria, all calculations shall include a safety margin of 5dB.*
- iv. *To ensure that low frequency room modes in the residential apartments do not result in excessive internal noise levels from music with strong bass content, room modes shall be assumed to increase the level of low- frequency sound in the 63Hz and 125Hz bands by 5dB.*

**Evidence required to satisfy the above conditions must be submitted to Council within 12 months of the date of this consent.**

**Subject to compliance with the deferred commencement conditions, to the satisfaction of the Director of City Planning, development consent is granted under Section 4.16 & 4.17 of the *Environmental Planning and Assessment Act 1979* subject to the following conditions:**

- Amend Condition 26, dot point 2 to read as follows:
  - The maximum capacity specified in the approved Noise Masterplan ; Or
- Amend Condition 32 to delete the words 'Coogee Bay Hotel' from part i
- Amend Conditions 33, 127 and 130 to delete the words 'Coogee Bay Hotel Masterplan Noise Assessment' and replace with 'Noise Masterplan'
- Amend Conditions 129, 144 and 148 to delete the word 'Precinct' in the first sentence
- Insert new Condition 181, which reads as follows:

181. The noise associated with the entire development including any future land uses (i.e. retail tenancies) must comply with the approved Noise Masterplan (including any amendments) at all times.
- Amend Conditions 3e. and 20b. to delete the words 'at a minimum rate of 1:5 parking spaces' and insert the words 'for each residential parking space'






**CONSIDERATION OF COMMUNITY VIEWS**

In coming to its decision, the Panel considered written submissions made during public exhibition and heard from all those wishing to address the Panel. The Panel notes that issues of concern included:

- Height, scale and density (loss of "village feel")
- View loss

- Solar access and overshadowing of the public domain and open space
- Intensity of traffic and loss of pedestrian safety
- Anti-social behaviour (noise and pollution, smell and rubbish)
- Impact to existing local business
- Heritage impact
- Impact to foreshore
- Loss of trees

The Panel considers that concerns raised by the community have been adequately addressed in the Assessment Report and that no new issues requiring assessment were raised during the public meeting. The Panel notes that in addressing these issues appropriate conditions have been imposed.

PANEL MEMBERS	
 Carl Scully (Chair)	 Amelia Thorpe
 Alice Spizzo	 Joanne McCaffery
 Danny Said	

SCHEDULE 1		
1	PANEL REF – LGA – DA NO.	PPSSEC-143 – Randwick – DA/437/201
2	PROPOSED DEVELOPMENT	Demolition of buildings, works to the Coogee Bay Hotel, including refurbishment to provide for 18 hotel rooms, a new 3 storey building to the southern side of the beer garden with 13 new hotel rooms (resulting in a total of 31 hotel rooms), construction of a 5/6 storey shop top housing comprising 58 dwellings, 11 retail premises, internal laneway from Coogee Bay Road, basement parking for 159 spaces, subdivision, landscaping and associated works (Local Heritage Item, variations to FSR and height of buildings of the RLEP 2012, Integrated Development)
3	STREET ADDRESS	212 Arden Street, 227-233 Coogee Bay Road and 5-7 & 15A Vicar Street, Coogee
4	APPLICANT/OWNER	Cotton Development Management Pty Ltd c/- Urbis Simmattown Ltd
5	TYPE OF REGIONAL DEVELOPMENT	General development over \$30 million
6	RELEVANT MANDATORY CONSIDERATIONS	<ul style="list-style-type: none"> <li>• Environmental planning instruments: <ul style="list-style-type: none"> <li>○ Water Management Act 2000</li> <li>○ State Environmental Planning Policy (State and Regional Development 2011 (now State Environmental Planning Policy (Planning Systems) 2021)</li> <li>○ State Environmental Planning Policy (Infrastructure) 2007 (now State Environmental Planning Policy (Transport and Infrastructure) 2021)</li> <li>○ State Environmental Planning Policy No. 55 – Remediation of Land (now SEPP (Resilience and Hazards) 2021</li> <li>○ State Environmental Planning Policy No. 65 - Design Quality of Residential Apartment Development (now State Environmental Planning Policy (Housing) 2021)</li> <li>○ State Environmental Planning Policy (Affordable Rental Housing) 2009 (now State Environmental Planning Policy (Housing) 2021)</li> <li>○ State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 (now State Environmental Planning Policy (Sustainable Buildings) 2022)</li> <li>○ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (now State Environmental Planning Policy (Biodiversity and Conservation) 2021)</li> <li>○ State Environmental Planning Policy (Coastal Management) 2018 (now State Environmental Planning Policy (Resilience and Hazards) 2021)</li> <li>○ Randwick Local Environmental Plan 2012</li> </ul> </li> <li>• Draft environmental planning instruments: Nil</li> <li>• Development control plans: <ul style="list-style-type: none"> <li>○ Randwick Comprehensive Development Control Plan 2013</li> </ul> </li> <li>• Planning agreements: Nil</li> <li>• Relevant provisions of the <i>Environmental Planning and Assessment Regulation 2021</i></li> <li>• Coastal zone management plan: Nil</li> <li>• The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality</li> <li>• The suitability of the site for the development</li> <li>• Any submissions made in accordance with the <i>Environmental Planning and Assessment Act 1979</i> or regulations</li> </ul>

		<ul style="list-style-type: none"> <li>The public interest, including the principles of ecologically sustainable development</li> </ul>
7	<b>MATERIAL CONSIDERED BY THE PANEL</b>	<ul style="list-style-type: none"> <li>Council's Consultant Planner's Assessment Report: 16 April 2024</li> <li>List any clause 4.6 variation requests: Cl 4.3 Height of Buildings and Cl. 4.4 Floor Space Ratio</li> <li>Council's Consultant Planner's Assessment Report: 3 December 2021 (report for December 2021 public meeting)</li> <li>Total number of written submissions during public exhibition: 603 (500 unique submissions)</li> <li>Total number of unique submissions received by way of objection: 496</li> <li>Verbal submissions at the public meeting: <ul style="list-style-type: none"> <li>George Roumanous, David Burden, Michael Doumani, Lucy Bloom, Helen Tan, Hector Abbott, Councillor Marea Wilson, Councillor Michael Olive, Maurice Cunningham, Geraldine Hoeben, Ryan Elliot/Mark England/Rona Wade</li> <li>Council assessment officer – Frank Ko</li> <li>Council Independent Planning Consultant – Margaret Roberts</li> <li>On behalf of the applicant – Jacqueline Parker, Hilary Pearce and Rob Mirams</li> </ul> </li> </ul>
8	<b>MEETINGS, BRIEFINGS AND SITE INSPECTIONS BY THE PANEL</b>	<ul style="list-style-type: none"> <li>Kick-Off Briefing: 2 September 2021 <ul style="list-style-type: none"> <li><u>Panel members</u>: Carl Scully (Chair)</li> <li><u>Council assessment staff</u>: William Jones and Frank Ko</li> <li><u>Council's Consultant Planner</u>: Margaret Roberts and Gerard Turrisi</li> <li><u>Applicant Representatives</u>: Brigitte Bradley, Russell Cotton, Michael Emery, Rob Mirams, Jacqueline Parker and Petra Magendanz</li> <li><u>Department staff</u>: Alexander Hafner, Stuart Withington, Brianna Cheeseman, Sharon Edwards and Holly McCann</li> </ul> </li> <li>Council/Applicant Briefing: 21 October 2021 <ul style="list-style-type: none"> <li><u>Panel members</u>: Carl Scully (Chair), Jan Murrell, Chris Wilson, Christie Hamilton and Murray Matson</li> <li><u>Council assessment staff</u>: William Jones and Frank Ko</li> <li><u>Council's Consultant Planner</u>: Krystal Narbey and Margaret Roberts</li> <li><u>Applicant Representatives</u>: Brigitte Bradley, Russell Cotton, Chris Pope, Rob Mirams, Jacqueline Parker, Petra Magendanz and Cynthia McCollum</li> <li><u>Department staff</u>: Stuart Withington and Holly McCann</li> </ul> </li> <li>Public Meeting: 16 December 2021 <ul style="list-style-type: none"> <li><u>Panel members</u>: Carl Scully (Chair), Jan Murrell, Chris Wilson, Christie Hamilton and Danny Said</li> </ul> </li> <li>Council/Applicant: 17 February 2022 <ul style="list-style-type: none"> <li><u>Panel members</u>: Carl Scully (Chair), Jan Murrell, Chris Wilson and Joanne McCafferty and Danny Said</li> <li><u>Council assessment staff</u>: Kerry Kyriacou and Frank Ko</li> <li><u>Council's Consultant Planner</u>: Gerard Turrisi and Krystal Narbey</li> <li><u>Applicant Representatives</u>: Brigitte Bradley, Rob Mirams, Jacqueline Parker, Cynthia McCollum, Christopher Cheung, Aleksei Villis and Jane Maze-Riley</li> <li><u>Department staff</u>: Stuart Withington, Brianna Cheeseman and Cameron Brooks</li> </ul> </li> </ul>

		<ul style="list-style-type: none"> <li>• Council/Applicant: 14 June 2023 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Carl Scully (Chair)</li> <li>○ <u>Council assessment staff</u>: Kerry Kyriacou and Angela Manahan</li> <li>○ <u>Council's Consultant Planner</u>: Gerard Turrisi</li> <li>○ <u>Department staff</u>: Louisa Agyare and Suzie Jattan</li> </ul> </li> <li>• Council/Applicant: 4 March 2024 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Carl Scully (Chair)</li> <li>○ <u>Council assessment staff</u>: Frank Ko and Victoria McGrath</li> <li>○ <u>Council's Consultant Planner</u>: Krystal Narbey and Margaret Roberts</li> <li>○ <u>Council's Acoustic Consultant</u>: Glenn Leembruggen</li> <li>○ <u>Applicant Representatives</u>: Brigitte Bradley, Alexander Kingsbury, Aaron Gadiel, Rob Mirams, Jacqueline Parker, Cynthia McCollum and Hillary Pearce</li> <li>○ <u>Department staff</u>: Carolyn Hunt and Lisa Ellis</li> </ul> </li> <li>• Site inspection: 30 April 2024 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Carl Scully (Chair), Alice Spizzo, Amelia Thorpe, Daniel Said</li> <li>○ <u>Council's Consultant Planner</u>: Margaret Roberts</li> <li>○ <u>Council assessment staff</u>: Angela Manahan</li> </ul> </li> <li>• Final briefing to discuss Council's recommendation: 30 April 2024 <ul style="list-style-type: none"> <li>○ <u>Panel members</u>: Carl Scully (Chair), Alice Spizzo, Amelia Thorpe, Joanne McCafferty</li> <li>○ <u>Council assessment staff</u>: Frank Ko, Angela Manahan, Barry Mullam</li> <li>○ <u>Consultant Planner</u>: Margaret Roberts</li> <li>○ <u>Department staff</u>: Carolyn Hunt and Lisa Ellis</li> </ul> </li> </ul>
9	COUNCIL RECOMMENDATION	Approval (Deferred Commencement)
10	DRAFT CONDITIONS	Attached to the Council Assessment Report