

Randwick Local Planning Panel (Electronic) Meeting

Thursday 9 June 2022



RANDWICK LOCAL PLANNING PANEL (ELECTRONIC)

Notice is hereby given that a Randwick Local Planning Panel (Electronic) meeting will be held in the Microsoft Teams on Thursday, 9 June 2022

Declarations of Pecuniary and Non-Pecuniary Interests

Development Application Reports

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Kerry Kyriacou
DIRECTOR CITY PLANNING

Development Application Report No. D32/22

Subject: 10 Virginia Street, Kensington (DA/737/2021)

Executive Summary

| | |
|-----------------------------|---|
| Proposal: | Construction of a secondary dwelling at the rear with storage, landscaping and associated works (Heritage Conservation Area). |
| Ward: | West Ward |
| Applicant: | FLDC Architects |
| Owner: | Mr D J Mane |
| Cost of works: | \$211,860.00 |
| 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. 737/2021 for construction of a secondary dwelling and storage space at the rear of the property with landscaping and associated works in the Heritage Conservation Area, at No. 10 Virginia Street, Kensington, subject to the development consent conditions attached to the assessment report.

Attachment/s:

- [1. !\[\]\(2a133ebb0337313d16cc068f19494aa2_img.jpg\) RLPP Dev Consent Conditions \(dwellings dual occ\) - DA/737/2021 - 10 Virginia Street, KENSINGTON](#)

D32/22



1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) at the request of the General Manager due to potential conflict of interest as an objection was received from an ex-Councillor and the subject site is also located within close proximity to a residence of a current Councillor.

The proposal seeks development consent for the construction of a two-bedroom secondary dwelling at the rear of the site and a storage space.

The key issues associated with the proposal relate to setback from the rear and side boundaries, potential privacy loss, encroachment on Sydney Water sewer line, and heritage impact by way of architectural language and style.

The proposal is recommended for approval subject to non-standard conditions that require the side setback to be increased to 900mm, with a corresponding reduction in the width of the storage area, a privacy screen planting to be planted along the rear boundary, the windows to Bed 1 to be consistent with those in Bed 2 so as to allow for sufficient ventilation and solar access to that habitable room. Conditions also require a landscape plan to be submitted for approval prior to the construction certificate stage.

2. Site Description and Locality

The subject site is known as No 10 Virginia Street Kensington and is legally described as Lot 34 Section 11 in DP 5759. The site is 689.8m², it is regular in shape and has a 15.24m frontage to Virginia Street to the southwest. The side boundaries are 45.26m long. The site contains a dwelling house with painted brickwork and tile roof originally built in the Federation Era, but having undergone alterations and additions in recent years. There is a driveway leading to the rear of the property and 2 plastic sheds near the rear boundary.

The site is fairly flat with a slight slope of approximately 400mm, from RL 26.61 at the front to RL 26.27 at the rear along the northwestern boundary. The site has a fall of approximately 950mm along the southeastern boundary from RL 27.02 at the front to RL 26.07 at the rear. The rear of the site is heavily planted with shrubs.

The adjoining property to the northwest at No 8 Virginia Street is a substantially altered Federation Era dwelling house of painted brick, with a second storey addition and a masonry fence to the street. The adjoining property to the southeast is a Federation Era dwelling house of brick and tile construction with an outbuilding at the rear, and swimming pool.

The adjoining property to the rear at No 9 McDougall Street is a Federation Era dwelling house with many features preserved, while the property adjoining it to the northwest and diagonally to the rear of the site is a Federation Era dwelling house at No 7 McDougall Street, which is individually listed as an item of local environmental heritage.

Virginia Street is contained within the West Kensington Heritage Conservation Area. The area is marked by Federation era dwelling houses in substantial lots, many with stables or remnant structures at the rear.



From left to right, Nos 8, 10, 12 and 14 Virginia Street Kensington (Source: Google Maps)



From left to right, Nos 9 (behind the street trees), 7 and 5 McDougall Street Kensington (Source: Google Maps)

D32/22



Aerial View of site and surrounds (Source: SIX Maps)

3. Relevant history

The property previously had deferred commencement approval under DA/34/2005 for a new double garage, storage area, office and amenities at the rear of the site. This consent has not been constructed.

4. Proposal

The proposal seeks development consent for a single storey structure at the rear of the site containing a 2-bedroom secondary dwelling and a storage area.

It should be noted that the proposal was amended to provide 3m setback from the rear boundary, amended windows, door openings, façade treatment and internal layout, and increase roof height by 645mm.

5. Notification

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

- 8 Virginia Street, Kensington

| Issue | Comment |
|--|--|
| <p>There is a discrepancy in relation to the rear setback because plans show it as 900mm from the rear boundary but the SEE shows it as 3m from the rear boundary.</p> <p>There is a sewer line about 1.5m inside the rear boundary, and special instructions need to be obtained to build over this.</p> <p>Any windows facing the yard of property at No 8 Virginia Street should be opaque or with a high sill.</p> | <p>The location of the sewer line and the discrepancy between the plans and SEE in relation to the rear setback were noted, and the Applicant was asked to address this.</p> <p>Amended drawings were lodged via the planning portal on 9 May 2022. The amendments were notified and the notification period ended on 23 May 2022.</p> <p>The windows may be required to be opaque via condition of consent.</p> |

- 9 McDougall Street, Kensington

| Issue | Comment |
|--|---|
| <p>There should be no windows on the northeastern elevation.</p> <p>There should be no potential for overlooking and loss of privacy.</p> <p>Would like to be given the opportunity for further comments if there are changes to the proposed development.</p> | <p>The amended drawings show a setback of 3m, a sliding door and 2 windows at the rear of the secondary dwelling and 1 window at the rear of the storage area.</p> <p>The increased setback diminishes the potential to overlook and associated privacy loss. The neighbours were notified of the amendments.</p> |

- 14 Virginia Street, Kensington

| Issue | Comment |
|--|---|
| <p>Granny flat should not be built only 900mm from the rear boundary.</p> <p>The proposed building should not be sitting over the sewer line at the rear and space should be allowed for inspection traps.</p> <p>If granny flat is setback 3m from rear boundary the sewer line would not need to be encased in concrete.</p> | <p>The amended drawings now show a setback of 3m, and the neighbours were notified of the amendments.</p> |

5.1. Renotification

The Applicants were advised of the several issues identified by the assessing planners, Council's Heritage Officer and the adjoining neighbours. Amended drawings were lodged via the Planning Portal on 9 May 2022 and these were placed on notification which ended on 23 May 2022. No submissions were received as a result of renotification.

The amended drawings address most of the concerns raised by the assessing planners, Council's Heritage Officer and the adjoining neighbours.

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.

A new BASIX certificate was also submitted to reflect the amendments.

6.2. SEPP (Affordable Rental Housing) 2009

The application was lodged on 25 November 2021. The SEPP (Housing) 2021 came into force on 26 November 2021. Section 2(1)(a) of Schedule 7A of SEPP (Housing) 2021 includes a general savings provision which states that the SEPP (Housing) 2021 does not apply to a development application made, but not yet determined, or before the commencement date (being 26 November 2021). The requirements of SEPP (Affordable Rental Housing) 2009 are therefore applicable to this application.

Division 2 of Part 2 of the repealed SEPP (ARH) 2009 applies to land in the R2 zone. Clause 22 of the SEPP (ARH) 2009 provides permissibility for secondary dwellings in the R2 zone.

The following planning requirements in this SEPP apply to the development:

| Clause | Standard | Proposal | Complies |
|--------------|---|---|----------|
| 22 (2) | Consent must not result in there being on the land any dwelling other than the principal and secondary dwelling | The only dwellings that will result in being on the land are the existing primary dwelling and the proposed secondary dwelling. | Yes |
| 22(3)(a) | Total floor area of principal and secondary dwelling must not be more than maximum floor area allowed for dwelling house on the land under LEP | The existing principal dwelling has a floor area of 145m ² . The proposed floor area of the secondary dwelling is 54.33m ² . The total floor area of the existing and proposed secondary dwelling is 199.33m ² . Maximum floor area permitted under RLEP is 344.9m ² | Yes |
| 22(3)(b) | The total floor area of the secondary dwelling must not be more than 60m ² , unless a greater area is permitted under another applicable LEP | The total proposed floor area of the secondary dwelling is 54.33m ² . The additional storage area proposed is associated with the principal dwelling. Clause 5.4(9) of Randwick LEP 2012 relevantly states that 60m ² is the maximum size for a secondary dwelling. | Yes |
| 22(4)(a)(ii) | Site area must be at least 450m ² | The site area is 689.8m ² | Yes |
| 22(4)(b) | No additional parking is required to be provided for secondary dwelling | No additional parking is proposed. | Yes |
| 22(5) | A consent authority may consent to a secondary dwelling whether or not the | The proposed secondary development complies with the | N/A |

| | | | |
|--|--|---------------------------|--|
| | proposal complies with the standards in subclause 4. | standards in subclause 4. | |
|--|--|---------------------------|--|

6.3. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned Residential R2 Low Density under Randwick Local Environmental Plan 2012. Secondary dwellings are not permissible in this zone. The proposal is permissible under the SEPP (Affordable Housing) 2009.

Nevertheless, 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 not detracting from the aesthetic character and protecting the amenity of the local residents.

The following development standards in the RLEP 2012 are provided as a guide only:

| Clause | Development Standard | Proposal | Compliance (Yes/No) |
|---------------------------------|--------------------------------------|--|---------------------|
| Cl 4.4: Floor space ratio (max) | 0.5:1 (maximum 344.9m ²) | 0.31:1 (214.7m ²) | Yes |
| Cl 4.3: Building height (max) | 9.5m | 4.515m for proposed secondary dwelling. 3.87m in SEE (prior to amendments) | Yes |
| Cl 4.1: Lot Size (min) | 400m ² | Site area is 689.8m ² but N/A as it is not proposed to subdivide. | N/A |

6.3.1. *Clause 4.6 - Exceptions to development standards*
N/A

6.3.2. *Clause 5.10 - Heritage conservation*
The site is within the West Kensington Heritage Conservation Area, and it is located in the vicinity of an item of local heritage significance situated at No 7 McDougall Street Kensington. For this reason, the development application was referred to Council's Heritage Planner who provided comments that are included in this report.

6.3.3. *Clause 6.7- Foreshore scenic protection area*
N/A

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(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

a) Heritage Impact

Initial concern

Council's Heritage Planner has reviewed the application and advised that under Randwick DCP 2013, all new work and additions must respect the proportions of major elements of significant existing fabric including doors, window openings and verandahs.

The negatives of the proposed development were listed as being:

- the low pitch roof
- the fenestration pattern is substantially horizontal, whereas the prevailing pattern in the HCA is vertical
- the window openings are high and small

- the layout is such that the egress is through the kitchen.

These negatives result in a negative aesthetic impact but also in issues of fire safety and amenity impact.

Council's Heritage Planner advised as follows:

- The elevation and plan of the southwest elevation should show vertical windows in both bedrooms and storeroom
- Subject to BASIX conditions, the windows should be increased in depth
- The roof pitch should be amended to be consistent with that of the primary dwelling on the site
- The colours, materials and finishes of external surfaces are to be resolved
- Should archaeological remains be found during construction stage, all work should stop while an archaeological evaluation is undertaken and the NSW Heritage Office is notified.

Further, it is noted in the window schedule that the development is proposed to incorporate 10 sliding windows.

These are inappropriate in heritage terms, and the proposal should not contain sliding windows or doors to the external walls, since these do not match the architectural language of the Federation Era, of which the main dwelling house and the adjoining and nearby properties are representative.

The Heritage Planner's comments were addressed in the amended drawings as follows:

- The roof pitch was altered to approximate that of the existing home on site.
- The dimensions and proportions of the windows were altered to become more vertical in configuration.
- The windows were set in to the brickwork and are not proposed to be flush with it.
- The internal layout was changed and now presents a more livable configuration, which better complies with the Building Code.
- A schedule of colours, materials, and finishes was provided.

Amended Drawings

It is noted that the amended drawings indicate casement windows, but there is a sliding door at the rear, connecting the living room to the rear private open space that is now proposed for the secondary dwelling. The location of this set of sliding doors makes it not visible from the main dwelling on the site, from any of the adjoining properties or from the public domain. The proportion of the segments of this sliding door is vertical in appearance and should not detract from the preferred architectural language and proportions of the Federation Era neighbours and dwelling on site.

It is noted that the windows to the bedroom indicated as 'Bed 1' are still highlight windows. These are the only source of light and connection to the proposed private open space and are not considered appropriate for this room. The windows to this room should match the vertical proportion of the windows to 'Bed 2'. This may be addressed by a condition of consent.

No further issue is raised in respect to this sliding door. Council's heritage officer has indicated that the amended plans include an acceptable colour palette and a much better presentation visually for heritage compatibility, as well as function and safety.

b) Size of storage space

Initial concern

The proposed storage space is oversized in relation to the proposed secondary dwelling. It is indicated as being accessed from a door on the southeastern (eastern) elevation and therefore possibly for the use of the main dwelling. However it is only accessible via the POS dedicated to the secondary dwelling.

The storage space as proposed, is a well ventilated area with opposing windows, and has an internal area of approximately 16m². As such it has the capacity to be incorporated as part of the

secondary dwelling in the future. Should this take place, the floorspace of the secondary dwelling will become over the allowable 60m².

Due to its proposed size, window arrangement and separate entry, the storage space has the capacity itself to become an additional studio dwelling, in the future.

In light of this, the location and size of the proposed storage space cannot be supported.

Amended Drawings

The amended drawings indicate a slightly reduced storage space, while the internal layout of the secondary dwelling has been altered so that it appears more self-contained, and less likely to incorporate the storage space in its internal layout in the future.

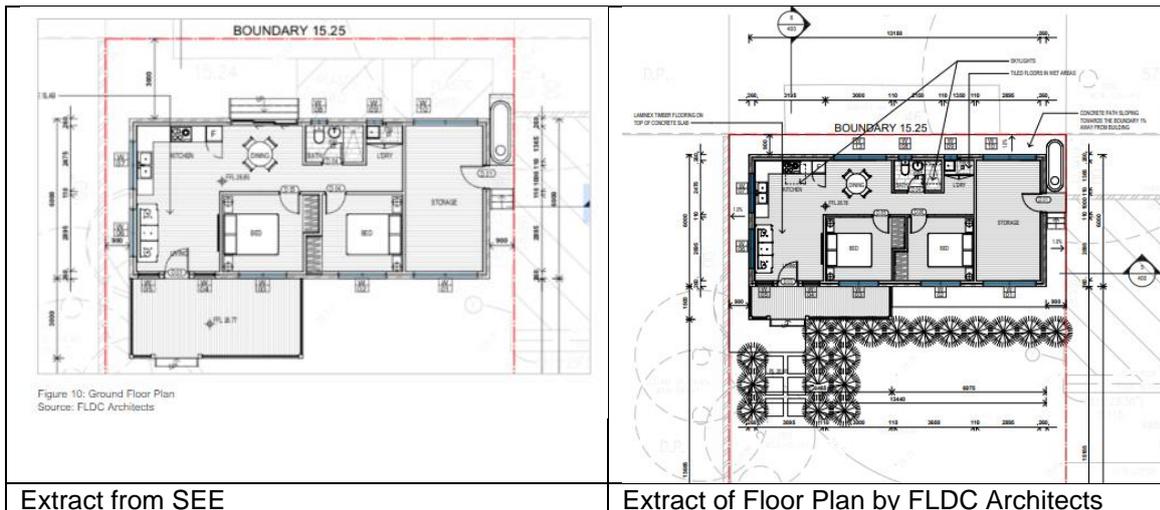
It is noted that the storage space replaces two plastic sheds currently on site that are approximately the same size.

No further issue is raised in respect to this storage space. However, a condition of consent should be included to require that this space is not used as a habitable room.

- c) Distance from boundaries

Initial concern

The SEE lodged with this application shows the rear setback as being 3m from the boundary, as shown in the extract from the SEE prepared by BMAUrban.



It is noted that the drawings lodged with this DA are marked as 'Pre DA'. Whereas it may be that the proposed setback has been changed following any pre DA feedback, this is not clear from the application.

It is also noted that the outbuilding at the rear of the adjoining property at No 12 Virginia Street is setback substantially more than the proposed 900mm setback of the secondary dwelling.

The SEE which indicates the proposed setback as being 3m from the rear boundary shows that this setback is to be in line with the outbuilding at the rear of No 12 Virginia Street.

The submissions from the neighbours at Nos. 8 and 14 Virginia Street stated that there is a sewer line at the rear of this line of properties, and care should be exercised in the construction of any structure in the vicinity, to allow for inspection access. The sewer line is approximately 1.5m from the rear boundary.

A 3m rear setback should be sufficient to allow for the existing sewer line, while matching the rear setback of the outbuilding at the adjoining property at No 12 Virginia Street.

Amended Drawings

The amended drawings now indicate a setback of 3 m from the rear boundary.

This is acceptable and no further issue is raised in relation to the rear setback.

- d) Loss of privacy and overlooking

Initial concern

The submissions from the adjoining neighbours at No 8 Virginia Street and No 9 McDougall Street raised concerns in relation to potential overlooking and privacy loss due to the placement and size of the proposed windows facing these adjoining boundaries.

Whereas these concerns may be alleviated by the use of highlight windows, opaque windows, or no windows to one or both walls facing these boundaries, none of these solutions are acceptable in terms of the amenity of the future occupants of the proposed secondary dwelling, nor in terms of heritage impact.

Amended Drawings

The amended drawings now indicate more suitably proportioned windows in accordance with the Heritage Planner's comments.

The amendments indicate a set of sliding doors opening from the living area to the private open space. These are acceptable in terms of livability and the setback is sufficient to alleviate concerns of privacy loss by the neighbours at No 9 McDougall Street.

The window on the north-western elevation is a highlight window to the proposed kitchen area. No overlooking or privacy loss is likely in respect to the size and location of this window.

To further ensure the protection of privacy of the adjoining neighbours, a condition of consent will require suitable screen planting to be placed along the rear boundary.

9. Conclusion

That the application to construct a secondary dwelling and storage space at the rear of No 10 Virginia Street, Kensington 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.

Heritage impacts

- The proposed works will not detract from the heritage significance of the nearby heritage item located at the rear of the site.
- The proposed works will not detract from the character of the Heritage Conservation Area.

Non-standard conditions have been included to ensure that the windows to 'Bed 1' match the windows to 'Bed 2' and assist in the amenity of that habitable room, by way of allowing for sufficient ventilation and day light to be experienced in that room.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Heritage planner

The application was referred to Council's Heritage Planner who provided the following comments:

The Site

The site is located on the eastern side of Virginia Street in Kensington, opposite its intersection with Myrtle Street. The site comprises a single lot, identified as Lot 34 in DP 5759, with a frontage width of 15.24m.

The subject property is not listed as an item of local heritage significance; however, it is located within the West Kensington Heritage Conservation Area (HCA), which is listed as a conservation area of local heritage significance on Schedule 5 of the Randwick Local Environmental Plan (LEP) 2012.

This HCA is a large area of land generally bounded by Dowling Street to the west, Todman Avenue to the north, and the Australian Golf Course to the south. In summary, its significance consists in its geometry of subdivision and street formation, vistas and views, and an established development character, largely comprising a scale of single story, interwar domestic architecture of masonry construction with tiled and slated roofing.

Number 10 Virginia Street is a typical dwelling in this HCA and is not individually listed. However, it is located in the vicinity of a listed heritage item, being a Federation House at 7 McDougall Street, which is listed in Schedule 5 of the Randwick LEP 2012 as item number 1137. This item is diagonally adjacent to the rear of the subject site such that the two properties do not have a common boundary.

Accordingly, the proposal has been assessed in terms of the relevant heritage provisions of the Randwick LEP 2012 and the requirements of the Randwick Comprehensive Development Control Plan (CDCP) 2013, and the Impact Assessment Criteria guidelines endorsed by the NSW Heritage Council.

Background

This part of Virginia Street is generally developed with single storey residences, except for the childcare centre at 2 Virginia Street, north of the subject site at the corner of Baker Street, and the property adjoining number 10 to the north at 8 Virginia Street which has a large second storey addition.

The dwelling at number 10 Virginia Street comprises an established interwar bungalow (sic) of single storey modest proportion in rendered masonry construction with terracotta tile roofing in hip and gable formation, an open verandah area to the front with masonry supports, and front fencing in combinations of masonry and timber picket. There is a driveway to the left side (north) of the dwelling. There are established additions to the rear of the dwelling.

Proposal

The proposal involves the construction of a new outbuilding, in the 'Granny Flat' secondary dwelling style, comprising a compact two-bedroom dwelling with living, kitchen and bathroom facilities, as well as a large storage room located at the south side of the dwelling and independently accessible. Details of the development proposal have been prepared by FLDC Architects.

The proposed external materials include:

- *External Face Brick - The Avenue (Charlton)*
- *Aluminium Windows – in matt black*
- *Roofing – Colorbond roof sheeting – in SHALE GREY (or SURFMIST - NB discrepancy in submitted details)*
- *Guttering, downpipes and fascia in Colorbond (Please note all matching)*

- *Verandah posts and balustrading (please detail materials and colour)*
- *Verandah flooring (please detail)*
- *External paving (Please detail)*
- *Flooring - 8mm Laminate Flooring (Timber look)*

The impacts of the built form have been minimised by its siting at the rear of the property where it will not be readily visible from the street. It incorporates a low-pitched roof form and is single storey in scale. It is designed to be subservient to the main dwelling

The proposed development does not cause any loss of view.

The proposed development has no other perceptible adverse impacts on the environment, traffic, parking, drainage or other external features or services.

Submission

Controls

Randwick Local Environmental Plan 2012

Clause 5.10(1) of the Randwick LEP includes the 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 2013 provided Objectives and Controls in relation to heritage properties.

Randwick Development Control Plan 2013

B2 Section 2, 2.2 design and Character

Controls, Heritage Items and Contributory buildings

(vii) All new work and additions must respect the proportions of major elements of significant existing fabric including doors, windows openings and verandahs

4.20.4 Guidelines for Change

Outbuildings to the Rear

The scale and bulk of outbuildings to the rear should not dominate the main building on the site. Outbuildings should be of a 1 ½ storey scale with upper floor accommodation within available attic space. The maximum wall height of outbuilding is to be 3.5m and roof pitch is to be consistent with that of the main building on the site.

Comments

POSITIVE

Comment: The proposed outbuilding is generally consistent with these guidelines.

- *It is to be a single storey structure, located at the rear of the site and will not be readily visible from the street.*
- *Masonry construction and other external finishes and materials are appropriate*
- *The scale and simple form are sympathetic to the significance of the West Kensington Heritage Conservation Area.*

- *It is subservient to the main dwelling and the visual interest provided by the surrounding period buildings within the conservation will not be diminished. In particular, the individually listed dwelling diagonally adjacent at the rear will not be compromised in any way.*

NEGATIVE

- *The proposed structure incorporates a low-pitched roof form that is not consistent with the pitch of principal surrounding dwellings. This is important given that this structure is a standalone dwelling, substantially removed from the body of the main dwelling.*
- *The fenestration pattern is substantially horizontal, while the established character in the immediate area is vertical. In particular, the bedroom windows, while compliant, are perceptually minimal. This not only has a negative aesthetic impact, but also impacts amenity and fire safety. This is of consideration given that the internal dimensions of the several rooms are compact, the window openings are high and small, with consequent diminishment of ventilation and light. This elevation faces the southwest, and if there is a determined need for A/C, the positioning of internal outlets becomes problematic if fenestration is high and horizontal. Importantly, the only proposed egress is past the critical area of the kitchen. The issue of privacy is appreciated; however, this consideration could be adequately met by exterior screening, especially planting and paving arrangements.*

Recommendation

The following conditions should be included in any consent:

- *The elevation and plan for the proposal on the southwest elevation should show that both bedroom windows, as well as the storeroom window, are to be vertically rather than horizontally aligned, and, subject to BASIX conditions, to be increased in depth. Details are to be 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 roofing plan for the proposed 'granny flat' outbuilding should be amended, subject to BASIX requirements, to be consistent with the roof pitch of the main/primary dwelling on the site. Details are to be 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 colours, materials and finishes of the external surfaces to the building are to be finalised including details for the following:*
 1. *Colorbond roofing (shale grey); Colorbond guttering and downpipes (shale grey); Colorbond fascia (shale grey). (Note that there is a discrepancy in the submitted information between shale grey and seamist).*
 2. *Detail the colour and material of verandah support posts and balustrading.*
 3. *Detail the colour and material of verandah flooring.*
 4. *Detail the external paving type.*
 5. *Mortar should be in recessive toning, suitably matched to the proposed brick masonry.*

Details of the proposed colours, materials and textures (i.e- a schedule and brochure/s or sample board), inclusive of the above-mentioned details, are to be 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 subject land parcel is the first known building to be constructed on the site. The 1943 aerial view indicates some lighter construction buildings to the rear yard. In the unlikely event that historical archaeological remains or deposits are exposed during the works, all*

work should cease while an evaluation of their potential extent and significance is undertaken, and the NSW Heritage Office notified under the requirements of the Heritage Act.

Following receipt of the amended plans the following comments were received from the heritage officer:

Thank you for these re-worked plans.

The colour palette is acceptable.

The reworking overall is a much better presentation visually for heritage compatibility, as well as in function and safety.

1.2. Development Engineer

The application was referred to Council's Development Engineer and Landscape Development Officer who provided the following comments:

An application has been received for construction of a secondary dwelling at the rear of the above site.

This report is based on the following plans and documentation:

- Architectural Plans by FLDC Architects;*
- Statement of Environmental Effects by BMA Urban*
- Detail & Level Survey by W Buxton P/L.*

Landscape Comments

Permission is granted for removal of the existing vegetation within the site, which is affected by the proposed works, subject to the implementation of replacement planting similar to the concept landscaping plan by FLDC Architects.

Appendix 2: DCP Compliance Table

3.1 Section B2 - Heritage

The relevant provisions under Section B2 of the RDCP have been considered and addressed by Council's Heritage Planner in Appendix 1 above.

3.2 Section C1: Low Density Residential

| DCP Clause | Controls | Proposal | Compliance |
|------------|--|--|---|
| | Classification | Zoning = R2 | Secondary dwellings are not permissible in R2 zone under RLEP 2012. They are permissible under Affordable Rental Housing SEPP in force at the time of making this application. |
| 2 | Site planning | | |
| 2.1 | Minimum lot size and frontage | | |
| | Minimum lot size (RLEP): • R2 = 400sqm • R3 = 325sqm | 689.8m ² It is not proposed to subdivide | N/A in this case. |
| | 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 = 15.24m | Yes |
| 2.2 | Layout Detached dual occupancy | | |
| | i) Detached dual occupancies may be developed only if: - Dual frontage - Secondary access - Street frontage of at least 18m in width. | N/A | N/A |
| | Minimum separation: - Dual frontage = 10m min. - Secondary access: Merit assessment - Detached in R2 = 1800mm min. (18m minimum frontage) | | |
| | 900mm minimum footpath at rear lane Note: N/A to corner allotment. | | |
| 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 = 689.8m ² Existing = 145m ² or 21% Proposed = 214.7m ² or 31.12% 45% maximum | Yes |

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| DCP Clause | Controls | Proposal | Compliance |
|------------|---|---|--|
| 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 = 689.8m ² Existing = not provided but approximately 544.8m ² open space – overgrown and not shown on plan or 78.98% Proposed = 235.46m ² (34%) | No, however additional deep soil planting is required by a condition of consent across the entire rear boundary of at least 900mm wide, providing an additional 13.7m ² deep soil, bringing the deep soil to 249.16m ² (36%). A landscape plan is required to be provided by condition of consent. |
| 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 = 689.8m ² Existing = Not provided but more than 8m x 8m Proposed = Not provided but more than 8m x 8m for existing dwelling and 15.15m x 3m for secondary dwelling | Yes acceptable on merit |
| | Dual Occupancies (Attached and Detached) POS | | |
| | 451 to 600 sqm = 5m x 5m each 601sqm or above = 6m x 6m each 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 | Site = Existing = Proposed = | N/A |
| 3 | Building envelope | | |
| 3.1 | Floor space ratio LEP 2012 = 0.5:1 | Site area= 689.8m ² Existing FSR= 0.21:1 Proposed FSR= 0.31:1 | Yes |
| 3.2 | Building height | | |
| | Maximum overall height LEP 2012 = 9.5m | Existing = 6.08m Proposed = | Yes |

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| DCP Clause | Controls | Proposal | Compliance |
|--------------|---|---|--|
| | | No change to existing dwelling. Proposed secondary Dwelling = 4.515m | |
| | i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded | Existing= not provided Proposed= approximately 2.7m Proposed floor to ceiling height 2.7m | Yes |
| 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 | Dwelling fronting the street is existing | N/A |
| 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 • Frontage over 12m = 1200mm (Gnd & 1 st floor), 1800mm above. Refer to 6.3 and 7.4 for parking facilities and outbuildings | Minimum= 1200mm for dwelling house, Existing= 1063mm for primary dwelling Proposed= 809mm on north west and 901mm on north east | No. 900mm is the complying development minimum side setback under SEPP (ARH) 2009 and it is considered that this is the minimum which should apply. This may be addressed by a condition of consent. |
| 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. | Minimum = 8m Existing = 22m Proposed = 3m | No, but not required having regard to existing rear setback of adjoining property. Section 7.4 of the DCP allows for a nil setback for outbuildings. 3m is considered reasonable particularly having regard to adjoining development and |

| DCP Clause | Controls | Proposal | Compliance |
|------------|---|---|---|
| | iv) For irregularly shaped lots = merit assessment on basis of:- <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts Refer to 6.3 and 7.4 for parking facilities and outbuildings | | the sewer line. |
| 4 | Building design | | |
| 4.1 | General | | |
| | Respond specifically to the site characteristics and the surrounding natural and built context - <ul style="list-style-type: none"> • articulated to enhance streetscape • stepping building on sloping site, • no side elevation greater than 12m • encourage innovative design | The amended proposal better responds to the characteristics of the existing dwelling house on site, adjoining neighbours and heritage conservation area | Yes |
| 4.2 | Additional Provisions for symmetrical semi-detached dwellings | | |
| | i) Enhance the pair as coherent entity: <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 ii) Constructed to common boundary of adjoining semi iii & iv) avoid exposure of blank party walls to adjoining semi and public domain | | N/A |
| 4.3 | Additional Provisions for Attached Dual Occupancies | | |
| | Should present a similar bulk as single dwellings <ul style="list-style-type: none"> i) Garage for each dwelling shall have a single car width only ii) Articulate and soften garage entry iii) Minimise driveway width iv) Maximum 2m setback of front entry from front façade v) Maximise landscape planting at front | | N/A |
| 4.4 | Roof Design and Features | | |
| | <i>Rooftop terraces</i> <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) <i>Dormers</i> <ul style="list-style-type: none"> iii) Dormer windows don't 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 | The proposed roof better matches the roof design of the existing dwelling. There are no roof features proposed. | Yes in respect to roof design N/A in relation to roof features |

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| DCP Clause | Controls | Proposal | Compliance |
|------------|---|---|---|
| | <i>Celestial windows and skylights</i> vii) Sympathetic to design of dwelling <i>Mechanical equipment</i> viii) Contained within roof form and not visible from street and surrounding properties. | | |
| 4.5 | Colours, Materials and Finishes | | |
| | 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.) | A schedule of colours and materials is lodged with the amended drawings | Yes |
| 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. | No earthworks proposed | N/A |
| 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. | No shadow diagrams or solar access diagrams provided. | The amended drawings indicate a longer rear set back which should allow for solar access to the living areas / habitable rooms facing the rear of the site. The window to Bed 1 will be conditioned to maximise solar access to that room. |
| | Solar access to neighbouring development: | | |
| | i) Portion of the north-facing living room | No shadow | The proposed |

| DCP Clause | Controls | Proposal | Compliance |
|------------|--|---|---|
| | <p>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. | <p>diagrams or solar access diagrams provided.</p> | <p>secondary dwelling is located to the southwest of the property at No 9 McDougall Street and to the south east of the property at No 8 Virginia Street, so it is not possible to overshadow these properties. The height and location of the proposed dwelling in relation to the structures at the rear of the property at No 12 Virginia Street is such that it is not likely that the property at No 12 Virginia Street will be adversely affected by any overshadowing from the proposed development.</p> |
| 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:</i> The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</p> | <p>The amended drawings better address the issues of energy efficiency and natural ventilation.</p> | <p>Yes</p> |
| 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 | <p>The proposed secondary dwelling is situated at the rear of the site with sufficient setback from</p> | <p>Yes Screen landscaping along the rear boundary is proposed to be conditioned</p> |

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| DCP Clause | Controls | Proposal | Compliance |
|------------|---|--|---|
| | <ul style="list-style-type: none"> - 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>rear boundary to obviate overlooking potential to the property at the rear. A buffer zone of private open space with approximate dimensions of 15m x 3m is proposed at the rear between the secondary dwelling and the boundary fence. The properties on either side at Nos 8 and 12 Virginia Street do not present habitable rooms in the vicinity of the proposed secondary dwelling.</p> | |
| | 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> | N/A | N/A |
| 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. - Locate less sensitive areas adjacent to the party wall to serve as noise buffer. | <p>No noise sources are proposed to be located adjacent to bedroom windows of adjoining dwellings.</p> | Yes |
| 5.5 | Safety and Security | | |
| | <p>i) dwellings main entry on front elevation (unless narrow site)</p> <p>ii) Street numbering at front near entry.</p> <p>iii) 1 habitable room window (glazed area min 2 square metres) overlooking the street or a public place.</p> <p>iv) Front fences, parking facilities and</p> | <p>The main entry of the secondary dwelling faces in the direction of the street, but as it is located at the rear of the site,</p> | <p>Yes as far as is feasible, noting that this is a secondary dwelling located at the rear of the site.</p> |

| DCP Clause | Controls | Proposal | Compliance |
|------------|--|---|------------|
| | landscaping does not to obstruct casual surveillance (maintain safe access) | these parameters are not applicable. | |
| 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) | There are no existing view corridors or vistas that might be impacted by the proposed development. | N/A |
| 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) | There is vehicular access on the side of the existing dwelling, which may be used if required by the proposed secondary dwelling. | Existing |
| 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 surrounding areas; - does not pose risk to pedestrian safety | No further parking facilities are proposed. | N/A |

| DCP Clause | Controls | Proposal | Compliance |
|------------|--|---------------|------------|
| | <ul style="list-style-type: none"> and - does not require removal of significant contributory landscape elements (such as rock outcrop or sandstone retaining walls) | | |
| 6.3 | Setbacks of Parking Facilities | | |
| | <ul style="list-style-type: none"> 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 | None proposed | N/A |
| 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 | Existing | Existing |
| 6.5 | Garage Configuration | | |
| | <ul style="list-style-type: none"> 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 - 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 | None proposed | N/A |
| 6.6 | Carpport Configuration | | |
| | <ul style="list-style-type: none"> i) Simple post-support design (max. semi-enclosure using timber or metal slats minimum 30% open). ii) Roof: Flat, lean-to, gable or hipped with pitch that relates to dwelling iii) 3m maximum width. iv) 5.4m minimum length v) 2.6m maximum height with flat roof or 3.0m max. height for pitched roof. vi) No solid panel or roller shutter door. vii) front gate allowed (minimum 30% open) viii) Gate does not open to public land | None proposed | Existing |
| 6.7 | Hardstand Car Space Configuration | | |
| | <ul style="list-style-type: none"> i) Prefer permeable materials in between concrete wheel strips. ii) 2.4m x 5.4m minimum dimensions | None proposed | Existing |
| 7 | Fencing and Ancillary Development | | |
| 7.1 | General - Fencing | | |
| | <ul style="list-style-type: none"> i) Use durable materials | None proposed | Existing |

| DCP Clause | Controls | Proposal | Compliance |
|------------|---|--|--|
| | 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 | | |
| 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) light weight 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 alignment of the primary street façade (tapered down to fence height at front alignment). <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> iv) 150mm allowance (above max fence height) for stepped sites v) Natural stone, face bricks and timber are preferred. Cast or wrought iron pickets may be used if compatible vi) Avoid roofed entry portal, unless complementary to established fencing pattern in heritage streetscapes. vii) Gates must not open over public land. viii) The fence must align with the front property boundary or the predominant fence setback line along the street. ix) Splay fence adjacent to the driveway to improve driver and pedestrian sightlines. | None Proposed | Existing |
| 7.3 | Side and rear fencing | | |
| | i) 1800mm maximum height (from existing ground level). Sloping sites step fence down (max. 2.2m). ii) Fence may exceed max. if level difference between sites iii) Taper down to front fence height once past the front façade alignment. iv) Both sides treated and finished. | None proposed | Existing |
| 7.4 | Outbuildings | | |
| | i) Locate behind the front building line. ii) Locate to optimise backyard space and not over required permeable areas. iii) Except for laneway development, only single storey (3.6m max. height and 2.4m max. wall height) iv) Nil side and rear setbacks where: - finished external walls (not requiring | The definition of outbuildings in RDCP 2013 includes secondary dwellings. The proposed secondary | Partial. Building height exceeds due to heritage considerations. Wall height exceeds to improve amenity for the occupants. |

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| DCP Clause | Controls | Proposal | Compliance |
|------------|---|---|---------------------------------|
| | maintenance; - no openings facing neighbours lots and - maintain adequate solar access to the neighbours dwelling v) First floor addition to existing may be considered subject to: - 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. vi) Must not be used as a separate business premises. | dwelling is an outbuilding to the existing dwelling house on site. It is a single storey structure. It has openings facing neighbours so it will be setback from the rear boundary. It is not proposed to be used as a separate business premises. No additional outbuildings are proposed to the proposed secondary dwelling. Max height is 4.515m and wall height 2.7m. | Considered acceptable on merit. |
| 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. | None 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. | Not shown on plans but in BASIX | Can be conditioned |
| 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, | None proposed | N/A |

| DCP Clause | Controls | Proposal | Compliance |
|------------|---|---------------|--------------------------|
| | 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). | | |
| 7.8 | Clothes Drying Facilities | | |
| | i) Located behind the front alignment and not be prominently visible from the street | None proposed | To be conditioned |
| 8 | Area Specific Controls | | |
| 8.1 | Development in Laneways | | |
| | i) Max. 6m height. Max. 4.5m external wall height. Mass and scale to be secondary to primary dwelling and upper level contained within roof form (attic storey). ii) 1 operable window to laneway elevation (casual surveillance) iii) Aligns with consistent laneway setback pattern (if no consistent setback then 1m rear setback). (Refer to Sub-Section 6 for controls relating to setback to garage entry.) iv) Nil side setback allowed subject to: <ul style="list-style-type: none"> - adjoining building similarly constructed - no unreasonable visual, privacy and overshadowing impacts v) Screen or match exposed blank walls on adjoining properties (ie on common boundary). | None proposed | N/A |

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 bedrooms Note: Tandem parking for 2 vehicles is allowed. | None proposed, but tandem parking for additional car is possible in existing arrangement. | N/A |

Responsible officer: Urban Perspectives, Town Planners

File Reference: DA/737/2021

Development Consent Conditions (dwellings and dual occupancies)



| | |
|------------------------|---|
| Folder /DA No: | DA/737/2021 |
| Property: | 10 Virginia Street, KENSINGTON NSW 2033 |
| Proposal: | Construction of a secondary dwelling with storage at the rear including associated landscaping and site works (Heritage Conservation Area). |
| 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 |
|------------------------------------|-----------------|--------------|
| Site/Roof Plan DA 300 Rev A | FLDC Architects | 27/04/2022 |
| Proposed Ground Floor DA 301 Rev A | FLDC Architects | 27/04/2022 |
| Proposed elevations DA 400 Rev A | FLDC Architects | 27/04/2022 |
| Proposed sections DA 500 Rev A | FLDC Architects | 27/04/2022 |

| BASIX Certificate No. | Dated |
|------------------------------|--------------|
| 1249182S_02 | 16/05/2022 |

Amendment of Plans & Documentation

- The approved plans and documents must be amended in accordance with the following requirements and submitted to and approved by Council's Manager Development Assessments prior to issuing a construction certificate for the development:
 - A side set back of a minimum 900mm to be indicated from both side boundaries and a corresponding reduction in the width of the storage area.
 - The window to the room indicated as 'Bed 1' to be deleted and replaced with two windows of the same dimensions as those proposed for the room indicated as 'Bed 2'.
 - Air conditioning units to be shown on the plans, located to minimise noise impacts on the bedrooms of adjoining dwellings and not visible from the street.
 - A clothes drying area is to be shown on the plans.

- e. A landscape plan is to be submitted to and approved by Council's Manager Development Assessments prior to issuing a construction certificate for the development, and it is to indicate the following:
 - i. Screen planting indicated along the entire rear boundary in a deep soil area of no less than 900mm wide, and planted with suitable non-invasive, preferably native species that grow to a suitable height to enhance privacy but not detract from sunlight access into the habitable rooms of the proposed secondary dwelling.
 - ii. The planting of suitable species to provide screening between the existing primary dwelling house and the secondary dwelling.

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. 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 Assessment, prior to a construction certificate being issued for the development.

Section 7.12 Development Contributions

- 5. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$211,860.00 the following applicable monetary levy must be paid to Council: \$2,118.60.

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.

6. **Compliance Fee**
A development compliance and enforcement fee of \$444.90 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.

7. **Long Service Levy Payments**
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.

8. **Security Deposits**
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*:

- \$600 - Damage / Civil Works Security Deposit

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

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

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

9. **Stormwater Drainage**
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.

10. Stormwater runoff from the (redeveloped portion) site shall be discharged either:
- a. To the kerb and gutter along the site frontage by gravity (preferably without the use of a charged system); OR
 - b. Through a private drainage easement(s) to Council's kerb and gutter (or underground drainage system); OR
 - c. To a suitably sized infiltration area. As a guide the infiltration area shall be sized based on a minimum requirement of 1 m² of infiltration area (together with 1 m³ of storage volume) for every 20 m² of roof/impervious area on the site.

Infiltration areas must be located a minimum of 3.0 metres from any structure (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 any adjacent side or rear boundary.

Prior to the use of infiltration in rear draining lots (where there is no formal overland escape route to Council's kerb and gutter/street drainage system), a geotechnical investigation will be required to determine whether the ground is suitable for infiltration. Should rock and/or a water table be encountered within two metres of the proposed base of the infiltration pit, or the ground conditions comprise low permeability soils such as clay, infiltration will not be appropriate.

NOTE: Should the applicant be unable to obtain a private drainage easement over properties to the rear of the development site (to facilitate stormwater discharge in accordance with option b)); and ground conditions preclude the use of infiltration (Option c), consideration may be given to the use of a charged system or a pump out system to drain that portion of the site that cannot be drained by gravity to the kerb and gutter at the front of the property.

11. 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.

12. Should a pump system be required to drain any portion of the site the system must be designed with a minimum of two pumps being installed, connected in parallel (with each pump capable of discharging at the required discharge rate) and connected to a control board so that each pump will operate alternatively. The pump wet well shall be sized for the 1 in 100 year, 2 hour storm assuming both pumps are not working.

The pump system must also be designed and installed strictly in accordance with Randwick City Council's Stormwater Code.

13. All pump out water must pass through a stilling pit, located within the site, prior to being discharged by gravity to the kerb and gutter.

Sydney Water Requirements

14. 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.

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

15. 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

16. 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

17. 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

18. 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

19. 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

20. 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

21. 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

22. 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

23. A *Demolition and Construction Waste Management Plan (WMP)* must be development 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

- 24. 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.
- 25. 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.

Heritage Conservation

- 26. The subject land parcel is the first known building to be constructed on the site. The 1943 aerial view indicates some lighter construction buildings to the rear yard. In the unlikely event that historical archaeological remains or deposits are exposed during the works, all work should cease while an evaluation of their potential extent and significance is undertaken, and the NSW Heritage Office notified under the requirements of the Heritage Act.

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.

D32/22

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 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.

Tree Management

39. Approval is granted for removal of the existing vegetation within the site, which is affected by the proposed works, subject to the implementation of replacement planting similar to the concept landscaping plan the approved landscaping by FLDC Architects.

Road / Asset Opening Permit

40. 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

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, street verge

43. 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.
44. 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.
45. That part of the nature strip 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.

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 approval. 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.

(For Significant Re-Development in rear draining lots where a new pump-out system or infiltration area will be provided)

47. Should an infiltration area or pump-out system be provided, 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):

The location, diameter, gradient and material (i.e. PVC, RC etc) of all stormwater pipes;
Details of infiltration/absorption systems; and
Details of pumping systems installed (including wet well volumes).

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

48. 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 – Noise Levels

49. 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

50. 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

51. 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.

Storage space

52. The storage area on the eastern side of the secondary dwelling is not to be used as a habitable room at any time.

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 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 (e.g. pipes, cables etc) may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial before you dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.

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

Development Application Report No. D33/22

Subject: 26 Mawson Parade, Chifley (DA/551/2021)

Executive Summary

| | |
|-----------------------------|---|
| Proposal: | Alterations and additions to existing shop top housing development, including changes to ground floor access, changes to the roof to accommodate an additional bedroom and a west-facing balcony at the second floor, new windows and screening and associated works. |
| Ward: | South Ward |
| Applicant: | Mr V Wall |
| Owner: | Great Wall Super Property Holdings Pty Ltd |
| Cost of works: | \$207,900.00 |
| Reason for referral: | FSR non-compliance >10% |

Recommendation

- A. That the RLPP is satisfied that the matters detailed in Clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the floor space ratio development standard in Clause 4.4 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning, Industry and Environment may be assumed.
- B. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/551/2021 for alterations and additions to existing shop top housing development, including changes to ground floor access, changes to the roof to accommodate an additional bedroom and a west-facing balcony at the second floor, new windows and screening and associated works, at No. 26 Mawson Parade, Chifley, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (mixed-use) - DA/551/2021 - 26 Mawson Parade, CHIFLEY



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 existing shop top housing development, including changes to ground floor access, changes to the roof to accommodate an additional bedroom and a west-facing balcony at the second floor, new windows and screening and associated works. No works are proposed to the ground floor level office premises.

The key issues associated with the proposal relate to the floor space ratio non-compliance as discussed in Section 7.

The proposal is recommended for approval subject to standard conditions that require privacy screening to the southern side of the second-floor level balcony.

2. Site Description and Locality

The subject site is known as 26 Mawson Parade, Chifley and is legally described as Lot 143 in DP 36561. The corner site is 162m², is rectangular in shape and has a 6.13m frontage to Mawson Parade to the north-east, a 27.4m side frontage to Melba Avenue to the north-west and a 6.694m rear frontage to Mawson Lane. The site contains a part two/part three storey shop top housing development with an office use at the ground floor level.



Figure 1 – Street View from Statement of Environmental Effects

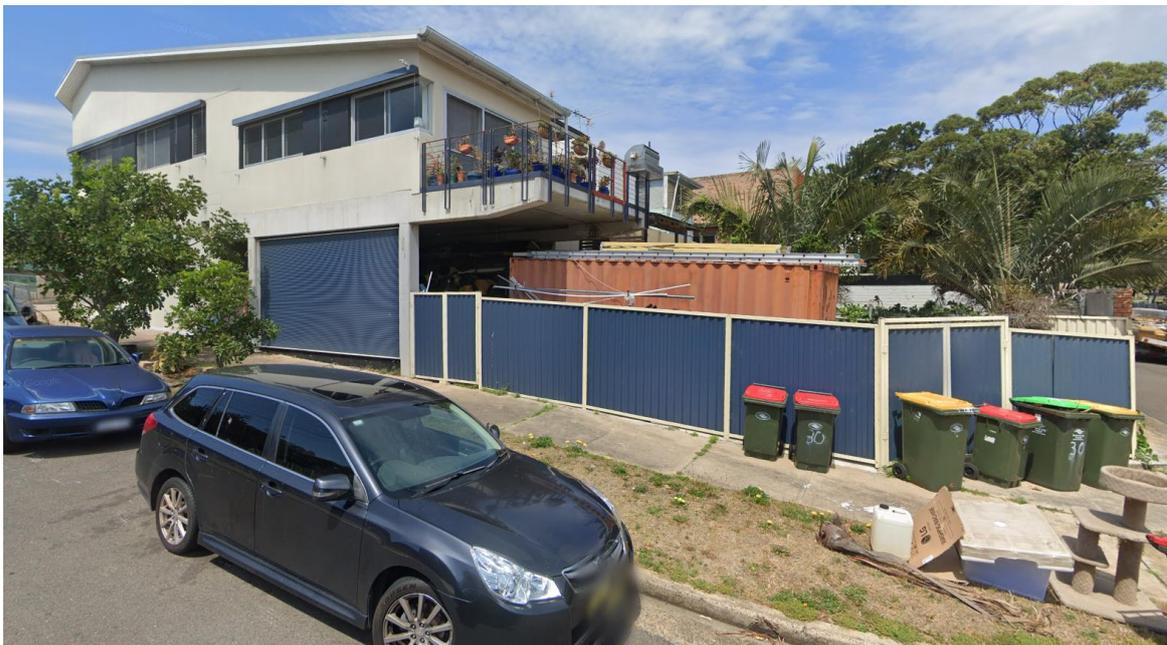


Figure 2 – Google Streetview towards the rear

3. Relevant history

DA/303/2001/C

Development Application No. DA/303/2001/C was approved on 13/08/2012 for the modification of the approved development consent by extension of first floor balcony and construction of storage space in the attic.

DA/303/2001/B

Development Application No. DA/303/2001/B was approved on 08/11/2011 for the modification of the approved development consent by altering the roof line of the dwelling, changes to the internal stairs configuration and window openings on all elevations at first floor level.

DA/303/2001/A

Development Application No. DA/303/2001/A was refused on 08/11/2011 for the modification of approved development by alteration of the roof form, window and door openings and extension of floor areas.

DA/303/2001

Development Application No. DA/303/2001 was approved on 15/05/2001 for the first floor addition to commercial premises including two bedrooms, a bathroom and a living room. As shown on the approved site and ground floor plan below, the ground floor level is referenced as an office.

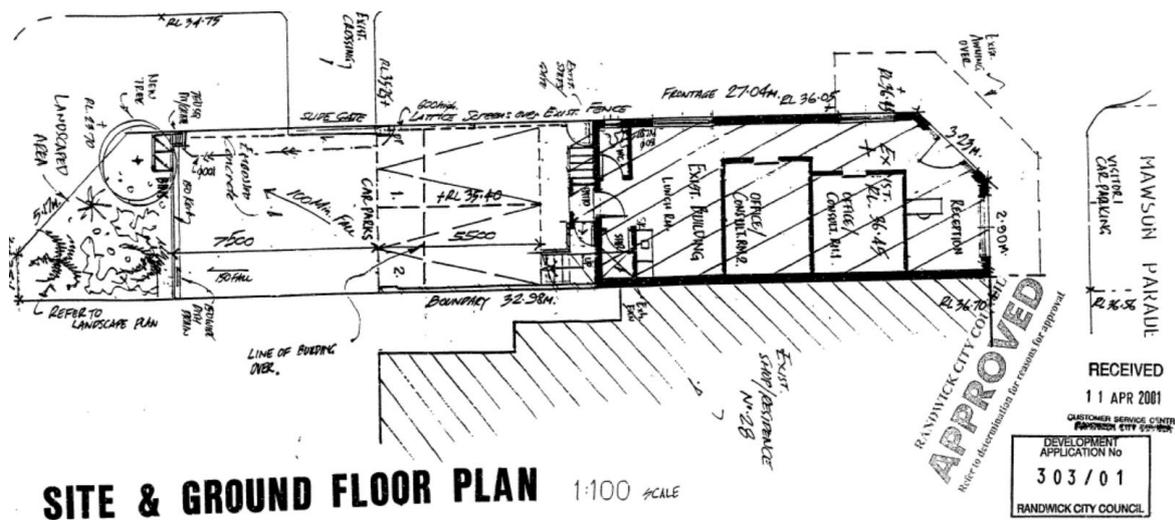


Figure 3 – Approved Site & Ground Floor Plan (DA/303/2001)

DA/172/1972

Development Application No. DA/172/1972 was approved on 28/07/1972 for the use of the existing shop as a hairdressing salon.

DA/178/1971

Development Application No. DA/178/1971 was approved on 19/10/1971 to erect a brick shop.

BA/1165/1964

Building Application No. BA/1165/1964 was approved on 31/01/1964 for shops and a dwelling.

4. Proposal

The proposal seeks development consent for alterations and additions to existing shop top housing development, including changes to ground floor access, changes to the roof to accommodate an additional bedroom and a west-facing balcony at the second floor, new windows and screening and associated works.

The proposal was amended on 03/05/2022 which involved the following changes:

- Retention of the existing roof structure and eaves.
- Reduction to the second floor level extension by increasing the rear setback.
- Modification to the roof form with a skillion dormer to the existing roof.

On 27/05/2022, Council requested additional information including updated gross floor area calculations and a southern elevation. This information was provided on 27/05/2022.

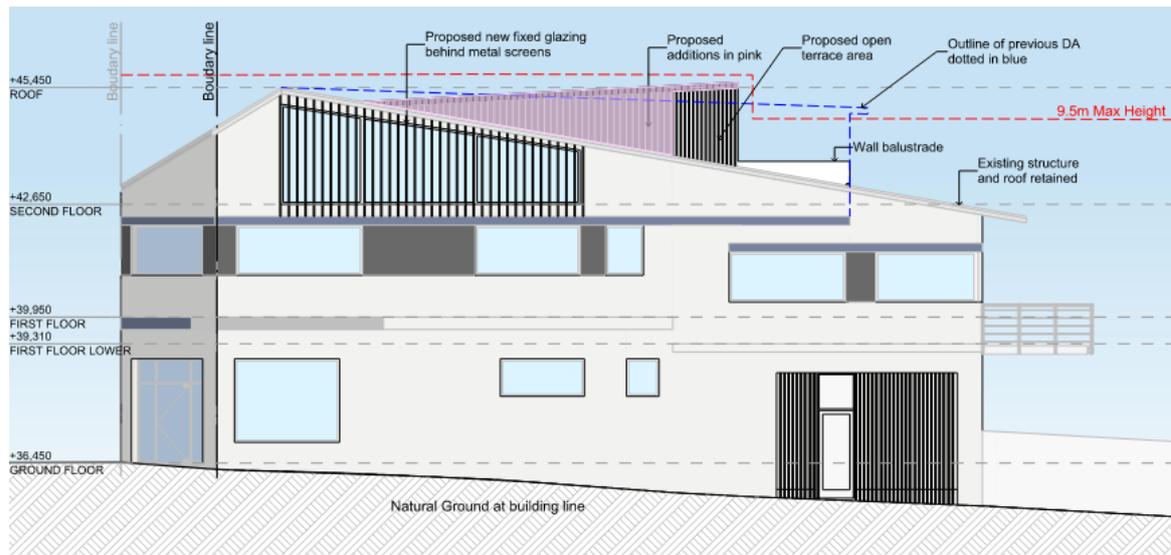


Figure 4 – Proposed North Elevation

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5. Notification

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

The amended application and additional information submitted (as discussed above) was not re-notified to surrounding residents because it was considered to have no greater environmental or amenity impact.

6. Relevant Environment Planning Instruments

6.1. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned B1 Neighbourhood Centre under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent.

The approved and existing use of the subject site as shop top housing is maintained. It is noted that shop top housing is defined as *one or more dwellings located above the ground floor of a building, where at least the ground floor is used for commercial premises or health services facilities*. The office premises at the ground floor is a type of commercial premises. It is therefore considered that the proposal is consistent with the specific objectives of the zone.

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

| Clause | Development Standard | Proposal | Compliance (Yes/No) |
|---------------------------------|----------------------|----------|---------------------|
| Cl 4.3: Building height (max) | 9.5m | 9.3m | Yes |
| Cl 4.4: Floor space ratio (max) | 1:1 | 1.26:1 | No |

6.1.1. Clause 4.6 - Exceptions to development standards

The non-compliance with the development standard is discussed in section 7 below.

6.1.2. Clause 5.10 - Heritage conservation

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

7. Clause 4.6 exception to a development standard

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

| Clause | Development Standard | Existing | Proposed | Proposed variation | Proposed variation (%) |
|---------------------------------------|-----------------------------|-----------------------------------|----------------------------------|--------------------|------------------------|
| Cl 4.4: Floor space ratio (max) | 1:1 (162m ²) | 1.109:1 (176.6m ²) | 1.26:1 (203.8m ²) | 45.8m ² | 26% |

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 demonstrates that this objective is satisfied by noting that:

The proposed alterations and additions to the unit, including the minor increase of gross floor area and consequently the FSR, do not create any amenity impact to neighbours as a result of the bulk and scale of the current shop top building.

The additional floor area is sited within the building's footprint. Therefore, the increased FSR will be indiscernible from the surrounding properties and public domain.

The ground level primary open area and rear yard zones are not amended by the proposal. The proposal also includes additional primary open area in the form of rooved balconies.

Additionally, the proposed non-compliant floor space sits within the building footprint and will not intensify or compromise the future character of the locality.

Therefore, the approved development and achieved FSR are considered to be compatible with surrounding properties

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

The applicant's written justification demonstrates that this objective is satisfied by noting that:

The proposed internal modifications and minor increase of FSR do not alter the built form and architectural design of the building. The proposed changes improve the building's articulation or do not result in any adverse environmental impacts.

The proposed internal reconfiguration involves a new bedroom with shaded windows to the northern façade, and a rear deck with roof overhang.

The BASIX certificate (submitted by the applicant) shows that the development meets the relevant water and energy saving targets.

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

The development is not within a conservation area 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 demonstrates that this objective is satisfied by noting that:

The proposed FSR variation will not generate any adverse or unreasonable impacts on adjoining properties.

The additional floor space is accommodated within the approved building footprint. The proposal does not exceed the building height controls. The additional gross floor area extends to the interior of the building and there is not expected any visual bulk or overshadowing on adjoining properties related to the proposal.

The proposed FSR variation is not related to any view loss from neighbouring developments.

Therefore, the proposed modifications and additional FSR are not considered to adversely impact the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, and overshadowing and views.

Assessing officer's comment: The above statements are concurred with, and the applicant's written request has adequately demonstrated that compliance with the floor space ratio development standard is unreasonable or unnecessary in the circumstances of the case. The proposal seeks to convert the non-habitable storage space at the existing attic level by constructing a new skillion roof and creating a larger second floor level. As such, the slab and floor area at second floor level is within the existing building envelope and the additional bulk is limited to the new roof form.

The proposal, as conditioned, would not result in any significant additional adverse amenity or visual impacts to the streetscape, the neighbouring properties, or the current occupants with regards to private open space, solar access, overshadowing, views, acoustic and visual privacy, and access to natural light and ventilation. A BASIX Certificate has been submitted and the subject site is not identified as an item of local heritage significance, or within a heritage conservation area. The proposal therefore satisfies the objectives of the floor space ratio development standard.

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

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

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

- *The minor variation is a result of continuing an existing skillion roof pitch to the rear of the site. The changes are in keeping with the current building form.*
- *The proposed is consistent with the HEIGHT controls. Therefore, the bulk and scale are consistent with the neighbouring B1 zoned dwellings.*
- *The proposed FSR deviation is limited to the rear of the building envelope. The primary streetscape is maintained.*
- *The FSR variation does not add any additional dwelling units to the site and does not intensify or compromise the future character of the locality. The existing sole unit on the site is enlarged to provide flexible family living.*
- *The proposed FSR variation is not responsible for any unreasonable adverse impacts to surrounding properties, including overshadowing and view loss. As above mentioned, the additional variation does not generate any visual bulk impacts as it continues an existing roof form along the side aspect of the building.*

- *The privacy and amenity to surrounding properties will be maintained. Therefore, the proposed modifications and additional height are not considered to adversely impact the amenity of adjoining and neighbouring land in terms of visual or acoustic privacy.*
- *The FSR variation is well integrated into the high-quality approved development and ensures that the built form is retained with no significant alteration.*
- *There are not adverse or unreasonable overshadowing, visual bulk, privacy or view loss impacts associated with the proposed FSR variation. Amenity is retained to surrounding properties as envisioned by the DCP amenity controls.*
- *Therefore, it is considered that the proposed deviation is acceptable and inconsequential in the circumstances and will not detract from the desired future character in the locality.*

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

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

To determine whether the proposal will be in the public interest, an assessment against the objectives of the Floor Space Ratio standard and B1 zone is provided below:

Assessment against objectives of floor space ratio standard

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

Assessment against objectives of the B1 zone

The objectives of B1 zone are:

- To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.
- To enable residential development that is well-integrated with, and supports the primary business function of, the zone.
- To minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones.

The applicant's written justification demonstrates that the B1 objectives are satisfied by noting that:

The proposed FSR does not result in any impact created by height, bulk and scale. Therefore the FSR is associated with a built form compatible with the developments in the site's vicinity. The single unit proposal will maintain the context of the surrounding low-density residential environment and does not intensify the use of the current site, thereby confirming that the variation does not raise any inconsistency with the objectives of the B1 zoning or surrounding residential zone. The additional floor space creates a flexible dwelling unit that provides for housing affordability.

Assessing officer's comment: The reasons outlined by the applicant above are concurred with and it is considered that the proposal meets the objectives of the B1 zone. The proposed development will provide residential development that is well-integrated with the existing shop top housing and protect the amenity of neighbouring residents . The development is consistent with the objectives of the floor space ratio standard and the B1 zone. Therefore the development will be in the public interest.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

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

Conclusion

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

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. |
| 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 | The environmental impacts of the proposed development on the natural and built environment have been addressed in this report. The proposed development is consistent with the dominant character in the locality. |

D33/22

| Section 4.15 'Matters for Consideration' | Comments |
|--|--|
| | The proposal will not result in detrimental social or economic impacts on the locality. |
| Section 4.15(1)(c) – The suitability of the site for the development | The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development. |
| Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation | No submissions were received. |
| Section 4.15(1)(e) – The public interest | The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest. |

10. Conclusion

That the application for alterations and additions to existing shop top housing development, including changes to ground floor access, changes to the roof to accommodate an additional bedroom and a west-facing balcony at the second floor, new windows and screening and associated works be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013
- The proposal is consistent with the specific objectives of the B1 zone.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- The development enhances the visual quality of the public domain/streetscape.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineer

This report is based on the following plans and documentation:

- Architectural Plans by ASA Architects;
- Statement of Environmental Effects by ASA Architects;

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 power pole on the same side of the street hence the above clause **is not** applicable.

Landscape Comments

There are no existing trees, covered by Part B5 (Preservation of Trees and Vegetation) in Council's DCP 2013, that will be affected by this proposal.

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

RANDWICK LEP 2012 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS

This Clause 4.6 variation request has been prepared to accompany the development application for the alterations and additions to an existing single unit shop top dwelling at 26 Mawson Parade, Chifley.

Clause 4.6 of the Randwick LEP 2012 allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards.

This Clause 4.6 variation request takes into account the relevant aspects of the Land and Environment Court judgement in *Initial Action Pty Ltd v Woollahra Council [2017] NSWLEC 1734*, as revised by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130*.

Clause 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.*
- (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.*
- (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 Director-General has been obtained.*
- (5) *In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.*

Development Standard to be Varied

The proposal seeks a variation to the development standard contained within Clause 4.4 of the *Randwick LEP 2012 - FSR*.

The proposal is for an FSR of 1.26:1, which is a variation of 0.26:1 (26%) from the maximum FSR of 1.0:1 provided for the subject site under the RLEP2012 statutory standards.

Shop Top Housing buildings are allowed within the B1 Neighbourhood zone.

Justification for Contravention of the Development Standard

This written request is considered to justify the contravention of the development standard and addresses the matters required to be demonstrated by Clause 4.6(3), of which there are two aspects. Both aspects are addressed below:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Assessment: It is considered that strict compliance with the development standard for FSR on the site is unreasonable and unnecessary in the circumstances for the following reasons:

- The minor variation is a result of continuing an existing skillion roof pitch to the rear of the site. The changes are in keeping with the current building form.
- The proposed is consistent with the HEIGHT controls. Therefore, the bulk and scale are consistent with the neighbouring B1 zoned dwellings.
- The proposed FSR deviation is limited to the rear of the building envelope. The primary streetscape is maintained.
- The FSR variation does not add any additional dwelling units to the site, and does not intensify or compromise the future character of the locality. The existing sole unit on the site is enlarged to provide flexible family living.
- The proposed FSR variation is not responsible for any unreasonable adverse impacts to surrounding properties, including overshadowing and view loss. As above mentioned, the additional variation does not generate any visual bulk impacts as it continues an existing roof form along the side aspect of the building.
- the privacy and amenity to surrounding properties will be maintained. Therefore, the proposed modifications and additional height are not considered to adversely impact the amenity of adjoining and neighbouring land in terms of visual or acoustic privacy.
- The FSR variation is well integrated into the high-quality approved development and ensures that the built form is retained with no significant alteration.
- There are not adverse or unreasonable overshadowing, visual bulk, privacy or view loss impacts associated with the proposed FSR variation. Amenity is retained to surrounding properties as envisioned by the DCP amenity controls.
- Therefore, it is considered that the proposed deviation is acceptable and inconsequential in the circumstances and will not detract from the desired future character in the locality.
- Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning, as demonstrated in the following table:

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| Consistency with the objectives of the HEIGHT standard in the LEP | |
|--|--|
| Objectives | Assessment |
| <p><i>1(a) to ensure that the size and scale of development is compatible with the desired future character of the locality.</i></p> | <p>The proposed alterations and additions to the unit, including the minor increase of gross floor area and consequently the FSR, do not create any amenity impact to neighbours as a result of the bulk and scale of the current shop top building.</p> <p>The additional floor area is sited within the building's footprint. Therefore, the increased FSR will be indiscernible from the surrounding properties and public domain.</p> <p>The ground level primary open area and rear yard zones are not amended by the proposal. The proposal also includes additional primary open area in the form of rooved balconies.</p> <p>Additionally, the proposed non-compliant floor space sits within the building footprint and will not intensify or compromise the future character of the locality.</p> <p>Therefore, the approved development and achieved FSR are considered to be compatible with surrounding properties.</p> |
| <p><i>1(b) to ensure that buildings are well articulated and respond to environmental and energy needs.</i></p> | <p>The proposed internal modifications and minor increase of FSR do not alter the built form and architectural design of the building. The proposed changes improve the building's articulation or do not result in any adverse environmental impacts.</p> <p>The proposed internal reconfiguration involves a new bedroom with shaded windows to the northern façade, and a rear deck with roof overhang.</p> |
| <p><i>1(c) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item</i></p> | <p>The subject site is not within a conservation area.</p> <p>The proposed additional FSR will not generate any adverse or unreasonable impacts on any surrounding heritage items.</p> |
| <p><i>1(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.</i></p> | <p>The proposed FSR variation will not generate any adverse or unreasonable impacts on adjoining properties.</p> <p>The additional floor space is accommodated within the approved building footprint. The proposal does not exceed the building height controls. The additional gross floor area extends to the interior of the building and there is not expected any visual bulk or overshadowing on adjoining properties related to the proposal.</p> <p>The proposed FSR variation is not related to any view loss from neighbouring developments.</p> <p>Therefore, the proposed modifications and additional FSR are not considered to adversely impact the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, and overshadowing and views.</p> |
| Consistency with the objectives of the R2 Low Density Residential zone | |
| Objectives | Assessment |
| <ul style="list-style-type: none"> <i>To provide for the housing needs of the community within a low density residential environment.</i> | <p>The proposed FSR does not result in any impact created by height, bulk and scale. Therefore the FSR is associated with a built form compatible with the developments in the site's vicinity.</p> |

| | |
|---|--|
| <ul style="list-style-type: none"> • 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. | <p>The single unit proposal will maintain the context of the surrounding low-density residential environment and does not intensify the use of the current site, thereby confirming that the variation does not raise any inconsistency with the objectives of the B1 zoning or surrounding residential zone. The additional floor space creates a flexible dwelling unit that provides for housing affordability.</p> |
|---|--|

Based on the above assessment, it is considered that strict compliance with the LEP FSR standard is unreasonable and unnecessary in this instance.

(b) that there are sufficient environmental planning grounds to justify contravening the development standard

Assessment: It is considered that there are sufficient environmental planning grounds to justify varying the FSR development standard, which include:

- The proposed additional FSR will not result in any breach in building height. Therefore, overall height, bulk and scale are consistent with the controls.
- The proposed FSR deviation is limited within the building footprint and general envelope. The additional floor space does not alter the approved built form setbacks and does not result in any adverse or unreasonable impacts to adjoining or surrounding properties.
- The FSR deviation does not intensify the use of the land.
- The proposed FSR variation is not responsible for any unreasonable adverse impacts to surrounding properties, including overshadowing and view loss. As above mentioned, the fsr variation does not generate any visual bulk impacts and is imperceptible from neighbouring properties and public domain.
- The proposed modifications and additional FSR are not considered to adversely impact the amenity of adjoining and neighbouring land in terms of visual or acoustic privacy.
- The FSR variation is well integrated into the high-quality approved development and ensures that the built form is retained with no significant alteration.
- There are not adverse or unreasonable overshadowing, visual bulk, privacy or view loss impacts associated with the proposed FSR variation. Amenity is retained to surrounding properties as envisioned by the DCP amenity controls.
- Therefore, it is considered that the proposed deviation is of a minor nature and inconsequential in the circumstances and will not detract from the desired future character in the locality.

Based on the above points, it is considered that there are sufficient environmental planning grounds to permit the floor space ratio variation in this instance.

Other Matters for Consideration

4(a)(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

Assessment: The above assessment demonstrates that the proposed FSR satisfies the objectives of the floor space ratio standard and the B1 Neighbourhood Centre zoning.

Furthermore, it is considered that the variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with the FSR variation.

Given that the proposal is consistent with the desired future character for the area nominated by the specific controls in the LEP and DCP, and that there are no adverse or unreasonable impacts to the broader community, it is considered that there are no public interest matters which would prevent a variation to the FSR control.

*(5) In deciding whether to grant concurrence, the Director-General must consider:
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning*

Assessment: The proposed FSR variation allows for the orderly and economic use of land as envisaged by the *Environmental Planning and Assessment Act, 1979*.

The proposed FSR allows for achievement of a compatible building envelope without creating a development with overbearing height, bulk or scale and without compromising the desired future character of the area.

The proposed FSR is therefore consistent with the State and Regional Policies, particularly urban consolidation principles which seek to provide additional height and density near transport and established services.

Concurrence

The Secretary's concurrence under clause 4.6(4) of the LEP has been delegated to the Council by written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018. That concurrence may also be assumed by the Court pursuant to s39(6) of the Land and Environment Court Act.

(b) the public benefit of maintaining the development standard

Assessment: There is no public benefit in maintaining the FSR standard given the absence of amenity impacts associated with the additional gross floor area to the development. Importantly, the proposed increase of FSR will not adversely impact the streetscapes or neighbouring properties due to its confined location.

(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

Assessment: There are not considered to be any additional matters to consider beyond those discussed above.

Generally as to concurrence, for the reasons outlined above – and particularly having regard to the site specific nature of this clause 4.6 variation request – there is nothing about this proposed FSR variation that raises any matter of significance for State or regional environmental planning, nor is there any broad public benefit in maintaining the development standard on this site. There are no other relevant matters requested to be taken into consideration before granting concurrence.

Conclusion

For reasons mentioned herein, this Clause 4.6 variation is forwarded in support of the development proposal at 26 Mawson Parade, Chifley and is requested to be looked upon favourably by the consent authority.

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Appendix 3: DCP Compliance Table

3.1 Section B7 – Transport, Traffic, Parking and Access

Council’s Engineer has not raised any concerns with regards to the additional bedroom and the demand for additional parking at the subject site. As such, the proposal is satisfactory with Section B7 of the RDCP.

3.2 Section D6: Neighbourhood Centres – General Controls

| DCP Clause | Control | Proposal | Compliance | | | | | | |
|--------------|---|--|---------------------------------|--------------|------|--------------|------|--|-----|
| 2.3 | Building Heights | | | | | | | | |
| | <p>i) In neighbourhood centres with a 9.5m maximum height limit, development must not exceed 2 storeys in height (with the exception of habitable roof space/partial floor, which must be setback so as not to be visible from the street or incorporated into the roof design to have the appearance of a roof rather than an additional storey).</p> <p>iii) The minimum floor to ceiling height for a floor must comply with the following table:</p> <table border="1"> <thead> <tr> <th>Floor</th> <th>Minimum floor to ceiling height</th> </tr> </thead> <tbody> <tr> <td>Ground Floor</td> <td>3.3m</td> </tr> <tr> <td>Upper Floors</td> <td>2.7m</td> </tr> </tbody> </table> <p>iv) Demonstrate the suitability of an alternative number of storeys and/or floor to ceiling heights having regard to:</p> <ul style="list-style-type: none"> - existing predominant storeys and/or floor to ceiling heights within the centre - character of the street. | Floor | Minimum floor to ceiling height | Ground Floor | 3.3m | Upper Floors | 2.7m | The proposal complies with the 9.5m height limit and the minimum floor to ceiling heights. | Yes |
| Floor | Minimum floor to ceiling height | | | | | | | | |
| Ground Floor | 3.3m | | | | | | | | |
| Upper Floors | 2.7m | | | | | | | | |
| 3 | Building Design | | | | | | | | |
| 3.1 | Facades | | | | | | | | |
| | <p>i) Where a development has two street frontages, each façade treatment must respond to the buildings in those streets.</p> <p>ii) Include shopfronts on side street frontages of corner sites to enhance the commercial potential of the space and minimise blank walls to the streetfront.</p> <p>iii) Facades should display proportions and detailing which respect the prevailing building facades across the centre (i.e. designing fine grain shop fronts, where the existing subdivision is fine grain).</p> <p>vii) All facade elements must be contained within the site boundaries.</p> | The new skillion roof makes a positive architectural response to the front, side and rear elevations that are visible from the public domain. The new fixed glazing and metal screening to the northern side elevation provides articulation to the Melba Avenue frontage. The new balcony at the second-floor level is recessed behind the existing roof structure and principal building façade. The solid wall balustrade provides privacy to the occupants and the non-compliance associated | Yes | | | | | | |

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| DCP Clause | Control | Proposal | Compliance |
|------------|--|--|------------|
| | viii) Building services, such as drainage pipes shall be coordinated and integrated with overall facade and balcony design. ix) Balconies to the street facade are to be recessed behind the principal building facade. x) Balcony balustrades should comprise a light open/glazed material and should be compatible with the style of the building. | with Council's requirement for open balustrade materials is satisfactory. | |
| 3.2 | Roof Forms | | |
| | i) In centres where parapet forms are prevalent, development should include parapets that reflect the rhythm, scale and detailing of existing parapets. ii) Provide flat roofs where these prevail across the centre, unless the site conditions justify an alternative roof form (eg. Corner sites). iii) Design roof forms to generate a visually interesting skyline, while minimising apparent bulk and potential for overshadowing. The style and pitch of new roofs should relate sympathetically to neighbouring buildings. iv) Relate roof forms to the size and scale of the building, the building elevation and the three dimensional building form. | The proposal maintains the existing roof form when viewed from Mawson Street and Melba Avenue. The new skillion roof integrates with the existing roof and represents an appropriate scale when viewed from the street. No adverse visual impacts are likely to occur. | Yes |
| 3.4 | Colours, materials and finishes | | |
| | i) Utilise high quality and durable materials and finishes which require minimal maintenance. ii) Combine different materials and finishes to assist building articulation and modulation. The use of face bricks and/or natural stone cladding may assist the integration of new development into the existing streetscape. iii) The following materials are considered incompatible: <ul style="list-style-type: none"> • Large wall tiles; • Rough textured render and/or bagged finish; • Curtain walls; and • Highly reflective or mirror glass. iv) Avoid large expanses of any single material to facades. | The metal roof and anodized aluminium materials are contemporary and provide articulation and modulation to the building. No adverse visual impacts to the streetscape are likely to occur. | Yes |

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| DCP Clause | Control | Proposal | Compliance |
|------------|---|---|-------------------------------|
| | v) Visible light reflectivity from building materials used on the facades of new buildings should not exceed 20%. | | |
| 5 | Amenity | | |
| 5.1 | Solar Access | | |
| | <p>i) Commercial and mixed use development are not to reduce sunlight to adjacent dwellings below a minimum of 3 hours of sunlight on a portion of the windows of the habitable rooms between 8am and 4pm on 21 June.</p> <p>iv) Ensure that building layouts facilitate good solar access to both internal and external living spaces (eg. Ideally locate living areas to the north and east, and service areas to the south and west of the development).</p> <p>v) Maximise any northerly aspect and optimise the number of north facing windows. Shade north facing windows with roof eaves, verandahs or balconies, awnings or other horizontal shading devices.</p> | The shadow diagrams submitted with the application demonstrate compliance is maintained and no significant adverse overshadowing impacts to neighbouring properties are likely to occur. | Yes |
| 6 | Shop Top Housing | | |
| | <p>iii) Private open spaces should be:</p> <ul style="list-style-type: none"> located adjacent to and accessible from the main living areas of the dwelling; located so as to maximise solar access, i.e. preferably orientated from north east to north west; located to ensure privacy and away from noisy locations, where possible; and screened by vegetation or a wall to ensure privacy. | <p>The new balcony at the second-floor level is partially enclosed by full height walls at the side elevations. Notwithstanding this, a privacy screen is required to the southern side elevation. See Condition 2.</p> | Satisfactory, as conditioned. |

Responsible officer: Tegan Ward, Senior Environmental Planning Officer

File Reference: DA/551/2021

**Development Consent Conditions
(Mixed use)**



D33/22

| | |
|------------------------|---|
| DA No: | DA/551/2021 |
| Property: | 26 Mawson Parade, CHIFLEY NSW 2036 |
| Proposal: | Alterations and additions to existing shop top housing development, including changes to ground floor access, changes to the roof to accommodate an additional bedroom and a west-facing balcony at the second floor, new windows and screening and associated works (variation to FSR of the RLEP 2012). |
| 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 |
|----------------|-----------------|--------------|----------------------------|
| DA-100 (Rev B) | ASA Architects | 29/04/2022 | 03/05/2022 |
| DA-101 (Rev B) | | 29/04/2022 | 03/05/2022 |
| DA-102 (Rev B) | | 29/04/2022 | 03/05/2022 |
| DA-103 (Rev B) | | 29/04/2022 | 03/05/2022 |
| DA-200 (Rev B) | | 29/04/2022 | 03/05/2022 |
| DA-201 (Rev B) | | 29/04/2022 | 03/05/2022 |
| DA-202 (Rev B) | | 27/05/2022 | 27/05/2022 |
| DA-300 (Rev B) | | 29/04/2022 | 03/05/2022 |
| DA-301 (Rev B) | | 29/04/2022 | 03/05/2022 |

| BASIX Certificate No. | Dated | Received by Council |
|------------------------------|--------------|----------------------------|
| A429462_02 | 03/05/2022 | 03/05/2022 |

Amendment of Plans & Documentation

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

- A privacy screen having a height of 1.6m (measured above the finished level of the balcony and stairs) shall be provided to the entire southern side of the second floor level rear balcony.

Privacy screen 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.

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 \$207,900 the following applicable monetary levy must be paid to Council: \$2,079.

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.

- Compliance Fee**
6. A development compliance and enforcement fee of \$436.60 shall be paid to Council in accordance with Council's adopted Fees & Charges Pricing Policy, prior to the issue of a Construction Certificate for development.

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

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

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

- \$2,000.00 - Damage / Civil Works Security Deposit

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

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

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

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

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

The Sydney Water [Tap in™](#) online service replaces the Quick Check Agents as of 30 November 2015

The [Tap in™](#) service provides 24/7 access to a range of services, including:

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

Sydney Water's [Tap in™](#) online service is available at:

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

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

Stormwater Drainage

10. 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.

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

11. 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).
12. Access and facilities for people with disabilities must be provided in accordance with the relevant requirements of the Building Code of Australia, Disability (Access to Premises – Buildings) Standards 2010, relevant Australian Standards and conditions of consent, to the satisfaction of the Certifier.

BASIX Requirements

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

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

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

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

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

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

Certification and Building Inspection Requirements

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

A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.
 - b) a *Principal Certifier* must be appointed to carry out the necessary building inspections and to issue an *occupation certificate*; and
 - c) a *principal contractor* must be appointed for the building work and any applicable requirements of the *Home Building Act 1989* must be satisfied accordingly; and
 - d) the *principal contractor* must be advised of the required *critical stage inspections* and other inspections to be carried out, as specified by the *Principal Certifier*; and
 - e) at least two days notice must be given to the Council, in writing, prior to commencing any works.
- Demolition Work Plan**
15. A Demolition Work Plan must be prepared for the development in accordance with Australian Standard AS2601-2001, Demolition of Structures and relevant environmental/work health and safety requirements.
- The Demolition Work Plan must be submitted to the Principal Certifier, not less than two (2) working days before commencing any demolition work. A copy of the Demolition Work Plan must be maintained on site and be made available to Council officers upon request.
- If the work involves asbestos products or materials, a copy of the Demolition Work Plan must also be provided to Council not less than 2 days before commencing those works.
- Public Liability**
16. The owner/builder is required to hold Public Liability Insurance, with a minimum liability of \$10 million and a copy of the Insurance cover is to be provided to the Principal Certifier and Council.
- Public Utilities**
17. 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.
18. 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

19. Building works are required to be inspected by the *Principal Certifier*, in accordance with section 6.5 of the *Environmental Planning & Assessment Act 1979* and clause 162A of the *Environmental Planning & Assessment Regulation 2000*, to monitor compliance with the relevant standards of construction, Council's development consent and the construction certificate.

Building & Demolition Work Requirements

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

- Work Health and Safety Act 2011;
- Work Health and Safety Regulation 2011;
- SafeWork NSW Code of Practice for the Safe Removal of Asbestos;
- Australian Standard 2601 (2001) – Demolition of Structures;
- The Protection of the Environment Operations Act 1997;
- Randwick City Council Asbestos Policy (adopted 13 September 2005).

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

Removal of Asbestos Materials

21. 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.

Support of Adjoining Land

22. 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.

Temporary Site Fencing

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

Notes:

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

Public Safety & Site Management

24. Public safety and convenience must be maintained at all times during demolition, excavation and construction works and the following requirements must be complied with to the satisfaction of Council:
- a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.
 - b) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times. Any damage caused to the road, footway,

vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.

- c) All building and site activities (including storage or placement of materials or waste and concrete mixing/pouring/pumping activities) must not cause or be likely to cause 'pollution' of any waters, including any stormwater drainage systems, street gutters or roadways.

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

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

Site Signage

25. 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

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

| Activity | Permitted working hours |
|---|--|
| All building, demolition and site work, including site deliveries (except as detailed below) | <ul style="list-style-type: none"> Monday to Friday - 7.00am to 5.00pm Saturday - 8.00am to 5.00pm Sunday & public holidays - No work permitted |
| Excavating or sawing of rock, use of jack-hammers, pile-drivers, vibratory rollers/compactors or the like | <ul style="list-style-type: none"> Monday to Friday - 8.00am to 1.00pm only Saturday - No work permitted Sunday & public holidays - No work permitted |
| Additional requirements for all development | <ul style="list-style-type: none"> Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted |

An application to vary the abovementioned hours may be submitted to Council's Manager Health, Building & Regulatory Services for consideration and approval to vary the specified hours may be granted in exceptional circumstances and for limited occasions (e.g. for public safety, traffic management or road safety reasons). Any applications are to be made on the standard application form

and include payment of the relevant fees and supporting information. Applications must be made at least 10 days prior to the date of the proposed work and the prior written approval of Council must be obtained to vary the standard permitted working hours.

Survey Requirements

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

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

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

Building Encroachments

28. 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

29. 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

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

Fire Safety Certificates

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

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

Structural Certification

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

BASIX Requirements & Certification

33. 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, street verge

34. The applicant must meet the full cost for a Council approved contractor to:
- a) Remove the redundant concrete layback in Melba Avenue and to reinstate the area with integral kerb and gutter to Council's specifications and requirements.
 - b) Reconstruct the damaged sections of Council footpath along the Melba Ave frontage. The works are to be to Council's specifications and requirements.
35. 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.
36. 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.
37. 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.

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.

Fire Safety Statements

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

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

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

Environmental Amenity

39. 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.
40. The written approval of council must be obtained prior to the installation of any cooling towers.

GENERAL ADVISORY NOTES

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

- A1 The requirements and provisions of the *Environmental Planning & Assessment Act 1979* and *Environmental Planning & Assessment Regulation 2000*, must be fully complied with at all times.
- Failure to comply with these requirements is an offence, which renders the responsible person liable to a maximum penalty of \$1.1 million. Alternatively, Council may issue a penalty infringement notice (for up to \$6,000) for each offence. Council may also issue notices and orders to demolish unauthorised or non-complying building work, or to comply with the requirements of Council's development consent.
- A2 In accordance with the requirements of the *Environmental Planning & Assessment Act 1979*, building works, including associated demolition and excavation works (as applicable) must not be commenced until:
- A *Construction Certificate* has been obtained from an Accredited Certifier or Council,
 - An Accredited Certifier or Council has been appointed as the *Principal Certifier* for the development,
 - Council and the Principal Certifier have been given at least 2 days notice (in writing) prior to commencing any works.
- A3 Council can issue your *Construction Certificate* and be your *Principal Certifier* for the development, to undertake inspections and ensure compliance with the development consent and relevant building regulations. For further details contact Council on 9093 6944.
- A4 This determination does not include an assessment of the proposed works under the Building Code of Australia (BCA), Disability (Access to Premises – Buildings) Standards 2010 and other relevant Standards. All new building work (including alterations and additions) must comply with the BCA and relevant Standards. You are advised to liaise with your architect, engineer and building consultant prior to lodgement of your construction certificate.

- A5 Any proposed amendments to the design and construction of the building may require a new development application or a section 4.55 amendment to the existing consent to be obtained from Council, before carrying out such works
- A6 A Local Approval application must be submitted to and be approved by Council prior to commencing any of the following activities on a footpath, road, nature strip or in any public place:-
- Install or erect any site fencing, hoardings or site structures
 - Operate a crane or hoist goods or materials over a footpath or road
 - Placement of a waste skip or any other container or article.

For further information please contact Council on 9093 6971.

- A7 Specific details of the location of the building/s should be provided in the Construction Certificate to demonstrate that the proposed building work will not encroach onto the adjoining properties, Council's road reserve or any public place.
- A8 This consent does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is proposed to be carried out upon any adjoining or supported land, the land owner or principal contractor must obtain:
- the consent of the owners of such adjoining or supported land to trespass or encroach, or
 - an access order under the *Access to Neighbouring Land Act 2000*, or
 - an easement under section 88K of the *Conveyancing Act 1919*, or
 - an easement under section 40 of the *Land & Environment Court Act 1979*, as appropriate.

Section 177 of the *Conveyancing Act 1919* creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).

- A9 External paths and ground surfaces are to be constructed at appropriate levels and be graded and drained away from the building and adjoining premises, so as not to result in the entry of water into the building, or cause a nuisance or damage to any adjoining land.
- Finished ground levels external to the building are to be consistent with the development consent and are not to be raised, other than for the provision of approved paving or the like on the ground.
- A10 Prior to commencing any works, the owner/builder should contact *Dial Before You Dig* on 1100 or www.dialbeforeyoudig.com.au and relevant Service Authorities, for information on potential underground pipes and cables within the vicinity of the development site.
- A11 The necessary development consent and a construction certificate or a complying development certificate (as applicable) must be obtained for any proposed *cooling towers* and external plant and equipment, if not included in this consent.
- A12 An application must be submitted to 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.

- A13 There are to be no emissions or discharges from the premises, which will give rise to an environmental or public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and *Regulations*.
- A14 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.
- A15 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.
- A16 Further information and details on Council's requirements for trees on development sites can be obtained from the recently adopted Tree Technical Manual, which can be downloaded from Council's website at the following link, <http://www.randwick.nsw.gov.au> - Looking after our environment – Trees – Tree Management Technical Manual; which aims to achieve consistency of approach and compliance with appropriate standards and best practice guidelines.

Common Boundary Wall

- A17 The applicant is to meet all requirements of NSW Land Registry Services as applicable in regards to any required vertical or horizontal extension of the cross easements for support over the common party wall. Confirmation of these requirements should be obtained from a registered surveyor.

Development Application Report No. D34/22

Subject: 39-47 St Pauls Street, Randwick (DA/793/2021)

| | |
|-----------------------------|---|
| Proposal: | Alterations and additions to the Randwick Ritz Cinema including a new rooftop cinema for 100 seats |
| Ward: | East Ward |
| Applicant: | Milestone Australia Pty Ltd |
| Owner: | Arverne Pty Ltd |
| Cost of works: | \$491,832 |
| Reason for referral: | Demolition works to a Heritage Item and contravention of FSR and building height development standards by more than 10% |

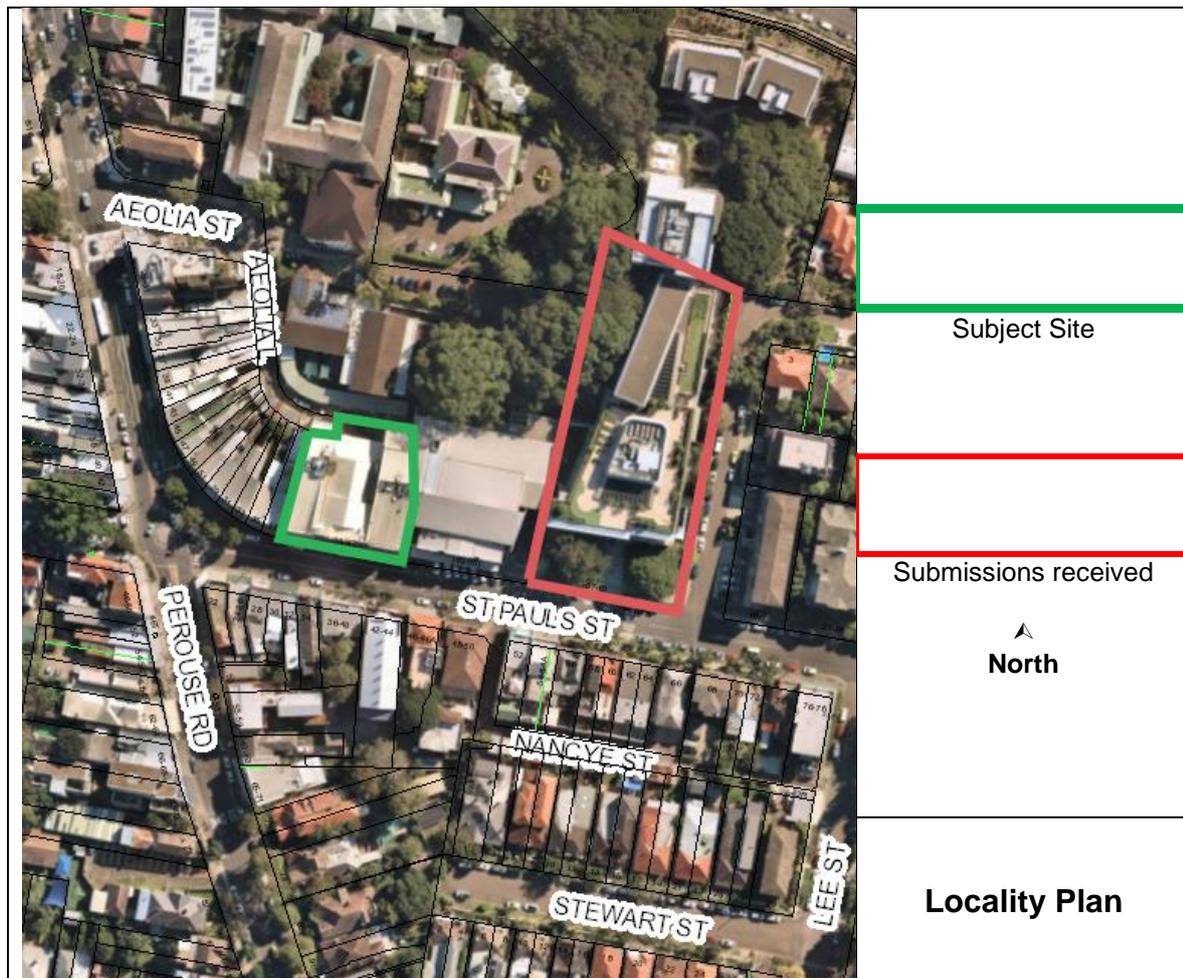
Recommendation

- 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 Building Height 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 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 Floor Space Ratio development standard in Clause 4.4 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning, Industry and Environment may be assumed
- C. 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. 793/2021 for alterations and additions to the Randwick Ritz Cinema including a new rooftop cinema for 100 seats, at Nos. 39-47 St Pauls Street Randwick, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  [RLPP Dev Consent Conditions \(commercial\) - DA/793/2021 - 39-47 St Pauls Street, RANDWICK](#)

D34/22



1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development involves partial demolition of a Heritage Item and contravenes the development standards for Building Height and Floor Space Ratio (FSR) under Randwick Local Environmental Plan (RLEP) 2012 by more than 10%.

The proposal seeks development consent for alterations and additions to the Randwick Ritz Cinema including a new rooftop cinema for 100 seats.

The site is listed as a Heritage Item and is partially within The Spot Heritage Conservation Area (HCA) under RLEP 2012 and is listed on the State Heritage Register (SHR). The proposal is classified as Integrated Development, pursuant to Clause 4.46 of the *Environmental Planning & Assessment Act, 1979* (EP&A Act), as the works are proposed to a State Heritage Item.

The application was publicly exhibited to surrounding properties in accordance with Council's Community Participation Plan. One (1) submission was received in objection raising concerns with view impacts, light spill and acoustic impacts. Four (4) submissions were received in support of the proposal.

The key issues associated with the proposal relate to the non-compliance with the Building Height and Floor Space Ratio (FSR) development standards under RLEP 2012, heritage impacts, visual impacts, view loss, light spill and acoustic impacts.

With regards to FSR, a maximum of 1.5:1 applies to the subject site under RLEP 2012. The proposed development will have an FSR of 1.86:1 (2,921m²), which represents an increase of 39m² or a 1.35% increase above the existing approved FSR. The Applicant submitted a written request in accordance with Clause 4.6 of RLEP 2012 seeking an exception to the FSR development

standard. The additional floorspace will not increase the maximum patron capacity of the cinema or change the overall bulk and scale of the building within the primary streetscape. Furthermore, the proposed works will not result in any significant adverse environmental amenity impacts to the surrounding area, subject to the imposition of appropriate conditions on any consent granted. The Applicant's Clause 4.6 written request seeking an exception to the development standard is well founded and therefore supported.

With regards to building height, a maximum of 12m applies to the subject site under RLEP 2012. The proposed development will have a building height of 19.61m to the top of the lift extension, which represents an increase of 2.81m or 16.7% above the existing approved building height. The Applicant submitted a written request in accordance with Clause 4.6 of RLEP 2012 seeking an exception to the Building Height development standard. The existing building currently exceeds the maximum building height. The additional building height associated with the proposed lift extension and the cinema screen on the rooftop will not change the overall bulk and scale of the development within the primary streetscape. Furthermore, the proposal will not result in any significant adverse environmental amenity impacts to the surrounding area, subject to the imposition of conditions on any consent granted. The Applicant's Clause 4.6 written request seeking an exception to the development standard is well founded and therefore supported.

In terms of heritage, the application was referred to Heritage NSW seeking General Terms of Approval (GTAs). Heritage NSW raised no objection to the proposal and submitted GTAs, which have been incorporated in the recommended development consent. Council's Heritage Planner considers the proposed works to be acceptable from a heritage perspective.

The proposal will not result in any significant adverse overshadowing, view loss or visual privacy impacts to the surrounding area. The proposal is also acceptable in terms of light spill and acoustic impacts, subject to the imposition of appropriate conditions on any consent granted.

Despite the addition of a new outdoor cinema on the rooftop, the overall seating capacity will be reduced by nine seats to a total of 1,806 seats as there will be reduction in the number of seats in the existing cinemas. There will be no change to staff numbers. Therefore, the proposal will not increase parking demand or traffic generation.

There will be no change to the approved hours of operation for the indoor cinemas. The outdoor rooftop cinema proposes to trade from 6:00pm (sunset) until midnight on Thursday, Friday and Saturday. The extended hours are considered acceptable, subject to a one year trial period in order to allow Council to review its performance prior to granting any further extension.

The proposal will provide a unique outdoor cinema experience, resulting in a positive impact for the local community and visitors to the cinema.

The proposal is therefore acceptable, subject to imposition of conditions.

2. Site Description and Locality

The subject site is known as 39-47 St Pauls Street, Randwick ("The Ritz Cinema") and is legally described as Lot 101 in DP 1029883. The site is 1,568m², irregular in shape and has a 41.2m frontage to St Pauls Street to the south and 6m frontage to Aeolia Lane to the north-west.

The site is occupied by The Ritz Cinema, listed as a Heritage Item under the RLEP 2012 and on the State Heritage Register (SHR). The NSW Heritage database identifies the significance of the building as *"the first modern style cinema in Randwick. But for minor functional alterations and promotional décor, the Ritz survives as it was originally built. One of only a few Art Deco cinemas of the 1930's still operating in NSW."* The original cinema was constructed in 1937 with additional cinemas added to the east in 1997 and to the west in 2001.

The site is zoned B1 Neighbourhood Centre under RLEP 2012 and forms part of "The Spot" business centre pursuant to the Randwick Development Control Plan 2013 (RDGP 2013) where the building is also listed as a contributory building within the streetscape.

The locality comprises predominantly commercial uses as part of the business zone with the adjoining property to the north and east zoned SP2 Infrastructure comprising Brigidine College. A Parking Facility that forms part of the Brigidine College site immediately adjoins the subject site to the east. St Basil's Randwick (a residential care facility) is located further to the east and Prince of Wales Hospital further to the west.

3. Relevant history

The Ritz Cinema has a lengthy application history relating to a range of alterations and additions over the years. The most recent applications include:

- On 18 November 2019, RLPP approved the installation of a temporary outdoor cinema screen on the existing rear external wall of the Ritz Cinema adjacent to Aeolia Lane, including movable deck chairs, minor alterations to the existing toilets and conversion of an existing external door to a food and drink serving window (DA/318/2019).
- On 11 June 2020, RLPP refused alterations and additions, including an increase in the number of total seats to 1932, excavation at rear with construction of two new cinemas (Nos. 7 & 8), reconfiguration of cinema No. 6, installation of rooftop mechanical plant, and provision of a bin storage room on the eastern side of proposed cinema No. 7 (DA/600/2019).
- On 10 September 2020, RLPP approved the demolition of existing structures, alterations and additions to the Randwick ritz cinema including internal refurbishment of ground floor and external refurbishment to the existing mezzanine level (DA/148/2020).
- On 11 September 2020, RLPP approved a Section 8.2 review of a refused application for alterations and additions to the Randwick ritz cinema including excavation at the rear with construction of two new cinemas (7 & 8) and limit the maximum seating capacity to 1,815 seats.
- On 14 October 2021, RLPP approved alterations to the Randwick Ritz Cinema consisting of the fitout and use of part of the basement level for the purpose of a new basement cinema including removal and relocation of existing seats within Cinemas 2 to 5. No changes to maximum seating numbers and hours of operation (DA/361/2021).

4. Proposal

The proposal seeks development consent for alterations and additions to the Randwick Ritz Cinema including a new rooftop cinema for 100 seats. Specifically, the proposal involves:

- fitout and use of the eastern portion of the existing rooftop level for the purpose of a new rooftop cinema theatre, including the extension of the existing internal staircase and lift and extension of the external staircase along the northern (rear) building elevation and to provide access to the rooftop level.
- installation of a new rooftop cinema screen measuring 8m (width) x 3.38m (height), 100 x cinema seats, projector, bar/serving counter for food and drink purchases, balustrade and planter boxes.

The proposed cinema screen is located at the northeast corner of the roof facing south, with tiered seating stepping down from south to north towards the screen. A bar, stair and lift access and plant areas are located behind the seating.

Tiered planting is located along the balustrade on either side of the rooftop cinema. The screen material is high grade outdoor vinyl stretched over a corrugated steel backing. The screen structure will be weatherproof steel truss frame with exposed back, sides and top. **Figures 1 to 4** show the location and illustrate the proposed rooftop cinema. Updated architectural plans, dated 18 March 2022, showing additional details in relation to the layout of the rooftop cinema were submitted to Council. There were no changes to the design of the rooftop cinema.

Seating Capacity

Despite the addition of a new outdoor cinema on the rooftop accommodating 100 seats, the overall seating capacity will be reduced by 9 seats to a total of 1,806 seats as there will be reduction in the number of seats in the existing cinemas.

The Applicant has provided the following description in relation to the changes in patron numbers:

“Seating numbers within each cinema have been updated to reflect as built, and with the addition of 100 seats in the proposed new rooftop cinema the total number of seats provided is 1806, a reduction of 9 seats.

Seat reductions in other cinemas is proposed resulting in the minor reduction in the overall seats. Cinemas 1, 2, 3, 5 and 8 will include seat reductions of 80, 11, 13, 23 and eight seats respectively and cinemas 4,6 and 7 will have seat increases of 17, six and three seats respectively) resulting in a minor reduction in the overall seat numbers, resulting in nine less seats overall. The seat numbers within the cinema were reduced by 9 seats after the seats in the existing cinemas were upgraded to larger seats. Therefore, the larger size of the new seats accommodated less seats.

Patron and Staff Numbers

With the additional rooftop cinema, there will be no increase to existing number of maximum approved patrons and staff permitted on site being 1,815 patrons as approved via condition in DA/615/2003 and DA/600/2019. There will be no additional staff required to operate the rooftop cinema.

Liquor Licence

The rooftop cinema will also serve alcohol under an On-premises Liquor Licence. The current liquor licence for the Ritz Cinema will be amended to cover the rooftop cinema seating area. This aspect is subject to a separate application to the Office of Liquor and Gaming.

Patron Access to the cinema

It is proposed that patrons will enter the Randwick Ritz from St Pauls Street and walk through the cinema and access the rooftop level via the existing internal lift core located within the eastern portion of the building, which is proposed to be extended for the purpose of this application. At the end of sessions, staff will ensure patrons exit through the Randwick Ritz building to St Pauls Street.

Hours of Operation

The proposed hours of operation for the rooftop cinema are 6:00pm to 12 midnight on Thursday, Friday and Saturday nights. Movie sessions will commence after sunset and end by 12 midnight. Screening nights will be limited to only one movie per session and patrons will watch the movie playing on the new outdoor screen using wireless headphones.

The bar is proposed to be open 45 minutes before the movie commences. The area in front of the bar will be used for queuing space only. There will be no amplified music in the cinema area.

Staff and cleaners will be present outside of the trading hours to perform essential tasks and activities such as cleaning, restocking supplies, administrative tasks within the back of house office area and preparing the cinema for the next day of trade. The pack-up/cleaning time will be completed by 12:15am.

Deliveries and Waste Collection

All deliveries and waste removal from the site will be undertaken between the hours of 7am and 10pm, Monday to Sunday as per the current approved site servicing arrangements. Access for delivery vehicles will be from Aeolia Lane via the existing vehicle access point to the basement level loading dock and bin storage areas. There will be no change to the current approved deliveries and waste management as a result of the proposed rooftop cinema.

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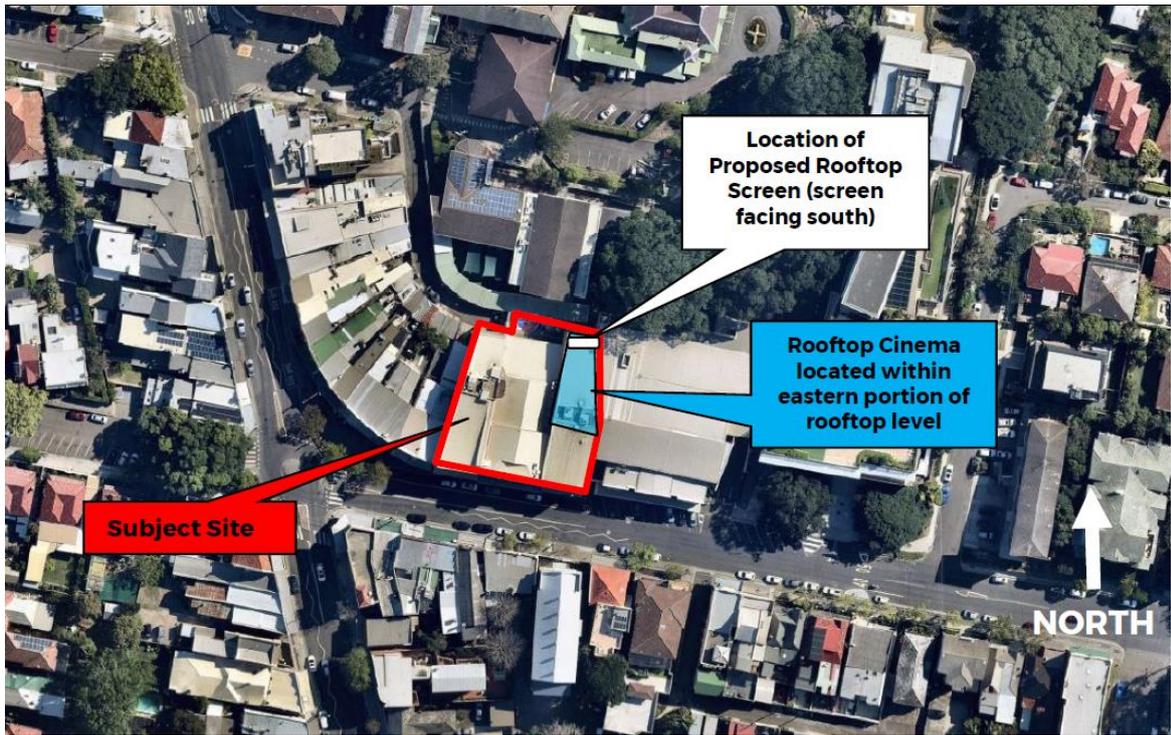


Figure 1 – Location of proposed cinema on the rooftop of the Randwick Ritz



Figure 2 – Proposed cinema rooftop plan

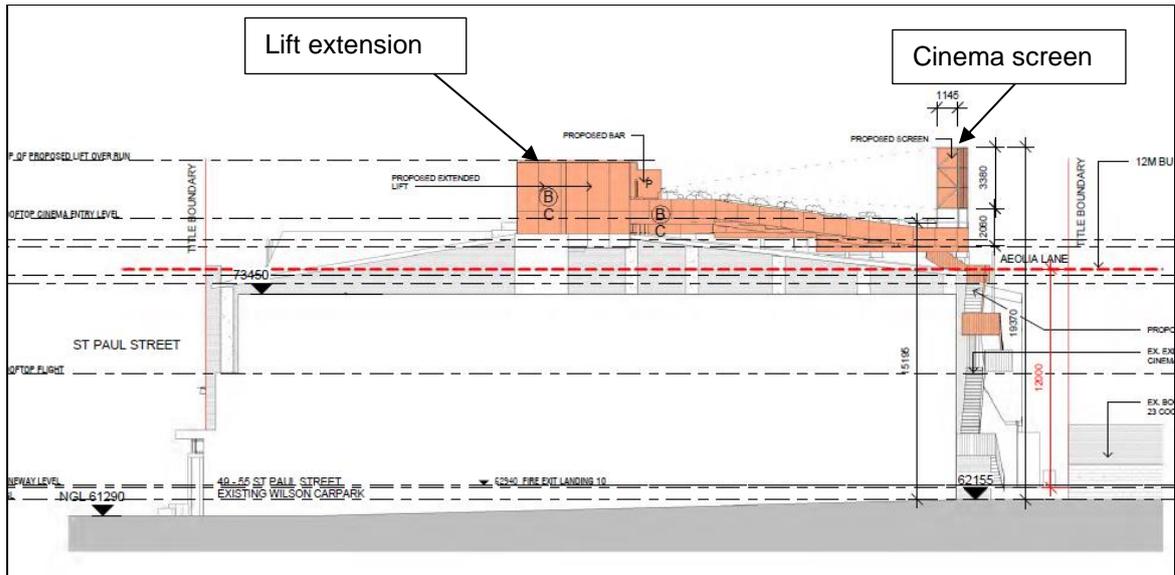


Figure 3 – Proposed cinema - eastern elevation

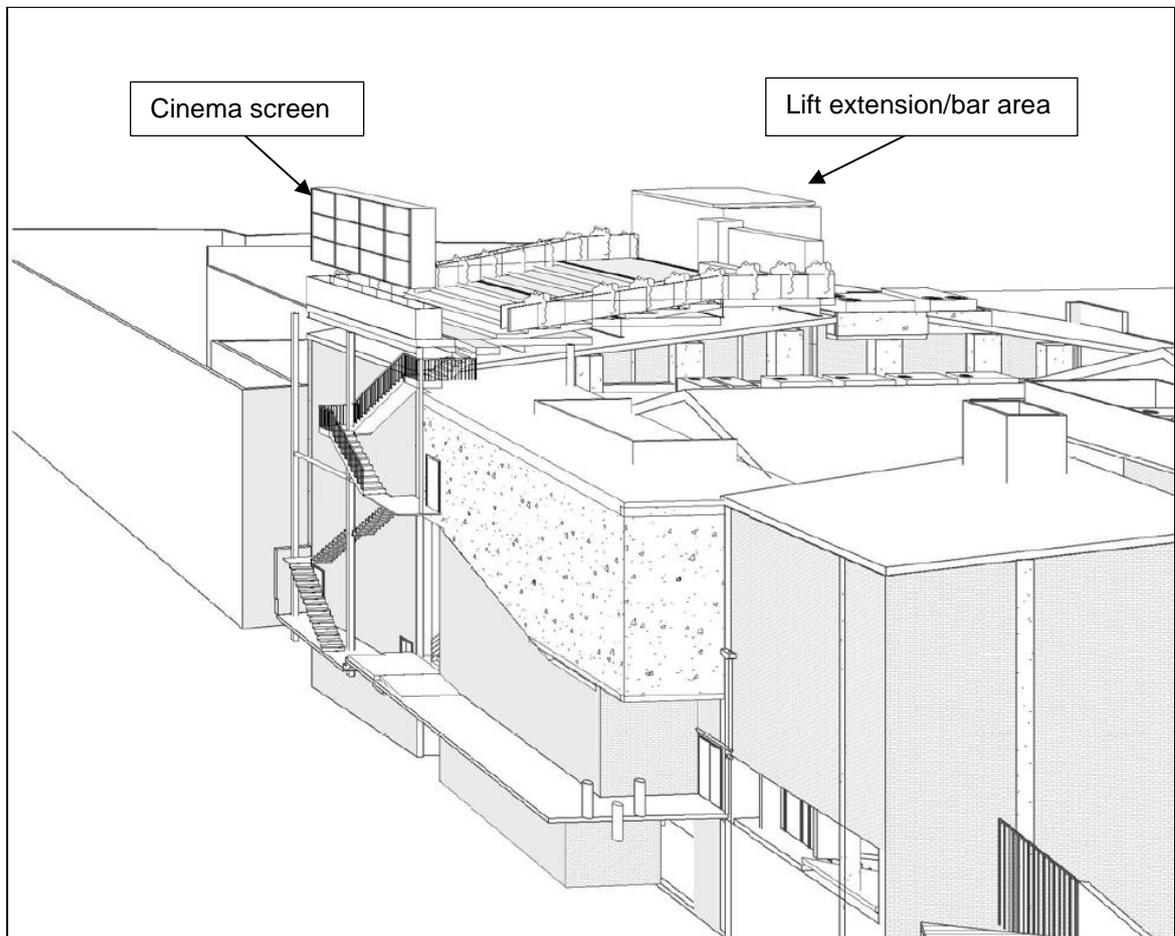


Figure 4 – 3D birds eye view looking from the laneway at the rear of the site

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. A total of five submissions were received as a result of the notification process including, one submission in objection and four submissions in support of the development.

A summary of the issues raised in the objection is provided in the table below:

- SJB Planning on behalf of St Basils Aged Care Facility

| Issue | Comment |
|--|---|
| Inadequate modelling and assessment of light spill | The proposal will not result in any obtrusive lighting impacts, subject to the imposition of appropriate conditions on any development consent. Refer to the Key Issues in Section 8.1 of this report. |
| Noise generated by patrons before and after the sessions and mechanical plant. | The proposal will not result in any significant adverse noise impacts, subject to the imposition of appropriate conditions on any development consent. Refer to the Key Issues in Section 8.1 of this report. |
| Lack of details associated with the on-premise liquor licence. | The current liquor licence for the Ritz Cinema will be amended to cover the rooftop cinema seating area. This is subject to a separate application to the Office of Liquor and Gaming. |
| View Impacts | The proposal will not result in any adverse view loss. Refer to the Key Issues in Section 8.1 of this report. |

The submissions in support of the proposal consider the development to be a positive heritage outcome, a unique outdoor cinema experience that will add to the stock of late night trading venues in the area, a low key cinema use with minimal impact on the amenity of the surrounding area, a suitable use in a pandemic and appropriate for the commercial area.

5.1. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned B1 Neighbourhood Centre under RLEP 2012, and the proposal is permissible with consent. The proposal is consistent with the specific objectives of the zone in that the proposal will ensure the ongoing viability of the cinema with minimal impact on the amenity of residents in the nearby residential zones, subject to the imposition of appropriate conditions on any consent granted.

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

| Clause | Development Standard | Existing/Approved | Proposal | Compliance (Yes/No) |
|---------------------------------|------------------------------|-------------------------------|---|---------------------------------|
| Cl 4.3: Building height (max) | 12m | 16.8m | 19.61m (top of the lift overrun) 19.41m (top of the cinema screen) | No - refer to Section 6. |
| Cl 4.4: Floor space ratio (max) | 1.5:1 (2,352m ²) | 1.83:1 (2,882m ²) | 1.862:1 (2,921m ²), | No - refer to Section 6. |

5.1.1. Clause 4.6 - Exceptions to development standards

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

5.1.2. Clause 5.10 - Heritage conservation

As discussed in **Section 2**, the site is listed as a Heritage Item under the RLEP and listed on the SHR. The proposal is supported by Heritage NSW and Council’s Heritage Planner. The proposal is therefore consistent with this clause. The heritage impacts are discussed further in **Section 8**.

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6. Clause 4.6 exception to a development standard

The proposal seeks to vary the following development standards contained within the RLEP 2012:

| Clause | Development Standard | Proposal | Proposed variation | Proposed variation (%) |
|------------------------------------|---------------------------------|----------------------------------|--------------------|--|
| Cl 4.4: Floor space ratio (max) | 1.5:1 (2,352m ²) | 1.86:1 (2,921m ²) | 569m ² | 24% (1.35% above existing approved) |
| Cl 4.3: Building Height (max) | 12m | 19.61m | 7.61m | 63% (16.7% above existing approved) |

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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.

6.1. 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 objectives in Section 1.1 of the Randwick Comprehensive Development Control Plan 2013 (DCP 2013) outline the following characterises and desired future character of "The Spot":

- *"To protect and enhance the heritage values of the commercial area.*
- *To encourage and facilitate well designed and appropriate development within "The Spot" commercial centre with new development or alterations to existing buildings designed to be compatible with and enhance the heritage streetscape.*
- *To minimise the potential of the buildings within the commercial zone to adversely affect the amenity of the residential land by implementing building height planes and controls around the commercial periphery."*

The proposal directly supports the objectives by ensuring that the heritage significant elements of the Ritz Cinema building and adjacent Heritage Conservation Area and heritage item adjoining to the north are preserved. The objective of the proposal is to introduce a new cinema experience to cater for community expectations for a varied offer of films within a modern and start-of-the-art cinema. The development will not adversely impact the heritage qualities of the Spot Heritage Conservation Area as it cannot be viewed from the public domain areas along the heritage streetscapes of St Pauls Street and Perouse Road.

The Local Strategic Planning Statement (LSPS) which was made effective from 26 March 2020 does not specifically include a desired future character statement for "The Spot" however the following statements are relevant:

"Council will continue to protect the heritage values and fabric of our Heritage Items and HCAs including contributory buildings, recognising their role in the historical development of our City, sense of place and cultural identity. Development in the vicinity of heritage items and heritage conservation areas will be managed through the development assessment system to ensure it is respectful and sympathetic to the heritage values and cultural heritage significance."

"Council encourages and promotes adaptive re-use of heritage items and contributory buildings in a way that encourages activity and entices people to visit and promotes understanding of their heritage values. Development is to be historically and contextually appropriate, to ensure that the heritage values and fabric that contribute to cultural heritage significance is retained and protected."

The proposal delivers a minor quantum of additional floor space (5.9% increase) and will have no adverse heritage impact on the host building and The Spot precinct by virtue of the location within the eastern portion of the rooftop level and there being no visibility from Perouse Road and St Pauls Street or any other public domain vantage point within The Spot Neighbourhood Centre.

Whilst it is acknowledged that the proposed development will alter the existing roof profile of the building, the submitted Visual Impact Statement prepared by Alec Tzannes, dated

September 2021 confirms that the primary elements of the rooftop cinema, being the cinema screen and lift overrun, will have zero visual impact from the existing streetscape of St Pauls Street and Perouse Road and other primary public spaces within The Spot Neighbourhood Centre and will be of 'low to moderate' where the screen is primarily visible from the north (rear) of the site.

The desired future character as outlined in Randwick DCP 2013 and the LSPS will be supported by the proposed development on the basis the addition does not result in any loss of significant heritage fabric, has no impacts on the visual character of The Spot and the contribution of the building to St Pauls Street and ensures the ongoing use of the site as an important cultural facility for the community.

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

The proposed rooftop cinema will not adversely alter or impact the existing articulation and environmental performance of the existing Ritz Cinema building. The proposal will not result in any overshadowing, view loss or overlooking 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 site is listed as a State Heritage Item known as the "Ritz Theatre" and the western part of the site is located in the "The Spot" Heritage Conservation Area (No. C16) under Schedule 5 of LEP 2012. The proposed cinema is confined wholly within the eastern portion of the rooftop level and will have zero visual impact when viewed from the existing streetscape of St Pauls Street and Perouse Road and other primary public spaces within The Spot Neighbourhood Centre nor does not remove any significant heritage fabric of the building.

(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.

Whilst it is acknowledged that the proposed rooftop cinema will increase the FSR of the existing Ritz Cinema building, the development will not adversely impact the existing skyline and will not create any unreasonable additional visual bulk when viewed from the public domain. Further, the comprehensive visual impact analysis provided within the Visual Impact Statement prepared by Alec Tzannes confirms that the rooftop cinema will only be visible from the north (rear) of the site at Aeolia Lane and other adjoining properties and public vantage points to the north. Further, the submitted visual analysis states that the development results in 'low to moderate' impacts where it can be viewed from the north (rear) including only minor changes to the existing roof profile of the building, and minimal loss of sky. On this basis, the rooftop cinema will not result in overlooking of neighbouring properties nor will it result in any overshadowing impacts or loss of significant views.

The submitted Visual Impact Statement concludes "Tzannes supports the design of the rooftop cinema, including the location of the screen, the materiality, size and scale of the screen as there is no significant adverse visual impact to the surrounding context."

Assessing officer's comment: The proposed works including the lift extension and installation of a cinema screen will not result in any change to the overall bulk and scale of the cinema building when viewed from the surrounding area. The proposal will remain consistent with the desired future character of the locality. The proposed additional floorspace will not result in any intensification of the cinema complex as the total seating capacity of the venue will be decreased by nine seats. Furthermore, the proposed use would not result in any significant adverse environmental impacts to the surrounding area, subject to the imposition of appropriate conditions on any consent granted. From a heritage perspective, the proposed works are supported by Council's Heritage Planner and Heritage NSW has raised no objection. The applicant's written request has adequately demonstrated that compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case.

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

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

There are particular constraints that affect the subject site which inhibit the development's ability to achieve strict compliance with the maximum FSR standard and a contravention of the relevant development standards is justified on environmental planning grounds on the consideration of the following:

- *The proposed development does not result in the construction new floor area but will convert and use part of the existing rooftop space of the Ritz Cinema building for the purpose of a new rooftop cinema.*
- *Accordingly, the proposal presents an opportunity to enhance an existing space for the introduction of a world class, one-of-a-kind rooftop cinema experience without environmental and heritage impacts.*
- *The proposed development will maintain the existing built form and scale of the subject building when viewed the existing streetscape of St Pauls Street to the south, Perouse Road to the west and other primary vantage points within The Spot.*
- *There are no amenity impacts on the neighbouring properties as a result of the FSR non-compliance generated by the new rooftop cinema. The proposal will not adversely impact the visual privacy, solar access and views on any neighbouring apartment or the surrounding properties in the area.*
- *The non-complaint FSR of the Ritz Cinema building is an existing situation of the subject site. Given the location of the new works within the eastern portion of the rooftop, which is not visible from any public domain vantage points within The Spot and is proposed within a building already exceeding the FSR control, the proposal is unable to achieve compliance with the relevant development standard.*
- *The proposal is confined wholly within the eastern portion of the rooftop level of the existing later building addition of the Ritz Cinema and therefore avoids the removal of any original and significant heritage fabric as identified in the Conservation Management Plan dated March 2020 and submitted Statement of Heritage Impact prepared by Architectural Projects.*
- *The proposed development whilst non-compliant with the Council's numerical maximum FSR development standard, does not relate to nor does it offend, or propose any inconsistencies with the objectives of Clause 4.4 of LEP 2012 (referred to in Section 7 below).*
- *The proposal will not result in any additional patronage on site and will not generate any additional parking demand. Accordingly, the minor increase of GFA (5.9%), is a quantitative non-compliance that will not significantly alter the existing built form and its perceivable impacts or current approved operation of the site.*
- *The non-compliant FSR will not impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.*
- *To not allow variation to the relevant FSR development standard stipulated within Clause 4.4 in LEP 2012 would deprive the owners of the site the opportunity to provide a unique and sympathetic addition to their property to improve the operation, economic viability.*

Assessing officer's comment: The applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. In addition, it is noted that the site is suitably sized and configured as such to accommodate the additional FSR without resulting in any significant adverse visual impacts on the surrounding area.

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 FSR standard and B1 Neighbourhood Centre zone is provided below:

Assessment against objectives of floor space ratio standard

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

Assessment against objectives of the B1 zone

The objectives of B1 zone are:

- *“To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- *To enable residential development that is well-integrated with, and supports the primary business function of, the zone.*
- *To minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones.”*

Assessing officer's comment: The proposed development will ensure the continued operation of the Cinema for the local community. The proposed works will not result in any adverse impacts on the amenity of residents in the surrounding residential area.

The development is consistent with the objectives of the FSR standard and the B1 zone. Therefore, the development will be in the public interest.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

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

Conclusion

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

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

The applicant's written justification for the departure from the Building Height standard is contained in **Appendix 2**.

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

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

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

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

The objectives in Section 1.1 of the Randwick Comprehensive Development Control Plan 2013 (DCP 2013) outline

the following characterises and desired future character of "The Spot":

- "To protect and enhance the heritage values of the commercial area.
- To encourage and facilitate well designed and appropriate development within "The Spot" commercial centre with new
- development or alterations to existing buildings designed to be compatible with and enhance the heritage streetscape.
- To minimise the potential of the buildings within the commercial zone to adversely affect the amenity of the residential land by implementing building height planes and controls around the commercial periphery."

The proposal directly supports the objectives of Clause 4.3 Height of Buildings by ensuring that the development is of a compatible scale and size for the desired future character of The Spot. The development meets the objectives of the desired future character of The Spot by ensuring that the heritage significant elements of the Ritz Cinema building, Heritage Conservation Area and adjoining heritage item to the north are retained and protected. The objective of the proposed development is to provide a state-of-the-art cinema experience, utilising the infrastructure of an existing building that will not adversely impact the heritage significance of the area and will make a positive contribution to the economic and social vibrancy of The Spot. The development will not adversely impact the heritage qualities of the Spot Heritage Conservation Area when viewed from the principal public domain areas along the heritage streetscapes of St Pauls Street and Perouse Road.

The Local Strategic Planning Statement (LSPS) which was made effective on 26 March 2020 does not specifically include a desired future character statement for "The Spot", however, the following statements are relevant:

"Council will continue to protect the heritage values and fabric of our Heritage Items and HCAs including contributory buildings, recognising their role in the historical development of our City, sense of place and cultural identity. Development in the vicinity of heritage items and heritage conservation areas will be managed through the development assessment system to ensure it is respectful and sympathetic to the heritage values and cultural heritage significance."

"Council encourages and promotes adaptive re-use of heritage items and contributory buildings in a way that encourages activity and entices people to visit and promotes understanding of their heritage values. Development is to be historically and contextually appropriate, to ensure that the heritage values and fabric that contribute to cultural heritage significance is retained and protected."

The proposed rooftop cinema will have no adverse heritage impact on the host building and The Spot precinct as the lift overrun and rooftop cinema are located on the East and West extension which are perceived to have limited heritage value. The proposed development is essential to the ongoing viability of the heritage item and retains the use of the site through adaptive reuse and the prominent heritage features of the building. The desired future character as outlined in DCP 2013 and the LSPS will be supported by the proposed development on the basis the addition does not result in any loss of significant heritage fabric, has no impacts on the visual character of The Spot and the contribution of the building to St Pauls Street and ensures the ongoing use of the site as an important cultural facility for the community.

The site is located approximately 6.5km south east from the Sydney CBD in a B1 Neighbourhood Centre Zoned precinct known as "The Spot". The surrounding land uses in the Spot consist of neighbourhood shops licensed cafes and restaurants within the immediate vicinity of the site which contribute to a vibrant commercial centre. The site is a short 440m walk to the Randwick Light Rail Stop (commences operation in December 2019) and 60m from the nearest bus stop on Perouse Road which provides bus services to the Sydney CBD and the Eastern Suburbs.

The surrounding locality is characterised by a variety of two storey mixed use and commercial buildings fronting St Pauls Street and Perouse Road. Aeolia Lane is not the principal frontage for the site and has a currently poor amenity dominated by the existing at-grade parking of the Ritz

Cinema site and the 16 garage/car port structures and roller shutters that run along the western side of Aeolia Lane.

Whilst it is acknowledged that the proposed development will alter the existing roof profile of the building, the submitted Visual Impact Statement prepared by Alec Tzannes, dated September 2021 confirms that the primary elements of the rooftop cinema, being the cinema screen and lift overrun, will have zero visual impact from the existing streetscape of St Pauls Street and Perouse Road and other primary public spaces within The Spot Neighbourhood Centre and will be of 'low to moderate' where the screen is primarily visible from the north (rear) of the site.

It is considered that the proposed height results in a scale and density of development that is in accordance with, and promotes a consistent nature of, development within the area. As a result, the proposal does not present as being-out-of-character for "The Spot" B1 Neighbourhood Centre, the surrounding scale of development at the adjoining Brigidine and St Basil's aged care facility and buildings located within the site.

- (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 site is listed as a State Heritage Item known as the "Ritz Theatre" and the western part of the site is located in the "The Spot" Heritage Conservation Area (No. C16) under Schedule 5 of LEP 2012. The building has been designed to respect the dominant scale of the existing Ritz Cinema building and is an addition that will sit comfortably on the site and compatible in context of the heritage items in the vicinity to the north known as "Aeolia", Brigidine Convent and Chapel."

It is acknowledged that the proposed development will alter the built form of the building, and the roof profile and will result in an increase to the maximum building height. However, the development will not adversely impact the heritage significance of the site and will contribute to the economic viability of the site without taking away from the heritage characteristics and features of the site and surrounding area and will retain the use of the site. Refer to the Heritage Impact Statement prepared by Architectural Projects.

- (c) "(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 supported by a Visual Impact Assessment prepared by Tzannes. The Visual Impact Assessment concludes that the primary elements of the rooftop cinema will have zero impact from St Pauls Street to the south, Perouse Road to the west and other primary public spaces throughout The Spot. Where the screen is primarily visible from the north (rear), it has a low to moderate impact and will not result in any view loss or overlooking of neighbouring spaces.

The development will not contribute to visual bulk, loss of privacy or view loss impacts resulting from the proposed development, as supported by the Visual Impact Assessment prepared by Tzannes. The proposed development is considered reasonable in urban design and built form terms as it maintains the existing St Pauls Street streetscape, and with respect to scale, and building bulk it sits comfortably within the site and surrounding buildings on neighbouring properties within The Spot. The site is located within an established commercial and mixed use precinct and facilitates the orderly growth and development of land zoned for commercial purposes.

In light of this, the proposal will not result in any unreasonable environmental impact relating to view loss, visual imposition and overshadowing upon the neighbouring properties and will not detract from the welfare of the community or the quality of the environment on the basis the building does not abut any private recreational or public open space or residential zoned land. The proposed height of the development achieves the objective of Clause 4.3 of LEP 2012 in relation to building height, as outlined in the preceding assessment.

Assessing officer's comment: The additional height associated with the extension of the lift and the new cinema screen will not result in any change to the overall bulk and scale of the Cinema building and the building will remain consistent with the desired future character of the locality. Furthermore, the new lift extension and cinema screen will be setback from the edge of the front parapet of the

building and will not be visible within the primary streetscape in front of the site or to the west. The proposed additional building height will not result in any significant adverse visual bulk, overshadowing or privacy impacts to surrounding area. From a heritage perspective, the proposed works are supported by Council's Heritage Planner and Heritage NSW has raised no objection. The applicant's written request has adequately demonstrated that compliance with the Building Height development standard is unreasonable or unnecessary in the circumstances of the case.

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

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

There are particular constraints that affect the subject site which inhibit the development's ability to achieve strict compliance with the maximum Building height standard and a contravention of the relevant development standards is justified on environmental planning grounds on the consideration of the following:

- *The perceivable impacts of the rooftop cinema development will be limited to loss of minimal sky as well as alteration to the roof profile of the existing Ritz Cinema building. As identified within the submitted visual analysis prepared by Alec Tzannes Where the development will be primarily visible from Aeolia Lane and other surrounding properties to the north the visual impacts associated with the proposed height increase will be moderate to low.*
- *Whilst it is acknowledged that the proposed rooftop cinema will be open to the sky, the development including the proposed height increase will not result in any adverse acoustic impacts to surrounding residences on the basis that the audio from the cinema will be transmitted via headphones. The submitted acoustic analysis prepared by RWDI Australia Pty Ltd dated 5 November 2021 concludes that "The assessment has determined that the operation of the rooftop cinema after 10pm would be unlikely to generate any sleep disturbance impacts on the surrounding residential receivers. The assessment has also confirmed that noise from the operation rooftop cinema in conjunction with other sources from the site, namely mechanical plant, would not exceed any relevant noise goals."*
- *In accordance with the submitted Obtrusive Light Assessment Report prepared by Lighting, Art and Science, Pty Limited, dated 27 September 2021, the proposed rooftop cinema will not cause any adverse light spill impacts to properties surrounding the site that have views of the rooftop cinema screen. The report concludes that "there is no road that will have a view of the screen within several hundred metres so that the screen will be too small to have an impact as will be the situation for any residences on the surrounding hills, located to the south of the subject site within the R2 Low Density Residential zone, that may be able to see the screen."*
- *Whilst there will be some perceivable impacts of the two primary elements of the rooftop cinema, being the new cinema screen and lift overrun, including the loss of minimal sky as well as alteration to the roof profile of the existing Ritz Cinema building, these elements will only be visible from the rear of the site Aeolia Lane and other adjoining properties and public vantage points to the north.*
- *There are no adverse amenity impacts on the neighbouring properties as a result of the building height noncompliance generated by the rooftop cinema. The proposal has no significant adverse impacts on the visual privacy, acoustic privacy, solar access and views on any neighbouring apartment or the surrounding properties in the area.*
- *The building height exceeding the maximum requirement of Clause 4.3 is an existing situation of the subject site. Given the location of the proposed development within the eastern portion of the rooftop level away from key public domain vantage points and is proposed to a building already exceeding the building height control, the proposal is unable to achieve compliance with the relevant development standards.*
- *The proposed development whilst non-compliant with the Council's numerical maximum height of buildings, achieves compliance with the objectives of Clause 4.3 (refer to Section 7 below).*
- *The proposal presents an opportunity to convert an existing rooftop space to provide additional floor space and new cinema experience whilst maintain the residential amenity and heritage significance of the surrounding context and host building.*

- *To not allow variation to the relevant height of building clause would deprive the owners of the site the opportunity to provide a high-quality and innovative addition to their property to improve the operation, economic viability of the existing Ritz Cinema entertainment facility.*
- *Given the proposal will not result in any significant adverse impacts to surrounding development; is consistent with the envisaged built form of the locality and will maintain the heritage integrity of the Ritz Cinema building and “The Spot” Heritage Conservation Area from the key public domain along St Pauls Street, the proposed development is considered to have sufficient planning grounds to justify a variation to the maximum building height development standard.*

Assessing officer’s comment: The applicant’s written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. In addition, it is noted the new cinema screen and lift extension on the roof will not be readily visible from key public domain vantage points and the existing building already exceeds the building height development standard. The additional building height will not result in any significant adverse environmental impacts on the surrounding area.

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

To determine whether the proposal will be in the public interest, an assessment against the objectives of the Building Height standard and B1 Neighbourhood Centre zone is provided below:

Assessment against objectives of floor space ratio standard

For the reasons outlined in the applicant’s written request, the development is consistent with the objectives of the Building Height standard.

Assessment against objectives of the B1 zone

The objectives of B1 zone are:

- *“To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood.*
- *To enable residential development that is well-integrated with, and supports the primary business function of, the zone.*
- *To minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones.”*

Assessing officer’s comment: The proposed development will ensure the continued operation of the Cinema for the local community. The proposed works will not result in any adverse impacts on the amenity of residents in the neighbouring residential area.

The development is consistent with the objectives of the Building Height standard and the B1 zone. Therefore, the development will be in the public interest.

8. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

Variation of the maximum Building Height standard will allow for the orderly use of the site and there is 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 Building Height development standard.

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 and 7 and the 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 RDCP 2013. See table in Appendix 3 and the discussion in the 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 | The environmental impacts of the proposed development on the natural and built environment have been addressed in this report. The proposed development is consistent with the dominant character in the locality. The proposal will not result in detrimental social or economic impacts on the locality. |
| 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 | The issues raised in the submissions have been addressed in this report. |

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| Section 4.15 'Matters for Consideration' | Comments |
|---|--|
| accordance 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

Heritage

The Ritz cinema is a composite of three buildings. The central building is an Art Deco cinema building constructed circa 1937 and is the original cinema building adjoined by two 2 storey contemporary buildings immediately to the east and west, which forms part of the extended cinema.

The combined site is listed as Heritage Item no. I447 within the RLEP 2012. The site is also partially located within The Spot HCA. The portion of the combined site occupied by the original building (43 St Pauls Street) is identified as a State Heritage Item (SHR No.348) and the Statement of Significance is as follows:

'The Randwick Ritz is a good example of a picture theatre showing the smaller scaling and reduced decoration often applied to suburban theatres. It is one of the few surviving examples of the hundreds of cinema which were built during the 1930's, the most creative period of cinematic design in Australia It has many fine pieces of Art Deco decoration in a restrained Art Deco setting. The Ritz Theatre is a record of the cinema culture of the 1930's. The building has an excellent ability to interpret aspirations, uses, tastes and importance of cinema in the society of the 1930s It is the last known surviving theatre by A.M. Bolot. Following demolition or alteration of most suburban picture theatres, it is now an important and rare survival.'

The proposal is Integrated Development pursuant to Clause 4.46 of the EP&A Act, 1979 and was subsequently referred to Heritage NSW seeking its GTAs. Heritage NSW subsequently provided GTAs and the following advice:

"It is recommended that the height of the proposed lift overrun and stair addition to the rooftop be reduced to the minimal required to mitigate any visual impacts on the Ritz Theatre. Supporting documentation should include additional photomontages showing proposed close range and medium range views along St Pauls Street to demonstrate that the proposed addition will have no adverse visual impact on the historic art deco façade and its symmetrical presentation to St Pauls Street."

Heritage NSW have verbally advised Council officers the 'advice' was imposed so that if there is scope to reduce the size of the lift overrun and stair addition to the rooftop then it should be done. Otherwise, Heritage NSW consider it to be suitably setback from the street to minimise its visual impact. The Applicant has advised the lift overrun and stair addition have been designed to minimise its visual impact as far as possible. Council's Heritage Planner supports the proposal from a heritage perspective, noting it will be completely concealed when viewed from the front of the property via St Pauls Street, and therefore will not alter or detract from the original fabric and detailing of the front building façade of the Ritz Cinema. Council's Heritage officer also recommends the employment of tradespeople experienced in conservation works and the provision of details in relation to materials and finishes. Conditions to this effect are included in the recommended development consent.

Visual Impact

The Applicant submitted a Visual Impact Assessment (VIA) with the application. **Figure 5** shows the location of the view corridors included in the VIA. **Figures 6 to 13** illustrate the visual impact of the proposed cinema from key vantage points in the surrounding area.



Figure 5 – Location of view corridors in the Applicant's VIA

The lift extension will be located beside the projector at the middle ridgeline and setback 14.8m from the parapet fronting St Pauls Street. Therefore, the proposed lift extension will not be visible within the existing streetscape of St Pauls Street in front of the site or Perouse Road to the west and other primary public spaces within The Spot Neighbourhood Centre. The lift extension will be visible when viewed from St Pauls Street to the east, but it will be read in conjunction with the adjoining carpark building due to the angle of the view and the visual impact is minor.

The proposed cinema screen will be positioned at the northeastern corner of the cinema roof, facing south. The rear of the Randwick ritz is accessed via Aeolia Lane which is primarily used for servicing the rear of shops. The cinema screen will be visible at the termination of the laneway.

The cinema screen will be visible from Brigidine College at the rear of the site. However, the screen structure will have a relatively small width in relation to the overall width of the site and is not expected to result in any significant adverse visual impact when viewed from Brigidine College.

The rooftop cinema will change the roof profile when viewed from the windows and balconies along the western elevation of St Basil Aged Care facility. However, the new rooftop structures do not result in any significant adverse view loss and is considered appropriate within the commercial context (refer to the View Impacts in **Section 8** of this report).

From a wider perspective, the views of the cinema screen from the northeast will be largely offset by distance separation and the new roof profile is considered appropriate in a commercial context. On the basis of the above, the proposal is considered acceptable in terms of its visual impact on the surrounding area.

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Figure 6 – View from St Pauls Street and Perouse Road intersection to the west. The proposed cinema is not visible due to its 14.8m setback from the parapet



Figure 7 – View from St Pauls Street to the east of the site. The proposed lift extension will be read in conjunction with the carpark building adjoining the site to the east and not the Ritz.



Figure 8 - Existing view from Aeolia Lane at the rear of the site



Figure 9 – Proposed view from Aeolia Lane at the rear of the site. The outline of the screen is shown in beige and green. The grey shading is the approved envelope of Cinema 8.



Figure 10 - Existing view from Brigidine College multi-purpose building at the rear of the site.

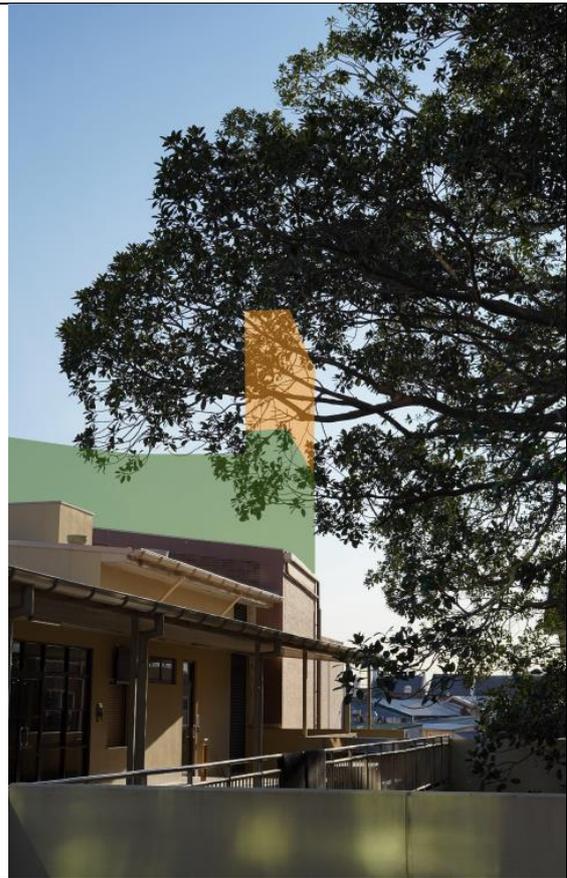


Figure 11 - Proposed view from Brigidine College multi-purpose building at the rear of the site.



Figure 12 - Existing view from the 1st floor balcony at 21-23 Perouse Road, 100m to the northwest



Figure 13 – Proposed view from 1st floor balcony at 21-23 Perouse Road, 100m to the northwest

View Impacts

Part C1 Section 5.6 of RDCP 2013 establishes the concept of view sharing to ensure equitable distribution of views between development and neighbouring dwellings and the public domain.

The NSW Land and Environment Court has developed a planning principle relating to view sharing based on the case of Tenacity Consulting v Warringah Council (2004) NSWLEC 140. Where view loss is likely to occur development proposals must address the view impact requirements of RDCP 2013 and the planning principle.

The Applicant submitted a VIA with the application.

Concerns were raised by the St Basils Aged Care Facility, located 50m to the east of the proposed development at 57-63 St Pauls Street, in relation to the impact upon district views to the west attained from the existing windows along the western elevation of its aged care facility.

St Basil's allowed the Applicant to access to some rooms to take photos and assist with the preparation of a VIA. This report therefore relies on the Applicant's VIA to assess the view impacts from St Basils Aged Care facility. The location of the views attained from St Basils Aged Care Facility are shown in **Figures 14 to 16**.

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Figure 14 - East view from the roof of the Randwick Ritz showing the windows locations at the western elevation of the St Basils Aged Care Facility



Figure 15 - Level 3 – Window location at St Basils Aged Care Facility



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Figure 16 - Level 4 – Window location at St Basils Aged Care Facility

To assess whether the extent of view loss resulting from the proposed lift extension and cinema screen is reasonable, an analysis has been undertaken with reference to the Land and Environment Court Planning Principle established in the matter of Tenacity Consulting v Warringah (2004) NSWLEC 140:

The view loss assessment is carried out against the following four step process:

1. Quality of Views:

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

The existing views are described in the table and illustrated in the photos above (**Figures 1 to 4**).

| Address | Type of View | Location/Position |
|---|--|----------------------------------|
| St Basils Randwick Aged Care Facility at 57-63 St Pauls Street Randwick | | |
| Level 4 common sitting area | Sky views, rooftops and vegetation in the foreground and partial district view and hospital buildings beyond | Common sitting area |
| Level 4 – west facing balcony outside Room 424 | Sky views, rooftops and vegetation in the foreground and partial district view and hospital buildings beyond | Balcony adjoining aged care room |
| Level 3 – Room 323 (inside) | Sky views, rooftops and vegetation in the foreground and partial district view and hospital buildings beyond | Aged care room |

2. Reasonable Expectation of View Retention:

The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from

front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

The partial district views available across the top of the cinema roof to the west are attained from bedrooms, living areas and common areas across the rear boundary in a standing position.

3. Extent of Impact:

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

The Applicant’s VIA includes a photomontage showing the proposed development from the St Basils Aged Care facility (refer to **Figures 17 to 19**).



Figure 17 – View from the sitting room at Level 4 (profile of the proposed cinema outlined in orange)



Figure 18 - View from the balcony outside Room 424 at Level 4 (profile of the proposed cinema outlined in orange)

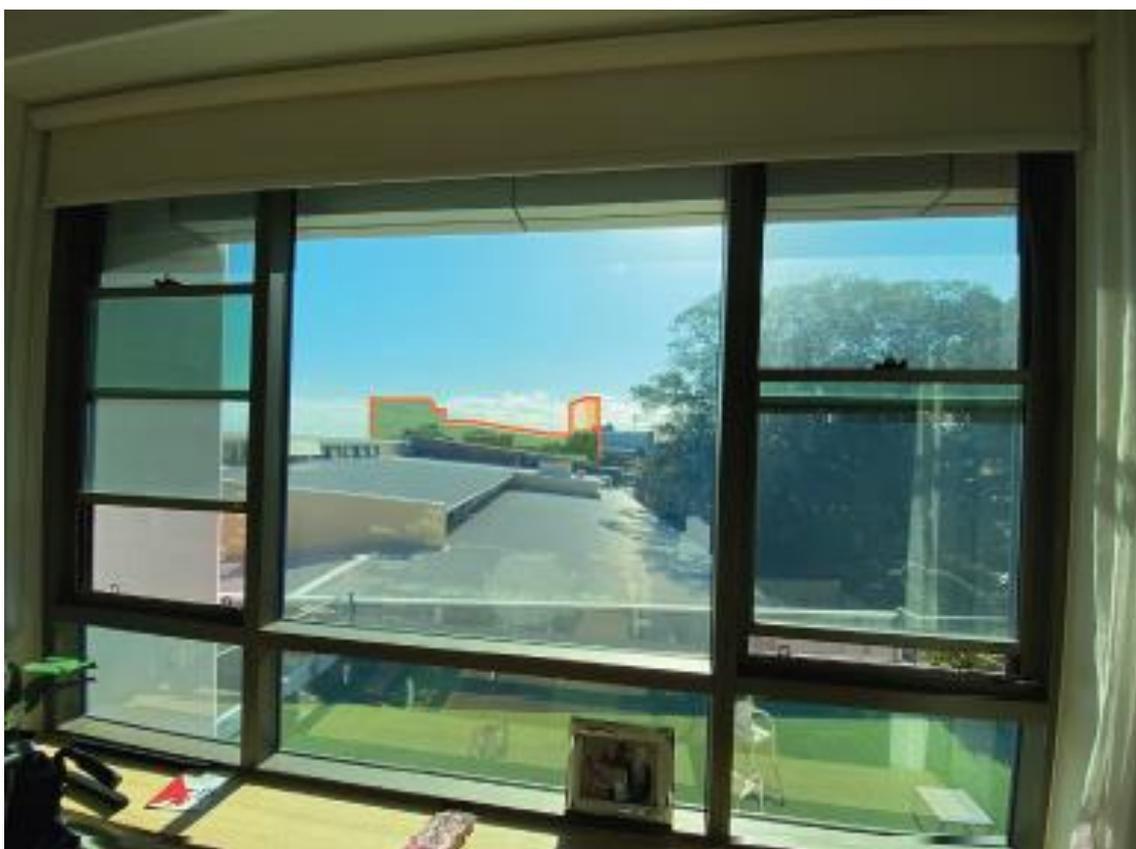


Figure 19 – View from inside bedroom 323 at Level 3 (profile of the proposed cinema outlined in orange)

The proposal will alter the roof profile of the building and result in a moderate loss of district view to the west. The vegetation in the foreground and sky views beyond will remain largely unaffected.

4. Reasonableness of Proposed Development:

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

The partial loss of district views to the west from the St Basils Aged Care Facility is attributed to the proposed lift extension, balustrade and planter along the sides of the tiered seating area and the cinema screen. Whilst these structures do not comply with the maximum building height development standard under RLEP 2012, there is no scope to reduce the size or height of these new building elements given the specialised nature of the development proposed and the need to provide lift access and ensure the proportions of the cinema screen maximise the patron viewing experience in an open environment.

The impact on the district views will not result in any significant adverse amenity impacts for the occupants of the affected rooms/sitting area in the St Basils Aged Care Facility as the existing vegetation in the foreground and the sky views beyond will remain largely unaffected. Furthermore, these rooms will continue to receive good solar access. On that basis, the proposal is acceptable and view sharing is reasonable.

Acoustic Impacts

The Applicant submitted a Noise Impact Assessment (NIA) with the application to assess the potential noise impacts from the operation of the outdoor cinema. The proposed rooftop cinema will have a capacity of 100 patrons and include a bar area at the rear. The patrons would enter via a new stair located in the south-east section of the cinema. The proposed hours of operation are between 6pm (after sunset) and 12 midnight, Thursday, Friday and Saturday.

The nearest identifiable residential receivers are located at 25-31 Perouse Road, on the corner of Aeolia St and Perouse Road and shop-top housing along St Pauls Street and Perouse Road. Due to the proposed operational hours of the outdoor cinema, from sunset to 12.00am after school hours, an assessment of noise impacts to the adjoining Brigidine College has not been undertaken. The NIA includes unattended noise monitoring conducted at the nearest residential receivers between 2 September and 13 September 2021.

Background noise levels were dominated by existing mechanical plant servicing the commercial premises on St Pauls Street up until approximately 9:00pm. Some traffic noise from St Pauls Street was also audible. It should also be noted that noise monitoring was conducted during COVID19 lockdown restrictions. Therefore, the measured noise levels may be less than what would be expected during unrestricted periods.

The audio from the movie will be transmitted to patrons via wireless headphones. Therefore, the only potential noise impacts associated with the showing of a movie are patron talking noise before and after the movie and patron reactions during the movie.

The NIA indicates that when the predicted noise level at the nearest residential receivers is compared against the sleep disturbance criteria, there will be no sleep disturbance impacts expected from the operation of the proposal. Furthermore, the assessment has also confirmed that noise from the operation rooftop cinema in conjunction with other sources from the site, namely mechanical plant, would not exceed any relevant noise goals. The Plan of management submitted with the application indicates that the pack down/cleaning time by staff will occur by 12:15am. However, the NIA recommends pack down/cleaning by staff should be finished by 12 midnight and no noise generating machinery should be used. Conditions to this effect are included in the recommended development consent.

Council's Environmental Health Officer (EHO) questioned some of the background noise levels and sleep disturbance criteria adopted in the Applicant's NIA. Notwithstanding, Council's EHO notes the NIA has determined that the operation of the rooftop cinema after 10:00pm would be unlikely to generate any sleep disturbance impacts on the surrounding residential receivers.

Council's EHO recommends conditions including a detailed noise assessment, verification of background noise levels, restrictions on the use of music or speakers, patron management and the hours of operation. Conditions to this effect are included in the recommended development consent

Subject to the imposition of appropriate noise conditions on any consent granted, the proposal is acceptable in terms of acoustic impacts.

Hours of Operation

The proposed hours of operation are from 6:00pm (sunset) to 12 midnight Thursday, Friday and Saturday.

Due to the proposal being an outdoor rooftop cinema, the sessions can only commence after dark. The movie sessions will run primarily during the Spring and Summer months when the weather is most amenable, and when the sun does not set until after 8:00pm. To allow for complete darkness before the session begins, a movie may commence after 8:00pm in the Summer. The proposal envisages generally one movie sitting per session. The bar will be open approximately 45 minutes before the movie commences.

On 13 February 2020, Council approved the installation of a temporary outdoor cinema screen in the laneway at the rear of the site between 6:00pm and 12 midnight, seven days a week

(DA318/2019/A). It was subject to a trial period ending on 31 March 2021. Council's EHO advises a search of Council records indicates there have been no noise complaints since 2018 or related to the temporary outdoor cinema.

Part D13 of RDCP 2013 establishes the hours of operation for late night trading premises in the B1 commercial zone. Outdoor areas are allowed to trade up to 10:00pm Mondays to Saturdays and 9:30pm Sundays. The proposal seeks to trade until 12 midnight, which does not comply with the maximum 10:00pm for outdoor areas in the B1 zone.

The key objective of the late night trading controls is to protect the amenity of the surrounding area, particularly residential uses. Despite the non-compliance with the late night trading controls, the proposal is in keeping with the objectives in that the proposed outdoor cinema use is relatively low key as the patrons will be seated while watching a movie with headphones. There is no intention to use the space as a bar and alcohol will only be served in conjunction with the movie. Furthermore, there will be no amplified music.

The Plan of Management submitted with the application adopts a range of mitigation and management measures, including the ushering of patrons in and out of the rooftop cinema quickly and quietly to reduce noise and protect the amenity of the surrounding area. Conditions to this effect are included in the recommended development consent. On that basis, the proposed hours of operation until 12 midnight are acceptable, subject to a one year trial period to allow Council to review the performance of the outdoor cinema. A condition to this effect is included in the recommended development consent.

Light Spill

The Applicant submitted an Obtrusive Light Assessment (OLA) to address the potential light impacts from the cinema screen to the surrounding area. The proposed rooftop cinema comprises a cinema projector and a reflective projection screen and lighting associated with safe movement of the customers and the new bar.

The movie will be projected onto the screen from a laser cinema projector. The screen will be 8m wide by 3.38m high and will be constructed of stretched signage fabric. The proposed projector has a zoom lens that can be adjusted to ensure the image is within the boundary of the screen. The screen will be opaque to eliminate light emission from the back of the screen.

Australian Standard AS/NZS4282:2019 Control of the obtrusive effects of outdoor lighting specifically refers to the potentially adverse effects of outdoor lighting on nearby residents and users of roads, and is broadly adopted by most Councils as a regulatory standard for outdoor lighting installations.

The nearest residential development potentially affected by light spill is the St Basils Aged Care facility to the east of the subject site. The Applicants OLA includes the following comments:

The St Basils Residential Aged care facility located to the east of the subject site, can only see edge of the screen and the angle is so acute that the luminance will be minimal. There is no road that will have a view of the screen within several hundred metres so that the screen will be too small to have an impact as will be the situation for any residences on the surrounding hills, located to the south of the subject site within the R2 Low Density Residential zone, that may be able to see the screen. The impact from this distance will be similar to a neighbour's television.

The screen is orientated to the south and would be partially obscured by the roof of the Ritz Cinema building and the raked seating and balustrade. As the projection onto the screen will be focussed through a lens, there will be no stray light outside the beam. When viewed from behind, there will be no transmission of light through the screen and no light trespass of the beam around the screen.

The Applicant's OLA concludes that the proposed projector and screen will have minimal impact on the surrounding residents and road users and is fully conforming to the recommendations of *AS/NZS4282:2019 Australian Standard for obtrusive lighting*.

Council's EHO has raised no objections to the methodology and findings in the Applicant's OLA and recommends a condition to ensure the lighting does not adversely impact the amenity of the surrounding area in accordance with *AS/NZS4282:2019 Control of the obtrusive effects of outdoor lighting*. A condition to this effect is included in the recommended development consent.

Subject to the imposition of appropriate lighting conditions on any consent granted, the proposal is acceptable in terms of potential light spill.

9. Conclusion

That the application for alterations and additions to the Randwick Ritz Cinema including a new rooftop cinema for 100 seats be approved (subject to conditions) for the following reasons:

1. The proposed development is consistent with the relevant objectives contained within the Randwick Local Environmental Plan 2012 and the relevant requirements of the Randwick Development Control Plan 2013.
2. The proposed development is consistent with the objectives of the B1 Neighbourhood Centre zone within Randwick Local Environmental Plan 2012 in that the proposal will ensure the ongoing viability of the cinema with minimal impact on the amenity of residents in the surrounding area, subject to the imposition of appropriate conditions on any consent granted.
3. The variations to clause 4.3 Height of Buildings and clause 4.4 Floor Space Ratio within Randwick Local Environmental Plan 2012 are supported given the applicant's written requests seeking an exception to the development standards have adequately demonstrated those matters that are required to be demonstrated in clause 4.6(3) and the development is in the public interest in accordance with clause 4.6(4).
4. The proposed development will not have an adverse visual impact as it will not be visible within the existing streetscape of St Pauls Street in front of the site or Perouse Road to the west and other primary public spaces within The Spot Neighbourhood Centre.
5. The proposed development will not change the overall bulk and scale of the building within the primary streetscape and is compatible with the desired future character of the locality.
6. The proposed development will not result in any significant adverse overshadowing, view loss or visual privacy impacts to the surrounding area.
7. The proposed development is a relatively low key use, and will not result in any adverse acoustic impacts, subject to the imposition of appropriate conditions on any consent granted.
8. The proposed development will not result in any adverse light spill to the surrounding area, subject to the imposition of appropriate conditions on any consent granted.
9. The proposed development is in accordance with Clause 5.10 Heritage Conservation of the Randwick Local Environmental Plan 2012 given it will not adversely impact the heritage qualities of the State Heritage Item or the Heritage Conservation Area.
10. The proposed development will make a positive contribution to The Spot Neighbourhood Centre by providing a unique outdoor cinema experience.
11. The proposed development will result in a reduction in the overall seating capacity and there will be no increase parking demand or traffic generation.
12. The proposed development will assist with the long-term viability of the business, resulting in a positive impact for the local community and visitors to the cinema.

Appendix 1: Referrals

1. External referral comments:

1.1. Heritage Council



Heritage NSW

HMS Application ID: 799
Your ref: CNR-34949 - DA/793/2021

D34/22

Thomas Mithen
Planner
Randwick City Council
30 Frances St
RANDWICK NSW 2031

By email: thomas.mithen@randwick.nsw.gov.au

Dear Mr Mithen

HERITAGE COUNCIL OF NSW – GENERAL TERMS OF APPROVAL INTEGRATED DEVELOPMENT APPLICATION

Address: 43 St Pauls Street RANDWICK NSW 2031
SHR item: Ritz Theatre, SHR no. 00348
Proposal: Ritz Theatre - Alterations and additions to the Randwick Ritz Cinema accommodating a new rooftop cinema for 100 seats
IDA application no: HMS ID 799, received 9.02.2022

As delegate of the Heritage Council of NSW (the Heritage Council), I have considered the above integrated development application. In accordance with Section 4.47 of the *Environmental Planning and Assessment Act 1979*, the following general terms of approval are granted:

Note: The following general terms of approval relate to only those works that are located within the curtilage of the State Heritage Register (SHR) listed item, *Ritz Theatre*.

APPROVED DEVELOPMENT

1. Development must be in accordance with:
 - a. Architectural drawing prepared by ITN Architects International as listed below:

| Dwg No | Dwg Title | Date | Rev |
|---|---|------------|-----|
| Project Name: Ritz Cinema – Rooftop Cinema Application | | | |
| A101 | Existing/Proposed Site Plan | 25.11.2020 | - |
| A102 | Existing/Demolition Ritz Cinema Basement | 25.11.2020 | - |
| A103 | Existing/Demolition Ritz Cinema Ground Floor | 25.11.2020 | - |
| A104 | Existing/Demolition Ritz Cinema East Wing Mezzanine | 25.11.2020 | - |
| A105 | Existing/Demolition Ritz Cinema First Floor Plan | 25.11.2020 | - |
| A106 | Existing/Demolition Ritz Cinema Rooftop Plan | 25.11.2020 | - |
| A107 | Existing/Demolition Ritz Cinema West Elevation | 25.11.2020 | - |
| A108 | Existing/Demolition Ritz Cinema South Elevation | 25.11.2020 | - |

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| | | | |
|------|---|------------|---|
| A109 | Existing/Demolition Ritz Cinema Section A | 25.11.2020 | - |
| A110 | Existing/Demolition Ritz Cinema Section B | 25.11.2020 | - |
| A111 | Approved Ritz Cinema Basement | 25.11.2020 | - |
| A112 | Approved Ritz Cinema Basement | 25.11.2020 | - |
| A113 | Approved Ritz Cinema Ground Floor | 25.11.2020 | - |
| A114 | Approved East Wing Mezzanine | 25.11.2020 | - |
| A115 | Proposed Ritz Cinema First Floor Plan | 25.11.2020 | - |
| A116 | Proposed Ritz Cinema Entry Foyer Plan | 25.11.2020 | - |
| A117 | East Wing Projection Room Level | 25.11.2020 | - |
| A118 | Proposed Ritz Cinema Rooftop Plan | 25.11.2020 | - |
| A119 | Proposed Ritz Cinema West Elevation | 25.11.2020 | - |
| A120 | Proposed Ritz Cinema East Elevation | 25.11.2020 | - |
| A121 | Proposed Ritz Cinema Section B | 25.11.2020 | - |
| A122 | Proposed Ritz Cinema Section C | 25.11.2020 | - |
| A123 | Ritz Shadow Diagram 8am June 22nd | 25.11.2020 | - |
| A124 | Ritz Shadow Diagram 9am June 22nd | 25.11.2020 | - |
| A125 | Ritz Shadow Diagram 10am June 22nd | 25.11.2020 | - |
| A126 | Ritz Shadow Diagram 11am June 22nd | 25.11.2020 | - |
| A127 | Ritz Shadow Diagram 12pm June 22nd | 25.11.2020 | - |
| A128 | Ritz Shadow Diagram 1pm June 22nd | 25.11.2020 | - |
| A129 | Ritz Shadow Diagram 2pm June 22nd | 25.11.2020 | - |
| A130 | Ritz Shadow Diagram 3pm June 22nd | 25.11.2020 | - |
| A131 | Ritz Shadow Diagram 4pm June 22 nd | 25.11.2020 | - |
| A132 | Rooftop Cinema Material Swatches | 25.11.2020 | - |

EXCEPT AS AMENDED by the following general terms of approval:

PROTECTION OF SIGNIFICANT FABRIC

2. Significant built and landscape elements are to be protected during site preparation and the works from potential damage. Protection systems must ensure significant fabric, including landscape elements, is not damaged or removed.

Reason: to reduce impact on significant fabric.

HERITAGE CONSULTANT

3. A suitably qualified and experienced heritage consultant must be nominated for this project. The nominated heritage consultant must provide input into the detailed design, provide heritage information to be imparted to all tradespeople during site inductions, and oversee the works to minimise impacts to heritage values. The nominated heritage consultant must be involved in the selection of appropriate tradespersons and must be satisfied that all work has been carried out in accordance with the conditions of this consent.

Reason: So that appropriate heritage advice is provided to support best practice conservation and ensure works are undertaken in accordance with this approval.

SPECIALIST TRADESPERSONS

4. All work to, or affecting, significant fabric shall be carried out by suitably qualified tradespersons with practical experience in conservation and restoration of similar heritage structures, materials and construction methods.

Reason: So that the construction, conservation and repair of significant fabric follows best heritage practice.

UNEXPECTED HISTORICAL ARCHAEOLOGICAL RELICS

5. The applicant must ensure that if unexpected archaeological deposits or relics not identified and considered in the supporting documents for this approval are discovered, work must cease in the affected area(s) and the Heritage Council of NSW must be notified. Additional assessment and approval may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

Reason: This is a standard condition to identify to the applicant how to proceed if historical archaeological deposits or relics are unexpectedly identified during works.

COMPLIANCE

6. If requested, the applicant and any nominated heritage consultant may be required to participate in audits of Heritage Council of NSW approvals to confirm compliance with conditions of consent.

Reason: To ensure that the proposed works are completed as approved.

SECTION 60 APPLICATION

7. An application under section 60 of the *Heritage Act 1977* must be submitted to, and approved by, the Heritage Council of NSW (or delegate), prior to work commencing.

Reason: To meet legislative requirements.

Advice

It is recommended that the height of the proposed lift overrun and stair addition to the rooftop be reduced to the minimal required to mitigate any visual impacts on the *Ritz Theatre*. Supporting documentation should include additional photomontages showing proposed close range and medium range views along St Pauls Street to demonstrate that the proposed addition will have no adverse visual impact on the historic art deco façade and its symmetrical presentation to St Pauls Street.

Section 148 of the *Heritage Act 1977* (the Act) allows people authorised by the Minister to enter and inspect, for the purposes of the Act, with respect to buildings, works, relics, moveable objects, places or items that is or contains an item of environmental heritage. Reasonable notice must be given for the inspection.

Right of Appeal

If you are dissatisfied with this determination, section 70A of the Act gives you the right of appeal to the Land and Environment Court.

If you have any questions about this correspondence, please contact Stela Razzaque, Senior Heritage Planning Officer, at Heritage NSW on or stela.razzaque@environment.nsw.gov.au.

Yours sincerely

Shikha Jhaldiyal
Acting Manager Assessments
Heritage NSW
Department of Planning and Environment (DPE)
As Delegate of the Heritage Council of NSW
17/04/2022

2. Internal referral comments:

2.1. Heritage Planner

Council's Heritage Planner provided the following comments:

The Site

The subject site is located at No 39-47 St Pauls Street Randwick (with a primary address 43 St Pauls Street Randwick 2031). It is located on the north side of St Pauls Street near the intersection of Perouse Road, with a main street frontage to St Pauls Street and a rear access to Aeolia Lane.

The current legal designation of the site is Lot 101, DP 1029883, being a consolidation of several former land parcels. It is irregular in shape with a frontage to St Pauls Street of 41 metres; an east boundary of 43 metres; an abuttal to No 37 St Pauls Street of 37 metres at its immediate west; an abuttal to the campus of Brigidine College Randwick of 25 metres at its immediate north; and a rear façade to Aeolia Lane at its northeast corner. The site has a total area of 1,568 sqm.

The current presentation is a composite of three buildings over several historical land parcels:

- (a) The historical 1937 Ritz Cinema*
- (b) The 1997 East Extension*
- (c) The 2001 West Extension*

It is noted that component (a) is the principal heritage item, legally defined at the State level as a Government Gazette Plan of 1943, being Lot A in D.P. 334555 (see image below).

The local listing text description also designates this central original component of the cinema complex as the principal heritage item. However, it is noted that Council's 2013 heritage map incorporates the total current site as a single local heritage item – Number I447.

The 'West Extension' portion of the site (purchased 2001) is also part of the locally listed Heritage Conservation Area (HCA) known as the 'The Spot'. Therefore, the historical State listed central portion of the cinema abuts that HCA at its west boundary.

Adjoining the combined site further to this west side, and also contained within 'The Spot' HCA, is a row of two-storey terraces with ground floor restaurants and cafes, as well as some shop-top housing.

To the immediate north and east of the cinema complex is Brigidine College secondary school campus, as well as a car parking facility (which is also part of the Brigidine College site). These sites are shaded as a consolidated locally listed heritage item – Number I248.

Directly opposite the cinema complex there are several neighbourhood shops, including cafes and restaurants. These are also within "The Spot" HCA. This collection includes a further locally listed heritage item – Number I448, being 'Pan Arcadian House' a former Masonic Temple building at 42-44 St Pauls Street. It is noted that this item does not have viewing windows at its first floor level.

A residential aged-care facility known as 'St Basil's Randwick' is located approximately 55m to the east of the Ritz site, at the corner of St Pauls Street and Daintrey Crescent.

Background

Randwick LEP 2012 Local Listing

The local listing specifies in text that the central 1937 historical portion of the Ritz cinema complex is the heritage item. However, the address of 39-47 St Pauls Street includes both the east and west wings of the building, and that total complex is shaded as a local heritage item within Council's heritage map.

As noted above, number 39 St Pauls Street is also part of the local HCA known as 'The Spot'. Thus, the west part of the building, at number 39 is included in that HCA, while the remainder of the building abuts the HCA.

Characteristics of 'The Spot' Heritage Conservation Area

This HCA is described as a cohesive precinct with a curved commercial centre on Perouse Road and St Pauls Street, surrounded by residential areas of mixed styles, reflecting Victorian, Federation, and Interwar periods. The commercial centre is built to the street alignments and dwellings are mostly single and double story. There are some taller flat buildings and educational buildings. The area is characterised by established plantings and mixed vistas.

The subject cinema complex site occupies a long-established setting within this vibrant commercial and educational hub, providing an essential cultural entertainment centre.

Local Listing Description of Site

The Ritz Cinema is described as:

A modern 1930's style cinema building. Well-executed Art Deco design in good repair. Symmetrical rendered front with stepped parapet. Cantilevered awning. Façade is little altered ... A.M. Bolot designed it as a modern style cinema. The luxurious new cinema opened in July 1937 and is now the only commercial cinema in Randwick. From 1962 to 1985 the cinema was owned by the sisters of the Brigidine Congregation, whose convent lands adjoin to the north.

Significance: The building was the first modern-style cinema in Randwick. But for minor functional alterations and promotional décor, the 'Ritz' survives as it was originally built. One of only a few Art Deco cinemas of the 1930's still operating in NSW.

Summary of developed usage of the cinema

- 1954 – Alterations for a wider screen
- 1963 - Interior re-decoration
- 1984 – Interim Conservation Order
- 1993 – Permanent Conservation Order
- 1995 – Purchase of adjoining shops (east side)
- 1997 – Three new cinemas added (east side)
- 2001 – Purchase of adjoining site and two more cinemas added (west side)
- 2008 – Glass awning deck (front façade)
- 2009 – New mezzanine level (interior)
- 2014 – Continued use of awning area (front façade) as outdoor seating dining area as well as carparking changes
- 2019 – Installation of a temporary outdoor cinema screen adjacent to Aeolia Lane

The Ritz Cinema has current approval for a total nine (9) cinemas, a waiting foyer, a mezzanine lounge, a candy bar, and toilet facilities.

This summary of development outlines the ongoing use of the premises for its singular purpose as a cultural hub over changed social and industry circumstances. This development is detailed in the Conservation Management Plan (CMP) prepared by Architectural Projects March 2020 (Author Amanda Jean).

The subject site was acquired by Arverne Pty Ltd in March 2019. This company owns and operates several cinemas that provide an outdoor and rooftop cinema experience.

D34/22

Heritage Council of New South Wales
 PLAN
 Under the Heritage Act, 1977
 Description Lot A D.P. 334555 - 'The Ritz Theatre'
 Mun./Shire/City Randwick Locality Randwick
 Parish of Alexandria County of Cumberland
 Scale 1:800

| COMPILED FROM INFORMATION IN | FILE REFERENCE | PLAN APPROVED | PLAN NUMBER |
|------------------------------|----------------|--|-------------|
| file A.E.B. DATE 19-6-84 | HC 33112 | <i>Ann Math</i> FOR SECRETARY, HERITAGE COUNCIL | HC. 832 |

THIS IS THE PLAN REFERRED TO IN ~~INTERIM~~ PERMANENT CONSERVATION ORDER No. 27 OF 1988
 N.S.W. GOVERNMENT GAZETTE No. 26 OF 19.3.83
 SUBJECT LAND SHOWN THUS.

State Heritage Listing

The central component of the subject site is a State Heritage listed item (State Heritage Register Item No.00348 known as 'Ritz Theatre').

The Permanent Conservation Order of 1993 pertains to Lot A DP 334555, a government gazette Plan of 19. 03.1943 and not the current consolidated plan for the total complex.

State Heritage Assessment

The 1937 Ritz Cinema comprised a single cinema with no car parking. This historical central item was listed under the Heritage Act 2/04/1999 as Instrument No. 00348 Plan No 832 Gazette No. 27, Gazette Page 1546, Heritage Item ID 5045406.

The significance of the building is defined as:

... the first modern style cinema in Randwick. But for minor functional alterations and promotional décor, the Ritz survives as it was originally built. One of only a few Art Deco cinemas of the 1930's still operating in NSW.

It is assessed as aesthetically significant because the exterior and interior detailing in craft and skills and is highly representative of expressionist futuristic cinemas of the late 1930's, particularly the work of its architect A.M. Bolot. It also shows an excellent record of changing cinema culture. Its archaeological potential is deemed low.

Then, between 1996 and 2001, a total of five (5) new cinema theatres were added. Further building alterations and additions to both the internal and external areas resulted in an increase to the total patron capacity.

The Conservation Management Plan (CMP)

A detailed overview of the site history is provided within the Conservation Management Plan of 2020 (Architectural Projects Pty Ltd). In summary:

The Ritz Cinema is one of the few surviving examples of the hundreds of cinemas which were built during the 1930's, the most creative period of cinematic design in Australia. The Ritz Cinema is an excellent example of the art deco style ... showing the evolution of the theatre from the picture palaces of the 1920s, to the French inspired art deco designs of early 1930s ... The Ritz Cinema provides an essential cultural entertainment centre, with strong cultural heritage in the Randwick Area.

Proposal

The drawings prepared by ITN Architects International detail:

- *Construction of a rooftop Cinema with screen and seating for 100 patrons, located within the east portion of the existing rooftop level of the Ritz Cinema building and substantially at its northeast end.*
- *Construction of a stepped, finished floor to facilitate a stepped seating arrangement to maximise screen view lines.*
- *A marginal height extension of rooftop presentation, including the lift overrun.*
- *Associated works for perimeter containment, safety, plantings and limited downward-directed illumination.*
- *The provision of a rooftop bar.*
- *An extension of the existing internal staircase to provide entry from below within the east component of the complex.*
- *The provision of a rear fire-stair egress (north) into Aeolia Lane, which would not impact the central State heritage listed component.*
- *Provision of film audio transmitted via headphones only.*

The general aims of the proposal are to:

- *Enhance a designated 'Strategic Centre' of the Randwick LGA by a creative approach to the cinema experience.*
- *Enhance commercial night-time activity in the continuation of the immediate cultural precinct of The Spot.*
- *Utilise a minimal footprint in an existing neutral space, in a manner that respects the heritage significance of the existing built complex, but particularly the central heritage component of site.*

Submission

The submission includes:

- *An extensive set of highly detailed plans.*
- *An acceptable Statement of Environmental Effects (SEE), supported by detailed reports of immediate precinct environmental impact for:*
 - (a) *Visual impact in the immediate precinct and beyond, including photomontages from numerous significant surrounding points.*
 - (b) *Lighting radiance analysis – of the proposed downwards-directed and facility-contained lighting.*
 - (c) *Operational sound and patron noise.*

- *A detailed Conservation Management Plan (CMP) incorporating a thorough history of Development Applications (Architectural Projects March 2020).*
- *An acceptable Heritage Impact Assessment (HIA).*
- *A consultation schedule of on-site engagement and dialogue with immediate neighbours*
- *A detailed artistic impression of finishes, along with material swatches*

The submission notes the importance of the central historical component of the cinema complex, particularly the continued physical and visual appreciation of the central façade and the established roofline.

The submission notes that the rear façade was never considered integral to the original design, and that the rear section has been modified and added to over time.

Controls

External Referral - NSW Heritage Council

The Ritz Cinema is listed on the State Heritage Register under the provisions of the Heritage Act 1977 (Item Reference No. 00348). As noted above, that listing specifically comprises the central portion of the complex as delineated by its historical land title 19.03.1943 (Lot A D.P. 334555).

The NSW Heritage Council is the consent authority for any development proposal for such a site, requiring either the submission of an Integrated DA, or a prior Section 60 application under the NSW Heritage Act 1977.

This application is seeking development consent for the purpose of Integrated Development under the provisions of the NSW Heritage Act 1977 and therefore requires concurrence from the NSW Heritage. Accordingly, General Terms Approval is therefore required to be issued by NSW Heritage prior to the determination of this application.

Internal Referral - Randwick Council

The site is also identified as a heritage item under the Randwick LEP 2012, in Schedule 5 Environmental Heritage, as Item Number 1447.

A portion of the consolidated site (at its west side) is also part of 'The Spot' Heritage Conservation Area (HCA).

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 itself, as well as on the heritage conservation area.

The Heritage section of Randwick Development Control Plan 2013 provides Objectives and Controls in relation to heritage properties.

These considerations include:

- *Design and siting to ensure retention of contributory features of the building itself, and its relationship to the streetscape, to neighbouring properties, and to the characteristics of the HCA as outlined in the Randwick DCP 2013.*
- *Minimisation of impact on the general perception of the heritage building within its context by a sensitive approach to all elevations, height, visual dominance and competing design or pattern of any introduced elements.*

- *Perceived setback.*
- *Retention of the item in a condition of good repair.*
- *The deployment of quality, understated materials, finishes and colour schemes.*

Comment

External Authority Assessment - Considerations Discussed with NSW Heritage Assessment Officer (13 April 2022)

It was noted that the proposed works schedule alterations and additions to only the east component of the cinema complex, and more specifically at the northeast end.

Careful evaluation of the proposal, along with its detailed plans, the photomontages, the Ritz Conservation Management Plan (CMP), the Heritage Impact Assessment (HIA) and the Statement of Environmental Effects (SEE) demonstrates:

- *The proposal does not constitute development per se on a State listed heritage item. There would be no physical impact upon the item itself. Therefore, from a physical analysis the proposal is acceptable in that it will not materially impact the significant original fabric of the Ritz Cinema.*
- *The fire exit stairway is proposed to be located on the rear façade of the building, with egress into the rear lane, which is in a non-significant area of the building.*
- *The proposed development is located at the northeast (rear end) of the east portion of the rooftop. It is set back approximately 17 metres from the front façade. It would not have a visual impact upon any contributory features or characteristics of the existing Ritz Cinema, particularly its frontage to St Pauls Street. The public and users will still be able to view and appreciate the significance of the Ritz Cinema.*
- *The proposed development would not visually impact the immediate curtilage around the heritage item, which is deemed to be the wider setting of 'The Spot' HCA.*
- *The proposed rooftop cinema would have a low to moderate visual impact to Aeolia Lane and other adjoining properties to the north. However, this north rear-facade (which has long been utilitarian in nature) has been substantially altered over time. There appears to be no evidence that it was considered a key presentation of the historical cinema.*
- *It is noted that there will be a minimal visual impact on the wider precinct. However, the detailed photomontages from numerous vantage points demonstrate the overall minimal visual impact within the wider precinct, especially given the oblique angles and low rise of the principal introduced elements (essentially the screen and the lift overrun).*
- *There is a marginal increase to the height of the roof structure, for the elevator overrun, the perimeter containment and plantings, as well as the rear fire-escape stairway. However, that minimal increase is not substantially discernible in its scale, form and detailing from the existing built complex. No elements will dominate the presentation.*
- *The development is not sited on any known, or potentially significant archaeological deposits.*
- *The proposed works further enhance the cultural experience of the precinct and are essential for the ongoing viability of the theatre.*
- *The proposed works are reversible.*

In general, therefore, the proposal is sympathetic to the heritage values of the State Heritage item and is in keeping with the Conservation Management Plan (CMP) prepared by Architectural Projects, dated March 2020

Internal Authority Assessment - Randwick Planning

While it is noted that the proposed works schedule alterations and additions to only the east component of the cinema complex, that component also comprises part of the local heritage listing, shaded as item I447 in Schedule 5 Randwick LEP 2012.

However, careful evaluation of the proposal, along with its detailed plans, photomontages, the Ritz Conservation Management Plan (CMP), the Heritage Impact Assessment (HIA) and the Statement of Environmental Effects (SEE) demonstrates:

- *The proposal is appropriately located at the north-east (rear end) of the east portion of the rooftop. It will not impact the significant original fabric of the Ritz Cinema nor introduce any competing elements. The additions, fit-out and use of the rooftop level will be contained wholly within the subject property.*
- *The proposal will be completely concealed when viewed from the front of the property via St Pauls Street and therefore will not alter or detract from the original fabric and detailing of the front building façade of the Ritz Cinema.*
- *It does not alter any other contributory features or characteristics of the existing Ritz Cinema.*
- *It has no perceivable physical or visual impact on other surrounding contributory heritage items. In particular, the proposal is not considered to cause any unreasonable visual impact to the adjoining local heritage item at No 6 Aeolia Street, identified as Aeolia Brigidine Convent and Chapel (Item I248).*
- *The proposed rooftop cinema will have a minimal visual impact to Aeolia Lane and other adjoining properties to the north, However, it will not result in any adverse visual bulk impacts such as overshadowing or overlooking onto neighbouring properties. In particular, the photo-montage analysis has demonstrated that the materiality, the scale and orientation of the screen, as well as the lift overrun, will not have significant adverse visual impact to the surrounding context.*
- *Changes to general scale, form and detailing of the proposed additions and alterations are not substantially discernible from the existing built complex.*
- *The considerations outlined in the application to Council for height allowance and FSR variations are noted, but their consideration does not constitute the heritage analysis remit.*
- *Based on the comprehensive visual impact analysis, the proposal will have no impact upon the existing streetscape of St Pauls Street and Perouse Road and other primary public spaces within The Spot Neighbourhood Centre. Therefore, the proposal does not reduce the visual quality of The Spot HCA.*
- *The proposed extension will ensure the ongoing use of the heritage item for cinema purposes. This represents a continuation of a valuable intangible heritage role of the cinema complex as part of precinct cultural life in changed industry and societal circumstances.*
- *The proposed development will not result in any adverse acoustic impacts to surrounding residences since the cinema audio will be via headphones.*
- *The detailed artistic impression of design and finishes, along with material swatches demonstrates a neutral and understated, but quality approach to general presentation.*

- Existing compliance with seating capacity means that the proposal will not result in an intensification of the existing use of the Ritz Cinema building or generate any additional parking demand and traffic effects.
- The proposal is entirely reversible.

Recommendation

The following conditions should be included in any consent:

- The NSW Heritage Council is the principal consent authority for this development. Accordingly, General Terms Approval is required to be issued by NSW Heritage prior to the determination of this application in terms of possible visual impact. It is understood that this application is in process.
- An architect or tradesperson suitably qualified and experienced in heritage conservation shall oversee the works.
- All work is to be in strict compliance with the proposed design, finishes and material swatches as specified. Details of any changes are to be 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.

2.2. Environmental Health

Council's Environmental Health Officer provided the following comments

Proposed Development:

Alterations and additions to the Randwick Ritz Cinema including accommodating a new rooftop cinema for 100 seats (Variation to Height & FSR) (Integrated Development - State Heritage Item: Item Reference No. 00348). Seat reductions in other cinemas are proposed resulting in a minor reduction in the overall number of seats to 1,806 seats (reduction of 9 seats). Rooftop cinema located within eastern portion of rooftop level and with its inclusion will result in a total of ten (10) approved cinemas.

Comments:

Rooftop Cinema Proposed works

- *Fitout and use of the eastern portion of the existing rooftop level for the purpose of a new rooftop cinema theatre including the extension of the existing internal staircase and lift (RL 80.81) and extension of the external staircase along the northern (rear) building elevation and to provide access to the rooftop level.*
- *Installation of a new rooftop cinema screen (RL 81.525) measuring, 8m (W) x 3.38m (H), 100 x cinema seats, projector, bar/serving counter for food and drink purchases, balustrade and planter boxes*
- *The gross floor area of the cinema will be 172 square metres.*
- *The film audio associated with the proposed rooftop cinema will be transmitted via headphones only.*

Trading hours

No change is proposed to the existing approved Ritz Cinema trading hours. The proposed rooftop cinema will trade within the established hours of the existing Ritz Cinema. It is proposed that the rooftop cinema will operate 6pm to 12 midnight on Thursday, Friday and Saturday nights. The

rooftop cinema is proposed to operate primarily in the Spring and Summer (with occasional sessions throughout the year) an estimated 2-3 sessions per week (Thursday to Saturday nights).

Note to planner: Health recommend a trial period for 8.00pm to 10.00pm for 1 year to ensure it can be run without adversely impacting the amenity of the area.

Maximum capacity

Cinemas 1, 2, 3, 5 and 8 will include seat reductions of 80, 11, 13, 23 and eight seats respectively and cinemas 4,6 and 7 will have seat increases of 17, six and three seats respectively) – the reduction is due to larger seats being installed.

With the additional rooftop cinema, there will be no change to existing number of maximum approved patrons and staff permitted on site being 1,815 patrons as approved via condition in DA/615/2003 and DA/600/2019. During operation there will be no additional staff required for the purpose of the rooftop cinema.

The maximum rooftop cinema capacity is 100 seats and should be conditioned to form part of this consent.

Noise impacts

Nearby Noise sensitive receivers:-

- Shop top housing,
- Residential care home,
- Residential apartment buildings (Perouse Road)
- Brigidine College

This noise impact assessment will consider noise from patrons, specifically:

- Patrons talking before and after the movie.
- Patron reactions during the movie.
- The proposal requires patrons to wear headphones.

Measured background noise levels

Evening (6pm-10pm) - 45dbA

Night shoulder (10pm to 12 midnight) - 39dBA

Due to the readings being undertaken during COVID-19 it is proposed that for the evening period an allowance of 5dB addition to the unattended results would be permissible making the background noise level 50dBA, while an allowance of 3dB for the night time shoulder has been applied making the noise level 41dBA (as per the submitted report / typo).

| Noise period | Measured background noise levels | Proposed background noise levels additions |
|--------------------------------------|----------------------------------|--|
| Evening period (6pm-10pm) | 45dbA | 50dBA (+5) |
| Night shoulder (10pm to 12 midnight) | 39dBA | 41dBA (+2) |

Patron noise L₁₀ criteria (BG+5dB)

| Noise period | Criteria based on measured background noise levels | Criteria based on proposed background noise levels |
|--------------------------------------|--|--|
| Evening period (6pm-10pm) | 50dBA | 55dBA |
| Night shoulder (10pm to 12 midnight) | 44dBA | 46dBA |

Predicted L₁₀ noise levels from patrons comply with both sets of criteria with predicted levels between 33dBA-40dBA. The addition of 5dB and 3dB to the evening and night shoulder are not supported by health as the long-term impact of COVID remains to be seen with the pandemic altering the way in which businesses operate and peoples movements e.g. increased mobile working etc.

Sleep disturbance criteria

| | | |
|--------------------------------------|------------------------------------|------------------------------------|
| Night shoulder (10pm to 12 midnight) | <i>L_{Aeq,15min} 40dBA</i> | <i>L_{Aeq,15min} 44dBA</i> |
| Night shoulder (10pm to 12 midnight) | <i>L_{AFmax} 52dBA</i> | <i>L_{AFmax} 54dBA</i> |

The sleep disturbance criteria noted in the report is L_{AFmax} 60dB this is not supported by health who assert the criteria should be L_{AFmax} 54dBA based on a measured RBL of 39dBA.

An exceedance of 1dB is predicted at receiver 3 from people screaming, this is deemed to be negligible and barely perceptible by the human ear.

On 18 November 2019, Development Application No. DA/318/2019 was approved for “installation of a temporary outdoor cinema screen on the existing rear external wall of the Randwick Ritz Cinema adjacent to Aeolia Lane. The outdoor laneway Cinema was subject to a trial period ending on 31 March 2021, during which it operated without any complaints or objection from surrounding residents and property owners.” A search of pathway complaints for The Ritz Cinema revealed that there have been no noise complaints lodged as far back as 2018.

It is recommended that a detailed maximum noise level event assessment should be undertaken. This will be conditioned as part of the consent. No music or speakers outside are permitted as part of this application. Verification of background noise levels have been included in the standard acoustic report condition.

The assessment has determined that the operation of the rooftop cinema after 10pm would be unlikely to generate any sleep disturbance impacts on the surrounding residential receivers. The assessment has also confirmed that noise from the operation rooftop cinema in conjunction with other sources from the site, namely mechanical plant, would not exceed any relevant noise goals.

Mechanical plant

Existing air con plant platform extended a number of the units were to be installed on the eastern plant area, adjacent to the rooftop cinema.

The noise level from mechanical plant at the most affected point in the audience area would be approximately 52-55 dBA. This noise level would unlikely impact the amenity of the audience before and after the sessions (no headphones) and during the movie (with headphones). No further mitigation or management is required.

Deliveries and Waste Collection

All deliveries and waste removal from the site will be undertaken between the hours of 7am and 10pm, Monday to Sunday as per the current approved site servicing arrangements.

Bins located in the basement with 7 x 240 litre bins.

Offensive lighting

The report concludes that the proposed projector and screen will have minimal impact on the surrounding residents or road users and is fully conforming to the recommendations of AS/NZS4282:2019 Australian Standard for obtrusive lighting.

There is no road that will have a view of the screen, any residences on the surrounding hills, located to the south of the subject site within the R2 Low Density Residential zone, that may be able to see the screen, the impact from this distance will be similar to a neighbour's television.

Licensed premises – NSW Liquor and gaming

Upon receiving development consent, the existing liquor licence will be amended to include the rooftop cinema area.

*The Ritz Cinema
Moving Story Entertainment Pty. Ltd.
No. LIQ0624013797*

New Rooftop bar

Detailed proposed bar plans have not been provided for review, to condition requirement for compliance with AS4674.

The area may only be used for screening movies and patrons should not be allowed to congregate before/after the movie.

2.3. Building Surveyor

The application is accompanied by a Building Code of Australia Assessment report. Council's Building Surveyor has not reviewed the report, but has advised that standard conditions of consent requiring compliance with the requirements for class 2-9 buildings should be imposed on any consent. A condition to that effect is included in the recommended development consent.

2.4. Development Engineer

Council's Development Engineer advises all the works are either internal or confined to the rooftop and there is no need for any engineering conditions, noting a condition should be imposed reinforcing the maximum patron numbers.

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



CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS - RANDWICK LOCAL ENVIRONMENTAL PLAN 2012

CLAUSE 4.4 FLOOR SPACE RATIO

INTEGRATED DEVELOPMENT APPLICATION FOR ALTERATIONS TO THE RANDWICK RITZ CINEMA ACCOMMODATING A NEW ROOFTOP CINEMA

39 - 47 ST PAULS STREET, RANDWICK (LOT 101 DP 1029883)

May 2022

1. Introduction

The subject site (site) is located at 39-47 St Pauls Road, Randwick and is legally described as Lot 101 DP 1029883. The site has a total site area of 1,568m².

This Clause 4.6 Exceptions to Development Standards request accompanies an Integrated Development Application to Randwick City Council (Council) seeking development consent for alterations and additions to the Randwick Ritz Cinema consisting of the fitout and use of the rooftop level for the purpose of a new rooftop cinema for 100 seats and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Milestone dated 9 December 2021 and drawings prepared by ITN Architects. This Clause 4.6 Exception to Development Standard Variation Request relates to Clause 4.4 Floor Space Ratio (FSR) within the Randwick Local Environmental Plan 2012 (LEP 2012).

This Development Standard Variation Request has been prepared in accordance with the NSW Department of Planning and Environment's *Varying development standards: A Guide* (August 2011) and relevant decisions in the New South Wales Land and Environment Court (Court). The following two recent Court judgements provide a clear outline of the matters required to be addressed under to Clause 4.6, including the structure of such requests:

- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118; and*
- *NSW Court of Appeal in RebelMH Neutral Bay Pty Limited v North Sydney Council [2019] NSWCA 130.*

The Court has established principles that are to be addressed in relation to whether a development standard variation should be approved by a consent authority. The relevant tests to be considered are set out in the judgement of Justice Lloyd in *Winton Property Group Ltd v North Sydney Council [2001] 130 LGERA 79*. The relevant tests were revisited by Chief Justice Preston in the decision of *Wehbe v Pittwater Council [2007] NSW LEC 827 (Wehbe)*. Although the Winton Property Group and Wehbe judgement refer to variations to development standards submitted under *State Environmental Planning Policy 1 - Development Standards (SEPP 1)* the principles and tests contained therein remain applicable to Clause 4.6 of the Standard Instrument as confirmed by the Court in the following judgements:

- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 (Four2Five);*
- *Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386;*
- *Moskovich v Waverley Council [2016] NSWLEC 1015; and*
- *SARM Architects Pty Ltd v Wollongong City Council [2015] NSWLEC 1101*

It has been established in case law that the quantum of the numerical variation does not form part of the tests required to be conducted under Clause 4.6. For instance, the Court's decisions with regard to *Moskovich V Waverley Council* (65% exceedance of FSR) and *Micaul Holdings Pty Limited v Randwick City Council* (55% exceedance of height and 20% exceedance of FSR) attest to this.

2. Details of Current and Proposed Floor Space Ratio

A maximum FSR of 1.5:1 applies to the site under Clause 4.4 of LEP 2012.

The existing Ritz Cinema building (including approved basement Cinema) has an approved FSR of 1.83:1 and a gross floor area (GFA) of 2,882m².

The proposed development will result in an additional 39m² of gross floor area located within the eastern portion of the existing rooftop level of the building.

The proposed development will have a total GFA of 2,921m² and an FSR of 1.86:1.

The proposal is limited to the rooftop level which will provide limited additional floor space to accommodate seating and a bar without significant alterations the overall perceived bulk of the existing Ritz Cinema building. Whilst it is acknowledged that the proposed development will alter the existing roof profile of the building, the submitted Visual Impact Statement prepared by Alec Tzannes, dated May 2022 confirms that the primary elements of the rooftop cinema, being the cinema screen and lift overrun, will have zero visual impact from the existing streetscape of St Pauls Street and Perouse Road and other primary public spaces within The Spot Neighbourhood Centre and will be of 'low to moderate' where the screen is primarily visible from the north (rear) of the site.

Further, the submitted Visual Impact Statement confirms that although the primary elements will alter the roof line and building profile of the existing Ritz cinema building, these elements will not result in any overshadowing or overlooking onto neighbouring properties, nor will the proposal result in the loss of significant views.

There will be no increase to the maximum patron and staff capacity as a result of this proposal in accordance with Condition No. 2 of DA/600/2019.

This proposal results in a variation of the LEP 2012 development standard relating to maximum FSR required by Clause 4.4 in context of the approved non-compliant FSR (1.83:1) of the existing building on the site. In response to the proposed non-compliance, the following Clause 4.6 Variation Request is provided. This Variation is well founded and is worthy of support by Council Officers and the Randwick Local Planning Panel (the Panel).

3. What are the Objectives of Clause 4.6 and Is the proposal consistent with them?

The objectives of Clause 4.6 of LEP 2012 are:

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

As outlined in the assessment below, that the proposed variation is consistent with the objectives of Clause 4.6 of LEP 2012. This variation allows flexibility in the application of the maximum FSR development standard by allowing the proposed addition to provide a new roof top cinema screen.

4. Is the standard to be varied a Development Standard to which Clause 4.6 applies?

Clause 4.4 is in Part 4 "Principal Development Standards" of LEP 2012. The wording of Clause 4.4 is consistent with previous decisions of the Court in relation to matters which constitute development standards. It is noted that Clause 4.6 does not contain a provision which specifically excludes Clause 4.4 from being able to be varied. On this basis Clause 4.4 is a development standard for which Clause 4.6 applies.

5. Is compliance with the Development Standard unreasonable or unnecessary in the circumstances of this case?

The Court's decision in the Wehbe case provides guidance by nominating the five separate methods in which compliance to a development standard can be demonstrated as being unreasonable and unnecessary subject to a variation request. The five methods specified in the Wehbe case include the following:

- Method No. 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard.
- Method No. 2: The underlying objective or purpose of the standard is not relevant to the development with the consequence that compliance is unnecessary.
- Method No. 3: The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.

Method No. 4: The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.

Method No. 5: *"The zoning of the particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning is also unreasonable and unnecessary as it applied to that land"* and hence compliance with the standard would be unreasonable or unnecessary (i.e. the subject allotment should not have been included in the zone it is located in).

This Development Standard Variation Request will rely upon Method No.1 as set out the Wehbe case.

Method Nos. 2, 3, 4 and 5 are not considered relevant to the current proposal and therefore this Development Standard Variation Request relies upon Method No. 1 in *Wehbe* only. This approach is consistent with the findings of Dixon SC in *Brigham v Canterbury - Bankstown Council [2018] NSWLEC 1406* who notes *'you do not need to list all five tests from Wehbe if the first test is relied upon and said to be satisfied'*.

On the basis of the above, it is adequately demonstrated that there are sufficient environmental planning grounds to justify contravention of the FSR development standard and that compliance with the requirements of Clause 4.4 Floor Space Ratio is both unreasonable and unnecessary in the circumstances of this case for the following reasons:

- In accordance with the Visual Impact Statement prepared by Alec Tzannes, dated May 2022, the proposed rooftop cinema development will have zero visual impact from the existing streetscape of St Pauls Street and Perouse Road and other primary public spaces within The Spot Neighbourhood Centre.
- There are two primary elements of the rooftop cinema including the proposed cinema screen (RL 81.525) and lift overrun (RL 80.81) that will be visible, however these will only be visible from the north (rear) of the site including Aeolia Lane and other adjoining properties and public vantage points as identified within visual analysis undertaken by Alec Tzannes, dated May 2022.
- The primary elements of the rooftop cinema, being the cinema screen and lift overrun will be of 'low to moderate' impact where the screen is primarily visible from the rear of the site Aeolia Lane and other adjoining properties and public vantage points to the north and include a minimal loss of sky as well as alteration to the existing roof profile of the Ritz Cinema building. On this basis, the development will not adversely impact the existing skyline and will not create any unreasonable additional visual bulk when viewed from the rear of the site.
- Whilst it is acknowledged that the primary elements of the rooftop cinema, being the cinema screen and lift overrun, will alter the roof profile of the existing Ritz cinema building, these elements will not result in any overshadowing or overlooking onto neighbouring properties, nor will the proposal result in the loss of significant views.
- The objectives indicate that the FSR of a building is relative to the physical nature of a building, including height, bulk and scale. In the circumstances of this case, the design of the rooftop cinema including the location, materiality, size and scale of its primary elements is an appropriate built form response to the surrounding context on the basis that it will result in no significant adverse visual impacts.
- The rooftop cinema will not be visible from the principal frontage of the site along St Pauls Street and the proposed works will not change the external appearance of the building when viewed from the public domain within The Spot Neighbourhood Centre.
- It is not possible to utilise part of the rooftop level without variation to the FSR standard on this site.
- The proposed additional Gross Floor Area will have no physical visual bulk impacts to the existing streetscape of St Pauls Street and Perouse Road and other primary public spaces within The Spot heritage conservation area and it will have no adverse impact on the heritage significant building façade of the Ritz Cinema building itself.
- The proposed additional FSR will facilitate a unique experience with a high standard of amenity for cinema patrons in accordance with contemporary expectations.
- The variation to the existing FSR will maintain existing operational requirements and the associated impacts of the existing Ritz Cinema in relation to car parking remain similar to approved.
- The existing Ritz Cinema building has an FSR of 1.83:1 which exceeds the maximum FSR of 1.5:1 that applies to the subject site under LEP 2012. The relatively minor quantum of additional floor space (39m² increase) will have no adverse heritage impact on the host building and The Spot precinct by virtue of utilising rooftop space of the later eastern addition of the Ritz Cinema.

There are no unreasonable environmental or amenity impacts on any nearby properties which will arise as a result of the maximum FSR being exceeded in this case.

6. Are there sufficient environmental planning grounds to justify contravening the Development Standard?

The decision in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 indicates that merely showing that the development achieves the objectives of the development standard will be insufficient to justify that a development is unreasonable or unnecessary in the circumstances of the case for the purposes of an objection under Clause 4.6.

The case also demonstrates that the requirement in Clause 4.6(3)(b) of LEP 2012 to justify that there are sufficient environmental planning grounds for the variation, requires identification of grounds particular to the circumstances of the proposed development and not simply grounds that apply to any similar development on the site or in the vicinity. In the *Four2Five* case, the Court found that the environmental planning grounds presented by the applicant in a Clause 4.6 variation request must be specific to the circumstances of the proposed development on that site.

In this instance, there are sufficient environmental planning and design grounds to justify the continued contravention of the maximum FSR development standard as it relates to the proposed development in context to the existing building.

There are particular constraints that affect the subject site which inhibit the development's ability to achieve strict compliance with the maximum FSR standard and a contravention of the relevant development standards is justified on environmental planning grounds on the consideration of the following:

- The proposed development does not result in the construction new floor area but will convert and use part of the existing rooftop space of the Ritz Cinema building for the purpose of a new rooftop cinema. Accordingly, the proposal presents an opportunity to enhance an existing space for the introduction of a world class, one-of-a-kind rooftop cinema experience without environmental and heritage impacts.
- The proposed development will maintain the existing built form and scale of the subject building when viewed the existing streetscape of St Pauls Street to the south, Perouse Road to the west and other primary vantage points within The Spot.
- There are no amenity impacts on the neighbouring properties as a result of the FSR non-compliance generated by the new rooftop cinema. The proposal will not adversely impact the visual privacy, solar access and views on any neighbouring apartment or the surrounding properties in the area.
- The non-complaint FSR of the Ritz Cinema building is an existing situation of the subject site. Given the location of the new works within the eastern portion of the rooftop, which is not visible from any public domain vantage points within The Spot and is proposed within a building already exceeding the FSR control, the proposal is unable to achieve compliance with the relevant development standard.
- The proposal is confined wholly within the eastern portion of the rooftop level of the existing later building addition of the Ritz Cinema and therefore avoids the removal of any original and significant heritage fabric as identified in the Conservation Management Plan dated March 2020 and submitted Statement of Heritage Impact prepared by Architectural Projects.
- The proposed development whilst non-compliant with the Council's numerical maximum FSR development standard, does not relate to nor does it offend, or propose any inconsistencies with the objectives of Clause 4.4 of LEP 2012 (referred to in Section 7 below).
- The proposal will not result in any additional patronage on site and will not generate any additional parking demand. Accordingly, the minor increase of GFA is a quantitative non-compliance that will not significantly alter the existing built form and its perceivable impacts or current approved operation of the site.
- The non-compliant FSR will not impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.
- To not allow variation to the relevant FSR development standard stipulated within Clause 4.4 in LEP 2012 would deprive the owners of the site the opportunity to provide a unique and sympathetic addition to their property to improve the operation, celebrate the heritage significance and enhance the economic viability.

The proposed rooftop cinema will significantly enhance the existing cinema experience currently provided on site to ensure the viability of the existing Ritz Cinema State Heritage Item and will not result in any adverse impacts to surrounding development.

Having regard to the above, the proposed development is considered acceptable in these circumstances and is considered to have sufficient planning grounds to justify the variation to the maximum FSR development standard applicable to the land.

7. Is the proposed development 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?

7.1 B1 Neighbourhood Centre Zone Objectives

The proposal is consistent with the objectives of the development standard in LEP 2012 and for development in the B1 Neighbourhood Centre Zone under LEP 2012. The proposed development is in the public interest as it is compliant with the zone objectives and the objectives of the FSR development standard (Clause 4.4 in LEP 2012).

The objectives for development in B1 Neighbourhood Centre Zone are:

- *"To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood."*
- *To enable residential development that is well-integrated with, and supports the primary business function of, the zone*
- *To minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones."*

The proposal will satisfy the relevant B1 Neighbourhood Zone objectives as it will maintain the significant fabric of the State Heritage Item and preserves the character of the existing building on the St Pauls Street streetscape whilst enhancing the diversity of cinema and experience available to the community. The new rooftop cinema will cater to community expectations for world-class and comfortable cinema facilities of varying sizes and will support the continued use of the Ritz Cinema.

The proposal is an important factor for the ongoing viability of the Ritz Cinema site through the diversification of the range of cinema spaces and experiences, positive outcomes including flow-on impacts to The Spot and wider Strategic Centre of Randwick, provision of new jobs, continuation of existing direct and indirect part time and full-time employment as well as ensuring the State Heritage Listed building remains open to the public as a place for cinema and to enjoy the heritage significant elements of the building. The proposed development is permitted with Council's development consent in the B1 Neighbourhood Centre Zone.

7.2 Clause 4.4 FSR Objectives

Clause 4.4 outlines the following relevant objectives for the FSR controls in LEP 2012:

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

The objectives in Section 1.1 of the Randwick Comprehensive Development Control Plan 2013 (DCP 2013) outline the following characterises and desired future character of "The Spot":

- *"To protect and enhance the heritage values of the commercial area.*
- *To encourage and facilitate well designed and appropriate development within "The Spot" commercial centre with new development or alterations to existing buildings designed to be compatible with and enhance the heritage streetscape.*
- *To minimise the potential of the buildings within the commercial zone to adversely affect the amenity of the residential land by implementing building height planes and controls around the commercial periphery."*

The proposal directly supports the objectives by ensuring that the heritage significant elements of the Ritz Cinema building and adjacent Heritage Conservation Area and heritage item adjoining to the north are preserved. The objective of the proposal is to introduce a new cinema experience to cater for community expectations for a varied offer of films within a modern and start-of-the-art cinema. The development will

not adversely impact the heritage qualities of the Spot Heritage Conservation Area as it cannot be viewed from the public domain areas along the heritage streetscapes of St Pauls Street and Perouse Road.

The Local Strategic Planning Statement (LSPS) which was made effective from 26 March 2020 does not specifically include a desired future character statement for "The Spot" however the following statements are relevant:

"Council will continue to protect the heritage values and fabric of our Heritage Items and HCAs including contributory buildings, recognising their role in the historical development of our City, sense of place and cultural identity. Development in the vicinity of heritage items and heritage conservation areas will be managed through the development assessment system to ensure it is respectful and sympathetic to the heritage values and cultural heritage significance."

"Council encourages and promotes adaptive re-use of heritage items and contributory buildings in a way that encourages activity and entices people to visit and promotes understanding of their heritage values. Development is to be historically and contextually appropriate, to ensure that the heritage values and fabric that contribute to cultural heritage significance is retained and protected."

The proposal delivers a minor quantum of additional floor space (39m² increase) and will have no adverse heritage impact on the host building and The Spot precinct by virtue of the location within the eastern portion of the rooftop level and there being no visibility from Perouse Road and St Pauls Street or any other public domain vantage point within The Spot Neighbourhood Centre.

Whilst it is acknowledged that the proposed development will alter the existing roof profile of the building, the submitted Visual Impact Statement prepared by Alec Tzannes, dated May 2022 confirms that the primary elements of the rooftop cinema, being the cinema screen and lift overrun, will have zero visual impact from the existing streetscape of St Pauls Street and Perouse Road and other primary public spaces within The Spot Neighbourhood Centre and will be of 'low to moderate' where the screen is primarily visible from the north (rear) of the site.

The desired future character as outlined in Randwick DCP 2013 and the LSPS will be supported by the proposed development on the basis the addition does not result in any loss of significant heritage fabric, has no impacts on the visual character of The Spot and the contribution of the building to St Pauls Street and ensures the ongoing use of the site as an important cultural facility for the community.

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

The proposed rooftop cinema will not adversely alter or impact the existing articulation and environmental performance of the existing Ritz Cinema building. The proposal will not result in any overshadowing, view loss or overlooking 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 site is listed as a State Heritage Item known as the "Ritz Theatre" and the western part of the site is located in the "The Spot" Heritage Conservation Area (No. C16) under Schedule 5 of LEP 2012. The proposed cinema is confined wholly within the eastern portion of the rooftop level and will have zero visual impact when viewed from the existing streetscape of St Pauls Street and Perouse Road and other primary public spaces within The Spot Neighbourhood Centre nor does not remove any significant heritage fabric of the building.

(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.

Whilst it is acknowledged that the proposed rooftop cinema will increase the FSR of the existing Ritz Cinema building, the development will not adversely impact the existing skyline and will not create any unreasonable additional visual bulk when viewed from the public domain. Further, the comprehensive visual impact analysis provided within the Visual Impact Statement prepared by Alec Tzannes confirms that the rooftop cinema will only be visible from the north (rear) of the site at Aeolia Lane and other adjoining properties and public vantage points to the north. Further, the submitted visual analysis states that the development results in 'low to moderate' impacts where it can be viewed from the north (rear) including only minor changes to the existing roof profile of the building, and minimal loss of sky. On this basis, the rooftop cinema will not result in overlooking of neighbouring properties nor will it result in any overshadowing impacts or loss of significant views.

The submitted Visual Impact Statement concludes *‘Tzannes supports the design of the rooftop cinema, including the location of the screen, the materiality, size and scale of the screen as there is no significant adverse visual impact to the surrounding context.’*

8. Secretary’s Concurrence

Under Clause 4.6(5) of LEP 2012, the Secretary’s concurrence is required prior to any variation being granted, however it is noted under Planning Circular PS 18-003 *‘Variations to development standards’* dated 21 February 2018 that the Secretary’s concurrence is assumed by a delegate of Council if:

- the development contravenes a numerical standard by less than 10%; and
- the variation is a numerical standard.

The notice appended to the Planning Circular PS 18-003 confirms independent hearing and assessment panels (Local Planning Panels) are to assume the Secretary’s concurrence *‘because they are exercising the council’s functions as a consent authority.’*

By virtue of the Integrated Development Application requiring development consent from the Randwick Local Planning Panel the Secretary’s Concurrence is assumed by the Panel. The following section provides a response to those matters set out in Clause 4.6(5) of the LEP 2012 which must be considered by the Secretary, and by extension, the delegate of Council.

8.1 Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The proposed variation of the maximum FSR development standard will not be inconsistent with any objectives within State or Regional Planning policies. The proposal supports the attainment of the aims of the current metropolitan plan for Sydney including the *Greater Sydney Region Plan: A Metropolis of Three Cities* and the Eastern District Plan.

Randwick is designated as a ‘Strategic Centre’ in the Eastern City District Plan and sits within an innovation, health and education precinct that also provides retail, commercial, health and community service activities. The growth of the Randwick Strategic Centre will support the Eastern ‘Harbour CBD’ to continue to be competitive in a global market where a diverse range of high quality commercial, education and entertainment/recreation services and facilities are provided to the local community, visitors and international tourists. The Eastern City District Plan also identifies the Eastern ‘Harbour CBD’ as fostering ‘a strong cultural and arts sector, and thriving night-time economies in centres’.

8.2 The public benefit of maintaining the development standard

There is no public benefit in strictly applying the FSR development standard to the proposed development. Variation of the maximum FSR standard will provide flexibility to facilitate the orderly use of the existing building.

The Panel’s refusal to permit the proposed variation to the maximum FSR development standard in this instance would not be in the public interest given the absence of any significant detrimental environmental or amenity impacts attributable to the proposed non-compliance. Further, refusal of the proposed variation would not permit any further improvements to the Ritz Cinema required to diversify offerings of films in all types of cinema sizes and upgrade the facility to a contemporary, world class cinema comfort and experience expectations on the basis the existing building already exceeds the maximum FSR development standard under LEP 2012. The proposed development will benefit the public in that:

- It facilitates the construction and operation of a state-of-the-art rooftop cinema to ensure the Ritz Cinema is able to satisfy the expectations of cinema patrons for modern cinema facilities and high standards of comfort and cinema experience.
- The proposal respects the architectural integrity of the host building and does not alter the existing building envelope or its bulk, scale and character when viewed from the existing streetscape and surrounding public domain areas of ‘The Spot’.
- The proposal will not impact the visual privacy, solar access and views on any neighbouring apartment or the surrounding properties in the area.

- The proposed development will not result in an intensification of the existing use of the Ritz Cinema and will maintain existing operational requirements.
- The proposal allows the new site owner (since March 2019) to undertake important additions to their property to significantly enhance the diversity of cinema spaces, internal amenity, comfort and use of the cinema for patrons where it is demonstrated the proposal has no adverse environmental impacts as assessed under Part 4 of the Environmental Planning and Assessment Act 1979.
- The proposed development delivers a development that maintains the existing character of the Ritz Cinema building and its compatibility in terms of bulk and scale with surrounding developments within The Spot Heritage Conservation area.
- The proposal reinforces the site's high level of access to existing infrastructure such as light rail and bus networks.
- The proposal reinforces the strategic site context comprising start-of-the-art infrastructure by establishing a new world-class standard rooftop cinema experience and celebrates the heritage significance of a historic cinema use.

9. Conclusion

This Clause 4.6 written request to vary the FSR development standard has adequately addressed the matters required to be demonstrated under Clause 4.6(4) of Randwick LEP 2012 in order for Council Officers and the Panel to be satisfied that there are sufficient environmental planning grounds to justify contravention of the FSR development standard, and to warrant the granting of development consent to the Integrated Development Application.

Based upon the preceding assessment contained in this submission, a variation of the maximum FSR control as required by Clause 4.4 of the Randwick LEP 2012 is acceptable and strict adherence to a maximum FSR of 1.5:1 is unreasonable and unnecessary in the circumstances of the case.

The variation sought will allow for the orderly and economic use and development of the land in an appropriate manner, maintains the heritage integrity of the host building, and allows for a better use of the subject building for its intended historic use as a cinema.

MILESTONE (AUST) PTY LIMITED



CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARD - RANDWICK LOCAL ENVIRONMENTAL PLAN 2012

CLAUSE 4.3 HEIGHT OF BUILDINGS

INTEGRATED DEVELOPMENT APPLICATION FOR ALTERATIONS TO THE RANDWICK RITZ CINEMA ACCOMMODATING A NEW ROOFTOP CINEMA FOR 100 SEATS

39 - 47 ST PAULS STREET, RANDWICK (LOT 101 DP 1029883)

NOVEMBER 2021

1. Introduction

The subject site (site) is located at 39-47 St Pauls Road, Randwick and is legally described as Lot 101 DP 1029883. The site has a total site area of 1,568m².

This Clause 4.6 Exceptions to Development Standards request accompanies an Integrated Development Application to Randwick City Council (Council) seeking development consent for alterations and additions to the Randwick Ritz Cinema to accommodate consisting of the fitout and use of the rooftop level for the purpose of a new rooftop cinema for 100 seats and should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by Milestone dated 9 December 2021 and drawings prepared by ITN Architects. This Clause 4.6 Exception to Development Standard Variation Request relates to Clause 4.3 Height of buildings within the Randwick Local Environmental Plan 2012 (LEP 2012).

This Development Standard Variation Request has been prepared in accordance with the NSW Department of Planning, Industry and Environment's *Varying development standards: A Guide* (August 2011) and relevant decisions in the New South Wales Land and Environment Court (Court). The following two recent Court judgements provide a clear outline of the matters required to be addressed under to Clause 4.6, including the structure of such requests:

- *Brigham v Canterbury - Bankstown Council [2018] NSWLEC 1406*; and
- *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*.

The Court has established principles that are to be addressed in relation to whether a development standard variation should be approved by a consent authority. The relevant tests to be considered are set out in the judgement of Justice Lloyd in *Winton Property Group Ltd v North Sydney Council [2001] 130 LGERA 79*. The relevant tests were revisited by Chief Justice Preston in the decision of *Wehbe v Pittwater Council [2007] NSW LEC 827* (Wehbe). Although the Winton Property Group and Wehbe judgement refer to variations to development standards submitted under *State Environmental Planning Policy 1 - Development Standards* (SEPP 1) the principles and tests contained therein remain applicable to Clause 4.6 of the Standard Instrument as confirmed by the Court in the following judgements:

- *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 (Four2Five)*;
- *Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386*;
- *Moskovich v Waverley Council [2016] NSWLEC 1015*; and
- *SARM Architects Pty Ltd v Wollongong City Council [2015] NSWLEC 1101*

It has been established in case law that the quantum of the numerical variation does not form part of the tests required to be conducted under Clause 4.6. For instance, the Court's decisions with regard to *Moskovich V Waverley Council* (65% exceedance of FSR) and *Micaul Holdings Pty Limited v Randwick City Council* (55% exceedance of height and 20% exceedance of FSR) attest to this.

2. Details of Current and Proposed Height of Building

A maximum building height development standard of 12 metres applies to the site under Clause 4.3 of LEP 2012.

The existing maximum building height is 16.8m and, therefore, the Ritz Cinema building already exceeds the maximum building height limit for the site.

The rooftop cinema development in its entirety (with the exception of the structural enforcements which will be mounted to the existing ground of the rear of the property) will be located above the existing 12 metre height limit which applies to the site.

There are two primary elements of the rooftop cinema, being the proposed cinema screen (RL 81.525) and lift overrun (RL 80.81). The lift overrun will form the highest point of the development due to the varying existing ground levels of the site. The lift overrun will be located within the eastern portion of the rooftop level (refer to **Figure 1**).

The proposed rooftop cinema development will increase the existing maximum height of the building, by 2.81 metres, from 16.8 metres to 19.61 metres (refer to **Figure 1**).



Figure 1: Aerial view (Not to scale)
Source: Nearmap 2021

Figures 2 and 3 illustrate both the existing components of the Ritz Cinema building (as shown in the black dotted line) which currently exceed the 12 metre building height limit as well as the additional components associated with the proposed rooftop cinema that will also exceed the 12 metre limit (highlighted in yellow).

Proposed Height of two Primary Elements:

Lift Overrun (maximum height of development)

The maximum height of the development is associated with the proposed lift overrun, which is 19.61 metres above the existing finished floor level (RL 61.2) of the ground floor foyer located directly below the proposed overrun as shown in **Figure 3** below.

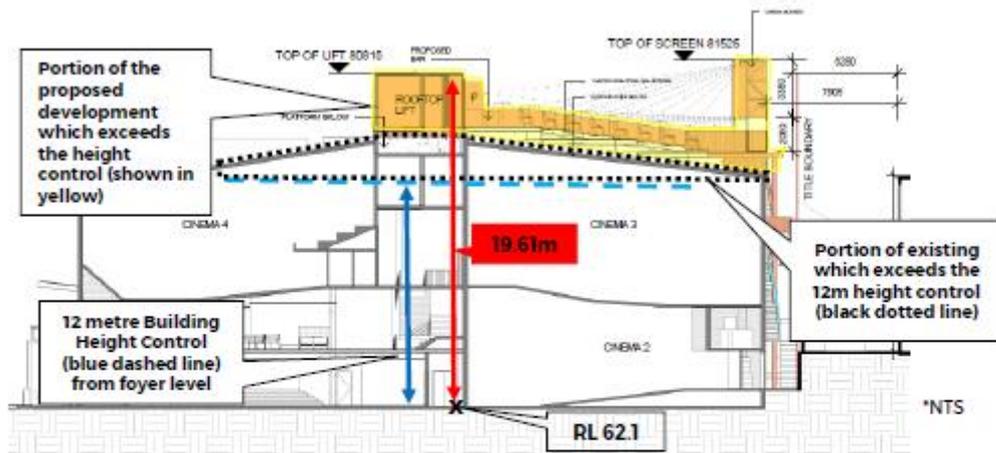


Figure 2: Explanation of Proposed Building Height Increase (Lift Overrun)
Source: ITN Architects 2020 (Section C, Drawing No. A122)

Cinema Screen

The height of the second primary element being the proposed cinema screen (RL 81.525), has a proposed height of 19.41m above the existing ground level (RL 62.115) at the rear of the property (refer to Figure 2 over page).

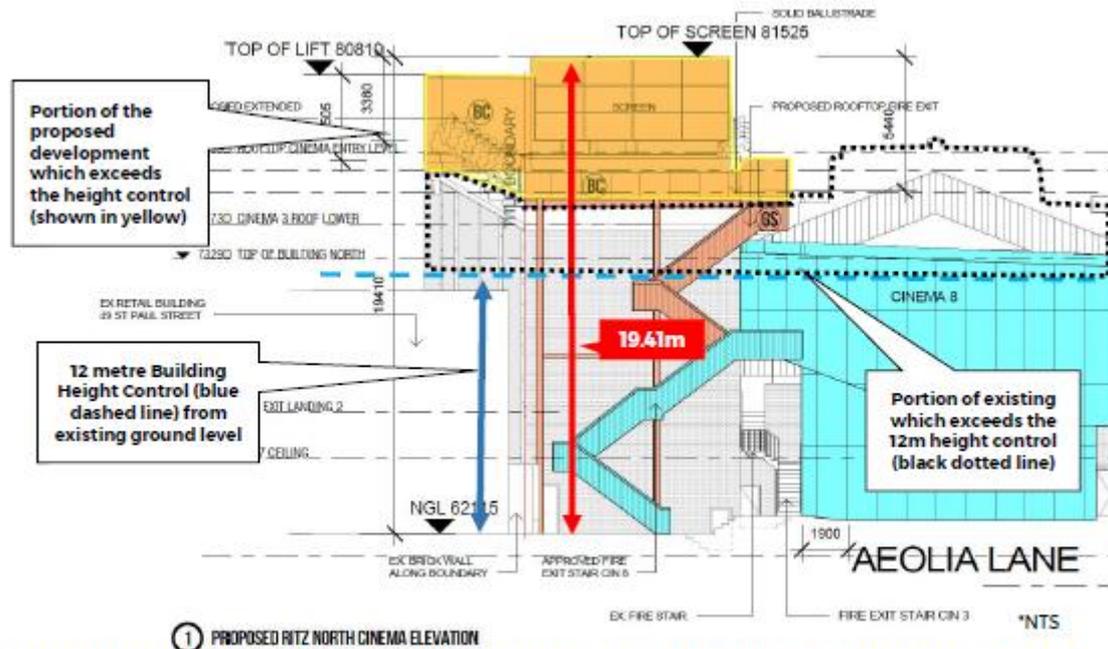


Figure 3: Explanation of Proposed Building Height Increase (Cinema Screen) from existing ground level at rear of site (RL 62.115)
Source: ITN Architects 2020 (Northern Cinema Elevation, Drawing No. A119)

The proposed rooftop cinema development will result in a height increase of 2.61 metres above the existing maximum building height (16.8 metres) of the Ritz Cinema.

As a result of the proposed rooftop cinema, the Ritz Cinema building will have an increased maximum building height of 19.41 metres, which equates to a height increase of 15.5%.

This proposal results in variation of the LEP 2012 development standard relating to the maximum height of buildings required by Clause 4.3 of LEP 2012 in context of the non-compliance of the existing building on the site. In response to the proposed non-compliance, the following Clause 4.6 Variation Request is provided. This Variation is well founded and is worthy of support by Council Officers and the Panel.

3. What are the Objectives of Clause 4.6 and Is the proposal consistent with them?

The objectives of Clause 4.6 of LEP 2012 are:

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

As outlined in the assessment below, the proposed variation is consistent with the objective of Clause 4.6 of LEP 2012. This variation allows flexibility in the application of the maximum height of buildings development standard by allowing the proposed addition to provide two new cinema screens integrated with the design and layout of the existing building.

4. Is the standard to be varied a Development Standard to which Clause 4.6 applies?

Clause 4.3 is in Part 4 "Principal Development Standards" of LEP 2012. The wording of Clause 4.3 is consistent with previous decisions of the Court in relation to matters which constitute development standards. It is noted that Clause 4.6 does not contain a provision which specifically excludes Clause 4.3 from being able to be varied. On this basis Clause 4.3 is a development standard for which Clause 4.6 applies.

5. Is compliance with the Development Standard unreasonable or unnecessary in the circumstances of this case?

The Court's decision in the *Wehbe* case provides guidance by nominating the five separate methods in which compliance to a development standard can be demonstrated as being unreasonable and unnecessary subject to a variation request. The five methods specified in the *Wehbe* case include the following:

- Method No. 1: The objectives of the standard are achieved notwithstanding non-compliance with the standard.
- Method No. 2: The underlying objective or purpose of the standard is not relevant to the development with the consequence that compliance is unnecessary.
- Method No. 3: The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable.
- Method No. 4: The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable.
- Method No. 5: *"The zoning of the particular land" was "unreasonable or inappropriate" so that "a development standard appropriate for that zoning is also unreasonable and unnecessary as it applied to that land" and hence compliance with the standard would be unreasonable or unnecessary (i.e. the subject allotment should not have been included in the zone it is located in).*

This Development Standard Variation Request will rely upon Method No.1 as set out the *Wehbe* case.

Method Nos. 2, 3, 4 and 5 are not considered relevant to the current proposal and therefore this Development Standard Variation Request relies upon Method No. 1 in *Wehbe*, only. This approach is consistent with the findings of Dixon SC in *Brigham v Canterbury - Bankstown Council [2018] NSWLEC 1406* who notes 'you do not need to list all five tests from *Wehbe* if the first test is relied upon and said to be satisfied'.

On the basis of the above, it is adequately demonstrated that there are sufficient environmental planning grounds to justify contravention of the building height development standard and that compliance with the requirements of Clause 4.3 Height of Buildings is both unreasonable and unnecessary in the circumstances of this case for the following reasons:

- Despite the proposed height increase, the rooftop cinema development will not be visible from the existing streetscape of St Pauls Street and Perouse Road and other primary public spaces within The Spot Neighbourhood Centre.
- It is necessary that the new rooftop cinema is provided for the modernisation of the cinema to ensure it remains competitive and able to provide a diversity of screen and cinema sizes that can host a variety of films and cinema experiences as well as maintain the ongoing viability of the historic use of the site.
- In accordance with the Visual Impact Statement prepared by Alec Tzannes, dated September 2021, proposed rooftop cinema development will have zero visual impact from the existing streetscape of St Pauls Street and Perouse Road and other primary public spaces within The Spot Neighbourhood Centre.
- There are two primary elements of the rooftop cinema including the proposed cinema screen (RL 81.525) and lift overrun (RL 80.81) that will be visible, however these will only be visible from the north (rear) of the site including Aeolia Lane and other adjoining properties and public vantage points as identified within visual analysis undertaken by Alec Tzannes, dated September 2021.
- The primary elements of the rooftop cinema, being the cinema screen and lift overrun will be of 'low to moderate' impact where the screen is primarily visible from the rear of the site Aeolia Lane and other adjoining properties and public vantage points to the north and include a minimal loss of sky as well as alteration to the existing roof profile of the Ritz Cinema building. On this basis, the development will not adversely impact the existing skyline and will not create any unreasonable additional visual bulk when viewed from the rear of the site.
- The proposed development will not adversely impact the existing skyline and will not create any unreasonable additional visual bulk when viewed from the public domain.
- The proposed development will maintain the existing built form and scale of the Ritz Cinema building from the key public domain vantage points along St Pauls Street and Perouse Road.
- It is not possible to utilise part of the rooftop level without variation to the building height standard on this site.
- The proposal will have no tangible visual bulk impacts from St Pauls Street and Perouse Road and have no adverse impact on the heritage significant building façade of the Ritz Cinema building itself.
- Notwithstanding the building height increase, the proposed rooftop cinema will be an appropriate contextual fit within the existing commercial precinct of The Spot and the proposed building height variation will be of minimal environmental impact.
- Whilst it is acknowledged that the proposed development will increase the maximum building height of the existing Ritz Cinema building, the submitted the proposed additional height will not result in any overshadowing or overlooking onto neighbouring properties, nor will the proposal result in the loss of significant views. Further, based on the submitted assessment reports regarding potential acoustic and light spill impacts including the Noise Impact Assessment prepared by RWDI Australia Pty Ltd dated 5 November 2021 and Obtrusive Light Assessment Report prepared by Lighting, Art and Science, Pty Limited, dated 27 September 2021 the proposed rooftop cinema development including the proposed height increase will not cause any unreasonable amenity impacts and will be designed and managed to ensure the residential amenity of the surrounding residential properties are maintained.

There are no unreasonable environmental or amenity impacts on any nearby properties which will arise as a result of the maximum height of buildings being exceeded in this case.

6. Are there sufficient environmental planning grounds to justify contravening the Development Standard?

The decision in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 indicates that merely showing that the development achieves the objectives of the development standard will be insufficient to justify that a development is unreasonable or unnecessary in the circumstances of the case for the purposes of an objection under Clause 4.6.

The case also demonstrates that the requirement in Clause 4.6(3)(b) of LEP 2012 to justify that there are sufficient environmental planning grounds for the variation, requires identification of grounds particular to the circumstances of the proposed development and not simply grounds that apply to any similar development on the site or in the vicinity. In the *Four2Five* case, the Court found that the environmental planning grounds presented by the applicant in a Clause 4.6 variation request must be specific to the circumstances of the proposed development on that site.

In this instance, there are sufficient environmental planning and design grounds to justify the continued contravention of the maximum building height development standard as it relates to the proposed development in context to the existing building.

There are particular constraints that affect the subject site which inhibit the development's ability to achieve strict compliance with the maximum building height standard and a contravention of the relevant development standards is justified on environmental planning grounds on the consideration of the following:

- The perceivable impacts of the rooftop cinema development will be limited to loss of minimal sky as well as alteration to the roof profile of the existing Ritz Cinema building. As identified within the submitted visual analysis prepared by Alec Tzannes Where the development will be primarily visible from Aeolia Lane and other surrounding properties to the north the visual impacts associated with the proposed height increase will be moderate to low.
- Whilst it is acknowledged that the proposed rooftop cinema will be open to the sky, the development including the proposed height increase will not result in any adverse acoustic impacts to surrounding residences on the basis that the audio from the cinema will be transmitted via headphones. The submitted acoustic analysis prepared by RWDI Australia Pty Ltd dated 5 November 2021 concludes that *"The assessment has determined that the operation of the rooftop cinema after 10pm would be unlikely to generate any sleep disturbance impacts on the surrounding residential receivers. The assessment has also confirmed that noise from the operation rooftop cinema in conjunction with other sources from the site, namely mechanical plant, would not exceed any relevant noise goals."*
- In accordance with the submitted Obtrusive Light Assessment Report prepared by Lighting, Art and Science, Pty Limited, dated 27 September 2021, the proposed rooftop cinema will not cause any adverse light spill impacts to properties surrounding the site that have views of the rooftop cinema screen. The report concludes that *"there is no road that will have a view of the screen within several hundred metres so that the screen will be too small to have an impact as will be the situation for any residences on the surrounding hills, located to the south of the subject site within the R2 Low Density Residential zone, that may be able to see the screen."*
- Whilst there will be some perceivable impacts of the two primary elements of the rooftop cinema, being the new cinema screen and lift overrun, including the loss of minimal sky as well as alteration to the roof profile of the existing Ritz Cinema building, these elements will only be visible from the rear of the site Aeolia Lane and other adjoining properties and public vantage points to the north.
- There are no adverse amenity impacts on the neighbouring properties as a result of the building height non-compliance generated by the rooftop cinema. The proposal has no significant adverse impacts on the visual privacy, acoustic privacy, solar access and views on any neighbouring apartment or the surrounding properties in the area.
- The building height exceeding the maximum requirement of Clause 4.3 is an existing situation of the subject site. Given the location of the proposed development within the eastern portion of the rooftop level away from key public domain vantage points and is proposed to a building already exceeding the building height control, the proposal is unable to achieve compliance with the relevant development standards.
- The proposed development whilst non-compliant with the Council's numerical maximum height of buildings, achieves compliance with the objectives of Clause 4.3 (refer to **Section 7** below).
- The proposal presents an opportunity to convert an existing rooftop space to provide additional floor space and new cinema experience whilst maintain the residential amenity and heritage significance of the surrounding context and host building.
- To not allow variation to the relevant height of building clause would deprive the owners of the site the opportunity to provide a high-quality and innovative addition to their property to improve the operation, economic viability of the existing Ritz Cinema entertainment facility.

Given the proposal will not result in any significant adverse impacts to surrounding development; is consistent with the envisaged built form of the locality and will maintain the heritage integrity of the Ritz Cinema building and "The Spot" Heritage Conservation Area from the key public domain along St Pauls Street, the proposed development is considered to have sufficient planning grounds to justify a variation to the maximum building height development standard.

7. Is the proposed development 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?

7.1 B1 Neighbourhood Centre Zone Objectives

The proposal is consistent with the objectives of the development standard in LEP 2012 and for development in the B1 Neighbourhood Centre Zone under LEP 2012. The proposed development is in the public interest as it is compliant with the zone objectives and the objectives of the Height of Building development standard (Clause 4.3 in LEP 2012).

The objectives for development in B1 Neighbourhood Centre Zone are:

- *"To provide a range of small-scale retail, business and community uses that serve the needs of people who live or work in the surrounding neighbourhood."*
- *"To enable residential development that is well-integrated with, and supports the primary business function of, the zone."*
- *"To minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones."*

The proposal will satisfy the relevant B1 Neighbourhood Zone objectives as it will maintain the heritage significant fabric of the State Heritage Item, will have limited visibility overall with no visibility from the key public domain along St Pauls Street and Perouse Road within The Spot Heritage Conservation area, and preserves the character of the existing building on the St Pauls Street streetscape whilst enhancing the operation of the site with a new cinema screen and viewing experience to cater for community expectations for modern and comfortable cinema facilities. The proposal will support the continued use of the Ritz Cinema to serve the needs of people who live and work in the area.

The proposal will be visible from the upper level south facing windows in the nearest residential apartment building approximately 60m to the north west (25-31 Perouse Road) and from the roof top communal area of the St Basils Aged Care facility approximately 55m to the east (57-63 St Pauls Street), however by virtue of the physical separation from these residential buildings, and the smaller scale of the proposed building in relation to the existing Ritz Cinema building and adjoining development to the north and east on the Brigidine College site, there will be no adverse amenity impacts resulting from the proposed development.

The proposal is an important factor for the ongoing viability of the Ritz Cinema site with positive outcomes including flow on impacts to The Spot, provision of new jobs, continuation of existing direct and indirect part time and full time employment as well as ensuring the State Heritage Listed building remains open to the public as a place for cinema and to enjoy the heritage significant elements of the building. The proposed development is permitted with Council's development consent in the B1 Neighbourhood Centre Zone.

7.2 Clause 4.3 Height of Buildings Objectives

Clause 4.3 outlines the following relevant objectives for the height of buildings in LEP 2012:

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

The objectives in Section 1.1 of the Randwick Comprehensive Development Control Plan 2013 (DCP 2013) outline the following characterises and desired future character of "The Spot:

- *"To protect and enhance the heritage values of the commercial area."*
- *"To encourage and facilitate well designed and appropriate development within "The Spot" commercial centre with new development or alterations to existing buildings designed to be compatible with and enhance the heritage streetscape."*
- *"To minimise the potential of the buildings within the commercial zone to adversely affect the amenity of the residential land by implementing building height planes and controls around the commercial periphery."*

The proposal directly supports the objectives of Clause 4.3 Height of Buildings by ensuring that the development is of a compatible scale and size for the desired future character of The Spot. The development meets the objectives of the desired future character of The Spot by ensuring that the heritage significant elements of the Ritz Cinema building, Heritage Conservation Area and adjoining heritage item to the north are retained and protected. The objective of the proposed development is to provide a state-of-the-art cinema experience, utilising the infrastructure of an existing building that will not adversely impact the heritage significance of the area and will

make a positive contribution to the economic and social vibrancy of The Spot. The development will not adversely impact the heritage qualities of the Spot Heritage Conservation Area when viewed from the principal public domain areas along the heritage streetscapes of St Pauls Street and Perouse Road.

The Local Strategic Planning Statement (LSPS) which was made effective on 26 March 2020 does not specifically include a desired future character statement for "The Spot", however, the following statements are relevant:

"Council will continue to protect the heritage values and fabric of our Heritage Items and HCAs including contributory buildings, recognising their role in the historical development of our City; sense of place and cultural identity. Development in the vicinity of heritage items and heritage conservation areas will be managed through the development assessment system to ensure it is respectful and sympathetic to the heritage values and cultural heritage significance."

"Council encourages and promotes adaptive re-use of heritage items and contributory buildings in a way that encourages activity and entices people to visit and promotes understanding of their heritage values. Development is to be historically and contextually appropriate, to ensure that the heritage values and fabric that contribute to cultural heritage significance is retained and protected."

The proposed rooftop cinema will have no adverse heritage impact on the host building and The Spot precinct as the lift overrun and rooftop cinema are located on the East and West extension which are perceived to have limited heritage value. The proposed development is essential to the ongoing viability of the heritage item and retains the use of the site through adaptive reuse and the prominent heritage features of the building. The desired future character as outlined in DCP 2013 and the LSPS will be supported by the proposed development on the basis the addition does not result in any loss of significant heritage fabric, has no impacts on the visual character of The Spot and the contribution of the building to St Pauls Street and ensures the ongoing use of the site as an important cultural facility for the community.

The site is located approximately 6.5km south east from the Sydney CBD in a B1 Neighbourhood Centre Zoned precinct known as "The Spot". The surrounding land uses in the Spot consist of neighbourhood shops licensed cafes and restaurants within the immediate vicinity of the site which contribute to a vibrant commercial centre. The site is a short 440m walk to the Randwick Light Rail Stop (commences operation in December 2019) and 60m from the nearest bus stop on Perouse Road which provides bus services to the Sydney CBD and the Eastern Suburbs.

The surrounding locality is characterised by a variety of two storey mixed use and commercial buildings fronting St Pauls Street and Perouse Road. Aeolia Lane is not the principal frontage for the site and has a currently poor amenity dominated by the existing at-grade parking of the Ritz Cinema site and the 16 garage/car port structures and roller shutters that run along the western side of Aeolia Lane.

Whilst it is acknowledged that the proposed development will alter the existing roof profile of the building, the submitted Visual Impact Statement prepared by Alec Tzannes, dated September 2021 confirms that the primary elements of the rooftop cinema, being the cinema screen and lift overrun, will have zero visual impact from the existing streetscape of St Pauls Street and Perouse Road and other primary public spaces within The Spot Neighbourhood Centre and will be of 'low to moderate' where the screen is primarily visible from the north (rear) of the site.

It is considered that the proposed height results in a scale and density of development that is in accordance with, and promotes a consistent nature of, development within the area. As a result, the proposal does not present as being-out-of-character for "The Spot" B1 Neighbourhood Centre, the surrounding scale of development at the adjoining Brigidine and St Basil's aged care facility and buildings located within the site.

"(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 site is listed as a State Heritage Item known as the "Ritz Theatre" and the western part of the site is located in the "The Spot" Heritage Conservation Area (No. C16) under Schedule 5 of LEP 2012. The building has been designed to respect the dominant scale of the existing Ritz Cinema building and is an addition that will sit comfortably on the site and compatible in context of the heritage items in the vicinity to the north known as "Aeolia", Brigidine Convent and Chapel."

It is acknowledged that the proposed development will alter the built form of the building, and the roof profile and will result in an increase to the maximum building height. However, the development will not adversely impact the

heritage significance of the site and will contribute to the economic viability of the site without taking away from the heritage characteristics and features of the site and surrounding area and will retain the use of the site.

Refer to the Heritage Impact Statement prepared by Architectural Projects.

(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 supported by a Visual Impact Assessment prepared by Tzannes. The Visual Impact Assessment concludes that the primary elements of the rooftop cinema will have zero impact from St Pauls Street to the south, Perouse Road to the west and other primary public spaces throughout The Spot. Where the screen is primarily visible from the north (rear), it has a low to moderate impact and will not result in any view loss or overlooking of neighbouring spaces.

The development will not contribute to visual bulk, loss of privacy or view loss impacts resulting from the proposed development, as supported by the Visual Impact Assessment prepared by Tzannes. The proposed development is considered reasonable in urban design and built form terms as it maintains the existing St Pauls Street streetscape, and with respect to scale, and building bulk it sits comfortably within the site and surrounding buildings on neighbouring properties within The Spot. The site is located within an established commercial and mixed use precinct and facilitates the orderly growth and development of land zoned for commercial purposes.

In light of this, the proposal will not result in any unreasonable environmental impact relating to view loss, visual imposition and overshadowing upon the neighbouring properties and will not detract from the welfare of the community or the quality of the environment on the basis the building does not abut any private recreational or public open space or residential zoned land.

The proposed height of the development achieves the objective of Clause 4.3 of LEP 2012 in relation to building height, as outlined in the preceding assessment.

8. Secretary's Concurrence

Under Clause 4.6(5) of LEP 2012, the Secretary's concurrence is required prior to any variation being granted, however it is noted under Planning Circular PS 18-003 *"Variations to development standards"* dated 21 February 2018 that the Secretary's concurrence is assumed by a delegate of Council if:

- the development contravenes a numerical standard by less than 10%; and
- the variation is a numerical standard.

The notice appended to the Planning Circular PS 18-003 confirms independent hearing and assessment panels (Local Planning Panels) are to assume the Secretary's concurrence *"because they are exercising the council's functions as a consent authority"*.

By virtue of the Section 8.2 Application requiring development consent from the Randwick Local Planning Panel the Secretary's Concurrence is assumed by the Panel. The following section provides a response to those matters set out in Clause 4.6(5) of the LEP 2012 which must be considered by the Secretary, and by extension, the delegate of Council.

8.1 Whether contravention of the development standard raises any matter of significance for State or regional environmental planning

The proposed variation of the maximum building height development standard will not be inconsistent with any objectives within State or Regional Planning policies. The proposal supports the attainment of the aims of the current metropolitan plan for Sydney including the *Greater Sydney Region Plan: A Metropolis of Three Cities* and the Eastern District Plan.

Randwick is designated a "Strategic Centre" in the Eastern City District Plan and sits within an innovation, health and education precinct that also provides retail, commercial, health and community service activities. The growth of the Randwick Strategic Centre will support the Eastern "Harbour CBD" to continue to be competitive in a global market where a diverse range of high quality commercial, education and entertainment/recreation services and facilities are provided to the local community, visitors and international tourists. The Eastern City District Plan also

identifies the Eastern "Harbour CBD" as fostering "a strong cultural and arts sector, and thriving night-time economies in centres".

8.2 The public benefit of maintaining the development standard

It is considered that there is no public benefit in strictly applying the height of building development standard to the proposed development. Variation of the maximum building height standard will allow for the orderly use of the site.

Council's refusal to permit the proposed variation to the maximum height of buildings development standard in this instance would not be in the public interest given the absence of any significant detrimental environmental impacts attributable to the proposed non-compliance and it would not permit any further additions to the Ritz Cinema to provide a world-class entertainment facility that will support the economic and social viability of the Ritz Cinema and the surrounding businesses within The Spot. The existing building already exceeds the building height development standard under LEP 2012.

The proposed development will benefit the public in that:

- It facilitates the construction and operation of a state-of-the-art rooftop cinema to ensure the Ritz Cinema is able to satisfy the expectations of cinema patrons for modern cinema facilities and high standards of comfort and cinema experience.
- It enhances and responds sensitively to the heritage site and surrounding heritage setting to the north, west and south of the site by respecting the dominant visual character of the host building and not resulting in any view loss or overshadowing impacts on the surrounding area.
- Whilst there will be some perceivable impacts of the two primary elements of the rooftop cinema, being the new cinema screen and lift overrun, including the loss of minimal sky as well as alteration to the roof profile of the existing Ritz Cinema building, these elements will only be visible from the rear of the site Aeolia Lane and other adjoining properties and public vantage points to the north.
- The proposal respects the architectural integrity of the host building and does not alter the existing building envelope or its bulk, scale and character when viewed from the existing streetscape and surrounding public domain areas of 'The Spot'.
- The proposal will not impact the visual privacy, solar access and views on any neighbouring apartment or the surrounding properties in the area.
- The proposed development will not result in an intensification of the existing use of the Ritz Cinema and will maintain existing operational requirements including the maximum patron capacity of 1815 persons.
- The proposal allows the new site owner (since March 2019) to undertake important additions to their property to significantly enhance the diversity of cinema spaces, internal amenity, comfort and use of the cinema for patrons where it is demonstrated the proposal has no adverse environmental impacts as assessed under Part 4 of the Environmental Planning and Assessment Act 1979.
- The proposed development delivers a development that maintains the existing character of the Ritz Cinema building and its compatibility in terms of bulk and scale with surrounding developments within The Spot Heritage Conservation area.
- The proposal reinforces the site's high level of access to existing infrastructure such as light rail and bus networks.
- The proposal reinforces the strategic site context comprising start-of the art infrastructure by establishing a new world-class standard rooftop cinema experience and celebrates the heritage significance of a historic cinema use.
- It delivers a development that positively responds to the streetscape and is compatible in terms of building height with surrounding developments.

9. Conclusion

This Clause 4.6 written request to vary the height of buildings development standard has adequately addressed the matters required to be demonstrated under Clause 4.6(3) and Clause 4.6(4) of LEP 2012 in order for Council Officers and the Panel to be satisfied that there are sufficient environmental planning grounds to justify contravention of the height of buildings development standard, and to warrant the granting of development consent to the Section 8.2 Application.

Based upon the preceding assessment contained in this submission, a variation of the maximum height of buildings development standard as required by Clause 4.3 of the Randwick LEP 2012 is acceptable and strict

adherence to a maximum height of buildings control of 12m is unreasonable and unnecessary in the circumstances of the case. There are sufficient environmental planning grounds to justify contravening building height development standard as outlined in this written request.

The variation sought will allow for the orderly and economic use and development of the land in an appropriate manner, maintains the heritage integrity of the host building, and allows for a better outcome for the subject building in planning terms as opposed to locating the addition elsewhere on the site where environmental and heritage impacts would be inappropriate.

Appendix 3: DCP Compliance Table

3.1 Section B2: Heritage

The relevant provisions under Section B2 of the RDCP have been considered and addressed by Council's Heritage Planner.

3.2 Section D8 Table: The Spot, Randwick

| DCP Clause | Controls | Proposal | Compliance |
|------------|---|---|---|
| 4 | Heritage items and Contributory Buildings | | |
| | i) Retain heritage items and contributory buildings. ii) Original fabric should be conserved, new work should be sensitive, and neighbouring development should be sympathetic to their character. | The works are supported by NSW Heritage and Council's Heritage Planner. | Yes |
| 7 | Business area – building envelopes | | |
| 7.1 | Application of building envelope planes - Commercial Development i) The FSR and building height controls set by RLEP together with DCP envelope controls define the overall built form and scale of development. | The proposal does not comply with the FSR or height of buildings standards. | No. Refer to the discussion in this report. |
| 8 | Business area – building design | | |
| 8.6 | Car parking and access i) Car parking, delivery areas and accessways are not to detract from the streetscape environment. ii) On-site car parking is to be provided either at ground level or as basement car parking. iii) Above ground car parking must not be visible from St Pauls Street and/or Perouse Road. iv) Carpark ventilation grilles must not be located on primary street frontages. v) If the development has access to a rear lane, the loading and unloading facilities must be provided from the lane, in order to minimise the intrusion of vehicular access and servicing upon the pedestrian character of The Spot. vi) Rear servicing areas in mixed use development should be able to cater for both residential and commercial servicing requirements. | The proposal will not result in any change to existing parking or loading arrangements on the site. | Yes |

2.5 Section D13 Late Night Trading

D34/22

| Objectives and Control | Proposal | Complies |
|--|---|------------|
| <p>This section contains objectives and controls to assist in the assessment of late night trading premises with particular regard to protecting residential amenity and maintaining public safety. Late night trading premises are business, retail and entertainment uses which operate at night. These can include (but are not limited to) licensed and/or unlicensed establishments such as pubs, restaurants and cafes, take away food and drink premises and other such premises which provide late night services such as convenience stores, pharmacies and the like.</p> <p>Proposals for late night trading premises must demonstrate commitment to good management and ensure that any adverse impacts are minimal and/or capable of being adequately managed.</p> <p>A social impact assessment is required for new or significant expansion of licensed premises.</p> <p>This section applies to all DAs for new or existing late night trading premises that seek approval wholly or in part for:</p> <ul style="list-style-type: none"> • A change of use. • New, modified or extended trading hours. • Refurbishment, additions or extensions that are likely to result in an intensification of the current use; and/or • An extension or renewal of trading hours or renewable conditions of consent. <p>For the purposes of this DCP late night trading premises are defined as any retail, business or entertainment use that operates at night. The DCP categorises these as high or low impact as follows: Note: A 'pub' may include a wine bar and the like, where the primary purpose is the retail sale of liquor for consumption on the premises</p> <p>High Impact</p> <ul style="list-style-type: none"> i) A pub. ii) A registered club. iii) Any premises with a capacity of more than 100 patrons where alcohol is sold and/or consumed on the premises (e.g. restaurant or café) iv) . Any premises used as a function centre or entertainment facility where alcohol is sold and/or consumed on the premises <p>Low Impact</p> <ul style="list-style-type: none"> i) Any premises with a capacity of 100 patrons or less where alcohol is sold and/or consumed on the premises (e.g. restaurant or café). | <p>The proposal is for an outdoor cinema that will operate 6:00pm to 12 midnight Thursday, Friday and Saturday nights. There will be a bar at the rear of the cinema serving alcohol.</p> <p>The requirement for a Social Impact Assessment (SIA) should be commensurate with the significance of the likely impacts of the proposal.</p> <p>For the purposes of assessment against the late night trading controls, the proposed cinema use is considered to be low impact because of the low key nature of the cinema use where patrons are typically seated and watching a movie with headphones</p> <p>A SIA is not required for a low impact premises.</p> | <p>Yes</p> |

| | | |
|---|---|---|
| <p>ii) ii) Any other retail or business premises which operates after 11pm.</p> | | |
| <p>Matters for consideration i) All DAs for late night trading premises must address the following matters:</p> <ul style="list-style-type: none"> - Specific nature of the proposal (e.g. pub, nightclub, restaurant etc). - Proposed layout of the premises - Current and proposed hours of operation. - Existing trading hours and nature of other late night trading premises operating within a 100 metre radius. - Current and proposed size of the premises and maximum patron capacity (including the maximum number of patrons that will be standing and/or sitting at the one time). - Details on whether alcohol is to be sold and/or consumed on the premises and measures for responsible service. - Measures to minimise likely noise or other amenity impacts on adjoining properties. - The likely impact of the premises on the concentration of late night uses in the locality. - Details on any proposed entertainment and likely amenity impacts. - Suitability of the location and context of the proposal, including proximity to residential land uses and other sensitive land uses (e.g. schools, places of worship etc). | <p>The SEE describes the proposed use as a cinema with a bar. The proposed on-premise license will allow for the sale of alcohol for consumption without food.</p> <p>There will be no change to the existing approved trading hours for the indoor areas of the cinema.</p> <p>The site is located in a commercial hub with a range of late night restaurants and bars.</p> | <p>Yes</p> |
| <p>The following is a guide to the range of hours of operation that may apply to DAs for late night trading premises in B1 Neighbourhood zone</p> <p>Indoor Up to 11pm Mondays to Saturdays and 10.00pm Sundays. Outdoor Up to 10pm Mondays to Saturdays and 9.30pm Sundays.</p> | <p>The proposal seeks to trade until 12 midnight, which does not comply with the maximum 10:00pm for outdoor areas. Given the low key nature of the proposed cinema use, where patrons are seated and watching a movie with headphones, the proposed hours are operation are suitable, subject to a trial period to allow Council to review the performance of the cinema. A condition to this effect is included in the recommended development consent.</p> | <p>No, acceptable subject to condition.</p> |
| <p>3 Management Plan In addition to the matters for consideration, all DAs for high impact late night trading premises must be accompanied by a Management Plan that specifies the operations and measures to be undertaken to ensure that the premises will be responsibly managed.</p> | <p>The Applicant submitted a POM with the application addressing complaints handling and noise. The POM will ensure the ongoing operation of the premises is properly managed to protect the amenity of the surrounding area. A condition requiring adherence to the POM is included in the recommended development consent.</p> | <p>Yes, subject to condition</p> |

D34/22

Responsible officer: Thomas Mithen, Environmental Planner
File Reference: DA/793/2021

Development Consent Conditions (Commercial)



| | |
|------------------------|--|
| Folder /DA No: | DA/793/2021 |
| Property: | 39-47 St Pauls Street, RANDWICK NSW 2031 |
| Proposal: | Alterations and additions to the Randwick Ritz Cinema including accommodating a new rooftop cinema for 100 seats (Variation to Height & FSR) (Integrated Development - State 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 |
|---|------------------------------|---------------|
| Existing/Demolition Roof Plan A106 | ITN Architects International | 18 March 2022 |
| Proposed Cinema 3 & 4 Foyer Plan A116 | ITN Architects International | 18 March 2022 |
| Proposed Cinema Projection Room level A117 | ITN Architects International | 18 March 2022 |
| Proposed Rooftop Elevation Plan A118 | ITN Architects International | 18 March 2022 |
| Proposed Rooftop Cinema Detail Plan A119 | ITN Architects International | 18 March 2022 |
| Proposed Rooftop Elevation Western and Northern Plan A120 | ITN Architects International | 18 March 2022 |
| Proposed Rooftop Elevation Eastern and Southern Plan A121 | ITN Architects International | 18 March 2022 |
| Proposed Sections A122 | ITN Architects International | 18 March 2022 |
| Proposed Sections A123 | ITN Architects International | 18 March 2022 |

General Terms of Approval (NSW Heritage)

Protection of significant fabric

2. Significant built and landscape elements are to be protected during site preparation and the works from potential damage. Protection systems must ensure significant fabric, including landscape elements, is not damaged or removed.

Reason: to reduce impact on significant fabric.

Heritage consultant

3. A suitably qualified and experienced heritage consultant must be nominated for this project. The nominated heritage consultant must provide input into the detailed design, provide heritage information to be imparted to all tradespeople during site inductions, and oversee the works to minimise impacts to heritage values. The nominated heritage consultant must be involved in the selection of appropriate tradespersons and must be satisfied that all work has been carried out in accordance with the conditions of this consent.

Reason: So that appropriate heritage advice is provided to support best practice conservation and ensure works are undertaken in accordance with this approval.

Specialist Tradespersons

4. All work to, or affecting, significant fabric shall be carried out by suitably qualified tradespersons with practical experience in conservation and restoration of similar heritage structures, materials and construction methods.

Reason: So that the construction, conservation and repair of significant fabric follows best heritage practice.

Unexpected historical archaeological relics

5. The applicant must ensure that if unexpected archaeological deposits or relics not identified and considered in the supporting documents for this approval are discovered, work must cease in the affected area(s) and the Heritage Council of NSW must be notified. Additional assessment and approval may be required prior to works continuing in the affected area(s) based on the nature of the discovery.

Reason: This is a standard condition to identify to the applicant how to proceed if historical archaeological deposits or relics are unexpectedly identified during works.

Compliance

6. If requested, the applicant and any nominated heritage consultant may be required to participate in audits of Heritage Council of NSW approvals to confirm compliance with conditions of consent.

Reason: To ensure that the proposed works are completed as approved.

Section 60 application

7. An application under section 60 of the Heritage Act 1977 must be submitted to, and approved by, the Heritage Council of NSW (or delegate), prior to work commencing.

Reason: To meet legislative requirements.

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**
8. The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation.
- Materials and Finishes**
9. All work is to be in strict compliance with the Rooftop Cinema material Swatches prepared by ITN Architects, received by Council on 20 December 2021, submitted with the application. Details of any changes are to be submitted to and approved by Council's Manager Development Assessment prior to a construction certificate being issued for the development.
- Demolition Work Plan**
10. A Demolition Work Plan must be prepared for the development in accordance with Australian Standard AS2601-2001, Demolition of Structures and relevant environmental/work health and safety requirements.
- The Demolition Work Plan must be submitted to the Principal Certifier, not less than two (2) working days before commencing any demolition work. A copy of the Demolition Work Plan must be maintained on site and be made available to Council officers upon request.
- If the work involves asbestos products or materials, a copy of the Demolition Work Plan must also be provided to Council not less than 2 days before commencing those works.
- Section 7.12 Development Contributions**
11. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$491,832 the following applicable monetary levy must be paid to Council: \$4,918.32.
- 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 9099 6999 or 1300 722 542 for the indexed contribution amount prior to payment.
- To calculate the indexed levy, the following formula must be used:
- $$\text{IDC} = \text{ODC} \times \text{CP2/CP1}$$
- Where:
- IDC** = the indexed development cost
- ODC** = the original development cost determined by the Council
- CP2** = the Consumer Price Index, All Groups, Sydney, as published by the ABS in respect of the quarter ending immediately prior to the date of payment
- CP1** = the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.
- Council's Development Contribution Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at www.randwick.nsw.gov.au.
- Compliance Fee**
12. A development compliance and enforcement fee of \$1,032.85 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

13. 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

14. 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 **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/tapin>

The Principal Certifying Authority 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

15. 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).

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

Mechanical Noise

17. Noise emissions from plant and equipment must satisfy the relevant noise criteria in the *Protection of the Environment Operations Act 1997* and Environment Protection Authority guidelines and details to demonstrate compliance with the relevant noise criteria shall be included in the construction certificate.

Fit-out Food premises

18. The premises is to be designed, constructed and operated in accordance with the *Food Act 2003*, *Food Regulation 2010*, Australia & New Zealand Food Standards Code and Australian Standard AS 4674 (2004), Design, construction and fit-out of food premises and details of compliance are to be included in the documentation for the construction certificate.
19. A wash hand basin (and soap and towel dispenser) must be provided within the rooftop bar area. The basin is to be provided with hot and cold water via a suitable mixing device. This is in addition to the equipment sink required for washing glasses and the like.

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

20. 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*;
 - c) 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.
21. The following conditions must be complied with in relation to any works involving the demolition, removal, handling, storage or disposal of any hazardous materials (including asbestos):
- 1) All work must be carried out in accordance with the following requirements (as applicable):
 - *Work Health and Safety Act 2011*;
 - *Work Health and Safety Regulation 2017*;
 - SafeWork NSW Code of Practice for the Safe Removal of Asbestos;
 - Australian Standard 2601 (2001) – Demolition of Structures;
 - *Protection of the Environment Operations Act 1997*;
 - *Protection of the Environment Operations (Waste) Regulation 2014*; and
 - Randwick City Council Asbestos Policy.

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

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 Plan

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

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

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

Construction Noise & Vibration Management Plan

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

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

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

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

- c) A further report/correspondence must be obtained from the consultant as soon as practicable upon the commencement of works, which reviews and confirms the implementation and suitability of the noise and vibration strategies in the *Construction Noise & Vibration Management Plan* and which demonstrates compliance with relevant criteria.
- d) Any recommendations and requirements contained in the *Construction Noise & Vibration Management Plan* and associated reports are to be implemented accordingly and should noise and vibration emissions not comply with the terms and conditions of consent, work must cease forthwith and is not to recommence until details of compliance are submitted to Council and the *Principal Certifier*.

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

Public Liability

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

Construction Traffic Management

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

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

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

27. A detailed Construction Site Traffic Management Plan must be submitted to and approved by Council, prior to the commencement of any site work. Note: Aeolia Lane must remain open during the course of construction works unless the prior approval of Council is obtained.

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

- A description of the demolition, excavation and construction works
- A site plan/s showing the site, roads, footpaths, site access points and vehicular movements
- Any proposed road and/or footpath closures
- Proposed site access locations for personnel, deliveries and materials
- Size, type and estimated number of vehicular movements (including removal of excavated materials, delivery of materials and concrete to the site)
- Provision for loading and unloading of goods and materials
- Impacts of the work and vehicular movements on the road network, traffic and pedestrians
- Proposed hours of construction related activities and vehicular movements to and from the site

- Current/proposed approvals from other Agencies and Authorities (including NSW Roads & Maritime Services, Police and State Transit Authority)
- Any activities proposed to be located or impact upon Council's road, footways or any public place
- Measures to maintain public safety and convenience

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

28. Any necessary approvals must be obtained from NSW Police, Roads & Maritime Services, Transport, and relevant Service Authorities, prior to commencing work upon or within the road, footway or nature strip.
29. Approval is granted for removal of only those carspaces directly located within the footprint of the proposed cinema. All other carspaces approved under DA/615/2003 must be retained and protected as part of the proposed works. Suitable vehicular access to all carspaces to be retained must be maintained at all times.

Public Utilities

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

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

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

31. Building works are required to be inspected by the *Principal Certifier*, in accordance with section 6.5 of the *Environmental Planning & Assessment Act 1979* and clause 162A of the *Environmental Planning & Assessment Regulation 2000*, to monitor compliance with the relevant standards of construction, Council's development consent and the construction certificate.

Building & Demolition Work Requirements

32. The demolition, removal, storage, handling and disposal of products and materials containing asbestos must be carried out in accordance with Randwick City Council's Asbestos Policy and the relevant requirements of SafeWork NSW and the NSW Environment Protection Authority (EPA), including:
- Work Health and Safety Act 2011;
 - Work Health and Safety Regulation 2011;
 - SafeWork NSW Code of Practice for the Safe Removal of Asbestos;
 - Australian Standard 2601 (2001) – Demolition of Structures;
 - The Protection of the Environment Operations Act 1997;
 - Randwick City Council Asbestos Policy (adopted 13 September 2005).

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

Removal of Asbestos Materials

33. 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.

Dust Control

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

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

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

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

Site Signage

- 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".

Restriction on Working Hours

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

| Activity | Permitted working hours |
|---|--|
| All building, demolition and site work, including site deliveries (except as detailed below) | <ul style="list-style-type: none"> • Monday to Friday - 7.00am to 5.00pm • Saturday - 8.00am to 5.00pm • Sunday & public holidays - No work permitted |
| Excavating or sawing of rock, use of jack-hammers, pile-drivers, vibratory rollers/compactors or the like | <ul style="list-style-type: none"> • Monday to Friday - 8.00am to 1.00pm only • Saturday - No work permitted • Sunday & public holidays - No work permitted |
| Additional requirements for all development | <ul style="list-style-type: none"> • Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted |

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

Road/Asset Opening Permit

- 38. 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:

- D34/22
- a) A *Road / Asset Opening Permit* must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the *Roads Act 1993* and all of the conditions and requirements contained in the *Road / Asset Opening Permit* must be complied with.
 - b) Council's *Road / Asset Opening Officer* must be notified at least 48 hours in advance of commencing any excavation works and also immediately upon completing the works (on 9399 0691 or 0409 033 921 during business hours), to enable any necessary inspections or works to be carried out.
 - c) Relevant *Road / Asset Opening Permit* fees, construction fees, inspection fees and security deposits, must be paid to Council prior to commencing any works within or upon the road, footpath, nature strip or other public place,
 - d) The owner/developer must ensure that all works within or upon the road reserve, footpath, nature strip or other public place are completed to the satisfaction of Council, prior to the issuing of a *final occupation certificate* or occupation of the development (whichever is sooner).
 - e) Excavations and trenches must be back-filled and compacted in accordance with AUSPEC standards 306U.
 - f) Excavations or trenches located upon a road or footpath are required to be provided with 50mm depth of cold-mix bitumen finish, level with the existing road/ground surface, to enable Council to readily complete the finishing works at a future date.
 - g) Excavations or trenches located upon turfed areas are required to be back-filled, compacted, top-soiled and re-turfed with Kikuyu turf.
 - h) The work and area must be maintained in a clean, safe and tidy condition at all times and the area must be thoroughly cleaned at the end of each days activities and upon completion.
 - i) The work can only be carried out in accordance with approved hours of building work as specified in the development consent, unless the express written approval of Council has been obtained beforehand.
 - j) Sediment control measures must be implemented in accordance with the conditions of development consent and soil, sand or any other material must not be allowed to enter the stormwater drainage system or cause a pollution incident.
 - k) The owner/developer must have a Public Liability Insurance Policy in force, with a minimum cover of \$10 million and a copy of the insurance policy must be provided to Council prior to carrying out any works within or upon the road, footpath, nature strip or in any public place.

Traffic Management

39. 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.
40. All work, including the provision of barricades, fencing, lighting, signage and traffic control, must be carried out in accordance with the NSW Roads and Traffic Authority publication - '*Traffic Control at Work Sites*' and Australian Standard AS 1742.3 – *Traffic Control Devices for Works on Roads*, at all times.
41. All conditions and requirements of the NSW Police, Roads & Maritime Services, Transport and Council must be complied with at all times.

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

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

Fire Safety Certificates

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

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

Structural Certification

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

Sydney Water Certification

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

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

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

Noise Control Requirements & Certification

46. A report must be prepared by a qualified Acoustic Consultant assessing and confirming all plant and equipment installed to the building (including speakers and sound systems) comply with the relevant noise criteria and no noise or vibration nuisance will be present.

The report is required to demonstrate that noise and vibration emissions satisfy the relevant noise criteria specified in Council's conditions of consent and the NSW Environment Protection Authority (EPA) Noise Policy for Industry.

Waste Management

47. Adequate provisions are to be made within the premises for the storage, collection and disposal of trade/commercial waste and recyclable materials, to the satisfaction of Council.

Trade/commercial waste materials must not be disposed in or through Council's domestic garbage service. All trade/commercial waste materials must be collected by Council's Trade Waste Service or a waste contractor authorised by the Waste Service of New South Wales and details of the proposed waste collection and disposal service are to be submitted to Council prior to commencing operation of the business.

The operator of the business must also arrange for the recycling of appropriate materials and make the necessary arrangements with an authorised waste services contractor accordingly.

48. Any liquid trade waste materials are to be disposed of in accordance with the requirements of the Sydney Water, Trade Waste Department (i.e. via a grease trap) and details of compliance are to be submitted to the Certifier prior to the commencement of any works.

Sydney Water

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

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

The Section 73 Certificate must be submitted to the Principal Certifying Authority and the Council prior to issuing an Occupation Certificate.

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.

Fire Safety Statements

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

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

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

Hours of Operation

51. The outdoor cinema on the rooftop is permitted to operate between 6:00pm to 12 midnight on Thursday, Friday and Saturday nights for a trial period of 12 months from the date of issue of an Occupation Certificate for the outdoor cinema.

If the operator wishes to continue operating with the extended hours after the 12 month trial period, they must lodge an application under section 4.55 of the EP&A Act within 2 months of the expiration of the trial period. The trial period hours may continue until determination of the application.

Appropriate supporting evidence (including an acoustic report that shows the impacts must be provided with the Section 4.55 application).

52. All patrons must be ushered quickly and quietly out of the outdoor cinema at the end of the movie and no later than 11:45pm to allow staff to complete the cleaning/pack-up activities before 12 midnight.
53. All cleaning/pack-up by staff of the outdoor cinema must be completed by 12 midnight.
- Clean up**
54. Staff must be mindful of the noise generation and take all reasonable measures to minimise any unnecessary noise during the set-up and cleaning/pack-up process. No noise-generating cleaning equipment (such as vacuums or leaf blowers) are to be used at night.
55. The business proprietor and all personnel must ensure that the outdoor cinema area (and the immediate vicinity) is maintained in a clean and tidy condition at all times, free of grease, food and litter. Effective methods are to be used to clean the area on a regular basis and which must not cause a pollution incident as defined in the *Protection of the Environment Operations Act 1997*.
- Patron Numbers**
56. The maximum number of patrons permitted to utilise the cinema complex shall remain at 1815 patrons as approved by DA/615/2003.
57. The maximum number of patrons permitted in the rooftop cinema is restricted to 100 persons per movie session.
- Environmental Amenity**
58. There are to be no emissions or discharges from the premises which will give rise to a public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and *Regulations*.
59. Speakers and/or noise amplification equipment are not permitted to be installed in the rooftop area. There must be no amplified noise, music or the like broadcast before, during intermissions or after films.
60. All patrons shall use wireless headphones when watching the movie.
61. The rooftop area is only approved for the use of screening open air movies, the area cannot be used to host parties or other large gatherings.
62. Patrons must not be allowed to congregate in the rooftop area for more than 15 minutes before films and must vacate the area immediately after films have ended.
63. Alcohol may only be served from the rooftop bar in conjunction with the screening of a movie.
64. Patrons should remain seated for the duration of the movie excluding going to the toilet, purchasing snacks/drinks from the bar, finding their seats, entering/exiting etc.
- Acoustic Report**
65. An acoustic report, prepared by a suitably qualified and experienced consultant* in acoustics, must be provided to the Council within 3 months of the issuing of an occupation certificate, which demonstrates and confirms that the relevant provisions of the *Protection of the Environment Operations Act 1997* and the noise criteria and requirements contained in this consent has been satisfied (including any relevant approved acoustic report and recommendations). The assessment and report must include all relevant fixed and operational noise sources.
66. Verification background noise monitoring must be undertaken to clarify if the COVID-19 pandemic has permanently changed the background noise levels. The prevailing background noise levels must be agreed with Council and be used to set the relevant noise criteria for the rooftop cinema during operation.

*Note: *Suitably Qualified Acoustic Consultant* means a consultant who possesses the qualifications to render them eligible for membership of the Australian Acoustical Society, Institution of Engineers Australia or the Association of Australian Acoustical Consultants at the grade of member firm.

Noise Control Requirements & Certification

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

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

68. The L_{10} noise level emitted from the licensed premises shall not exceed the background noise level (L_{90}) in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) by more than 5dB between 7.00am and 12.00 midnight at the boundary of any affected residence. The background noise level shall be measured in the absence of noise emitted from the licensed premises.

The L_{A10} noise level emitted from the licensed premises shall not exceed the background noise level (L_{A90}) in any Octave Band Centre Frequency (31.5Hz – 8kHz inclusive) between 12.00 midnight and 7.00am at the boundary of any affected residence. The background noise level shall be measured in the absence of noise emitted from the licensed premises.

Notwithstanding compliance with the above, the noise from the licensed premises shall not be audible within any habitable room in any residential premises between the hours of 12.00 midnight and 7.00am.

69. The use of the premises and the operation of plant and equipment shall not give rise to the transmission of vibration or damage to other properties.
70. An acoustic report, prepared by a suitably qualified and experienced consultant in acoustics, may be requested and required by Council from time to time after commencement of use, which demonstrates and confirms that the relevant provisions of the Protection of the Environment Operations Act 1997 and the noise criteria and requirements contained in this consent has been satisfied (including any relevant approved acoustic report and recommendations). The assessment and report must include all relevant fixed and operational noise sources.

Plan of Management

71. The use must always be operated / managed in accordance with the Plan of Management, prepared by Milestone (AUST) Pty Limited signed and dated on 10.12.2021 by Jordan Bastian Randwick Ritz Cinema Manager, Trim Ref: D04436053. In the event of any inconsistency, the conditions of this consent will prevail over the Plan of Management.

Obtrusive Lighting

72. During operation of the rooftop open air cinema you must ensure that at no time must the intensity, hours of illumination or location of the lighting cause objectionable glare or injury to the amenity of the neighbourhood or Obtrusive Light in accordance with the definition in Australian Standard AS/NZS4282:2019 Control of the obtrusive effects of outdoor lighting.

If in the opinion of Council, obtrusive lighting is causing a nuisance to nearby receivers, the intensity, hours of illumination and location of the lighting must be varied so that it does not cause undue nuisance to nearby residents.

Complaints Handling

73. The licensee must establish and maintain a formal and documented system for the recording and resolution of complaints made to the licensed premises by residents. All complaints are to be attended to in a courteous and efficient manner and referred promptly to the licensee or duty manager. The appropriate remedial action, where possible, is to be implemented immediately and the licensee or duty Manager is to contact the complainant within 48 hours to confirm details of action taken.

Upon reasonable prior notice, the licensee must make available the incident book to the police and Council officers.

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

- A1 The requirements and provisions of the *Environmental Planning & Assessment Act 1979* and *Environmental Planning & Assessment Regulation 2000*, must be fully complied with at all times.
- Failure to comply with these requirements is an offence, which renders the responsible person liable to a maximum penalty of \$1.1 million. Alternatively, Council may issue a penalty infringement notice (for up to \$6,000) for each offence. Council may also issue notices and orders to demolish unauthorised or non-complying building work, or to comply with the requirements of Council's development consent.
- A2 In accordance with the requirements of the *Environmental Planning & Assessment Act 1979*, building works, including associated demolition and excavation works (as applicable) must not be commenced until:
- A *Construction Certificate* has been obtained from an Accredited Certifier or Council,
 - An Accredited Certifier or Council has been appointed as the *Principal Certifier* for the development,
 - Council and the Principal Certifier have been given at least 2 days notice (in writing) prior to commencing any works.
- A3 Council can issue your *Construction Certificate* and be your *Principal Certifier* for the development, to undertake inspections and ensure compliance with the development consent and relevant building regulations. For further details contact Council on 9093 6944.
- A4 This determination does not include an assessment of the proposed works under the Building Code of Australia (BCA), Disability (Access to Premises – Buildings) Standards 2010 and other relevant Standards. All new building work (including alterations and additions) must comply with the BCA and relevant Standards. You are advised to liaise with your architect, engineer and building consultant prior to lodgement of your construction certificate.
- A5 Any proposed amendments to the design and construction of the building may require a new development application or a section 4.55 amendment to the existing consent to be obtained from Council, before carrying out such works
- A6 A Local Approval application must be submitted to and be approved by Council prior to commencing any of the following activities on a footpath, road, nature strip or in any public place:-
- Install or erect any site fencing, hoardings or site structures
 - Operate a crane or hoist goods or materials over a footpath or road
 - Placement of a waste skip or any other container or article.

For further information please contact Council on 9093 6971.

- A7 Specific details of the location of the building/s should be provided in the Construction Certificate to demonstrate that the proposed building work will not encroach onto the adjoining properties, Council's road reserve or any public place.
- A8 This consent does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is proposed to be carried out upon any adjoining or supported land, the land owner or principal contractor must obtain:
- the consent of the owners of such adjoining or supported land to trespass or encroach, or
 - an access order under the *Access to Neighbouring Land Act 2000*, or
 - an easement under section 88K of the *Conveyancing Act 1919*, or
 - an easement under section 40 of the *Land & Environment Court Act 1979*, as appropriate.

Section 177 of the *Conveyancing Act 1919* creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).

- A9 External paths and ground surfaces are to be constructed at appropriate levels and be graded and drained away from the building and adjoining premises, so as not to result in the entry of water into the building, or cause a nuisance or damage to any adjoining land.
- Finished ground levels external to the building are to be consistent with the development consent and are not to be raised, other than for the provision of approved paving or the like on the ground.
- A10 The necessary development consent and a construction certificate or a complying development certificate (as applicable) must be obtained for any proposed *cooling towers* and external plant and equipment, if not included in this consent.
- A11 A Local Approval application must be submitted to and be approved by Council's Building Approvals & Certification team 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 in a public place.

For further information please contact Council on 9093 6971.

- A12 There are to be no emissions or discharges from the premises, which will give rise to an environmental or public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and *Regulations*.
- A13 The applicant/owner is advised to engage the services of a suitably qualified and experienced Acoustic consultant, prior to finalising the design and construction of the development, to ensure that the relevant noise criteria and conditions of consent can be fully satisfied.

D34/22

Development Application Report No. D35/22

Subject: 10 Torrington Road, Maroubra (DA/614/2021)

| | |
|-----------------------------|---|
| Proposal: | Demolition of existing structures and construction of a 3 storey dwelling house with basement and upper level balconies, cabana and outbuilding at the rear, decking, landscaping and associated works (variation to height of buildings of the RLEP 2012). |
| Ward: | Central Ward |
| Applicant: | Smyth and Smyth Pty Ltd |
| Owner: | Mr E Y Liu |
| Cost of works: | \$3,421,679 |
| Reason for referral: | FSR non-compliances >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/614/2021 for the demolition of existing structures and construction of a 3 storey dwelling house with basement and upper level balconies, cabana and outbuilding at the rear, decking, landscaping and associated works, at No. 10 Torrington Road, Maroubra, for the following reasons:

1. Non-compliance with Land Use Table of the RLEP 2012

The proposal is inconsistent with the objectives of the R2 Low Density Residential zone. Specifically, the development fails to achieve the following:

- a. The proposal does not 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.
- b. The proposal does not protect the amenity of residents.

2. Non-compliance with Clause 4.3 (Building Height) of the RLEP 2012

The proposal does not comply with the 9.5m height of buildings development standard listed under Clause 4.3 of the RLEP 2012. The applicant has submitted a Clause 4.6 request to vary this standard, however the request is not considered to be well founded for the following reasons:

- a. It has not demonstrated that compliance with the development standard is unreasonable or unnecessary or that there are sufficient environmental planning grounds to justify contravening the standard; and
- b. The proposal is inconsistent with the relevant objectives of the 'height of buildings' development standard whereby the proposal will result in a finished development form that will be inconsistent with the desired future character of the locality and does not minimise its amenity impacts upon neighbouring land.

3. Non-compliance with Clause 4.4 (Floor Space Ratio) of the RLEP 2012

The proposal does not comply with the 0.6:1 floor space ratio development standard listed under Clause 4.4 of the RLEP 2012. The applicant has failed to identify the non-compliance and as such, a Clause 4.6 request to vary this standard has not been

submitted. The proposed variation cannot be supported and therefore, by necessity, the development application must be refused.

4. **Clause 6.7 (Foreshore Scenic Protection Area) of the RLEP 2012**

The proposal is inconsistent with the objectives of the foreshore scenic protection area. Specifically, the development fails to achieve the following:

- a. The proposal has not been located and designed to minimise its visual impact on public areas of the coastal scenic protection area arising from the excessive bulk and scale of the proposal, and therefore does not achieve Clause 6.7(3)(a).
- b. The proposal does not positively contribute to the scenic quality of the coastal scenic protection area due to the excessive bulk and scale of the proposal, and therefore does not achieve Clause 6.7(3)(b).
- c. The proposal is inconsistent with objective (d) pursuant to Clause 6.7(1) in that the proposal is excessive in height, bulk and scale and will have unacceptable impacts on the visual environment and scenic qualities of the coastal scenic protection area.

5. **Non-compliances with the RDCP 2013**

The proposal does not comply with the following provisions of the RDCP 2013:

- a. Pursuant to Part B7, Section 3.2, the two additional parking spaces are not supported due to the extent of the FSR non-compliance and the building results in an unacceptable bulk and scale.
- b. Pursuant to Part 3.1, Section C2 of RDCP 2013, the proposed non-compliance with the floor space ratio development standard is not supported.
- c. Pursuant to Part 3.2, Section C2 of RDCP 2013, the proposed non-compliance with the building height development standard is not supported.
- d. Pursuant to Part C1, Section 3.2, the proposal does not comply with the 7m external wall height objectives and controls in that the second floor level has not been designed as habitable roof space and includes a 2.9m external wall height non-compliance.
- e. Pursuant to Part C1, Section 3.3, the proposal does not uphold the objectives and achieve compliance with the 1.8m side setback control at the first and second floor levels.
- f. Pursuant to Part C1, Section 4.6, the proposal does not uphold the objectives and controls in relation to the excavation at the basement level. The basement level is considered excessive, contributes the FSR non-compliance, has not been designed in accordance with the sites topography and may lend itself to future habitable uses due to the excessive floor to ceiling heights.
- g. Pursuant to Part 5.3, Section C2 of RDCP 2013, the proposed balcony at the second floor level has not been demonstrated to negate overlooking and this result in unacceptable visual privacy impacts. In addition, privacy screening measures have not been included to a number windows at the side elevations.
- h. Pursuant to Part B10, the bulk and scale of the proposal is not considered a positive visual outcome for the site as seen from the public domain and the foreshore scenic protection area.

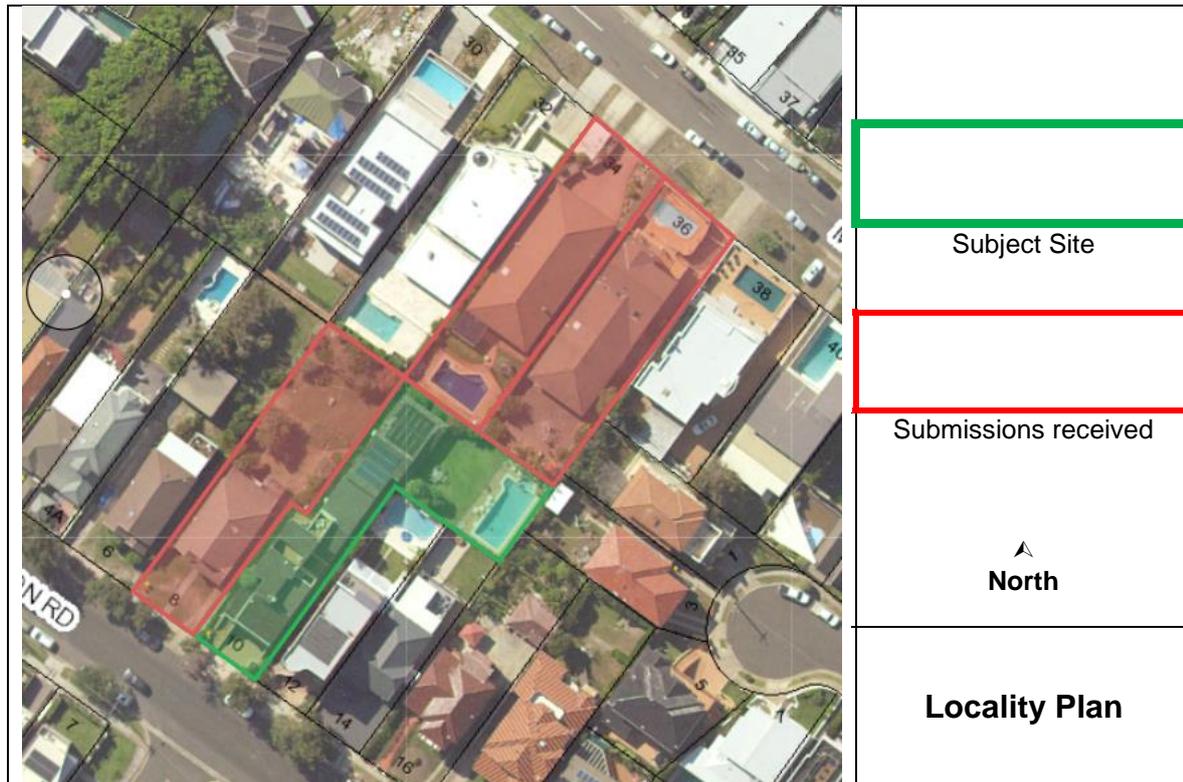
6. Public Interest

The proposal is not in the public interest as the building proposes significant deviations from both the numerical and merit-based controls.

Attachment/s:

Nil

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1. Executive summary

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

- The development contravenes the development standards for floor space ratio and building height by more than 10%.

The proposal seeks development consent for the demolition of the existing structures and the construction of a 3 storey dwelling house with basement and upper level balconies, cabana and outbuilding at the rear, decking, landscaping and associated works.

The key issues associated with the proposal relate to excessive bulk and scale. Specifically, the RLEP non-compliances with 10.27m-10.3m building height, 0.74:1 FSR, the foreshore scenic protection area objectives, and RDCP non-compliances with 9.9m external wall height, upper level side setbacks and 4m deep excavation from the substantial basement level.

For the reasons discussed in this report, the proposal is recommended for refusal.

2. Site Description and Locality

The subject site, Lot B DP 320680, is located on the northern side of Torrington Road between Malabar Road to the west and Lurline Street to the east. The site backs onto the rear of properties addressed to Mermaid Avenue. The site is an L-shape with a frontage of 12.19m to Torrington Road. The site has an area of 910.46sqm. The site slopes from the front to the rear by approximately 3.6m.

The subject site comprises of a 2- to 3-storey detached dwelling and an enclosable swimming pool in the north-eastern rear corner of the site. There is a driveway in the centre of the site frontage leading to a semi-basement level double garage. The site is landscaped with a variety of shrubs and turf. The site does not contain any trees. There are 2 street trees located along the street frontage in front of the site.



Figure 1 – View from Torrington Road

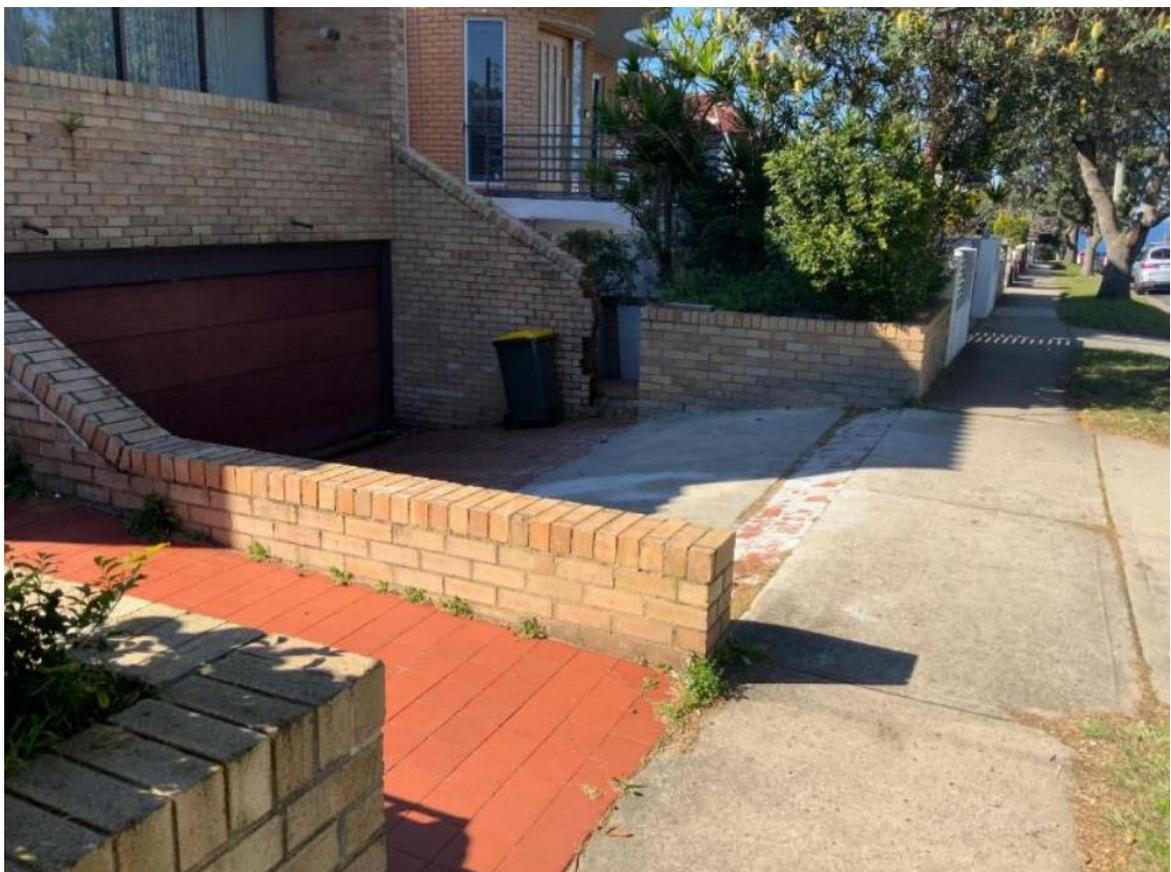


Figure 2 – Existing driveway to lower ground floor level garage

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Figure 3 – Front and western façade of the existing dwelling



Figure 4 – Rear pool enclosure

3. Relevant history

CDC/218/2019

Complying Development Certificate No. CDC/218/2019 was approved on 19/9/2019 for alterations and additions to the existing dwelling.

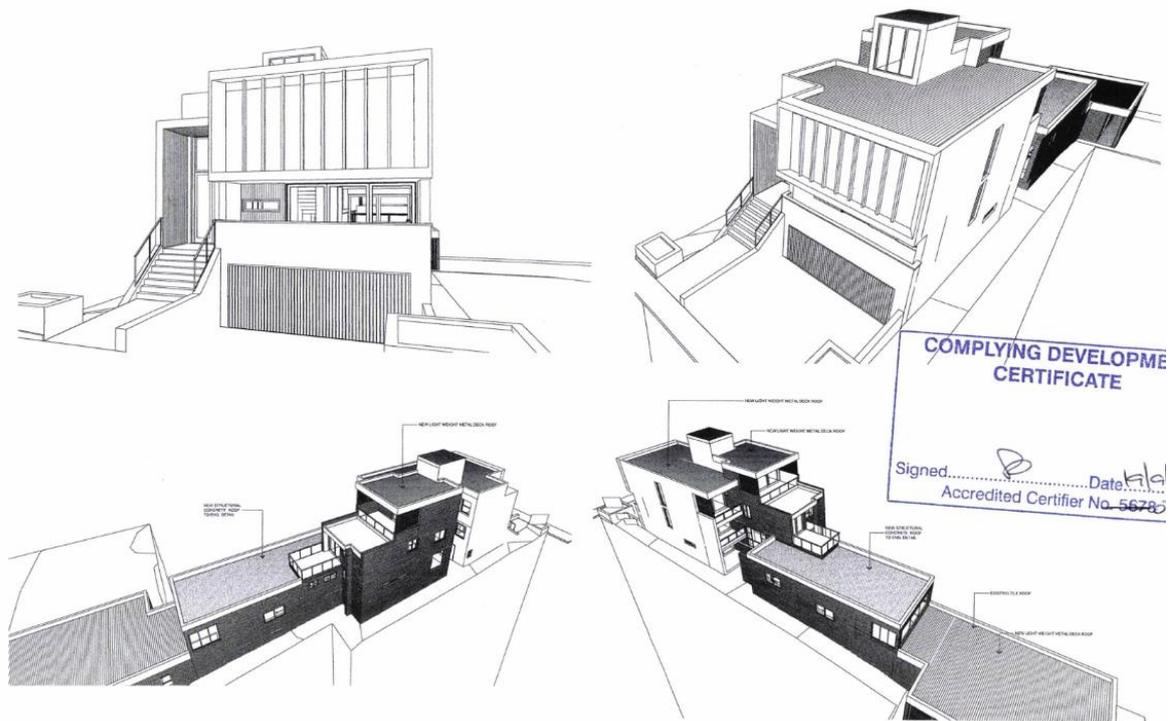


Figure 5 – Building Perspectives approved by CDC/218/2019

CDC/218/2019/A

Modified CDC No. CDC/218/2019/A was approved on 14/10/2019 for modifications to the approved alterations and additions to the existing dwelling. This involved the replacement of the skillions roofs with a flat roof, new windows and a minor extension to the front to accommodate a new bathroom, ensuite and walk in robe.

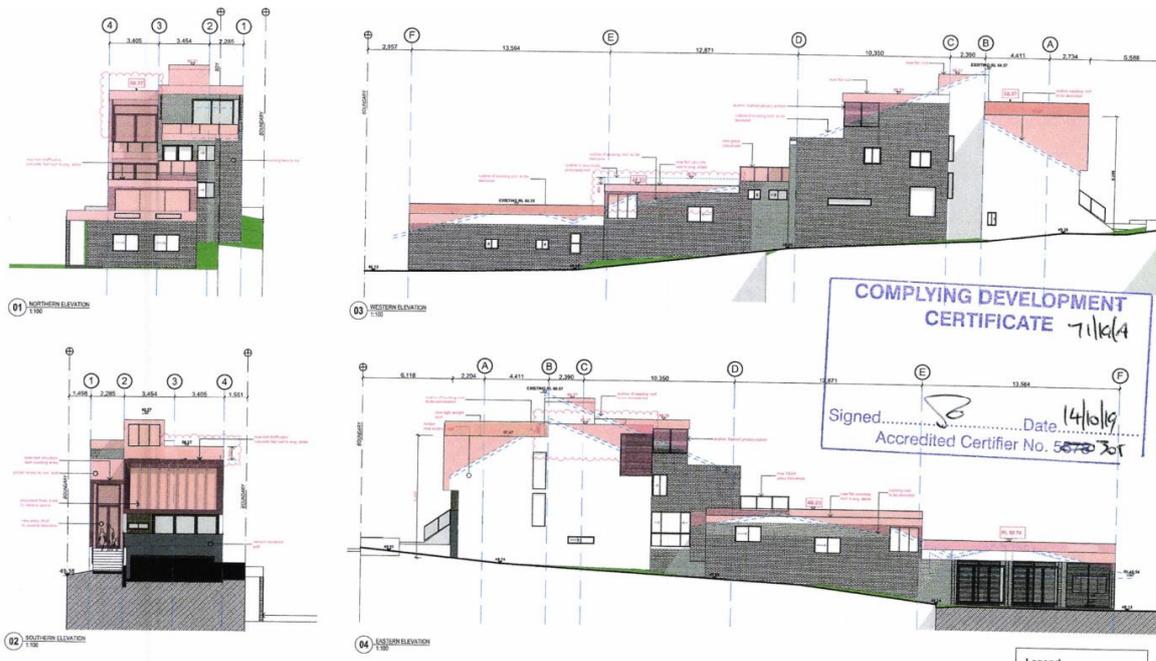


Figure 6 – Elevations approved by CDC/218/2019/A

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4. Proposal

The proposal seeks development consent for the demolition of the existing structures and the construction of a 3 storey dwelling house with basement and upper level balconies, cabana and outbuilding at the rear, decking, landscaping and associated works.

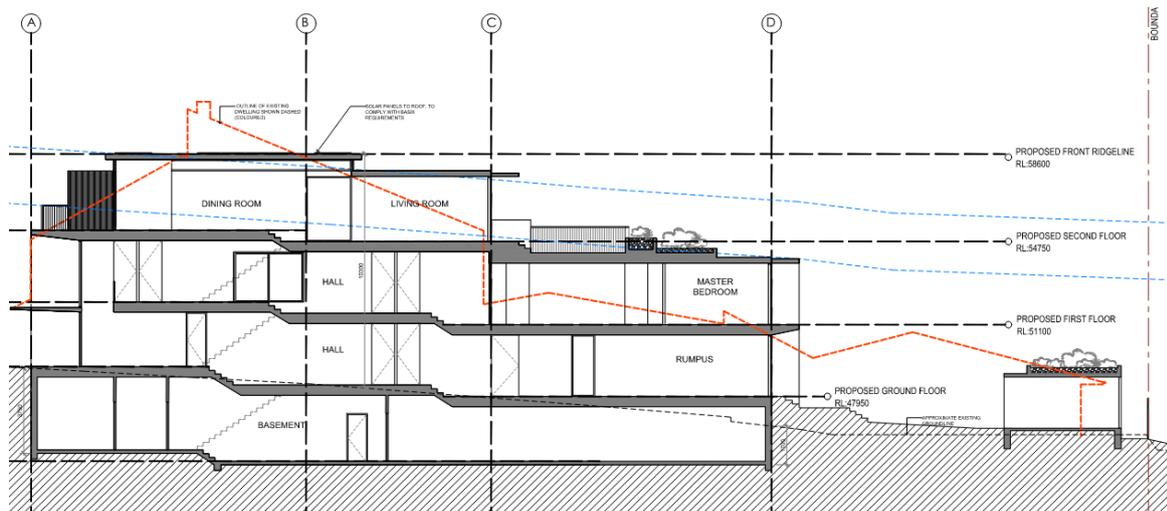


Figure 7 – Section AA

On 23/05/2022, Council discussed the reasons for refusal with the Applicant and provided the opportunity for the application to be withdrawn. On 27/05/2022, the Applicant confirmed the application would not be withdrawn and as such, the application is recommended for refusal.

5. Notification

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

- 34 Mermaid Avenue, Maroubra
- 36 Mermaid Avenue, Maroubra
- 8 Torrington Road, Maroubra

| Issue | Comment |
|---|--|
| Overshadowing and solar access | Notwithstanding that the shadow diagrams lack detail regarding the neighbouring properties, sufficient information has been submitted to confirm the proposal complies with the solar access requirements. |
| Privacy | As discussed in Appendix 2, if the application were approved, conditions would be included to require privacy screens to the side elevation windows. However, the second floor level rear balcony is considered to result in adverse privacy impacts and forms a reason for refusal. |
| Wall height non-compliance | This issue forms a reason for refusal. |
| Incompatible with the streetscape character | This issue forms a reason for refusal. |
| Height, bulk and scale | This issue forms a reason for refusal. |
| Incompatible with the R2 zoning objectives | This issue forms a reason for refusal. |
| Does not respect topography | This issue forms a reason for refusal. |
| Cabana setback inadequate and should match current building | The cabana complies with Council’s setback controls. |

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| Issue | Comment |
|--|--|
| Prominent pool structure installed without permission or notification to neighbouring properties | A review of the properties development history has been undertaken and it is not evident that the existing pool enclosure has been approved. As such, the matter has been referred to Council's Compliance Team for investigation. |
| Building below balcony should be one storey not two storeys | Concerns are raised in relation to privacy impacts from the second floor level balcony and this issue forms a reason for refusal. |
| Balcony size excessive and should be reduced. If they remove planters, it could be 92m2 | The size of the planters are not considered excessive, however, concerns are raised in relation to privacy impacts from the second floor level balcony and this issue forms a reason for refusal. |
| Height non-compliance | This issue forms a reason for refusal. |
| Inadequate setbacks | This issue forms a reason for refusal. |
| Maximum wall length | The proposal complies with Council's requirements and no external walls are >12m without articulation or fenestration. |
| Views (from street and neighbouring properties) | No view loss submissions cited private view loss were received. |
| Concerns regarding number of bedrooms and use as an Airbnb/boarding house | Six bedrooms for a dwelling-house on a subject site with an area of 910m2 is not considered excessive. |

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6. Relevant Environment Planning Instruments

6.1. SEPP 55 – Remediation of Land

Under Clause 7(1)(a) of SEPP 55 – Remediation of Land, consideration has been given as to whether the subject site on which the development is occurring is contaminated.

As the site has a long history of residential use, it is considered that the land does not require further consideration under Clause 7 (1) (b) and (c) of SEPP 55. The proposal is therefore acceptable with regard to SEPP 55: Remediation of Land.

6.2. SEPP (BASIX) 2004

SEPP (Building Sustainability Index: BASIX) 2004 applies to the proposed development. It relates to commitments within the proposed development in relation to thermal comfort, water conservation and energy efficiency sustainability measures.

The development application was accompanied by BASIX Certificate No. A344452 demonstrating compliance with the SEPP.

6.3. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned R2 under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent. The objectives for the R2 Low Density Zone in the Land Use Table in the RLEP are:

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

Development within the streetscape is characterised by free standing detached dwelling houses ranging from one to two storeys. The third storey of nearby development comprises a habitable roof that is consistent with Council's wall height control. On the southern side of Torrington Road there

are a few examples of partially below ground garages. Approval of the proposal in its current form will result in a development that is inconsistent with the existing and desired built character of the area. Accordingly, the proposal is not consistent with the objectives of the R2 zone for the following reasons:

- The proposal does not achieve Objective O3 which is 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 does not achieve Objective O4 which is to protect the amenity of residents.

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

| Clause | Development Standard | Proposal | Compliance (Yes/No) |
|-------------------------------------|------------------------------|---------------------------------------|---------------------|
| Cl 4.4(2A): Floor space ratio (max) | 0.6:1 (546.2m ²) | 0.74:1 (670.2m ²) | No |
| Cl 4.3: Building height (max) | 9.5m | 10.27m (roof) 10.3m (solar panels) | No |

6.3.1. *Clause 4.6 - Exceptions to development standards*

Floor Space Ratio

Pursuant to Clause 4.4(2A) of the RLEP, the maximum FSR development standard is 0.6:1 or a maximum GFA of 546m². The gross floor area calculations submitted with the application states that the proposal complies and has a FSR of 0.56:1 and a GFA of 511m². This is incorrect and the proposed development has a FSR of 0.74:1 and a GFA of 670.2m². A written request to vary the FSR development standard under Clause 4.6 of the RLEP has not been submitted and therefore the proposal must be refused.

The applicant's gross floor area calculations should be amended as per the following:

- The basement level laundry, cellar, lift and stairs should be **included**. These areas equate to approximately 45.2m² of GFA.
- The outbuilding within the rear setback has not been **included** and this equates to approximately 3m² of GFA.
- The enclosed swimming pool has not been **included** and this equates to approximately 114m² of GFA.
- The ground floor level lift should be **excluded**, and this equates to approximately 4.2m² of GFA.
- The first floor level stair/landing need to be **included** and this equates to approximately 9.8m² of GFA.
- The second floor level lift and stairs are void spaces should be **excluded**, this equates to approximately 8.6m².

In light of the above, the proposal is inconsistent with the following objectives in Clause 4.4 of the RLEP:

- Objective (a) of Clause 4.4 of the RDCP as it will result in a building form that is not consistent with the desired future character of the locality.
- Objective (d) of Clause 4.4 of the RDCP as it will adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy and views.

Building Height

The non-compliance with the height development standard is discussed in section 7 below.

6.3.2. *Clause 6.7 Foreshore scenic protection area*

The site is located within the FSPA pursuant to Clause 6.7(2) of the RLEP and the Foreshore Scenic Protection Area Map. The objectives of Clause 6.7 are as follows:

- (a) to recognise, protect and enhance the natural, visual and environmental qualities of the scenic areas of the coastline,
- (b) to protect and improve visually prominent areas adjoining the coastal foreshore,
- (c) to protect significant public views to and from the coast,
- (d) to ensure development in these areas is appropriate for the location and does not detract from the scenic qualities of the coast.

The proposal is inconsistent with the matters for consideration prior to granting consent pursuant to Clause 6.7(3)(a) and (b) of the RLEP in that:

- (ii) The proposal has not been located and designed to minimise its visual impact on public areas of the coastal scenic protection area arising from the excessive bulk and scale of the proposal.
- (iii) The proposal does not positively contribute to the scenic quality of the coastal scenic protection area due to the excessive bulk and scale of the proposal.

The proposal is inconsistent with objective (d) of the foreshore scenic protection area pursuant to Clause 6.7(1) of the RLEP in that the proposal is excessive in height, bulk and scale and will have unacceptable impacts on the visual environment and scenic qualities of the coastal scenic protection area.

7. Clause 4.6 exception to a development standard

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

| Clause | Development Standard | Proposal | Proposed variation | Proposed variation (%) |
|----------------------------------|----------------------|---------------------------------------|--------------------|------------------------|
| Cl 4.3: Building height (max) | 9.5m | 10.27m (roof) 10.3m (solar panels) | 0.73m-0.8m | Up to 8.4% |

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 Building Height development standard (CI 4.3)

The applicant's written justification for the departure from the building height 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 development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case because the relevant objectives of the standard are still achieved.

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

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

The applicant's written justification demonstrates that this objective is satisfied by noting that; *"the bulk and scale of the development is compatible with surrounding existing development and is consistent with the desired future character of the area. As demonstrated in the architectural plans submitted with this application, the proposed new dwelling will have a height, bulk and scale that is compatible with the adjoining 3-storey dwelling to the east.*

Numerous 3-storey homes have been approved and constructed along both sides of Torrington Rd. The proposed built form which presents as 2-storeys above a garage level is entirely consistent with numerous dwellings along Torrington Rd.

On this basis, the height variation does not generate any inconsistency with the existing or desired future character."

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

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

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

The applicant's written justification demonstrates that this objective is satisfied by noting that; *"the proposed building height variation is not responsible for any unreasonable*

adverse impacts to surrounding properties in terms of overshadowing, privacy and view loss, as detailed below:

Overshadowing: As demonstrated on the Solar Access Diagrams submitted with this application, the proposal will retain more than 3 hours of direct sunlight between 8am and 4pm on 21 June to a portion of the north-facing living area windows and the private open space area of the adjoining dwellings to the east and west.

Privacy: The proposed works have been designed and sited to ensure adequate visual and acoustic privacy between the subject dwelling and the adjoining properties. The proposal has considered the location of the works on the site, the internal layout and the building materials used.

The proposed works will have appropriate setbacks thereby providing adequate separation from the adjoining properties.

Windows have been appropriately sited and designed to minimise any potential overlooking. It is noted that there are minimal openings along the side elevations to prevent overlooking impacts to the adjoining dwellings to the east and west.

The ground floor private open space area and deck will be screened by fencing and landscaping to minimise potential acoustic privacy concerns.

The upper level balconies are orientated to the rear and front and have been appropriately sized and screened with planter landscaping to ensure minimal visual or acoustic privacy impacts to neighbouring properties.

View Sharing: The proposed development will not have an adverse impact on views from the public domain or surrounding properties. The height is less than the existing height of the current dwelling. It is therefore unlikely that the height variation will generate any adverse view impacts noting the level nature of topography further west towards Malabar Rd. Properties further west and south-west along Torrington Rd are sufficiently separated to ensure that the proposed height variation would not generate any adverse view impacts. Such properties will continue to view either side east and north-east towards distant coastal views, noting that views would only be available from other 3-storey dwellings."

Assessing officer's comment: The justification provided by the applicant above is not concurred with and the following additional comments are made:

- The proposed building height non-compliance is amplified by the non-compliance with Council's 7m external wall height control.
- The bulk and scale of the building is not compatible with existing development within the streetscape or the desired future character of the area.
- The visual impact of the overall form would set a negative precedent for future development in the street.
- The floor to ceiling heights at the second-floor level, 2.9m-3.5 are excessive and in this context, the extent of the non-compliance is considered unnecessary.
- The proposed non-compliance does results in any significant adverse amenity and visual impacts to the streetscape and neighbouring properties.

In conclusion, the applicant's written request has not adequately demonstrated that compliance with the height development standard is unreasonable or unnecessary in the circumstances of the case.

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

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

- *“Compliance with the development standard is unreasonable and unnecessary as the proposed building height and bulk is of an appropriate form and scale and is compatible with surrounding development and the desired future character for the locality.*
- *The proposed building height non-compliance is minor 0.8m (8.4%), and only in relation to the rear part of the roof. The remainder of the development complies with the building height standard. Refer to the extract of the Elevation Plan below.*
- *As demonstrated in the extract of the Section Plan below, the proposed new dwelling has a maximum building height that is considerably less than the maximum building height of the existing dwelling.*
- *The minor area of non-compliance will not be visible from the streetscape and will be indiscernible from surrounding properties.*
- *The proposal has been designed to respond to the natural topography of the site.*
- *Planter landscaping is provided to the First Floor and Second Floor to soften the appearance of the built form. The proposal incorporates a high level of articulation to the façades. The articulation of the façades and the recessed upper level will reduce the perceived bulk and associated height variation of the proposed development.*
- *The bulk and scale of the development (despite the variation) is compatible with surrounding existing development and is consistent with the desired future character of the area. As demonstrated in the architectural plans submitted with this application, the proposed new building will have a height, bulk and scale that is compatible with the adjoining 3-storey dwelling to the east at 12 Torrington Road. Refer to the extract of the Street Elevation below.*
- *The building height variation will not be responsible for any unreasonable bulk or scale impacts, noting that the proposal complies with the LEP FSR control and the DCP site coverage and landscaping controls.*
- *The proposed building height variation is not responsible for any unreasonable adverse impacts to surrounding properties in terms of overshadowing, privacy and view loss.*
- *As demonstrated on the Solar Access Diagrams submitted with this application, the proposal will retain more than 3 hours of direct sunlight between 8am and 4pm on 21 June to a portion of the north-facing living area windows and the private open space area of the adjoining properties to the east and west.*
- *The proposed density, scale and bulk of the development is appropriate and acceptable given the context of the locality and will not appear out of character when viewed in its context of other buildings in the vicinity.*
- *The proposed bulk and scale of the development is also compatible with the size and shape of the allotment.”*

Assessing officer’s comment: As discussed above, the applicant’s written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

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

To determine whether the proposal will be in the public interest, an assessment against the objectives of the height standard and R2 Low Density Residential zone is provided below:

Assessment against objectives of height standard

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

Assessment against objectives of the R2 zone

The objectives of R2 zone are:

- 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.

The applicant's written justification demonstrates that this objective is satisfied by noting that;

The proposed dwelling is permissible in the R2 Low Density Residential zone.

The proposal (notwithstanding the variation from the height standard) is consistent with the objectives of the zoning as follows:

- *“The proposal will retain the existing residential use of the site and continue to provide for housing needs in the area.*
- *The proposed height, bulk and scale is consistent with the character of surrounding development*
- *The proposal will not inhibit other land uses to be provided in the area that provide facilities or services to meet the day to day needs of residents.*
- *The proposal will not compromise the amenity of other residents in terms of privacy or views. The proposed floor layout has been designed to ensure that mutual privacy is maintained between neighbours within the building and neighbouring properties.”*

Assessing officer's comment: The reasons outlined by the applicant above are not concurred with and it is considered that the proposal does not meet the objectives of the R2 Low Density zone. The proposal is not consistent with the existing or desired future character of the streetscape. The bulk and scale of the height non-compliance is considered excessive.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

Variation of the maximum building height standard will allow for the orderly use of the site and there is 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 not been satisfied and that development consent may not be granted for development that contravenes the building height development standard.

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

The 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 | The environmental impacts of the proposed development on the natural and built environment have been addressed in this report. The proposed development is consistent with the dominant character in the locality. The proposal will not result in detrimental social or economic impacts on the locality. |
| 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

External Wall Height

Operating in conjunction with the RLEP height standards, the external wall height controls of the RDCP stipulates the maximum height for the external enclosing walls of a building. The height standard and external wall height control ensure the scale and mass of development compliment the desirable streetscape character and achieve a suitable urban design outcome.

The relevant objectives of external wall height in Section 3.2 of RDCP are:

- *To ensure development height establishes a suitable scale to the street and contributes to its character.*
- *To ensure development height does not cause unreasonable impacts upon the neighbouring dwellings in terms of overshadowing, view loss, privacy and visual amenity.*
- *To ensure the form and massing of development respect the topography of the site.*

The relevant control for external wall height under Section 3.2.1(i) states:

- *The maximum external wall height is 7m. For steeply sloping sites, the maximum external wall height is 8m.*

The proposed development must have an external wall height of 7m and the proposal attains a maximum wall height of 9m at the southern front elevation, 9.9m at the eastern and western side elevations.

The bulk and scale of the proposed wall height is considered excessive and results in adverse visual impacts to the streetscape and the neighbouring properties. The wall height is not consistent with existing development within the street and the desired future character of the area. The floor to ceiling heights at the uppermost level are substantial, 2.9m-3.5m and there is scope for reduction to lessen the external wall height non-compliance.

Section 3.2 in the RDCP states that any structures above the wall height limit are intended for roof elements only. Council's controls envisage that the upper level must read as a habitable roof space and dormer windows (that comply with Council's controls) may be provided to ensure adequate floor to ceiling height. For these reasons the proposal does not uphold the objectives and is considered unsatisfactory with Section 3.2 of the RDCP.

Side Setbacks

The relevant objectives of setbacks in Section 3.3 of the RDCP are:

- *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.*

The relevant controls for the sides setback in Section 3.3.2(i) states:

- *Any basement or semi-basement level protruding 1.2m or more above ground level (finished) at any point will be counted as a storey. In this case, the "ground storey" is taken to be the level immediately above and will be subject to the relevant side setback control.*
- *The minimum side setbacks for sites with a frontage width 12m and above is 1200mm (Gnd & 1st floor), 1800mm above.*

The Statement of Environmental Effects fails to recognize that the basement level protrudes 1.3m above the existing ground level and thereby is counted as a storey. A side setback of 1.2m applies to the basement and ground floor level, and 1.8m to the first and second floor levels.

The first floor level is setback 1.3m to the lift, 1.2m to the western elevation and 1.5m to the eastern elevation. The second floor level is setback 1.3m to the lift, and 1.5m the western/eastern elevations.

The proposed non-compliances exacerbate the amenity impacts for adjoining properties and the visual impact arising from the bulk and scale of the proposal. The proposed non-compliances at the upper levels result in an unreasonable sense of enclosure and inappropriate separation to the neighbouring properties. For these reasons the proposal does not uphold the objectives and is considered unsatisfactory with Section 3.3 of the RDCP.

Excavation

The relevant objectives of earthworks in Section 4.6 of the RDCP are:

- *To maintain or minimise change to the natural ground levels.*
- *To ensure excavation and backfilling of the site do not result in unreasonable structural, visual, overshadowing and privacy impacts on the adjoining dwellings.*

The relevant control in Section 4.6(i) states:

- *Any excavation and backfilling within the building footprint must be limited to 1m at any point on the allotment, unless it is demonstrated that the site gradient is too steep to reasonably construct a dwelling within this extent of site modification.*

The basement level includes two substantial storage rooms (78m² and 106m²), a wine cellar, laundry and plant rooms. It is considered that the design of the basement will lend itself to future habitable uses due to the excessive floor to ceiling heights (2.9m-3.2m) and size of the storage rooms (78m² and 106m²). Such uses would be counted towards GFA and the existing non-compliant FSR. Furthermore, the proposed excavation to a depth of 4m represents a 3m breach of Council's control.

The proposed excavation is considered to be unreasonable and unnecessary. A proposal designed to suit the existing ground levels, which would not require the use of such an extensive cut, could be achieved on the site and this would be consistent with the neighbouring properties. The proposed building footprint has not been designed having regard to the topography of the site and the natural ground levels are not maintained given that excessive excavation is required. For these reasons the proposal does not uphold the objectives and is considered unsatisfactory with Section 4.6 of the RDCP.

10. Conclusion

That the application for the demolition of existing structures and construction of a 3 storey dwelling house with basement and upper level balconies, cabana and outbuilding at the rear, decking, landscaping and associated works be refused for the following reasons:

1. Non-compliance with Land Use Table of the RLEP 2012

The proposal is inconsistent with the objectives of the R2 Low Density Residential zone. Specifically, the development fails to achieve the following:

- a. The proposal does not 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.
- b. The proposal does not protect the amenity of residents.

2. Non-compliance with Clause 4.3 (Building Height) of the RLEP 2012

The proposal does not comply with the 9.5m height of buildings development standard listed under Clause 4.3 of the RLEP 2012. The applicant has submitted a Clause 4.6 request to vary this standard, however the request is not considered to be well founded for the following reasons:

- a. It has not demonstrated that compliance with the development standard is unreasonable or unnecessary or that there are sufficient environmental planning grounds to justify contravening the standard; and
- b. The proposal is inconsistent with the relevant objectives of the 'height of buildings' development standard whereby the proposal will result in a finished development form that will be inconsistent with the desired future character of the locality and does not minimise its amenity impacts upon neighbouring land.

3. **Non-compliance with Clause 4.4 (Floor Space Ratio) of the RLEP 2012**

The proposal does not comply with the 0.6:1 floor space ratio development standard listed under Clause 4.4 of the RLEP 2012. The applicant has failed to identify the non-compliance and as such, a Clause 4.6 request to vary this standard has not been submitted. The proposed variation cannot be supported and therefore, by necessity, the development application must be refused.

4. **Clause 6.7 (Foreshore Scenic Protection Area) of the RLEP 2012**

The proposal is inconsistent with the objectives of the foreshore scenic protection area. Specifically, the development fails to achieve the following:

- a. The proposal has not been located and designed to minimise its visual impact on public areas of the coastal scenic protection area arising from the excessive bulk and scale of the proposal, and therefore does not achieve Clause 6.7(3)(a).
- b. The proposal does not positively contribute to the scenic quality of the coastal scenic protection area due to the excessive bulk and scale of the proposal, and therefore does not achieve Clause 6.7(3)(b).
- c. The proposal is inconsistent with objective (d) pursuant to Clause 6.7(1) in that the proposal is excessive in height, bulk and scale and will have unacceptable impacts on the visual environment and scenic qualities of the coastal scenic protection area.

5. **Non-compliances with the RDCP 2013**

The proposal does not comply with the following provisions of the RDCP 2013:

- a. Pursuant to Part B7, Section 3.2, the two additional parking spaces are not supported due to the extent of the FSR non-compliance and the building results in an unacceptable bulk and scale.
- b. Pursuant to Part 3.1, Section C2 of RDCP 2013, the proposed non-compliance with the floor space ratio development standard is not supported.
- c. Pursuant to Part 3.2, Section C2 of RDCP 2013, the proposed non-compliance with the building height development standard is not supported.
- d. Pursuant to Part C1, Section 3.2, the proposal does not comply with the 7m external wall height objectives and controls in that the second floor level has not been designed as habitable roof space and includes a 2.9m external wall height non-compliance.
- e. Pursuant to Part C1, Section 3.3, the proposal does not uphold the objectives and achieve compliance with the 1.8m side setback control at the first and second floor levels.

- f. Pursuant to Part C1, Section 4.6, the proposal does not uphold the objectives and controls in relation to the excavation at the basement level. The basement level is considered excessive, contributes the FSR non-compliance, has not been designed in accordance with the sites topography and may lend itself to future habitable uses due to the excessive floor to ceiling heights.
- g. Pursuant to Part 5.3, Section C2 of RDCP 2013, the proposed balcony at the second floor level has not been demonstrated to negate overlooking and this result in unacceptable visual privacy impacts. In addition, privacy screening measures have not been included to a number windows at the side elevations.
- h. Pursuant to Part B10, the bulk and scale of the proposal is not considered a positive visual outcome for the site as seen from the public domain and the foreshore scenic protection area.

6. **Public Interest**

The proposal is not in the public interest as the building proposes significant deviations from both the numerical and merit-based controls.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Landscape Technician

Council's Landscape Technician has confirmed the proposal is unsatisfactory in its current form as a result of the driveway widening and removal of a street tree. Conditions of consent have been recommended by Council's Engineer below in Section 1.2 which address this issue by offsetting the driveway entrance/opening at the front boundary for the dwelling a minimum of 2m from the outside edge of the existing trunk of the street tree. See comments below:

There are two mature Banksia integrifolia (Coastal Banksia's) on Council's public verge in front of this site, comprising one on either side of the existing driveway, with the eastern tree being in good health and condition with a height of 9-10m, with the one in line with the western boundary being about 6-7m, and in fair condition due to the presence of deadwood as a result of being lopped away from the domestic wires, which now pass through its western aspect.

Both are protected by the DCP and are also part of a single species avenue planting that extends along the length of this side of the street, so as a group, are a major feature of the streetscape, while also offering a food and habitat source to native fauna along the harsh, exposed coastal strip.

While a double width vehicle crossing is already provided, the plans propose this to be widened even further to the west, to be 5800mm in total, finishing in line (and direct conflict with) the western street tree, which is noted for removal, with the eastern tree able to be retained given that the offset to the crossing on that side will remain unchanged.

However, Council's preference is that established native coastal trees be retained wherever possible, as is required by the DCP, and following discussions with Council's Development Engineer, it has become apparent that there is sufficient space to maintain the western side of the crossing in its current position, which is roughly in line with the existing wall that separates the internal driveway and the pedestrian entrance, without affecting access to the new basement in anyway, and as this also then allows retention of the street tree given the 2 metre setback, which in turn maintains an acceptable line of sight of vehicles approaching from the west, uphill, is the ideal outcome.

As such, relevant protection conditions and a bond have been imposed to ensure they are both safely retained in the streetscape as part of this development.

All vegetation within both the front and rear setbacks of this site are insignificant, so can be removed where needed, with the shrubs/small trees that are beyond the western boundary, wholly in the rear setback of the adjoining private property at no.8, close to the common boundary, not to be affected given their small size and the fact the existing side setback will be maintained, with the pavers which currently occupy this side access to be replaced with gravel and stepping stones, which does not pose any threat.

1.2. Development Engineer

Driveway Entrance Amendment (Due to Street Tree Retention Requirement)

Development Engineering has noted that Council's Landscape Development Officer requires the retention of the Council Street Tree at the western end of the site adjacent to the driveway entrance. Council's Development Engineers advises vehicular access to the setback double car garage can still be provided with the requested minimum 2.00m offset from the trunk of the Council Street Tree.

*Development Engineering has included a relevant condition which requires the plans to be amended prior to the issuing of a Construction Certificate, which shows the Council Driveway and the driveway entrance/opening at the front boundary for the dwelling being offset a **minimum 2.00m** from the outside edge of the existing trunk of the western end Street Tree.*

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 (or underground drainage system) in Torrington Road; OR

A suitably sized infiltration area.

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.*

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

Statement of Environmental Effects

10 Torrington Road, Maroubra

RANDWICK LEP 2013 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS

This Clause 4.6 variation request has been prepared to accompany the development application for the demolition of existing dwelling and the construction of a 3-storey dwelling at 10 Torrington Road, Maroubra.

Clause 4.6 of the Randwick LEP 2013 allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards.

This Clause 4.6 variation request takes into account the relevant aspects of the Land and Environment Court judgement from *Initial Action Pty Ltd v Woollahra Council [2017] NSWLEC 1734*, as revised by the NSW Court of Appeal in *Rebel MH Neutral Bay Pty Limited v North Sydney Council (2019) NSWCA 130*.

Clause 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.
- (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.
- (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 Director-General has been obtained.
- (5) In deciding whether to grant concurrence, the Director-General 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 Director-General before granting concurrence.

Development Standard to be Varied

The proposal seeks a variation to the development standard contained within Clause 4.3 of the Randwick LEP 2013 - maximum height of 9.5m, demonstrated on the LEP map in the figure below.

The proposed maximum height of 10.3m, which represents a variation of 0.8m (8.4%) from the numerical height standard in the LEP.

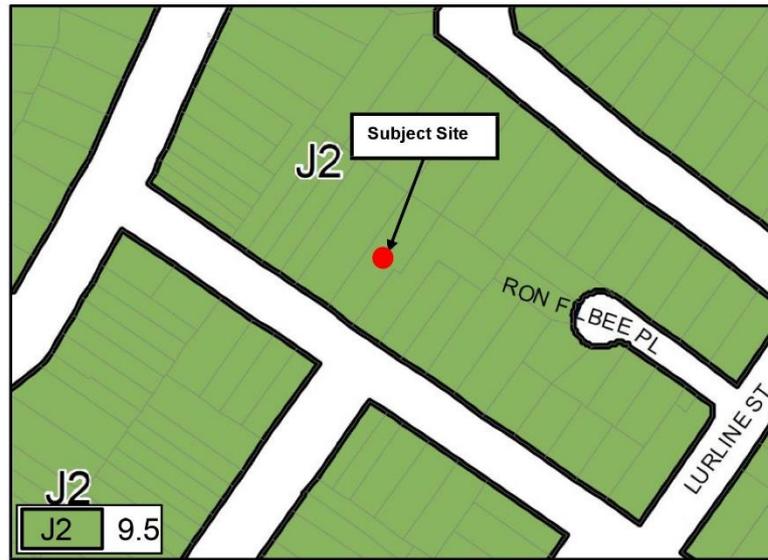


Figure 50: Building Height

Justification for Contravention of the Development Standard

This written request is considered to justify the contravention of the development standard and addresses the matters required to be demonstrated by clause 4.6(3), of which there are two aspects. Both aspects are addressed below:

(a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Assessment: It is considered that strict compliance with the development standard for height on the site is unreasonable and unnecessary in the circumstances for the following reasons:

- Compliance with the development standard is unreasonable and unnecessary as the proposed building height and bulk is of an appropriate form and scale and is compatible with surrounding development and the desired future character for the locality.
- The proposed building height non-compliance is minor 0.8m (8.4%), and only in relation to the rear part of the roof. The remainder of the development complies with the building height standard. Refer to the extract of the Elevation Plan below.
- As demonstrated in the extract of the Section Plan below, the proposed new dwelling has a maximum building height that is considerably less than the maximum building height of the existing dwelling.
- The minor area of non-compliance will not be visible from the streetscape and will be indiscernible from surrounding properties.
- The proposal has been designed to respond to the natural topography of the site.
- Planter landscaping is provided to the First Floor and Second Floor to soften the appearance of the built form. The proposal incorporates a high level of articulation to

the façades. The articulation of the facades and the recessed upper level will reduce the perceived bulk and associated height variation of the proposed development.

- The bulk and scale of the development (despite the variation) is compatible with surrounding existing development and is consistent with the desired future character of the area. As demonstrated in the architectural plans submitted with this application, the proposed new building will have a height, bulk and scale that is compatible with the adjoining 3-storey dwelling to the east at 12 Torrington Road. Refer to the extract of the Street Elevation below.
- The building height variation will not be responsible for any unreasonable bulk or scale impacts, noting that the proposal complies with the LEP FSR control and the DCP site coverage and landscaping controls.
- The proposed building height variation is not responsible for any unreasonable adverse impacts to surrounding properties in terms of overshadowing, privacy and view loss.
- As demonstrated on the Solar Access Diagrams submitted with this application, the proposal will retain more than 3 hours of direct sunlight between 8am and 4pm on 21 June to a portion of the north-facing living area windows and the private open space area of the adjoining properties to the east and west.
- The proposed density, scale and bulk of the development is appropriate and acceptable given the context of the locality and will not appear out of character when viewed in its context of other buildings in the vicinity.
- The proposed bulk and scale of the development is also compatible with the size and shape of the allotment.

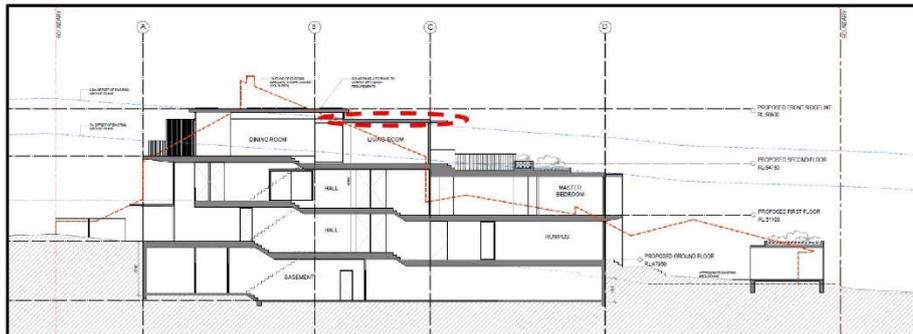


Figure 51: Extract of the Section Plan demonstrating that the building height non-compliance is only in relation to the rear part of the roof (red hatched circle). The remainder of the development complies with the building height control, whilst the non-compliant higher component of the existing dwelling is shown dotted

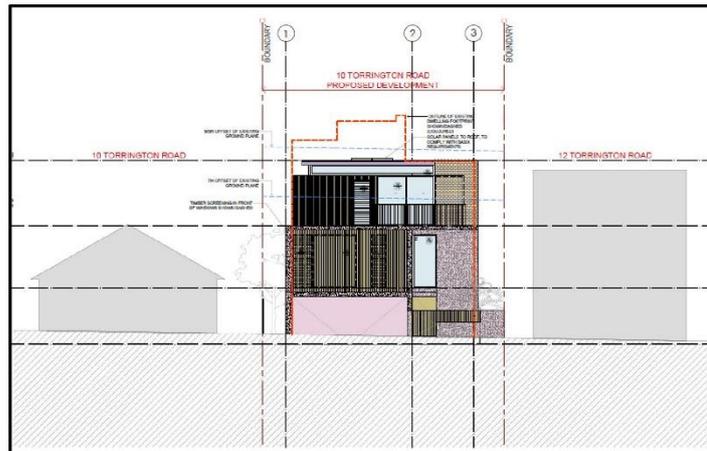


Figure 52: Extract of the Street Elevation demonstrating that the height, bulk and scale of the proposed new building is compatible with the adjoining 3-storey dwelling to the east at 12 Torrington Road

- Despite the non-compliance, the proposal achieves the objectives of the development standard and the R2 Low Density Residential zone as demonstrated in the following table:

| Consistency with the objectives of the height standard in the LEP | |
|--|---|
| Objectives | Assessment |
| a) to ensure that the size and scale of development is compatible with the desired future character of the locality | <p>The bulk and scale of the development is compatible with surrounding existing development and is consistent with the desired future character of the area. As demonstrated in the architectural plans submitted with this application, the proposed new dwelling will have a height, bulk and scale that is compatible with the adjoining 3-storey dwelling to the east.</p> <p>Numerous 3-storey homes have been approved and constructed along both sides of Torrington Rd. The proposed built form which presents as 2-storeys above a garage level is entirely consistent with numerous dwellings along Torrington Rd.</p> <p>On this basis, the height variation does not generate any inconsistency with the existing or desired future character.</p> |
| b) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item, | <p>The existing building on the subject site is not a heritage items and the subject site is not located within a conservation area. There are no heritage items in the vicinity of the site.</p> |
| 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. | <p>The proposed building height variation is not responsible for any unreasonable adverse impacts to surrounding properties in terms of overshadowing, privacy and view loss, as detailed below:</p> <p><u>Overshadowing:</u> As demonstrated on the Solar Access Diagrams submitted with this application, the proposal</p> |

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| | |
|--|---|
| | <p>will retain more than 3 hours of direct sunlight between 8am and 4pm on 21 June to a portion of the north-facing living area windows and the private open space area of the adjoining dwellings to the east and west.</p> <p><u>Privacy:</u> The proposed works have been designed and sited to ensure adequate visual and acoustic privacy between the subject dwelling and the adjoining properties. The proposal has considered the location of the works on the site, the internal layout and the building materials used.</p> <p>The proposed works will have appropriate setbacks thereby providing adequate separation from the adjoining properties.</p> <p>Windows have been appropriately sited and designed to minimise any potential overlooking. It is noted that there are minimal openings along the side elevations to prevent overlooking impacts to the adjoining dwellings to the east and west.</p> <p>The ground floor private open space area and deck will be screened by fencing and landscaping to minimise potential acoustic privacy concerns.</p> <p>The upper level balconies are orientated to the rear and front and have been appropriately sized and screened with planter landscaping to ensure minimal visual or acoustic privacy impacts to neighbouring properties.</p> <p><u>View Sharing:</u> The proposed development will not have an adverse impact on views from the public domain or surrounding properties. The height is less than the existing height of the current dwelling. It is therefore unlikely that the height variation will generate any adverse view impacts noting the level nature of topography further west towards Malabar Rd. Properties further west and south-west along Torrington Rd are sufficiently separated to ensure that the proposed height variation would not generate any adverse view impacts. Such properties will continue to view either side east and north-east towards distant coastal views, noting that views would only be available from other 3-storey dwellings.</p> |
| Consistency with the objectives of the R3 Medium Density Residential zone | |
| Objectives | Assessment |
| <ul style="list-style-type: none"> • <i>To provide for the housing needs of the community within a low density residential environment.</i> • <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> • <i>To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition,</i> | <p>The proposed dwelling is permissible in the R2 Low Density Residential zone.</p> <p>The proposal (notwithstanding the variation from the height standard) is consistent with the objectives of the zoning as follows:</p> <ul style="list-style-type: none"> • The proposal will retain the existing residential use of the site and continue to provide for housing needs in the area. • The proposed height, bulk and scale is consistent with the character of surrounding development. |

| | |
|--|--|
| <p><i>that contribute to the desired future character of the area.</i></p> <ul style="list-style-type: none"> • <i>To protect the amenity of residents.</i> • <i>To encourage housing affordability.</i> • <i>To enable small-scale business uses in existing commercial buildings.</i> | <ul style="list-style-type: none"> • The proposal will not inhibit other land uses to be provided in the area that provide facilities or services to meet the day to day needs of residents. • The proposal will not compromise the amenity of other residents in terms of privacy or views. The proposed floor layout has been designed to ensure that mutual privacy is maintained between neighbours within the building and neighbouring properties. |
|--|--|

Based on the above assessment, it is considered that strict compliance with the LEP height standard is unreasonable and unnecessary in this instance.

(b) that there are sufficient environmental planning grounds to justify contravening the development standard

Assessment: It is considered that there are sufficient environmental planning grounds to justify varying the building height development standard, which include:

- The proposed height non-compliance is associated with the rear part of the roof only. The remainder of the development complies with the building height standard. Refer to the extract of the Elevation Plan above.
- As demonstrated in the extract of the Section Plan above, the proposed new dwelling has a maximum building height that is considerably less than the maximum building height of the existing dwelling.
- The minor area of non-compliance will not be visible from the streetscape and will be indiscernible from surrounding properties.
- The proposal has been designed to respond to the natural topography of the site.
- Planter landscaping is provided to the First Floor and Second Floor to soften the appearance of the built form. The proposal incorporates a high level of articulation to the façades. The articulation of the facades and the recessed upper level will reduce the perceived bulk and associated height variation of the proposed development.
- The bulk and scale of the development (despite the variation) is compatible with surrounding existing development and is consistent with the desired future character of the area. As demonstrated in the architectural plans submitted with this application, the proposed new building will have a height, bulk and scale that is compatible with the adjoining 3-storey dwelling to the east at 12 Torrington Road. Refer to the extract of the Street Elevation above.
- The building height variation will not be responsible for any unreasonable bulk or scale impacts, noting that the proposal complies with the LEP FSR control and the DCP site coverage and landscaping controls.
- The proposed building height variation is not responsible for any unreasonable adverse impacts to surrounding properties in terms of overshadowing, privacy and view loss.
- As demonstrated on the Solar Access Diagrams submitted with this application, the proposal will retain more than 3 hours of direct sunlight between 8am and 4pm on 21

June to a portion of the north-facing living area windows and the private open space area of the adjoining properties to the east and west.

- The proposed density, scale and bulk of the development is appropriate and acceptable given the context of the locality and will not appear out of character when viewed in its context of other buildings in the vicinity.
- The proposed bulk and scale of the development is also compatible with the size and shape of the allotment.
- Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning.

Based on the above points, it is considered that there are sufficient environmental planning grounds to permit the height variation in this instance.

Other Matters for Consideration

4(a)(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

Assessment: The above assessment demonstrates that the proposed height satisfies the objectives of the height standard and the R2 Low Density Residential zone.

Furthermore, it is considered that the variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with the minor height variation.

Given that the proposal is consistent with the desired future character for the area nominated by the specific controls in the LEP and DCP, and that there are no adverse or unreasonable impacts to the broader community, it is considered that there are no public interest matters which would prevent a variation to the height control.

*(5) In deciding whether to grant concurrence, the Director-General must consider:
(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning*

Assessment: The proposed height variation allows for the orderly and economic use of land as envisaged by the *Environmental Planning and Assessment Act, 1979*.

The proposed height allows for achievement of a compatible building envelope without creating a development with overbearing height, bulk or scale and without compromising the desired future character of the area.

The proposed height is therefore consistent with the State and Regional Policies, particularly urban consolidation principles which seek to provide additional height and density near transport and established services.

(b) the public benefit of maintaining the development standard

Assessment: There is no public benefit in maintaining the height standard given the limited amenity impacts associated with the development and the positive streetscape outcome that would arise from the redevelopment of the subject site.

Statement of Environmental Effects

10 Torrington Road, Maroubra

(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

Assessment: There are not considered to be any additional matters to consider beyond those discussed above

Conclusion

For reasons mentioned herein, this Clause 4.6 variation is forwarded in support of the development proposal at 10 Torrington Road, Maroubra and is requested to be looked upon favourably by the consent authority.

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Appendix 3: DCP Compliance Table

3.1 Section B7: Transport, Traffic, Parking and Access

| DCP Clause | Control | Proposal | Compliance |
|------------|---|---|------------|
| 3.2 | Vehicle Parking Rates | | |
| | Dwelling houses <ul style="list-style-type: none"> 2 spaces per dwelling house with 3 or more bedrooms | 4 spaces via tandem parking. Given the extent of the FSR non-compliance, the additional parking spaces results in a building that does not represent the permissible bulk and scale of the desired character of the area. | No |

3.2 Section C1: Low Density Residential

| DCP Clause | Controls | Proposal | Compliance |
|------------|---|---|--------------|
| | Classification | Zoning = R2 | |
| 2 | Site planning | | |
| 2.3 | Site coverage | | |
| | 601 sqm or above = 45% (409.5m2) | Proposed = 27% (242m2) Notwithstanding that the SEE states the proposal complies, diagrammatic calculations have not been submitted to confirm compliance. Council's Assessment Officer estimates the proposed site coverage is 39% (356m2). | Satisfactory |
| 2.4 | Landscaping and permeable surfaces | | |
| | i) 601 sqm or above = 35% (318.5m2) ii) Deep soil minimum width 900mm. iii) Maximise permeable surfaces to front iv) Retain existing or replace mature native trees v) Minimum 1 canopy tree (8m mature). Smaller (4m mature) If site restrictions apply. vi) Locating paved areas, underground services away from root zones. | Proposed = 38% (352.8m2) | Yes |
| 2.5 | Private open space (POS) | | |
| | Dwelling & Semi-Detached POS | | |
| | 601 sqm or above = 8m x 8m | Proposed = >8m x 8m | Yes |
| 3 | Building envelope | | |
| 3.1 | Floor space ratio LEP 2012 = 0.6:1 | 0.74:1 | No |
| 3.2 | Building height | | |
| | Maximum overall height LEP 2012 = | 10.3m | No |

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| DCP Clause | Controls | Proposal | Compliance |
|--------------|--|---|--|
| | 9.5m | | |
| | i) Maximum external wall height = 7m sloping sites (Minimum floor to ceiling height = 2.7m) iii) Merit assessment if exceeded | Proposed = 9.9m | Unsatisfactory - see Key Issues. |
| 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. | No. 8 = 9.8m No. 12 = 6.1m Minimum = 7.95m Existing = 6.1m Proposed = 6.15m | Satisfactory |
| | Notwithstanding that the proposal does not strictly comply with the numerical requirement and the average setbacks of the adjoining properties, the front setback is considered acceptable on merit. This is on the basis that the proposal represents the setback of the existing dwelling-house which maintains the varied rhythm of street setbacks in Torrington Road, adequate planting is provided to contribute to a positive streetscape character and no significant adverse amenity/visual impacts to neighbouring properties are likely to occur. | | |
| 3.3.2 | Side setbacks: Dwellings: <ul style="list-style-type: none"> • Frontage over 12m = 1200mm (Gnd & 1st floor), 1800mm above. Refer to 6.3 and 7.4 for parking facilities and outbuildings | Minimum = 1.2m (basement & GF), 1.8m (FF and SF) Basement = 1.2m GF = 1.2m FF = 1.3m (lift) – 1.5m SF = 1.2m-1.5m Basement at rear is 1.3m above EGL | Unsatisfactory - see Key Issues. Yes Yes No No |
| 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: <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 | Minimum = 8m Proposed = 16.4m | Yes |

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| DCP Clause | Controls | Proposal | Compliance |
|------------|--|---|------------|
| | and view sharing impacts Refer to 6.3 and 7.4 for parking facilities and outbuildings | | |
| 4 | Building design | | |
| 4.1 | General | | |
| | Respond specifically to the site characteristics and the surrounding natural and built context - <ul style="list-style-type: none"> • articulated to enhance streetscape • stepping building on sloping site, • no side elevation greater than 12m • encourage innovative design | The ground floor level of the new dwelling-house steps down with the topography of the site, however, the basement level as discussed below requires excessive excavation. The elevations provide sufficient articulation and modulation through fenestration, colours and materials. | Yes |
| 4.4 | Roof Design and Features | | |
| | <i>Rooftop terraces</i> <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) <i>Dormers</i> <ul style="list-style-type: none"> iii) Dormer windows don't 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 <i>Celestial windows and skylights</i> <ul style="list-style-type: none"> vii) Sympathetic to design of dwelling <i>Mechanical equipment</i> <ul style="list-style-type: none"> viii) Contained within roof form and not visible from street and surrounding properties. | The second floor level balcony is not provided above the main roof. The skylights are integrated into the flat roof form. No mechanical plant equipment would be visible from Torrington Road, any public areas or the surrounding properties. | 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 | Satisfactory | Yes |

| DCP Clause | Controls | Proposal | Compliance |
|------------|---|--|----------------------------------|
| | (See also section 8.3 foreshore area.) | | |
| 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 ground floor level adopts an appropriate split level design that reflects the ground levels of the site, however, major concerns regarding the basement level is discussed in the Key Issues section. The basement level requires excavation to a depth of 4m and includes floor to ceiling heights of 2.9m-3.2m-. | Unsatisfactory - see Key Issues. |
| 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. | Notwithstanding the lack of detail included on the shadow diagrams, for example, an outline of the neighbouring properties, due to the orientation of the subject site, the proposal appears to comply. | Yes |
| | 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 | As above. | Yes |

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| DCP Clause | Controls | Proposal | Compliance |
|------------|--|---|---------------------|
| | <p>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. | | |
| 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> | <p>The BASIX certificate demonstrates compliance.</p> | <p>Yes</p> |
| 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. | <p>Should the application be recommended for approval, conditions requiring privacy screening to the side elevation windows would be required by conditions of consent.</p> | <p>Satisfactory</p> |

| DCP Clause | Controls | Proposal | Compliance |
|------------|---|---|----------------|
| | <ul style="list-style-type: none"> - 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) | | |
| | 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. | Concerns are raised in relation to privacy impacts and the second floor level balconies. Privacy screens would add bulk and scale to the building above the external wall height limit and would not result in a satisfactory outcome. The application does not include privacy sightlines to demonstrate no significant adverse amenity impacts would occur and therefore the proposal does not satisfy the objectives or controls in Section 5.3.2. | Unsatisfactory |
| 5.4 | Acoustic Privacy | | |
| | i) noise sources not located adjacent to adjoining dwellings bedroom windows | The proposal is not considered to result in any significant acoustic privacy impacts beyond that associated with the existing dwelling-house at the subject site. | 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 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) | The entry to the new dwelling-house facing Torrington Road and front elevation habitable room windows satisfies Council's controls. | Yes |

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| DCP Clause | Controls | Proposal | Compliance |
|------------|---|--|------------|
| 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) | There were no objections received from neighbouring properties that cited view loss impacts. | N/A |
| 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: <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) | The double width garage upholds the controls, however, as discussed in Appendix 1, Council's Tree Officer and Engineer require the driveway width to be reduced to retain the street tree. Should the application be approved, this would be required by condition of consent. | No |
| 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 | The garage complies with the side setback controls. | Yes |

| DCP Clause | Controls | Proposal | Compliance |
|------------|---|--|----------------|
| 6.4 | Driveway Configuration | | |
| | Maximum driveway width: - Single driveway – 3m - Double driveway – 5m Must taper driveway width at street boundary and at property boundary | As discussed above and in Appendix 1, Council’s Tree Officer and Engineer require the driveway width to be reduced to retain the street tree. | Satisfactory |
| 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 dimensions of the garage comply with the minimum Australian Standards, however, the tandem garage is not considered appropriate given the scale of the FSR non-compliance. | Unsatisfactory |
| 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 | The proposed fence materials are considered satisfactory with regards to Council’s controls. | Yes |
| 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) light weight 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 alignment of the primary street façade (tapered down to fence height at front alignment). <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> | The 1.1m high solid front fence satisfies Council’s controls. | Yes |

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| DCP Clause | Controls | Proposal | Compliance |
|------------|--|---|--------------|
| | iv) 150mm allowance (above max fence height) for stepped sites v) Natural stone, face bricks and timber are preferred. Cast or wrought iron pickets may be used if compatible vi) Avoid roofed entry portal, unless complementary to established fencing pattern in heritage streetscapes. vii) Gates must not open over public land. viii) The fence must align with the front property boundary or the predominant fence setback line along the street. ix) Splay fence adjacent to the driveway to improve driver and pedestrian sightlines. | | |
| 7.3 | Side and rear fencing | | |
| | i) 1800mm maximum height (from existing ground level). Sloping sites step fence down (max. 2.2m). ii) Fence may exceed max. if level difference between sites iii) Taper down to front fence height once past the front façade alignment. iv) Both sides treated and finished. | Side elevations of the boundary fences has not been submitted, however, a condition limiting the fences to a height of 1.8m would be required by condition of consent should the application be approved. | Satisfactory |
| 7.4 | Outbuildings | | |
| | i) Locate behind the front building line. ii) Locate to optimise backyard space and not over required permeable areas. iii) Except for laneway development, only single storey (3.6m max. height and 2.4m max. wall height) iv) Nil side and rear setbacks where: <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 | The proposed cabana outbuilding is 3.1m high, includes a flat roof and it setback 1.2m from the side boundaries. As such, the outbuilding upholds Council's controls and is satisfactory. | Yes |
| 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. | The proposal does not include any alterations or additions to the pool including the enclosure. | N/A |

| DCP Clause | Controls | Proposal | Compliance |
|------------|---|--|--------------|
| | 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. | | |
| 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 plans do not specify the location of air-conditioning units, however, should the application be approved, compliance with Council's controls would form part of the recommended conditions of consent. | Satisfactory |
| 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). | Notwithstanding that the architectural plans do not specify the location of any communication dishes or aerial antennae, adequate roof area if provided to accommodate these structures. | Satisfactory |
| 7.8 | Clothes Drying Facilities | | |
| | i) Located behind the front alignment and not be prominently visible from the street | The size of the rear setback area is sufficient to include area for external clothes drying facilities. | N/A |

1.1 Section B10: Foreshore Scenic Protection Area

| DCP Clause | Controls | Proposal | Compliance |
|------------|--|--|----------------|
| | 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 | For the reasons discussed in this report, the bulk and scale of the proposal is not satisfactory as a result of the non-compliances with the FSR development | Unsatisfactory |

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| | <p>(coherent architecture).</p> <ul style="list-style-type: none"> 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>standard, setback and wall height controls. The development is not considered a positive visual outcome for the site as seen from the public domain in the foreshore scenic protection area.</p> | |
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Responsible officer: Tegan Ward, Senior Environmental Planning Officer

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