
Bayside Planning Panel

13/02/2018

Item No.	6.3
Application Type	Development Application
Application Number	DA-2017/288
Lodgement Date	6 March 2017
Property	Suite 1, 152 Ramsgate Road, Ramsgate Beach
Owner	Kaka Property Investments Pty Ltd
Applicant	Ingham Planning Pty Ltd
Proposal	Extension of trading hours of approved commercial / retail tenancy
No. of Submissions	25 individuals / couples objected to the proposal (including the 10 signature petition), and two (2) letters of support were received.
Cost of Development	Nil
Report by	Pascal van de Walle, Coordinator Development Assessment

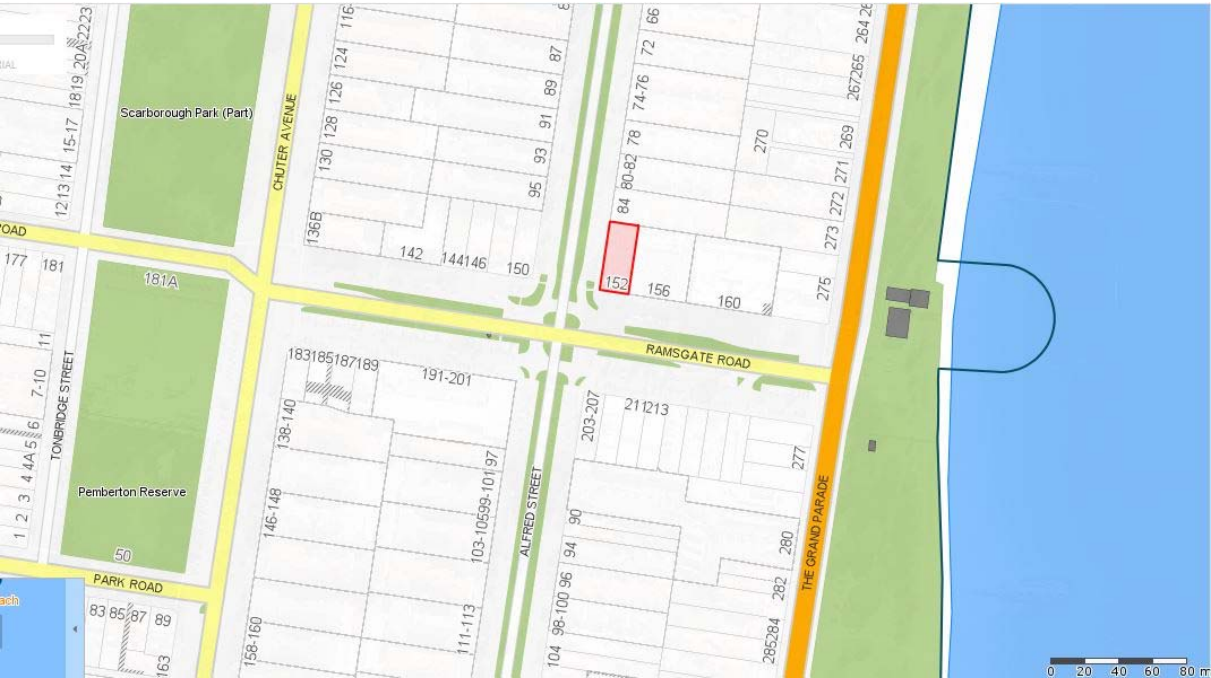
Officer Recommendation

- 1 That this Development Application DA-2017/288 for an extension of trading hours for an approved commercial / retail premises be **APPROVED** by the Bayside Planning Panel pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
 - 2 That the objectors and supporter be notified of the Panel's decision.
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Attachments

- 1 Planning Assessment Report
 - 2 Site Plan
-

Location Plan



BAYSIDE COUNCIL

Planning Assessment Report

Application Details

Application Number:	DA-2017/288
Date of Receipt:	6 March 2017
Property:	152 Ramsgate Road, RAMSGATE BEACH 1 / 152 Ramsgate Road, RAMSGATE BEACH (Lot 11 SP 91996)
Owner(s):	Helm No 7 Pty Ltd Kaka Property Investments Pty Ltd
Applicant:	Ingham Planning Pty Ltd
Proposal:	Extension of trading hours of approved commercial / retail tenancy (Suite 1)
Recommendation:	Approved
No. of submissions:	25 individuals / couples objected to the proposal (including the 10 signature petition), and two (2) letters of support were received.
Author:	Pascal van de Walle
Date of Report:	31 January 2018

Key Issues

This application was previously reported to the Bayside Planning Panel on 14 December 2017. The matter was deferred to allow re-notification and to provide objectors time to lodge their submissions. The Panels determination was as follows:

1. That Development Application DA-2017/288 for an extension of trading hours for an approved commercial / retail premises be DEFERRED to the meeting of the Bayside Planning Panel to be held on 13 February 2018 to allow objectors time to lodge their submissions; and,
2. That the objectors and supporter be notified of the Panel's decision.

The application was re-notified, including notification to all surrounding residents. A total of 13 individual submissions objecting to the proposal, 1 submission in support of the proposal, and a petition containing ten (10) signatures were received in response to the re-notification. The petition was from the owners / occupants of units located within the same building at 152 Ramsgate Road, Ramsgate Beach. Combined with the submissions received in response to the original notification period and the submissions received prior to the previous Bayside Planning Panel meeting, a total of 25 individuals / couples objected to the proposal and 2 submissions were in support of the proposal.

The application continues to seek the extension of trading hours of the approved commercial / retail tenancy to between 7:00am and 10:00pm seven days a week at 152 Ramsgate Road, Ramsgate Beach. Since the previous meeting the Applicant has prepared a Plan of Management to demonstrate

how noise and other potential impacts associated with the operation of the site would be managed and minimised.

Since the previous Panel meeting some signage has been erected, and the internal fit-out commenced, for use of the tenancy as an Optometrist business. Notwithstanding, the applicant has advised Council Officers that they wish to proceed with the application for extended trading hours to provide them with flexibility of the use of the premises.

This amended report provides an updated assessment which is based on consideration of the issues raised in all of the public submissions and the submitted Plan of Management. The report also rectifies inconsistencies and minor errors that were found in the original assessment report.

As demonstrated by the assessment, appropriate trading hours for the approved retail tenancy are still found to be 7:00am to 10:00pm Monday to Saturday and 7:00am to 9:00pm Sunday and public holidays. It is, however, considered reasonable to impose a trial period for the extended trading hours for any 'Food and Drink Premises'. Based on the issues raised and context of the site, a trial period of 12 months is recommended for Food and Drink Premises to allow assessment of potential impacts throughout all times of the year including the busier summer months. Other uses may operate without a trial period.

The proposal is therefore recommended for approval subject to recommended conditions of consent.

Recommendation

1. That this Development Application DA-2017/288 for an extension of trading hours for an approved commercial / retail premises be **APPROVED** by the Bayside Planning Panel pursuant to Section 80(1)(a) of the Environmental Planning and Assessment Act 1979 and subject to the conditions of consent attached to this report.
2. That the objectors and supporter be notified of the Panel's decision.

Background

History

Background / History - Current Application (DA-2017/288)

This application was previously reported to the Bayside Planning Panel on 14 December 2017. The matter was deferred to allow objectors time to lodge their submissions. The Panels determination was as follows:

1. That Development Application DA-2017/288 for an extension of trading hours for an approved commercial / retail premises be DEFERRED to the meeting of the Bayside Planning Panel to be held on 13 February 2018 to allow objectors time to lodge their submissions; and,
2. That the objectors and supporter be notified of the Panel's decision.

The application was re-notified, including notification to all surrounding residents. A total of 13 individual submissions objecting to the proposal, 1 submission in support of the proposal, and a petition containing ten (10) signatures were received in response to the re-notification. The petition was from the owners / occupants of units located within the same building at 152 Ramsgate Road, Ramsgate Beach.

Background / History - Previous Applications

Council's records show that the following applications were previously approved on the site:

- Development Application No. 2015/225 for construction of a seven (7) storey mixed use development, comprising 10 residential units, 1 commercial unit, ground and first floor carparking, demolition of existing buildings and strata title subdivision into 11 lots was approved by Council on 15 July 2015.
- Section 96(1) Application No. 2015/225/A for modification of conditions 39 and 109 relating to planter box soil depth and flood proofing of the car parking level was approved on 28 July 2015.
- Section 96(1A) Application No. 2015/225/B for modification to the approved mixed use building including relocation of mail box, minor increase in height of lift overrun, additional air conditioning units on the roof, associated screening and amendment to conditions relating to storage, carpark clearance height and adaptable unit relocation was approved on 5 August 2016.

Construction of the above development (as modified) has been completed.

Relevant approvals on adjoining and nearby properties include:

- 154-156 Ramsgate Road - on 15 July 2015 Council approved DA-2015/282 on the adjoining properties being for construction of six (6) storey mixed use development comprising 23 residential units, one commercial tenancy, associated car parking and landscaping works, demolition of existing buildings and strata title subdivision.
- 160 Ramsgate Road - on 17 October 2012 Council approved DA-2012/378 being for demolition of the existing structures and construction of a six storey mixed use building, comprising 6 commercial units with 39 residential units above, carparking at ground and basement level and Strata Subdivision into 45 lots.

Proposal

Council is in receipt of a Development Application DA-2017/288 at 152 Ramsgate Road, Ramsgate Beach, which seeks modify the hours of operation for the approved commercial / retail tenancy as follows:

Day	Approved Hours	Proposed Hours
Monday – Friday	7:00am – 6:00pm	7:00am – 10:00pm
Saturday	8:00am – 5:00pm	7:00am – 10:00pm
Sunday	10:00am – 4:00pm	7:00am – 10:00pm

This application does not request approval for any change in use, however given the extended trading

hours it is relevant to consider the potential impacts associated with use of the site.

The original consent for the mixed use building (DA-2015/225) granted approval for use of the tenancy for commercial purposes, subject to compliance with conditions associated with hours of operation, car parking, signage and so on. 'Commercial Premises' in the Rockdale Local Environmental Plan (RLEP) 2011 means any of a business premises, office premises or retail premises, and may include a shop, cafe, restaurant and so on. The applicant originally indicated that it was likely that the premises would be occupied by a restaurant or cafe, and therefore an assessment was carried out on this basis. The premises will now be occupied by an optometrist business, however the applicant has advised Council that the continue to seek the extension to the approved trading hours to provide flexibility for future uses. Consideration has therefore been given to a number of potential uses in the assessment of this application.

Site location and context

The retail / commercial premises the subject to this application is known as Suite 1, 152 Ramsgate Road, Ramsgate Beach. It is the ground floor corner tenancy within the recently completed mixed use building that is located at the north-eastern corner of the intersection of Ramsgate Road and Alfred Street (see **Figure 1**). The tenancy has an internal floor space of 115m².

The overall site being 152 Ramsgate Road is rectangular in shape, with a primary street frontage of 16.695m to Ramsgate Road and a secondary frontage of 40.234m to Alfred Street, resulting in a total area of 682.75sqm. The recently completed development on this site comprises 10 residential units on Levels 1 - 5, a single commercial / retail tenancy at ground floor level, and parking for 17 vehicles.

The site is zoned B4 Mixed Use under the Rockdale Local Environmental Plan 2011 and forms part of the Ramsgate Road commercial precinct. Coles Supermarket and other specialty shops are located on the opposite side of Ramsgate Road, and four cafes and specialty shops are located on the ground floor of the recently completed mixed use development at 160 Ramsgate Road, Ramsgate Beach.

The adjoining properties to the east at 156 Ramsgate Road have also been recently redeveloped for a mixed use development with a similar height as the proposed development (DA-2015/282). The development includes forty (40) units and the premises are now fully occupied.

Further to the east is No. 160 Ramsgate Road, another recently completed six (6) storey mixed use development designed and constructed by the same Developer as the subject site – Helm Pty Ltd.

Villa developments are located immediately behind the site with frontage to Alfred Street, including No. 84 Alfred Street, and detached dwellings within the R4 High Density Residential Zone are located on the opposite (western) side of Alfred Street (No.'s 146-150 Ramsgate Road). Three storey Residential Flat Buildings are also located diagonally opposite the site within Alfred Street, including 95 Alfred Street.

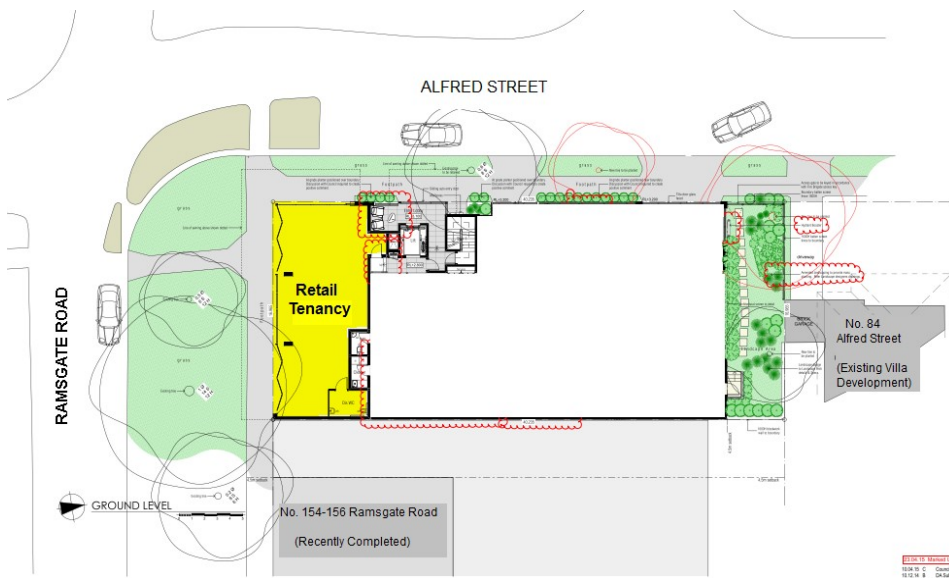


Figure 1 - Site Plan showing location of Retail Tenancy.

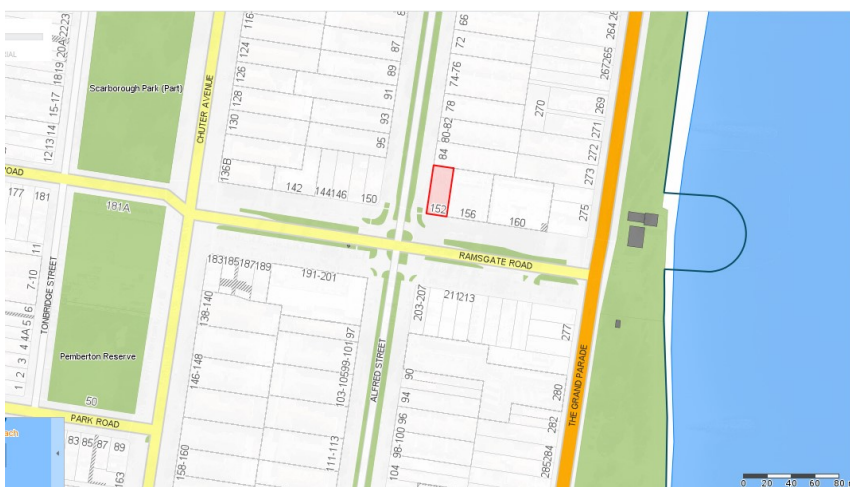


Figure 2 - Site Plan showing site in broader local context.



Figure 3 - Photomontage submitted with the original application (DA-2015/225)

Statutory Considerations

Environmental Planning and Assessment Act, 1979

An assessment of the application has been undertaken pursuant to the provisions of the *Environmental Planning and Assessment Act, 1979*.

S.79C(1) - Matters for Consideration - General

S.79C(1)(a)(i) - Provisions of Environmental Planning Instruments

The following Environmental Planning Instruments are relevant to this application:

State Environmental Planning Policy (Infrastructure) 2007

Clause 101 - Development with frontage to classified road

The proposed development is located on land with a frontage to a classified road i.e. Ramsgate Road. In this regard, clause 101- Development with frontage to a classified road, of the SEPP must be considered before consent can be granted.

The proposal will not involve any changes to vehicular access to the site and the proposal is not for a traffic generating development. As such, the application has been considered in respect to the SEPP and no additional conditions of development consent are required to be imposed in this regard.

Rockdale Local Environmental Plan 2011

Relevant clauses	Compliance with objectives	Compliance with standard/provision
2.3 Zone B4 Mixed Use	Yes	Yes - see discussion
4.4 Floor space ratio	Yes	Yes - see discussion
6.11 Active Street Frontages	Yes	Yes - see discussion
6.12 Essential services	Yes	Yes

2.3 Zone B4 Mixed Use

The subject site is zoned B4 - Mixed Use under the provisions of Rockdale Local Environmental Plan 2011 (RLEP 2011). The approved use of the tenancy is a 'commercial premises' which constitutes a permissible development. The applicant does not intend to amend the approved use. A 'commercial premises' can include a 'business premises', 'office premises' or 'retail premises' which are all separately defined in RLEP 2011 and permit a broad range of uses including shops, food and drink premises, banks, post offices, travel agencies, and hairdressers. The premises will be used as an optometrist business, however the applicant has advised that they wish to retain flexibility of future uses. Therefore consideration has been given to the potential use of the premises as a restaurant or cafe use.

The objectives of the zone are:

- To provide a mixture of compatible land uses.
- To integrate suitable business, office, residential, retail and other development in accessible locations so as to maximise public transport patronage and encourage walking and cycling.

The proposed extension of trading hours for the approved commercial tenancy is not inconsistent with

the objectives of the B4 Mixed Use zone. The proposal does not alter the approved use, and the application has been accompanied by an Acoustic Report and Plan of Management which include measures to minimise impacts associated with a restaurant / cafe use on surrounding residential properties. In addition, recommended conditions are proposed to further minimise impacts as discussed later in the assessment. Based on consideration of the number and content of submissions it is, however, considered reasonable to impose a 12 month trial period for and future Food and Drink Premises use. Other uses may operate without a trial period. Therefore, subject to imposition of recommended conditions, the proposal ensures that a mix of compatible land uses has been provided within the Ramsgate Town Centre and the proposed development is consistent with the objectives of the zone.

4.4 Floor space ratio

The proposal does not result in any increased floor space. The proposal is therefore acceptable with regards to Clause 4.4 of RLEP 2011.

6.11 Active Street Frontages

The Ramsgate Road frontage is identified on the Active Street Frontage map in RLEP 2011. A building has an *active street frontage* if all premises on the ground floor of the building facing the street are used for the purposes of business premises or retail premises. The ground floor of the Ramsgate Road frontage comprises commercial / retail space with a minimum floor to ceiling height of 3.5 metres. The subject application does not propose any works that would compromise the approved developments compliance with this clause. The proposal is therefore considered to provide an Active Street Frontage to Ramsgate Road and therefore satisfies the requirements of clause 6.11.

S.79C(1)(a)(ii) - Provisions of any Draft EPI's

There are no proposed instruments affecting this proposal.

S79C(1)(a)(iii) - Provisions of any Development Control Plan

The following Development Control Plan is relevant to this application:

Rockdale Development Control Plan 2011

The application is subject to Rockdale DCP 2011. A compliance table for the proposed development is provided below:

Relevant clauses	Compliance with objectives	Compliance with standard/provision
4.4.6 Noise Impact - Non-residential	Yes	Yes - see discussion
4.5.2 Social Equity - Equitable Access	Yes	Yes - see discussion
4.6 Shared Parking Concession - Mixed Use	Yes	Yes - see discussion
4.6 Vehicles Enter and Exit in a Forward Direction	Yes	Yes
4.6 Access to Parking	Yes	Yes - see discussion
4.6 Design of Loading Facilities	Yes	Yes - see discussion
4.7 Waste Storage and Recycling Facilities	Yes	Yes - see discussion
4.7 Service Lines/Cables	Yes	Yes
7.4 Ramsgate Beach Commerical Area	Yes	Yes - see discussion

4.4.6 Noise Impact - Non-residential

Part 4.4.6 of RDCP 2011 requires that non-residential development not adversely affect the amenity of adjacent residential development as a result of noise, hours of operation and/or service deliveries.

The premises currently has approval to operate as any commercial, business, office or retail premises between the hours of 7:00am and 6:00pm Monday to Friday, between 8:00am and 5:00pm on Saturday, and between 10:00am and 4:00pm on Sunday.

The applicant originally indicated that the premises would most likely be used as a restaurant or cafe and therefore an acoustic assessment of potential impacts has been submitted for consideration as part of this assessment for the extended hours of operation. The premises will now be occupied by an optometrist business, however as noted previously the applicant wishes to proceed with the current application to ensure flexibility is provided for future uses.

The applicant's DA Acoustic Assessment report prepared by Renzo Tonin & Associates (dated 18 August 2017) considers the potential noise impacts that may result from use of the site for any of the following purposes:

- A licensed café/restaurant;
- A non-licensed café/restaurant; or
- A retail shop

The acoustic assessment of a licensed and non-licensed cafe/restaurant is based on trading hours between 7:00am and 10:00pm, 7 days a week with a 50 seating capacity. The applicant also notes that, in relation to the 1st scenario, that a liquor license approval would be required. This is a separate process from the planning process and would be considered on its own merits. A condition is proposed requiring that a liquor license be obtained if required.

The acoustic report also considers potential impacts resulting from a 'retail shop'. This is considered similar to an optometrist use and the report finds that no additional conditions would be required on such a use.

The Acoustic Report considers potential impacts to the nearby residential premises including 84 Alfred Street, 95 Alfred Street, 150 Ramsgate Road, 152 Ramsgate Road (i.e. the units located in the upper building levels), 154 Ramsgate Road, and 160 Ramsgate Road. It utilises noise monitoring undertaken at No. 152 & 160 Ramsgate Road.

The report considers that the primary aspects of noise emission will be from patrons and background music played through the in-house system. It confirms that any café/restaurant use would utilise the mechanical services plant and equipment which forms a part of the base building design and was assessed as part of the overall building (i.e. DA-2015/225).

The Acoustic report provides a detailed assessment of potential noise impacts, including impacts associated with 50 patrons in the Restaurant Dining Area under the influence of alcoholic consumption. The report provides a range of recommendations, depending on the circumstances of the operations, including the use of acoustically absorptive finishes, specific glazing and keeping some doors closed (for a licensed premises). The report considers that, subject to compliance with recommendations in the report, the proposed uses are predicted to comply with the established noise criteria and therefore,

are deemed acceptable for use during the proposed trading hours. Furthermore, it considers that the use of the premises as a shop would not require any noise mitigation measures.

There are currently numerous businesses within the Centre which have later evening operating hours, including Coles that closes at midnight seven nights and the Shell Service Station immediately adjoining No. 160 Ramsgate Road that closes at 10:50pm. The local Thai Restaurant 'Be My Guest' also closes at 9pm seven nights, and the existing Mr Liquor bottleshop closes at 9pm Monday - Saturday and 8pm on Sundays. In addition, the Ramsgate Beach Bowling Club located 240m to the west is open until 4am daily. Therefore there are other premises that operate similar or longer hours than proposed for this site, however based on current hours for other nearby uses and the context of the locality, it is considered more appropriate that the hours for Sundays be restricted to 9:00pm.

With regards to patrons accessing and leaving the premises, it is considered that impacts can be minimised and managed by way of the submitted Plan of Management (PoM). The PoM will also assist to minimise other potential impacts resulting from the use of the premises, including car parking and mechanical exhaust systems, and a condition is included requiring that operations be carried out in accordance with the PoM. In addition, minor updates are required to the PoM prior to commencement of extended trading hours and this is also included as a recommended condition.

The application and Acoustic Report have been assessed by Council's Environmental Health Team and the key recommendations from the DA Acoustic Assessment report have been included in the draft conditions of consent, including a restriction on seating capacity to a maximum of 50, the provision of acoustically absorptive finishes and other recommended measures from the Acoustic Report. Council's Environmental Health Team have also provided recommended conditions relating to the use of amplified music, live music and exhaust systems, and have recommended that the western doors and some doors to Ramsgate Road be closed after 6pm for a non-licensed restaurant.

In light of the issues raised in the submissions, the number of submissions received and the context of the site, it is considered reasonable that the extended hours be subject to a trial period for any 'Food and Drink Premises'. In this case, a 12 month trial period is considered reasonable to ensure that any Food and Drink Premises will operate through the busier summer months. Other uses may, as noted previously, continue without any restriction and the 12 month trial period for Food and Drink Premises only commences when the premises is first occupied by such a use.

Subject to compliance with the DA Acoustic Assessment report, the Plan of Management and the recommended conditions of consent, acoustic impacts to surrounding and nearby residential premises are considered to be minimised and in accordance with RDCP 2011 and other relevant requirements.

4.5.2 Social Equity - Equitable Access

The tenancy was required to comply with all relevant legislation regarding access under the original consent. The tenancy includes an accessible toilet, and this proposal does not propose any modifications that would affect the tenancies compliance with access requirements.

4.6 Shared Parking Concession - Mixed Use

The commercial tenancy has an area of 115m² and requires the provision of 3 on-site parking spaces for its use as a shop, restaurant / cafe, gym or similar commercial use (i.e. 1 space / 40m²).

The original development DA-2015/225 for construction of the mixed use building was approved on the basis that the commercial premises would be allocated with one (1) dedicated car space and that it

would also share two (2) residential visitors spaces during standard business hours in accordance with RDCP 2011. A positive covenant has therefore been created on the title of the land to ensure that the commercial unit retains use of two (2) visitors spaces between 7:00am to 6:00pm Monday to Friday and 7:00am to 1:00pm on Saturdays.

The requested extension to the hours of operation will therefore result in one (1) on-site parking space being available for the commercial tenancy during the following times:

- 6:00pm - 10:00pm, Monday to Friday;
- 1:00pm - 10:00pm, Saturday; and
- 7:00am - 9:00pm, Sundays.

The site is located opposite the recently upgraded public car parking associated with the Ramsgate Centre, and the surrounding streets in the vicinity of the site permit on-street parking. The applicant has undertaken a parking survey that demonstrates that adequate on-street parking is available in close proximity to the site during the evenings and at various times during the weekends. The survey demonstrates that there is adequate on-street parking available, and the impacts to on-street parking will be minimal. This is contrary to the view of local residents provided in their submissions, who advise that parking is a problem in the locality, and Council's Engineers have requested that the survey be undertaken by a qualified Traffic Consultant. The applicant has now submitted a Plan of Management which include measures to minimise impacts to on-street parking, and a condition is proposed restricting the extended trading hours for a Food and Drink Premises to a 12 month trial period. Therefore, subject to compliance with the conditions of consent, the proposal is considered to be acceptable with regards to car parking.

Further, it is noted that the sharing of visitors parking spaces with commercial operations will be carefully considered with future developments as this application has demonstrated that many businesses no longer have standard hours of operation that would permit sharing of visitors and commercial parking spaces as has been the case historically.

4.6 Access to Parking

A condition is proposed to ensure that the Commercial premises has access to the two (2) shared visitor / commercial parking spaces during the hours provided for in the Positive Covenant.

4.6 Design of Loading Facilities

The application was approved with a shared visitors / loading bay and a condition in this consent requires use of this shared space for loading purposes.

4.7 Waste Storage and Recycling Facilities

Adequate provision of waste storage facilities have been provided within the site for use by the commercial tenancy.

7.4 Ramsgate Beach Commercial Area

Part 7.4 of RDCP 2011 applies to all development on land zoned B4 Mixed Use in the Ramsgate Beach commercial area. Therefore, this section applies to the subject site.

The DCP has identified that *"Ramsgate Beach commercial area is a vibrant local centre situated adjacent to the Botany Bay foreshore"*. In addition, it notes that *"the current lot subdivision, prime beach side location, and generous public domain at Ramsgate Road offers the potential for the Centre to grow as a local centre, providing a greater range of retail services to residents, as well as*

becoming a lively beach side destination".

The objectives of the Ramsgate Beach Commercial Area are:

- To facilitate growth and revitalisation of Ramsgate Beach commercial area which enhances the Centre's commercial functions.
- To provide high quality buildings which create a varied and interesting streetscape which reflects to the beach side location.
- To ensure new development allows significant solar access to Ramsgate Road, and creates a sense of openness in the Centre, allowing distant skyline views from the public domain.
- To protect the amenity of the low and medium residential areas which adjoin the Centre.

The extended trading hours will contribute to creating a varied streetscape that would be considered to enhance and revitalise the Centre's commercial functions in accordance with the objectives and vision for this Centre. Detailed consideration has been given to potential impacts resulting from the extended hours throughout the report. It is not envisaged that the proposal will to have any significant adverse impacts on the amenity of the surrounding residential areas that adjoin the centre subject to compliance with recommended conditions of consent. The proposal is therefore considered to satisfy the objectives of the Ramsgate Beach Commercial Area.

S.79C(1)(a)(iv) - Provisions of regulations

All relevant provisions of the Regulations have been taken into account in the assessment of this proposal.

S.79C(1)(b) - Likely Impacts of Development

Potential impacts related to the proposal have been considered in response to SEPPs, LEP and DCP controls. The impacts that have not already been addressed are as follows:

Odour Impacts

The applicant has confirmed that the exhaust system includes a vent above roof top level. Relevant conditions are also proposed to ensure that the mechanical ventilation system operates in accordance with relevant legislation to minimise odour impacts to surrounding residential residences.

Character / Streetscape

The extended trading hours for the tenancy will slightly vary the streetscape and and may result in a slight change to the character of the area with customers and patrons using the footpaths and their cars at times that were previously less busy. Due to the patron/customer capacity of the tenancy and the sites location within the Ramsgate Town Centre, this is not seen as a significant issue and is seen as something that would be in line with the anticipated uses within a Town Centre. Indeed, many people may welcome the extended trading hours as the tenancy will provide more diversity of uses and activity within the Ramsgate Town Centre.

Safety & Security

The operations will ensure that passive surveillance will be provided for more hours during the day. Appropriate conditions have been recommended to ensure that no incidents related to inadequate security or safety arise from the extension of trading hours. A condition has been imposed to ensure a Plan of Management is prepared and made available to Council before trading commences.

S.79C(1)(c) - Suitability of the site

The relevant matters pertaining to the suitability of the site for the proposed development have been considered in the assessment of the original proposal and again with this proposal. Additional conditions of consent are proposed to further minimise any impacts on neighbouring properties. There are no known major physical constraints, environmental impacts, natural hazards or exceptional circumstances that would hinder the suitability of the site for the proposed development.

S.79C(1)(d) - Public submissions

The development has been notified on two (2) occasions in accordance with the provisions of Rockdale DCP 2011.

A total of seven (7) submissions were received in response to the original notification period, including six (6) objections and one (1) letter of support. Two of the objections were signed by multiple owners / occupiers from within the same strata development.

Following re-notification a total of 13 individual letters and a petition containing 10 signatures were received objecting to the proposed development. One (1) submission was in support of the proposal. The petition appears to have been signed by all occupants / owners of the 10 residential units located within No. 152 Ramsgate Road.

Furthermore, five individual submissions were received following notification of the December Bayside Planning Panel Meeting. Two submissions were from the same person.

In total, 25 individuals / couples objected to the proposal and 2 submissions were received in support of the proposal.

The key issues raised in the additional submissions were the same as those raised in the original submissions, including noise, parking, and character of the northern side of Ramsgate Road. Some additional issues have been raised and all of the issues identified are addressed below.

The issues raised in the submissions are discussed below:

Issue 1 – Character and Streetscape - The proposed hours are excessive and inconsistent with that of the neighbouring building (160 Ramsgate Road) and other developments on the northern side of Ramsgate Road where retail premises' are required to close at 6:00pm. The proposed hours would adversely impact the 'village atmosphere' promoted and created by Rockdale Council at the time and also as promoted by the developer. One resident stated that they do not agree that the area has a boulevard feel due to the fence down the middle of the road and that each side of the road should retain its existing character.

Comment: The original assessment had taken into account the character and quieter nature of the northern side of Ramsgate Road. Redevelopment of the northern side of the street is very recent and has resulted in a significant change in the overall character of Ramsgate Beach. The character of the area is still evolving.

The restriction to hours of operation for No. 160 Ramsgate Road are not a Council imposed restriction. It is understood from the submissions that the restriction to hours of operation at No. 160 Ramsgate Road are site specific and that they are imposed through the Strata By-Laws for that building.

There is no doubt that the nature of the northern side of Ramsgate Road is currently different to the southern side and concerns raised by residents have been given detailed consideration. This northern side is, however, located within the Ramsgate Beach Commercial / Town Centre and has recently undergone transition from low density residential to larger mixed use developments. The Vision for the area, including the northern side of Ramsgate Road, as provided in RDCP 2011 includes the following [report authors emphasis]:

*"Ramsgate Beach commercial area will grow and be revitalised in a way that takes advantage of its unique character, and **become a vibrant, lively and attractive beach side centre**. Redevelopment on both sides of Ramsgate Road which complements the generous and well landscaped public domain will provide a boulevard feel. As well as the redevelopment of older building stock on the southern side of Ramsgate Road, new development on the north side will expand the Centre to create additional commercial opportunities and a 'loop' for pedestrian with improved connection to the foreshore".*

There are currently numerous businesses within the Centre which have later evening operating hours, including Coles that closes at midnight seven nights and the Shell Service Station immediately adjoining No. 160 Ramsgate Road that closes at 10:50pm. The local Thai Restaurant 'Be My Guest' also closes at 9pm seven nights, and the existing Mr Liquor bottleshop closes at 9pm Monday - Saturday and 8pm on Sundays. In addition, the Ramsgate Bowling Club located 240m west of the site is open until 4am daily.

Detailed consideration has also been given to potential impacts that may result from the proposal, and the original assessment found that impacts were minimised and acceptable subject to imposition of recommended conditions, including a condition restricting trading hours to 9pm on Sundays. As noted in the body of the report, based on the additional submissions and issues raised, a 12 month trial period for any 'Food and Drink Premises' is considered to be warranted in this case.

The proposal is therefore considered to be in line with the Vision for the area and, subject to imposition of recommended conditions, acceptable in the evolving context of the area.

In addition, one of the submissions in support of the proposal considers that the proposal would be in line with Council's Vision for the area '*as expressed through Bayside Council creating the Ramsgate Beach Thriving Town Program*', would provide additional passive surveillance to the street, would allow more members of the public to benefit from facilities during times that they are currently underutilised, and would provide a positive contribution to the area.

Issue 2 – Noise from patrons - including noise from patrons, including intoxicated patrons, leaving the premises, if it is utilised as a restaurant, with their "usual chatter and laughter, cars being started, tooting of horns and shouts of good-bye". The additional submissions noted the cumulative impacts of noise from garbage vehicles, waste water pump trucks, sweeper trucks ,etc., and considered that recommended signage would not be sufficient or effective enough to deter and stop noisy patrons. Further some objections considered that the additional noise would be beyond the EPA sleep disturbance criteria and that residents would not be able to obtain the amount of sleep recommended by the Sleep Foundation.

Comment: The matter of noise has been discussed in response to Clause 4.4.6 of RDCP 2011 where noise impacts have been found to be minimal and acceptable subject to imposition of recommended conditions of consent, including a 12 month trial period for any Food or Drink premises. With regards to

compliance with the EPA Sleep Disturbance, the EPA advises that this matter is generally a matter to be considered between the hours of 10:00pm and 7:00am. The proposed use would not operate during these times.

Issue 3 – Parking & Traffic - the submissions raise concern with existing parking problems in the area at all times of day and night. Many state that driveways are currently being blocked by cars. One considers that a multi-storey carpark should be built given that there is currently insufficient parking in the area. In addition, one submission considers that the proposal would be defined as 'Traffic Generating Development' under the Infrastructure SEPP.

Comment: An assessment of the traffic and parking impacts resulting from the extended hours has been provided previously in the report (refer to assessment of Clause 4.6 of RDCP 2011). The impacts were found to be minor and acceptable in the circumstances of this case. Illegal parking is a matter that is required to be dealt with by police and Council's Parking inspectors, and the proposal is not defined as 'Traffic Generating Development' under the SEPP.

Issue 4 - Compliance with conditions - several residents were concerned that noise will not be policed.

Comment: Where noise impacts occur beyond approved hours and / or operations are undertaken contrary to conditions of consent, complaints can be made to Council and the relevant Council staff will investigate the incident(s). It is considered that the recommended conditions can be enforced to minimise impacts.

Issue 5 - The objectives of the B4 Mixed Use zone have already been achieved and will continue to be achieved even if the hours are not extended.

Comment: The objectives of the zone are also achieved by the proposed development as discussed in the body of the report. In addition, the objectives of RDCP 2011 are met by the proposed development (refer to Issue 1 above).

Issue 6: The original report has not considered the potential impacts from an Optometrist which is far different to that of a restaurant or cafe.

Comment: The acoustic report considered potential noise impacts associated with a 'shop' which is considered to be the substantially the same as an optometrist business. In addition, the remainder of the potential impacts can be dealt with by way of conditions on the original consent combined with the recommended conditions on this consent.

Issue 7: The parking assessment in the original report was incorrect.

Comment: The parking assessment has been corrected in this report.

Issue 8: Anti-social and anti-family friendly development.

Comment: The proposal includes a Plan of Management and conditions that will assist to manage behaviour. Issues of anti-social behaviour should be reported to the operator and relevant authorities.

Issue 9: Precedent - if one shop is granted extended times it will set a precedent for others in the adjoining buildings located on the northern side of Ramsgate Road.

Comment: Any future applications would need to be assessed and considered in accordance with relevant policies.

Issue 10: Odour - No confidence that the ventilation system will comply with the Australian Standards and odour impacts will result. In addition, odour impacts would result to the communal open space at roof top level of the adjoining MIRA development at 154-156 Ramsgate Road.

Comment: It is considered that the conditions will minimise odour impacts. If any impacts were to result, the Council's Environmental Health Team will investigate.

S.79C(1)(e) - Public interest

The proposal has been assessed against the relevant planning policies applying to the site having regard to the objectives of the controls. As demonstrated in the assessment of the development application, the proposal will allow use of the commercial tenancy within its environmental capacity. Furthermore, the proposal does not create unreasonable impacts on surrounding properties. As such it is considered that the development application is in the public interest.

Schedule 1 - Draft Conditions of consent

General Conditions

The following conditions restrict the work to the detail provided in the Development Application and are to ensure that the development is complete.

1. The term of this consent is limited to a period of five (5) years from the date of the original approval. The consent will lapse if the development does not commence within this time.
2. This approval relates to the commercial premises, and its associated car parking spaces, within No. 152 Ramsgate Road, as shown in Plan with Job No. B1408, Drawing No. WD.02 (Revision E).
3. This consent does not grant approval for the carrying out of any physical building 'work'. Any alterations and/or additions to the subject building shall not be undertaken without first obtaining approval.

Development specific conditions

The following conditions are specific to the Development Application proposal.

4. Commercial / Retail Premises - Operational Conditions
The use of the commercial tenancy shall comply with the following:
 - (a) Hours of Operation
 - (i) Use of the commercial tenancy is restricted to between the hours of 7:00am and 10:00pm Monday to Saturday and 7:00am to 9:00pm Sundays and Public Holidays.
 - (ii) Limitation on Hours of Operation - Food and Drink Premises
 - (A) Notwithstanding Condition 4(a)(i) above, this consent is limited to a 12 month trial period for any "Food and Drink Premises"

use. Prior to the expiry of the 12 month trial period, a new development application shall be submitted to, and approved by, Council, for any continuance of the extended trading hours for a Food and Drink Premises.

Note: Food and Drink Premises is defined in the Rockdale Local Environmental Plan 2011.

(B) Prior to commencement of any 'Food and Drink Premises', the owner, occupant or operator must notify Council in writing of the commencement date of the business operation. The consent for any such operation shall cease 12 months after this commencement date unless a further application has been submitted to, and approved by, Council in accordance with (a) above.

(C) Where a further application required by Condition 4(a)(ii)(A) and 4(a)(ii)(B) above has not been approved, the trading hours for any Food and Drink Premises must revert to the hours of operation approved under DA-2015/225.

Note: the hours of operation approved under DA-2015/225 is as follows:

* 7:00am - 6:00pm Mondays to Fridays;

* 8:00am - 5:00pm Saturdays; and,

* 10:00am - 4:00pm Sundays and public holidays.

(b) Maximum seating capacity - If the premises is used as a 'food and drink' premises, the maximum seating capacity of the premises is restricted to 50. (i.e. the seating capacity utilised for the Acoustic Assessment).

(c) Materials, goods or machinery shall not be stored, placed or otherwise permitted to stand between the building line and the street alignment, or any other part of the public road at any time without Council's consent.

(d) All loading, unloading and transfer of goods / waste to and from the loading bay and premises shall take place wholly within the property, and in accordance with DA-2015/225.

(e) The front windows must be kept free of shelves, and a maximum of 15% of the window display area may be covered with promotional materials, obscure glazing and/or other treatment to ensure passive surveillance is maintained to and from the tenancies.

(f) All other relevant conditions of this consent and DA-2015/225.

5. Noise Minimisation - 'Food and Drink' premises (as defined in Rockdale Local Environmental Plan 2011)

(1) If the premises is used as a non-licensed 'Food and Drink' premises, the following requirements detailed in Part 5.2 of the DA Acoustic Assessment report prepared by Renzo Tonin (dated 18 August 2017) and/or as recommended by Council's Environmental Health Team must be complied with during and/or prior to commencement of operations:

(a) Acoustically absorptive finishes shall be incorporated into the design especially on the ceiling and walls of the Restaurant Dining Area to assist in the control of reverberation time. It is preferable to have the acoustic treatment on the lower section of the wall, i.e. on the same height as the noise source, or directly above the seating area.

- (b) Glazing and floor/ceiling construction between Level 1 and Ground Floor retail tenancy shall comply with the assumptions included in Part 5.2 of the DA Acoustic Assessment report.
 - (c) The western bi-fold doors, facing Alfred Street, shall be kept closed after 6pm. One set of the southern bi-fold doors (15m²), facing Ramsgate Road, can be opened after 6pm - the other two sets of bi-fold doors shall remain closed. If noise complaints are received the doors may need to be closed at other times to minimise impacts to adjoining and nearby residential properties.
- (2) If the premises is a Licensed 'Food and Drink' Premises, the following requirements detailed in Part 4.2 of the DA Acoustic Assessment report prepared by Renzo Tonin (dated 18 August 2017) must be complied with during and/or prior to commencement of operations:
- (a) The western bi-fold doors, facing Alfred Street, shall be kept closed at all times. One set of the southern bi-fold doors (15m²), facing Ramsgate Road, can be opened during the proposed trading hours - the other two sets of bi-fold doors shall remain closed.
 - (b) Acoustically absorptive finishes shall be incorporated into the design especially on the ceiling and walls of the Restaurant Dining Area to assist in the control of reverberation time. It is preferable to have the acoustic treatment on the lower section of the wall, ie. on the same height as the noise source, or directly above the seating area.
 - (c) Glazing and floor/ceiling construction between Level 1 and Ground Floor retail tenancy shall comply with the assumptions included in Part 4.2 of the DA Acoustic Assessment report.
- (3) Compliance with the following for all uses:
- (a) No playing of amplified music (including live music performances) is permitted outside of the premises or with any doors open;
 - (b) Indoor background music shall be played lower than that of 'normal' human vocal effort which is LA_{weq} 64dB. Instrumental tracks are recommended as this type of music is less noticeable compared music with lyrics and therefore is perceived as being less annoying.
 - (c) Any speakers or audio systems is required to be vibration isolated by appropriate springs mounts if mounting on the walls, ceiling or columns.
- (4) Signs of adequate size and location shall be provided within the commercial tenancy requesting that patrons to keep noise to a minimum to minimise impacts on surrounding residents when using, access and/or leaving the premises.

6. Car Parking

The operators / staff / visitors of the commercial premises shall utilise the three (3) shared visitors / commercial car parking spaces located within the building at all times permitted by the Positive Covenant (Section 88E) registered on the Title of the property while the premises is in use.

Note: The Positive Covenant allows the commercial tenant (including staff / visitors) to utilise the three (3) visitors parking spaces within the building between the hours of 7:00am to 6:00pm Monday to Friday and between 7:00am and 1:00pm Saturdays. At all other times these three (3) shared spaces must be available for use by residential visitors to the premises.

7. Plan of Management (PoM)

- (a) The Plan of Management (PoM) prepared by Ingham Planning, dated 22 January 2018, must be updated prior to commencement of the extended trading hours the subject of this application to ensure consistency with all conditions of this consent. The amended PoM must also be approved in writing by Council's Director of City Futures prior to commencement of the extended trading hours.
- (b) The approved PoM must be updated every two (2) years or prior to commencement of operations of any new use. All amendments shall be submitted to the Director of City Futures at Bayside Council for approval within two (2) weeks of being amended.
- (c) The approved PoM must be implemented at all times during business operations.

8. Mechanical Ventilation / Exhaust

- (a) The mechanical exhaust ventilation system shall be installed in the kitchen and food preparation areas where cooking and heat producing processes are conducted. All equipment producing heat or steam shall be placed wholly under the ventilation canopy. The ventilation system shall be designed and installed by an appropriate qualified person in accordance with Australian Standards AS1668.1 1998 & 1668.2 2002.
- (b) The system must vent above roof top level.

9. Business Identification Signage

Any proposed signs must, unless separately approved, comply with the requirements of the State Environmental Planning Policy (Exempt and Complying Development Code) 2008. In addition, any signage cannot have / use:

- (a) flashing lights;
- (b) electronically changeable messages;
- (c) animated display, moving parts or simulated movement; or
- (d) a method and level of illumination that distracts or dazzles.

10. Discharge of Trade Waste Water

A copy of Permission to Discharge Trade Waste Water shall be obtained from Sydney Water prior to the discharge of trade waste water to the sewer system. A copy shall be provided to Principal Certifying Authority (PCA) prior to issuing the Construction Certificate. A copy shall also be provided to Council if Council is not the PCA.

11. Liquor License

A Liquor License must be obtained prior to commencement of any use that requires such license.

12. Should the use of the premises include "Food and Drink" premises (i.e. restaurant, cafe or other similar use as defined in Rockdale Local Environmental Plan 2011), the following must be complied with:

- (a) The mechanical exhaust ventilation system shall be installed in the kitchen and food preparation areas where cooking and heat producing processes are conducted. All equipment producing heat or steam shall be placed wholly under the ventilation canopy. The ventilation system shall be designed and installed by an appropriate qualified person in accordance with Australian Standards AS1668.1 1998 & 1668.2 2002.
- (b) The mechanical ventilation system must vent above roof top level.

- (c) The use of mechanical plant including air conditioners, fans, compressors, condensers, freezers, swimming pool or spa pumps (whether commercial or domestic) shall not cause sound pressure levels in excess of the criteria given in the NSW Industrial Noise Policy – 2000.
 - (d) The proposed development shall be designed, constructed and operated in compliance with the requirements of the Food Act 2003, Food Regulations 2004 and the Australian Standard AS 4674 – 2004 “Design, Construction and Fit out of Food Premises”.
13. All existing and proposed lights shall comply with the Australian Standard AS4282 - 1997 "Control of the Obtrusive Effects of Outdoor Lighting". In this regard, the lighting of the premises shall be directed so as not to cause nuisance to the owners or occupiers of adjacent/adjoining premises or to motorists on adjoining or nearby roads.

Development consent advice

- a. Some forms of signage require separate development consent. Please refer to relevant planning policies for more information.
- b. A street/shop number shall be prominently displayed at the front of the development. The street number shall be a minimum of 120 mm in height to assist emergency services and visitors to locate the property. The numbering shall be erected prior to commencement of operations.

RAMSGATE ROAD

ALFRED STREET

Retail /
Commercial
Tenancy

No. 84
BRICK
HOUSE
(TILE ROOF)

No. 154
Proposed Unit Development
(Indicative)

GROUND LEVEL

23.04.15 Marked Up Version

10.04.15	C	Council RFI
10.12.14	B	DA Submission
03.12.14	P6	Consultant Co-ordination Issue
11.11.14	A	DRP Submission
07.11.14	P5	Consultant Co-ordination Issue
03.11.14	P4	Preliminary Issue
31.10.14	P3	Preliminary Issue
28.10.14	P2	Preliminary Issue
22.10.14	P1	Preliminary Issue



PCA ARCHITECTS
253 Moray Street, New Farm, Qld 4005
Architects Registration No. 6975

RAMSGATE BEACH APARTMENTS
152 RAMSGATE ROAD • RAMSGATE BEACH

DRAWING	DATE	ISSUE	AMENDMENTS
Ground Level	JOB No. B1408	DWG. No. DA.04	Rev. C