

Randwick Local Planning Panel (Electronic) Meeting

Thursday 12 May 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, 12 May 2022

Declarations of Pecuniary and Non-Pecuniary Interests

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Kerry Kyriacou
DIRECTOR CITY PLANNING

Development Application Report No. D18/22

Subject: 2 Hillary Parade Matraville (DA/719/2016/B)

Executive Summary

Proposal:	Deletion of Condition 2.c. requiring the entire terrace area including the associated pergola and planter boxes at first floor level of each dwelling to be deleted and replaced with a non-trafficable concrete roof.
Ward:	South Ward
Applicant:	Yvonne Micallef
Owner:	Yvonne Micallef
Cost of works:	Nil
Reason for referral:	The original determination was determined by the Panel.

Recommendation

That the RLPP refuse the Section 8.2 review of determination of Development Application DA/719/2016/B for the deletion of Condition 2(c) having regard to the matters for consideration detailed in Section 4.15 of the Environmental Planning and Assessment Act and for the following reasons:

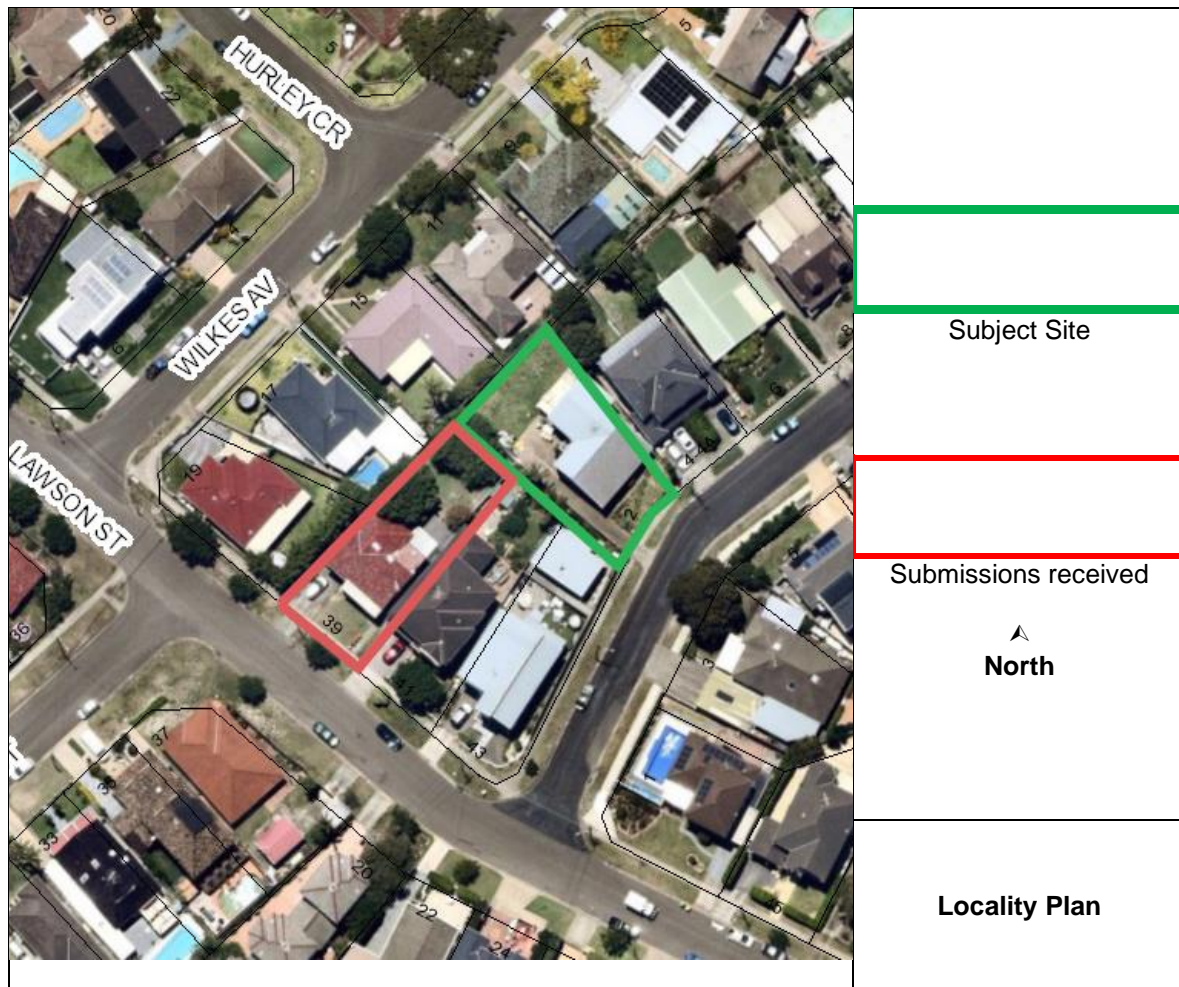
1. The proposed terraces would result in adverse privacy impacts to the adjoining residential properties and therefore do not satisfy the relevant objective of the R2 Low Density Residential zone under Randwick Local Environmental Plan 2012 as it would not protect the amenity of the local residents.
2. The proposal fails to satisfy the relevant objectives and controls of the Randwick Comprehensive Development Control Plan 2013, in relation to the following:
 - Part C1 – Low Density Housing
 - 4 Building Design in relation to the excessive size and visual bulk associated with the proposed terraces.
 - 5.3 Visual Privacy in relation to the adverse privacy impacts to the adjoining residential properties.
3. The proposal is not satisfactory pursuant to the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979 as amended, in that the proposal is not in the public interest.

Attachment/s:

Nil

D18/22

D18/22



1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) because the review of a decision made by a Local Planning Panel is also to be conducted by the Panel (Clause 8.3(5) of the *Environmental Planning and Assessment Act 1979*).

On 20 June 2017, Council under delegated authority approved the demolition of all structures on site and the construction of a two storey attached dual occupancy development with associated site and landscape works.

A subsequent Modification Application for alterations to the design, which involved exceedance of the FSR development standard by more than 10%, was approved by the RLPP, subject to the deletion of the proposed terraces at the first floor level for each dwelling (Condition 2.c.).

The Applicant seeks a review of determination and the reinstatement of the terraces and the associated pergola at the top level by deleting Condition 2c of the development consent. The Section 8.2 review application has not made any changes to the design or the size of the subject terraces, except for the installation of privacy screens along the side elevations.

The proposal would result in potential adverse privacy and visual bulk impacts to the adjoining residential properties and is not supported, and Council's previous decision to delete the terraces should be confirmed.

2. Site Description and Locality

The subject site is located on the northwestern side of Hillary Parade, approximately 40m north of its intersection with Lawson Street, Matraville.

The site currently contains a single storey, brick dwelling house with an attached garage located on the lower ground level at the rear.

The adjoining property to the north-east at 4-4A Hillary Parade contains a two storey semi-detached dwelling.

The adjoining properties to the northwest at 11 and 15 Wilkes Avenue contain single storey detached dwelling houses.

The southwestern boundary of the site adjoins the rear yards of residential properties at 39, 41 and 43 Lawson Street containing detached dwelling houses.

3. Relevant history

DA/719/2016 was granted approval on 20 June 2017 for the demolition of all structures on site and construction of a new two storey, attached dual occupancy with associated site and landscape works.

DA/719/2016/A was granted approval on 20 May 2020 to modify the approved development by widening of Lot A garage, conversion of storage areas to bedroom and bathroom, changes to some doors and windows, internal reconfiguration, enclosure of undercroft area, addition of lower ground floor laundry, bathroom and storage.

DA/675/2018 was approved on 22 October 2018 for a Torrens title subdivision of the approved dual occupancy into two lots.

DA/719/2016/B was granted approval on 10 June 2021 to modify the approved development including internal reconfiguration, addition of a lift, extension of lower ground subfloor to accommodate a theatre room, increased height of garage / first floor and parapet walls, new windows, changes to windows and doors, changes to dividing walls, and adjustment of allotment areas by repositioning party wall / fence. Condition 2.c. of the modified development consent requires the deletion of the proposed terraces at the top level of both dwellings.

4. Proposal

The Applicant seeks the reinstatement of the previously proposed terraces and the associated covered pergola with privacy screens along the side elevations at the first floor level of each dwelling by deleting Condition 2.c. imposed under DA/719/2016/B.

Condition 2.c. reads as follows:

2.c. The entire terrace area including the associated pergola and planter boxes at first floor level of each dwelling shall be deleted and replaced with a non-trafficable concrete roof. The door to the roof terrace area of each dwelling shall be replaced with a window and the lift opening to the roof terrace area shall be deleted.

5. Statutory Requirements under Division 8.2

Division 8.2 of the Environmental Planning and Assessment Act 1979, as amended, enables an applicant to request a Review of a Determination of a Development Application or an application for the modification of a development consent.

Council may accept amendments to the original development proposal if the proposed amendments result in substantially the same development as that originally described in the development application. Council may review the Determination, and as a consequence of the review, may confirm or change the Determination.

Substantially the same development

Section 8.3(3) of the *Environmental Planning and Assessment Act 1979*, states:

In requesting a review, the applicant may amend the proposed development the subject of the original application for development consent or for modification of development consent. The consent authority may review the matter having regard to the amended development, but only if it is satisfied that it is substantially the same development.

The proposal seeks consent to reinstate the originally proposed terraces and pergola at the top level for both dwellings and the installation of privacy screens along the side elevations. The review application therefore does not involve substantive changes to the overall building design as part of the subject Section 8.2 review. It is therefore considered to be substantially the same development.

6. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Participation Plan 2019. The following submission was received as a result of the notification process:

- 39 Lawson Street

Summary of Issues Raised	Council Officer's Comment
The proposal will have an adverse privacy impact with views to the bathroom window on the first floor and the patio on the ground floor and the rear yard.	The potential privacy impacts are acknowledged and the proposed reinstatement of the previously proposed terraces at the top level for each dwelling is not supported. Refer to the Key Issues section of this report.
A privacy screen should be at least 2m in height and on outside of the planter boxes	
The existing trees in the rear yard do not provide privacy.	
The lift should be contained within the confines of the main bedroom with no part whatsoever protruding out onto the terrace to minimise noise impacts from its operation.	There are no changes proposed to the approved lift. The potential noise impacts associated with the use of the lift were considered as part of the original application and deemed to be acceptable.
The two flues are large and cumbersome and it is questioned what kind of fireplace/heating is proposed to be used that requires the flues noted on the drawings, noting that open fireplaces are to be phased out by 2025.	The flues were approved as part of the original application and are deemed to be acceptable. The future use of any fireplace/heating is subject to Regulations established by the NSW Environment Protection Authority.

7. Relevant Environment Planning Instruments

7.1. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned Residential R2 Low Density under Randwick Local Environmental Plan (RLEP) 2012 and the proposal is permissible with consent. The proposal is inconsistent with the specific objectives of the R2 zone in that the proposed terraces would not protect the amenity of the local residents.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4: Floor space ratio (max)	0.5:1	0.77:1 The proposed terraces do not constitute GFA, and therefore there will be no change to the approved FSR.	No

CI 4.3: Building height (max)	9.5m	8.55m (measured to the top of the pergola)	Yes
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8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

The Randwick Development Control Plan (RDCP) 2013 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 relevant provisions of the RDCP are addressed in the Key Issues section below.

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 7 & 8 and the Key Issues section 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 does not satisfy the privacy and building design objectives and controls of the RDCP. See the discussion in the Key Issues section below.
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	The environmental impacts of the proposed development on the natural and built environment have been addressed in this report. The proposal will not result in adverse privacy impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	The proposed terraces would not minimise the potential privacy impacts to the adjoining properties. Therefore, the site is not considered suitable for the proposed terraces.
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 does not promote the objectives of the zone as it will not protect the amenity of adjoining residents. Accordingly, the proposal is not considered to be in the public interest.

9.1. Discussion of Key Issues

Visual Privacy

The Applicant requests the reinstatement of the previously proposed terraces and the associated pergola with privacy screens added along the side elevations at the top level for both dwellings by deleting Condition 2c of the development consent.

Council's previous Planning Assessment report explains that the proposed terraces would provide opportunities to overlook the adjoining and nearby dwellings, and therefore is at odds with the privacy objective of the RDCP.

The Applicant contends that RDCP allows the provision of upper floor balconies to the rear of the site with privacy screens. However, Council's previous Planning Assessment report also considers that the provision of privacy screens would exacerbate the visual bulk of the development.

Part C1 Section 5.3 of RDCP contains privacy objectives and controls that seeks to minimise overlooking neighbouring dwellings and maintain reasonable levels of privacy. It is acknowledged the privacy controls allow upper floor balconies orientated to the front and rear of the site with privacy screens installed to mitigate the loss of privacy. However, the objectives of the control also need to be taken into consideration as part of Council's assessment.

In this circumstance, the proposed terraces are considered to be excessive in size and their future use would not minimise overlooking to the adjoining properties or maintain reasonable levels of privacy. The Applicant has not made any changes to the design of the terraces to address the privacy concerns, except for the installation of screens along the side elevations that would increase visual bulk at the top level. On that basis, the proposal in its current form does not satisfy the privacy objectives under RDCP, and the reinstatement of the proposed terraces is not supported.

Building Design

Part C1 Section 4.1 of RDCP contains building design objectives and controls to minimise visual bulk and ensure terraces are of a size and configuration that are appropriate to the proportions of the building.

The proposed terraces will be enclosed by a 1m high solid planter box, a 1.6m high privacy screen along the side elevations and a pergola with a covered roof. It is noted the overall area of each terrace is larger than the adjoining bedrooms (excluding the ensuite and walk-in robes). The proposed terraces are not of a size and configuration that are appropriate to the proportions of the building and the installation of privacy screens and the pergola would increase the visual bulk of the development to an unacceptable level. On that basis, the proposal fails to satisfy the building design objectives and controls in RDCP, and the reinstatement of the terraces is not supported.

10. Conclusion

Due to the reasons as detailed in this report, the application to review the development consent and delete Condition 2.c. is not supported and it is recommended that the previous determination be confirmed in that regard.

11. Recommendation

THAT Council's original decision to refuse the proposed terraces at the first floor level for each dwelling under DA/719/2016/B, at 8 Hillary Parade, MATRAVILLE, be confirmed.

The reasons for refusal are as follows:

4. The proposed terraces would result in adverse privacy impacts to the adjoining residential properties and therefore do not satisfy the relevant objective of the R2 Low Density Residential zone under Randwick Local Environmental Plan 2012 as it would not protect the amenity of the local residents.

5. The proposal fails to satisfy the relevant objectives and controls of the Randwick Comprehensive Development Control Plan 2013, in relation to the following:
 - Part C1 – Low Density Housing
 - 4 Building Design in relation to the excessive size and visual bulk associated with the proposed terraces.
 - 5.3 Visual Privacy in relation to the adverse privacy impacts to the adjoining residential properties.
6. The proposal is not satisfactory pursuant to the provisions of Section 4.15 of the Environmental Planning and Assessment Act 1979 as amended, in that the proposal is not in the public interest.

Responsible officer: Thomas Mithen, Environmental Planner

File Reference: DA/719/2016/B

D18/22

Development Application Report No. D19/22

Subject: 18 Percival Street, Maroubra (DA/552/2021)

Proposal: Alterations and additions to existing dwelling house including partial demolition, ground floor extension to the rear, addition of a new first floor with east-facing balcony, swimming pool at the rear, landscaping and associated works.

Ward: West Ward

Applicant: Mr J Dixon & Ms R Dixon

Owner: Mr J H S Dixon & Mrs R J Dixon


Cost of works: \$418,613.80

Reason for referral: The development involves demolition of a heritage item

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/552/2021 for alterations and additions to the existing dwelling house including partial demolition, ground floor extension to the rear, addition of a new first floor with east-facing balcony, swimming pool at the rear, landscaping and associated works at No. 18 Percival Street, Maroubra NSW 2035, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (dwellings dual occ) - DA/552/2021 - 18 Percival Street, Maroubra

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1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development involves partial demolition of a heritage item.

The proposal seeks development consent for alterations and additions to existing dwelling house including partial demolition, ground floor extension to the rear, addition of a new first floor with east-facing balcony, swimming pool at the rear, landscaping and associated works.

The key issues associated with the proposal relate to the side and rear setbacks and the building design - wall length and ridge height.

The proposal is recommended for approval subject to conditions.

2. Site Description and Locality

The subject site is known as 18 Percival Street, Maroubra NSW 2035 and is legally described as Lot 1 in DP 973773. The site area is 285m², is regular in shape and has a 9.145m eastern frontage to Percival Street and a maximum depth of 31.31m.

The site contains a single storey timber clad dwelling house with a tiled roof, detached single car garage at the western rear and several retaining walls within the western and southern setbacks at the rear.

The development is surrounded by 3 storey brick dwelling houses. The area is characterised by low-density residential development and is located opposite Snape Park.

The site slopes approximately 1.92m to the front measured from RL 26.3 to RL 24.38.

The site is listed as a heritage item under Schedule 5 of the Randwick Local Environmental Plan 2012. The Randwick Heritage Study Inventory Sheet (I226) describes the building as a relatively intact late Victorian cottage standalone cottage known as 'Palmyra'.



Figure 1: Picture of the subject site with green roof (18 Percival Street) and adjacent two storey dwellings.



Figure 2: Picture of the subject site

D19/22

D19/22



Figure 3: Picture of the subject site looking north toward subject site



Figure 4: Picture of the subject site looking south toward subject site

3. Relevant history

A search of Council's records has identified no recent application history relevant to the above mentioned subject allotment. However, with reference to this application, Council sought additional information in the following instances:

On the 20 October 2021, Council sought the following:

- *The proposal does not comply with the landscaping requirements. There has been no legal justification for the existing non-compliance. As such, the proposal must be amended to ensure compliance with the Randwick DCP 2013.*
- *The proposal does not comply with the wall height requirements. The maximum allowable wall height specified under the Randwick DCP 2013 is 7m.*
- *The proposal does not comply with the building design requirements. There shall be no wall greater than 12m. The proposal must be amended accordingly.*

- *The proposed southern side setback is non-compliant with the 900mm requirement. No justification has been received and as such the proposal must be amended to reflect compliance with the requirement.*
- *The proposed rear setback has not been identified. It is noted that the proposed first floor is subject to the rear setback requirement and the established rear setback at ground level does not apply to the first floor. The Randwick DCP specifies that the proposal must provide over and above the minimum requirement having regard to the existing predominant rear setback.*
- *The SEE must address the potential privacy implications from the proposed balcony.*
- *A Flood Report application form shall be submitted to Council together with a fee of \$181 for the provision of flood planning levels relevant to the subject proposal by Council's Drainage Engineer. Any other flooding issues that need to be addressed will also be specified.*

The applicant had submitted amended / updated information as requested above on the 1 December 2021.

A meeting was subsequently held with the applicant on 9 March 2022 to discuss the heritage concerns with the proposed works. Council's Heritage Officer provided the following minutes for the meeting:

Council's Heritage Officers expressed concern about the scale of the additions to the single-storey late Victorian weatherboard dwelling at 18 Percival St, Maroubra, listed as a heritage item under Randwick Local Environmental Plan 2012.

The application proposes alterations and additions at the rear of the existing heritage dwelling, including a new two-storey addition. The upper-level addition has a steep-pitched hip and gable roof design that aims to mimic the original house's steeply pitched front roof.

Council's Heritage Officers noted that the roof form of the current proposal visually dominates the original heritage building. It was noted that the DCP requires that additions to heritage buildings do not visually dominate, compete with or conceal the original form and massing of the existing significant built form. While it is noted that the property is heavily enclosed by its neighbouring properties, in this instance the design solution is required to respond to the scale, form and detailing of the existing heritage building, not those of its neighbours.

It was noted that the DCP recommends a pavilion-type addition to separate the original heritage section of the dwelling from its more modern addition to help ensure that the integrity of the original roof form is maintained, that old and new remain distinct and that the streetscape impact of the addition is minimised. Simple articulated forms to the elevations of the new built fabric would ensure that it will not be unreasonably visually dominate or compete with the form and massing of the existing building.

PlanShop advised that they considered the presented roof plan represented a better design solution for the extension. PlanShop undertook to provide to Council officers for feedback a sketch of a different roof design utilising a hip roof form as a means of reducing the bulk and scale of the addition. This will be provided for comment prior to amendment of the DA plans.

Additional information for PlanShop

The Heritage section of Randwick Development Control Plan 2012 provides Objectives and Controls applying to development in a heritage conservation area, including Design and character; Scale and form; Detailing; and Materials, finishes and colour schemes. In relation to Design and character, Clause 2.2 of the DCP includes a Control that the design of alterations and additions must complement the existing building in its scale, form and detailing, but that it should be possible to distinguish the new work from the old. In relation to Scale and Form, Clause 2.3 of the DCP includes Controls that additions must not visually dominate, compete with or conceal the original form and massing of the existing buildings, and must not contain any major or prominent design elements which compete with existing architectural features or detailing. The DCP notes that any upper-level addition should be set well to the rear to minimise streetscape visibility and retain the integrity of the main roof, and preferably use pavilion-type forms with a lower-scale linking structure between the original building and any double-storey addition. If a pavilion-type form is not suitable or desirable, an upper floor addition may be acceptable, set well to the rear of the building to minimise impact on the main roof and to minimise streetscape visibility.

Following the meeting the applicant submitted amended plans addressing specifically the concerns related to the heritage concerns and the minutes mentioned above on 14 March 2022. The proposal was reviewed by Council's Heritage Officer and raised no further concerns against the proposal (see Appendix 1, section 1.1).

Council sought clarification and additional information with respect to the outstanding planning matters on the 11 April 2022 seeking the following:

- *An amended site / landscape / roof plan is required to be submitted detailing all setbacks from relative boundaries on the ground and first floor from all proposed structures/improvements. The current submitted plan does not detail the roof design, proposed pool or setbacks and makes reference to a garage.*
- *The proposal seeks to provide access to an attic roof space on the first floor which has not been detailed in the SEE. A floor plan of the attic space is to be provided.*
- *The submitted section plans do not indicate the depth of the pool to be excavated. An amended section plan is required for the proposed swimming pool.*
- *An amended set of Shadow Diagrams is required to demonstrate the impacts on solar access from the proposed development in accordance with the latest amended plans that have been submitted.*

The applicant had submitted the requested information on the 20 April 2022 satisfying the request for additional information and assessment.

4. Proposal

The proposal seeks development consent for alterations and additions to existing dwelling house including partial demolition, ground floor extension to the rear, addition of a new first floor with east-facing balcony, swimming pool at the rear, landscaping and associated works. The proposed works are specifically outlined below:

Demolition

- Demolish the ground floor rear portion of the dwelling house including the existing lounge / dining, kitchen and bath and laundry and demolish the garage structure.

Ground Floor

- Provision of a new rear addition and revised internal layout to provide an open plan kitchen and living area; new internal staircase;

First Floor

- Provision of a first floor addition to the rear including two (2) bedrooms, a bathroom, ensuite and lounge area with a balcony.

Roof

- New skylights and new metal roof.

Ancillary Structures

- New inground swimming pool, swimming pool fence and landscaping to rear of the site.

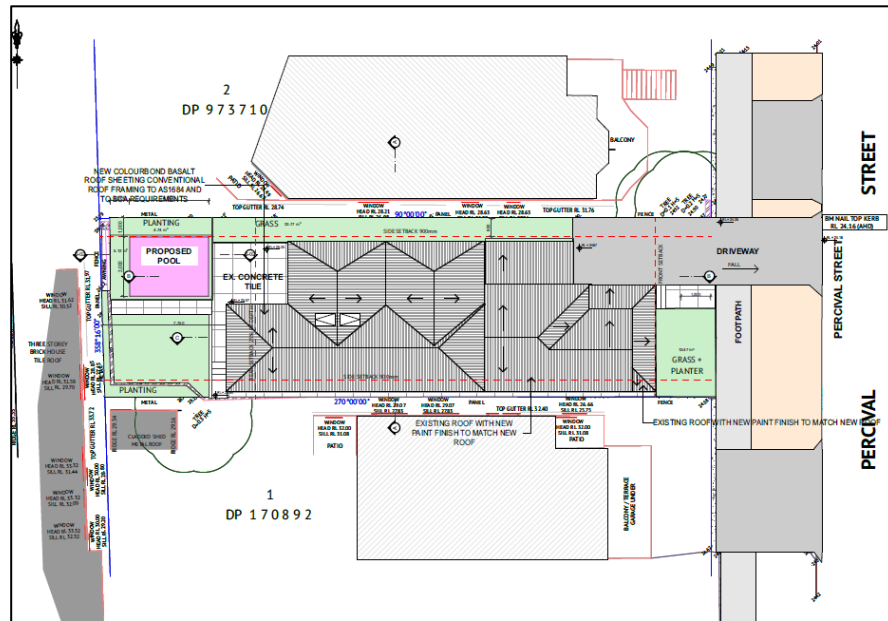


Figure 5: Proposed site plan - 18 Percival Street, Maroubra



Figure 6: View to the rear of the site at 18 Percival Street, Maroubra



Figure 7: View to the rear of the existing dwelling at 18 Percival Street, Maroubra

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. 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.

6.2. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned Residential R2 Low Density Residential under the 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 whilst enhancing the aesthetic character and protecting the amenity of the local residents.

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

Clause	Development Standard	Proposal	Compliance
CI 4.4: Floor space ratio (max) Subclause (2B): there is no maximum floor space ratio for a dwelling house or semi-detached dwelling on a lot that has an area of 300 square metres or less.	As the site has an area of 285sqm. There is no maximum FSR applicable to the site.	Site area = 285sqm Proposed = 201.75sqm or 0.71:1	Yes
CI 4.3: Building height (max)	9.5m	Proposed = 8.54m It is noted that the plans were measured and a calculation of the overall height using the dimensions provided indicates that the maximum height of the development will be RL 33.23.	Yes

6.2.1. Clause 5.10 - Heritage conservation

Clause 5.10(1) of Randwick Local Environmental Plan 2012 includes and Objective of conserving the heritage significance of heritage items and heritage conservation areas, including associated fabric, setting and views.

Clause 5.10(4) of Randwick Local Environmental Plan 2012 requires Council to consider the effect of the proposed development on the heritage significance of the heritage item or heritage conservation area.

The Development Application was required to be referred to Council's Heritage Officer for review. Refer to Appendix 1, Section 1.1.

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.

The relevant provisions of the DCP are addressed in Appendix 3.

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 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(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 residential 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	No submissions have been received for or against the proposed development.

Section 4.15 'Matters for Consideration'	Comments
with the EP&A Act or EP&A Regulation	
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.

8.1. Discussion of key issues

- **Floor Space Ratio**

The site has an area of 285sqm. Pursuant to clause 4.4(2B) of RLEP 2012, where a dwelling house is on a lot that has an area of 300m² or less, there is no maximum floor space ratio. As such there is no maximum FSR applicable to the development. The proposed FSR of 0.71:1 is considered acceptable for low-density residential development.

Note: Lot sizes between 300 and 450m² as specified under the RLEP 2012 permit a maximum FSR of 0.75:1. The subject allotment is well below the site area indicated and below the FSR of 0.75:1, therefore considered appropriate in this instance.

- **Rear Setback**

Randwick Development Control Plan 2013, Low Density Residential, clause 3.3.3. Rear Setbacks states that the minimum rear setback must be 25% of allotment depth or 8m, whichever is the lesser.

The northern side boundary of the allotment has a length of 31.31m and the southern side boundary has a length of 31.035, an average length of 31.17m. 25% of the average boundary length equates to 7.79m therefore requiring a minimum 7.79m rear boundary setback.

The existing rear setback is approximately 6.16m – 6.31m.

The proposed rear setback has been proposed to be 6.16m – 6.31m on the ground and first floor.

The applicant has provided the following justification:

The proposal maintains the existing rear setback of the dwelling at ground floor level. The proposals rear setback at ground and first floor is consistent with that of other two storey dwellings within Percival Street as is demonstrated in the image below in red. Although in excess of the DCP setback the 1st floor rear setback is in overall keeping with the neighbourhood setbacks generally. It does not generate overlooking issues, and contributes to visual privacy between neighbours.

Note also from the below image all ground floor levels in this part of Percival Street, do not comply with the 8m rear setback requirement.



Figure 8: image provided by applicant demonstrating the existing rear setback pattern in the subject urban block.



Figure 9: View to the rear of the site

The relevant objectives of the control are as follows:

- *To ensure the form and massing of development complement and enhance the streetscape character.*
- *To ensure adequate separation between neighbouring buildings for visual and acoustic privacy and solar access.*
- *To reserve adequate areas for the retention or creation of private open space and deep soil planting.*
- *To enable a reasonable level of view sharing between a development and the neighbouring dwellings and the public domain.*

An aerial review of the subject site and nearby developments within the subject urban block has revealed that there are a number of developments with setbacks less than the required 8m rear

setback on the ground and first floor. It is considered that the proposal is characteristic of the surrounding built environment and is generally consistent with the objectives of the control. The proposal will have minimal impact on the amenity of the subject site and adjoining developments. No significant views have been identified. The proposal complies with the deep soil and POS requirements specified by the DCP. It is considered that the minor variation to the rear setback is considered appropriate having regard to the streetscape and the negligible benefit to the adjoining neighbours in this instance.

- **Side Setback**

The Randwick DCP specifies a minimum of 900mm setback be provided to the ground and first floor from side boundaries based on the site's frontage width.

The existing development on the site currently presents a non-compliant southern side setback of 440mm. The proposal seeks to provide a southern side setback which is flush with the ground floor at 440mm from the southern side boundary, a variation of 0.46m.

The applicant has provided the following justification:

The existing ground floor side setback is unaltered by the proposal, and therefore the non-compliance at ground floor is considered acceptable and characteristic of the existing dwelling. The first floor addition proposes to mimic the ground floor side setback at the southern elevation, and this is consistent with all two storey buildings within Percival Street whose ground floor and first floor side setbacks are the same, whether they be compliant with the 900mm side setback or not. This is characteristic of the streetscape design and appearance.

Providing a compliant side setback of 900mm at first floor level would not result in any improved amenity such as levels of light received or levels of enclosure to 20 Percival Street than the proposed side setback, and therefore compliance with the side setback control in this instance provides no material planning benefit other than numerical compliance.

Unlike most other two storey dwellings within Percival Street, the length/depth of the first floor addition is much shorter than neighbouring two storey dwellings, therefore also contributing to minimising visual and amenity impacts.

We feel this deviation from DCP has no negative impact as it again, responds to the typical urban form in the area, and the simplicity of the addition design of the proposal as a response to the heritage fabrics intrinsic balance, and legible forms. A first floor setback would detract from this simplicity by adding unnecessary details that are not sympathetic to the heritage fabric.

The objectives of the control are as follows:

- *To maintain or establish a consistent rhythm of street setbacks and front gardens that contributes to the character of the neighbourhood.*
- *To ensure the form and massing of development complement and enhance the streetscape character.*
- *To ensure adequate separation between neighbouring buildings for visual and acoustic privacy and solar access.*
- *To reserve adequate areas for the retention or creation of private open space and deep soil planting.*
- *To enable a reasonable level of view sharing between a development and the neighbouring dwellings and the public domain.*

As stated above with reference to the same objectives, a review of the streetscape has revealed that there are a number of developments with setbacks less than 900mm on the ground and first floor. It is considered that the proposal is characteristic of the surrounding built environment. Nevertheless, it is considered that the proposal is generally consistent with the objectives of the control. The proposal will have minimal impact on the amenity of the subject site and adjoining developments with the exception of potential impacts to the solar access to north facing living room windows which has been deemed acceptable based on merit (**see key issues – solar access and overshadowing below**). No significant views have been identified. The proposed non-compliance relates to the first floor addition and as such the proposed non-compliance has no bearing on the

POS of the site. It is considered that the minor variation is considered appropriate having regard to the streetscape and the negligible benefit to the adjoining neighbours in this instance.

- **Building Design (Wall Length)**

The Randwick DCP specifies that no external wall shall be greater than 12m in length. The proposal seeks a northern side elevation of 14.4m.

The applicant has provided the following justification:

The existing southern wall currently exceeds the 12m wall length at ground floor. The proposed northern ground floor wall will now exceed 12m, however it does not propose to project any further to the rear of the dwelling than any existing structures. It should be noted the proposed first floor does not exceed 12m in length for walls. Where 12m wall lengths are proposed, there will be no amenity impacts including overshadowing or enclosure.

The length of wall (to the North), less than 2m in excess of the DCP guidance of 12m is principally an outcome of working within the site analysis, and maintaining separation patterns typical to the street and adjacent streets. As the immediate neighboring property to the North has a similar exceedance length, the proposal is in keeping, what's more, the elevation has no discernable view from which is a bulky aspect- it cannot be viewed in its entirety, and furthermore, it is broken up as an architectural element by the gable ends.

A complying gesture of adding a recess to break this wall would not have any discernable urban planning merit, thus we feel this length is justifiable.

There is also significant precedent within Percival Street for wall lengths of 12m or more. The adjacent building 16 Percival Street has a southern wall length of 12m or more at ground and first floor level. This is also the case at 2, 4, 8, 10 and 12 Percival Street, whose buildings all have 12m wall lengths or more.

Therefore, given the limited visual and amenity impacts of having a 12m long wall at ground level, compliance with the DCP control for wall length serves no material planning benefit in this instance, other than numerical compliance.

Again, as the consultant planner for a recent DA at 224 Fitzgerald Street, it is important to point out to Council that this was also approved with a wall length over 12m.

The objectives of the control are as follows:

- *To ensure the form, scale, massing and proportions of dwellings recognise and adapt to the characteristics of a site in terms of topography, configuration, orientation and surrounding natural and built context.*
- *To ensure building facades are articulated to complement or enhance the existing streetscape and neighbourhood character.*
- *To encourage contemporary and innovative designs to establish a preferred neighbourhood character in new and transitional residential areas.*

Development within the immediate surrounding environment has an established precedent with wall length greater than 12m.

It is considered that the proposal is generally consistent with the surrounding development which will pose a minimal impact on the amenity of the subject site and adjoining allotments. It is considered that the minor variation is considered appropriate having regard to the streetscape and the negligible benefit to the adjoining neighbours in this instance.

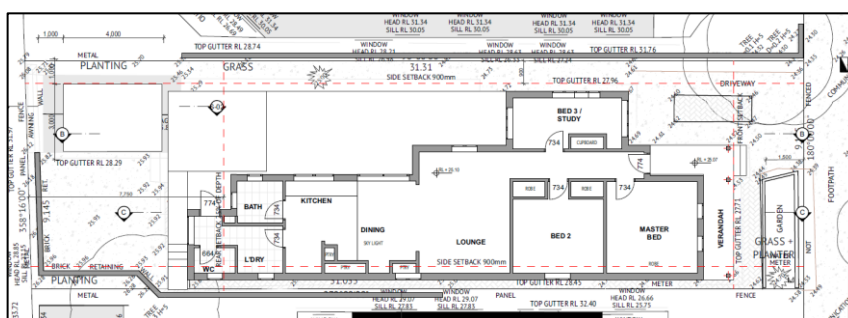


Figure 10: Existing Ground Floor Plan

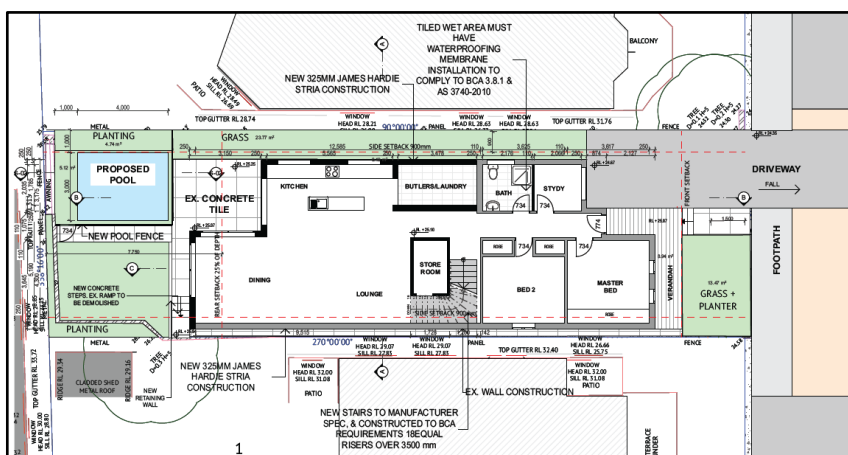


Figure 11: Proposed Ground Floor Plan

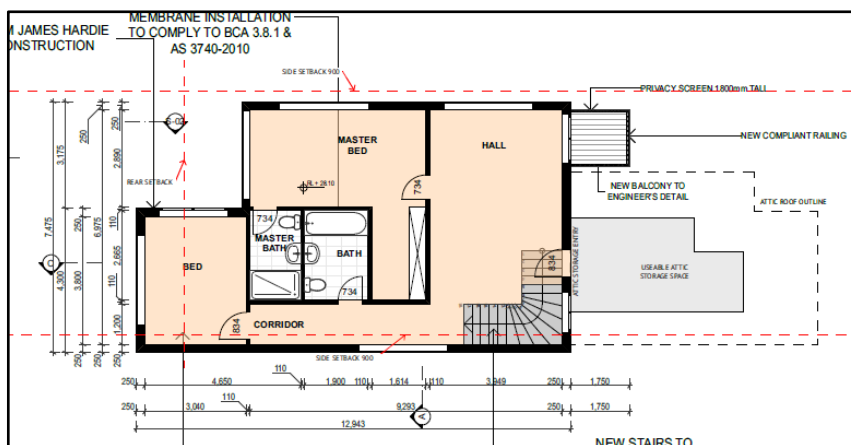


Figure 12: Proposed First Floor Plan

• Solar Access and Overshadowing

Section 5.1 of the DCP includes the relevant objectives and controls that relate to solar access and overshadowing.

The objectives seek to;

- Ensure new dwellings and alterations and additions are sited and designed to maximise solar access to the living areas and private open space,
- Ensure development retains reasonable levels of solar access to the neighbouring dwellings and their private open space,
- Provide adequate ambient daylight to dwellings and minimise the need for artificial lighting.

The controls specifically in relation to solar access to neighbouring development notes the following;

A portion of north facing living area windows of neighbouring dwellings and private open space must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June, and existing

solar panels sited less than 6m above ground on neighbouring dwellings retain a minimum of 3 hours of direct sunlight between 8am to 4pm on 21 June.

It is also important to note that in some instances overshadowing to adjoining properties may result from development that does not comply with the above controls because of the site orientation, and not because of an inappropriate or non-complying design. In those cases solar access impacts are assessed against the proposal with reference to compliance with the Floor Space Ratio, Height, Setback and Site Coverage controls.

The resultant overshadowing to the adjoining properties is demonstrated by the supplied shadow diagrams as illustrated below.

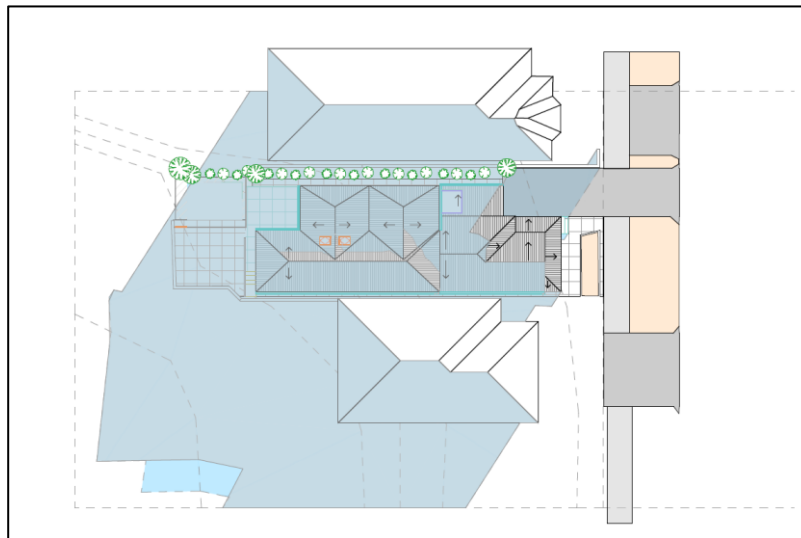


Figure 13: Shadow Diagrams 9:00am

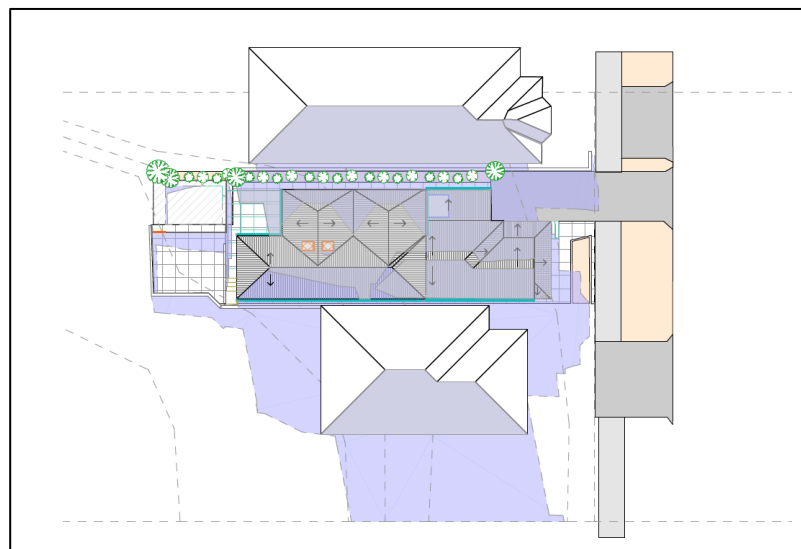


Figure 14: Shadow Diagrams 12:00pm

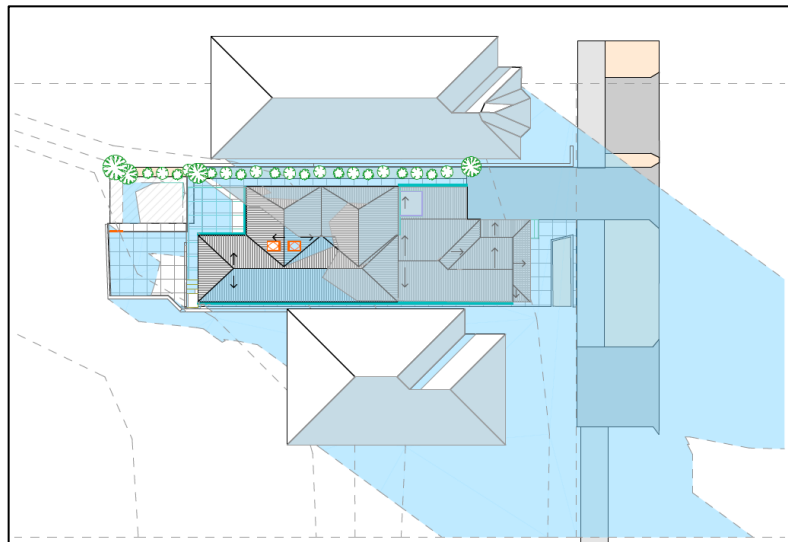


Figure 15: Shadow Diagrams 12:00pm

As noted above the assessment of the solar access impact and overshadowing is judged by a combination of not just the numerical controls but also the reasonableness of the proposal having regard to the site orientation and compliance with other controls of the DCP.

It is a natural consequence of the site orientation that any development to a property directly to the north of another, that includes an additional level, will result in some additional overshadowing to the properties immediately adjoining that to the south.

This is the case in this instance where the subject property is directly to the north of the adjoining property at No. 20 Percival Street. No submissions were received from the adjoining neighbour.

It is not reasonable for properties to the immediate south or another property to expect those properties to the north to be quarantined from reasonable development, or otherwise restricted wholly because of additional solar impacts and overshadowing. As noted, that is a natural consequence of the site and lot pattern being in this case on an east/west axis.

It is also noted that the established pattern of development in this locality is a mixture of single, two and three storey development. Two storey development, either as a new proposal, or as in this case, alterations and additions to an existing dwelling, reflects the desired future character of the locality as expressed in the planning controls. It is not realistic to expect that existing single storey dwellings will remain in that form given the expectation for residents to provide for additional floor area to their dwellings, which once again is allowed for and reflected in the current planning controls.

With respect to the overall controls, including FSR, Building Heights and Site Coverage it is noted that this proposal readily meets all of these controls. However, there is a minor variation sought to the side and rear setbacks as earlier noted in this report. It is considered that stepping in the first floor addition of the proposal from the southern wall to ensure compliance with the 900mm setback requirement will not result in any benefit to the solar access of the ground floor living room windows of No. 20 Percival Street. Furthermore, whilst there will be additional overshadowing to the adjoining properties, the solar access to those properties complies with the controls with respect to solar access to their private open space which is maintained in accordance with the controls in the morning for the minimum of 3 hours.

Similarly, the proposal does not provide for solar access to the north-facing living room windows located at ground floor as the site is adjoined by a three-storey dwelling house to the north at No. 16 Percival Street.

Therefore, having regard to the controls, the extent of overshadowing and solar access and the site orientation, in combination with the demonstrated compliance with the LEP and DCP controls, the resultant overshadowing is reasonable, not unexpected given the site orientation and accordingly satisfactory and the controls as expressed in Section 5.1 of the DCP are complied with.

9. Conclusion

That the Development Application No. DA/552/2021 for Alterations and additions to existing dwelling house including partial demolition, ground floor extension to the rear, addition of a new first floor with east-facing balcony, swimming pool at the rear, landscaping and associated works, at No. 18 Percival Street, Maroubra NSW 2035 be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013
- The proposal is consistent with the specific objectives of the R2 zone in that the proposed activity and built form will provide for the housing needs of the community whilst enhancing the aesthetic character and protecting the amenity of the local 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.

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Appendix 1: Referrals

1. Internal referral comments:

1.1. Heritage planner

The Site

The site has a primary frontage to Percival Street and is occupied by a single-storey timber dwelling at No 18 Percival Street, listed as a heritage item under Randwick Local Environmental Plan 2012. The Randwick Heritage Study Inventory Sheet (I226) describes the building as a relatively intact late Victorian cottage standalone cottage known as 'Palmyra'.

Proposal

The application proposes alterations and additions at the rear of the existing heritage dwelling, including a new two-storey addition - with hipped roof forms - that spans the width of the site. At the ground-floor level it is proposed to maintain the two front rooms of the Victorian cottage as bedrooms and the skillion roof bedroom to the north will become a study and bathroom. The remaining rear living, laundry and WC spaces will be demolished. They are to be replaced with open plan living/dining spaces across the site's width. A first-floor addition will house bedrooms and a lounge room with attached balcony. The works will require a first-floor rear addition, and internal alterations to the existing heritage dwelling. The two front rooms of the original heritage building are to be retained and are to provide two bedrooms. At the rear, a new inground pool is proposed.

Submission

The application is accompanied by a Heritage Impact Statement prepared by Juniper Lane Heritage and Planning. The HIS notes that the cottage largely retains its original form and is intact. The façade of the terrace is largely unchanged, with original features relatively unaltered and historically accurate, with the exception of the existing colour scheme and new colourbond roof.

The HIS concludes that it is likely that the detailing on the front gable and the curtain timberwork are a 1980s addition, arguing that original features would have been more traditional, symmetrical with more restrained detail. The HIS has not however assessed the façade detailing against other heritage-listed Victorian weatherboard cottages in the municipality. Original cottages in Earl Street, Randwick, for example, display original façade detailing that is very similar to the cottage in Percival Street.

The HIS observes that the cottage is likely to have been one of a block of similar-scale original cottages in the street, with only two other examples of this size of cottage remaining. It contends that Percival Street has lost its heritage streetscape significance with the surrounding modern development of two- and three-storey properties - built under previous RLEP planning rules - dominating the remaining cottages, including the subject site.

The HIS describes the cottage as "unique as an intact stand-alone late Victorian cottage", likely 1890s-1910, featuring Queen Anne-style gable and curtain detailing (potentially reconstructed) unusual for a cottage of this size, and the only remaining cottage of its type in the immediate vicinity. The HIS notes that the cottage retains its high gabled roof and vertically proportioned timber windows and that the general layout of the façade is intact. The cottage is typically modest in scale and the internal layout simple in design in contrast to its intricate façade detail. It notes that it is unclear if the detailing is original due to lack of available information about the site.

The HIS concludes that the dwelling is in good condition and retains its original façade and thereby retaining its heritage significance as an independent heritage item. It notes that no significant modern additions are visible from the streetscape other than the replacement of the roof with colourbond sheeting, and that the façade, including its detailing and layout, should be retained. It describes the building as being significant to the area as a representation of the early Victorian interest in the coast and as a modern dwelling built in this area during the Victorian era when substantially larger terraces were being constructed in inner-city Sydney.

The HIS describes the impact the proposal has on the heritage item as respectful of building's heritage significance and sympathetic in design. It contends that the proposed alterations and additions to the rear of the site are acceptable because they do not compete with the integrity or character of the original building and do not affect the existing heritage item and its contributory status. It argues the new works allow for the provision of a more dominant structure behind what is currently a dwarfed heritage item that sits in between large neighbouring development. It contends that the bulk and scale of the addition is commensurate with the roof height of the surrounding buildings and does not impact on the heritage values of the site or the streetscape.

Controls

Clause 5.10(1) of Randwick Local Environmental Plan 2012 includes an Objective of conserving the heritage significance of heritage items and heritage conservation areas, including associated fabric, setting and views.

Clause 5.10(4) of Randwick Local Environmental Plan 2012 requires Council to consider the effect of the proposed development on the heritage significance of the heritage item or heritage conservation area.

The Heritage section of Randwick Development Control Plan 2012 provides Objectives and Controls applying to development of heritage items, including Design and character; Scale and form; Detailing; and Materials, finishes and colour schemes. In relation to Design and character, Clause 2.2 of the DCP includes a Control that the design of alterations and additions must complement the existing building in its scale, form and detailing, but that it should be possible to distinguish the new work from the old. In relation to Scale and Form, Clause 2.3 of the DCP includes Controls that additions must not visually dominate, compete with or conceal the original form and massing of the existing buildings, and must not contain any major or prominent design elements which compete with existing architectural features or detailing. The DCP notes that any upper-level addition should be set well to the rear to minimise streetscape visibility and retain the integrity of the main roof, and preferably use pavilion-type forms with a lower-scale linking structure between the original building and any double-storey addition. If a pavilion-type form is not suitable or desirable, an upper-floor addition may be acceptable, set well to the rear of the building to minimise impact on the main roof and to minimise streetscape visibility.

Comments

The existing heritage roof is steeply pitched over the front rooms with front gable. It connects to another steeply pitched roof with a wider fall to a skillion roof on the north side over a bedroom/study. The rear kitchen/dining area has a low skillion roof sloping to the rear over the laundry and WC area. The front verandah returns around the side elevation over the recessed corner entry hall.

Original fabric

Externally No 18 retains original weatherboard cladding and windows, doors, decorative surrounds and gable detailing and verandah detailing. The original front verandah flooring, likely timber, has been replaced by concrete.

Internally the front two rooms retain original plasterwork, decorative vents, timber windows, picture rails and floorboards. The works schedule provided as part of any development application to a heritage building should include details of how the original fabric – in this case the two front rooms – is to be retained and/or made good, including restoration of fabric where it has been lost. Works should include retention of flooring and original fireplaces where appropriate. Original timberwork could include skirtings, architraves and doors. Original plasterwork could comprise cornices and ceiling roses. Inspection of and making good of any termite damage to the front of the house should also be carried out. Original floorboards should be salvaged where possible to reinstate the verandah's original timber deck.

The Australian ICOMOS Charter for Places of Cultural Significance 2013 (The Burra Charter) provides key concepts in the form of Conservation Principles which are further developed in the Conservation Processes and Conservation Practice sections. The Burra Charter requires a cautious approach of changing as much as is necessary but as little as possible. Succinct

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definitions are provided for conservation terms, eg- “restoration” means returning a place to a known earlier state by removing accretions or by reassembling existing elements affected by the introduction of new material.

It is of concern that the information contained in the development application and HIS provides little reassurance that a cautious approach to the replacement of original building fabric will be adopted. There is concern that introduction of new material could impact on the heritage value of the building. It is recommended that a detailed survey of the visible and accessible heritage building fabric be undertaken to determine the physical condition of internal and external components, including the extent of termite damage, if any. External components would include timber weatherboards and decorative detail including windows and front door, window and door surrounds, and verandah and gable detailing. Internal components would include floorboards and decorative detail including skirtings, picture rails, architraves, and internal doors, as well as plasterwork and fireplaces.

Based on a detailed survey of the building’s fabric, a schedule of conservation works should be provided clarifying as far as possible the extent of replacement of original building fabric and the detail of proposed works to make good original fabric. It is recognised that it may not be possible to establish the full scope of works until the project is underway. The reinstatement of timber verandah flooring could improve ventilation to the timber floors and minimise potential damp problems. Drawings should be provided of the materials and details of any proposed timber verandah flooring intended to replace the existing concrete slabs. Appropriate consent conditions should be provided.

Ground floor demolition

The application proposes the retention of the two front rooms of the dwelling and the demolition of the rear half of the dwelling. The front two rooms must be retained in their original configuration, with original detailing retained or reinstated. The dining, kitchen, living and laundry and WC areas to the rear have been considerably modified and there are no heritage objections to the demolition of the rear half of the dwelling, subject to prior archival recording.

Rear addition

The application proposes a two-storey rear addition replacing the existing single-storey form, setback approximately 10 metres from the front boundary. The upper-level addition has been altered from a steep-pitched hip-and-gable roof design (that aimed to mimic the original steeply pitched front roof) to a hipped roof design (detailed in drawings DR4292, provided to Council on 21 March 2022) that is less visually dominant. As noted above, the DCP requires that additions to heritage buildings do not visually dominate, compete with or conceal the original form and massing of the existing significant built form. While it is noted that the property is heavily enclosed by neighbouring properties, in this instance the design solution is required to respond to the scale, form and detailing of the existing heritage building, not those of its neighbours.

Horizontal weatherboard and colourbond roof are suitable for use on heritage buildings and are sympathetic to the heritage item. Careful consideration should be given to the suitability of placing large windows on the northern and western elevations of the addition to limit heat gain and optimise energy efficiency on site.

Planner’s Comment

The comments have been reviewed and it is considered that the proposed conditions are considered appropriate and have been included in the development consent.

1.2. Development Engineer

Flood Report Comments

A Council Flood Report has been issued for the subject site, dated 07.03.2022, which advised that the 1:100 year Flood Level for the subject site is RL 24.55m AHD. A 500mm Freeboard would result in a minimum floor level of RL 25.05m AHD.

It is noted that the submitted Survey Plans show the existing floor level for the dwelling is RL 25.18m AHD. Development Engineering has included a condition that requires the ground floor reconstruction/extension to be at least match the existing floor level of RL 25.18m AHD, as per Level Survey by Chadwick Cheng Surveyors dated 28.04.2021

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.

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.

Planner's Comment

The comments have been reviewed and it is considered that the proposed conditions are considered appropriate and have been included in the development consent. It is noted that the proposal has sought to provide a FFL of 25.10 at ground level. It is considered that the recommended condition by the Development Engineers to have the proposal amended to have a ground floor level of RL 25.18m will have minimal planning impacts.

Appendix 2: DCP Compliance Table**3.1 Section C1: Low Density Residential**

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	
2	Site planning		
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 = 285sqm Proposed = 51%	Yes
2.4	Landscaping and permeable surfaces		
	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 = 285sqm Proposed = 22.6% (64.46sqm)	Yes
2.5	Private open space (POS)		
	Dwelling & Semi-Detached POS		
	Up to 300 sqm = 5m x 5m 301 to 450 sqm = 6m x 6m 451 to 600 sqm = 7m x 7m 601 sqm or above = 8m x 8m	Site = 285sqm Proposed = minimum 5m x 5m provided.	Yes
	ii) POS satisfy the following criteria: <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 	The POS is located at ground level adjacent to the kitchen and dining area at the rear of the dwelling. The proposed location is considered acceptable having regard to the size of the allotment and the orientation of the site. The POS is relatively flat.	
3	Building envelope		
3.1	Floor space ratio LEP 2012 = on merit	Proposed FSR= 0.71:1	Yes
3.2	Building height		
	Maximum overall height LEP 2012 = 9.5m	Proposed = 8.54m	Yes
	i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m	The proposal seeks a maximum external wall height of 6.13m and a maximum floor to ceiling	Yes

DCP Clause	Controls	Proposal	Compliance
	iii) Merit assessment if exceeded	height of 2.65m. The proposed 50mm variation is considered acceptable in this instance, having considered that the proposal complies with the NCC and the need for a reduced height to the first floor addition to alleviate the impact of the new first floor addition on the heritage significance of the item.	
3.3	Setbacks		
3.3.1	Front setbacks i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary street frontage: - 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	Proposed = 11.23m N/A The proposed swimming pool is located at the western rear of the site.	Yes N/A Yes
3.3.2	Side setbacks: Semi-Detached Dwellings: • Frontage less than 6m = merit • Frontage b/w 6m and 8m = 900mm for all levels Dwellings: • Frontage less than 9m = 900mm • Frontage b/w 9m and 12m = 900mm (Gnd & 1st floor) • Frontage over 12m = 1200mm (Gnd & 1 st floor), 1800mm above. Refer to 6.3 and 7.4 for parking facilities and outbuildings	Existing: Southern ground floor = 0.44m. No proposed changes Proposed: Northern ground floor = 1.23m Southern first floor = 0.44m Northern first floor = 1.23m	Acceptable, see key issues.
3.3.3	Rear setbacks 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: - 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-	Existing = 6.16m Proposed = 6.16m – 6.31m on ground and first floor	Acceptable, see key issues.

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DCP Clause	Controls	Proposal	Compliance
	<p>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.</p> <p>iv) For irregularly shaped lots = merit assessment on basis of:-</p> <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p>		
4	Building design		
4.1	General		
	<p>Respond specifically to the site characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> • articulated to enhance streetscape • stepping building on sloping site, • no side elevation greater than 12m • encourage innovative design 	<p>The proposed first-floor addition has been significantly setback from the street. The proposal seeks to provide a variety of materials and steps in the footprint of the development to reduce the apparent scale to the adjoining neighbours and the streetscape. In addition, the proposal has been setback behind the apex of the roof of the ground floor at the eastern front of the site, to reduce the impacts of the development on the heritage significance of the site and the scale of the development to the streetscape.</p> <p>The site does not present a significant fall. The proposal seeks a northern side elevation of 14.4m.</p>	Acceptable, see key issues.
4.4	Roof Design and Features		
	<p><i>Celestial windows and skylights</i></p> <p>vii) Sympathetic to design of dwelling</p>	It is considered that the proposed skylights are positioned appropriately and will have minimal impact on the visual amenity of the adjoining neighbours and the public domain.	Yes
4.5	Colours, Materials and Finishes		
	i) Schedule of materials and finishes	The applicant has submitted a schedule of	Yes

DCP Clause	Controls	Proposal	Compliance
	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.)	colours and finishes. It is considered that the proposal is generally consistent with the controls. However, the subject site is identified as a heritage item. The application was required to be referred to Council's heritage officer who recommended appropriate conditions of consent regarding colours and materials (see Appendix 1, Section 1.1)	
4.6	Earthworks		
	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 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.	Minimal earthworks are required to facilitate the development. The proposed earthworks predominantly relate to the swimming pool. It is noted that section 4.6 does not relate to swimming pools as specified by the DCP.	Yes
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	Due to the east-west orientation of the subject site and the context of the subject site located adjacent to the three storey dwelling house at No.16 Percival Street, it is considered that the existing north-facing living room windows of the subject site do not obtain a minimum of 3 hours of direct sunlight. The proposed north-facing living room windows similarly do not receive a minimum of 3 hours sunlight.	Acceptable, see key issues.

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DCP Clause	Controls	Proposal	Compliance
	ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.	Minimal changes are proposed to the POS of the subject site. A review of the submitted shadow diagrams reveals that the POS of the subject site will receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June.	Yes
	Solar access to neighbouring development:		
	iii) 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.	It is considered that the north-facing living room windows of the adjoining neighbour to the south do not receive a minimum of 3 hours of direct sunlight.	No, see key issues.
	iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.	The POS of the adjoining property to the south will receive a minimum of 3 hours.	Yes
	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.	No solar panels are located on the adjoining property to the south. The roof of the adjoining property to the south has an RL 34.1. A calculation of the plans has revealed that the maximum height of the proposed development is to be RL 33.23. As such, it is considered that any future solar panels on the neighbouring development will retain solar access.	Yes
	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. 	Variation is sought. See key issues.	See key issues.

DCP Clause	Controls	Proposal	Compliance
5.2	Energy Efficiency and Natural Ventilation		
	<p>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:</p> <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: The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</i></p>	The applicant has submitted a BASIX Certificate with the Development Application, satisfying the minimum requirements for energy efficiency and natural ventilation.	Yes
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>	The proposed windows are located appropriately and offset from neighbouring windows. In addition, windows with potential privacy concern have been provided as highlight windows with a minimum floor to sill height of 1.6m.	Yes
	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:</p>	The front facing balcony on the first-floor level is provided with a 1.8m high privacy screen to the northern elevation. Minimal privacy impacts are anticipated.	Yes.

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DCP Clause	Controls	Proposal	Compliance
	Screen planting and planter boxes (Not sole privacy protection measure) vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.		
5.4	Acoustic Privacy		
	i) noise sources not located adjacent to adjoining dwellings bedroom windows <i>Attached dual occupancies</i> ii) Reduce noise transmission between dwellings by: - 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.	No noise sources are proposed to be located adjacent to adjoining dwellings bedroom windows.	Yes
7	Fencing and Ancillary Development		
7.5	Swimming pools and Spas		
	i) Locate behind the front building line	The proposed swimming pool is located at the eastern rear of the site behind the front building line.	Yes
	ii) Minimise damage to existing tree root systems on subject and adjoining sites.	The application was required to be referred to Council's engineering department who have raised no concerns against the proposal.	Yes
	iii) Locate to minimise noise impacts on the adjoining dwellings.	The proposed location is considered acceptable and away from adjoining dwellings bedroom windows.	Yes
	iv) Pool and coping level related to site topography (max 1m over lower side of site).	The coping of the inground pool is located at ground level.	Yes
	v) Setback coping a minimum of 900mm from the rear and side boundaries.	Minimum 900mm proposed from the western rear boundary and northern side boundary.	Yes
	vi) Incorporate screen planting (min. 3m mature height unless view corridors affected) between setbacks.	The proposal is appropriately sited to maximise the area of POS on the site. The site is constrained in size. In addition, any proposed screen planting within the	Yes

DCP Clause	Controls	Proposal	Compliance
	<p>vii) Position decking to minimise privacy impacts.</p> <p>viii) Pool pump and filter contained in acoustic enclosure and away from the neighbouring dwellings.</p>	<p>setbacks will negatively impact on the non-climbable zone specified under the Swimming Pools Act.</p> <p>The proposed coping at ground level is appropriately located.</p> <p>A condition of consent has been imposed to ensure that the pool pump is provided in an acoustic enclosure and restricted hours of use if noise can be heard from the adjoining properties habitable rooms.</p>	Yes

3.2 Section B7: Transport, Traffic, Parking and Access

DCP Clause	Controls	Proposal	Compliance
3.2	Vehicle Parking Rates		
	<p>1. Space per dwelling house with up to 2 bedrooms</p> <p>2. Spaces per dwelling house with 3 or more bedrooms</p> <p>Note: Tandem parking for 2 vehicles is allowed.</p>	<p>Existing = 1</p> <p>Proposed = 1</p>	Acceptable based on the existing non-compliance.

Responsible officer: Joseph Farag, Environmental Planning Officer

File Reference: DA/552/2021

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**Development Consent Conditions
(dwellings and dual occupancies)**

Folder /DA No:	DA/552/2021
Property:	18 Percival Street, Maroubra
Proposal:	Alterations and additions to existing dwelling house including partial demolition, ground floor extension to the rear, addition of a new first floor with east-facing balcony, swimming pool at the rear, landscaping and associated works (Heritage Item).
Recommendation:	Approval

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
DR-4292, Sheet 02, Rev B	Planshop	20/04/2022	20 April 2022
DR-4292, Sheet 04, Rev B	Planshop	20/04/2022	20 April 2022
DR-4292, Sheet 05, Rev B	Planshop	20/04/2022	20 April 2022
DR-4292, Sheet 06, Rev B	Planshop	20/04/2022	20 April 2022
DR-4292, Sheet 07, Rev B	Planshop	20/04/2022	20 April 2022
DR-4292, Sheet 08, Rev B	Planshop	20/04/2022	20 April 2022
DR-4292, Sheet 09, Rev B	Planshop	20/04/2022	20 April 2022
DR-4292, Sheet 10, Rev B	Planshop	20/04/2022	20 April 2022
DR-4292, Sheet 11, Rev B	Planshop	20/04/2022	20 April 2022
DR-4292, Sheet 12, Rev B	Planshop	20/04/2022	20 April 2022
DR-4292, Sheet 13, Rev B	Planshop	20/04/2022	20 April 2022

DR-4292, Sheet 16, Rev B	Planshop	20/04/2022	20 April 2022
DR-4292, Sheet 17, Rev B	Planshop	20/04/2022	20 April 2022
DR-4292, Sheet 22, Rev B	Planshop	20/04/2022	20 April 2022

BASIX Certificate No.	Dated	Received by Council
A429124	25 August 2021	7 September 2021

Amendment of Plans & Documentation

2. The approved plans and documents must be amended in accordance with the following requirements:
 - a. The maximum ridge height of the roof of the proposed development is to be RL 33.23.

Schedule of Conservation Works

3. The works outlined in the Schedule of Conservation Works are to be implemented in conjunction with the proposed development. An architect suitably qualified and experienced in heritage conservation shall be engaged to oversee the implementation to ensure the use of technically sound and appropriate techniques. All work shall be carried out in accordance with the principles of the Australia ICOMOS Burra Charter and to the satisfaction of the Director City Planning.

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

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

Stormwater Drainage

5. Surface water/stormwater (from the redeveloped portion of the site) must be drained and discharged to the street gutter in front of the site to the satisfaction of the Certifier and details of the proposed stormwater drainage system are to be included in the construction certificate details for the development.

Schedule of Conservation Works

6. A schedule of conservation works should be provided clarifying as far as possible the extent of replacement of original building fabric and the detail of proposed making good works. The schedule is to be based on a survey of building fabric, determining as far as possible the physical condition of internal and external components, including floorboards, weatherboards, windows, doors and internal and external decorative detail. This schedule of conservation works is to be submitted to and approved by Council's Director City Planning, in accordance with Section 80A (2) of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development.

Timber Verandah

7. Drawings are to be provided of the materials and details of the proposed timber verandah flooring if the existing concrete slab is to be replaced. Additional detail is to be submitted to and approved by Council's Director City Planning, in accordance with Section 80A (2) of the

Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development.

Ground Floor Level

8. Plans submitted for the Construction Certificate are to show the ground floor level extension/reconstruction being constructed at a level no lower than RL 25.18m AHD (which is the existing floor level as shown on the submitted Survey Plan by ChadwickCheng Surveyors dated 28.04.2021.The Principal Certifier is to ensure compliance with this requirement.

Archival Recording of property

9. A brief archival recording of the property shall be prepared and submitted to and approved by Council's Director City Planning, in accordance with Section 80A (2) of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development. This recording shall be in accordance with the NSW Heritage Office 2006 Guidelines for Photographic Recording of Heritage Items using Film or Digital Capture. Two copies of the endorsed archival recording shall be presented to Council, one of which shall be placed in the Local History Collection of Randwick City Library.

Salvage Plan

10. A salvage plan shall be prepared and submitted to and approved by Council's Director City Planning, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development. The salvage plan is required to ensure that materials including fireplaces, architraves, skirtings, windows, doors and remnant components of significant heritage fabric are carefully removed and stored, sold or donated to a heritage salvaging yard to facilitate the conservation of other buildings of a similar period.

External Colours, Materials & Finishes

11. The colours, materials and finishes of the external surfaces to the building are to be compatible with the existing building and consistent with the architectural style of the building. Details of the proposed colours, materials and textures (ie - a schedule and brochure/s or sample board) are to be submitted to and approved by Council's Director City Planning, in accordance with Section 80A (2) of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development.

Section 7.12 Development Contributions

12. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$418,613 the following applicable monetary levy must be paid to Council: \$4,186.15

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 6999 or 1300 722 542 for the indexed contribution amount prior to payment.

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

$$IDC = ODC \times CP2/CP1$$

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.

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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

13. A development compliance and enforcement fee of \$879.10 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

14. 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.

Sydney Water Requirements

15. 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

16. 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

17. 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 Certifying Authority.

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

18. 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.

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Home Building Act 1989

19. 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

20. 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 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

21. 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 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

22. 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

23. Demolition Work must be carried out in accordance with Australian Standard AS2601-2001, Demolition of Structures and relevant work health and safety requirements.

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.

Demolition & Construction Waste Plan

24. 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

25. 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.
26. 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.

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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

27. 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.

Site Signage

28. 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

29. 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 5.00pm • 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

30. 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.

Excavations, Back-filling & Retaining Walls

31. 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

32. 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.
33. 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

34. 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

35. 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

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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

36. 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

37. 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

38. 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

39. 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/builder 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

40. 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

41. 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.

Swimming Pool Safety

42. Swimming pools are to be designed and installed in accordance with the relevant requirements of the *Building Code of Australia* and be provided with childproof fences and self-locking gates, in accordance with the *Swimming Pools Act 1992* and the *Swimming Pools Regulation 2008*.

The swimming pool is to be surrounded by a child-resistant barrier (e.g. fence), that separates the pool from any *residential building* (as defined in the *Swimming Pools Act 1992*) that is situated on the premises and from any place (whether public or private) adjoining the premises; and that is designed, constructed and installed in accordance with Australian Standard AS 1926.1 – 2012 (Swimming Pool Safety Part 1 - Safety Barriers for Swimming Pools).

Gates to pool area must be self-closing and latching at all times and, the gate is required to open outwards from the pool area and prevent a small child opening the gate or door when the gate or door is closed.

Temporary pool safety fencing is to be provided pending the completion of all building work and the pool must not be filled until a fencing inspection has been carried out and approved by the Principal Certifier.

A 'warning notice' must be erected in a prominent position in the immediate vicinity of the swimming pool, in accordance with the provisions of the *Swimming Pools Regulation 2008*, detailing pool safety requirements, resuscitation techniques and the importance of the supervision of children at all times.

Swimming Pool Requirements

43. Swimming pools are to be designed, installed and operated in accordance with the following general requirements:
- a) Backwash of the pool filter and other discharge of water is to be drained to the sewer in accordance with the requirements of the Sydney Water Corporation; and
 - b) All pool overflow water is to be drained away from the building and adjoining premises, so as not to result in a nuisance or damage to premises; and
 - c) Water recirculation and filtrations systems are required to comply with AS 1926.3 – 2010: Swimming Pool Safety – Water Recirculation and Filtration Systems; and
 - d) Pool plant and equipment is to be enclosed in a sound absorbing enclosure or installed within a building, to minimise noise emissions and possible nuisance to nearby residents.

Notification of Swimming Pools

44. The owner of the premises must 'register' the swimming pool [or spa pool] on the NSW Swimming Pool Register, in accordance with the *Swimming Pools Act 1992*.

The Swimming Pool Register is administered by the NSW Office of Local Government and registration on the Swimming Pool Register may be made on-line via their website www.swimmingpoolregister.nsw.gov.au.

Registration must be made prior to the issue of an Occupation Certificate for the pool and a copy of the NSW Swimming Pool Certificate of Registration must be forwarded to the Principal Certifier and Council accordingly.

Council's Infrastructure, Vehicular Crossings, street verge

45. 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.
46. 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:

- a) 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.
- b) 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.

47. 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

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.

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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.

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

49. 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.

Waste Management

50. Adequate provisions are to be made within the premises for the storage and removal of waste and recyclable materials, to the satisfaction of Council.

Swimming/Spa Pools

51. The pool plant and equipment shall not be operated during the following hours if the noise emitted can be heard within a habitable room in any other residential premises, or, as otherwise specified in relevant Noise Control Regulations:

- before 8.00am or after 8.00pm on any Sunday or public holiday; or
- before 7.00am or after 8.00pm on any other day.

Air Conditioners

52. Air conditioning plant and equipment shall not be operated during the following hours if the noise emitted can be heard within a habitable room in any other residential premises, or, as otherwise specified in relevant Noise Control Regulations:

- before 8.00am or after 10.00pm on any Saturday, Sunday or public holiday; or
- before 7.00am or after 10.00pm on any other day.

Rainwater Tanks

53. The operation of plant and equipment associated with rainwater tanks are to be restricted to the following hours if the noise emitted can be heard within a habitable room in any other residential premises:

- before 8.00am or after 8.00pm on weekends or public holiday; or
- before 7.00am or after 8.00pm on weekdays.

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 Council's assessment of this application does not include an assessment of compliance with the *Swimming Pool Act 1992*. All pool barriers, fences and structures within properties containing a swimming pool must comply with the requirements of the *Swimming Pool Act 1992*, BCA and relevant Australian Standards.
- Details of compliance with the *Swimming Pool Act 1992*, Building Code of Australia and relevant Standards must be included in the Construction Certificate to the satisfaction of the Certifying Authority.
- A13 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.
- A14 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.
- A15 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.

Development Application Report No. D20/22

Subject: 3A Mermaid Avenue, Maroubra (DA/80/2021)


Executive Summary

Proposal:	Alterations and additions to existing dwelling to create two new semi-detached dwellings and Torrens title subdivision.
Ward:	Central Ward
Applicant:	Arkhaus
Owner:	Mr T Panigiris
	Mrs C Panigiris
Cost of works:	\$2,308,468.00
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 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/80/2021 for alterations and additions to existing dwelling to create two new semi-detached dwellings and Torrens title subdivision, at No. 3A Mermaid Avenue, Maroubra, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Draft Conditions of Consent - DA/80/2021 - 3A Mermaid Avenue, Maroubra

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1. Executive summary

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 dwelling to create two (2) new semi-detached dwellings. The alterations and additions involve the extension of the building at all three (3) storeys, new off-street parking and additional access driveway, and alterations to the existing pool. The proposal also seeks consent for the Torrens title subdivision of the allotment into two (2) lots.

The key issues associated with the proposal relate to non-compliance with the maximum building height standard and the external wall height control, and the associated overshadowing and visual bulk impacts. The applicant has submitted a written request to vary the standard, which is considered to be well-founded. The variation is assessed as being in the public interest given the development is consistent with the objectives of the standards and of the R2 Low Density Residential zone. The non-complaint portion of building is primarily a result of the excavated lower ground floor level and the significantly steep topography of the site.

The proposal is recommended for approval subject to non-standard conditions that require a reduction to the overall height of the proposal as a result of decreased internal ceiling heights, a recessed building portion on the southern elevation and additional privacy measures.

2. Site Description and Locality

The subject site is known as 3A Mermaid Avenue, Maroubra and has a legal description of Lot 4 in Deposited Plan 224461. The site is irregular in shape, with angled north, east and west boundaries,

and has a total area of 830.75m². Vehicular and pedestrian access is gained via the 16.005m frontage to Mermaid Avenue. The site experiences a fall of approximately 11.97m from the front western boundary down towards the rear eastern boundary, with an average slope of approximately 23.86%.

The site is zoned R2 - Low Density Residential and is currently occupied by an existing three (3) storey dwelling house with attached garage and in-ground swimming pool. The property is surrounded by residential properties to the north, south, east and west. The Tasman Sea is located to the east of the site, with Rob Walker Rock Pool located to the south-east. Water views are currently obtained from the subject site and surrounding properties from the north-east through to south-east. The prevailing architectural style of the streetscape is a mixture of newer and older style dwelling houses of three (3) or more storeys. The site is identified as being within a foreshore scenic protection area pursuant to RLEP 2012.

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 relevant or recent applications for the site. The existing dwelling house on the site was approved in November 1992.

Subject Development Application

24 February 2021

Development Application DA/80/2021 was lodged with Council. The application was internally referred to Council's Development Engineer for comment and/or recommendation.

03 December 2021

Following an assessment by Council, the applicant was advised of a number of concerns with the proposal. The concerns raised were primarily in relation to the height of the building, including external wall height, and amenity impacts upon the neighbouring property. The written correspondence also noted amendments by condition recommended by Council's Development Engineer.

01 March 2022

In response to the initial concerns raised by Council, a response to the RFI and amended plans were submitted which involved an amended roof design at the south-eastern corner which deleted the parapet for a portion of the roof and reduced the height. An updated clause 4.6 written submission was also provided.

4. Proposal

The proposal seeks consent for alterations and additions to the existing dwelling to create two (2) new semi-detached dwellings.

Specifically, the Applicant seeks consent for the following works:

- Alterations and additions to the existing building to create two (2) semi-detached dwellings comprising:

Dwelling 3A

○ *Ground Floor Level*

Open-plan Living/Dining/Kitchen area, Pantry, Powder room, attached single garage, internal access stair and lift, balcony to the east;

○ *Lower Ground Floor 1 Level*

Three (3) bedrooms, one (1) En-suite, one (1) Bathroom, Laundry, internal access stair and lift;

○ *Lower Ground Floor 2 Level*

Rumpus room, one (1) Bedroom, one (1) Powder room, internal access stair and lift, Alfresco area to the east;

Dwelling 3B

○ *Ground Floor Level*

Open-plan Living/Dining/Kitchen area, Pantry, Powder room, attached double garage, internal access stair and lift, balcony to the east;

- *Lower Ground Floor 1 Level*

Three (3) bedrooms, one (1) En-suite, one (1) Bathroom, Laundry, internal access stair and lift;

- *Lower Ground Floor 2 Level*

Rumpus room, one (1) Bedroom, one (1) Powder room, Store, internal access stair and lift, Alfresco area to the east;

- New access driveway and internal driveway;
- Alterations to the existing swimming pool;
- Excavation;
- Tree removal, landscaping and associated works.
- Torrens title subdivision of the site into two (2) lots. Lot 3A = 407.87m² and Lot 3B = 422.92m².

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. As a result of the notification process a total of two (2) submissions were received from and on behalf of the following property.

- 3 Mermaid Avenue, Maroubra

Property Owner

Issue	Comment
<p>Concerns regarding impacts upon the northern central courtyard, noting:</p> <ul style="list-style-type: none"> • The courtyard is a primary outdoor space and has been designed and located to be north-facing and protected by the coastal winds; • The courtyard is an entertaining space; • Vegetation is grown in the courtyard area; • If the development is approved, the courtyard shall become dark and overshadowed; • The Laundry opens onto the courtyard and it is utilised for clothes drying. 	<p>The use of the existing courtyard is noted and has been considered in the assessment. However, given the location of the existing courtyard, which is located within the centre of the site, full retention of solar access to the courtyard would be considered unreasonable in this instance. Amendments have been made in relation to the south-eastern portion of the roof, and further changes are recommended through conditions to minimise the extent of overshadowing to the adjoining property, including the courtyard. See Key Issues and Clause 4.6 Assessment for further discussion.</p>

Town Planner

Issue	Comment
<p><u>Statement of Environmental Effects</u></p> <p>Concerns regarding the submitted SEE including:</p> <ul style="list-style-type: none"> – The description of the development as alterations and additions. – The SEE states that there shall be no adverse amenity impacts upon the adjoining property at 3 Mermaid Avenue. – The Clause 4.6 statement is considered to be unfounded and unreasonable due to adverse impacts upon the adjoining property. – Notes several non-compliances that are highlighted in the SEE. 	<p>See Clause 4.6 assessment and Key Issues for further discussion where relevant.</p>

Issue	Comment
<p><u>Breach of Council's Planning Controls</u> Concerns regarding non-compliance with the following:</p> <ul style="list-style-type: none"> - Height of buildings; - External Wall Height; - Side Setback; - Single Width Garage Control; - Minimum Frontage Control; - Landscaping Control. 	<p>See Key Issues for further discussion where relevant.</p> <p>The proposal is considered to be compliant with the minimum side setbacks for semi-detached dwellings, noting that no numerical requirement is provided for allotments more than 8m in width and the proposal complies within the minimum 900mm provisions for the dwellings.</p>
<p><u>Solar Access and Overshadowing</u> No elevational shadow diagrams have been provided. The submission includes professional shadow diagrams prepared on behalf of the objector to demonstrate the extent of overshadowing which identifies that the central courtyard shall be overshadowed by the proposal.</p>	<p>See Key Issues for further discussion.</p>
<p><u>Visual Impact</u> Concerns regarding the visual impact and sense of enclosure as a result of the excessive southern wall and extension to the east.</p>	<p>While it is noted that the extension of the development to the rear may result in some sense of enclosure of the neighbouring courtyard, it must be acknowledged that the subject courtyard is located within the central portion of the site and therefore any extension of the existing building on the site to the rear would likely result in additional visual impacts. The rear setback is not considered to be unreasonable, noting that the proposed setback is in excess of 20m from the rear boundary, and the proposal is setback significantly further than other developments along the foreshore. See Key Issues for further discussion regarding the non-compliant elements of the development which relate to building height, external wall height and wall length, and articulation and visual impact of the side elevation.</p>
<p><u>Visual Privacy</u> Concerns regarding overlooking from the proposed development, including windows on the southern elevation and the rear balcony.</p>	<p>A condition of consent is recommended for privacy measures to be applied to any side elevation windows to minimise overlooking. The proposed rear balconies shall have privacy screening along the southern and northern sides of the balcony in accordance with control 5.3. The screens shall be a minimum height of 1.6m from the finished floor level and be designed and orientated to prevent direct overlooking into neighbouring properties.</p>
<p><u>Minimum Frontage Width</u> Concerns regarding non-compliance with the minimum frontage width and irregular shape of the allotments, and inconsistency with the subdivision and development pattern of the area.</p>	<p>See Key Issues for further discussion.</p>

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Issue	Comment
Streetscape Impact Concerns regarding the lack of landscaping within the front yard as a result of the dual driveways and excessive garages within the front of the site and the detrimental impact upon the streetscape.	While the provisions of clause 2.4 seeks to maximise the amount of permeable surfaces within the front of the site, there is no minimum numerical requirement stipulated. The proposal fully complies with the minimum deep soil and landscaping provisions for each of the proposed lots. Landscaping has been provided within the front yard where possible, noting the requirement for off-street parking to be provided to each of the dwellings. See Key Issues for further discussion regarding the proposed parking within the front of the site.

5.1. Renotification

Amended plans were submitted by the Applicant on 1 March 2022 in which the overall height of the proposed development was lowered at the south-eastern corner and additional information in the form of a response to the concerns raised was provided. As the amended plans resulted in a reduction to the built form at the south-eastern corner of the development and would therefore result in a lesser impact to that which was proposed in the original proposal, re-notification of the plans was not considered necessary in this instance.

6. Relevant Environment Planning Instruments

6.1. 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.

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. There are no general savings and transitional provisions under the new Biodiversity SEPP and therefore the application is determined under the new SEPP (Biodiversity and Conservation) 2021. As such 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 following comments and justification.

Assessing officer's comment:

The proposed development requires the removal of several trees within the site and one (1) tree on Council's road reserve area. However the existing trees proposed for removal are considered to be of low significance, already exempt due to their proximity to the existing dwelling on site, or

unrealistic to retain in view of the redevelopment of the 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.

6.2. SEPP (Coastal Management) 2018

The site is identified as being within a Coastal Zone, comprising Coastal Use Area, pursuant to SEPP (Coastal Management) 2018. Clause 14 of the SEPP requires certain matters to be considered in the assessment of a Development Application before development consent can be granted. Furthermore, pursuant to clause 15, development consent must not be granted unless Council is satisfied that the proposed development is not likely to cause increased risk of coastal hazard on the subject site or any other land.

SEPP (Resilience and Hazards) 2021

The Resilience and Hazards SEPP came into force on 2 March 2022. The new Resilience and Hazards SEPP shall replace the SEPP (Coastal Management) 2018, with Division 4, clause 2.11 and clause 2.12 of Division 5 of the new Resilience and Hazards SEPP applicable to the proposed development. There are no general savings and transitional provisions under the new Resilience and Hazards SEPP and therefore the application is determined under the new SEPP (Resilience and Hazards) 2021. As such consideration of the new SEPP has been undertaken in accordance with the provisions of 4.15 of the Act.

The provisions of the Coastal Management SEPP have been transferred over to the new Resilience and Hazards SEPP with particular regards to the wording of clauses 14 and 15 in relation to the Coastal Use Area and development in the coastal zone generally, with the same wording adopted in the new SEPP under clauses 2.11 and 2.12. As such, it is considered that the proposed development would remain consistent with the provisions of the new Resilience and Hazards SEPP, noting the comments and justification below.

The proposed development is considered to be consistent with the relevant objectives of the SEPP and is satisfactory with regards to the matters of clause 2.11 (previously clause 14). The proposed alterations and additions (and subsequent change of use) shall not adversely impact upon foreshore public access nor detract from the scenic nature of the coast. It is considered that the proposed development is not likely to cause increased risk of coastal hazards on the coastal land. Council's Development Engineer raised no concerns with regards to the stormwater drainage and management of the site, subject to recommended conditions of consent. As such the proposed development is considered to be consistent with the provisions of clause 2.11 and 2.12 of the new Resilience and Hazards SEPP (previously clause 14 and 15 of SEPP (Coastal Management) 2018).

Clause 2.11 also requires Council to consider the surrounding coastal and built environment, and the bulk, scale and size of the proposed development. The overall bulk and scale of the proposal is not considered to be excessive in view of compliance with Council's built form controls in relation to FSR, site coverage, landscaping, setbacks (with particular regard to rear setback), and that the non-compliances with the building height and external wall height are supported. It is also noted that there are other examples of three (3) storey dwellings along the foreshore and as such the proposed development is not inconsistent with surrounding coastal and built environment.

6.3. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned R2 Low Density Residential under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent. The objectives of the R2 zone aim to provide for the housing needs of the community within a low density residential environment, recognise the desirable elements of the existing streetscape and built form, and that contribute to the desired future character of the area, and protect the amenity of residents.

The proposed development providing one (1) storey to the street frontage is considered to be consistent with the existing streetscape, and the overall built form is not inconsistent with the character of surrounding area, with dwellings of multiple storeys along the foreshore due to the

topography of the subject site and surrounding sites. As discussed further in the report under the Discussion of Key Issues heading and DCP Compliance Table, subject to the recommendations within the report the proposed development is not considered to result in any unreasonable impacts upon the adjoining and surrounding properties with regards to view loss, solar access, and visual and acoustic privacy.

Subject to the recommended amendments, the proposal is considered to be 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 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)
CI 4.4: Floor space ratio (max)	0.75:1	Lot 3A = 0.619:1 Lot 3B = 0.603:1	Yes Yes
CI 4.3: Building height (max)	9.5m	Lot 3A = 10.79m Lot 3B = 10.79m	No No <i>See Clause 4.6 Assessment for further discussion.</i>
CI 4.1: Lot Size (min)	400m ²	Lot 3A = 407.87m ² Lot 3B = 422.92m ²	Yes Yes

6.3.1. Clause 4.6 - Exceptions to development standards

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

6.3.2. Clause 6.7 Foreshore scenic protection area

Clause 6.7 of RLEP states that development consent must not be granted for development on land identified as foreshore scenic protection area unless the development is located and designed to minimise the visual impact as viewed from the public domain of the coastline, and that the development contributes to the scenic quality of the coastal foreshore.

As discussed throughout the report, the proposed development is not considered to be out of context with the existing area including development along the coastline, with multi-storey developments a common feature along the foreshore area due to the steep topography of the land. The stepping of the First floor level minimises the visual impact of the addition as viewed from the public areas of the coastline, and the waterway, and the proposal is seen to be consistent with the provisions of clause 6.7.

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)	9.5m	Lot 3A = 10.79m Lot 3B = 10.79m	1.29m 1.29m	13.57% 13.57%

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

- 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.*

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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 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 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 argues that this objective is satisfied by noting that the height breach is considered minor and limited to the rear portion (when considered in the context of the natural ground levels of the site), and does not have any significant implications upon the desired future character noting the multi-level residential uses along this portion of Mermaid Avenue. The breach occurs due to the footprint of the existing

building being extended to the east where the slope continues to fall to the east. The non-compliant portion shall not be visible from the street and would be imperceptible as viewed from the ocean, noting the nature of the surrounding buildings of three (3) to six (6) storeys.

- (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(c) 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 argues that this objective is satisfied by noting that the non-compliant portion will not introduce any significant adverse impacts in terms of visual bulk, due to the adjoining property to the south being located further to the rear. The breach to the height standard does not introduce any privacy impacts given the elevation nature of the glazing and screening proposed and that the southern elevation comprises limited openings. The proposal shall not result in any overshadowing of windows to principal living areas, with adverse overshadowing to the central courtyard. However, the Applicant is of the opinion that the subject courtyard is a secondary area of POS and the non-compliant portion of the development shall not result in any overshadowing to any determinative degree noting that the courtyard will retain solar access in the morning period for one (1) hour and 50% of the courtyard obtaining solar access up until 10am. No additional shadows shall be cast on any principal living areas or principal private open space. Furthermore, it is considered that no significant views shall be interrupted as a result of the non-compliant portion of the proposal.

Assessing officer's comment:

The proposed development is largely compliant with Council's built form controls with the exception of the maximum building height, external wall height and wall length, however it is considered that subject to a minor amendment the wall length can be resolved by introducing a recessed element to ensure consistency with the control.

The height breach is primarily in relation to the existing ground levels of the site, which have been highly modified with the lowest ground floor level excavated into the site. As such, the height variation extends for the entire depth of the lower ground floor level. However, it is noted that as measured from the assumed extrapolated natural ground levels the non-compliance would be proposed development would be limited to the south-eastern corner of the development with the northern side compliant with the 9.5m height limit.

The eastern side of Mermaid Avenue experiences a significant slope from the western street frontage to the rear of the sites to the east along the foreshore. However, the sites also experience a cross-fall from north to south, with particular regards to the properties at No. 1C-23 Mermaid Avenue. As such the heights of developments within the street, and as viewed from the waterway and foreshore areas to the east, transition down the street with the height of the dwellings generally in accordance with the gradual north-south slope. The existing developments adjoining the foreshore vary in the number of storeys, however are primarily between three (3) and six (6) storeys at the rear. It is considered that the proposed height is comparable to other developments within the street along the eastern side of Mermaid Avenue, including the number of storeys proposed. For reference, the adjoining property to the south has a upper roof ridge of RL43.95, with the adjoining property to the north having a roof ridge of RL49.06 and a gutter height of RL46.73. As such, the proposed building height of RL44.60 provides a transition between the southern properties and northern properties. In view of the above and the context of the existing foreshore developments, it is considered that the resultant development is generally commensurate of the level of development anticipated for the site, and the desired future character of the area.

The proposed development is not considered to result in any unreasonable view loss impacts, nor privacy impacts subject to the recommendations within the report in relation to privacy measures. Concerns have been raised in submissions regarding overshadowing and adverse

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visual bulk as a result of the proposed development. As discussed under clause 4.1, subject to the recommended amendments the proposed development is not considered to result in any unreasonable visual bulk with the side elevation appropriately articulated. The height breach is predominantly in relation to the balcony roofs to the rear. The applicant has aimed to reduce the visual bulk associated with this component by providing a lower level privacy screen to create a more open and light-weight structure. As discussed in detailed under clause 5.1, while it is acknowledged that the proposed development shall result in additional overshadowing of the adjoining property to the south, a significant portion of the private open space located to the east shall retain solar access in excess of the minimum requirements. The subject central courtyard is highly susceptible to overshadowing due to the location of the area within the centre of the site and along a side boundary. As such, the overshadowing impacts are not considered to be unreasonable in this instance. Notwithstanding, it is recommended that the overall height of the proposal be reduced by 300mm to minimise the associated impacts. Subject to the recommendations contained within the report, the proposed development is not considered to result in any unreasonable impacts upon the adjoining properties with regards to view loss, solar access, visual amenity and privacy.

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 proposal can achieve the objectives of the development standard. 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 height of buildings development standard as follows:

- The height breach is largely in relation to the existing topography of the site, noting that the site experiences an abrupt fall at the rear of the site.
- While it is acknowledged that overshadowing to the neighbouring courtyard shall occur, fully compliant solar access shall be maintained to the eastern facing terraces and living spaces.
- The departure from the height standard shall not introduce any significant adverse view or privacy impacts.
- The objectives of the standard are achieved.
- The proposed change of use to semi-detached dwellings require extension of the building to the rear where the topography significantly slopes.
- The non-compliant portion is largely related to the balcony roofs which is considered to be a reasonable inclusion to provide shelter. The balconies provide an area of POS off the living areas. Relocation of the balconies would adversely impact upon the size of the internal living areas.
- Compliance with the standard would not make any discernible difference in terms of how the building is perceived from the public domain since the non-compliant part of the building is not visible from the street and when viewed from the Ocean would still read as a three-storey form, and shall present as single storey to the street.

Assessing officer's comment:

As discussed in detail under Section 9.1 of the report, a significant portion of the proposed development results in technical non-compliance with the maximum height stipulated for the site. However, as outlined above, it is considered that the extent of the breach can be attributed to the excavated lower ground floor level of the existing building and subsequent modified ground levels. The Applicant has generally measured the height of the building from the assumed natural ground levels, however has acknowledged Council's calculation of the maximum height from the existing ground level, being under the floor slab of the most Lower Ground Level of the dwelling. The height breach is primarily a result of the existing level of the Lower Ground Floor of the dwelling, which was responsive to the existing topography of the site. As such the Applicant's argument that the height breach is primarily due to the existing levels and topography of the site is warranted, noting that there is a significant slope from the

front boundary down towards to the rear of the site, and even as measured from the assumed natural ground levels a minor breach would still occur.

It is noted that the design of the proposed alterations and additions are restricted by the siting and floor levels of the existing building, which are to be largely retained. Furthermore, due to the need to provide off-street parking on site, including the location of the existing garage, the extension of the building is limited to the rear. Compliance with the maximum height standard would require the deletion of the majority of the upper Ground Floor level (due to the siting of the lowest level below) which would severely compromise the internal amenity of the dwellings. The three (3) storey nature of the proposal is not considered to be unwarranted in the context of the surrounding developments and the topography of the site. Additionally, the proposed living/dining area is not considered to be excessive, being a depth of 5.79m. The proposal also fully complies with the rear setback control and is sited significantly further back than the adjoining developments along the foreshore. Notwithstanding, it is also noted that the proposed internal ceiling heights exceed the requirements of Part C1 of RDCP 2013, being 2.7m, with particular regards to the upper level of the development which provides an internal ceiling height of 3.2m. As discussed under clause 5.3, it is recommended that the overall height of the development be reduced by 300mm which would minimise the extent of non-compliance.

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?

As discussed in Section 6.2 of the report, the proposal is considered to be consistent with the objectives of the R2 zone, and as outlined above, the proposed development is also found to be consistent with the objectives of clause 4.3 Height of Buildings, subject to the recommendations within the report. 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 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 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(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

Description of Development

Concerns have been raised in the submission regarding the description of the development as alterations and additions to the existing dwelling given the extent of changes proposed.

The application seeks consent for alterations and additions to the existing dwelling to create two (2) new semi-detached dwellings. By virtue of the change of use of the existing development from a dwelling house to semi-detached dwellings, the assessment is based on the new development being semi-detached dwellings. The proposal seeks to retain portions of the existing building and therefore the proposal has been accurately described as alterations and additions, albeit substantial alterations. Given the change of use proposed, the assessment of the application as alterations and additions rather than a new development does not permit any variations or compensation in relation to the existing building and description, with the proposed development assessed on its individual merits in consideration of the relevant standards and controls applicable to semi-detached dwellings. As such, an amendment to the description was not considered necessary in this instance.

Building Height

- **Clause 4.3 (Height of Buildings) of RLEP 2012**
- **Clause 3.2 (Building Height) of Part C1 of RDCP 2013**
- **Clause 3.2 (Building Height – External Wall Height) of Part C1, RDCP 2013**

RLEP 2012 defines building height as the vertical distance from existing ground level to the highest point of the building, where existing ground level is "*the existing level of a site at any point*". The proposed development is located directly above the existing second Lower Ground Floor level and as such the existing ground level shall be the ground level below the existing floor slab of Lower Ground Floor 2.

The maximum height of the proposed development is 10.79m above the existing ground level (existing lowest level) to the roof directly above. Clause 4.3 - Height of Buildings specifies a maximum building height of 9.5m for the subject site and the proposed development is numerically non-compliant with the development standard. As such, quantitatively, the Applicant seeks to vary the development standard by approximately 13.57% and a Clause 4.6 exception to vary the development standard has been provided. See assessment of Clause 4.6 in relation to the contravention of the maximum height.

As discussed in detail within the report, the proposed height breach is largely a result of the topography of the site which experiences a significant slope, the existing excavated level of the site where the existing lower floor level is located, and the siting of the existing building which restricts extension of the upper level to the east. Due to the steep topography of the site, the proposed development also results in non-compliance with the maximum external wall height of 8m proposing a maximum wall height of 8.37m on the northern elevation and 9.35m on the southern elevation. The extent of the wall height variations can be seen in Figures 1 and 2 below.

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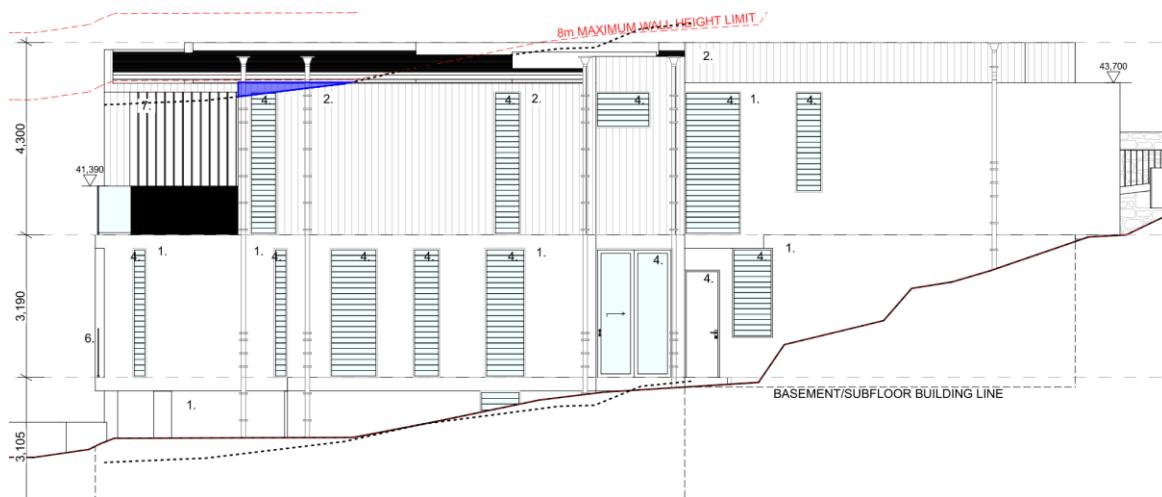


Figure 1 – Extent of External Wall Height breach identified in blue – Northern Elevation

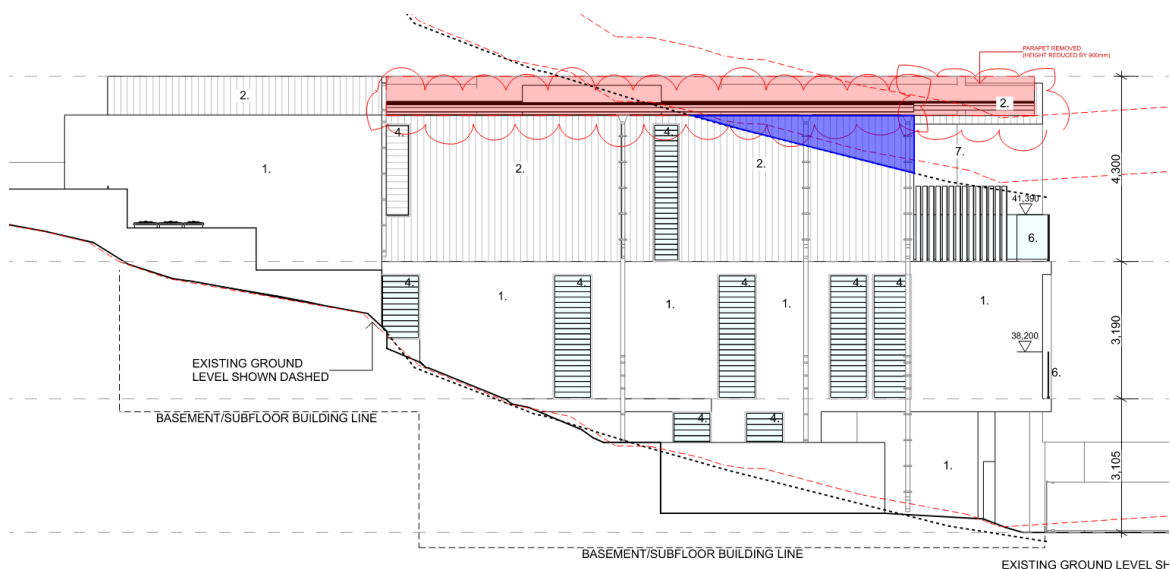


Figure 2 – Extent of External Wall Height breach identified in blue – Southern Elevation

The objectives of clause 3.2 aim to ensure that development height establishes a suitable scale to the street, does not cause unreasonable amenity impacts upon neighbouring dwellings, and ensure the form and massing of development respects the natural topography of the site. The control also permits a variation to the 8m wall height control having regard to the site topography.

The proposed height at the front of the site is comparable with the overall height of adjoining dwellings and is considered to be at a scale that is compatible with adjoining developments and shall not be out of character with the existing streetscape or desired future character. The proposed breach in and of itself shall not give rise to any unreasonable impacts upon adjoining properties with regards to visual bulk, privacy or view loss, and assessment of the proposal has demonstrated that the proposed development shall not result in any unreasonable impacts upon adjoining properties with regards to solar access subject to the recommendations within the report. It is considered that the proposal respects the topography of the site by stepping the upper level behind the alignment of the lower levels. The extent of the rear setback of the upper level is considered to be a balance between providing a reasonable level of amenity for occupants, and minimising impacts upon the adjoining properties, noting that the size and depth of the living area is not considered to be excessive, and any additional setback would compromise the internal amenity of the space.

In view of the above the proposal is considered to be consistent with the objectives of the control. Additionally, in consideration of the significant slope of the land, the generous rear setback, and the surrounding developments which comprise up to six (6) storeys, the non-compliance with the

wall height control is not considered to be unreasonable and would not warrant refusal of the application in this instance.

Clause 2.1 (Minimum Lot Size and Frontage) of Part C1, RDCP 2013

Clause 2.1 stipulates that the minimum frontage width for allotments resulting from subdivision of land within the R2 zone is 12m. The proposed allotments shall have a frontage width of 6.97m for Lot 3A and 9.02m for Lot 3B and the proposal is technically non-complaint with the control. Concerns have been raised in the submission regarding the minimum frontage widths and inconsistency with the subdivision pattern of the surrounding area.

The proposed allotments comply with the minimum lot size standard of 400m², providing two (2) elongated allotments of irregular shape due to the irregular shape of the existing site. It is also noted that the arbitrary configuration of the allotments at the rear of the site is in response to the existing swimming pool on site which location is to be maintained. The proposed boundaries shall allow for the existing swimming pool infrastructure and ground levels to be utilised to permit a swimming pool on each allotment.

The objectives of the control aim to ensure that land subdivision respects the predominant subdivision and development pattern of the locality, and that allotments are of adequate width and configuration to deliver suitable building design and maintain the amenity of neighbours. Furthermore, clause 2.1 identifies that the frontage control is to ensure suitable subdivision configuration, which will enable dwellings of adequate dimensions, configuration and amenity performance as well as suitable space for open space and visually acceptable and efficient parking and access arrangements.

The existing character of the area is predominantly low density residential developments, comprising a mixture of dwelling houses, semi-detached dwellings and attached dual occupancies. The subdivision pattern of the immediate locality incorporates a variety of lot configurations, including irregular shaped allotments, and battle-axe allotments to the north. While the subdivision pattern of the area is predominantly larger allotments, there are several examples of smaller allotments with frontage widths less than 12m within close proximity to the subject site to the north, west and south. Furthermore, by virtue of the existing battle-axe allotments immediately to the north of the subject site, the subdivision pattern of the area has been modified.

The detailed assessment has demonstrated that the proposed allotments fully comply with the minimum lot size of 400m², and the proposed dwellings are consistent with the built form controls specified by RLEP 2012 and RDCP 2013, with the exception of the height controls, and with particular regards to site coverage, landscaping, setbacks and FSR. As such it is considered that the proposed allotments are of sufficient size and width to accommodate the semi-detached dwellings. The proposed development shall retain adequate landscaped and private open space within the rear yard, and the east-west orientation of the site will allow good solar access and overall amenity for occupants. Despite the narrow width of the site, the proposal is able to achieve compliant car parking provisions through a tandem arrangement on the northern allotment and the retention of the existing garage on the southern allotment. The design of the garages ensures that the parking structures are sympathetic to the streetscape and shall present as part of the dwellings. In view of the above, it is considered that the proposed lot widths are not inconsistent with the character or subdivision pattern of the area, noting examples of narrow allotments within the vicinity of the site, and the proposed development is consistent with the objectives of the control. Additionally, given the non-conforming subdivision configuration/pattern of the surrounding area, the non-compliance with the minimum frontage does not warrant refusal of the application in this instance.

Setbacks

- **Subclause 3.3.2 (Side Setbacks) of Part C1, RDCP 2013**
- **Clause 6.3 (Setbacks of Parking Facilities) of Part C1, RDCP 2013**

The provisions of clause 3.3.2 of Part C1 do not stipulate any numerical side setback for a semi-detached dwelling with an allotment width of more than 8m. The proposed lot width of Lot 3B is

9.02m. The proposed development provides a minimum side setback of 1.27m-1.749m to the southern side boundary which is considered to be adequate.

The lot width of Lot 3A is 6.97m which requires minimum setbacks of 900mm to all levels. The proposed development provides a minimum side setback of 0.46m to the proposed garage to the northern side boundary. The dwelling component of the development provides a setback of 1.58m-3.32m and fully complies with the control. Furthermore, the non-compliance is limited to a minor portion of the proposed garage. The extent of non-compliance can be seen in Figure 3 below.

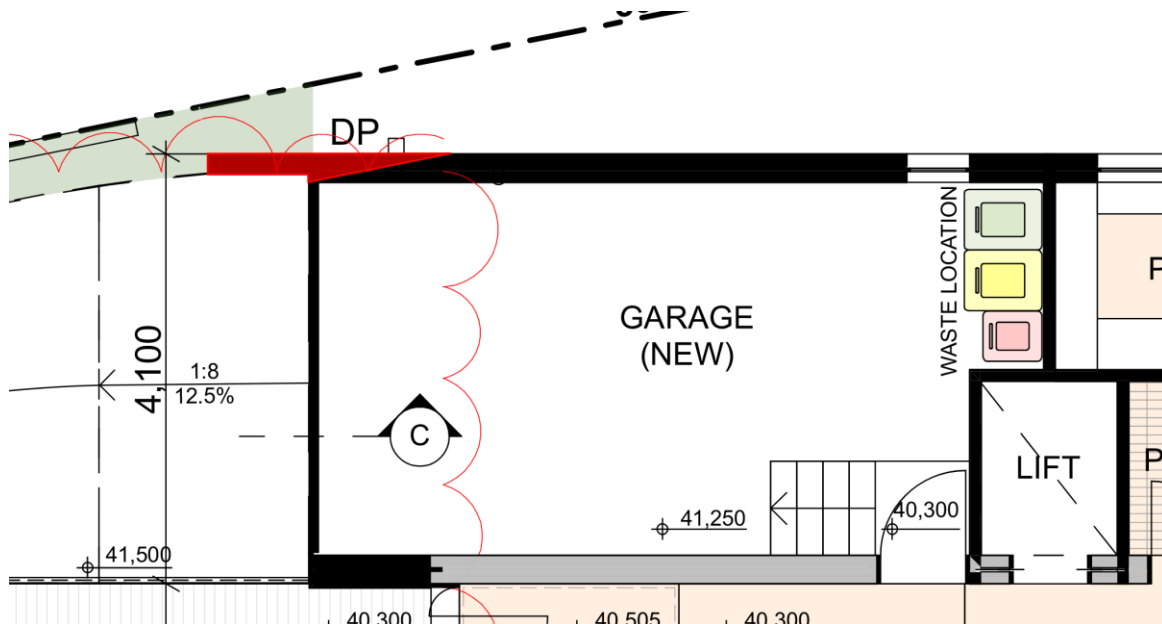


Figure 3 – Extent of non-compliance with 900mm setback identified in red.

The non-compliance is due to the architectural design of the development, and integration of the garage with the overall built form. A blade wall is provided as an extension of the garage wall. However, it is considered that the extension of the wall and framing of the garage provides a uniform architectural element across the two (2) dwellings, reinforcing the architectural expression of the pair of dwellings and providing a unified complementary building in accordance with the aims of clause 4.2. Given that the provisions of clause 6.3 also permit a lesser setback for the purpose of parking structures, the minor non-compliance is supported in this instance.

Clause 4.1 (Building Design - General) of Part C1, RDCP 2013

Clause 4.1 (iii) requires side elevations to be divided into sections, bays or modules of not more than 12m by way of recesses or side courtyards in order to avoid unrelieved walls. The proposed dwelling on Lot 3B shall result in wall lengths of 12.38m at the Ground Floor level and 16.37m at the Lower Ground Floor level which does not comply with the control. Concerns have been raised by the adjoining property to the south regarding the visual impact of the proposal which will be highly visible from the neighbouring property, including the central courtyard. The proposed elevation provides window openings on the southern elevation, however these are not considered to provide adequate modulation of the elevations to break up the wall length and building mass. The Lower Ground Floor level provides three (3) bedrooms along the southern side of the dwelling which are all generous in width, being a minimum of 4.7m. As such, it is considered that a recessed portion of building could easily be provided on the southern elevation to one (1) or part of the bedrooms to ensure that the wall length does not exceed 12m in length. It is recommended that the recessed portion is recessed a minimum of 500mm in order to sufficiently articulate the side wall. It is considered that the articulation of the Lower Ground Floor level, and differentiation in materiality of the Ground Floor level would be sufficient to break up the built form, and the minor non-compliance of 380mm at the Ground Floor level could be supported. Subject to the recommendation, the proposal is considered to be consistent with the provisions of clause 4.1 and can be supported. Should the application be approved, a condition of consent for amended plans prior to the issue of a Construction Certificate is recommended.

Clause 5.1 (Solar Access) of Part C1, RDCP 2013

An objection was received from the adjoining property to the south which raised concerns regarding overshadowing of the proposed development, of particular concern is a centrally located courtyard along the northern side of the adjoining dwelling. The subject courtyard is accessed off the Living area, and the submission notes that this is a principal area of private open space due to the northerly aspect and protection from the coastal elements to the east, being a partially enclosed courtyard. The location of the subject courtyard in relation to the proposed development is identified in Figure 4 below.

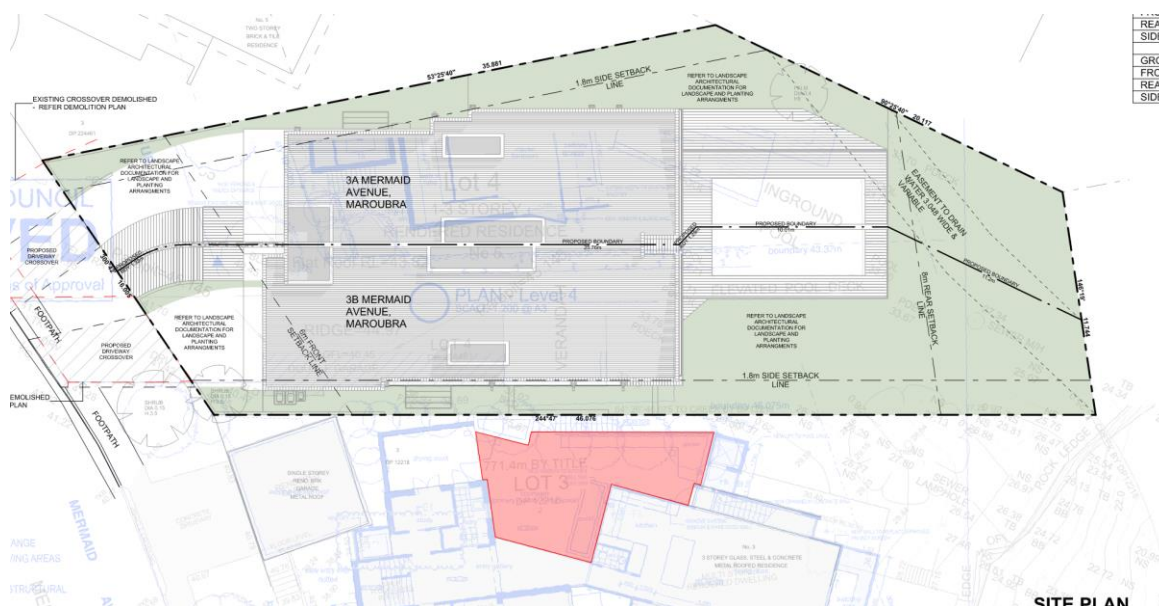


Figure 4 – neighbouring courtyard identified in red.

Concerns have been raised by the adjoining property in relation to the building height and external wall height breaches to the southern side of the development which attribute to the extent of overshadowing. The submission received on behalf of the property owners of No. 3 Mermaid Avenue included an independent assessment and shadow diagrams of the proposed development, including elevational and view from sun diagrams. The shadow diagrams submitted by the Applicant and objector have both been utilised for the purpose of the assessment of the solar access.

The information provided to Council demonstrates that the courtyard shall maintain solar access in the morning period from 8am to 9am, with the solar access reducing from 9am onwards until 12pm when the courtyard shall be completely overshadowed. The courtyard currently receives solar access from 8am through to 1pm and as such the proposal shall result in additional overshadowing of the adjoining property.

While it is acknowledged that the proposed height of the building within the south-eastern corner, including the external wall height, does attribute to the overshadowing impact, the overshadowing is primarily a result of the rear setback and extension of the building to the east. It is considered that a compliant height would lessen the impact at the southern side of the courtyard and the northern windows of the Entry foyer, however a substantial portion of the courtyard would still be overshadowed. The subject courtyard is located in excess of 20m from the rear property boundary, and behind the rear alignment of the development at 3 Mermaid Avenue. The existing building on the subject site provides a stepped rear alignment at the upper level with the northern portion of the building extending beyond the southern portion. As such, due to the existing design and rear alignment, the neighbouring courtyard currently receives complaint solar access. The proposed development provides a minimum rear setback of 20.1m in excess of the minimum 8m requirement stipulated by clause 3.3. It is also noted that the proposed rear alignment is located well behind the alignment of other developments along the foreshore and as such the proposed rear setback of the upper level is not considered to be unreasonable.

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In accordance with the control, the private open space of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. The area covered by sunlight must be capable of supporting passive recreation activities. While it is noted that the courtyard is a highly utilised area of private open space given its location off the living area and protection from the elements, consideration must be given to the private open space areas of the development as a whole. The adjoining property at 3 Mermaid Avenue has several areas of POS, however of particular concern are the areas located off living spaces and the main outdoor recreation areas which are considered as follows:

- Level 3
 - Central Courtyard off the Kitchen/Living area – impacted by the proposed development as discussed above;
 - Balcony located off the Living area to the east – shall not be impacted by the proposed development, will receive a minimum of 3 hours solar access;
- Rear Yard - Level 1
 - Two (2) decking areas and swimming pool - shall not be impacted by the proposed development, will receive a minimum of 3 hours solar access;
- Rear Yard – Basement Level
 - Garden area including a seating area and concrete deck – shall not be impacted by the proposed development, will receive a minimum of 3 hours solar access.

Due to the site orientation, any extension of the upper floor level to the east would result in additional overshadowing to the adjoining property to the south, particularly to the courtyard which is highly susceptible to overshadowing due to its location within the centre of the site, and therefore overshadowing is inevitable. This is also acknowledged in the planning control which provides a variation to the minimum 3 hours requirement having regard to the following:

- *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.*

Notwithstanding the above, the planning principal *The Benevolent Society v Waverley Council [2010] NSWLEC 1082* states that overshadowing as a result of poor design is not acceptable even if the development satisfies numerical requirements, and questions whether there is a more sensitive design which would achieve the same amenity while reducing the impact upon neighbours. The proposed development does provide generous internal ceiling heights which does result in a taller building and exacerbates the extent of non-compliance with the height standard. The floor levels and ceiling heights are somewhat determined by the existing building on site, however it is noted that the most upper level provides an internal floor-to-ceiling height of 3.2m. The provisions of clause 3.2 in relation to building height specify an internal ceiling height of 2.7m for living areas. In the response to initial concerns regarding the maximum height, the Applicant notes that the 2.7m is a minimum height and therefore no changes were made to the internal ceiling heights. However, the 2.7m is considered to be adequate to achieve a reasonable level of amenity for living areas (noting that the BCA only requires a ceiling height of 2.4m for habitable space and therefore the control provides a greater height for increased amenity). It is considered that a reduction to the height would lessen the extent of overshadowing to the courtyard, albeit minor, and would reduce the extent of variation to the building height standard, while still allowing adequate ceiling heights. It is noted that the entry foyer of the proposed dwelling is stepped with a lesser internal height and as such, it is recommended that the internal ceiling height of the Ground Floor level and overall height of the development be reduced by 300mm. Subject to the recommendation and in consideration of the additional areas of POS which shall retain solar access, it is considered that the proposed development would not result in any unreasonable impacts upon the adjoining properties with regards to solar access.

Off-Street Parking

- **Clause 3.2 (Vehicle Parking Rates) of Part B7, RDCP 2013**
- **Clause 6.1 (Location of Parking Facilities) of Part C1, RDCP 2013**
- **Clause 6.2 (Parking Facilities Forward of the Front Façade Alignment) of Part C1, RDCP 2013**
- **Clause 6.5 (Garage Configuration) of Part C1, RDCP 2013**

Clause 3.2 of RDCP 2013 requires a minimum of two (2) off-street parking spaces to be provided for each of the proposed dwellings. The existing off-street parking is a double garage located to the south of the site fronting Mermaid Avenue and as such additional parking provisions are required. The Applicant seeks to retain the existing garage and provide an additional single garage to the northern side of the site. As the proposed garages are located forward of the proposed dwellings, the proposal is technically non-compliant with the provisions of clause 6.1.

Clause 6.2 permits a garage within the front setback area where the site is significantly sloping and provided the proposed garage will not adversely affect the visual amenity of the streetscape. Due to the topography of the subject site and surrounding sites, where the residencies are stepped down the sites towards the rear below street level, there are numerous examples of garages fronting the street along the eastern side of Mermaid Avenue, and the existing streetscape consists of a combination of single, double and triple garages.

The proposed garage to the north shall have an internal width of 3.5m, however the increased width is largely in relation to the internal access stairs provided. The garage floor level is sited above the dwelling floor level in order to achieve compliant driveway gradients and therefore the internal access stair is required. The proposed garages have been integrated with the development due to the architectural design which incorporates a framing of the garages. Furthermore, the proposed garage doors shall be finished in a profiled cladding the same as the cladding on the external walls to integrate the garage with the dwellings and portray the appearance of a residential façade rather than a garage. The proposed development is not considered to be inconsistent with or detrimental to the streetscape, noting other significant parking structures fronting Mermaid Avenue within the immediate vicinity. In view of the above, the proposed garages are considered to be acceptable in this instance and is supported on merit.

10. Conclusion

That the application for alterations and additions to existing dwelling to create two (2) semi-detached dwellings and Torrens title subdivision 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 R2 zone in that 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 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 development enhances the visual quality of the foreshore by upgrading the existing facades.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineer

The application was referred to Council's Development Engineer who provided the following comments with regards to the proposed development, and recommended several conditions of consent to be imposed should the application be approved:

An application has been received for alterations and additions at the above site.

This report is based on the following plans and documentation:

- *Architectural Plans by Arkhaus, dwg's DA.00 – 19, issue A, dated 18/02/21;*
- *Statement of Environmental Effects by Evolution Planning, dated Feb 2021;*
- *Detail & Level Survey by Wil Geospatial, dated 16/03/21;*
- *Arboricultural Impact Assessment & Tree Impact & Protection Plan by Joshua's Tree Services & Solutions dated 09/02/21;*
- *Landscape Plans by Affordable Design Studio, sheet LP01-04, rev E, dated 26/02/21.*

General Comments

There are no objections to the development subject to the comments and conditions provided in this report. There are some no compliances related to the driveway location in relation to the street tree and the encroachment of the pool deck into the council drainage easement. These have been addressed by condition.

Flood Information has now been received and assessed with associated impacts considered acceptable.

Flooding Comments

The site lies within the catchment of the recent Council commissioned South LGA Flood Study. The study was on public exhibition earlier in 2021 but is yet to be submitted in a final form from the hydraulic consultant for formal adoption by Council, however it is the understanding though that any further changes to the flood model will be unlikely.

The study predicts the site will be subject to an overland flow path and flood storage area and the property has been tagged under S10.7 of the EP&A Act as being subject to flood related development controls.

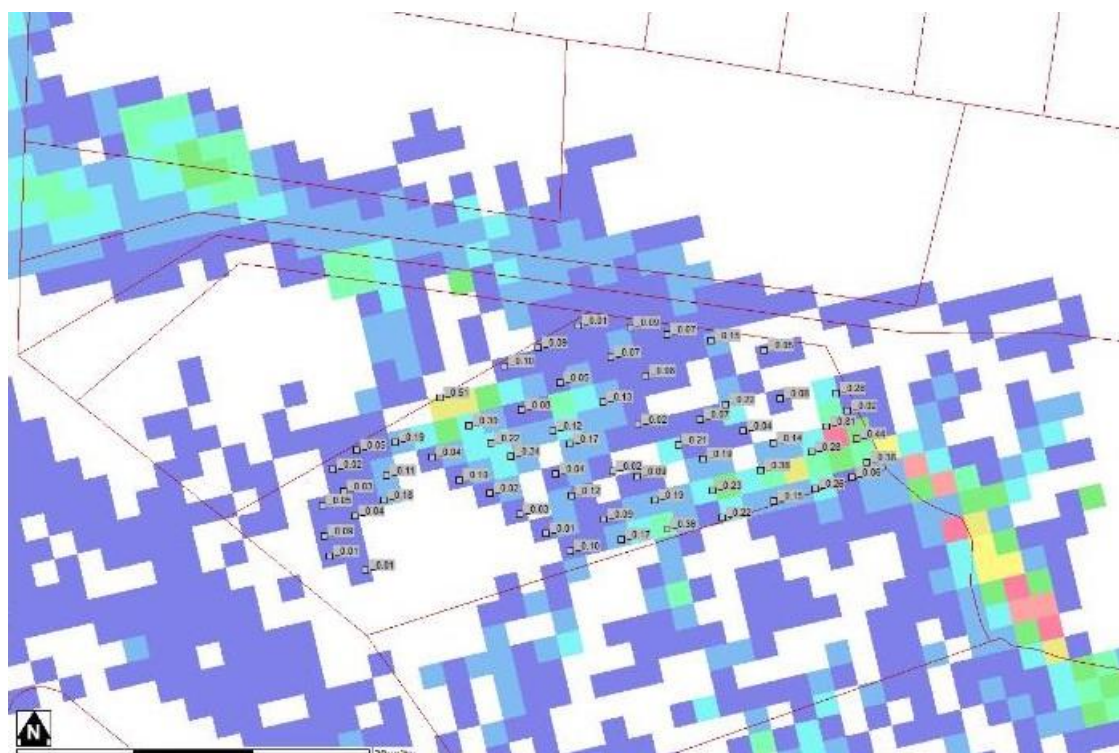
The flooding issues (including a request for a flood report) were forwarded to the applicant on 1st October 2021. The applicant then applied to Council for a flood report on the 5th October and subsequently received the flood report from Council's Drainage Engineer on the 28th October 2021.

The flood report notes the following

- *Part of the property lies within a floodway*
- *Part of the property lies within a flood storage area*
- *The minimum flood planning level is 0.42m above natural ground level.*

The applicant has also submitted an accompanying letter by Evolution Planning which addresses some of the aspects raised in the flood report.

Development Engineering has considered the flood report and also the internal Council "Flood Figures" document which provides detailed flood map of the subject property. Flood map for depths for the 1% AEP (1 in 100yr) flood are reproduced below.



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Development Engineering has also undertaken a site inspection on the 9th November 2021 to confirm the findings of the flood model and assess the implication for the proposed development.

The following comments are made regarding the flooding.

- The resolution of the model is limited but appears to indicate the main source of floodwater into the site is being conveyed from the adjacent private right of way/concrete driveway immediately to the north of the site. Flood depths of less than 0.16m are predicted on the right of way adjacent to the subject property.
- Development Engineer has undertaken a site inspection and confirmed the right of Way will likely convey significant flows during major storm events but due to the slope of the right of way and a 150mm high kerb provided along its southern edge it is anticipated that in reality most of the floodwaters will likely continue eastwards down the right of way rather than entering the subject site.
- There is an inlet pit on the driveway (see pic below) where some spillover into the subject site may occur but this is not to be significant as bypass flow further along the right of way is available and more likely to occur.
- Even if significant spillover were to occur floodwaters would continue downstream towards the cliff and away from the dwelling and development site.
- Some ponding may occur at the lower ground terrace level on the northern side of the existing dwelling but this would not be expected to be significant and only affects the existing portion.
- The significant ponding indicated on the flood map located centrally along the northern boundary appears to be an anomaly and does not represent reality since that location is occupied by the existing dwelling.
- The proposed development would not impact flood levels upstream or downstream of the development site.

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In consideration of the above factors the flooding impacts are considered to be acceptable and no objections are raised on flooding grounds

Parking Comments

Under Part B7 of Council's DCP 2013 each of the proposed 4-bedroom residences is required to provide a minimum of 2 off-street carspaces. The submitted plans demonstrate compliance with this requirement.

The proposed new garage generally complies with the minimum requirements of Australian Standard 2890.1:2004 in regards to minimum internal width, and overhead clearances.

There was some initial concern on the position of the internal stairs which provide access to the main floor level and will be immediately adjacent to the carspace and potentially be a safety hazard/obstruction. As the stairs are a downgrade to the main floor level they will be below the garage floor level and will not be an obstruction to car doors opening. In addition they will be situated forward on of any door opening due to its position more than 4m from the garage opening.

Drainage Comments

*On site stormwater detention is **NOT** required for this development.*

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 Mermaid Avenue; or*

- ii. To the Council drainage easement located at the rear of the property; or

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 not** located within 15m of a mains power distribution pole on the same side of the street hence the above clause **is not** applicable.

Tree Management Comments

The first tree assessed in the Arborist Report is a mature, 19m tall *Araucaria heterophylla* (Norfolk Island Pine, T1) that is located wholly in the front setback of the adjoining private property to the northwest, 1C Mermaid Avenue, which has a strong presence in the streetscape, but will not be affected in anyway given its physical distance from the site and all works, so conditions are not needed.

On Council's verge, in line with the southeast side boundary, between the existing vehicle crossing for the subject site and the crossing for no.3, is a semi-mature, 3-4m tall *Cupaniopsis anacardioides* (Tuckeroo, T2) of good health and condition, which is protected by the DCP, and is also the first in a group planting of this native coastal species that extends along the length of the roadway to the south, which as a group, provide a contribution to the streetscape.

While the Ground Floor Demolition Plan, dwg DA.02 confirms that the existing garage structure along the southern boundary will be retained and maintained in its current position, the Site Plan, dwg DA.01 then shows that the crossing will be widened slightly further to the south, so that the setback between its southern edge and the trunk of the tree will be reduced by about 250mm, to an offset of approximately 1300mm.

However, discussions with Council's Development Engineer revealed that this will actually not be necessary to facilitate compliant access, and if any adjustment is needed to this crossing, then it can be made to the other, northwest side, with protection conditions specifying this included in the report, as well as in the Civil conditions.

While the western aspect of this tree is noted to already partially overhang the existing crossing, it is not critical for line of sight given that there is still sufficient distance provided between the tree and kerb to view cars that will be approaching from the south, which are also on the other, western side of the road, so whilst this should not present a safety issue, conditions require minimal clearance pruning, at the applicant's cost, both to assist with this issue, as well as to avoid damage during works.

Just to its east, within the site, right in the southwest corner, adjacent the existing driveway and garage, is a 3m tall *Magnolia grandiflora* (Magnolia, T3), which is growing in an existing raised planter bed, and while recommended for retention in the Arborist Report, this cannot be formally required given that it is an insignificant, common, exotic species, which is exempt from the DCP due both to its small size, and as such, consent has been given for its removal and replacement.

Within the front setback, adjacent the northwest corner of the existing dwelling is a mature, 18m tall *Araucaria heterophylla* (Norfolk Island Pine, T4), of good health and condition, that is protected by the DCP, and while the house pre-dates the tree, it is noted as encroaching its TPZ.

It is easily the most established vegetation within this site, with its crown occupying the entire northwest side setback as well as overhanging partially into the adjoining property to the north, and despite being assigned a 'High Significance Rating', is recognised as a common coastal species, that does not occur naturally in this LGA, state or even mainland Australia.

Due to its size and the exclusion zones that need to be applied, there is no way this tree could remain whilst proceeding with these works as shown, as the footprint of Dwelling no.3A (new garage) will be built right up into this same area; and conversely, any re-design would need to maintain the current setback, which would then impact the layout of the whole scheme, but as this would still result in a major encroachment of its TPZ, it is not a viable option, and could not be supported anyway.

Any disturbance or damage to its root system arising from demolition or excavation will have serious implications given both the size of the tree and the presence of houses directly beneath it, and is even more of a concern given this sites cliff top location which is exposed to strong coastal winds.

Further, its branches already overhang the rooftop of the subject dwelling as well as the neighbouring house, so any new building works will require a significant crown reduction in order to facilitate access, and as this tree has not yet reached its mature dimensions, it will require even more space both above and below ground into the future.

For these reasons, it is deemed unsuitable in such a confined side setback, and on this basis, there is seen to be justification for its removal in this case, given an ability to reasonably incorporate it as part of these works, with the presence of the other larger Norfolk Island Pine (T1) that is just to its northwest, fronting the street, to assist in minimising any loss amenity that will result, with the relevant consent provided in this report, as shown and sought.

While the position and extent of the new internal driveway, garage and dwelling prevents the ability to plant a replacement tree that will be capable of achieving similar dimensions, the Upper Ground Floor Landscape Plan does show that an evergreen native species will be provided back in its place, in the northwest site corner, along with another one in the garden along the southern side of the central/shared pedestrian access, which will maintain a presence in both the front setback and streetscape.

Despite the group of four, 5-7m tall Howea fosteriana (Kentia Palms) along the northern boundary of this site being desirable feature species, none are significant, and do not make any meaningful contribution to native fauna or the local environment, so no objections are raised to removing the majority, as shown and as recommended; including T5, halfway along the northern side setback, just to the east of T4, then in the rear setback, T6 adjacent the northwest corner of the existing pool and T7 along its northern edge, given their direct conflict with the new footprint, pool, landscaping and stormwater works that are shown for these areas.

T8 is nominated for retention given that it can remain in the existing, separate raised area, away from the existing and new pool/deck, and can simply be incorporated into the perimeter landscaping, with relevant measures imposed to ensure this.

Despite not being shown on the site survey, the Arborist has identified a group of three, 9m tall Acmena smithii (Lilly Pillies, T9-11) adjacent the southeast corner of the existing dwelling, which while recommended for retention due to their ability to perform a screening and privacy function for both these occupants and the neighbours to the south, Council cannot formally require this given that both the existing and new footprints are already/will be within 2m of their trunks, automatically making them exempt from the clauses in our DCP, meaning they could already be removed at anytime, without consent, so permission has been given for their removal, should the applicant wish., along with the Dypsis lutescens (Golden Cane Palm, T13) just to the west of this group.

There is a 5-6m tall unidentified species (T12) which is located wholly on the adjoining private property at no.3, close to the common boundary, which both Council and the applicant have a responsibility at common law to ensure remains unaffected by these works, and as the existing concrete pathway already encroaches its TPZ & SRZ, it is not anticipated that these new works will create any new, major impacts, with the protection measures recommended by the Arborist included in this report, and should be sufficient to ensure it remains.

The steep, overgrown and inaccessible area towards the lower, rear section of the site will remain unaltered, and as this area also contains several easements for the drainage of both water and sewer, no works have been proposed beyond the footprint of the existing/re-designed pool.

Appendix 2: Applicant's written request seeking to justify the contravention of the development standard

Clause 4.6 Variation Request – Building Height

The following Clause 4.6 variation request is made with respect to amended plans, prepared by Arkhaus, being REV B 9/2/2022. The amended plans do not result in a decrease to "building height" at its maximum point but do include amendments which result in lesser shadowing impacts which is related to the objectives of the standard.

Under Clause 4.3, a development standard related to height of 9.5m applies to the site. With a maximum height of 11.048m, the proposed development constitutes a breach to the standard by 1.548m at most, (16% above the standard). Refer to the extract of the section drawing below showing the extent of the breach.

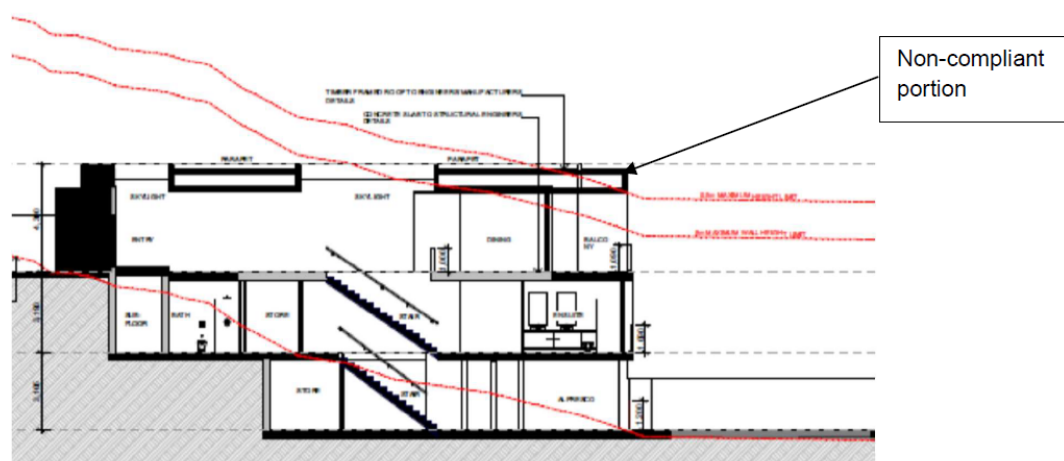


FIGURE 1: EXTRACT SECTION SHOWING BREACH TO HEIGHT STANDARD

To address the breach to the development standard a request to vary the standard, in accordance with Clause 4.6 of the LEP is provided.

The correct approach to assessing whether a Clause 4.6 written request is well founded is set out in the matter of *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118).

His Honour said in *Initial Action* [at 13] that cl 4.6(4) establishes preconditions that must be satisfied before a consent authority can exercise the power in cl 4.6(2) to grant development consent for development that contravenes a development standard.

He further stated [at 14] that:

"The first precondition, in cl 4.6(4)(a), is that the consent authority, or the Court on appeal exercising the functions of the consent authority, must form two positive opinions of satisfaction under cl 4.6(4)(a)(i) and (ii)....."

The formation of the opinions of satisfaction as to the matters in cl 4.6(4)(a) enlivens the power of the consent authority to grant development consent for development that contravenes the development standard.

Finally, the Chief Justice said [at 15] that:

"The first opinion of satisfaction in cl 4.6(4)(a)(i), is 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 cl 4.6(3)."

In addition, under cl 4.6(4)(a)(ii), the consent authority must also be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the particular

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

Further to the matters for consideration set out at Clause 4.6, His Honour also set out how the written variation request must relate to the part of the development which breaches the development standard as opposed to the consideration of the proposed development as a whole. The following written variation request has been drafted in this manner.

The Objectives of Clause 4.6 of Randwick Local Environmental Plan 2012 as follows:

- 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.*

At sub clause (2) *“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.”*

Sub-clause (3) includes the requirement that a written request is provided by the applicant that seeks to justify the contravention of the standard.

The written request needs to demonstrate that:

- i. *compliance with standard is unreasonable or unnecessary in the circumstances of the case;*
- ii. *there are sufficient environmental planning grounds to justify contravening the development standard.*

Pursuant to sub-clauses (4) and (5), the consent authority needs to be satisfied that the request made by the applicant adequately addresses those matters at sub clause (3), (items (i) and (ii) above); and, that the proposal is within 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.

Concurrence must be obtained from the Secretary. 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.*

Sub-clauses (6) and (8) are not relevant in the circumstances of this case and Clause (7) which refers to record keeping is a matter for Council to address.

These matters are considered below with respect to a proposed contravention to Clause 4.3 Height under Randwick LEP 2012.

This statement (or request) satisfies the first provision of Clause 4.6 in terms of the applicant making a written request to vary a development standard.

Relevant Standard

The development standard to which this Clause 4.6 request seeks to vary is Clause 4.3 Height of Randwick LEP 2012.

“(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 Height of Buildings Map indicates a maximum height for the site of 9.5m.

Is the requirement a development standard?

A *development standard* is defined at Section 4 of the Act as:

*“**development standards** means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of:*

- (a) the area, shape or frontage of any land, **the dimensions of any land, buildings or works**, or the distance of any land, building or work from any specified point,*

[emphasis added]

Clause 4.3 of the LEP includes a numeric provision related to the height of a development of 9.5m. The control is considered to be a *development standard*.

1. Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

As to whether or not compliance with the standard is unreasonable and unnecessary, the consideration provided in *NSWLEC Wehbe v Pittwater 2007* (previously applied to SEPP 1) has been found to be of assistance. *Wehbe* sets out five means for consideration as follows:

- a) the objectives of the standard are achieved notwithstanding non-compliance with the standard;

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- b) the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;
- c) the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;
- d) 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;
- e) the zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

With respect to the tests outlined above from *Wehbe*, we submit that it is unreasonable and unnecessary to strictly comply with Clause 40(4)(a) for reasons related to (a) above, in terms of the consistency of the proposed development with the objectives of the development standard.

We further note that in *NSWLEC Four2Five Pty Ltd v Ashfield Council 2015*, Pearson C found that the reasons to justify any contravention should be particular to the circumstances of the site and development. This is not to say that wider reasons must be discounted. Our submission is made on the basis of the circumstances of this particular site and wider environmental strategic and contextual planning grounds.

(a) Consistency with the objectives of the standard

The objectives of the Height standard 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 proposed development is considered to be consistent with the objectives of the standard for the following reasons:

- (a) The relatively minor breach to the standard does not have any significant implications with the desired future character of the area given the residential uses in this location on the eastern side of Mermaid Avenue have multiple levels at the rear due to the sloping nature of the land. We say "relatively minor breach" because whilst the numeric non-compliance is ~1.5m, it only relates to a small part of the building at the rear.

Like the existing dwelling the proposed form at the rear is three storeys and the breach occurs due to the proposed footprint being extended further to the rear where the slope continues to fall.

The non-compliant portion will not be visible from the street and when viewed from the Ocean, the proposed non-compliance will be imperceptible, particularly in light of the context of other residential buildings where the rear presentations will be perceived between 3 and 6 storeys (in the case of the approved development at 7 Mermaid Avenue).

(b) N/A

(c) Visual Bulk

The non-compliant portion of the building is not considered to introduce any significant adverse impacts in terms of visual bulk due to the modest nature of the non-compliance and since the neighbouring building to the immediate south has a rear building line located further to the east than the proposed building. The part of the building which aligns with the non-compliant part has only limited openings and largely comprises a concrete wall.

The proposed non-compliant portion of the building will not be visible from the street.

Loss of Privacy

The rear elevation includes windows and balconies at the ground level (uppermost level). The upper part of the east facing windows and part of the balcony air space of dwelling 3A exceed the height limit. Refer to Figure 2 below.

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FIGURE 2: EXTRACT REAR ELEVATION SHOWING HEIGHT STANDARD

We also acknowledge the presence of other windows at the side elevations of the uppermost floor but these sit below the maximum building height plane.

The breach to the height standard does not introduce any privacy impacts given the elevated nature of the glazing above eye level and the provision of fixed louvre screens at the side edges of the balconies to prevent users looking back or sideways towards neighbouring properties.

Overshadowing

The proposed development will result in additional overshadowing to the neighbouring property directly to the south, the degree and location of which is discussed below in context as it is important to understand the relationship between the existing neighbouring buildings and light of current additions to the neighbouring building now under construction.

The dwelling to the south, 3 Mermaid Avenue, is designed and orientated to have its principal living areas and open space areas orientated towards the east (rear). The elevation of the neighbouring building in proximity to the rear of the proposed building where the non-compliance is located comprises a concrete wall with limited openings. These limited openings are not considered to be the principal sources of solar access to the rooms within.

Whilst we have not carried out an internal inspection of 3 Mermaid Avenue, on the basis of aerial photography, and information provided by Council and in the public submission, there is what we continue to describe as a secondary area of open space in the form of a courtyard located in proximity of the side boundary between the two sites at the central portion of the neighbouring building.



FIGURE 3: RELATIONSHIP BETWEEN 3A AND 3 MERMAID AVENUE

We have already provided a contextual discussion above with respect to how the side courtyard should be considered in the overall assessment of the proposal. For completeness, in terms of having a stand-alone Clause 4.6 variation request, these comments are provided below.

“Before concentrating on the merits of the proposed amendments and the assessment of Height and Solar Access, we question the weight attached to the side courtyard as being a principal area of open space or as Mr. Moody suggests the sole area of private open space, (“my Client’s primary private open space area” – Conclusion point 4).

We understand and acknowledge that the occupants wish to have solar access to this space preserved but one must also consider the availability of solar access to the rest of the property including the existing and now enlarged terraces (now under construction) at the eastern side of the building which are also accessible from living areas.

As relevant to this assessment, Part C1(5.1) of Council’s DCP pertains to solar access to neighbouring open space as follows:

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"The private open space of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. The area covered by sunlight must be capable of supporting passive recreation activities"

We submit that even if the entire side courtyard was overshadowed as a result of the proposed development, Part C1(5.1) of Council's DCP would still be satisfied. As we understand the issue, the rationale to maintain the existing levels of solar access to the side courtyard is because it is "sheltered from the elements" and has access from living areas. The new enlarged terraces at the east side of the property, now under construction, are also accessible from principal living areas and covered, thereby sheltered from the elements.

The maintenance of solar access to the side courtyard whilst solar access in excess of the DCP requirements is available from the east would suggest that a higher standard of solar access should be applied to the property which is not only unreasonable but also unjust in terms of the development potential of the neighbouring property.

It this case of course, at least part of the shadowing arises as a result of building elements which do not strictly comply with 'Height' or 'Wall Height' which we fully acknowledge and which this amended DA will address accordingly. Our point is that regardless of the extent of overshadowing on the side courtyard, the proposed development will still comply with the DCP in terms of the degree of solar access to open space on neighbouring properties and that the existing and new eastern terrace areas also have direct access from internal living areas and are sheltered and therefore we disagree that the side courtyard should be treated as a principal area of open space but rather a secondary space.

Of further consideration to the solar access available to this space is the presence of significant trees between 3 and 3A Mermaid Avenue, which is not factored into the shadow analysis provided by the applicant or the objector but do significantly overshadow the space being to the immediate north."



Secondary open
space/courtyard
behind trees

FIGURE 4: SIDE REAR ELEVATION OF 3 MERMAID AVENUE AS VIEWED FROM THE REAR OF THE SUBJECT SITE



Trees

Side
courtyard

FIGURE 5: TREES TO THE IMMEDIATE NORTH OF THE SIDE COURTYARD

Amended shadow diagrams accompany the amended DA which show existing shadow, additional shadow, and the extent of shadow reduction as a result of the proposed amendments.

In terms of overshadowing, this variation request concentrates on the side courtyard at 3 Mermaid Avenue since it is the only area of open space which is overshadowed and no windows to principal living spaces are overshadowed. From 1pm onward at mid-winter, the side courtyard is overshadowed by the existing building at 3A Mermaid Avenue and therefore it is only the period from 8am to 1pm which is of relevance to this assessment. Refer to the series of figures below showing the degree of shadowing of the side courtyard.

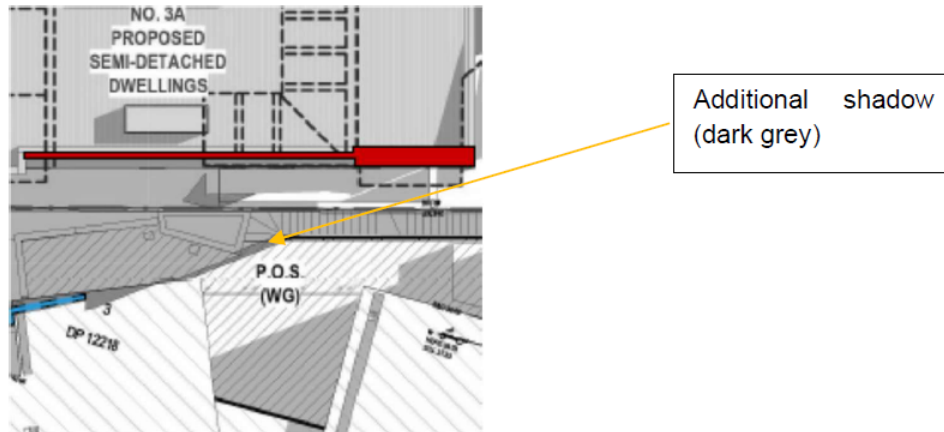


FIGURE 6: 8AM MID-WINTER

Comment: Negligible additional shadow.

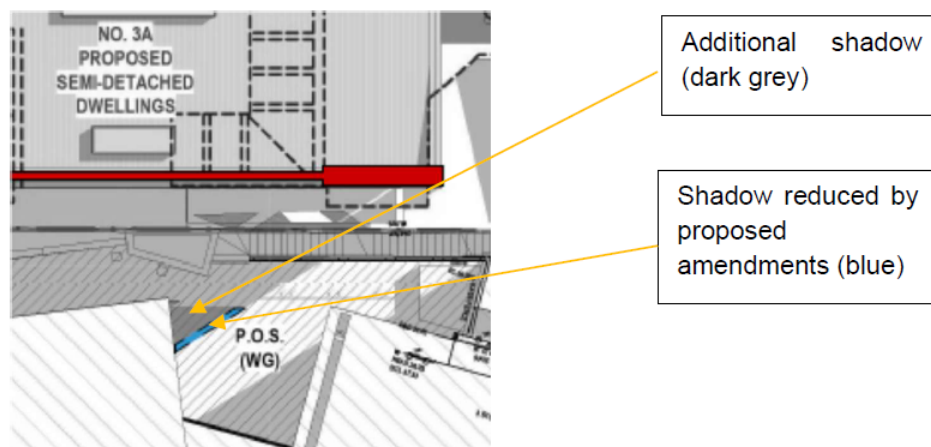


FIGURE 7: 9AM MID-WINTER

Comment: Minor degree of overshadowing at peripheral part of side courtyard. Solar access to the core part of the courtyard is maintained

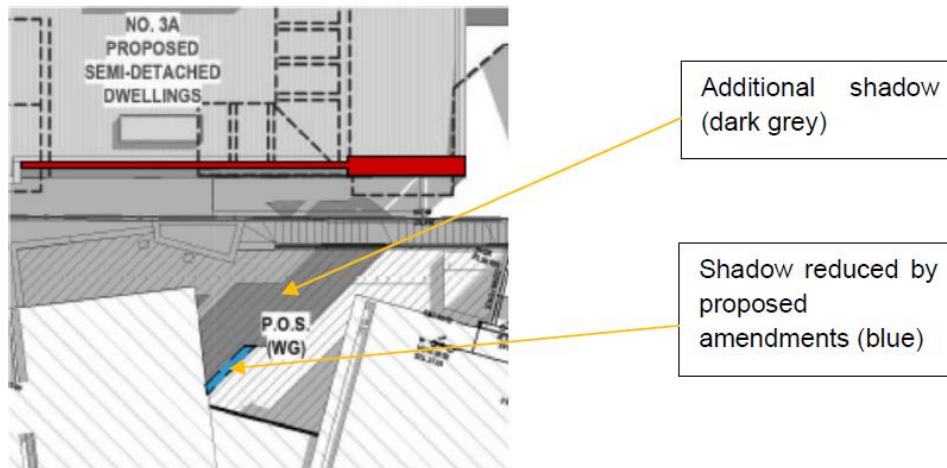


FIGURE 8: 10AM MID-WINTER

Comment: Approximately 50% of area with existing solar access is overshadowed. We submit that the remaining area, in accordance with the DCP, is still *“capable of supporting passive recreation activities”*

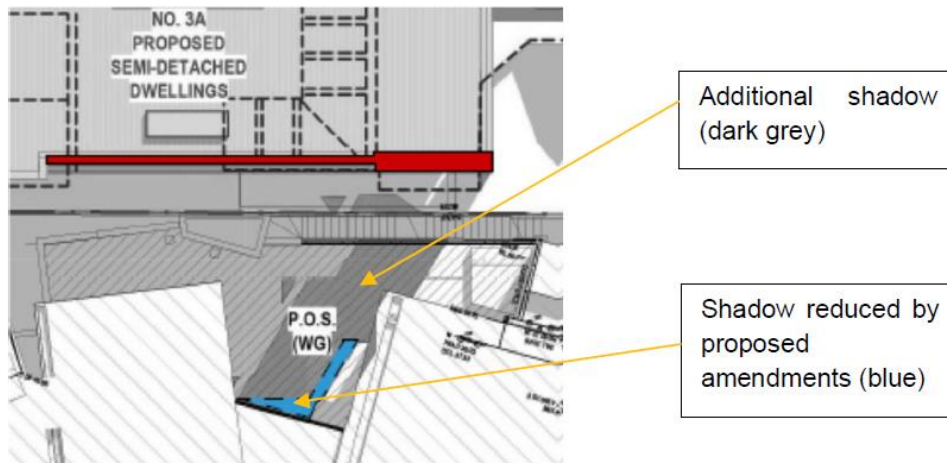


FIGURE 9: 11AM MID-WINTER

Comment: The side courtyard is almost entirely overshadowed except for the SE corner which will receive solar access as a result of the proposed amendments, namely the part removal of the southern wall parapet and the eastern uppermost balcony roof being recessed/setback.

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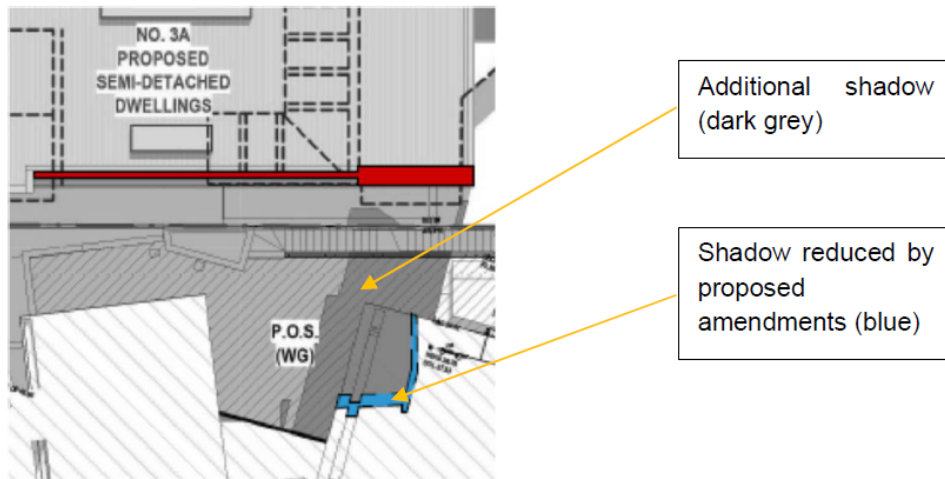


FIGURE 10: NOON MID-WINTER

Upon assessment of the accompanying shadow diagrams and understanding the context and relationship between the proposed development and the dwelling to the south, whilst the proposal will introduce additional shadowing to the south, the shadows cast by the non-compliant portion of the building (in terms of height) will not overshadow the side courtyard space to any determinative degree since for one hour between 8am-9am no significant additional overshadowing will occur and between 9am-10am, approximately 50% of the courtyard will have solar access.

The shadows cast by the part of the proposed building which exceeds the height standard do not significantly overshadow the side courtyard. The majority of the shadow is cast by the proposed southern wall, which is reduced in height with the amended plans and is considered separately. Our point is the veracity of this variation request should not be considered in terms of the overall overshadowing of the side courtyard but only on the part of the proposed building which exceeds the height standard which is limited to the roof over the balcony at its southern part (as it relates to this particular impact) and which has been recessed and further setback as a result of the proposed amendments.

No additional shadows will be cast on any principal living areas or principal areas of private open space.

Views

No significant views will be interrupted as a result of the non-compliant portion of the proposal.

The proposed development is considered to be consistent with, and would not hinder, the objectives of the Height standard.

Are there sufficient environmental planning grounds to justify contravening the development standard?

The proposed variation under Clause 4.6 is considered to be justified on the following environmental planning grounds:

- The greatest non-compliance with the standard occurs at the rear part of the building between the side external building lines due to an abrupt fall in the topography below that point, where the potential impacts are of less consequence. Refer to the extract of the rear elevation below

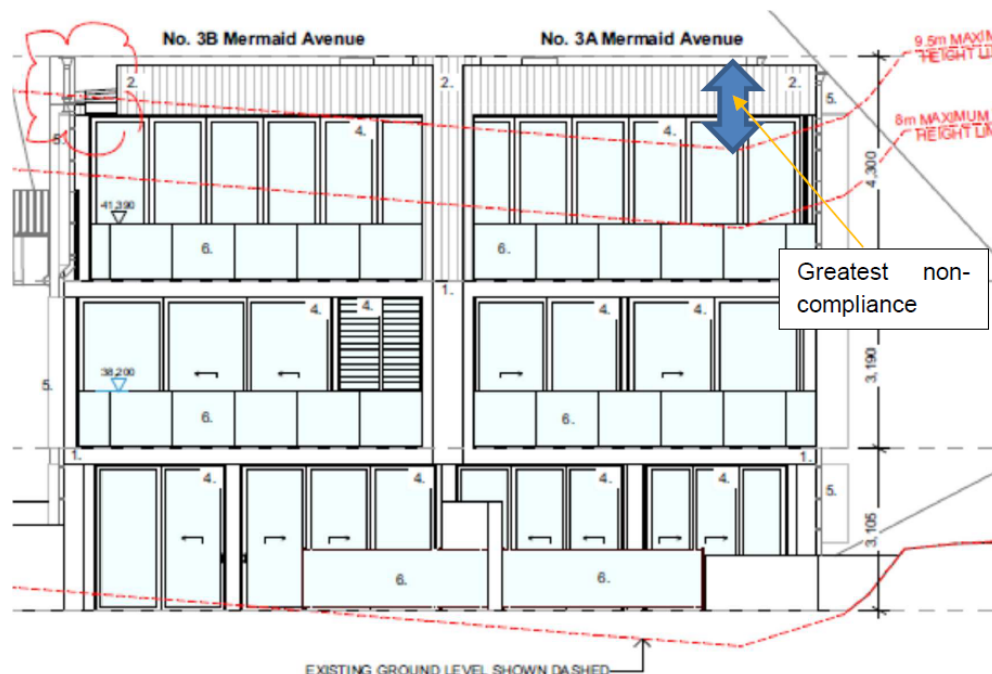


FIGURE 11: EXTRACT REAR ELEVATION SHOWING HEIGHT STANDARD

- Whilst additional overshadowing will occur on the neighbouring side courtyard to the south, solar access to this space will still be available for 1.5 hours in the morning and fully compliant solar access will be available to the east facing terraces which also have access to living spaces and are protected from the elements. We understand that these eastern terraces are being enlarged which will give greater areas of open space with full solar access and which are accessible from living areas;
- The departure to the height standard will not introduce any significant adverse view or privacy related impacts;

- The proposed development satisfies the objectives related to the height standard, despite numeric non-compliance;
- The proposal involves the permitted use as a semi-detached dwelling development and to achieve this the existing building involves extending the building line towards the rear where the topography of the land falls significantly and hence the non-compliance;
- The part of the building which breaches the height standard is the balcony roofs at the rear which are considered to be a reasonable inclusion in the design at the uppermost level to provide shelter to the balconies which benefit from the excellent outlooks towards the Ocean. The balconies are best located at this level since they service the living spaces in proximity to the entry to the dwellings. To comply with the height standard the balconies would have to be setback from the proposed rear building line which would not leave enough space for a reasonably sized living and kitchen area;
- Compliance with the standard would not make any discernible difference in terms of how the building is perceived from the public domain since the non-compliant part of the building is not visible from the street and when viewed from the Ocean would still read as a three-storey form;
- The building presents to the street as a single storey building.

The Public Interest

Under Clause 4.6 the public interest is considered to be satisfied where it can be demonstrated that the proposed development is consistent with the objectives of the development standard and the zone within which the site is located. The proposed development promotes the objectives of the zone and the development standard for height and therefore is considered to be in the public interest.

Matters of significance for State or regional environmental planning

No matters of significance for State or regional environmental planning arise as a result of the non-compliance with Clause 4.4.

The public benefit of maintaining the development standard

It would not be in the public benefit to strictly maintain the standard in the particular circumstances of this case as it would diminish the levels of amenity of the future residents of the building and that strict compliance with the standard would not achieve any significant benefits to neighbouring properties. No enforceable precedent is created by the support of this Clause 4.6 variation request since each submission is appropriately considered on the merits of each individual case.

Conclusion – Clause 4.6 variation request

Strict compliance with Clause 4.3 of the LEP is considered to be unreasonable and unnecessary and there are satisfactory environmental planning grounds to warrant a variation to the height standard in the circumstances of this case.

Subject to the concurrence of this Clause 4.6 variation request by the Secretary, or as otherwise delegated, the proposed development satisfactorily addresses Clause 4.3 of the LEP, and consent may be granted.

Appendix 3: DCP Compliance Table**3.1 Section C1: Low Density Residential**

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	The resultant development shall be defined as semi-detached dwellings which are permissible within the R2 zone.
2	Site planning		
2.1	Minimum lot size and frontage		
	Minimum lot size (RLEP): • R2 = 400sqm • R3 = 325sqm	Lot 3A = 407.87m ² Lot 3B = 422.92m ²	Complies.
	Minimum frontage		
	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	Min = 12m <u>Proposed</u> = Lot 3A = 6.97m Lot 3B = 9.02m	Does not comply. <i>See Key Issues for further discussion.</i>
2.3	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45%	<u>Total Site Area</u> = 830.75m ² Lot 3A = 407.8m ² Lot 3B = 422.9m ² <u>Proposed</u> = Lot 3A = 35.4% Lot 3B = 38.3%	Complies.
2.4	Landscaping and permeable surfaces		
	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.	<u>Total Site Area</u> = 830.75m ² Lot 3A = 407.8m ² Lot 3B = 422.9m ² <u>Proposed</u> = Lot 3A = 36.2% Lot 3B = 38.3%	Complies.
2.5	Private open space (POS)		
	Dwelling & Semi-Detached POS		
	Up to 300 sqm = 5m x 5m 301 to 450 sqm = 6m x 6m 451 to 600 sqm = 7m x 7m 601 sqm or above = 8m x 8m	<u>Total Site Area</u> = 830.75m ² Lot 3A = 407.8m ² Lot 3B = 422.9m ² <u>Proposed</u> =	Complies.

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DCP Clause	Controls	Proposal	Compliance
		Lot 3A = 6m x 15m Lot 3B = 8.75m x 16m	
3	Building envelope		
3.1	Floor space ratio LEP 2012 =	Total Site Area = 830.75m ² Lot 3A = 407.8m ² Lot 3B = 422.9m ² Proposed = Lot 3A = 0.619:1 Lot 3B = 0.603:1	Complies.
3.2	Building height		
	Maximum overall height LEP 2012 =	Proposed = Lot 3A = 10.79m Lot 3B = 10.79m	Does not comply. <i>See Clause 4.6 Assessment for further discussion.</i>
	i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded	Proposed = Lot 3A = 8.37m Lot 3B = 9.35m	Does not comply. <i>See Key Issues for further discussion.</i>
3.3	Setbacks		
3.3.1	Front setbacks i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary street frontage: - 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	Minimum = 2.34m (average of No. 1C being 3.98m and No. 3 being 0.7m). <i>It is noted that the garage at No. 3 has a nil setback which would result in an average front setback of 1.99m, however given the garage is a detached structure consideration has been given to the external walls of the dwellings.</i> Proposed = Lot 3A = 6.29m-9.52m Lot 3B = 2.9m-5.85m	Complies.
3.3.2	Side setbacks: Semi-Detached Dwellings: • Frontage less than 6m = merit • Frontage b/w 6m and 8m = 900mm for all levels Dwellings: • Frontage less than 9m = 900mm • Frontage b/w 9m and 12m = 900mm (Gnd & 1 st floor) 1500mm above	Minimum = 900mm for all levels Proposed = Lot 3A = 0.46m-3.32m Lot 3B = 1.27m-1.749m	Lot 3A does not comply. <i>See Key Issues for further discussion.</i> Lot 3B Complies.

DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> Frontage over 12m = 1200mm (Gnd & 1st floor), 1800mm above. <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p>		
3.3.3	<p>Rear setbacks</p> <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 <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p>	<p>Minimum = 8m</p> <p>It is considered there is no prevailing or predominant rear building line within the street, with the rear setbacks of the surrounding properties largely determined by the foreshore building line which is applicable to No.3-23 Mermaid Avenue.</p> <p>Proposed = Lot 3A = 19.87m Lot 3B = 20.1m</p> <p>The subject site is highly irregular in shape, with an angled northern side boundary. The rear boundary is considered to be the most eastern boundary and the proposal is setback well in excess of the minimum 8m from the rear boundary. The northern boundary acts as side boundary, being adjacent to the vehicular access of the neighbouring sites.</p>	Complies.
4	Building design		
4.1	General		
	<p>Respond specifically to the site characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> articulated to enhance streetscape stepping building on sloping site, no side elevation greater than 12m encourage innovative design 	<p>The proposed development is in response to the existing development on the site and the topography of the land. The</p>	<p>Lot 3A complies.</p> <p>Lot 3B does not comply.</p> <p><i>See Key Issues for further discussion.</i></p>

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DCP Clause	Controls	Proposal	Compliance
		<p>proposal is considered to adopt a stepped building mass in that the most upper level rear elements are balconies, with the external wall setback from the lower levels.</p> <p><u>Lot 3A</u> The proposed dwelling does not provide any wall lengths in excess of 12m, with the elevations well articulated.</p> <p><u>Lot 3B</u> The proposed dwelling on Lot 3B shall result in wall lengths of 12.38m at the Ground Floor level and 16.37m at the Lower Ground Floor level.</p>	
4.2	Additional Provisions for symmetrical semi-detached dwellings		
	<p>i) Enhance the pair as coherent entity:</p> <ul style="list-style-type: none"> • behind apex of roof; low profile or consistent with existing roof • new character that is first floor at front only after analysis streetscape outcome <p>ii) Constructed to common boundary of adjoining semi</p> <p>iii & iv) avoid exposure of blank party walls to adjoining semi and public domain</p>	<p>Due to the partial retention of the existing dwelling, and the irregular configuration of the allotments, the proposal shall not be a symmetrical design as viewed from the street. However, it is considered that the proposal shall present as a coherent entity in the streetscape due to the architectural design of the development, and common architectural features used within each dwelling. The proposal shall not result in any</p>	Acceptable.

DCP Clause	Controls	Proposal	Compliance
		exposed blank party walls.	
4.4	Roof Design and Features		
	<p><i>Rooftop terraces</i></p> <ul style="list-style-type: none"> i) on stepped buildings only (not on uppermost or main roof) ii) above garages on sloping sites (where garage is on low side) <p><i>Dormers</i></p> <ul style="list-style-type: none"> iii) Dormer windows do not dominate iv) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof. v) Multiple dormers consistent vi) Suitable for existing <p><i>Clerestory windows and skylights</i></p> <ul style="list-style-type: none"> vii) Sympathetic to design of dwelling <p><i>Mechanical equipment</i></p> <ul style="list-style-type: none"> viii) Contained within roof form and not visible from street and surrounding properties. 	<p>The proposed skylights shall not be visible from the street and are sympathetic to the overall design of the development.</p>	Complies.
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>The provisions of Part B10 of RDCP 2013 require colour schemes within the foreshore scenic protection area to complement the natural elements and use a colour palette which is predominantly light toned or neutral tones.</p> <p>The proposed colour scheme is predominantly black and dark tones with particular regards to the upper level, which is inconsistent with the foreshore control. A condition is recommended to require the submission of a final schedule for the approval of Council's Manager Development Assessment prior to the issue of a</p>	Complies, subject to condition.

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DCP Clause	Controls	Proposal	Compliance
		Construction Certificate.	
4.6	Earthworks		
	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 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.	The proposal involves some additional excavation at the Lower Ground Floor 2 level to accommodate an internal lift throughout the dwelling on Lot 3A. The additional excavation shall be approximately 5.6m ² in area at the second lower ground floor level only. While the excavation shall exceed a depth of 1m, given the multi-storey nature of the dwelling, the minor amount of excavation is not unwarranted to accommodate the lift.	Acceptable.
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.	Due to the orientation of the site, there are minimal north-facing windows as these are located on the side elevation. However, expansive glazing is provided to the living areas on the north-eastern rear façade. It is considered that the proposed living areas shall receive adequate solar access. Skylights have also been incorporated into the roof of the living area to enhance natural	Acceptable.

DCP Clause	Controls	Proposal	Compliance
		light into the open-plan areas. POS is located to the rear and shall received afternoon direct sunlight in accordance with the control.	
	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. 	Concerns have been raised regarding overshadowing to the adjoining property to the south.	Acceptable. <i>See Key Issues for further discussion.</i>
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: <ul style="list-style-type: none"> Skylights (ventilated) Clerestory windows Fanlights above doorways Highlight windows in internal partition walls ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries iii) living rooms contain windows and doors opening to outdoor areas <i>Note: The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</i>	A BASIX Certificate has been submitted with the application. Natural lighting and ventilation shall be facilitated through the design of the dwelling.	Complies.

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DCP Clause	Controls	Proposal	Compliance
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>	<p>Concerns have been raised regarding potential overlooking from the proposed development. Given that the proposed side elevation windows are located adjacent to neighbouring windows and POS it is recommended that privacy measures be applied to these windows.</p>	Complies, subject to condition.
	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>	<p>Privacy screens have been provided along the northern and southern sides of the proposed upper level balconies in accordance with the control. It is recommended that the privacy screening be reduced to a height of 1.6m to minimise the visual bulk associated with the screening. The decking and pool area at the lower ground floor level is largely consistent with the location and level of the existing outdoor recreation spaces.</p>	Complies.
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> <ul style="list-style-type: none"> - Locate noise-generating areas and quiet areas adjacent to each other. 	<p>The proposed living and outdoor spaces are located adjacent to neighbouring living areas to minimise noise</p>	Complies.

DCP Clause	Controls	Proposal	Compliance
	- Locate less sensitive areas adjacent to the party wall to serve as noise buffer.	impacts.	
5.5	Safety and Security		
	<ul style="list-style-type: none"> i) Dwelling's 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 to obstruct casual surveillance (maintain safe access) 	<p>The main entries are located on the front elevation.</p> <p>The proposal presents as one (1) storey at the street frontage comprising garages and the formal entry. As such no windows are proposed on the front façade. Given the location and topography of the site and surrounding properties, this is not uncommon with most dwellings on the eastern side of Mermaid Avenue have garaging and entrances fronting the street with minimal if no glazing. It is considered that casual surveillance shall be achieved from the entry doors.</p>	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) 	<p>The subject site and surrounding properties shall likely obtain substantial water views to the north-east through to south-east.</p> <p>A submission was received from the adjoining property at 3 Mermaid Avenue which advised that no adverse view loss impacts were likely to occur as a result of the proposal.</p> <p>The proposal seeks to extend the building</p>	Acceptable.

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DCP Clause	Controls	Proposal	Compliance
		<p>approximately 1m at the northern side towards the rear, with the proposed balcony protruding another 3.2m beyond the external wall. Given that the proposal shall extend further towards the rear it is considered that there may be some minor view loss impacts from the adjoining property at 1C Mermaid Avenue, however the upper level deck of the neighbouring property is sited higher than the proposed development, with the balcony floor level approximately 300mm below the top roof ridge of the proposal. As such it is considered that water views across the site and to the north-east shall likely be retained and the proposal shall not result in any unreasonable view loss impacts.</p>	
6	Car Parking and Access		
6.1	Location of Parking Facilities:		
	<ul style="list-style-type: none"> i) Maximum 1 vehicular access ii) Locate off rear lanes, or secondary street frontages where available. iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling. <i>Note: See 6.2 for circumstances when parking facilities forward of the front façade alignment may be considered.</i> iv) Single width garage/carport if frontage <12m; Double width if: 	<p>The proposed garages are sited forward of the dwelling façade.</p>	<p>Does not comply. <i>See Key Issues for further discussion.</i></p>

DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> - Frontage >12m, - Consistent with pattern in the street; - Landscaping provided in the front yard. v) Minimise excavation for basement garages vi) Avoid long driveways (impermeable surfaces)		
6.2	Parking Facilities forward of front façade alignment (if other options not available)		
	i) The following may be considered: <ul style="list-style-type: none"> - An uncovered single car space - A single carport (max. external width of not more than 3m and - Landscaping incorporated in site frontage ii) Regardless of the site's frontage width, the provision of garages (single or double width) within the front setback areas may only be considered where: <ul style="list-style-type: none"> - There is no alternative, feasible location for accommodating car parking; - Significant slope down to street level - does not adversely affect the visual amenity of the street and the surrounding areas; - does not pose risk to pedestrian safety and - does not require removal of significant contributory landscape elements (such as rock outcrop or sandstone retaining walls) 	<p>The proposed development seeks to retain the double width garage for Lot 3B.</p> <p>Lot 3A provides a single garage.</p>	Does not comply. See Key Issues for further discussion.
6.3	Setbacks of Parking Facilities		
	i) Garages and carports comply with Sub-Section 3.3 Setbacks. ii) 1m rear lane setback iii) Nil side setback where: <ul style="list-style-type: none"> - nil side setback on adjoining property; - streetscape compatibility; - safe for drivers and pedestrians; and - Amalgamated driveway crossing 	<p>The proposed garage for Lot 3A does not comply with the minimum side setback specified in subclause 3.3.2.</p>	Does not comply. See Key Issues for further discussion.
6.4	Driveway Configuration		
	Maximum driveway width: <ul style="list-style-type: none"> - Single driveway – 3m - Double driveway – 5m Must taper driveway width at street boundary and at property boundary	<p><u>Lot 3A</u> The driveway shall be 3m at the streetfrontage, with the width slightly increased internally due to the curved angle of the driveway.</p> <p><u>Lot 3B</u> The existing driveway shall be retained.</p>	Acceptable.
6.5	Garage Configuration		
	i) recessed behind front of dwelling ii) The maximum garage width (door and piers or columns): <ul style="list-style-type: none"> - Single garage – 3m 	<p><u>Lot 3A</u> The proposed garage shall have an internal width</p>	Acceptable. See Key Issues for further discussion.

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DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> - Double garage – 6m iii) 5.4m minimum length of a garage iv) 2.6m max wall height of detached garages v) recess garage door 200mm to 300mm behind walls (articulation) vi) 600mm max. parapet wall or bulkhead vii) minimum clearance 2.2m AS2890.1 	<p>of 3.5m.</p> <p><u>Lot 3B</u></p> <p>The existing double garage shall be retained to facilitate the dwelling at 3B.</p>	
7	Fencing and Ancillary Development		
7.1	General - Fencing		
	<ul style="list-style-type: none"> i) Use durable materials ii) Sandstone not rendered or painted iii) Do not use steel post and chain wire, barbed wire or dangerous materials iv) Avoid expansive surfaces of blank rendered masonry to street 	<p>The application does not seek consent for any fencing, and no details have been provided with regards to any fencing. As such a condition of consent shall be imposed to ensure that any proposed fencing is submitted to and approved by Council prior to the issue of a Construction Certificate.</p>	N/A
7.5	Swimming pools and Spas		
	<ul style="list-style-type: none"> i) Locate behind the front building line ii) Minimise damage to existing tree root systems on subject and adjoining sites. iii) Locate to minimise noise impacts on the adjoining dwellings. iv) Pool and coping level related to site topography (max 1m over lower side of site). v) Setback coping a minimum of 900mm from the rear and side boundaries. vi) Incorporate screen planting (min. 3m mature height unless view corridors affected) between setbacks. vii) Position decking to minimise privacy impacts. viii) Pool pump and filter contained in acoustic enclosure and away from the neighbouring dwellings. 	<p>The proposed pools are located within the rear yard and shall utilised the area of the existing swimming pool to reduce the extent of excavation required and minimise impacts upon trees and vegetation.</p> <p>The location of the pools within the current location shall ensure that there is no unreasonable acoustic or privacy impacts. A condition of consent shall be imposed regarding the placement and acoustic requirements of the pool pump.</p>	Acceptable.

DCP Clause	Controls	Proposal	Compliance
7.8	Clothes Drying Facilities		
	i) Located behind the front alignment and not be prominently visible from the street	Clothes drying facilities are identified within the side setback areas of the proposal.	Complies.

3.2 Section B10: Foreshore Scenic Protection Area

DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> i) Consider visual presentation to the surrounding public domain, including streets, lanes, parks, reserves, foreshore walkways and coastal areas. All elevations visible from the public domain must be articulated. ii) Integrated outbuildings and ancillary structures with the dwelling design (coherent architecture). iii) Colour scheme complement natural elements in the coastal areas (light toned neutral hues). iv) Must not use high reflective glass v) Use durable materials suited to coast vi) Use appropriate plant species vii) Provide deep soil areas around buildings viii) Screen coping, swimming and spa pools from view from the public domain. ix) Integrate rock outcrops, shelves and large boulders into the landscape design x) Any retaining walls within the foreshore area (that is, encroaching upon the Foreshore Building Line) must be constructed or clad with sandstone. 	<p>The bulk and scale of the proposed development is not inconsistent with the surrounding developments within the foreshore scenic protection area and along the coast, which consists of multi-storey dwellings of three (3) or more storeys. The increased setback of the external wall at the upper level and deep balcony shall articulate the rear elevation and minimise the visual impact as viewed from the foreshore areas.</p> <p>More than adequate deep soil areas and landscaping shall be provided in and around the building to integrate the development with landscaping and soften the visual impact.</p> <p>The control requires the proposed development to reflect the scenic quality of the foreshore which is characterised by natural/earthy and light colours, and for the exterior colour to complement the natural elements of the coastal</p>	Complies.

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		area. The proposed development includes a darker colour palette which is inconsistent with the coastal setting of the site. As such, a condition of consent is recommended for an updated colour and materials schedule to be approved by Council prior to the issue of a CC.	
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Responsible officer: Angela Manahan, Executive Planner

File Reference: DA/80/2021

Development Consent Conditions



D20/22

Folder /DA No:	DA/80/2021
Property:	3A Mermaid Avenue, Maroubra NSW
Proposal:	Alterations and additions to existing dwelling to create semi-detached dwelling and torrens title subdivision. NSW Planning Portal Ref No. PAN-72817.
Recommendation:	Approval

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	Date received by Council
DA.01 (Site Plan), Issue A	Arkhaus	18 February 2021	24 February 2021
DA.02 (Ground & Lower Ground Demolition Plan), Issue A	Arkhaus	18 February 2021	24 February 2021
DA.03 (Lower Ground 2 Demolition Plan), Issue A	Arkhaus	18 February 2021	24 February 2021
DA.04 (Ground Floor Plan), Issue B	Arkhaus	01 March 2022	01 March 2022
DA.05 (Lower Ground Floor Plan), Issue B	Arkhaus	01 March 2022	01 March 2022
DA.06 (Lower Ground Floor 2 Plan), Issue B	Arkhaus	01 March 2022	01 March 2022
DA.07 (Roof Plan), Issue B	Arkhaus	01 March 2022	01 March 2022
DA.08 (West Elevation), Issue B	Arkhaus	09 February 2022	01 March 2022
DA.09 (East Elevation), Issue B	Arkhaus	09 February 2022	01 March 2022
DA.10 (South Elevation), Issue B	Arkhaus	09 February 2022	01 March 2022
DA.11 (North Elevation), Issue B	Arkhaus	09 February 2022	01 March 2022
DA.12 (Sections), Issue B	Arkhaus	09 February 2022	01 March 2022
DA.18 (Subdivision Plan), Issue A	Arkhaus	18 February 2021	24 February 2021
LP01 (Landscape Plan Upper Ground Floor), Issue E	Affordable Design Studio	26 February 2021	27 October 2021
LP02 (Landscape Plan Lower Ground Floor), Issue E	Affordable Design Studio	26 February 2021	27 October 2021
LP03 (Landscape Specification),	Affordable	26 February 2021	27 October 2021

Issue E	Design Studio		
LP04 (Landscape Detail), Issue E	Affordable Design Studio	26 February 2021	27 October 2021

BASIX Certificate No.	Dated
A398560	02 December 2020
A398553	02 December 2020

2. The approved plans and documents must be amended in accordance with the following requirements:
- The internal floor to ceiling height of the Ground Floor level shall be reduced by 300mm. As a result of the reduced ceiling height, the overall height of the development shall also be reduced by 300mm to a maximum RL44.30.
 - A recess of a minimum of 500mm shall be provided on the southern elevation at the Lower Ground Floor level to ensure that the wall at this level is no greater than 12m in length.
 - 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:
 - Windows on the southern elevation at all levels;
 - Windows on the northern elevation at all levels.

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**

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**

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. The colours and materials are to reflect the scenic quality of the foreshore which is characterised by natural/earthy and light colours, and for the exterior colour to complement the natural elements of the coastal area.
- Fencing**

No fencing is approved under this development consent. Details of any fencing, including any front, side and rear fence, is to be submitted to and approved by Council's Manager – Development Assessment, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development. The design of the fencing is to be in accordance with the provisions of Randwick Development Control Plan 2013.

Section 7.12 Development Contributions

6. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$2,308,468.00 the following applicable monetary levy must be paid to Council: \$23,084.70.

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 Contributions Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at www.randwick.nsw.gov.au.

Compliance Fee

7. A development compliance and enforcement fee of \$4,847.80 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

8. 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

9. 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(6) of the *Environmental Planning and Assessment Act 1979*:

- \$8000.00 - Damage / Civil Works Security Deposit

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 civil works which confirms that there has been no damage to Council's infrastructure.

The owner/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 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 Director of City Services upon issuing of an occupation certificate or completion of the civil works.

Design Alignment levels

10. 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:

Northern Vehicle Crossing

- RL 41.90 AHD northern edge of driveway
- RL 41.85 AHD southern edge of driveway

Southern Vehicle Crossing

- RL 41.71 AHD (Match existing) northern edge of driveway
- RL 41.34 AHD (40mm below existing) southern edge of driveway

The design alignment levels at the property boundary as issued by Council 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.

11. The above alignment levels and the site inspection by Council's Development Engineering Section have been issued at a prescribed fee of **\$912** 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.

Internal Driveway/Garage Design

12. The new internal access driveway must be designed and constructed to match the alignment levels at the property boundary (as specified by Council) and the driveway and garage must be constructed in accordance with the following requirements and amendments:

- The driveway must be 3m wide at the front property alignment
- A minimum 5m length of the internal driveway must not exceed a grade of 5% (1 in 20) in order to provide for a second carspace.

A longitudinal section of the driveway must be provided with the construction certificate plans, at a scale of 1:25 or 1:50 along the centreline of the driveway. The section shall demonstrate compliance with the Council issued alignment level at the property boundary, together with satisfactory ramp grades (and transitions if required) in accordance with the above requirements.

13. The southern access driveway must be lowered 40mm on its southern edge at the front property alignment in order to match the alignment levels at the property boundary (as specified by Council). This is to improve access grades across the verge and over the crest in the driveway.

Council Drainage Easement

14. Plans submitted for the construction certificate shall demonstrate compliance with the following amendments/requirements in order to protect Council access to its stormwater pipe assets within the existing 3.05m wide drainage easement;
- There must be no structural elements located within the 3.05m wide Council drainage easement including the pool deck and pool services equipment.

- A cantilevered deck may be permitted provided it is in a form that can be easily dismantled and subject to the approval of Council's Development Engineers in writing. Details are to be forwarded to Council's Engineers for approval.

Stormwater Drainage

15. 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. A copy of the engineering calculations and plans are to be forwarded to Council, 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
 - e) 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.
 - f) 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.
 - g) 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.
16. 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 the 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 Mermaid Avenue; or
 - ii. To the private drainage easement at rear of the site; 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.
- c) 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. road, laneway or reserve).
- d) 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.
- e) Should a charged system be required to drain any portion of the site, the charged system must be designed such that;
- i. There are suitable clear-outs/inspection points at pipe bends and junctions.
 - ii. The maximum depth of the charged line does not exceed 1m below the gutter outlet.
- f) Generally all internal pipelines must be capable of discharging a 5% AEP (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.
- g) The drainage grate protecting the garage entrance must be sized to accommodate surface flows from the driveway associated with the 1% AEP (1 in 100yr) flood to ensure the driveway and garage do not become a pathway for surface flows to enter the dwelling during major storm events.
- h) A sediment/silt arrestor 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 /infiltration system/private drainage easement.

Sediment/silt arrestor 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.

- i) Any Seepage waters are required to be drained and disposed of within the site and are not to be drained into Council's stormwater drainage system.
- j) Any site discharge pipelines to the kerb and gutter on Mermaid Avenue 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.

Landscape Plans

17. 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 scheme submitted for the Construction Certificate is substantially consistent with the Landscape Plans by Affordable Design Studio, sheets LP01-04, rev E, dated 26/02/21, with both this written statement and plans to then be submitted to, and be approved by, the Principal Certifier.

Street Tree Protection

18. In order to ensure retention of the *Cupaniopsis anacardioides* (Tuckeroo, T2) that is located on Council's Mermaid Avenue verge, in line with the southeast side boundary in good health, the following measures are to be undertaken:

- a. All documentation submitted for the Construction Certificate application must show its retention, the position and diameter of its trunk and canopy, as well as its SRZ, TPZ, and Tree Identification Number as taken from the Arboricultural Impact Assessment & Tree Impact & Protection Plan by Joshua's Tree Services & Solutions dated 09/02/21 (*'the Arborist Report'*) in relation to the site and new works.
- b. **All Construction Certificate plans must show that the southern edge of the existing vehicle crossing will not be extended/widened to be closer to this tree, with any adjustments to this crossing only to be made to the northern edge.**

For specific engineering/civil requirements, refer also to 'Council's Infrastructure, Vehicular Crossings, street verge' condition later in this consent.

- c. Any excavations associated with the installation of external new services, pipes, stormwater systems or similar over public property can only be located to the west of the existing vehicle crossing, with the Principal Certifier to ensure that all Services

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Plans are both prepared and then installed on-site to comply with this requirement.

- d. This tree must be physically protected by installing evenly spaced star pickets around the perimeter of this section of the grassed verge, returning back against the front property boundary, to which, safety tape/para-webbing/shade cloth or similar shall be permanently attached so as to completely enclose/exclude this tree for the duration of works.
- e. 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".
- f. Within this TPZ, there is to be no storage of materials, machinery or site office/sheds, 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. In order to prevent soil/sediment being washed over its root system, erosion control measures must be provided at ground level around the perimeter of the TPZ.
- h. 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 be placed around their circumference, and are then to be secured by 8 gauge wires or steel strapping at 300mm spacing. NO nailing to the trunk.
- i. The applicant is not authorised to perform any other works to this tree and must contact Council's Landscape Development Officer on 9093-6613 should **clearance pruning** or similar be necessary. If approval is given, it can only be performed by Council, GIVING UP TO SIX WEEKS NOTICE, wholly at the applicants cost, with payment to be received prior to pruning, and prior to any Occupation Certificate.
- j. Where roots are encountered which are in direct conflict with the approved works, they may then be cut cleanly using only hand-held tools, not machinery, with the affected area/s to then be backfilled with clean site soil as soon as practically possible.
- k. The Principal Certifier must ensure compliance with all of these requirements, both on the plans as well as on-site during works, and prior to any Occupation Certificate.
- l. A refundable deposit in the form of cash, credit card or cheque for an amount of **\$1,500.00** 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 an 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.

Tree Protection Measures

19. In order to ensure retention of the *Howea fosteriana* (Kentia Palm, T8) in the rear setback of this site, along the northern boundary, as well as the unidentified species (T12) which is located wholly in the rear setback of the adjoining private property at no.3, close to the

common boundary in good health as shown and recommended, the following measures are to be undertaken:

- a. All documentation submitted for the Construction Certificate application must show their retention, the position and diameter of both their trunks and crowns, as well as their TPZ's, SRZ's and Tree Identification Numbers as taken from 'the Arborist Report' in relation to the site and new works.
- b. Prior to the commencement of any site works, the Principal Certifier must ensure that an AQF Level 5 Consulting Arborist (who is eligible for membership with a nationally recognized organization/association) has been engaged as *'the Project Arborist'* for the duration of works and will be responsible for both implementing and monitoring these conditions of development consent, as well as **Sections 7.0, Tree Protection Measures, and Section 9.0 Recommendations, of the Arborist Report**, along with any other instructions issued on-site.
- c. The Project Arborist must be present on-site at the relevant stages of works and must keep a log of the dates of attendance and the works performed, which is to be presented as a Final Compliance Report, for the approval of the Principal Certifier, prior to any Occupation Certificate.
- d. The Principal Certifier must ensure that all Construction Certificate plans show that the footprint, setbacks, finished levels and similar of the new dwellings and associated works will be consistent with the plans by Arkhaus, issue A, dated 18/02/21, with the same also applying to any new hydraulic/stormwater services, which must be consistent with what is shown on the Drainage Plans by Zait Engineering Solutions Pty Ltd, rev A, dated 21/01/21.
- e. Prior to the commencement of any site works, the trunk of **T8** must be physically protected by wrapping layers of geo-textile, underfelt, carpet, hessian or similar, from ground level to a height of 2m, to which, 2m lengths of 50mm x 100mm hardwood timbers, spaced at 150mm centres shall be placed around its circumference, and are to be secured by 8 gauge wires or steel strapping at 300mm spacing. NO nailing to the trunk.
- f. This protection 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".
- g. Existing boundary/dividing fencing and concrete surfacing within the **TPZ of T12** must be maintained in-situ as a form of physical protection/separation, with any changes to existing ground levels within either of their TPZ's to firstly be approved in writing by the Project Arborist, which must then form part of the Final Compliance Report.
- h. In order to prevent soil/sediment being washed over their root systems, erosion control measures must be provided at ground level around the perimeter of their TPZ's.
- i. There is to be no storage of materials, machinery or site office/sheds, nor is cement to be mixed or chemicals spilt/disposed of and no stockpiling of soil or rubble within their TPZ's, with all Site Management Plans to comply with these requirements.
- j. Demolition, as well as all initial excavations or footings, services or similar within their TPZ's must be supervised/performed by the Project Arborist, to a minimum depth of 400mm, and where roots are encountered which are in conflict with the approved works, and the Project Arborist gives permission for their pruning, they may then be cut cleanly, only by hand-held tools, with the affected areas to be backfilled with clean site soil so that the cut ends are not left exposed to the atmosphere.
- k. All plans must include details showing that the rear timber decking near T8 will be supported on localised pad footings only, with an allowance of 50-100mm to be provided around its trunk (if needed), so as to allow for future growth.

- I. Any new common boundary fencing within their TPZ's can only be a system which is supported on isolated pad footings, not continuous strip footings, with details confirming compliance to be shown.
- m. The Principal Certifier must ensure compliance with these requirements, both on the plans as well as on-site during the course of works, and prior to any Occupation Certificate.

Sydney Water

20. 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**
21. 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). Details of compliance with the BCA are to be included in the construction certificate application.
- Structural Adequacy**
22. Certificate of Adequacy supplied by a *professional engineer* shall be submitted to the *Certifier (and the Council, if the Council is not the Certifier)*, certifying the structural adequacy of the existing structure to support the alterations and additions.
- BASIX Requirements**
23. 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 & Other Requirements

24. 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

25. 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 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

26. 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 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

27. 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. 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

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

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

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

29. 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.

Public Utilities

30. 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.

31. 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

32. 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

33. 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

34. 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
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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

35. 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.

Public Safety & Site Management

36. 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) 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, and details are to be included in the *Construction site Management Plan*.
- a) 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.
- b) 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.

Support of Adjoining Land, Excavations & Retaining Walls

- 37. 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.

- 38. 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.

- 39. 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*.

Building Encroachments

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

Future Footpath Provision

41. The top of footings of any structures constructed on the boundary alignment must be at least 150mm below the alignment level as specified for the vehicular access. This condition has been attached to accommodate future footpath construction at this location.

Tree Management

42. Approval is granted for removal of the following vegetation from within this development site, subject to full implementation of the approved Landscape Plans.
- Within the front setback, adjacent the northwest corner of the existing dwelling, the mature *Araucaria heterophylla* (Norfolk Island Pine, T4), as it not yet even reached its mature dimensions, with the large exclusion zone it requires meaning it would not be possible to incorporate this tree into any development, as it is deemed too large for the space available, even in its current settings;
 - The *Magnolia grandiflora* (Magnolia, T3) in the front setback, in the southwest site corner, within the existing raised planter, as despite being shown for retention, Council cannot formally impose this as its small size means it is already exempt from the DCP;
 - Those *Howea fosteriana* (Kentia Palms) along the northern site boundary, including T5 halfway along the side setback, just to the east of T4, then in the rear setback, T6 adjacent the northwest corner of the existing pool and T7 along its northern edge, given their direct conflict with the new footprint, pool, landscaping and stormwater works that are shown for these same areas;
 - Whilst not shown on the site survey, the group of three *Acmena smithii* (Lilly Pillies, T9-11) adjacent the southeast corner of the existing dwelling, as despite being recommended for retention, Council cannot formally require this given that both the existing and new footprints are/will be within 2m of their trunks, automatically making them exempt from the clauses in our DCP, meaning they could already be removed at anytime, without consent;
 - The *Dyopsis lutescens* (Golden Cane Palm, T13) also in the southern side setback, just to the west of the group described in point 'd' above, for the same reasons.

Pruning

43. Permission is granted for the minimal and selective pruning of only those lower growing, lower order branches from the northwest aspect of T12, which is located wholly on the adjoining private property to the south, no.3, close to the common boundary, only where they overhang into this site and need to be pruned in order to avoid damage to the tree; or; interference with the approved works.

44. This approval does not imply any right of entry onto a neighbouring property nor does it allow pruning beyond a common boundary; however, where such measures are desirable in the best interests of correct pruning procedures, and ultimately, the ongoing health of the tree, the applicant must negotiate with the neighbour/tree owner for access to perform this work.
45. All pruning can only be undertaken by a Practising Arborist who holds a minimum of AQF Level III in Arboriculture, and to the requirements of Australian Standard AS 4373-2007 'Pruning of Amenity Trees'.

Road/Asset Opening Permit

46. 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 *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/builder 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.
 - Relevant *Road / Asset Opening Permit* fees, repair 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.

For further information, please contact Council's Road / Asset Opening Officer on 9093 6691 or 1300 722 542.

Footings adjacent to drainage easements

47. Any footings adjacent to the drainage easement/s must be inspected by the applicant's engineer to ensure that these footings are either founded on rock or extend below the "angle of repose". Documentary evidence of compliance with this condition is to be submitted to Principal Certifier, prior to proceeding to the subsequent stages of construction.

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

48. 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

49. 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 each of the required BASIX commitments have been fulfilled.

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

Swimming Pool Safety

50. Swimming pools are to be designed and installed in accordance with the relevant requirements of the *Building Code of Australia* and be provided with childproof fences and

self-locking gates, in accordance with the *Swimming Pools Act 1992* and the *Swimming Pools Regulation 2008*.

The swimming pool is to be surrounded by a child-resistant barrier (e.g. fence), that separates the pool from any *residential building* (as defined in the *Swimming Pools Act 1992*) that is situated on the premises and from any place (whether public or private) adjoining the premises; and that is designed, constructed and installed in accordance with Australian Standard AS 1926.1 – 2012 (Swimming Pool Safety Part 1 - Safety Barriers for Swimming Pools).

Gates to pool area must be self-closing and latching at all times and, the gate is required to open outwards from the pool area and prevent a small child opening the gate or door when the gate or door is closed.

Temporary pool safety fencing is to be provided pending the completion of all building work and the pool must not be filled until a fencing inspection has been carried out and approved by the Principal Certifier.

A 'warning notice' must be erected in a prominent position in the immediate vicinity of the swimming pool, in accordance with the provisions of the *Swimming Pools Regulation 2008*, detailing pool safety requirements, resuscitation techniques and the importance of the supervision of children at all times.

Spa Pool Safety

51. Spa pools are to be designed and installed in accordance with the relevant provisions of the *Building Code of Australia* and be provided with a child resistant barrier, in accordance with the provisions of the *Swimming Pools Act 1992* and the *Swimming Pools Regulation 2008*.

A 'warning notice' must be erected in a prominent position in the immediate vicinity of the swimming pool, in accordance with the provisions of the *Swimming Pools Regulation 2008*, detailing pool safety requirements, resuscitation techniques and the importance of the supervision of children at all times.

Swimming Pool & Spa Pool Requirements

52. Swimming pools (and spa pools) are to be designed, installed and operated in accordance with the following general requirements:

- a) Backwash of the pool filter and other discharge of water is to be drained to the sewer in accordance with the requirements of the Sydney Water Corporation; and
- b) All pool overflow water is to be drained away from the building and adjoining premises, so as not to result in a nuisance or damage to premises; and
- c) Water recirculation and filtrations systems are required to comply with AS 1926.3 – 2010: Swimming Pool Safety – Water Recirculation and Filtration Systems; and
- d) Pool plant and equipment is to be enclosed in a sound absorbing enclosure or installed within a building, to minimise noise emissions and possible nuisance to nearby residents.

Notification of Swimming Pools & Spa Pools

53. The owner of the premises must 'register' the swimming pool [or spa pool] on the NSW Swimming Pool Register, in accordance with the *Swimming Pools Amendment Act 2012*.

The Swimming Pool Register is administered by the NSW Office of Local Government and registration on the Swimming Pool Register may be made on-line via their website www.swimmingpoolregister.nsw.gov.au.

Registration must be made before the issue of an Occupation Certificate for the pool.

Council's Infrastructure & Vehicular Crossings

54. The applicant must meet the full cost for a Council approved contractor to:

- a) Construct concrete vehicular crossing and layback at kerb opposite the new vehicular entrance to the site, to Council's specifications and requirements.
 - b) Reconstruct the existing crossing to the southern double garage as required.
NOTE: ANY reconstructed crossing at this location must maintain or increase the current setback from the existing Council street tree. (See also Street Tree Protection condition earlier in this report).
 - c) Remove any redundant concrete vehicular crossings and laybacks and to reinstate the area with turf and integral kerb and gutter to Council's specification.
 - d) Reconstruct 1.3m wide footpath **adjacent to the kerb** along the full site frontage as required.
55. 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
56. 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:
- a) 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.
 - b) 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.
- Stormwater Drainage**
57. 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).
58. 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.

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Landscaping

59. 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 Landscape Plans by Affordable Design Studio, sheet LP01-04, rev E, dated 26/02/21, and any relevant conditions of consent.
60. Suitable strategies shall then be implemented to ensure that this landscaping is maintained in a healthy and vigorous state until maturity, for the life of the development.
61. 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 the issue of any Occupation Certificate.

Project Arborist Certification

62. Prior to any Occupation Certificate, the Project Arborist must submit to, and have approved by, the Principal Certifier, written certification which confirms compliance with the conditions of consent and Arborists Report Recommendations; the dates of attendance and works performed/supervised relating to retention of **T8 & T12**.

Waste Management

63. The owner or applicant is required to contact Council's City Services department, to make the necessary arrangements for the provision of waste services to the additional premises.

Subdivision

64. A formal application for a subdivision certificate is required to be submitted to and approved by the Council and subdivision plans are to be registered at NSW Land Registry Services prior to the issuing of a final occupation certificate.

REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

The following conditions of consent must be complied with prior to the 'Principal Certifying Authority' issuing a 'Subdivision certificate'.

These conditions have been applied to satisfy the provisions of Council's environmental plans, policies and codes for subdivision works.

Sydney Water

65. 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 subdivision certificate or occupation certificate will be issued, whichever the sooner.

Public Utilities

66. The applicant must meet the full cost for telecommunication companies, Jemena, Ausgrid and Sydney Water to adjust/relocate their services as required. This may include (but not necessarily be limited to) relocating/installing new service lines and providing new meters. The applicant must make the necessary arrangements with the service authorities.

Should compliance with this condition require works that are not exempt development, the necessary approvals must be obtained prior to any works being undertaken.

Easements

67. The applicant shall create suitable rights of carriageway, easements for services, support and stormwater lines, as required. The applicant shall be advised that the minimum easement width for any stormwater line is 0.9 metres. Confirmation that this condition has been complied with must be obtained from the registered surveyor preparing the subdivision plans, in writing.

Subdivision Certificate

68. A formal application for a subdivision certificate is required to be submitted to and approved by the Council and all relevant subdivision conditions of this development consent are required to be satisfied prior to the release of the subdivision plans.

Street and/or Sub-Address Numbering

69. 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.

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 a subdivision 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.

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 Premises

70. Each of the premises must only be used as a single residential dwelling and must not be used for dual or multi-occupancy purposes.

External Lighting

71. 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.

Plant & Equipment

72. Noise from the operation of all plant and equipment upon 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 Office of Environment & Heritage (EPA) Noise Control Guidelines.

Swimming/Spa Pools

73. The pool plant and equipment shall not be operated during the following hours if the noise emitted can be heard within a habitable room in any other residential premises, or, as otherwise specified in relevant Noise Control Regulations:
- before 8.00am or after 8.00pm on any Sunday or public holiday; or
 - before 7.00am or after 8.00pm on any other day.

Stormwater management

74. The site stormwater system must be regularly cleaned and maintained to ensure it operates as required by the design.

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 Council's policies. 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 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.

- A3 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.

- A4 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.

- A5 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.

- A6 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.

- A7 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.

- 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 Council's assessment of this application does not include an assessment of compliance with the *Swimming Pool Act 1992*. All pool barriers, fences and structures within properties containing a swimming pool must comply with the requirements of the *Swimming Pool Act 1992*, BCA and relevant Australian Standards.
- Details of compliance with the *Swimming Pool Act 1992*, Building Code of Australia and relevant Standards must be included in the Construction Certificate to the satisfaction of the Certifier.
- A10 Under 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.
- A11 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.
- A12 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.

Development Application Report No. D21/22

Subject: 33 Caley Street, Chifley (DA/88/2022)


Executive Summary

Proposal: Construction of a new double storey dwelling.
Ward: South Ward
Applicant: Masterton Homes
Owner: Mr B Anderson and Mrs K S Anderson
Cost of works: \$624,199
Reason for referral: Conflict of Interest

Recommendation

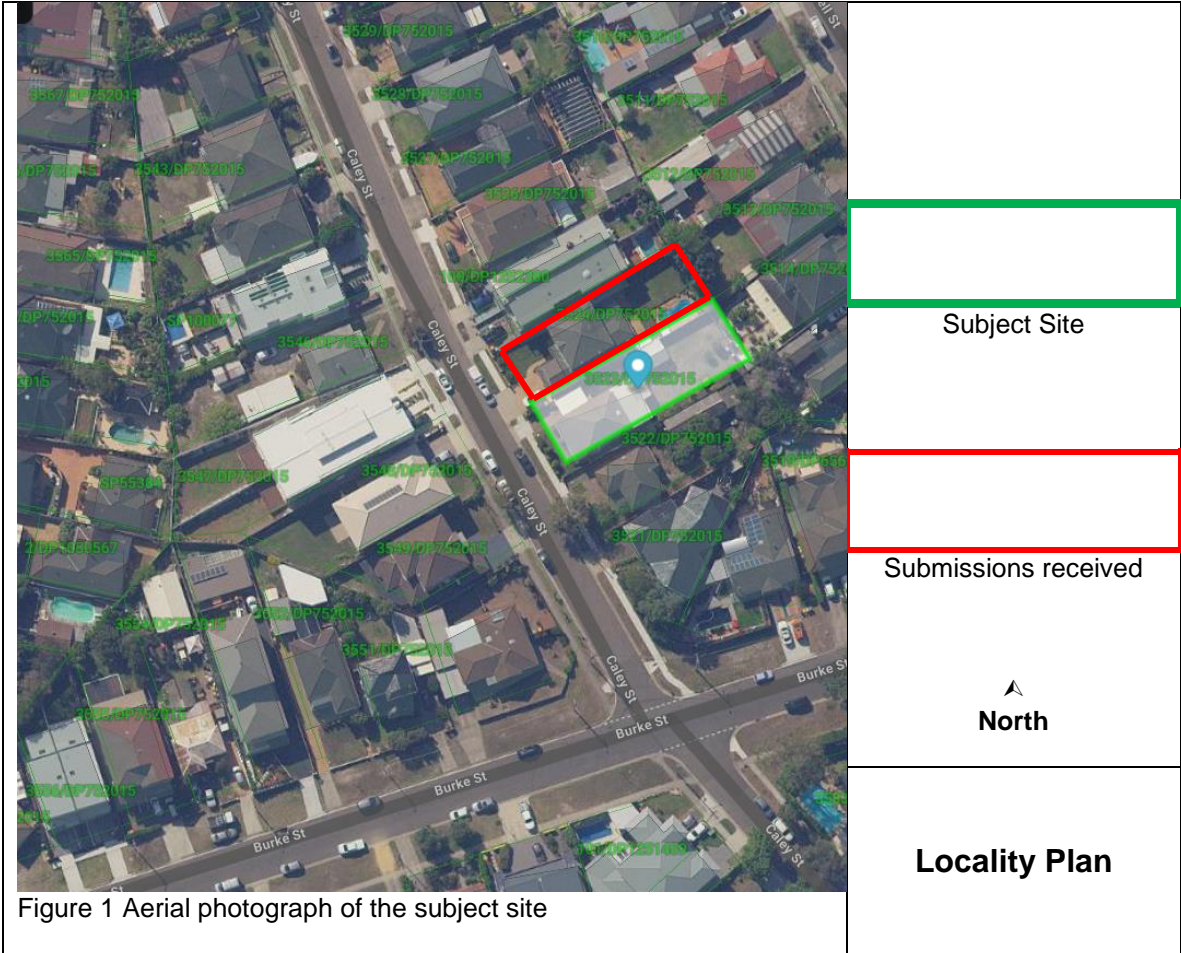
That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 88/2022 for the construction of a new dwelling, at No. 33 Caley Street, Chifley, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (dwellings dual occ) - DA/88/2022 - 33 Caley Street, Chifley

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1. Executive summary

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

- The landowner is a Council employee.

The proposal seeks development consent for the construction of a two storey dwelling.

The proposal is recommended for approval subject to non-standard conditions that require the proposed native feature tree in the north-east corner of the site to be removed from the plans, as it will potentially conflict with the sewer pipe and neighbouring swimming pool at No. 31 Canley Street.

2. Site Description and Locality

The subject site is known as 33 Caley Street, Chifley and is legally described as Lot 3523 in DP 752015. The site is 562.8m², is regular in shape and has a 13.715m frontage to Caley Street to the west. The site contains a single storey brick dwelling with fibro garage and a carport.

The site slopes approximately 1.2m from north-east corner to the south-west corner.

The owners of the property have already received separate approval for the demolition of the existing dwelling.



Figure 2 View of the subject site from Caley Street



Figure 3 Neighbouring dwelling to the north-west (31 Caley Street, Chifley)

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Figure 4 Neighbouring dwelling to the south-east (35 Caley Street, Chifley)



Figure 1 Neighbouring dwellings on the opposite side of Caley Street (22 and 20 Caley Street, Chifley - L- R)

3. Relevant history

CDC/92/2022 – Compling Development Certificate - Private - Demolition of existing dwelling, garage, carport & ancillary structures. Determined: 24/03/2022

4. Proposal

The proposal seeks development consent for the construction of a new two storey dwelling house and associated site and landscape works.

At ground floor will be a double garage, patio and entry, guest bedroom with built-in-robe, powder room, laundry, home theatre, stairs to the first floor, and open plan kitchen, family and dining room. The living area will open onto a rear alfresco area and rear yard.

The first floor level will have a lounge extending onto a front balcony, Master suite with walk-in-robe and ensuite, main bathroom, study with walk-in-robe, bedroom 3 with a walk-in-robe, and bedroom 4 with a walk-in-robe and ensuite.

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. The following submissions were received as a result of the notification process:

- 31 Caley Street, Chifley

Issue	Comment
The proposed native feature tree at the rear of the site will be in an area that has a Sydney Water sewerage pipe. The proposed tree has a minimum 6m height which could impact on the pipe. The tree will also be adjacent to the inground pool of No. 31 Caley St resulting in dropped leaves which affects the filtration system and if damaged, is at the cost of the owner of No. 31 to repair.	<p>The comments are noted. It is considered that the 'native feature tree' (specific species is not indicated) as shown on the plans should not be planted in this location. Screen planting is proposed along both side boundaries and the rear boundary, which is sufficient.</p> <p>A condition of consent will be included to remove the 6m high native feature tree in the rear yard.</p>

It should be also noted that the owner of the subject property has provided a written request to remove the feature tree on the northeastern corner of the site and to extend the existing proposed planning along the eastern and northern boundaries to fill the space where this tree would have been located.

5.1. Renotification

Not applicable.

6. Relevant Environment Planning Instruments

6.1. SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate dated 7 February 2022 has been submitted in accordance with the requirements of the SEPP (Building Sustainability Index: BASIX) 2004.

6.2. SEPP (Coastal Management) 2018

The proposal and the site location within Chifley are not contrary to the aims of this Policy or present any matters requiring further consideration.

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

There is minimal vegetation currently on the site. The proposal is not contrary to the aims of this Policy or present any matters requiring further consideration.

6.4. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned Residential R2 Low Density 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 within a low density residential environment, whilst enhancing the aesthetic character and protecting the amenity of the local 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)	0.5:1	0.48:1 (271.78m ²)	Yes
Cl 4.3: Building height (max)	9.5m	Max 8.2m	Yes
Cl 4.1: Lot Size (min)	400m ²	567.10m ²	Yes

6.4.1. Clause 4.6 - Exceptions to development standards

Not applicable. No development standards are being varied.

6.4.2. Clause 5.10 - Heritage conservation

Not applicable.

6.4.3. Clause 6.7- Foreshore scenic protection area

Not applicable.

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.

The relevant provisions of the DCP are addressed in Appendix 2.

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 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	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 2 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 residential 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.

8.1. Discussion of key issues

The proposal complies with the relevant planning controls under the Randwick LEP and DCP. There are no matters which raise concern. The points raised in the submission from an adjoining land owner have been considered and appropriate conditions of consent are included to address this.

9. Conclusion

That the application to construct a two storey dwelling be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013
- The proposal is consistent with the specific objectives of the R2 zone in that the proposed activity and built form will provide for the housing needs of the community whilst enhancing the aesthetic character and protecting the amenity of the local 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 proposal is recommended for approval subject to non-standard conditions that require the proposed native feature tree in the north-east corner of the site to be removed from the plans, as it will potentially conflict with the sewer pipe and neighbouring swimming pool at No. 31 Chifley Street.

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Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineer

Parking Comments

Under Part B7 of Council's DCP 2013 the proposed 4 bedroom + STUDY residence is required to provide a minimum of 2 off-street carspaces. The submitted plans demonstrate compliance with this requirement with two spaces able to be provided within the proposed double garage. Additional spaces would also be available on the internal driveway in front of the garage.

The proposed double garage and driveway **comply** with the minimum requirements of Australian Standard 2890.1:2004 in regards to size, grades, and overhead clearances.

Drainage Comments

Detailed drainage plans with levels reduced to Australian Height Datum (AHD), shall be prepared by a suitably qualified Hydraulic Engineer and be submitted to and approved by the Principal Certifier. A copy of the plans shall be forwarded to Council, if Council is not the Principal Certifier.

Roof stormwater must be directed to a suitably designed and constructed rainwater tank, as required in the relevant BASIX Certificate for the dwelling. The overflow from the rainwater tank and other surface stormwater must be directed (via a sediment/silt arrestor pit) to Council's kerb and gutter in Caley Street.

Tree Management & Landscape Comments

There is no significant vegetation that requires assessment for this application, with the shrubs in both the front and rear setbacks of this site all being too small for the DCP, so can be removed where necessary, with the submitted Landscape Plan showing that the amount of planting will be increased compared to the current situation, which will also improve the quality of the private open spaces for the benefit of occupants, so conditions require its full implementation as part of any approval.

The SEE also details that this proposal will achieve compliance with the numerical controls of Council's DCP in relation to site coverage/landscaped area, deep soil and private open space.

The mature Willow Myrtle on Council's public verge, beyond the southern site boundary, in front of the adjoining property at no.35, should not be affected given its distance from all works, so conditions are not needed.

Undergrounding of Power Comments

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 not** located within 15m of a mains power distribution pole on the same side of the street hence the above clause **is not** applicable.

Relevant conditions of consent have been inserted within the development consent conditions attached to this report.

Appendix 2: DCP Compliance Table**3.1 Section C1: Low Density Residential**

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	Dwellings are permissible
2	Site planning		
2.1	Minimum lot size and frontage		
	Minimum lot size (RLEP): <ul style="list-style-type: none"> R2 = 400sqm R3 = 325sqm 	Existing site area is 562.8m ² . No subdivision is proposed.	Yes
	Minimum frontage		
	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	Min = 12m Existing = 13.715m and no change proposed	Yes
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 = 562.8m ² Proposed = 202.37m ² or 36%	Yes
2.4	Landscaping and permeable surfaces		
	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 = 562.8m ² Proposed = 249m ² or 44% Deep soil depths comply.	Yes
2.5	Private open space (POS)		
	Dwelling & Semi-Detached POS		
	Up to 300 sqm = 5m x 5m 301 to 450 sqm = 6m x 6m 451 to 600 sqm = 7m x 7m 601 sqm or above = 8m x 8m	Site = 562.8m ² Proposed = 13.5m x 13.5m (the rear yard)	Yes
3	Building envelope		
3.1	Floor space ratio LEP 2012 = 0.5:1	Site area = 562.8m ² Proposed FSR = 271.78m ² or 0.48:1	Yes
3.2	Building height		
	Maximum overall height LEP 2012 = 9.5m	Proposed = 8.2m maximum	Yes
	i) Maximum external wall height = 7m	Proposed = 7m	Yes

DCP Clause	Controls	Proposal	Compliance
	(Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded	measured to the front gable	
3.3	Setbacks		
3.3.1	Front setbacks i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary street frontage: - 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	Minimum= average of adjoining Existing= approx. 6.25m to both adjoining dwellings Proposed= 6.25m to 7.45m	Yes
3.3.2	Side setbacks: Dwellings: • Frontage less than 9m = 900mm • Frontage b/w 9m and 12m = 900mm (Gnd & 1 st floor) 1500mm above • Frontage over 12m = 1200mm (Gnd & 1 st floor), 1800mm above. Refer to 6.3 and 7.4 for parking facilities and outbuildings	Minimum= Ground 1.2m and First floor 1.8m Proposed= 1.2m to ground floor and 2.13m to first floor level	Yes
3.3.3	Rear setbacks 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: - 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: - - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts Refer to 6.3 and 7.4 for parking facilities and outbuildings	Minimum = 14.32m Proposed = 14.3m The rear yard will be landscaped. No outbuildings or swimming pool is proposed.	Yes
4	Building design		
4.1	General		
	Respond specifically to the site characteristics and the surrounding natural and built context - • articulated to enhance streetscape • stepping building on sloping site,	The site is flat, and the proposed dwelling is	Yes

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DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> no side elevation greater than 12m encourage innovative design 	consistent with newer development in the area.	
4.4	Roof Design and Features		
	<p><i>Rooftop terraces</i></p> <ul style="list-style-type: none"> i) on stepped buildings only (not on uppermost or main roof) ii) above garages on sloping sites (where garage is on low side) <p><i>Dormers</i></p> <ul style="list-style-type: none"> iii) Dormer windows do not dominate iv) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof. v) Multiple dormers consistent vi) Suitable for existing <p><i>Celestial windows and skylights</i></p> <ul style="list-style-type: none"> vii) Sympathetic to design of dwelling <p><i>Mechanical equipment</i></p> <ul style="list-style-type: none"> viii) Contained within roof form and not visible from street and surrounding properties. 	<p>No rooftop terraces are proposed.</p> <p>No dormer windows are proposed.</p> <p>No celestial windows or skylights are proposed.</p> <p>Any ventilation can be within the roof space.</p>	Yes
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 schedule of materials and finishes is included, proposing suitable materials (render wall with tile roof) and colours (Crisp White, Monument, Shale Grey). Newer development in the area includes brick and render finish.</p>	Yes
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>The site relatively flat with a 1.2m cross fall. Minimal cut is proposed, approximately 500mm at the rear of the dwelling (north-west elevation).</p>	Yes

DCP Clause	Controls	Proposal	Compliance
	<p>combination of materials, and landscaping)</p> <p>vi) cut and fill for POS is terraced</p> <p><i>where site has significant slope:</i></p> <p>vii) adopt a split-level design</p> <p>viii) Minimise height and extent of any exposed under-croft areas.</p>		
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	<p>i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June</p> <p>ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.</p>	The living areas and POS located at the rear will have a north-east orientation, achieving good solar access for more than 3 hrs.	Yes
	Solar access to neighbouring development:		
	<p>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.</p> <p>iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.</p> <p>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.</p> <p>vi) Variations may be acceptable subject to a merits assessment with regard to:</p> <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. 	The proposal will still allow for at least 3 hrs solar access to the north-facing living room windows and POS of the adjoining dwellings.	Yes
5.2	Energy Efficiency and Natural Ventilation		
	<p>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:</p> <ul style="list-style-type: none"> Skylights (ventilated) Clerestory windows 	<p>Natural light and ventilation will infiltrate the dwelling through the windows proposed.</p> <p>Windows are</p>	Yes

D21/22

DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> Fanlights above doorways Highlight windows in internal partition walls ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries iii) living rooms contain windows and doors opening to outdoor areas <i>Note:</i> The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable	provided to ensuites, bathrooms and the laundry. The living area opens directly onto the rear yard.	
5.3	Visual Privacy		
	Windows		
	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: <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). ii) orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)	Windows have been positioned to maximise light and ventilation while respecting the adjoining dwellings. All living areas are located at the ground floor level, or at the front of the dwelling at the first floor, to minimize overlooking from these areas into adjoining properties.	Yes
	Balcony		
	iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side) 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) v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure) vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.	A first floor balcony is proposed at the front of the dwelling, directing views to the street rather than to adjoining properties.	Yes
5.4	Acoustic Privacy		
	i) noise sources not located adjacent to adjoining dwellings bedroom windows	The A/C unit will be set in from the side boundary – see control 7.6	Yes
5.5	Safety and Security		
	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	The front entry will be clearly visible from the street. The guest	Yes

DCP Clause	Controls	Proposal	Compliance
	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)	bedroom window will also present to the street.	
5.6	View Sharing		
	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)	The scale of development in the immediate area is single and two storeys. The area is relatively flat. There are no views which are known to be impacted by the proposal.	Yes
6	Car Parking and Access		
6.1	Location of Parking Facilities:		
	i) Maximum 1 vehicular access ii) Locate off rear lanes, or secondary street frontages where available. iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling. <i>Note: See 6.2 for circumstances when parking facilities forward of the front façade alignment may be considered.</i> iv) Single width garage/carport if frontage <12m; Double width if: - Frontage >12m, - Consistent with pattern in the street; - Landscaping provided in the front yard. v) Minimise excavation for basement garages vi) Avoid long driveways (impermeable surfaces)	One driveway crossing will be provided to the double garage, which will be setback behind the front building line.	Yes
6.2	Parking Facilities forward of front façade alignment (if other options not available)		
	i) The following may be considered: - An uncovered single car space - A single carport (max. external width of not more than 3m and - Landscaping incorporated in site frontage ii) Regardless of the site's frontage width, the provision of garages (single or double width) within the front setback areas may only be considered where: - There is no alternative, feasible location for accommodating car parking; - Significant slope down to street level - does not adversely affect the visual amenity of the street and the	See comment above. The driveway will allow for additional parking to the double garage, if it is required.	Yes

D21/22

DCP Clause	Controls	Proposal	Compliance
	surrounding areas; - does not pose risk to pedestrian safety and - does not require removal of significant contributory landscape elements (such as rock outcrop or sandstone retaining walls)		
6.3	Setbacks of Parking Facilities		
	i) Garages and carports comply with Sub-Section 3.3 Setbacks. ii) 1m rear lane setback iii) Nil side setback where: - nil side setback on adjoining property; - streetscape compatibility; - safe for drivers and pedestrians; and - Amalgamated driveway crossing	The garage complies with the front and side setback requirements.	Yes
6.4	Driveway Configuration		
	Maximum driveway width: - Single driveway – 3m - Double driveway – 5m Must taper driveway width at street boundary and at property boundary	A 3.5m wide crossover will be provided, widening in width to the garage door.	Yes
6.5	Garage Configuration		
	i) recessed behind front of dwelling ii) The maximum garage width (door and piers or columns): - Single garage – 3m - Double garage – 6m iii) 5.4m minimum length of a garage iv) 2.6m max wall height of detached garages v) recess garage door 200mm to 300mm behind walls (articulation) vi) 600mm max. parapet wall or bulkhead vii) minimum clearance 2.2m AS2890.1	The garage is setback 1.2m behind the front building line. The width of the garage door will be 4.81m, with an internal dimension of 5.52m length x 5.4m width.	Yes
7	Fencing and Ancillary Development		
7.1	General - Fencing		
	i) Use durable materials ii) sandstone not rendered or painted iii) don't use steel post and chain wire, barbed wire or dangerous materials iv) Avoid expansive surfaces of blank rendered masonry to street	No details are provided.	This can be conditioned.
7.2	Front Fencing		
	i) 1200mm max. (Solid portion not exceeding 600mm), except for piers. - 1800mm max. provided upper two-thirds partially open (30% min), except for piers. ii) lightweight materials used for open design and evenly distributed iii) 1800mm max solid front fence permitted in the following scenarios: - Site faces arterial road - Secondary street frontage (corner allotments) and fence is behind the	No front fence is proposed.	N/A

DCP Clause	Controls	Proposal	Compliance
	<p>alignment of the primary street façade (tapered down to fence height at front alignment).</p> <p><i>Note: Any solid fences must avoid continuous blank walls (using a combination of materials, finishes and details, and/or incorporate landscaping (such as cascading plants))</i></p> <p>iv) 150mm allowance (above max fence height) for stepped sites</p> <p>v) Natural stone, face bricks and timber are preferred. Cast or wrought iron pickets may be used if compatible</p> <p>vi) Avoid roofed entry portal, unless complementary to established fencing pattern in heritage streetscapes.</p> <p>vii) Gates must not open over public land.</p> <p>viii) The fence must align with the front property boundary or the predominant fence setback line along the street.</p> <p>ix) Splay fence adjacent to the driveway to improve driver and pedestrian sightlines.</p>		
7.3	Side and rear fencing		
	<p>i) 1800mm maximum height (from existing ground level). Sloping sites step fence down (max. 2.2m).</p> <p>ii) Fence may exceed max. if level difference between sites</p> <p>iii) Taper down to front fence height once past the front façade alignment.</p> <p>iv) Both sides treated and finished.</p>	No details are provided.	This can be conditioned.
7.4	Outbuildings		
	<p>i) Locate behind the front building line.</p> <p>ii) Locate to optimise backyard space and not over required permeable areas.</p> <p>iii) Except for laneway development, only single storey (3.6m max. height and 2.4m max. wall height)</p> <p>iv) Nil side and rear setbacks where:</p> <ul style="list-style-type: none"> - finished external walls (not requiring maintenance; - no openings facing neighbours lots and - maintain adequate solar access to the neighbours dwelling <p>v) First floor addition to existing may be considered subject to:</p> <ul style="list-style-type: none"> - Containing it within the roof form (attic) - Articulating the facades; - Using screen planting to visually soften the outbuilding; - Not being obtrusive when viewed from the adjoining properties; - Maintaining adequate solar access to the adjoining dwellings; and - Maintaining adequate privacy to the adjoining dwellings. <p>vi) Must not be used as a separate business premises.</p>	Not proposed.	N/A

D21/22

DCP Clause	Controls	Proposal	Compliance
7.5	Swimming pools and Spas		
	i) Locate behind the front building line ii) Minimise damage to existing tree root systems on subject and adjoining sites. iii) Locate to minimise noise impacts on the adjoining dwellings. iv) Pool and coping level related to site topography (max 1m over lower side of site). v) Setback coping a minimum of 900mm from the rear and side boundaries. vi) Incorporate screen planting (min. 3m mature height unless view corridors affected) between setbacks. vii) Position decking to minimise privacy impacts. viii) Pool pump and filter contained in acoustic enclosure and away from the neighbouring dwellings.	Not proposed.	N/A
7.6	Air conditioning equipment		
	i) Minimise visibility from street. ii) Avoid locating on the street or laneway elevation of buildings. iii) Screen roof mounted A/C from view by parapet walls, or within the roof form. iv) Locate to minimise noise impacts on bedroom areas of adjoining dwellings.	The A/C unit is proposed along the north-west elevation, set in approx. 1.8m from the side boundary. It will not be visible from the street.	Yes
7.7	Communications Dishes and Aerial Antennae		
	i) Max. 1 communications dish and 1 antenna per dwelling. ii) Positioned to minimise visibility from the adjoining dwellings and the public domain, and must be: <ul style="list-style-type: none"> - Located behind the front and below roof ridge; - minimum 900mm side and rear setback and - avoid loss of views or outlook amenity iii) Max. 2.7m high freestanding dishes (existing).	No details are provided.	This can be conditioned.
7.8	Clothes Drying Facilities		
	i) Located behind the front alignment and not be prominently visible from the street	Clothes drying area can be provided on site, not visible from the street.	Yes

3.2 Section B7: Transport, Traffic, Parking and Access

DCP Clause	Controls	Proposal	Compliance
3.2	Vehicle Parking Rates		
	1 Space per dwelling house with up to 2 bedrooms 2 Spaces per dwelling house with 3 or more	A double garage is provided for the	Yes

	bedrooms Note: Tandem parking for 2 vehicles is allowed.	4 bedroom dwelling.	
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Responsible officer: GAT & Associates, Town Planners

File Reference: DA/88/2022

D21/22

D21/22

Development Consent Conditions (dwellings and dual occupancies)



Folder /DA No:	DA/88/2022
Property:	33 Caley Street, Chifley
Proposal:	Construction of a new double storey dwelling.
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 Sheet 01.00	Masterton	18.02.22	24.02.22
Ground Floor Plan Sheet 02.00	Masterton	18.02.22	24.02.22
First Floor Plan Sheet 02.01	Masterton	18.02.22	24.02.22
Elevations Sheet 03.00	Masterton	18.02.22	24.02.22
Elevations Sheet 03.01	Masterton	18.02.22	24.02.22
Schedules Sheet 02.02	Masterton	18.02.22	24.02.22
Sections Sheet 04.00	Masterton	18.02.22	24.02.22
Sediment Control Plan Sheet 06.00	Masterton	18.02.22	24.02.22
Landscape DA Plan (Issue V2)	Impressions Landscape	20.12.21	24.02.22
Schedule of External Finishes	Masterton	27.10.21	24.02.22

BASIX Certificate No.	Dated	Received by Council
1250658S_02	7 February 2022	12 February 2022

Amendment of Plans & Documentation

- The approved plans and documents must be amended in accordance with the following requirements:
 - The proposed native feature tree on the north-east corner of the site as shown on Landscape DA Plan (Issue V2), dated 20 December 2021 and prepared by Impressions Landscape Design shall be removed and the screen planting along the eastern and northern boundaries shall be extended to fill in the space.

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 surface finishes to the development must be consistent with the relevant plans, documentation and colour schedules provided with the development application.

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 \$624,199.00 the following applicable monetary levy must be paid to Council: \$6,242.00.

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 6999 or 1300 722 542 for the indexed contribution amount prior to payment.

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

$$IDC = ODC \times CP2/CP1$$

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.

Long Service Levy Payments

6. 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 Deposit

7. The following damage / civil works security deposit requirement must be complied with as security for making good any damage caused to the roadway, footway, verge or any public place; and as security for completing any public work; and for remedying any defect on such public works, in accordance with section 80A(6) of the *Environmental Planning and Assessment Act 1979*:

- \$4000 - Damage / Civil Works Security Deposit

The damage/civil works security deposit 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 civil works which confirms that there has been no damage to Council's infrastructure.

The owner/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 prior to the commencement of any building works.

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

Design Alignment levels

8. 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:

- **20 mm above the back of the existing footpath at all points opposite the path, along the full site frontage.**

The design alignment levels at the property boundary as issued by Council and their relationship to the 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.

9. The above alignment levels and the site inspection by Council's Development Engineering Section have been issued at a prescribed fee of **\$782** 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.

Driveway Design

10. The gradient of the internal access driveway must be designed and constructed in accordance with AS 2890.1 (2004) – Off Street Car Parking and the levels of the driveway must match the alignment levels at the property boundary (as specified by Council). Details of compliance are to be included in the construction certificate.

Sydney Water Requirements

11. 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™ 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.

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

Stormwater Drainage

12. Detailed drainage plans with levels reduced to Australian Height Datum (AHD), shall be prepared by a suitably qualified Hydraulic Engineer and be submitted to and approved by the Principal Certifier. A copy of the plans shall be forwarded to Council, if Council is not the Principal Certifier.

The drainage plans must demonstrate compliance with the Building Code of Australia, Australian Standard AS3500.3:2003 (Plumbing and Drainage - Stormwater Drainage) and the relevant conditions of this development approval.

13. A site stormwater drainage system is to be provided in accordance with the following requirements (as applicable):
- a) The stormwater drainage system must be designed and constructed to satisfy the relevant requirements in the Building Code of Australia,
 - b) Roof stormwater must be directed to a suitably designed and constructed rainwater tank, as required in the relevant BASIX Certificate for the dwelling,
 - c) The overflow from the rainwater tank and other surface stormwater must be directed to a suitably designed sediment/silt arrestor pit which drains to a suitably designed infiltration area having a minimum base area of 5m²,
 - d) A stormwater overflow pipe (located a minimum 50mm above the outlet to the infiltration area) is to be provided from the sediment/silt arrestor pit to drain to Council's kerb and gutter in front of the site,
 - e) The design and construction of the infiltration areas must be appropriate having regard to the site and ground characteristics.

Should the site or ground conditions preclude the construction of an infiltration pit (i.e. due to rock being located within 300mm of the base of the infiltration area), an infiltration pit need not be provided and the stormwater is to be discharged directly to the kerb and gutter via a sediment/silt arrestor pit.

- f) Should a charged system be required to drain any portion of the site, the charged system must be designed such that;
- i. There are suitable clear-outs/inspection points at pipe bends and junctions.
 - ii. The maximum depth of the charged line does not exceed 1m below the gutter outlet.
- g) 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.
- h) Details of the design and construction of the stormwater drainage system, sediment site arrestor pit/s and infiltration areas must be submitted to and approved by the Principal Certifier with the Construction Certificate and all works are to be carried to the satisfaction of the Principal Certifier.

Details and requirements for the design and construction of sediment/silt arrestor pits and infiltration areas may be obtained from the applicants consulting engineer or from Council's Development Engineer on 9093-6881.

14. Sediment/silt arrestor pit/s are to be provided within the site at or near the street boundary prior to stormwater being discharged from the site or into any infiltration areas. The sediment/silt arrestor pits are to be constructed generally in accordance with the following requirements, to the satisfaction of the principal Principal Certifier:
- The base of the pit located a minimum 300mm under the invert level of the outlet pipe.
 - The grate is to be a galvanised heavy-duty grate that has a provision for a child proof fastening system.
 - A minimum of 4 x 90 mm diameter weep holes 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 located over the outlet pipe (Mascot GMS Multi-purpose filter screen or similar)
 - A child proof and corrosion resistant fastening system for the access grate (spring loaded j-bolts or similar).
 - The inlet pipeline located on the side of the pit so that the stormwater will discharge across the face of the screen.
 - A sign adjacent to this pit stating that:
"This sediment/silt arrestor pit shall be regularly inspected and cleaned."
- Note: Sketch details of a standard sediment/silt arrestor pit can be obtained from Council's Drainage Engineer.**

15. The Infiltration area is required to be constructed generally in accordance with the following requirements:
- Provision of a minimum 300 mm of soil cover (600 mm where the pit is located under a garden/landscaped area).
 - Located a minimum of 3.0 metres from any structures (note: this set back 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) and 2.1 metres from the adjacent side or rear boundaries.
 - Having a minimum base infiltration area of 5.0 m2 with a suitable means of dispersing stormwater over the area of infiltration.

- Locating the outlet from the silt arrestor pit to the infiltration area at least 50 mm below the outlet from the silt arrestor pit to the kerb and gutter.

Public Utilities

16. 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.

Landscape Plan

17. 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 scheme submitted for the Construction Certificate is substantially consistent with the Landscape DA Plan by Impressions Landscape Design, page 01, v2, dated 20/12/21, with both this written statement and plans to then be submitted to, and be approved by, the Principal Certifier.

New Street Tree

18. To assist with integration of this larger dwelling into the streetscape, the applicant must submit a payment of **\$107.25** (GST inclusive) to cover the costs for Council to supply, plant and maintain 1 x 25 litre Tuckeroo street tree on the Caley Street verge, an equal distance between the northern side of the new vehicle crossing and the northern site boundary.

This fee must be paid into **Tree Amenity Income** at the Cashier on the Ground Floor of the Administrative Centre **prior to a Construction Certificate being issued for the development.**

The applicant must contact Council's Landscape Development Officer on 9093-6613 (quoting the receipt number) AND GIVING UP TO SIX WEEKS NOTICE to arrange for planting upon the completion of all works.

After this, any further enquiries regarding scheduling/timing or completion of tree works are to be directed to Council's South Area Tree Preservation & Maintenance Coordinator on 9093-6964.

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

19. 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

20. 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 Certifying Authority.

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

21. 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

22. 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

23. 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 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 excavation work or building work).

Construction Noise & Vibration Management Plan

24. 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 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

25. 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
- 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.

Construction Waste

26. A *Construction Waste Management Plan* (WMP) must be developed and implemented for the development, to the satisfaction of Council.

The Waste Management Plan must provide details of the type and quantities of 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

27. 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.

Documentary evidence from the relevant public utility authorities confirming that their requirements have been or are able to be satisfied, must be submitted to the Principal Certifier prior to the commencement of any works.

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

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

28. 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.

Site Signage

29. 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

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

Activity	Permitted working hours
All building 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 5.00pm 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.

Excavations, Back-filling & Retaining Walls

31. All excavations and backfilling associated with the erection 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 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

32. 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.
33. Prior to undertaking any 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 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 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

34. 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

35. Public safety and convenience must be maintained at all times during 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 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

36. 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

37. 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

38. 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

39. 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 *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/builder 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.
- Relevant *Road / Asset Opening Permit* fees, repair 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.

For further information, please contact Council's Road / Asset Opening Officer on 1300 722 542.

Tree Management

40. Due to a combination of their small size/insignificance, as well as to allow for the new works, approval is granted for the removal of all vegetation within this development site, including the small shrubs in the front and rear setbacks, subject to full implementation of the approved Landscape Plan.

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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

41. 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

42. 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

43. The owner/developer must meet the full cost for a Council approved contractor to:
- Construct concrete vehicular crossing and layback at kerb opposite the vehicular entrance to the site, 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, as required. Any unpaved areas on the nature strip must be turfed and landscaped to Council's specification.
44. 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.
45. 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.

Stormwater Drainage

46. The applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced Hydraulic Engineer confirming that the design and construction of the stormwater drainage system complies with Australian Standard 3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and the conditions of this development consent.

The certification must be provided following inspection/s of the site stormwater drainage system by the certifying engineers and shall be provided to the satisfaction of the Principal Certifier.

Landscape Certification

47. 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 Landscape DA Plan by Impressions Landscape Design, page 01, v2, dated 20/12/21.
48. Suitable strategies shall be implemented to ensure that the approved landscaping is then maintained in a healthy and vigorous state until maturity, for the life of the development.
49. 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.

Street and/or Sub-Address Numbering

50. 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.

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

51. 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.

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.

Air Conditioners

54. Air conditioning plant and equipment shall not be operated during the following hours if the noise emitted can be heard within a habitable room in any other residential premises, or, as otherwise specified in relevant Noise Control Regulations:

- before 8.00am or after 10.00pm on any Saturday, Sunday or public holiday; or
- before 7.00am or after 10.00pm on any other day.

Rainwater Tanks

55. The operation of plant and equipment associated with rainwater tanks are to be restricted to the following hours if the noise emitted can be heard within a habitable room in any other residential premises:

- before 8.00am or after 8.00pm on weekends or public holiday; or
- before 7.00am or after 8.00pm on weekdays.

Use of parking spaces

56. 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 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 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 (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 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.

Development Application Report No. D22/22

Subject: 274 Arden Street, Coogee (DA/660/2003/C)

Executive Summary

Proposal:	To extend the kitchen by in-filling the existing terrace on the southern side of the upper level (second floor) unit, changes to windows and associated works.
Ward:	East Ward
Applicant:	Mod Urban Pty Ltd
Owner:	Strata Plan 86038
Cost of works:	\$49,000
Reason for referral:	FSR development standard exceeded by more than 10%

Recommendation

That the RLPP, as the consent authority, approve the application made under Section 4.55 of the Environmental Planning and Assessment Act 1979, as amended, to modify Development Application No. 660/2003 to extend the kitchen by in-filling the existing terrace on the southern side of upper level (second floor) unit, changes to windows and associated works at No. 274 Arden Street, Coogee in the following manner:

- **Amend Condition 1 to read:**

1. The development must be implemented substantially in accordance with the plans drawn by Turner + Associates, Job No. 04010, issue B of drawing numbers DA01, DA04-DA07, printed on 30.04.04 and stamped received by Council on 28 July 2004, Revision A of the landscape plan drawn by Jane Irwin Landscape Architecture, numbered LDA-01 and stamped received by Council on 17 May 2004, issue A of the materials board by Turner + Associates, issued 11/05/04 and stamped received by Council on 13 May 2004, Sheets 1 to 4 of the draft strata plans prepared by Denny Linker & Co, Surveyor's Reference 040819 DSP, printed August 20, 2004 and stamped received by Council on the 24 August 2004, the application form and on any supporting information received with the application, except as may be amended by the following conditions and as may be shown in red on the attached plans:

EXCEPT where amended by:

- **Council in red on the approved plans; and/or**
- **Other conditions of this consent; and/or**
- **the following Section 4.55 plans and supporting documents only in so far as they relate to the modifications highlighted on the Section 4.55 plans and detailed in the Section 4.55 application:**

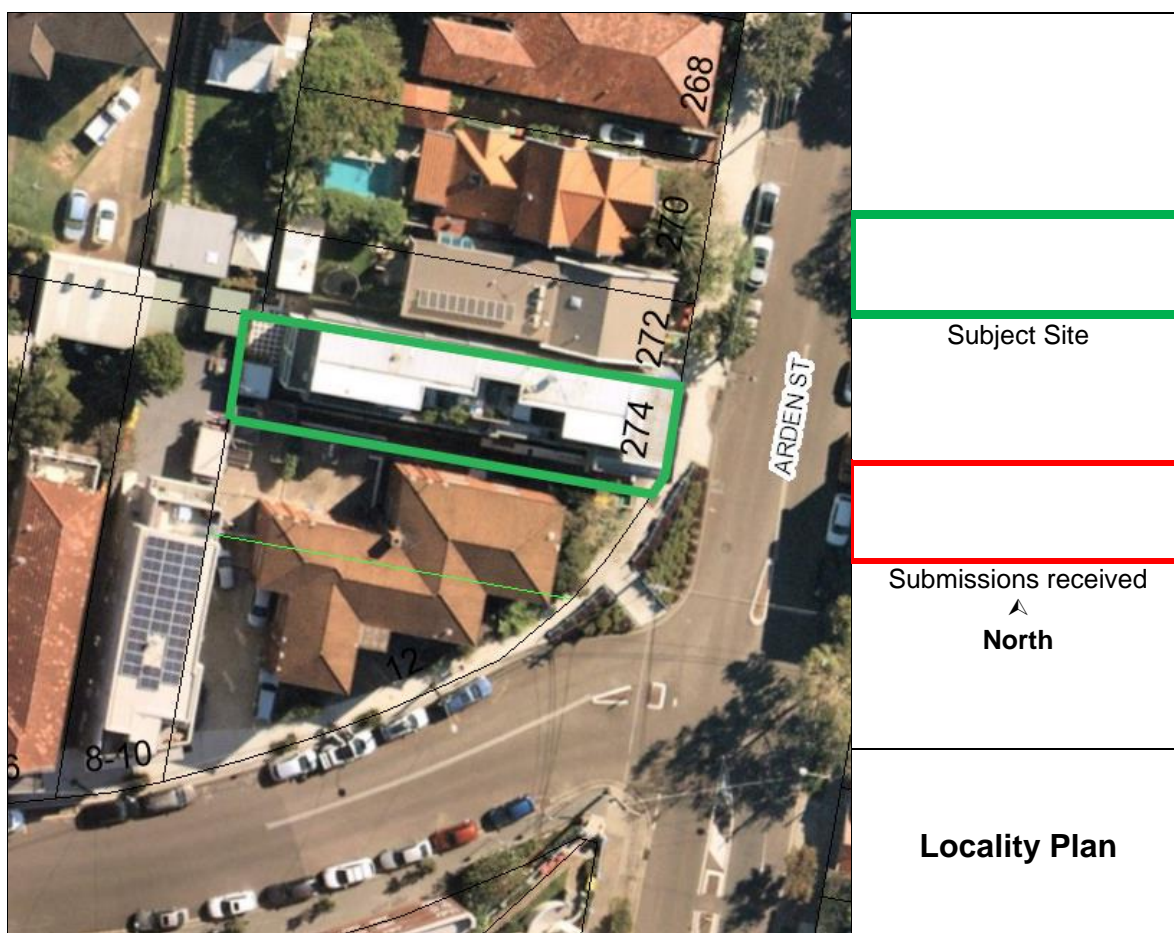
Plan	Drawn by	Dated	Received by Council
DA-0001 Existing Level 2 Floor Plan (demolition) Rev 1	Place Studio	10 June 2021	13 October 2021
DA-0002 Proposed Level 2 Floor Plan Rev 1	Place Studio	10 June 2021	13 October 2021
DA-0003 Rev 1	Place Studio	10 June 2021	13 October 2021

DA-0006 Level 2 Front Elevation Rev A	Place Studio	18 February 2022	22 February 2022
DA-007 Proposed South Elevation Rev 1	Place Studio	22 June 2021	22 February 2022

Attachment/s:

Nil

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D22/22

1. Reason for referral

This application is referred to the Randwick Local Planning Panel (RLPP) because the development contravenes the development standard for floor space ratio by more than 10%.

2. Site Description and Locality

The site is located on the western side of Arden Street, approximately 11m north of its intersection with Havelock Street, Coogee.

The site contains a 3 storey residential flat building comprising 7 apartments. There are three apartments at the ground floor and the first floor and one apartment at the second floor, which is the subject of this application.

The adjoining property to the north at 272 Arden Street contains a two storey dwelling house. The adjoining property to the south at 12 Havelock Street contains a 3 storey residential flat building.

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Figure 1 – View of the existing building from Arden Street (Source: Modurban)

3. Details of Current Approval

On 31 August 2004, Council approved alterations and additions to existing two storey RFB adding a third storey and amendment to approved strata plan (DA/660/2003).

4. Proposal

The proposed modification seeks to infill the existing terrace on the southern side of the upper level (second floor) apartment and enlargement of the existing window on the front elevation and associated works. Extracts of the floor plans showing the proposed modification are provided at **Figures 2 and 3**.

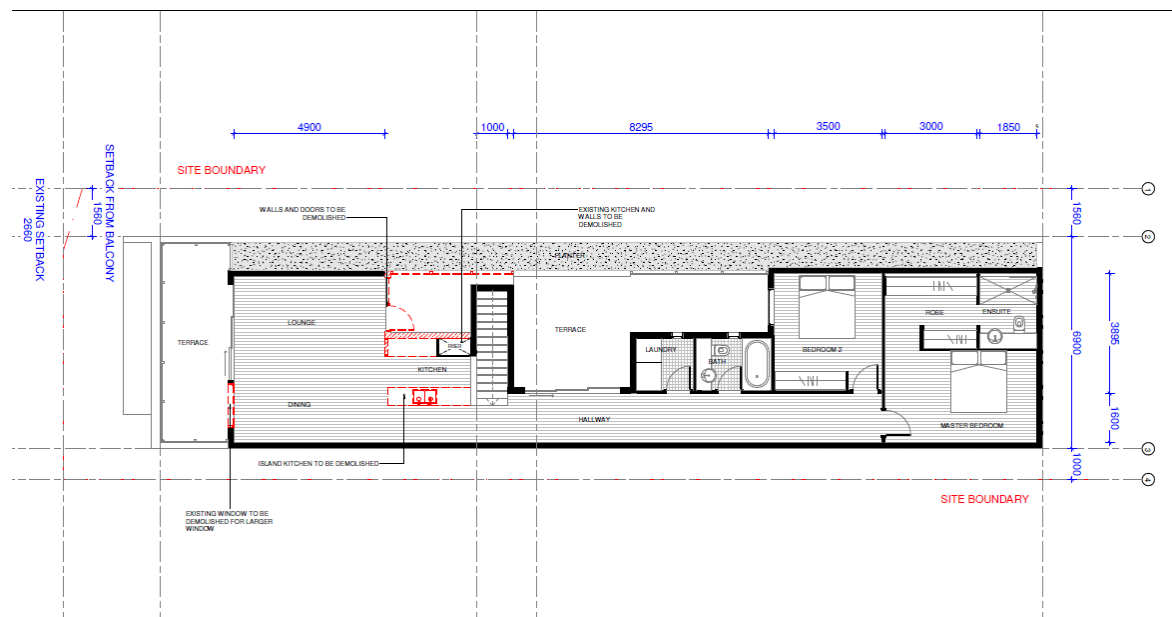


Figure 2 – Demolition plan – Upper Floor Apartment 7 (changes in red)

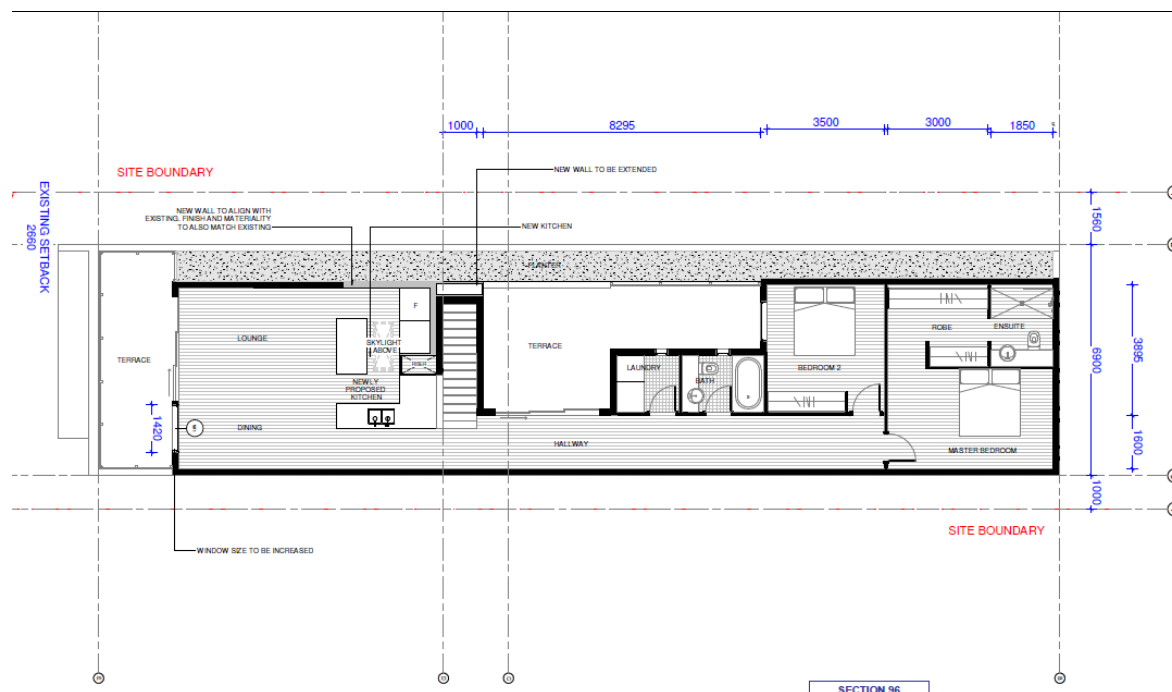


Figure 3 – Proposed modified layout - Upper Floor Apartment 7

5. Section 4.55 Assessment

Under the provisions of Section 4.55 of the Environmental Planning and Assessment Act, 1979 (the Act), as amended, Council may only agree to a modification of an existing Development Consent if the following criteria have been complied with:-

1. it is satisfied that the development to which the consent as modified relates is *substantially the same development* as the development for which the consent was originally granted and before that consent as originally granted was modified (if at all), and
2. it has consulted with any relevant public authorities or approval bodies, and

3. it has notified the application & considered any submissions made concerning the proposed modification

An assessment against the above criteria is provided below:

1. Substantially the Same Development

The proposed modifications are not considered to result in a development that will fundamentally alter the originally approved development because:

- it does not alter the use of the approved development as it will still comprise a three storey residential flat building with 7 apartments;
- it will not increase the number of bedrooms within the subject apartment and there will be no additional parking demand or traffic generation;
- the additional floorspace will be contained within the existing building envelope, and there will be no change to the overall bulk and scale of the building when viewed from adjoining properties and within the streetscape; and
- it would not result in any significant additional amenity impacts to the adjoining residential properties in terms of overshadowing, privacy, view loss and visual bulk.

2. Consultation with Other Approval Bodies or Public Authorities:

The development is not integrated development or development where the concurrence of another public authority is required.

3. Notification and Consideration of Submissions:

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. Key Issues

6.1 Non-compliance with FSR development standard

Clause 4.4 of RLEP 2012 establishes a maximum Floor Space Ratio (FSR) development standard of 0.9:1 for the site. Based on a site area of 357m², the total allowable Gross Floor Area (GFA) for the development is 321m².

The approved development has an FSR of 1.24:1 (443.27m²), which exceeds the FSR development standard. The proposed modification seeks to increase the GFA by a total of 5.59m², resulting in an FSR of 1.26:1 (448.86m²) and a variation of 127.86m² or 39.8% above the FSR development standard.

A Clause 4.6 written request seeking an exception to a development standard is not applicable to modification applications. The Statement of Environmental of Effects (SEE) submitted with the modification application includes the following justification for the variation to the development standard:

The proposal results in an FSR of 1.32:1.

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 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.

It is considered that strict compliance with Clause 4.4 is unreasonable and unnecessary in the circumstances for the following reasons:

- The additional floor space will not result in any unreasonable impacts, particularly in terms of overshadowing or privacy as discussed in this document;
- The proposal is not inconsistent with other development in the locality in terms of height, bulk and scale, particularly in relation to the scale and bulk of other residential flat buildings in the area including the adjacent residential flat building to the south of the site;
- The proposal still results in residential apartments which enjoy a good level of amenity;
- The proposal does not result in any detrimental impact to the streetscape;
- Each apartment maintains a good level of private open space;
- The proposal will contribute positively to the character and appearance of the area;
- No adverse impacts to adjoining development is to occur in terms of loss of privacy, overshadowing or visual impact and view loss;
- The proposal maintains a high quality of residential accommodation;

The non-compliance with the Floor Space Ratio standard contained in Clause 4.4 of the Randwick LEP will not result in significant impacts on adjoining development and therefore strict compliance is unnecessary in the circumstances of the case. It would be unreasonable to enforce compliance with the FSR standard contained within the RLEP when the proposed development on site achieves the underlying purpose of the standard and meets Council's objectives.

Council Officers comment

The proposed additional floorspace is contained within the approved building envelope. Despite the non-compliance with the FSR development standard, the proposed modified development is consistent with the objectives of the FSR development standard and the R3 Medium Density Residential zone under RLEP 2012, as there will be no change to the overall height, bulk and scale of the development, and it will therefore remain consistent with the desired future character of the locality. Furthermore, there will be no adverse amenity impacts in terms of overshadowing, privacy, view loss or visual bulk to the adjoining properties (refer to the discussion below).

On that basis, the proposed modified development is acceptable, and the exceedance of the FSR development standard is therefore supported.

6.2 Residential Amenity Impacts

Overshadowing

The proposed additional floorspace will be contained within the existing building envelope on the southern side of the building and will not result in any additional overshadowing of the adjoining properties.

Visual Privacy

The enclosing wall along the southern elevation of the new kitchen will reduce potential privacy impacts to the adjoining property to the south compared to the existing open terrace. The proposed enlargement of the window at the front overlooks the street and does not pose a potential privacy risk.

View Impact

There will be no loss of view from the adjoining properties as the proposed additional floorspace is contained within the profile of the existing building.

Visual Bulk

The proposed enclosing kitchen wall along the southern elevation will be setback a distance of 2.66m to the southern side boundary adjoining the residential flat building at 12 Havelock Street. The upper level will continue to provide sufficient articulation afforded by the terrace on the western side of the stairwell. The proposal will not result in any significant additional visual bulk when viewed from the adjoining property.

7. Section 4.15 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	<p>State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development</p> <p>The proposed modified development will remain compliant with the SEPP and associated Apartment Design Guide, noting the subject apartment will continue to receive adequate sunlight and natural ventilation and good amenity for the occupants</p> <p>State Environment Planning Policy (Building Sustainability Index: BASIX) 2004.</p> <p>The approved development pre-dates BASIX. In any event the proposed modification does not satisfy the minimum cost of works threshold and BASIX does not apply.</p> <p>Randwick Local Environmental Plan 2012</p> <p>The proposed modifications are ancillary to the approved development, which will remain substantially the same. The development remains consistent with the general aims and objectives of the RLEP 2012.</p>
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 development remains compliant with the objectives and controls of the Randwick Comprehensive DCP 2013.
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	The proposed modifications have responded appropriately to the relevant planning controls and will not result in any significant adverse environmental, social or economic impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	<p>The site has been assessed as being suitable for the development in the original development consent.</p> <p>The modified development will remain substantially the same as the originally approved development and is considered to meet the relevant objectives and performance requirements in the RDCP 2013 and RLEP 2012. Further, the proposed modifications will not adversely affect the character or amenity of the locality.</p> <p>Therefore, the site remains suitable for the modified development.</p>

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.

8. Conclusion

The application is recommended for approval for the following reasons:

- a) The proposed modifications are considered to result in a development that is substantially the same as the previously approved development.
- b) The modified development will not result in significant adverse environmental impacts upon the amenity and character of the locality.

Responsible officer: Thomas Mithen, Environmental Planner

File Reference: DA/660/2003/C

D22/22

Development Application Report No. D23/22

Subject: 41 Adina Avenue, Phillip Bay (DA/752/2021)

Executive Summary

Proposal:	Alterations and additions to residential dwelling including basement car parking for 15 vehicles, new cinema and gym.
Ward:	South Ward
Applicant:	Mr T Hall
Owner:	Ms M L Karantonis
Cost of works:	\$961,853
Reason for referral:	The development contravenes the development standards for floor space ratio by more than 10%.

Recommendation

That the RLPP refuse consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/752/2021 for alterations and additions to residential dwelling including basement car parking for 15 vehicles, new cinema and gym at No. 41 Adina Avenue, Phillip Bay for the following reasons:

1. The proposed development does not satisfy the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, as amended.
2. The proposal does not satisfy SEPP (Building Sustainability Index: BASIX) 2004, in that a revised BASIX Certificate is required for the development.
3. The proposed development does not comply with the floor space ratio development standard under Clause 4.4 of the Randwick Local Environmental Plan 2012. The written request to vary the development standard pursuant to Clause 4.6 of the Randwick Local Environmental Plan 2012 provides incorrect site area and proposed floor space ratio calculations. The consent authority cannot grant development consent for the variation without a correct written request, pursuant to Clause 4.6(3). Notwithstanding, the written request has not adequately demonstrated that compliance is unreasonable and unnecessary, and that there are sufficient, environmental planning grounds.
4. The development does not satisfy Clause 6.2 – Earthworks of the Randwick Local Environmental Plan 2012. The proposed excavation is excessive and the application has not demonstrated that excavation will not result in unreasonable structural impacts on adjoining dwellings.
5. The proposal is contrary to the objectives of the R2 Low Density Residential zone in Randwick Local Environmental Plan 2012 in that the size and scale of development is not compatible with the low density residential environment and does not contribute to the desired future character of the area.
6. The proposal does not comply with the relevant requirements of the RDCP 2013 with regards to rear setbacks, earthworks, energy efficiency and natural ventilation, car parking and access.
7. The proposed development would enable the establishment of a precedence for excessive basement excavation across the locality. Accordingly, the proposal is not in the public interest.

Attachment/s:

Nil

D23/22

D23/22



1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development contravenes the development standard for floor space ratio by more than 10%.

The proposal seeks development consent for alterations and additions to a dwelling house including basement car parking for 15 vehicles, new cinema room and gym area. The proposed works relate to an approved, but as yet unbuilt dwelling, under DA/610/2020.

The key issues associated with the proposal relate to exceedance of the Floor Space Ratio (FSR) development standard and excessive earthworks and car parking.

The proposed development does not comply with the maximum 0.6:1 FSR development standard within Clause 4.4 of Randwick Local Environmental Plan 2012 (RLEP 2013). The proposed FSR of 0.75:1 represents a 24.7% variation to the development standard.

The variation is not supported because the size of the proposed development is incompatible with the objectives of the maximum floor space ratio and the R2 Low Density Residential zone. The applicant's written request to vary the standard has not adequately addressed the provisions pursuant to Clause 4.6 of the RLEP 2012.

As per the Demolition & Excavation Work Plan prepared by The RIX Group, excavation is proposed across an approximate area of 1,000m² and an approximate volume of 4,475m³. The excavation is primarily for the purposes of a 15 car garage, which exceeds Council's car parking requirements by 13 car spaces.

It is recommended that the RLPP refuse consent for the development for the reasons outlined above and within this report.

2. Site Description and Locality

The subject site consists of reconfigured allotments approved under DA/347/2021. The approved allotment has a total site area of 1,440m² in an irregular 'L' shape configuration, with a 14.08m frontage to Adina Avenue to the north-west.

The site slopes approximately 2m from the north-eastern boundary to the south-western boundary, at the rear of the site.

Existing on the site is a two storey dwelling house, with a workshop outbuilding at the rear.

The locality is residential in a nature and contains a mixture of low density residential development. The existing streetscape along Adina Avenue comprises low density housing in the form of freestanding older stock and contemporary one to two storey dwellings, with parking provided at grade. Frenchmans Beach is located 350m to the south-west of the subject site. The subject site and surrounding properties enjoy views of Botany Bay to the south-west.



1. Figure 1. Streetscape view – 41 Adina Avenue, Phillip Bay



2. Figure 2. North-east adjoining property – 39 Adina Avenue, Phillip Bay



3. Figure 3. South-west adjoining property – 42 Elaroo Avenue, Phillip Bay



4. Figure 4. Streetscape on the south-eastern side of Adina Avenue



5. Figure 5. Streetscape on the north-western side of Adina Avenue



6. Figure 6. Views of Botany Bay to the south-west from Adina Avenue

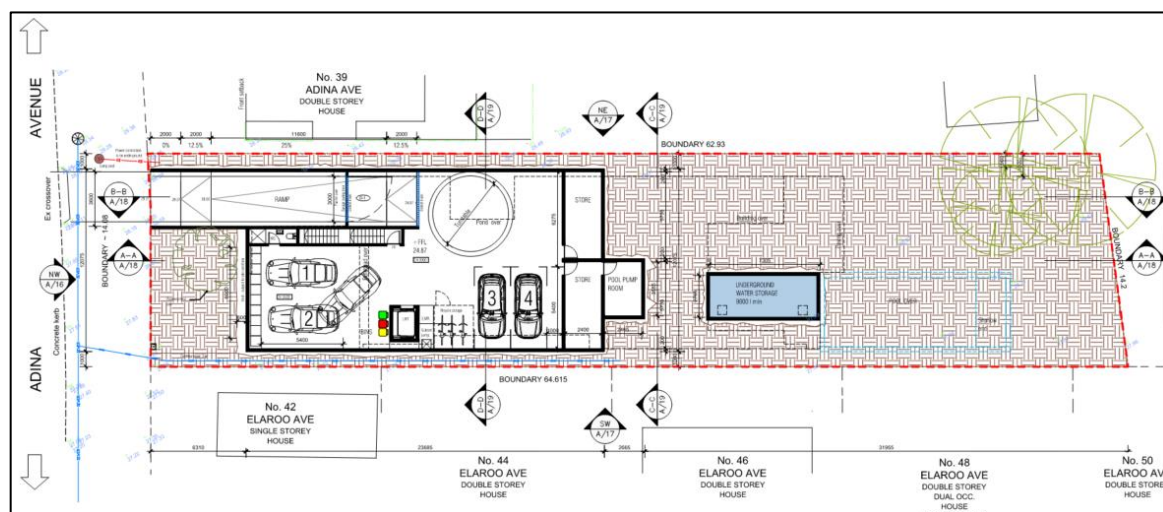
3. Relevant history

DA/610/2020

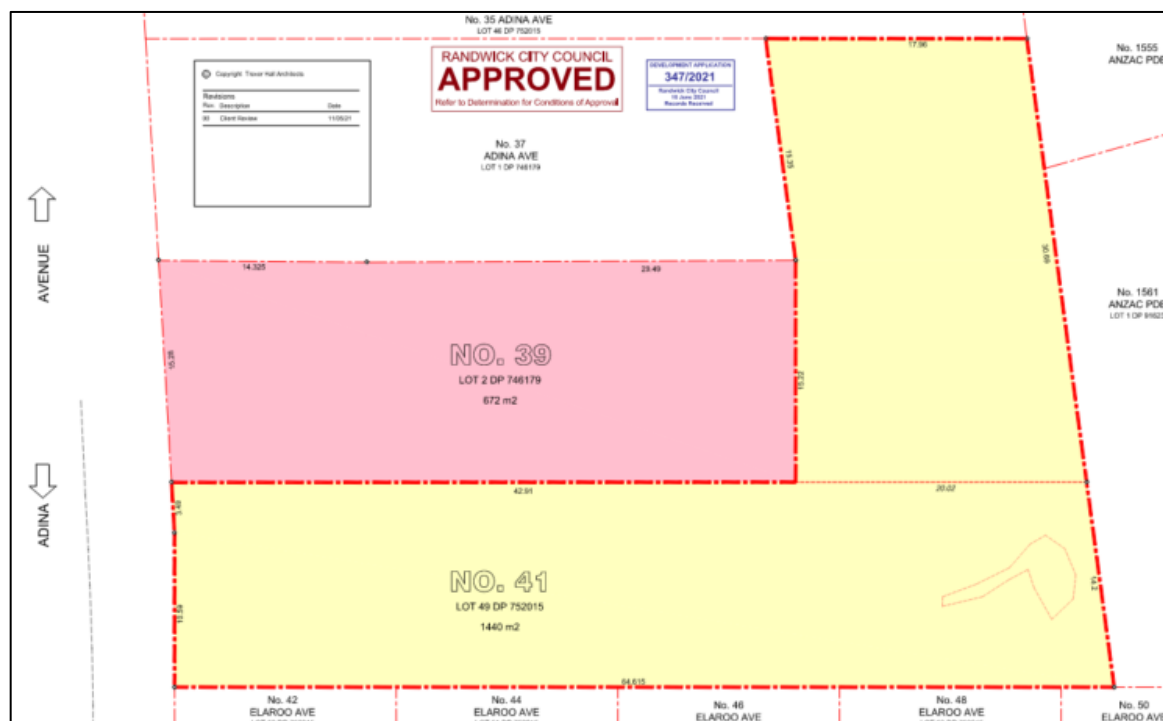
Development Application DA/610/2020 was approved on 2 March 2021 to demolish existing residential dwelling and associated outbuildings and construction of a new 2 storey residential dwelling with basement level parking and a pool. The development consent included approval for a basement car park, with 4 car spaces, turntable, storage and pump room.

DA/347/2021

Development Application DA/347/2021 was approved on 15 October 2021 for reconfiguration of 2 existing allotments to create 2 allotments with concurrent demolition of a existing shed.

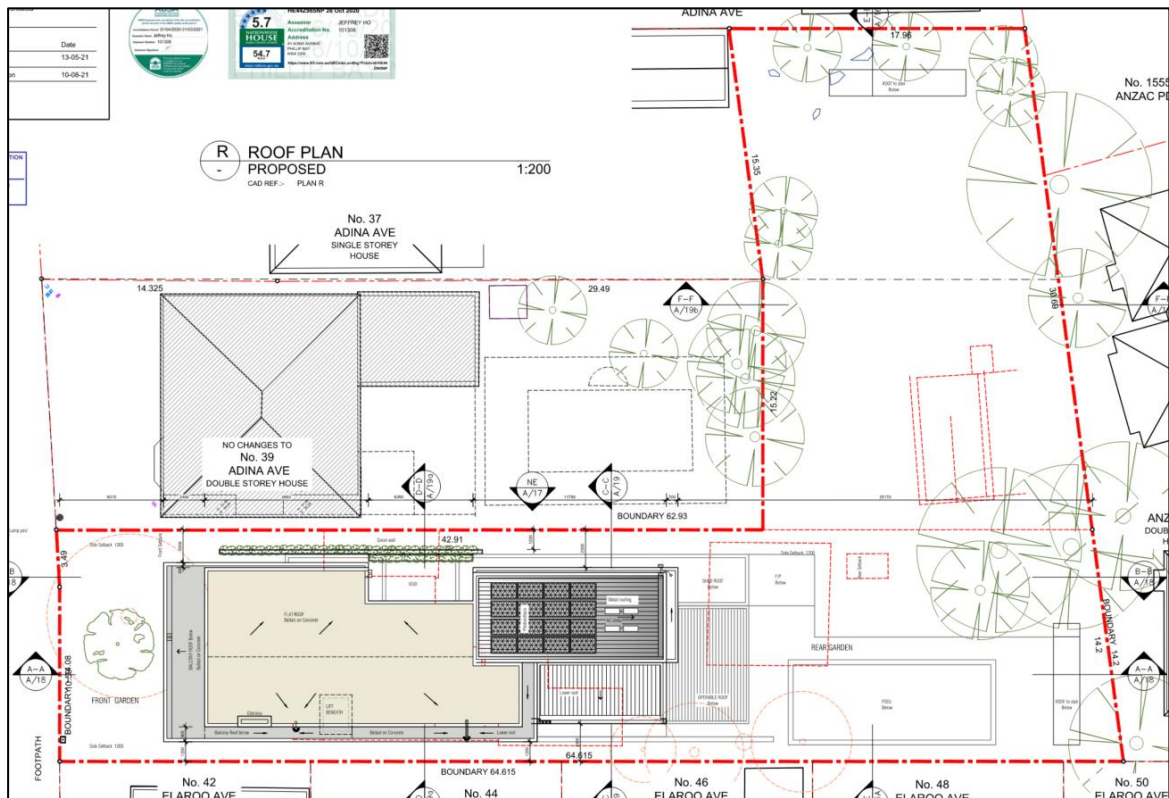


7. Figure 7. Approved basement floor plan under DA/610/2020

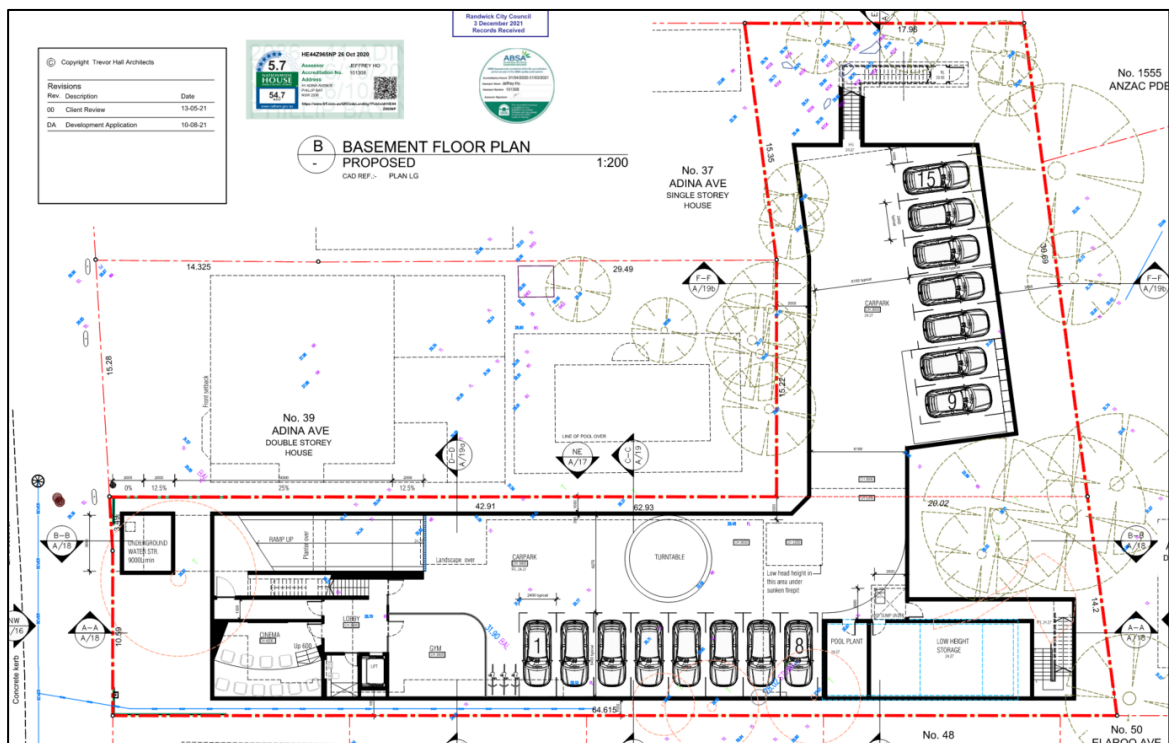


8. Figure 8. Approved allotments under DA/347/2021

D23/22



9. Figure 9. Proposed roof plan



10. Figure 10. Proposed basement floor plan

4. Proposal

The proposal seeks development consent for alterations and additions to an approved dwelling house including basement car parking for 15 vehicles, new cinema and gym.

The proposal seeks to extend the basement excavation towards the rear of the site in an irregular 'L' shape configuration. The basement includes a cinema, gym and lobby towards the front of the site. These new habitable areas of the basement have a gross floor area of 110m². The basement also contains 15 car spaces, bicycle parking, turntable, plant room, storage and two egress stairs connecting to the rear private open space.

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 2019. The following submissions were received as a result of the notification process:

- 46 Elaroo Avenue, Phillip Bay

Issue	Comment
Proposed border plantings of <i>Syzygium paniculatum</i> will have an adverse solar access impact on the townhouses at 46 Elaroo Avenue. The Body Corporate is happy with the condition of consent imposed in DA/610/2020, requiring the <i>Syzygium paniculatum</i> planting to be replaced with a smaller variety. The current DA plans do not reflect this condition of consent.	A development consent condition could be imposed in relation to landscape planting were this application to be approved. The application is recommended refusal for reasons outlined in this report.

6. Relevant Environment Planning Instruments

6.1. SEPP (Building Sustainability Index: BASIX) 2004

SEPP (Building Sustainability Index: BASIX) 2004 applies to this development. The applicant has submitted BASIX Certificate No. 1141093S_02 for the development. The details of this BASIX Certificate have been checked against approved BASIX Certificate No. 1141093S for DA/610/2020. Both BASIX Certificates provide a conditioned floor area of 411.3m² and unconditioned floor area of 50m². It appears that the BASIX Certificate No. 1141093S_02 has not included the proposed addition of the cinema and gym in the floor area details. Thus, a valid BASIX Certificate is outstanding for the proposed development to confirm that it achieves environmental and energy efficiency targets.

6.2. SEPP (Biodiversity and Conservation) 2021

The State Environmental Planning Policy (Biodiversity and Conservation) 2021 came into effect in NSW on 1 March 2022.

Chapter 2 of SEPP (Biodiversity and Conservation) 2021 contains provisions relating to vegetation in non-rural areas, including the aims:

*“(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 2.6(1) requires a permit to be granted by the Council for the clearing of vegetation in non-rural areas (such as City of Randwick).

Assessing Officer's Comment: Council's Landscape Officer has assessed the proposal and advises that the proposed clearing of vegetation is acceptable, subject to recommended conditions of consent.

6.3. SEPP (Resilience and Hazards) 2021

Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 applies to all land and aims to provide for a State-wide planning approach to the remediation of contaminated land.

Clause 4.6 of SEPP (Resilience and Hazards) 2021 requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land. The subject site is not identified under RLEP 2012 as constituting contaminated land or land that must be subject to a site audit statement. In this regard it is Council's position that the site will be suitable for the proposed development, posing no risk of contamination. Pursuant to Clause 4.6 of SEPP (Resilience and Hazards) 2021, the land is considered to be suitable for the proposed land use.

6.4. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned Residential R2 Low Density under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent.

The proposal is not consistent with the specific objectives of the zone. The proposed development is not compatible with the low density residential environment and does not contribute to the desired future character of the area. Refer to the assessment of the Clause 4.6 request.

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

Clause	Development Standard	Proposal	Compliance
CI 4.4: Floor space ratio (max)	0.6:1	0.75:1 NB. The FSR of the approved development under DA/610/2020 is 0.6:1.	No
CI 4.3: Building height (max)	9.5m	7.44m	Yes

6.4.1. Clause 4.6 - Exceptions to development standards

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

6.4.2. Clause 6.1 – Acid sulphate soils

Part of the site is identified as Class 5 Acid Sulfate Soils. The site is located approximately 480m from Class 4 Acid Sulfate Soils to the north-west. However, due to the site topography and distance to another soil class, the water table is unlikely to be lowered below 1m AHD.

6.4.3. Clause 6.2 - Earthworks

The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.

Development consent is required for the proposed earthworks.

Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—

- (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,
- (b) the effect of the development on the likely future use or redevelopment of the land,
- (c) the quality of the fill or the soil to be excavated, or both,
- (d) the effect of the development on the existing and likely amenity of adjoining properties,
- (e) the source of any fill material and the destination of any excavated material,
- (f) the likelihood of disturbing relics,
- (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,
- (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

Excavation to a depth of 4.9m is proposed for the basement, which spans an approximate area of 1,000m². As per the Demolition & Excavation Work Plan prepared by The RIX Group, there will be roughly 400m³ of topsoil and other rock material to be excavated within the footprint. The remaining basement excavation will be within sandstone with an approximate quantity of 4,000m³. Detail excavation for the lift pits and structural footings will be within sandstone material and is around 75m³ material.

The submitted Geotechnical Report by GDK highlights that there is medium/strong sandstone located 0.30m-0.50m below the surface level throughout the site. The excavation/removal of the sandstone to allow for the basement level construction will likely require vertical cutting and hydraulic hammers. The Geotechnical Report states that the contractor is to ensure that vibrations resulting from the use of hydraulic hammers are minimised and limited to a maximum peak particle velocity of about 5mm / second at any adjoining structure, unless the adjoining structures show signs of distress and are classified as 'sensitive structures' by the person undertaking the dilapidation report which would reduce the maximum peak particle velocity to 2mm/sec. The Report advises that residents will probably find vibration levels above 3mm/sec as being strongly perceptible to disturbing.

Further investigation is therefore required to ensure excavation does not result in unreasonable structural impacts on adjoining dwellings.

In regard to the effect of the development on the likely future use or redevelopment of the land – The extent of the basement garage is excessive for the general low density housing needs. The design of the basement lends itself to flexibility for future habitable uses. The basement garage predominantly has a floor to ceiling height of 3.6m, with a small section having a floor to ceiling height of 3.2m. The minimum headroom clearance for car parking is 2.1m. Any redevelopment of the site may require a substantial volume of fill.

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 4.4: Floor space ratio (max)	0.6:1 (864m ²)	0.75:1 (1077.6m ²) NB. The FSR of the approved development under DA/610/2020 is 0.6:1.	213.6m ²	24.7%

The applicant's Clause 4.6 request states that the basement carpark is for the purposes of housing a car collection and should be considered car 'storage' rather than a garage. Hence, the applicant

considers that proposed basement car 'storage' does not count as GFA. The Clause 4.6 request was submitted 'in an abundance of caution.' However, the basement car 'storage' fundamentally functions as a garage. Hence the car parking in excess of Council's car parking requirements is included in the GFA calculations, resulting in a variation of 24.7%.

Note: The applicant has confirmed in an email that the site area is 1,440m², which is consistent with development consent DA/347/2021. There is an error in the plans and Clause 4.6 request, which refers to a site area of 1,460.4m². The applicant indicated an intention to update the plans and documentation to correct the site area and calculations. However, this additional information has not been submitted and/or received by Council.

The consent authority cannot grant development consent for the variation without a correct written request, pursuant to Clause 4.6(3). Nevertheless, an assessment has been carried out against the correct numerical non-compliance.

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 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 seeks to demonstrate that this objective is satisfied by noting that:

Although it is less likely that other nearby properties would contain similar basements, the dwelling will remain virtually the same as approved under DA/610/2020. The dwelling will remain the same height, have the same setbacks and same external properties and dimensions as approved. There will be no issues of bulk, size or scale evident or impacting on the streetscape, surrounding properties or the wider areas as the Site, with the basement garage being wholly below ground and behind the building line. The setbacks are also in compliance which will allow sufficient deep soil and landscaping to be provided, thereby reinforcing the expectation of a dwelling contained within a landscaped setting.

(b) to ensure that buildings are well articulated and respond to environmental and energy needs

The applicant's written justification seeks to demonstrate that this objective is satisfied by noting that:

The proposal remains consistent with this objective, given there are no changes to the approved dwelling, which has been deemed to be sufficiently articulated and meet the required environmental and energy efficiency needs. The proposal satisfies the requisite BASIX requirements, which are documented on Drawing No. 12-18/A/02. Given the nature and intended use of the basement storage, it will not require any significant additional energy needs. In terms of physical appearance of the above ground structures (i.e. the stairwells), these are sufficiently setback off the boundaries to allow deep soil plantings and will not be of a size, scale, massing or bulk to adversely affect the amenity of neighbouring properties.

(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 or near a heritage item so the objective detailed in Clause 1(c) is not relevant to this development.

(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 seeks to demonstrate that this objective is satisfied by noting that:

The modifications to the approved dwelling are, for the most part, internal and will not alter the potential impacts on adjoining properties...

As stated previously, the above ground structures (i.e. the stairwells) are sufficiently setback off the boundaries to allow deep soil plantings and will not be of a size, scale, massing or bulk to adversely affect the amenity of neighbouring properties. There will be no privacy implications from the stairs and any shadows cast will be within the subject site. The eastern staircase will also provide an enhanced level of privacy for the swimming pool from the two storey dwelling at 1561 Anzac Parade, while northern structure is adjacent to the detached sheds on the rear of Nos.35 and 37 Adina Avenue. Likewise, being below ground (or in terms of the stairwells, being minor structures), there will not be any impacts on views.

The stairs are also required to satisfy emergency egress requirements under the National Construction Code. Given their location, they are unlikely to be used except in an emergency.

In terms of acoustic matters, the basement will be located below ground and given the primary purpose is the storage of a private car collection, will not give rise to any noise impacts. Noise and vibration impacts during construction will be suitably controlled through Council's standard conditions that are applied to mitigate potential impacts, including construction hours, traffic management, the use of equipment and dilapidation management.

Assessing officer's comment:

The existing streetscape along Adina Avenue comprises low density housing in the form of freestanding older stock and contemporary one to two storey dwellings, with parking provided at grade. Sites on Adina Avenue exhibit only a gentle slope. The desired future character of the area therefore comprises parking located at grade to minimise excavation, with an appropriate amount of car spaces provided for residential use. While a smaller, four-car space basement garage was approved for the six-bedroom dwelling under DA/610/2020, the size of the proposed basement is excessive. The size of the basement for 15 car spaces exceeds the extent of excavation envisaged for low density residential development in the Phillip Bay locality. The size of the basement is also not considered 'desirable' as this will set an undesirable precedent for the area.

The applicant has submitted BASIX Certificate No. 1141093S_02 for the development. The details of this BASIX Certificate have been checked against approved BASIX Certificate No. 1141093S for DA/610/2020. Both BASIX Certificates provide a conditioned floor area of 411.3m² and unconditioned floor area of 50m². It appears that the BASIX Certificate No. 1141093S_02 has not included the proposed addition of the cinema and gym in the floor area details. Thus, a valid BASIX Certificate is outstanding for the proposed development to confirm that it achieves environmental and energy efficiency targets.

Furthermore, the applicant's Clause 4.6 request focuses on the energy requirements of the basement parking, but does not address the additional energy needs for the basement habitable rooms (cinema and gym).

To conclude, the proposed development does not satisfy the objectives of the standard in relation to desired future character and energy efficiency.

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:

Having regard to both the accepted practice and the likely future approach to providing an improved planning outcome, we state the proposal will achieve both sufficient and improved planning outcomes, namely:

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- *The proposal satisfies the objectives of the R2 Low Density Residential zone and the objectives of the FSR development standard.*
- *The non-compliance with the standard will not result in a scale of development which is incompatible with either the existing or desired future character of the locality. The enlarged basement is to be used for the purposes of storing the applicant's private car collection in a centralized location, instead of a number of facilities across Sydney.*
- *The variation to the FSR development standard will not be readily observable from the public domain or from other properties.*
- *Despite the non-compliance, the proposed development is an appropriate development for the site. It will not prejudice the internal amenity of any existing dwellings on adjoining properties, the utilisation of the adjoining communal open space to the north or the proposed dwellings. In this instance, the development as proposed is consistent with the provisions of orderly and economic development, as required by the EP&A Act and facilitates a positive environmental planning outcome for the site.*
- *The non-compliance with the standard does not result in a residential development that is out of character with the surrounding development, nor will it be incompatible with the desired future character of the locality. The proposal is purpose-based architectural solution that has been tailored to the specific constraints of the site. Most people do not own classic car collections of the size and nature that the applicant does and accordingly, the opportunity for other properties seeking a development outcome such as this are somewhat restricted, limiting the establishment of a precedence.*
- *The non-compliance with the FSR development standard does not contribute to adverse amenity impacts in terms of overshadowing and solar access, outlook, visual privacy or view loss to adjoining properties.*
- *The proposal will achieve improved planning outcomes that would not be realized if the development standard were rigidly enforced. The vehicles are currently stored in multiple locations across Sydney. This creates a real cost to the applicant and there are very real security concerns following the destruction of two rare cars in a fire at their storage location in 2019. The storage of the collection in multiple facilities reflects the difficulty the applicant has in providing a single, purpose-built storage facility for the vehicles. Further, any time the applicant wishes to access the vehicles for maintenance or use, it requires a car trip to and from the storage facility and parking for that vehicle. With a centralized and purpose-built storage area, the collection will be in that one location. Apart from being more cost-effective for the applicant, such a solution will:*
 - *Provide greater security and protection for the collection. This will minimise the potential for loss, theft and vandalism.*
 - *Allow easy access without unnecessary vehicle trips on the local road network.*
 - *Free up storage space in the existing industrial storage facilities.*
 - *Facilitate a better quality of life and amenity for the applicant who can utilize and enjoy their collection with it being close at hand.*

Assessing officer's comment:

As noted above, the proposed development does not satisfy the objectives of the standard in relation to desired future character and energy efficiency.

The size of the basement for 15 car spaces exceeds the extent of excavation envisaged for low density residential development in the Phillip Bay locality. No attempts have been made by the applicant to minimise the size of the basement – the provision of 15 car spaces could be achieved in a smaller basement, in a tandem arrangement or car stackers for example.

Nonetheless, the proposed car 'storage' functions and is designed as car parking. There is no design differentiation between a car 'storage' and a 'car park'. The use of the basement for 'storage' of classic and limited-edition cars, as opposed to general car parking, cannot be enforced or necessary delineated.

Thus, the proposed development would enable the establishment of a precedence for excessive basement excavation for low density residential development across the locality.

Furthermore, the applicant's written request has not satisfactorily demonstrated that there are sufficient environmental planning grounds for the addition of habitable rooms, which contribute to the FSR exceedance and increased energy requirements. The approved 6 bedroom dwelling house provides a satisfactory degree of internal residential amenity.

In conclusion, the applicant's written request has failed to demonstrate 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 R2 Low Density Zone is provided below.

Assessment against objectives of floor space ratio standard

As assessed above, the development does not satisfy the objectives of the FSR standard.

Assessment against objectives of the R2 zone

The applicant's written justification addresses the objectives of the R2 zone as follows:

- To provide for the housing needs for the community within a low density residential environment.

The proposal satisfies this objective. The development seeks to provide additional floor area below ground in a basement level that will not be evident, aside from two landscaped egress stairwells. The approved dwelling remains without any modification to its physical parameters above ground. The subject application does not seek to provide any greater density by way of additional bedrooms or dwellings. Accordingly, the approved detached dwelling will remain as is.

- To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Not applicable.

- To recognize 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.

The proposal will not be visible from the streetscape and being predominantly underground, will not affect the desirable elements of the streetscape, or the character of the area.

- To protect the amenity of residents.

The proposal, by virtue of being underground, will not adversely affect the solar access, views, outlook, visual or aural privacy of the adjoining properties. The above-ground components (the stairwells) will be well set back off the boundaries and landscaped in a manner that will give the appearance of a small outbuilding.

- To encourage housing affordability.

The proposal is not inconsistent with this objective as the dwelling has already been approved.

- To enable small-scale business uses in existing commercial buildings.

Not applicable.

Assessing officer's comment: The proposed development is incompatible with a low-density residential environment. The size of the basement excavation and number of car spaces is

excessive for the purposes of low-density residential development. Thus, the proposal does not provide for the housing needs for the community within a low density residential environment or contribute to the desired future character of the area.

The development does not satisfy the objectives of the floor space ratio standard and the R2 Low Density Residential zone.

Furthermore, the proposed development would enable the establishment of a precedence for excessive basement excavation across the locality.

Therefore the development will not 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 not allow for the orderly use of the site and there is a 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 not been satisfied and that development consent cannot be granted for development that contravenes the FSR 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 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 'Matters for Consideration'	Comments
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 does not satisfy 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)(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 not consistent with the low density residential 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 not considered suitable for the proposed development. The size of the development is not compatible with the low density residential area.
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 does not satisfy the objectives of the zone and will result in significant adverse environmental impacts. The proposed development would enable the establishment of a precedence for excessive basement excavation across the locality. Accordingly, the proposal is not in the public interest.

9.1. Discussion of key issues

Floor space ratio

The applicant's Clause 4.6 request states that the basement carpark is for the purposes of housing a car collection and should be considered car 'storage' rather than a garage. Hence, the applicant considers that proposed basement car 'storage' does not count as GFA. The Clause 4.6 request was submitted 'in an abundance of caution.' However, the basement car 'storage' fundamentally functions as a garage. Hence the car parking in excess of Council's car parking requirements is included in the GFA calculations, resulting in a variation of 24.7%.

As assessed in Part 7 of this report, the requirements of Clause 4.6(4) have not been satisfied and that development consent cannot be granted for development that contravenes the FSR development standard.

Earthworks

The LEP and DCP includes provisions to minimise or mitigate the impact of earthworks.

Excavation to a depth of 4.9m is proposed for the basement, which spans an approximate area of 1000m². As per the Demolition & Excavation Work Plan prepared by The RIX Group, there will be roughly 400m³ of topsoil and other rock material to be excavated within the footprint. The remaining basement excavation will be within sandstone with an approximate quantity of 4000m³. Detail excavation for the lift pits and structural footings will be within sandstone material and is around 75m³ material.

The development does not satisfy Clause 6.2 Earthworks of the LEP, and Clause 6.4 Earthworks, Part C1 of the DCP in that the proposed excavation is excessive and the application has not demonstrated that excavation will not result in unreasonable structural impacts on adjoining dwellings.

Clause 6.1(v), Part C1 of the DCP specifies an intention to minimise excavation for basement garages. No attempts have been made by the applicant to minimise the size of the basement – the provision of 15 car spaces could be achieved in a smaller basement, in a tandem arrangement or car stackers for example. Nonetheless the proposed basement garage is excessive for the purposes of low density residential development – The dwelling exceeds Council's car parking requirements by 13 car spaces. Furthermore, the basement garage predominantly has a floor to ceiling height of 3.6m, with a small section having a floor to ceiling height of 3.2m. This is excessive, considering that the minimum headroom clearance for car parking is 2.2m.

For the above reasons, the proposed earthworks are not supported and the application is recommended for refusal.

10. Conclusion

That the application for alterations and additions to residential dwelling including basement car parking for 15 vehicles, new cinema and gym be refused for the following reasons:

1. The proposed development does not satisfy the matters for consideration under Section 4.15 of the Environmental Planning and Assessment Act 1979, as amended.
2. The proposal does not satisfy SEPP (Building Sustainability Index: BASIX) 2004, in that a revised BASIX Certificate is required for the development.
3. The proposed development does not comply with the floor space ratio development standard under Clause 4.4 of the Randwick Local Environmental Plan 2012. The written request to vary the development standard pursuant to Clause 4.6 of the Randwick Local Environmental Plan 2012 provides the incorrect site area and proposed floor space ratio calculations. The consent authority cannot grant development consent for the variation without a correct written request, pursuant to Clause 4.6(3). Notwithstanding, the written request has not adequately demonstrated that compliance is unreasonable and unnecessary, and that there are sufficient, environmental planning grounds
4. The development does not satisfy Clause 6.2 – Earthworks of the Randwick Local Environmental Plan 2012. The proposed excavation is excessive and the application has not demonstrated that excavation will not result in unreasonable structural impacts on adjoining dwellings.
5. The proposal is contrary to the objectives of the R2 Low Density Residential zone in Randwick Local Environmental Plan 2012 in that the size and scale of development is not compatible with the low density residential environment and does not contribute to the desired future character of the area.
6. The proposal does not comply with the relevant requirements of the RDCP 2013 with regards to rear setbacks, earthworks, energy efficiency and natural ventilation, car parking and access.

7. The proposed development would enable the establishment of a precedence for excessive basement excavation across the locality. Accordingly, the proposal is not in the public interest.

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Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineer

An application has been received for construction of a new 6 bedroom dwelling at the above site including a pool and a basement level for a Cinema, Gym, Storage Area and 15 car spaces (2 which have mechanical workspace).

This report is based on the following plans and documentation:

- Architectural Plans by Trevor Hall Architects dated August 2021;
- Statement of Environmental Effects by Urban Planning Solutions;
- Detail & Level Survey by C- Side Surveyors dated 18.10.2019;
- Geotechnical Report by GDK
- Arboricultural Impact Assessment (rev A) by Rennie Bros. Tree Surgeons, ref 13368, dated 01/07/21;
- Landscape Plans by Nicholas Bray Landscapes, dwg's L1-3, rev F, dated 28/07/21.

Geotechnical Comments

The submitted Geotechnical Report by GDK highlights that there is medium/strong sandstone located 0.30m-0.50m below the surface level throughout the site. The excavation/removal of the sandstone to allow for the basement level construction will likely require vertical cutting and hydraulic hammers. The Planning Officer may wish to liaise with Council's Building Services in regards to any conditions which may be considered relevant in relation to the excavation of the rock and the impact on adjoining/surrounding properties.

Drainage Comments

Detailed drainage plans with levels reduced to Australian Height Datum (AHD), shall be prepared by a suitably qualified Hydraulic Engineer and be submitted to and approved by the Principal Certifier. A copy of the plans shall be forwarded to Council, if Council is not the Principal Certifier.

Roof stormwater must be directed to a suitably designed and constructed rainwater tank, as required in the relevant BASIX Certificate for the dwelling. The overflow from the rainwater tank and other surface stormwater must be directed (via a sediment/silt arrestor pit) to Council's kerb and gutter in Adina Avenue (5sqm infiltration system is not required due to the presence of rock).

As the basement level garage is located within the zone of excavated rock the seepage/ground water and subsoil drainage must not be collected & discharged directly or indirectly to Council's street gutter or underground drainage system. There is to be adequate provision for the ground water to drain around the basement carpark (to ensure the basement will not dam or slow the movement of the ground water through the development site) and the walls of the basement level of the building is to be waterproofed/tanked to restrict the entry of any seepage water and subsoil drainage into the basement level of the building.

The submitted drainage plans by Clapham Design Services shall not be stamped approved with any approval and future drainage plans shall be subject to conditions of approval within the Development Consent.

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 mains power distribution pole on the same side of the street hence the above clause is applicable. A suitable condition has been included in this report.

Tree Management Comments

The mature *NZ Xmas Tree* (T1) located centrally in the front yard, just to the south of the existing driveway, is in very poor health and condition, and is now in a state of decline from which it will not recover, so could already be removed, irrespective of these works, and as major excavations associated with the new basement entry ramp will need to be performed in this same area, consent has been granted for its removal, along with the *Tibouchina* (T2) to its east, against the front of the existing dwelling, as well as the other small shrubs at the rear, around the existing garage, as they are all insignificant, as well as in direct conflict with this proposal.

In the rear setback of the subject site, along the southern boundary, adjacent the two story dwelling at the neighbouring site of 46 Elaroo Avenue, there is a group of screening shrubs/trees, being from west to east, a *Draceana* (T3), a *Brachychiton acerifolius* (Flame Tree, T4), a juvenile Gum, a Mulberry (T5) and two Oleanders, most of which are already exempt from the provisions of Council's DCP due to either their small size or being classified as undesirable weed species, and as they are all in direct conflict with the footprint of the Ground Floor and pool in this same area, no objections are raised to their removal, with T4 noted as already having been compromised by the neighbours recent cutting of its roots that had grown into their site at no.46.

Beyond the southeast site corner, located wholly on the adjoining private property at 1561 Anzac Parade, about 1m off the common boundary, is a mature, 12m tall *Casuarina cunninghamiana* (River She Oak, T10), with the footprint of the basement level (rear access stairs) now encroaching much closer to the eastern site boundary and tree than what the pool proposed in DA/610/2020 previously did, reducing the offset from 7.5m down to only about 2300mm.

While this will still be outside of its critical SRZ, the TPZ Encroachment Plan at Appendix H of the Arborist Report depicts that it will intersect the western aspect of its TPZ, to an amount of approximately 10-15%, but then has not been assessed or discussed in the Arborist Report at all.

Both the applicant and Council have a responsibility at common law to ensure this tree is not affected in anyway by these works, and as the basement will be constructed in an area that is already occupied by impervious bedrock/sandstone, with deep soil to be maintained contiguous to its trunk, it is still deemed feasible to retain this tree, with relevant protection conditions imposed.

Back within the subject site, along the rear/eastern boundary is a stand of mature trees, with the two 10m tall *Casuarina cunninghamiana* (River She Oaks, T7 & T9) shown as being retained within an isolated area of deep soil, with the basement walls to be constructed to their south, west and north.

Importantly, as these works will be entirely beyond their TPZ's they can both be retained, with the protection measures listed in the Arborist Report having been formalised into conditions, including those which permit minimal clearance pruning both to accommodate the works/machinery and avoid potential conflict/damage to the trees.

Consistent with past advice, no objections are raised to removing the *Ailanthus altissima* (Tree of Heaven, T6) in this same area described above, at the western end of this group, as it is an invasive weed that is exempt from the DCP, and while the *Strelitzia nicholii* (Giant Bird of Paradise, T8) to its east could remain, removal has still been supported, as recommended in the Arborist Report, so as to reduce competition with the two more desirable native She Oaks (T7 & 9) that are remaining, with the relevant consent for this provided.

This application now involves an additional parcel of land that extends beyond what was previously the northern site boundary, which was acquired as part of a separate approval process, with the excavated basement to also extend into this area as well, affecting several more trees than what was previously assessed in DA/610/2020.

They comprise firstly, within this site, on the eastern boundary, towards the northeast corner, two *Morus alba* (Mulberry, Tearthw-14) which are an undesirable weed species that are exempt from the DCP, so no objections are raised to their removal, with the same applying to the two *Cotoneaster's* (T17-18) to the west, on the opposite/western site boundary.

There are also two *Melaleuca linariifolia* (Snow In Summer, T15-16) within this new/rear portion of this development site, that adjoins the common boundary with 35A Adina Avenue, and while the Arborist Report states they can be safely retained, the floor plan that this assessment is based on is not consistent with the architectural plans, which show the rear fire/access stairs extending out past the northern wall of the basement, to be just beneath their southern aspects.

However, given a combination of their relatively small size, the offset provided, and the fact that the works are restricted to one side of their root plates only, they can still be retained as existing site features, and be incorporated into the new Landscape scheme as shown.

Located wholly on the adjoining private property to the east, 1561 Anzac Parade, close to the common boundary, is a mature, 12m tall *Eucalyptus botryoides* (Bangalay, T12) of good health and condition, which is protected by the DCP and is an endemic species that benefits native fauna, so must be retained, as shown and as recommended.

It is the most established specimen assessed for this application, with the eastern wall of the basement to result in a 5.6% encroachment of its TPZ, which is categorised as minor, and sustainable by the tree, with relevant protection conditions imposed, along with those which permit minimal and selective clearance pruning so as to avoid conflict with the piling rig during construction.

Similarly, growing within the other adjoining site to the west, 39 Adina Avenue, also close to the common boundary is another group including from south to north, a *Gleditsia triacanthos* (Honey Locust, T19), a *Callistemon viminalis* (Bottlebrush, T20) and an *Araucaria columnaris* (Cooks Pine, T21).

The Arborist Report has assessed that the western wall of the basement will encroach the TPZ of T19 by 4.8% (minor), and T21 by 9.8% (also minor), with the same conditions applied to T12 described above also relevant here.

T20 has been recommended for removal purely to reduce competition in this immediate area/group, which will then assist in T21 achieving its full biological potential. The SEE confirms that the applicant has purchased no.39 (which was then sub-divided), no objections are raised to this, as it will have no impact on amenity or the local environment.

Still within no.39, while other smaller specimens further to the west of those described above have been assessed, conditions are not required as their physical distance from all works means they would remain completely unaffected.

The Landscape Plans show that perimeter screen planting will be provided around the entire site, with a generous area of open lawn (above the basement) to then be provided to the north of the pool area, with the SEE detailing that this proposal will achieve compliance with Council's numerical controls for deep soil and landscape area.

Appendix 2: Applicant's written request seeking to justify the contravention of the development standard

1 INTRODUCTION

1.1 THE SUBMISSION

This submission has been prepared for Melissa and Emmanuel Karantonis to accompany a development application for a proposed basement extension and dwelling alterations at 41 Adina Avenue, Phillip Bay (the Site). It seeks a variation under Clause 4.6 to the Floor Space Ratio (FSR) development standard within the Randwick Local Environmental Plan 2012 (RLEP 2012).

It is our view that the basement extension, which gives rise to the numerical breach of the Floor Space Ratio Development Standard, should not be considered as gross floor area. However, in the abundance of caution, this submission has been prepared to demonstrate that the proposal is worthy of approval and variation of the FSR Development Standard.

This submission has been prepared in accordance with the NSW Department of Planning and Infrastructure's publication *"Varying development standards: A Guide"* (August 2011) as well as the recently exhibited Explanation of Intended Effect (EIE) in relation to *"Varying Development Standards: A Case for Change"*.

It is noted that Clause 4.6 of the RLEP 2012 also requires the concurrence of the Director-General to be obtained prior to granting of consent for development that contravenes a development standard unless concurrence from the Secretary has been obtained or assumed pursuant to Planning Circular PS 17-006 (dated 15 December 2017).

1.2 THE PROPOSAL

The application proposes to make alterations and additions to an approved but as yet, unbuilt dwelling. In essence, the alterations and additions will consist of a reconfigured and enlarged basement garage storage and extensive landscaping, with full details provided in Section 2 of the Statement of Environmental Effects and Table 1 below. The purpose of the proposed works is to provide storage for the Applicant's collection of classic and limited-edition cars, which are currently stored in multiple locations across Sydney. In order to satisfy the National Construction Code (NCC) requirements for egress, the basement garage requires emergency stairs to be constructed. These will be provided within the rear yard and will be extensively landscaped to minimise their visual appearance.

To accommodate the proposal and given the advanced nature of the civil and architectural designs to date, a number of other minor adjustments to the

basement level and pool area of the approved dwelling are also accommodated within this proposal. Amendments required to the design pursuant to Condition 2(a)-(e) have also been incorporated into the drawings relating to the fencing, privacy screens and the southwestern blade wall. Importantly, neither the setbacks, height nor floor levels of the approved dwelling will change. Details of the proposal are outlined in Table 1 below.

TABLE 1: THE PROPOSED DEVELOPMENT

LEVEL	APPROVED	PROPOSED
Basement Level	<ul style="list-style-type: none"> ▪ Floor level at RL 24.87. ▪ 4 car parking spaces & turntable. ▪ Bicycle storage locker. ▪ Lift access and lift motor room. ▪ 2 storage rooms. ▪ Bin storage. ▪ Pool pump room. ▪ Staircase. ▪ Tool storage and work bench. ▪ Toilet and shower. ▪ Underground water storage tank. 	<ul style="list-style-type: none"> ▪ Floor level at RL 24.27. ▪ Reconfiguration of car parking spaces and WC to provide new 10-seat home cinema and lobby and reconfigured bathroom. ▪ Car turntable relocated. ▪ Home gym added. ▪ Car parking extended to provide parking for 15 vehicles for private car collection. ▪ Bicycle storage locker ▪ Lift access and lift motor room. ▪ New low-height storage room. ▪ Bin storage. ▪ Pool pump room. ▪ Staircase near driveway retained with two new emergency exit stairs to rear yard. ▪ Tool storage and work bench. ▪ Underground water storage tank relocated
Ground Floor	<ul style="list-style-type: none"> ▪ Floor level at RL 28.7 (entry) and RL 28.4 (living areas) ▪ Guest bedroom and ensuite. ▪ Reception and formal lounge. 	<p>Overall configuration, setbacks and layout of ground floor of dwelling unchanged with the following same rooms and features:</p> <ul style="list-style-type: none"> ▪ Floor level remains same at RL 28.7 (entry) and RL 28.4 (living areas).

LEVEL	APPROVED	PROPOSED
	<ul style="list-style-type: none"> Stairs and lift access. Linen cupboard and WC. Study. Living room. Kitchen and butler's pantry. Laundry. Water feature (pond). Outdoor patio and barbeque. Fire pit. Toilet. Tool storage room (shed). In-ground pool. 	<ul style="list-style-type: none"> Guest bedroom and ensuite. Reception and formal lounge. Stairs and lift access. Linen cupboard and WC. Study. Living room. Kitchen and butler's pantry. Laundry. Water feature (pond). Outdoor patio and barbeque. Fire pit. Toilet. Tool storage room (shed). In-ground pool. <p>Minor changes include:</p> <ul style="list-style-type: none"> Concourse around pool increased on northern side of pool and shower relocated Paved area added to east of fire pit. Egress staircase x2 from basement. New landscaped rear yard and lawn area.
First Floor	<ul style="list-style-type: none"> Floor level at RL 31.7. Master bedroom with ensuite and WIR. Lift and stair access. Toilet. 4 bedrooms, each with ensuite. 	<ul style="list-style-type: none"> Floor level remains same at RL 31.7. Configuration, setbacks and layout of 1st floor of dwelling unchanged.

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2 THE USE OF CLAUSE 4.6

2.1 VARYING A DEVELOPMENT STANDARD

The NSW Department of Planning and Environment's publication "*Varying Development Standards: A Guide*" (August 2011), states that:

The NSW planning system currently has two mechanisms that provide the ability to vary development standards contained within environmental planning instruments:

- *Clause 4.6 of the Standard Instrument Local Environment Plan (SI LEP).*
- *State Environment Planning Policy No 1 – Development Standards (SEPP1).*

In this instance, SEPP 1 does not apply as the RLEP 2012 is a Standard Instrument LEP.

This proposal seeks to vary the FSR development standard applicable to the Site through the relevant DA and not introduce new controls across an area. The Clause 4.6 guidelines also state specifically when this clause is not to be used as specified in Clause 4.6 (8) of RLEP 2012. Neither the Site, nor the proposal, satisfy these criteria and therefore, the use of Clause 4.6 to vary the Minimum subdivision lot size is appropriate in this instance.

2.2 THE PURPOSE OF CLAUSE 4.6

The purpose, or objective of Clause 4.6 is twofold, as follows:

"4.6 Exceptions to development standards

(1) The objectives of this clause are as follows:

- (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.*

..."

Clause 4.6 therefore acknowledges that despite the intent behind a development standard, certain circumstances may warrant an alternative solution where that solution can deliver an appropriate planning outcome without rigid application of the controls. Accordingly, a significant body of caselaw has developed around Clause 4.6 (and will continue to evolve accordingly).

2.3 THE CURRENT LEGAL CONTEXT TO CLAUSE 4.6 SUBMISSIONS

This request has been prepared having regard to the principles and matters arising out of the following guideline judgements on Clause 4.6 variations:

- *Big Property Group Pty Ltd v Randwick City Council* [2021] NSWLEC 1161
- *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130
- *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61
- *Al Maha Pty Ltd Vs Huajun Investments Pty Ltd* [2018] NSWCA 137
- *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118
- *Moskovich v Waverley Council* [2016] NSWLEC 1015
- *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 (and its predecessor, *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386)
- *Wehbe v Pittwater Council* [2007] NSWLEC 827

It is noted that the above judgments have, in effect, reaffirmed the previous judgment in respect to *Micaul Holdings Pty Ltd*, which in turn refers back to the following key principles:

- *That compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case.*
- *There must be sufficient environmental planning grounds to justify contravening the development standard.*
- *The applicant's written request must adequately address the matters required to be demonstrated by Clause 4.6(3).*
- *The proposed development must 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 to be carried out.*
- *Concurrence to the variation is required by the Secretary, as noted above.*

Importantly, in *Initial Action*, Preston CJ said at [88]:

'Clause 4.6 does not directly or indirectly establish this test (for a better planning outcome). The requirement ...is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.'

Recently however, the context surrounding Clause 4.6 variations has been somewhat clouded by the conclusions drawn by the recent NSW Independent

Commission Against Corruption (ICAC) Investigation into the conduct of councillors of the former Canterbury City Council and others (Operation Dasha). The Investigation raised concerns that varying development standards can dilute transparency in the planning system and subsequently open up opportunities for corruption.

In response, the NSW Department of Planning, Industry and Environment (DPIE) has prepared and exhibited an Explanation of Intended Effect (EIE) in relation to *"Varying Development Standards: A Case for Change"*.

Under the proposed revised Clause 4.6, a consent authority must be directly satisfied that the applicant's written request demonstrates the following essential criteria in order to vary a development standard:

- the proposed development is consistent with the objectives of the relevant development standard and land use zone; and
- the contravention will result in an improved planning outcome when compared with what would have been achieved if the development standard was not contravened.

According to the EIE, in deciding whether a contravention of a development standard will result in an improved planning outcome, the consent authority would need to *"consider the public interest, environmental outcomes, social outcomes and economic outcomes."* The EIE also opens the door for *"an alternative test ... (to be) ... developed to enable flexibility to be applied in situations where the variation is so minor that it is difficult to demonstrate an improved planning outcome, but the proposed variation is appropriate due to the particular circumstances of the site and the proposal."* Just how such an alternative test may be developed is yet to be seen, given that formal draft changes to Clause 4.6, have not yet been advertised or made available.

3 NATURE OF THE VARIATION

3.1 WHAT IS THE APPLICABLE PLANNING INSTRUMENT AND ZONING?

RLEP 2012 is the environmental planning instrument that applies to the Site. The Site is zoned R2 Low Density Residential according to RLEP 2012, in accordance with the Land Zoning Map.

3.2 WHAT ARE THE ZONE OBJECTIVES?

The relevant objectives of the R2 Low Density Residential Zone are:

The relevant objectives of the zone are as follows:

- *To provide for the housing needs of the community within a low 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.*

3.3 WHAT IS THE STANDARD BEING VARIED?

The standard being varied is the 'Floor Space Ratio development standard contained in Clause 4.4 (2A) of THLEP 2012. This clause states as follows:

"(2A) Despite subclause (2), the maximum floor space ratio for a dwelling house or semi-detached dwelling on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential is not to exceed—

- (a) if the lot is more than 300 square metres but not more than 450 square metres—0.75:1, or*
- (b) if the lot is more than 450 square metres but not more than 600 square metres—0.65:1, or*
- (c) if the lot is more than 600 square metres—0.6:1."*

3.4 IS THE STANDARD TO BE VARIED A DEVELOPMENT STANDARD?

Yes, the FSR standard is considered to be a development standard in accordance with the definition contained in Section 1.4 of the Environmental Planning and Assessment Act 1979 (EP&A Act) – in particular, subsection (a) of that definition and not a prohibition. A development standard is defined as follows:

***“development standards** means provisions of an environmental planning instrument or the regulations in relation to the carrying out of development, being provisions by or under which requirements are specified or standards are fixed in respect of any aspect of that development, including, but without limiting the generality of the foregoing, requirements or standards in respect of—*

- (a) the area, shape or frontage of any land, the dimensions of any land, buildings or works, or the distance of any land, building or work from any specified point,*
- (b) the proportion or percentage of the area of a site which a building or work may occupy,*
- (c) the character, location, siting, bulk, scale, shape, size, height, density, design or external appearance of a building or work,*
- (d) the cubic content or floor space of a building,*
- (e) the intensity or density of the use of any land, building or work,*
- (f) the provision of public access, open space, landscaped space, tree planting or other treatment for the conservation, protection or enhancement of the environment,*
- (g) the provision of facilities for the standing, movement, parking, servicing, manoeuvring, loading or unloading of vehicles,*
- (h) the volume, nature and type of traffic generated by the development,*
- (i) road patterns,*
- (j) drainage,*
- (k) the carrying out of earthworks,*
- (l) the effects of development on patterns of wind, sunlight, daylight or shadows,*
- (m) the provision of services, facilities and amenities demanded by development,*

- (n) *the emission of pollution and means for its prevention or control or mitigation, and*
- (o) *such other matters as may be prescribed."*

3.5 IS THE DEVELOPMENT STANDARD A PERFORMANCE BASED CONTROL?

No, the development standard is a numerical control.

3.6 WHAT IS THE UNDERLYING OBJECT OR PURPOSE OF THE STANDARD?

The objectives of Clause 4.4 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 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.*

3.7 WHAT IS THE NUMERIC VALUE OF THE DEVELOPMENT STANDARD IN THE ENVIRONMENTAL PLANNING INSTRUMENT?

Clause 4.4(2A)(c) of the RLEP 2012 and the associated map, prescribes an FSR for the Site of 0.6:1, as the Site has a land area in excess of 600m². In this instance, an FSR of 0.6:1 would represent a Gross Floor Area (GFA) of 876.24m².

3.8 WHAT IS THE PROPOSED NUMERIC VALUE OF THE VARIATION IN THE DEVELOPMENT APPLICATION?

While it is submitted that the majority of the basement level is for the purposes of storage, in the abundance of caution, this submission has been prepared to demonstrate that the variation of the FSR development standard has planning merit. By adopting the more cautious approach, the proposal will realise a GFA of 1077.6m², which equates to an FSR of 0.74:1. This takes into account the space in the basement for carparking above the minimum standard. Gross Floor Area drawings and calculations are provided on Sheets 9 and 9A of the submitted architectural drawings.

Notwithstanding this - and leading to matters of the perceived bulk and scale (two elements that are partly quantified by FSR), the proposed GFA excluding the basement level is 464.8m². This equates to an FSR of only 0.32:1.

With respect to the basement level, we draw Council's attention to the definition of gross floor area, as defined in the Dictionary to the Randwick LEP 2013:

"gross floor area means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes—

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,*
but excludes—
 - (d) any area for common vertical circulation, such as lifts and stairs, and*
 - (e) any basement—*
 - (i) storage, and*
 - (ii) vehicular access, loading areas, garbage and services, and*
 - (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
 - (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
 - (h) any space used for the loading or unloading of goods (including access to it), and*
 - (i) terraces and balconies with outer walls less than 1.4 metres high, and*
 - (j) voids above a floor at the level of a storey or storey above."*

Of particular note are the following elements of the gross floor area definition:

"but excludes—

- (d) any area for common vertical circulation, such as lifts and stairs, and*
- (e) any basement—*
 - (i) storage, and*
 - (ii) vehicular access, loading areas, garbage and services, and*

- (f) *plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- (g) *car parking to meet any requirements of the consent authority (including access to that car parking), and*

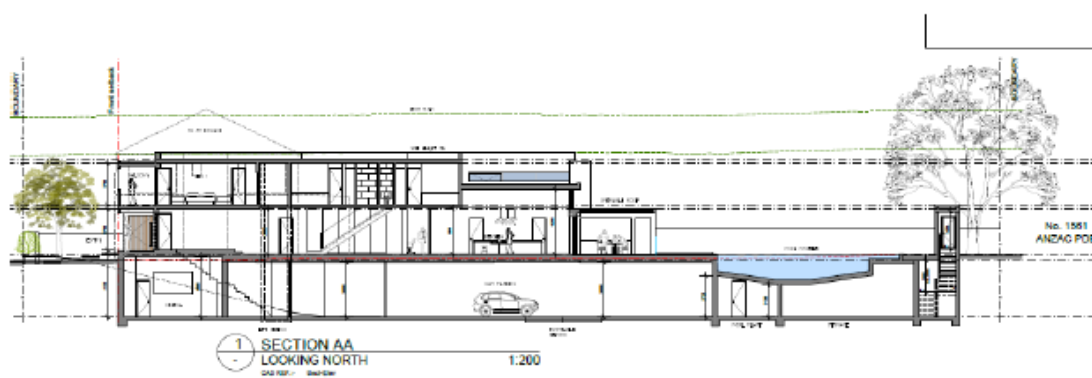
The purpose of the enlarged basement is to primarily store the applicant's private classic and limited-edition car collection, which are currently located in various storage facilities across Sydney. This collection is for personal use and obviously, the cars cannot be used simultaneously by the Applicant. It is understood that not all of the vehicles in the collection are roadworthy and cannot therefore be legally driven on the road.

Further, the entire lower level of the proposed dwelling satisfies the definition of a "basement", which is:

... the space of a building where the floor level of that space is predominantly below ground level (existing) and where the floor level of the storey immediately above is less than 1 metre above ground level (existing)...

This is demonstrated in Figure 1 below, where the basement garage has been excavated into the ground and does not protrude in excess of 1m above existing ground level. Council has already accepted this position in relation to the approved development in its assessment of DA/610/2020, where the basement level was demonstrated as per Figure 2 below.

FIGURE 1: SECTION DEMONSTRATING BASEMENT LEVEL



SOURCE: TREVOR HALL ARCHITECTS 2021

FIGURE 2: APPROVED BASEMENT GFA (DWG 19-15/A/09)



SOURCE: TREVOR HALL ARCHITECTS 2020

4 ASSESSMENT OF VARIATION

4.1 OVERVIEW

Clause 4.6 of the RLEP 2012 establishes the framework for varying development standards applying under the instrument. Subclause 4.6(3)(a) and 4.6(3)(b) state that Council must not grant consent to a development that contravenes a development standard unless a written request has been received from the applicant that seeks to justify the contravention of the standard by demonstrating:

'4.6(3)(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

4.6(3)(b) that there are sufficient environmental planning grounds to justify contravening the development standard.

Subclause 4.6(4)(a) mandates that development consent must not be granted for a development that contravenes a development standard unless the Consent Authority is satisfied:

- (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....'*

An assessment of the Clause 4.6 variation is provided below, in accordance the above requirements and acknowledgment of the current caselaw referenced earlier. In addition, this variation has also been prepared in accordance with the Guidelines, which identifies matters to be addressed in an application to vary a development standard.

4.2 IS STRICT COMPLIANCE WITH THE DEVELOPMENT STANDARD UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE?

Yes - in this instance, the strict numerical compliance with the development standard for floor space ratio is unreasonable and unnecessary. In determining what constitutes unreasonable or unnecessary and following the previously cited judgments, a series of questions should be asked, namely:

- (a) *Would the proposal, despite numerical non-compliance, be consistent with the relevant environmental or planning objectives?*
- (b) *Is the underlying objective or purpose of the standard not relevant to the development thereby making compliance with any such development standard unnecessary?*
- (c) *Would the underlying objective or purpose be defeated or thwarted were compliance required, making compliance with any such development standard unreasonable?*
- (d) *Has Council by its own actions, abandoned or destroyed the development standard, by granting consent that depart from the standard, making compliance with the development standard by others both unnecessary and unreasonable?*
- (e) *Is the "zoning of particular land" unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable and unnecessary as it applied to that land? Consequently, compliance with that development standard is unnecessary and unreasonable.*

On 19 February 2016, Preston CJ re-confirmed the approach to the "unreasonable or unnecessary" test in Clause 4.6 adopted by Morris C in *Micaul Holdings*. Consistent with that decision and in response to the above questions, it is submitted that strict compliance with the FSR standard would be unreasonable or unnecessary in this particular instance, for the following reasons that are specific to this site and proposal:

- The proposal is consistent with the relevant environmental and planning objectives pertaining to the minimum allotment size and the R2 Low Density Residential zone. This is discussed in detail below.
- Although the underlying objectives for the FSR development standard are a valid and relevant matter for consideration, we contend that the variation would not result in a lesser public benefit than strict adherence with the standard would. The proposal represents a reasonable alternative that will not contradict these objectives.
- With respect to whether the underlying objective or purpose of the FSR development standard would be thwarted if compliance were maintained, we contend that it would. Complying with the FSR provisions contained in the RLEP 2012 would not necessarily achieve a different or better planning outcome. The non-compliant area is entirely below ground and is not evident from the surrounding area. This is also discussed in detail below.

- With respect to whether the standard has been abandoned or destroyed by Council's own actions, we submit that Council has already permitted other variations to the FSR development standard and have already addressed the provision of a large (but albeit complying) basement in its consideration of DA/610/2020 on 2 March 2020.
- With respect to the appropriateness of the land's zoning, we note that this is appropriate for the Site and do not press this point. Notwithstanding this, given Council have already approved the construction of a two storey dwelling with a basement garage, we submit that the proposal is consistent with Council's aspirations for the desired future character of the surrounding area.

It is also submitted that compliance with the development standard would be unreasonable and unnecessary for the reasons expanded upon below.

THE PROPOSAL REMAINS CONSISTENT WITH THE OBJECTIVES OF THE R2 LOW DENSITY RESIDENTIAL ZONE:

The proposal remains consistent with the relevant zone objectives outlined in subclause 2.3 and the Land Use Table of RLEP 2012, despite the non-compliance, as demonstrated below:

Objective: To provide for the housing needs of the community within a low density residential environment.

The proposal satisfies this objective. The development the subject of this application seeks to provide the additional floor area below ground in a basement level that will not be evident, aside from the two landscaped egress stairwells. The approved dwelling remains without any modification to its physical parameters (setbacks, height, external configuration etc) above ground. The subject application does not seek to provide any greater density by way of additional bedrooms or dwellings. Accordingly, the approved detached dwelling will remain as is.

Objective: To enable other land uses that provide facilities or services to meet the day to day needs of residents.

Not applicable as the proposal is to provide storage of the applicant's classic and limited-edition cars at the Applicant's place of residence instead of scattered across Sydney in a variety of storage facilities.

Objective: 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.

The proposal will not be visible from the streetscape and being predominantly underground, will not adversely affect the desirable elements of the streetscape, or the character of the area.

Objective: To protect the amenity of residents.

The proposal, by virtue of being underground, will not adversely affect the solar access, views, outlook, visual or aural privacy of the adjoining properties. The above-ground components (the stairwells) will be well set back off the boundaries and landscaped in a manner that will give the appearance of a small outbuilding.

Objective: To encourage housing affordability.

The proposal is not inconsistent with this objective as the dwelling has already been approved.

Objective: To enable small-scale business uses in existing commercial buildings.

Not applicable as residential development is proposed.

THE PROPOSAL REMAINS CONSISTENT WITH THE OBJECTIVES OF THE FSR DEVELOPMENT STANDARD:

The proposal remains consistent with the relevant objectives of the FSR development standard outlined in clause 4.4(1) of the RLEP 2012, despite the non-compliance, as demonstrated below:

Objective: to ensure that the size and scale of development is compatible with the desired future character of the locality,

Although it is less likely other nearby properties would contain similar basements, the dwelling will remain virtually the same as approved under DA/610/2020. The dwelling will remain the same height, have the same setbacks and same external properties and dimensions as approved. There will be no issues of bulk, size or scale evident or impacting on the streetscape, surrounding properties or the wider area as the Site, with the basement garage being contained wholly below ground and behind the building line. The setbacks of the basement are also in compliance, which will allow sufficient deep soil and landscaping to be provided, thereby reinforcing the expectation of a dwelling contained within a landscaped setting.

Objective: to ensure that buildings are well articulated and respond to environmental and energy needs,

The proposal remains consistent with this objective, given there are no changes to the approved dwelling, which has been deemed to be sufficiently articulated and meet the required environmental and energy efficiency needs. The proposal

satisfies the requisite BASIX requirements, which are documented on Drawing No. 21-18/A/02. Given the nature and intended use of the basement storage, it will not require any significant additional energy needs. In terms of the physical appearance of the above ground structures (i.e. the stairwells), these are sufficiently setback off the boundaries to allow deep soil plantings and will not be of a size, scale, massing or bulk to adversely affect the amenity of neighbouring properties.

Objective: to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,

This objective is not relevant as the Site is not within a conservation area or adjacent to a heritage item.

Objective: 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 modifications to the approved dwelling are, for the most part, internal and will not alter the potential impacts on adjoining properties. The external modifications to the dwelling are those that have been required by Conditions 2(a)-(e) of the development consent issued under DA/610/2020 to provide an improved level of privacy, solar access and general amenity. Conditions 2(a)-(e), required the following design amendments to be submitted to Council for approval prior to the issue of a Construction Certificate:

- "a) The proposed southwestern boundary fence must not exceed 1800mm above the existing ground levels on the subject site.*
- b) Privacy screen having a height of 1.6m (measured above the finished level of the porch) shall be provided to the southwestern side of the front ground floor porch.*
- c) The sliding privacy screens on the southwestern side of the front first floor balcony shall be replaced with fixed privacy screens having a height of 1.6m (measured above finished level) and covering the entire southwestern side of the balcony.*
- d) All 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 southwestern blade wall extending beyond the rear alignment of the rear ground floor patio roof shall be deleted."*

As stated previously, the above ground structures (i.e. the stairwells) are sufficiently setback off the boundaries to allow deep soil plantings and will not be of a size, scale, massing or bulk to adversely affect the amenity of neighbouring properties. There will be no privacy implications from the stairs and any shadows cast will be within the subject Site. The eastern staircase will also provide an enhanced level of privacy for the swimming pool from the two storey dwelling at 1561 Anzac Parade, while northern structure is adjacent to the detached sheds on the rear of Nos. 35 and 37 Adina Avenue. Likewise, being below ground (or in terms of the stairwells, being minor structures), there will not be any impacts on views.

The stairs are also required to satisfy emergency egress requirements under the National Construction Code. Given their location, they are unlikely to be used except in an emergency.

In terms of acoustic matters, the basement will be located below ground and given the primary purpose is the storage of a private car collection, will not give rise to any noise impacts. Noise and vibration impacts during construction will be suitably controlled through Council's standard conditions that are applied to mitigate potential impacts, including construction hours, traffic management, the use of equipment and dilapidation management.

4.3 ARE THERE SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS?

Yes. In the circumstances of the case, there are sufficient environmental planning grounds to justify the variation to the development standard.

In forming a conclusion as to whether there are sufficient environmental planning grounds to justify the variation to the development standard, Council's attention is also directed to [88]-[90] in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118. In addition, due regard must be given to the State Government's proposed changes to the application of Clause 4.6, as discussed in Section 2.3 above. Although not yet in force, the EIE published by DPIE notes that a consent authority, in deciding whether a contravention of a development standard will result in an improved planning outcome, would need to "*consider the public interest, environmental outcomes, social outcomes and economic outcomes.*"

Having regard to both the accepted practice and the likely future approach to providing an improved planning outcome, we state that the proposal will achieve both sufficient and improved planning outcomes, namely:

- The reasons discussed in the section above.
- The proposal satisfies the objectives of the R2 Low Density Residential zone and the objectives of the FSR development standard, having regard to the particular nature of the development and the particular circumstances of the Site. The variation in itself is not so offensive to the objectives of the zone or the development standard or in terms of impacts to adjoining properties as to warrant the refusal of consent.
- The non-compliance with the standard will not result in a scale of development, which is incompatible with either the existing or desired future character of the locality. The enlarged basement is to be used for the purposes of storing the applicant's private car collection in a centralised location, instead of in a number of facilities across Sydney.
- The variation to the FSR development standard will not be readily observable from the public domain or from other properties.
- Despite the non-compliance, the proposed development is an appropriate development for the Site. It will not prejudice the internal amenity of any existing dwellings on adjoining properties, the utilisation of the adjoining communal open space to the north or the proposed dwellings. In this instance, the development as proposed is consistent with the provisions of orderly and economic development, as required by the EP&A Act and facilitates a positive environmental planning outcome for the Site.
- The non-compliance with the standard does not result in a scale of building that is incongruous with the existing or desired future character of the surrounding built environment. As noted previously, Council has already approved the dwelling, requiring several minor modifications which have been adopted in the proposal.
- The non-compliance with the standard does not result in a residential development that is out of character with the surrounding development, nor will it be incompatible with the desired future character of the locality. The proposal is purpose-based architectural solution that has been tailored to the specific constraints of the Site. Most people do not own classic car collections of the size and nature that the Applicant does and accordingly, the opportunity for other properties seeking a development outcome such as this are somewhat restricted, limiting the establishment of a precedence.

- The development, as proposed, is consistent with the provisions of orderly and economic development.
- The non-compliance with the FSR development standard does not contribute to adverse amenity impacts in terms of overshadowing and solar access, outlook, visual privacy or view loss to adjoining properties. Changes required to the approved dwelling under DA/610/2020 to improve the amenity of adjoining properties have been incorporated into the proposal. The alternative design solution does not create any adverse impacts on the desirable attributes of the established streetscape and character of the area.
- The proposal will achieve improved planning outcomes that would not be realised if the development standard were rigidly enforced. The vehicles are currently stored in multiple locations across Sydney. This creates a significant cost to the Applicant and there are very real security concerns following the destruction of two rare cars in a fire at their storage location in 2019. The storage of the collection in multiple facilities reflects the difficulty the Applicant has in providing a single, purpose-built storage facility for the vehicles. Further, any time the applicant wishes to access the vehicles for maintenance or use, it requires a car trip to and from the storage facility and parking for that vehicle. With a centralised and purpose-built storage area, the collection will be in the one location. Apart from being more cost-effective for the Applicant, such a solution will:
 - Provide greater security and protection for the collection. This will minimise the potential for loss, theft and vandalism.
 - Allow easy access without unnecessary vehicle trips on the local road network.
 - Free up storage space in the existing industrial storage facilities.
 - Facilitate a better quality of life and amenity for the Applicant who can utilise and enjoy their collection with it being close at hand.

4.4 IS THE VARIATION WELL FOUNDED?

The proposed variation is well founded, as demonstrated in the preceding sections of this submission. Compliance with the standard is unreasonable as the development satisfies the objectives specified within Section 1.3 (a), (c), (d), (g) and (h) of the EP&A Act, the development standard (Clause 4.1) and the R2 Low Density Residential zone. Additionally, the proposal results in an improved planning outcome than a compliant form.

The Site and the circumstances are unique in that the Site is an unusually large parcel of land and very few people would have a car collection as the Applicant has. The Public interest

Furthermore, approval of the variation to the FSR development standard is in the wider public interest. This is because, as held at [26] and [27] in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the proposal is consistent with both the objectives of the particular development standard and the zone in which the proposal is to be carried out.

4.5 WOULD STRICT COMPLIANCE HINDER THE ATTAINMENT OF THE OBJECTS SPECIFIED IN SECTION 1.3 OF THE ACT?

The relevant objects set down in Section 1.3 are as follows:

- (a) *to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) *to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) *to promote the orderly and economic use and development of land,*
- (d) ...
- (e) ...
- (f) ...
- (g) *to promote good design and amenity of the built environment,*
- (h) *to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) ...
- (j) ...

In this instance, strict compliance would unnecessarily limit the opportunity for the Applicant to keep their personal car collection at hand in a centralised and purpose-built basement facility, instead of in multiple locations across Sydney where time and unnecessary vehicle trips are required to access the collection. There are no discernible environmental impacts or impacts on the amenity enjoyed by adjoining properties. Further, the proposal satisfies the underlying objectives of

both the zone and the development standard, by providing basement storage below ground, where it will not compromise the amenity of adjoining residences.

The proposed non-compliance with the development standard would not hinder the attainment of the objects of Section 1.3 (a) - (d), (g) and (h) of the EP&A Act. These objectives are to encourage social and economic welfare of the community, the proper management of built and natural resources, good design and to promote and coordinate orderly and economic use and development of land.

In this instance, strict compliance with the development standard would not result in any discernible benefits to the amenity of adjoining sites or the public. It therefore stands that the environmental planning grounds and outcomes that are particular to this development and this Site are such, that a departure from the development standard in that context would promote the proper and orderly development of land.

5 CONCLUSION

This report accompanies a development application seeking to make alterations and additions to an approved but as yet, unbuilt dwelling at 41 Adina Avenue, Phillip Bay. The alterations and additions will consist of a reconfigured and enlarged basement garage and extensive landscaping. In order to satisfy the National Construction Code (NCC) requirements for egress, the basement garage requires emergency stairs to be constructed. These will be provided within the rear yard and will be extensively landscaped to minimise their visual appearance. Amendments required to the dwelling design pursuant to Condition 2(a)-(e) of the Development Consent for DA/610/2020 have also been incorporated into the drawings relating to the fencing, privacy screens and the southwestern blade wall.

An exception is sought, pursuant to Clause 4.6 of the Randwick Local Environmental Plan 2012 to vary the maximum permissible FSR prescribed by Clause 4.4(2A)(c) of the instrument.

The variation offers an alternative solution to provide storage of the Applicant's private car collection, which is currently contained in a number of different locations across Sydney. The variation will enable a bespoke and well-considered development to be provided that addresses the site constraints, streetscape and relevant objectives of both the standards and the zone. The report finds that the variation will not result in unreasonable environmental impacts. In this case, a variation of the development standard is justified.

Appendix 3: DCP Compliance Table**3.1 Section C1: Low Density Residential**

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	
2	Site planning		
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 = 1440m ² Proposed = 20.9%	Yes
2.4	Landscaping and permeable surfaces		
	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 = 1440m ² Proposed = 36.4%	Yes
2.5	Private open space (POS)		
	Dwelling & Semi-Detached POS		
	Up to 300 sqm = 5m x 5m 301 to 450 sqm = 6m x 6m 451 to 600 sqm = 7m x 7m 601 sqm or above = 8m x 8m	Compliance demonstrated.	Compliance demonstrated.
3	Building envelope		
3.1	Floor space ratio LEP 2012 = 0.6:1	Proposed FSR= 0.75:1 NB. The FSR of the approved development under DA/610/2020 is 0.6:1.	No
3.2	Building height		
	Maximum overall height LEP 2012 = 9.5m	Proposed = 7.44m	Yes
	i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded	Proposed= 7m	Yes
3.3	Setbacks		
3.3.2	Side setbacks: Semi-Detached Dwellings: • Frontage less than 6m = merit • Frontage b/w 6m and 8m = 900mm for all levels Dwellings:	Minimum= 900mm Proposed= 1m	Yes

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DCP Clause	Controls	Proposal	Compliance
	<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. <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p>		
3.3.3	<p>Rear setbacks</p> <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 <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p>	<p>Minimum = 8m Proposed = 1.6m</p> <p>The proposed basement encroaches the 8m rear setback.</p>	No
4	Building design		
4.1	General		
	<p>Respond specifically to the site characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> articulated to enhance streetscape stepping building on sloping site, no side elevation greater than 12m encourage innovative design 	Dwelling façades retained as per DA/610/2020.	Yes
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.) 	Compliance demonstrated.	Yes

DCP Clause	Controls	Proposal	Compliance
4.6	Earthworks		
	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 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.	Excavation to a depth of 4.9m is proposed for the basement, which spans an approximate area of 1000m ² .	No, refer to Key Issues.
5	Amenity		
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: <ul style="list-style-type: none"> • Skylights (ventilated) • Clerestory windows • Fanlights above doorways • Highlight windows in internal partition walls ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries ii) living rooms contain windows and doors opening to outdoor areas <i>Note: The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</i>	No natural ventilation or lighting provided to cinema and gym. It appears that the BASIX Certificate has not included the proposed addition of the cinema and gym in the floor area details. Thus, a valid BASIX Certificate is outstanding for the proposed development to confirm that it achieves environmental and energy efficiency targets.	No
6	Car Parking and Access		
6.1	Location of Parking Facilities:		
	i) Maximum 1 vehicular access ii) Locate off rear lanes, or secondary street frontages where available. iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling. <i>Note: See 6.2 for circumstances when parking facilities forward of the front</i>	The proposal fails to minimise basement excavation.	No, refer to Key Issues.

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DCP Clause	Controls	Proposal	Compliance
	<p><i>façade alignment may be considered.</i></p> <p>iv) Single width garage/carport if frontage <12m; Double width if:</p> <ul style="list-style-type: none"> - Frontage >12m, - Consistent with pattern in the street; - Landscaping provided in the front yard. <p>v) Minimise excavation for basement garages</p> <p>vi) Avoid long driveways (impermeable surfaces)</p>		
6.3	Setbacks of Parking Facilities		
	<p>i) Garages and carports comply with Sub-Section 3.3 Setbacks.</p> <p>ii) 1m rear lane setback</p> <p>iii) Nil side setback where:</p> <ul style="list-style-type: none"> - nil side setback on adjoining property; - streetscape compatibility; - safe for drivers and pedestrians; and - Amalgamated driveway crossing 	1m side setback provided to external walls of basement garage.	Yes
6.5	Garage Configuration		
	<p>i) recessed behind front of dwelling</p> <p>ii) The maximum garage width (door and piers or columns):</p> <ul style="list-style-type: none"> - Single garage – 3m - Double garage – 6m <p>iii) 5.4m minimum length of a garage</p> <p>iv) 2.6m max wall height of detached garages</p> <p>v) recess garage door 200mm to 300mm behind walls (articulation)</p> <p>vi) 600mm max. parapet wall or bulkhead</p> <p>vii) minimum clearance 2.2m AS2890.1</p>	The garage has a width of 11.6m near the front of the site.	No

3.2 Section B7: Transport, Traffic, Parking and Access

DCP Clause	Controls	Proposal	Compliance
3.2	Vehicle Parking Rates		
	<p>1 space per dwelling house with up to 2 bedrooms</p> <p>2 spaces per dwelling house with 3 or more bedrooms</p> <p>Note: Tandem parking for 2 vehicles is allowed.</p>	<p>15 car spaces provided for the 6 bedroom house.</p> <p>The excess 13 car spaces are included in the GFA calculations, resulting in 24.7% FSR variation.</p>	No

Responsible officer: Eunice Huang, Environmental Planning Officer

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