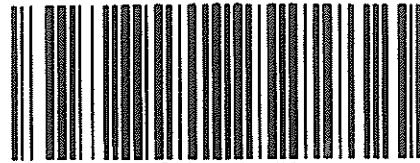


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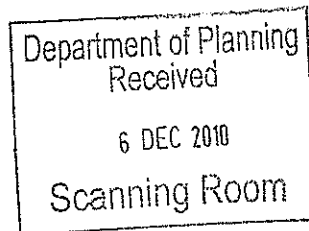
Our Ref: ABH
Your Ref: DA/871/2010

6/108 Alison Road
RANDWICK NSW 2031



2 December 2010

Mr Michael Woodland
Director
Metropolitan Projects
Department of Planning
23-33 Bridge Street
SYDNEY NSW 2000



BY EXPRESS POST AND EMAIL:
michael.woodland@planning.nsw.gov.au

Dear Michael

**Project Application No: DA/871/2010 re MP10_0098 (Application)
Proposed "Stables Precinct" Development at Royal Randwick Racecourse (Racecourse)
Objection to Application**

I refer to the brief informal meeting between you, the Honourable Tony Kelly, ALGA MLC, Minister for Planning (**Minister**), and me at the University of New South Wales on 29 November 2010 (**informal meeting**).

Please note that my attendance at the informal meeting was solely to introduce myself to the Minister, to ascertain the relevant officer at the Department of Planning (**DoP**) dealing with the Application on behalf of the Minister and to determine whether or not you had both had the opportunity to review my formal objection to the Application dated 11 November 2010 (**my objection**). You indicated to me that you had seen at least part of my objection. For the sake of completeness, I attach¹ a copy of my objection to this letter for your full review.

The informal meeting was not a forum in which I was able, or was it appropriate for me, to discuss with you in sufficient detail the issues raised in my objection. As such, I invite you to a meeting at my offices to discuss the matters raised in both my objection and this letter in more detail. I also invite you to join me for an inspection of the area surrounding the "Stables Precinct" site and the property at 108 Alison Road.

The reason that it is important for us to meet is that, from certain comments made by you and the Minister at the informal meeting, I am very concerned that you are both pre-disposed to approve the Application, notwithstanding that the assessment thereof has not yet been made. To the extent this is the case, then it is improper for the Application to proceed.

I do not refer to all the matters that are outlined in my objection in this letter, but I do which to expand upon the matters we briefly touched upon at the informal meeting.

Not a Part 3A Development

You will recall that at the informal meeting I raised with you the incorrect assessment of Mr Sam Haddad, the Director-General of the DoP (**Director-General**) of 2 August 2010, in which the Director-General indicated that he had formed the opinion that the development that is the subject of the Application (**Development**) was a development "for the purpose of a major sporting facility" under clause 15 of schedule 1 of the *Environmental Planning Policy – Major Development* (2005) (**SEPP**) and, as such, a project that should be assessed under Part 3A of

the *Environmental Planning and Assessment Act 1979 (NSW) (EPAA) (Director-General's assessment)*.

I repeat the comments made in my objection, notably in paragraphs 2.1 to 3.8, which related to preliminary matters of the application including the Director-General's assessment.

At the informal meeting, you indicated that you had previously sighted these comments, but that you were "confident" in the validity of the Director-General's assessment, although you did not elaborate on the basis for your assertion. I press my comments.

As discussed, one of the reasons that the Director-General's decision is incorrect is that there is no basis for the Director-General, on behalf of the Minister, to have opined that the Development will exceed the \$30 million capital investment value (CIV) threshold prescribed by clause 15(2)(a) of schedule 1 of SEPP.

When I raised this at the informal meeting, you will recall that the Minister said to me words to the effect "*we have guys in our department who will know whether a development is worth \$20 million or \$40million*".

To be blunt, the general view of the staff of the DOP as to the value of any development is irrelevant and, in any event, entirely insufficient for determining whether a project meets the requirements of section 75B of the EPAA and Regulation 6 of SEPP. There must be a reasonable basis for an opinion that a CIV has been met, and it must be held by the Minister himself or by the Director-General pursuant to the Minister's March 2009 delegation.

No such basis was demonstrated in the Director-General's assessment.

The Director-General's assessment was made in response to the Clause 6 Request & Preliminary Environmental Assessment – Randwick Racecourse Stables Precinct submitted by Urbis on behalf of the Australian Jockey Club (AJC) in July 2010 (**Clause 6 Request**). There were not, or should not have been, any other documents upon which the Director-General relied in making his assessment.

The only reference to the value of the Development in the Clause 6 Request was a brief comment¹ that Ralph Beattie Bosworth (RBB) had apparently assessed the CIV of the Development at \$49.1 million. There was also reference in the Clause 6 Request to the calculation of that amount being annexed thereto at its Appendix A; however, the copy of the Clause 6 Request that is available to the public does not include annex such a document.

Furthermore, annexed to the Environmental Assessment of October 2010 that forms the basis of the Application (EA) at Appendix B is a letter from RBB dated 20 September 2010, in which the CIV of the Development is calculated at approximately \$37.6M.

This raises two issues:

1. The Director-General could not properly opine that the CIV of the Development would be in excess of \$30M, solely on the unsupported assertion of the same in the Clause 6 Request.
2. Even if that assertion were supported by the calculations of RBB, the same entity has since assessed the CIV at a much lesser amount. The accuracy of RBB's calculations therefore is entirely questionable and their assessments cannot be relied upon.

¹ At paragraph 5.2

As stated above, the opinion of the Minister or the Director-General's in this regard must have a reasonable basis. As outlined in my objection and above, the Director-General's assessment does not.

Assessment of DGRs

At the informal meeting, we also briefly discussed the Director-General's requirements for the Development as outlined in the letter of 6 August 2010 from Andrew Smith of the DoP to Mr Tim Blythe of Urbis (**DGRs**). You will recall that I raised some of the matters outlined in paragraphs 3.2 to 3.8 of my objection, namely that the EA does not meet a number of the DGRs and, therefore, the assessment that must have been made by the Director-General to allow the EA to be exhibited (which it was from 13 October 2010 until 12 November 2010) that the EA had met all of the DGRs (**DGR assessment**) must be incorrect. You confirmed to me that the DGR assessment had been made.

I repeat the matters outlined in paragraphs 3.2 to 3.8 of my objection and refer you, by way of example, to Key Issue 12 of the DGRs, which states, *inter alia*:

- "...The EA shall demonstrate the relationship of the proposals where the stage 1 infrastructure works approved under major project application MP07_0092 and any variations/inconsistencies are to be fully identified".

At no point in the EA does the AJC demonstrate the relationship between the previous development application for works to the Racecourse (MP 07_0092) (**Stage 1 Application**) and the current Application, even though it states on page 5 of the EA that it does so at paragraph 6.11 of the EA. The reference on page 5 of the EA is, in fact, the only reference to this matter. Paragraph 6.11 is short, and states:

6.11 Utilities and Infrastructure

A Utilities and Infrastructure Assessment of the currently available and anticipated service demands has been undertaken by Arup. The assessment looks at:

- Potable water supply;
- Water saving initiatives;
- Sewer servicing; and
- Electricity supply and servicing.

The assessment concludes that:

The report's findings indicate that there is a minimal amount of infrastructure services that are affected or required to be upgraded to suit the new development.

Further details of the utilities and infrastructure servicing for the proposed Stables redevelopment are contained within the Utilities Infrastructure Report in **Appendix W**.

As you can see, in this paragraph there is no demonstration of or even any reference to the relationship between the Stage 1 Application and the current Application. Yet, in spite of this quite obvious absence, the Director-General has still assessed that this requirement, *inter alia*, has been met by the EA.

For the reasons outlined in paragraphs 3.2 and 3.3 of my objection, the DGR assessment is incorrect and in breach of the Minister's obligations under Regulation 8D of the *Environmental Planning and Assessment Regulation 2000* (NSW) (**EPA Regulation**) and section 75H of the EPAA.

Please confirm that the Minister will now reject the Application pursuant to Regulation 8D(3) of the EPA Regulation due to the EA's non-compliance with the DGRs. Otherwise, please provide me with a copy of the DGR assessment, by return.

Apprehended bias

We also discussed the actual or apprehended bias of Randwick City Council (**Council**) undertaking the assessment of the Application on behalf of the Minister. This is expounded in section 5 of my objection. I am also concerned about the actual or apprehended bias of the Minister, Director-General and the DoP in relation to this Application and the Development.

Council

As stated to you, and outlined in further detail in my objection, the more appropriate site for the Development, to the extent that it is needed, is the site of the existing stables at the Racecourse in the corner of the Racecourse that is abutted by High Street and Anzac Parade (**High Street/Anzac Parade site**). This site is more appropriate in respect of, *inter alia*, vehicular access, size, traffic impact and impact on surrounding residences, in that it:

1. has existing, large, designated and traffic-controlled access thereto and therefrom;
2. is over twice the size of the proposed "Stables Precinct" site ;
3. is not overlooked by surrounding residential properties; and
4. currently houses the majority of the Racecourse's stabling and training facilities.

However, as is demonstrated in the Council's "Randwick Education and Health Specialised Centre Discussion Paper" (**Specialised Centre Paper**), which is currently being exhibited, the Council openly intends for the High Street/Anzac Parade site, as well as the site in the corner of High Street and Wansey Road and other parts of the Racecourse abutting High Street, to be re-zoned, having either been sold by the AJC to the Council or the University of New South Wales or otherwise annexed by the New South Wales Government from the AJC's lease of the Racecourse, so as to be redeveloped into high density, multi-storey residential/commercial properties. Indeed, the Council has already taken steps to protect its position in this regard by enacting the "*Royal Randwick Racecourse Development Control Plan*" of 8 May 2007 which, for not stated reason, proposes that any new stables development is to be located on the eastern side of the Racecourse, rather than in the High Street/Anzac Parade site.

As such, the Council cannot undertake an objective, arm's length assessment of the Development, to the extent that the more appropriate site for the Development is the High Street/Anzac Parade site, which is outlined in further detail in my objection, given its own interests in seeking to redevelop that site for the purposes of the Specialised Centre Paper.

You stated to me at the informal meeting that any apprehended bias by the Council would somehow be negated as the final recommendation to be made to the Minister in relation to the Application (**recommendation**) was in your hands. It is not clear how the recommendation being in your hands can or will cure the apprehended bias of the Council. The Minister has delegated the role of assessor of the Application to the Council; the assessment provided by the Council will

no doubt form the basis for your recommendation. If it does not, there seems little point in having delegated that authority to the Council. In any event, you did not indicate that you, the Minister or the Director-General would be undertaking your own assessment, separate to that of the Council, so it is unclear on what basis you would or could reject the findings in the Council's assessment.

Therefore, you and the Minister will be significantly guided by the Council's assessment in making, respectively, the recommendation and the final determination of the Application. To the extent that the Council's assessment is that the Application should be approved, any such assessment, the recommendation and the final determination will be tainted by an apprehended bias.

Department of Planning

I understand that the DoP and the AJC, or the AJC's agents, have for some time had some detailed discussions about the Development and the redevelopment of the Racecourse generally. Indeed, immediately prior to yesterday's meeting, I overheard you indicate to another person that you had yourself undertaken an inspection of the existing stabling facilities at the Racecourse and that you were "shocked" by what you had seen during that inspection.

These comments would appear to indicate that you are necessarily disposed to the Development, which means that you cannot make an objective recommendation in respect of the Application. I also note that you were heavily involved in the assessment Stage 1 Application, which was approved.

Pursuant to the "Meeting and Telephone Communications" Code, please provide me with all correspondence, including, but not limited to, file notes, minutes of meetings and discussions and memoranda of understanding, as between the DoP, the Minister and/or the Director-General and the AJC or the AJC's agents with respect to the Development and/or the construction of stabling and training facilities at the Racecourse.

If you fail to provide copies of these documents, which are of course, open to public scrutiny, I will have to issue a Freedom of Information request pursuant to the *Government Information (Public Access) Act 2009*. I would prefer not to have to take such a formal step though and would rather keep matters informal for the time being.

Moreover, at the informal meeting, the Minister was clearly unaware of the source of the funding for the Development; indeed the Minister was of the view that it was being funded by part of the recent \$150 million grant from the New South Wales Government (**Government**), through Racing NSW, to the AJC in respect of the proposed spectator precinct redevelopment. That is to say, the Minister was of the opinion that the Government was funding the Development and he was clearly prepared to determine the Development on that basis. It is unlikely that the Minister would reject a project funded by the Government. In such circumstances, it can be said that the Minister is pre-disposed to the approval of the Application and Development.

Furthermore, in relation to your comment that you were "shocked" at the state of the existing stabling facilities during your inspection of the same, you will note that, in my objection, I outline that there is no evidence whatsoever contained in or annexed to the EA that shows that the existing stabling facilities are deficient, dilapidated or in some way not capable of performing the function of stabling facilities, as asserted without support by the AJC. That is to say, there has been no independent assessment by any relevant expert that the existing stabling facilities need to be replaced. Indeed, given its previous conduct in the Stage 1 Application, the AJC itself cannot be said to consider that the existing stabling facilities need to be replaced.

To the extent that you yourself consider that the stabling facilities should be replaced, please indicate your qualifications in this regard. You must note that it is not a matter of your personal opinion as to whether or not you, as an unqualified layman, consider that the stables are somehow incapable of performing the function of stabling facilities; any assessment of and recommendation in respect of the Application must be made on the contents of that Application alone, and not on the basis of your own view of matters that have not been supported by any evidence in the Application. Your own personal view is an irrelevant consideration.

That is to say, it is not your role to prove those parts of the Application that have not been properly supported by evidence. To the extent that no such evidence is provided, the appraisal must be that, given that lack of supporting evidence, that part is not demonstrated and cannot be relied upon. Again, if you, or any other member of the DoP, have taken steps to somehow cure the deficiencies in the Application, this is a further example of a pre-disposition towards achieving the outcome of approving the Application.

Further, given your previous inspection of the existing stabling facilities at the Racecourse, if you fail or refuse to accept my invitation of an inspection of the area surrounding the "Stables Precinct" site and the property at 108 Alison Road, I can only take this as a further example of a pre-disposition towards achieving the outcome of approving the Application.

It therefore cannot be that the Minister, the Director-General and the DoP have clean hands when it comes to the appraisal and determination of the Application. Notwithstanding your assurances that the Minister's decision-making ability will remain unfettered, the Minister, the Director-General you and the Council cannot bring an impartial and unprejudiced mind to the decision-making process in respect of the Application.

It is imperative that the decision process remains unfettered and, in the circumstances, it cannot.

Consequences of apprehended bias

As you are well aware, in *Gwandalan Summerland Point Action Group Inc. v Minister for Planning* [2009] NSWLEC140, his Honour Lloyd J determined that a development approved by the then Minister for Planning should be overturned as there was a reasonable apprehension of bias on behalf of the then Minister. In that case, the then Minister was found to be pre-disposed to approving a development application, with his Honour stating²:

The fair-minded lay observer *might* thus have apprehended that the Minister *might* not bring an impartial and unprejudiced mind to his determination of the applications, since he seemed to be enamoured with the whole proposal...

His Honour relied upon the "two might" test for reasonable apprehension of bias as outlined in *McGovern v Ku-ring-gai Council* (2008) 161 LGERA 170, namely whether a fair-minded lay observer with knowledge of the material objective facts might entertain a reasonable apprehension that the decision-maker might not bring an impartial and unprejudiced mind to the resolution of the question.

Such an impartial and unprejudiced mind cannot exist when an assessment of the Application by the Council, which has openly-stated interests it has already taken steps to protect, is made and then acted upon by the Minister, Director-General and DoP who are pre-disposed to approve the Application.

² At paragraph 133

Please confirm, by return, that, as with the developments referred to in *Gwandalan*, the Application will be dealt with at arm's length and undertaken by an independent planning authority, namely an authority other than the Council or the DoP.

Loss of economic welfare

I again refer you to my objection. My property has panoramic and unobstructed front views of the rustic "Stripping Stalls", existing bull ring and the green fields of the Racecourse that comprise the "Stables Precinct" site. If the Application is approved, those views will be removed in their entirety to be replaced, firstly, by views of a major construction site for at least 18 months (**construction period**) and thereafter by views of multiple, multi-storeyed, large industrial-style buildings for at least 20 years.

During the construction period, I reasonably expect my property to be unsellable due to the panoramic and unobstructed front views from my property, noise and ancillary nuisances of a major construction site. That is, the value of my property will be reduced to nil.

Thereafter, I reasonably expect that the value of my property will be significantly reduced from its current, or pre-Application, value due to the panoramic and unobstructed front views from my property, traffic and ancillary nuisances of the Development and the proposed redirection of racegoing traffic on racedays.

As you can imagine, these are matters of the utmost concern to me and it is therefore imperative that we meet so as to ensure that an independent, merit-based process for the assessment of the Application is put in place that will not necessitate an appeal under section 75L of the EPAA or the issue of other proceedings to prevent the Development proceedings due to procedural impropriety.

I look forward to hearing from you.

Yours faithfully



Alex Haslam
Tel: 8240 8028
Email: ahaslam@gclegal.com.au

encl

¹ Letter to Randwick City Council dated 11 November 2010

Our Ref: ABH
Your Ref: DA/871/2010

6/108 Alison Road
RANDWICK NSW 2031

11 November 2010

The General Manager
Randwick City Council
30 Frances Street
RANDWICK NSW 2031

By email and express post:
general.manager@randwick.nsw.gov.au

Dear Sir

**Project Application No: DA/871/2010 re: MP10_0098 (Application)
Proposed "Stables Precinct" development at Royal Randwick Racecourse (Racecourse)
Objection to Application**

I am the owner of the property at 6/108 Alison Road, Randwick, and I write this letter on behalf of myself, the owners of apartments 1, 2, 3 and 4/108 Alison Road and the owners of Strata Plan SP3360 (together **the Owners of 108 Alison Road**) to formally object to the Application and its associated Environmental Assessment of October 2010 (EA), submitted by Urbis on behalf of the Australian Jockey Club (AJC).

1. EXECUTIVE SUMMARY

1.1 The Application, EA and the development that is the subject of the Application and EA (**Development**) must be rejected on the basis that, *inter alia*:

- (a) The Application is for a development that does not fall under Part 3A of the *Environmental Planning and Assessment Act 1979 (NSW)* (**EPAA**);
- (b) The EA:
 - (i) has not satisfied the Director-General's Requirements of 6 August 2010 (**DGRs**); and
 - (ii) contains a number of misrepresentations and unsupported assertions;
- (c) The Development:
 - (i) is in breach of sections 5, 107 and 108 of the EPAA; Regulations 40-46 of the *Environmental Planning and Assessment Regulation 2000* (**EPAA Regulation**); sections 18, 38 and 43 of *Randwick Local and Environmental Plan 1998* (**LEP**); and Regulation 101 of *State Environmental Planning Policy (Infrastructure) 2007* (**ISEPP**); and
 - (ii) does not satisfy a number of the requirements of the "Royal Randwick Racecourse Development Control Plan" of 8 May 2007¹ (**DCP**), notably in relation to building height and view loss;
 - (iii) conflicts with the objectives of Randwick City Council's (**Council**) "Randwick Economic Development Strategy" paper² (**Development**

¹ Effective from 12 June 2007

² Dated March 2009

Strategy paper) and “*Randwick Education and Health Specialised Centre Discussion Paper*” (**Specialised Centre Paper**);

- (iv) will remove unobstructed and panoramic front views from 108 Alison Road, in breach of the principles outlined in *Tenacity v Warringah* [2004] NSWLEC 140;
 - (v) create increased noise, light spill, odour, dust and strain on amenities to the surrounding residences; and
 - (vi) take an unacceptably long period of time to construct, in light of its proposed location period, of between 18-24 months. Urbis has asserted that the construction of the Development will be completed in between 9-12 months. This is unrealistic. Given the size of the Development, it is more likely to take at least 18 months to be practically complete;
- (d) The previous application for works to the Racecourse (MP 07_0092) (**Stage 1 Application**) was silent as to the Development, in breach of the principles outlined in *Anglican Church Property Trust v Sydney City Council* [2003] NSWLEC 353;
- (e) The Development has been intentionally designed so as to, at least on its face, have a capital investment value of over \$30 million, solely to attempt to ensure that the Development is assessed under Part 3A, as opposed to under Part 4, of the EPAA; and
- (f) Both the Council and the Department of Planning (**DoP**) have a vested interest in approving the Application and, as such, no objective assessment of the Application and EA can be made by either.

2. NOT A PART 3A DEVELOPMENT UNDER THE EPAA

2.1 On 13 July 2010, Urbis, the “independent social consultant” and, additionally, design consultant for the Development on behalf of the AJC, submitted the Clause 6 Request, requesting, *inter alia*, that the Minister for Planning form an opinion that the Development is of a kind described in clause 15 of Schedule 1 of the *Environmental Planning Policy – Major Development* (2005) (**SEPP**), so that the Development fell to be considered a “Major Infrastructure Development” to be assessed under Part 3A, as opposed to Part 4, of the EPAA. The basis for this request was that Urbis asserted the Development was a:

(2) Development for the purpose of major sporting facilities that:

(a) has a capital investment value of more than \$30 million...³

2.2 In a document dated 2 August 2010, Mr Sam Haddad, the Director-General of the DoP (**Director-General**), indicated that he had formed the opinion that the Development was a development for “*the purpose of a major sporting facility*” for the purposes of SEPP, and it was, as such, a project that should be assessed under Part 3A of the EPAA (**Director-General’s decision**).

2.3 No reasoning was given as why the Development was considered by the Director-General to be a development “*the purpose of a major sporting facility*”. The lack of any given reasoning behind this decision is entirely unsatisfactory and, in light of the points outlined in further detail below⁴, seems not to have been made at arm’s length.

2.4 In any event, the Director-General’s decision is incorrect and must be withdrawn forthwith.

³ Clause 15(2)(a) of SEPP

⁴ At Section 5

- 2.5 A project application falls to be considered under Part 3A of the EPAA if it is a "*Major Infrastructure Development*"⁵. SEPP provides assistance to the Director-General in his determination of whether a particular project is a "*Major Infrastructure Development*" by listing a number of facilities in Schedule 1 thereto that should fall under this definition.
- 2.6 However, the Development is not a "*Major Infrastructure Development*" as:
- (a) The Development is a stabling and training resource for horses, which is not a "*major sporting facility*" as required under clause 15 of Schedule 1 of SEPP or, indeed, a "*sporting facility*" at all;
 - (b) The Development is not "*for the purpose of*" the Racecourse as required under clause 15 of Schedule 1 of SEPP:
 - (i) to the extent that the Racecourse is a "*major sporting facility*", that must be because it facilitates horse races for public viewing. There is no evidence in the Application, EA or Clause 6 Request that demonstrates that the horses proposed to be stabled at the Development will all participate in races for public viewing at the Racecourse, which they necessarily must do for the Development to "*for the purpose of*" the Racecourse. Indeed, the Development is stated by the AJC to be for "*the benefit of the racing industry*"⁶ generally; it is not exclusively for the purpose of Racecourse. That is to say, the horses stabled and trained at the Racecourse likely race at other racecourses⁷; and
 - (ii) however, the Racecourse is not a "*major sporting facility*". Both the New South Wales Government and its agency, the DoP, have previously considered that the Racecourse is a facility that is instead a tourist-related or recreation facility:
 - (A) in February 2008⁸, the DoP approved the Stage 1 Application, on the basis that the Racecourse was "*an important recreation, leisure, tourism and employment venue*"⁹, that is, that it was a development that more properly fell under clause 17 of Schedule 1 to SEPP, being a development for "*the purpose of tourist related facilities, major convention and exhibition facilities or multi-use entertainment facilities*", as opposed to under clause 15 of Schedule 1 to SEPP;
 - (B) in the New South Wales Government's Metropolitan Strategy "*City of Cities: A Plan for Sydney's Future*", the Racecourse is identified as contributing towards "*recreation, social interaction and quality of life*";
 - (C) clause 17 of Schedule 1 to SEPP is only satisfied if a proposed development:
 - (a) has a capital investment value of more than \$100 million, or
 - (b) employs 100 or more people, or

⁵ Section 75B

⁶ Paragraph 1.2 of the AJC's "*Royal Randwick Racecourse Stabling Management Plan*" dated 9 September 2010 annexed to the EA at Appendix Q (**AJC's Stabling Plan**)

⁷ For example, at Warwick Farm racecourse, which is owned by the AJC, or are Rosehill Racecourse if the AJC's proposed merger with the Sydney Turf Club is successful

⁸ DoP's Environmental Assessment Report: "*Major Project Assessment: Royal Randwick Racecourse Stage 1 Works – 2008 Upgrade*"

⁹ Ibid at paragraph 7.1

- (c) has a capital investment value of more than \$5 million and is located in an environmentally sensitive area of State significance or a sensitive coastal location.

There is no suggestion or assertion in the EA or otherwise that any of these criteria have been met.

- (c) In any event, there is no compelling evidence in or annexed to the EA or any other document submitted by Urbis or the AJC that demonstrates that the Development exceeds the \$30 million capital investment threshold required by clause 15(2)(a) of Schedule 1 to SEPP:

- (i) In the Clause 6 Request, it is asserted¹⁰ that the capital investment value of the Development will be \$49.1 million. There is no evidence in the Clause 6 Request as to how this figure is calculated;

- (ii) In the EA, it is stated¹¹:

the proposed Stables Precinct works outlined in **Section 4** of this report will have a capital investment value of approximately \$50 million, the proposal falls within the ambit of the SEPP (Major Development) and is a development to which Part 3A of the *EP&A Act* applies

There is no calculation or breakdown in the EA as to how the figure of “*approximately \$50 million*” is derived. The only document provided with the EA that purports to support the capital investment value of the Development is the letter of RBB Quantity Surveyors dated 20 September 2010 (**RBB letter**) annexed to the EA¹², which asserts the relevant value is estimated to be just under \$37.6 million. However:

- (A) the RBB letter is a one page document, bereft of any basis for value estimated therein. On its face, therefore, it cannot be accepted as a compelling demonstration that Development has a capital investment value of over \$30 million, as is required. On this basis alone, the Application must not be assessed under Part 3A of the EPAA; and
 - (B) the relevant value of just under \$37.6 million is significantly different from the stated capital investment value of the Development in the Clause 6 Request of \$49.1 million and of “*approximately \$50 million*” in the EA. The statements are misleading, without any expressed basis in fact or opinion and appear to have been inserted solely to represent to the DoP that the Development would have a value of over \$30 million.

- (d) The underlying reason for the Development put forward by Urbis is not one that supports the definition of a “*Major Infrastructure Development*”. It is stated:

- (i) throughout both the EA and Clause 6 Request that the Development is required to attract major thoroughbred horse trainers to send their horses to be stabled and trained at the Development;
 - (ii) in the AJC’s Stabling Plan:

¹⁰ At paragraph 5.2

¹¹ At paragraph 5.4.1

¹² At Appendix B

The extensive plans for the creation of a new stabling precinct at Royal Randwick Racecourse's (RRR) consistent with the direction given by the site specific Development Control Plan (DCP) will have huge benefits for the operations of the Racecourse's equine business and that of the multitude of stakeholders whose livelihood depends on it. Paramount to the plans is the community acceptance to the overall impact this improvement will have on the surrounding area.¹³

- (iii) in the DCP (which was drafted by the AJC and adopted by the Council):

New investment in training facilities should be made...to become the focus for new, financially robust investments by top owners and trainers.¹⁴

- (iv) in the document attached to Urbis's email to me of 20 October 2010 (**AJC's 20 October 2010 reply**)¹⁵:

To attract top thoroughbred trainers and horses to RRR the facilities need to be developed to best practise standards in keeping with RRR's place as the pinnacle racecourse in Australia.

That is, by the AJC's own admission, the Development is a purely commercial development, for the purposes of attempting to generate increased revenue by somehow enticing higher-quality trainers and horse to the Racecourse. This is not a "*Development for the purpose of major sporting facilities*", a development for "*the purpose of tourist related facilities, major convention and exhibition facilities or multi-use entertainment facilities*" or a development that falls under any of the other clauses in Schedule 1 to SEPP.

It is openly known that the AJC currently has a very limited amount of capital at its disposal and I understand the Development is being funded by either:

- The sale or annexure of the existing sites of the stables at the Racecourse on the corner of High Street and Anzac Parade (**High Street/Anzac Parade site**) and the Steeple Hill precinct¹⁶ as outlined in further detail below¹⁷; or
- A private overseas investor who has significant influence within the horseracing industry (**Benefactor**) who wishes for the Development to be constructed in an attempt to improve the Racecourse to a level at which it would, in his opinion, be in a position to compete with the Victorian racecourses that hold the major Australian horse races. I also understand the Benefactor resides at 47 Wansey Road, which is directly opposite the Steeple Hill precinct of the Racecourse.

In either case, this again shows that the Development is a purely commercial development. Indeed, if the Benefactor is the funder of the Development, this would suggest that its construction is more for marketing purposes than anything else. Please confirm the source of the funding for the Development.

In any event, there has been no evidence provided by Urbis or the AJC that the Development would necessarily attract major thoroughbred horse trainers to send their horses be stabled at the Development; and

¹³ At paragraph 1.1

¹⁴ At paragraph 2.1

¹⁵ Attached hereto at Annexure 2

¹⁶ At the corner of Wansey Road and High Street

¹⁷ At section 5

(e) The Development is not otherwise a:

- (a) major infrastructure or other development that, in the opinion of the Minister, is of State or regional environmental planning significance,
- (b) major infrastructure or other development that is an activity for which the proponent is also the determining authority (within the meaning of Part 5) and that, in the opinion of the proponent, would (but for this Part) require an environmental impact statement to be obtained under that Part.¹⁸

2.7 It is demonstrably clear that the Development does not fall to be considered as a "*Major Infrastructure Development*" for the purposes of Part 3A of the EPAA. The Director-General's determination is therefore entirely flawed, and must be withdrawn immediately. The Application is to be more properly assessed by the Council instead under Part 4 of the EPAA. Please confirm by return that the Director-General's determination has been withdrawn.

2.8 However, if the Council, on behalf of the DoP, continues to assess the Application under Part 3A of the EPAA, such an assessment would be *ultra vires* and open for objection and judicial review. In such circumstances, the Owners of 108 Alison Road would have no alternative but to seek a judicial determination and/or review in respect of any such assessment.

3. NON-COMPLIANCE WITH PLANNING REQUIREMENTS, PROVISIONS AND PRINCIPLES

3.1 Even if this position is wrong and the Application is one that should properly be assessed under Part 3A, as opposed to Part 4, of the EPAA, which is denied, the Application, the EA and the Development do not comply with/are in breach of a number of the various applicable planning requirements, provisions and principles.

Non-compliance with DGRs

3.2 The Application and EA have not satisfied a large number of the DGRs, and therefore must be rejected under Regulation 8D(3)(a) of the EPAA Regulation.

3.3 In his letter to Mr Tim Blythe of Urbis of 6 August 2010, Mr Andrew Smith, Acting Director, Metropolitan Projects, DoP (**DoP's 6 August 2010 letter**), provided the DGRs to the AJC that needed to be addressed by the AJC in the EA. Relevantly, the DGRs provided:

(a) Key Issue 2:

2. Built Form and Urban Design Impacts

EA shall demonstrate that design and visual impact of the development is consistent with the desired future character of Royal Randwick Race Course and the general locality as described in the relevant planning instrument. The assessment should address the following issues:

...

- Visual impacts upon the public domain including views from Alison Road and the nearby residential development;

- ...

¹⁸ Section 75B(2) of the EPAA

- Landscape and open space concepts that assist in reducing visual impact including plotting layout and species and water sensitive management/design practices
- (i) The design and visual impact of the Development is not consistent with an "Open Space" zone area, as outlined in further detail below;
 - (ii) The location of the Development at the "Stables Precinct" is entirely tied up with the Council's plan to commercially develop other, substantial areas of the Racecourse, as outlined in further detail below. This is not consistent with an "Open Space" zone area;
 - (iii) In both the EA and Clause 6 Request, the only buildings from which visual impact assessments have been made in respect of the Development are:
 - (A) properties along Wansey Road, from which the view of the Development would not appear to as clear as from 108 Alison Road; and
 - (B) the grandstand on the Racecourse, approximately 1km from the Development.

These buildings are referred to as "key buildings" in both the EA and Clause 6 Request;
 - (iv) 108 Alison Road is a property housing 6 apartments that sits immediately across Alison Road, or 40m, from the proposed site of the Development. There are panoramic and unobstructed views of the site of the Development, currently being low-level rustic "Stripping Stalls", a bull-ring and grass fields, from the front of all apartments and the common property at 108 Alison Road. 108 Alison Road is, in essence, the only property in the locality of the Development that has a full and unobstructed view of the entirety of the "Stables Precinct" site. It is therefore a "key building", is on Alison Road and is part of "the nearby residential development".
 - (v) As can be seen from Figures A to I below, the panoramic and unobstructed views will be lost entirely if the Development is approved, to be replaced by views of industrial buildings in excess of 12m, or 3.5 to 4 storeys, in height.



Figure A:

Aerial photograph of existing "Stables Precinct" site showing location and proximity of 108 Alison Road to site

© Google Maps



Figure B:

Aerial photograph of existing "Stables Precinct" site showing extent of unobstructed view of site from 108 Alison Road

© Google Maps

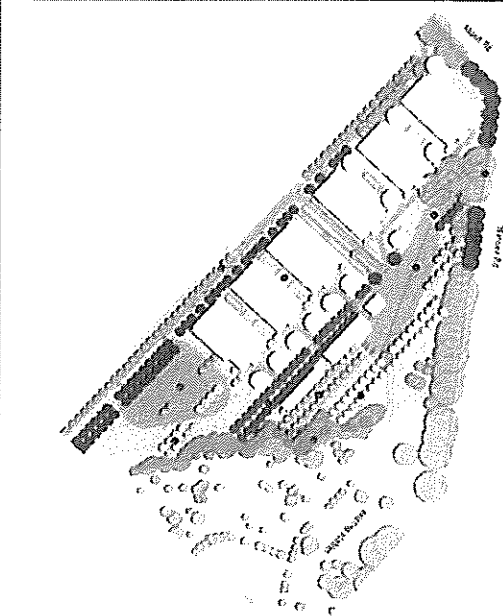


Figure C:

Plan of extent of the Development: Figure 4.2 of the Heritage Impact Statement annexed to the EA at Appendix X



Figure D: "Mature Landscape" view of Development. Excerpt (as amended) from Montage 4 at page 41 of Visual Impact Assessment Report at Appendix I of EA

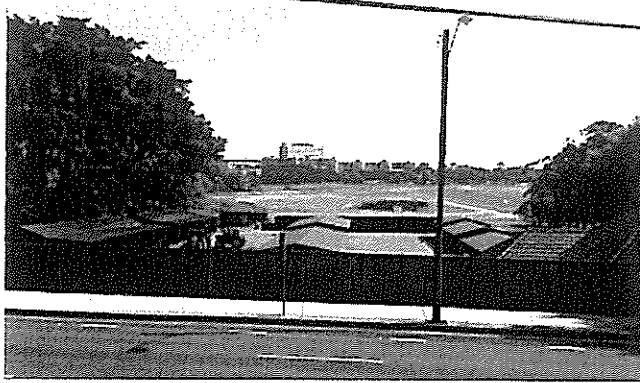


Figure E:

View of existing "Stables Precinct" site from front of common property at 108 Alison Road.

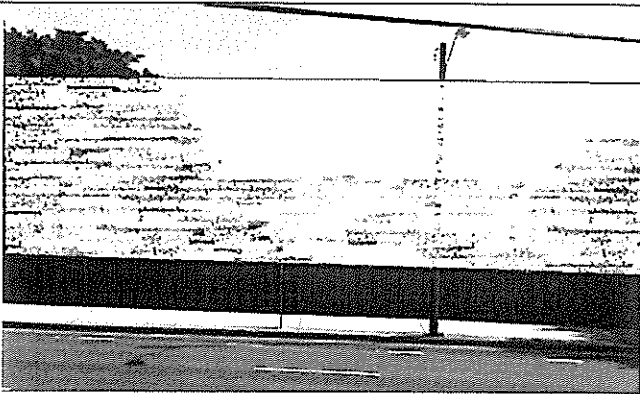


Figure F:

View of existing "Stables Precinct" site from front of common property at 108 Alison Road showing area of the view to be lost solely due to nearest stable block of the Development

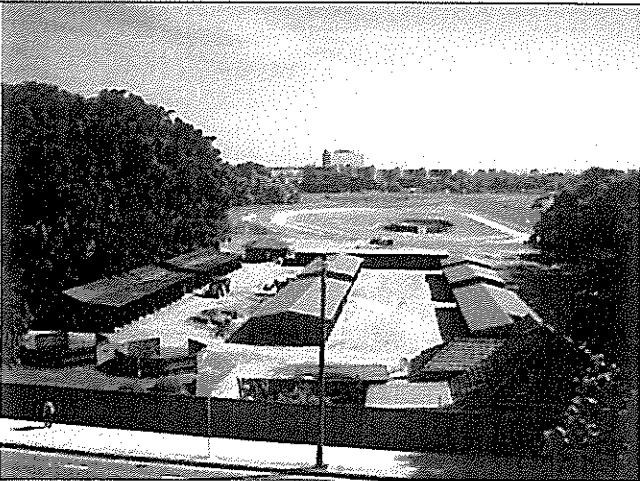


Figure G:

View of existing "Stables Precinct" site from front of 6/108 Alison Road.

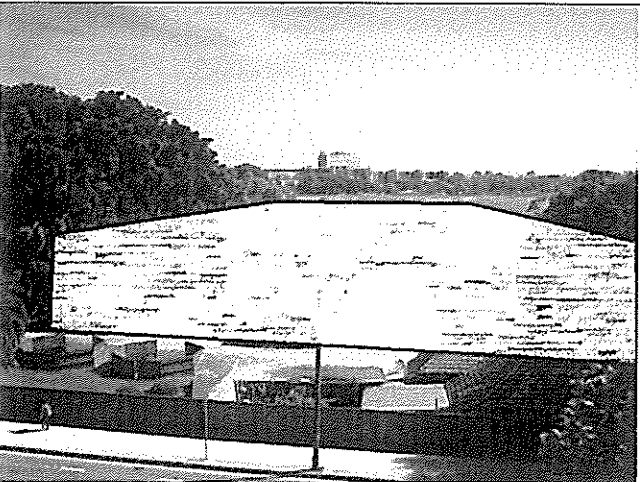


Figure H:

View of existing "Stables Precinct" site from front of 6/108 Alison Road, showing area of the view to be lost due the Development.

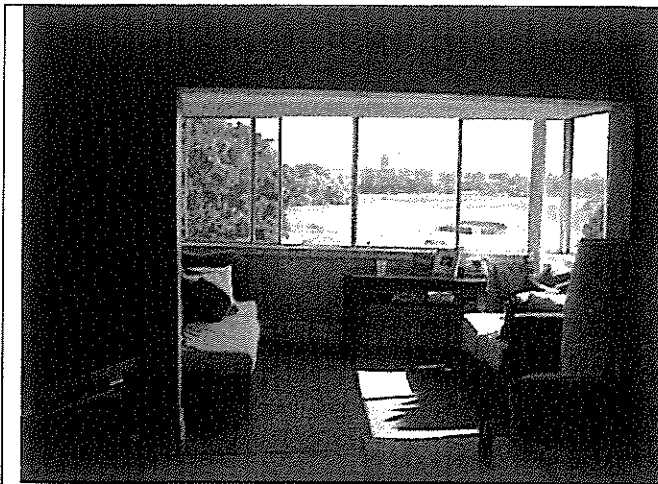


Figure I:

View of existing "Stables Precinct" site through front windows of 6/108 Alison Road from rear of living area.

- (vi) However, there is no visual impact assessment in the EA as from 108 Alison Road, or indeed Alison Road at all. This is despite:
- (A) the residents of Alison Road "*close to the Wansey Road intersection*" being noted in Urbis's "*Consultation Report Stables Precinct*"¹⁹ as "Stakeholders" in relation to the Development; and
 - (B) a photographer and Mr Jonathan Seward of the AJC attending upon 108 Alison Road and 6/108 Alison Road, at my suggestion, on 12 October 2010 (being prior to the exhibition of the EA) to take photographs of the "Stables Precinct" site therefrom for the purposes of a visual impact assessment of the Development on 108 Alison Road.
- (vii) The absence of any visual impact assessment from either Alison Road or 108 Alison Road in the EA is a failure by the AJC to meet the requirements of Key Issue 2 of the DGRs, and, furthermore, is a misrepresentation of the impact of the Development by the AJC to the Council/DoP.
- (b) Key Issue 3 states that the EA shall address certain matters including:
- ...any required road/intersection upgrades, access from surrounding streets, including examination of the different options to cope with routine and increased access requirements and distributing access for the proposed stables via other access points on Wansey Road and High Street;
 - ...
 - Identify measures to mitigate potential impacts from pedestrians and cyclists during the construction stage of the project.
- (i) The road intersection at Alison Road, Wansey Road and Prince Street (**Alison Road/Wansey Road intersection**) is already a dangerous intersection, in that it is an accident and traffic blackspot. As you will see from the photograph below at Figure J, there is no slip road for southbound traffic turning right across Alison Road into Wansey Road. This causes a significant number of accidents and near accidents, due to traffic backup behind right-turning vehicles heading into Wansey Road in conjunction with

¹⁹ Annexed to the EA at Appendix E; page 14

a blind corner along Alison Road leading into the Alison Road/Wansey Road intersection, and to oncoming traffic into the Alison Road/Wansey Road intersection from Randwick Junction down a hill and through a sharp corner in between Bradley Street and the intersection.

- (ii) From the EA and Clause 6 Request, it is clear that the AJC has sought to placate the owners of the properties of Wansey Road adjacent to the Development, by proposing that no heavy vehicles entering the Development through the proposed entrance thereto, Gate 10 of the Racecourse (**Gate 10**), as relocated so as to be closer to the Alison Road/Wansey Road intersection, will be allowed to travel down Wansey Road. This means that most if not all Development traffic will be approaching Gate 10 from the Alison Road end of Wansey Road, having crossed the Alison Road/Wansey Road intersection from the north.



Figure J:

Aerial view of the Alison Road/Wansey Road intersection. Existing "Stables Precinct" site in bottom left hand corner. 108 Alison Road is the long, near-rectangular building at centre top. Note the lack of slip road for traffic cross the intersection from the north-west.

© Google Maps

- (iii) The Transportation Report annexed to the EA²⁰ does not recommend any intersection upgrade or, indeed, otherwise comment upon the impact of the increased traffic that will necessarily be crossing the Alison Road/Wansey Road intersection between 4.30am and 5.30am and 8.30 and 9.30am daily, with increased large vehicle traffic on barrier trial days every 2 weeks. You will be aware that peak hour traffic along Alison Road occurs between 7.30 and 9.30am, and that Alison Road is one of the two key arterial and commuter routes into the Sydney CBD through the Randwick area. A large amount of extra vehicular, and slow-moving, articulated horse, traffic across the Alison Road/Wansey Road intersection will cause a number of implications for traffic both heading south along Alison Road and heading north along Alison Road, as well as traffic heading into and out of Wansey Road (given the short distance between the proposed location of Gate 10 and the Alison Road/Wansey Road intersection).
- (iv) Given the proposed movement of the entirety of the stabling on the Racecourse to the "Stables Precinct" site from the existing sites of the

²⁰ At Appendix O.

stables at the High Street/Anzac Parade site and the Steeple Hill precinct, and the proposed heavy vehicle exclusion to the Development along Wansey Road, it cannot be said that an adequate “*examination of the different options to cope with routine and increased access requirements and distributing access for the proposed stables via other access points on Wansey Road and High Street*” has been undertaken.

- (v) Furthermore, you will be aware that a designated cycleway runs across the existing Gate 10, the proposed location of Gate 10 and across Gate 8 on Alison Road (being the proposed entrance/exit for all construction traffic to the “Stables Precinct” site) (**cycleway**). The cycleway is a “Strategic Bicycle Route” for the purpose of the Council’s Bicycle Plan²¹. No assessment has been done of the impact of the significant increase in traffic that will necessarily cross the cycleway at two locations due to the construction and operation of the Development. The cycleway will run across the line of a large amount of construction and operational traffic; not only has this not been addressed in the EA, but this will give rise to a significant danger, as the cycleway is a well-used resource, particularly given the amount of students living in Randwick, Kensington and Kingsford. The Development will breach of the Council’s Bicycle Plan. I note that this has not been raised by the Council in its Traffic Committee meetings.
 - (vi) The EA is therefore deficient and the AJC has failed to meet the requirements of Key Issue 3 of the DGRs.
- (c) Key Issue 6 states, *inter alia*:
- The EA must address any likely solar access, acoustic privacy, visual privacy, view loss, odour and dust issues and identify mitigation measures necessary to achieve a high level of environmental and nearby residential amenity.
 - (i) As stated above and in further detail below, the EA has not addressed the visual privacy and view loss to be caused by the Development to 108 Alison Road, which is a clearly a key building in respect of the Development. It has also inadequately addressed the acoustic odour and dust impacts upon local residential amenity and failed to identify adequate mitigation measures for these issues.
 - (ii) The EA has therefore failed to meet the requirements of Key Issue 6 of the DGRs.
- (d) Key Issue 12 states, *inter alia*:
- “...The EA shall demonstrate the relationship of the proposals where the stage 1 infrastructure works approved under major project application MP07_0092 and any variations/inconsistencies are to be fully identified”.
 - (i) You will be aware that the Development was not included in major project application MP07-0092, being the Stage 1 Application submitted in July 2007. Indeed, the only building proposed to be constructed on the “Stables Precinct” (referred to as the “Bull Ring” site) as part of the Stage 1 Application was a “New Grounds Maintenance Shed”, which was to be located in the middle of the “Stables Precinct” site and which can be found in the “*Royal Randwick Racecourse Development Masterplan – Consultant*

²¹ As updated by the Council’s “Randwick Bicycle Plan Update” dated 9 November 2006. At page 10.

Briefing Scope of Works Components"²² and "Royal Randwick Racecourse Development Masterplan – Consultant Briefing Staging of Works"²³ drawings provided with the Stage 1 Application.

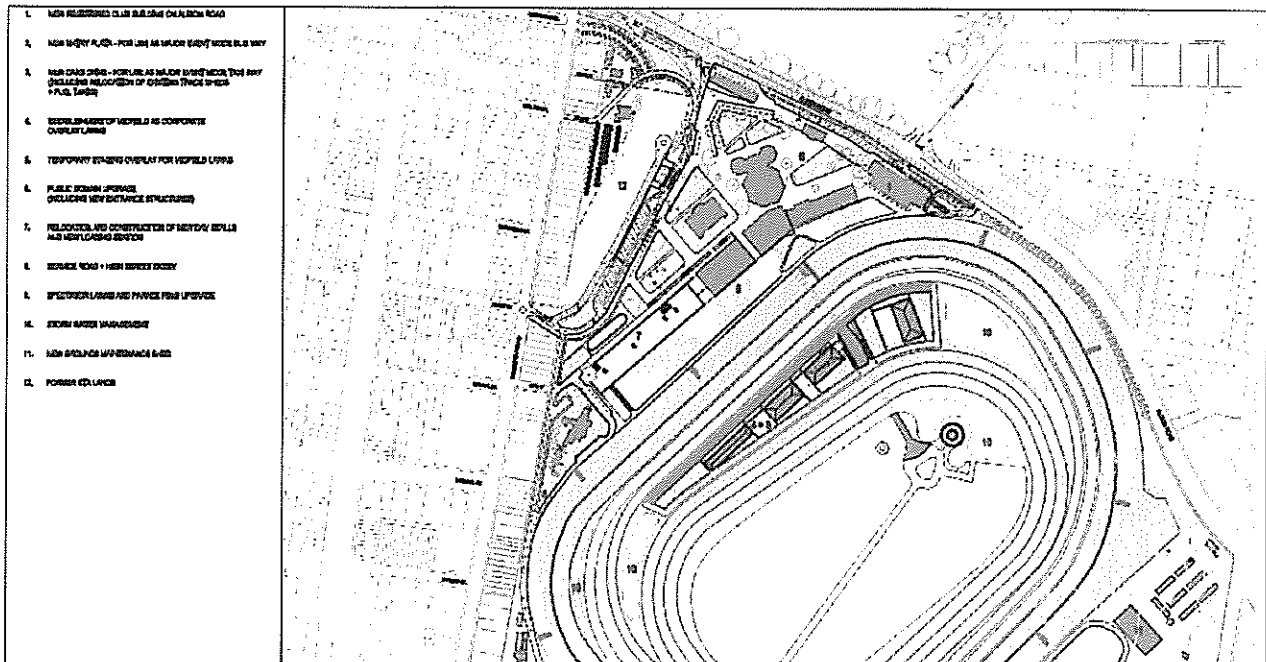


Figure K: Excerpt from "Royal Randwick Racecourse Development Masterplan – Consultant Briefing Scope of Works Components"; Maintenance Shed at Item 11.

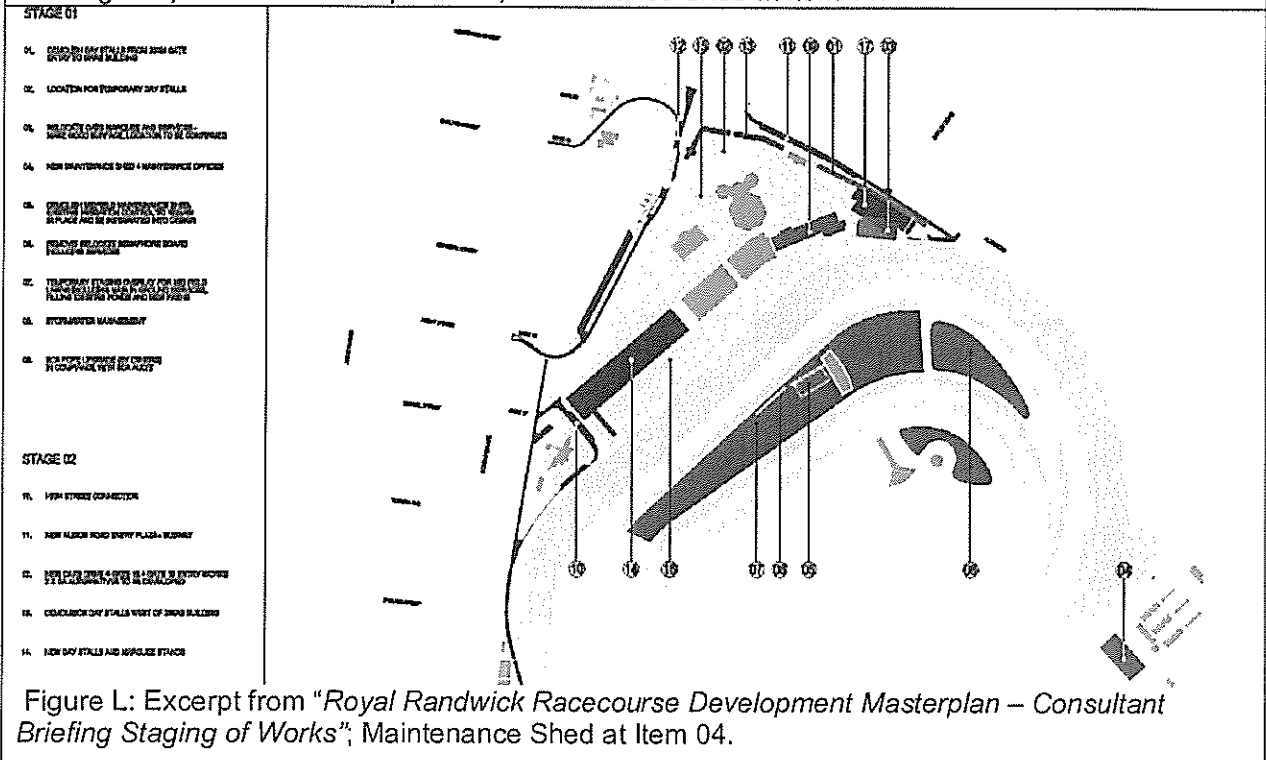


Figure L: Excerpt from "Royal Randwick Racecourse Development Masterplan – Consultant Briefing Staging of Works"; Maintenance Shed at Item 04.

(ii) As you can see, the "Royal Randwick Racecourse Development Masterplan – Consultant Briefing Staging of Works" drawing indicated

²² At Item 11 of the "Proposed Works".

²³ At Item 04 of "Stage 01" works. Annexed hereto at Annexure B.

buildings proposed to be constructed as part of both the Stage 01 and Stage 02 stages of the works to be undertaken at the Racecourse. There is no mention in the Stage 1 Application of any development on the "Stables Precinct" site other than the "New Grounds Maintenance Shed", and no indication that a development the size of the Development was to be proposed in due course.

- (iii) The stable blocks that form the majority of the Development are said to be required to service the horses trained at the Racecourse. However, from the inclusion of the "New Grounds Maintenance Shed" in the Stage 1 Application, it is clear that the AJC did not intend, or see any need to seek, to build any further stabling or training facilities on the "Stables Precinct" site or elsewhere at the Racecourse. It is unclear as to what relevant information has changed in this regard since the Stage 1 Application. The Stage 1 Application was only made 3 years ago, at which time the AJC must have deemed the existing stabling facilities to be sufficient for stabling and training horses at the Racecourse.
- (iv) In any event, the EA is silent as to the variation/inconsistency between the Stage 1 Application and the (current) Application. This is in breach of Key Issue 12.
- (e) At Appendix B to the DGRs, a number of plans and documents were listed that were required to accompany the Application and EA, amongst other things, these included:
 - (i) a site analysis plan of view corridors²⁴; and
 - (ii) visual and view analysis demonstrated through visual aid, such as photo montage, to demonstrate visual impacts of the proposed buildings. In particular, the view analysis must consider sitting, bolt and scale relationship from key areas²⁵.

No site analysis plan or visual impact assessment from 108 Alison Road has been included in the EA. As outlined, and demonstrated by the photos, above, 108 Alison Road is a key area and a key building for the purpose of the Development. The EA is therefore deficient.

Director-General's Assessment of the DGRs

- 3.4 In the DoP's 6 August 2010 letter, it is stated, *inter alia*, that:

Prior to exhibiting the Environmental Assessment that you submit for the project, the Department will review the document to determine if it adequately addressed the DGRs...

If the Director-General considers that the Environmental Assessment does not adequately address the DGRs, the Director-General may require you to revise the Environmental Assessment. Once the Director-General assesses that the DGRs have been adequately addressed, the Environmental Assessment will be made publicly available for at least 30 days.

- 3.5 You will be aware that the EA was publicly exhibited from 13 October 2010. As such, it is to be presumed that the Director-General, or his delegate, assessed the EA prior to that date and determined that it has adequately addressed the DGRs. Given the clear failures

²⁴ At Item 2.

²⁵ At Item 6.

by the AJC to address in the EA a number of Key Issues of the DGRs as outlined above, it is unclear on what basis such an assessment was or could have been made.

- 3.6 Please provide me with a copy of this assessment and all other documents used, created or relied upon in respect thereof, without delay.
- 3.7 It is clear that any assessment made by the Director-General, or his delegate, is entirely unfounded and should therefore be withdrawn forthwith. Moreover, given widespread lack of compliance with the DGRs outlined immediately above, the EA should be rejected forthwith pursuant to Regulation 8D(3)(a) of the EPAA Regulation.
- 3.8 Please confirm that this will occur. Any failure to do so, will be a failure by the DoP/Council to properly comply with the prescribed process under Part 3A of the EPAA, and Regulation 8D of the EPAA Regulation.

Development in Breach of EPAA and EPAA Regulation

Reduction of Economic Welfare

- 3.9 Section 5(a)(i) of EPAA states:

The objects of this Act are:

(a) to encourage:

- (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

- 3.10 The Development will breach section 5(a)(i) of EPAA, as it will adversely impact upon the economic welfare of the Owners of 108 Alison Road, being members of the relevant community. The increased traffic and danger across and around the dangerous Alison Road/Wansey Road intersection, the increased noise and the removal of the panoramic and unobstructed views from the front of the apartments and common property at 108 Alison Road due to the construction and operation of the Development will necessarily and significantly reduce the values and saleability of the apartments at 108 Alison Road and, as such, the economic welfare the Owners of 108 Alison Road.
- 3.11 The Application and EA must be refused on this basis alone.
- 3.12 Furthermore, as outlined in further detail below, the likely and significant impact of the increased traffic to the Development, due to its construction and operation, increases the possibility of delays to commuter traffic along Alison Road, a key arterial route into Sydney CBD. This is contrary to the economic welfare of the community.

Lack of Proper Community Consultation

- 3.13 There has been an inadequate level of community consultation in respect of the Application, EA and the Development. The first time the Owners of 108 Alison Road became aware of the Development was when we received letters from Urbis dated 28 September 2010 (**28 September 2010 letter**). However, the Development has clearly been discussed, and certain level of agreement reached, between the DoP, the Council and the AJC since, at least, July 2010 if not at the time of the DCP in June 2007. That is to say, by 28 September 2010, any community consultation was, in essence, nominal.

3.14 This is contrary to the objective outlined in section 5(c) of the EPAA, which states:

The objects of this Act are:

...

- (c) to provide increased opportunity for public involvement and participation in environmental planning and assessment

3.15 Furthermore, in the AJC's Stabling Plan annexed to the EA²⁶ it is stated²⁷:

Paramount to the plans is the community acceptance to the overall impact this improvement will have on the surrounding area.

- 3.16 The AJC has retained Urbis as both its "independent social consultant" and design consultant of the Development. I understand that Urbis, in its role as "independent social consultant," was to make an independent assessment of how the Development would impact upon the community. At the meeting in respect of the Development at the Racecourse on 5 October 2010 (**5 October 2010 meeting**), Urbis representatives attended in their capacities as both "independent social consultant" and design consultant. It was entirely plain at that time that, in its role as "independent social consultant", Urbis had not undertaken an adequate amount of community investigation, consultation and review. For example, no consultation or investigation had taken place in respect of the impact of the Development on the Owners of 108 Alison Road, despite the residents of that part of Alison Road where 108 Alison Road is located, being identified²⁸ as "Stakeholders" in relation to the Development. It is noted that residents of Wansey Road, upon whom the visual and traffic impacts of the Development will be less than that for the Owners of 108 Alison Road, were consulted about the Development at a meeting with the AJC on 22 August 2010, although I understand the scale and nature of the Development was misrepresented to them at that time.
- 3.17 On 29 September 2010 and 6 October 2010, I emailed various queries I had about the Development to Urbis²⁹. You will see that these were detailed queries. On 20 October 2010, some 3 weeks after my initial enquiry, I received the AJC's 20 October 2010 reply, which was a clearly insufficient response³⁰. This is entirely contrary to Urbis' stated approach to "*genuinely solicit community and stakeholder views through a well-managed and articulated process*"³¹ and that outlined in the AJC's Stabling Plan.
- 3.18 Moreover, at the 5 October 2010 meeting, it was clear that there was a lack of any Chinese wall between the representatives of Urbis acting as "independent social consultant" and those acting as design consultant. In fact, it was clear that, in its role as "independent social consultant", Urbis is acting more as a cheerleader and advocate for the Development and its proposed design, rather than undertaking a valid and independent assessment of the affect of the Development on relevant members of the community.
- 3.19 The actions of the AJC as regards consulting the relevant members of the community in respect of the Development are entirely contrary to not only section 5(c) of the EPAA, but also its stated paramount objective. The Owners of 108 Alison Road do not accept that the Development will have anything other than a devastating impact upon the area surrounding the Development and our economic welfare.

²⁶ At Appendix Q

²⁷ At paragraph 1.1

²⁸ At paragraph 3.2 of Appendix E

²⁹ Annexed hereto at Annexure 1

³⁰ Annexed hereto at Annexure 2

³¹ At paragraph 1.2 of Appendix E

Existing Use Rights

- 3.20 The "Stables Precinct" site is currently, and has historically been, used solely for the strapping of horses and the running of horses around the existing bull ring. It has never been used to stable horses for the lifetime of the Racecourse, from 1860 to date³². The "Stripping Stalls" have been located at the "Stables Precinct" site since 1919. The history of the "Stables Precinct" site is outlined in further detail in the Heritage Impact Statement.³³
- 3.21 The Development will entirely change and/or intensify the historical and existing use of the "Stables Precinct" site. This is in breach of sections 107 and 108 of the EPAA, Regulations 40-46 of the EPAA Regulation, as well as the planning principles established in *Fodor Investments v Hornsby Shire Council* [2005] NSWLEC 71, which were followed in *Stromness Pty Ltd v Woollahra Municipal Council* [2006] NSWLEC 587. As such, the Application and EA should be rejected immediately.
- 3.22 The planning principles to be met, as established in *Fodor*, are:
- (a) How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?
 - (b) What is the relevance of the building in which the existing takes place?
 - (c) What are the impacts on adjoining land?
 - (d) What is the internal amenity?

Bulk and Scale

- 3.23 This proposal involves a significant increase in height to the existing buildings on the "Stables Precinct" site by a factor of 3.5 to 4. The existing "Stripping Stalls" on the "Stables Precinct" site stand at between 3 to 3.5m in height; the proposed stable blocks that form the bulk of the Development are proposed to be built to a height of 12.63m.
- 3.24 In this location, these buildings will not be properly screened from the front view from 108 Alison Road, and will be able to be seen from street level of Alison Road from Bradley Street through to 106 Alison Road. The scale and bulk of the Development is therefore unacceptable, and is not appropriate with regard to what is permissible on surrounding sites.

Relevance

- 3.25 As outlined below, there is no need for the Development, given the negligible increase in the proposed horse-stabling capacity and the lack of any evidence showing that the current stabling facilities at the Racecourse are incapable of being used. Furthermore, the changes to the existing buildings are not minor; they are to be demolished and replaced with buildings, the majority of which will be of a height that is in excess of the current building at the "Stables Precinct" site by a factor of 3.5 to 4 and puts a use on the site that does not currently exist and has never existed.

Impacts on adjoining land

- 3.26 As outlined above and below, the visual and other impacts of the Development upon 108 Alison Road, which adjoins the Racecourse, are unacceptable.

³² Heritage Impact Statement annexed to the EA at Appendix X

³³ Ibid.

- 3.27 Further, the use of the "Stables Precinct" site will be increased and intensified by a significant magnitude if the Development is approved³⁴. As stated above, the "Stables Precinct" site is used solely for strapping and running of horses, and has never been used for the stabling of horses. The use, aspect and character of this site will therefore change completely. The traffic flow to this site will also increase to the extent outlined in the EA and above. The size of the buildings at the site will also increase by a considerable factor.
- 3.28 There will be no acoustic privacy at 108 Alison Road, as no steps have been taken to baffle the noise generated by the Development and the horses therein to 108 Alison Road, which will necessarily increase from the existing noise created by the use of the "Stables Precinct" site. It is expected that the noise of the Development will carry straight into 108 Alison Road.
- 3.29 For all the reasons outlined in this letter, the amenity and character of the surrounding residential area will be entirely disturbed by the Development. This is contrary to the principles established in *Randall Pty Ltd v Leichhardt Council* [2004] NSWLEC 277.

Development in Breach of LEP

- 3.30 The LEP is the relevant environmental planning instrument for development in the Randwick area, of which the Racecourse is a part, and consideration to the compliance of its terms must be given in respect of the Development.

Not zoned for residential purposes

- 3.31 As indicated above, the Racecourse is zoned under LEP as Zone 6A. Section 18 of LEP states:

Zone No 6A (Open Space Zone)

- (1) The objectives of Zone No 6A are:

- (a) to identify publicly owned land used or capable of being used for public recreational purposes, and
- (b) to allow development that promotes, or is related to, the use and enjoyment of open space, and
- (c) to identify and protect land intended to be acquired for public open space, and
- (d) to identify and protect natural features that contribute to the character of the land, and
- (e) to enable the sustainable management of the land.

- 3.32 The Racecourse is not zoned as Zone 2A, 2B or 2C. That is to say, it is not zoned for residential purposes. The Development proposes that a number of stablehands and strappers would be residing at the stables. This would be a permanent residence for the stablehands and strappers, as the AJC has asserted³⁵ that the proposed stabling facilities of the Development will be permanently at full capacity.
- 3.33 At paragraph 5.4.4 of the EA, it is stated, *inter alia*:

The Project Application proposal satisfies the Zone 6A Open Space objectives in the following manner:

³⁴ This is conceded by the AJC at paragraph 6.5.8 of the EA

³⁵ AJC's 20 October 2010 reply. Attached at Annexure 2 hereto

- Improve the internal operations of the RRR specialised open space for horse racing, training and housing.
- Enhance the enjoyment of operations within the Stables Precinct by providing state-of-the-art facilities that will promote horse racing as a recreational activity within the wider public.
- Embed the historic use and preservation of the racecourse site as key racecourse land, through consolidating these key equine related facilities within a single precinct, and conserving the racecourse to continue to operate as a horse racing and training precinct.
- Siting the new Stable facilities within the RRR in a manner that minimises earthworks and responds to the natural topography of the Stables Precinct to provide appropriate mitigation of amenity impacts to surrounding land uses.

Clause 18 provides the Zone 6A objectives and permissible uses, which includes with development consent '*recreation facility*', which is defined in Clause 49 as:

recreation facility means a building or a work used for a sporting, exercise or leisure activity, and includes golf courses, racecourses, showgrounds, bowling greens, tennis courts and the like, including any ancillary club building, but (in Part 2) does not include a building or work elsewhere defined in this clause. (our emphasis added)

As the stables are a key racecourse facility providing housing and training facilities for horses, the proposal is permissible on the RRR site with development consent

- 3.34 None of these bullet-pointed statements show in any way that the Development would meet the Zone 6A objectives as outlined in Section 18 of the LEP; they are merely "mission statements" as to how the Development would benefit the operations of the AJC. Furthermore, the last two of these bullet-pointed statements are entirely factually incorrect, for the reasons expounded in this letter.
- 3.35 Moreover, the reference in the EA to a "*recreation facility*" to support a development on a Zone 6A land is irrelevant. The definition of "*recreation facility*" does not relate to a "building or a work used for a racecourse"; it instead relates to a "building or a work used for a sporting activity, including a racecourse". The Development is not a racecourse.
- 3.36 Even if this is wrong, as outlined above, the Development cannot be said to be used for the Racecourse; it is an independent and separate stabling and training resource, that is not available to the public and is not used for recreational purposes.
- 3.37 In any event, as the stable blocks that form the bulk of the Development are proposed to be a permanent residence for a large number of stablehands and strappers, the stable blocks would more appropriately be defined as, or would include, "*boarding houses*".
- 3.38 Section 49 of the LEP states, *inter alia*:

boarding house means a building or place:

- (a) where permanent accommodation facilities are provided to the residents of the building or place, and
- (b) where meal and laundry facilities may be provided, and
- (c) which is not licensed to sell liquor within the meaning of the Liquor Act 1982,

but (in Part 2) does not include a building or place elsewhere defined in this clause.

- 3.39 The Development therefore cannot be a “*recreational facility*”: it is either “*boarding houses*” or includes “*boarding houses*”, which means that the carve-out under the definition of “*recreational facility*” applies (i.e. that a development cannot be a “*recreational facility*” if it includes a building otherwise defined under section 49 of the LEP). A “*boarding house*” is not a prescribed development allowed on Zone 6A Open Space land under section 18(3) of the LEP or otherwise. On this basis alone, the Application must be rejected.

No need for the Development

- 3.40 Section 38(1)(a) of the LEP states:

38 Development in open space zones

- (1) When determining an application for consent to carry out development on land within Zone No 6A or 6B, the consent authority must consider:

- (a) the need for the proposed development on that land

- 3.41 By the AJC’s own admission, as found in both the EA and Clause 6 Request, there is no need for the Development. The Development is predominantly comprised of 6 stable blocks designed so as to stable 600 horses; the capacity of the existing stabling facilities at the Racecourse is 590 horses. The AJC considers the capacity of the Development to be “*like for like*”³⁶ to the capacity of the existing stabling facilities; the AJC does not wish to construct stabling facilities to increase stabling capacity. The AJC has separately asserted that the existing stabling facilities are permanently at full capacity.
- 3.42 In essence, therefore, the Development will increase the stabling capacity of the Racecourse by 10 horses. That is say, there is clearly no need to increase the capacity of the stabling facilities at the Racecourse.
- 3.43 It is openly known that the AJC currently has a very limited amount of capital at its disposal. As stated above, I understand the source of funds for the Development is either from:
- (a) The sale or annexure of the existing sites of the stables at the Racecourse on the High Street/Anzac Parade site and the Steeple Hill precinct due to the Council’s wishes for the site; or
 - (b) the Benefactor, who I understand wishes for the Development to be constructed in an attempt to improve the Racecourse to a level at which it would, in his opinion, be in a position to compete with the Victorian racecourses that hold the major Australian horse races.
- 3.44 If the former is correct, this does not show any need for the Development. It merely shows that the AJC has made a commercial transaction in respect of its property, the major consequence of which is a transfer of its existing stable facilities.
- 3.45 If, instead, the latter is correct, again, this does not show any need for the Development; it would instead be more appropriately categorised as a frolic on behalf of the Benefactor for his (and the AJC’s) own purposes. The Owners of 108 Alison Road should not suffer due to the wishes of one (rich) investor. Please confirm the source of the funding for the Development.

³⁶ Paragraph 2.1.1 of Appendix E to the EA

- 3.46 The AJC has also asserted in the EA and in the AJC's 20 October 2010 reply that the existing stabling facilities at the Racecourse are dilapidated and not to "best practice" (whatever that means), and, further, that the Development is required so as to attract to thoroughbred trainers and horses to Randwick Racecourse, so as to keep the Racecourse as the premier or pinnacle racecourse in Australia.
- 3.47 There is no evidence in the EA or otherwise that the existing stabling facilities at the Racecourse are dilapidated or in any way need of demolition; this is a bare assertion by the AJC in the EA and Clause 6 Request with no factual support provided as to the current state of the existing stabling facilities. In the Stage 1 Application, there was no attempt to seek to develop or redevelop the existing stabling facilities of the Racecourse, notwithstanding that approval for a significant development to the grandstand was sought at that time. Indeed, the Stage 1 Application merely sought to construct a "New Grounds Maintenance Shed" in the middle of the "Stables Precinct" site, so as to improve the existing "Stripping Stalls". That is to say, the AJC did not consider that there was any need for new stabling and training resources at the Racecourse 3 years ago. There is no evidence to show that anything relevant in this regard has changed since that time.
- 3.48 Furthermore, to the extent that the Development is required to attract top thoroughbred trainers to the Racecourse, there is no methodology provided with the EA shows that the Development will necessarily cause this to occur. The thoroughbred trainers referred to are unidentified and no information has been provided to show any process in this regard. Again, this is a bare assertion by the AJC, with no factual basis to support it. In any event, common sense would dictate that it is unlikely that international trainers would stable and train their horses at the Racecourse merely because it has new stabling and training resources; the distance of Australia from most major racing centres would appear to be the main prevention to top international trainers (other than Australian trainers) stabling and training their horses in Australia. A new stabling and training resource is not going to overcome this.
- 3.49 To the extent that these unidentified trainers were attracted to the Racecourse, given that the capacity of the existing stabling facilities of 590 horses is permanently met, according to the AJC, it is not clear how any additional horses to be no doubt brought by these trainers would be stabled. Either the horses that are currently stabled at the Racecourse would have to find other stabling facilities, which will increase the strain on other stabling facilities, or the Development is an expensive exercise to attract 10 new horses.
- 3.50 Notwithstanding, the stated underlying reason for the Development is to attract top thoroughbred trainers to the Racecourse. As outlined in paragraph 2.6 above, this does not show any need for the Development; it is, instead either for want of a better phrase, a marketing expedition or an attempt to appease an investor who has significant industry within the horseracing industry. It does not satisfy section 38(i)(a) of the LEP.
- 3.51 Moreover, as regards the Racecourse being Australia's premier or pinnacle racing facility, again, these are bare assertions by the AJC, with no evidence to support them. It is unquestionable that the Racecourse is not internationally renowned; and, to the extent that it is renowned within Australia, it certainly cannot be considered Australia's premier racecourse. All of the major Australian horse races take place at Victorian racecourses. It is not likely that a new stabling and training recourse at the Racecourse will change this, even if new trainers were attracted to it.
- 3.52 Furthermore if the Racecourse is Australia's pinnacle racecourse, it is unclear as to why it needs any further facilities; if it is at the pinnacle, by definition, it cannot get any higher and therefore must already have sufficient facilities.
- 3.53 For all of the above reasons, the Development does not meet the requirements of section 38(1)(a) of the LEP, and, as such, the Application must be rejected.

Development detracts from use of open space

3.54 Section 38(1)(b) of the LEP states:

38 Development in open space zones

(1) When determining an application for consent to carry out development on land within Zone No 6A or 6B, the consent authority must consider:

(b) whether the proposed development promotes or is related to the use and enjoyment of open space, and

3.55 There is no evidence in the EA or its appendices that suggests that the stable and training resources proposed by the Development would in any way promote the use and enjoyment of open space; indeed, the Development would detract from the use and enjoyment of open space by constructing a number of large buildings thereon.

3.56 Furthermore, for the reasons outlined below³⁷, the location of the Development at the "Stables Precinct" is entirely tied up with the Council's plan to redevelop the High Street/Anzac Parade site and Steeple Hill Precinct as commercial and/or residential areas. The annexure of these substantial areas, which make up approximately 1/5th of the area of the Racecourse, for commercial and/or residential purposes to be replaced by 5 or 6 storey buildings clearly detracts from the use of open space, as it these buildings will be built on, and rezoned as areas other than, "Open Space".

Removal of Heritage items

3.57 Section 43 of the LEP states:

43 Heritage conservation**(1) Objectives**

The objectives of this clause are:

...

(b) to conserve the heritage significance of heritage items and heritage conservation areas including associated fabric, settings and views,

...

(2) Requirement for consent

Development consent is required for any of the following:

(a) demolishing or moving a heritage item or a building, work, relic or tree within a heritage conservation area,

3.58 The Racecourse is a heritage conservation area³⁸. As can be seen from Map 3 of the DCP below³⁹, the existing "Stripping Stalls" at the "Stables Precinct" site are buildings of High Heritage Conservation Significance. It is also noticeable from Map 3 of the DCP that

³⁷ In section 5

³⁸ New South Wales Government's Metropolitan Strategy "City of Cities: A "Plan for Sydney's Future", clause 2.23 of the DCP and paragraph 3.4.4 of the EA

³⁹ At Figure M

none of the existing buildings at the High Street/Anzac Parade site or Steeple Hill precinct are of any heritage significance.

3.59 Furthermore, it is stated at clause 3.2.3 of the DCP:

Objectives

3. Ensure that new development respects, enhances and contributes to the heritage significance of the site and its setting

3.60 And at clause 3.2.a of the DCP:

Heritage components as identified on Maps 3 and 4 are to be conserved and managed in accordance with the policies in the Conservation Management Plan

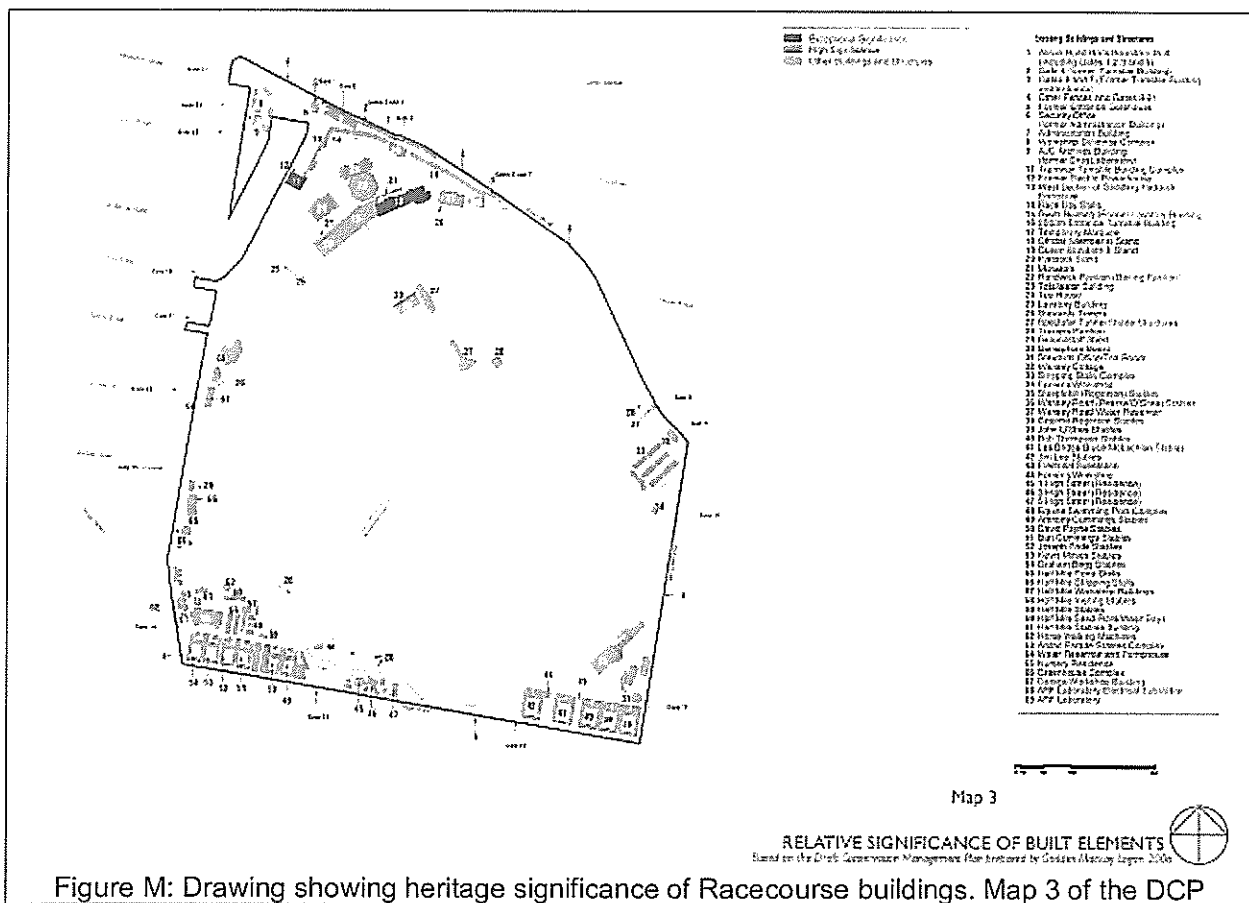


Figure M: Drawing showing heritage significance of Racecourse buildings. Map 3 of the DCP

3.61 Policy 7 of the Conservation Management Plan⁴⁰ states

Minimising Impacts of Adverse Change

Any adverse impacts related to proposed change/development on the heritage significance of the Royal Randwick Racecourse site as a whole or on any of its significant individual components, should be minimised by:

- exercising caution and reviewing the necessity and/or role of any decision with potentially detrimental heritage impacts;

⁴⁰ Draft Royal Randwick Racecourse Conservation Management Plan prepared for AJC in December 2006

- examining options and their relative impacts to determine the outcome with least detrimental effects; and
- ensuring, where possible, that changes are reversible and/or have minimal impacts on the significance of the racecourse site or any of its significant individual components.

3.62 The Development requires the demolition of the heritage-recognised "Stripping Stalls". In the EA, there has been no adequate examination of the options/alternatives as to the location of the Development other than locate the Development at the "Stables Precinct" and destroy the "Stripping Stalls".

3.63 As stated above, and shown in Map 3 of the DCP, none of the existing buildings at the High Street/Anzac Parade site or Steeple Hill precinct have any heritage significance. It is therefore far more appropriate for the stabling facilities at these sites to be improved, if that is necessary, rather than the Development take place at the "Stables Precinct" site, where the "Stripping Stalls" will be demolished.

3.64 The proposed demolition of the "Stripping Stalls" is contrary to sections 43(1)(b) of the LEP and clauses 3.2.2 and 3.2.a of the DCP.

3.65 In the EA, it is stated⁴¹:

The built form has been designed to respond to the European heritage significance of the Stables Precinct, providing a built form that will sustain the long-term use of the precinct for horse stables and training that it has been used for since 1833.

3.66 In the Heritage Impact Statement annexed to the EA⁴², it is stated:

The primary heritage significance of this part of the subject site is considered to be its continued function as a stabling and training area, not its built form or fabric. The proposed new facilities will reinforce this significance and is consistent with the overriding aim of the DCP which is to optimise the Royal Randwick Racecourse as a thoroughbred, racing, training and spectator facility of highest quality.

As such it is considered that the proposed demolition of the existing built structures, in the context of their replacement with state of the art equine facilities, is an acceptable heritage impact.

The heritage impact of this loss of built fabric can be mitigated by the preparation of an archival photographic record of the buildings and their setting.⁴³

3.67 These statements are both incorrect and misleading. The "Stables Precinct" site is not, and for the entirety of the lifetime of the Racecourse from 1860 to date has never been, used for the purpose of stabling horses. This is abundantly clear from the history of the "Stables Precinct" site outlined in the Heritage Impact Statement itself. Indeed, the "Stripping Stalls" proposed to be demolished have been at the "Stables Precinct" site since 1919.

3.68 Further, at paragraph 3.1 of the EA, it is stated:

The key characteristics of the Stables Precinct include:

- An eastern boundary to Wansey Road, and a north-eastern boundary to Alison Road.

⁴¹ At paragraph 6.1.4

⁴² At Appendix X

⁴³ At paragraph 7.2

- Six timber-framed and two metal-framed Stripping Stall Buildings, and a Farrier's workshop.
 - Three sand-rolls, one at the southern end of the stripping stalls, and two roofless at the northern end.
 - A 'Bull Ring' with a smaller internal training track.
 - The Precinct is currently used for horse training, although in disrepair.
 - Contains 69 trees either within or adjacent to the precinct including:
 - 10 Moreton Bay Figs.
 - 12 Hills Weeping Figs.
 - 7 English Plane Trees.
 - Range of local gum trees.
 - Several exotic species.
 - Level change north-east to south-west between Wansey Road and the location of the proposed new stable buildings.
- 3.69 You will note there is no reference to the "Stables Precinct" site being used for the stabling of horses; only that the "Stables Precinct" *"is currently used for horse training"*.
- 3.70 Also, there is no evidence to support the assertion that the primary heritage significance of the "Stables Precinct" site is not related to its built form or fabric; the "Stripping Stalls" are buildings of High Heritage Conservation Significance
- 3.71 As outlined in the Heritage Impact Statement, the proposed solution to the demolition of these buildings is to take photographs of them for archives. This is an insufficient method by which to protect heritage buildings.
- 3.72 I also note that in the Heritage Impact Statement, a number of photographs of the "Stripping Stalls" have been included. It has to be said that these photos are misleading. They appear to have been purposely taken from the most unflattering of angles to serve the needs of the AJC. Indeed the photograph of the "Stripping Stalls" on the front of the Heritage statement has been taken from the back garden area of "The Cottage", which is not an area of the Development or of the "Stripping Stalls". You will see that this photograph it includes a rather unappealing view a number of functional items not related to the "Stripping Stalls" in an attempt to make the "Stripping Stalls" look in a worse condition that they actually are.
- 3.73 Given that no proposal for the demolition of the "Stripping Stalls" was included in the Stage 1 Application (indeed they were to be improved by the addition of a "New Grounds Maintenance Shed"), it is clear that the AJC do not, in reality, consider that these buildings are dilapidated or without merit. Indeed, they are used on a daily basis and are of a steady build, noting that they were first constructed in 1919.
- 3.74 Moreover, as you will note from the Figures A, E and G above, the "Stripping Stalls" have the benefit of modern and recently-added roofing. If the AJC truly considered that these buildings were dilapidated or without merit, it is inconceivable that they would have gone to the effort and expense of arranging for them to be re-roofed. In any event, if the "Stripping Stalls" are dilapidated, which is not admitted, this can only be due to a lack of maintenance by the AJC.

Breach of established heritage planning principles

- 3.75 The demolition of even a contributory heritage item in a heritage conservation area would also breach the relevant planning principles outlined in *Harbour Port Construction Pty Limited v Woollahra Municipal Council* [2004] NSWLEC 283 and *Helou v Strathfield Municipal Council* [2006] NSWLEC 66. In *Helou*, Moore C stated⁴⁴:

The demolition of a building which contributes to a conservation area will impact on the area's heritage significance even if its replacement building "fits" into the conservation area. Although the replacement building may be a satisfactory streetscape or urban design outcome, this does not address heritage impacts as the original heritage element has been removed.

- 3.76 Further relevant matters to be addressed in respect of the demolition of the "Stripping Stalls" (which have not been addressed in the EA) are found at paragraph 46 of *Helou*.
- 3.77 The demolition of the "Stripping Stalls" will impact upon the character of the "Stables Precinct" site, the Racecourse and Randwick generally. There is no evidence that the large and industrial-style buildings proposed to be constructed as part of the Development will "fit" into the character of the heritage conservation area. Randwick's heritage should not be destroyed solely to defer to the wishes of a rich investor and the AJC.

Development in Breach of ISEPP

- 3.78 Regulation 101 of ISEPP states:

101 Development with frontage to classified road

- (1) The objectives of this clause are:
 - (a) to ensure that new development does not compromise the effective and ongoing operation and function of classified roads, and
 - (b) to prevent or reduce the potential impact of traffic noise and vehicle emission on development adjacent to classified roads.
- (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.

⁴⁴ At paragraph 45

- 3.79 The AJC has conceded that Alison Road is a "*classified road*" for the purposes of ISEPP.⁴⁵
- 3.80 In breach of Regulation 101 of ISEPP, the Development will:
- (a) adversely impact upon the safety, efficiency, effective and ongoing operation and function of Alison Road.
 - (b) Increase traffic and traffic noise to Alison and Wansey Roads.
- 3.81 Due to the proposed relocation of all Racecourse stabling facilities to the "Stables Precinct" site, being a site on which there are currently no stabling facilities, there will necessarily be a marked increase in Racecourse traffic to the "Stables Precinct" site⁴⁶.
- 3.82 The proposed site of the entrance/exit to the Development is at Gate 10, having been relocated so as to be much closer to the Alison Road/Wansey Road intersection. There is a proposed restriction of heavy vehicles to approach the Development along Wansey Road. The main hours of traffic activity to and from the Development is proposed to be between 4.30am and 8.30am.
- 3.83 All of this will cause an increased number of large vehicles, being, amongst other things, articulated horse floats which are slow-moving and cumbersome vehicles, to turn across the already badly-designed and dangerous Alison Road/Wansey Road intersection during, amongst other times, peak morning traffic hours. You will be aware that Alison Road is one of the two key arterial routes into the Sydney CBD through Randwick; it is always busy with traffic.
- 3.84 You will see from Figure J above and Figure N below that there is no slip road for traffic turning right across the Alison Road/Wansey Road intersection from the north. As an owner and resident of 108 Alison Road, I can confirm there are numerous daily accidents or near accidents at or around the Alison Road/Wansey Road intersection, caused by this lack of slip road and the slight blind corner leading into this intersection for southbound traffic along Alison Road. The Development will require large horse vehicles to turn across the Alison Road/Wansey Road intersection during peak hour traffic. This will not only increase traffic of itself, but also it will cause:
- (a) traffic to increase in:
 - (i) the right-hand lane of Alison Road, in the southbound direction between Cowper and Prince Street;
 - (ii) the two northbound lanes approaching the Alison Road/Wansey Road intersection from Randwick Junction; and
 - (iii) Wansey Road, in both directions; and
 - (b) an increased number of traffic accidents in respect of traffic flowing into the Alison Road/Wansey Road intersection from all four directions.
- 3.85 This will have a huge impact upon the ability of commuters to ensure they arrive at work on time. This is in breach of section 5(a)(i) of the EPAA, as it will likely impact upon the New South Wales state economy.

⁴⁵ At paragraph 5.4.3 of the EA

⁴⁶ 40% increase in Racecourse traffic according to the Transportation Report annexed to the EA at Appendix O, although the basis for the low value of this figure is unclear



Figure N:

Aerial view of the Alison Road/ Wansey Road intersection, showing blind corner on the approach to Alison Road/ Wansey Road intersection. Gate 8 of the Racecourse is shown just above the notation of the Blind Corner.

© Google Maps

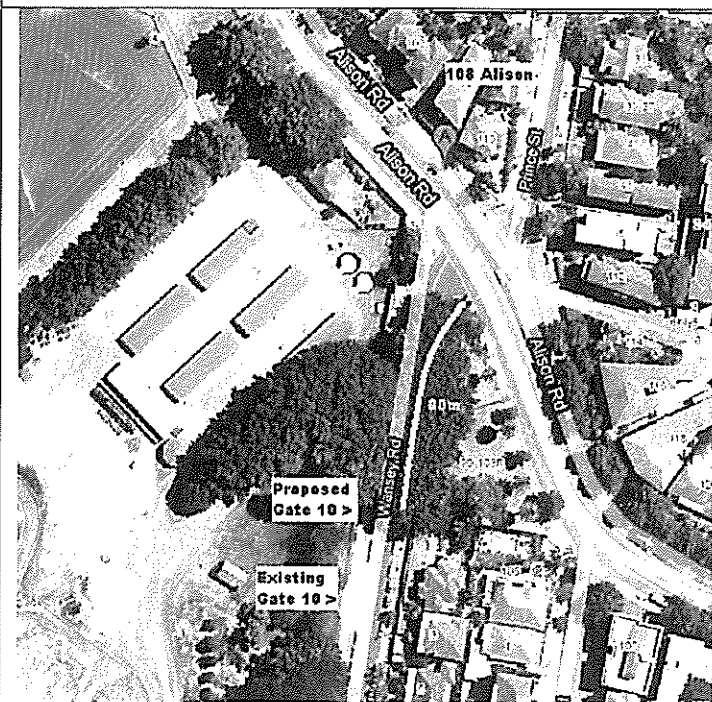


Figure O:

Aerial view of the Alison Road/ Wansey Road intersection and "Stables Precinct" site, showing proposed site of entrance/exit to "Stables Precinct" site and distance from proposed entrance/exit to Alison Road/ Wansey Road intersection.

© Google Maps

- 3.86 Furthermore, given the very short distance between the Alison Road/Wansey Road intersection and the required right turn for Development traffic across northbound traffic along Wansey Road into the Development through the proposed Gate 10 (approximately 80m as shown in Figure O above), it is likely that the increased large vehicle usage caused by the Development will cause traffic to back up along Alison Road in both directions.
- 3.87 That is to say, the operation of the Development will necessarily and significantly increase heavy traffic into and around the Alison Road/Wansey Road intersection, and cause a bottleneck to an area that already has an exceedingly dangerous intersection. This is in breach of Regulation 101 of ISEPP and, it is notable that none of this is dealt with in the Transportation Report annexed to the EA, notwithstanding that report indicates that there will be a 40% increase of Racecourse traffic across the Alison Road/Wansey Road intersection. The Transportation Report is deficient.

- 3.88 Moreover, no adequate assessment of the impact of construction traffic to and caused by the Development has been made. The increase of construction traffic through this area is in breach of clause 3.5.1 of the DCP in that it does not minimise *"the impact on surrounding and adjacent streets during construction and major events"*.
- 3.89 Moreover, the further proposal that all raceday traffic will exit the racecourse at Gate 8 on Alison Road (at the blind corner) will also cause a further and significant traffic bottleneck.
- 3.90 Currently, raceday traffic exits the Racecourse at existing Gate 10 on Wansey Road. This allows drivers to turn right into Wansey Road towards High Street, or left into Wansey Road towards the Alison Road/Wansey Road intersection. At the Alison Road/Wansey Road intersection, drivers then have the option to turn left or right into Alison Road, or to travel across the intersection into Prince Street. That is to say, there are four immediate possible routes for traffic exiting the Racecourse. Notwithstanding, on even the poorest-attended racedays, this causes traffic jams along the northbound side of Alison Road.
- 3.91 The proposal to use Gate 8 on Alison Road as an exit for raceday traffic will give drivers exiting the racecourse one route option only: to turn left into the northbound side of Alison Road, which is bounded by a median strip. There is no right (or left) hand exit from this route until the John Street intersection, some 300m further along Alison Road. There is no right hand turn at the Cowper Street intersection.



Figure P:

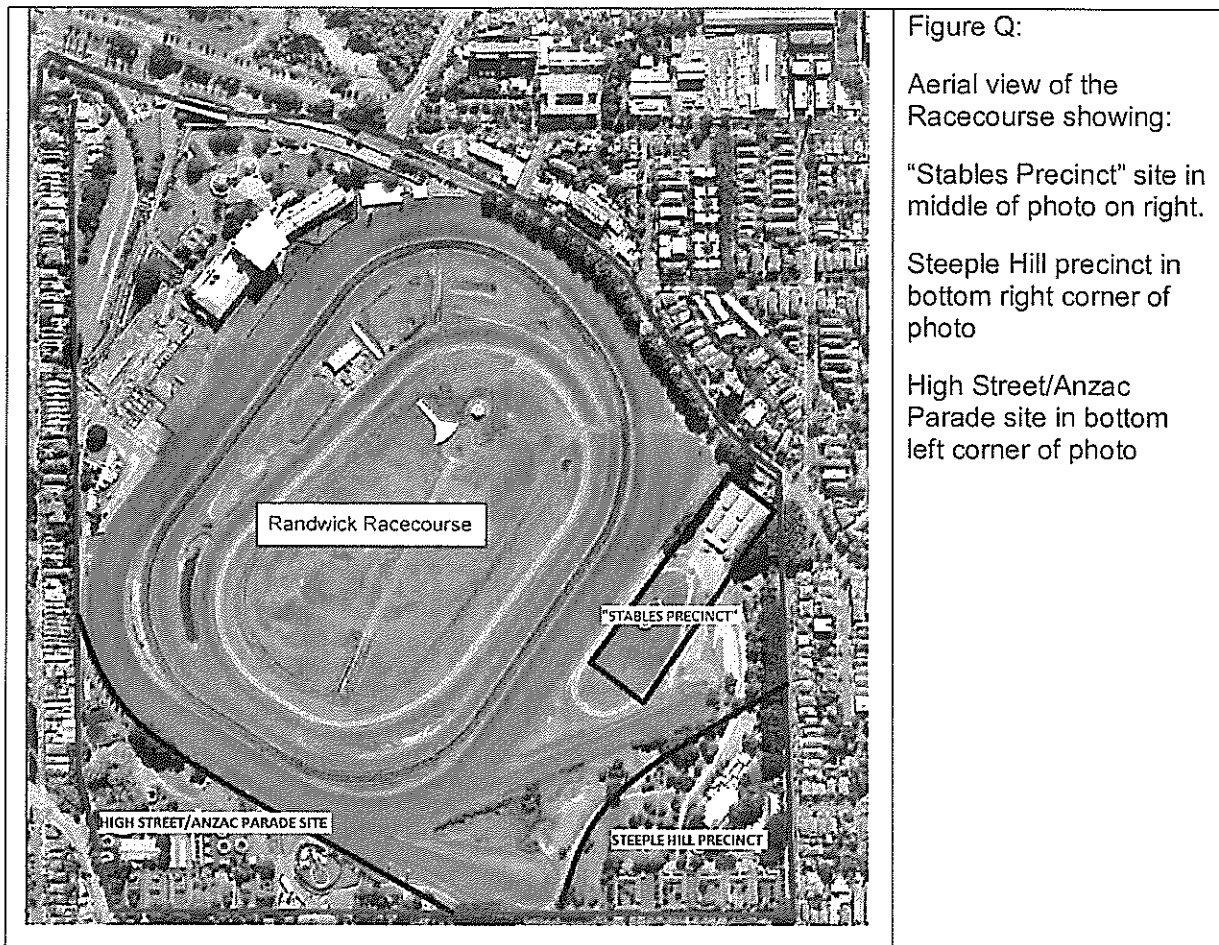
Aerial view of the Racecourse and Alison Road with the red line showing the 300m distance between the Gate 8 exit and the first available exit from Alison Road for raceday traffic. This will create a significant bottleneck on Alison Road and backlog of traffic onto the Racecourse.

© Google Maps

- 3.92 As stated above, and as you will be aware, Alison Road is one of the two key arterial routes through the Randwick areas. Forcing a large volume of traffic into an already busy road with no discernable exit therefrom for 300m will not only cause significant a significant traffic bottleneck and backlog along Alison Road, but also in respect of all relevant side roads; Wansey Road, Prince St, Cowper St and Botany Street, as well as back onto the Racecourse itself. This will not be a pleasant experience for racegoers or local residents.
- 3.93 If only to for traffic purposes, the site for the Development should be either the Steeple Hill precinct or the High Street/Anzac Parade site. As can be seen from the Figure Q below⁴⁷, neither of these sites are surrounded by residential zones on both sides, as is the

⁴⁷ Taken from the "Randwick Education and Health Specialised Centre Discussion Paper" (as amended)

"Stables Precinct" site. Moreover, these sites are larger than the "Stables Precinct" site and already set up with stabling and training resources.



- 3.94 If the Development were situated at the High Street/Anzac Parade site, all stables traffic arriving from the north could enter the site from either a left hand turn off Anzac Parade (if a Gate were placed on Anzac Parade) or by a left-hand turn into High Street, followed by a left-hand turn into the existing High Street entrance in to the Racecourse (**High Street Gate**). The High Street Gate is far better-suited to deal with stables traffic: there is an existing set of traffic lights that specifically deals with Racecourse traffic to the High Street/Anzac Parade site through the High Street Gate. This site already houses the majority of the existing stable facilities at the Racecourse. Locating the Development at this site, using the existing High Street Gate for access in conjunction with the existing traffic lights set up for access through that Gate would allow large horse traffic to smoothly enter and leave the Racecourse, instead of forcing it through the Alison Road/Wansey Road intersection.
- 3.95 On any basis, the High Street/Anzac Parade site is preferable and the proposed location of the Development at the "Stables Precinct" site is poorly-planned, and, to be frank, the worst possible location for the Development.
- 3.96 It is to be noted that the traffic assessment report annexed to the EA does not deal with the benefits of locating the Development at the High Street/Anzac Parade site.
- 3.97 To the extent that DCP validly requires any new stables development to be located on the eastern side of the Racecourse, the reason for which is clearly to serve the Council's own plans, then the Steeple Hill precinct is the more preferable location for the Development. Again, however, the Council has its own plans for that site.

Development in Breach of DCP

- 3.98 The DCP is the relevant development control plan for development on the Racecourse, and consideration to the compliance of its terms must be given in respect of the Development.

Proposed buildings in excess of 2 storeys

- 3.99 At clause 3.4.a of the DCP, it is stated, *inter alia*:

Training Areas (High Street, Steeple Hill and Bull Ring Precincts) ...

- Buildings are not to exceed 2 storeys unless particular functional requirements exist and an urban design precinct plan demonstrates that the height is appropriate in terms of siting, immediate context and avoiding adverse impacts on adjoining development.

- 3.100 At clause 3.4.b of the DCP, it is stated,

Building heights are to:

- be limited to the height indicated for the relevant Precinct,
- respond to detailed functional requirements, built form objectives, siting and immediate context, and
- avoid adverse impacts on adjoining development.

- 3.101 In the Clause 6 Request, the EA and the 28 September 2010 letter, it is stated that the stable blocks that form the majority of Development are two-storeyed buildings. This is both incorrect and misleading.

- 3.102 The height of these stable blocks is to be 12.63m, being buildings of 3.5 or 4 storeys. That these buildings are at least 3 storeys in height was conceded by the representatives of Urbis at the 5 October 2010 meeting and at the 13 October 2010 Randwick Precinct meeting. Minutes of this meeting are attached⁴⁸, showing this concession⁴⁹.

- 3.103 It is the height, not the internal structure, of a building that determines the amount of storeys of a building. It would be entirely unreasonable for a limit for a two-storey building to have no regard to the height of the proposed storeys. In this case, on average, each storey would be equivalent to 6.315m in height. This is approximately twice the height of a standard storey for a residential or office building.

- 3.104 Indeed, a height limit for a "storey" is explicitly provided for in the DCP. At clause 3.4.a of the DCP, which was drafted by the AJC, it is stated

A scale model is to accompany development applications for buildings greater than 4 storeys (15 metres).

- 3.105 Whilst the proposed stable blocks are not 15m in height, using this calculation, a 2 storey building is to be limited to a height of 7.5m. The proposed stable blocks are 12.63m in height, some 5.13m in excess of this limit and, using the assessment in the DCP, is more properly described as a 3.5 storey building. As such, the Development is in breach of the DCP.

⁴⁸ At Annexure 3

⁴⁹ Ibid. At point 6: "Height equivalent to 3-storey building"

3.106 Furthermore, even internally, the stable blocks are comprised of 3, not 2. storeys. As can be seen from Figure R below, there are stairs to and windows in respect of 3 storeys. The internal structure of the building is said to comprise 2 storeys for horse stabling and a "mezzanine" floor for housing the stablehands and strappers, above the second (internal) storey.

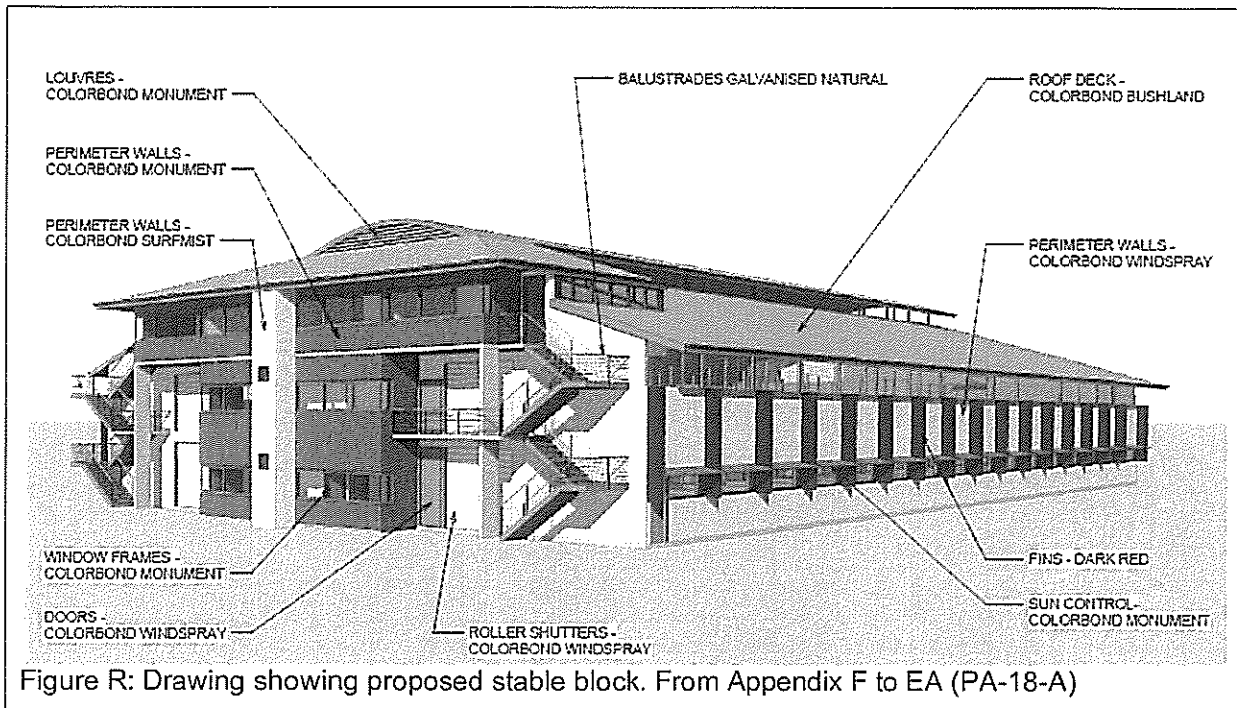


Figure R: Drawing showing proposed stable block. From Appendix F to EA (PA-18-A)

3.107 Firstly, the proposed "mezzanine" floor is not a mezzanine floor. Please note the following definitions of "mezzanine":

(a) Macquarie Dictionary Second Edition:

Mezzanine – a low storey between two other storeys of greater height especially where the low storey and the one beneath it form part of one composition.

(b) The New Shorter Oxford English Dictionary:

Mezzanine – a low storey between two others in a building usually between the ground floor and the floor above...

3.108 The "mezzanine" floor of the proposed stable blocks sits on top of the (internal) second storey. It does not sit between any other storeys. It is irrelevant that it is housed within the stable block structure, as asserted in the EA.⁵⁰

3.109 Secondly, in *Hillbrook Estate Development v Maroochy Shire Council*⁵¹, the Court held that a purported "mezzanine" floor that sat above part of the 6th storey immediately beneath it, was itself a separate "storey" and the subject building in that case was therefore a 7 storey building, as opposed to a 6 storey building asserted by the developer. The "mezzanine" floor of the proposed stable blocks is therefore a separate storey.

3.110 As outlined above, it is the height, not the internal structure, of a building that determines the amount of storeys of a building. As such, the proposed stable blocks are 3.5 to 4

⁵⁰ At paragraph 5.5.1

⁵¹ 2004 decision of the Planning and Environment Court of Queensland

storey buildings. Even if the determination of the amount of storeys of a building is more properly to be made by reference to its internal structure, by the AJC's own design, and admission⁵², the proposed stable blocks are 3 storey buildings.



Figure S

Photo of building of similar height to the proposed stable block buildings.

- 3.111 In either case, the proposed stable blocks and, therefore, the Development are in breach of the 2 storey limit at clause 3.4.a of the DCP and the Application must be rejected on this basis. It is inconceivable that, following the concession of the developer, by its agent, that these buildings are more properly described as 3-storey buildings, that the Application could be approved.
- 3.112 Moreover, that these buildings were described as "two-storey buildings" in the EA is an intentional misrepresentation by the AJC to both the DoP/the Council and the relevant members of the community, solely in an attempt to demonstrate that the requirements of clause 3.4.a of the DCP has been met, particularly as Urbis, on behalf of the AJC, has openly conceded that these buildings are more properly described as 3-storey buildings.

Devastating loss of views

- 3.113 As can be seen from Figures A, E, G and I above, the current front views held from the apartments and common property of 108 Alison Road are panoramic and unobstructed views of the rustic "Stripping Stalls", existing bull ring and the green fields of the Racecourse. These views will be completely lost if the Development is approved, and replaced with views of large and industrial style buildings.

- 3.114 Clause 3.2.2 of the DCP states:

Manage built, landscape and archaeological components, historic views and spaces in accordance with their assessed significance.

- 3.115 Clause 3.3.d of the DCP states:

Major views into, through and out of the site as shown on Map 6 are to be retained and enhanced.

⁵² At the 5 October 2010 meeting and the 13 October 2010 Randwick Precinct meeting. See Annexure 3.

3.116 Clause 3.4.2 of the DCP states:

Create a built form which serves the needs of the racing industry and which responds to the constraints and opportunities of the site, particularly its heritage significance, landscape characters, drainage requirements, views and vistas, and adjoining public domain.

3.117 Clause 3.4.a of the DCP states, *inter alia*:

Training Areas (High Street, Steeple Hill and Bull Ring Precincts ...

- Any new buildings in the Steeple Hill and Bull Ring Precincts are to respect the views and landscape elements identified in Maps 3-6.

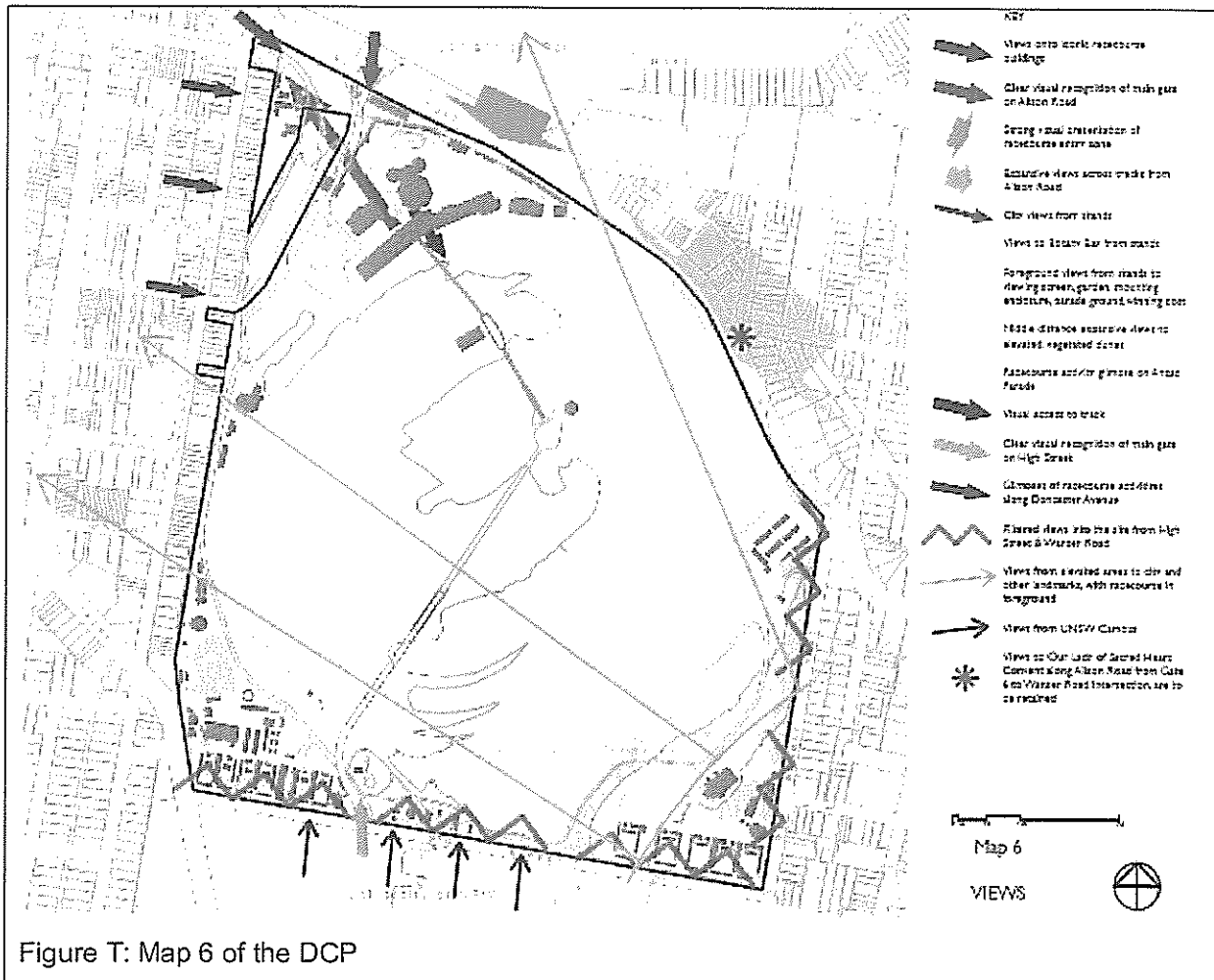


Figure T: Map 6 of the DCP

3.118 Clause 3.4.c of the DCP states:

New buildings are to maximise amenity and optimise views of the Racecourse and/or Centennial Park. The height and scale of new buildings are to retain significant views to, from, through and within the Racecourse.

3.119 Policy 59 of the Conservation Management Plan states:

Conservation of Historic Views

Significant historic views to and from Royal Randwick Racecourse should be conserved as much as possible, particularly to and from the northern parts of the racecourse site.

3.120 As outlined, and demonstrated by Figures A to I above, the Development will remove the panoramic and unobstructed front views of and through the Racecourse of the historic and rustic "Stripping Stalls", the existing bull ring and green fields, and replace them with views of large and industrial-style buildings of, *inter alia*, the type shown in Figure D and Figure R above. This is in breach of the provisions of the DCP and Conservation Management Plan referred to above, in that the Development:

- (a) will not maintain the historic views of the northern parts of the Racecourse and the historic "Stripping Stalls" from 108 Alison Road. These views have always existed from 108 Alison Road. They are therefore historic. As stated above, the "Stables Precinct" has never been used to stable horses;
- (b) does not retain or enhance the views into the Racecourse from 108 Alison Road. In fact, it will remove and destroy these views entirely;
- (c) is not of a built form that responds to the constraints of the views held by the adjoining public domain, namely 108 Alison Road;
- (d) does not respect the views into the "Bull Ring" Precinct (i.e. the "Stables Precinct" site) of the Racecourse from Alison Road, in particular from 108 Alison Road, as it will destroy these views; and
- (e) is not comprised of buildings that:
 - (i) optimise views of the Racecourse from 108 Alison Road; and
 - (ii) are of a height and form that will retain the significant views to and through the Racecourse from 108 Alison Road.

3.121 The Application must therefore be rejected.

AJC's assertions in relation to view loss

3.122 At paragraph 6.1.1 of the EA it is stated:

The visual impacts of the Stables Precinct buildings are likely mitigated through the change in topography between the level that the buildings are proposed, and carriage way level of adjacent streets, Wansey Street and Alison Road. Existing and proposed landscaping around the perimeter of the Stables Precinct will further diffuse the visual presentation of the stable buildings, and the two storey mechanical horse walkers, through providing foliage that will further soften the visual appearance of the precinct.

3.123 Paragraph 6.1.2 of the EA states:

A Visual Impact Assessment of the impacts of the stables redevelopment has been undertaken by AECOM and is contained within **Appendix I**. Key views have been extracted below, from the corner of Wansey Road and Alison Road (**Figure 10**), first floor of 3 Wansey Road (**Figure 11**) and the QEII grandstand (**Figure 12**) that illustrate the proposed development will not have a significant impact on existing views, principally due to:

- Modest heights proposed for the built form.
- Surrounding topography providing a natural level change between the development and Wansey Road.
- Preservation of existing established trees along the precinct boundary.

- Intensification of landscaping within the precinct, focussing on existing gaps within the perimeter.

The assessment indicates that the built form will be sympathetic to the existing views enjoyed by surrounding residential properties, as well as from key viewing locations within the RRR site.

3.124 Paragraph 6.5.5 of the EA states:

A Visual Assessment has been prepared by AECOM attached in **Appendix I**. The assessment considers the impact of the proposed built form on the desired future character of RR and surrounding property. The assessment includes a series of photomontages from key vantage points within and around the precinct.

The principle [sic] findings of the Visual Assessment are:

- *The visual impacts are experienced primarily within the Randwick racecourse property.*
- *The visual impacts experienced beyond the Randwick racecourse property are limited to 2 to 3 houses along the south east Wansey Road frontage.*
- *This visual impact is confined to a relatively narrow visual splay, and this visual splay will be eliminated over time by the future growth of proposed screen tree planting.*
- *The overall visual impact of the proposal will therefore be low to moderate once complete.*
- *The proposal creates opportunities for improved public immunity, particularly at the interface with Wansey Road.*

Based on the Visual Assessment and the subsequent conclusions extracted above, the proposed stables redevelopment is considered reasonable and appropriate for the Stables Precinct with regards to visual impact both within and around the racecourse.

3.125 In the Visual Impact Assessment report annexed to EA at Appendix I, it is stated⁵³, *inter alia*, that:

The visual catchment to the north of the proposal is defined by the existing greater differential to the Alison Road frontage combined with an almost continuous line of mature predominately ever green tree planting...

In summary, the most sensitive visual catchment is the zone that may be viewed from the adjacent residential neighbours along the Wansey Road boundary to the south east. The direct visual impact of the proposal are limited to the first 2 to 3 dwellings at the northern end of Wansey Road (numbers 1, 3 and (partly) 5 Wansey Road). These buildings are considered to be "key buildings" in the context of the director general's requirements.

⁵³ At page 27

3.126 It is also stated:

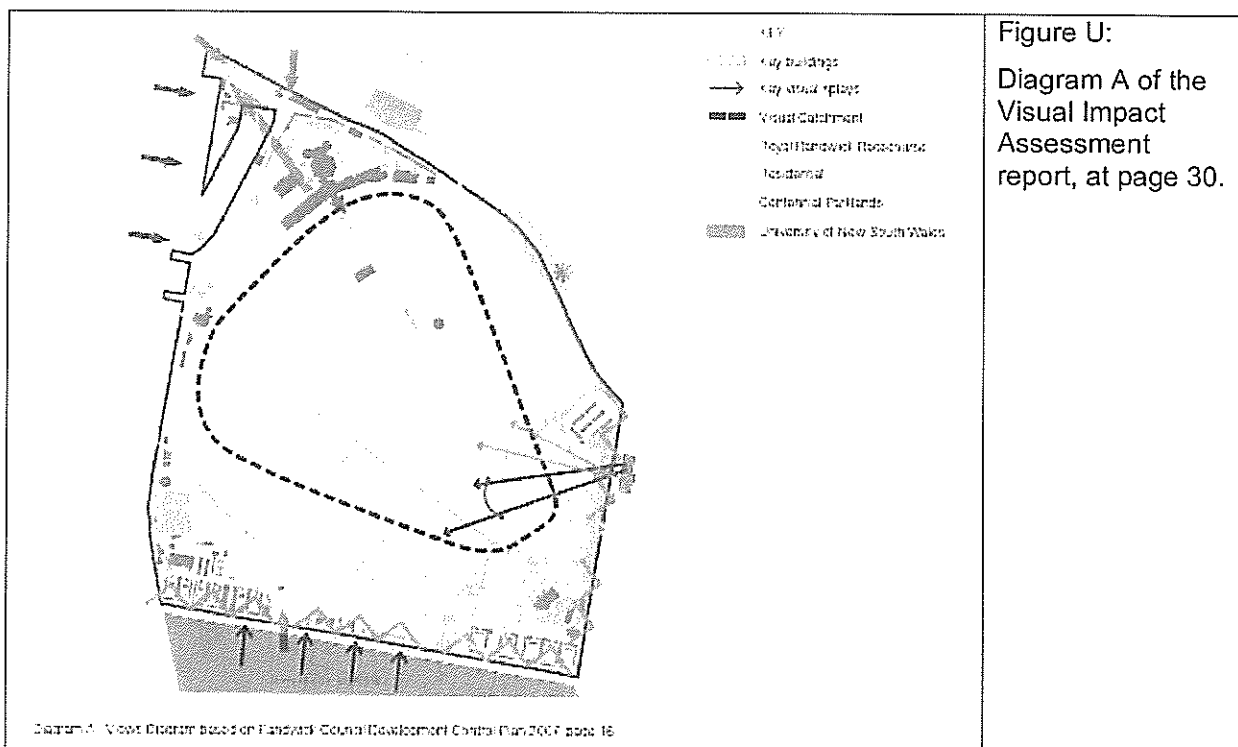
Visual impacts on views to and from key buildings, structures

Sections A & B illustrate that the generous setbacks from the adjacent streets combined with the retention of the mature existing evergreen trees effectively screen views to and from key buildings to the proposed structures.

Visual impacts upon the public domain including views from Alison Road and the nearby residential development

Diagram A illustrates that the siting of the proposed building complex makes the best use of the existing area of levelled land, currently occupied by the 'Strapping Sheds', in order to minimise the visual impact splay by making full use of the existing topography and mature tree screening to minimise the visual catchment of the proposal. Sections A, B & C and Montages 1 to 4 illustrate the apparent reduction in the visual bulk and scale of the proposed building complex when viewed from the key areas of sensitivity, due to the combined influence of the very generous setbacks, the depressed elevation of the building complex relative to the neighbouring residential buildings and the retention of the existing mature screen evergreen screen trees.

3.127 Diagram A of the Visual Impact Assessment report, purports to indicate what are considered to be both key buildings and key visual displays.



3.128 It is notable that the key buildings and key visual displays on this diagram relate solely to the properties at 1, 3 and 5 Wansey Road; there is no indication of the visual display from 108 Alison Road. This diagram is supported by Diagram C of the Visual Impact Assessment report⁵⁴. Both are inaccurate by failing to include 108 Alison Road.

⁵⁴ At page 32

AJC's assertions incorrect and misleading

3.129 The statements in the EA⁵⁵ that *"the proposed development will not have a significant impact on existing views"* and *"the built form will be sympathetic to the existing views enjoyed by surrounding residential properties"* are plainly incorrect. The current panoramic and unobstructed front views held from the apartments and common property of 108 Alison Road will be completely lost and/or destroyed if the Development is approved, and replaced with views of large and industrial style buildings.

3.130 In respect of the statements made in the Visual Impact Assessment report and outlined at paragraph 6.5.5 of the EA, these are also incorrect:

- (a) *"The visual impacts are experienced primarily within the Randwick Racecourse property."*

The visual impact of the Development will be experienced primarily from 108 Alison Road.

- (b) *"The visual impact experienced beyond the Randwick Racecourse property is limited to 2 to 3 houses along the south east Wansey Road frontage."*

Again, the main visual impact of the Development, from both within and around the Racecourse, is experienced from 108 Alison Road, and not from properties along Wansey Road.

- (c) *"This visual impact is defined to a relatively narrow visual splay, and this visual splay will be eliminated over time by the future growth of proposed screen tree planting"*.

The visual impact of the Development on 108 Alison Road is to remove its panoramic and unobstructed views into and across the Racecourse. This is shown in Figures A to I above. To the extent that the impact of the Development can somehow be removed by the growth of any proposed trees to be planted, which has not been demonstrated⁵⁶, any such trees would need to be at least 20m to 30m in height, to obscure the entirety of the impact of the Development from apartments at 5 and 6 of 108 Alison Road. Even then, however, such trees themselves would be an obscurement of the views from, and likely sunlight to, 108 Alison Road, in breach of section 14B of the *Trees (Disputes Between Neighbours) Act 2006* (NSW).

In any event, given the nature of the existing trees within the Racecourse along the Alison and Wansey Road frontages, any new trees planted for this purpose would need to be Morton Bay fig trees or the like, which would not come to maturity, and therefore the necessary height required, for possibly 30 years, leaving an unobstructed view of the Development for that period of time. In any event, such planting has not been proposed and the area in which any such trees would need to be planted is anyway far too narrow for the planting of such trees⁵⁷, given the existence of "The Cottage" in the north east corner of the Racecourse. This would preclude any potential amelioration of the visual impact of the Development on 108 Alison Road (to the extent that is achievable).

⁵⁵ At paragraph 6.1.2

⁵⁶ Indeed, it seems only low level trees are proposed to be planted. See Page 35 of Appendix I to the EA (Architectural Plans 2 of 3)

⁵⁷ Recommended distance of Moreton Bay Fig Trees from houses is 15m for this reason.

- (d) *"The overall visual impact of the proposal will therefore be low to moderate once complete."*

The visual impact of the Development will be severe or devastating to the Owners of 108 Alison Road both during its construction and once it is complete. This is shown in Figures A to I above.

- (e) *"The proposed stable redevelopment is considered reasonable and appropriate for the Stables Precinct with regards to visual impact both within and around the racecourse".*

The Development is entirely unreasonable with regards to the visual impact it will have upon 108 Alison Road and inappropriate for a site that has never historically been used to stable horses.

3.131 That no visual impact assessment from 108 Alison Road has been included in the EA and that 108 Alison Road has not been considered a key building for the purposes of both the Visual Impact Assessment report and the EA is staggering, given the panoramic and unobstructed views of the "Stables Precinct" site therefrom. These absences give an entirely misleading impression in the EA of the extent of the visual impact that will be caused to adjoining residences by the Development. Given that a visual impact assessment has been made from properties on Wansey Road, it can only be the case that these absences were intentional.

3.132 I repeat, the views of the "Stables Precinct" site, being of the rustic "Stripping Stalls", existing bull ring and the green fields of the Racecourse from the front of the apartments and the common property at 108 Alison Road are panoramic and unobstructed. 108 Alison Road is the only property that has such views. These views will be removed in their entirety by the Development and will cause the owners of 108 Alison Road to suffer a loss of enjoyment of their properties and a loss of value in their properties.

3.133 The Visual Impact Assessment report is flawed, inaccurate, misleading and, as such, must not be relied upon in respect of its conclusions.

Loss of views in breach of established planning principles

3.134 Furthermore, the Development would be in breach of the principles established in *Tenacity Consulting v Warringah* [2004] NSWLEC 140 for evaluation of view impacts on neighbours' properties. The principles are as follows:

- (a) *The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (eg of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, eg a water view in which the interface between land and water is visible is more valuable than one in which it is obscured.*⁵⁸

It is unquestionable that the views of the historic "Stripping Stalls", existing bull ring and green fields of the Racecourse from the front of the apartments and the common property at 108 Alison Road are panoramic and unobstructed. These views are whole views that directly face the front of 108 Alison Road. There is no barrier to these views and they are not obscured. The view of the "Stables Precinct" site from the front of the apartments and common property of 108 Alison Road is the main view from the front of the apartments and common property of 108 Alison Road.

⁵⁸ *Tenacity* at paragraph 26

- (b) *The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.*⁵⁹

108 Alison Road is a 4 storey residence sitting atop garaging at street level. Above the garages is an area of common property used for entertaining and leisure, which overlooks the "Stables Precinct" site. There are 6 apartments within 108 Alison Road, apartments 1, 3 and 5 of which are affronted by balconies that overlook the "Stables Precinct" site; and apartments 2, 4 and 6 of which have front-facing living areas that overlook the "Stables Precinct" site.



Figure V

View of 108 Alison Road from the pavement next to "The Cottage". Apartments 2, 4 and 6 are on the left-hand side of the photograph; apartments 1, 3 and 5 are on the right-hand side. The common property area is the area bounded by the white, wrought-iron fencing above the garages.

The existing views of the "Stables Precinct" Site from 108 Alison Road are all views across front boundaries from the front of the property. They are standing views, as can be shown by figures E, G and I above. Indeed, the standing views of the "Stables Precinct" site are obtained from even the rear of the living areas⁶⁰. The front views from the property are the best views from the property.

- (c) *The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.*⁶¹

The proposed location of the Development will obstruct the panoramic and unobstructed front views of the rustic "Stripping Stalls", existing bull ring and green fields of the Racecourse from the living areas of the apartments and the leisure areas of the common property at 108 Alison Road. As clearly shown in Figures F

⁵⁹ Tenacity at paragraph 27

⁶⁰ As seen in Figure F

⁶¹ Tenacity at paragraph 28

and H above, the Owners of 108 Alison Road will not retain any of these views, as they will be replaced by views of large and industrial style buildings. There are currently no industrial style buildings within the panoramic and unobstructed front views from 108 Alison Road.

The view loss is therefore to be assessed as devastating or, at the very least, severe.

- (d) *The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*⁶²

The Development breaches a number of planning controls: the Application, EA and the Development are in breach of the EPAA, the EPAA Regulation, the LEP, ISEPP, the DCP and the Construction Management Plan as outlined above; the EA has not complied with the DGRs and the AJC is otherwise in breach of the principles outlined in *Anglican Church* (as referred to below); the EA is otherwise deficient and misleading as to, *inter alia*, the visual impact and traffic impact of the development. The impact of the Development on 108 Alison Road would be devastating.

Furthermore, the Development at the "Stables Precinct" is generally not reasonable as:

- (i) even by the AJC's own admission⁶³, there is no need for it and there are two other larger and more appropriate sites on the Racecourse that could be used for upgrade of the stabling facilities at the Racecourse, to the extent this is required (which has not been demonstrated). These two sites, being the High Street/Anzac Parade site and the Steeple Hill precinct, are only bounded by residential properties on one side each and the views across the Racecourse from those properties are already obscured by trees; therefore the visual impact of the Development, were it located at either of these sites, would be significantly less than the visual impact of the Development at the "Stables Precinct" site; and
- (ii) it is being entirely funded by either:
 - (A) the sale or annexure of the existing sites of the stables at the Racecourse on the High Street/Anzac Parade site and the Steeple Hill precinct. The sale/annexure of and development on this land is in breach of the objectives of Zone 6A Open Space land outlined in Section 18 of the LEP; and/or
 - (B) the Benefactor in an attempt to improve the Racecourse to a level at which it would, in his opinion, be in a position to compete with the Victorian racecourses. Furthermore, I understand the Benefactor

⁶² *Tenacity* at paragraph 29

⁶³ Based on the proposed capacity of the Development compared with the existing stabling capacity of the Racecourse and surrounds, and the contents of the Stage 1 Application

owns a property at 47 Wansey Road, which is directly opposite the alternative Steeple Hill precinct site.

To the extent that it is asserted by the AJC that the devastating view loss from 108 Alison Road to be caused by the Development will somehow be ameliorated by the planting of trees between 108 Alison Road and the Development, as stated above, given that 108 Alison Road is a 5 storey building, such trees would need to be between 20 to 30m tall, to block the entirety of the view of the development from apartments 5 and 6 of 108 Alison Road.

Paragraph 4.7 of the EA is silent as to the proposed planting of trees in the north eastern corner of the Racecourse, where no trees currently exist and through which the views of the Racecourse from 108 Alison Road are obtained (**Corner**). However, I note that on page 4 of Appendix F (Architectural Plans 2 of 3) to the EA that what appears to be a proposal to plant 7 trees in the Corner. Relevantly, for the Owners of 108 Alison Road, are what appears to be a proposal to plant 4 trees along the Alison Road side of the Corner.

Unless these trees are planted fully mature, and are Morton Bay Fig trees or the like, so as to fit in with the existing trees either side of the Corner (as seen from Figures E, G and H above), then these trees will have little or no impact upon any proposed amelioration of the view loss to Alison Road caused by the Development.

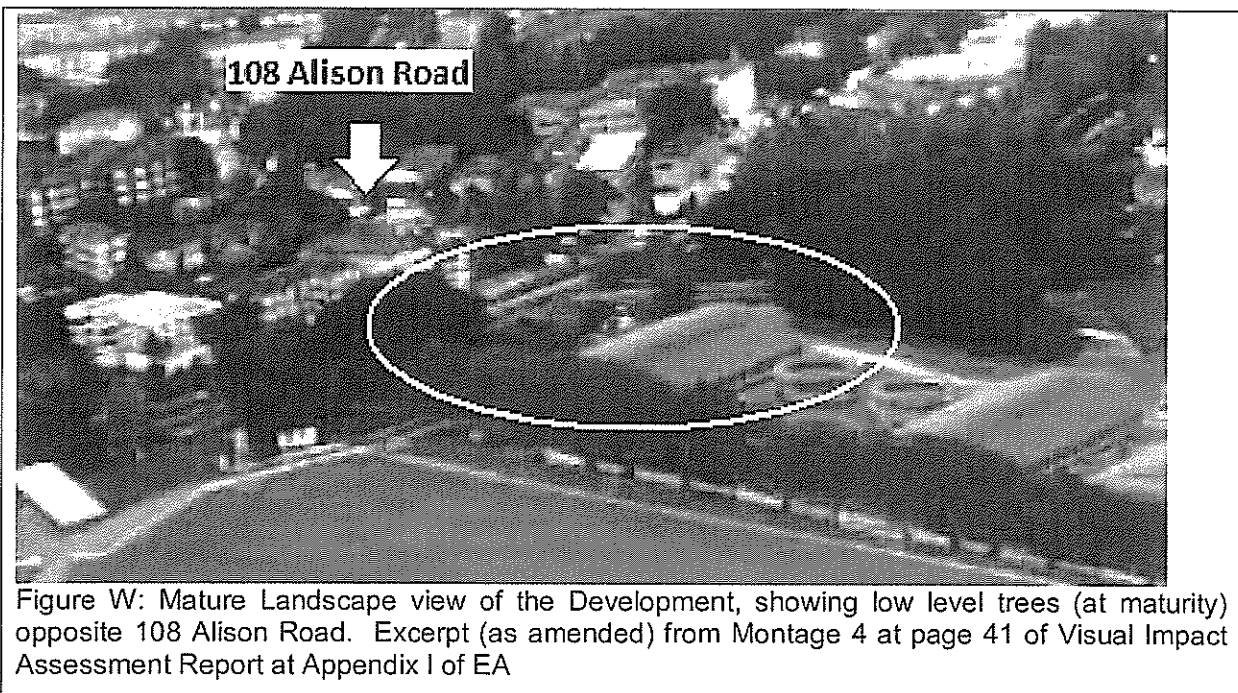
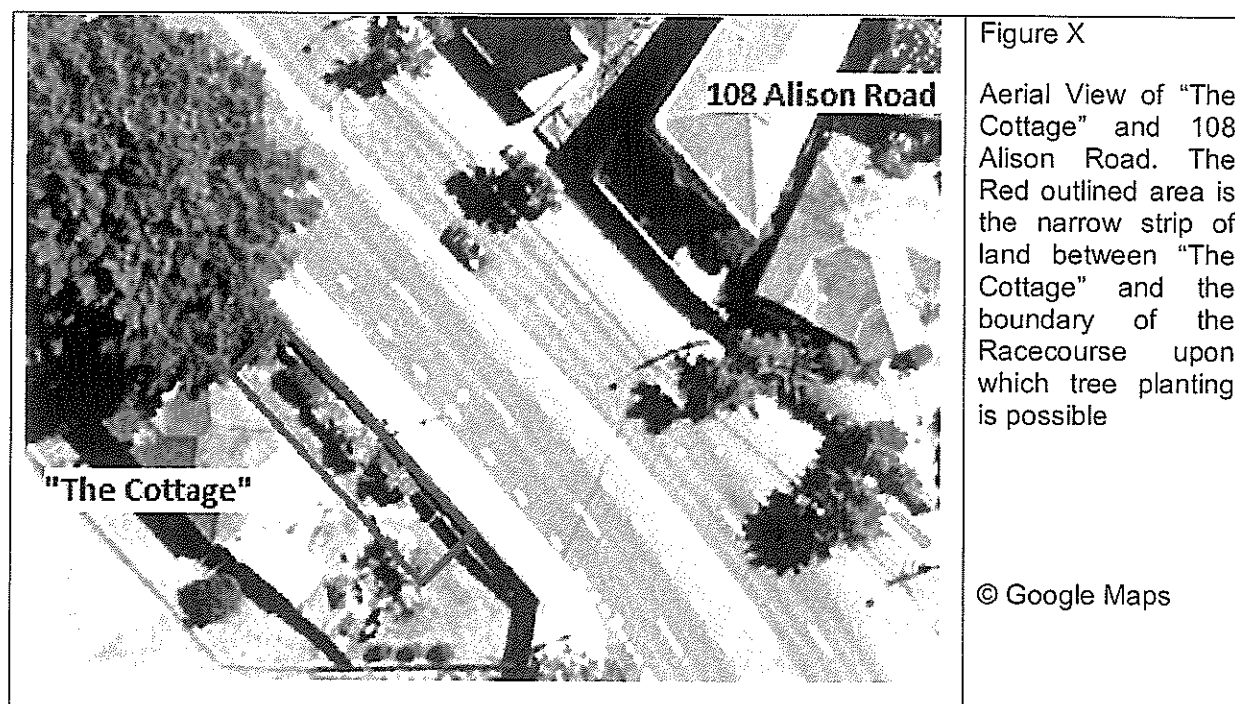


Figure W shows trees proposed to be planted in the Corner at their maturity. These do not appear to be Morton Bay Fig trees or the like and, even at maturity, only extend marginally over the height of the fencing bounding the Racecourse. That is, even at maturity, which will not be for some many years, these trees will be inadequate to obscure the view loss from 108 Alison Road due to their lack of height⁶⁴.

⁶⁴ This is confirmed by the "mature landscape" view at. page 35 of Appendix I

Moreover, there is only a minimal strip of land between "The Cottage" and the external boundary of the Racecourse on the Alison Road side within which to plant any trees.



Given the size of this strip of land, any trees planted thereon would be entirely inadequate for the purposes of ameliorating the view loss from 108 Alison Road, to the extent that could occur by the planting of tree. If Morton Bay Figs or the like were planted in this strip, the extensive and thick roots of such a large-sized tree would destroy the foundations of "The Cottage" and would likely impact upon the road surface of Alison Road. These would also likely impact upon the large sewerage pipe that runs along the length of Alison Road.

Also, given that the length of "The Cottage" and its back garden area takes up about two-thirds of the Alison Road side of the Corner and given the likely size of any trees planted even at maturity, which would not be from some years, it is unlikely that the plating of any trees along the Alison Road side of the Corner would have any effect upon the view loss to be experienced by the Owners of 108 Alison Road due to the Development⁶⁵.

3.135 The value of the apartments at 108 Alison Road is significantly dependent upon the preservation of the existing front views. Indeed, a major factor impacting upon my purchase of the property at 6/108 Alison Road in May 2006 was its panoramic and unobstructed views of and through the Racecourse. The removal of these views will drastically reduce the value and saleability of the apartments at 108 Alison Road. This will cause the Owners of Alison Road to suffer significant financial hardship.

3.136 Even if only on the basis of the devastating view loss, the Application must be rejected.

⁶⁵ In any event, the planting of trees may be in breach of section 14B of the *Trees (Dispute Between Neighbours) Act 2006 (NSW)*

Siting of Development

3.137 Clause 3.1.3 of the DCP states:

Ensure that uses are appropriately sited, and are of appropriate character, form and scale, to avoid conflicts with each other and with the surrounding uses.

3.138 Clause 3.4.4 of the DCP states:

Integrate new buildings consistent with the siting, form, scale, character, materials and colours of existing heritage components and their setting.

3.139 Clause 3.4.b of the DCP states:

Building heights are to:

- be limited to the height indicated for the relevant Precinct,
- respond to detailed functional requirements, built form objectives, siting and immediate context, and
- avoid adverse impacts on adjoining development.

3.140 As stated above, and demonstrated by Figure Q above and Figures Y and Z below, both the High Street/Anzac Parade site and the Steeple Hill precinct are both larger and far more suitable as sites for the Development than the "Stables Precinct" site. The "Stables Precinct" site is the only of these 3 sites that is bounded by a residential property on all sides, as opposed to only one side in respect of the other 2 sites (and, in essence, the part of the High Street/Anzac Parade site on which stabling and training facilities currently exist, and on which the Development could therefore be placed, is not bounded by any residential property).

3.141 The view loss to residences bordering either site caused by the Development would be negligible, as both sites are currently shielded from view by existing trees and foliage. This is shown in Figure T above and Figures Y and Z below.

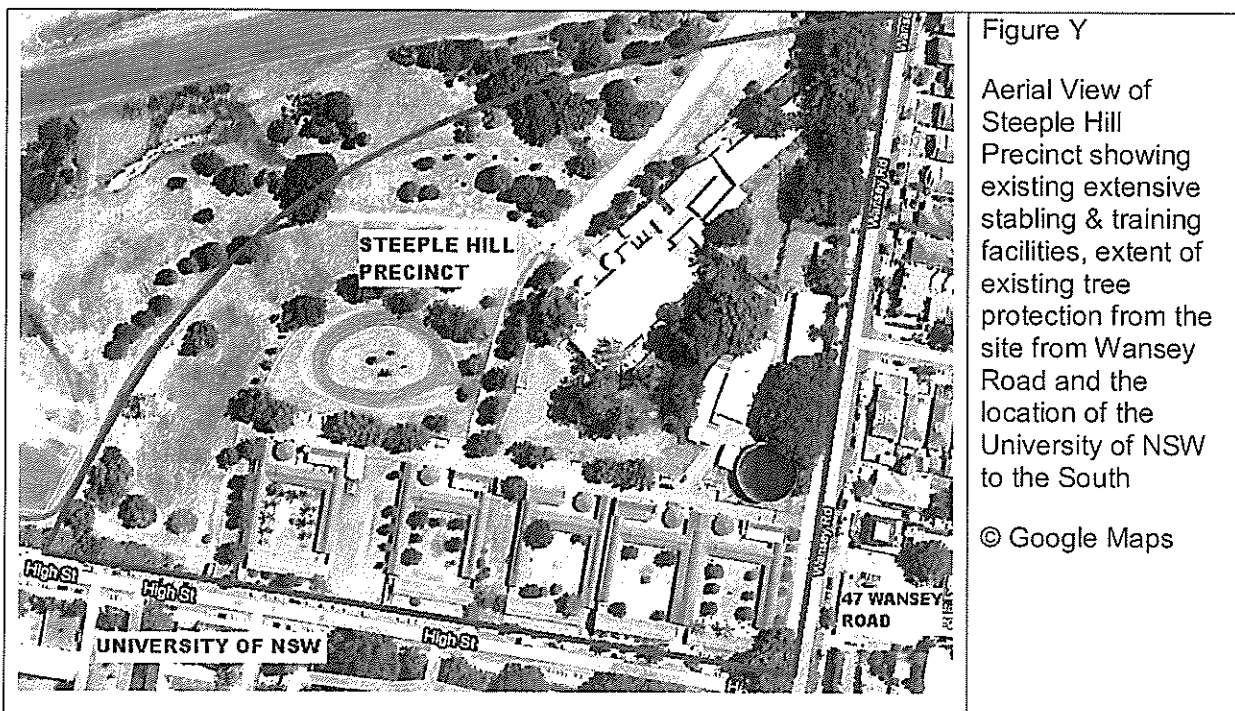


Figure Y

Aerial View of Steeple Hill Precinct showing existing extensive stabling & training facilities, extent of existing tree protection from the site from Wansey Road and the location of the University of NSW to the South

© Google Maps

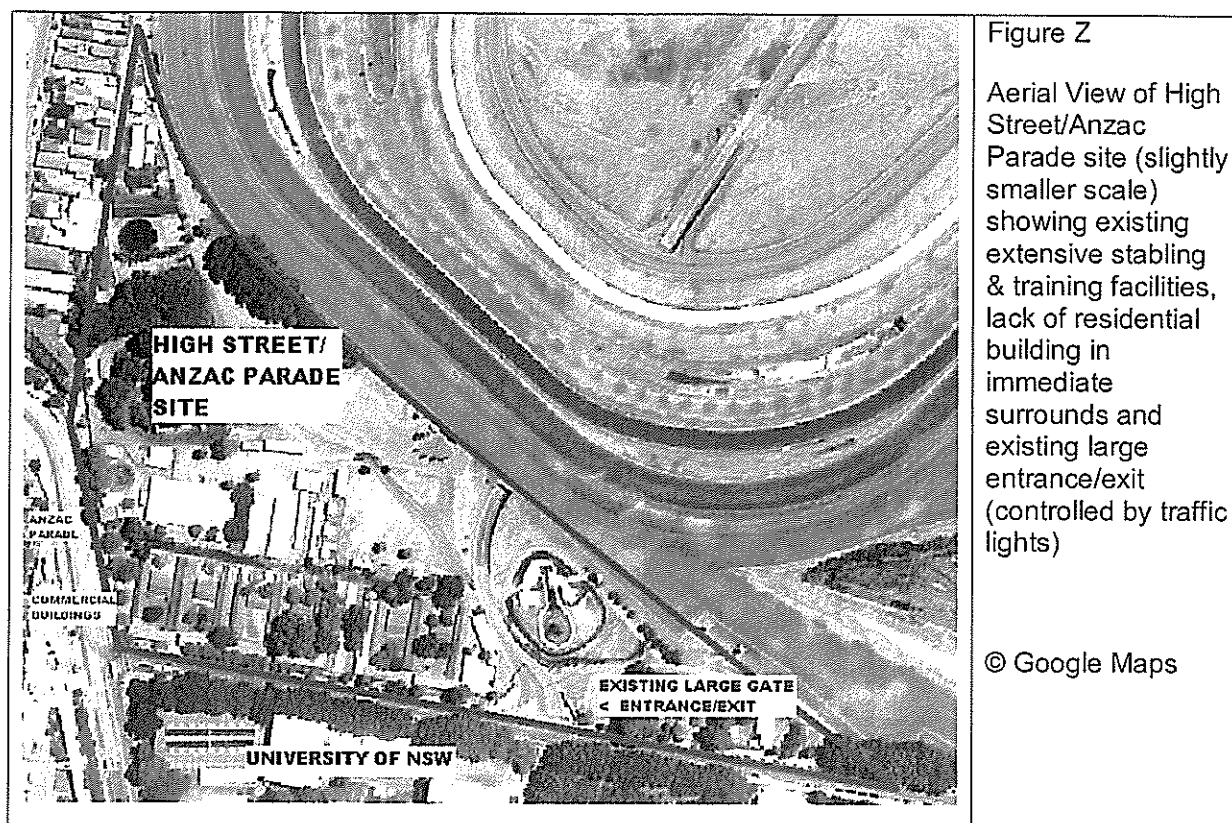


Figure Z

Aerial View of High Street/Anzac Parade site (slightly smaller scale) showing existing extensive stabling & training facilities, lack of residential building in immediate surrounds and existing large entrance/exit (controlled by traffic lights)

© Google Maps

- 3.142 Access to either of these sites would be significantly easier than via the Alison Road/Wansey Road intersection. Indeed, the High Street/Anzac Parade site already has a set of traffic lights to control incoming and outgoing traffic thereto. The traffic consequences to the residences surrounding these alternative sites would be significantly less than the consequences to the residences surrounding the "Stables Precinct" site for the reasons outlined above.
- 3.143 These are both far more appropriate sites, yet no assessment of the suitability of these sites has been undertaken in the EA.
- 3.144 No explanation has been given for this lack of assessment and, moreover, no reason is given in the DCP (which was drafted by the AJC) as to why the construction of any new stabling facilities, which were expressly absent from the subsequent Stage 1 Application, should be located on the "eastern side" of the Racecourse. Although, it is notable that the Council wishes to develop both the High Street/Anzac Parade site and the Steeple Hill Precinct as commercial/residential development (as outlined in further detail below). The Council clearly has a self-interest in approving the Development so as to be located at the "Stables Precinct".

AJC's comments about siting

- 3.145 In the AJC's 20 October 2010 reply, it is stated:

It is not possible to upgrade the existing facilities as the horses are in residence and we have no other facilities to which the horses could be moved while any works take place. Therefore a new facility is the only option.

- 3.146 These statements are both incorrect. Prior to the preparations for the World Youth Day celebrations at the Racecourse in 2008, horse stabling and training activities were not

possible at the Racecourse for some months. As such, the AJC transferred the horses stabled at the Racecourse to its other racecourse at Warwick Farm⁶⁶. There is no reason why such a transfer could not occur again during construction of the Development, to the extent that it is needed, on the High Street/Anzac Parade site.

3.147 In the AJC's 20 October 2010 reply, it is also stated:

There is no other location capable of housing the facility.

3.148 This statement is also incorrect. As can be clearly seen from Figures M, Q, Y and Z above, both the both the High Street/Anzac Parade site and the Steeple Hill precinct are both larger and far more suitable as sites for the Development than the "Stables Precinct" site. Indeed, the High Street/Anzac Parade site already houses stable blocks with similar footprints to those proposed by the Development and contains a swimming pool for horse training. This is the ideal location for the Development, to the extent it is needed.

3.149 Alternatively, the Steeple Hill precinct is also entirely capable of housing the Development.

Failure to Indicate Development in Stage 1 Application

3.150 In *Anglican Church Property Trust v Sydney City Council* [2003] NSWLEC 353, the Land and Environment Court determined how much detail should be provided in a Stage 1 application of a multi-stage application. The Court held⁶⁷ that:

...in multi-stage applications the information provided in Stage 1 should respond to all those matters that are critical to the assessment of the proposal...

In our opinion, two building envelopes, within which buildings of any shape or design might emerge, are not sufficient to make a proper assessment.

3.151 As outlined in the DCP, the development of the Racecourse is a multi-stage development. There was no mention made in the Stage 1 Application that the AJC would be seeking to submit an application in respect of the Development. In fact, the proposed construction of the "New Grounds Maintenance Shed" clearly suggested instead that no development other than the construction of the "New Grounds Maintenance Shed", and certainly not a development to the size of the Development, would take place on the "Stables Precinct" site.

3.152 It is of note that Stage 1 Application was submitted on 18 July 2007 after the publication and adoption of the DCP on 12 June 2007. There was, therefore, no reason why the Development could not have been included in the Stage 1 Application.

3.153 The Stage 1 Application therefore did not "*respond to all those matters that are critical to the assessment of the*" development proposal of the Racecourse. It was, instead, deficient and misleading. Had the possibility of the Development been included in the Stage 1 Application, as it should have been, the Owners of 108 Alison Road would have taken the opportunity to object to the Stage 1 Application at the time it was exhibited. This opportunity has been eradicated due to the failure of the AJC to include all critical matters in the Stage 1 Application. The (current) Application must therefore be rejected.

⁶⁶ <http://www.ajc.org.au/warwick-farm/page.aspx?p=96>

⁶⁷ At paragraph 59

Development Contrary to Specialised Centre Paper

3.154 Two of the stated aims of the Specialised Centre Paper⁶⁸ in respect of the Racecourse are to preserve the:

- (a) views across the Racecourse from Alison Road; and
- (b) the iconic landscape.

3.155 Another aim⁶⁹ is to ensure that, on the Racecourse:

Future development fronting Alison Road should ... preserve the wide views from the street into the racecourse

3.156 Also, in respect of any building height of buildings to be built on the Racecourse on particular frontages thereof, it is stated⁷⁰:

Alison Road: flexible based on design excellence and consideration of views, heritage and amenity factors

3.157 These aims are in direct conflict with the Development. As you will see from Figures F and H above, the Development will clearly obstruct views across the Racecourse from both 108 Alison Road and Alison Road generally for both vehicular and pedestrian traffic coming from Randwick Junction. If the Application is approved, therefore, the Council will be acting in contrary to, and against the objectives of, its own Specialised Centre Paper.

Development Contrary to Development Strategy paper

3.158 It is stated in the Development Strategy paper⁷¹:

Lifestyle, Culture and Social Cohesion

As knowledge is embodied in individuals, it is vitally important for regions to be able to attract and retain skilled workers. Achieving this ultimately relies on more than just employment opportunities, business subsidies and so on. Quality of life and personal development opportunities need to be afforded to these sophisticated 'knowledge workers'.

The emergence of the knowledge worker has reaffirmed 'place' as a driver of local and regional competitiveness. Knowledge workers need to be in an environment that is appealing to them, and which nurtures their growth and development. They effectively make lifestyle choices first and income generating choices second. For many, their chosen occupation does not tie them down to any one particular area.

Knowledge workers rely on those elements of an economy that support and encourage their creativity and the diffusion of ideas. This includes the area's lifestyle attributes including both its built form and its natural environmental attributes. The appeal of a region's 'lifestyle' will be strongly influenced by the quality of and accessibility to local recreation, leisure and entertainment facilities and the depth and strength of the cultural infrastructure. It will also be determined by the area's diversity, the community's acceptance of diversity and its social cohesion.

3.159 As a "knowledge worker" I can confirm that, if the Development is approved, my quality of life will be destroyed. I will be forced to overlook a large, noisy and dusty construction site

⁶⁸ At Part A: page 69, numbers 1 and 2.

⁶⁹ At Part B: page 8.

⁷⁰ At Part B: page 9.

⁷¹ At page 7

for between 18 months to 2 years, followed by a large and industrial-style building complex, in the knowledge that it will be highly unlikely that I would be able to sell my property for anything near the price I paid to purchase it some 4 years ago, given the necessary and substantial reduction in its value. I expect that any reasonable purchaser will not wish to purchase a property that has a panoramic and unobstructed view of, firstly, a large construction site and, secondly, a large and industrial-style building complex.

3.160 The Development would therefore fly in the face of these stated objectives.

3.161 The Development Strategy paper also states⁷²:

Randwick centres have a high level of amenity valued by residents....

The suburbs close to the beach or amenities such as Centennial Park are highly desirable areas. Residents value the natural assets, proximity to the CBD and airport, extensive open space, and low crime rates. The same features also attract many visitors to the LGA. Few other areas can boast this combination of assets. Residents, understandably, react against inappropriate development that they see as threatening local amenity.

3.162 As a resident, I rightly consider that the Development will threaten local amenity. For the reasons outlined above, the Development will cause an unacceptable increase in traffic and traffic danger to and around Alison Road and the Alison Road/Wansey Road intersection, both in respect of construction, operation and raceday traffic.

Noise, Light Spill, Dust and Odour

Noise

3.163 The Development will create a significant intensification of noise from and around the "Stables Precinct" site.

3.164 The existing "Strapping Stables", which have not been used to stable horses, have a capacity of 85 horses, and it is to be noted that this capacity is rarely, if ever, reached at any given time. The stabling of 600 horses⁷³, and the activity of the stabling blocks and training facilities, proposed to commence at 4.30am daily, will significantly increase noise levels from the "Stables Precinct" site.

3.165 Furthermore, the proposed stable blocks are large buildings, which will of themselves not only create a greater noise than that currently created by the "Stripping Stalls", but also will cause a significant reverberation effect of the noises created by horses therein. All noise from the "Stables Precinct" site will not be, in any way, baffled by surrounding foliage, as regards 108 Alison Road. As outlined immediately above, there will not, and cannot, be any adequate tree protection between the Development and 108 Alison Road to baffle such noise.

3.166 Moreover, it is conceded by the AJC in the EA that an increase in traffic will come to the Development at between 4.30 and 5.30am across the Alison Road/Wansey Road intersection. A large proportion of this traffic will be horse vehicles, being articulated, low-geared and slow-moving vehicles, which will necessarily cause greater noise than currently experienced at that time, particularly given the slight dip in the road at the Alison Road/Wansey Road intersection. This is unacceptable, entirely unsuitable for a dense residential area and will destroy the quality of life of the Owners of 108 Alison Road.

⁷² At paragraph 3.6

⁷³ An increase in capacity of 7 times over that the existing "Stripping Stalls", noting that the "Stripping Stalls" are not stables.

Light Spill

- 3.167 Given that 108 Alison Road overlooks the entirety of the “Stables Precinct” site, and therefore would overlook the entirety of the Development, it will be adversely affected by the light spill from the Development. There is no assessment of the light impact upon 108 Alison Road in the EA or annexed Light Spill Report.⁷⁴
- 3.168 Currently, there is no light generated from the “Stables Precinct” site during the night, save for some low-level lighting used from 4.30am onwards to enable the strapping of horses. That is to say, there currently is a view of darkness, which is very appealing. The Development would change this completely and would lead to night time views from the front of 108 Alison Road, being instead of lit industrial buildings as outlined in Figure ZA below. This is unacceptable.

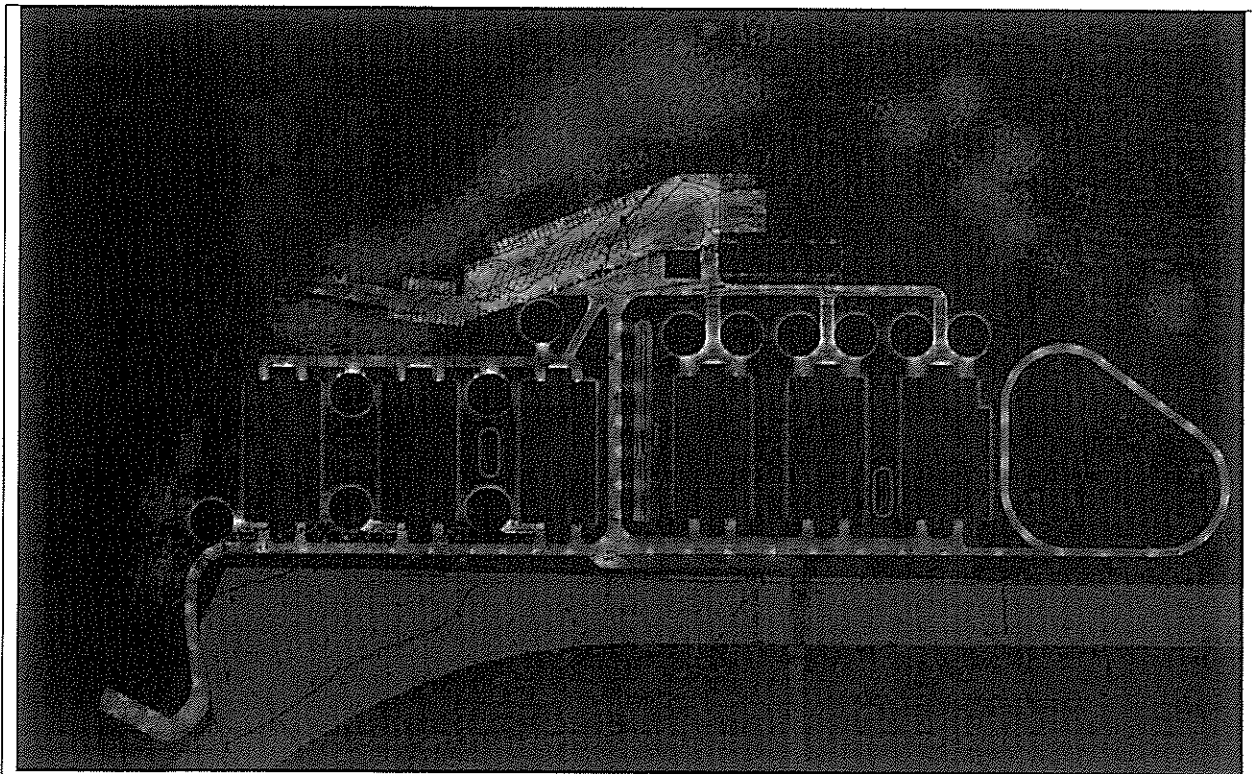


Figure ZA: Night time aerial view of proposed development: Page 7 of Appendix T to the EA

Odour

- 3.169 As stated above, there will be an increase in the number of horses at the “Stables Precinct” site by a factor of approximately 7. Notwithstanding the purported system in place to remove horse waste from the site, it will not be possible for all of the odours of both the horse waste and the horses themselves, along with the odour created by the waste produced from the stablehands and strappers to reside at the Development, to be removed. Currently, there is little odour, given the use of the “Stripping Stalls” does not involve stabling, usually concludes by 9.00am and is limited to a small number of horses.

⁷⁴ At Appendix T of the EA

Dust

- 3.170 The dust generated by the operation and construction of the Development would necessarily be greater than the dust currently produced by the use of the "Stripping Stalls" at the "Stables Precinct" site.
- 3.171 The trees proposed to be planted along the boundary of the Racecourse at Alison Road would be insufficient, in terms of height, volume and nature to stop dust from blowing into 108 Alison Road. As it stands, dust is already blown from the "Stables Precinct" site and the Racecourse to 108 Alison Road. This would only increase with the proposed changed and intensified use of this site.
- 3.172 The quality of life enjoyed by the Owners of 108 Alison Road, and their economic welfare⁷⁵, will necessarily and significantly decrease due to the increased noise, light spill, odour and dust to be created by the Development and the change/intensification of the Development. The Application must therefore be rejected.

Strain on Existing Amenities

- 3.173 As I understand it, there is no, or insufficient for the purposes of the Development, existing sewerage or significant water access at the existing "Stables Precinct" site. Given that the proposed stable blocks are to house a number of stable hands and strappers, clearly access to sewerage and water mains will be required. This is outlined in the Utilities Infrastructure Report annexed to the EA.⁷⁶
- 3.174 As it stands, the existing sewerage pipe that services the Alison Road/Wansey Road intersection area is archaic and, as I understand it, already in excess of its optimal capacity. Therefore, the addition of further, significant water and sewerage access to the Development will cause an unacceptable strain on the services.

Wansey Road Bias

- 3.175 As stated above, the residential buildings in the vicinity of the "Stables Precinct" site that have been deemed in the EA and Visual Impact Assessment report annexed thereto to be "key buildings" for the purposes of the impact of the Development, are properties along Wansey Road. As also stated above, the view of the Development from the Wansey Road properties would not be as significant or unobstructed as that from 108 Alison Road; 108 Alison Road is the property that would suffer the worst of the visual impact of the Development.
- 3.176 However, a visual impact assessment, as well as noise, odour, light spill and from the Wansey Road properties has been included in the EA and Visual Impact Assessment report and significant discussions have taken place between the AJC and the residents of Wansey Road to determine what steps the AJC can take to ameliorate the impact of the Development upon them⁷⁷.
- 3.177 No such discussions have taken place with the Owners of 108 Alison Road or, as far as I am aware, any of the residents of the properties on Alison Road that border the "Stables Precinct" site.
- 3.178 Furthermore, the AJC has sought to placate the residents of Wansey Road by proposing that no heavy traffic to the Development will approach the Development along Wansey

⁷⁵ For the purposes of section 5(a)(i) of the EPAA

⁷⁶ At Appendix W

⁷⁷ Most notably, a meeting on 22 August 2010.

Road, that is, it is proposed that all heavy Development traffic will enter Wansey Road from the Alison Road/Wansey Road intersection.

- 3.179 Whilst this may lessen the impact of the Development on the properties of Wansey Road, it will cause both construction and Development traffic to instead travel along Alison Road and across or through the Alison Road/Wansey Road intersection. Indeed, at the 5 October 2010 meeting, Mr Seward of the AJC apologised to me for this increase in traffic.
- 3.180 This reasonably transparent attempt to placate certain residents affected by the Development is not only abhorrent, but also it is likely to have little positive effect on the devastating impact that would be caused by the Development on these residents. Furthermore, it has also failed to in any way deal with the impact of the Development on the residents of Alison Road and the Owners of 108 Alison Road.

Construction

- 3.181 As stated above, Urbis and representatives of the AJC have indicated to me that the construction of the Development would take between 9-12 months to complete. This estimate is, to be blunt, fanciful.
- 3.182 As indicated in the EA, the Development is a large project, which contains a number of differing elements and internal and external finishes. It is unlikely that the development would be practically complete, let alone actually complete, within 18 months of breaking ground. I estimate actual completion would take 2 years. In that period the residents of properties surrounding the "Stables Precinct" site would have to endure a large scale construction site in their vicinity, a site over which the Owners of 108 Alison Road, would have unobstructed front views. This is entirely unacceptable and would adversely impact upon the value and saleability of our properties.
- 3.183 Furthermore, as you will be aware, the noise produced by a construction site is of high volume. The proposed hours for constructions works of the Development are:
- (a) 7am to 6pm on Mondays to Fridays;
 - (b) 8am to 1pm on Saturdays.
- 3.184 To have to endure construction works noise for a period of between 18 months and 2 years, from 7 or 8am for 6 days a week is entirely unacceptable and will entirely destroy the quality of life for the Owners of 108 Alison Road. A number of the Owners of 108 Alison Road are in residence at their properties throughout the duration of the proposed construction works hours of the development during the week; the remaining Owners of 108 Alison Road will likely be in residence during weekends. Again this is entirely unacceptable and will adversely impact upon the value and saleability of our properties. This is in breach of, *inter alia*, section 5(a)(i) of the EPAA.
- 3.185 Moreover, as outlined above, such a large scale construction will require the services of a large amount of various tradesman, and large vehicles. Given the proposed heavy traffic restrictions along Wansey Road, all of the large construction vehicles will have to access the "Stables Precinct" site through existing Gate 8 on Alison Road and through Alison Road/Wansey Road intersection. This will lead to a significant amount of further traffic and traffic backlog caused by the need for large vehicles to turn left from Alison Road. I also anticipate that a number of the construction vehicles will seek to u-turn through the Alison Road/Wansey Road intersection to gain access to the "Stables Precinct" site via Gate 8.
- 3.186 As stated above, the Alison Road/Wansey Road intersection is already a traffic and accident black spot. 18 months to 2 years of heavy construction traffic through and

across the Alison/Wansey Road intersection on a daily basis will lead to a number of further accidents and significant traffic delay for motor users and commuters.

- 3.187 The Construction Management Plan annexed to the EA⁷⁸ does not adequately assess any of these issues. As such, the Application must be rejected.

4. DEVELOPMENT INTENDED TO BE A PART 3A APPLICATION

- 4.1 It is clear that the AJC has expressly sought to submit an application for a development that, at least on its face, appears to have a capital investment value of over \$30 million, solely to attempt to ensure that the Development is assessed under Part 3A, as opposed to under Part 4, of the EPAA .
- 4.2 However, as outlined above, the stable blocks that form the bulk of the Development are not required. The volume horses set to be stabled in the Development is 600; the existing stabling capacity at the Racecourse is for 590 horses. Indeed, in the EA⁷⁹, the AJC concedes that *"the stables development will generally result in a like-for-like volume of stabling facilities..."*.
- 4.3 Given the negligible capacity increase, the better proposal would be for the AJC to seek to upgrade/redevelop its existing facilities at both the High Street/Anzac Parade site and Steeple Hill precinct, to the extent this is required (which has not been adequately demonstrated by the EA). This has not been assessed as an option in the EA, albeit is the most suitable option. It is notable that the High Street/Anzac Parade site and Steeple Hill precinct have been earmarked by the Council as sites for future, and significant, development (as outlined in further detail below).
- 4.4 However, the costs of such an upgrade would likely fall below the \$30 million capital investment value threshold of clause 15 of Schedule 1 to SEPP⁸⁰, to the extent that is the applicable benchmark. This would necessarily mean the Application would be assessed under Part 4 of the EPAA (as it should be in any event for the reasons outlined above).
- 4.5 As you will be aware, it is far easier for a developer to obtain approval for an application made under Part 3A, as opposed to Part 4, of the EPAA. As you will be also aware, nearly all of applications made under Part 3A of the EPAA are approved⁸¹, on the basis that there are less prescriptive requirements under Part 3A than under Part 4 of the EPAA. For example, there has been an effective neutering of community rights in respect of any development that falls under a Part 3A of the EPAA. Indeed, at the 5 October 2010 meeting, the representatives of both the AJC and Urbis, the agents of the AJC, acted as if the Application had already been approved⁸².
- 4.6 It was not the intent of Part 3A of the EPAA to encourage organisations to increase the value of proposed developments merely to bypass more stringent planning requirements. As you will see from Annexure 2 hereto, the AJC has refused to indicate where the funds for the Development are to be derived. I therefore ask you to provide confirmation of the funder of or source of funds for the Development.
- 4.7 Furthermore, it is entirely transparent that the AJC has sought to now press for the Development, which was not raised in the Stage 1 Application (although it could and should have been included therein), due the high possibility of a change of Government at the impending State election in March 2011. The New South Wales Liberal party has

⁷⁸ At Appendix P

⁷⁹ At page 2 of the Appendix E to the EA.

⁸⁰ See paragraph 1.1 above

⁸¹ 295 of the 296 applications made under Part 3A of the EPAA in 2007-2008 were approved

⁸² A representative of Urbis apologised to me for the Development.

openly committed to repealing Part 3A of the EPAA if elected at the next State election. Due to the high possibility of a change of Government at the election and the reasoning behind the timing and push for the Development and Application by the AJC, the Council should, at least, delay the assessment of the Application until after the next State election, if not reject the Application outright now, for the reasons outlined herein.

5. INTEREST OF DOP AND COUNCIL IN APPROVAL OF EA

5.1 The two bodies that are authorised to assess the Development, being the DoP, and via delegation, the Council, both have a vested interest in approving the Application and EA. As such, any assessment of the Application, EA and the Development is not at arm's length and subject to a significant conflict of interest and bias. If the Application is approved, there will be an implication of collusion between the DoP, the Council and the AJC.

5.2 This is on the basis that:

- (a) The Council has a self-interest in approving the Development on the "Stables Precinct" site, as opposed to the High Street/Anzac Parade site or the Steeple Hill precinct, as in respect of:
 - (i) the High Street/Anzac Parade site; the Council wishes for this site to be developed as commercial and/or residential buildings (**Anzac Parade development**), in line with the objectives of its own Specialised Centre Paper and Development Strategy paper. This is clear from:
 - (A) Point 4 on page 69 of Part A of the Specialised Centre Paper which shows development on that part of the High Street/Anzac Parade site between Doncaster Avenue and High Street:

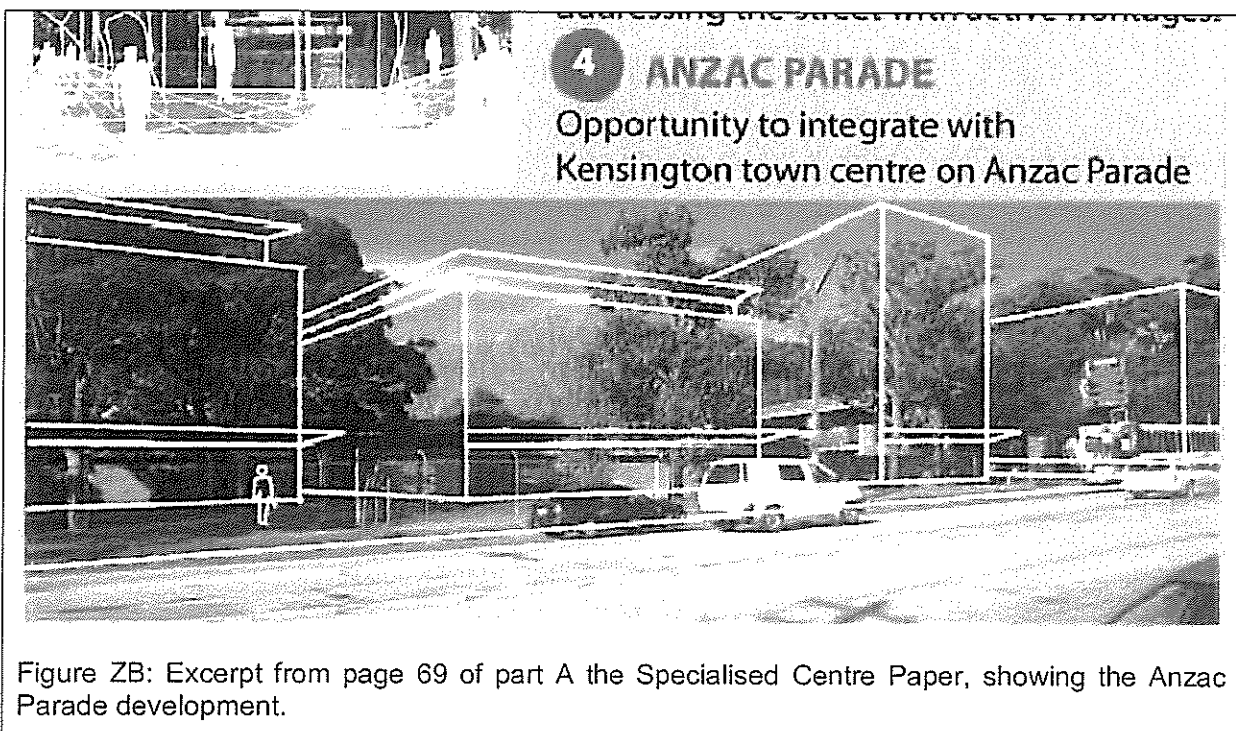


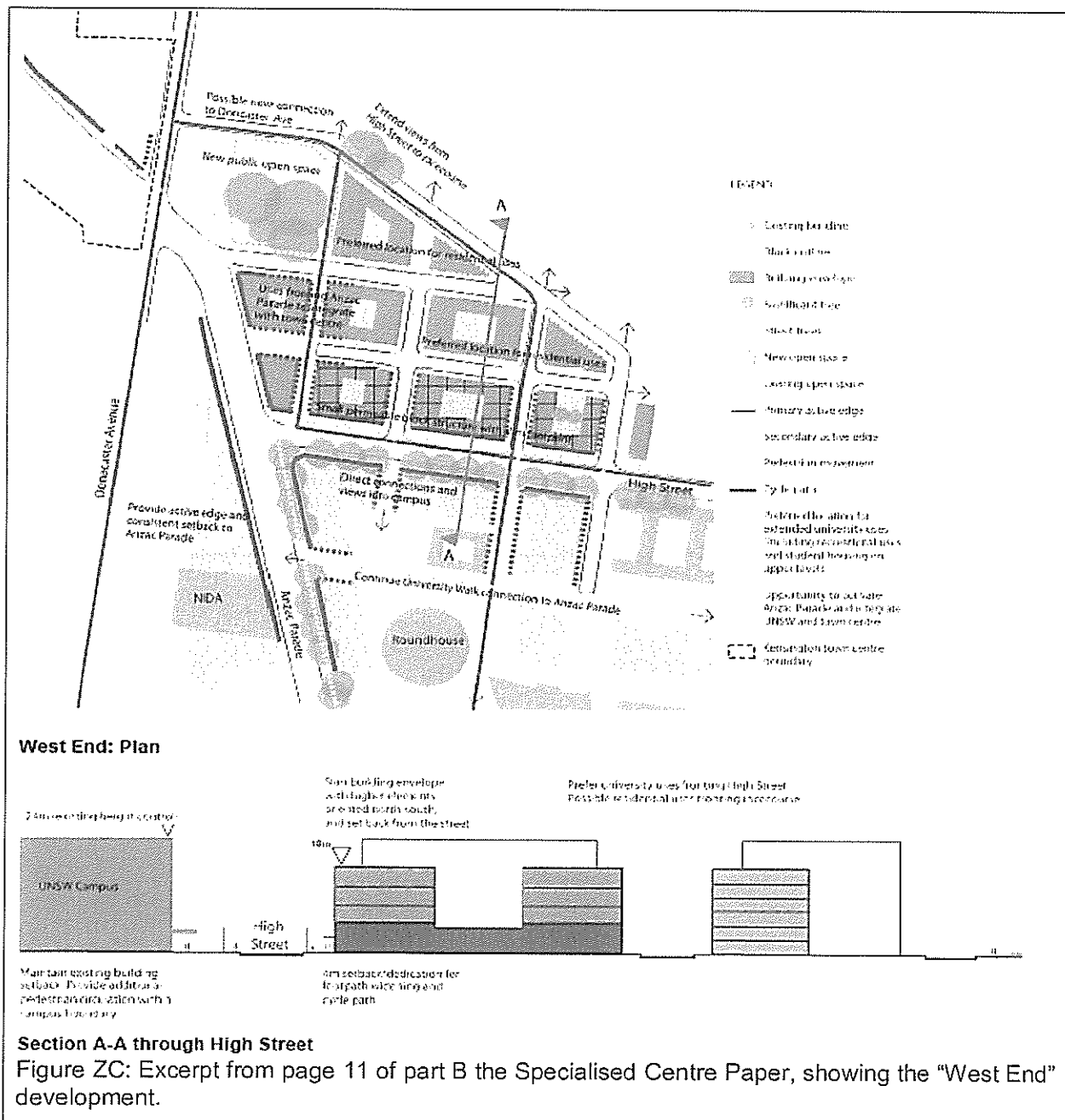
Figure ZB: Excerpt from page 69 of part A the Specialised Centre Paper, showing the Anzac Parade development.

- (B) Page 10 of Part B of the Specialised Centre Paper, which outlines the Council's desire to create a new development area known as "West End". The West End is the majority of the High Street/Anzac Parade site, and the Council's plan for this site is as follows:

The intersection of Anzac Parade and High Street is currently unobtrusive and modest, framed by low scale, inward-looking buildings. With the proposed relocation of existing stabling and training activities from here to the north-eastern part of the racecourse site, this corner can contribute to the Centre through better integrating with surrounding uses and providing an active, vibrant gateway and spine to the Centre.

It is clear from this statement that the Council's plans are entirely dependent upon the approval of the Development. Via delegation, the Council is the assessing authority for the Development. This is a clear conflict of interest.

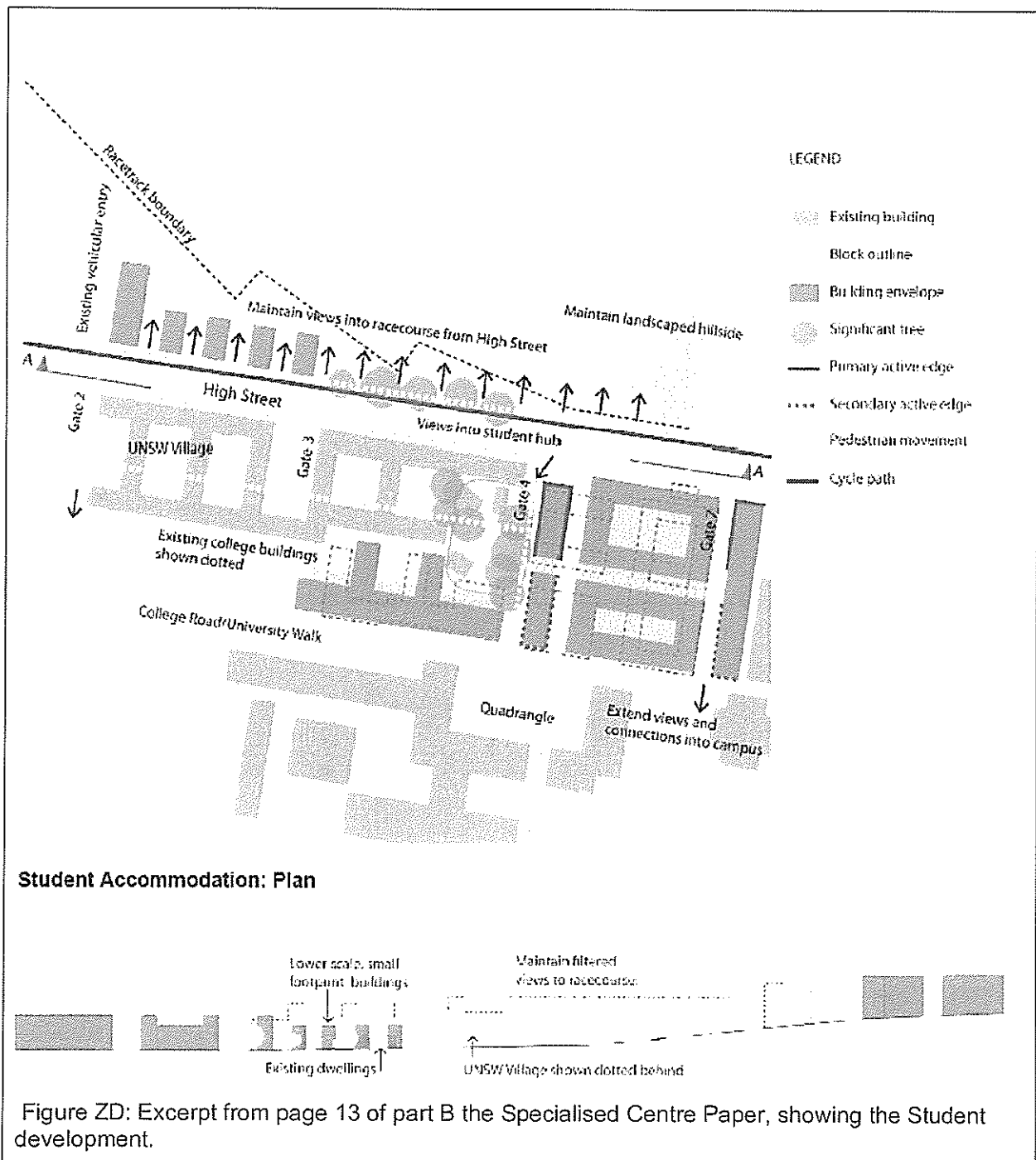
Page 11 shows the extent of the "West End" development, being a removal of the existing stabling facilities at the High Street/Anzac Parade site to be replaced by a significant development:



- (C) Page 12 of Part B of the Specialised Centre Paper, which outlines the Council's desire to create a new student accommodation for the University of New South Wales on that part of the High Street/Anzac Parade site not taken up by the "West End" Development (**Student development**):

Investigate possible student and/or key worker accommodation/facilities on the north side of High Street on the Racecourse site, at the location of existing residential buildings. Investigations should confirm the racecourse's access and boundary requirements in this area, where the track lies close to High Street.

This is supported by a drawing of the proposed development:



It must also be noted that the proposed Student Development, which is to include 6 storey university/research buildings, will be entirely visible, and therefore impact upon the views, from 108 Alison Road. I also understand that an area of public open space is proposed to be created behind the Student Development, with "views to racecourse". I expect that the AJC will oppose the creation of any such space, as it will necessarily enable people to watch race on the Racecourse without paying any admission charge.

- (D) Page 35 of the Development Strategy paper, which was published in March 2009, states:

Initiative 2.3 Develop design principles for key development opportunity sites, including where appropriate, more detailed controls to inform future land use planning and urban design outcomes (see Figure 5)

Figure 5: Education and Health Area around the Racecourse

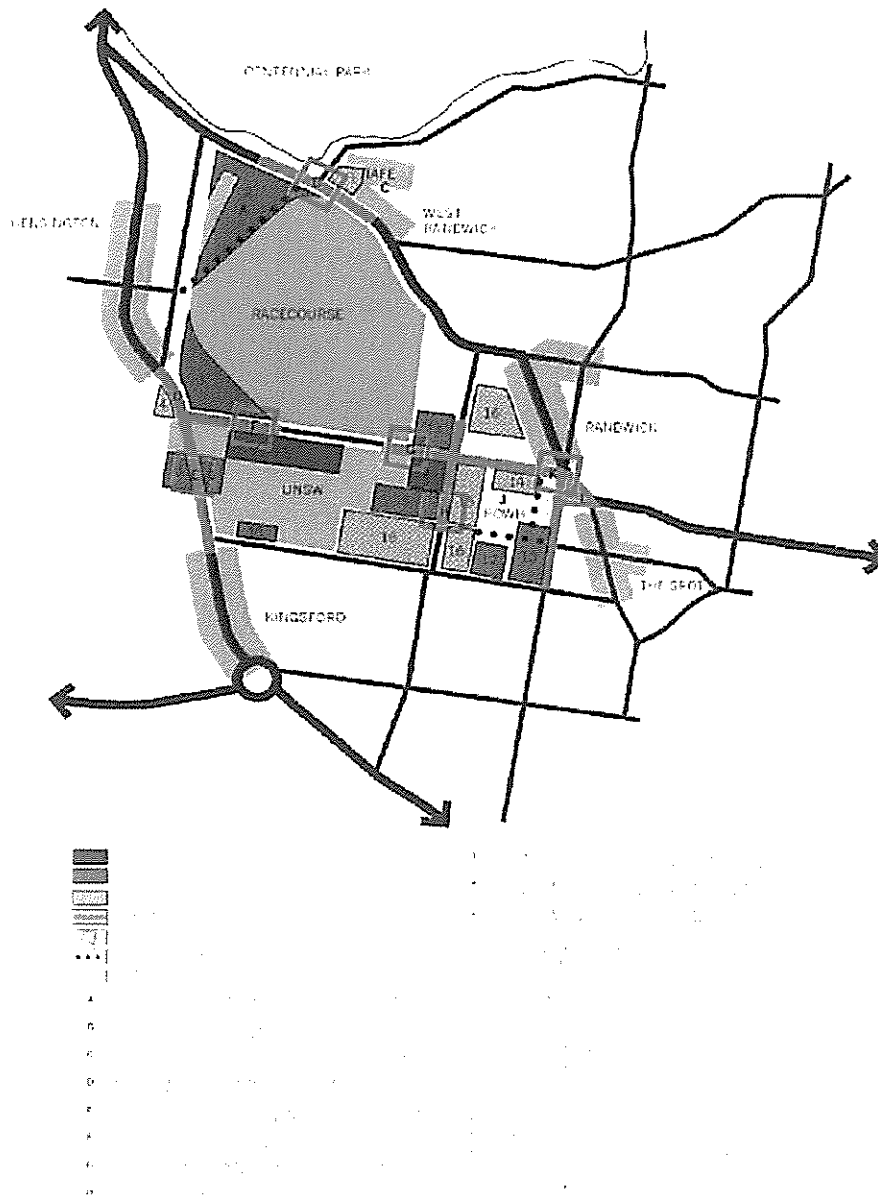
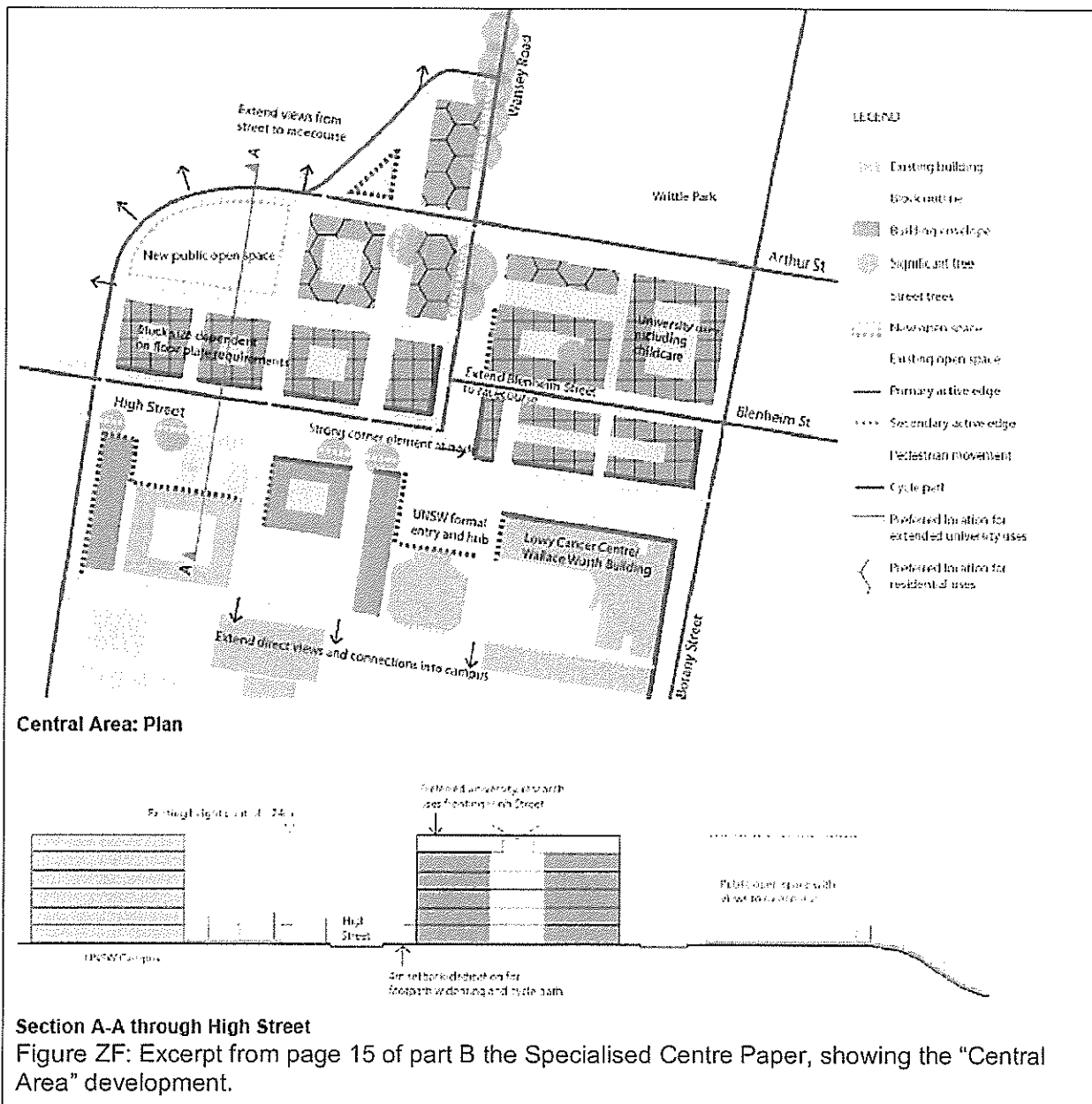


Figure ZE:

Excerpt from Figure 5 of the Development Strategy paper, showing "key development sites" on and around the Racecourse. The High Street/Anzac Parade site is at figure 3, noted as a "medium term" area of potential development.

- (ii) the Steeple Hill precinct; the Council wishes for this site to be developed as commercial and/or residential buildings in line with the objectives of its own Specialised Centre Paper. This is clear from Page 14 of Part B of the Specialised Centre Paper, which outlines the Council's desire to create a new development area known as "Central Area". The Central Area is the majority of the Steeple Hill precinct, and the Council's plan for this site is as follows:

This area contains a formal entry to UNSW, and the location of the Chancellery and ceremonial and public uses such as graduations and performances. It also houses a cluster of education and research uses with strong links to the Health Campus. It will remain a major access point to UNSW, and the location of bus stops generating a high level of pedestrian activity. With the proposed relocation of stabling and training activities on the racecourse, and possible redevelopment on the block bound by Wansey Road, Botany and High Streets (much of which is owned by UNSW), this area can make a stronger and more active contribution to the Centre.



Section A-A through High Street

Figure ZF: Excerpt from page 15 of part B the Specialised Centre Paper, showing the "Central Area" development.

It is also clear from this statement that the Council's plans are entirely dependent upon the approval of the Development. Via delegation, the Council is the assessing authority for the Development. This is a clear conflict of interest.

It is stated further on page 14 of Part B of the Specialised Centre Paper:

Provide potential to extend university functions to the racecourse High Street frontage, focusing on research, academic and conference/accommodation uses needing a larger floor plate than is available on existing university properties. Include a diverse range of housing, focusing on affordable options for students and key workers.

As shown at Figure ZF above, Page 15 of Part B of the Specialised Centre Paper demonstrates the extent of the "Central Area" development, being a removal of the existing stabling facilities at the Steeple Hill precinct site to be replaced by a significant development

The Council and has already taken steps to protect its position in respect of its desired development of the High Street/Anzac Parade site and Steeple Hill precinct by approving the DCP, in which it is observed ⁸³ that "*Modern stabling and training facilities are to be concentrated in the Steeple Hill and Bull Ring Precincts*". There is no reason given in the DCP as to why modern stabling facilities should be concentrated in the Steeple Hill precinct and "Stables Precinct" site (Bull Ring Precinct).

It also intends to introduce a new Local and Environmental Plan to rezone the High Street/Anzac Parade site and the Steeple Hill precinct to have "*additional permissible uses*" and increased building height allowances so as to allow the Anzac Parade development and the Steeple Hill development to proceed.⁸⁴

Given the proposed size and capacity of the Development, the High Street/Anzac Parade site would appear to be, by far, the most appropriate site for a stables upgrade or redevelopment. The Council's statement in the DCP is therefore confusing and raises the perception of an agreement already having been reached between the AJC and the Council in 2007 in respect of the Anzac Parade development. Indeed, the documents produced by the Council since then have all shown that the High Street/Anzac Parade site is to be redeveloped for commercial and/or residential purposes, and it now wishes to rezone both this site and the Steeple Hill precinct. Please provide details of what discussions and/or agreements have taken place between the Council and the AJC in respect of the Anzac Parade development, the Steeple Hill development and the Development.

- (b) If approved, the Development may improve the value of the Racecourse. The New South Wales Government is the owner of the Racecourse. The DoP and Council, as agencies of the New South Wales Government, therefore have a self-interest in approving the Development; and
- (c) The New South Wales Government, through Racing NSW, is now funding a significant upgrade to the grandstand at the Racecourse, to the value of \$150 million. The AJC has indicated that the Development is required so as to sit with this upgrade to the grandstand. The DoP therefore has a self-interest in allowing the Development to be approved.

⁸³ At page 8, paragraph 3.1.e.

⁸⁴ As outlined on page 29, 30 and 32 of Part B of the Specialised Centre Paper

- 5.3 Neither the Council nor the DoP can objectively assess the Application and the EA. An independent agency, with separate terms of reference, should therefore be commissioned to undertake any assessment. If an assessment is made by either the Council or the DoP, such an assessment will be perceived to be, if not actually, undertaken on the basis of a self-interest, with bias and one not made at arm's length.

6. CONCLUSION

- 6.1 It is clear from the above that:

(a) The Application, EA and Development:

- (i) must not be assessed under Part 3A of the EPAA;
- (ii) are in breach of the EPAA, EPAA Regulation, ISEPP, the LEP and the DCP and otherwise do not satisfy the DGRs;
- (iii) undermine the objectives of the Specialised Centre Paper;
- (iv) are in breach of the principles outlined in *Tenacity v Warringah* [2004] NSWLEC 140; and
- (v) are otherwise misleading and deficient, particularly in that the EA fails to make any Visual Impact Assessment of the Development from 108 Alison Road or any adequate traffic assessment in relation to the increased Construction and Development traffic;

(b) The Development is being entirely funded by either:

- (i) the sale or annexure of the existing sites of the stables at the Racecourse on the High Street/Anzac Parade site and the Steeple Hill precinct which make up about 1/5 of the area of the Racecourse; and/or
- (ii) a private investor, for his own purposes,

although I await your confirmation of this;

- (c) The Development would be better-situated for all relevant reasons at the High Street/Anzac parade site or Steeple Hill precinct;
- (d) The Council and DoP have a self-interest approving the Application, and the DCP contains directions that meet the Council's purposes for the Anzac Parade and Steeple Hill developments. There has been an utter lack of transparency in the dealings between the AJC, Council and DoP to the public; and
- (e) The Development will cause the Owners of 108 Alison Road to suffer a significant decrease in the quality of their life and the value and saleability of their properties.

- 6.2 For these, and all of the other reasons outlined above, the Application and EA must be rejected.

- 6.3 I look forward to your confirmation of the same following the conclusion of the exhibition period for the EA on 12 November 2010.

- 6.4 I fully expect you to receive a cursory response to the points raised in this objection from Urbis/the AJC, by reference to the matters already raised in the EA. This would be entirely unsatisfactory and insufficient to satisfy the points raised herein. To the extent the Council not conflicted from making an assessment of the Application, which it clearly is, it must undertake a more detailed assessment of the Development and the Application generally,

based on the points raised herein, rather than rely on any response from the AJC based on the contents of the EA, which are, in general, unfounded, grossly inaccurate, deficient and misleading.

- 6.5 If the Application and EA are not rejected, then the Owners of 108 Alison Road will have no alternative but to issue proceedings against the AJC, the Council and, if necessary, the Director-General, and seek to injunct the AJC from proceeding with the Development and obtain a judicial review of or determination of any approval of the Application by the Council on behalf of the Director-General.

I look forward to hearing from you.

Yours faithfully



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