

Randwick Local Planning Panel (Electronic) Meeting

Thursday 14 April 2022



RANDWICK LOCAL PLANNING PANEL (ELECTRONIC)

Notice is hereby given that a Randwick Local Planning Panel (Electronic) meeting will be held online via Microsoft Teams on Thursday, 14 April 2022

Declarations of Pecuniary and Non-Pecuniary Interests

Development Application Reports

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Kerry Kyriacou
DIRECTOR CITY PLANNING

Development Application Report No. D12/22

Subject: 64 Portland Crescent, Maroubra (DA/156/2021)

Proposal:	Amended proposal: Demolition of existing structures and construction of a 3 storey residential flat building comprising six (6) units, basement parking, tree removal, landscaping and associated works (affordable rental housing proposed). Original Proposal: Demolition of existing structures and construction of a 3 storey residential flat building comprising 9 units, basement parking, tree removal, landscaping and associated works (affordable rental housing proposed).
Ward:	Central Ward
Applicant:	Solutions Zane
Owner:	Ms K Haywood & Mr N Shore
Cost of works:	\$3,305,306.00
Reason for referral:	The development is subject to SEPP 65.

Recommendation

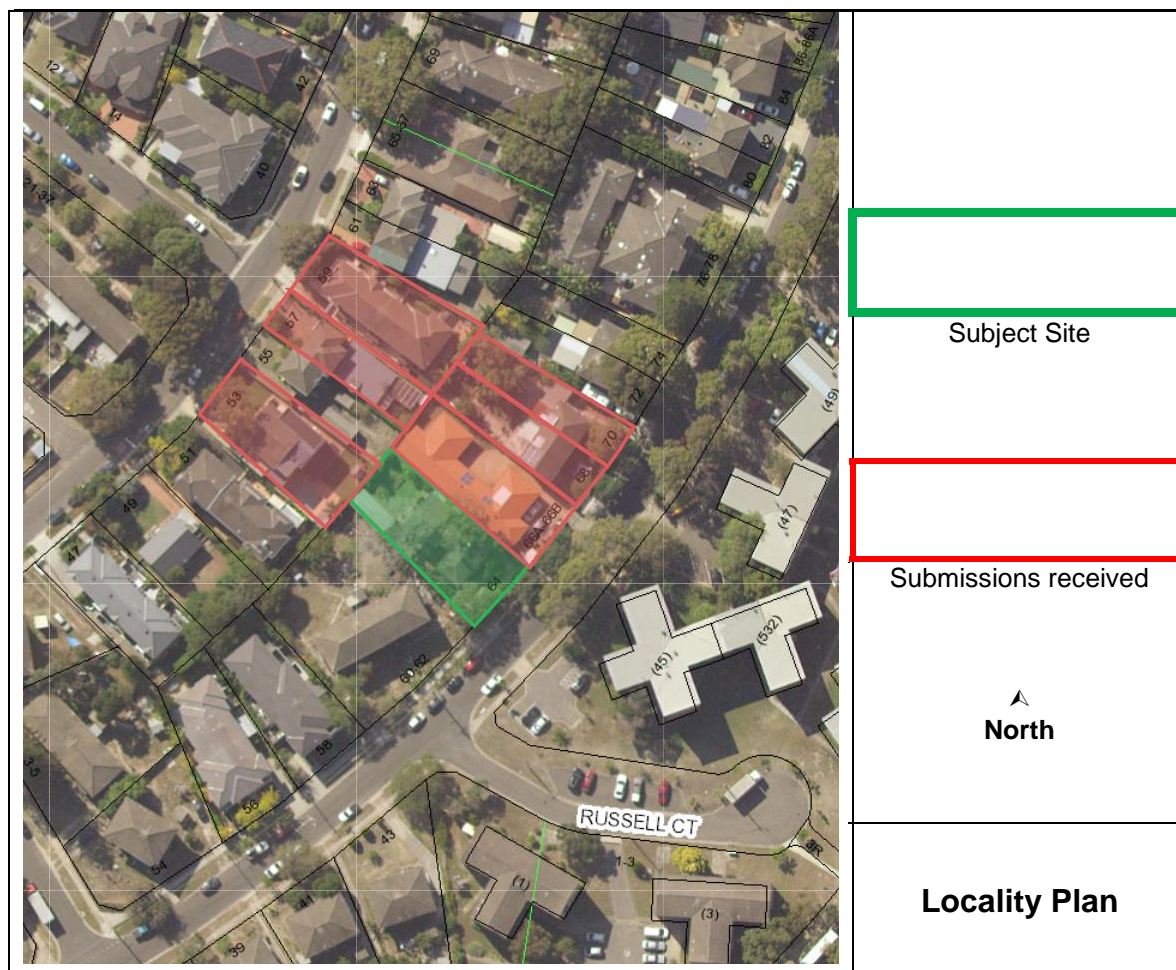
- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the height of buildings development standard in Clause 4.3 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning, Industry and Environment may be assumed.
- B. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/156/2021 for demolition of existing structures and construction of a 3 storey residential flat building comprising six (6) units, basement parking, tree removal, landscaping and associated works (affordable rental housing proposed), at No. 64 Portland Crescent, Maroubra, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Draft Conditions of Consent - DA/156/2021 - 64 Portland Crescent, Maroubra

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1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the proposed development is subject to SEPP 65 – Design Quality of Residential Apartment Development (SEPP 65).

The proposal, as amended, seeks development consent for demolition of existing structures and construction of a three (3) storey residential flat building comprising six (6) units, basement parking, tree removal, landscaping and associated works, with two (2) affordable rental housing units proposed.

The proposed development is generally consistent with the relevant planning provisions including SEPP 65 and associated design guidance within the Apartment Design Guide (ADG), Part 2 Division 1 of SEPP (Affordable Rental Housing) 2009 with regards to in-fill affordable housing, Randwick LEP 2012 and Randwick DCP 2013. The development is permissible within the R3 zone and is considered to be compatible with the desired future character of the area in terms of the overall built form, which is commensurate of a level anticipated for the site. The proposal as amended is considered to respond well to the constraints of the site and shall not result in any unreasonable amenity impacts upon neighbouring properties or the streetscape. The key issues associated with the proposal relate to non-compliance with the maximum building height pursuant to clause 4.3 of RLEP 2012, and design and amenity concerns regarding Unit 6 in relation to SEPP 65 and the ADG.

The proposal is recommended for approval subject to non-standard conditions that require the deletion of one (1) bedroom to Unit 6, and additional visual amenity and privacy measures.

2. Site Description and Locality

The subject site is known as 64 Portland Crescent, Maroubra and has a legal description of Lot 544 in Deposited Plan 36819. The site is irregular in shape and has a total area of 562.8m². The site is located on the north-western side of Portland Crescent. Vehicular and pedestrian access to the site is gained via the 16.7m frontage to Portland Crescent. The site is predominantly flat and experiences a slight fall of approximately 0.25m from the front south-eastern boundary down towards the north-western rear boundary. There are several established canopy trees located within the front portion of the site.

The site is zoned R3 - Medium Density Residential and is currently occupied by an existing dwelling house and detached garage. The property is surrounded by residential properties to the north, south, east and west. The existing streetscape is a mixture of low and medium density developments, comprising residential flat buildings, semi-detached dwellings and dwelling houses. The architectural style of the area is a mixture of older style developments, however there are examples of newer developments within the surrounding area.

3. Relevant history

The land has been used for residential purposes for an extended period of time. A search of Council's records did not reveal any recent and/or relevant applications for the site.

Subject Application

Development Application DA/156/2021 was lodged with Council on 29 March 2021. The application was referred to Council's Development Engineer for comment and/or recommendation.

The application was referred to Randwick Design Excellence Advisory Panel on 24 May 2021. The Panel raised several concerns with the proposal and concluded the following:

The panel is not supportive of the proposal in its current form and believe that the applicant should be given the opportunity to re-present the proposal in a revised form at a future meeting.

Any future proposal should be accompanied by a significantly expanded Site Analysis to justify any non-compliances if any.

This section should be read in conjunction with the recommendations highlighted above within each section (in blue)

The panel suggest that there are two potential directions that the proposal/proponent might investigate:

1.0

A reduction in the overall floorspace to allow the building envelope to comply with the controls and relieve "pressure" on the proposal such that it is able to respond to issues raised above.

2.0

A co-ordinated Planning Proposal for the whole of Portland Crescent to demonstrate that additional height may be acceptable in this location, and all other setbacks (front, side, rear) adhered to / issues ameliorated. The panel note that it is incumbent upon the applicant to avail themselves of the risks, and timelines associated with any Planning Proposal.

31 August 2021

A Request for Information was sent to the Applicant that raised several concerns with the proposal, primarily relating to the overall built form which was considered to be excessive, and numerous non-compliances with Council's built form controls. It was recommended that the proposal be amended and consideration be given to the upper level being located within habitable roof space.

30 November 2021

The applicant submitted amended plans and associated updated documentation which significantly reduced the overall built form of the proposal and involved the following changes:

- Reduction to the number of apartments from nine (9) to six (6)
- Reduction to the GFA;
- Increased setbacks at the front, sides and rear;
- Amendment to the upper level to be accommodated within a habitable roof form with dormer windows;
- Changes to the materiality and finishes of the development and overall architectural design.

The original proposal verses the amended proposal can be seen in the perspectives below:

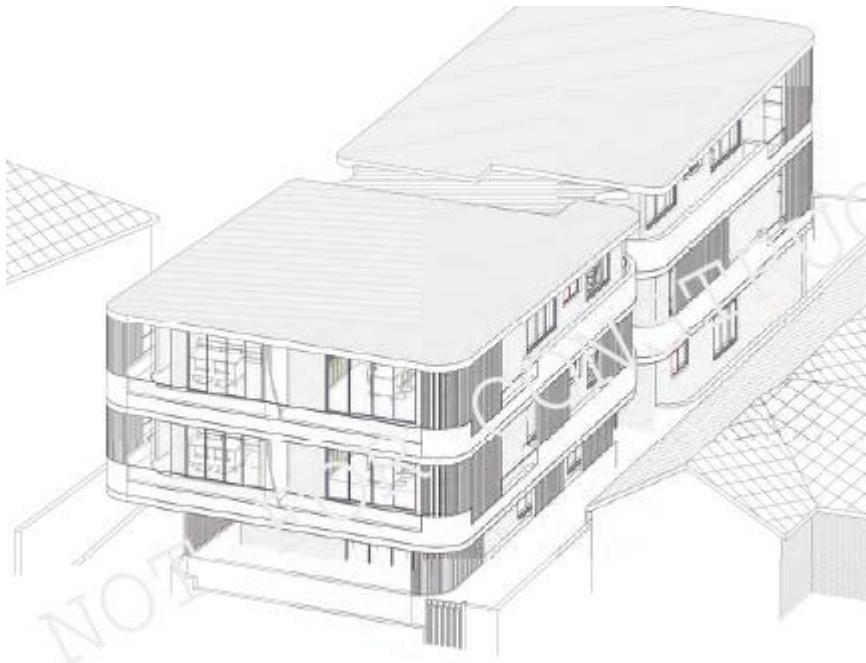


Figure 1 – Original proposal with nine (9) apartments.

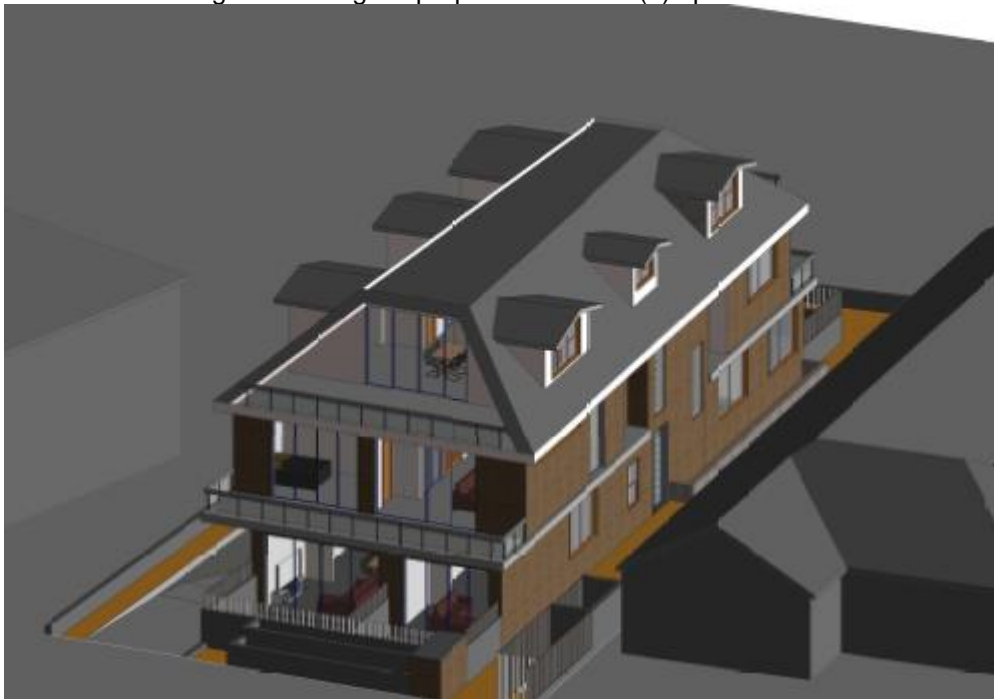


Figure 2 – Amended proposal with six (6) apartments.

While it is acknowledged that the amended plans significantly alter the proposal in terms of form and style, the proposed amendments are in response to concerns raised by Council, DEAP and the local community. The proposal shall remain consistent with the intent and land use of the original development, being a three (3) storey residential flat building, and therefore is considered to be

substantially the same development as original proposed, and thus the amended plans were accepted by Council in this instance.

4. Proposal

The original proposal sought development consent for the demolition of existing structures and construction of a 3 storey residential flat building comprising 9 units, basement parking, tree removal, landscaping and associated works (affordable rental housing proposed).

In response to several concerns raised by Council, the application was amended. The amended proposal in which the application is assessed seeks development consent for demolition of existing structures and construction of a 3 storey residential flat building comprising six (6) units, basement parking, tree removal, landscaping and associated works (affordable rental housing proposed).

Specifically, the Applicant seeks consent for the following works:

- Demolition of existing structures on the site;
- Construction of a three (3) storey residential flat building comprising:
 - Basement
Six (6) car parking spaces, waste room, bulk waste room, services, pump room, four (4) storage cages and one (1) storage unit, Lift and access stairs.
 - Ground Floor Level
One (1) x Studio apartment with patio area, One (1) x one (1) Bedroom apartment with patio area, one (1) x two (2) Bedroom apartment with two (2) Bathrooms and patio area, internal circulation, Lift and internal access stairs, communal open space.
 - First Floor Level
 - One (1) x two (2) Bedroom apartment with two (2) Bathrooms, one (1) Walk-in Robe and balcony, one (1) x one (1) Bedroom apartment with balcony, internal circulation, Lift and internal access stairs.
 - Second Floor Level
 - One (1) x three (3) Bedroom apartment with one (1) Bathroom and three (3) balconies, internal circulation, Lift and internal access stairs.
- Earthworks;
- Tree removal, landscaping and associated works.

The proposal shall incorporate two (2) affordable housing apartments located on Ground Floor level, identified as Units 1 and 2.

A photomontage of the proposed development as viewed from Portland Crescent can be seen in Figure 3 below:



Figure 3 – Photomontage of the proposal as viewed from Portland Crescent.

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Comprehensive DCP 2013. As a result of the notification process a total of seven (7) submissions were received on behalf of six (6) properties as follows:

- 70 Portland Crescent, Maroubra

Two (2) submission were received on behalf of No. 70 Portland Crescent which are both considered below:

Issue	Comment
Overdevelopment of the site	The proposed development has been amended to provide a reduced FSR and a reduction to the number of units, which has resulted in a substantial reduction to the overall built form. The amended proposal is considered to be commensurate of a level of development anticipated for the site and therefore is not considered to be an overdevelopment of the site.
Excessive bulk and scale, request for a two (2) storey building set back to maintain the character of the Coral Sea Area.	The amended proposal shall be two (2) storeys with habitable roof space, which is considered to reflect a scale compatible with the surrounding context and the character of the Coral Sea Park Estate.
Visual privacy	Privacy measures shall be imposed on windows on the side elevations at the upper levels to mitigate overlooking. Privacy screening shall also be provided along the sides of upper level balconies where required. The rear setback in excess of 6m to windows is considered to provide sufficient spatial separation to minimise overlooking impacts.

Issue	Comment
Acoustic privacy	The POS are located to the front and rear, with the COS located within the rear yard adjacent to the POS of adjoining properties. Planting is also provided along the side boundaries to provide a buffer between the common outdoor space and the adjoining properties.
Concerns regarding tree removal	Council's Landscape Officer has considered the tree removal and raised no concerns. New landscaping including canopy planting shall be provided on site. See Appendix 1 for further comment.

Issue	Comment
<u>Excessive bulk and scale</u> <ul style="list-style-type: none"> The bonus FSR under the SEPP ARH is excessive and an inappropriate streetscape presentation. A lesser FSR is more desirable. Maximum FSR is not an "as of right". The proposal fails the character test of SEPP ARH, with particular regards to streetscape [presentation which is single and two (2) storey developments. The proposal shall set an undesirable precedent. Failure to comply with ADG. The building should be limited to 2 storeys. If 3 storeys is pursued should be an attic with alternative materials to reduce scale and contained within a roof pitch. The building should present as 2 storey with the third storey not visually intrusive. The proposal is an overdevelopment of the site. 	<p>The proposed development has been amended to provide a reduced FSR and a reduction to the number of units, which has resulted in a substantial reduction to the overall built form. The architectural design of the development has also been amended to reduce the development from three (3) storeys to two (2) storeys with habitable roof space which is incorporated into a pitched roof form with dormer windows.</p> <p>The proposed FSR provides a balance between the bonus provisions under the ARH SEPP and consistency with Council's built form controls.</p> <p>The amended proposal is considered to be commensurate of a level of development anticipated for the site and therefore is not considered to be an overdevelopment of the site.</p>
<u>Setbacks</u> <ul style="list-style-type: none"> The proposal is not in keeping with the predominant front or rear building line. Does not comply with ADG separation distances. 	<p>The front and rear setbacks have been increased to ensure compliance with the control and consistency with the streetscape. Achieving compliance within the minimum separation distances under the ADG for the side setbacks would not be possible given the narrow width of the site and nature of the development being an in-fill development. The proposal complies with the minimum side setbacks of 3m under RDCP 2013 which is considered acceptable.</p>

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Issue	Comment
<p><u>Visual and Acoustic Privacy</u></p> <ul style="list-style-type: none"> • Expansive glazing is proposed along the full extent of the elevations and openings are not off-set. • Wrap around balconies shall result in overlooking. • Loss of privacy to rear yard due to overlooking from side windows. • Concerns regarding noise impacts from balconies orientated to the sides of the building. • Minimal privacy screening is proposed and should be provided to ensure maximum privacy. 	<p>Privacy measures shall be imposed on windows on the side elevations at the upper levels to mitigate overlooking. Privacy screening shall also be provided along the sides of balconies where required.</p> <p>The rear setback in excess of 6m to windows is considered to provide sufficient spatial separation to minimise overlooking impacts. The POS are located to the front and rear, with the COS located within the rear yard adjacent to the POS of adjoining properties. Planting is also provided along the side boundaries to provide a buffer between the common space and the adjoining properties. The proposed side privacy screening shall also assist in minimising noise impacts from the upper level balconies.</p>
<p><u>Character of area and Streetscape</u></p> <ul style="list-style-type: none"> • The streetscape presentation and cantilever form exacerbates the bulk, and the proposal is inconsistent with the streetscape. These features should be modified. • The draft Maroubra Central Local Character statements identify the locality as having distinct built form with generous setbacks and garden surround. The proposal should not set a precedent to destroy this character. • The 3 storey buildings opposite were designed differently, provide generous setbacks, separate design character. • The proposal would be inconsistent with the surrounding developments within the urban block. • The Coral Sea Estate was designed to have 2 storey developments, with 3 storeys around the perimeter. The estate is of significant historic value and the proposal will detract from the character. • Does not have the look and feel of the Coral Sea character. 	<p>As discussed above, the proposal has been amended which significantly reduces the overall bulk and scale. The amended proposal is also considered to be more compatible with the streetscape and the character of the Coral Sea Park Estate.</p> <p>The front setback has been increased and a planter box provided along the front of the site to enhance the landscape character of the site and aim to portray the front gardens character of the area.</p> <p>See Key Issues for further discussion.</p>
<p>The proposal fails to meet the R3 zone objectives.</p>	<p>The amended proposal is considered to be consistent with the R3 zone objectives in that the development will contribute to the housing needs of the community, recognises the desirable elements of the streetscape and the desired future character of the area, noting that the area is under transition, and shall not unreasonably impact upon the amenity of neighbouring properties.</p>

Issue	Comment
The proposal fails to achieve design excellence.	The application was referred to Randwick Design Excellence Advisory Panel who provided feedback and a series of recommendations with regards to the building design. The comments were incorporated into the amended proposal which is considered to address the original concerns of the Panel, and the proposal can be seen to achieve design excellence.
Concerns regarding traffic and parking and increased density.	The proposal provides compliant parking in accordance with the specified parking rates. No concerns were raised by Council's Development Engineer regarding traffic and parking.
Inadequate setbacks for the basement level.	The basement provides a minimum setback of 770mm and 830mm, with the exception of a minor portion which shall have a nil setback. The constraints of the site and requirement to provide adequate parking spaces results in lesser setbacks to the side boundaries, however appropriate conditions shall be imposed to ensure there are no impacts upon neighbouring properties as a result of the basement.
Concerns regarding roof top plant and increased height.	No plant is proposed on the roof. A condition of consent shall be imposed to ensure there is no plant or equipment located on the roof.
Plans fail to depict adjoining properties, request for window openings to be shown.	Adequate information was available to Council to undertake the assessment.

- 68 Portland Crescent, Maroubra

The submission from 4/59 New Orleans Crescent is a duplicate of the submission from 70 Portland which is addressed above.

- 4/59 New Orleans Crescent, Maroubra

The submission from 4/59 New Orleans Crescent is a duplicate of the submission from 70 Portland which is addressed above.

- 53 New Orleans Crescent, Maroubra

The submission from 4/59 New Orleans Crescent is a duplicate of the submission from 70 Portland which is addressed above.

- 57 New Orleans Crescent, Maroubra

The submission from 4/59 New Orleans Crescent is a duplicate of the submission from 70 Portland which is addressed above.

- 66A and 66B Portland Crescent, Maroubra

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Issue	Comment
<p><u>Excessive bulk and scale</u></p> <p>Strongly object to the 3 storey nature of the development which will set an undesirable precedent.</p>	<p>The proposed development has been amended to provide a reduced FSR and a reduction to the number of units, which has resulted in a substantial reduction to the overall built form. The architectural design of the development has also been amended to reduce the development from three (3) storeys to two (2) storeys with habitable roof space which is incorporated into a pitched roof form. The amended proposal is considered to be commensurate of a level of development anticipated for the site and therefore is not considered to be an overdevelopment of the site.</p>
<p>Detrimental impact upon character and value of adjacent properties.</p>	<p>As discussed above, the proposal has been amended which significantly reduces the overall bulk and scale. The amended proposal is also considered to be more compatible with the streetscape and the Coral Sea Park Estate. Devaluation of property is not a planning consideration.</p>
<p>Setbacks should be in compliance with guidelines, with particular regards to front setback and alignment with street.</p>	<p>Increased front and rear setbacks have been provided with comply with RDCP 2013 controls.</p>
<p><u>Visual Privacy</u></p> <ul style="list-style-type: none"> The proposed balconies shall result in privacy impacts to front garden. Concerns regarding overlooking of communal courtyard. Privacy would be maintained if development limited to 2 storeys. 	<p>Privacy measures shall be imposed on windows on the side elevations at the upper levels to mitigate overlooking. Privacy screening shall also be provided along the sides of balconies where required.</p>
<p>The proposal exceeds the external wall height control which contributes to bulk and scale.</p>	<p>The external wall height has been reduced in the amended proposal, with only the dormer windows breaching the 8m wall height. The bulk and scale of the proposal is not considered to be excessive. See Key Issues for further discussion.</p>
<p>If 3 storey proceeds, then privacy measures should be imposed for second floor level elevation.</p>	<p>Privacy measures shall be imposed on windows on the side elevations at the upper levels to mitigate overlooking. Privacy screening shall also be provided along the sides of rear balconies where required.</p>
<p>Concerns regarding noise impacts from increased density and location of habitable rooms along the boundary line.</p>	<p>The POS are located to the front and rear, with the COS located within the rear yard adjacent to the POS of adjoining properties. Planting is also provided along the side boundaries to provide a buffer between the common space and the adjoining properties.</p>
<p>Traffic and parking as a result of the increased density.</p>	<p>The proposal provides compliant parking in accordance with the specified parking rates. No concerns were raised by Council's Development Engineer regarding traffic and parking.</p>
<p>Streetscape presentation is not sympathetic to character of the neighbourhood.</p>	<p>The amended proposal, being two (2) storeys with habitable roof space and increased front setback is considered to be more compatible and consistent with the streetscape and desired character of the area. See Key Issues for further discussion.</p>

Issue	Comment
Concerns regarding setback of excavation of the basement and impacts upon structural integrity.	The basement provides a minimum setback of 770mm and 830mm, with the exception of a minor portion which shall have a nil setback. The constraints of the site and requirement to provide adequate parking spaces results in lesser setbacks to the side boundaries, however appropriate conditions shall be imposed to ensure there are no impacts upon neighbouring properties as a result of the basement, with particular regards to structural integrity.

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5.1. Renotification

Amended plans in relation to concerns raised by Council were submitted by the Applicant on 30 November 2021. The amendments involved a reduction to the overall built form, involving an increase in setbacks, reduction to FSR, and revision of the upper floor level into habitable roof space. Due to the amendments, the number of apartments was reduced from nine (9) units to six (6) units. It is considered that the proposed amendments shall result in a similar or lesser impact to that which was originally proposed, and as such formal re-notification of the amended plans was not considered necessary in this instance.

6. Relevant Environment Planning Instruments

6.1. SEPP (Affordable Rental Housing) 2009

Part 2 New affordable rental housing, Division 1 In-fill affordable housing development

The proposal seeks affordable housing subject to the provisions in Part 2 Division 1 of the SEPP for in-fill affordable housing. The proposal as amended demonstrates compliance with the applicable provisions and objectives. See assessment in Appendix 3, and where relevant, discussion of key issues section of this report. In summary, it is considered that subject to the recommendations, the proposed development satisfies the character test satisfying key envelope controls and therefore the bonus FSR is considered appropriate in this instance.

6.2. SEPP (Housing) 2021

During the course of the assessment of the application, the new SEPP (Housing) 2021 was gazetted and came into force on 26 November 2021. The new Housing SEPP shall replace the ARH SEPP, with Part 2 of the new Housing SEPP applicable to the proposed development.

While the new Housing SEPP contains saving provisions and the subject application will ultimately be determined under the ARH SEPP, consideration of the new Housing SEPP has been undertaken in accordance with the provisions of 4.15 of the Act. The provisions of Part 2 of the Housing SEPP are primarily consistent with the provisions of the ARH SEPP with particular regards to the do not refuse standards and non-discretionary standards, and design requirements. As such, it is considered that the proposed development would remain consistent with the relevant provisions under the new Housing SEPP.

6.3. SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate has been submitted in accordance with the requirements of the SEPP (Building Sustainability Index: BASIX) 2004.

6.4. SEPP (Vegetation in Non-rural Areas) 2017

The Vegetation SEPP came into effect in NSW on 25 August 2017. The aims of the Vegetation SEPP are:

“(a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and

(b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.”

Clause 7(1) requires a permit to be granted by the Council for the clearing of vegetation in non-rural areas (such as City of Randwick). Consent for the removal of vegetation within the site is being sought under this DA.

Assessing officer's comment:

The proposed development requires the removal of several trees on the site, however the existing trees proposed for removal are considered to be of low value or low significance, unstable or already exempt due to their proximity to the existing dwelling on site. Conditions of consent shall be imposed to ensure trees identified for retention, or those on adjoining land, can be safely retained. Council's Landscape Officer raised no objection to the proposed tree removal subject to recommended conditions of consent. A detailed assessment of the proposed tree removal can be found in Appendix 1 under the Development Engineering referral comments.

SEPP (Biodiversity and Conservation) 2021

The Biodiversity and Conservation SEPP came into force on 2 March 2022. The new Biodiversity and Conservation SEPP shall replace the SEPP (Vegetation in Non-rural Areas) 2017, with Chapter 2 of the new Biodiversity SEPP applicable to the proposed development.

While the new Biodiversity and Conservation SEPP contains saving provisions and the subject application will ultimately be determined under the Vegetation SEPP, consideration of the new Biodiversity SEPP has been undertaken in accordance with the provisions of 4.15 of the Act.

The provisions of the Vegetation SEPP have generally been transferred over to the new Biodiversity and Conservation SEPP with particular regards to when a permit from Council is required to remove vegetation and the considerations for Council when granting consent to remove vegetation. As such, it is considered that the proposed development would remain consistent with the provisions of the new Biodiversity and Conservation SEPP, noting the comments and justification above.

6.5. SEPP No. 65 – Design Quality Residential Flat Buildings

The proposed development is for a residential flat building that is three (3) storeys containing six (6) dwellings, therefore SEPP 65 is applicable to the proposed development.

In accordance with Clause 28 of SEPP 65, the development was referred to Council's Design Excellence Advisory Panel (“DEAP”) who assessed the development against the design quality principles of SEPP 65 (refer to Appendix 1). The DEAP advice was considered and amended plans provided to address the concerns. The amended proposal is considered to have satisfactorily addressed the DEAP comments, subject to conditions, and therefore re-referral to the Panel was not considered necessary in this instance. The amended development is assessed as being in accordance with the design quality principles of SEPP 65.

An assessment has also been carried out against the design criteria of the Apartment Design Guide (“ADG”) (refer to Appendix 4). In summary, the development complies with the majority of the design criteria with the exception of the size and layout of Unit 6, and in relation to building separation (with regards to visual privacy). Recommendations are made with regards to Unit 6 to improve amenity and achieve consistency with the requirements of the ADG. The proposed variations are assessed as part of the Key Issues section and are supported as the development achieves the objectives of the criteria and the design guidance subject to conditions.

Clause 30 of SEPP 65 provides standards that cannot be used as grounds to refuse development consent, which include:

- (1) *If an application for the modification of a development consent or a development application for the carrying out of development to which this Policy applies satisfies the following design criteria, the consent authority must not refuse the application because of those matters:*

- (a) *if the car parking for the building will be equal to, or greater than, the recommended minimum amount of car parking specified in Part 3J of the Apartment Design Guide,*

Assessment Officer comments:

Council's Development Engineer has advised that compliant car parking is provided in accordance with the minimum requirements stipulated under the ARH SEPP. Refer to Development Engineering comments as part of Appendix 1.

- (b) *if the internal area for each apartment will be equal to, or greater than, the recommended minimum internal area for the relevant apartment type specified in Part 4D of the Apartment Design Guide,*

Assessment Officer comments:

The proposed development is largely compliant with the minimum internal areas specified by Part 4D of the ADG. The proposal provides the following internal areas:

- Unit 1 is a Studio apartment with 1 bathroom. Minimum requirement for internal area is 35m² and an internal area of 37.57m² is proposed.
- Unit 2 contains 1 Bedroom and 1 bathroom. Minimum requirement for internal area is 50m² and an internal area of 50.81m² is proposed.
- Unit 3 contains 2 bedrooms and 2 bathrooms. Minimum requirement for internal area is 75m² and an internal area of 75m² is proposed.
- Unit 4 contains 2 bedrooms and 2 bathrooms. Minimum requirement for internal area is 75m² and an internal area of 88.51m² is proposed.
- Unit 5 contains 1 bedroom and 1 bathroom. Minimum requirement for internal area is 50m² and an internal area of 62m² is proposed.
- Unit 6 contains 3 bedrooms and 1 bathroom. Minimum requirement for internal area is 90m² and an internal area of 90m² is proposed. Notwithstanding, the requirements of the SEPP ARH require a minimum area of 95m² for 3 bedroom apartments. See Key Issues for further discussion.

- (c) *if the ceiling heights for the building will be equal to, or greater than, the recommended minimum ceiling heights specified in Part 4C of the Apartment Design Guide.*

Note. The Building Code of Australia specifies minimum ceiling heights for residential flat buildings.

Assessment Officer comments:

Minimum required ceiling height is 2.7m for habitable rooms and 2.4m for non-habitable rooms. The Ground Floor and First Floor levels of the development provide floor to floor heights of 3.1m which shall allow for minimum ceiling heights of 2.7m. The proposed Second Floor level is contained within habitable roof space and therefore the ceiling heights vary due to the pitched roof design. The Second Floor level shall achieve internal ceiling heights of up to 2.9m, with the overall internal ceiling heights compliant with the BCA. The roof level provides edge walls of approximately 1.5m which does not comply with the 1.8m minimum specified in the ADG, however the roof slope is greater than the 30° required by the ADG, proposing a slope of 41° which shall improve the internal amenity. As such, given the higher ceiling heights within the central portion of the apartment, and the proposed roof slope, and subject to the recommendations within the report, the proposed unit on the Second Floor level shall provide reasonable amenity and therefore the variation to the ceiling height is supported.

- (2) *Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:*
- (a) *the design quality principles, and*
 - (b) *the objectives specified in the Apartment Design Guide for the relevant design criteria.*

Assessment Officer comments:

Adequate regard has been given to the SEPP 65 design quality principles and the ADG design criteria as a design verification statement was submitted prepared by a registered architect stating that the design quality principles and ADG design criteria are generally achieved.

(3) *To remove doubt:*

- (a) *subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and*
- (b) *the design criteria specified in subclause (1) are standards to which section 79C (2) of the Act applies.*

6.6. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned R3 – Medium Density Residential under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent.

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will provide for the housing needs of the community and encourage housing affordability, will not be inconsistent with the existing streetscape (noting the area is considered to be under transition) and will not result in any unreasonable amenity impacts upon surrounding residents, subject to the recommendations within the report.

The following development standards in the RLEP 2012 apply to the proposal:

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.4: Floor space ratio (max)	0.75:1 under RLEP 2012, 0.95:1 pursuant to SEPP ARH (534.66m ² of GFA)	0.80:1 or 453.18m ² of GFA.	Yes
Cl 4.3: Building height (max)	9.5m	9.79m	No

6.6.1. Clause 4.6 - Exceptions to development standards

The non-compliances with the development standards are discussed in section 7 below.

7. Clause 4.6 exception to a development standard

The proposal seeks to vary the following development standards contained within the Randwick Local Environmental Plan 2012 (RLEP 2012):

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.3: Building height (max)	9.5m	9.79m	0.29m	3.05%

Clause 4.6 of RLEP 2012: Exception to a Development Standard relevantly states:

3. *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

4. *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Secretary has been obtained.*

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ summarised the matters in Clause 4.6 (4) that must be addressed before consent can be granted to a development that contravenes a development standard.

1. *The applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case*

Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 reinforces his previous decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827 where he identified five commonly invoked ways of establishing that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The most common is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

2. *The applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.*

Chief Justice Preston in ***Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 reinforces the previous decision** in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 regarding how to determine whether 'the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard'.

The grounds relied on by the applicant in their written request must be "environmental planning grounds" by their nature. Chief Justice Preston at [23] notes the adjectival phrase "environmental planning" is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s1.3 of the EPA Act.

Chief Justice Preston at [24] notes that there here are two respects in which the written request needs to be "sufficient".

1. The written request must focus on the aspect or element of the development that contravenes the development standard, not the development as a whole (i.e. The written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole); and
2. The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31] Judge Pain confirmed that the term 'sufficient' did not suggest a low bar, rather on the contrary, the written report must address sufficient environmental planning grounds to satisfy the consent authority.
3. *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [27] notes that the matter in cl 4.6(4)(a)(ii), with which the consent authority must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development

standard and the objectives for development of the zone in which the development is proposed to be carried out.

It is the proposed development's consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).

4. *The concurrence of the Secretary has been obtained.*

Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [28] notes that the other precondition in cl 4.6(4) that must be satisfied before consent can be granted is whether the concurrence of the Secretary has been obtained (cl 4.6(4)(b)). In accordance with Clause 4.6 (5), in deciding whether to grant concurrence, the Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for state or regional environmental planning, and
- (b) the public benefit of maintaining the development standard

Under clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6 (subject to the conditions in the table in the notice).

The approach to determining a clause 4.6 request as summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, has been used in the following assessment of whether the matters in Clause 4.6(4) have been satisfied for each contravention of a development standard.

7.1. Exception to the Height of Buildings development standard (Cl 4.3)

The applicant's written justification for the departure from the height of buildings standard is contained in Appendix 2.

1. Has the applicant's written request adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

The applicant's written request seeks to justify the contravention of the height of buildings development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case because the variation is minor in nature, a compliant design would compromise amenity, and that the relevant objectives of the standard are still achieved.

The objectives of the height of buildings standard are set out in Clause 4.3 (1) of RLEP 2012. The applicant has addressed each of the objectives as follows:

- (a) *to ensure that the size and scale of development is compatible with the desired future character of the locality*

The applicant's written justification notes that the proposal has gone through significant amendments from the original design to ensure compatibility with the streetscape and desired character, and that the minor variation shall be indiscernible from a compliant built form. The proposal also results in a FSR below that permitted under the ARH SEPP.

- (b) *to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,*

The development is not within a conservation area nor identified as a heritage item. Furthermore, there are no heritage items within the vicinity of the site.

- (c) *to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.*

The applicant's written justification demonstrates that this objective is satisfied by noting that the proposal shall not give rise to privacy, overshadowing, view loss or visual bulk impacts. The non-compliant section of roof is in the central portion with the perimeter of the development under the height limit and the non-compliance will not be readily visible from the street. Any overshadowing from the non-compliant portion would be negligible given the location of the height breach to a minor central portion of the development.

Assessing officer's comment:

The proposed height breach is minor in nature, being a 3% variation, and is limited to the central portion of the roof form only. The proposal could be amended to comply with the maximum height by altering the roof form or decreasing internal ceiling heights, however it is considered that the resultant impact of the breach would not warrant amendments to the roof form or ceiling heights given that the non-compliance shall not be readily visible as viewed from the public domain or adjoining properties, or result in any significant increased amenity for neighbouring properties with regards to solar access or visual bulk. It is considered that a reduction to the height would detrimentally impact upon the internal amenity of the development for occupants which would not outweigh the resultant impacts of the breach. Furthermore, the proposed development shall be consistent with the objectives of the standard in that the proposal shall present as a two (2) storey development with habitable roof space which is consistent with the desired character envisages by the built form controls of RLEP 2012 and RDCP 2013.

In conclusion, the applicant's written request has adequately demonstrated that compliance with the floor space ratio development standard is unreasonable or unnecessary in the circumstances of the case.

2. Has the applicant's written request adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard?

The applicant's written request seeks to demonstrate that there are sufficient environmental planning grounds to justify contravening the FSR development standard as follows:

- The strict numerical non-compliance shall not give rise to any adverse impacts in terms of visual bulk, loss of privacy, views or overshadowing.
- The non-compliance shall not be readily visible from the street.
- The modest development is innovative and interesting in design.
- Council has a documented history in applying a flexible approach in the application of development standards.

Assessing officer's comment:

As outlined above, it is noted that the proposed development could be amended to comply with the maximum height standard, noting that the height breach is limited to 270mm, however it is not considered warranted in this instance. The proposal provides compliant floor to floor heights for the development in accordance with the ADG, with the upper level contained within the roof form. The proposed pitched roof design and habitable roof space is to provide a more sympathetic design to the character of the local area and the existing streetscape. The development is restricted by the requirement to provide off-street parking and associated driveway gradients into the basement level which prevents the overall building being lowered. The subject site is also located within the catchment area for the Maroubra Bay Flood Study, while no significant flooding is predicted on the site there are significant overland flow paths which limit the floor levels of the development. The variation to the development standard is largely in relation to the constraints of the site and the architectural design of the development. As such, it is considered that there are sufficient environmental planning grounds to justify contravening the development standard.

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3. Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?

To determine whether the proposal will be in the public interest, an assessment against the objectives of the height of buildings standard and R3 zone is undertaken.

As discussed in Section 6.2 of the report, the proposal is considered to be consistent with the objectives of the R3 zone, and as outlined above, the proposed development is also found to be consistent with the objectives of clause 4.3 height of buildings and therefore the development will be in the public interest.

4. Has the concurrence of the Secretary been obtained?

In assuming the concurrence of the Secretary of the Department of Planning and Environment the matters in Clause 4.6(5) have been considered:

Does contravention of the development standard raise any matter of significance for state or regional environmental planning?

The proposed development and variation from the development standard does not raise any matters of significance for state or regional environmental planning.

Is there public benefit from maintaining the development standard?

Variation of the maximum height of buildings standard will allow for the orderly use of the site and there is a no public benefit in maintaining the development standard in this instance.

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(4) have been satisfied and that development consent may be granted for development that contravenes the height of buildings development standard.

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

The DCP provisions are structured into two components: objectives and controls. The objectives provide the framework for assessment under each requirement and outline key outcomes that a development is expected to achieve. The controls contain both numerical standards and qualitative provisions. Any proposed variations from the controls may be considered only where the applicant successfully demonstrates that an alternative solution could result in a more desirable planning and urban design outcome.

The relevant provisions of the DCP are addressed in Appendix 5.

9. Environmental Assessment

The site has been inspected and the application has been assessed having regard to Section 4.15 of the Environmental Planning and Assessment Act, 1979, as amended.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	It is noted that the new Housing SEPP came into force during the course of the assessment of the application. The provisions of the new SEPP have been considered in the assessment.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 5 and the discussion in key issues below
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

9.1. Discussion of key issues

Clause 16A (Character of local area) of SEPP ARH

Division 1 of the SEPP contains provisions and development standards that apply to development for the purpose of a in-fill affordable housing which have been addressed in the most part in SEPP ARH Table in Appendix 3. Clause 16A of SEPP ARH specifies that 'a consent authority must take into consideration whether the development is compatible with the *character of the local area*'.

A planning principal has been established via *Project Venture Developments v Pittwater Council [2005] NSW LEC 191* to test whether a proposal is compatible with the character of the area on the basis that:

Where compatibility between a building and its surroundings is desirable, its two major aspects are physical impact and visual impact. In order to test whether a proposal is compatible with its context, two questions should be asked.

1. *Are the proposal's physical impacts on surrounding development acceptable? The physical impacts include constraints on the development potential of surrounding sites.*

2. *Is the proposal's appearance in harmony with the buildings around it and the character of the street?*

An assessment of the amended proposal has found that the proposed development shall not result in any unreasonable impacts upon adjoining properties with regards to residential amenity, subject to the recommendations within the report. The proposal, as amended, is considered to be consistent with the objectives of RLEP 2012 and RDCP 2013, with particular regards to the built form controls applicable to medium density residential development, with any non-compliances minor in nature. Furthermore, the proposed parking shall ensure that the increase in density from a low density development to a medium density development shall not unreasonably impact upon the traffic and on-street parking within the area.

The amended proposal provides a substantial reduction to the FSR, subsequently resulting in a lesser building mass and built form. Increase setbacks are provided and increased landscaping on site, ensuring the development is located within a landscaped setting. The amended proposal being two (2) storeys with habitable roof space incorporated in a pitched roof which shall enhance the streetscape. However, it is recommended that the balustrade of the upper level balconies be setback from the balcony edge to minimise the visual impact of the structure. The bulk and scale of the development is not considered to be excessive nor does it exceed that anticipated for the site under the medium density residential planning controls. As such, the proposed development is considered to be in harmony with the buildings around it and is not inconsistent with the character of the street and adjacent developments which comprises a mixture of one, two and three storey developments.

In view of the above, and in consideration of the detailed assessment provided further in the report, the proposed development is not considered to be inconsistent with the character of the area.

Landscaping and Deep Soil Areas

The proposed development incorporates affordable housing and therefore the application is made pursuant to SEPP (Affordable Rental Housing) 2009. Clause 14 of the ARH SEPP stipulates standards that cannot be used to refuse consent. Clause 14(1)(c) and (d) relate to landscaping provisions and require the following:

- *Landscaped area – at least 30% of the site area is to be landscaped.*
- *Deep soil zones – in relation to that part of the site not built upon*
 - *there is a soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15 per cent of the site area; and*
 - *each area forming part of the deep soil zone has a minimum dimension of 3 metres, and*
 - *if practicable, at least two-thirds of the deep soil zone is located at the rear of the site area.*

The definition of “landscaped area” pursuant to the Standard Instrument is as follows:

landscaped area means a part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area.

The proposal includes a basement car park which occupies a significant portion of the site. As such, the area of the site not occupied by building is limited and therefore the proposed landscaped area (in accordance with the above definition) is 15.34% or 86.38m² which does not comply with the standard. The deep soil areas, which are a minimum of 3m in width, contribute to approximately 8% of the site or 45.21m².

The shortfall in landscaped area and deep soil area can be attributed to the extent of the basement level across the site. However, the proposal includes several landscaping areas throughout the site located above the basement and several planter boxes which contributes to the overall landscaping. As such, approximately 34.1% of the overall site area is provided for the purpose of landscaping.

Furthermore, total deep soil areas across the site, including those less than 3m in width, equates to 15.34% of the site area which would be consistent with the minimum requirements.

As the proposal is for a residential flat building, the provisions of SEPP 65 and the ADG are also applicable. The ADG requires a minimum of 7% of the site to be deep soil zones. No minimum dimensions are provided for the purpose of deep soil areas for sites less than 650m², in which the site is, being 562.8m². As the proposal provides a minimum of 15.34% of the site as deep soil planting, the proposal complies with the minimum provisions of the ADG.

While the provisions of SEPP ARH and SEPP 65 prevail, consideration is also given to the medium density provisions of Part C2 of RDCP 2013 in relation to landscaping and deep soil areas. Clause 2.2 of Part C2 require a minimum of 50% of the site area to be landscaped open space and a minimum of 25% of the site to be deep soil areas, with no minimum numerical dimensions specified. The proposed development shall have landscaped open space equating to 49% of the site area, and deep soil areas of 15.34%.

The objectives of clause 2.2 aim to ensure that landscape open space is provided of sufficient size to be used for recreational activities or growing substantial vegetation, to reduce impermeable surface cover and reduce stormwater run-off, improve stormwater quality and improve the amenity of open space with landscaped design.

While the proposed development results in non-compliance with the minimum deep soil areas, the proposal includes additional landscaping in the form of planter boxes and areas located on top of the basement roof for planting and vegetation. As such, as outlined above the area of site utilised for planting shall be approximately 34.1% of the site. The landscaped open space results in a minor non-compliance of 1%, the proposal provides generous setbacks and the building footprint is not considered to be excessive. Furthermore, the landscaped open space comprises a combination of soft and hard landscaping. Council's Development Engineer raised no concerns regarding the stormwater management of the site, subject to recommended conditions. As such, the proposal is considered to be consistent with the objectives of the control and is supported in this instance.

In view of the above, the proposed development is considered to provide a balance between built form and open space, and provide adequate areas throughout the site for the purpose of plantings and landscaping. Furthermore, given that the proposal complies with the minimum requirements of the ADG in regards to deep soil areas and communal open space, refusal of the application based on landscaping provisions would not be warranted in this instance, and therefore the variations are supported.

Dwelling Size and Layout

- **Clause 16(2)(b) (Dwelling size) of SEPP ARH**
- **Objective 4D-1 (Apartment Layout and Size) of the ADG**
- **Objective 4D-3 (Apartment Layout and Size) of the ADG**

Unit 6 of the proposed development is a three (3) bedroom and one (1) bathroom apartment. The provisions of clause 16(2)(b) of the ARH SEPP specify a minimum gross floor area of 95m² for a dwelling with three (3) or more bedrooms. The proposed apartment shall have a GFA of 90m² which does not comply with the standard. While it is acknowledged this is more onerous than the requirements of the ADG which requires an internal area of 90m² for the subject apartment, concerns are raised regarding the proposed three (3) bedrooms, and the ability to accommodate three (3) bedrooms within the floor space which results in poor amenity for occupants and non-compliance with the requirements of ADG in relation to living room widths, bedroom sizes and access to light and air.

Objective 4D-3 requires Living rooms or combined Living/Dining rooms to have a minimum width of 4m for three (3) bedroom apartments. The proposed development provides an open-plan Living/Dining area with a width of between 3.3m to 3.8m which does not comply with the requirements of 4D-3. It is considered that the reduced width of the living space can be attributed to Bedroom 1 which is located adjoining the Living/Dining area. In this regard the following is noted:

Objective 4D-3 requires bedrooms to have a minimum area of 9m², with a minimum dimension of 3m (excluding wardrobe space). Bedroom 1 within Unit 6 has an internal size of 8.71m² with

minimum dimensions of 2.7m x 3m which does not comply with the minimum provisions of the ADG. Furthermore, the subject bedroom does not provide any windows in contradiction to Objective 4D-1 of the ADG. As such, it is considered that the proposed bedroom shall provide poor amenity, being undersized with no access to natural light or ventilation.

In view of the above, and the cumulative non-compliances with regards to apartment size under the ARH SEPP, and layout and minimum dimensions under the ADG for living areas and bedrooms, it is recommended that Bedroom 1 is deleted and the apartment be amended to a two (2) bedroom apartment. This would allow the living and dining space to continue into the bedroom area, providing better amenity for the living areas and a more flexible and adaptable floor layout in accordance with the objectives of the controls. It should be noted that the extension of the living area into the bedroom space would still comply with the provisions of Objective 4D-2 in relation to the maximum depth of an open-plan layout being 8m, with the proposed depth a maximum of 7.3m.

Visual Privacy

- **Objective 3F-1 of the ADG;**
- **Clause 5.3 (Visual Privacy) of Part C2, RDCP2013**

The design criteria (objective 3F-1) of the ADG takes precedence over the RDCP with regards to visual privacy and provides minimum separation distances from buildings to site boundaries to ensure visual privacy is maintained (the setback controls in the RDCP do however still apply and are also assessed).

For buildings up to 12m in height (4 storeys), a 3m setback to side boundaries is required for non-habitable rooms and 6m for habitable rooms. The north-eastern side boundary setback to north-eastern facing windows is a minimum of 3m. The south-western side boundary setback to south-western facing windows is between 3m and 4.6m. The north-western rear boundary setback shall be 6.3m at Ground Floor level and 7.4m at First Floor level to the rear windows, and a minimum of 5.3m to the First Floor level balcony.

Objective 3F-1 states:

Adequate building separation distances are shared equitably between neighbouring sites, to achieve reasonable levels of external and internal visual privacy.

The relevant design guidance that supports the design criteria states:

- *New development should be located and oriented to maximise visual privacy between buildings on site and for neighbouring buildings. Design solutions include:*
 - *site layout and building orientation to minimise privacy impacts (see also section 3B Orientation)*
 - *on sloping sites, apartments on different levels have appropriate visual separation distances (see figure 3F.4)*
- *No separation is required between blank walls.*

A variation to the design criteria is supported for the following reasons:

- The subject site has a frontage width of approximately 16.7m, with the site tapering towards the rear, with a rear boundary length of 13.6m, as such achieving 6m setbacks to habitable rooms and an adequate building footprint would not be possible in this instance.
- It is recommended that privacy measures be imposed on side windows and to upper level balconies where appropriate to mitigate any overlooking impacts upon neighbouring properties.
- Living spaces have been orientated to the front and rear of the site to minimise visual privacy impacts.
- The building orientation is in accordance with section 3B of the ADG given:
 - the building defines the street by facing it and incorporating direct access from the street.

- living areas, POS and communal open space receives compliant solar access in accordance with sections 3D and 4A.
- solar access to living rooms, balconies and POS of neighbouring building has been considered and indicate that there shall not be any unreasonable impacts upon neighbouring properties with regards to solar access.

Clause 4.1 (Building Design – Building façade) of Part C2, RDCP 2013

Clause 4.1(iv) stipulates that building elevations should be divided into sections, bays or modules of not more than 10m. The north-eastern side elevations provides a wall length of 25.9m at the Ground Floor level which does not comply with the control. It should be noted that the upper levels of the development provide adequate recesses to ensure that the wall length does not exceed 10m, and the south-western side elevation does not provide any wall lengths greater than 10m in length.

The proposed variation to the 10m wall length is supported in this instance for the following reasons:

- The site is constrained by its irregular shape and width, noting that compliant side setbacks of 3m are provided for the proposed development, and therefore further modulation of the north-eastern façade would impact upon the internal floor layout of the development with regards to Units 1 and 3.
- The north-eastern elevation is articulated by a difference in materiality and numerous window openings, which breaks up the building mass.
- The non-compliance is limited to the Ground Floor level only which shall be partially obscured by any boundary fencing. Furthermore, the proposed landscaping along the side boundary shall screen the development and soften the visual impact of the building mass.
- In view of the above, the proposal is not considered to result in any unreasonable visual impacts as viewed from the public domain and adjoining properties.

Clause 4.4 (External Wall Height & Ceiling Height) of Part C2, RDCP 2013

Clause 4.4 specifies a maximum external wall height of 8m for the subject site. Where the development proposes dormer windows the maximum external wall height is measured to the underside of the dormer eave. The proposed development incorporates a habitable roof level with the use of dormer windows. The proposed windows shall extend more than 2m from the roof plane and therefore the proposal shall have an external wall height of up to 8.91m which does not comply with the control.

The relevant objectives of the control aim to ensure that the building form provides for interesting roof forms and is compatible with the streetscape, to control the bulk and scale of development and minimise the impacts on the neighbouring properties in terms of overshadowing, privacy and visual amenity. The proposed development provides a total of six (6) dormer windows, being three (3) on each side elevation. It is noted that the external wall outwith the dormers shall be a maximum height of 6.51m and therefore the proposal would comply with the external wall height control with the exception of the dormers.

The front south-eastern dormers are setback over 3m from the front roof eave. The proposed dormers are not considered to be excessive, are well proportioned in the overall context of the roof form and shall not be visually obtrusive. The proposed pitched roof form is compatible with the existing streetscape and the existing and desired future character of the area. The proposed dormers shall provide increased internal amenity without detrimentally contributing to the overall bulk and scale of the development. Furthermore, the proposed dormers are not considered to adversely impact upon the adjoining properties with regards to overshadowing, privacy or visual bulk. As such the proposal is considered to be consistent with the objectives of the control and the non-compliance is supported in this instance.

Clause 8.1 (Coral Sea Park Estate, Maroubra) of Part C2, RDCP 2013

The subject site is identified as being within the Coral Sea Park Estate under clause 8.1 of Part C2. The confinements of the Estate can be seen in Figure 4 below:

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Figure 4 – Coral Sea Park Estate, subject site identified in red.

Clause 8.1 requires that materials and finishes are consistent with the dominant themes and front facades are compatible with the form, massing and articulation of existing developments, that sites are of sufficient size and dimensions to accommodate large rear gardens and open spaces between buildings, front gardens are not fences, and front setbacks are consistent with the surrounding buildings.

Subclause 8.1(iii) also requires that sites for the development of two (2) or more dwellings have a minimum frontage of 20m. The site has a frontage of 16.7m and provides for six (6) dwellings which does not comply with the control. However, given the type of development, being a RFB, and that the proposal complies with the minimum site requirements of the ARH SEPP and side setbacks in relation to medium density developments, the number of dwellings is not considered to be excessive, and the non-compliance would not warrant refusal of the application.

The proposed development has aimed to ensure that the proposal shall be compatible with the dominant themes of the estate providing a two (2) storey built form with habitable roof space. The materiality of the development adopts a brick finish to compliment the existing materials and finishes of the surrounding developments. The proposal also provides an open rear garden area in accordance with the control. Fencing along the frontage has been minimised, with the use of an elevated planter box along the front façade to substitute the fence. The immediate vicinity of the subject site comprises RFBs, semi-detached dwellings, and dwelling houses, all with varying frontage widths and a variety of architectural forms, and it is considered that the proposed development would not be inconsistent with other development within the Estate. The front setback has been increased to ensure consistency in the streetscape. The proposal is largely consistent with Council's built form controls and the provisions of the ARH SEPP and ADG, with particular regards to FSR and setbacks, and it is considered that the subject site is capable of accommodating the proposed RFB. Furthermore, the proposed development is not inconsistent with the scale and massing of other existing RFB developments within the Estate. As such, the proposed development is supported in this instance.

10. Conclusion

That the application for demolition of existing structures and construction of a 3 storey residential flat building comprising six (6) units, basement parking, tree removal, landscaping and associated works (affordable rental housing proposed). be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013.
- The proposal is consistent with the specific objectives of the R3 zone in that it presents a bulk and scale that is generally consistent with that envisaged by the applicable standards that will contribute to the character of the area and not result in any adverse impacts on the residents.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- The development enhances the visual quality of the public domain/streetscape

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Appendix 1: Referrals

1. Internal referral comments:

1.1. Design Excellence Advisory Panel (DEAP)

The application was originally referred to Randwick Design Excellence Advisory Panel on 24 May 2021. In response to the concerns raised by the Panel and Council, the Applicant provided amended plans which significantly reduced the size and scale of the development, and provided an architectural form more compatible with the existing streetscape and Council's built form controls in relation to medium density development.

The original Panel comments are provided below:

INTRODUCTION

The proposal is characterised by:

- *Demolition of existing structures and construction of a 3 storey residential flat building comprising 9 units, basement parking, tree removal, landscaping and associated works (affordable rental housing proposed).*

General Notes:

The affordable housing bonus, specifically the full amount of affordable housing being included in this proposal is causing the built form to "inflate" in every direction and creating a number of significant non-compliances.

During the discussions at the meeting, there were a number of questions raised as to the legitimacy of the method in which the affordable housing bonus is calculated on this site.

Recommendations

Council should satisfy itself that the bonus (0.48:1) FSR is being calculated correctly before.

1. Context and Neighbourhood Character

- *Portland Crescent is a narrow suburban street with significant tree planting in the street and front setbacks that lend the street a landscape character.*
- *The opposing side of the street is made up of a post war social housing estate with significant setbacks, significant planting and 3 storey face brick building that present as 3+ storeys given slope in the topography or additional height in the roof-form.*

Recommendations

- *The proposal does not match the existing streetscape and neighbourhood character.*
- *A significant redesign including an increase in front setback and planting with associated deep soil volumes is required.*
- *The proposal should investigate further the retention of the existing trees on the site, in any future revisions.*

2. Built Form and Scale

Massing + Scale

- *The built form presents a consolidated three storey appearance to the street with ground floor setback. The unification of the built form through the roof, which traces the perimeter of the footprint enlarges the overall appearance of the building to the street in direct contradiction to the DCP controls - specifically, the intention of the external wall height control (RDCP clause 4.4), which is intended to reduce the visual bulk by limiting the appearance of the external wall to 8m - in effect attempting to create a 2storey + attic appearance.*

FSR - Floor Space Ratio

- *The proposal appears to comply with the FSR, however the additional floor space allowable under the Affordable Housing Bonus is causing a number of significant non-compliances.*

Recommendations

- Council should satisfy itself that the affordable housing bonus is being calculated correctly by the applicant.

HOB - Height Of Building

The proposal as presented at the meeting is shown within the height limit, however there are serious concerns regarding adequate floor to ceiling heights in habitable rooms, to the extent that the built outcome may not achieve height compliance given that:

- The floor thickness shown in sections is 250mm, with no obvious structural transfer zones, and,
- Several non habitable rooms (eg bathrooms, and kitchens) are positioned above habitable rooms below with no obvious strategy for plumbing reticulation etc, which could lower ceiling heights in those habitable rooms below.
- Habitable rooms (bedrooms) on the top floor, located at the centre of the plan, adjacent to the core have floor to ceiling heights of as little as 2200mm with raked ceilings that do not achieve the minimum 2700mm.

3. Density**Front Setback**

- The front setback is below the minimum allowable, and appears to be calculated (in the SEE and drawings) from the front edge of the balcony to the boundary.
- The SEE provides some commentary regarding the front setback, stating that there is no prevailing setback along the street.

Recommendations

- It is the opinion of the panel that although there may not be a prevailing numerical setback along the street, there is a predominance of significant planting in the front setbacks, which is not accommodated in the proposal as presented. The building line and balcony significantly breach the minimum setback and there is no adequate provision for deep soil volume in the front setback given the alignment of the basement relative to the front boundary.
- The proposal should be pulled back from the front boundary and at least the minimum setback with associated deep soil volume provided.

Side Setbacks

- The side setbacks are below the minimum allowable - ranging from 2500mm to 3000mm in various locations.
- Habitable rooms face side boundaries with minimal screening to ground and level one only, to control visual privacy.
- No privacy screening is provided to either the NE or SW facing habitable rooms on level 2 (storey 3).
- The screening elements as presented in the proposal to bedrooms may also reduce the daylight levels in bedrooms.

Recommendations

- The side setbacks should be adhered to for the primary building form.
- The panel recommends changes to the building form and building aesthetic - ie specific manipulations of form to direct views to the front and rear could be employed, specific instances of form / window manipulation could penetrate the side setbacks and provide directional views to the street and the rear.

Rear Setback

- The rear setback is below the minimum allowable under the ADG (incorrectly interpreted in the SEE) with no screening or amelioration of privacy and overlooking issues between the apartments / balcony and the neighbours to the rear.

Recommendations

- The proposal should increase the rear setback, and/or provide adequate visual privacy amelioration measures.

Communal Space

- The proposal does not provide any communal open space, with the exception of the entry pathway from the street along the NE boundary (as noted in the SEE).

Recommendations

- Whilst developments of this typology may elect, not to provide communal open space, this is required to be offset by increasing the Private Open Space POS for each apartment (under the ADG). The proposal does include larger POS, however the POS on level 01 and level 02 are below the minimum usable dimension (width) outlined in the ADG for 4 out of 6 apartments.
- The proposal must provide POS regardless of the inclusion or exclusion of communal open space that meets the minimum usable width required under the ADG.

4. Sustainability

The proposal does not include documentation of any provision for building sustainability measures eg:

- solar panels,
- water tanks,
- ODS tanks or the like.

Recommendations

- The proposal should include some form of water detention / retention as a minimum, and could go further to include energy harvesting technology such as solar panels or the like.

5. Landscape

- No landscape plan was provided with the documentation prior to the meeting. During the meeting the applicant sent landscape drawings.
- The proposal removes a number of existing significant trees on the site, including a number of trees that could contribute to the streetscape.
- An arborists report was provided demonstrating that the trees were in good condition with no structural flaws, or disease, however all existing trees were designated as "low" value, and therefore removed under the proposal.
 - The Arborist report provided the criteria for designation of trees which does not appear to support the removal of the existing trees given they are without structural flaws or disease.
- The minimum quantity of deep soil (required under the DCP) is not provided on site, if the ground floor "floating decks" to the rear are included. The definition of deep soil under the ADG stipulates that deep soil area is to be free of obstruction above and below ground. The floating decks will permanently shade the rear deep soil and prevent adequate microbial growth to support any planting.

Recommendations

- Council arborist should assess the existing trees to determine their value.
- Any revised proposal should treat the existing significant trees that should be retained as an opportunity, and the site planning should work with the existing landscape in any future revisions.
- Adequate deep soil should be provided clear of obstructions above and below ground at the front and rear of the site as a priority.
 - Significant planting, with adequate soil volumes should be provided in the front setback in order to create continuity with the streetscape.
 - Significant planting, with adequate soil volumes should be provided in the rear setback in order to provide privacy screening to the rear neighbours, and consolidate green space in the centre of the block.
 - Deep soil should also be provided along the side boundaries, and the basement footprint reduced to prevent excavation directly along the side boundaries.

6. Amenity

Solar Access

- The proposal does not meet the minimum requirement for solar access to apartments and is calculated incorrectly in the drawings provided.
- The apartment on the NE corner (fronting the street) does not have a window to the living room that would receive sunlight between 9 and 3 on the winter solstice.

Ceiling Height

- As noted above the floor to ceiling heights to habitable rooms on the top floor are below the minimum allowable, and throughout the proposal habitable rooms are positioned below kitchens and bathrooms with minimal floor thickness with no plumbing reticulation strategy shown.

Circulation

- The clear area in front of the lift does not achieve 2000mm. (shown and dimensioned on the plans as 1500mm). The drawings do not appear to meet the minimum provisions of the BCA / NCC.
 - It the understanding of the panel that the clear dimension in front of the lift is required for stretcher/gurney's to be manoeuvred in and out of the lift, and therefore must be provided.

Services

- There is no waste reticulation strategy shown on the drawings. All garbage would need to be taken to the basement bin store via the lift or fire stair+common lobby and basement stair.
- No bin presentation to street area is shown on drawings.
- No location for hydrant / fire services is shown on the drawings.

General

- One ground floor apartment (the one with frontage to the street) has a window to a study that faces into the undercroft, and basement ramp - a study is considered a habitable room under the ADG and this arrangement does not satisfy a reasonable proposition for amenity to this habitable room.

Recommendations

- The proposal should comply with the minimum amenity targets setout in the ADG, DCP, and NCC

7. Safety

No issues raised by the panel

8. Housing diversity and Social Interaction

The proposal is to be commended for the inclusion of a wide diversity of apartment types designated as affordable housing, ranging from 1,2,3,4 bedroom types. However it is precisely the quantum of affordable housing being provided (only on a 10 year lease) that is causing the inflated footprint /envelope and various significant non-compliances as noted in these minutes.

Recommendations

Refer to summary for potential directions - either a significant increase in height is required to accommodate the allowable floor space, or a reduction in the overall floor space.

9. Aesthetics

- The material choices are based on a "beach side" aesthetic as raised by the proponents architect in the meeting.

Recommendations

- *The panel feels that the context of the development does not lend itself to a “beach side” aesthetic and would be better served by integrating the materiality and palette of the surrounding streetscape into the development - notably face brick, and warm tones.*

SUMMARY AND RECOMMENDATIONS

The panel is not supportive of the proposal in its current form and believe that the applicant should be given the opportunity to re-present the proposal in a revised form at a future meeting.

Any future proposal should be accompanied by a significantly expanded Site Analysis to justify any non-compliances if any.

This section should be read in conjunction with the recommendations highlighted above within each section (in blue)

The panel suggest that there are two potential directions that the proposal/proponent might investigate:

1.0

A reduction in the overall floorspace to allow the building envelope to comply with the controls and relieve “pressure” on the proposal such that it is able to respond to issues raised above.

2.0

A co-ordinated Planning Proposal for the whole of Portland Crescent to demonstrate that additional height may be acceptable in this location, and all other setbacks (front, side, rear) adhered to / issues ameliorated. The panel note that it is incumbent upon the applicant to avail themselves of the risks, and timelines associated with any Planning Proposal.

Assessment Officer comments

The submitted amended plans are considered to have satisfactorily addressed the key matters raised by the DEAP as follows:

- The FSR of the development has been substantially reduced through a reduction to the number of apartments from nine (9) to six (6) and an associated reduced building footprint and height. The amended FSR is 0.80:1, where by a maximum of 0.95:1 is permitted by the ARH SEPP. The proposed FSR is more compatible with the level of built form anticipated for the site pursuant to RLEP 2012 which specifies a maximum FSR of 0.75:1 for the site.
- The architectural design of the development was amended to a two (2) storey development with habitable floor space sited within a pitched roof form to better align with the traditional streetscape character.
- The front setback of the development was increased at the upper levels, with the front building line consistent with the front setback alignment of the adjoining properties.
- Planter boxes are provided within the front setback area, adding to the landscaped character of the site, and ensuring a more consistent streetscape approach.
- The floor to floor height have been increased to 3.1m comply with the ADG.
- Side setbacks have been increased to 3m, with a greater setback provided to the southern side at the streetfrontage to minimise bulk and scale.
- The rear setback has been increased at all levels.
- The proposal provides both COS and POS for occupants.
- It was determined that the existing trees were generally of low value or significance. An updated Landscape Plan has been provided which increases landscaping on site, including new canopy planting.
- The proposed colour palette shall be compatible with the surrounding developments, incorporating face brick.

1.2. Development Engineer

The application was referred to Council's Development Engineer who provide the following comments and/or recommendations:

An amended application has been received which reduces the number of units to 6 and the number of carspaces to 6 in a revised basement layout with deletion of the mechanical turntable

Original Proposal

Demolition of existing structures and construction of a 3-storey residential flat building comprising 9 units, basement parking, tree removal, landscaping and associated works (affordable rental housing proposed) at the above site.

This report is based on the following plans and documentation:

- *Amended Architectural Plans by Equinox Designs, dwg's 100-703, rev C, dated 23/11/2021;*
- *Statement of Environmental Effects by Solutions Zane, dated March 2021;*
- *Traffic and parking assessment dated*
- *Detail & Level Survey by Equinox Designs 8/02/2021;*
- *Geotechnical Report by GCA dated 17th February 2021;*
- *Arboricultural Impact Assessment by Complete Arborcare, dated 11/02/21.*

General Comments

There are no objections to the amended scheme subject to the comments and conditions provided in this report

Flooding Comments

The site lies within the catchment for the Maroubra Bay Flood Study which predicts no significant flooding on the subject site during major storm events. The site has not been tagged under Section 10.7 of the EP&A Act as being subject to flood related development controls, hence a flood report is not required.

Notwithstanding there is a significant flow path on Portland Crescent in front of the site , which will reach depths of approximately 200mm for the critical 1% AEP (1 in 100yr) storm event.

At the front property boundary however flood depths are less than 50mm and virtually negligible within the site with a maximum level of RL 14.90 determined from Council's Wateride software which has access to the flood model.

To protect the basement from potential minor inflows it is recommended a crest be provided at twice the depth of flow as required by Part B8 of the DCP. This translates to a crest level of minimum RL 14.95 AHD. A suitable condition has been provided in this report.

Drainage Comments

The Planning Officer is advised that the submitted drainage plans should not be approved in conjunction with the DA, rather, the Development Engineer has included a number of conditions in this memo that relate to drainage design requirements. The applicant is required to submit detailed drainage plans to the Principal Certifier for approval prior to the issuing of a construction certificate.

The stormwater must be discharged (by gravity) either:

- i. *Directly to the kerb and gutter in front of the subject site in Portland Cr; or*
- ii. *Directly into Council's underground drainage system located in Portland Cr via a new and/or existing kerb inlet pit; or*
- iii. *To a suitably designed infiltration system (subject to confirmation in a full geotechnical investigation that the ground conditions are suitable for the infiltration system),*

Should the Stormwater be discharged to Council's street gutter or underground drainage system, an onsite stormwater detention (OSD) system will be required for this development.

Parking Comments

Parking Requirements for the development have been assessed as per the following applicable parking rates specified in Affordable Housing SEPP.

- 0.5 space per 1 bedroom unit
- 1 space per 2 bedroom unit
- 1.5 spaces per 3 bedroom unit

The revised development is for 6 units comprising of 1 x studio, 2 x 1 bedroom, 2 x 2 bedroom & 1 x 3 bedroom units,

For the purposes of assessment studios are counted as 1-bedroom units.

*Parking required under AHSEPP = (3 x 0.5) + (2 X 1) + (1 X 1.5)
 = 1.5 + 2.0 + 1.5
 = 5.0 spaces*

Parking proposed = 6 spaces (including 1 visitor space)

The parking provision is therefore satisfactory

Carpark Layout

The vehicular access driveways, internal circulation ramps and the carpark areas, (including, but not limited to, the ramp grades, carpark layout and height clearances) are to be in accordance with the requirements of Australian Standard 2890.1:2004.

A turntable is no longer proposed in the basement. Development Engineering is satisfied that the use of mechanical devices is no longer needed and no objections are raised to revised layout the turntable.

Geotechnical Comments

The submitted geotechnical report by GCA dated 17th February site did some investigation and monitoring of groundwater levels within the subject site. Groundwater levels of approximately 3m below ground level were observed.

Excavation for the basement will likely reach the top of the groundwater table and when allowing for future fluctuations on the groundwater level, it will be required that the basement be fully tanked and water-proofed.

Undergrounding of site feed power lines

At the ordinary Council meeting on the 27th May 2014 it was resolved that;

Should a mains power distribution pole be located on the same side of the street and within 15m of the development site, the applicant must meet the full cost for Ausgrid to relocate the existing overhead power feed from the distribution pole in the street to the development site via an underground UGOH connection.

*The subject **is** located within 15m of a power pole on the same side of the street hence the above clause **is** applicable. A suitable condition has been included in this report.*

Waste Management Comments

The Planning Officer is advised that the submitted waste management plan should not be approved in conjunction with the DA, rather, the Development Engineer has included a number of conditions in this memo that relate to waste management requirements.

The applicant is required to submit to Council and have approved by Council's Director Planning, an amended Waste Management Plan (WMP) detailing waste and recycling storage and disposal for the development site.

The plan shall detail the type and quantity of waste to be generated by the development; demolition waste; construction waste; materials to be re-used or recycled; facilities/procedures for the storage, collection recycling & disposal of waste and show how the on-going management of waste for the units will operate.

Comments on the number of Waste Bins

Appendix 3 in Part B6 of Council's DCP specifies a waste bin requirement rate for residential flat buildings houses of 1 x 240L bin per 2 rooms for normal garbage and 1 x 240L bin per 2 rooms for recycling.

i.e. Garbage/recycling Bins Required for amended proposal = $6/2 = 3$ of each

There are no specific requirements for green waste in Part B6 of the DCP however since March 2021 Council has now introduced a Food and organics collection service (FOGO) and it is recommended that 2 x 240L bins also be provided for FOGO.

*Total Number of BINS required = 3(normal) + 3(recycling) + 2(FOGO)
= 8 x 240L BINS*

Total Number of BINS provided = 10 x 240L bins (complies)

Tree Management Comments

On the Portland Crescent verge, to the northeast of the existing vehicle crossing, are a variety of recently installed, 1-2m tall plants that appear to have been provided by a resident rather than Council given their small size and the fact they are not consistent with the dominant theme throughout the rest of the streetscape.

These plans show that the crossing will be widened as well as shifter slightly further to the north, so as to then line up with the basement entry ramp, with no objections raised to their removal (wholly at the applicant's cost) where necessary, as this will also avoid issues associated with future line of sight, with the larger, 5m tall Hibiscus tileaceus (Cottonwood, T4) that is also on the verge, but further towards the northern site boundary, able to retained in-situ given its distance from any of these external works, with relevant protection conditions and a bond imposed to ensure this.

Within the front setback of this site, along the southwest side boundary, right in the southeast site corner, is a mature, 9m tall Eucalyptus nicholii (Willow Leafed Peppermint, T1), of good health and condition that is also protected by the DCP.

It is growing in a narrow strip between the boundary fence and existing internal driveway, and as the new basement level will occupy this same area, has been shown and recommended for removal on both the plans as well as in the Arborist Report.

This species is widely regarded as unstable, unreliable and short-lived when compared to many other Eucalypts, and as it is a very common, non-endemic, that is also not a significant example of the species in anyway, having been assigned a Low Retention Value and Short Life Expectancy, a re-design of the whole scheme to accommodate this tree will not be pursued, with consent granted for its removal, as sought.

The smaller screening shrubs throughout the front setback, being the two (T2) halfway across the front boundary, including the Umbrella Tree, as well as T3, closer to the front of the existing dwelling, are not significant, and as all aspects of the works will be in direct conflict with them, can also be removed as shown.

Whilst not assessed in the Arborist Report, there appears to be a mature Melaleuca quinquinervia (Broad Leafed Paperbark) in the front setback of this site, hard up against the northeast corner of the existing dwelling, then a larger Gum Tree further to its west, in the northern side setback, which while being this sites most established specimens, unfortunately are already exempt from Council's DCP due to their proximity within 2m of the existing dwelling, meaning they could already be removed at anytime, without even requiring Council consent, irrespective of this application, and as

the large setbacks required to allow their retention will not be feasible for this proposal, their removal cannot be opposed, with the relevant consent provided.

The standard requirement of a detailed Landscape Plan to accompany this application has not been provided, so conditions have had to specify the minimum inclusions to ensure a high level treatment is provided.

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Appendix 2: Applicant's written request seeking to justify the contravention of the development standardClause 4.6 Variation in relation to Clause 4.3 (Height of Buildings) of RLEP 2012**RANDWICK LOCAL ENVIRONMENTAL PLAN 2012 (RLEP)
CLAUSE 4.6 REQUEST FOR CONTRAVENTION OF THE
DEVELOPMENT STANDARD**

APPLICANT: Solutions Zane
ADDRESS: 64 Portland Avenue, Maroubra
PROPOSAL: Proposed Demolition of Existing Structures, Construction of a 3-Storey Residential Flat Building Containing 6 Dwellings, Basement Parking for 6 Vehicles, Landscaping and Associated Works (Infill Affordable Housing)

DEVELOPMENT STANDARD:
Maximum Height of Buildings Standard under Clause 4.3 (2) of the RLEP

INTRODUCTION

This submission is a request for contravention of the above development standard in relation to the proposed demolition of existing structures, construction of a 3-storey residential flat building containing 6 dwellings, basement parking for 6 vehicles, landscaping and associated works (infill affordable housing) at No. 64 Portland Crescent, Maroubra on the basis that:

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and;
2. There are sufficient environmental planning grounds to justify contravening the development standard and;
3. The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out and as such is well founded.
4. Contravention of the standard in this instance will not raise any matters of State or Regional significance.
5. There is no public benefit in maintaining the standard on this occasion.
6. The proposal achieves the objectives of Clause 4.6 of the WLEP of providing an appropriate degree of flexibility in applying certain development standards to particular development and achieves better outcomes for and from development by allowing flexibility in this particular circumstance.

The development standard to which the request relates

Clause 4.3 (2) states:

(2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

The corresponding map read in conjunction with clause 4.3 (2) of the RLEP identifies a maximum height of buildings of 9.5m, as detailed in the following extract from Council's mapping:

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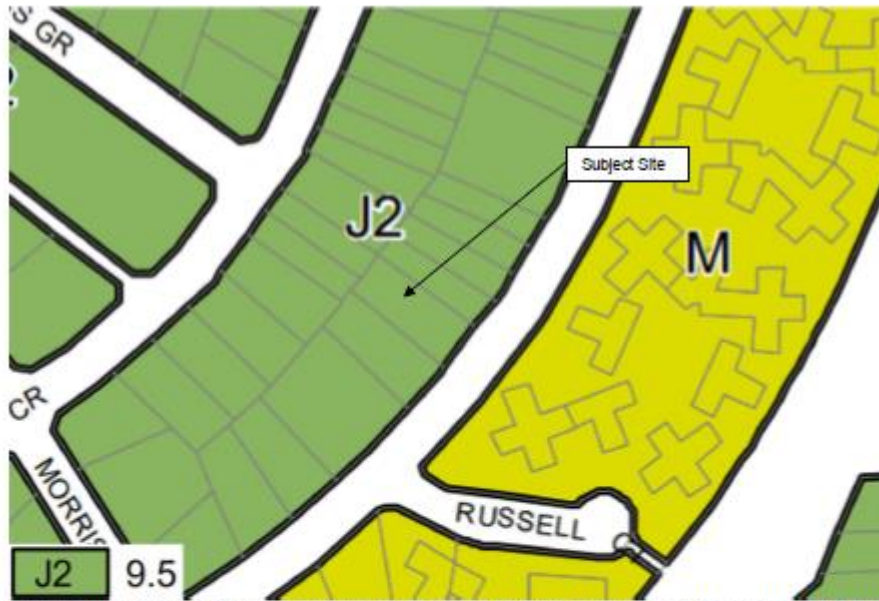


Figure 1: Maximum height of building in respect of the subject site (Source: RLEP Height of Building Map)

The objectives of the development standard

The objectives of this clause are as follows:

- (a) to ensure that the size and scale of development is compatible with the desired future character of the locality,
- (b) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,
- (c) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.

The nature of the departure from the development standard

For a small portion of the roof level, the proposed development includes a maximum building height of between 9.54m and 9.69m. Furthermore, Council officers have noted the SEPP 65 ADG requirement of 3.1m between floors, which will raise the maximum building height to between 9.64m and 9.79m, as shown on the southern elevation in Figure 2 below:



Figure 2: Roof plan of proposed development showing small section which will exceed the strict numerical height limit of 9.5 by up to between 0.14m 0.279m (red shading shows non-compliant portion) (Source: Working drawings from architectural plans)

Therefore, the departures from the building height standard are between 0.14m and 0.279m, equating to strict numerical departures of between 1.5% and 3% from the standard.

Why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Compliance with the minimum is unreasonable and unnecessary in the circumstances for the following reasons:

- The extent of departure is for a very small portion of the roof area only, due to the slope of the site which falls slightly to Portland Crescent in this location.
- The departure is so minor that it will be indiscernible from a compliant-built form.
- Insistence on a compliant maximum building height would oblige a lowering of the entire development and resultant non-compliance in driveway gradients, required by the relevant Australian Standards, minimum ground floor level for flooding, and or the inclusion of a less than optimal ceiling height in the uppermost level.
- Notwithstanding the strict numerical departure from the development standard, the proposed development, inclusive of the non-compliant component, in this instance, achieves the relevant objectives of the maximum height of buildings standard, in that:
 - The proposed development has been the subject of various amendments since lodgement of the original application such that the minor non-compliance will continue to ensure that the size and scale of the end development is compatible with the desired future character of the locality. This is also ensured by a total FSR well below that allowable under the ARH SEPP.
 - There are no contributory buildings in a conservation area or heritage items in proximity, with which the proposed development, inclusive of the strict numerically non-compliant component, would be incompatible, in terms of scale and character.
 - The strict-numerical non-compliance will not give rise to adverse amenity impacts in terms of:

- Additional visual bulk, as the non-compliant section comprises a roof component only, inset from the outer edges of the attic level, so as not to be readily visible from the streetscape.
- Loss of privacy, as the non-compliant component relates to a roof section only.
- Views from surrounding properties, as the location of the site and the proposed development, inclusive of the strict numerically non-compliant component, is not one where significant view corridors exist.
- Overshadowing, as the shadows cast to the southern neighbour, will be mostly from the southern edges of the building. The difference in additional shadows cast by the strictly non-compliant component will be minor to negligible. This minor impact in this regard is assisted by the siting and location of the adjoining building to the south and the absence of north facing windows to living room areas.

Chief Justice Preston of the NSW Land and Environment Court in the case of *Wehbe v Pittwater Council [2007] NSWLEC 827* established 5 ways in which a departure from a development standard can be justified and this was reiterated by Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*. The most invoked means of justifying a departure from a development standard is the achievement of the end objectives, despite the strict numerical non-compliance. For the reasons outlined above, the relevant objectives of the maximum height of buildings standard, in this instance, are achieved despite the strict numerical non-compliance and the request for departure is entirely justified and worthy of support on this occasion.

Given the justification provided in this request, the remaining ways by which a clause 4.6 Request may be justified do not require elaboration. Notwithstanding, for the purposes of completeness, the remaining ways are articulated with relevant commentary:

- *The underlying objective or purpose of the standard is not relevant to the development*

Comment

The underlying objective of the standard in this instance is relevant to the development. Moreover, the development, achieves the objectives of the standard, despite the strict numerically non-compliant component.

- *The underlying objective or purpose would be defeated or thwarted if compliance was required.*

Comment

In this instance, the underlying objective or purpose would be defeated or thwarted if compliance was required, as compliance would not facilitate any discernible benefits and would compromise the internal amenity of the building.

- *The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or*

Comment

Whilst the abovementioned standard is frequently varied by Council in justified circumstances, it has not been abandoned or destroyed by the Council's own actions.

- *The zoning of land was unreasonable or inappropriate, such that the standards for that zoning are also unreasonable or unnecessary.*

Comment

The zoning of the land on this occasion is not regarded as unreasonable or inappropriate, although the FSR is regarded as unlikely to encourage redevelopment of R3 Medium Density land in this location.

As such, the request on this occasion satisfies more than one means (one only required) of justifying contravention of the standard and is manifestly worthy of support.

The environmental grounds which justify contravening the development standard
Sufficient environmental planning grounds exist to justify departure from the development standard on this occasion in that:

- The application is accompanied by a BASIX certificate which conforms to the requirements of the SEPP with respect to potable water consumption, solar access, energy efficiency and thermal comfort.
- The strict-numerical non-compliance will not give rise to adverse amenity impacts in terms of:
 - Additional visual bulk, as the non-compliant section comprises a roof component only, inset from the outer edges of the attic level, so as not to be readily visible from the streetscape.
 - Loss of privacy as the non-compliant component relates to a roof section only.
 - Views from surrounding properties, as the location of the site and the proposed development, inclusive of the strict numerically non-compliant component, is not one where significant view corridors exist.
 - Overshadowing, as the shadows cast to the southern neighbour, will be mostly from the southern edges of the building and the difference in shadows cast by the strictly non-compliant component will be minor to negligible. This is assisted by the siting and location of the adjoining building to the south and the absence of north facing windows to living room areas.
- The strictly non-compliant component will not be readily visible from the streetscape of surrounding properties.
- The modest development inclusive of the strict numerically non-compliant component, is innovative and interesting in design and deserving of support.
- Council has a documented history of applying a flexible approach to the application of development standards as per the allowances under Clause 4.6, in appropriate circumstances.

Having due regard to the *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, it is affirmed that the above environmental planning grounds which justify contravention of the standard in this instance, are not general propositions. They are unique circumstances of the proposed development in the context of the existing building on the subject site.

Finally, having regard to the environmental benefits associated with the development in its current form and the acceptable amenity impacts, notwithstanding the strict departure from

maximum height of buildings standard, the proposed variation is justified and there are sufficient environmental grounds to support the departure.

The Public Interest/Consistency with the Objectives of the Standard and the objectives for development within the zone.

The proposed development is consistent with the relevant objectives of the standard, as detailed above.

The subject site is located within the R3 Medium Density Residential Zone. The zone objectives are:

- *To provide for the housing needs of the community within a medium density residential environment.*
- *To provide a variety of housing types within a medium density residential environment.*
- *To enable other land uses that provide facilities or services to meet the day to day needs of residents.*
- *To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.*
- *To protect the amenity of residents.*
- *To encourage housing affordability.*
- *To enable small-scale business uses in existing commercial buildings.*

The proposed development is consistent with the relevant objectives of the zone in that:

- It will continue to contribute to the variety of housing types within the surrounding medium density residential environment and this contribution will not be diminished by the strict numerically non-compliant component.
- Despite the strict numerical non-compliance, it will recognise and preserve the desirable elements of the existing streetscape and built form by confining the uppermost level within a roof form.
- Measures incorporated into the development will ensure the protection of amenity to surrounding residents and encourage housing affordability, by the inclusion of affordable housing units within the development and the replacing a single dwelling house with 6 apartments.

As such, the proposed development is in the public interest in that consistency with the objectives of the development standard and the objectives for development within the zone, has been achieved.

Significance for State and Regional Planning

The proposed development is consistent with State and Regional Planning Policies in that, inclusive of the strict numerical departure from the maximum height of buildings standard, it will result in an orderly and economic use of the land, in accordance with the objects of the Environmental Planning and Assessment Act, 1979.

Despite the non-compliance with the strict numerical requirement under clause 4.3 (2) of the RLEP, the proposed development on this occasion will achieve the stated objectives of the development standard.

Furthermore, the proposed development will achieve commensurate and sustainable environmental impacts as those which would be associated by a compliant form of development.

The end development will contribute to the existing and desired future character of the residential area, which is well located in relation to, schools, local and regional centres and community infrastructure. The site is well connected to public transport within walking distance providing access to beaches, local and regional centres and the Sydney CBD.

As such the proposed development does not raise any matters of significance for State or Regional planning.

The justification for the departure from the development standard is worthy of support.

Consistency with Clause 4.6 of the WLEP

The objectives of Clause 4.6 are:

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*

The justification for the provision of an appropriate degree of flexibility in the present circumstances has been demonstrated in this request. The wider planning intentions for the locality will not be compromised by the departure on this occasion.

Having regard to the contents of this submission, this request for contravention is well founded and worthy of support.

Departure from the standard on this occasion (whilst not required to), will achieve a better outcome for and from the proposed development by way of consistency with the objectives of the height of buildings standard and those of the R3 Medium Density Residential zone, will not raise any matter of significance for State or Regional Environmental Planning and no public benefit will be served by maintaining the standard in the circumstances.

The justification for the departure from the development standard is worthy of support.

Appendix 3: Compliance with the ARH SEPP for the Infill Affordable Housing Part 2 Division**1**

PART 2 – NEW AFFORDABLE RENTAL HOUSING Division 1 – In-fill Affordable Housing			
Clause	Control	Proposal	Compliance
Clause 10 - Development to which Division applies	<p>(1) This Division applies to development for the purposes of dual occupancies, multi dwelling housing or residential flat buildings if:</p> <p>(a) the development concerned is permitted with consent under another environmental planning instrument, and</p> <p>(b) the development is on land that does not contain a heritage item that is identified in an environmental planning instrument, or an interim heritage order or on the State Heritage Register under the <i>Heritage Act 1977</i>.</p> <p>(2) Despite subclause (1), this Division does not apply to development on land in the Sydney region unless all or part of the development is within an accessible area.</p>	<p>The proposed RFB is permitted with consent in the R3 Medium Density Residential zone.</p> <p>The site does not contain a heritage item.</p> <p>The site is within an accessible location as a bus stops is located within 400m of the site which is serviced regularly by a bus route.</p>	Complies.
Clause 13 - Floor space ratios	<p>(1) This clause applies to development to which this Division applies if the percentage of the gross floor area of the development that is to be used for the purposes of affordable housing is at least 20 per cent.</p> <p>(2) The maximum floor space ratio for the development to which this clause applies is the existing maximum floor space ratio for any form of residential accommodation permitted on the land on which the development is to occur, plus:</p> <p>(a) if the existing maximum floor space ratio is 2.5:1 or less:</p> <p>(i) 0.5:1—if the percentage of the gross floor area of the development that is</p>	<p>The total proposed GFA = 453.18m². Total affordable housing GFA = 91.56m² which is 20.2% of the total GFA.</p> <p>The existing max permissible FSR pursuant to the RLEP is 0.75:1. As the percentage of affordable housing is <50% of the total GFA, a bonus FSR of 0.2:1 applies, being 0.95:1 (or GFA of 534.66m²).</p> <p>The proposed FSR = 0.80:1 (453.18m²) which complies with the maximum permitted.</p> <p>Note: the proposed development provides one (1) additional car parking space than required by the</p>	Complies.

	<p>used for affordable housing is 50 per cent or higher.</p> <p>(ii) Y:1—if the percentage of the gross floor area of the development that is used for affordable housing is less than 50 per cent,</p> <p>where— AH is the percentage of the gross floor area of the development that is used for affordable housing.</p> <p>$Y = AH \div 100$</p>	<p>SEPP, and therefore the excess space has been counted as GFA in accordance with the definition of GFA pursuant to the Standard Instrument.</p>	
<p>Clause 14 - Standards that cannot be used to refuse consent</p>	<p>(1) Site and solar access Requirements</p> <p>A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:</p> <p>(a) (Repealed)</p> <p>(b) site area if the site area on which it is proposed to carry out the development is at least 450 square metres,</p>	<p>The site area is 562.8m²</p>	<p>Complies.</p>
	<p>(c) landscaped area if:</p> <p>(i) in the case of a development application made by a social housing provider—at least 35 square metres of landscaped area per dwelling is provided, or</p> <p>(ii) in any other case—at least 30 per cent of the site area is to be landscaped,</p>	<p>The Standard Instrument defines landscaped area as <i>part of a site used for growing plants, grasses and trees, but does not include any building, structure or hard paved area.</i></p> <p>The development application is not made by a social housing provider.</p> <p>The proposed landscaped area is approximately 15.34% (86.38m²).</p>	<p>Does not Comply. See Key issues for further discussion.</p>
	<p>(d) deep soil zones if, in relation to that part of the site area (being the site, not only of that particular development, but also of any other associated development to which this Policy applies) that is not built on, paved or otherwise sealed:</p> <p>(i) there is soil of a sufficient depth to support the growth of trees and shrubs on an area of not less than 15 per cent of the</p>	<p>The proposed deep soil zone is 8% (45.21m²), located entirely at the rear of the site.</p>	<p>Does not Comply. See Key issues for further discussion.</p>

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	<p>site area (the deep soil zone), and</p> <p>(ii) each area forming part of the deep soil zone has a minimum dimension of 3 metres, and</p> <p>(iii) if practicable, at least two-thirds of the deep soil zone is located at the rear of the site area,</p>		
	<p>(e) solar access if living rooms and private open spaces for a minimum of 70 per cent of the dwellings of the development receive a minimum of 2 hours direct sunlight between 9am and 3pm in mid-winter.</p>	83% of units will receive at least 2 hours of solar access to living rooms and balconies between 9am and 3pm on 21 June with front units receiving solar access in the morning and the rear and top level apartments receiving solar access through the day.	Complies.
	<p>(2) General A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:</p> <p>(a) parking if:</p> <p>(i) in the case of a development application made by a social housing provider for development on land in an accessible area—at least 0.4 parking spaces are provided for each dwelling containing 1 bedroom, at least 0.5 parking spaces are provided for each dwelling containing 2 bedrooms and at least 1 parking space is provided for each dwelling containing 3 or more bedrooms, or</p> <p>(ii) in any other case—at least 0.5 parking spaces are provided for each dwelling containing 1 bedroom, at least 1 parking space is provided for each dwelling containing 2 bedrooms and at least 1.5 parking spaces</p>	<p>The proposed development comprises 1 x Studio apartment, 2 x 1 Bedroom apartment, 2 x 2 Bedroom apartments and 1 x 3 Bedroom apartments, as such a minimum of five (5) car parking spaces is required.</p> <p>The proposal provides for six (6) car parking spaces within the basement.</p>	<p>Complies</p> <p><i>Refer to Development Engineers comments in Appendix 1.</i></p>

	are provided for each dwelling containing 3 or more bedrooms,		
	<p>(b) dwelling size if each dwelling has a gross floor area of at least:</p> <p>(i) 35 square metres in the case of a bedsitter or studio, or</p> <p>(ii) 50 square metres in the case of a dwelling having 1 bedroom, or</p> <p>(iii) 70 square metres in the case of a dwelling having 2 bedrooms, or</p> <p>(iv) 95 square metres in the case of a dwelling having 3 or more bedrooms.</p> <p>(iii) An additional 5m² is required for additional bathrooms.</p>	<p>The dwellings have the following gross floor area:</p> <ul style="list-style-type: none"> Unit 1 is a Studio apartment = 37.57m² (Affordable) Unit 2 is a 1-bedroom apartment = 50.81m² (Affordable) Unit 3 is a 2-bedroom apartment = 75m² Unit 4 is a 2-bedroom apartment = 88.51m² Unit 5 is a 1-bedroom apartment = 62m² Unit 6 is a 3-bedroom apartment = 90m² 	<p>Does not Comply. See Key issues for further discussion.</p>
	(3) A consent authority may consent to development to which this Division applies whether or not the development complies with the standards set out in subclause (1) or (2).		Complies.
	Nothing in this Policy affects the application of <i>State Environmental Planning Policy No 65—Design Quality of Residential Flat Development</i> to any development to which this Division applies.		Noted.
Clause 16 - Continued application of SEPP 65	A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.	Noted. SEPP 65 applies to the development and an assessment is carried out against SEPP 65 in table further below.	Noted.
Clause 16A - Character of local area	A consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area.	Refer to section 9.1 of this report which addresses this section of the SEPP.	Complies.
Clause 17 - Must be used for affordable housing for 10 years	<p>(1) A consent authority must not consent to development to which this Division applies unless conditions are imposed by the consent authority to the effect that:</p> <p>(a) for 10 years from the date of the issue of the occupation certificate:</p> <p>i. the dwellings proposed to be used for the</p>	Conditions will ensure compliance with this part.	Complies subject to conditions.

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	<p>purposes of affordable housing will be used for the purposes of affordable housing, and</p> <p>ii. all accommodation that is used for affordable housing will be managed by a registered community housing provider, and</p> <p>(b) a restriction will be registered, before the date of the issue of the occupation certificate, against the title of the property on which development is to be carried out, in accordance with section 88E of the <i>Conveyancing Act 1919</i>, that will ensure that the requirements of paragraph (a) are met. Land on which development has been carried out under this Division may be subdivided with the consent of the consent authority.</p>		
Clause 18 - Subdivision	Land on which development has been carried out under this Division may be subdivided with the consent of the consent authority.	No subdivision is proposed under the subject application.	Noted.

Appendix 4: Compliance with ADG Design Criteria

Apartment Design Guide – Compliance Table								
Design Criteria	Proposal	Compliance						
<p><u>Communal and Public Open Space</u> Communal open space has a minimum area equal to 25% of the site (140.7m²).</p> <p>Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9am and 3pm on 21 June (mid-winter).</p>	142.69m ² (25.3%) of communal open space is provided that will receive at least 2 hours direct sunlight.	Complies.						
<p><u>Deep Soil Zones</u> Deep soil zones are to meet the following minimum requirements:</p> <table border="1"> <thead> <tr> <th>Site Area</th><th>Minimum Dimension</th><th>Deep Soil Zone (% of site area)</th></tr> </thead> <tbody> <tr> <td>Less than 6500m²</td><td>-</td><td>7% (39.39m²)</td></tr> </tbody> </table>	Site Area	Minimum Dimension	Deep Soil Zone (% of site area)	Less than 6500m ²	-	7% (39.39m ²)	86.33m ² (15.34%) deep soil provided.	Complies.
Site Area	Minimum Dimension	Deep Soil Zone (% of site area)						
Less than 6500m ²	-	7% (39.39m ²)						
<p><u>Visual Privacy</u> Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows:</p> <table border="1"> <thead> <tr> <th>Building Height</th><th>Habitable Rooms and Balconies</th><th>Non-habitable rooms</th></tr> </thead> <tbody> <tr> <td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr> </tbody> </table>	Building Height	Habitable Rooms and Balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Setbacks of windows to side boundaries are a minimum of 3m.	Does not comply. <i>Refer to Key Issues for further discussion.</i>
Building Height	Habitable Rooms and Balconies	Non-habitable rooms						
Up to 12m (4 storeys)	6m	3m						
<p><u>Solar Access and Daylight</u> Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid-winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas.</p> <p>A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter</p>	<p>The living areas to the apartments are generally orientated to the north and north-east. There is one apartment located within the southern corner of the development which shall not receive any direct solar access due to its orientation. As such, it is considered that five (5) out of the six (6) apartments (83%) shall receive a minimum of 2 hours solar access to living areas.</p> <p>The main POS of Units 1, 4 and 6 are orientated to the south-east, however it is considered that the POS to Units 1 and 4 would likely received morning sunlight in midwinter for a minimum of 2hrs. The POS off the living area of Unit 6 is partially enclosed within the roof form and therefore would be partially overshadowed in the morning period. However the apartment also</p>	Acceptable.						

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Apartment Design Guide – Compliance Table		
Design Criteria	Proposal	Compliance
	includes two (2) northern balconies off the bedrooms that shall received solar access in excess of the minimum requirements. Furthermore, the communal open space will receive >3 hours solar access, being located in the northern rear yard.	
<p><u>Natural Ventilation</u> At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed</p> <p>Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.</p> <p>Cross-over apartment <i>cross ventilating apartment with two opposite aspects and with a change in level between one side of the building and the other</i></p> <p>Cross-through apartment <i>cross ventilating apartment on one level with two opposite aspects</i></p>	All apartments (100%) are naturally cross ventilated.	Complies.
<p><u>Ceiling Height</u> Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <ul style="list-style-type: none"> Habitable Rooms – 2.7m Non-habitable rooms – 2.4m 	<p>Five (5) of the six (6) units are provided with 2.7m ceiling heights, noting floor to floor heights of 3.1m.</p> <p>Unit 6 on the upper most level is contained within a habitable roof form, and therefore portions of ceiling height will be less than 2.7m, however the proposed ceiling height shall achieve up to a maximum of 2.9m. The roof level provides edge walls of approximately 1.5m, however the roof slope is greater than the 30° required by the ADG, proposing a slope of 41° which shall improve the internal amenity. As such, given the higher ceiling heights within the central portion of the apartment, and the proposed roof slope, it is considered that a reasonable level of internal amenity shall be achieved, with sufficient natural ventilation and solar access.</p>	Acceptable.

Apartment Design Guide – Compliance Table		
Design Criteria	Proposal	Compliance
<p><u>Apartment Layout</u></p> <p>Apartments are required to have the following minimum internal areas:</p> <ul style="list-style-type: none"> • Studio - 35m² • 1 Bedroom - 50m² • 2 Bedroom - 70m² • 3 Bedroom - 90m² <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each.</p> <p>Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms.</p> <p>Master bedrooms have a minimum area of 10m² and other bedrooms 9m² (excluding wardrobe space). Bedrooms have a minimum dimension of 3m (excluding wardrobe space).</p> <p>Living rooms or combined living/dining rooms have a minimum width of:</p> <ul style="list-style-type: none"> • 3.6m for studio and 1 bedroom apartments • 4m for 2 and 3 bedroom apartments <p>The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts.</p>	<ul style="list-style-type: none"> • Unit 1 is a Studio apartment with 1 bathroom, and proposed a internal area of 37.57m² • Unit 2 contains 1 Bedroom and has an internal area of 50.81m² • Unit 3 contains 2 bedrooms and 2 bathrooms and has an internal area of 75m² • Unit 4 contains 2 bedrooms and 2 bathrooms and has an internal area of 88.51m² • Unit 5 contains 1 bedroom and 1 bathroom and has an internal area of 62m² • Unit 6 contains 3 bedrooms and 1 bathroom and has an internal area of 90m² <p>All habitable rooms have windows that comply with the requirements of the ADG.</p> <p>With the exception of Unit 6, all bedrooms and living rooms comply with minimum dimensions.</p> <p>Each cross-through unit has a width exceeding 4m.</p>	<p>Unit 6 does not comply with the minimum widths for living spaces and minimum area for bedrooms.</p> <p>All other units comply. See <i>Key Issues for further discussion.</i></p>
<p><u>Environmental Performance</u></p> <p>Habitable room depths are limited to a maximum of 2.5 x the ceiling height. In open plan layouts (where the living, dining and</p>	<p>Depth of habitable rooms (other than open plan rooms) do not exceed 2.5 x the ceiling height. Open plan rooms combining living, dining and</p>	<p>Complies</p>

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Apartment Design Guide – Compliance Table		
Design Criteria	Proposal	Compliance
kitchen are combined) the maximum habitable room depth is 8m from a window.	kitchen have a maximum living room depth less than 8m from a window.	
<u>Open Space</u> All apartments are required to have primary balconies as follows: <ul style="list-style-type: none"> • Studio - 4m² • 1 bedroom - 8m² (minimum depth of 2m) • 2 bedroom – 10m² (minimum depth of 2m) • 3+ bedroom apartments – 12m² (minimum depth of 2.4m) For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m.	All upper level units are provided with balconies in accordance with the minimum requirements. The Ground level apartments fronting Portland Crescent shall have patio areas of 11.78m ² and 14.78m ² which does not comply with the minimum requirements. However the proposed areas of POS are considered to be of sufficient size, noting the areas of communal open space provided on the site.	Acceptable.
<u>Common Circulation Space</u> The maximum number of apartments off a circulation core on a single level is eight. For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40.	A maximum of three (3) units are proposed on any single level.	Complies
<u>Storage</u> In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: <ul style="list-style-type: none"> • Studio - 4m³ • 1 Bedroom - 6m³ • 2 Bedroom - 8m³ • 3 Bedroom - 10m³ At least 50% of the required storage is to be located within the apartment.	Compliant storage is provided for each unit as part of the basement carpark and within the units.	Complies

Appendix 5: DCP Compliance Table

It is noted that Clause 6 of SEPP 65 refers to Parts 3 and 4 of the ADG and requires:

(1) *This clause applies in respect of the objectives, design criteria and design guidance set out in Parts 3 and 4 of the Apartment Design Guide for the following:*

- (a) *visual privacy,*
- (b) *solar and daylight access,*
- (c) *common circulation and spaces,*
- (d) *apartment size and layout,*
- (e) *ceiling heights,*
- (f) *private open space and balconies,*
- (g) *natural ventilation,*
- (h) *storage.*

(2) *If a development control plan contains provisions that specify requirements, standards or controls in relation to a matter to which this clause applies, those provisions are of no effect.*

(3) *This clause applies regardless of when the development control plan was made.*

Therefore, where the RDCP provides controls in relation to (1), refer to Appendix 4 for the ADG design criteria assessment.

The relevant provisions of the DCP are addressed below.

5.1 Section C2: Medium Density Residential

DCP Clause	Control	Proposal	Compliance
C2	Medium Density Residential		
2.2	Landscaped open space and deep soil area		
2.2.1	Landscaped open space		
	A minimum of 50% of the site area (208.4m ²) is to be landscaped open space.	49% (275.82m ²). The minor variation is supported noting the development is consistent with the objectives of the control, and it is considered that sufficient landscaped open space is provided for recreational activities that will afford residents with good amenity.	Does not comply. See Key Issues for further discussion.
2.2.2	Deep soil area		
	(i) A minimum of 25% of the site area (104.2m ²) should incorporate deep soil areas sufficient in size and dimensions to accommodate trees and significant planting. (ii) Deep soil areas must be located at ground level, be permeable, capable for the growth of vegetation and large trees and must not be built upon,	15.34% (86.3m ²). It is noted that the ADG requires 7% deep soil. The minor variation is supported given sufficient deep soil area is provided for substantial vegetation,	Does not comply, however variation is supported. See Key Issues for further discussion.

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DCP Clause	Control	Proposal	Compliance
	<p>occupied by spa or swimming pools or covered by impervious surfaces such as concrete, decks, terraces, outbuildings or other structures.</p> <p>(iii) Deep soil areas are to have soft landscaping comprising a variety of trees, shrubs and understorey planting.</p> <p>(iv) Deep soil areas cannot be located on structures or facilities such as basements, retaining walls, floor slabs, rainwater tanks or in planter boxes.</p> <p>(v) Deep soil zones shall be contiguous with the deep soil zones of adjacent properties.</p>	<p>particularly within the side setbacks and at the rear. Stormwater will be appropriately managed (refer to Development Engineering comments at Appendix 1) with permeable surfaces provided where possible.</p>	
2.3	Private and communal open space		
2.3.1	Private open space		
	<p>Private open space is to be:</p> <p>(i) Directly accessible from the living area of the dwelling.</p> <p>(ii) Open to a northerly aspect where possible so as to maximise solar access.</p> <p>(iii) Be designed to provide adequate privacy for residents and where possible can also contribute to passive surveillance of common areas.</p> <p>For residential flat buildings:</p> <p>(vi) Each dwelling has access to an area of private open space in the form of a courtyard, balcony, deck or roof garden, accessible from within the dwelling.</p> <p>(vii) Private open space for apartments has a minimum area of 8m² and a minimum dimension of 2m.</p>	<p>Each apartment is provided with an area of POS in excess of 8m².</p>	Complies.
2.3.2	Communal open space		
	<p>Communal open space for residential flat building is to be:</p> <p>(a) Of a sufficient contiguous area, and not divided up for allocation to individual units.</p> <p>(b) Designed for passive surveillance.</p> <p>(c) Well oriented with a preferred northerly aspect to maximise solar access.</p> <p>(d) adequately landscaped for privacy screening and visual amenity.</p> <p>(e) Designed for a variety of recreation uses and incorporate recreation facilities such as playground equipment, seating and shade structures.</p>	<p>Communal open space is provided at the rear of the site and will receive in excess of 2 hours direct sunlight. A mixture of soft and hard landscaping is provided, which can be used for a variety of passive recreation activities.</p>	Complies.
3	Building Envelope		

DCP Clause	Control	Proposal	Compliance
3.1	Floor space ratio		
	0.95:1 required by the LEP and ARH SEPP.	0.80:1 proposed.	Complies.
3.2	Building height		
	9.5m required by the LEP.	9.7m proposed.	Does not comply. <i>See Key Issues for further discussion.</i>
3.3	Building depth		
	For residential flat buildings, the preferred maximum building depth (from window to window line) is between 10m and 14m. Any greater depth must demonstrate that the design solution provides good internal amenity such as via cross-over, double-height or corner dwellings / units.	Building / apartment depths comply with the objectives of the ADG, which takes precedence over the RDCP for this development standard (refer to ADG assessment in Appendix 4).	Complies with ADG.
3.4	Setbacks		
3.4.1	Front setback (i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street. Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances to allow for suitable landscaped areas to building entries. (ii) Where a development is proposed in an area identified as being under transition in the site analysis, the front setback will be determined on a merit basis. (iii) The front setback areas must be free of structures, such as swimming pools, above-ground rainwater tanks and outbuildings. (iv) The entire front setback must incorporate landscape planting, with the exception of driveways and pathways.	The prevailing setback line along the street is 3.5m. The proposed setback is 3.75m to the front-facing balconies, which is consistent with the group of buildings to the south that are part of the heritage conservation area.	Complies
3.4.2	Side setback		
	Residential flat building (i) Comply with the minimum side setback requirements stated below: - Lots with a site frontage width 16m-18m: 3.0m (ii) Incorporate additional side setbacks to the building over and	The site frontage width is approximately 16.76m. The proposed side setbacks shall be a minimum of 3m.	Complies.

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DCP Clause	Control	Proposal	Compliance
	<p>above the above minimum standards, in order to:</p> <ul style="list-style-type: none"> - Create articulations to the building facades. - Reserve open space areas and provide opportunities for landscaping. - Provide building separation. - Improve visual amenity and outlook from the development and adjoining residences. - Provide visual and acoustic privacy for the development and the adjoining residences. - Ensure solar access and natural ventilation for the development and the adjoining residences. 		
	(iii) A fire protection statement must be submitted where windows are proposed on the external walls of a residential flat building within 3m of the common boundaries. The statement must outline design and construction measures that will enable operation of the windows (where required) whilst still being capable of complying with the relevant provisions of the BCA.	A standard condition will ensure compliance with the BCA is achieved.	Complies
3.4.3	Rear setback		
	For residential flat buildings, provide a minimum rear setback of 15% (5.5m) of allotment depth or 5m, whichever is the greater.	A minimum of 6.2m to the external wall, 5.3m to the upper level balcony.	Complies
4	Building Design		
4.1	Building façade		

DCP Clause	Control	Proposal	Compliance
	<p>(i) Buildings must be designed to address all street and laneway frontages.</p> <p>(ii) Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout.</p> <p>(iii) Articulate facades to reflect the function of the building, present a human scale, and contribute to the proportions and visual character of the street.</p> <p>(iv) Avoid massive or continuous unrelieved blank walls. This may be achieved by dividing building elevations into sections, bays or modules of not more than 10m in length, and stagger the wall planes.</p>	<p>The front façade is well articulated and will present well to the street and surrounding properties with balconies, recessed and projecting architectural elements and a change in building materials.</p> <p>Portion of the building shall result in wall lengths greater than 10m in length.</p>	<p>Does not comply. See Key Issues for further discussion.</p>
4.2	Roof design		
	<p>(i) Design the roof form, in terms of massing, pitch, profile and silhouette to relate to the three dimensional form (size and scale) and façade composition of the building.</p> <p>(ii) Design the roof form to respond to the orientation of the site, such as eaves and skillion roofs to respond to sun access.</p> <p>(iii) Use a similar roof pitch to adjacent buildings, particularly if there is consistency of roof forms across the streetscape.</p>	<p>The prevailing roof form within the streetscape is pitched roof forms. The proposal includes a habitable roof space which incorporates a pitched roof with the use of dormer windows.</p>	<p>Complies</p>

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DCP Clause	Control	Proposal	Compliance
	<p>(iv) Articulate or divide the mass of the roof structures on larger buildings into distinctive sections to minimise the visual bulk and relate to any context of similar building forms.</p> <p>(v) Use clerestory windows and skylights to improve natural lighting and ventilation of internalised space on the top floor of a building where feasible. The location, layout, size and configuration of clerestory windows and skylights must be sympathetic to the overall design of the building and the streetscape.</p> <p>(vi) Any services and equipment, such as plant, machinery, ventilation stacks, exhaust ducts, lift overrun and the like, must be contained within the roof form or screened behind parapet walls so that they are not readily visible from the public domain.</p> <p>(vii) Terraces, decks or trafficable outdoor spaces on the roof may be considered only if:</p> <ul style="list-style-type: none"> - There are no direct sightlines to the habitable room windows and private and communal open space of the adjoining residences. - The size and location of terrace or deck will not result in unreasonable noise impacts on the adjoining residences. - Any stairway and associated roof do not detract from the architectural character of the building, and are positioned to minimise direct and oblique views from the street. - Any shading devices, privacy screens and planters do not adversely increase the visual bulk of the building. <p>(viii) The provision of landscape planting on the roof (that is, "green roof") is encouraged. Any green roof must be designed by a qualified landscape architect or designer with details shown on a landscape plan.</p>		
4.3	Habitable roof space		
	Habitable roof space may be considered, provided it meets the following:	The floor area of the upper level shall be	Complies.

DCP Clause	Control	Proposal	Compliance
	<ul style="list-style-type: none"> - Optimises dwelling mix and layout, and assists to achieve dual aspect or cross over units with good natural ventilation. - Has a maximum floor space of 65% of the storey immediately below. - Wholly contain habitable areas within the roof space. - When viewed from the surrounding public and private domain, the roof form has the appearance of a roof. A continuous flat roof with habitable space within it will not satisfy this requirement. - Design windows to habitable roof space as an integrated element of the roof. - Submit computer generated perspectives or photomontages showing the front and rear elevations of the development. 	<p>approximately 57% of the floor area immediately below.</p> <p>Due to the design and 48° pitch of the roof ensures that the upper level shall have the appearance of a roof form as viewed from the adjoining properties and public domain.</p> <p>The proposal utilises dormer windows to further emphasize the upper level as habitable roof space.</p>	
4.4	External wall height and ceiling height		
	(ii) Where the site is subject to a 9.5m building height limit under the LEP, a maximum external wall height of 8m applies.	As the dormer windows extend more than 2m from the roof, the maximum external wall height is measured to the underside of the eaves, being a maximum of 8.91m. The external wall height outwith the dormer windows shall be a maximum wall height of 6.51m.	Does not comply. <i>See Key Issues for further discussion.</i>
	(iii) The minimum ceiling height is to be 2.7m for all habitable rooms.	The upper floor level is contained within a habitable roof space and therefore the internal ceiling heights vary due to the internal pitched roof. The proposed development shall comply with the BCA in relation to habitable rooms and is consistent with the objectives of the ADG.	Acceptable.
4.5	Pedestrian Entry		
	(i) Separate and clearly distinguish between pedestrian pathways and vehicular access.	Pedestrian pathways and vehicular access are clearly distinguished.	Complies

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DCP Clause	Control	Proposal	Compliance
	<p>(ii) Present new development to the street in the following manner:</p> <ul style="list-style-type: none"> - Locate building entries so that they relate to the pedestrian access network and desired lines. - Design the entry as a clearly identifiable element in the façade composition. - Integrate pedestrian access ramps into the overall building and landscape design. - For residential flat buildings, provide direct entries to the individual dwellings within a development from the street where possible. - Design mailboxes so that they are convenient to residents, do not clutter the appearance of the development at street frontage and are preferably integrated into a wall adjacent to the primary entry (and at 90 degrees to the street rather than along the front boundary). - Provide weather protection for building entries. <p>Postal services and mailboxes</p> <p>(i) Mailboxes are provided in accordance with the delivery requirements of Australia Post.</p> <p>(ii) A mailbox must clearly mark the street number of the dwelling that it serves.</p> <p>(iii) Design mail boxes to be convenient for residents and not to clutter the appearance of the development from the street.</p>	<p>Due to the width of the site and the number of units proposed, being 6, the main entry has been located at the side of the building. However, the building entry at the side is clearly defined and relates well to the pedestrian access network. Relocating the entry to the front façade would require a substantial redesign, and would likely impact upon the number within the development (which is not considered to be excessive), or alternatively providing an entrance at the front would likely push the development towards the side boundaries which is not desirable. As such, the proposed entry along the side is supported in this instance.</p> <p>Mailboxes are provided along the Portland Crescent frontage, adjacent to the pedestrian access and at 90 degrees.</p> <p>The principal building entrance from Portland Crescent is not provided with weather protection. As such it is recommended that an awning is provided over the main entrance area.</p>	<p>Acceptable, subject to condition.</p>
4.6	Internal circulation		
	<p>(i) Enhance the amenity and safety of circulation spaces by:</p> <ul style="list-style-type: none"> - Providing natural lighting and ventilation where possible. - Providing generous corridor widths at lobbies, foyers, lift 	<p>Building circulation requirements are provided in accordance with the ADG, which takes precedence over the</p>	<p>Complies with the ADG.</p>

DCP Clause	Control	Proposal	Compliance
	<p>doors and apartment entry doors.</p> <ul style="list-style-type: none"> - Allowing adequate space for the movement of furniture. - Minimising corridor lengths to give short, clear sightlines. - Avoiding tight corners. - Articulating long corridors with a series of foyer areas, and/or providing windows along or at the end of the corridor. 	RDCP for this development standard (refer to ADG assessment in Appendix 4).	
	<p>(ii) Use multiple access cores to:</p> <ul style="list-style-type: none"> - Maximise the number of pedestrian entries along a street for sites with wide frontages or corner sites. - Articulate the building façade. - Limit the number of dwelling units accessible off a single circulation core on a single level to 6 units. 	<p>1 access core is provided within the centre of the building.</p> <p>3 dwellings are provided on the Ground Floor, 2 dwellings on the First Floor and 1 dwelling on the upper level.</p>	Complies
	<p>(iii) Where apartments are arranged off a double-loaded corridor, limit the number of units accessible from a single core or to 8 units.</p>	<p>Apartments are not provided off a double-loaded corridor.</p>	N/A
4.7	Apartment layout		
	<p>(i) Maximise opportunities for natural lighting and ventilation through the following measures:</p> <ul style="list-style-type: none"> - Providing corner, cross-over, cross-through and double-height maisonette / loft apartments. - Limiting the depth of single aspect apartments to a maximum of 6m. - Providing windows or skylights to kitchen, bathroom and laundry areas where possible. <p>Providing at least 1 openable window (excluding skylight) opening to outdoor areas for all habitable rooms and limiting the use of borrowed light and ventilation.</p> <p>(ii) Design apartment layouts to accommodate flexible use of rooms and a variety of furniture arrangements.</p>	<p>Apartment layouts are provided in accordance with the ADG, which takes precedence over the RDCP for this development standard (refer to ADG assessment in Appendix 4).</p> <p>Notwithstanding, all apartments have dual aspects and are naturally cross ventilated and provided with adequate natural light.</p>	Complies with the ADG.
	<p>(iii) Provide private open space in the form of a balcony, terrace or courtyard for each and every apartment unit in a development.</p> <p>(iv) Avoid locating the kitchen within the main circulation space of an apartment, such as hallway or entry.</p>	<p>All apartments are provided with compliant POS.</p> <p>All dwellings provided open-plan living/kitchen/dining areas, with kitchens located outwith circulation space.</p>	Complies.

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DCP Clause	Control	Proposal	Compliance
4.8	Balconies		
	<p>(i) Provide a primary balcony and/or private courtyard for all apartments with a minimum area of 8m² and a minimum dimension of 2m and consider secondary balconies or terraces in larger apartments.</p> <p>(ii) Provide a primary terrace for all ground floor apartments with a minimum depth of 4m and minimum area of 12m². All ground floor apartments are to have direct access to a terrace.</p>	All apartments are provided with adequate POS.	Acceptable.
4.9	Colours, materials and finishes		
	<p>(i) Provide a schedule detailing the materials and finishes in the development application documentation and plans.</p> <p>(ii) The selection of colour and material palette must complement the character and style of the building.</p> <p>(iv) Use the following measures to complement façade articulation:</p> <ul style="list-style-type: none"> - Changes of colours and surface texture - Inclusion of light weight materials to contrast with solid masonry surfaces - The use of natural stones is encouraged. <p>(v) Avoid the following materials or treatment:</p> <ul style="list-style-type: none"> - Reflective wall cladding, panels and tiles and roof sheeting - High reflective or mirror glass - Large expanses of glass or curtain wall that is not protected by sun shade devices - Large expanses of rendered masonry - Light colours or finishes where they may cause adverse glare or reflectivity impacts <p>(vi) Use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration.</p> <p>(vii) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used.</p>	The proposal includes a variety of materials and colours that shall be compatible with the streetscape and surrounding area.	Complies.
4.12	Earthworks Excavation and backfilling		
	(i) Any excavation and backfilling within the building footprints must	Other than the basement, excavation	Complies.

DCP Clause	Control	Proposal	Compliance
	<p>be limited to 1m at any point on the allotment, unless it is demonstrated that the site gradient is too steep to reasonably construct a building within this extent of site modification.</p> <p>(ii) Any cut and fill outside the building footprints must take the form of terracing following the natural landform, in order to minimise the height or depth of earthworks at any point on the site.</p> <p>(iii) For sites with a significant slope, adopt a split-level design for buildings to minimise excavation and backfilling.</p>	and backfilling is less than 1m.	
	<p>Retaining walls</p> <p>(iv) Setback the outer edge of any excavation, piling or sub-surface walls a minimum of 900mm from the side and rear boundaries.</p> <p>(v) Step retaining walls in response to the natural landform to avoid creating monolithic structures visible from the neighbouring properties and the public domain.</p> <p>(vi) Where it is necessary to construct retaining walls at less than 900mm from the side or rear boundary due to site conditions, retaining walls must be stepped with each section not exceeding a maximum height of 2200mm, as measured from the ground level (existing).</p>	Retaining walls are proposed for the basement garage. The retaining walls shall provide setbacks less than 900mm to the boundary for the basement. Appropriate conditions of consent shall be imposed.	Acceptable.
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access for proposed development		
	<p>(i) Dwellings must receive a minimum of 3 hours sunlight in living areas and to at least 50% of the private open space between 8am and 4pm on 21 June.</p> <p>(ii) Living areas and private open spaces for at least 70% of dwellings within a residential flat building must provide direct sunlight for at least 3 hours between 8am and 4pm on 21 June.</p>	<p>Apartments will receive adequate direct solar access that complies with the objectives of the ADG, which takes precedence over the RDCP for this development standard (refer to ADG assessment in Appendix 4).</p>	Complies with the objectives of the ADG.
	<p>(iii) Limit the number of single-aspect apartments with a southerly aspect to a maximum of 10 percent of the total units within a residential flat building.</p>	No single aspect apartments are proposed.	Complies
	<p>(iv) Any variations from the minimum standard due to site constraints and orientation must demonstrate how</p>	N/A	N/A

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DCP Clause	Control	Proposal	Compliance
	solar access and energy efficiency is maximised.		
	Solar access for surrounding development		
	<p>(i) Living areas of neighbouring dwellings must receive a minimum of 3 hours access to direct sunlight to a part of a window between 8am and 4pm on 21 June.</p> <p>(ii) At least 50% of the landscaped areas of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight to a part of a window between 8am and 4pm on 21 June.</p> <p>(iii) Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further.</p>	Based on the submitted shadow diagrams, additional overshadowing will occur to neighbouring properties to the south-west, however compliance with the standard is still achieved.	Complies.
5.2	Natural ventilation and energy efficiency		
	(i) Provide daylight to internalised areas within each dwelling and any poorly lit habitable rooms via measures such as ventilated skylights, clerestory windows, fanlights above doorways and highlight windows in internal partition walls.	All habitable rooms are provided with natural daylight via windows, with the exception of Bedroom 1 in Unit 6 which is to be deleted.	Complies
	(ii) Sun shading devices appropriate to the orientation should be provided for the windows and glazed doors of the building.	Appropriate sun shading devices have been provided where required.	Complies
	(iii) All habitable rooms must incorporate windows opening to outdoor areas. The sole reliance on skylight or clerestory windows for natural lighting and ventilation is not acceptable.	All habitable rooms are provided with window openings to outdoor areas.	Complies
	(iv) All new residential units must be designed to provide natural ventilation to all habitable rooms. Mechanical ventilation must not be the sole means of ventilation to habitable rooms.	All habitable rooms are capable of natural ventilation.	Complies
	(v) A minimum of 90% of residential units should be naturally cross ventilated. In cases where residential units are not naturally cross ventilated, such as single aspect apartments, the installation of ceiling fans may be required.	All apartments (100%) are cross-ventilated.	Complies
	(vi) A minimum of 25% of kitchens within a development should have access to natural ventilation and be adjacent to openable windows.	Due to the open-plan nature of the dwellings, all kitchens (100%) have access to natural ventilation.	Complies
	(vii) Developments, which seek to vary from the minimum standards, must demonstrate how natural ventilation can be satisfactorily achieved,	N/A	N/A

DCP Clause	Control	Proposal	Compliance
	particularly in relation to habitable rooms.		
5.3	Visual privacy		
	<ul style="list-style-type: none"> (i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings. (ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to any habitable room windows on the side elevations of the adjoining residences. (iii) Orient buildings on narrow sites to the front and rear of the lot, utilising the street width and rear garden depth to increase the separation distance. (iv) Locate and design areas of private open space to ensure a high level of user privacy. Landscaping, screen planting, fences, shading devices and screens are used to prevent overlooking and improve privacy. (v) Incorporate materials and design of privacy screens including: <ul style="list-style-type: none"> - Translucent glazing - Fixed timber or metal slats - Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings - Screen planting and planter boxes as a supplementary device for reinforcing privacy protection 	Privacy measures shall be imposed to ensure no unreasonable impacts upon adjoining properties with regards to visual privacy.	Acceptable.
5.4	Acoustic privacy		
	<ul style="list-style-type: none"> (i) Design the building and layout to minimise transmission of noise between buildings and dwellings. (ii) Separate “quiet areas” such as bedrooms from common recreation areas, parking areas, vehicle access ways and other noise generating activities. (iii) Utilise appropriate measures to maximise acoustic privacy such as: <ul style="list-style-type: none"> - Double glazing - Operable screened balconies - Walls to courtyards - Sealing of entry doors 	Acoustic privacy will be achieved within the apartments due to separation of quiet areas from noisy areas.	Complies
5.5	View sharing		
	<ul style="list-style-type: none"> (i) The location and design of buildings must reasonably maintain existing view corridors and vistas to significant elements from the 	It is not considered that any unreasonable view loss impacts shall occur as a result of the	Complies

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DCP Clause	Control	Proposal	Compliance
	<p>streets, public open spaces and neighbouring dwellings.</p> <p>(ii) In assessing potential view loss impacts on the neighbouring dwellings, retaining existing views from the living areas should be given a priority over those obtained from the bedrooms and non-habitable rooms.</p> <p>(iii) Where a design causes conflicts between retaining views for the public domain and private properties, priority must be given to view retention for the public domain.</p> <p>(iv) The design of fences and selection of plant species must minimise obstruction of views from the neighbouring residences and the public domain.</p> <p>(v) Adopt a balanced approach to privacy protection and view sharing, and avoid the creation of long and massive blade walls or screens that obstruct views from the neighbouring dwellings and the public domain.</p> <p>(vi) Clearly demonstrate any steps or measures adopted to mitigate potential view loss impacts in the development application.</p>	proposed development.	
5.6	Safety and security		
	(i) Design buildings and spaces for safe and secure access to and within the development.	Entry points to the building can be appropriately secured and will have clear lines of site.	Complies
	(iii) For residential flat buildings, provide direct, secure access between the parking levels and the main lobby on the ground floor.	Direct, secure access is provided to the main pedestrian paths within the site.	Acceptable.
	(iv) Design window and door placement and operation to enable ventilation throughout the day and night without compromising security. The provision of natural ventilation to the interior space via balcony doors only, is deemed insufficient.	All apartments are provided with openable habitable room windows that are capable of being secured.	Complies
	(v) Avoid high walls and parking structures around buildings and open space areas which obstruct views into the development.	No obstruction to lines of sight is proposed.	Complies
	(vi) Resident car parking areas must be equipped with security grilles or doors.	A security door to the basement access is proposed.	Complies
	(vii) Control visitor entry to all units and internal common areas by intercom and remote locking systems.	A condition is recommended to	Complies, subject to condition.

DCP Clause	Control	Proposal	Compliance
		ensure compliance with this part.	
	(viii) Provide adequate lighting for personal safety in common and access areas of the development.	A condition is recommended to ensure compliance with this part.	Complies, subject to condition.
	(ix) Improve opportunities for casual surveillance without compromising dwelling privacy by designing living areas with views over public spaces and communal areas, using bay windows which provide oblique views and casual views of common areas, lobbies / foyers, hallways, open space and car parks.	Casual surveillance will be achieved to the street and communal areas from living rooms and private open spaces.	Complies.
	(x) External lighting must be neither intrusive nor create a nuisance for nearby residents.	A condition is recommended to ensure compliance with this part.	Complies, subject to condition.
	(xi) Provide illumination for all building entries, pedestrian paths and communal open space within the development.	A condition is recommended to ensure compliance with this part.	Complies, subject to condition.
6.1	Location		
	(i) Car parking facilities must be accessed off rear lanes or secondary street frontages where available.	Access to the basement car park is proposed from Portland Crescent as there is no secondary streetfrontage.	Complies
	(ii) The location of car parking and access facilities must minimise the length of driveways and extent of impermeable surfaces within the site.	The driveway length is minimised and adequate deep soil landscaping / sufficient permeable surfaces are provided.	Complies.
	(iii) Setback driveways a minimum of 1m from the side boundary. Provide landscape planting within the setback areas.	The driveway is setback a minimum of 1m from the side boundary.	Complies.
	(iv) Entry to parking facilities off the rear lane must be setback a minimum of 1m from the lane boundary.	n/a	N/A
	(v) For residential flat buildings, comply with the following: (a) Car parking must be provided underground in a basement or semi-basement for new development. (b) On grade car park may be considered for sites potentially affected by flooding. In this scenario, the car park must be located on the side or rear of the allotment away from the primary street frontage.	Parking is proposed within the basement.	Complies.

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DCP Clause	Control	Proposal	Compliance
	(c) Where rear lane or secondary street access is not available, the car park entry must be recessed behind the front façade alignment. In addition, the entry and driveway must be located towards the side and not centrally positioned across the street frontage.		
6.2	Configuration		
	(i) With the exception of hardstand car spaces and garages, all car parks must be designed to allow vehicles to enter and exit in a forward direction.	Vehicles will be able to enter and exit the site in a forward direction.	Complies.
	(ii) For residential flat buildings, the maximum width of driveway is 6m. In addition, the width of driveway must be tapered towards the street boundary as much as possible.	The maximum driveway width is 3m.	Complies.
	(iv) Provide basement or semi-basement car parking consistent with the following requirements: (a) Provide natural ventilation. (b) Integrate ventilation grills into the façade composition and landscape design. (c) The external enclosing walls of car park must not protrude above ground level (existing) by more than 1.2m. This control does not apply to sites affected by potential flooding. (d) Use landscaping to soften or screen any car park enclosing walls. (e) Provide safe and secure access for building users, including direct access to dwellings where possible. (f) Improve the appearance of car park entries and avoid a 'back-of-house' appearance by measures such as: - Installing security doors to avoid 'black holes' in the facades. - Returning the façade finishing materials into the car park entry recess to the extent visible from the street as a minimum. - Concealing service pipes and ducts within those areas of the car park that are visible from the public domain.	The proposed basement complies with the control.	Complies.
7	Fencing and Ancillary Development		

DCP Clause	Control	Proposal	Compliance
7.1	Fencing		
	(i) Fences are constructed with durable materials that are suitable for their purpose and can properly withstand wear and tear and natural weathering. (ii) Sandstone fencing must not be rendered and painted. (iii) The following materials must not be used in fences: - Steel post and chain wire - Barbed wire or other dangerous materials (ii) Expansive surfaces of blank rendered masonry to street frontages must be avoided.	No details have been provided with regards to side and rear fencing. A condition shall be imposed for details to be submitted to and approved by Council.	Complies, subject to condition.
7.2	Front Fencing		

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DCP Clause	Control	Proposal	Compliance
	<p>(i) The fence must align with the front property boundary or the predominant fence setback line along the street.</p> <p>(ii) The maximum height of front fencing is limited to 1200mm, as measured from the footpath level, with the solid portion not exceeding 600mm, except for piers. The maximum height of front fencing may be increased to 1800mm, provided the upper two-thirds are partially open, except for piers.</p> <p>(iii) Construct the non-solid portion of the fence with light weight materials that are at least 30% open and evenly distributed along the full length of the fence.</p> <p>(iv) Solid front fence of up to 1800mm in height may be permitted in the following scenarios:</p> <ul style="list-style-type: none"> - Front fence for sites facing arterial roads. - Fence on the secondary street frontage of corner allotments, which is behind the alignment of the primary street façade. <p>Such solid fences must be articulated through a combination of materials, finishes and details, and/or incorporate landscaping, so as to avoid continuous blank walls.</p> <p>(v) The fence must incorporate stepping to follow any change in level along the street boundary. The height of the fence may exceed the aforementioned numerical requirement by a maximum of 150mm adjacent to any stepping.</p> <p>(vi) The preferred materials for front fences are natural stone, face bricks and timber.</p> <p>(vii) Gates must not open over public land.</p> <p>(viii) The fence adjacent to the driveway may be required to be splayed to ensure adequate sightlines for drivers and pedestrians.</p>	<p>A planter box is proposed along the front boundary which shall act as a front fence, and shall be a height of up to 1.8m. While the fence shall not be open in style, the planter above shall screen the fencing as viewed from the public domain. There are examples of solid masonry fencing within the street, including the existing fence at the subject site and as such the proposal shall not be out of character with the streetscape.</p>	Acceptable.
7.3	Side and Rear Fencing		
	<p>(i) The maximum height of side, rear or common boundary fences is limited to 1800mm, as measured from the ground level (existing). For sloping sites, the fence must be stepped to follow the topography of the land, with each step not exceeding 2200mm above ground level (existing).</p> <p>(ii) In the scenario where there is significant level difference between</p>	<p>No details have been provided regarding side or rear fencing. A condition of consent shall be imposed.</p>	Complies, subject to condition.

DCP Clause	Control	Proposal	Compliance
	<p>the subject and adjoining allotments, the fencing height will be considered on merits.</p> <p>(iii) The side fence must be tapered down to match the height of the front fence once pasts the front façade alignment.</p> <p>(iv) Side or common boundary fences must be finished or treated on both sides.</p>		
7.6	Storage		
	<p>(i) The design of development must provide for readily accessible and separately contained storage areas for each dwelling.</p> <p>(ii) Storage facilities may be provided in basement or sub floor areas, or attached to garages. Where basement storage is provided, it should not compromise any natural ventilation in the car park, reduce sight lines or obstruct pedestrian access to the parked vehicles.</p> <p>(iii) In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates:</p> <p>(a) Studio apartments – 6m³</p> <p>(a) 1-bedroom apartments – 6m³</p> <p>(b) 2-bedroom apartments – 8m³</p> <p>(c) 3 plus bedroom apartments – 10m³</p>	Storage is provided in accordance with the ADG, which takes precedence over the RDCP for this development standard (refer to ADG assessment in Appendix 4).	Complies with ADG.
7.7	Laundry facilities		
	(i) Provide a retractable or demountable clothes line in the courtyard of each dwelling unit.	Sufficient area is available as part of the COS and POS for clothes drying facilities.	Complies.
	(ii) Provide internal laundry for each dwelling unit.	Each unit is provided with an internal laundry.	Complies.
	(iii) Provide a separate service balcony for clothes drying for dwelling units where possible. Where this is not feasible, reserve a space for clothes drying within the sole balcony and use suitable balustrades to screen it to avoid visual clutter.	Sufficient area is available as part of the POS.	Complies.
7.8	Air conditioning units:		
	<ul style="list-style-type: none"> Avoid installing within window frames. If installed in balconies, screen by suitable balustrades. Air conditioning units must not be 	A condition is recommended to ensure compliance with this part.	Complies, subject to condition.

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DCP Clause	Control	Proposal	Compliance
	installed within window frames.		
8.1	Coral Sea Park Estate, Maroubra		
	i) Building materials and external finishes are to be consistent with the dominant themes in the Estate. ii) Site area and dimensions, particularly width, are of sufficient size to allow and maintain the existing themes of large rear garden areas and open spaces between buildings to continue. iii) Sites have a minimum frontage of 20 metres for development of more than 2 dwellings. iv) Open spaces in front of buildings are not fenced off from the street. Where fencing is proposed it is no more than one metre high. v) Front setbacks of development must consider consistency with the surrounding buildings. Front façade design must consider compatibility with the form, massing and articulation of existing development.	The proposed development shall not be inconsistent with the character of the estate which provides a variety of housing types.	Acceptable. <i>See Key Issues for further discussion.</i>

Responsible officer: Angela Manahan, Executive Planner

File Reference: DA/156/2021

Development Consent Conditions



D12/22

Folder /DA No:	DA/156/2021
Property:	64 Portland Crescent, Maroubra NSW
Proposal:	Amended proposal: Demolition of existing structures and construction of a 3 storey residential flat building comprising six (6) units, basement parking, tree removal, landscaping and associated works (affordable rental housing proposed). Original Proposal: Demolition of existing structures and construction of a 3 storey residential flat building comprising 9 units, basement parking, tree removal, landscaping and associated works (affordable rental housing proposed).
Recommendation:	Approval

DEVELOPMENT CONSENT CONDITIONS

GENERAL CONDITIONS

The development must be carried out in accordance with the following conditions of consent.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000* and to provide reasonable levels of environmental amenity.

Approved Plans & Supporting Documentation

- The development must be implemented substantially in accordance with the plans and supporting documentation listed below and endorsed with Council's approved stamp, except where amended by Council in red and/or by other conditions of this consent:

Plan	Drawn by	Dated	Received by Council
Dwg No. 207 (Site Plan), Revision C	Equinox Designs	23 November 2021	13 December 2021
Dwg No. 201 (Proposed Basement Parking), Revision C	Equinox Designs	23 November 2021	13 December 2021
Dwg No. 202 (Proposed Ground Level), Revision C	Equinox Designs	23 November 2021	13 December 2021
Dwg No. 203 (Proposed First Level), Revision C	Equinox Designs	23 November 2021	13 December 2021
Dwg No. 204 (Proposed Second Level), Revision C	Equinox Designs	23 November 2021	13 December 2021
Dwg No. 205 (Proposed Roof Plan), Revision C	Equinox Designs	23 November 2021	13 December 2021
Dwg No. 301 (Elevations), Revision C	Equinox Designs	23 November 2021	13 December 2021
Dwg No. 302	Equinox Designs	23 November 2021	13 December 2021

(Elevations), Revision C			
Dwg No. 303 (Elevations), Revision C	Equinox Designs	23 November 2021	13 December 2021
Dwg No. 304 (Elevations), Revision C	Equinox Designs	23 November 2021	13 December 2021

BASIX Certificate No.	Dated	Received by Council
1260079M	18 November 2021	13 December 2021

Amendment of Plans & Documentation

2. The approved plans and documents must be amended in accordance with the following requirements:

- a) Bedroom 1 in Unit 6 on the Second Floor level shall be deleted. The area of the bedroom is to form part of the open-plan Living/Dining area and the Unit 6 shall be amended to a maximum of two (2) bedrooms.
- b) The south-eastern balustrade of the front Second Floor level balcony (off the Living/Dining) shall be relocated to the north-west to a distance which ensures that the balustrade does not protrude above the roof pitch (no element of the balustrade should be visible above the roof pitch).
- c) The north-western balustrades of the rear Second Floor level balconies (off Beds 2 and 3) are to be relocated to the south-east to a distance which ensures that the balustrade does not protrude above the roof pitch (no element of the balustrade should be visible above the roof pitch).
- d) Privacy screens having a height of 1.6m (measured above the finished floor level) shall be provided to the following:
 - Rear north-western First Floor level balcony, along the entire north-eastern side and south-western side of the balcony;
 - Front south-eastern First Floor balcony, along the entire north-eastern side and south-western side of the balcony.

Privacy screens must be constructed with either:

- Translucent or obscured glazing (The use of film applied to the clear glass pane is unacceptable);
 - Fixed lattice/slats with individual openings not more than 30mm wide;
 - Fixed vertical or horizontal louvres with the individual blades angled and spaced appropriately to prevent overlooking into the private open space or windows of the adjacent dwellings.
- e) The following windows must have a minimum sill height of 1.6m above floor level, or alternatively, the window/s are to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height, or be fitted with fixed vertical or horizontal louvres with the individual blades angled and spaced appropriately to prevent overlooking into the private open space or windows of the adjacent dwellings:

First Floor Level

- North-east elevation - WF.01 to Bed 1, WF.02 to Bath, WF.05 to Bath, and WF.06 to Kitchen;
- South-west elevation - WF.08 to Walk-in Robe, WF.09 to EN-suite, and WF.10 to Bed 1;

Second Floor Level

- North-east elevation - WS.01 to Bed 3, and WF.03 to Living area;

- South-west elevation – WS.04 to Living area, WS.05 to Bath, and WS.06 to Bed 2.

Details of compliance for the above conditions are to be submitted and approved by Council's Manager Development Assessment prior to the issue of a Construction Certificate.

3. **Intercom / Locking Systems**
Control visitor entry to all units and internal common areas by intercom and remote locking systems.
4. **Lighting**
Adequate lighting for personal safety shall be provided in common and access areas including building entries and communal open space areas.
5. **Rooftop Plant**
No additional structures are to be located on the roof of the development, including any plant or equipment which is not permitted on the roof.
6. **Affordable Rental Housing Component**
Units 1 and 2 shall be provided as affordable rental housing in accordance with the SEPP (ARH) 2009.
 - a) The dwellings to be used for the purposes of 'affordable rental housing', as per the provisions of the SEPP (ARH) 2009 shall be used as such for at least 10 years from the date of the issue of the Occupation Certificate.
 - b) The affordable rental housing component (secured for a minimum of 10 years) must be managed by a registered Community Housing Provider (CHP).
 - c) The CHP must ensure compliance with the occupant restriction and others provisions of the regulatory code established through regulations under the Housing Act 2001.
 - d) A restriction must be registered, before the date of the issue of the occupation certificate, against the title of the property, in accordance with Section 88E of the Conveyancing Act 1919 that will ensure that the requirements a. and b. are met and that the terms of restriction may not be varied without Council's consent.
 - e) Prior to an Occupation Certificate being granted, evidence must be provided to Council demonstrating that the section 88E covenant has been registered on the title stating that the affordable rental housing component must be used for affordable rental housing and managed by a registered CHP.

REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

The following conditions of consent must be complied with before a 'Construction Certificate' is issued by either Randwick City Council or an Accredited Certifier. All necessary information to demonstrate compliance with the following conditions of consent must be included in the documentation for the construction certificate.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Council's development consent conditions and to achieve reasonable levels of environmental amenity.

7. **Consent Requirements**
The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation.
8. **External Colours, Materials & Finishes**
The colours, materials and surface finishes to the development must be consistent with the relevant plans and documentation provided with the development application (including the photomontage) and the colours, materials and finishes of the external surfaces to the building are to be compatible with the adjacent development to maintain the integrity and amenity of the building and the streetscape.

Details of the proposed colours, materials and textures (i.e. a schedule and brochure/s or sample board) are to be submitted to and approved by Council's Manager Development Assessments prior to issuing a construction certificate for the development.

Fencing

9. Details of all fencing, including any new front, side and rear fence, is to be submitted to and approved by Council's Manager – Development Assessment, prior to a construction certificate being issued for the development. The design of the fencing shall be in accordance with the provisions of Randwick Development Control Plan 2013. The documentation to be submitted to Council is to include elevations, plans, and details of materials and finishes.

Section 7.12 Development Contributions

10. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$3,305,306.00 the following applicable monetary levy must be paid to Council: \$33,053.05.

The levy must be paid in **cash, bank cheque** or by **credit card** prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone **9093 6000** or **1300 722 542** for the indexed contribution amount prior to payment.

To calculate the indexed levy, the following formula must be used:

$$\text{IDC} = \text{ODC} \times \text{CP2/CP1}$$

Where:

IDC = the indexed development cost

ODC = the original development cost determined by the Council

CP2 = the Consumer Price Index, All Groups, Sydney, as published by the ABS in respect of the quarter ending immediately prior to the date of payment

CP1 = the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.

Council's Development Contribution Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at www.randwick.nsw.gov.au.

Compliance Fee

11. A development compliance and enforcement fee of \$6,941.15 shall be paid to Council in accordance with Council's adopted Fees & Charges Pricing Policy, prior to the issue of a Construction Certificate for development.

Long Service Levy Payments

12. The required Long Service Levy payment, under the *Building and Construction Industry Long Service Payments Act 1986*, must be forwarded to the Long Service Levy Corporation or the Council, in accordance with Section 6.8 of the *Environmental Planning & Assessment Act 1979*.

At the time of this development consent, Long Service Levy payment is applicable on building work having a value of \$25,000 or more, at the rate of 0.35% of the cost of the works.

Security Deposits

13. The following security deposits requirement must be complied with prior to a construction certificate being issued for the development, as security for making good any damage caused to Council's assets and infrastructure; and as security for completing any public work; and for remedying any defect on such public works, in accordance with section 4.17 of the *Environmental Planning and Assessment Act 1979*:

- \$5,000.00 - Damage / Civil Works Security Deposit

The security deposits may be provided by way of a cash, cheque or credit card payment and is refundable upon a satisfactory inspection by Council upon the completion of the works which confirms that there has been no damage to Council's assets and infrastructure.

The developer/builder is also requested to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge and other assets prior to the commencement of any building/demolition works.

To obtain a refund of relevant deposits, a Security Deposit Refund Form is to be forwarded to Council's Development Engineer upon issuing of an occupation certificate or completion of the civil works.

Telecommunications infrastructure

14. Prior to the issue of a Construction Certificate in connection with this development, the developer (whether or not a constitutional corporation) is to provide evidence satisfactory to the Principal Certifier that arrangements have been made for:

- (i) The installation of fibre-ready facilities to all individual lots and/or premises in a real estate development project so as to enable fibre to be readily connected to any premises that is being or may be constructed on those lots. Demonstrate that the carrier has confirmed in writing that they are satisfied that the fibre ready facilities are fit for purpose, and;
- (ii) The provision of fixed-line telecommunications infrastructure in the fibre-ready facilities to all individual lots and/or premises in a real estate development project demonstrated through an agreement with a carrier.

NOTE: Real estate development project has the meanings given in section 372Q of the Telecommunications Act.

Street Tree Protection

15. In order to ensure retention of the *Hibiscus tiliaceus* (Cottonwood, T4) that is located on Council's Portland Crescent verge, towards the northern site boundary in good health, the following measures are to be undertaken:

- a. All documentation submitted for the Construction Certificate application must show its retention, along with the position and diameter of its trunk, canopy, SRZ, TPZ and tree identification number in relation to all new works.
- b. All Construction Certificate plans must also show that the new vehicle crossing and basement entry ramp will be provided along the southern site boundary, to the location and extent that is shown on the rev 5.6 plans, dwg 204, with the distance in millimetres/offset to its trunk to be included.
- c. This tree is to be physically protected by the installation of 1.8 metre high steel mesh/chainwire fencing, which shall be located a minimum distance of **1.5 metres** to its north and south (measured off the outside edge of its trunk at ground level), matching up with the back of the kerb to its east, and pedestrian footpath to its west, in order to completely enclose this tree for the duration of works.
- d. This fencing shall be installed prior to the commencement of demolition and construction works and shall remain in place until all works are completed, to which, signage containing the following words shall be clearly displayed and permanently attached: "TREE PROTECTION ZONE (TPZ), DO NOT REMOVE/ENTER".
- e. If additional trunk or branch protection is required, this can be provided by way of wrapping layers of geo-textile, underfelt, carpet, hessian or similar around affected areas, to which, lengths of evenly spaced hardwood timbers shall then be placed around their circumference, and are to be secured by 8 gauge wires or steel strapping at 300mm spacing. NO nailing to the trunk.
- f. Within the TPZ, there is to be no storage of materials, machinery or site office/sheds,

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nor is cement to be mixed or chemicals spilt/disposed of and no stockpiling of soil or rubble, with all Site Management Plans to comply with these requirements.

- g. **Other than the approved works, the applicant is not authorised to perform any other works to this public tree, and must contact Council's Landscape Development Officer on 9093-6613 should clearance pruning or similar works appear necessary. If approval is given, it can only be performed by Council, GIVING SIX WEEKS NOTICE, and will be wholly at the applicants cost, with payment to be received prior to pruning, and prior to any Occupation Certificate.**
- h. Any excavations associated with the installation of new services, pipes, stormwater systems or similar over public property can only be located along either of the sites side boundaries; or, against either side of the new crossing, with the Principal Certifier to ensure that all services plans are both prepared and then installed on-site to comply with this requirement.
- i. The Principal Certifier must ensure compliance with all of these requirements, both on the plans as well as on-site during the course of works, and prior to any Occupation Certificate.
- j. A refundable deposit in the form of cash, credit card or cheque for an amount of **\$1,000.00** must be paid at the Cashier on the Ground Floor of the Administrative Centre, **prior to a Construction Certificate being issued for the development**, in order to ensure compliance with the conditions listed in this consent, and ultimately, preservation of the tree.

The refundable deposit will be eligible for refund following an Occupation Certificate, subject to completion and submission of Council's *'Security Deposit Refund Application Form'*, and pending a satisfactory inspection by Council's Landscape Development Officer (9093-6613).

Any contravention of Council's conditions relating to the tree at any time during the course of the works, or prior to any Occupation Certificate, may result in Council claiming all or part of the lodged security in order to perform any rectification works necessary, as per the requirements of 80A (6) of the Environmental Planning and Assessment Act 1979.

Sydney Water Requirements

16. All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.

The approved plans must be submitted to the Sydney Water **Tap in™** online service, to determine whether the development will affect Sydney Water's waste water and water mains, stormwater drains and/or easements, and if any further requirements need to be met.

The Sydney Water Tap in™ online service replaces the Quick Check Agents as of 30 November 2015

The **Tap in™** service provides 24/7 access to a range of services, including:

- Building plan approvals
- Connection and disconnection approvals
- Diagrams
- Trade waste approvals
- Pressure information
- Water meter installations
- Pressure boosting and pump approvals
- Change to an existing service or asset, e.g. relocating or moving an asset.

Sydney Water's [Tap in™](https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm) online service is available at:

<https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>

The Principal Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service.

REQUIREMENTS TO BE INCLUDED IN THE CONSTRUCTION CERTIFICATE

The requirements contained in the following conditions of consent must be complied with and details of compliance must be included in the construction certificate for the development.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Councils development consent conditions and to achieve reasonable levels of environmental amenity.

Compliance with the Building Code of Australia & Relevant Standards

17. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 98 of the *Environmental Planning & Assessment Regulation 2000*, it is a *prescribed condition* that all building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).

18. Access and facilities for people with disabilities must be provided in accordance with the relevant requirements of the Building Code of Australia, Disability (Access to Premises – Buildings) Standards 2010, relevant Australian Standards and conditions of consent, to the satisfaction of the Certifier.

BASIX Requirements

19. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 97A of the *Environmental Planning & Assessment Regulation 2000*, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.

The required commitments listed and identified in the BASIX Certificate must be included on the construction certificate plans, specifications and associated documentation, to the satisfaction of the Certifier.

The design of the building must not be inconsistent with the development consent and any proposed variations to the building to achieve the BASIX commitments may necessitate a new development consent or amendment to the existing consent to be obtained, prior to a construction certificate being issued.

Site stability, Excavation and Construction work

20. A report must be obtained from a suitably qualified and experienced *professional engineer/s*, which includes the following details, to the satisfaction of the Certifier for the development:-

- a) Geotechnical details which confirm the suitability and stability of the site for the development and relevant design and construction requirements to be implemented to ensure the stability and adequacy of the development and adjacent land.
- b) Details of the proposed methods of excavation and support for the adjoining land (including any public place) and buildings.
- c) Details to demonstrate that the proposed methods of excavation, support and construction are suitable for the site and should not result in any damage to the adjoining premises, buildings or any public place, as a result of the works and any associated vibration.
- d) The adjoining land and buildings located upon the adjoining land must be adequately supported at all times throughout demolition, excavation and building work, to the satisfaction of the *Principal Certifier*.

- e) Written approval must be obtained from the owners of the adjoining land to install any ground or rock anchors underneath the adjoining premises (including any public roadway or public place) and details must be provided to the *Certifier*.

Traffic conditions

21. Adequate provisions are to be made to provide pedestrian visibility and safety. All new walls (and/or landscaping) adjacent to vehicular crossings should not exceed a height of 600mm above the internal driveway level for a distance of 1.5m within the site or new walls (including landscaping) should splayed 1.5 metres by 1.5 metres. Details of compliance, to the satisfaction of the Principal Certifier, are to be included in the construction certificate documentation.
22. The vehicular access driveways, internal circulation ramps and the carpark areas, (including, but not limited to, the ramp grades, carpark layout and height clearances) are to be in accordance with the requirements of AS2890.1:2004. The Construction Certificate plans must demonstrate compliance with these requirements.

Design Alignment levels

23. The design alignment level (the finished level of concrete, paving or the like) at the property boundary for driveways, access ramps and pathways or the like, shall be:

Match the back of the existing footpath along the full site frontage.

The design alignment levels at the property boundary as issued by Council and their relationship to the roadway/kerb/footpath must be indicated on the building plans for the construction certificate. The design alignment level at the street boundary, as issued by the Council, must be strictly adhered to.

Any request to vary the design alignment level/s must be forwarded to and approved in writing by Council's Development Engineers and may require a formal amendment to the development consent via a Section 4.55 application.

Enquiries regarding this matter should be directed to Council's Development Engineer on 9093-6881/9093-6923.

24. The above alignment levels and the site inspection by Council's Development Engineering Section have been issued at a prescribed fee of **\$955** calculated at \$57.00 per metre of site frontage. This amount is to be paid prior to a construction certificate being issued for the development.

Stormwater Drainage & Flood Management

25. The proposed internal driveway shall be designed with a high point at minimum **RL 14.95 AHD**. Details demonstrating compliance with this condition are to be included in the construction certificate documentation.
26. Windows, vents and other openings into the basement carpark (excluding the driveway opening) are to be located at least 150 mm above surrounding ground levels. Details demonstrating compliance with this condition are to be included in the construction certificate documentation.
27. Stormwater drainage plans have not been approved as part of this development consent. Engineering calculations and plans with levels reduced to Australian Height Datum in relation to site drainage shall be prepared by a suitably qualified Hydraulic Engineer and submitted to and approved by the Principal Certifier prior to a construction certificate being issued for the development. A copy of the engineering calculations and plans are to be forwarded to Council, prior to a construction certificate being issued, if the Council is not the Principal Certifier. The drawings and details shall include the following information:
- a) A detailed drainage design supported by a catchment area plan, at a scale of 1:100 or as considered acceptable to the Council or an accredited certifier, and drainage calculations prepared in accordance with the Institution of Engineers publication, Australian Rainfall and Run-off, 1987 edition.

- b) A layout of the proposed drainage system including pipe sizes, type, grade, length, invert levels, etc., dimensions and types of all drainage pipes and the connection into Council's stormwater system.
 - c) The separate catchment areas within the site, draining to each collection point or surface pit are to be classified into the following categories:
 - i. Roof areas
 - ii. Paved areas
 - iii. Grassed areas
 - iv. Garden areas
 - d) Where buildings abut higher buildings and their roofs are "flushed in" to the higher wall, the area contributing must be taken as: the projected roof area of the lower building, plus one half of the area of the vertical wall abutting, for the purpose of determining the discharge from the lower roof.
 - e) Proposed finished surface levels and grades of car parks, internal driveways and access aisles which are to be related to Council's design alignment levels.
 - f) The details of any special features that will affect the drainage design eg. the nature of the soil in the site and/or the presence of rock etc.
28. The site stormwater drainage system is to be provided in accordance with the following requirements;
- a) The stormwater drainage system must be provided in accordance with the relevant requirements of Building Code of Australia and the conditions of this consent, to the satisfaction of the *Principal Certifier* and details are to be included in the construction certificate.
 - b) The stormwater must be discharged (by gravity) either:
 - i. Directly to the kerb and gutter in front of the subject site in Portland street/road; or
 - ii. Directly into Council's underground drainage system located on the opposite side of Portland crescent via a new and/or existing kerb inlet pit; or
 - iii. To a suitably designed infiltration system (subject to confirmation in a full geotechnical investigation that the ground conditions are suitable for the infiltration system),

NOTES:

- Infiltration will not be appropriate if the site is subject to rock and/or a water table within 2 metres of the base of the proposed infiltration area, or the ground conditions comprise low permeability soils such as clay.
- If the owner/applicant is able to demonstrate to Council that he/she has been unable to procure a private drainage easement through adjoining premises and the ground conditions preclude the use of an infiltration system, a pump-out system may be permitted to drain the portion of the site that cannot be discharged by gravity to Council's street drainage system in front of the property.

Pump-out systems must be designed by a suitably qualified and experienced hydraulic consultant/engineer in accordance with the conditions of this consent and Council's Private Stormwater Code.

- c) Should stormwater be discharged to Council's street drainage system, an on-site stormwater detention system must be provided to ensure that the maximum discharge

from the site does not exceed that which would occur during a **10% AEP (1 in 10 year)** storm of one hour duration for existing site conditions. All other stormwater run-off from the site for all storms up to the 5% AEP (1 in 20 year) storm is to be retained on the site for gradual release to the street drainage system, to the satisfaction of the Principal Certifier. If discharging to the street gutter the PSD shall be restricted to the above or **25 L/S**, whichever the lesser.

An overland escape route or overflow system (to Council's street drainage system) must be provided for storms having an annual exceedance probability (AEP) of 1% (1 in 100 year storm), or, alternatively the stormwater detention system is to be provided to accommodate the 1% AEP (1 in 100 year) storm.

- d) Should stormwater be discharged to an infiltration system the following requirements must be met;
- i. Infiltration systems/Absorption Trenches must be designed and constructed generally in accordance with Randwick City Council's Private Stormwater Code.
 - ii. The infiltration area shall be sized for all storm events up to the 5% AEP (1 in 20 year) storm event with provision for a formal overland flow path to Council's Street drainage system.

Should no formal overland escape route be provided for storms greater than the 5% AEP (1 in 20yr) design storm, the infiltration system shall be sized for the 1% AEP (1 in 100yr) storm event.
 - iii. Infiltration areas must be a minimum of 3.0 metres from any structure (Note: this setback requirement may not be necessary if a structural engineer or other suitably qualified person certifies that the infiltration area will not adversely affect the structure)
 - iv. Infiltration areas must be a minimum of 2.1 metres from any site boundary unless the boundary is common to Council land (eg. a road, laneway or reserve).
- e) Determination of the required cumulative storage (in the on-site detention and/or infiltration system) must be calculated by the mass curve technique as detailed in Technical Note 1, Chapter 14 of the Australian Rainfall and Run-off Volume 1, 1987 Edition.

Where possible any detention tanks should have an open base to infiltrate stormwater into the ground. Infiltration should not be used if ground water and/or any rock stratum is within 2.0 metres of the base of the tank.
- f) Should a pump system be required to drain any portion of the site the system must be designed with a minimum of two pumps being installed, connected in parallel (with each pump capable of discharging at the permissible discharge rate) and connected to a control board so that each pump will operate alternatively. The pump wet well shall be sized for the 1% AEP (1 in 100 year), 2 hour storm assuming both pumps are not working.

The pump system must also be designed and installed strictly in accordance with Randwick City Council's Private Stormwater Code.
- g) If connecting to Council's underground drainage system, a reflux valve shall be provided (within the site) over the pipeline discharging from the site to ensure that stormwater from Council drainage system does not surcharge back into the site stormwater system.
- h) Any new kerb inlet pits (constructed within Council's road reserve) are to be constructed generally in accordance with Council's standard detail for the design of kerb inlet pits (drawing number SD6 which is available from Council).

- i) Generally all internal pipelines must be capable of discharging a 1 in 20 year storm flow. However the minimum pipe size for pipes that accept stormwater from a surface inlet pit must be 150mm diameter. The site must be graded to direct any surplus run-off (i.e. above the 1 in 20 year storm) to the proposed drainage (detention/infiltration) system.
- j) A sediment/silt arrester pit must be provided within the site near the street boundary prior to discharge of the stormwater to Council's drainage system and prior to discharging the stormwater to any absorption/infiltration system.

Sediment/silt arrester pits are to be constructed generally in accordance with the following requirements:

- The base of the pit being located a minimum 300mm under the invert level of the outlet pipe.
- The pit being constructed from cast in-situ concrete, precast concrete or double brick.
- A minimum of 4 x 90 mm diameter weep holes (or equivalent) located in the walls of the pit at the floor level with a suitable geotextile material with a high filtration rating located over the weep holes.
- A galvanised heavy-duty screen being provided over the outlet pipe/s (Mascot GMS multipurpose filter screen or equivalent).
- The grate being a galvanised heavy-duty grate that has a provision for a child proof fastening system.
- A child proof and corrosion resistant fastening system being provided for the access grate (e.g. spring loaded j-bolts or similar).
- Provision of a sign adjacent to the pit stating, "This sediment/silt arrester pit shall be regularly inspected and cleaned".

Sketch details of a standard sediment/silt arrester pit may be obtained from Council's Drainage Engineer.

- k) The floor level of all habitable, retail, commercial and storage areas located adjacent to any detention and/or infiltration systems with above ground storage must be a minimum of 300mm above the maximum water level for the design storm or alternately a permanent 300mm high water proof barrier is to be provided.

(In this regard, it must be noted that this condition must not result in any increase in the heights or levels of the building. Any variations to the heights or levels of the building will require a new or amended development consent from the Council prior to a construction certificate being issued for the development).

- l) The maximum depth of ponding in any above ground detention areas and/or infiltration systems with above ground storage shall be as follows (as applicable):
 - i. 150mm in uncovered open car parking areas (with an isolated maximum depth of 200mm permissible at the low point pit within the detention area)
 - ii. 300mm in landscaped areas (where child proof fencing is not provided around the outside of the detention area and sides slopes are steeper than 1 in 10)
 - iii. 600mm in landscaped areas where the side slopes of the detention area have a maximum grade of 1 in 10
 - iv. 1200mm in landscaped areas where a safety fence is provided around the outside of the detention area
 - v. Above ground stormwater detention areas must be suitably signposted where required, warning people of the maximum flood level.

Note: Above ground storage of stormwater is not permitted within basement car parks or store rooms.

- m) A childproof and corrosion resistant fastening system shall be installed on access grates over pits/trenches where water is permitted to be temporarily stored.
- n) A 'V' drain (or equally effective provisions) are to be provided to the perimeter of the property, where necessary, to direct all stormwater to the detention/infiltration area.
- o) Mulch or bark is not to be used in on-site detention areas.
- p) Site discharge pipelines shall cross the verge at an angle no less than 45 degrees to the kerb line and must not encroach across a neighbouring property's frontage unless approved in writing by Council's Development Engineering Coordinator.
- q) Any onsite detention/infiltration systems shall be located in areas accessible by residents of all units.

Groundwater

29. As the proposed basement level/s may extend into the water table (or be affected by fluctuations of the water table), the following requirements apply:

- a. The design and construction of the basement level/s must preclude the need for dewatering after construction.

That part of the development that may be impacted by the water table must include a water proof retention system (i.e. a fully tanked structure) with adequate provision for future fluctuations of water table levels. (It is recommended that a minimum allowance for a water table variation of at least +/-1.0 metre beyond any expected fluctuation be provided). The actual water table fluctuation and fluctuation safety margin must be determined by a suitably qualified professional.

- b. Groundwater management systems shall be designed to transfer groundwater around, through or under the proposed development without a change in the range of the natural groundwater level fluctuations in the locality.

Where an impediment to the natural flowpaths is created as a result of the nature of the construction methods utilised or the bulk of the below-ground structure, artificial drains such as perimeter drains and through drainage may be utilised. These systems may only be utilised where it can be demonstrated that the natural groundwater flow regime is restored both up-gradient and down-gradient of the site, without any adverse effects on surrounding property or infrastructure.

Groundwater management systems:

- Are to be designed to be easily maintained.
- Should have a design life of 100 years.

- c. The basement level/s of the building must be designed by a structural engineer who is qualified and experienced in the design of structures below a water table. Details of the proposed methods of managing groundwater, tanking and waterproofing must be submitted to and approved by the Principal Certifier, prior to issuing the **construction certificate**. A copy of the engineer's qualifications and experience must also be submitted to the Principal Certifier.

In the event of the development being modified in a manner that changes building/structural loads or alters the basement design, a suitably qualified and experienced structural engineer must certify that the design of the basement remains adequate for the site conditions.

30. Prior to the issue of a construction certificate, a report must be submitted to and approved by the Principal Certifier, detailing the proposed methods of excavation (including support), managing groundwater and dewatering the site.

The report is to be prepared by a suitably qualified and experienced Geotechnical and/or Hydrogeological Engineer and include:

- a. Details of compliance with relevant approvals and licences (e.g. Council's conditions of consent and Water Licence from the Office of Water).
- b. The proposed method of excavation, shoring/piling and dewatering.
- c. Assessment of the potential risk of off-site impacts such as damage to surrounding buildings or infrastructure due to differential sediment compaction and surface settlement during and following pumping of groundwater. *Note: The assessment must demonstrate that the proposed method of excavation and dewatering will not pose an unacceptable risk of damage.*
- d. The zone of any possible settlement.
- e. Details of the proposed temporary disposal of groundwater and/or construction site stormwater to Council's drainage system. *Note: Prior to discharging groundwater (or site stormwater) into Council's stormwater drainage system, separate written approval must be obtained from Council in accordance with Section 138 of the Roads Act 1993.*
- f. The location of any proposed re-injection points in relation to the property boundaries (where re-injection equipment is to be located on land other than the subject premises, the written consent of the owner must also be provided to Council).
- g. Details of groundwater quality and proposed disposal of any potentially contaminated groundwater in an environmentally sensitive manner. The details must demonstrate compliance with relevant requirements and approvals of the Office of Environment & Heritage, Council and the Protection of the Environment Operations Act 1997.
- h. The program to monitor fluctuations of the water table during dewatering/ construction to ensure that the conditions of consent and other relevant requirements are satisfied.
- i. The location of all proposed monitoring and pumping equipment in relation to the property boundaries (where monitoring or pumping equipment is to be located on land other than the subject premises, the written consent of the owner must also be provided to Council).
- j. Details of any consultation and arrangements made with owners of any potentially affected nearby premises (i.e. in relation to access, monitoring and rectification of possible damage to other premises)
- k. Certification that the proposed methods of dewatering and excavation are:
 - appropriate and in accordance with 'best practice' principles; and
 - should not result in any unacceptable levels of settlement or damage of the adjoining or nearby buildings within the zone of influence.

A copy of the approved report must be submitted to Council, (for Council's record keeping purposes and as confirmation that this condition has been complied with), prior to the commencement of any site construction works.

Any practices or recommendations made by the consulting engineer/s in the approved report must be implemented accordingly and the dewatering process must be monitored by the consulting engineer/s to the satisfaction of the Principal Certifier.

Waste Management

31. The waste management plan has not been approved as part of this development consent. An amended Waste Management Plan detailing the waste and recycling storage and removal strategy for all of the development, is required to be submitted to and approved by Council's Director of City Planning.

The Waste Management plan is required to be prepared in accordance with Council's Waste Management Guidelines for Proposed Development and must include the following details (as applicable):

- The use of the premises and the number and size of occupancies.
- The type and quantity of waste to be generated by the development.
- Demolition and construction waste, including materials to be re-used or recycled.
- Details of the proposed recycling and waste disposal contractors.
- Waste storage facilities and equipment including provision for FOGO.
- Access and traffic arrangements.
- The procedures and arrangements for on-going waste management including collection, storage and removal of waste and recycling of materials.

Further details of Council's requirements and guidelines, including pro-forma Waste Management plan forms can be obtained from Council's Customer Service Centre.

32. The garbage room shall be sized to contain a minimum of 8 x 240 litre bins (comprising 3 garbage bins, 3 recycle bins and 2 FOGO bins) and with adequate provisions for access to all bins. Details showing compliance are to be included in the construction certificate.
33. The waste storage areas are to be provided with a tap and hose and the floor is to be graded and drained to the sewer to the requirements of Sydney Water.

Public Utilities

34. A *Public Utility Impact Assessment* must be carried out to identify all public utility services located on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the building works.

The owner/builder must make the necessary arrangements and meet the full cost for telecommunication companies, gas providers, Ausgrid, Sydney Water and other authorities to adjust, repair or relocate their services as required.

Undergrounding of Site Power

35. Power supply to the proposed development shall be provided via an underground (UGOH) connection from the nearest mains distribution pole in Portland Crescent. No Permanent Private Poles are to be installed with all relevant documentation submitted for the construction certificate to reflect these requirements to the satisfaction of the Principal Certifier. The applicant/owner is to liaise with an Ausgrid Accredited Service Provider to carry out the works to the requirements and satisfaction of Ausgrid and at no cost to Council.

Landscape Plans

36. A landscape plan prepared by a qualified professional in the Landscape industry (must be eligible for membership with AILD, AILA or equivalent) which complies with the following requirements must be provided for the Construction Certificate:
 - a. A Planting Plan & Plant Schedule which includes proposed species, botanic and common names, pot size at the time of planting, quantity, location, dimensions at maturity and any other details required to describe the works;
 - b. A predominance of species that can withstand poor quality sandy soils and are not reliant on high quantities of moisture and fertilizer for survival;
 - c. A high-quality selection and arrangement of decorative species throughout the front setback so as to assist with presentation of this development to the streetscape;
 - d. Any new walls or planting within the garden bed shown across the front property boundary, within a distance of 2 metres of either side of the new driveway, must not exceed 600mm in height, so as to maintain a clear line of sight of approaching pedestrians and vehicles, and must also be those which will not encroach out onto the public footpath and obscure access;

- e. The design of the two rear courtyards/private open space must be amended so that deep soil garden beds with a minimum width of 2 metres are provided across the width of the rear boundary instead, to which, a lush arrangement and layering of species shall be provided, with the extent of the deck as currently shown to be reduced so as to comply with this requirement;
 - f. Dedicated garden areas around the perimeter of the site, to which, evergreen screen planting and decorative lower growing species shall be provided so as to ensure reasonable level of future privacy and amenity, for both occupants and neighbours;
 - g. A minimum of 4 x 100 litre (pot size at the time of planting) trees within the site, selecting NATIVE species which will attain a minimum height of between 4-7 metres at maturity, and are to be strategically located within areas of deep soil where possible, as well as to maximise future screening and privacy between this site and adjoining properties;
 - h. Additional notation showing soil and mulch details, irrigation, edging, paving, fencing, lighting details, surface finishes, retaining walls, decking and any other landscape elements in order to fully describe the proposed landscape works.
 - i. All planter boxes and garden beds constructed on slab must have a minimum soil depth of 600mm and all lawn areas must have a minimum soil depth of 300mm, with construction details to be provided to confirm compliance
37. Written certification from a qualified professional in the Landscape industry (must be eligible for membership with a nationally recognised organisation/association) must state that the Landscape Plan/s submitted for the Construction Certificate comply with the requirements specified above, with both this written statement and approved plan/s to then be submitted to, and be approved by, the Principal Certifier.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

The following conditions of consent must be complied with prior to the commencement of any works on the site. The necessary documentation and information must be provided to the Council or the 'Principal Certifier', as applicable.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000* and to provide reasonable levels of public health, safety and environmental amenity.

Certification and Building Inspection Requirements

38. Prior to the commencement of any building works, the following requirements must be complied with:
- a) a Construction Certificate must be obtained from the Council or an accredited certifier, in accordance with the provisions of the *Environmental Planning & Assessment Act 1979*.

A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.
 - b) a *Principal Certifier* must be appointed to carry out the necessary building inspections and to issue an *occupation certificate*; and
 - c) a *principal contractor* must be appointed for the building work and any applicable requirements of the *Home Building Act 1989* must be satisfied accordingly; and
 - d) the *principal contractor* must be advised of the required *critical stage inspections* and other inspections to be carried out, as specified by the *Principal Certifier*; and
 - e) at least two days notice must be given to the Council, in writing, prior to commencing any works.

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Home Building Act 1989

39. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 98 of the *Environmental Planning & Assessment Regulation 2000*, the relevant requirements of the *Home Building Act 1989* must be complied with.

Details of the Licensed Building Contractor and a copy of the relevant Certificate of Home Warranty Insurance or a copy of the Owner-Builder Permit (as applicable) must be provided to the Principal Certifier and Council.

Dilapidation Reports

40. A dilapidation report (incorporating photographs of relevant buildings) must be obtained from a *Professional Engineer*, detailing the current condition and status of all of the buildings and structures located upon all of the properties adjoining the subject site and any other property or public land which may be affected by the works, to the satisfaction of the *Principal Certifier*.

The dilapidation report must be submitted to the Council, the *Principal Certifier* and the owners of the adjoining/nearby premises encompassed in the report, prior to commencing any site works (including any demolition work, excavation work or building work).

Construction Site Management Plan

41. A *Construction Site Management Plan* must be developed and implemented prior to the commencement of any works. The construction site management plan must include the following measures, as applicable to the type of development:

- location and construction of protective site fencing / hoardings;
- location of site storage areas/sheds/equipment;
- location of building materials for construction;
- provisions for public safety;
- dust control measures;
- details of proposed sediment and erosion control measures;
- site access location and construction
- details of methods of disposal of demolition materials;
- protective measures for tree preservation;
- location and size of waste containers/bulk bins;
- provisions for temporary stormwater drainage;
- construction noise and vibration management;
- construction traffic management details;
- provisions for temporary sanitary facilities.

The site management measures must be implemented prior to the commencement of any site works and be maintained throughout the works, to the satisfaction of Council.

A copy of the Construction Site Management Plan must be provided to the Principal Certifier and Council prior to commencing site works. A copy must also be maintained on site and be made available to Council officers upon request.

Demolition Work Plan

42. A Demolition Work Plan must be prepared for the development in accordance with Australian Standard AS2601-2001, Demolition of Structures and relevant environmental/work health and safety provisions and the following requirements:

- a) The Demolition Work Plan must be submitted to the Principal Certifier, not less than two (2) working days before commencing any demolition work. A copy of the Demolition Work Plan must be maintained on site and be made available to Council officers upon request.

If the work involves asbestos products or materials, a copy of the Demolition Work Plan must also be provided to Council not less than 2 days before commencing those works.

- b) Any materials containing asbestos (including Fibro) must be safely removed and disposed of in accordance with the NSW Work Health and Safety Regulation 2017,

SafeWork NSW Code of Practice for the Safe Removal of Asbestos, Protection of Environment Operations (Waste) Regulation 2014 and Council's Asbestos Policy.

Construction Noise & Vibration Management Plan

43. A *Construction Noise & Vibration Management Plan*, prepared in accordance with the Environment Protection Authority (EPA) Guidelines for Construction Noise and Assessing Vibration, by a suitably qualified person, is to be developed and implemented prior to commencing site work and throughout the course of construction, in accordance with the following requirements:

- a) Noise and vibration emissions during the construction of the building and associated site works must not result in an unreasonable loss of amenity to nearby residents.

Noise and vibration from any rock excavation machinery, pile drivers and all plant and equipment must be minimised, by using appropriate plant and equipment, silencers and the implementation of noise management strategies.

- b) The *Construction Noise & Vibration Management Plan* must include details of measurements, analysis and relevant criteria and demonstrate that the noise and vibration emissions from the work satisfy the relevant provisions of the *Protection of the Environment Operations Act 1997*, current EPA Guidelines for Construction Noise and Assessing Vibration and Councils conditions of consent.

- c) A further report/correspondence must be obtained from the consultant as soon as practicable upon the commencement of works, which reviews and confirms the implementation and suitability of the noise and vibration strategies in the *Construction Noise & Vibration Management Plan* and which demonstrates compliance with relevant criteria.

- d) Any recommendations and requirements contained in the *Construction Noise & Vibration Management Plan* and associated reports are to be implemented accordingly and should noise and vibration emissions not comply with the terms and conditions of consent, work must cease forthwith and is not to recommence until details of compliance are submitted to Council and the *Principal Certifier*.

A copy of the *Construction Noise & Vibration Management Plan* and associated acoustic/vibration report/s must be maintained on-site and a copy must be provided to Council and the *Principal Certifier* accordingly.

Public Liability

44. The owner/builder is required to hold Public Liability Insurance, with a minimum liability of \$10 million and a copy of the Insurance cover is to be provided to the *Principal Certifier* and Council.

Construction Traffic Management

45. An application for a 'Works Zone' and Construction Traffic Management Plan must be submitted to Councils Integrated Transport Department, and approved by the Randwick Traffic Committee, for a 'Works Zone' to be provided in Portland Crescent Road for the duration of the demolition & construction works.

The 'Works Zone' must have a minimum length of 12m and extend for a minimum duration of three months. The suitability of the proposed length and duration is to be demonstrated in the application for the Works Zone. The application for the Works Zone must be submitted to Council at least six (6) weeks prior to the commencement of work on the site to allow for assessment and tabling of agenda for the Randwick Traffic Committee.

The requirement for a Works Zone may be varied or waived only if it can be demonstrated in the Construction Traffic Management Plan (to the satisfaction of Council's Traffic Engineers) that all construction related activities (including all loading and unloading operations) can and will be undertaken wholly within the site. The written approval of Council must be obtained to provide a Works Zone or to waive the requirement to provide a Works Zone prior to the commencement of any site work.

46. A detailed Construction Site Traffic Management Plan must be submitted to and approved by Council, prior to the commencement of any site work.

The Construction Site Traffic Management Plan must be prepared by a suitably qualified person and must include the following details, to the satisfaction of Council:

- A description of the demolition, excavation and construction works
- A site plan/s showing the site, roads, footpaths, site access points and vehicular movements
- Any proposed road and/or footpath closures
- Proposed site access locations for personnel, deliveries and materials
- Size, type and estimated number of vehicular movements (including removal of excavated materials, delivery of materials and concrete to the site)
- Provision for loading and unloading of goods and materials
- Impacts of the work and vehicular movements on the road network, traffic and pedestrians
- Proposed hours of construction related activities and vehicular movements to and from the site
- Current/proposed approvals from other Agencies and Authorities (including NSW Roads & Maritime Services, Police and State Transit Authority)
- Any activities proposed to be located or impact upon Council's road, footways or any public place
- Measures to maintain public safety and convenience

The approved Construction Site Traffic Management Plan must be complied with at all times, and any proposed amendments to the approved Construction Site Traffic Management Plan must be submitted to and be approved by Council in writing, prior to the implementation of any variations to the Plan.

47. Any necessary approvals must be obtained from NSW Police, Roads & Maritime Services, Transport, and relevant Service Authorities, prior to commencing work upon or within the road, footway or nature strip.

All conditions and requirements of the NSW Police, Roads & Maritime Services, State Transit Authority and Council must be complied with at all times

Public Utilities

48. Documentary evidence from the relevant public utility authorities confirming they have agreed to the proposed works and that their requirements have been or are able to be satisfied, must be submitted to the Principal Certifier prior to the commencement of any demolition, excavation or building works.

The owner/builder must make the necessary arrangements and meet the full cost for telecommunication companies, gas providers, Ausgrid, Sydney Water and other service authorities to adjust, repair or relocate their services as required.

Nature strip vegetation

49. Approval is granted for the applicant to remove and dispose of, wholly at their own cost, the group of small, recently planted shrubs on the Portland Crescent verge, between the existing driveway and T4, both so as to allow for the new, relocated vehicle crossing, as well as to avoid future issues associated with obscuring the line of sight when exiting the property, with the applicant to satisfy themselves as to the location of any services or similar, prior to the commencement of any external works.

REQUIREMENTS DURING CONSTRUCTION & SITE WORK

The following conditions of consent must be complied with during the demolition, excavation and construction of the development.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000* and to provide reasonable levels of public health, safety and environmental amenity during construction.

Inspections during Construction

50. Building works are required to be inspected by the *Principal Certifier*, in accordance with the *Environmental Planning & Assessment Act 1979* and clause 162A of the *Environmental Planning & Assessment Regulation 2000*, to monitor compliance with the relevant standards of construction, Council's development consent and the construction certificate.

Building & Demolition Work Requirements

51. The demolition, removal, storage, handling and disposal of products and materials containing asbestos must be carried out in accordance with Randwick City Council's Asbestos Policy and the relevant requirements of SafeWork NSW and the NSW Environment Protection Authority (EPA), including:

- Work Health and Safety Act 2011;
- Work Health and Safety Regulation 2017;
- SafeWork NSW Code of Practice for the Safe Removal of Asbestos;
- Australian Standard 2601 (2001) – Demolition of Structures;
- The Protection of the Environment Operations Act 1997;
- Protection of Environment Operations (Waste) Regulation 2014;
- Randwick City Council Asbestos Policy.

A copy of Council's Asbestos Policy is available on Council's web site or a copy can be obtained from Council's Customer Service Centre.

Removal of Asbestos Materials

52. Any work involving the demolition, storage or disposal of asbestos products and materials must be carried out in accordance with the following requirements:

- Work Health & Safety legislation and SafeWork NSW requirements
- Preparation and implementation of a *demolition work plan*, in accordance with AS 2601 (2001) – Demolition of structures; NSW Work Health and Safety Regulation 2017 and Randwick City Council's Asbestos Policy. A copy of the demolition work plan must be provided to Principal Certifier and a copy must be kept on site and be made available for Council Officer upon request.
- A SafeWork NSW licensed demolition or asbestos removal contractor must undertake removal of more than 10m² of bonded asbestos (or as otherwise specified by SafeWork NSW or relevant legislation). Removal of friable asbestos material must only be undertaken by contractor that holds a current friable asbestos removal licence. A copy of the relevant licence must be provided to the Principal Certifier.
- On sites involving the removal of asbestos, a sign must be clearly displayed in a prominent visible position at the front of the site, containing the words 'Danger Asbestos Removal In Progress' and include details of the licensed contractor.
- Asbestos waste must be stored, transported and disposed of in compliance with the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Operations (Waste) Regulation 20014*. Details of the disposal of materials containing asbestos (including receipts) must be provided to the Principal Certifier and Council.
- A Clearance Certificate or Statement, prepared by a suitably qualified person (i.e. an occupational hygienist, licensed asbestos assessor or other competent person), must be provided to Council and the Principal Certifier as soon as practicable after completion of the asbestos related works, which confirms that the asbestos material

have been removed appropriately and the relevant conditions of consent have been satisfied.

A copy of Council's Asbestos Policy is available on Council's web site at www.randwick.nsw.gov.au in the Building & Development Section or a copy can be obtained from Council's Customer Service Centre.

Excavations, Back-filling & Retaining Walls

53. All excavations and backfilling associated with the erection or demolition of a building must be executed safely in accordance with appropriate professional standards and excavations must be properly guarded and supported to prevent them from being dangerous to life, property or buildings.

Retaining walls, shoring or piling must be provided to support land which is excavated in association with the erection or demolition of a building, to prevent the movement of soil and to support the adjacent land and buildings, if the soil conditions require it. Adequate provisions are also to be made for drainage.

Details of proposed retaining walls, shoring, piling or other measures are to be submitted to and approved by the Principal Certifier.

Support of Adjoining Land

54. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 98 E of the *Environmental Planning & Assessment Regulation 2000*, it is a prescribed condition that the adjoining land and buildings located upon the adjoining land must be adequately supported at all times.

Sediment & Erosion Control

55. Sediment and erosion control measures, must be implemented throughout the site works in accordance with the manual for Managing Urban Stormwater – Soils and Construction, published by Landcom.

Details must be included in the Construction Site Management Plan and a copy must be provided to the Principal Certifier and Council. A copy must also be maintained on site and be made available to Council officers upon request.

Dust Control

56. During demolition excavation and construction works, dust emissions must be minimised, so as not to result in a nuisance to nearby residents or result in a potential pollution incident.

Adequate dust control measures must be provided to the site prior to the works commencing and the measures and practices must be maintained throughout the demolition, excavation and construction process, to the satisfaction of Council.

Dust control measures and practices may include:-

- ☐ Provision of geotextile fabric to all perimeter site fencing (attached on the prevailing wind side of the site fencing).
- ☐ Covering of stockpiles of sand, soil and excavated material with adequately secured tarpaulins or plastic sheeting.
- ☐ Installation of a water sprinkling system or provision hoses or the like.
- ☐ Regular watering-down of all loose materials and stockpiles of sand, soil and excavated material.
- ☐ Minimisation/relocation of stockpiles of materials, to minimise potential for disturbance by prevailing winds.
- ☐ Landscaping and revegetation of disturbed areas.

Temporary Site Fencing

57. Temporary site safety fencing or site hoarding must be provided to the perimeter of the site throughout demolition, excavation and construction works, to the satisfaction of Council, in accordance with the following requirements:
- Temporary site fences or hoardings must have a height of 1.8 metres and be a cyclone wire fence (with geotextile fabric attached to the inside of the fence to provide dust control), or heavy-duty plywood sheeting (painted white), or other material approved by Council.
 - Hoardings and site fencing must be designed to prevent any substance from, or in connection with, the work from falling into the public place or adjoining premises and if necessary, be provided with artificial lighting.
 - All site fencing and hoardings must be structurally adequate, safe and be constructed in a professional manner and the use of poor quality materials or steel reinforcement mesh as fencing is not permissible.
 - An overhead ('B' Class) type hoarding is required is be provided to protect the public (unless otherwise approved by Council) if:
 - ☐ materials are to be hoisted (i.e. via a crane or hoist) over a public footway;
 - ☐ building or demolition works are to be carried out on buildings which are over 7.5m in height and located within 3.6m of the street alignment;
 - ☐ it is necessary to prevent articles or materials from falling and causing a potential danger or hazard to the public or occupants upon adjoining land;
 - ☐ as may otherwise be required by WorkCover, Council or the *Principal Certifier*.

Notes:

- ☐ *Temporary site fencing may not be necessary if there is an existing adequate fence in place having a minimum height of 1.5m.*
- ☐ *If it is proposed to locate any site fencing, hoardings, amenities or articles upon any part of the footpath, nature strip or public place at any time, a separate Local Approval application must be submitted to and approved by Council's Health, Building & Regulatory Services before placing any fencing, hoarding or other article on the road, footpath or nature strip.*

Public Safety & Site Management

58. Public safety and convenience must be maintained at all times during demolition, excavation and construction works and the following requirements must be complied with to the satisfaction of Council:
- Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.
 - The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times. Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.
 - All building and site activities (including storage or placement of materials or waste and concrete mixing/pouring/pumping activities) must not cause or be likely to cause 'pollution' of any waters, including any stormwater drainage systems, street gutters or roadways.

Note: It is an offence under the Protection of the Environment Operations Act 1997 to cause or be likely to cause 'pollution of waters', which may result in significant penalties and fines.

- d) Access gates and doorways within site fencing, hoardings and temporary site buildings or amenities must not open outwards into the road or footway.
- e) Bulk bins/waste containers must not be located upon the footpath, roadway or nature strip at any time without the prior written approval of the Council. Applications to place a waste container in a public place can be made to Council's Health, Building and Regulatory Services department.
- f) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.

Site Signage

59. A sign must be erected and maintained in a prominent position on the site for the duration of the works, which contains the following details:

- name, address, contractor licence number and telephone number of the *principal contractor*, including a telephone number at which the person may be contacted outside working hours, or *owner-builder* permit details (as applicable)
- name, address and telephone number of the *Principal Certifier*,
- a statement stating that "unauthorised entry to the work site is prohibited".

Restriction on Working Hours

60. Building, demolition and associated site works must be carried out in accordance with the following requirements:

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as detailed below)	<ul style="list-style-type: none"> • Monday to Friday - 7.00am to 5.00pm • Saturday - 8.00am to 5.00pm • Sunday & public holidays - No work permitted
Excavating or sawing of rock, use of jack-hammers, pile-drivers, vibratory rollers/compactors or the like	<ul style="list-style-type: none"> • Monday to Friday - 8.00am to 3.00pm only • Saturday - No work permitted • Sunday & public holidays - No work permitted
Additional requirements for all development	<ul style="list-style-type: none"> • Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted

An application to vary the abovementioned hours may be submitted to Council's Manager Health, Building & Regulatory Services for consideration and approval to vary the specified hours may be granted in exceptional circumstances and for limited occasions (e.g. for public safety, traffic management or road safety reasons). Any applications are to be made on the standard application form and include payment of the relevant fees and supporting information. Applications must be made at least 10 days prior to the date of the proposed work and the prior written approval of Council must be obtained to vary the standard permitted working hours.

Survey Requirements

61. A Registered Surveyor's check survey certificate or other suitable documentation must be obtained at the following stage/s of construction to demonstrate compliance with the approved setbacks, levels, layout and height of the building to the satisfaction of the Principal Certifier:

- prior to construction (pouring of concrete) of footings and boundary retaining structures,
- prior to construction (pouring of concrete) of each floor slab,
- upon completion of the building, prior to issuing an *Occupation Certificate*,
- as otherwise may be required by the *Principal Certifier*.

The survey documentation must be forwarded to the Principal Certifier and a copy is to be forwarded to the Council, if the Council is not the Principal Certifier for the development.

Building Encroachments

62. There must be no encroachment of any structures or building work onto Council's road reserve, footway, nature strip or public place.

Site Seepage & Stormwater

63. Details of the proposed connection and or disposal of any site seepage, groundwater or construction site stormwater to Council's stormwater drainage system must be submitted to and approved by Council's Development Engineering Coordinator, prior to commencing these works, in accordance with section 138 of the *Roads Act 1993*.

Details must include the following information:

- Stormwater/De-Watering Management Plan (prepared by a suitably qualified Environmental Consultant);
- Detailed plans and specifications;
- Hydraulic engineering details of the proposed disposal/connection of groundwater or site stormwater to Council's drainage system
- Volume of water to be discharged
- Location and size of drainage pipes
- Duration, dates and time/s for the proposed works and disposal
- Details of water quality and compliance with the requirements of the *Protection of the Environment Act 1997*
- Details of associated plant and equipment, including noise levels from the plant and equipment and compliance with the requirements of the *Protection of the Environment Act 1997* and associated Regulations and Guidelines
- Copy of any required approvals and licences from other Authorities (e.g. A water licence from the Department of Planning/Department of Water & Energy).
- Details of compliance with any relevant approvals and licences

Road/Asset Opening Permit

64. Any openings within or upon the road, footpath, nature strip or in any public place (i.e. for proposed drainage works or installation of services), must be carried out in accordance with the following requirements, to the satisfaction of Council:
- a) A *Road / Asset Opening Permit* must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the *Roads Act 1993* and all of the conditions and requirements contained in the *Road / Asset Opening Permit* must be complied with.
 - b) Council's Road / Asset Opening Officer must be notified at least 48 hours in advance of commencing any excavation works and also immediately upon completing the works (on 9399 0691 or 0409 033 921 during business hours), to enable any necessary inspections or works to be carried out.
 - c) Relevant *Road / Asset Opening Permit* fees, construction fees, inspection fees and security deposits, must be paid to Council prior to commencing any works within or upon the road, footpath, nature strip or other public place,
 - d) The owner/developer must ensure that all works within or upon the road reserve, footpath, nature strip or other public place are completed to the satisfaction of Council, prior to the issuing of a *final occupation certificate* or occupation of the development (whichever is sooner).
 - e) Excavations and trenches must be back-filled and compacted in accordance with AUSPEC standards 306U.
 - f) Excavations or trenches located upon a road or footpath are required to be provided with 50mm depth of cold-mix bitumen finish, level with the existing road/ground surface, to enable Council to readily complete the finishing works at a future date.
 - g) Excavations or trenches located upon turfed areas are required to be back-filled, compacted, top-soiled and re-turfed with Kikuyu turf.

- h) The work and area must be maintained in a clean, safe and tidy condition at all times and the area must be thoroughly cleaned at the end of each days activities and upon completion.
- i) The work can only be carried out in accordance with approved hours of building work as specified in the development consent, unless the express written approval of Council has been obtained beforehand.
- j) Sediment control measures must be implemented in accordance with the conditions of development consent and soil, sand or any other material must not be allowed to enter the stormwater drainage system or cause a pollution incident.
- k) The owner/developer must have a Public Liability Insurance Policy in force, with a minimum cover of \$10 million and a copy of the insurance policy must be provided to Council prior to carrying out any works within or upon the road, footpath, nature strip or in any public place.

Roadway

65. If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) days notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

Traffic Management

66. Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.
67. All work, including the provision of barricades, fencing, lighting, signage and traffic control, must be carried out in accordance with the NSW Roads and Traffic Authority publication - 'Traffic Control at Work Sites' and Australian Standard AS 1742.3 – Traffic Control Devices for Works on Roads, at all times.
68. All conditions and requirements of the NSW Police, Roads & Maritime Services, Transport and Council must be complied with at all times.

Stormwater Drainage

69. Adequate provisions must be made to collect and discharge stormwater drainage during construction of the building to the satisfaction of the Principal Certifier.

The prior written approval of Council must be obtained to connect or discharge site stormwater to Council's stormwater drainage system or street gutter.

Vegetation

70. Approval is granted for removal of the following from within this development site, subject to full implementation of the adopted Landscape Plan:
- The *Eucalyptus nicholii* (Willow Leafed Peppermint, T1) in the front setback, along the southwest side boundary, right in the southeast site corner, as it is not significant in anyway, and is also in direct conflict with the basement ramp in this same area, with a re-deign not warranted given its Low Retention Value and Short Life Expectancy;
 - The smaller Lilly Pilly screening shrubs throughout the front setback, being the two (T2) halfway across the front boundary, including the Umbrella Tree (weed), as well as T3, closer to the front of the existing dwelling, as all are in direct conflict with all aspects and levels of the works in these same areas as shown;
 - Whilst not assessed in the Arborist Report, the mature *Melaleuca quinquinervia* (Broad Leafed Paperbark) in the front setback, hard up against the northeast corner of the existing dwelling, then a larger Gum Tree further to its west, in the northern side setback, as both are already exempt from Council's DCP due to their proximity within

2m of the existing dwelling, meaning they could already be removed at anytime, without Council consent, irrespective of this application, and are also in direct conflict with all aspects and levels of this proposal;

- d. Those small shrubs around the perimeter of the rear setback.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

The following conditions of consent must be complied with prior to the '*Principal Certifier*' issuing an '*Occupation Certificate*'.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Council's development consent and to maintain reasonable levels of public health, safety and amenity.

Occupation Certificate Requirements

71. An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the *Environmental Planning & Assessment Act 1979*.

Fire Safety Certificates

72. Prior to issuing an interim or Occupation Certificate, a single and complete *Fire Safety Certificate*, encompassing all of the essential fire safety measures contained in the *fire safety schedule* must be obtained and be submitted to Council, in accordance with the provisions of the *Environmental Planning and Assessment Regulation 2000*. The *Fire Safety Certificate* must be consistent with the *Fire Safety Schedule* which forms part of the Construction Certificate.

A copy of the *Fire Safety Certificate* must be displayed in the building entrance/foyer at all times and a copy must also be forwarded to Fire and Rescue NSW.

Structural Certification

73. A Certificate must be obtained from a *professional engineer*, which certifies that the building works satisfy the relevant structural requirements of the Building Code of Australia and approved design documentation, to the satisfaction of the *Principal Certifier*. A copy of which is to be provided to Council with the Occupation Certificate.

Sydney Water Certification

74. A *section 73 Compliance Certificate*, under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation. An Application for a Section 73 Certificate must be made through an authorised Water Servicing Coordinator. For details, please refer to the Sydney Water web site www.sydneywater.com.au > *Building and developing* > *Developing your Land* > *Water Servicing Coordinator* or telephone 13 20 92.

Please make early contact with the Water Servicing Co-ordinator, as building of water/sewer extensions may take some time and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifier and the Council prior to issuing an Occupation Certificate or Subdivision Certificate, whichever the sooner.

BASIX Requirements & Certification

75. In accordance with Clause 154B of the *Environmental Planning & Assessment Regulation 2000*, a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that any relevant BASIX commitments and requirements have been satisfied.

Relevant documentary evidence of compliance with the BASIX commitments is to be forwarded to the *Principal Certifier* and Council upon issuing an Occupation Certificate.

Noise Control Requirements & Certification

76. The operation of plant and equipment shall not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997 and Regulations*.

In this regard, the operation of the plant and equipment shall not give rise to an $L_{Aeq, 15 \text{ min}}$ sound pressure level at any affected premises that exceeds the background $L_{A90, 15 \text{ min}}$ noise level, measured in the absence of the noise source/s under consideration by more than 5dB(A) in accordance with relevant NSW Environment Protection Authority (EPA) Noise Control Guidelines.

77. A report must be obtained from a suitably qualified and experienced consultant in acoustics, which demonstrates and certifies that noise and vibration from any plant and equipment (e.g. mechanical ventilation systems and air-conditioners) satisfies the relevant provisions of the *Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority (EPA) Noise Control Manual, Industrial Noise Policy and Council's development consent.

A copy of the report must be provided to the *Principal Certifier* and Council prior to an occupation certificate being issued.

Street and/or Sub-Address Numbering

78. Street numbering must be provided to the front of the premises in a prominent position, in accordance with the Australia Post guidelines and AS/NZS 4819 (2003) to the satisfaction of Council.

If this application results in an additional lot, dwelling or unit, an application must be submitted to and approved by Council's Director of City Planning, together with the required fee, for the allocation of appropriate street and/or unit numbers for the development. The street and/or unit numbers must be allocated prior to the issue of an occupation certificate.

Please note: any Street or Sub-Address Numbering provided by an applicant on plans, which have been stamped as approved by Council are not to be interpreted as endorsed, approved by, or to the satisfaction of Council.

Council's Infrastructure, Vehicular Crossings & Road Openings

79. The owner/developer must meet the full cost for a Council approved contractor to:
- Construct a full width concrete heavy duty vehicular crossing and layback at kerb opposite the vehicular entrance to the premises to Council's specifications and requirements.
 - Remove any redundant concrete vehicular crossing and layback and to reinstate the area with concrete footpath, turf and integral kerb and gutter to Council's specification.
 - Re/construct a 1.3m wide concrete footpath along the full site frontage. Any unpaved areas on the nature strip must be turfed and landscaped to Council's specification.
80. Prior to issuing a final occupation certificate or occupation of the development (whichever is sooner), the owner/developer must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.
81. All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must be carried out in accordance with Council's "Crossings and Entrances – Contributions Policy" and "Residents' Requests for Special Verge Crossings Policy" and the following requirements:
- Details of the proposed civil works to be carried out on Council land must be submitted to Council in a Civil Works Application Form. Council will respond, typically within 4 weeks, with a letter of approval outlining conditions for working on Council land, associated fees and workmanship bonds. Council will also provide details of the approved works including specifications and construction details.
 - Works on Council land, must not commence until the written letter of approval has been obtained from Council and heavy construction works within the property are complete. The work must be carried out in accordance with the conditions of development consent,

Council's conditions for working on Council land, design details and payment of the fees and bonds outlined in the letter of approval.

- c) The civil works must be completed in accordance with the above, prior to the issuing of an occupation certificate for the development, or as otherwise approved by Council in writing.

**Service Authorities
Sydney Water**

82. A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994. Sydney Water's assessment will determine the availability of water and sewer services, which may require extension, adjustment or connection to their mains, and if required, will issue a Notice of Requirements letter detailing all requirements that must be met. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator (WSC).

Go to sydneywater.com.au/section73 or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

The Section 73 Certificate must be submitted to the Principal Certifier and the Council **prior to the issuing of an Occupation Certificate**.

Undergrounding of Power

83. The Principal Certifier shall ensure that power supply to the completed development has been provided as an underground (UGOH) connection from the nearest mains distribution pole in Portland crescent street. All work is to be to the requirements and satisfaction of Ausgrid and at no cost to Council.

NOTE : Any private poles must be removed prior to the issuing of an occupation certificate.

Stormwater Drainage

84. A "restriction on the use of land" and "positive covenant" (under section 88E of the Conveyancing Act 1919) shall be placed on the title of the subject property to ensure that the onsite detention/infiltration system is maintained and that no works which could affect the design function of the detention/infiltration system are undertaken without the prior consent (in writing) from Council. Such restriction and positive covenant shall not be released, varied or modified without the consent of the Council.

Notes:

- a. The "restriction on the use of land" and "positive covenant" are to be to the satisfaction of Council. A copy of Council's standard wording/layout for the restriction and positive covenant may be obtained from Council's Development Engineer.
 - b. The works as executed drainage plan and hydraulic certification must be submitted to Council prior to the "restriction on the use of land" and "positive covenant" being executed by Council.
 - c. Evidence of registration of the Positive Covenant and Restriction (by receipt and/or title search) on the title of the subject property must be provided to the satisfaction of the Principal Certifier.
85. A works-as-executed drainage plan prepared by a registered surveyor and approved by a suitably qualified and experienced hydraulic consultant/engineer must be forwarded to the Principal Certifier and the Council. The works-as-executed plan must include the following details (as applicable):
- Finished site contours at 0.2 metre intervals;
 - The location of any detention basins/tanks with finished surface/invert levels;
 - Confirmation that orifice plate/s have been installed and orifice size/s (if applicable);
 - Volume of storage available in any detention areas;
 - The location, diameter, gradient and material (i.e. PVC, RC etc) of all stormwater pipes;
 - Details of any infiltration/absorption systems; and
 - Details of any pumping systems installed (including wet well volumes).

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86. The applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced Hydraulic Engineer, which confirms that the design and construction of the stormwater drainage system complies with the Building Code of Australia, Australian Standard AS3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and conditions of this development consent.

The certification must be provided following inspection/s of the site stormwater drainage system by the Hydraulic Engineers to the satisfaction of the Principal Certifier.

87. The applicant shall submit to the Principal Certifier and Council certification from a suitably qualified and experienced professional engineer, confirming that the walls of the basement have been fully tanked and waterproofed to prevent the entry of all groundwater in the basement level/s and that any required sub-soil drainage systems have been provided in accordance with the conditions of this consent. There must be no dry weather seepage/groundwater flows discharging to Council's street gutter or underground drainage system.

Carparking

88. The car spaces shall be formalised with line-marking prior to the issuing of an occupation certificate.

NOTE: One carspace must be labelled "visitor parking"

Landscaping

89. Prior to any Occupation Certificate, certification from a qualified professional in the Landscape industry must be submitted to, and be approved by, the Principal Certifier, confirming the date that the completed landscaping was inspected, and that it has been installed substantially in accordance with the approved Landscape Plan, as well as any relevant conditions of consent.
90. Suitable strategies must also be implemented to ensure that the landscaping is maintained in a healthy and vigorous state until maturity, for the life of the development.
91. The nature-strip upon Council's footway shall be re-graded and re-turfed with Kikuyu Turf rolls, including turf underlay, wholly at the applicant's cost, to Council's satisfaction, prior to any Occupation Certificate.

Waste Management

92. Prior to the occupation of the development, the owner or applicant is required to contact Council's City Services department, to make the necessary arrangements for the provision of waste services for the premises.
93. The waste storage areas shall be clearly signposted.

OPERATIONAL CONDITIONS

The following operational conditions must be complied with at all times, throughout the use and operation of the development.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Council's development consent and to maintain reasonable levels of public health and environmental amenity.

Use of parking spaces

94. The car spaces within the development are for the exclusive use of the occupants of the building. The car spaces must not be leased to any person/company that is not an occupant of the building.

Residential Parking Permits

95. All prospective owners and tenants of the building must be notified that Council will not issue any residential parking permits to occupants/tenants of this development.

96. A notice shall be placed in the foyer/common areas of the building advising tenants/occupiers that they are in a building which does not qualify for on-street resident parking permits.

Fire Safety Statements

97. A single and complete *Fire Safety Statement* (encompassing all of the fire safety measures upon the premises) must be provided to the Council (at least on an annual basis) in accordance with the requirements of the *Environmental Planning & Assessment Regulation 2000*.

The *Fire Safety Statement* is required to confirm that all the fire safety measures have been assessed by a competent fire safety practitioner and are operating in accordance with the standards of performance specified in the *Fire Safety Schedule*.

A copy of the *Fire Safety Statement* must be displayed in the building entrance/foyer at all times and a copy must also be forwarded to Fire & Rescue NSW.

Environmental Amenity

98. External lighting to the premises must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance.

Stormwater Detention/Infiltration System

99. The detention area/infiltration system must be regularly cleaned and maintained to ensure it functions as required by the design.

GENERAL ADVISORY NOTES

The following information is provided for your assistance to ensure compliance with the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, or other relevant legislation and requirements. This information does not form part of the conditions of development consent pursuant to Section 4.17 of the Act.

- A1 The requirements and provisions of the *Environmental Planning & Assessment Act 1979* and *Environmental Planning & Assessment Regulation 2000*, must be fully complied with at all times.

Failure to comply with these requirements is an offence, which renders the responsible person liable to a maximum penalty of \$1.1 million. Alternatively, Council may issue a penalty infringement notice (for up to \$6,000) for each offence. Council may also issue notices and orders to demolish unauthorised or non-complying building work, or to comply with the requirements of Council's development consent.

- A2 In accordance with the requirements of the *Environmental Planning & Assessment Act 1979*, building works, including associated demolition and excavation works (as applicable) must not be commenced until:

- A *Construction Certificate* has been obtained from an Accredited Certifier or Council,
- An Accredited Certifier or Council has been appointed as the *Principal Certifier* for the development,
- Council and the Principal Certifier have been given at least 2 days notice (in writing) prior to commencing any works.

- A3 Council can issue your *Construction Certificate* and be your *Principal Certifier* for the development, to undertake inspections and ensure compliance with the development consent and relevant building regulations. For further details contact Council on 9093 6944.

- A4 This determination does not include an assessment of the proposed works under the Building Code of Australia (BCA), Disability (Access to Premises – Buildings) Standards 2010 and other relevant Standards. All new building work (including alterations and additions) must comply with the BCA and relevant Standards. You are advised to liaise with your architect, engineer and building consultant prior to lodgement of your construction certificate.

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- A5 Any proposed amendments to the design and construction of the building may require a new development application or a section 4.55 amendment to the existing consent to be obtained from Council, before carrying out such works
- A6 A Local Approval application must be submitted to and be approved by Council prior to commencing any of the following activities on a footpath, road, nature strip or in any public place:-
- Install or erect any site fencing, hoardings or site structures
 - Operate a crane or hoist goods or materials over a footpath or road
 - Placement of a waste skip or any other container or article.
- For further information please contact Council on 9093 6971.
- A7 Specific details of the location of the building/s should be provided in the Construction Certificate to demonstrate that the proposed building work will not encroach onto the adjoining properties, Council's road reserve or any public place.
- A8 This consent does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is proposed to be carried out upon any adjoining or supported land, the land owner or principal contractor must obtain:
- the consent of the owners of such adjoining or supported land to trespass or encroach, or
 - an access order under the Access to *Neighbouring Land Act 2000*, or
 - an easement under section 88K of the *Conveyancing Act 1919*, or
 - an easement under section 40 of the *Land & Environment Court Act 1979*, as appropriate.
- Section 177 of the *Conveyancing Act 1919* creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).
- A9 External paths and ground surfaces are to be constructed at appropriate levels and be graded and drained away from the building and adjoining premises, so as not to result in the entry of water into the building, or cause a nuisance or damage to any adjoining land.
- Finished ground levels external to the building are to be consistent with the development consent and are not to be raised, other than for the provision of approved paving or the like on the ground.
- A10 Prior to commencing any works, the owner/builder should contact *Dial Before You Dig* on 1100 or www.dialbeforeyoudig.com.au and relevant Service Authorities, for information on potential underground pipes and cables within the vicinity of the development site.
- A11 An application must be submitted to and approved by Council prior to the installation and operation of any proposed greywater or wastewater treatment systems, in accordance with the *Local Government Act 1993*.
- Greywater/Wastewater treatment systems must comply with the relevant requirements and guidelines produced by NSW Health, NSW Office of Environment and Heritage and other relevant regulatory requirements.
- A12 Underground assets may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial before you dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the

vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.

- A13 The applicant is to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.
- A14 Further information and details on Council's requirements for trees on development sites can be obtained from the recently adopted Tree Technical Manual, which can be downloaded from Council's website at the following link, <http://www.randwick.nsw.gov.au> - Looking after our environment – Trees – Tree Management Technical Manual; which aims to achieve consistency of approach and compliance with appropriate standards and best practice guidelines.

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Development Application Report No. D13/22

Subject: 52-56 Carr Street, Coogee (DA/668/2021)

Executive Summary

Proposal:	Alterations and additions to an existing building, extension of existing lift service to top two levels and associated works.
Ward:	East Ward
Applicant:	GSA Planning
Owner:	The Owners - Strata Plan No. 49851 & 87532
Cost of works:	\$82,500
Reason for referral:	Height non-compliance >10%

Recommendation

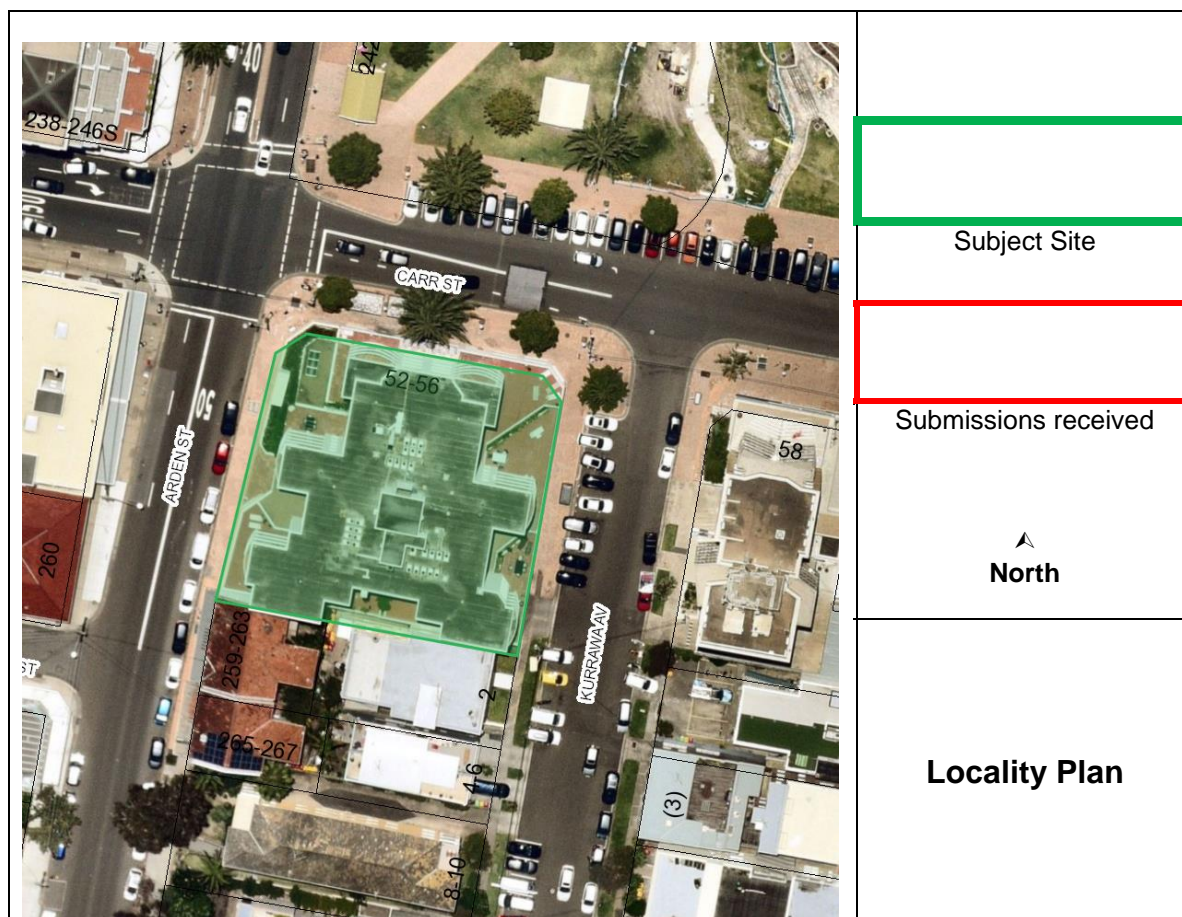
- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the height of building development standard in Clause 4.3 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning, Industry and Environment may be assumed.
- B. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/688/2021 for alterations and additions to an existing building, extension of existing lift service to top two levels and associated works, at No. 52-56 Carr Street, Coogee, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (mixed-use) - DA/668/2021 - 52-56 Carr Street, COOGEE NSW 2034 - DEV - GSA Planning

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Subject Site

Submissions received

▲
North

Locality Plan

1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as:

- The development contravenes the development standard for building height by more than 10%.

The proposal seeks development consent for alterations and additions to an existing building, extension of existing lift service to top two levels and associated works.

The key issues associated with the proposal relate to the building height non-compliance, however, as discussed in Section 7, the proposed contravention of the development standard is considered satisfactory on the basis that the existing building does not comply and the works are internal. An assessment against the relevant provisions in Clause 4.3, 4.6 and B2 zone is provided in Section 7.

The proposal is recommended for approval subject to standard conditions.

2. Site Description and Locality

The site is legally described as SP 2004 and is located in the R3 Medium Density Residential zone. The site has a frontage to Carr Street of 18.04m, with a splayed corner. The site has a 32.64m boundary to Kurrawa Avenue. The southern boundary is 32.41m and the eastern boundary is irregular. The total site area is 836m². The site contains a seven-storey residential flat building with a total of 28 units. There are driveways from both Carr Street and Kurrawa Avenue. Pedestrian access is from Kurrawa Avenue. The site is located at the southern end of Coogee Beach, directly opposite Goldstein Reserve. There are a variety of different land uses and large mixed used buildings, predominantly residential and commercial. There are cafes, hotels, restaurant and retail outlets within the vicinity of the site.



Figure 1 – Subject Site

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3. Relevant history

Development Application No. DA/116/2014 was approved on 06/07/2015 for alterations and additions to an existing residential flat building including a new café.

Modification Application No. DA/116/2014/A was approved on 09/08/2018 for the following:

- Addition of a new service/storage area
- New pedestrian gate fronting Carr Street at the lower ground floor level
- Modification of the entry including a new lift
- Internal reconfiguration to café
- Enclosure of the car spaces at the ground floor level
- Increase the size of the balconies and new roof to the upper level balconies.
- Changes to the openings on the elevations
- Installation of a mechanical ventilation system and associated acoustic attenuation box on the western side of the car park
- Amendment to consent to allow residential works to be completed and occupied separately from the completion of the cafe works.

Development Application No. DA/139/2021 was approved on 30/04/2021 for the strata subdivision of a 28 lot strata to a 29 lot strata.

Modification Application No. DA/139/2021/A was approved on 22/07/2021 to remove condition 10 as the site does not have an OSD system.

4. Proposal

The proposal seeks development consent for the alterations and additions to the existing building including the extension of the existing lift cores to the roof and lift motor room level (the top two

levels of the building) to enable access for maintenance. Photos of the existing roof and motor room are shown in Figures 2-8 below.



Figure 2 – Existing roof top area



Figure 3 – Existing external view of the roof top plant room



Figure 4 – Existing external view of the roof top plant room

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Figure 5 – Existing internal view of the roof plant room



Figure 6 - Existing internal view of the roof plant room



Figure 7 - Existing internal view of the roof plant room

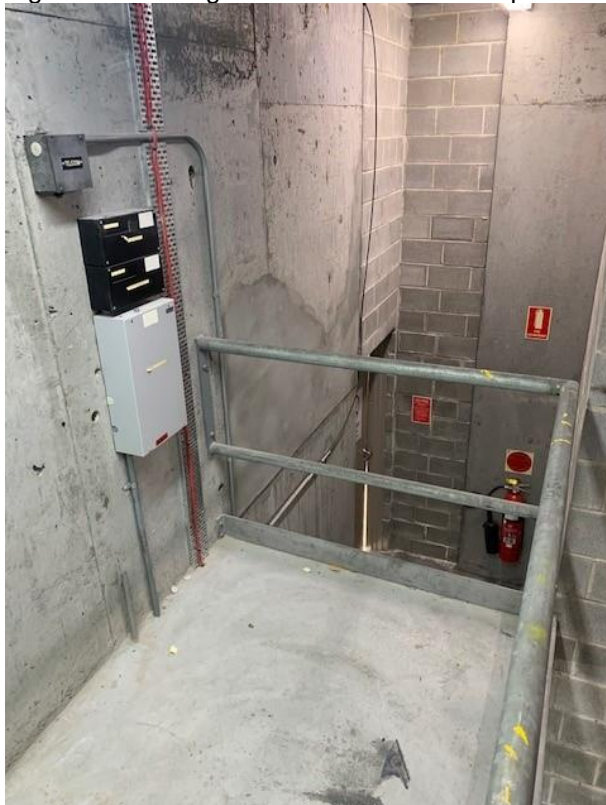


Figure 8 - Existing internal view of the roof plant room

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5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Participation Plan. No submissions were received.

6. Relevant Environment Planning Instruments

6.1. SEPP (Resilience and Hazards) 2021

The State Environmental Planning Policy (Resilience and Hazards) 2021 (Resilience and Hazards SEPP) consolidates and repeals the provisions of the following 3 SEPPs:

1. SEPP (Coastal Management) 2018 (Coastal Management SEPP)
2. SEPP 33 – Hazardous and Offensive Development (SEPP 33)
3. SEPP 55 – Remediation of Land (SEPP 55)

The objectives of Chapter 2 Coastal Management of the Resilience and Hazards SEPP aims to manage development in the coastal zone, protect the environmental assets of the coast, establish a framework for land use planning to guide decision-making in the coastal zone and map the 4 coastal management areas that comprise the NSW coastal zone for the purpose of the definitions in the *Coastal Management Act 2016*.

Clause 2.10 requires Council to consider whether the proposal is likely to cause an adverse impact within the coastal use area with regards to visual amenity, public access, loss of views, overshadowing, built environmental heritage, natural hazards, Aboriginal cultural heritage/practices/places, marine or natural vegetation and fauna, and the use of the surf zone.

The subject site is located within close proximity to the coastline, being Coogee Beach to the north-east. The proposed works are internal and within the existing building envelope of the top two floors. The proposal would not be associated with any adverse impacts to the nearby foreshore area or the coastal use area. The proposed development therefore satisfies the relevant provisions in Clause 2.10 of the Resilience and Hazards SEPP.

6.2. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned B2 Local Centre under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent. The following development standards in the RLEP 2012 apply to the proposal:

Clause	Development Standard	Proposed	Compliance
Cl 4.4: Floor space ratio (max)	1.5:1	No change	N/A
Cl 4.3: Building height (max)	12m	28.26m (No change)	No

6.2.1. Clause 4.4 – Floor Space Ratio

The internal works involve the vertical lift circulation and plant rooms which are excluded from the definition of gross floor area (GFA). As such, the proposal maintains the existing FSR and satisfies the relevant provisions in Clause 4.4 of the RLEP.

6.2.2. Clause 4.6 - Exceptions to development standards

The non-compliances with the development standards are discussed in Section 7 below.

6.2.3. Clause 5.10 - Heritage conservation

The subject site is not identified as an item of local heritage significance or located with a heritage conservation area.

6.2.4. Clause 6.7 Foreshore scenic protection area

As discussed in Section 6.1 above, the proposed works are internal and would not have any adverse impacts to the foreshore scenic protection area.

7. Clause 4.6 exception to a development standard

The proposal seeks to vary the following development standard contained within the Randwick Local Environmental Plan 2012 (RLEP 2012):

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
CI 4.3: Building height (max)	12m	28.26m (same as existing)	16.26m	135.5%

Clause 4.6 of RLEP 2012: Exception to a Development Standard relevantly states:

3. *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
4. *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Secretary has been obtained.*

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ summarised the matters in Clause 4.6 (4) that must be addressed before consent can be granted to a development that contravenes a development standard.

1. *The applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case*

Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 reinforces his previous decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827 where he identified five commonly invoked ways of establishing that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The most common is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

2. *The applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.*

Chief Justice Preston in ***Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 reinforces the previous decision** in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 regarding how to determine whether 'the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard'.

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The grounds relied on by the applicant in their written request must be “environmental planning grounds” by their nature. Chief Justice Preston at [23] notes the adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s1.3 of the EPA Act.

Chief Justice Preston at [24] notes that there here are two respects in which the written request needs to be “sufficient”.

1. The written request must focus on the aspect or element of the development that contravenes the development standard, not the development as a whole (i.e. The written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole); and
2. The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31] Judge Pain confirmed that the term ‘sufficient’ did not suggest a low bar, rather on the contrary, the written report must address sufficient environmental planning grounds to satisfy the consent authority.
3. *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [27] notes that the matter in cl 4.6(4)(a)(ii), with which the consent authority must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

It is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).

4. *The concurrence of the Secretary has been obtained.*

Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [28] notes that the other precondition in cl 4.6(4) that must be satisfied before consent can be granted is whether the concurrence of the Secretary has been obtained (cl 4.6(4)(b)). In accordance with Clause 4.6 (5), in deciding whether to grant concurrence, the Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for state or regional environmental planning, and
- (b) the public benefit of maintaining the development standard

Under clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary’s concurrence for exceptions to development standards in respect of applications made under cl 4.6 (subject to the conditions in the table in the notice).

The approach to determining a clause 4.6 request as summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, has been used in the following assessment of whether the matters in Clause 4.6(4) have been satisfied for each contravention of a development standard.

7.1. Exception to the Building Height development standard (Clause 4.3)

The applicant's written justification for the departure from the building height standard is contained in Appendix 1.

1. Has the applicant's written request adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

The applicant's written request seeks to justify the contravention of the building height development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case because the relevant objectives of the standard are still achieved.

The objectives of the height standard are set out in Clause 4.3 (1) of RLEP 2012. The applicant has addressed each of the objectives as follows:

(a) *to ensure that the size and scale of development is compatible with the desired future character of the locality*

The applicant's written justification demonstrates that this objective is satisfied by noting that; *"development immediately surrounding the site includes a shop top housing development to the east of up to eight storeys in Carr Street, and the nine storey Crowne Plaza Hotel to the north west. It is also noted that there are smaller two and three storey residential flat buildings and shop top housing in the vicinity. Notwithstanding this, the proposed works are internal only, do not increase the height of the existing building and will retain its six storey appearance from Carr Street, with the existing top two service levels set back from the main building line and not readily visible from the street. This is consistent with the existing character of surrounding development and will remain unchanged. Accordingly, the proposal satisfies Objective (a)."*

(b) *to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,*

The development is not within a conservation area or near a heritage item so the objective detailed in Clause 1(b) is not relevant to this development.

(c) *to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.*

The applicant's written justification demonstrates that this objective is satisfied by noting that; *"the area of non-compliance as a result of the proposal will be located within the existing building envelope and will retain the existing building height. As no external works are proposed, there will be no additional impacts to adjoining development in respect of visual bulk, loss of privacy, overshadowing and views. Accordingly, in our opinion, the amenity of neighbouring dwellings will be maintained, and the proposal complies with objective (c) of the height standard."*

Assessing officer's comment: The justification provided by the applicant above is generally concurred with and the following additional comments are made:

- The proposed height non-compliance at the top levels does not alter the height of the existing building.
- The non-compliance enables access for maintenance and the vertical circulation of the building for the current and future occupants.
- The works are internal and would not add bulk and scale to the existing building. The external envelope of the building is retained.
- The proposed non-compliance does not result in any significant adverse amenity or visual impacts to the streetscape or neighbouring properties with regards to solar access, overshadowing, public or private views, acoustic and visual privacy.

In conclusion, the applicant's written request has adequately demonstrated that compliance with the height development standard is unreasonable or unnecessary in the circumstances of the case.

2. Has the applicant's written request adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard?

The applicant's written request seeks to demonstrate that there are sufficient environmental planning grounds to justify contravening the building height development standard as follows:

"The proposal does not alter the external building envelope and will therefore maintain compatibility with the existing and emerging development in the area. In particular, the proposal will remain appropriate within the context of the nearby multi storey Crowne Plaza Hotel in Arden Street and the multi storey shop top housing development in Carr Street. This environmental ground is supported in Initial Action v Woollahra Municipal Council [2019] NSWLEC 1097, where Commissioner O'Neill states at [42] that:

"I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by His Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act)."

As the existing building exceeds the 12m height development standard, it is inevitable that any new works or alterations to existing elements on the upper levels will result in a non-compliance. Strict compliance would require the unnecessary removal of four existing floors which would not be feasible, given it was historically approved at the current height. Adherence to the development standard would limit the opportunities for improvement to the upper levels.

The proposed works will maintain the existing maximum building height and maximum RL and will facilitate maintenance of the lift service that provides access for occupants. The works over the height limit will not be visible from the public domain, as it is located within part of the building that is set back from the leading building edge.

Utilising the existing building envelope for additional lift services will enable the extent of non-compliance to maintain the amenity for adjoining and nearby development in respect of solar access and views. Visual and acoustic privacy will also be maintained as there are no new windows which will overlook adjoining properties. Accordingly, the proposal will not create any additional environmental amenity impacts.

The proposed height exceedance within the existing building envelope facilitates the orderly and economic development by undertaking minor works to an existing residential flat building of a scale that is compatible with surrounding development. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the variation to the development standard, as required in Clause 4.6(3)(b). We therefore consider contravening the development standard to be justified."

Assessing officer's comment: In conclusion, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

3. Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?

To determine whether the proposal will be in the public interest, an assessment against the objectives of the building height development standard and B2 Local Centre zone is provided below:

Assessment against objectives of building height standard

For the reasons outlined in the applicant's written request, the development is consistent with the objectives of the building height standard.

Assessment against objectives of the B2 Local Centre zone

The objectives of B2 zone are:

- To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To enable residential development that is well-integrated with, and supports the primary business function of, the zone.
- To facilitate a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community.
- To minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones.
- To facilitate a safe public domain.

The applicant's written justification demonstrates that the objectives are satisfied by noting that:

- *The works will not alter the range of existing ground level commercial uses that serve the people in the local area, as the works relate to services at the upper levels.*
- *The proposal will not affect employment opportunities on the site.*
- *The proposal will maintain access to regular public transport and will continue to encourage walking and cycling.*
- *The residential component and its integration with the business function of the zone will not be altered as a result of the proposal.*
- *The proposal will retain the built form, will maintain the current level of pedestrian amenity as well as the sense of place for the community.*
- *As the proposed works are located within the existing building envelope, the amenity of residents in the zone and nearby residential zones will be protected.*
- *The proposed works will occur at the upper levels and will retain the existing level of safety in the public domain.*

Assessing officer's comment: The reasons outlined by the applicant above are concurred with and it is considered that the proposal meets the objectives of the B2 Local Centre zone. The proposed development provides for lift maintenance to service the needs of the current and future occupants of the building. The proposed works are internal and the development is considered to be consistent with the objectives of the building height standard and B2 zone. Therefore the development will be in the public interest.

4. Has the concurrence of the Secretary been obtained?

In assuming the concurrence of the Secretary of the Department of Planning and Environment the matters in Clause 4.6(5) have been considered:

Does contravention of the development standard raise any matter of significance for state or regional environmental planning?

The proposed development and variation from the development standard does not raise any matters of significance for state or regional environmental planning.

Is there public benefit from maintaining the development standard?

Variation of the maximum building height standard will allow for the orderly use of the site and there is no public benefit in maintaining the development standard in this instance.

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(4) have been satisfied and that development consent may be granted for development that contravenes the building height development standard.

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

The DCP provisions are structured into two components: objectives and controls. The objectives provide the framework for assessment under each requirement and outline key outcomes that a development is expected to achieve. The controls contain both numerical standards and qualitative provisions. Any proposed variations from the controls may be considered only where the applicant successfully demonstrates that an alternative solution could result in a more desirable planning and urban design outcome.

The proposed development involves internal alterations within the existing building envelope and as such, would not be associated with any significant adverse visual or amenity impacts to the residents of the building or neighbouring properties with regards to privacy, views or overshadowing. The proposed works do not significantly alter the bulk and scale of the existing built form and would not be visible from the public domain. The proposal therefore upholds the relevant objectives and controls in Part C2 and Part 8.2 of the RDCP.

9. Environmental Assessment

The site has been inspected and the application has been assessed having regard to Section 4.15 of the Environmental Planning and Assessment Act, 1979, as amended.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6-8.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See section 8 above.
Section 4.15(1)(a)(iia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions were received.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

10. Conclusion

That the application for alterations and additions to an existing building, extension of existing lift service to top two levels and associated works be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013
- The proposal is consistent with the specific objectives of the B2 zone.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- The development enhances the visual quality of the public domain/streetscape.
- The proposed development will make a positive contribution to the commercial centre.

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Appendix 1: Applicant's written request seeking to justify the contravention of the development standard

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RANDWICK LOCAL ENVIRONMENTAL PLAN (LEP) 2012 CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

APPLICANT'S NAME: Owners Corporation SP49851

SITE ADDRESS: No. 56 Carr Street, Coogee

PROPOSAL: Alterations and additions to an existing mixed use building

1. (i) Name of the applicable planning instrument which specifies the development standard:

Randwick Local Environmental Plan (LEP) 2012

(ii) The land is zoned: B2 Local Centre Zone

The objectives of the B2 Local Centre Zone are as stated as follows:

- To provide a range of retail, business, entertainment, and community uses that serve the needs of people who live in, work in, and visit the local area.
- To encourage employment opportunities in accessible locations.
- To maximise public transport patronage and encourage walking and cycling.
- To enable residential development that is well-integrated with and supports the primacy business function of the zone.
- To facilitate a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community.
- To minimise the impacts of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones.
- To facilitate safe public domain.

(iii) The number of the relevant clause therein:

Clause 4.3 – Height of Buildings is stated as follows:

- (1) The objectives of this clause are as follows—
- (a) to ensure that the size and scale of development is compatible with the desired future character of the locality,
 - (b) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,
 - (c) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.
- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning

2. Overview

This Clause 4.6 Exception to Development Standards has been prepared in accordance with the most recent case law. In our opinion, the variation achieves the objectives of the zone and development

standard and has demonstrated there are sufficient environmental planning grounds.

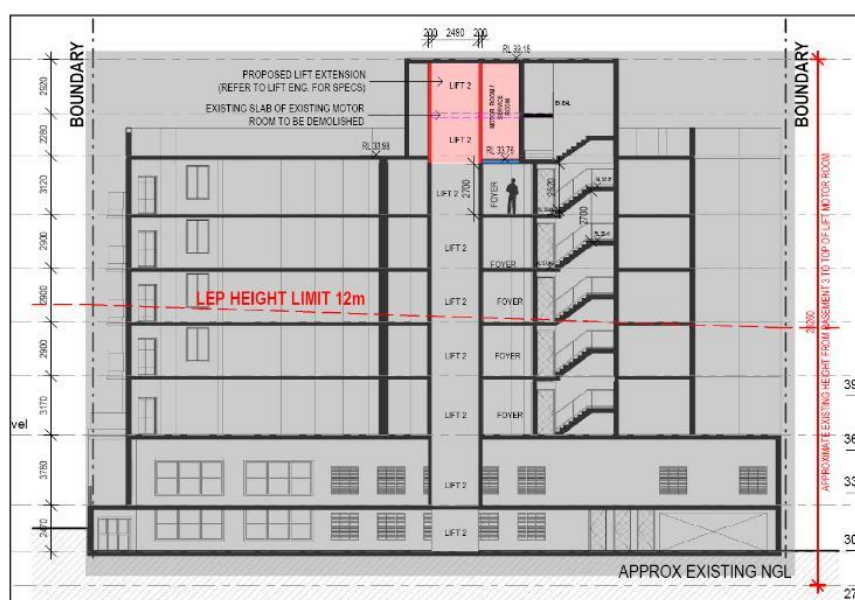
3. Specify the nature of Development Standard sought to be varied and details of variation:

The development standard to which this request for variation relates is Clause 4.3 of the LEP Height of Buildings. This Clause operates in conjunction with the Height Map which indicates a maximum 12m applies to the subject site. Clause 4.3 is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

The proposal is for alterations and additions to the existing multi storey mixed use building which has an existing maximum height of 28.26m when measured from the top of the lift overrun at RL39.18AHD to the existing basement level at RL10.92AHD. This exceeds the height development standard.

As the proposal is located at the top two floors of the development and within the existing building envelope, the works to these levels will occur within an existing non-compliant portion of the development (see Figure 1).

As the existing building is already over the height limit, any renovations or improvements to the upper level (even if internal only) would inevitably not comply. However, the proposed works will be no higher than the existing roof level (RL39.18AHD) and the proposal will maintain amenity for adjoining properties.



Source: Structability Consulting Engineers

Figure 1: Section showing works above the height limit
(LEP height limit shown red dashed)

The interpretation of height has been considered by the Court in *Bettar v Council of the City of Sydney* [2014] NSWLEC 1070. In *Bettar*, the Court dealt with a site with similar characteristic to the subject site. The Court took the approach of measuring height with the intent, in part, of relating the development proposal to its context and made the following relevant comments:

*"It is relevant to consider the objectives of the building height development standard in considering how best to determine the maximum height of the building using the dictionary definitions in LEP 2012. As one of the purposes of the development standard is to relate the proposal to its context, it follows that **the determination of the existing ground level should bear some relationship to the overall topography that includes the site...**" (emphasis added).*

In this case, the Court preferred the Applicant's approach to determine the existing ground level by extrapolating the ground levels found on the adjoining footpath across the site to measure vertical distance. The Court's reasoning for this is outlined in paragraph [41] was as follows:

"I prefer Mr Chamie's approach to determining the existing ground level because the level of the footpath at the boundary bears a relationship to the context and the overall topography that includes the site and remains relevant once the existing building is demolished.."

A similar approach can be undertaken in relation to the subject site. The proposal will continue to present as a six to eight storey mixed use building with basement levels. The alterations and additions will be located wholly within the existing building envelope and will remain compatible with the building heights of the neighbouring developments.

4. Consistency with Objectives of Clause 4.6

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (*Initial Action*), Preston CJ notes at [87] and [90]:

Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.

However, it is still useful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

Objective (a)	to provide an appropriate degree of flexibility in applying certain development standards to particular development,
Objective (b)	to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The proposal seeks flexibility in the application of the height development standard to the development in the circumstance of this particular case. In our opinion, the works are acceptable as the new areas of non-compliance occur within the existing built form and will therefore maintain the existing maximum building height and roof level. In addition, the area of non-compliance will not create any additional amenity impacts to nearby residences. Flexibility in this circumstance would result in a better outcome for the development by allowing renovations to the upper levels for maintenance purposes.

5. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause states, inter alia:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in these circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

5.1 Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

It is our opinion that the proposal satisfies Test 1 of the five tests established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant test will be considered below.

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard;

Despite the non-compliance, the proposal is consistent with the desired medium density character of the area. The proposal maintains the existing height, bulk and scale which will maintain compatibility with other similar developments in the locality. Consistency with the objectives of the height standard will now be discussed.

(a) To ensure that the size and scale of development is compatible with the desired future character of the locality

Development immediately surrounding the site includes a shop top housing development to the east of up to eight storeys in Carr Street, and the nine storey Crowne Plaza Hotel to the north west. It is also noted that there are smaller two and three storey residential flat buildings and shop top housing in the vicinity. Notwithstanding this, the proposed works are internal only, do not increase the height of the existing building and will retain its six storey appearance from Carr Street, with the existing top two service levels set back from the main building line and not readily

visible from the street. This is consistent with the existing character of surrounding development and will remain unchanged. Accordingly, the proposal satisfies Objective (a).

(b) To ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item

The subject site is not located near contributory buildings or a heritage item. Accordingly, this objective is not relevant.

(c) To ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views

The area of non-compliance as a result of the proposal will be located within the existing building envelope and will retain the existing building height. As no external works are proposed, there will be no additional impacts to adjoining development in respect of visual bulk, loss of privacy, overshadowing and views.

Accordingly, in our opinion, the amenity of neighbouring dwellings will be maintained, and the proposal complies with objective (c) of the height standard.

5.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

The proposal does not alter the external building envelope and will therefore maintain compatibility with the existing and emerging development in the area. In particular, the proposal will remain appropriate within the context of the nearby multi storey Crowne Plaza Hotel in Arden Street and the multi storey shop top housing development in Carr Street. This environmental ground is supported in *Initial Action v Woollahra Municipal Council* [2019] NSWLEC 1097, where Commissioner O'Neill states at [42] that:

I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by His Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act).

As the existing building exceeds the 12m height development standard, it is inevitable that any new works or alterations to existing elements on the upper levels will result in a non-compliance. Strict compliance would require the unnecessary removal of four existing floors which would not be feasible, given it was historically approved at the current height. Adherence to the development standard would limit the opportunities for improvement to the upper levels.

The proposed works will maintain the existing maximum building height and maximum RL and will facilitate maintenance of the lift service that provides access for occupants. The works over the height limit will not be visible from the public domain, as it is located within part of the building that is set back from the leading building edge.

Utilising the existing building envelope for additional lift services will enable the extent of non-compliance to maintain the amenity for adjoining and nearby development in respect of solar access and views. Visual and acoustic privacy will also be maintained as there are no new windows which will overlook adjoining properties. Accordingly, the proposal will not create any additional environmental amenity impacts.

The proposed height exceedance within the existing building envelope facilitates the orderly and economic development by undertaking minor works to an existing residential flat building of a scale that is compatible with surrounding development. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the variation to the development standard, as required in Clause 4.6(3)(b). We therefore consider contravening the development standard to be justified.

6. Clause 4.6(4)(a) Requirements

Clause 4.6(4)(a) guides the consent authority's consideration of this Clause 4.6 variation request. It provides that:

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

The applicant submits that the consent authority can be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this request, and having regard to the site and locality. In our opinion, the proposal achieves the objective of the height Development Standard, as already demonstrated; and the B2 Local Centre Zone, as discussed below:

Objective: *To provide a range of retail, business, entertainment, and community uses that serve the needs of people who live in, work in, and visit the local area.*

Response: The works will not alter the range of existing ground level commercial uses that serve the people in the local area, as the works relate to services at the upper levels.

Objective: *To encourage employment opportunities in accessible locations.*

Response: The proposal will not affect employment opportunities on the site.

Objective: *To maximise public transport patronage and encourage walking and cycling.*

Response: The proposal will maintain access to regular public transport and will continue to encourage walking and cycling.

Objective: *To enable residential development that is well-integrated with, and supports the primary business function of, the zone.*

Response: The residential component and its integration with the business function of the zone will not be altered as a result of the proposal.

Objective: *To facilitate a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community.*

Response: The proposal will retain the built form, will maintain the current level of pedestrian amenity as well as the sense of place for the community.

Objective: *To minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones.*

Response: As the proposed works are located within the existing building envelope, the

amenity of residents in the zone and nearby residential zones will be protected.

Objective: *To facilitate a safe public domain.*

Response: The proposed works will occur at the upper levels and will retain the existing level of safety in the public domain.

From this, we consider the proposal is in the public interest and should be supported.

7. Clauses 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning, Industry and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. While the proposal exceeds the development standard by over 10%, the Planning Circular provides for the Local Planning Panel to assume concurrence.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- (b) *the public benefit of maintaining the development standard, and*
- (c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The non-compliance is a result of the existing building height which is already over the height development standard. The works above the LEP standard will occur within the existing building envelope and will enhance the functionality of the existing building in terms of maintenance, without significantly affecting neighbouring properties.

The public benefit of maintaining the development standard is not considered significant given that, regardless of the non-compliance, the proposal will appear consistent in the streetscape. The works above the height limit are located in part of the existing building that is recessed to maintain the building's appearance within the streetscape.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

8. Conclusion

This written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental

The logo for gsa planning, with 'gsa' in a grey sans-serif font and 'planning' in a blue sans-serif font.

planning grounds to justify contravening the development standard. This is summarised in the compliance matrix prepared in light of *Initial Action* (see Table 1 on the following page).

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the development objectives of the B2 Local Centre Zone pursuant to the LEP. On that basis, the request to vary Clause 4.3 should be upheld.

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Table 1: Compliance Matrix				
Para (Initial Action)	Requirement	Section of this Report	Summary	Satisfied
10	Is it a development standard (s.1.4)	1	Yes	
11	What is the development standard	1	Clause 4.3 - Height of Buildings	
12	What is the control	1 & 2	12.5m	
14	First Precondition to Enlivening the Power – Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES
15, 25	1st Positive Opinion – That the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement.	5	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
16-22	First Aspect is Clause 4.6(3)(a) – That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in <i>Wehbe</i> .	5.1	The proposal satisfies Test 1 of <i>Wehbe</i> : <ul style="list-style-type: none"> The objectives of the standard are achieved notwithstanding the non-compliance with the standard; 	YES
23-24	Second Aspect is Clause 4.6(3)(b) – The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under Clause 4.6(4)(a)(i) that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: a) The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. b) The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.	5.2	Sufficient environmental planning grounds include, inter alia: <ul style="list-style-type: none"> As the existing building exceeds the height limit, any works to the upper level would result in a non-compliance; The proposal maintains the existing maximum height and maximum RL of the building; Strict compliance would require the removal of existing levels which is unreasonable given it was historically approved at its current height; The works to the upper level will improve amenity for occupants in terms of lift maintenance; and The proposed works above the height limit will maintain the existing levels of amenity for adjoining properties. 	YES
26-27	2nd Positive Opinion – That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.	6	The proposed development is consistent with the objectives of the height standard as addressed under Test 1 of <i>Wehbe</i> . The proposal is also consistent with the objectives of the R3 Medium Density Residential Zone.	YES
28-29	Second Precondition to Enlivening the Power –	7	As the relevant matters for consideration under Clause 4.6 have	YES

Clause 4.6 Exceptions to Development Standards – Height of Buildings
No. 56 Carr Street, Coogee – Job No. 21430

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	That the concurrence of the Secretary has been obtained [Clause 4.6(4)(b)]. On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under Clause 4.6.		been satisfied as outlined above, the Council can grant development consent.	
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Clause 4.6 Exceptions to Development Standards – Height of Buildings
No. 56 Carr Street, Coogee – Job No. 21430

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Responsible officer: Tegan Ward, Senior Environmental Planning Officer

File Reference: DA/668/2021

Development Consent Conditions (Mixed use)



D13/22

DA No:	DA/668/2021
Property:	52-56 Carr Street, COOGEE NSW 2034
Proposal:	Alterations and additions to an existing building, extension of existing lift service to top two levels and associated works. (Variation to Height)
Recommendation:	Approval

Development Consent Conditions

GENERAL CONDITIONS

The development must be carried out in accordance with the following conditions of consent.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000* and to provide reasonable levels of environmental amenity.

Approved Plans & Supporting Documentation

- The development must be implemented substantially in accordance with the plans and supporting documentation listed below and endorsed with Council's approved stamp, except where amended by Council in red and/or by other conditions of this consent:

Plan	Drawn by	Dated	Received by Council
Site Plan (Drawing No. A002 – Rev D)	Structability Consulting Engineers	17/09/2020	28/10/2021
Roof / COS Plan (Drawing No. A201 – Rev D)	Structability Consulting Engineers	17/09/2020	28/10/2021
Lift Motor Room Floor Plan (Drawing No. A202 – Rev D)	Structability Consulting Engineers	17/09/2020	28/10/2021
Section 1 of 2 (Drawing No. A401 – Rev D)	Structability Consulting Engineers	17/09/2020	28/10/2021
Section 2 of 3 (Drawing No. A402 – Rev D)	Structability Consulting Engineers	17/09/2020	28/10/2021
Section 3 of 3 & Internal Elevation 1 of 2 (Drawing No. A403 – Rev D)	Structability Consulting Engineers	17/09/2020	28/10/2021

REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

The following conditions of consent must be complied with before a 'Construction Certificate' is issued by either Randwick City Council or an Accredited Certifier. All necessary information to demonstrate compliance with the following conditions of consent must be included in the documentation for the construction certificate.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Council's development consent conditions and to achieve reasonable levels of environmental amenity.

Consent Requirements

2. The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation.

Compliance Fee

3. A development compliance and enforcement fee of \$173.25 shall be paid to Council in accordance with Council's adopted Fees & Charges Pricing Policy, prior to the issue of a Construction Certificate for development.

Long Service Levy Payments

4. The required Long Service Levy payment, under the *Building and Construction Industry Long Service Payments Act 1986*, must be forwarded to the Long Service Levy Corporation or the Council, in accordance with Section 6.8 of the *Environmental Planning & Assessment Act 1979*.

At the time of this development consent, Long Service Levy payment is applicable on building work having a value of \$25,000 or more, at the rate of 0.35% of the cost of the works.

REQUIREMENTS TO BE INCLUDED IN THE CONSTRUCTION CERTIFICATE

The requirements contained in the following conditions of consent must be complied with and details of compliance must be included in the construction certificate for the development.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Council's development consent conditions and to achieve reasonable levels of environmental amenity.

Compliance with the Building Code of Australia & Relevant Standards

5. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 98 of the *Environmental Planning & Assessment Regulation 2000*, it is a *prescribed condition* that all building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

The following conditions of consent must be complied with prior to the commencement of any works on the site. The necessary documentation and information must be provided to the Council or the 'Principal Certifier', as applicable.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000* and to provide reasonable levels of public health, safety and environmental amenity.

Certification and Building Inspection Requirements

6. Prior to the commencement of any building works, the following requirements must be complied with:

- a) a Construction Certificate must be obtained from the Council or an accredited certifier, in accordance with the provisions of the *Environmental Planning & Assessment Act 1979*.

A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.

- b) a *Principal Certifier* must be appointed to carry out the necessary building inspections and to issue an *occupation certificate*; and
- c) a *principal contractor* must be appointed for the building work and any applicable requirements of the *Home Building Act 1989* must be satisfied accordingly; and
- d) the *principal contractor* must be advised of the required *critical stage inspections* and other inspections to be carried out, as specified by the *Principal Certifier*; and
- e) at least two days notice must be given to the Council, in writing, prior to commencing any works.

Construction Site Management Plan

7. A *Construction Site Management Plan* must be developed and implemented prior to the commencement of any works. The construction site management plan must include the following measures, as applicable to the type of development:

- location and construction of protective site fencing / hoardings;
- location of site storage areas/sheds/equipment;
- location of building materials for construction;
- provisions for public safety;
- dust control measures;
- details of proposed sediment and erosion control measures;
- site access location and construction
- details of methods of disposal of demolition materials;
- protective measures for tree preservation;
- location and size of waste containers/bulk bins;
- provisions for temporary stormwater drainage;
- construction noise and vibration management;
- construction traffic management details;
- provisions for temporary sanitary facilities.

The site management measures must be implemented prior to the commencement of any site works and be maintained throughout the works, to the satisfaction of Council.

A copy of the Construction Site Management Plan must be provided to the Principal Certifier and Council prior to commencing site works. A copy must also be maintained on site and be made available to Council officers upon request.

Demolition Work Plan

8. A Demolition Work Plan must be prepared for the development in accordance with Australian Standard AS2601-2001, Demolition of Structures and relevant environmental/work health and safety requirements.

The Demolition Work Plan must be submitted to the Principal Certifier, not less than two (2) working days before commencing any demolition work. A copy of the Demolition Work Plan must be maintained on site and be made available to Council officers upon request.

If the work involves asbestos products or materials, a copy of the Demolition Work Plan must also be provided to Council not less than 2 days before commencing those works.

Construction Noise & Vibration Management Plan

9. A *Construction Noise & Vibration Management Plan*, prepared in accordance with the Environment Protection Authority (EPA) Guidelines for Construction Noise and Assessing Vibration, by a suitably qualified person, is to be developed and implemented prior to commencing site work and throughout the course of construction, in accordance with the following requirements:

- a) Noise and vibration emissions during the construction of the building and associated site works must not result in damage to nearby premises or result in an unreasonable loss of amenity to nearby residents.

Noise and vibration from any rock excavation machinery, pile drivers and all plant and equipment must be minimised, by using appropriate plant and equipment, silencers and the implementation of noise management strategies.

- b) The *Construction Noise & Vibration Management Plan* must include details of measurements, analysis and relevant criteria and demonstrate that the noise and vibration emissions from the work satisfy the relevant provisions of the *Protection of the Environment Operations Act 1997*, current EPA Guidelines for Construction Noise and Assessing Vibration and Councils conditions of consent.

- c) A further report/correspondence must be obtained from the consultant as soon as practicable upon the commencement of works, which reviews and confirms the implementation and suitability of the noise and vibration strategies in the *Construction Noise & Vibration Management Plan* and which demonstrates compliance with relevant criteria.

- d) Any recommendations and requirements contained in the *Construction Noise & Vibration Management Plan* and associated reports are to be implemented accordingly and should noise and vibration emissions not comply with the terms and conditions of consent, work must cease forthwith and is not to recommence until details of compliance are submitted to Council and the *Principal Certifier*.

A copy of the *Construction Noise & Vibration Management Plan* and associated acoustic/vibration report/s must be maintained on-site and a copy must be provided to Council and the *Principal Certifier* accordingly.

Public Liability

10. The owner/builder is required to hold Public Liability Insurance, with a minimum liability of \$10 million and a copy of the Insurance cover is to be provided to the *Principal Certifier* and Council.

REQUIREMENTS DURING CONSTRUCTION & SITE WORK

The following conditions of consent must be complied with during the demolition, excavation and construction of the development.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000* and to provide reasonable levels of public health, safety and environmental amenity during construction.

Inspections during Construction

11. Building works are required to be inspected by the *Principal Certifier*, in accordance with section 6.5 of the *Environmental Planning & Assessment Act 1979* and clause 162A of the *Environmental Planning & Assessment Regulation 2000*, to monitor compliance with the relevant standards of construction, Council's development consent and the construction certificate.

Building & Demolition Work Requirements

12. The demolition, removal, storage, handling and disposal of products and materials containing asbestos must be carried out in accordance with Randwick City Council's Asbestos Policy and the relevant requirements of SafeWork NSW and the NSW Environment Protection Authority (EPA), including:

- Work Health and Safety Act 2011;
- Work Health and Safety Regulation 2011;
- SafeWork NSW Code of Practice for the Safe Removal of Asbestos;
- Australian Standard 2601 (2001) – Demolition of Structures;
- The Protection of the Environment Operations Act 1997;
- Randwick City Council Asbestos Policy (adopted 13 September 2005).

A copy of Council's Asbestos Policy is available on Council's web site or a copy can be obtained from Council's Customer Service Centre.

Removal of Asbestos Materials

13. Any work involving the demolition, storage or disposal of asbestos products and materials must be carried out in accordance with the following requirements:

- Occupational Health & Safety legislation and WorkCover NSW requirements
- Randwick City Council's Asbestos Policy
- A WorkCover licensed demolition or asbestos removal contractor must undertake removal of more than 10m² of bonded asbestos (or as otherwise specified by WorkCover or relevant legislation). Removal of friable asbestos material must only be undertaken by contractor that holds a current friable asbestos removal licence. A copy of the relevant licence must be provided to the Principal Certifier.
- On sites involving the removal of asbestos, a sign must be clearly displayed in a prominent visible position at the front of the site, containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' and include details of the licensed contractor.
- Asbestos waste must be stored, transported and disposed of in compliance with the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Operations (Waste) Regulation 2005*. Details of the landfill site (which must be lawfully able to receive asbestos materials) must be provided to the Principal Certifier.
- A Clearance Certificate or Statement, prepared by a suitably qualified person (i.e. an occupational hygienist, licensed asbestos assessor or other competent person), must be provided to Council and the Principal Certifier upon completion of the asbestos related works which confirms that the asbestos material have been removed appropriately and the relevant conditions of consent have been satisfied.

A copy of Council's Asbestos Policy is available on Council's web site at www.randwick.nsw.gov.au in the Building & Development Section or a copy can be obtained from Council's Customer Service Centre.

Public Safety & Site Management

14. Public safety and convenience must be maintained at all times during demolition, excavation and construction works and the following requirements must be complied with to the satisfaction of Council:

- a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.
- b) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times. Any damage caused to the road, footway,

vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.

- c) All building and site activities (including storage or placement of materials or waste and concrete mixing/pouring/pumping activities) must not cause or be likely to cause 'pollution' of any waters, including any stormwater drainage systems, street gutters or roadways.

Note: It is an offence under the Protection of the Environment Operations Act 1997 to cause or be likely to cause 'pollution of waters', which may result in significant penalties and fines.

- d) Access gates and doorways within site fencing, hoardings and temporary site buildings or amenities must not open outwards into the road or footway.
- e) Bulk bins/waste containers must not be located upon the footpath, roadway or nature strip at any time without the prior written approval of the Council. Applications to place a waste container in a public place can be made to Council's Health, Building and Regulatory Services department.
- f) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works, and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.

Site Signage

15. A sign must be erected and maintained in a prominent position on the site for the duration of the works, which contains the following details:
- name, address, contractor licence number and telephone number of the *principal contractor*, including a telephone number at which the person may be contacted outside working hours, or *owner-builder* permit details (as applicable)
 - name, address and telephone number of the *Principal Certifier*,
 - a statement stating that "unauthorised entry to the work site is prohibited".

Restriction on Working Hours

16. Building, demolition and associated site works must be carried out in accordance with the following requirements:

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as detailed below)	<ul style="list-style-type: none"> Monday to Friday - 7.00am to 5.00pm Saturday - 8.00am to 5.00pm Sunday & public holidays - No work permitted
Excavating or sawing of rock, use of jack-hammers, pile-drivers, vibratory rollers/compactors or the like	<ul style="list-style-type: none"> Monday to Friday - 8.00am to 1.00pm only Saturday - No work permitted Sunday & public holidays - No work permitted
Additional requirements for all development	<ul style="list-style-type: none"> Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted

An application to vary the abovementioned hours may be submitted to Council's Manager Health, Building & Regulatory Services for consideration and approval to vary the specified hours may be granted in exceptional circumstances and for limited occasions (e.g. for public safety, traffic management or road safety reasons). Any applications are to be made on the standard application form

and include payment of the relevant fees and supporting information. Applications must be made at least 10 days prior to the date of the proposed work and the prior written approval of Council must be obtained to vary the standard permitted working hours.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

The following conditions of consent must be complied with prior to the 'Principal Certifier' issuing an 'Occupation Certificate'.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Council's development consent and to maintain reasonable levels of public health, safety and amenity.

Occupation Certificate Requirements

17. An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the *Environmental Planning & Assessment Act 1979*.

Noise Control Requirements & Certification

18. The operation of plant and equipment shall not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997 and Regulations*.

In this regard, the operation of the plant and equipment shall not give rise to an $L_{Aeq, 15 \text{ min}}$ sound pressure level at any affected premises that exceeds the background $L_{A90, 15 \text{ min}}$ noise level, measured in the absence of the noise source/s under consideration by more than 5dB(A) in accordance with relevant NSW Environment Protection Authority (EPA) Noise Control Guidelines.

OPERATIONAL CONDITIONS

The following operational conditions must be complied with at all times, throughout the use and operation of the development.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Council's development consent and to maintain reasonable levels of public health and environmental amenity.

Plant & Equipment – Noise Levels

19. The operation of all plant and equipment on the premises shall not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997 and Regulations*. In this regard, the operation of the plant and equipment shall not give rise to an $L_{Aeq, 15 \text{ min}}$ sound pressure level at any affected premises that exceeds the background $L_{A90, 15 \text{ min}}$ noise level, measured in the absence of the noise source/s under consideration by more than 5dB(A) in accordance with relevant NSW Environment Protection Authority (EPA) Noise Control Guidelines.

Environmental Amenity

20. External lighting to the premises must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance.
21. The written approval of council must be obtained prior to the installation of any cooling towers.

GENERAL ADVISORY NOTES

The following information is provided for your assistance to ensure compliance with the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, or other

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relevant legislation and requirements. This information does not form part of the conditions of development consent pursuant to Section 4.17 of the Act.

- A1 The requirements and provisions of the *Environmental Planning & Assessment Act 1979* and *Environmental Planning & Assessment Regulation 2000*, must be fully complied with at all times.

Failure to comply with these requirements is an offence, which renders the responsible person liable to a maximum penalty of \$1.1 million. Alternatively, Council may issue a penalty infringement notice (for up to \$6,000) for each offence. Council may also issue notices and orders to demolish unauthorised or non-complying building work, or to comply with the requirements of Council's development consent.

- A2 In accordance with the requirements of the *Environmental Planning & Assessment Act 1979*, building works, including associated demolition and excavation works (as applicable) must not be commenced until:

- A *Construction Certificate* has been obtained from an Accredited Certifier or Council,
- An Accredited Certifier or Council has been appointed as the *Principal Certifier* for the development,
- Council and the Principal Certifier have been given at least 2 days notice (in writing) prior to commencing any works.

- A3 Council can issue your *Construction Certificate* and be your *Principal Certifier* for the development, to undertake inspections and ensure compliance with the development consent and relevant building regulations. For further details contact Council on 9093 6944.

- A4 This determination does not include an assessment of the proposed works under the Building Code of Australia (BCA), Disability (Access to Premises – Buildings) Standards 2010 and other relevant Standards. All new building work (including alterations and additions) must comply with the BCA and relevant Standards. You are advised to liaise with your architect, engineer and building consultant prior to lodgement of your construction certificate.

- A5 Any proposed amendments to the design and construction of the building may require a new development application or a section 4.55 amendment to the existing consent to be obtained from Council, before carrying out such works

- A6 A Local Approval application must be submitted to and be approved by Council prior to commencing any of the following activities on a footpath, road, nature strip or in any public place:-

- Install or erect any site fencing, hoardings or site structures
- Operate a crane or hoist goods or materials over a footpath or road
- Placement of a waste skip or any other container or article.

For further information please contact Council on 9093 6971.

- A7 Specific details of the location of the building/s should be provided in the Construction Certificate to demonstrate that the proposed building work will not encroach onto the adjoining properties, Council's road reserve or any public place.

- A8 This consent does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is proposed to be carried out upon any adjoining or supported land, the land owner or principal contractor must obtain:

- the consent of the owners of such adjoining or supported land to trespass or encroach, or
- an access order under the *Access to Neighbouring Land Act 2000*, or

- an easement under section 88K of the *Conveyancing Act 1919*, or
- an easement under section 40 of the *Land & Environment Court Act 1979*, as appropriate.

Section 177 of the *Conveyancing Act 1919* creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).

- A9 External paths and ground surfaces are to be constructed at appropriate levels and be graded and drained away from the building and adjoining premises, so as not to result in the entry of water into the building, or cause a nuisance or damage to any adjoining land.

Finished ground levels external to the building are to be consistent with the development consent and are not to be raised, other than for the provision of approved paving or the like on the ground.

- A10 Prior to commencing any works, the owner/builder should contact *Dial Before You Dig* on 1100 or www.dialbeforeyoudig.com.au and relevant Service Authorities, for information on potential underground pipes and cables within the vicinity of the development site.

- A11 The necessary development consent and a construction certificate or a complying development certificate (as applicable) must be obtained for any proposed *cooling towers* and external plant and equipment, if not included in this consent.

- A12 An application must be submitted to an approved by Council prior to the installation and operation of any proposed greywater or wastewater treatment systems, in accordance with the *Local Government Act 1993*.

Greywater/Wastewater treatment systems must comply with the relevant requirements and guidelines produced by NSW Health, NSW Office of Environment and Heritage and other relevant regulatory requirements.

- A13 There are to be no emissions or discharges from the premises, which will give rise to an environmental or public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and *Regulations*.

Development Application Report No. D14/22

Subject: 669-677 Anzac Parade, Maroubra (DA/1/2022)

Executive Summary

Proposal: New shopfront signage to Unit 3 for the Australian Foundation for Disability

Ward: West

Applicant: M.A Boaz & R Borysko

Owner: Randwick City Council


Cost of works: \$1925.00

Reason for referral: The landowner is Council.

Recommendation

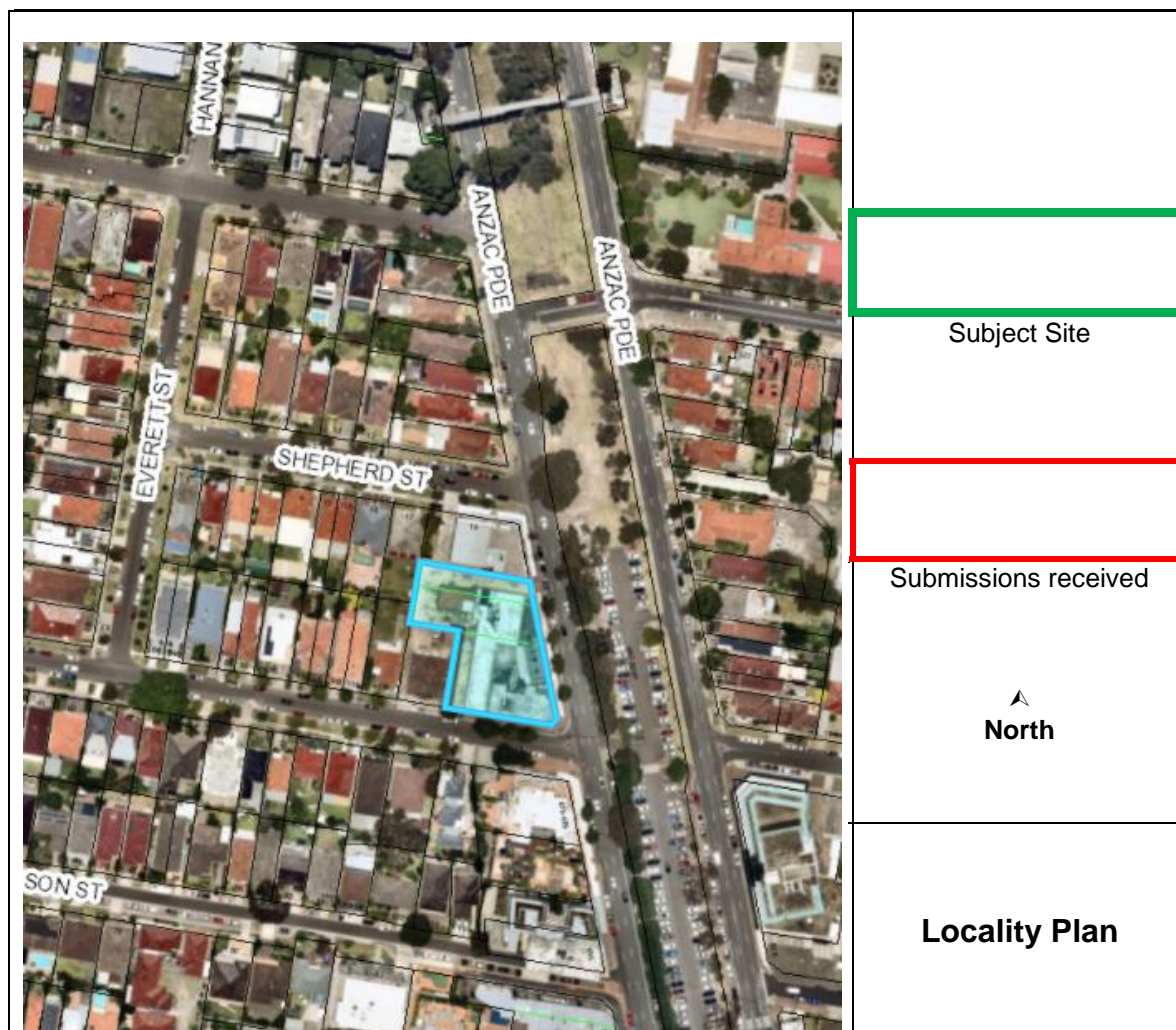
That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/1/2022 for new shopfront signage, at Unit 3, No. 669-677 Anzac Parade, Maroubra, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (commercial) - DA/1/2022 - 669-677 Anzac Parade, MAROUBRA NSW 2035 - DEV - Randwick City Council

D14/22

D14/22



1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the landowner is Randwick City Council.

The proposal seeks development consent for shop-front window signage to Unit 3, ancillary to the community facility for the Australian Foundation for Disability, approved under Development Application No. DA/344/2020.

2. Site Description and Locality

The subject site is identified as Lot 2, DP 219483, No. 669-677 Anzac Parade, Maroubra.

The site is an irregular shaped allotment with a primary eastern frontage to Anzac Parade of 52m, a secondary southern frontage to Gale Road of 40m, a south-eastern corner splay of 3m and a total site area of 2,116m². The site has a staggered rear boundary which wraps around 102A Gale Road for a total length of 70m and a northern side boundary of 42m. The site contains 4 storey commercial building with multiple uses including Randwick City Council run Lionel Bowen Library and Community Centre, and multiple commercial tenancies fronting Anzac Parade at ground level.

The application specifically relates to Unit 3 within the building which is now a community facility for the Australian Foundation for Disability.



Figure 1: Subject site fronting Anzac Parade



Figure 2: Subject site as viewed from the opposite side of Anzac Parade



Figure 3: Main entrance to Council Library at corner of Anzac Parade and Gale Road

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Figure 4: Unit 3 frontage to Anzac Parade

3. Relevant history

Development Application No. DA/344/2020 was granted consent by the Local Planning Panel on 30/11/2020 for change of use of Unit 3 from office premises to a community facility for the Australian Foundation for Disability (not-for-profit) to operate 7:30am-6pm Mon-Fri and 9am-5pm Sat-Sun, including internal alterations to existing premises.

4. Proposal

The proposal seeks development consent for shop-front window signage. The applicant has submitted the following justification:

AFFORD proposes to fit translucent film signage to the existing front window of the premises fronting Anzac Parade. The signage will include the AFFORD and NDIS logos as well as various artwork, photos and wording relating to the use of the premises as a community facility. The window frontage has a total width of 11.65 m and a height of 3.5 m. The proposed signage will cover the width and height of the window. There will be no other changes to the approved use and operation of the site as a community facility under DA/344/2020.



Figure 5: Signage Plan – 663-677 Anzac Parade Maroubra NSW

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Participation Plan. No submissions were received as a result of the notification process.

6. Relevant Environment Planning Instruments

6.1. State Environmental Planning Policies

State Environmental Planning Policy (Industry and Employment) 2021

The State Environmental Planning Policy (Industry and Employment) 2021 (Industry and Employment SEPP) consolidates, transfers and repeals the provisions of the following 2 SEPPs:

1. SEPP (Western Sydney Employment Area) 2009 (Western Sydney Employment SEPP)
2. SEPP 64 – Advertising and Signage (SEPP 64) These changes are part of a broader administrative consolidation of SEPPs. Planning Circular PS– 21-007 gives an overview of all changes made as part of the SEPP consolidation initiative.

No policy changes have been made. The SEPP consolidation does not change the legal effect of the existing SEPPs, with section 30A of the Interpretation Act 1987 applying to the transferred provisions. The SEPP consolidation is administrative. It has been undertaken in accordance with section 3.22 of the Environmental Planning and Assessment Act 1979.

The Industry and Employment SEPP:

- transfers most existing provisions from the 2 SEPPs being consolidated into chapters 2 and 3. Chapter 1 contains the preliminary information and commencement details
- repeals the 2 SEPPs being consolidated.

The Industry and Employment SEPP began on 1 March 2022

Clause 3.11 of the SEPP states that a consent authority must not consent to an application to display signage unless it is satisfied that the proposed signage is consistent with the objectives of Chapter 3 of the policy as set out in clause 3.1(1)(a) and that the proposed signage satisfies the assessment criteria specified in Schedule 5.

When considering Clause 3.1(1)(a) of the SEPP, the following comments are made.

The proposal seeks business identification signage to the external facade of the existing building. In accordance with the objectives set out in Clause 3.1(1)(a), the proposal will offer a positive response to the character of the area. Visual clutter is mitigated through the strategic positioning of signage to ensure there is no overbearing impression upon the public domain. The proposed signage will be legible and will effectively communicate the nature of the premises, ensuring for seamless identification. A high-quality design and finish are proposed.

In accordance with Schedule 5 of the SEPP, the following comments are made.

Character of the Area

- Having regard to the existing character of the area, the site is zoned B2 Local Centre with development along Anzac Parade, in the immediate vicinity of the site, reflective of this. Development typically comprises of multi storey shop top housing developments and retail/commercial uses. Signage to these buildings is limited to the ground floor where retail uses are located with the upper levels dominated by balconies to the residential units.

The site is located at the fringe of the City Centre, with development to the north transitioning to residential development of a low density scale. To the west, development is also residential with mid size residential flat buildings located along Gale Road, near its intersection with Anzac Parade however further to the west, the scale of the development moves towards single and two storey detached dwellings.

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The subject building, whilst nestled between mixed use developments, is a unique building in that it is a purpose-built community facility. The proposed signage to the subject building is located at ground floor level. The proposal is characteristic of the immediate area and is considered appropriate having regard to the existing use as a community facility for the Australian Foundation for Disability (not-for-profit)

The positioning of signage has been concentrated to the eastern façade which fronts Anzac Parade to promote the use of this portion of the building. This façade has an interface to an open car park at the centre of Anzac Parade that is densely landscaped and therefore will result in a negligible impact.

Special Areas

- The subject site is not located in an environmentally sensitive area or heritage conservation area. The proposal is consistent with the desired future character of the area and use of the building as a community facility. The proposed signage has had regard to its local context as detailed in this report.

Views and Vistas

- There are no significant views to or from the subject site that would be impacted through the proposed signage.

As stated, the proposed signage is sympathetically integrated to the building's façade having regard to the local context.

The proposal does not conflict with the viewing rights of other advertisers.

Streetscape, setting or landscape

- The objectives of the B2 Local Centre zone seek *"to facilitate a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community"*. The proposed signage will activate the building's façade improving its streetscape presence and will engage the local community. The proposed signage will therefore be in keeping with the desired future character of the area.
- The proposed signage will positively integrate within the context of the existing built form and will improve visibility of an important community resource.
- Proposed signage will be clear and legible from the public domain. The proposal will provide for visual interest.
- The proposal provides a positive integration in the context of the site which does not protrude above buildings.
- The proposal does not require ongoing vegetation management.

Site and building

- A cohesive response to the overall style and character of the built form will result.
- There are no significant features that would be impacted through the proposed signage.
- Proposed signage will complement the style and character of the development.

Associated devices and logos with advertisements and advertising structures

- The proposed signage will be a film attached to the window and there will be no requirement for any safety devices or lighting devices. The logos included in the design relate to the community use of the premises.

Illumination

- There is no illuminated signage proposed.

Safety

- The proposed signage is in keeping with the overall context the development and will be subservient in terms of its visual impact when viewing the site from the public domain.
- There are no sight lines to or from the site that would be impacted through the proposed location of signage as these are contained to the existing built form. There are no safety impacts deemed to result to public roads or to the public domain.

As detailed above, the proposed signage is consistent with the relevant provisions of State Environmental Planning Policy (Industry and Employment) 2021.

6.2. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned B2 Local Centre under Randwick Local Environmental Plan 2012 and the proposal (signage) which is ancillary to the Community Facility is permissible with consent.

The community facility will be operated by AFFORD, a not-for-profit organisation, and will be used for the physical, social, cultural and intellectual development and welfare for people with disabilities within the community. It therefore meets the definition of community facility and is permissible with consent in the B2 zone. The proposed signage relates to the use of the site as a community facility.

The community use of the site will help serve the needs of the local community and provide opportunities for employment in an accessible location. The proposed signage is in keeping with the commercial/retail character of this part of Anzac Parade, which includes a number of ground floor shop fronts to Anzac Parade with varied signage. There would be no adverse amenity impacts to nearby residents and the proposal would not affect the safety of the public domain.

The proposal is consistent with the specific objectives of the zone in that the signage will:

- Contribute to a range of uses that serve the needs of people who live in, work in and visit the local area;
- Encourage employment opportunities in accessible locations;
- Minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones; and
- Facilitate a safe public domain.

The proposal seeks no changes to development standards prescribed under the Randwick Local Environmental Plan 2012.

7. Development control plans and policies**7.1. Randwick Comprehensive DCP 2013**

The DCP provisions are structured into two components: objectives and controls. The objectives provide the framework for assessment under each requirement and outline key outcomes that a development is expected to achieve. The controls contain both numerical standards and qualitative provisions. Any proposed variations from the controls may be considered only where the applicant successfully demonstrates that an alternative solution could result in a more desirable planning and urban design outcome.

There are limited applicable controls within the RDCP 2013 for signage to this development type. The proposal is considered to be satisfactory with regards to the relevant objectives and controls of RDCP 2013. The relevant provisions of the DCP are addressed in Appendix 1.

8. Environmental Assessment

The site has been inspected and the application has been assessed having regard to Section 4.15 of the Environmental Planning and Assessment Act, 1979, as amended.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in section 6.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See tables in Appendix 1.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions were received against the proposal.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

9. Conclusion

That the application for shop-front signage be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013

- The proposal is consistent with the specific objectives of the B2 zone in that that the signage will:
 - Contribute to a range of uses that serve the needs of people who live in, work in and visit the local area;
 - Encourage employment opportunities in accessible locations;
 - Minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones; and
 - Facilitate a safe public domain.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- The development will not detract from the visual quality of the public domain/streetscape
- The proposed development will make a positive contribution to the commercial centre

It is noted that no conditions relating to a Construction or Occupation Certificate were imposed as the proposed signage relates to decal signage on the external glazing of the eastern façade.

Appendix 1: DCP Compliance Table**Section D4: Maroubra Junction Centre**

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
3.2.1	<p>Block 1</p> <p>i) Building Envelope Plan Location: Anzac Parade (north of library) Building envelopes: Four storeys</p> <p>ii) Building Use Location: Anzac Parade: Two floors retail/commercial; residential above</p> <p>iv) Setbacks Side setback Along Anzac Parade and Shepherd Street: 0m Along Gale Road: min 3m Rear setback Lots fronting Anzac Parade: min 10m</p> <p>v) Deep Soil Zone Provide a min 1.5m wide deep soil tree planting strip along rear boundary</p> <p>vi) Vehicle Access All lots fronting Anzac Parade are required to provide vehicle access via a minimum 6m wide right of carriageway.</p>	<p>No change to existing.</p> <p>No change to existing.</p> <p>No change to existing.</p> <p>No change to existing.</p> <p>No change to existing.</p>	<p>N/A</p> <p>N/A</p> <p>N/A</p> <p>N/A</p> <p>N/A</p>
4.6.1	<p>Awnings and Signage</p> <p>Awnings</p> <p>i) Awnings are to:</p> <ul style="list-style-type: none"> - complement the height, depth and form of the desired character or existing pattern of awnings, and - provide sufficient protection from sun and rain. <p>ii) New awnings are to follow the general alignment of existing awnings in the street and there must be a minimum clearance of 3.5m between the footpath and the underside of the awning.</p> <p>iii) Awnings must have a minimum setback of 600mm from the kerb.</p> <p>iv) Continuous awnings are to be provided in busy pedestrian areas.</p> <p>v) Awnings are to be located over building entries and should help identify the entry point.</p> <p>vi) Pedestrian safety is to be enhanced by providing under awning lighting.</p>	N/A	N/A

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>Signs</p> <p>i) Signs are to be integrated with the design of the development by responding to scale, proportions and architectural detailing.</p> <p>ii) Location and space for future signs is to be detailed on DA plans and elevations.</p> <p>iii) Signs are to provide clear direction for residents and visitors.</p> <p>iv) Signs on blinds are not permitted.</p> <p>v) All signs are to comply with State Environmental Planning Policy No 64 - Advertising and Signage and Part F2 Outdoor Advertising and Signage.</p>	<p>The proposed signage will be fitted to the window of the existing building and is therefore in keeping with the scale and proportion of the building.</p> <p>The signage location has been indicated on the plans.</p> <p>N/A.</p> <p>N/A.</p> <p>The proposed signage is in accordance with SEPP 64 and an assessment is provided in section 6.1 of the report above. The proposal is also in accordance with Part F2 of DCP 2013 which is provided below.</p>	<p>Yes.</p> <p>Yes.</p> <p>N/A.</p> <p>N/A.</p> <p>Yes.</p>

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Section F2: Outdoor Advertising and Signage

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
2	<p>General Design and Siting</p> <p>i) Signage should recognise the legitimate needs for directional advice, business identification and promotion.</p> <p>ii) Signage must complement and be compatible with the development on which it is situated and with adjoining development.</p> <p>iii) Signage should not obscure architecturally decorative details or features of buildings or</p>	<p>The proposal provides for business identification signage. The proposal specifically relates to the community use of the building.</p> <p>The proposal will complement the modern design of the building and provide for visual interest. The proposed signage is in keeping with the commercial/retail character of the area which includes a number of shop fronts with associated signage.</p> <p>Complies.</p>	<p>Yes.</p> <p>Yes.</p> <p>Yes.</p> <p>Yes.</p>

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>dominate building facades. It should be placed on the undecorated wall surfaces or designed sign panels provided.</p> <p>iv) Entire building facades and /or walls must not be painted or covered with cladding or other material to act as a large billboard type.</p> <p>v) Where a building or site contains multiple tenancies or uses, a coordinated approach for all signs is required.</p> <p>vi) Signage shall be displayed in English but may include a translation in another language.</p> <p>vii) Signage erected or displayed on identified heritage buildings or within heritage conservation areas must not detract from the architectural character and heritage significance of such buildings or areas.</p> <p>viii) Outdoor advertising attached to vehicles or trailers which are parked for advertising purposes will not be permitted.</p> <p>ix) Signage must not be flashing or animated. Note: Flashing or animated signs include mechanical moving signs, moving LED signs, video/television screens, projected laser advertising and other flashing, intermittently illuminated or sequenced lighting signs.</p>	<p>Complies.</p> <p>The proposal only seeks signage in relation to the existing community facility use approved under DA/344/2020.</p> <p>All proposed signage will be in English.</p> <p>N/A.</p> <p>N/A.</p> <p>No flashing or animated signage proposed.</p>	<p>Yes.</p> <p>N/A.</p> <p>Yes.</p> <p>N/A.</p> <p>N/A.</p> <p>N/A.</p>
3.2	<p>Business Zones</p> <p>i) The size and shape of any signage must relate to the size of the building or space to which it is to be attached to or placed on. Larger building facades are capable of accommodating larger signs without detracting from the appearance of the building.</p> <p>ii) Signage must not dominate or obscure a building or its architectural features. Advertising</p>	<p>The proposed signs are appropriately proportioned and flush with the façade.</p> <p>The proposed ground floor signage does not completely obscure the</p>	<p>Yes</p> <p>Yes.</p>

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	should highlight and reinforce architectural details.	four-storey commercial building or the subject tenancy.	
	iii) Roof signs and advertising structures must not project above the parapet of the building or that part of the building to which they are attached (including signs and bunting mounted on plant rooms or other roof structures).	None proposed.	N/A
	iv) Avoid fin signs, projecting wall signs and above awning signs (sitting on the awning).	None proposed.	N/A
	v) The visual amenity and value of streetscapes should be protected through careful consideration of proposals for flush wall signage.	The proposed signage ancillary to the approved community facility is considered an appropriate scale and response to the locality having considered the context of the subject site and adjoining properties.	Yes.
	vi) On any building listed as a Heritage Item or situated in a Heritage Conservation Area outdoor advertising (projecting and flush) must not be located above awning level.	The site is not identified being listed as a Heritage Item or situated in a Heritage Conservation Area under the Randwick Local Environmental Plan 2012.	N/A.
	vii) Upper level signs are best located at major focal points of a building only, to advertise arcades, plazas, etc. and to provide as corporate identity for developments which contain a range of businesses.	No upper level signs proposed.	N/A.
	viii) Outdoor advertising on or attached to buildings must align and relate to the architectural design lines on a building façade or, in the absence of architectural detail or decoration, relate to the design lines of adjacent buildings.	The proposal will provide for visual interest whilst the proposed signage is appropriately proportioned and flush with the eastern façade.	Yes.
	ix) Limit under awning to one per shop or for larger premises one per 6 metres of shop frontage.	No awning signage proposed.	N/A.
	x) Under awning signs must be at least 2.6 metres above footpath level.	No under awning signs proposed.	N/A.
	xi) Pole or pylon signs must not exceed the height of adjoining or		N/A.

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	adjacent buildings, or 6 metres, whichever is the lower.	No pole or pylon signs are proposed.	

Responsible officer: Joseph Farag, Environmental Planning Officer

File Reference: DA/1/2022

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Development Consent Conditions



Folder /DA No:	DA/1/2022
Property:	669-677 Anzac Parade, MAROUBRA NSW 2035
Proposal:	New shopfront signage to Unit 3 for the Australian Foundation for Disability
Recommendation:	Approval

Development Consent Conditions

GENERAL CONDITIONS

The development must be carried out in accordance with the following conditions of consent.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000* and to provide reasonable levels of environmental amenity.

Approved Plans & Supporting Documentation

1. The development must be implemented substantially in accordance with the plans and supporting documentation listed below and endorsed with Council's approved stamp, except where amended by Council in red and/or by other conditions of this consent:

Plan	Drawn by	Dated	Received by Council
Proposed Street front Signage, SK-08	JKH Build Design	21/12/2020	4 January 2020

Public Safety & Site Management

2. Public safety and convenience must be maintained at all times during the installation of signs and the following requirements must be complied with to the satisfaction of Council:
 - a) Building materials, waste materials, equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.
 - b) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any obstructions, trip hazards, goods, materials at all times. Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.
 - c) All building and site activities (including storage or placement of materials or waste) must not cause or be likely to cause 'pollution' of any waters, including any stormwater drainage systems, street gutters or roadways.

Note: It is an offence under the Protection of the Environment Operations Act 1997 to cause or be likely to cause 'pollution of waters', which may result in significant penalties and fines.

- d) Access gates and doorways within site fencing, hoardings and temporary site buildings or amenities must not open outwards into the road or footway.
- e) Bulk bins/waste containers must not be located upon the footpath, roadway or nature strip at any time without the prior written approval of the Council. Applications to place a waste container in a public place can be made to Council's Health, Building and Regulatory Services department.
- f) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works, and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.

Site Signage

3. A sign must be erected and maintained in a prominent position on the site for the duration of the works, which contains the following details:
- name, address, contractor licence number and telephone number of the *principal contractor*, including a telephone number at which the person may be contacted outside working hours, or *owner-builder* permit details (as applicable)

Restriction on Working Hours

4. Building, demolition and associated site works must be carried out in accordance with the following requirements:

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as detailed below)	<ul style="list-style-type: none"> Monday to Friday - 7.00am to 5.00pm Saturday - 8.00am to 5.00pm Sunday & public holidays - No work permitted
Excavating or sawing of rock, use of jack-hammers, pile-drivers, vibratory rollers/compactors or the like	<ul style="list-style-type: none"> Monday to Friday - 8.00am to 1.00pm only Saturday - No work permitted Sunday & public holidays - No work permitted
Additional requirements for all development	<ul style="list-style-type: none"> Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted

An application to vary the abovementioned hours may be submitted to Council's Manager Health, Building & Regulatory Services for consideration and approval to vary the specified hours may be granted in exceptional circumstances and for limited occasions (e.g. for public safety, traffic management or road safety reasons). Any applications are to be made on the standard application form and include payment of the relevant fees and supporting information. Applications must be made at least 10 days prior to the date of the proposed work and the prior written approval of Council must be obtained to vary the standard permitted working hours.

Building Encroachments

5. There must be no encroachment of any structures or building work onto Council's road reserve, footway, nature strip or public place.

GENERAL ADVISORY NOTES

The following information is provided for your assistance to ensure compliance with the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, or other relevant legislation and requirements. This information does not form part of the conditions of development consent pursuant to Section 4.17 of the Act.

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- A1 The requirements and provisions of the *Environmental Planning & Assessment Act 1979* and *Environmental Planning & Assessment Regulation 2000*, must be fully complied with at all times.

Failure to comply with these requirements is an offence, which renders the responsible person liable to a maximum penalty of \$1.1 million. Alternatively, Council may issue a penalty infringement notice (for up to \$6,000) for each offence. Council may also issue notices and orders to demolish unauthorised or non-complying building work, or to comply with the requirements of Council's development consent.

- A2 Any proposed amendments to the design and construction of the building may require a new development application or a section 4.55 amendment to the existing consent to be obtained from Council, before carrying out such works

- A3 This consent does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is proposed to be carried out upon any adjoining or supported land, the land owner or principal contractor must obtain:

- the consent of the owners of such adjoining or supported land to trespass or encroach, or
- an access order under the *Access to Neighbouring Land Act 2000*, or
- an easement under section 88K of the *Conveyancing Act 1919*, or
- an easement under section 40 of the *Land & Environment Court Act 1979*, as appropriate.

Section 177 of the *Conveyancing Act 1919* creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).

- A4 The necessary development consent and a construction certificate or a complying development certificate (as applicable) must be obtained for any proposed *cooling towers* and external plant and equipment, if not included in this consent.

- A5 There are to be no emissions or discharges from the premises, which will give rise to an environmental or public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and *Regulations*.

- A6 A Local Approval application must be submitted to and be approved by Council prior to commencing any of the following activities on a footpath, road, nature strip or in any public place:-

- Install or erect any site fencing, hoardings or site structures
- Operate a crane or hoist goods or materials over a footpath or road
- Placement of a waste skip or any other container or article.

For further information please contact Council on 9093 6971.

Development Application Report No. D15/22

Subject: 70 Coogee Bay Road, Coogee (DA/451/2021)


Executive Summary

Proposal:	Alterations and additions to the existing building including a new upper floor level, and conversion of the use of the development from a Residential Flat Building to an attached dual occupancy including strata subdivision (variation to FSR & height of building standards).
Ward:	East Ward
Applicant:	Mary Kilbane
Owner:	Mr B & Mrs M Kilbane
Cost of works:	\$1,287,000
Reason for referral:	Development that contravenes a development standard by more than 10%.

Recommendation

- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the height of buildings development standard in Clause 4.3 and the Floor Space Ratio development standard in Clause 4.4 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning, Industry and Environment may be assumed.
- B. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/451/2021 for Alterations and additions to the existing building including a new upper floor level, and conversion of the use of the development from a Residential Flat Building to an attached dual occupancy including strata subdivision, at No. 70 Coogee Bay Road, Coogee, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Draft Development Consent - DA/451/2021 - 70 Coogee Bay Road, RANDWICK NSW 2031 - DEV - Randwick City Council

D15/22

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The application is referred to the Randwick Local Planning Panel (RLPP) as:

- The development contravenes the development standard for height of buildings by more than 10%.

The proposal seeks development consent for alterations and additions to the existing building including a new upper floor level, and conversion of the use of the development from a Residential Flat Building to an attached dual occupancy. The proposal also seeks consent for the strata subdivision of the attached dual occupancy.

The proposal was notified in accordance with Council's Community Participation Plan and two (2) submissions by way of unique objection was received with the key issue in relation to the rear setback, streetscape presentation to Coogee Bay Road, acoustic impacts from the rear decks and the proposed location of a sump. In response to concerns raised by Council, amended plans were provided which increased the rear setbacks at the lower levels and reduced the overall bulk and scale of the proposed upper floor level.

The key issues associated with the proposal relate to non-compliance with the maximum building height and floor space ratio development standards, and external wall height control. The applicant has submitted written requests to vary the standards, which are considered to be well-founded. The variations are assessed as being in the public interest given the development is consistent with the objectives of the standards and of the R3 Medium Density Residential zone. The additional height and FSR is attributed to the upper level addition, which has been setback from the rear building alignment and will portray a two (2) storey presentation to the streetscape of Coogee Bay Road.

The proposal is recommended for approval subject to non-standard conditions that require a decrease to the external wall height of the eastern wall and privacy measures on side windows.

2. Site Description and Locality

The subject site is known as 70 Coogee Bay Road, Coogee and has a legal description of Lot C in Deposited Plan 436028. The site is rectangular in shape and has a total area of 285.58m². The site has a double street frontage to the front and rear of the site and is located on the northern side of Coogee Bay Road and the southern side of Queen Street. Pedestrian access is gained via the 7.495m frontage to Coogee Bay Road. Vehicular and pedestrian access is gained via the 7.285m frontage to Queen Street. The site experiences a fall of approximately 7.22m from the front southern boundary down towards the rear northern boundary, with an average slope of approximately 18.6%.

The site is zoned R3 - Medium Density Residential and is currently occupied by an existing three (3) storey Residential Flat Building (RFB). The property is surrounded by residential properties to the north, south, east and west. Coogee Beach is located to the far east of the site. The existing streetscape on this portion of the northern side of Coogee Bay Road is predominantly older style semi-detached dwellings of two (2) and three (3) storeys (viewed as one (1) or two (2) storeys as viewed from Coogee Bay Road). The northern streetscape also includes RFBs of three (3) and four (4) storeys. The southern side of Coogee Bay Road is predominantly characterised by older multi-storey RFBs of up to five (5) storeys. Adjacent to the site to the north on the opposite side of Queen Street are primarily low-density developments comprising dwelling houses and semi-detached dwellings.



Figure 1 – Subject site as viewed from Coogee Bay Road.

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Figure 2 – Subject site as viewed from the rear at Queen Street.

3. Relevant history

The land has been used for residential purposes for an extended period of time. A search of Council's records did not reveal any recent or relevant development applications for the subject site.

Subject Development Application

Development Application DA/451/2021 was lodged with Council on 29 July 2021. The application referred to Council's Development Engineer for comment and/or recommendation.

December 2021

On 13 December 2021 concerns were raised with the Applicant regarding the FSR and height of the proposed development, including the external wall height. It was recommended that the proposed upper level be significantly reduced in bulk and contained within the roof form (such as a pitched roof with dormer windows) to ensure consistency with the intent and objectives of the standards and controls. Additional information in the form of the rental records for the property was also sought in relation to assessment of Part 3 of *State Environmental Planning Policy (Affordable Rental Housing) 2009*. Amended plans were submitted on 22 December 2021 which reduced the overall height and GFA of the development, and provided a greater setback to the side and rear boundary for the upper level to minimise the bulk and scale. The assessment is based on the amended proposal.

4. Proposal

The proposal seeks development consent for alterations and additions to the existing building including a new upper floor level, and conversion of the use of the development from a Residential Flat Building to an attached dual occupancy.

Specifically, the Applicant seeks consent for the following works:

- Partial demolition of the existing building;
- Ground Floor Level
 - New internal walls and reconfiguration;

- Extension of the western party wall to create a partially enclosed terrace area;
- New window and door openings along the eastern elevation;
- First Floor Level
 - New internal access stair;
 - New internal walls and reconfiguration;
 - Extension of balcony to the north and west;
 - Extension of western party wall to partially enclose balcony;
- Second Floor Level
 - New internal access stair;
 - New internal walls and reconfiguration;
 - Extension of balcony to the north and east;
 - Extension of party wall and eastern external wall to partially enclose balcony;
 - New pedestrian gate and pathway fronting Coogee Bay Road;
 - Existing window replaced with French doors to the south;
 - New window openings along the eastern elevation;
- Construction of a new upper floor level (Third Floor Level);
- Associated landscaping and earthworks, including the provision of planter boxes on levels 1, 2 and 3.

Each of the proposed dwellings within the dual occupancy shall be located over two (2) levels and comprise the following:

- Unit 1
 - Open-plan Living/Dining/Kitchen area, Plant room, and terrace area to the north;
 - Three (3) Bedrooms, two (2) En-suites, one (1) Walk-in Robe, one (1) Bathroom, and balcony to the north.
- Unit 2
 - Open-plan Living/Dining/Kitchen area, Study/Media room, Laundry, Linen room, one (1) Bathroom, and balcony to the north;
 - Three (3) Bedrooms and two (2) En-suites.

The application also seeks consent for the strata subdivision of the attached dual occupancy.

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Participation Plan. The following submissions were received as a result of the notification process:

- Unit 2/72 Coogee Bay Road, Coogee

Issue	Comment
Impact upon Coogee Bay Road streetscape including the impact upon the original Edwardian façade which is a characteristic of the existing development and adjoining properties. The introduction of the upper level is intrusive and the arch headed windows will negatively impact upon the original Edwardian style façade.	See Key Issues for further discussion.

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Issue	Comment
<p><u>Location of the proposed sump</u></p> <p>Request that the proposed sump be located away from the neighbouring wall to ensure no overflow impacts upon neighbouring properties.</p>	<p>The Applicant provided a response to the submissions which advised that the submitted engineering drawings were indicative of the location of the proposed stormwater pit only, and showed the pit approximately 450mm from the boundary. However, the Applicant notes that if a further setback is required then this can be accommodated. It is recommended that the pit be a minimum of 900mm from the common boundary to provide adequate separation and ensure no adverse impacts.</p>
<p>Concerns regarding the proposed rear decks and potential impacts in relation to noise impacts.</p>	<p>See Key Issues for further discussion.</p>

- 68 Coogee Bay Road, Coogee

Issue	Comment
<p>Concerns regarding the rear alignment of the proposed development which should not extend beyond the alignment of the adjoining property at 68 Coogee bay Road.</p>	<p>Amended plans were submitted in response to concerns raised regarding the extent of the FSR variation and the bulk and scale of the development. As a result of the amendments, the proposal was amended which resulted in the proposed development being in alignment with the adjoining property to the west. As such, the proposal as amended does not encroach beyond the rear building alignment of the adjoining property, with the exception of balconies and terrace areas.</p>

The Applicant also provided a letter of support from the owner of Unit 1/72 Coogee Bay Road who did not raise any objection to the proposed plans.

5.1. Renotification

In response to concerns raised by Council regarding the FSR non-compliance and bulk and scale of the proposed upper level addition, amended plans were submitted by the Applicant on 22 December 2021. The amendments reduce the floor area of the upper level and increase the setbacks at the side and rear boundaries, as well as increase the rear setback at the lower levels of the proposal. The amended design results in a reduced built form to that which was originally proposed and it is considered that the proposed amendments shall result in a similar or lesser impact to that which was originally proposed. As such formal re-notification of the amended plans was not considered necessary.

6. Relevant Environment Planning Instruments

6.1. SEPP (Affordable Rental Housing) 2009

The subject site and existing RFB is currently under single ownership. As the building has not been strata subdivided, nor is social housing provider accommodation or housing for seniors or people with a disability, consideration was given to whether the provisions of Part 3 of SEPP ARH in relation to the retention of affordable rental housing was applicable.

It should be noted that the ARH SEPP was repealed on 25 November 2021, with the provisions of the ARH SEPP incorporated into the new SEPP (Housing) 2021. Schedule 7 of the Housing SEPP contains saving provisions which states that the former provisions of a repealed instrument continue to apply to a development application made, but not determined, before the commencement of the SEPP. As the subject application was lodged prior to the commencement of the new Housing SEPP, the provisions of Part 3 of the ARH SEPP are still applicable. Notwithstanding, it is noted that Part

3 of the Housing SEPP is consistent with the previous provisions and therefore assessment of the development would remain consistent with the SEPP (Housing) 2021.

Part 3 Retention of existing affordable rental housing, pursuant to the ARH SEPP is applicable to determine whether the proposal will result in a reduction in affordable rental housing, and therefore whether a monetary contribution might be considered to substitute any loss pursuant to Section 51 of the ARH SEPP.

The ARH SEPP defines a low-rental dwelling as follows:

“low-rental dwelling means a dwelling that was let at a rental not exceeding the median rental level at any time during the relevant period, as specified in the Rent and Sales Report, in relation to a dwelling of the same type, having the same number of bedrooms and located in the same local government area.”

The relevant period is defined as “the period commencing 5 years before the day on which the development application involving the building is lodged and ending on that day.”

In response to Council’s request for additional information, the Applicant submitted details of the rents received in the 5 year period prior to the lodgement of the application, being from July 2016 through to 30 June 2021, by way of a copy of the legal Residential Tenancy Agreements.

Based on Council’s records and the documentaiton provided, the existing three (3) units comprise the following:

- Unit 1 – Two (2) bedrooms;
- Unit 2 – One (1) bedroom (however, the owner advised that in contradiction to Council’s records the main bedroom has been divided into two (2) rooms and has been let on the basis of a two (2) bedroom unit;
- Unit 3 – Two (2) bedrooms.

The quarterly rent and sales reports published by the Department of Human Services for the relevant period provides the following data:

Median rent of Units in Randwick LGA

Quarter	Median Rent – 1 Bedroom	Median Rent – 2 Bedroom
June 2016	\$500	\$620
September 2016	\$500	\$620
December 2016	\$520	\$650
March 2017	\$530	\$650
June 2017	\$520	\$650
September 2017	\$520	\$650
December 2017	\$530	\$660
March 2018	\$525	\$650
June 2018	\$520	\$650
September 2018	\$510	\$650
December 2018	\$500	\$650
March 2019	\$500	\$630
June 2019	\$500	\$630
September 2019	\$480	\$610
December 2019	\$500	\$630
March 2020	\$500	\$630
June 2020	\$450	\$580
September 2020	\$450	\$560
December 2020	\$430	\$550
March 2021	\$450	\$550
June 2021	\$450	\$560
September 2021	\$450	\$590

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The information submitted to Council identifies that the three (3) existing units have been rented out as follows:

Unit 1

Lease term	Rental Rate	Weekly Rental Rate
September 2016	Vacant	Nil - vacant
December 2016 to August 2017	\$3476.19 per month	\$802.19
August 2017 to August 2018	\$3476.19 per month	\$802.19
August 2018 to August 2019	\$3476.19 per month	\$802.19
September 2019 to September 2020	\$1590.00 per fortnight	\$795.00
October 2020 to April 2021	\$1520.00 per fortnight	\$760.00
May 2021 to May 2022	\$1500.00 per fortnight	\$750.00

Unit 2

Lease term	Rental Rate	Weekly Rental Rate
July 2016 to July 2017	\$1440.00 per fortnight	\$720.00
July 2017 to July 2018	\$1560.00 per fortnight	\$780.00
September 2018 to September 2019	\$1560.00 per fortnight	\$780.00
June 2019 to September 2020	\$1560.00 per fortnight	\$780.00
September 2020 to September 2021	\$720.00 per week	\$720.00

Unit 3

Lease term	Rental Rate	Weekly Rental Rate
July 2016 to July 2017	\$1400.00 per fortnight	\$700.00
July 2017 to January 2018	\$1400.00 per fortnight	\$700.00
Month to Month rental from January 2018 to May 2018	\$1400.00 per fortnight	\$700.00
May 2018 to January 2019	\$1440.00 per fortnight	\$720.00
Month to Month rental from January 2019 to January 2020	\$1440.00 per fortnight	\$720.00
January 2020 to July 2020	\$3100.00 per month	\$715.38
Month to Month rental from July 2020 to May 2021	\$3100.00 per month	\$715.38
May 2021 to November 2021	\$650.00 per week	\$650.00

In view of the above, in this instance, it is considered that the existing units would not be classified as low rental dwellings and there is unlikely to be a reduction in affordable housing on the land. Therefore, no contributions are applicable in this instance.

6.2. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned R3 Medium Density Residential under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent.

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will provide for the housing needs of the community, will not be inconsistent with the existing streetscape and subject to the recommended conditions will not result in any unreasonable amenity impacts upon surrounding residents.

The following development standards in the RLEP 2012 apply to the proposal:

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.4: Floor space ratio (max)	0.9:1 or 257.022m ² of GFA	0.97:1 or 277.17m ² of GFA	No
Cl 4.3: Building height (max)	12m	13.64m	No

CI 4.1: Lot Size (min)	N/A	N/A	N/A – Strata Subdivision
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6.2.1. Clause 4.6 - Exceptions to development standards

The non-compliances with the development standards are discussed in section 7 below.

7. Clause 4.6 exception to a development standard

The proposal seeks to vary the following development standards contained within the Randwick Local Environmental Plan 2012 (RLEP 2012):

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
CI 4.4: Floor space ratio (max)	0.9:1	0.97:1 or 277.17m ² of GFA	20.148m ²	7.839%
CI 4.3: Building height (max)	12m	13.64m	1.64m	13.63%

Clause 4.6 of RLEP 2012: Exception to a Development Standard relevantly states:

3. *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
4. *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Secretary has been obtained.*

In *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ summarised the matters in Clause 4.6 (4) that must be addressed before consent can be granted to a development that contravenes a development standard.

1. *The applicant's written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case*

Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 reinforces his previous decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827 where he identified five commonly invoked ways of establishing that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The most common is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

2. *The applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.*

Chief Justice Preston in ***Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118** reinforces the previous decision in *Four2Five Pty Ltd v Ashfield*

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Council [2015] NSWLEC 90 regarding how to determine whether ‘the applicant’s written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard’.

The grounds relied on by the applicant in their written request must be “environmental planning grounds” by their nature. Chief Justice Preston at [23] notes the adjectival phrase “environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s1.3 of the EPA Act.

Chief Justice Preston at [24] notes that there here are two respects in which the written request needs to be “sufficient”.

1. The written request must focus on the aspect or element of the development that contravenes the development standard, not the development as a whole (i.e. The written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole); and
2. The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31] Judge Pain confirmed that the term ‘sufficient’ did not suggest a low bar, rather on the contrary, the written report must address sufficient environmental planning grounds to satisfy the consent authority.
3. *The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out.*

Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [27] notes that the matter in cl 4.6(4)(a)(ii), with which the consent authority must be satisfied, is not merely that the proposed development will be in the public interest but that it will be in the public interest because it is consistent with the objectives of the development standard and the objectives for development of the zone in which the development is proposed to be carried out.

It is the proposed development’s consistency with the objectives of the development standard and the objectives of the zone that make the proposed development in the public interest.

If the proposed development is inconsistent with either the objectives of the development standard or the objectives of the zone or both, the consent authority, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii).

4. *The concurrence of the Secretary has been obtained.*

Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [28] notes that the other precondition in cl 4.6(4) that must be satisfied before consent can be granted is whether the concurrence of the Secretary has been obtained (cl 4.6(4)(b)). In accordance with Clause 4.6 (5), in deciding whether to grant concurrence, the Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for state or regional environmental planning, and
- (b) the public benefit of maintaining the development standard

Under clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the Secretary’s concurrence for exceptions to development standards in respect of applications made under cl 4.6 (subject to the conditions in the table in the notice).

The approach to determining a clause 4.6 request as summarised by Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, has been used in the following

assessment of whether the matters in Clause 4.6(4) have been satisfied for each contravention of a development standard.

7.1. Exception to the Floor Space Ratio (FSR) development standard (CI 4.4)

The applicant's written justification for the departure from the FSR standard is contained in Appendix 2.

1. **Has the applicant's written request adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?**

The applicant's written request seeks to justify the contravention of the FSR development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case because the relevant objectives of the standard are still achieved.

The objectives of the FSR standard are set out in Clause 4.4 (1) of RLEP 2012. The applicant has addressed each of the objectives as follows:

(a) to ensure that the size and scale of development is compatible with the desired future character of the locality

The applicant's written justification argues that this objective is achieved as the desired character is somewhat established by the development at 68 Coogee Bay Road and 80 Queen Street which are relatively newer approvals in 2014 and 2015. The bulk and scale of the proposal development would be consistent with the adjoining development at No. 68. Additionally, the upper level that constitutes the variation, has been designed to complement and conserve the appearance and character of the existing semi-detached building on Coogee Bay Road.

(b) to ensure that buildings are well articulated and respond to environmental and energy needs

The applicant's written justification demonstrates that this objective is satisfied by noting that the proposed additions are designed to integrate with the existing development, however be more recessive to the streetscape and enhance landscaping on the site. The proposal also includes measures to reduce resource consumption.

The BASIX certificate (submitted by the applicant) shows that the development meets the relevant water and energy saving targets.

(c) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,

The development is not within a conservation area. The Applicant notes that there are heritage items within the surrounding immediate area, however the proposal shall not compromise the heritage significance of the items.

(d) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.

The applicant's written justification demonstrates that this objective is satisfied by noting that the proposal shall not give rise to privacy, overshadowing, view loss or visual bulk impacts.

Assessing officer's comment:

While it is acknowledged that the proposed FSR results in a variation to the development standard, the extent of variation is in relation to the GFA of the existing development and the change of use of the existing building to provide a lower density development with additional bedrooms and better amenity. The additional GFA and variation can be solely attributed to the proposed upper floor level of the development, noting that the existing building complies with the 0.9:1 standard. The proposed upper addition has been minimised and reduced to a level

that accommodates reasonably sized bedrooms and bathrooms with good amenity, with the proposed areas not considered to be excessive. Any further reduction to the size of the rooms would detrimentally impact upon the internal amenity of the dwelling. Furthermore, the surrounding developments are of a similar level of bulk and scale, and the proposal shall maintain a built form that is not inconsistent with the existing streetscape or the character of the area, with particular regards to the streetscape of Coogee Bay Road in which the development will present as a two (2) storey dwelling. The proposed alterations and additions shall improve the visual impact of the development as viewed from the adjoining properties and public domain, by enhancing and articulating the front and rear façades. The BASIX certificate (submitted by the applicant) shows that the development meets the relevant water and energy saving targets.

It is noted that there are several heritage items within the vicinity of the site, however the existing heritage buildings are located a significant distance from the subject site, with the closest item on the corner of Carrington Road and Queen Street being in excess of 35m from the proposed development. As such it is considered that the proposed development shall not detrimentally impact upon the heritage significance of the surrounding heritage properties.

Due to the recessed nature of the proposed addition which is setback from the rear building alignment, and the absence of windows on the side elevations of the adjoining properties, it is considered that the proposal shall not be visually obtrusive as viewed from the adjoining properties nor results in any unreasonable impacts with regards to view loss, privacy and solar access.

In conclusion, the applicant's written request has adequately demonstrated that compliance with the floor space ratio development standard is unreasonable or unnecessary in the circumstances of the case.

2. Has the applicant's written request adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard?

The applicant's written request seeks to demonstrate that there are sufficient environmental planning grounds to justify contravening the FSR development standard as follows:

- The proposal is consistent with the objectives of the standard and the R3 zone.
- The proposed variation provides a development that adds to the housing mix and diversity of the area.
- The cumulative impact of the non-compliance is acceptable in consideration of the local approvals within the surrounding area which sets a precedent for variation to the standard.
- The proposed building envelope would not be inconsistent with the adjoining development at 68 Coogee Bay Road.
- The non-compliance will not contribute to adverse impacts upon adjoining properties with regards to residential amenity.
- The proposal will improve the amenity, functionality and floor layout of the dwellings, providing an environmental benefit.

Assessing officer's comment:

The proposed development is constrained by the existing building on site, which shall be largely retained, and the existing GFA. The change of use shall facilitate a form of low density development within the medium density zone, ensuring a variety of housing types are provided within the R3 zone. The proposed additions and resultant GFA shall provide better amenity for occupants by creating open-plan and flexible living, kitchen and dining areas, and facilitating additional bedrooms, creating 3 bedroom dwellings which will positively contribute to the housing stock in the area. The resultant bulk and scale is not considered to be excessive in consideration of the surrounding context, and the proposed additions are sympathetic to the existing building. Furthermore, the proposal involves the upgrading of the existing facades, improving the streetscape presentation of the development, and enhancing the visual impact from the public domain. The proposed upper addition shall not result in excessive built form as viewed from Coogee Bay Road, and due to the rear and side setbacks shall not be visually obtrusive as viewed from Queen Street. In conclusion, the applicant's written request has

adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

3. Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?

To determine whether the proposal will be in the public interest, an assessment against the objectives of the Floor Space Ratio standard and R3 zone is undertaken.

As discussed in Section 6.2 of the report, the proposal is considered to be consistent with the objectives of the R3 zone, and as outlined above, the proposed development is also found to be consistent with the objectives of clause 4.4 Floor Space Ratio and therefore the development will be in the public interest.

4. Has the concurrence of the Secretary been obtained?

In assuming the concurrence of the Secretary of the Department of Planning and Environment the matters in Clause 4.6(5) have been considered:

Does contravention of the development standard raise any matter of significance for state or regional environmental planning?

The proposed development and variation from the development standard does not raise any matters of significance for state or regional environmental planning.

Is there public benefit from maintaining the development standard?

Variation of the maximum floor space ratio standard will allow for the orderly use of the site and there is a no public benefit in maintaining the development standard in this instance.

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(4) have been satisfied and that development consent may be granted for development that contravenes the FSR development standard.

7.2. Exception to the Building Height development standard (Clause 4.3)

The applicant's written justification for the departure from the height of buildings standard is contained in Appendix 2.

1. Has the applicant's written request adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case?

The applicant's written request seeks to justify the contravention of the Building Height development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case because the proposed height would be consistent with the adjoining development and the relevant objectives of the standard are still achieved.

The objectives of the Building Height development standard are set out in Clause 4.3 (1) of RLEP 2012. The applicant has addressed each of the objectives as follows:

(a) to ensure that the size and scale of development is compatible with the desired future character of the locality

The applicant's written justification demonstrates that this objective is satisfied by noting that the proposed bulk and scale of the additions have been minimised and shall not be visually obtrusive and shall be compatible with the existing surrounding developments. Additionally, the upper level that constitutes the variation, has been designed to

complement and conserve the appearance and character of the existing semi-detached building on Coogee Bay Road.

- (b) *to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,*

The development is not within a conservation area. The Applicant notes that there are heritage items within the surrounding immediate area, however the proposal shall not compromise the heritage significance of the items.

- (c) *to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.*

The applicant's written justification argues that this objective is satisfied by noting that the proposed alterations and additions will not result in any adverse impacts in terms of visual bulk, overshadowing, view loss or privacy.

Assessing officer's comment:

The proposed development seeks to construct a new upper level to the existing building in order to improve the internal amenity of the dwelling and create an additional bedroom. The subject site experiences a significant fall from south to north, with a drop of approximately 6.8m from the Coogee Bay Road frontage down to the rear of the building fronting Queen Street. It is considered that the height variation can be attributed to the proposed upper level addition, with particular regards to the additional bulk at the rear of the building where the land has been excavated to provide a lower ground floor level, and due to the topography of the site, in which there is a significant slope from south to north.

Concerns were raised regarding the maximum height of the development and the proposal was amended to minimise the visual impact of the upper level and reduce the bulk and scale. The proposed development shall present as two (2) storeys to Coogee Bay Road and would not be inconsistent with the existing streetscape which contains residential developments of one (1) and two (2) storeys. Furthermore, the proposal has been sited behind the apex of the roof to further minimise the visual impact. The amended proposal increased the setback of the upper level to the rear and side to minimise the visual bulk at the upper level. The applicant provided a 3d analysis of the likely visual bulk as viewed from Queen Street which is demonstrated in Figure 3 below:



Figure 3 – 3d view of the proposal as viewed from Queen Street to the north.

The 3d drawing demonstrates that the proposed upper level would not be dissimilar in bulk to the adjoining development to the east at 68 Coogee Bay Road. Due to the rear alignment of the development which does not encroach beyond the neighbouring properties, it is considered that the proposal would not result in any unreasonable impacts upon the adjoining properties with regards to visual impact, privacy, overshadowing or view loss.

In view of the above, it is considered that compliance with the maximum height development standard is unreasonable or unnecessary in this instance as the height of the proposed additions is responsive to the surrounding developments and largely a result of the topography of the site, and the proposal can achieve the objectives of the development standard subject to conditions. In conclusion, the Applicant's written request has demonstrated that the proposed breach is unreasonable or unnecessary in the circumstance of the case.

2. Has the applicant's written request adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard?

The applicant's written request seeks to demonstrate that there are sufficient environmental planning grounds to justify contravening the Building Height development standard as follows:

- The proposal provides better amenity for occupants, by providing a high internal amenity without unreasonably impacting surrounding properties.
- The proposed variation provides a development that adds to the housing mix and diversity of the area.
- The cumulative impact of the non-compliance is acceptable in consideration of the local approvals within the surrounding area which sets a precedent for variation to the standard.
- The proposed building envelope would not be inconsistent with the adjoining development at 68 Coogee Bay Road.
- The non-compliance will not contribute to adverse impacts upon adjoining properties with regards to residential amenity.

Assessing officer's comment:

As discussed above, the proposed height is largely a result of the topography of the site and the existing lower ground floor level of the development which is sited below natural ground level. The proposed additions have been minimised to reduce the bulk and scale. The proposed upper level shall improve the internal amenity for occupants, without unreasonably impacting upon the amenity of the neighbouring properties. In consideration of the size and scale of the surrounding developments within the vicinity of the subject site, the proposed non-complaint height is not considered to be unwarranted and the additional height can be accommodated on the site without resulting in adverse amenity impacts.

In view of the above, it is considered that the applicant's written request has demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

3. Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out?

To determine whether the proposal will be in the public interest, consideration is given to the objectives of the Building Height standard and R3 zone.

As discussed in Section 6.2 of the report, the proposal is considered to be consistent with the objectives of the R3 zone, and as outlined above, the proposed development is also found to be consistent with the objectives of clause 4.3 Height of Buildings and therefore the development will be in the public interest.

4. Has the concurrence of the Secretary been obtained?

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In assuming the concurrence of the Secretary of the Department of Planning and Environment the matters in Clause 4.6(5) have been considered:

Does contravention of the development standard raise any matter of significance for state or regional environmental planning?

The proposed development and variation from the development standard does not raise any matters of significance for state or regional environmental planning.

Is there public benefit from maintaining the development standard?

Variation of the maximum height standard will allow for the orderly use of the site and there is no public benefit in maintaining the development standard in this instance.

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(4) have been satisfied and that development consent may be granted for development that contravenes the height of buildings development standard.

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

The DCP provisions are structured into two components: objectives and controls. The objectives provide the framework for assessment under each requirement and outline key outcomes that a development is expected to achieve. The controls contain both numerical standards and qualitative provisions. Any proposed variations from the controls may be considered only where the applicant successfully demonstrates that an alternative solution could result in a more desirable planning and urban design outcome.

As the proposed development is for the purpose of an attached dual occupancy, the provisions of Part C1 of RDCP are applicable in this instance. The relevant provisions of the DCP are addressed in the Key Issues section of the report and Appendix 3.

9. Environmental Assessment

The site has been inspected and the application has been assessed having regard to Section 4.15 of the Environmental Planning and Assessment Act, 1979, as amended.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

9.1. Discussion of key issues

Heritage Conservation

A submission was received which raised concerns regarding the proposed alterations and additions with particular regards to the streetscape presentation to Coogee Bay Road. The submission raises concerns regarding the architectural features and style of the proposal which shall be detrimental to the existing Edwardian facades of the neighbouring buildings.

The subject site and surrounding properties are not identified as being heritage items nor within a Heritage Conservation Area. While it is appreciated that the existing facades along this portion of Coogee Bay Road are largely intact and portray their original features, it is noted that the streetscape as a whole provides a variety of architectural styles. The proposal seeks to largely retain the existing front façade of Coogee Bay Road with some minor amendments involving the replacement of a window with french doors, and the new upper level addition. The proposed addition is located behind the apex of the existing dwelling to align with the adjoining development to the west, and in order to minimise the visual impact of the proposed upper level. There are examples of modern additions within the immediate vicinity of the site and therefore the proposed would not be uncharacteristic of the area. Given that the subject site is not identified as having any heritage significance, refusal of the application based on the architectural design would not be warranted in this instance.

Clause 3.2 (External Wall Height) of Part C1, RDCP 2013

Clause 3.2 specifies a maximum wall height in order to control the bulk and scale of development, complement the desirable streetscape outcome and achieve a suitable urban design outcome. As the proposed development is for the purpose of a dual occupancy, the provisions of Part C1 of RDCP 2013 are applicable which stipulates a maximum external wall height of 8m for steeply sloping sites. However, it is worth noting that the low density controls generally anticipate dual occupancies to be single to double storey with an additional storey of sloping sites. Due to the retention and use of the existing medium density building, being an Residential Flat Building, the proposed dual occupancy is one above the other, resulting in a four (4) storey development which would be more aligned with the medium density controls. The provisions of Part C2 of RDCP 2013 in relation to medium density residential development would permit an external wall of 10.5m.

Notwithstanding, the proposed development shall have a maximum external wall height of 13.1m as measured from existing ground level, with a substantial portion of the upper floor level sited above both the 8m and 10.5m external wall height.

The objectives of clause 3.2 are as follows:

- To ensure development height establishes a suitable scale to the street and contributes to its character.
- To ensure development height does not cause unreasonable impacts upon the neighbouring dwellings in terms of overshadowing, view loss, privacy and visual amenity.
- To ensure the form and massing of development respect the topography of the site.

The non-compliant wall height is a result of the existing building and the proposed upper floor level. The existing building does not comply with the 8m wall height and therefore any additions would be sited above the 8m. Due to the significant slope of the site, which experiences a fall of 7.22m from south to north, achieving compliance with the maximum wall height of 10.5m would also be difficult, unless it was in the form of habitable roof space.

Rather than provide the upper level as habitable roof space which would severely compromise the internal amenity of the development, the Applicant has aimed to provide an upper level consistent with the same visual bulk as habitable roof space by setting the upper level back from the rear and side boundary (for the rear portion of the development). As such, the rear portion of the development shall not be visually dominant in the streetscape when viewed from Queen Street. Furthermore, the proposal shall appear as a two (2) storey development as viewed from Coogee Bay Road which is not inconsistent with the existing streetscape which provides a mix of single and two (2) storey developments. Notwithstanding, to ensure a consistent streetscape presentation along Coogee Bay Road, it is recommended that the external wall height for the most eastern wall be at the same level as the adjoining property to the east at No. 72, as demonstrated in Figure 4 below.

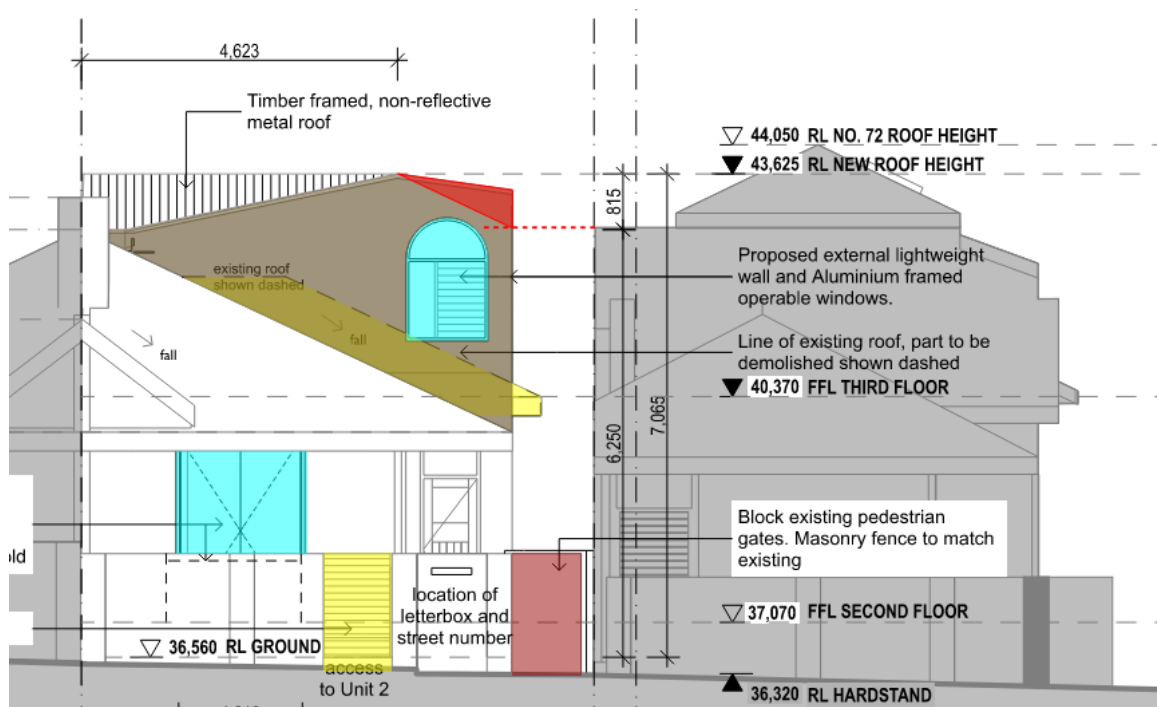


Figure 4 – Reduction to external wall height and associated roof amendments identified in red.

The reduction of the eastern external wall would require a minor amendment to the roof form, however internal ceiling heights of 2.46m would still be achieved at this portion, maintaining compliance with the BCA.

The adjoining development to the east at 72 Coogee Bay Road does not have any windows on the western side elevation adjacent to the proposed development, and the proposal shall be sited behind the rear building alignment of the neighbouring property. Additionally, the proposed development shall maintain the rear building alignment of the adjoining property to the west at No. 68 which shares a common party wall with the proposal. As such it is considered that there shall be

no unreasonable impacts upon the neighbouring dwellings in terms of overshadowing, view loss, privacy and visual amenity.

The proposed development seeks to utilise the existing built form, with the key component of the development being the new upper floor level. The Applicant has minimised the impact of the addition by setting the upper level behind the apex to the south, and providing a significant setback to the north, ensuring that the proposed top storey shall not be visually prominent as viewed from the public domain and streetscape. In this regard, it is considered that the form and massing of development does respect the topography of the site.

In view of the above, the proposal is considered to be consistent with the objectives of the control and can be supported in this instance, subject to the recommended amendments in relation to lowering the external wall height on the eastern elevation. As such, a condition of consent shall be imposed for the external wall height of the eastern wall of Bedrooms 2 and 3 be a maximum height of RL42.835.

10. Conclusion

That the application for alterations and addition to existing apartments, conversion of 3 x single level apartments to 2 level dual occupancy apartments with addition of level to upper level apartment.(Variation to FSR & Height) be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013
- The proposal is consistent with the specific objectives of the R3 zone in that the proposed activity and built form will provide for the housing needs of the community, will not be inconsistent with the existing streetscape and subject to the recommended conditions will not result in any unreasonable amenity impacts upon surrounding residents.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- The proposed development shall not result in any unreasonable impacts upon the residential amenity of the surrounding properties.

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Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineer

An application has been received for major alterations and additions at the above site to convert the existing 3 unit building, fronting Coogee Bay Road, into a duplex with 3 bedrooms for each of the 2 remaining units. The application also includes Strata Subdivision.

This report is based on the following plans and documentation:

- *Architectural Plans by Mary Ellen Hudson including draft Strata Plans and dated 26.07.2021;*
- *Statement of Environmental Effects by Two Trees & Co P/L dated July 2021;*
- *Detail & Level Survey by J B Stephen Surveying Services.*

Comments for Consideration by Planning Officer

The proposal seeks to remove the eastern side boundary stairs which provide access to the lower level of the building from Coogee Bay Rd. This proposal, if approved, will then provide the lower level unit (Unit 1) with sole access from the Queen Street frontage and the upper level unit (Unit 2) with sole access from Coogee Bay Rd. The Planning Officer is to consider that with Unit 1 (lower level unit) having sole frontage to Queen Street what address should be allocated to the Unit for postal deliveries, emergency services etc as access from Coogee Bay Rd is to be totally removed.

The site currently has a 2 car garage located at the rear of the site which has access from Queen Street. It is unclear how the parking spaces are currently allocated amongst the existing 3 units however the application proposes to allocate Unit 1 (lower level unit) the 2 car garage which seems acceptable in its proposed form.

Undergrounding of power lines to site

At the ordinary Council meeting on the 27th May 2014 it was resolved that;

Should a mains power distribution pole be located on the same side of the street and within 15m of the development site, the applicant must meet the full cost for Ausgrid to relocate the existing overhead power feed from the distribution pole in the street to the development site via an underground UGOH connection.

*The subject **is** located within 15m of a power pole on the same side of the street hence the above clause **is** applicable.*

It is noted that the proposed works are located towards the rear and there are no alterations or additions proposed at the front of the dwelling where the existing electricity supply connects. It is therefore considered a nexus cannot be established between the council resolution and the proposed works and subsequently the condition has not been recommended in this instance.

Landscape Comments

There are no existing trees, covered by Part B5 (Preservation of Trees and Vegetation) in Council's DCP 2013, that will be affected by this proposal.

Appendix 2: Applicant's written request seeking to justify the contravention of the development standard

Clause 4.6 Variation in relation to Clause 4.3 (Height of Buildings) and Clause 4.4 (Floor Space Ratio) of RLEP 2012



CLAUSE 4.6 VARIATION REQUEST

CLAUSE 4.1 HEIGHT OF BUILDINGS AND
CLAUSE 4.4 MAXIMUM FLOOR SPACE RATIO
RANDWICK LEP 2012

70 COOGEE BAY ROAD, COOGEE

PROPOSED ALTERATIONS AND ADDITIONS
AND CHANGE OF USE TO (ATTACHED)
DUAL OCCUPANCY

APRIL 2022

REVISED ARCHITECTURAL SCHEME

PREPARED BY

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1. INTRODUCTION

This variation request has been prepared to demonstrate that the proposed departure from the applicable height of buildings (HOB) and floor space ratio (FSR) can be supported by Council and the Local Planning Panel in accordance with Randwick Local Environmental Plan (RLEP) 2012 Clause 4.6 - Exceptions to Development Standards.

This clause 4.6 request should be read in conjunction with the Statement of Environmental Effects (SEE) and the architectural drawings that accompany the DA. Prepared by MEH Architects. The SEE contains details of the site and surrounds including a photographic context that illustrates the existing character of the locality and the recent local approvals that demonstrate desired future character of the locality.

In summary this clause 4.6 request for variation of the development standards demonstrates that, in these circumstances, there are sufficient environmental planning grounds to justify the proposed non compliance with the maximum permissible FSR and HOB as evidenced by the:

- Compliance of the proposed development with the objectives of the Zone, HOB and FSR standards which in turn demonstrates that the proposed development is in the public interest as detailed at Section 4.1;
- Compliance with the FSR and HOB standard is unnecessary in this instance because the proposed development meets the objectives of the standards and the Zone and consequently the intent of the standards are achieved regardless of the non-compliance. This is demonstrated by the consistency of the proposed additional height and floor space and resulting building envelope with the precedent building envelope at 68 Coogee Bay Road as illustrated in Figures 4-6 and as detailed at Section 4.1.2 and Section 4.2)
- The proposed development helps to achieve the stated objectives of the strategic planning framework in relation to provision of housing diversity, meeting the community housing need for larger multi-generational duplex style dwellings as detailed at Section 4.1.1;
- Compliance with the FSR and HOB standard is unreasonable in this instance because the cumulative impact of the non-compliance with the standards is acceptable as demonstrated in the analysis of recent local approvals at Section 4.2 and illustrated in Figure 7 and Figure 8 and Attachment A which lists the precedents for approval of the proposed HOB and FSR non-compliances in the R3 Zone;
- Achievement of the draft revised test for Clause 4.6, notwithstanding the HOB and FSR non-compliances, and providing better planning outcomes for the site and the locality as detailed in Section 5;
- The absence of any matters of State or regional significance, detailed at Section 6.

In light of contribution of the proposed development to the achievement of the Zone, HOB and FSR standard objectives and the State Government's stated objectives in relation to housing diversity, there would be no public benefit in maintaining the development standard.

On this basis it has been demonstrated that the proposed development will achieve better planning, environmental, social and economic outcomes if flexibility is provided with regard to the FSR and HOB standard in the particular circumstances of this case in which these variations are sought.

2. MATTERS TO BE CONSIDERED IN THIS CLAUSE

4.6 REQUEST

The objectives of Clause 4.6¹ of RLEP 2012 are:

- (a) To provide an appropriate degree of flexibility in applying certain development standards to particular development,
- (b) To achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The subject site is zoned R3 Medium Density Residential.

Pursuant to Clause 4.3 of RLEP 2012 the site is subject to a mapped permissible building height² of 12 metres.



Figure 1: Height of Buildings (Source: Randwick LEP 2012)

A variation of the maximum HOB development standard is proposed that equates to 1.64 m or 14 % variation of the maximum 12 metre standard as detailed in Table 1.

The site is subject to a mapped maximum floor space ratio of 0.9:1.



Figure 2: Floor Space Ratio Map (Source: Randwick LEP 2012)

The site area is 285.58m². The proposed development comprises a total GFA 277.17m², which constitutes an FSR of 0.97:1. This exceeds the development standard by 8.41 m², which equates to a non-compliance of 2.9% as detailed in Error! Reference source not found..

Where the variation of a development standard exceeds 10%, the DA must be determined by the Local Planning Panel. Clause 4.6 (2) provides that:

Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

It is noted that the FSR and HOB controls are not expressly excluded from the operation of this clause. The revised scheme reduces the FSR exceedance such that it is less than 10% and does not need to be approved by the LPP. Notwithstanding, this clause 4.6 request considers to the two variations together as the proposed scale and height of the building are integrated and designed to meet the highest standards of urban design.

This Clause 4.6 request is prepared in accordance with the specific requirements of Clause 4.6 (3) and Clause 4.6 (5) and therefore includes consideration of:

- Whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;
- Whether there are sufficient environmental planning grounds to justify contravening the development standard;
- Whether contravention of the development standard raises any matter of significance for State or regional environmental planning; and
- The public benefit of maintaining the development standard.

Clause 4.6 (4) provides that consent must not be granted for development that contravenes a development standard unless—

(a) The consent authority is satisfied that—

- (i) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
- (ii) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and

(b) The concurrence of the Planning Secretary has been obtained.

In accordance with planning circular PS 20-002 (5 May 2020) the Secretary's concurrence can be assumed where a decision is made by an Independent Hearing and Assessment Panel such as the Randwick Local Planning Panel where they are exercising the Council's functions as a consent authority in accordance with the relevant notice. Concurrence can only be assumed if the consent authority has first considered (in relation to a clause 4.6 request):

- Whether contravention of the development standard raises any matter of significance for state or regional environmental planning; and
- The public benefit of maintaining the development standard.

This request for variation of the standards has also been prepared with reference to *Varying development standards: A Guide* August 2011 published by the Department of Planning Infrastructure and Environment. This request considers the three relevant sections of the Wehbe 'five part test' (Wehbe v Pittwater Council (2007) 156 LGERA 446):

1. The objectives of the standard are achieved notwithstanding noncompliance with the standard;
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (not relevant in this instance);
4. The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;

The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone (not relevant in this instance).

This clause 4.6 request for variation of the HOB and FSR development standards demonstrates that, in the circumstances of this case, there are sufficient environmental planning grounds to justify the proposed non compliance with the maximum permissible FSR and HOB as evidenced by the:

- Compliance of the proposed development with the objectives of the Zone and, HOB and FSR standards which in turn itself demonstrates that the proposed development is in the public interest as detailed at Section 4.1;
- Consistency of the proposed additional height and floor space and resulting bulk and scale with the existing character of the locality and the desired future character of the locality, as demonstrated by the approval precedent within Coogee Bay Road and Queen Street (refer Figures 4 -6 and Sections 4.1.2 and 4.2)
- The ability of the proposed development to help achieve the stated objectives of the strategic planning framework in relation to provision of housing diversity meeting the communities housing need as detailed at Section 4.1.1;
- Lack of any adverse cumulative impact associated with the HOB and FSR non-compliance as demonstrated in the analysis of recent local approvals at Section 4.2;
- Consistency with the Council's historic application of the HOB and FSR standard within the R3 Zone and Clause 4.6 in the local area as illustrated in Figure 7 and Figure 8 and detailed in Attachment A which includes the precedent approvals in the R3 Zone;
- Achievement of the draft revised test for Clause 4.6, notwithstanding the HOB and FSR non-compliance and providing better planning outcomes for the site and the locality as detailed in Section 5;
- The absence of any matters of State or regional significance, detailed at Section 6.

On this basis, the proposed development will achieve positive planning, environmental, social and economic outcomes, if flexibility is provided with regard to the FSR and HOB standard in the particular circumstances of the case in which this variation sought.

3. THE SITE AND THE PROPOSED VARIATION

This clause 4.6 request accompanies a Development Application (DA) seeking consent for an attached dual occupancy development including partial demolition of the existing structure and construction of two attached dwellings in a duplex formation. This clause 4.6 request should be read in conjunction with the Statement of Environmental Effects (SEE) and the post exhibition architectural drawings that accompany the DA prepared by MEH Architects that illustrate:

- Partial demolition of the existing structure including internal walls and floors;
- Construction of two units including an addition at the upper third floor of the building:
 1. Unit 1 accessed at grade from the rear Queen Street frontage of the site and providing living areas oriented to the north at ground floor, with associated private open space, and three bedrooms and bathroom at the first floor. This unit takes advantage of the existing two-car garage with frontage to Queen Street. No modification of the garage is proposed;
 2. Unit 2 accessed at grade from Coogee Bay Road with living areas oriented to the north, with associated private open space at the second floor and three bedrooms and bathroom in a third floor addition.

Strata subdivision of the two units is also sought as part of this DA.

The proposed development is permissible with consent in the R3 Medium Density Zone and is generally consistent with the relevant development standards and planning controls including the relevant provisions of *Randwick Local Environmental Plan 2012* (RLEP) with the exception of an exceedance of the maximum permissible floor space ratio and height of buildings controls.

The Gross Floor Area¹⁸ (GFA) and associated Floor Space ratio¹⁹ (FSR) calculated in accordance with RLEP are detailed in Table 1 and Table 2 accordingly GFA excludes floor space identified for vertical circulation, mechanical plant and basement storage.

Table 1 Proposed Height of Building

	RL Roof	RL Ground	Max Height in Metres	Non Compliance	Non Compliance
Coogee Bay Road	43,280	36,560	6.72	N/A	N/A
Queen Street	43,625	30,190	13.44	1.44	11.96%
Revised Max HOB	43,625	29,990	13.64	1.64	13.63%

Amended plans were prepared in response to Council comments and public exhibition. The maximum height of the building did not change (RL43,625/13.64 m). However Council requested that the max HOB be calculated from 200 mm below the slab level at the basement floor rather than from the existing ground level. As a result the extent of the variation has increased by just 200 mm.

The variation request therefore relates to the proposed additional 1.64 m of height, which comprises a 14 % variation of the development standard.

The increase in the height of the proposed development is relatively modest when considered in the context of the very steep topography of the site, the existing development adjacent and the character of the locality

Table 2 Proposed Floor Space Ratio

Gross Floor Area	Existing (m ²)	Proposed (m ²)
Total	242.6	277.17
Total FSR	0.8:1	0.97:1
Non-Compliance		8.41 m ² 3%

The proposed development has been amended to reduce the additional floor space and now comprises just 8.41 square metres more than permitted by the FSR standard. The additional floor space at the upper level is designed as a lightweight modern addition of sympathetic character to the existing building. The proposed additional upper floor is a similar height, bulk and scale to the recent upper level addition to the building adjacent at 68 Coogee Bay Road.

The SEE also sets out the details of the site and surrounding environment including the nature of adjoining development and the surround residential area.

4. JUSTIFICATION FOR THE VARIATION

As held by the court in *Wehbe v Pittwater Council* [2007] NSWLEC827, development standards are not an end in themselves but a means of achieving environmental and planning objectives. Where the objectives of the development standard are achieved, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).

4.1 COMPLIANCE WITH THE DEVELOPMENT STANDARDS IS UNNECESSARY

Section 4.1.1 and 4.1.2 demonstrate that compliance with the FSR and HOB standard is unnecessary in this instance because the proposed development meets the objectives of the standards and the Zone and consequently the intent of the standards are achieved regardless of the non-compliance.

4.1.1 COMPLIANCE WITH THE OBJECTIVES OF THE R3 ZONE

The proposed development complies with the relevant objectives of the zone, which are to:

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day to day needs of residents.
- To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.
- To protect the amenity of residents.
- To encourage housing affordability;
- To enable small-scale business uses in existing commercial buildings.

These objectives require a response to community housing need that provides housing diversity and affordability, while respecting the built form character of the neighbourhood in which development is located. The manner in which the proposed development achieves these outcomes is addressed thematically following.

4.1.1.1 MEETING THE HOUSING NEEDS OF THE COMMUNITY

Council undertook a housing preference survey as part of the *Vision 2040 - Shaping Randwick's Future* community consultation. Of the 214 housing surveys "for those people who were thinking of moving in the next 5 years, the majority are likely or very likely to move to a freestanding house (57%) or a semi-detached/townhouse (56%). 41% would likely or very likely move to a small apartment block and 32% would likely or very likely move to a dual occupancy (duplex).

The majority of respondents (68%) are likely to stay in the Eastern Suburbs. These results mirror the research findings by the City Futures Research Centre (2013) on housing preferences

in Greater Sydney which showed that people generally prefer to remain within their local area, with 82 per cent of residents moving into a new home within 15 kilometres of their former residence.

The proposed development will meet the community's housing needs and contribute to the development of greater liveability in an LGA that is accessible, safe and healthy with quality public spaces and attractive neighbourhoods and centres. It will provide for the multi-generational housing needs of the existing owners and the local community through contribution of two 3-bedroom units which are under-represented in the local dwelling mix. This will allow two larger families to enjoy the benefits of living on the site.

The Randwick Local Housing Strategy (LHS) relies on analysis of Randwick City's housing and demographic conditions and documents private dwellings by number of bedrooms between 2006 and 2016 when 2 and 3 bedroom dwellings were the dominant dwelling type. Despite this dominance in the housing mix, the proportion of 3 bedroom dwellings (as a proportion of Randwick City's total dwellings) decreased during this time by 2.1%, while the number of 0-1 bed dwellings increased by 2.1% (1,700 dwellings).

In 2016 there was a lower proportion of 3 bedroom dwellings (24.9% compared to the average for Greater Sydney 32.1%). Concurrently there was a higher proportion of 0-1 and 2 bedroom dwellings in Randwick City when compared to the average for the region (13% compared to 7.8% and 36.4% compared to 23.7% respectively).

Accompanying this loss of larger dwellings with 3 -4 bedrooms are demographic change and housing affordability factors that mean that children and grandchildren are spending longer in the family home before they leave to create their own households. The proportion of population aged 65 and older is expected to increase, consistent with the ageing population trend occurring across Australia. However, for Randwick the projections also show a large increase in persons aged 5-14 and 15-24 (30% and 29% increases respectively). This means the demand for multi-generational housing will only increase.

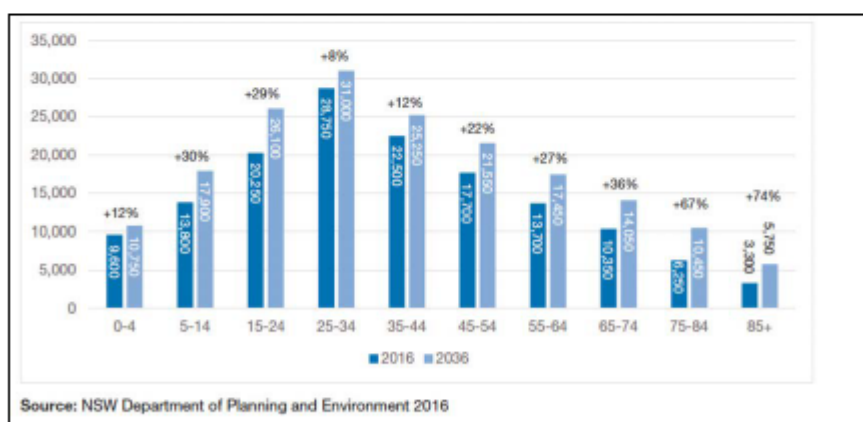


Figure 3 Projected population distribution by age 2016-2036 (Randwick Local Housing Strategy)

The proposed development caters to market need and stated desire of the strategic planning framework for a diversity of dwellings within the LGA. While intended to facilitate multi-generational family living for the building's owners, the proposed development responds to documented need for the replacement of lost larger dwellings in medium density format, making better and more efficient use of limited R3 land within the LGA. The LHS found that "a large part of the area zoned R3 Medium Density Residential is strata subdivided, limiting likely development outcomes." The proposed development represents a unique opportunity to redevelop an existing R3 site to achieve greater land-use efficiency that will be gained from the additional upper level and directly from the FSR and HOB variation.

4.1.1.2 PROTECTING AMENITY, THE STREETScape AND BUILT FORM

The proposed development – and particularly the upper floor addition that constitutes the HOB and FSR variation – has been designed to complement and conserve the appearance and character of the existing semi-detached building on Coogee Bay Road.

The proposed development responds to the challenge of 'Better Placed' the NSW Government Architects design guide to use design to achieve the aspiration we have for place. The proposed development uses design to creatively synthesise the existing built form with a modern addition and in doing so expresses deep understanding of design ideas, planning issues and people's housing need.

The bulk and scale of the proposed development is similar to the building envelope of the existing development adjacent at 68 Coogee Bay Road as demonstrated in Figure 4 and Figure 5.



Figure 4: The northern (rear) elevation of Queen Street showing the location of the proposed upper floor addition

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Figure 5: The northern (rear) elevations of the nearby flat building at 74 Coogee Bay Road and the adjacent flat building with modern upper level addition at 68 Coogee Bay Road. The proposed addition is of a similar height and scale as that existing at 68 Coogee Bay Road that sits behind a lower single storey garage

The proposed addition at 8.41 m² of floor space and 1.44 m of height are proposed to be located at the rear of the existing upper level. It will be minimally visible from Coogee Bay Road from the footpath outside the dwelling. From other parts of the public domain and from the residences across the street the existing street trees will screen views to the site comprehensively.

These views from the Coogee Bay Road footpath will be enhanced through the restoration and upgrade of the existing ground level façade and enhanced landscaping to the front setback. The rear upper level addition will be unobtrusive when viewed from the footpath outside the site, as it has been designed as a lightweight modern structure of high material quality. In this way also, the proposed addition will be readable as distinct from the existing semi-detached dwelling and will demonstrate architecturally the growth and change in the neighbourhood in a sympathetic and considered manner.

Views of the Queen Street façade of the building will be similarly limited. In this location this is due to the existing garage structures at the street boundary and the topography. Views towards the proposed addition will be available from some parts of the Queen Street footpath opposite the development and minimally from the front yards and carports of detached housing opposite.

While the scale and bulk of the proposed development is similar to that existing at no. 68, it will be differentiated from that addition through the use of simple, timeless, modern and lightweight detailing and materials contrasting with the existing traditional masonry finishes which are to be refurbished and enhanced.

Good design is characterised by the quality of spaces and places, their function, how they integrate, and what they contribute to the broader environment, their users, inhabitants and audiences. The proposed development will contribute to the built environment through good design and enhanced views towards the site from the public domain on Queen Street. Together with significant landscaping, the proposed development will present as lush green terraces that will soften the built form and connect the viewer and resident with nature.

Importantly this design quality means that the terraced and staggered setbacks will not give rise to opportunities for overlooking and privacy concerns for neighbours or the proposed lower unit within the site. Similarly the proposed development will not give rise to overshadowing impacts and demonstrated in the SEE and shadow diagrams that accompany this Clause 4.6 request.

Overall, the proposed addition will complement and match the existing traditional semi-detached RFB built form – with restored and upgraded front elevation, plain face brick side elevation and terraced staggered and setback landscaped rear elevation – that will help maintain consistency within the existing streetscapes, and result in a built form that is sympathetic to the character of the existing building and the local area and protects the amenity of residents adjacent and within the site itself. In this way the proposed development recognises the desirable elements of the existing streetscape and built form and provides an integrated and sympathetic modern addition that contributes to the desired future character of the area.

4.1.2 COMPLIANCE WITH THE OBJECTIVES OF THE STANDARDS

Numerical standards are often a crude reflection of intent. Development may achieve the underlying purpose of a standard even though it does not strictly comply with the numerical control. It is widely recognised that such variations can be numerically small or large. The proposed development complies with the objectives of the FSR and HOB standards and these are assessed thematically following.

The objectives of clause 4.1 in relation to HOB are:

- (a) to ensure that the size and scale of development is compatible with the desired future character of the locality,*
- (b) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,*
- (c) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.*

The objectives of clause 4.4 in relation to FSR are:

- (a) to ensure that the size and scale of development is compatible with the desired future character of the locality,*
- (b) to ensure that buildings are well articulated and respond to environmental and energy needs,*
- (c) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,*

(d) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.

4.1.2.1 BULK AND SCALE

The desired future character is established by the recent residential development of a similar type in the surrounding streets. The approval at 68 Coogee Bay Road ([DA/610/2015](#)) sets the relevant bulk and scale precedent in the neighbourhood which establishes the desired future character of this unusual group of semi-detached RFBs on the cliff face in this location (refer Figure 4 and Figure 5). The proposed maximum height is 400 mm less than the max RL of the adjacent property at RL44,050.

The approval at 5/80 Queen Street ([DA/327/2014](#)) sets the precedent for a high design quality modern addition that is distinct from the existing built form in materiality and appearance as illustrated in Figure 6.



Figure 6: The approved modern rooftop addition to apartment 5 at 80 Coogee Bay Road (DA/327/2014 determined 28 October 2014)

As illustrated in the architectural plans - but with significant differences and improvements in design quality and detailing as detailed above (at Section 3.1) - the bulk and scale of the development proposed is consistent with that previously approved at No. 68. The maximum HOB reached will be marginally less and the bulk of the addition at both the Coogee Bay Road and Queen Street frontages will be similar. On this basis the proposed bulk and scale is demonstrated to be acceptable within the streetscape.

Despite this there are important differences in the design resolution of the proposed development from these precedents. MEH Architects have delivered a vision for the site that is more integrated with the existing dwelling, more recessive within the streetscape and more reliant on landscaping to achieve visual identity and interest than either of the nearby recent approvals. In this way it builds on the desired future character and increases aspirations and expectations for good design.

In this manner the proposed development responds to the planning framework for Randwick and can directly contribute to the achievement of Vision 2040 (LSPS) Planning Priority 3, which is "to encourage development that responds to the local character and desired future character of our neighbourhoods."

The SEE that accompanies this C14.6 request demonstrates conclusively that there will be no adverse overshadowing impact as a result of the proposed variation to the HOB and FSR standards.

On this basis the proposed development, and specifically the variation to the HOB and FSR standards, is demonstrated to be consistent with the objective that requires that development be compatible with the desired future character of the locality and respectful of the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.

4.1.2.2 HERITAGE

Randwick residents aspire to tree-lined, green, low density/suburban, liveable, peaceful, safe, heritage, unique, relaxed and accessible neighbourhoods. On this basis the LSPS provides the strategic framework for land use planning and decision making over the next 20 years. It identifies the vision for Randwick:

In 2040 Randwick City will continue to have a strong sense of community. Our culturally diverse community will have access to quality housing, beautiful open spaces and our unique coastline.

The site is not located within a Conservation Area and is not a Heritage Item. It is located in close proximity to several locally listed heritage items as illustrated in Figure 6 of the SEE.

The proposed development will refurbish and restore the Coogee Bay road semi-detached frontage of the subject site and will thus conserve and enhance its contributions to the streetscape in this location. Minor modification of the existing front widow is proposed to install French doors that will better connect the internal living areas with the exterior private open space. This will not have any adverse impact on the appearance of the subject site and will not have any impact on the significance of nearby heritage items.

The existing row of semi-detached RFBs at 62-74 Coogee Bay Road are not identified as contributory buildings. However they have an aesthetic consistency that is enhanced by the consistent street tree planting adjacent.

As demonstrated in detail at Section 3.1 the proposed development will not adversely impact any views towards the site from the public domain and any (minor) contribution that the site makes to the setting of nearby heritage items will be unaffected by the proposed development. The scale and character of the site within the local context will remain appropriate and acceptable notwithstanding the proposed variation to the development standards.

4.1.2.3 ENVIRONMENTAL AND ARCHITECTURAL PERFORMANCE

The environmental capacity of the land and the Precinct can be determined by investigation of the proposed development's potential to cause adverse environmental or amenity impacts on:

- Adjoining development;
- The wider neighbourhood.

Such an assessment has been carried out in the SEE that demonstrates that the proposed development is of an acceptable intensity given the environmental capacity of both the land at 70 Coogee Bay road and the broader neighbourhood. This is described briefly following (and detailed in the attached SEE).

The upper floor addition is designed to ensure that it will not give rise to privacy or overlooking concerns for adjoining development or the lower unit proposed within the site itself. The shadow diagrams contained in the architectural plans and the overshadowing impacts described in the SEE are acceptable and, in fact, the proposed development including the upper floor addition will result in shadow conditions that are minimally different to those existing on adjacent development at present (refer Attachment A – DCP Compliance Table in the SEE).

The proposed development incorporates measures to reduce resource consumption, and particularly to reduce fossil fuel consumption through the inclusion of rainwater tanks, water efficient tap hardware and garden tap fittings, solar panels and low energy/high efficiency lighting which will directly contribute to lower carbon consumption and a more sustainable development. The upper floor addition that constitutes the vast majority of the proposed FSR and HOB variation will adopt these measures of ecologically sustainable design.

There is no change proposed to the existing parking conditions on site. Unit 1 will have exclusive access to the ground level garage, while Unit 2 will not have on-site parking. At present two units in the existing development rely solely on public transport, walking and cycling, which in this location is regular and reliable and achieves the 30-minute city conditions on both weekdays and weekends.

On this basis the proposed FSR and HOB variation does not exceed the environmental capacity of the site and surrounding neighbourhood. The ability of the proposed development to protect the amenity of existing and future residents of the site and surrounds is demonstrated by the absence of adverse impacts including overlooking, privacy or solar access.

The proposed development incorporating the additional GFA is designed holistically to function within the environmental and amenity capacity of the site and surrounds. The proposed development is thus demonstrated to be sympathetically designed and articulated and responsive to environmental and energy needs.

4.2 COMPLIANCE WITH THE FSR DEVELOPMENT STANDARD IS UNREASONABLE

Section 4.2.1 demonstrates that compliance with the FSR and HOB standard is unreasonable in this instance because the cumulative impact of the non-compliance with the standards is acceptable.

4.2.1 THE CUMULATIVE EFFECT OF VARIATIONS TO THE STANDARD

The following analysis of recent approvals in the LGA demonstrates that compliance with the standards is unreasonable in this instance (i.e. no purpose would be served). This is because Council has established a precedent for approvals of this nature, through the granting of consent to other development that contravenes the FSR HOB standard within the local area. Recent similar approvals are illustrated in Figure 7 and detailed in Attachment A.

These similar approvals demonstrate the significant pent up demand for residential accommodation across greater Sydney and the constrained nature of residential land in Randwick, and Coogee specifically. This is acknowledged in the local and State strategic planning framework. In particular, the Randwick LSPS acknowledges the need to cater to significant additional demand for housing and the need for the supply of a diversity of such housing, particularly through development of housing that forms the 'missing middle' such as the proposed development. In this regard Section 3.1. above details the need for 3- bedroom dwellings to make up for recent losses in such and the likely growth in demand for accommodation such as proposed that is suitable for multi-generational living to address housing affordability and supply issues.

The recent similar approvals documented herein and the proposed development increases the efficiency with which the site and the neighbourhood itself can be utilised. Council has approved a range of similar FSR and HOB non-compliances in the R3 zone as illustrated in Figure 7 These include a number of HOB variations of a similar scale to that proposed and in the order of 10 – 55% herein including HOB variations 10 – 55% and a FSR variations in the order of 10 – 68%. These are detailed in Attachment A.



Figure 7: Development Approvals in the locality with HOB Exceedance (source: Randwick c4.6 register)

CLAUSE 4.6 REQUEST FOR VARIATION OF THE HOB STANDARD – 70 COOGEE BAY ROAD RANDWICK

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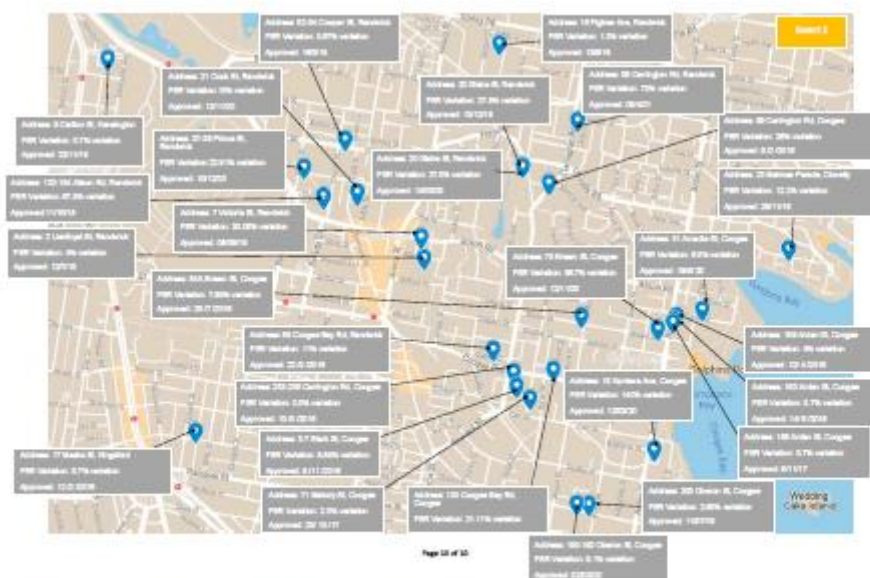


Figure 8: Development Approvals in the locality with FSR Exceedance (source: Randwick c4.6 register)

CLAUSE 4.6 REQUEST FOR VARIATION OF THE HOB STANDARD – 70 COOGEE BAY ROAD RANDWICK

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The cumulative effect of the similar approvals granted in the locality has not been and will not be to undermine the objectives of the development standard or the planning objectives for the zone.

This is because, the scarcity of developable R3 land in Randwick LGA and the Eastern City District is such that greater efficiency of land use through increased building envelopes, bulk and scale of development will be required to meet housing diversity needs into the future.

5. DRAFT REVISED TEST FOR VARIATION OF CLAUSE 4.6

The NSW Government is proposing changes to clause 4.6 of the Standard Instrument LEP in order to clarify the requirements for varying development standards, and improve transparency and accountability in the planning system.

The draft "revised test" will a variation to development standards to demonstrate that the proposed development will result in an "improved planning outcome", when compared with what would have been achieved if the development standard was not contravened, by consideration of the public interest and environmental, social and economic outcomes.

This proposed development, and specifically the departure from the FSR and HOB standard requested to permit additional floor space on the subject site will provide for an improved local and regional planning outcomes by:

- Facilitating development for an 3 bedroom dwellings that respond to the local loss in this elements of the dwelling mix;
- Providing opportunities for multi-generational living in 'missing middle' accommodation;
- Supporting the viability and sustainability of the R3 zone in Randwick and providing for the efficient use of finite infrastructure and resources by more efficient use of land.

On this basis it can be concluded that the FSR and HOB exceedance sought in this instance will improve planning outcomes for the site, the R3 Zone , the LGA and the Eastern City District more broadly by supporting, managing and sustaining the viability and efficiency of finite urban services land.

6. ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL PLANNING, OR THE PUBLIC INTEREST

Contravention of the FSR and HOB standards will, in this instance, support the State and regional objectives of delivering housing diversity. It will, in fact directly contribute to the increased efficiency of land use and development within this finite resource which are definitive objectives of both Council's LSPS and Local Housing Strategy.

Clause 4.6 provides flexibility in the application of development standards in circumstances where strict compliance with those standards would, in any particular case:

- *Be unreasonable or unnecessary; or*
- *Tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.*

The objects specified Section 1.3 Objects of Act (cf previous s 5) are 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,*
- (ii) The promotion and co-ordination of the orderly and economic use and development of land,*

Strict compliance with the development standard may hinder achievement of the objects of the Act, particularly the promotion of a better environment, social and economic welfare of the community and the promotion of orderly and economic use and development of the land. The proposal represents an innovative land use best located in an R3 Zone. It aims meet existing and growing consumer demand for the multi-generational housing.

Strict compliance with the development standards would restrict the ability of the proposal from achieving its objectives with the associated loss of social and economic benefits that would accrue from the development. Strict compliance would also result in flow on economic impacts related to limitations on housing supply and diversity.

The granting of consent to the development as proposed would therefore, in this case, be consistent with the objectives of Clause 4.6 providing for flexibility in these circumstances in which strict compliance with the FSR and HOB standards has been demonstrated to be unreasonable and unnecessary as well as having potential to be contrary to the attainment of the objects of the Act.

The proposed development will not give rise to any other matter of State or regional significance.

Council can be satisfied that the proposed development is in the public interest because the proposed development is not antipathetic to the objectives of the Zone, HOB and FSR standards as detailed in Section 4.1.

In light of contribution of the proposed development to the achievement of the Zone and HOB and FSR standard objectives and the State Government's stated objectives in relation to housing diversity, there would be no public benefit in maintaining the development standard.

7. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

This clause 4.6 request demonstrates that there are sufficient environmental planning grounds to justify contravening the RLEP 2012 HOB and FSR standards in this instance. This is demonstrated by the:

- Compliance of the proposed development with the objectives of the Zone and HOB and FSR standards which in turn demonstrates that the proposed development is in the public interest as detailed at Section 4.1;
- Consistency of the proposed additional height and floor space and resulting bulk and scale with the existing character of the locality and the desired future character of the locality, as demonstrated by the approval precedent within Coogee Bay Road and Queen Street (refer Figures 4 – 6 and as detailed at Section 4.1.2 and Section 4.2)
- The ability of the proposed development to help achieve the stated objectives of the strategic planning framework in relation to provision of housing diversity meeting the communities housing need as detailed at Section 4.1.1;
- Lack of any adverse cumulative impact associated with the HOB and FSR non-compliance as demonstrated in the analysis of recent local approvals at Section 4.2;
- Consistency with the Council's historic application of the HOB and FSR standard within the R3 Zone and Clause 4.6 in the local area as illustrated in Figure 7 and detailed in Attachment A which details the existing precedents for approval of the proposed HOB and FSR non-compliances in the R3 Zone;
- Achievement of the draft revised test for Clause 4.6, notwithstanding the HOB and FSR non-compliance and providing better planning outcomes for the site and the locality as detailed in Section 5 ;
- The absence of any matters of State or regional significance, detailed at Section 6.

On this basis it can be concluded that the proposed development will achieve better planning, environmental, social and economic outcomes if flexibility is provided with regard to the FSR and HOB standard in the particular circumstances of this case in which these variations are sought.

ATTACHMENT A – EXCERPTS FROM RANDWICK CLAUSE 4.6 REGISTER

CLAUSE 4.6 REQUEST FOR VARIATION OF THE HOB STANDARD – 70 COOGEE BAY ROAD RANDWICK

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HOB VARIATIONS



CLAUSE 4.6 REQUEST FOR VARIATION OF THE HOB STANDARD – 70 COOGEE BAY ROAD RANDWICK

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HOB VARIATIONS

DA Number	Lot number	DP Number	Unit number	Street number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consenting authority	Date DA determined ddmmyyyy	Approved by
DA139/2020	26	6284		34	Beach St	Coogee	2034	4: Residential - New multi-unit > 20 dwellings	RLEP 2012	R3 - Medium Density	Clause 4.3 - Building height of 9.5m	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Building height is up to 10.24m or up to 9.37%	NSW Dept of Planning	07-May-21	DA1
DA Number	Lot number	DP Number	Unit number	Street number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consenting authority	Date DA determined ddmmyyyy	Approved by
DA196/2020	130	1198703		133	Carlingford Rd	Coogee	2034	1: Residential - Alterations & additions	RLEP 2012	R3 - Medium Density	Clause 4.3 - Building height of 12m	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Building height is up to 12.7m or up to 5.03%	NSW Dept of Planning	04-May-21	DA1
DA Number	Lot number	DP Number	Unit number	Street number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consenting authority	Date DA determined ddmmyyyy	Approved by
DA539/2020	1	1043747		5	St Luke St	Randwick	2031	1: Residential - Alterations & additions	RLEP 2012	R3 - Medium Density	Clause 4.3 - Building height of 9.5m	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Building height is up to 9.8m or up to 4.7%	NSW Dept of Planning	18-Mar-21	DA1
DA Number	Lot number	DP Number	Unit number	Street number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consenting authority	Date DA determined ddmmyyyy	Approved by
8	15536		101				2034		RLEP 2012			Maintains compatible scale with			10-Dec-20	SLPP

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DA857/2019					Mount St	COOGEE		1: Residential - Alterations & additions		R3 - Medium Density	Clause 4.3 - Building height of 12m	neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Building height is up to 12.8m or up to 5%	NSW Dept of Planning		
DA Number	Lot number	DP Number	Unit number	Street number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consenting authority	Date DA determined ddmmyyyy	Approved by
DA882/2020	8	307923		78	Bream St	COOGEE	2034	1: Residential - Alterations & additions	RLEP 2012	R3 - Medium Density	Clause 4.3 - Building height of 12m	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Building height is 17.195 (reduction) or up to 52.2% Existing = 18.265m	NSW Dept of Planning	12-Nov-20	RLPP
DA402/2020	1	522522		21	Cook Street	RANDWICK	2031	5: Residential - New multi-unit 20+ dwellings	RLEP 2012	R3 - Medium Density	Clause 4.3 - Building height of 12m	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Building height is 12.72m or 6%	NSW Dept of Planning	12-Nov-20	RLPP
DA844/2019	10	41884		18	Kumaw Ave	COOGEE	2034	1: Residential - Alterations & additions	RLEP 2012	R3 - Medium Density	Clause 4.3 - Building height of 12m	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of	Building height is 12.16m or up to 1.3%	NSW Dept of Planning	12-Mar-20	RLPP

CLAUSE 4.6 REQUEST FOR VARIATION OF THE HOB STANDARD – 70 COOGEE BAY ROAD RANDWICK

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HOB																
												overshadowing, privacy and views.				
DA Number	Lot number	DP Number	Unit number	Street number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consenting authority	Date DA determined dd/mm/yyyy	Approved by
DA/138/2019	7	5174		190-192	Oberon Street	COOGEE	2034	4. Residential - New multi unit < 20 dwellings	RLEP 2012	RS - Medium Density Residential	Clause 4.3 - Building height of 12m	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Building height is 12.24m or up to 2%	NSW Dept of Planning	02-Mar-20	RLPP
DA Number	Lot number	DP Number	Unit number	Street number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consenting authority	Date DA determined dd/mm/yyyy	Approved by
DA/201/2019	1	1058227		34	Hooper Street,	RANDWICK	2031	1. Residential - Alterations & additions	RLEP 2012	RS - Medium Density Residential	Clause 4.3 - Building height of 9.5m	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Building height is up to 10.02m increased by 520mm or up to 5.5%	NSW Dept of Planning	21-Nov-19	DEL
DA Number	Lot number	DP Number	Unit number	Street number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consenting authority	Date DA determined dd/mm/yyyy	Approved by
DA/536/2018	3	5450777		48	Dudley Street	Coogee	2034	4. Residential - New multi unit < 20 dwellings	RLEP 2012	RS - Medium Density Residential	Clause 4.3 - Building height of 12m	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Building height is up to 12.775m increased by 775mm or up to 6.4%	NSW Dept of Planning	9 May 2019	RLPP

CLAUSE 4.6 REQUEST FOR VARIATION OF THE HOB STANDARD – 70 COOGEE BAY ROAD RANDWICK

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DA Number	Lot number	DP Number	Unit number	Street number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Concurrent authority	Date DA determined dd/mm/yyyy	Approved by
DA/458/2017	45	9644		1-3	Marcel Ave	COOGEE	2034	4. Residential - New multi unit < 20 dwellings	RLEP 2012	RS - Medium Density Residential	Clause 4.3 - Building height of 9.5m	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Building height is up to 11.4m increased by 1.9m or up to 20%	NSW Dept of Planning	3 May 2019	RLPP
DA/553/2017	8	28464		8	Clyde Street	RANDWICK	2031	4. Residential - New multi unit < 20 dwellings	RLEP 2012	RS - Medium Density Residential	Clause 4.3 - Building height of 9.5m	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Building height is 11.3m increased by 1.8m or up to 18.9%	NSW Dept of Planning	13-Sep-18	RLPP
DA/636/2017	9	13888		10	Daintrey Crescent	RANDWICK	2031	1. Residential - Alterations & additions	RLEP 2012	RS - Medium Density Residential	Clause 4.3 - Building height of 12m	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Building height is 12.52m increased by 0.52m or up to 4.3%	NSW Dept of Planning	13-Sep-18	RLPP
DA/352/018	1	1220845		137			2034		RLEP 2012		Clause 4.3 - Building	Maintains compatible scale with			10-May-18	RDAP

CLAUSE 4.6 REQUEST FOR VARIATION OF THE HOB STANDARD – 70 COOGEE BAY ROAD RANDWICK

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					Cerrington Road	COOGEE		1: Residential - Alterations & additions		R3 - Medium Density Residential	height of 12m	neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Building height is 15m increased by 3m or 25%	NSW Dept of Planning		
DA Number	Lot number	DP Number	Unit number	Street number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consenting authority	Date DA determined dd/mm/yyyy	Approved by
DA/162/2018	2			2	Abbey Street	RANDWICK	2031	1: Residential - Alterations & additions	RLEP 2012	R3 - Medium Density Residential	Clause 4.3 - Building height of 9.5m	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Building height is 10.42m increased by 920mm or 9.88%	NSW Dept of Planning	22-Jun-18	DEL
DA Number	Lot number	DP Number	Unit number	Street number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consenting authority	Date DA determined dd/mm/yyyy	Approved by
DA/134/2018	1	554799		90	Perouse Road	RANDWICK	2031	1: Residential - Alterations & additions	RLEP 2012	R3 - Medium Density Residential	Clause 4.3 - Building height of 9.5m	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Building height is 9.650m increased by 150mm or 1.6%	NSW Dept of Planning	04-Jul-18	DEL
DA Number	Lot number	DP Number	Unit number	Street number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consenting authority	Date DA determined dd/mm/yyyy	Approved by
DA/478/2017	8	581831		37	St Marks Road	RANDWICK	2031	1: Residential - Alterations & additions	RLEP 2012	R3 - Medium Density Residential	Clause 4.3 - Building height of 9.5m	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Building height is 10.257m increased by 757mm or 7.98%	NSW Dept of Planning	02-Jan-18	Del

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HOB																
												overshadowing, privacy and views.				
DA Number	Lot number	DP Number	Unit number	Street number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consenting authority	Date DA determined dd/mm/yyyy	Approved by
DA/489/2018	1	129513		31	Middle Street	Kingsford	2032	7: Residential - Other	RLEP 2012	R3 - Medium Density Residential	Clause 4.3 - Building height of 9.5m	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Building height is 10.1m increased by 600mm or 6.3%	NSW Dept of Planning	18-Aug-17	DEL
DA Number	Lot number	DP Number	Unit number	Street number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consenting authority	Date DA determined dd/mm/yyyy	Approved by
DA/555/2018	E	962552		1	Coogee Street	RANDWICK	2031	4: Residential - New multi unit < 20 dwellings	RLEP 2012	R3 - Medium Density Residential	Clause 4.3 - Building height of 9.5m	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Building height on the Southern elevation of the pergola roof 9.98m (at south western) - 10.535m (at south eastern) or South western corner: 5.05% South eastern corner: 10.89%	NSW Dept of Planning	11/07/2017	PCM

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DA Number	Lot number	DP Number	Unit number	Street number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Concurring authority	Date DA determined d/m/yyyy	Approved by
DA167/2015	Lot 2 & Lot 1	1088669 & 1088669		4	Heptun Street	COOGEE	2034	4. Residential - New multi-unit < 20 dwellings	RLEP 2012	R3 - Medium Density Residential	Clause 4.3 - Building height of 9.5m	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Height - eastern elevation 11.035m or 16.15% (rear) western elevation 2.57% (rear)	NSW Dept of Planning	08-Nov-16	PCM
DA551/2015	12	2349		20	Moore Street	COOGEE	2034	1. Residential - Alterations & additions	RLEP 2012	R3 - Medium Density Residential	Clause 4.3 - Building height of 9.5m	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Height 10.42m increased by 920mm or 9.6%.	NSW Dept of Planning	13-Sep-16	PCM
DA247/2016	COR LOT 1	311535		17	Meeks Street,	KINGSFORD	2032	1. Residential - Alterations & additions	RLEP 2012	R3 - Medium Density Residential	Clause 4.3 - Building height of 12m	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Height 12.16m increased by 160mm or 1.3%.	NSW Dept of Planning	26-Aug-16	Delegate authority

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DA267/2016	8	108445 SUBJ TO ROW & VARIATIONS		15	Oswald Street	RANDWICK	2031	1. Residential - Alterations & additions	RLEP 2012	R3 - Medium Density Residential	Clause 4.3 - Building height of 9.5m	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Height 9.78m increased by 280mm or 3%.	NSW Dept of Planning	26-Jul-16	Delegate authority
DA333/2015	3	320320		29	Dolphin Street	RANDWICK	2031	1. Residential - Alterations & additions	RLEP 2012	R3 - Medium Density Residential	Clause 4.3 - Building height of 9.5m.	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views. Site is steeply sloping.	Height 12.46m - exceeds by 2.7m or 28.42% (Steeply sloping site).	NSW Dept of Planning	26-Jul-16	OCM
DA903/2015	b	316889		6	Dudley Street,	RANDWICK	2031	1. Residential - Alterations & additions	RLEP 2012	R3 - Medium Density Residential	Clause 4.3 - Building height of 9.5m	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Height 10.2m increased by 700mm or 7.4%.	NSW Dept of Planning	11-May-16	Delegate Authority
		116730										Maintains compatible				

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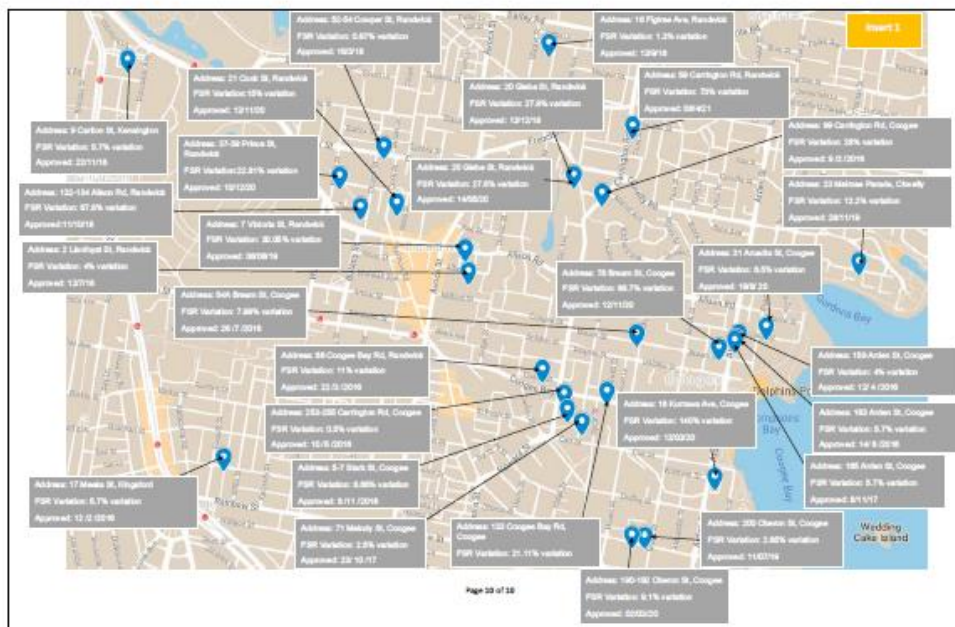
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DA/23/2016	2	1 SUBJ TO CROSS EA		164A	Brook Street	COOGEE	2034	1: Residential - Alterations & additions	RLEP 2012	R3 - Medium Density Residential	Clause 4.3 - Building height of 12m	scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Height 12.10m increased by 190mm or 1.6%.	NSW Dept of Planning	22-Mar-16	Delegate of Authority
DA Number	Lot number	DP Number	Unit number	Street number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Concurring authority	Date DA determined	Approved by
DA/432/016	2	1050760 (BEING LOTS 1-50 IN SP 70445) SUBJECT TO VARIOUS EASEMENTS & ROW	A402	106	Brook Street	COOGEE	2034	1: Residential - Alterations & additions	RLEP 2012	R3 - Medium Density Residential	Clause 4.3 - Building height of 12m	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Building height is 16.167m (4m over height limit) or 35% excess	NSW Dept of Planning	08-Mar-16	PCM

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FSR VARIATIONS



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DA Number	Lot number	DP Number	Unit number	Street Number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consenting authority	Date DA determined dd/mm/yyyy	Approved by
DA952/2020	8	437406		59	Campton Rd	RANDWICK	2031	1: Residential - Alterations & additions	RLEP 2012	R3 - Medium Density	Clause 4.4 - FSR = 0.5:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	FSR increased to 0.87 or 75%	NSW Dept of Planning	08-Apr-21	RLPP
DA Number	Lot number	DP Number	Unit number	Street Number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consenting authority	Date DA determined dd/mm/yyyy	Approved by
DA442/2020	2	10161		37-39	Prince Street	RANDWICK	2031	1: Residential - Alterations & additions	RLEP 2012	R3 - Medium Density	Clause 4.4 - FSR = 0.5:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	FSR increased to 1.13:1 or 86.7%; Existing = 1.03:1	NSW Dept of Planning	10-Dec-20	RLPP
DA Number	Lot number	DP Number	Unit number	Street Number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consenting authority	Date DA determined dd/mm/yyyy	Approved by
DA69/2020	8	307923		78	Bream St	COOGEE	2034	1: Residential - Alterations & additions	RLEP 2012	R3 - Medium Density	Clause 4.4 - FSR = 0.5:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	FSR increased to 1.89:1 or 86.7%; Existing = 1.58:1	NSW Dept of Planning	12-Nov-20	RLPP
DA Number	Lot number	DP Number	Unit number	Street Number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consenting authority	Date DA determined dd/mm/yyyy	Approved by
DA402/2020	1	502522		21	Cook Street	RANDWICK	2031	5: Residential - New multi unit <20 dwellings	RLEP 2012	R3 - Medium Density	Clause 4.4 - FSR = 0.5:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	FSR decreased to 1.03:1 or 15%; Existing = 1.24:1	NSW Dept of Planning	12-Nov-20	RLPP

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DA Number	Lot number	DP Number	Unit number	Street Number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consenting authority	Date DA determined dd/mm/yyyy	Approved by
DA274/2020	1	121560		31	Arcadia St	COOGEE	2034	1: Residential - Alterations & additions	RLEP 2012	R3 - Medium Density	Clause 4.4 - FSR = 0.5:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	FSR increased to 0.95:1 or 5.5%	NSW Dept of Planning	19-Aug-20	DEL
DA Number	Lot number	DP Number	Unit number	Street Number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consenting authority	Date DA determined dd/mm/yyyy	Approved by
DA619/2019	13	95170	13	20	Glebe St	RANDWICK	2031	1: Residential - Alterations & additions	RLEP 2012	R3 - Medium Density	Clause 4.4 - FSR = 0.5:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Existing FSR 1.15:1 decreased to 1.144:1 or 1.3% Reduction (27.5% over)	NSW Dept of Planning	14-May-20	RLPP
DA Number	Lot number	DP Number	Unit number	Street Number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consenting authority	Date DA determined dd/mm/yyyy	Approved by
DA644/2019	10	41884		18	Kumera Ave	COOGEE	2034	1: Residential - Alterations & additions	RLEP 2012	R3 - Medium Density	Clause 4.4 - FSR = 0.5:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	FSR increased to 2.2:1 or 140%	NSW Dept of Planning	12-Mex-20	RLPP
DA Number	Lot number	DP Number	Unit number	Street Number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consenting authority	Date DA determined dd/mm/yyyy	Approved by
DA139/2019	7	5174		190-192	Oberon Street	COOGEE	2034	4: Residential - New multi unit <20 dwellings	RLEP 2012	R3 - Medium Density	Clause 4.4 - FSR = 0.5:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	FSR increased to 0.89:1 or 8.1%	NSW Dept of Planning	02-Mex-20	RLPP

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DA Number	Lot number	DP Number	Unit number	Street Number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consenting authority	Date DA determined ddmmyyyy	Approved by
DA162/2019	5	1303		23	Melrose Parade	CLOVELLY	2031	1: Residential - Alterations & additions	RLEP 2012	RC - Medium Density Residential	Clause 4.4 - FSR = 0.9:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	FSR increased to 1.01:1 or 12.2%	NSW Dept of Planning	26-Nov-19	RLPP
DA169/2019	5	87099	5	7	Victoria Street	RANDWICK	2031	1: Residential - Alterations & additions	RLEP 2012	RC - Medium Density Residential	Clause 4.4 - FSR = 0.9:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Existing FSR is 1.14:1 or 26.7% over. Proposed FSR is 1.18:1 or 30.05%	NSW Dept of Planning	08-Aug-19	RLPP
DA140/2018	A	34366		200	Oberon Street	COOGEE	2034	4: Residential - New multi unit < 20 dwellings	RLEP 2012	RC - Medium Density Residential	Clause 4.4 - FSR = 0.9:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	FSR increased to 0.916:1 or 2.05%	NSW Dept of Planning	11-Jul-19	RLPP
DA14/2018	14	95170	14	20	Globe Street	Randwick	2031	1: Residential - Alterations & additions	RLEP 2012	RC - Medium Density Residential	Clause 4.4 - FSR = 0.9:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Existing FSR 1.150:1 or 25.0% over. Proposed FSR 1.151:1 or 27.0% (reduction 0.9%)	NSW Dept of Planning	13-Dec-18	RLPP

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DA Number	Lot number	DP Number	Unit number	Street Number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consenting authority	Date DA determined ddmmyyyy	Approved by
DA52/2018	7	78879		9	Carlton Street	Kensington	2033	1: Residential - Alterations & additions	RLEP 2012	RC - Medium Density Residential	Clause 4.4 - FSR = 0.9:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	FSR increased to 0.95:1 or 5.7%	NSW Dept of Planning	22-Nov-18	RLPP
DA517/2017	20	1211937		132-134	Alison Road	Randwick	2031	1: Residential - Alterations & additions	RLEP 2012	RC - Medium Density Residential	Clause 4.4 - FSR = 0.9:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	FSR existing 1.5:1 increased to 1.51:1 (0.9:1 is the standard); increase of 0.61 or 57.5%	NSW Dept of Planning	11-Oct-18	RLPP
DA756/2017	26	3026		16	Fitzroy Avenue	Randwick	2031	1: Residential - Alterations & additions	RLEP 2012	RC - Medium Density Residential	Clause 4.4 - FSR = 0.75:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	FSR increased to 0.76:1 or 1.3%	NSW Dept of Planning	13-Sep-18	RLPP
DA Number	Lot number	DP Number	Unit number	Street Number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consenting authority	Date DA determined ddmmyyyy	Approved by

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DA/7252017	2	13010	2	Lienfoyl Street	RANDWICK	2031	4 Residential - New multi unit + 20 dwellings	RLEP 2012	R3 - Medium Density Residential	Clause 4.4 - FSR = 0.75:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	FSR increased to 0.75 or 4%	NSW Dept of Planning	12-Jul-18	RLPP	
DA Number	Lot number	DP Number	Unit number	Street Number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Concurring authority	Date DA determined dd/mm/yyyy	Approved by
DA/7820218	1	SP8301	1	52-54	Cooper Street	RANDWICK	2031	1 Residential - Alterations & additions	RLEP 2012	R3 - Medium Density Residential	Clause 4.4 - FSR = 0.9:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	FSR increased to 0.906 or 0.67%	NSW Dept of Planning	16-Mar-18	DEL
DA Number	Lot number	DP Number	Unit number	Street Number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Concurring authority	Date DA determined dd/mm/yyyy	Approved by
DA/9442018	1	925205	165	Arden Street	COOGEE	2034	4 Residential - New multi unit + 20 dwellings	RLEP 2012	R3 - Medium Density Residential	Clause 4.4 - FSR = 0.9:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	FSR increased to 0.95:1 or 5.7%	NSW Dept of Planning	06-Nov-17	DEL	
DA Number	Lot number	DP Number	Unit number	Street Number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Concurring authority	Date DA determined dd/mm/yyyy	Approved by
DA/3072017	2	326760	71	Melody Street	COOGEE	2034	1 Residential - Alterations & additions	RLEP 2012	R3 - Medium Density Residential	Clause 4.4 - FSR = 0.9:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	FSR increased to 0.92:1 or 2.5%	NSW Dept of Planning	23-Oct-17	DEL	

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DA Number	Lot number	DP Number	Unit number	Street Number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Concurring authority	Date DA determined dd/mm/yyyy	Approved by
DA/173/2017	1	310881	133	Coogee Bay Road	COOGEE	2034	1 Residential - Alterations & additions	RLEP 2012	R3 - Medium Density Residential	Clause 4.4 - FSR = 0.9:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Existing FSR of 1.04:1 (15.33% over). Proposed FSR of 1.09:1 or 21.11%.	NSW Dept of Planning	11/07/2017	PCM	
DA Number	Lot number	DP Number	Unit number	Street Number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Concurring authority	Date DA determined dd/mm/yyyy	Approved by
DA/189/2018	LOT 5 SEC 2	2907		5-7	Stark Street	COOGEE	2034	4 Residential - New multi unit + 20 dwellings	RLEP 2012	R3 - Medium Density Residential	Clause 4.4 - FSR = 0.9:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	FSR increased to 0.98:1 or 8.66%	NSW Dept of Planning	08-Nov-16	PCM
DA Number	Lot number	DP Number	Unit number	Street Number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Concurring authority	Date DA determined dd/mm/yyyy	Approved by
DA/140/2018	1	89221	1	54A	Bream Street,	COOGEE	2034	1 Residential - Alterations & additions	RLEP 2012	R3 - Medium Density Residential	Clause 4.4 - FSR = 0.9:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	FSR increased to 0.98:1 or 7.99%	NSW Dept of Planning	28-Jul-18	OCM
DA Number	Lot number	DP Number	Unit number	Street Number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Concurring authority	Date DA determined dd/mm/yyyy	Approved by

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DA/839/2015	1	959305		183	Arden Street	COOGEE	2034	4: Residential - New multi unit < 20 dwellings	RLEP 2012	R3 - Medium Density Residential	Clause 4.4 - FSR = 0.9:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	FSR increased to 0.95:1 or 5.7%	NSW Dept of Planning	14-Jun-16	PCM
DA Number	Lot number	DP Number	Unit number	Street Number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Concurring authority	Date DA determined dd/mm/yyyy	Approved by
DA/180/2016	7	63178	7	253-255	Camington Road	COOGEE	2034	1: Residential - Alterations & additions	RLEP 2012	R3 - Medium Density Residential	Clause 4.4 - FSR = 0.9:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Existing building has a FSR of 1.11:1 proposed FSR of 1.115:1 increased by 0.5% or 6.87sqm.	NSW Dept of Planning	10-May-16	PCM
DA Number	Lot number	DP Number	Unit number	Street Number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Concurring authority	Date DA determined dd/mm/yyyy	Approved by
DA/455/2015	A	100389 (BEING LOTS 6-10 IN SP 77817)		159	Arden Street	COOGEE	2034	1: Residential - Alterations & additions	RLEP 2012	R3 - Medium Density Residential	Clause 4.4 - FSR = 0.9:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	FSR increased to 0.930:1, or 4% or 22.92sqm.	NSW Dept of Planning	12-Apr-16	delegated Authority
DA Number	Lot number	DP Number	Unit number	Street Number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Concurring authority	Date DA determined dd/mm/yyyy	Approved by

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DA/610/2015	8	436028 SUBJ TO CROSS EA		88	Coogee Bay Road,	RANDWICK	2031	1: Residential - Alterations & additions	RLEP 2012	R3 - Medium Density Residential	Clause 4.4 - FSR = 0.9:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	FSR increased to 1.01:1, or 11% or 30.35sqm.	NSW Dept of Planning	22-Mar-16	PCM
DA Number	Lot number	DP Number	Unit number	Street Number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consenting authority	Date DA determined dd/mm/yyyy	Approved by
DA/470/2015	1	311535		17	Melba Street	KINGSFORD	2032	4: Residential - New multi unit < 20 dwellings	RLEP 2012	R3 - Medium Density Residential	Clause 4.4 - FSR = 0.9:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	FSR is 0.95 (5.7%)	NSW Dept of Planning	12-Feb-16	Delegated
DA Number	Lot number	DP Number	Unit number	Street Number	Street name	Suburb	postcode	Category of development	Environmental planning instrument	Zoning of land	Development standard to be varied	Justification of variation	Extent of variation	Consenting authority	Date DA determined dd/mm/yyyy	Approved by
DA/695/2015	1	6907	1	90	Camington Road,	COOGEE	2034	1: Residential - Alterations & additions	RLEP 2012	R3 - Medium Density Residential	Clause 4.4 - FSR = 0.9:1	Maintains compatible scale with neighbouring buildings and does not adversely impact in terms of overshadowing, privacy and views.	Existing FSR is 1.2:1, proposed increase to 1.45:1, which is 20% above standards.	NSW Dept of Planning	04-Feb-16	PCM

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ENDNOTES

ⁱ Exceptions to a Development Standard Clause 4.6 of RLEP 2012

(3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:

- (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
- (b) that there are sufficient environmental planning grounds to justify contravening the development standard.

(4) Development consent must not be granted for development that contravenes a development standard unless:

- (a) The consent authority is satisfied that:
 - (i) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Secretary must consider:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

Willoughby Local Environmental Plan 2012

Current version for 5 March 2021 to date (accessed 3 July 2021 at 11:17)

ⁱⁱ building height (or height of building) means—

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building, including flagpoles, chimneys, flues and the like.

Appendix 3: DCP Compliance Table**3.1 Section Part C1: Low Density Residential**

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R3	Dual occupancies are permitted within the R3 zone.
2	Site planning		
2.1	Minimum lot size and frontage		
	Minimum lot size (RLEP): <ul style="list-style-type: none"> R2 = 400sqm R3 = 325sqm 	There are no minimum provisions in relation to the minimum lot size or frontage for an attached dual occupancy within the R3 zone. The proposed development seeks a reduction in density from three (3) dwellings to two (2), utilising the existing building, and therefore the proposed development is considered to be acceptable for the site.	N/A
	Minimum frontage		
	<ul style="list-style-type: none"> i) Min frontage R2 = 12m ii) Min frontage R3 = 9m iii) No battle-axe or hatchet in R2 or R3 iv) Minimum frontage for attached dual occupancy in R2 = 15m v) Minimum frontage for detached dual occupancy in R2 = 18m 		
2.3	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45%	Site = 285.58m ² Proposed = 55.2%	Complies.
2.4	Landscaping and permeable surfaces		
	<ul style="list-style-type: none"> i) Up to 300 sqm = 20% ii) 301 to 450 sqm = 25% iii) 451 to 600 sqm = 30% iv) 601 sqm or above = 35% v) Deep soil minimum width 900mm. vi) Maximise permeable surfaces to front vii) Retain existing or replace mature native trees viii) Minimum 1 canopy tree (8m mature). Smaller (4m mature) If site restrictions apply. ix) Locating paved areas, underground services away from root zones. 	Site = 285.58m ² Proposed = 19.56% The minor shortfall in deep soil areas is supported noting that the existing building footprint shall be retained, and additional landscaping is provided to soften the built form by way of elevated planter boxes at the rear of the development.	Acceptable.
2.5	Private open space (POS)		
	Dual Occupancies (Attached and Detached) POS		
	451 to 600 sqm = 5m x 5m each 601sqm or above = 6m x 6m each	Site = 285.58m ²	Acceptable.

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DCP Clause	Controls	Proposal	Compliance
	<p>ii) POS satisfy the following criteria:</p> <ul style="list-style-type: none"> Situated at ground level (except for duplex) No open space on podiums or roofs Adjacent to the living room Oriented to maximise solar access Located to the rear behind dwelling Has minimal change in gradient 	<p>Proposed =</p> <p>Dwelling 1 = 43.3m² at Ground Floor level in the form or terrace and lawn area, 12.7m² balcony at First Floor level.</p> <p>Dwelling 2 = 12.6m² balcony off Living area.</p> <p>The site is substantially lower than the 450m² required for dual occupancies within the R2 zone, noting that the development of a dual occupancy is permitted within the R3 zone with no requirements in relation to site area. As such, there are no provisions for POS for sites under 450m². Notwithstanding, the proposal provides generous POS for the lower level dwelling and provides POS in excess of the minimum requirements for balconies under the medium density controls. As such, the proposed POS is considered adequate in this instance.</p>	
3	Building envelope		
3.1	Floor space ratio LEP 2012 =	<p>Site area = 285.58m²</p> <p>Proposed FSR =</p>	Does not comply. <i>See Clause 4.6 assessment.</i>
3.2	Building height		
	Maximum overall height LEP 2012 =	Proposed = 13.64m	Does not comply. <i>See Clause 4.6 assessment.</i>
	<p>i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m)</p> <p>ii) Sloping sites = 8m</p> <p>iii) Merit assessment if exceeded</p>	Proposed = 13.1m	Does not comply. <i>See Key Issues for further discussion.</i>

DCP Clause	Controls	Proposal	Compliance
3.3	Setbacks		
3.3.1	Front setbacks <ul style="list-style-type: none"> i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary street frontage: <ul style="list-style-type: none"> - 900mm for allotments with primary frontage width of less than 7m - 1500mm for all other sites iii) do not locate swimming pools, above-ground rainwater tanks and outbuildings in front 	The existing front setback shall not be altered as a result of the proposed development. The proposed upper floor level shall be located behind the roof apex, providing a greater setback to Coogee Bay Road.	Acceptable.
3.3.2	Side setbacks: Dwellings and dual occupancies: <ul style="list-style-type: none"> • Frontage less than 9m = 900mm • Frontage b/w 9m and 12m = 900mm (Gnd & 1st floor) 1500mm above • Frontage over 12m = 1200mm (Gnd & 1st floor), 1800mm above. Refer to 6.3 and 7.4 for parking facilities and outbuildings	Minimum = 900mm for all levels. Proposed = 1.18m-1.27m to the eastern side, the western side adjoins the common party wall with the adjoining property at 68 Coogee Bay Road.	Complies.
3.3.3	Rear setbacks <ul style="list-style-type: none"> i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments. ii) Provide greater than aforementioned or demonstrate not required, having regard to: <ul style="list-style-type: none"> - Existing predominant rear setback line - reasonable view sharing (public and private) - protect the privacy and solar access iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions. iv) For irregularly shaped lots = merit assessment on basis of:- <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts Refer to 6.3 and 7.4 for parking facilities and outbuildings	The subject site has a double street frontage and technically the rear setback is not applicable. Notwithstanding, the proposed development shall be in alignment with the adjoining property to the west, with minor protruding elements such as planter boxes extending beyond the rear building alignment which is considered acceptable. Notwithstanding, it is noted that the GF level seeks to provide a solid wall up to 2.88m in height along the western side boundary to partially enclose the terrace area. The height of the proposed wall is to achieve compliance with the BCA in relation to fire safety. While the wall shall extend above the 1.8m height normally specified for boundary	Acceptable.

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DCP Clause	Controls	Proposal	Compliance
		fencing, it is noted that there is an existing solid wall already located along the common boundary which exceeds 1.8m, with a portion of the wall full storey height. The enclosure of the terrace will assist in mitigating noise impacts from the outdoor area, and given the existing situation is supported in this instance.	
4	Building design		
4.1	General		
	Respond specifically to the site characteristics and the surrounding natural and built context - <ul style="list-style-type: none"> articulated to enhance streetscape stepping building on sloping site, no side elevation greater than 12m encourage innovative design 	The proposal results in a maximum wall length of 13.6m due to the partial enclosure of the rear balconies. However, it is consideration that the extension of the wall to the balcony will assist in minimising acoustic impacts upon neighbouring properties. The proposed wall length would not be inconsistent with the adjoining property at 72 Coogee Bay Road. The side elevation shall be broken up by window openings and new screen planting is proposed along the side boundary due to the removal of the side access stairs which shall soften the built form as viewed from the adjoining property. Given the constraints of the site, including the narrow width and topography, and the limited windows on the side elevation of the adjoining property, the minor non-compliance is supported in this instance.	Acceptable.
4.3	Additional Provisions for Attached Dual Occupancies		

DCP Clause	Controls	Proposal	Compliance
	<p>Should present a similar bulk as single dwellings</p> <ul style="list-style-type: none"> i) Garage for each dwelling shall have a single car width only ii) Articulate and soften garage entry iii) Minimise driveway width iv) Maximum 2m setback of front entry from front façade v) Maximise landscape planting at front 	<p>The provisions of clause 4.3 generally anticipate a side by side attached dual occupancy and therefore is not wholly applicable to the proposed development. The development seeks to utilise the existing building, the proposed dual occupancy would not be incompatible with other developments within the street, viewed as two (2) storeys from Coogee Bay Road, and part 3, part 4 storey from Queen Street, noting the context of the surrounding RFBs and semi-detached dwellings. The existing parking shall be retained at the rear of the site fronting Queen Street.</p> <p>As such, the proposal is considered to be consistent with the objectives of the clause.</p>	Acceptable.
4.5	Colours, Materials and Finishes		
	<ul style="list-style-type: none"> i) Schedule of materials and finishes ii) Finishing is durable and non-reflective. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) recycle and re-use sandstone (See also section 8.3 foreshore area.) 	<p>A condition of consent is recommended for a final colours and materials scheme to be submitted to Council for approval prior to the issue of a Construction Certification.</p>	Complies, subject to condition.
4.6	Earthworks		
	<ul style="list-style-type: none"> i) excavation and backfilling limited to 1m, unless gradient too steep ii) minimum 900mm side and rear setback iii) Step retaining walls. iv) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm. v) sloping sites down to street level must minimise blank retaining walls (use 	<p>Minimal earthworks shall be required for the proposed development.</p>	Complies.

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DCP Clause	Controls	Proposal	Compliance
	combination of materials, and landscaping) vi) cut and fill for POS is terraced <i>where site has significant slope:</i> vii) adopt a split-level design viii) Minimise height and extent of any exposed under-croft areas.		
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.	The Living areas and main POS are located to the north and shall receive adequate solar access.	Complies.
	Solar access to neighbouring development:		
	i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. v) solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings. vi) Variations may be acceptable subject to a merits assessment with regard to: <ul style="list-style-type: none"> Degree of meeting the FSR, height, setbacks and site coverage controls. Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. Topography of the subject and adjoining allotments. Location and level of the windows in question. Shadows cast by existing buildings on the neighbouring allotments. 	Due to the north-south orientation of the site, and rear setback of the proposal which shall be consistent with the adjoining property, the proposed shall not result in any unreasonable impacts upon the adjoining properties with regards to solar access.	Complies.
5.2	Energy Efficiency and Natural Ventilation		
	i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as:	A BASIX Certificate has been submitted with the application. Natural lighting and	Complies.

DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> • Skylights (ventilated) • Clerestory windows • Fanlights above doorways • Highlight windows in internal partition walls <p>ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries</p> <p>iii) living rooms contain windows and doors opening to outdoor areas</p> <p><i>Note:</i> The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</p>	ventilation shall be facilitated through the design of the dwellings.	
5.3	Visual Privacy		
	Windows		
	<p>i) proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures:</p> <ul style="list-style-type: none"> - windows are offset or staggered - minimum 1600mm window sills - Install fixed and translucent glazing up to 1600mm minimum. - Install fixed privacy screens to windows. - Creating a recessed courtyard (minimum 3m x 2m). <p>ii) orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)</p>	New window openings are proposed on the eastern side elevation which shall be located adjacent to windows on the neighbouring property as such it is recommended that privacy measures are imposed on side windows, with the exception of the upper most level in which the proposed windows are not directly adjacent to any neighbouring windows.	Acceptable.
	Balcony		
	<p>iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side)</p> <p>iv) minimise overlooking of POS via privacy screens (fixed, minimum of 1600mm high and achieve minimum of 70% opaqueness (glass, timber or metal slats and louvers)</p> <p>v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure)</p> <p>vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.</p>	The proposed balconies shall be partially enclosed by walls to the sides to minimise overlooking into neighbouring properties. Furthermore, the location of the proposed balconies shall be consistent with the existing balconies, and as such it is considered that the proposal shall not result in any unreasonable impacts with regards to visual privacy.	Acceptable.
5.4	Acoustic Privacy		
	<p>i) noise sources not located adjacent to adjoining dwellings bedroom windows <i>Attached dual occupancies</i></p> <p>ii) Reduce noise transmission between dwellings by:</p>	The proposed balconies are provided with solid walls along the side elevations to minimise noise impacts. Given the	Acceptable.

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DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> - Locate noise-generating areas and quiet areas adjacent to each other. - Locate less sensitive areas adjacent to the party wall to serve as noise buffer. 	reduction in density from 3 units to 2, it is considered that the proposed development shall not result in any unreasonable acoustic impacts.	
5.5	Safety and Security		
	<ul style="list-style-type: none"> i) dwellings main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 square metres) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not obstruct casual surveillance (maintain safe access) 	Each dwelling shall be accessed from their own streetfrontage, with Dwelling 1 accessed via Queen Street, and Dwelling 2 accessed via Coogee Bay Road.	Acceptable.
5.6	View Sharing		
	<ul style="list-style-type: none"> i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas. ii) retaining existing views from the living areas are a priority over low use rooms iii) retaining views for the public domain takes priority over views for the private properties iv) fence design and plant selection must minimise obstruction of views v) Adopt a balanced approach to privacy protection and view sharing vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA. (certified height poles used) 	It is anticipated that the proposed development shall not result in any unreasonable view loss impacts. It is noted that no submissions in relation to view loss was received by Council.	Acceptable.
6	Car Parking and Access		
	<u>General Comments</u> Car parking in the form of the existing double garage shall be maintained on the site fronting Queen Street and there shall be no change to the car parking and access as a result of the proposed development. The existing car parking spaces shall be allocated to one (1) of the two (2) dwellings. However, given the reduction in density of the development, from three (3) dwellings to two (2) dwellings, the shortfall in parking is not considered unwarranted. No concerns have been raised by Council's Development Engineer.		

Responsible officer: Angela Manahan, Executive Planner

File Reference: DA/451/2021

Development Consent Conditions



Folder /DA No:	DA/451/2021
Property:	70 Coogee Bay Road, Coogee NSW
Proposal:	Alterations and additions to the existing building including a new upper floor level, and conversion of the use of the development from a Residential Flat Building to an attached dual occupancy including strata subdivision (variation to FSR & height of building standards).
Recommendation:	Approval

DEVELOPMENT CONSENT CONDITIONS

GENERAL CONDITIONS

The development must be carried out in accordance with the following conditions of consent.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000* and to provide reasonable levels of environmental amenity.

Approved Plans & Supporting Documentation

- The development must be implemented substantially in accordance with the plans and supporting documentation listed below and endorsed with Council's approved stamp, except where amended by Council in red and/or by other conditions of this consent:

Plan	Drawn by	Dated	Received by Council
DA06 (Roof & Site Plan)	Mary Ellen Hudson Architect	22 December 2021	22 December 2021
DA07 (Ground Floor Plan)	Mary Ellen Hudson Architect	22 December 2021	22 December 2021
DA08 (First Floor Plan)	Mary Ellen Hudson Architect	22 December 2021	22 December 2021
DA09 (Second Floor Plan)	Mary Ellen Hudson Architect	22 December 2021	22 December 2021
DA10 (Third Floor Plan)	Mary Ellen Hudson Architect	22 December 2021	22 December 2021
DA11 (Cross Section 01)	Mary Ellen Hudson Architect	23 February 2022	24 February 2022
DA12 (Cross Section 02)	Mary Ellen Hudson Architect	23 February 2022	24 February 2022
DA13 (Long Section 01)	Mary Ellen Hudson Architect	23 February 2022	24 February 2022
DA14 (Long Section 02)	Mary Ellen Hudson Architect	23 February 2022	24 February 2022
DA15 (South Elevation – Coogee Bay Road)	Mary Ellen Hudson Architect	23 February 2022	24 February 2022
DA16 (South Elevation)	Mary Ellen Hudson	23 February	24 February 2022

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	Architect	2022	
DA17 (West Elevation)	Mary Ellen Hudson Architect	23 February 2022	24 February 2022
DA18 (North Elevation)	Mary Ellen Hudson Architect	23 February 2022	24 February 2022
DA20 (East Elevation)	Mary Ellen Hudson Architect	23 February 2022	24 February 2022
DA21 (Unit 1 Strata Plans)	Mary Ellen Hudson Architect	23 February 2022	24 February 2022
DA22 (Unit 2 Strata Plans)	Mary Ellen Hudson Architect	23 February 2022	24 February 2022

BASIX Certificate No.	Dated	Received by Council
A422709 (Unit 1)	06 July 2021	29 July 2021
A422716 (Unit 2)	06 July 2021	29 July 2021

Amendment of Plans & Documentation

2. The approved plans and documents must be amended in accordance with the following requirements:
 - a. The eastern external wall of the Third Floor level to Bedrooms 2 and 3 shall be a maximum height of RL42.835. The pitch angle of the roof above Bedrooms 2 & 3 and the windows on the eastern elevation shall be amended to accommodate the reduction to the external wall height.
 - b. The following windows must have a minimum sill height of 1.6m above floor level, or alternatively, the window/s are to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height:

Ground Floor Level

- Three (3) Living room windows on the eastern elevation;

First Floor Level

- Window to bathroom and en-suite on the eastern elevation;

Second Floor Level

- Two (2) kitchen windows and bathroom window on the eastern elevation.

Details of compliance for the above conditions must be submitted to and approved by Council's Manager Development Assessment prior to the issue of a Construction Certificate.

REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

The following conditions of consent must be complied with before a 'Construction Certificate' is issued by either Randwick City Council or an Accredited Certifier. All necessary information to demonstrate compliance with the following conditions of consent must be included in the documentation for the construction certificate.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Council's development consent conditions and to achieve reasonable levels of environmental amenity.

Consent Requirements

3. The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation.

External Colours, Materials & Finishes

4. The colours, materials and finishes of the external surfaces to the building are to be compatible with the adjacent development to maintain the integrity and amenity of the building and the streetscape.

Details of the proposed colours, materials and textures (i.e. a schedule and brochure/s or sample board) are to be submitted to and approved by Council's Manager Development Assessments prior to issuing a construction certificate for the development.

Section 7.12 Development Contributions

5. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$1,287,000.00 the following applicable monetary levy must be paid to Council: \$12,870.00.

The levy must be paid in **cash, bank cheque** or by **credit card** prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone **9093 6000** or **1300 722 542** for the indexed contribution amount prior to payment.

To calculate the indexed levy, the following formula must be used:

$$\text{IDC} = \text{ODC} \times \text{CP2/CP1}$$

Where:

IDC = the indexed development cost

ODC = the original development cost determined by the Council

CP2 = the Consumer Price Index, All Groups, Sydney, as published by the ABS in respect of the quarter ending immediately prior to the date of payment

CP1 = the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.

Council's Development Contribution Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at www.randwick.nsw.gov.au.

Compliance Fee

6. A development compliance and enforcement fee of \$2,702.70 shall be paid to Council in accordance with Council's adopted Fees & Charges Pricing Policy, prior to the issue of a Construction Certificate for development.

Long Service Levy Payments

7. The required Long Service Levy payment, under the *Building and Construction Industry Long Service Payments Act 1986*, must be forwarded to the Long Service Levy Corporation or the Council, in accordance with Section 6.8 of the *Environmental Planning & Assessment Act 1979*.

At the time of this development consent, Long Service Levy payment is applicable on building work having a value of \$25,000 or more, at the rate of 0.35% of the cost of the works.

Stormwater Drainage

8. Surface water from building work and structures must satisfy the following requirements (as applicable), to the satisfaction of the Certifier and details are to be included in the construction certificate:-
 - a) Surface water/stormwater drainage systems must be provided in accordance with the relevant requirements of the Building Code of Australia (Volume 2);
 - b) The surface water/stormwater is to be drained and discharged to the street gutter or, subject to site suitability, the stormwater may be drained to a suitably designed absorption pit;
 - c) Any absorption pits or soaker wells should be located not less than 3m from any adjoining premises and the stormwater must not be directed to any adjoining premises or cause a nuisance;
 - d) External paths and ground surfaces are to be constructed at appropriate levels and be graded and drained away from the building and adjoining premises, so as not to result

in the entry of water into the building, or cause a nuisance or damage to the adjoining premises;

- e) Details of any proposed drainage systems or works to be carried out in the road, footpath or nature strip must be submitted to and approved by Council before commencing these works.
- f) The pit is to be located a minimum of 900mm from any common boundary.

Sydney Water Requirements

9. All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.

The approved plans must be submitted to the Sydney Water **Tap in™** online service, to determine whether the development will affect Sydney Water's waste water and water mains, stormwater drains and/or easements, and if any further requirements need to be met.

The Sydney Water Tap in™ online service replaces the Quick Check Agents as of 30 November 2015

The **Tap in™** service provides 24/7 access to a range of services, including:

- Building plan approvals
- Connection and disconnection approvals
- Diagrams
- Trade waste approvals
- Pressure information
- Water meter installations
- Pressure boosting and pump approvals
- Change to an existing service or asset, e.g. relocating or moving an asset.

Sydney Water's **Tap in™** online service is available at:

<https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>

The Principal Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service.

REQUIREMENTS TO BE INCLUDED IN THE CONSTRUCTION CERTIFICATE

The requirements contained in the following conditions of consent must be complied with and details of compliance must be included in the construction certificate for the development.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Councils development consent conditions and to achieve reasonable levels of environmental amenity.

Compliance with the Building Code of Australia & Relevant Standards

10. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 98 of the *Environmental Planning & Assessment Regulation 2000*, it is a *prescribed condition* that all building work must be carried out in accordance with the provisions of the Building Code of Australia (BCA).

BASIX Requirements

11. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 97A of the *Environmental Planning & Assessment Regulation 2000*, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.

The required commitments listed and identified in the BASIX Certificate must be included on the construction certificate plans, specifications and associated documentation, to the satisfaction of the Certifier.

The design of the building must not be inconsistent with the development consent and any proposed variations to the building to achieve the BASIX commitments may necessitate a new development consent or amendment to the existing consent to be obtained, prior to a construction certificate being issued.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

The following conditions of consent must be complied with prior to the commencement of any works on the site. The necessary documentation and information must be provided to the Council or the 'Principal Certifier', as applicable.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000* and to provide reasonable levels of public health, safety and environmental amenity.

Certification and Building Inspection Requirements

12. Prior to the commencement of any building works, the following requirements must be complied with:

- a) a Construction Certificate must be obtained from the Council or an accredited certifier, in accordance with the provisions of the *Environmental Planning & Assessment Act 1979*.

A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.

- b) a *Principal Certifier* must be appointed to carry out the necessary building inspections and to issue an *occupation certificate*; and

- c) a *principal contractor* must be appointed for the building work, or in relation to residential building work, an *owner-builder* permit may be obtained in accordance with the requirements of the *Home Building Act 1989*, and the Principal Certifier and Council are to be notified accordingly; and

- d) the *principal contractor* must be advised of the required *critical stage inspections* and other inspections to be carried out, as specified by the *Principal Certifier*; and

- e) at least two days notice must be given to the Council, in writing, prior to commencing any works.

Home Building Act 1989

13. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 98 of the *Environmental Planning & Assessment Regulation 2000*, the relevant requirements of the *Home Building Act 1989* must be complied with.

Details of the Licensed Building Contractor and a copy of the relevant Certificate of Home Warranty Insurance or a copy of the Owner-Builder Permit (as applicable) must be provided to the Principal Certifier and Council.

Dilapidation Reports

14. A dilapidation report must be obtained from a Professional Engineer, Building Surveyor or other suitably qualified independent person, in the following cases:

- excavations for new dwellings, additions to dwellings, swimming pools or other substantial structures which are proposed to be located within the *zone of influence* of the footings of any dwelling, associated garage or other substantial structure located upon an adjoining premises;
- new dwellings or additions to dwellings sited up to shared property boundaries (e.g. additions to a semi-detached dwelling or terraced dwellings);
- excavations for new dwellings, additions to dwellings, swimming pools or other substantial structures which are within rock and may result in vibration and or potential

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damage to any dwelling, associated garage or other substantial structure located upon an adjoining premises;

- as otherwise may be required by the *Principal Certifier*.

The dilapidation report shall include details of the current condition and status of any dwelling, associated garage or other substantial structure located upon the adjoining premises and shall include relevant photographs of the structures, to the satisfaction of the *Principal Certifier*.

The dilapidation report must be submitted to the Council, the *Principal Certifier* and the owners of the adjoining/nearby premises encompassed in the report, prior to commencing any site works (including any demolition work, excavation work or building work).

Construction Noise & Vibration Management Plan

15. Noise and vibration emissions during the construction of the building and associated site works must not result in an unreasonable loss of amenity to nearby residents and the relevant requirements of the *Protection of the Environment Operations Act 1997* and NSW EPA Guidelines must be satisfied at all times.

Noise and vibration from any rock excavation machinery, pile drivers and all plant and equipment must be minimised, by using appropriate plant and equipment, silencers and the implementation of noise management strategies.

A *Construction Noise Management Plan*, prepared in accordance with the NSW EPA Construction Noise Guideline by a suitably qualified person, is to be implemented throughout the works, to the satisfaction of the Council. A copy of the strategy must be provided to the Principal Certifier and Council prior to the commencement of works on site.

Construction Site Management Plan

16. A *Construction Site Management Plan* must be developed and implemented prior to the commencement of any works. The construction site management plan must include the following measures, as applicable to the type of development:

- location and construction of protective site fencing / hoardings;
- location of site storage areas/sheds/equipment;
- location of building materials for construction;
- provisions for public safety;
- dust control measures;
- details of proposed sediment and erosion control measures;
- site access location and construction
- details of methods of disposal of demolition materials;
- protective measures for tree preservation;
- location and size of waste containers/bulk bins;
- provisions for temporary stormwater drainage;
- construction noise and vibration management;
- construction traffic management details;
- provisions for temporary sanitary facilities.

The site management measures must be implemented prior to the commencement of any site works and be maintained throughout the works, to the satisfaction of Council.

A copy of the Construction Site Management Plan must be provided to the Principal Certifier and Council prior to commencing site works. A copy must also be maintained on site and be made available to Council officers upon request.

Demolition Work

17. Demolition Work must be carried out in accordance with Australian Standard AS2601-2001, Demolition of Structures and relevant work health and safety provisions and the following requirements:

- a) A Demolition Work Plan must be prepared for the demolition works which should be submitted to the Principal Certifier, not less than two (2) working days before

commencing any demolition work. A copy of the Demolition Work Plan must be maintained on site and be made available to Council officers upon request.

If the work involves asbestos products or materials, a copy of the Demolition Work Plan must also be provided to Council not less than 2 days before commencing those works.

- b) Any materials containing asbestos (including Fibro) must be safely removed and disposed of in accordance with the NSW Work Health and Safety Regulation 2017, SafeWork NSW Code of Practice for the Safe Removal of Asbestos, Protection of Environment Operations (Waste) Regulation 2014 and Council's Asbestos Policy.

Demolition & Construction Waste Plan

18. A *Demolition and Construction Waste Management Plan* (WMP) must be developed and implemented for the development.

The Waste Management Plan must provide details of the type and quantities of demolition and construction waste materials, proposed re-use and recycling of materials, methods of disposal and details of recycling outlets and land fill sites.

Where practicable waste materials must be re-used or recycled, rather than disposed and further details of Council's requirements including relevant guidelines and pro-forma WMP forms can be obtained from Council's Customer Service Centre or by telephoning Council on 1300 722 542.

Details and receipts verifying the recycling and disposal of materials must be kept on site at all times and presented to Council officers upon request.

Public Utilities

19. A *Public Utility Impact Assessment* must be carried out on all public utility services on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the development/building works and include relevant information from public utility authorities and exploratory trenching or pot-holing, if necessary, to determine the position and level of service.
20. The applicant must meet the full cost for telecommunication companies, gas providers, Ausgrid, and Sydney Water to adjust/repair/relocate their services as required. The applicant must make the necessary arrangements with the service authority.

REQUIREMENTS DURING CONSTRUCTION & SITE WORK

The following conditions of consent must be complied with during the demolition, excavation and construction of the development.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000* and to provide reasonable levels of public health, safety and environmental amenity during construction.

Inspections during Construction

21. Building works are required to be inspected by the *Principal Certifier*, in accordance with the *Environmental Planning & Assessment Act 1979* and clause 162A of the *Environmental Planning & Assessment Regulation 2000*, to monitor compliance with the relevant standards of construction, Council's development consent and the construction certificate.

Site Signage

22. A sign must be erected and maintained in a prominent position on the site for the duration of the works, which contains the following details:
- name, address, contractor licence number and telephone number of the principal contractor, including a telephone number at which the person may be contacted outside working hours, or owner-builder permit details (as applicable)
 - name, address and telephone number of the Principal Certifier,
 - a statement stating that "unauthorised entry to the work site is prohibited".

Restriction on Working Hours

23. Building, demolition and associated site works must be carried out in accordance with the following requirements:

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as detailed below)	<ul style="list-style-type: none"> Monday to Friday - 7.00am to 5.00pm Saturday - 8.00am to 5.00pm Sunday & public holidays - No work permitted
Excavating or sawing of rock, use of jack-hammers, pile-drivers, vibratory rollers/compactors or the like	<ul style="list-style-type: none"> Monday to Friday - 8.00am to 1.00pm Saturday - No work permitted Sunday & public holidays - No work permitted

An application to vary the abovementioned hours may be submitted to Council's Manager Health, Building & Regulatory Services for consideration and approval to vary the specified hours may be granted in exceptional circumstances and for limited occasions (e.g. for public safety, traffic management or road safety reasons). Any applications are to be made on the standard application form and include payment of the relevant fees and supporting information. Applications must be made at least 10 days prior to the date of the proposed work and the prior written approval of Council must be obtained to vary the standard permitted working hours.

Removal of Asbestos Materials

24. Any work involving the demolition, storage or disposal of asbestos products and materials must be carried out in accordance with the following requirements:

- Work Health & Safety legislation and SafeWork NSW requirements
- Preparation and implementation of a *demolition work plan*, in accordance with AS 2601 (2001) – Demolition of structures; NSW Work Health and Safety Regulation 2017 and Randwick City Council's Asbestos Policy. A copy of the demolition work plan must be provided to Principal Certifier and a copy must be kept on site and be made available for Council Officer upon request.
- A SafeWork NSW licensed demolition or asbestos removal contractor must undertake removal of more than 10m² of bonded asbestos (or as otherwise specified by SafeWork NSW or relevant legislation). Removal of friable asbestos material must only be undertaken by contractor that holds a current friable asbestos removal licence. A copy of the relevant licence must be provided to the Principal Certifier.
- On sites involving the removal of asbestos, a sign must be clearly displayed in a prominent visible position at the front of the site, containing the words 'Danger Asbestos Removal In Progress' and include details of the licensed contractor.
- Asbestos waste must be stored, transported and disposed of in compliance with the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Operations (Waste) Regulation 2014*. Details of the disposal of materials containing asbestos (including receipts) must be provided to the Principal Certifier and Council.
- A Clearance Certificate or Statement, prepared by a suitably qualified person (i.e. an occupational hygienist, licensed asbestos assessor or other competent person), must be provided to Council and the Principal Certifier as soon as practicable after completion of the asbestos related works, which confirms that the asbestos material have been removed appropriately and the relevant conditions of consent have been satisfied.

A copy of Council's Asbestos Policy is available on Council's web site at www.randwick.nsw.gov.au in the Building & Development Section or a copy can be obtained from Council's Customer Service Centre.

Excavations, Back-filling & Retaining Walls

25. All excavations and backfilling associated with the erection or demolition of a building must be executed safely in accordance with appropriate professional standards and excavations must be properly guarded and supported to prevent them from being dangerous to life, property or buildings.

Retaining walls, shoring or piling must be provided to support land which is excavated in association with the erection or demolition of a building, to prevent the movement of soil and to support the adjacent land and buildings, if the soil conditions require it. Adequate provisions are also to be made for drainage.

Details of proposed retaining walls, shoring, piling or other measures are to be submitted to and approved by the Principal Certifier.

Support of Adjoining Land

26. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 98 E of the *Environmental Planning & Assessment Regulation 2000*, it is a prescribed condition that the adjoining land and buildings located upon the adjoining land must be adequately supported at all times.

27. Prior to undertaking any demolition, excavation or building work in the following circumstances, a report must be obtained from a *professional engineer* which details the methods of support for the dwelling or associated structure on the adjoining land, to the satisfaction of the *Principal Certifier*.

- when undertaking excavation or building work within the zone of influence of the footings of a dwelling or associated structure that is located on the adjoining land;
- when undertaking demolition work to a wall of a dwelling that is built to a common or shared boundary (e.g. semi-detached or terrace dwelling);
- when constructing a wall to a dwelling or associated structure that is located within 900mm of a dwelling located on the adjoining land;
- as may be required by the *Principal Certifier*.

The demolition, excavation and building work and the provision of support to the dwelling or associated structure on the adjoining land, must also be carried out in accordance with the abovementioned report, to the satisfaction of the *Principal Certifier*.

Sediment & Erosion Control

28. Sediment and erosion control measures, must be implemented throughout the site works in accordance with the manual for Managing Urban Stormwater – Soils and Construction, published by Landcom.

Details of the sediment and erosion control measures to be implemented on the site must be included in with the Construction Management Plan and be provided to the Principal Certifier and Council. A copy must also be maintained on site and be made available to Council officers upon request.

Public Safety & Site Management

29. Public safety and convenience must be maintained at all times during demolition, excavation and construction works and the following requirements must be complied with:

- a) Public access to the building site and materials must be restricted by existing boundary fencing or temporary site fencing having a minimum height of 1.5m, to Council's satisfaction.

Temporary site fences are required to be constructed of cyclone wire fencing material and be structurally adequate, safe and constructed in a professional manner. The use of poor quality materials or steel reinforcement mesh as fencing is not permissible.

- b) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.

- c) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times. Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.
- d) All building and site activities (including storage or placement of materials or waste and concrete mixing/pouring/pumping activities) must not cause or be likely to cause 'pollution' of any waters, including any stormwater drainage systems, street gutters or roadways.

Note: It is an offence under the Protection of the Environment Operations Act 1997 to cause or be likely to cause 'pollution of waters', which may result in significant penalties and fines.

- e) Access gates and doorways within site fencing, hoardings and temporary site buildings or amenities must not open out into the road or footway.
- f) Site fencing, building materials, bulk bins/waste containers and other articles must not be located upon the footpath, roadway or nature strip at any time without the prior written approval of the Council. Applications to place a waste container in a public place can be made to Council's Health, Building and Regulatory Services department.
- g) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.
- h) A Road / Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the *Roads Act 1993* and all of the conditions and requirements contained in the Road / Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details.
- i) Temporary toilet facilities are to be provided, at or in the vicinity of the work site throughout the course of demolition and construction, to the satisfaction of WorkCover NSW and the toilet facilities must be connected to a public sewer or other sewage management facility approved by Council.

Site Signage

- 30. A sign must be erected and maintained in a prominent position on the site for the duration of the works, which contains the following details:
 - name, address, contractor licence number and telephone number of the *principal contractor*, including a telephone number at which the person may be contacted outside working hours, or *owner-builder* permit details (as applicable)
 - name, address and telephone number of the *Principal Certifier*,
 - a statement stating that "unauthorised entry to the work site is prohibited".

Survey Requirements

- 31. A Registered Surveyor's check survey certificate or other suitable documentation must be obtained at the following stage/s of construction to demonstrate compliance with the approved setbacks, levels, layout and height of the building to the satisfaction of the Principal Certifier:
 - prior to construction (pouring of concrete) of the footings or first completed floor slab,
 - upon completion of the building, prior to issuing an occupation certificate,
 - as otherwise may be required by the Principal Certifier.

The survey documentation must be forwarded to the Principal Certifier and a copy is to be forwarded to the Council, if the Council is not the Principal Certifier for the development.

Building Encroachments

32. There must be no encroachment of any structures or building work onto Council's road reserve, footway, nature strip or public place.

Road / Asset Opening Permit

33. A Road / Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road / Asset Opening Permit must be complied with.

The owner/builders must ensure that all works within or upon the road reserve, footpath, nature strip or other public place are completed to the satisfaction of Council, prior to the issuing of a final occupation certificate for the development.

For further information, please contact Council's Road / Asset Opening Officer on 9093 6691 or 1300 722 542.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

The following conditions of consent must be complied with prior to the 'Principal Certifier' issuing an 'Occupation Certificate'.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Council's development consent and to maintain reasonable levels of public health, safety and amenity.

Occupation Certificate Requirements

34. An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the *Environmental Planning & Assessment Act 1979*.

BASIX Requirements & Certification

35. In accordance with Clause 154B of the *Environmental Planning & Assessment Regulation 2000*, a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that any relevant BASIX commitments and requirements have been satisfied.

Relevant documentary evidence of compliance with the BASIX commitments is to be forwarded to the *Principal Certifier* and Council upon issuing an Occupation Certificate.

Council's Infrastructure & Vehicular Crossings

36. The applicant must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.
37. All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must be carried out in accordance with Council's "Crossings and Entrances – Contributions Policy" and "Residents' Requests for Special Verge Crossings Policy" and the following requirements:
- Details of the proposed civil works to be carried out on Council land must be submitted to Council in a Civil Works Application Form. Council will respond, typically within 4 weeks, with a letter of approval outlining conditions for working on Council land, associated fees and workmanship bonds. Council will also provide details of the approved works including specifications and construction details.
 - Works on Council land, must not commence until the written letter of approval has been obtained from Council and heavy construction works within the property are complete. The work must be carried out in accordance with the conditions of development consent, Council's conditions for working on Council land, design details and payment of the fees and bonds outlined in the letter of approval.

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- c) The civil works must be completed in accordance with the above, prior to the issuing of an occupation certificate for the development, or as otherwise approved by Council in writing.

38. That part of the naturestrip upon Council's footway which is damaged during the construction of the proposed works shall be excavated to a depth of 150mm, backfilled with topsoil equivalent with 'Organic Garden Mix' as supplied by Australian Native Landscapes, and re-turfed with Kikuyu turf or similar. Such works shall be completed at the applicant's expense.

Street and/or Sub-Address Numbering

39. Street numbering must be provided to the front of the premises in a prominent position, in accordance with the Australia Post guidelines and AS/NZS 4819 (2003) to the satisfaction of Council.

If this application results in an additional lot, dwelling or unit, an application must be submitted to and approved by Council's Director of City Planning, together with the required fee, for the allocation of appropriate street and/or unit numbers for the development. The street and/or unit numbers must be allocated prior to the issue of an occupation certificate.

Please note: any Street or Sub-Address Numbering provided by an applicant on plans, which have been stamped as approved by Council are not to be interpreted as endorsed, approved by, or to the satisfaction of Council.

REQUIREMENTS PRIOR TO THE ISSUING OF A STRATA CERTIFICATE

The following conditions of consent must be complied with prior to the 'Principal Certifier' issuing a 'Strata Certificate'.

These conditions have been applied to satisfy the provisions of Council's environmental plans, policies and codes for subdivision works.

40. All floors, external walls and ceilings depicted in the proposed strata plan must be constructed.
41. All floors, external walls and ceilings depicted in the proposed strata plan must correspond to those depicted in the development consent (**DA/451/2021**) and construction certificate for the building.
42. Prior to endorsement of the strata plans, all facilities required under previous development approvals (such as parking spaces, terraces and courtyards) must be provided in accordance with the relevant requirements.
- Sydney Water**
43. A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994. Sydney Water's assessment will determine the availability of water and sewer services, which may require extension, adjustment or connection to their mains, and if required will issue a Notice of Requirements letter detailing all requirements that must be met. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator (WSC).
- Go to sydneywater.com.au/section73 or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.
- A Section 73 Compliance Certificate must be completed before a strata certificate can be issued.
44. The applicant shall create suitable right of carriageway and easements as required, however generally all services lines (including stormwater) over any strata lot serving another strata lot are to be common property.
45. The applicant shall provide Council with a copy of the base plan of survey (e.g. Plan of Redefinition) for the property prior to strata subdivision approval.

46. A formal application for a strata certificate is required to be submitted to and approved by the Council or registered certifier and all relevant conditions of this development consent are required to be satisfied prior to the release of the subdivision plans.
47. Details of critical stage inspections carried out by the Principal Certifier, together with any other certification relied upon, must be provided to Council or registered Certifier prior to the issuing of a strata/subdivision certificate.

Street and/or Sub-Address Numbering

48. Street numbering must be provided to the front of the premises in a prominent position, in accordance with the Australia Post guidelines and AS/NZS 4819 (2003) to the satisfaction of Council.

If this application results in an additional lot, dwelling or unit, an application must be submitted to and approved by Council's Director of City Planning, together with the required fee, for the allocation of appropriate street and/or unit numbers for the development. The street and/or unit numbers must be allocated prior to the issue of an occupation certificate.

Please note: any Street or Sub-Address Numbering provided by an applicant on plans, which have been stamped as approved by Council are not to be interpreted as endorsed, approved by, or to the satisfaction of Council.

49. Street numbering for Unit 1 shall need to be altered given that sole access will be from Queen Street and an application will need to be submitted to Council for approval accordingly. New street numbering should be clearly identifiable and provisions made for the purpose of postal deliveries and mail etc.

OPERATIONAL CONDITIONS

The following operational conditions must be complied with at all times, throughout the use and operation of the development.

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Council's development consent and to maintain reasonable levels of public health and environmental amenity.

External Lighting

50. External lighting to the premises must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance.

Use of Planter Boxes

51. The planter boxes to the north on the First Floor, Second Floor and Third Floor level are to be non-trafficable and are only to be accessed for the purpose of maintenance.

Waste Management

52. Adequate provisions are to be made within the premises for the storage and removal of waste and recyclable materials, to the satisfaction of Council.

Plant & Equipment – Noise Levels

53. The operation of all plant and equipment on the premises shall not give rise to an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 and Regulations.

In this regard, the operation of the plant and equipment shall not give rise to an LAeq, 15 min sound pressure level at any affected premises that exceeds the background LA90, 15 min noise level, measured in the absence of the noise source/s under consideration by more than 5dB(A) in accordance with relevant NSW Environment Protection Authority (EPA) Noise Control Guidelines.

Use of parking spaces

54. The car spaces within the development are for the exclusive use of the occupants of the building. The car spaces must not be leased to any person/company that is not an occupant of the building.

GENERAL ADVISORY NOTES

The following information is provided for your assistance to ensure compliance with the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, or other relevant legislation and requirements. This information does not form part of the conditions of development consent pursuant to Section 4.17 of the Act.

- A1 The requirements and provisions of the *Environmental Planning & Assessment Act 1979* and *Environmental Planning & Assessment Regulation 2000*, must be fully complied with at all times.

Failure to comply with these requirements is an offence, which renders the responsible person liable to a maximum penalty of \$1.1 million. Alternatively, Council may issue a penalty infringement notice (for up to \$3,000) for each offence. Council may also issue notices and orders to demolish unauthorised or non-complying building work, or to comply with the requirements of Council's development consent.

- A2 In accordance with the requirements of the *Environmental Planning & Assessment Act 1979*, building works, including associated demolition and excavation works (as applicable) must not be commenced until:

- A *Construction Certificate* has been obtained from an Accredited Certifier or Council,
- An Accredited Certifier or Council has been appointed as the *Principal Certifier* for the development,
- Council and the Principal Certifier have been given at least 2 days notice (in writing) prior to commencing any works.

- A3 Council can issue your *Construction Certificate* and be your *Principal Certifier* for the development, to undertake inspections and ensure compliance with the development consent and relevant building regulations. For further details contact Council on 9093 6944.

- A4 This determination does not include an assessment of the proposed works under the Building Code of Australia (BCA) and other relevant Standards. All new building work (including alterations and additions) must comply with the BCA and relevant Standards and you are advised to liaise with your architect, engineer and building consultant prior to lodgement of your construction certificate.

- A5 Any proposed amendments to the design and construction of the building may require a new development application or a section 4.55 amendment to the existing consent to be obtained from Council, before carrying out such works

- A6 A Local Approval application must be submitted to and be approved by Council prior to commencing any of the following activities on a footpath, road, nature strip or in any public place:-

- Install or erect any site fencing, hoardings or site structures
- Operate a crane or hoist goods or materials over a footpath or road
- Placement of a waste skip or any other container or article.

For further information please contact Council on 9093 6971.

- A7 Specific details of the location of the building/s should be provided in the Construction Certificate to demonstrate that the proposed building work will not encroach onto the adjoining properties, Council's road reserve or any public place.

- A8 This consent does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is proposed to be carried out upon any adjoining or supported land, the land owner or principal contractor must obtain:

- the consent of the owners of such adjoining or supported land to trespass or encroach, or
- an access order under the *Access to Neighbouring Land Act 2000*, or

- an easement under section 88K of the *Conveyancing Act 1919*, or
- an easement under section 40 of the *Land & Environment Court Act 1979*, as appropriate.

Section 177 of the *Conveyancing Act 1919* creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).

- A9 The finished ground levels external to the building must be consistent with the development consent and are not to be raised, other than for the provision of approved paving or the like on the ground
- A10 Prior to commencing any works, the owner/builder should contact *Dial Before You Dig* on 1100 or www.dialbeforeyoudig.com.au and relevant Service Authorities, for information on potential underground pipes and cables within the vicinity of the development site.
- A11 An application must be submitted to an approved by Council prior to the installation and operation of any proposed greywater or wastewater treatment systems, in accordance with the *Local Government Act 1993*.

Greywater/Wastewater treatment systems must comply with the relevant requirements and guidelines produced by NSW Health, NSW Office of Environment and Heritage and other relevant regulatory requirements.

- A12 Underground assets (eg pipes, cables etc) may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial before you dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.
- A13 The applicant is to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.
- A14 Further information and details on Council's requirements for trees on development sites can be obtained from the recently adopted Tree Technical Manual, which can be downloaded from Council's website at the following link, <http://www.randwick.nsw.gov.au> - Looking after our environment – Trees – Tree Management Technical Manual; which aims to achieve consistency of approach and compliance with appropriate standards and best practice guidelines.
- Common Boundary Wall**
- A15 The applicant is to meet all requirements of NSW Land Registry Services as applicable in regards to any required vertical or horizontal extension of the cross easements for support over the common party wall. Confirmation of these requirements should be obtained from a registered surveyor.

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