

Randwick Local Planning Panel (Electronic) Meeting

Thursday 14 July 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, 14 July 2022

Declarations of Pecuniary and Non-Pecuniary Interests

Development Application Reports

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Kerry Kyriacou
DIRECTOR CITY PLANNING

Development Application Report No. D38/22

Subject: 91 Beach Street, Coogee (DA/688/2021)


Executive Summary

Proposal:	First floor addition at rear of existing dwelling and modification to internal layout at ground and basement levels. (Variation to FSR)
Ward:	North Ward
Applicant:	Mrs H Roche & Mr K Roche
Owner:	Mrs H M Roche
Cost of works:	\$487,575
Reason for referral:	The development contravenes the development standard for floor space ratio 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 floor space ratio development standard in Clause 4.4 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning and Environment may be assumed.
- B. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/688/2021 for first floor addition at rear of existing dwelling and modification to internal layout at ground and basement levels, at No. 91 Beach Street, Coogee, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (dwellings dual occ) - DA/688/2021 - 91 Beach Street, COOGEE

D38/22

D38/22



1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development contravenes the development standard for Floor Space Ratio (FSR) by more than 10%.

The proposal seeks development consent for first floor addition at rear of existing dwelling and modification to internal layout at ground and basement levels.

The proposal was notified in accordance with Randwick Community Participation Plan 2019 and two (2) submissions were received.

The key issues associated with the proposal relate to exceedance of the FSR development standard; exceedance of maximum wall height control; privacy; and view sharing.

The proposed development has a FSR of 0.82:1 which equates to a 25.6% variation of the 0.65:1 maximum development standard.

The proposed development has a wall height of 8.92m, which is excess of the maximum 8m wall height control for sloping sites.

The key privacy issue relates to overlooking from the proposed upper level rear balcony into adjoining properties to the north and east.

Surrounding properties enjoy water views of Coogee Bay and beyond to the south-east. The proposed view impact has been assessed in accordance with the Land and Environment Court

planning principle after Roseth SC pp.25-29 in Tenacity Consulting v Warringah [2004] NSWLEC 140.

The proposal is recommended for approval subject to conditions.

2. Site Description and Locality

The subject site is known as 91 Beach Street, Coogee and is legally described as Lot 1 in DP 129429. The site is 455.6m², is regular in shape and has a 16.715m frontage to Beach Street to the west. The site has a depth of 27.23m along the southern side boundary. The land falls from the Beach Street boundary to the rear boundary in a south-easterly direction by approximately 2.9m. The land gradient reaches 10.6% in the southern side setback of the existing dwelling, falling in an easterly direction.

The site contains a part one storey part two storey dwelling house, with a single-width garage located on the northern boundary. The dwelling presents as a single storey building from Beach Street. The ground level contains bedrooms and living areas, as well as an uncovered courtyard on the northern side and a deck on the south-eastern corner. A lower ground floor level is located below, comprising a games room, cinema room, laundry, bathroom and cellar/storage. The games room opens out to an undercroft area below the rear wing of the ground floor above.

The site is located in a residential area comprising dwelling houses, semi-detached dwellings and residential flat buildings. The site is adjoined to the north by 89 Beach Street, which contains a two storey dwelling house and a garage with terrace above. The garage and terrace is located adjacent to the common boundary of the subject site. The site is adjoined to the east by 1-3 Moore Street, which is a two storey semi-detached dwelling. The site is adjoined to the south by a part one and part two storey dwelling. The western side of Beach Street is dominated by a high retaining wall supporting an elevated footpath. Residential flat buildings are located on this side of Beach Street.

Coogee Beach and Dunningham Reserve is located within 250m south of the subject site.

The subject site and surrounding properties enjoy water views of Coogee Bay and headlands beyond.



Figure 1. Streetscape view – 91 Beach Street, Coogee

D38/22



Figure 2. Streetscape view – 91 Beach Street, Coogee



Figure 3. Beach Street Streetscape – looking south-east towards 80 Beach Street (left) and Coogee Bay beyond



Figure 4. Existing basement level of existing dwelling house – 91 Beach Street, Coogee



Figure 5. View of undercroft from windows of existing games room on the lower ground floor level.

3. Relevant history

The land has been used for residential purposes for an extended period of time. A search of Council's records revealed the following recent or relevant development applications for the subject site.

- DA/121/2001 – Development application No. DA/121/2001 was approved on 30 April 2001 for alterations and additions to existing dwelling including alterations to the rear, extension of existing garage, new courtyard, internal alterations and rebuild north wall.

- DA/121/2001/A – Modification application No. DA/121/2001/A was approved on 31 August 2001 for Section 96 modification Alter internal configuration and use of some rooms and alter the location of some.

Amended plans

This development application was lodged on 5 November 2021. Council issued a request for information on 19 May 2022, identifying that the proposed ridge height exceeded the maximum 9.5m building height development standard. Council received amended plans on 23 May 2022 with the following changes –

- Ridge height reduced from RL42.29 to RL 42.07 to comply with the maximum 9.5m building height development standard.
- Floor to ceiling height of master bedroom reduced from 2.7m to 2.55m.

4. Proposal

The proposal seeks development consent for first floor addition at rear of existing dwelling and modification to internal layout at ground and basement levels.

Specifically the development comprises:

- Alterations to existing lower ground floor level
 - Demolition of existing stairs
 - Addition of new stairs in place of existing laundry
 - Relocation of laundry in place of existing cellar
- Alterations to existing ground floor level
 - Demolition of existing stairs to the basement
 - New stairs to basement and first floor
 - Enlargement of Bedroom 4
 - Increase size of an existing south-facing window and infill of an existing south-facing window
- First floor addition utilising existing attic space
 - Stairs to/from lower levels
 - Master bedroom
 - Walk-in wardrobe
 - Ensuite
 - Rear balcony

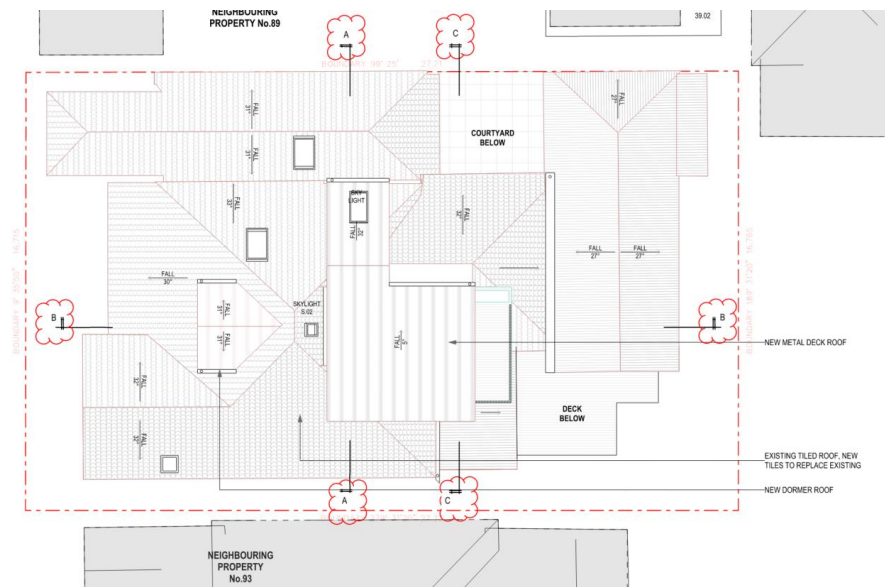


Figure 6. Proposed site plan – 91 Beach Street, Coogee

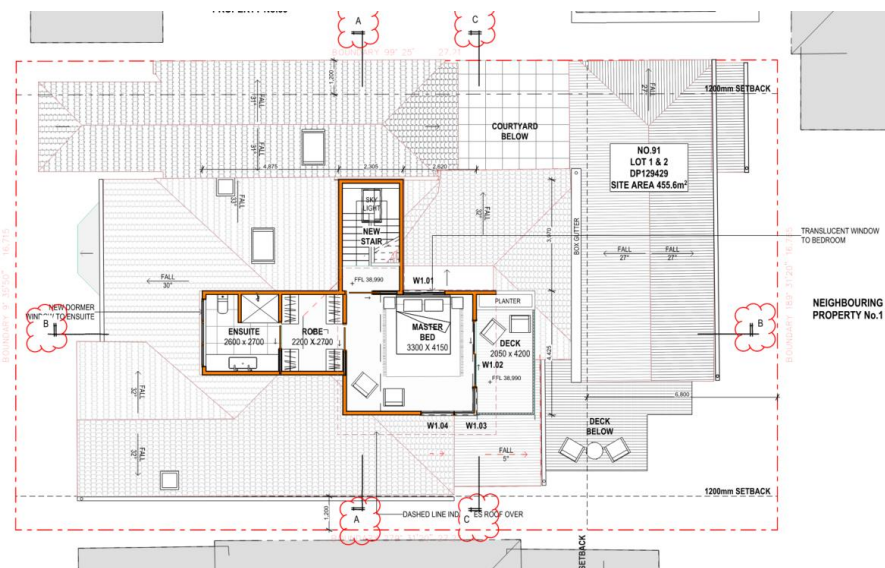


Figure 7. Proposed first floor plan – 91 Beach Street, Coogee



Figure 8. Proposed streetscape elevation – 91 Beach Street, Coogee

5. Notification

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

- 89 Beach Street, Coogee

Issue	Comment
<p>The buildings at 89 & 91 Beach Street are already very close together. Our outdoor area is directly between the 2 buildings. The outlook from aspects of our outdoor area is directly impacted by the buildings on 91 Beach Street. Changes to the building at 91 Beach Street may impact our sense of space, privacy and outlook from aspects of our outdoor area.</p> <p>Our main study and working from home area is the room directly next to our outdoor area and it looks directly out towards 91 Beach Street that run the length of that room. Changes to the building at 91 Beach Street may impact our sense of space, privacy and outlook from our main study and working from home area. We are also concerned that this proposed development may cause a reduction in natural light to this room.</p> <p>Our existing privacy in relation to our main entertaining deck must be appropriately maintained should this proposed development proceed through careful consideration of the aspects/views from the proposed development at 91 Beach Street, including the use of adequate screens.</p>	<p>It is noted that the existing buildings at Nos. 89 and 91 and located in close proximity to each other. However, the proposed additions are provided with a satisfactory separation distance to mitigate visual and privacy impacts.</p> <p>When scaled off the plans, the upper level addition has a 4.27m northern side setback to the new stairs, and an 8.22m northern side setback to the master bedroom and deck.</p> <p>The proposed setbacks, in conjunction with the utilization of the existing roof space, minimise the visual bulk impact of the proposed addition.</p> <p>There is an approximate 11m separation distance from the north-east corner of the proposed rear deck to the outdoor terrace of No. 89.</p> <p>It is noted that surrounding development in this coastal area is sited to take advantage of ocean views to the south-east, resulting in a degree of existing mutual overlooking. The proposed privacy impact of the proposed deck is acceptable in the context of surrounding development.</p> <p>The passive use of the bedroom adjoining the deck, which is limited to 2.05m, mitigates the impact of the deck; i.e. the size and siting of the deck discourages its use for entertaining purposes.</p> <p>A photomontage of the proposed building envelope, when viewed from the study window of No.89 is provided on Drawing No. DA 42. This photomontage demonstrates that the proposal will retain views of Coogee Bay from the study, as well as living areas and private open space of No. 89. The photomontage demonstrates that the imposition of a privacy screen is not appropriate for the proposed deck, because it will result in a reduction of water views.</p> <p>In regard to solar access to the study – No. 89 is located to the north of the development site and is therefore not impacted by overshadowing from the proposed development to the south, as demonstrated in the shadow diagrams.</p>

- 1-3 Moore Street, Coogee

Issue	Comment
<p>Privacy impacts</p> <ul style="list-style-type: none"> - The proposed development includes an east facing balcony that will directly look into rooms at the rear of my property impacting my privacy. - The FSR variation notes that existing eastern vegetation provides a privacy screen. This could only be considered partially true for the dwelling's existing rear addition due to the proximity of the fence line. <p>For the proposed development new upper floor, any statement that vegetation could create privacy is not a true statement, simply due to the fact the height of the development will always be well above any vegetation.</p>	<p>There is an approximate 12m separation distance from the north-east corner of the proposed rear deck to the rear balconies of 1-3 Moore Street. The view is oblique and the balcony can only be accessed via a bedroom.</p> <p>The passive use of the bedroom adjoining the deck, which is limited to 2.05m, mitigates the impact of the deck; i.e. the size and siting of the deck discourages its use for entertaining purposes.</p> <p>It is noted that surrounding development in this coastal area is sited to take advantage of ocean views to the south-east, resulting in a degree of existing mutual overlooking. The proposed privacy impact of the proposed deck is acceptable in the context of surrounding development.</p> <p>It is noted that the existing vegetation cannot be relied upon as a privacy mitigation strategy. The DCP states that landscape planting must not be used as the sole privacy protection measure.</p>
<p>View impacts</p> <ul style="list-style-type: none"> - The height of the proposed development will exceed the current dwelling's pyramidal roof height unnecessarily whilst at the same time dramatically increasing the actual building volume at that maximum height. - From diagrams, it appears that high ceilings are specified, existing internal ceilings are retained and a further ridge peak included where alternative options could be considered to reduce this impact. - From the east of this development the proposed roofline profile at the elevation will create a potential 'dark mass' and therefore eyesore for adjoining properties as well as impacting the current character of the area. - The proposed development specifies a dark metal cladding and a 'modern design concept' that is unsympathetic to adjacent buildings and roofscapes. I believe the development should be sympathetic to all adjoining properties due to the topography of Coogee's 'landscape bowl' that slopes towards the beach front. 	<p>The proposed wall height and ridge height of the upper level addition has been amended to comply with the 9.5m maximum height of buildings development standard. The ridge height has been reduced by 220mm to RL42.07, which is lower than the existing ridge height of RL 42.19. The floor to ceiling height has been reduced to 2.55m.</p> <p>The additions utilise the existing roof cavity to minimise the visual bulk of the upper level.</p> <p>The additions are appropriately scaled to complement the existing dwelling proportions and do not dominate the eastern elevation or adjoining properties. The proposed development is lower in height than properties to the north, responding to the sloping topography of the area.</p> <p>The contemporary style additions are consistent with the desired future character of the area. New development in the area is typically of a contemporary architectural style, incorporating neutral tones and metal sheeting.'</p>

Issue	Comment
Potential shadow/light impact <ul style="list-style-type: none"> The proposed development will have an adverse effect on adjacent properties by affecting the western view and sunlight as evening arrives. This is due to the proposed development's significantly increased roof volume at height falling directly in line with the direction of the setting sun. 	1-3 Moore Street is located to the north-east of the subject site. The shadow diagrams demonstrate that the proposal does not impact the existing solar access of 1 Moore Street.
FSR variation/approval sought as multi-residency building. <ul style="list-style-type: none"> This property is already a 4 bedroom, free-standing substantial house that stretches from the street front to within 1m of the rear of the property. As such the amenity of this residence for family living is already sufficient. The noted basement area is regularly utilized as part of this amenity as therefore a FSR variation is unnecessary. 	The Applicant's Clause 4.6 variation request has satisfactorily demonstrated that compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case, and there are sufficient environmental planning grounds to justify contravening the development standard. Refer to Section 7 of this report.

6. Relevant Environment Planning Instruments

6.1. SEPP (Building Sustainability Index: BASIX) 2004

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

6.2. Randwick Local Environmental Plan 2012 (LEP)

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

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will provide for the housing needs of the community whilst enhancing the aesthetic character and protecting the amenity of the local residents.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4: Floor space ratio (max)	9.5m	9.5m	Yes
CI 4.3: Building height (max)	0.65:1	0.817:1 (Existing FSR = 0.74:1)	No

6.2.1. Clause 4.6 - Exceptions to development standards

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

6.2.2. Clause 6.1 - Acid sulfate soils

The site is located in land classified as Class 5 Acid Sulfate Soils. No earthworks are proposed. Accordingly, the development does not disturb, expose or drain acid sulfate soils and cause environmental damage.

6.2.3. Clause 6.7- Foreshore scenic protection area

Development consent must not be granted for development on land to which this clause applies unless the consent authority is satisfied that the development—

- (a) is located and designed to minimise its visual impact on public areas of the coastline, including views to and from the coast, foreshore reserves, open space and public areas, and
- (b) contributes to the scenic quality of the coastal foreshore.

The entire site is within the foreshore scenic protection area. The proposed bulk and scale of the proposal is sympathetic to surrounding area. The development does not have an adverse visual impact on public areas of the coastline. The proposed addition presents as an attic storey when viewed from Beach Street, and has been designed to maintain view sharing for neighbouring properties. The development complements the scenic qualities of the foreshore area.

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
CI 4.4: Floor space ratio (max)	0.65:1 (296.14m ²)	0.817:1 (372m ²)	75.86m ²	25.6%

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 1.

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

The applicant's written request seeks to justify the contravention of the 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 FSR variation does not generate any incompatibility with the desired future character of the locality, noting that the site lies within the R3 Medium Density zone. Such zone allows for 2-3 storey scaled residential flat buildings and multi-dwelling housing development.

The retention of the single storey presentation of the dwelling in the Beach Street streetscape ensures that the proposed FSR variation will maintain the low scale form of the dwelling. The siting of the additions towards the centre of the site suitably minimises the visual bulk and impacts of the dwelling, which also assists in maintaining compatibility with the desired future character of the locality...

A significant proportion of the GFA (97sqm) is contained within the lower ground floor area. Such areas have ceiling heights less than 2.4m (generally 2.1-2.15m) and are non-habitable in nature, being a storeroom, laundry, cellar, stair and WC. When such areas are excluded, the FSR is 0.6:1, which is compliant with the 0.65:1 standard (whilst also being well below the 0.75:1 FSR standard that applies to residential flat buildings and other medium-density forms of development that are permitted on this site). It is noted that these components are above existing ground level. However, they are concealed from the street view due to the sloping nature of the site from the west down to the east. The rooms are also not evident when viewed from any surrounding property due to the differences in topography between the subject site and adjoining properties. The lower ground floor (plan) shows the subterranean nature of some of the rooms as well as the sub-standard ceiling heights, except for the games room, which has a ceiling height of 2.4m...

The additional FSR that is sought, which contributes to the variation (when the above-mentioned lower ground areas are included), is provided discreetly. The 1st-floor plan indicates the centralised and isolated location of the additions whilst the majority of the additional GFA is contained within the existing roof volume...

The substantial setback of the additions is well beyond that required, as evident on the 1st-floor plan. This confirms the sensitive siting of the additions and the lack of visual impact generated by the variation...

On this basis, the proposed FSR variation is not considered to generate any incompatibility with this objective.

- (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 additions on the new upper level which are responsible for this variation request, have been designed to be partly sited within the existing roof volume whilst the habitable bedroom component will enjoy sunlight, daylight and cross ventilation. The design of the addition incorporates articulation, as shown by the elevations and floor plans.

On this basis, this objective is achieved, notwithstanding the FSR variation.

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:

- *Absence of adverse or unreasonable shadow impacts associated with the excess FSR*

The substantial setbacks and compliance with the height limit also ensure that the variation generates no adverse shadow impacts. The proposed additional shadows do not affect solar access to the primary east-facing living areas or private open space of the adjoining southern neighbouring dwelling at 93 Beach Street.

- *Absence of adverse or unreasonable privacy impacts associated with the excess FSR*

The additional FSR does not generate any unreasonable overlooking impacts, noting that the new 1st floor contains a passive bedroom. The proposed bedroom and associated east-facing deck will not generate any adverse overlooking impacts, noting the extensive separation distances to neighbouring properties to the north, east and south. It should be noted that established dense vegetation exists along with the eastern and southern setbacks, preventing any overlooking impacts. The siting of the addition and its associated balcony has also been carefully designed to avoid any adverse or unreasonable overlooking impacts to the neighbouring northern dwelling at 89 Beach Street. The neighbouring northern property is elevated above the subject site and contains extensive south-facing living room windows and an unscreened private open space terrace that looks out and over the subject site. The north-facing window to the new bedroom has been designed to have fixed opaque glazing to avoid mutual overlooking impacts. A planter has also been provided to the small balcony off the new bedroom to provide for mutual privacy whilst retaining views, as discussed further below.

- *Demonstration that the additional FSR is not responsible for any unreasonable view impacts*

The additional FSR is not considered to generate any unreasonable view impacts to any surrounding property. The northern neighbours at 89 Beach Street permitted access to their property to allow for an understanding of the potential view impacts of the additional bedroom. Photographs were permitted to be taken, and it is demonstrated in the following view analysis that views are fully retained from the elevated private open space terrace and living room window areas. It is acknowledged that there will be a minor loss of view from a portion of the study. However, the siting of the bedroom addition has been amended to minimise potential view impacts. The addition was originally sited further east. However, the new upper level has been redesigned to relocate the bathroom and ensuite to be largely within the roof volume, whilst the extent of the bedroom which protrudes east of the existing roof has also been reduced. The northern elevation shows that the height of the addition is compliant... It is also noted that such views are across a side boundary and that the siting of the additions have been confined to be centred within site rather than over the existing rear addition on the site. The views from the northern neighbour are enjoyed over components of the built form well below the height limit towards the eastern end of the subject site. No increase in height is sought in this location which retains iconic views from the primary living and private open space areas at 89 Beach Street. A privacy screen that was originally proposed to provide mutual privacy has been replaced with a planter that provides for mutual privacy whilst minimising view loss. It is also noted that the extent of the bedroom has been minimised and is not excessive, noting it cannot be shifted any further west due to the location of the stair also being fixed. On this basis, the proposal represents a skilful design, as demonstrated below in the view image taken from the centre of the study at 89 Beach Street...



Figure 9. Image taken from the centre of the study at 89 Beach Street which shows that the addition is sited to retain water and land-water interface views over Coogee Bay to the south



Figure 10. *View from the living room window with all water views being retained.*



Figure 11. *View from the outdoor terrace with all water views being retained*

Assessing officer's comment: 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. The proposal is of skilful design that utilizes the existing roof form to maintain a single storey presentation to the public domain. The proposed upper level additions do not visually dominate neighbouring properties, nor result in adverse shadow, privacy or view impact. The proposal retains water views from the study,

living room and outdoor areas of the adjoining property at 89 Beach Street. Refer to Key Issues for a detailed assessment of the view impact.

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:

- *It is considered that the location of lower ground floor non-habitable areas which are responsible for the FSR variation constitutes an environmental planning ground. These areas do not add to the streetscape presentation of the dwelling, nor do they provide significant amenity to the dwelling due to their subterranean nature, having little or no access to outlook, sunlight, daylight, ventilation and views. The limited ceiling height of these areas, being 2.1-2.15m, also compromises their amenity and limits these extensive areas to being non-habitable.*
- *The retention of iconic views from the primary living and private open space areas to the adjoining property at 89 Beach Street also contributes to the demonstration that there are sufficient environmental planning grounds. It is acknowledged that there will be minor view impacts from the centre of the study area, however, it is noted that the layout of the study is such that the outlook is not towards the views.*
- *It is considered that the absence of unreasonable privacy impacts also constitutes environmental planning grounds. The additional FSR is associated with a passive room being the main bedroom with ensuite and walk-in robe. The setback of the bedroom windows and balcony are well beyond that, as evidenced by the substantial distance to the adjoining northern neighbour. It is also reiterated that the established high and dense screen of vegetation along the eastern and southern side avoids privacy impacts to properties addressed to 93 Beach Street, 1 Moore Street and 34-36 Arcadia Street.*
- *The absence of unreasonable shadow impacts to primary living or private open space areas of adjoining properties is another environmental planning ground. In this regard, it is confirmed that the additional FSR does not generate any adverse or unreasonable shadow impacts to any surrounding neighbour, in particular the adjoining property to the south at 93 Beach Street.*
- *The absence of visual bulk impacts to the proposed additional built form responsible for the FSR variation is considered to constitute an environmental planning ground. The additions are substantially separated from the primary living and private open space areas of the adjoining dwelling to the north which is elevated above the subject dwelling. The retention of established dense screen planting along the eastern and southern side setbacks ensures that the additional built form will be largely imperceptible from the other adjoining properties addressed to 93 Beach Street 1 Moore Street, and 34-36 Arcadia Street.*
- *The modest streetscape outcome, being single-storey with a dormer window, represents a subtle form of well below that anticipated by the control, i.e. a dwelling house or residential flat building with a 2 to 3 storey scale. It is confirmed that the FSR beyond that permitted by the standard are largely subterranean areas below and behind the main components of the dwelling and do not add to the bulk of the dwelling when viewed from the streetscape. Such modest form of development below the scale anticipated in the R3 Medium Density zone is considered to constitute an environmental planning ground.*
- *The variation does not generate any inconsistency with the desired future character of the locality, whilst the variation also does not compromise the zone objectives.*

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 R3 medium density 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 R3 zone

The objectives of the R3 zone are:

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

The applicant's written request demonstrates the proposal satisfies the objectives of the R3 zone in the following ways:

The alterations and additions to the dwelling house enhance the amenity of the dwelling house.

The proposed FSR variation is associated with an attractive and high quality residential dwelling which remains compatible with the desired future character.

Importantly, the amenity of surrounding residents is protected, thereby ensuring that the FSR variation does not cause any inconsistency with the zone objectives.

On this basis, the zone objectives are satisfied, notwithstanding the FSR variation.

The applicant's written request also demonstrates that the proposal is in the public interest in the following ways:

The above assessment demonstrates that the proposed FSR satisfies the height standard's objectives and the R3 - Medium Density Residential.

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.

Assessing officer's comment: The proposed development will provide for the housing needs of the community within a medium density residential environment, while protecting the amenity of the residents.

The development is consistent with the objectives of the floor space ratio standard and the R3 Medium Density Residential 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 2.

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 2 and the discussion in key issues below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning	Not applicable.

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Section 4.15 'Matters for Consideration'	Comments
Agreement or draft Planning Agreement	
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.

9.1. Discussion of key issues

Wall height

The proposed development is subject to a maximum wall height control of 8m under Clause 3.2 of Part C1 of the DCP. The site is steeply sloping, with the land gradient reaching 10.6% in the southern side setback of the existing dwelling. The proposed development has a wall height of 8.92m.

The Applicant's Statement of Environmental Effects provides the following justification for the wall height variation:

The proposal is compliant with the overall height limit but is slightly over the wall height where the additions protrude beyond the roof form.

The recessed nature of the additions associated with the wall height variation ensures that the proposal will not be responsible for any adverse visual bulk, privacy, view or shadow impacts.

The proposed variation criteria in the controls are therefore considered to be satisfied, noting the wall height variation is triggered by the already excavated lower ground floor non-habitable areas.

On this basis, the proposed wall height variation is reasonable.

As per the above justification, the proposed wall height variation is considered acceptable in this instance, due to the recessed nature of the additions, which retain a single storey presentation to the street. Nor does the addition dominate the rear elevation of the dwelling house or surrounding properties. The wall height variation arises from the existing excavation for the lower ground floor level. The existing ground floor level is subterranean in character and does not lend itself to a high amenity for the bedroom use that is proposed for the addition.

Privacy

The proposed upper level addition includes a rear balcony that can only be accessed from the master bedroom. Neighbour submissions have raised concerns about the privacy impact of the proposed balcony.

The Applicant's Statement of Environmental Effects provides the following assessment of the privacy impact:

The abundant separation distance between the proposed development and neighbouring dwellings to the north, east and south along with deep soil planting in the rear backyard further mitigates potential visual and acoustic privacy impacts.

The architectural plans demonstrate that the separation distance to the outdoor terrace of the adjoining property to the north is in excess of 15-metres. Such separation is extensive in a dense urban environment, particularly one where mutual overlooking from elevated decks and balconies seeking views exists. Furthermore, the difference in topography between the proposed balcony and the sunken nature of the property to the south at 93 Beach St, ensures that there is no potential for overlooking to primary living or private open space area of that property. Furthermore, the substantial and effective deep soil planting along the rear and southern side setbacks, prevents views eastward to the neighbouring properties addressed to Moore St, and to the southeast addressed to Arcadia Street.

It is also reiterated that the balcony and new openings are associated with a passive room being a bedroom, not a primary living or private open space area. The limited size of the balcony also will not allow for congregation of occupants noting it is only accessible through the main bedroom.

From the north-east corner of the proposed rear balcony, there is an approximate 11m separation distance to the outdoor terrace of No. 89 and an approximate 12m separation distance to the rear balconies of 1-3 Moore Street.

The passive use of the bedroom adjoining the deck, which is limited to 2.05m, mitigates the impact of the deck; i.e. the size and siting of the deck discourages its use for entertaining purposes.

The photomontage in Figure 13 demonstrates that the imposition of a privacy screen is not appropriate for the proposed deck, because it will result in a reduction of water views. In response to the Applicant's statement, the deep soil planting in the rear backyard cannot be relied upon as a privacy screening measure as per Clause 5.3, Part C1 of the DCP.

Nonetheless, it is noted that surrounding development in this coastal area is sited to take advantage of ocean views to the south-east, resulting in a degree of existing mutual overlooking. The proposed privacy impact of the proposed deck is acceptable in the context of surrounding development.

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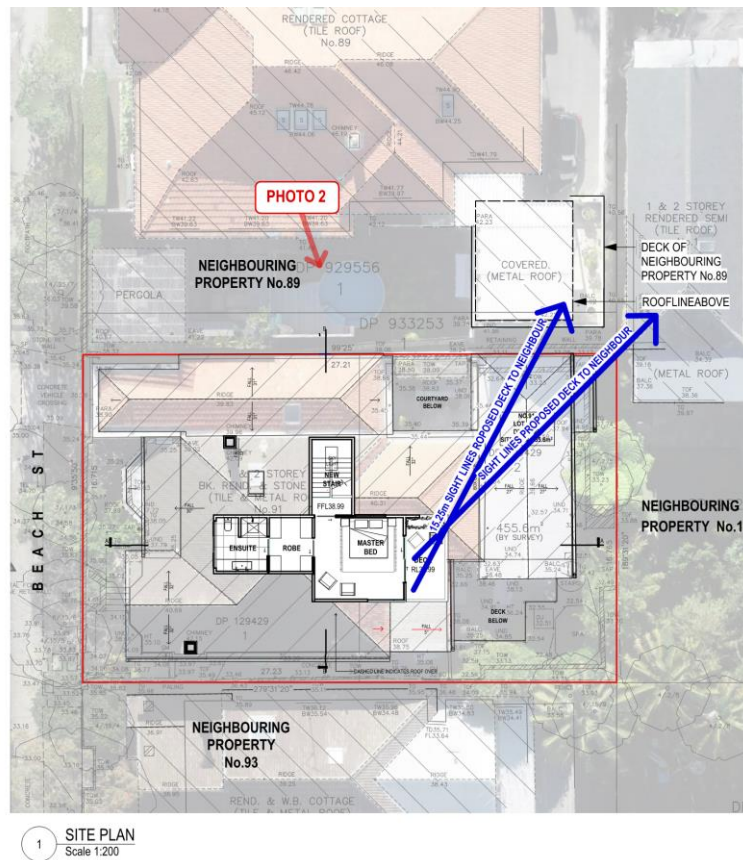


Figure 12. Privacy assessment (Drawing No. DA 42) prepared by Maryanne Taskovski Architect



Figure 13. View Corridor Study (Drawing No. DA 42) prepared by Digital Line

View sharing

Clause 5.6 in Part C1 of the DCP outlines the following objectives in relation to view sharing:

Objectives

- To acknowledge the value of views to significant scenic elements, such as ocean, bays, coastlines, watercourses, bushland and parks; as well as recognised icons, such as city skylines, landmark buildings / structures and special natural features.
- To protect and enhance views from the public domain, including streets, parks and reserves.
- To ensure development is sensitively and skilfully designed to maintain a reasonable amount of views from the neighbouring dwellings and the public domain.

The Applicant's Statement of Environmental Effects provides the following response in relation to the view sharing:

The matter of view sharing has been carefully considered during the preparation of this development application. The owner occupiers/applicant of the subject site have liaised with the adjoining owners to the north at 89 Beach Street and were permitted access to ascertain the potential effects of the 1st floor addition and associated rear balcony and privacy screening.

After carrying out a view analysis from the adjoining property, the first floor addition for the main bedroom has been set back further from the rear to better maintain views from the study area of No. 89 Beach Street. It was apparent that views from the primary living and outdoor terrace of No. 89 will be fully retained. Furthermore, a privacy screen which was originally designed on the northern side of the balcony off the bedroom, was seen to generate view impacts to Coogee Bay and land-water interface views. The screen has been replaced by a planter to bed allows for view retention whilst retaining mutual privacy, noting the extensive separation distance of 15.2m.

In accordance with the assessment under the Planning Principle for view sharing (Tenacity Consulting v Warringah SC), it is noted that the views from 89 Beach St are across the side boundary of the subject site, and hence are difficult to retain. Notwithstanding, the proposed addition is sited substantially behind the rear building setback under the DCP, to better retain views whilst allowing for a modest bedroom area. The outperformance of the rear setback is considered to be the primary factor associated with view loss considerations. On this basis, the proposal represents a skilful design response as required by the Planning Principle for view sharing-Tenacity Consulting v Warringah SC.

An assessment of the proposed development and its impact on views is carried out in accordance with the Land and Environment Court planning principle after Roseth SC pp.25-29 in Tenacity Consulting v Warringah [2004] NSWLEC 140. This assessment is guided by a four step process identified by the *Land and Environment Court*.

1. Quality of views:

Step 1. "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 views of the north-adjoining property at 89 Beach Street are affected by the proposed development. This property enjoys whole water views to the south-east of Coogee Bay and headlands beyond, inclusive of the interface between land and water. No.89 also enjoys district views to the south.

Refer to Figure 9, Figure 10, Figure 11, Figure 13 for photos of the view.

2. From what part of the property are the views obtained?

Step 2. 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 water views are obtained from the south-facing windows and private open space of No. 89. The views are obtained across the side boundaries of No. 89 and the subject site.

3. An assessment of the extent of the impact?

Step 3. 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 submitted a View Corridor Study prepared by Digital Line (Figure 12) which demonstrates the proposed impact on the views from the study of No. 89. This diagram shows that there is loss of district views to the south, but the whole water views of Coogee Bay and the headlands beyond are retained to the south-east.

The outdoor terrace and living room are located further east of the proposed addition. Accordingly it can be deduced, based on the photographs in **Figure 10** and **Figure 11**, that the water views from the living room and outdoor terrace of No.89 will be wholly retained.

Overall, the loss of district views from study room is considered minor, with the more significant water views retained for the study, living and outdoor terrace.

4. An assessment of the reasonableness of the proposal that is causing the impact?

Step 4. The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all the 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 more impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact of views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

The proposed development seeks a variation to the floor space ratio development standard and maximum wall height control of the DCP. The proposed additional floor area is located on the first floor level and recessed into the existing dwelling roof form. The proposed addition is provided with rear setbacks in excess of the minimum requirements, to maintain a view corridor for the study, living room and outdoor deck towards water views. The proposed wall height of the development does not directly impact water views. A compliant wall height would not necessarily retain district views. The proposed ridge height is nonetheless compliant with the maximum building height development standard of 9.5m.

Notwithstanding the non-compliances, the massing of the proposed additions presents a skilful design that retains the water views of No. 89.

Conclusion

Given the above reasons, the view impact of the proposed development can be considered acceptable and the view sharing reasonable.

10. Conclusion

That the application for first floor addition at rear of existing dwelling and modification to internal layout at ground and basement levels be approved (subject to conditions) for the following reasons:

- 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.
- 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 R3 zone in that the proposed activity and built form will provide for the housing needs of the community whilst enhancing the aesthetic character and protecting the amenity of the local residents.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- The proposed development maintains reasonable view sharing for neighbours, as assessed against the planning principle established in *Tenacity Consulting v Warringah* [2004] NSWLEC 140.

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Appendix 1: 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 the existing dwelling house at 91 Beach Street, Coogee.

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* - maximum FSR of 0.65:1 that applies under Clause 4.4(2A).

The proposed maximum FSR of 0.81:1 represents a variation of 0.16:1 from the numerical FSR standard in the LEP.

However, it is noted from the FSR map below that an FSR of 0.75:1 applies to the site. Such FSR applies to residential flat buildings and multi-dwelling housing forms which are permissible in the R3 Medium Density Residential zone. The proposed FSR of 0.81:1 is not significantly above the standard that applies to medium density housing forms which would have greater intensity of usage.

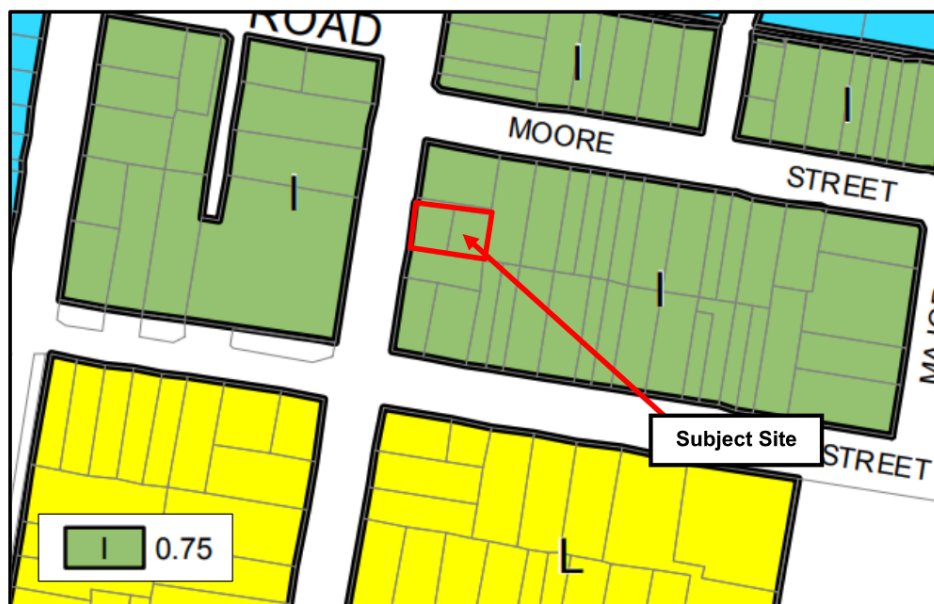


Figure 1: Floor Space Ratio Map

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 variation is justified on the following basis:

Technical nature of the variation

A significant proportion of the GFA (97sqm) is contained within the lower ground floor area. Such areas have ceiling heights less than 2.4m (generally 2.1-2.15m) and are non-habitable

in nature, being a storeroom, laundry, cellar, stair and WC. When such areas are excluded, the FSR is 0.6:1, which is compliant with the 0.65:1 standard (whilst also being well below the 0.75:1 FSR standard that applies to residential flat buildings and other medium-density forms of development that are permitted on this site). It is noted that these components are above existing ground level. However, they are concealed from the street view due to the sloping nature of the site from the west down to the east. The rooms are also not evident when viewed from any surrounding property due to the differences in topography between the subject site and adjoining properties. The following lower ground floor excerpt shows the subterranean nature of some of the rooms as well as the sub-standard ceiling heights, except for the games room, which has a ceiling height of 2.4m

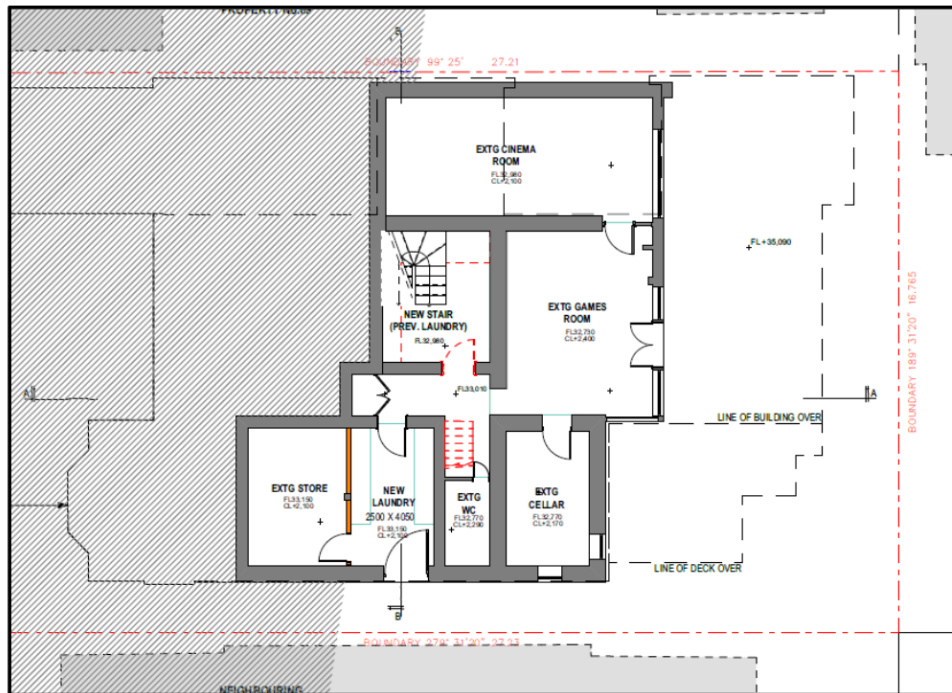


Figure 2: Limited and isolated nature of the 1st-floor addition, which contributes to the variation

The additional FSR that is sought, which contributes to the variation (when the above-mentioned lower ground areas are included), is provided discreetly. The 1st-floor plan indicates the centralised and isolated location of the additions whilst the majority of the additional GFA is contained within the existing roof volume, as evident from the floor plan excerpt of the upper level below:

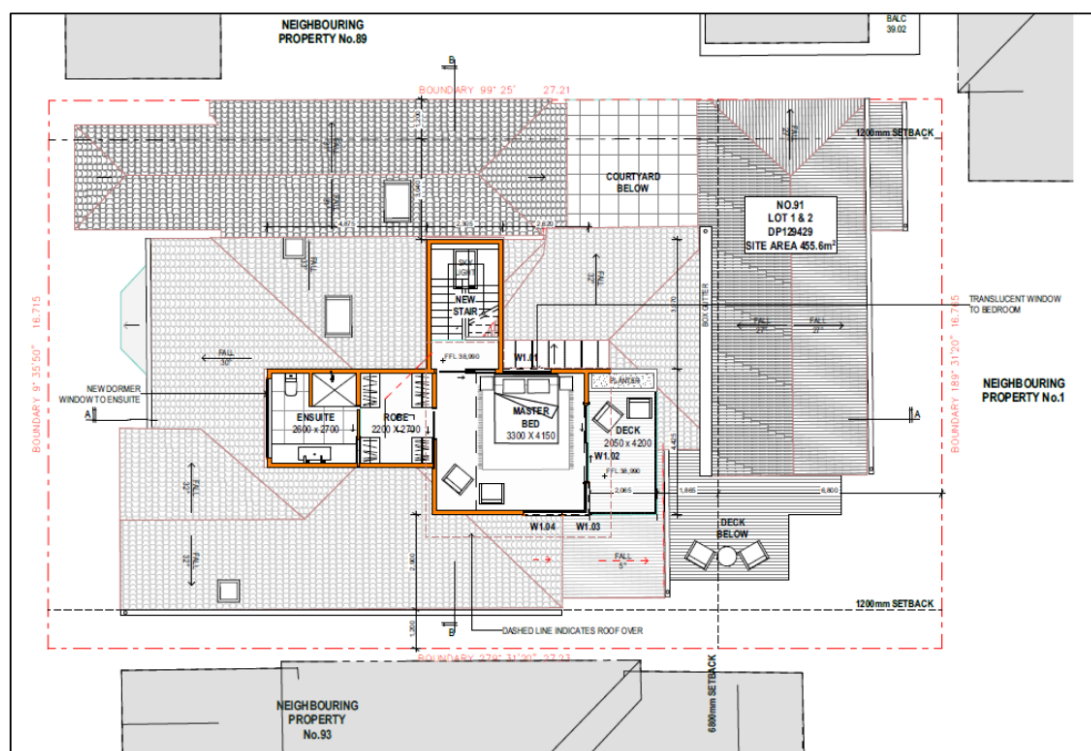


Figure 3: Excerpt of the upper-level floor plan, which shows that a substantial proportion of the FSR is contained within the roof space whilst the limited footprint and substantial setbacks from adjoining properties are also evident

Outperformance of side and rear setbacks associated with the built form responsible for the variation

The substantial setback of the additions is well beyond that required, as evident on the 1st floor plan. This confirms the sensitive siting of the additions and the lack of visual impact generated by the variation.

Absence of adverse or unreasonable shadow impacts associated with the excess FSR

The substantial setbacks and compliance with the height limit also ensure that the variation generates no adverse shadow impacts. The proposed additional shadows do not affect solar access to the primary east-facing living areas or private open space of the adjoining southern neighbouring dwelling at 93 Beach Street.

Absence of adverse or unreasonable privacy impacts associated with the excess FSR

The additional FSR does not generate any unreasonable overlooking impacts, noting that the new 1st floor contains a passive bedroom. The proposed bedroom and associated east-facing deck will not generate any adverse overlooking impacts, noting the extensive separation distances to neighbouring properties to the north, east and south. It should be noted that established dense vegetation exists along with the eastern and southern setbacks, preventing any overlooking impacts. The siting of the addition and its associated balcony has also been carefully designed to avoid any adverse or unreasonable overlooking impacts to the neighbouring northern dwelling at 89 Beach Street. The neighbouring northern property is elevated above the subject site and contains extensive south-facing

living room windows and an unscreened private open space terrace that looks out and over the subject site. The north-facing window to the new bedroom has been designed to have fixed opaque glazing to avoid mutual overlooking impacts. A planter has also been provided to the small balcony off the new bedroom to provide for mutual privacy whilst retaining views, as discussed further below.

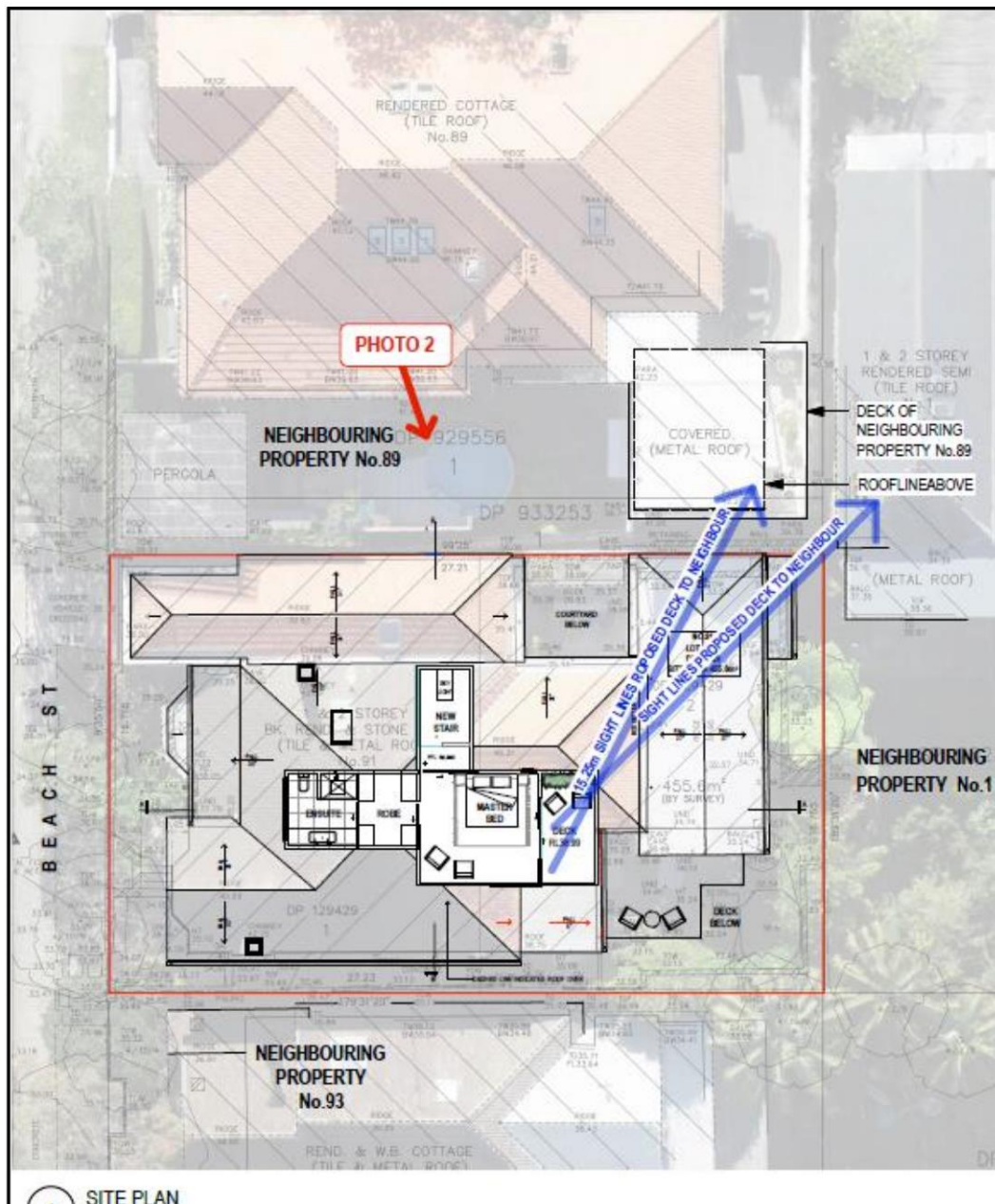


Figure 4: Sightline diagram showing the extensive 15.25m distance of separation from the small deck off the bedroom to the elevated private open space terrace to the north whilst the established vegetation along the eastern/rear and southern/side setback is also evident

Demonstration that the additional FSR is not responsible for any unreasonable view impacts

The additional FSR is not considered to generate any unreasonable view impacts to any surrounding property. The northern neighbours at 89 Beach Street permitted access to their property to allow for an understanding of the potential view impacts of the additional bedroom. Photographs were permitted to be taken, and it is demonstrated in the following view analysis that views are fully retained from the elevated private open space terrace and living room window areas. It is acknowledged that there will be a minor loss of view from a portion of the study. However, the siting of the bedroom addition has been amended to minimise potential view impacts. The addition was originally sited further east. However, the new upper level has been redesigned to relocate the bathroom and ensuite to be largely within the roof volume, whilst the extent of the bedroom which protrudes east of the existing roof has also been reduced. The northern elevation shows that the height of the addition is compliant, noting the existing ground level of the basement (RL32.98) and the new ridge (RL42.29) generates a height of 9.3m, being 200mm below the 9.5m height limit. It is also noted that such views are across a side boundary and that the siting of the additions have been confined to be centred within site rather than over the existing rear addition on the site. The views from the northern neighbour are enjoyed over components of the built form well below the height limit towards the eastern end of the subject site. No increase in height is sought in this location which retains iconic views from the primary living and private open space areas at 89 Beach Street. A privacy screen that was originally proposed to provide mutual privacy has been replaced with a planter that provides for mutual privacy whilst minimising view loss. It is also noted that the extent of the bedroom has been minimised and is not excessive, noting it cannot be shifted any further west due to the location of the stair also being fixed. On this basis, the proposal represents a skilful design, as demonstrated below in the view image taken from the centre of the study at 89 Beach Street, with the location of the photo (Photo 2) shown on the preceding image.

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Figure 5: Image taken from the centre of the study at 89 Beach Street which shows that the addition is sited to retain water and land-water interface views over Coogee Bay to the south



Figure 6: View from the living room window with all water views being retained



Figure 7: View from the outdoor terrace with all water views being retained

Absence of streetscape impacts

The modest scale of the additions responsible for the FSR variation, as well as the siting of the built form partly within the roof volume as well as the siting of the addition behind the front ridge, ensures that the FSR variation will not be responsible for any adverse streetscape impacts along Beach Street. It is also noted that this part of Beach Street is zoned R3 Medium Density Residential and permits residential flat buildings. On this basis, the retention of the single storey presentation of the dwelling in the streetscape ensures that the FSR variation would be indiscernible. The following streetscape images confirm the modest and subtle nature of the additions in the streetscape, which ensures that the FSR variation is not responsible for any adverse streetscape impacts:

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Figure 8: Western streetscape elevation to Beach Street which confirms the modest nature of the dwelling in the streetscape with the built form responsible for the variation being sited behind the existing ridge



Figure 9: 3D perspective which supports the elevation and comments above

Consistency with the objectives of the FSR standard in the LEP	
Objectives	Assessment
4.4(1)(a) to ensure that the size and scale of development is compatible with the desired future character of the locality	<p>The proposed FSR variation does not generate any incompatibility with the desired future character of the locality, noting that the site lies within the R3 Medium Density zone. Such zone allows for 2-3 storey scaled residential flat buildings and multi-dwelling housing development.</p> <p>The retention of the single storey presentation of the dwelling in the Beach Street streetscape ensures that the proposed FSR variation will maintain the low scale form of the dwelling. The siting of the additions towards the centre of the site suitably minimises the visual bulk and impacts of the dwelling, which also assists in maintaining compatibility with the desired future character of the locality.</p> <p>It is also reiterated that a significant proportion of the GFA which contributes to the FSR variation is discreetly located in the lower ground floor and are not evident from the streetscape nor from surrounding properties. The 'above-ground' components which are visible from surrounding areas are compliant with the GFA requirements of the LEP.</p> <p>On this basis, the proposed FSR variation is not considered to generate any incompatibility with this objective.</p>
4.4(1)(b) to ensure that buildings are well articulated and respond to environmental and energy needs,	<p>The additions on the new upper level which are responsible for this variation request, have been designed to be partly sited within the existing roof volume whilst the habitable bedroom component will enjoy sunlight, daylight and cross ventilation. The design of the addition incorporates articulation, as shown by the elevations and floor plans.</p> <p>On this basis, this objective is achieved, notwithstanding the FSR variation.</p>
4.4 (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	<p>The site is not heritage listed, is not in a conservation area and is not adjacent to any heritage items.</p>
4.4(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	<p>The lack of external impacts to neighbouring properties has been outlined above under the unreasonable and unnecessary assessment. It is reiterated that the additional FSR does not generate any adverse amenity impacts in relation to overshadowing, loss of view or privacy.</p> <p>On this basis, the additional FSR does not generate any inconsistency with this objective.</p>
Consistency with the objectives of the R3 - Medium Density Residential	
Objectives	Assessment
<ul style="list-style-type: none"> To provide for the housing needs of the community within a medium-density residential environment. To provide a variety of housing types within a medium-density residential environment. To enable other land uses that provide facilities or services to meet the day to day needs of residents. 	<p>The alterations and additions to the dwelling house enhance the amenity of the dwelling house.</p> <p>The proposed FSR variation is associated with an attractive and high quality residential dwelling which remains compatible with the desired future character.</p> <p>Importantly, the amenity of surrounding residents is protected, thereby ensuring that the FSR variation does not cause any inconsistency with the zone objectives.</p> <p>On this basis, the zone objectives are satisfied, notwithstanding the FSR variation.</p>

<ul style="list-style-type: none"> • 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. 	
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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 includes:

- It is considered that the location of lower ground floor non-habitable areas which are responsible for the FSR variation constitutes an environmental planning ground. These areas do not add to the streetscape presentation of the dwelling, nor do they provide significant amenity to the dwelling due to their subterranean nature, having little or no access to outlook, sunlight, daylight, ventilation and views. The limited ceiling height of these areas, being 2.1-2.15m, also compromises their amenity and limits these extensive areas to being non-habitable.
- The retention of iconic views from the primary living and private open space areas to the adjoining property at 89 Beach Street also contributes to the demonstration that there are sufficient environmental planning grounds. It is acknowledged that there will be minor view impacts from the centre of the study area, however, it is noted that the layout of the study is such that the outlook is not towards the views.
- It is considered that the absence of unreasonable privacy impacts also constitutes environmental planning grounds. The additional FSR is associated with a passive room being the main bedroom with ensuite and walk-in robe. The setback of the bedroom windows and balcony are well beyond that, as evidenced by the substantial distance to the adjoining northern neighbour. It is also reiterated that the established high and dense screen of vegetation along the eastern and southern side avoids privacy impacts to properties addressed to 93 Beach Street, 1 Moore Street and 34-36 Arcadia Street.
- The absence of unreasonable shadow impacts to primary living or private open space areas of adjoining properties is another environmental planning ground. In this regard, it is confirmed that the additional FSR does not generate any adverse or unreasonable shadow impacts to any surrounding neighbour, in particular the adjoining property to the south at 93 Beach Street.
- The absence of visual bulk impacts to the proposed additional built form responsible for the FSR variation is considered to constitute an environmental planning ground. The additions are substantially separated from the primary living and private open space areas of the adjoining dwelling to the north which is elevated above the subject

dwelling. The retention of established dense screen planting along the eastern and southern side setbacks ensures that the additional built form will be largely imperceptible from the other adjoining properties addressed to 93 Beach Street 1 Moore Street, and 34-36 Arcadia Street.

- The modest streetscape outcome, being single-storey with a dormer window, represents a subtle form of well below that anticipated by the control, i.e. a dwelling house or residential flat building with a 2 to 3 storey scale. It is confirmed that the FSR beyond that permitted by the standard are largely subterranean areas below and behind the main components of the dwelling and do not add to the bulk of the dwelling when viewed from the streetscape. Such modest form of development below the scale anticipated in the R3 Medium Density zone is considered to constitute an environmental planning ground.
- The variation does not generate any inconsistency with the desired future character of the locality, whilst the variation also does not compromise the zone objectives.

Based on the above points, it is considered that there are sufficient environmental planning grounds to permit the FSR 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 height standard's objectives and the R3 - Medium Density Residential.

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 economical use of land as envisaged by the *Environmental Planning and Assessment Act, 1979*.

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

Therefore, the proposed FSR is 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 February 21 2018, attached to the Planning Circular PS 18-003 issued on February 21 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 limited amenity impacts associated with the development and the positive streetscape outcomes that would arise from the subject site's redevelopment.

(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 91 Beach Street, Coogee. It is requested to be looked upon favourably by the consent authority.

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

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R3	
2	Site planning		
2.3	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45%	Site = 455.6m ² No proposed changes to existing site coverage.	As per existing.
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 = 455.6m ² No proposed changes to existing deep soil landscaped area.	As per existing.
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 = 455.6m ² No proposed changes to existing private open space.	As per existing.
3	Building envelope		
3.1	Floor space ratio LEP 2012 = 0.65:1	Site area = 455.6m ² Existing FSR = 0.74:1 Proposed FSR = 0.82:1	Yes
3.2	Building height		
	Maximum overall height LEP 2012 = 9.5m	Proposed = 9.5m	Yes
	i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded	Proposed = 8.92m	No
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:	Proposed upper level additions are recessed behind existing front façade.	Yes

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DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> - 900mm for allotments with primary frontage width of less than 7m - 1500mm for all other sites iii) do not locate swimming pools, above-ground rainwater tanks and outbuildings in front		
3.3.2	Side setbacks: Semi-Detached Dwellings: <ul style="list-style-type: none"> • Frontage less than 6m = merit • Frontage b/w 6m and 8m = 900mm for all levels Dwellings: <ul style="list-style-type: none"> • Frontage less than 9m = 900mm • Frontage b/w 9m and 12m = 900mm (Gnd & 1st floor) 1500mm above • Frontage over 12m = 1200mm (Gnd & 1st floor), 1800mm above. Refer to 6.3 and 7.4 for parking facilities and outbuildings	Minimum for upper level = 1800mm Proposed = 4.1m	Yes
3.3.3	Rear setbacks i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments. ii) Provide greater than aforementioned or demonstrate not required, having regard to: <ul style="list-style-type: none"> - Existing predominant rear setback line - reasonable view sharing (public and private) - protect the privacy and solar access iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions. iv) For irregularly shaped lots = merit assessment on basis of:- <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts Refer to 6.3 and 7.4 for parking facilities and outbuildings	Minimum = 6.81m Proposed upper level = 8.67m	Yes
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 proposed additions are well integrated into the existing dwelling design. The proposal complements the existing architectural expression of the	Yes

DCP Clause	Controls	Proposal	Compliance
		dwelling house.	
4.4	Roof Design and Features		
	<p><i>Rooftop terraces</i></p> <ul style="list-style-type: none"> i) on stepped buildings only (not on uppermost or main roof) ii) above garages on sloping sites (where garage is on low side) <p><i>Dormers</i></p> <ul style="list-style-type: none"> iii) Dormer windows 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 <p><i>Celestial windows and skylights</i></p> <ul style="list-style-type: none"> vii) Sympathetic to design of dwelling <p><i>Mechanical equipment</i></p> <ul style="list-style-type: none"> viii) Contained within roof form and not visible from street and surrounding properties. 	<p>The proportions of the dormer window complement the existing hipped roof and do not dominate the dwelling façade.</p> <p>The height is approximately 1.9m.</p> <p>However, the dormer siting is compliant.</p> <p>The proposed dormer facilitates an upper level addition that maintains a single storey presentation to the street.</p>	No, acceptable on merit.
4.5	Colours, Materials and Finishes		
	<ul style="list-style-type: none"> i) Schedule of materials and finishes ii) Finishing is durable and non-reflective. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) recycle and re-use sandstone (See also section 8.3 foreshore area.) 	Schedule of colours, materials and finishes have been submitted,	Yes
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	<ul style="list-style-type: none"> 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. 	A north-facing fixed opaque glazed window is proposed to allow solar access and daylight to the new bedroom whilst avoiding privacy impacts.	Yes
	Solar access to neighbouring development:		
	i) Portion of the north-facing living room	The shadow	Yes

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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 demonstrate that the majority of overshadowing falls over the roof of the adjoining property to the south at 93 Beach St. The additional shadows are not cast on the north-facing living area windows or private open space areas. These areas are overshadowed by existing 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: The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</i></p>	<p>A BASIX Certificate is submitted with the application and confirms that the proposal will comply with the State Government's water, thermal comfort and energy efficiency requirements.</p>	Yes
5.3	Visual Privacy		
	Windows		
	<p>i) proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures:</p> <ul style="list-style-type: none"> windows are offset or staggered minimum 1600mm window sills Install fixed and translucent glazing up 	<p>Proposed upper level bedroom is a passive use, which minimises privacy impact of proposed windows.</p>	Yes, refer to Key Issues.

DCP Clause	Controls	Proposal	Compliance
	<p>to 1600mm minimum.</p> <ul style="list-style-type: none"> - 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>W1.01 is north-facing, which is nominated as translucent window.</p> <p>W1.02, W1.03 and W1.04 are orientated to the south and east (rear), which takes advantage of the ocean views to the south-east.</p> <p>The southern outlook from these windows provide views towards the roof of No. 93, rather than the windows and private open space of this adjoining property.</p> <p>Refer to Key Issues.</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>	<p>The proposed rear balcony is accessed from a bedroom, which is a passive use that minimises privacy impact on adjoining properties. The 2.05m width of the balcony limits gatherings on the balcony.</p> <p>Refer to Key Issues.</p>	Yes, refer to Key Issues.
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>The rear balcony is limited to a depth of 2.05m and is located off a bedroom; restricting gatherings and likelihood of acoustic</p>	Yes

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DCP Clause	Controls	Proposal	Compliance
		disturbance.	
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)	No changes.	Yes
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)	Scale and siting of upper level addition maintains view sharing for neighbouring dwellings. Water views are retained for 89 Beach Street, from their study, living area and private open space. The proposal does not impact views from the public domain.	Yes

3.2 Section B7: Transport, Traffic, Parking and Access

DCP Clause	Controls	Proposal	Compliance
3.2	Vehicle Parking Rates		
	1. Space per dwelling house with up to 2 bedrooms 2. Spaces per dwelling house with 3 or more bedrooms Note: Tandem parking for 2 vehicles is allowed.	2 existing car spaces are provided in the existing garage for the 5 bedroom dwelling.	Yes

3.3 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.	The proposed addition presents as an attic storey when viewed from Beach	Yes

	<ul style="list-style-type: none"> ii) Outbuildings and ancillary structures integrated with the dwelling design (coherent architecture). iii) Colour scheme complement natural elements in the coastal areas (light toned neutral hues). iv) Must not use high reflective glass v) Use durable materials suited to coast vi) Use appropriate plant species vii) Provide deep soil areas around buildings viii) Screen coping, swimming and spa pools from view from the public domain. ix) Integrate rock outcrops, shelves and large boulders into the landscape design x) Any retaining walls within the foreshore area (that is, encroaching upon the Foreshore Building Line) must be constructed or clad with sandstone. 	<p>Street, and has been designed to maintain view sharing for neighbouring properties. The development complements the scenic qualities of the foreshore area.</p> <p>The proposed colour scheme is of a neutral palette that completes the coastal area.</p>	
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D38/22

Responsible officer: Eunice Huang, Environmental Planning Officer

File Reference: DA/688/2021

D38/22

Development Consent Conditions (dwellings and dual occupancies)



Folder /DA No:	DA/688/2021
Property:	91 Beach Street, COOGEE NSW 2034
Proposal:	First floor addition at rear of existing dwelling and modification to internal layout at ground and basement levels. (Variation to FSR)
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
DA 02 Revision 02	Maryanne Taskovski Architect	20 May 2022
DA 03 Revision 03	Maryanne Taskovski Architect	20 May 2022
DA 04 Revision 02	Maryanne Taskovski Architect	20 May 2022
DA 05 Revision 02	Maryanne Taskovski Architect	20 May 2022
DA 10 Revision 03	Maryanne Taskovski Architect	23 May 2022
DA 11 Revision 04	Maryanne Taskovski Architect	23 May 2022
DA 12 Revision 03	Maryanne Taskovski Architect	23 May 2022
DA 13 Revision 03	Maryanne Taskovski Architect	23 May 2022
DA 20 Revision 02	Maryanne Taskovski Architect	23 May 2022
DA 21 Revision 02	Maryanne Taskovski Architect	23 May 2022
DA 22 Revision 02	Maryanne Taskovski Architect	23 May 2022

BASIX Certificate No.	Dated
A426888_02	11 April 2022

REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

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

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

Consent Requirements

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

External Colours, Materials & Finishes

3. The colours, materials and finishes of the external surfaces to the building are to be compatible with the adjacent development to maintain the integrity and amenity of the building and the streetscape.

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

Section 7.12 Development Contributions

4. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$487,575 the following applicable monetary levy must be paid to Council: \$4,875.75

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

5. A development compliance and enforcement fee of \$1,023.90 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.

Long Service Levy Payments

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

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

Sydney Water Requirements

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

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

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

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

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

Sydney Water's **Tap in™** online service is available at:

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

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

REQUIREMENTS TO BE INCLUDED IN THE CONSTRUCTION CERTIFICATE

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

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

Compliance with the Building Code of Australia & Relevant Standards

8. 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

9. 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.

Stormwater Drainage

10. A surface water/stormwater drainage system must be provided in accordance with the following requirements, to the satisfaction of the Certifier and details are to be included in the construction certificate:-
- a) Surface water/stormwater drainage systems must be provided in accordance with the relevant provisions of the Building Code of Australia (Volume 2) and relevant Standards;
 - b) The surface water/stormwater must be drained and discharged to the street gutter or, subject to site suitability, the stormwater may be drained to a suitably designed absorption pit;
 - c) Any absorption pits or soaker wells should be located not less than 3m from any adjoining premises and the stormwater must not be directed to any adjoining premises or cause a nuisance;
 - d) External paths and ground surfaces are to be constructed at appropriate levels and be graded and drained away from the building and adjoining premises, so as not to result in the entry of water into the building, or cause a nuisance or damage to the adjoining premises;
 - e) Details of any proposed drainage systems or works to be carried out in the road, footpath or nature strip must be submitted to and approved by Council before commencing these works;
 - f) A certificate, from a suitably qualified person must be submitted to the Principal Certifier and Council, prior to the issue of an Occupation Certificate, which confirms that the stormwater drainage system has been provided in accordance with the requirements of this consent, relevant standards and requirements.

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

11. 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

12. 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.

Construction Site Management Plan

13. 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

14. 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

15. A *Demolition and Construction Waste Management Plan* (WMP) must be developed and implemented for the development.

The Waste Management Plan must provide details of the type and quantities of demolition and construction waste materials, proposed re-use and recycling of materials, methods of disposal and details of recycling outlets and land fill sites.

Where practicable waste materials must be re-used or recycled, rather than disposed and further details of Council's requirements including relevant guidelines and pro-forma WMP forms can be obtained from Council's Customer Service Centre or by telephoning Council on 1300 722 542.

Details and receipts verifying the recycling and disposal of materials must be kept on site at all times and presented to Council officers upon request.

Public Utilities

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

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

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

REQUIREMENTS DURING CONSTRUCTION & SITE WORK

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

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

Inspections during Construction

17. 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

18. 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

19. 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

20. 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

21. All excavations and backfilling associated with the erection or demolition of a building must be executed safely in accordance with appropriate professional standards and excavations must

be properly guarded and supported to prevent them from being dangerous to life, property or buildings.

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

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

Support of Adjoining Land

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.
23. 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

24. 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

25. 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

26. 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".

Building Encroachments

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

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

28. 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

29. 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.

Structural Certification

30. 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 Certifying Authority. A copy of which is to be provided to Council with the 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.

External Lighting

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

Waste Management

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

Plant & Equipment – Noise Levels

33. 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.

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.

D38/22

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

Failure to comply with these requirements is an offence, which renders the responsible person liable to a maximum penalty of \$1.1 million. Alternatively, Council may issue a penalty infringement notice (for up to \$3,000) for each offence. Council may also issue notices and orders to demolish unauthorised or non-complying building work, or to comply with the requirements of Council's development consent.

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

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

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

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

- A5 Any proposed amendments to the design and construction of the building may require a new development application or a section 4.55 amendment to the existing consent to be obtained from Council, before carrying out such works

- A6 A Local Approval application must be submitted to and be approved by Council prior to commencing any of the following activities on a footpath, road, nature strip or in any public place:-

- Install or erect any site fencing, hoardings or site structures
- Operate a crane or hoist goods or materials over a footpath or road
- Placement of a waste skip or any other container or article.

For further information please contact Council on 9093 6971.

- A7 Specific details of the location of the building/s should be provided in the Construction Certificate to demonstrate that the proposed building work will not encroach onto the adjoining properties, Council's road reserve or any public place.

- A8 This consent does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is proposed to be carried out upon any adjoining or supported land, the land owner or principal contractor must obtain:

- the consent of the owners of such adjoining or supported land to trespass or encroach, or
- an access order under the *Access to Neighbouring Land Act 2000*, or
- an easement under section 88K of the *Conveyancing Act 1919*, or
- an easement under section 40 of the *Land & Environment Court Act 1979*, as appropriate.

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

- A9 The finished ground levels external to the building must be consistent with the development consent and are not to be raised, other than for the provision of approved paving or the like on the ground
- A10 Prior to commencing any works, the owner/builder should contact *Dial Before You Dig* on 1100 or www.dialbeforeyoudig.com.au and relevant Service Authorities, for information on potential underground pipes and cables within the vicinity of the development site.
- A11 An application must be submitted to an approved by Council prior to the installation and operation of any proposed greywater or wastewater treatment systems, in accordance with the *Local Government Act 1993*.

Greywater/Wastewater treatment systems must comply with the relevant requirements and guidelines produced by NSW Health, NSW Office of Environment and Heritage and other relevant regulatory requirements.

Development Application Report No. D39/22


Subject: 70 Coogee Bay Road, Randwick (DA/451/2021)

Proposal:	Section 8.2 review of determination for alterations and additions to the existing building including a new upper floor level, and conversion of the use of the development from a Residential Flat Building to an attached dual occupancy including strata subdivision (variation to FSR & height of building standards).
Ward:	East Ward
Applicant:	Ms. M Kilbane
Owner:	Ms. M Kilbane
Cost of works:	\$1,287,000.00
Reason for referral:	Development that contravenes the building height development standard by more than 10%.

Recommendation

- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the height of buildings development standard in Clause 4.3 and the Floor Space Ratio development standard in Clause 4.4 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning, Industry and Environment may be assumed.
- B. That the RLPP's original determination of Development Application No. DA/451/2021 dated 14 April 2022 for alterations and additions to the existing building including a new upper floor level, and conversion of the use of the development from a Residential Flat Building to an attached dual occupancy including strata subdivision at 70 Coogee Bay Road, Randwick, be rescinded.
- 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. DA/451/2021 for alterations and additions to the existing building including a new upper floor level, and conversion of the use of the development from a Residential Flat Building to an attached dual occupancy including strata subdivision (variation to FSR & height of building standards), at No. 70 Coogee Bay Road, Randwick, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Draft Development Consent - DA.451.2021(8.2 Review) - 70 Coogee Bay Road, RANDWICK NSW 2031 - DEV - Randwick City Council (D04609198)



1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development contravenes the development standard for height of buildings by more than 10% and relates to a review of a determination made by the RLPP in April 2022.

The proposal seeks development consent for alterations and additions to the existing building including a new upper floor level, and conversion of the use of the development from a Residential Flat Building to an attached dual occupancy, including strata subdivision. The application also proposes a variation to FSR & height of building standards.

The application was previously referred to the RLPP and refused on the 14th of April 2022 for the following reason:

The Panel was of the view that any Third Floor addition should be setback behind the existing roof ridge (by the deletion of bedroom 3 and adjoining bathroom), so that the southern wall of the development more closely aligns with the top floor extension of 72 Coogee Bay Road. Any Third Floor addition needs to be further simplified in terms of its architectural form and detailing, including the roof form and fenestration. The reduction in size and height of the third floor would reduce the extent of exceedance of height and floor space standards.

In response, the applicant lodged a Section 8.2 review of determination on the 12th of May 2022 and made the following plan amendments to address the Panel's reasons for refusal:

- Bedroom 3 has been deleted from the third floor and the bathroom relocated to reduce the gross floor area by 11.21m² and the proposed FSR from 0.96:1 (7.8% variation) to 0.92:1 (3.09% variation). The amendment has positioned the third floor addition predominantly behind the existing roof ridge and also resulted in the closer alignment of the southern elevation wall with the 72 Coogee Bay Road upper floor extension.
- The roof form facing the Coogee Bay Road frontage has been amended from a flat parapet style to a more traditional pitched form.
- The window facing the Coogee Bay Road frontage has also been amended to reflect a simpler traditional opening style.

The original proposal was notified in accordance with Council's Community Participation Plan and two (2) submissions by way of unique objection were received with the key issues related to the rear setback, streetscape presentation to Coogee Bay Road, acoustic impacts from the rear decks and proximity of drainage pits to side boundary. These matters were addressed by plan revisions prior to the application being referred for Panel consideration at the previous determination meeting. The amended plans submitted under the subject Section 8.2 review were notified in accordance with Council's Community Participation Plan and in response no submissions were received during the notification period.

The key issues associated with the proposal relate to non-compliance with the maximum building height and floor space ratio development standards, and the external wall height control. The applicant has submitted written requests to vary the standards, which are considered to be well-founded. The variations are assessed as being in the public interest given the development is consistent with the objectives of the standards and the R3 Medium Density Residential zone. The additional height and FSR is attributed to the upper level addition, which has been setback from the rear building alignment and will present as a two (2) storey structure from the Coogee Bay Road streetscape perspective.

The proposal is recommended for approval subject to non-standard conditions that require a decrease to the external wall height of the eastern wall and privacy measures on side windows.

2. Site Description and Locality

The subject site is known as 70 Coogee Bay Road, Coogee and has a legal description of Lot C in Deposited Plan 436028. The site is rectangular in shape and has a total area of 285.58m². The site has a dual street frontage to the front and rear and is located on the northern side of Coogee Bay Road and the southern side of Queen Street. Pedestrian access is gained via the 7.495m frontage to Coogee Bay Road. Vehicular and pedestrian access is gained via the 7.285m frontage to Queen Street. The site experiences a fall of approximately 7.22m from the front southern boundary down towards the rear northern boundary, with an average slope of approximately 18.6%.

The site is zoned R3 - Medium Density Residential and is currently occupied by an existing three (3) storey Residential Flat Building (RFB) containing 3 dwellings. The property is surrounded by residential properties to the north, south, east and west, with Coogee Beach located further to the east of the site. The existing streetscape along the northern side of Coogee Bay Road is predominantly characterised by older style semi-detached dwellings of two (2) and three (3) storeys (viewed as one (1) or two (2) storeys as viewed from Coogee Bay Road). The northern streetscape also includes RFBs of three (3) and four (4) storeys. The southern side of Coogee Bay Road is predominantly characterised by older multi-storey RFBs of up to five (5) storeys. Opposite the northern Queen Street side of the site are primarily low-density developments comprising of dwelling houses and semi-detached dwellings.

Refer to **Figure's 1 and 2** below illustrating the existing site conditions.



Figure 1 – Subject site as viewed from Coogee Bay Road.



Figure 2 – Subject site as viewed from the rear at Queen Street.

3. Relevant history

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

Subject Development Application

Development Application DA/451/2021 was lodged with Council on 29 July 2021 and refused by the Randwick Local Planning Panel on the 14th of April 2022. A Section 8.2 review of determination was lodged with Council on the 12th of May 2022, with further plan amendments made to address the reasons for refusal provided by the panel.

4. Proposal

The proposal seeks a Section 8.2 review of determination for alterations and additions to the existing building including a new upper floor level, and conversion of the use of the development from a Residential Flat Building to an attached dual occupancy. The application comprises of the following detailed works:

- Site works
 - Partial demolition of the existing building;
 - Associated landscaping and earthworks, including the provision of planter boxes on levels 1, 2 and 3.
- Ground Floor Level
 - New internal walls and reconfiguration;
 - Extension of the western party wall to create a partially enclosed terrace area;
 - New window and door openings along the eastern elevation;
- First Floor Level
 - New internal access stair;
 - New internal walls and reconfiguration;
 - Extension of balcony to the north and west;
 - Extension of western party wall to partially enclose balcony;
- Second Floor Level
 - New internal access stair;
 - New internal walls and reconfiguration;
 - Extension of balcony to the north and east;
 - Extension of party wall and eastern external wall to partially enclose balcony;
 - New pedestrian gate and pathway fronting Coogee Bay Road;
 - Existing window replaced with French doors to the south;
 - New window openings along the eastern elevation;
- Construction of a new Third Floor Level
 - Two new bedrooms and bathrooms (Third bedroom deleted and southern street elevation redesigned to provide increased setback behind existing roof ridge line under subject 8.2 review).

Each of the proposed dwellings within the dual occupancy are located over two (2) levels and comprise the following:

- **Unit 1 (accessed from Queen Street)**
 - Open-plan living, dining and kitchen area, plant room, and terrace area;
 - Double garage with loft study / storage area above;
 - Three (3) bedrooms and ensuites, one (1) walk-in robe, and balcony to the north.
- **Unit 2 (accessed from Coogee Bay Road)**
 - Open-plan living, dining and kitchen area, study/media room, laundry, linen room, one (1) bathroom, and balcony to the north;
 - Two (2) bedrooms and bathrooms.

The application also seeks consent for the strata subdivision of the attached dual occupancy.

5. Reasons for review

The applicant has provided the following reasons for requesting the review:-

- The original application was refused by Randwick Local Planning Panel on the 14th of April 2022, without the opportunity for the applicant to present to the Panel or respond to the Panel's concerns through the provision of amended plans.
- Post determination meetings were held with Council Staff in the aim of amending the proposed design to address the concerns of the Randwick Local Planning Panel related to the relationship of the upper floor addition with the existing building and neighbouring properties from the Coogee Bay Road perspective, along with the upper floor addition being deemed excessive in terms of visual prominence from the streetscape and the extent of the proposed Floor Space Ratio (FSR) variation.

6. Statutory requirements under Division 8.2

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

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

Substantially the same development

The amendments to the previously proposed upper floor addition include an increased street setback through the deletion a bedroom and the relocation of an ensuite bathroom, changes to the roof form and the style of a street facing window. These changes to address the Randwick Local Planning Panel's reason for refusal are not considered to substantially alter the proposed upper floor addition (solely related to Coogee Bay Road frontage) or the wider scope of alterations proposed to facilitate a dual occupancy development under the original assessment. In addition, the proposed amendments are a reduction of the previously proposed building envelope that will improve the relationship of the development with the immediate streetscape and results in a built form outcome that minimises environmental impacts to surrounding development. Accordingly, the amendments proposed in the subject Section 8.2 review of determination are considered to result in the substantially the same development.

7. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the Section 8.2 review of determination in accordance with the Randwick Community Participation Plan. In response, no submissions were received as a result of the notification process.

8. Relevant Environment Planning Instruments

8.1. SEPP (Housing) 2021

The subject site and existing RFB is currently under single ownership and the existing building has not been strata subdivided, managed by a social housing provider accommodation or housing for seniors or people with a disability. As such, consideration was given to whether Part 3 retention of existing affordable rental housing is applicable to determine whether the proposal will result in a reduction in affordable rental housing, and if a monetary contribution must be considered to substitute any loss pursuant to Section 48 of the Housing SEPP.

The Housing SEPP defines a low-rental dwelling as follows:

“low-rental dwelling means a dwelling that was let at a rental not exceeding the median rental level at any time during the relevant period, as specified in the Rent and Sales Report, in relation to a dwelling of the same type, having the same number of bedrooms and located in the same local government area.”

The relevant period is defined as “the period commencing 5 years before the day on which the development application involving the building is lodged and ending on that day.”

The Applicant submitted details of the rents received in the 5 year period prior to the lodgement of the application, being from July 2016 through to 30 June 2021, by way of a copy of the legal Residential Tenancy Agreements.

Based on Council’s records and the documentaiton provided, the existing three (3) units comprise the following:

- **Unit 1** – Two (2) bedrooms;
- **Unit 2** – One (1) bedroom (however, the owner advised that in contradiction to Council’s records the main bedroom has been divided into two (2) rooms and has been let on the basis of a two (2) bedroom unit; and
- **Unit 3** – Two (2) bedrooms.

In the previous assessment, a review was undertaken that determined the rental income received from these units (approx. \$650 to \$802 per week for 2 Bed unit) was predominantly above the median rental price of units (approx. \$550 to \$660 per week for 2 Bed unit) within the wider Randwick LGA. In this instance, it is considered that the existing units would not be classified as low rental dwellings and there is unlikely to be a reduction in affordable housing on the land. Accordingly, no contributions are applicable under the Housing SEPP 2021.

8.2. Randwick Local Environmental Plan 2012 (LEP)

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

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will provide for the housing needs of the community, will not be inconsistent with the existing streetscape and subject to the recommended conditions will not result in any unreasonable amenity impacts upon surrounding residents.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4: Floor space ratio (max)	0.9:1 or 257.022m ² of GFA	0.92:1 or 264.96m ² of GFA	No
CI 4.3: Building height (max)	12m	13.64m	No
CI 4.1: Lot Size (min)	N/A	N/A	N/A – Strata Subdivision

9. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
CI 4.4: Floor space ratio (max)	CI 4.4: Floor space ratio (max)	0.9:1	0.92:1 or 264.96m ² of GFA	3.09% (7.938m ²)
CI 4.3: Building height (max)	CI 4.3: Building height (max)	12m	13.64m	13.67% (1.64m)

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.

9.1. 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 regardless of the non-compliance.

The objectives of the FSR standard are set out in Clause 4.4 (1) of RLEP 2012. The applicant has addressed each of the objectives as follows:

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

The applicant's written justification argues that this objective is achieved as the desired character is somewhat established by the development at 68 Coogee Bay Road and 80 Queen Street which are relatively newer approvals in 2014 and 2015. The bulk and scale of the proposal development would be consistent with the adjoining development at No. 68.

Additionally, as a part of the Section 8.2 review the upper level that constitutes the variation, has been designed to complement and conserve the appearance and character of the existing semi-detached building on Coogee Bay Road, with an increased upper floor setback provided behind the existing roof ridge line and the incorporation of a traditional style roof form and window openings. The proposed wall height and roof form have also been designed to predominantly reference the levels and street alignment of the upper floor addition approved at 72 Coogee Bay Road.

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the proposed additions are designed to integrate with the existing development, however with the design of the new third floor addition more recessive to the dual streetscape and incorporating additional onsite landscaping to soften the visual appearance of the built form.

The proposal also includes measures to reduce resource consumption. The BASIX certificate (submitted by the applicant) shows that the development meets the relevant water and energy saving targets.

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

The development is not within a conservation area. The Applicant notes that there are heritage items within the surrounding immediate area, however the proposal shall not compromise the heritage significance of these items.

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the proposal shall not give rise to privacy, overshadowing, view loss or visual bulk impacts.

Assessing officer's comment:

While it is acknowledged that the proposed FSR results in a variation to the development standard, the extent of variation is in relation to the GFA of the existing development and the change of use of the existing building to provide a lower density development with a reduced number of bedrooms and better amenity. The additional GFA and variation can be solely attributed to the proposed upper floor level of the development, noting that the existing building complies with the 0.9:1 standard. The proposed upper floor addition has been minimised and reduced in the Section 8.2 review to a level that accommodates reasonably sized bedrooms and bathrooms with good amenity, with the proposed areas not considered to be excessive and resulting in a reduced variation of 7.938m² (3.09%). It is considered any further reduction to the size of the rooms would detrimentally impact upon the internal amenity of the dwelling and affect the accessibility of the stairwell. As a part of the Section 8.2 review the applicant has removed the third bedroom and relocated the bathroom to align the upper floor addition predominantly behind the existing roof ridge line and better reference the alignment of the street setback provided by the approved development at No. 72 Coogee Bay Road.

Furthermore, the surrounding developments are of a similar level of bulk and scale, and the proposal shall maintain a built form that is not inconsistent with the existing streetscape or the character of the area, with regard to the streetscape of Coogee Bay Road in which the development will present as a partial two (2) storey dwelling through the retention of the existing roof ridge line. The proposed alterations and additions shall improve the visual impact of the

development as viewed from the adjoining properties and public domain, by enhancing and articulating the front and rear façades, along with the incorporation of additional on-grade landscaping and planter beds on structure. The BASIX certificate (submitted by the applicant) shows that the development meets the relevant water and energy saving targets.

It is noted that there are several heritage items within the vicinity of the site, however the existing heritage buildings are located a significant distance from the subject site, with the closest item on the corner of Carrington Road and Queen Street being in excess of 35m from the proposed development. It is considered that the proposed development would not detrimentally impact upon the heritage significance of the surrounding heritage properties. Notwithstanding, in order to provide a consistent streetscape outcome, the proposed roof form and window opening of the new third storey has been amended in the Section 8.2 review to incorporate a more traditional style.

Due to the recessed nature of the proposed addition which is setback from the rear building alignment, and the absence of windows on the side elevations of the adjoining properties, it is considered that the proposal shall not be visually obtrusive as viewed from the adjoining properties nor results in any unreasonable impacts with regards to view loss, privacy and solar access.

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

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

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

- The proposal is consistent with the objectives of the standard and the R3 zone.
- The proposed variation provides a development that adds to the housing mix and diversity of the area.
- The cumulative impact of the non-compliance is acceptable in consideration of the local approvals within the surrounding area which sets a precedent for variation to the standard.
- The proposed building envelope would not be inconsistent with the attached development at 68 Coogee Bay Road.
- The non-compliance will not contribute to adverse impacts upon adjoining properties with regards to residential amenity.
- The proposal will improve the amenity, functionality and floor layout of the dwellings and result in an environmental benefit.

Assessing officer's comment:

The proposed development is constrained by the existing building on site, which shall be largely retained, and the existing GFA. The change of use shall facilitate a form of low density development within the medium density zone, ensuring a variety of housing types are provided within the R3 zone. The proposed additions and resultant GFA will provide better amenity for occupants by creating open-plan and flexible living, kitchen and dining areas, and facilitate a reduced number of bedrooms compared to existing to create (1x) 3-bedroom dwelling and (1x) 2-bedroom dwelling, which will positively contribute to the housing stock in the area. The resultant bulk and scale is not considered to be excessive in consideration of the surrounding context of the attached and neighbouring property, and the proposed additions are sympathetic to the existing building. Furthermore, the proposal involves the upgrading of the existing facades, improving the streetscape presentation of the development, and enhancing the visual impact from the public domain. The proposed upper addition shall not result in excessive built form as viewed from Coogee Bay Road, and due to the rear and side setbacks will not be visually obtrusive as viewed from Queen Street. In conclusion, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

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

In the aim of determining whether the proposal will be in the public interest, an assessment against the objectives of the Floor Space Ratio standard and R3 zone has undertaken as a part of the assessment.

As discussed in Section 6.2 of the report, the proposal is considered consistent with the objectives of the R3 zone, and as outlined above, the proposed development is also found to be consistent with the objectives of clause 4.4 Floor Space Ratio and therefore the development will be in the public interest.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

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

Conclusion

Based upon 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.

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

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

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

The applicant's written request seeks to justify the contravention of the Building Height development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case because the proposed height would be consistent with the adjoining development and the relevant objectives of the standard are still achieved regardless of the non-compliance.

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

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the proposed bulk and scale of the third floor addition has been minimised to prevent visual obtrusion and shall be compatible with the existing surrounding developments. Additionally, the upper level that constitutes the variation at the rear Queen Street elevation,

has been designed to complement and conserve the appearance and character of the existing semi-detached building on Coogee Bay Road.

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

The development is not within a conservation area. The Applicant notes that there are heritage items within the surrounding immediate area, however the proposal shall not compromise the heritage significance of the items.

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

The applicant's written justification argues that this objective is satisfied by noting that the proposed alterations and additions will not result in any adverse impacts in terms of visual bulk, overshadowing, view loss or privacy.

Assessing officer's comment:

The proposed development seeks to construct a new upper level to the existing building in order to improve the internal amenity of the dwelling with an open plan kitchen, living and dining area on the lower level of Unit 2 and the relocation of the 2 bedroom to the floor above. The subject site experiences a significant fall from south to north, with a drop of approximately 6.8m from the Coogee Bay Road frontage down to the rear of the building fronting Queen Street. The height variation is attributed to the proposed upper level addition, with the additional bulk at the rear of the building where the land has been excavated to provide a lower ground floor level due to the topography of the site exhibiting a greater fall within this portion of the property.

The previous application reduced the overall height of the development and increased the rear and side upper floor setback to minimise the visual impact and reduce the bulk and scale of the development. The proposed development shall present as two (2) storeys to Coogee Bay Road and would not be inconsistent with the existing streetscape, which contains residential developments of one (1) and two (2) storeys. Furthermore, the proposed 8.2 review plans have sited the third floor addition predominantly behind the roof ridge line to further minimise the visual impact from the street perspective. The applicant submitted a revised 3D analysis of the likely visual bulk as viewed from Queen Street and Coogee Bay Road, which is illustrated in **Figure's 3 and 4** below:



Figure 3 – 3D view of the proposal as viewed from Queen Street to the north.



Figure 4 – 3D views of the proposal as viewed from Coogee Bay Road to the south (*Note: The applicant submitted further street perspectives that can be provided to the panel for review*)

The above 3D drawings demonstrates that the proposed upper level would not be dissimilar in bulk to the adjoining development at 68 and 72 Coogee Bay Road. Due to the front and rear alignment of the development not encroaching substantially beyond the neighbouring properties, it is considered that the proposal would not result in any unreasonable impacts upon the adjoining properties with regards to visual impact, privacy, overshadowing or view loss.

In view of the above, it is considered that compliance with the maximum height development standard is unreasonable or unnecessary in this instance as the height of the proposed additions is responsive to surrounding development and largely a result of the topography of the site. Furthermore, the proposal can achieve the objectives of the development standard subject to conditions. In conclusion, the Applicant's written request has demonstrated that the proposed breach is unreasonable or unnecessary in the circumstance of the case.

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

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

- The proposal provides better amenity for occupants, by providing a high internal amenity without unreasonably impacting surrounding properties.
- The proposed variation provides a development that adds to the housing mix and diversity of the area.
- The cumulative impact of the non-compliance is acceptable in consideration of the local approvals within the surrounding area, which sets a precedent for variation to the standard.
- The proposed building envelope would not be inconsistent with the adjoining development at 68 Coogee Bay Road.
- The non-compliance will not contribute to adverse impacts upon adjoining properties with regards to residential amenity.

Assessing officer's comment:

As discussed above, the proposed height is largely a result of the topography of the site and the existing lower ground floor level of the development, which is sited below natural ground level. The proposed third floor addition has sited to reduce the bulk and scale from both street perspectives. The proposed upper level shall improve the internal amenity for occupants, without unreasonably impacting upon the amenity of the neighbouring properties. In

consideration of the size and scale of the surrounding developments within the vicinity of the subject site, the proposed non-complaint height is not considered to be unwarranted, and the additional height can be accommodated on the site without resulting in adverse amenity impacts.

In view of the above, it is considered that the applicant's written request has demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

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

In the aim of determining whether the proposal will be in the public interest, consideration is given to the objectives of the Building Height standard and the R3 zone.

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

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

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

Conclusion

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

10. Development control plans and policies

10.1. Randwick Comprehensive DCP 2013

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

As the proposed development is for the purpose of an attached dual occupancy, the provisions of Part C1 of RDCP are applicable in this instance. The relevant provisions of the DCP are addressed in the Key issues section of this report and **Appendix 3**.

11. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions were received in relation to the subject 8.2 review of determination. The previous submissions received in relation to previous application have been addressed by way of plan amendments.
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.

11.1. Discussion of key issues

Heritage Conservation

As a part of the previous determination meeting the Panel raised concerns for the proposed alterations and additions in relation to the Coogee Bay Road streetscape presentation. The reasons for refusal raised concern with the architectural form and detailing, including the roof form and fenestration.

The subject site and surrounding properties are not identified as being heritage items nor within a Heritage Conservation Area. Notwithstanding, it is appreciated that the existing facades along this portion of Coogee Bay Road are largely intact and portray their original features. As such, the Section 8.2 review was accompanied by plan amendments that simplify the style of the upper floor window opening and incorporate a pitched roof form that is sympathetic to the existing building and neighbouring properties. The proposed design amendments are considered to result in an improved streetscape outcome from Coogee Bay Road.

Clause 3.2 (External Wall Height) of Part C1, RDCP 2013

Clause 3.2 specifies a maximum wall height in order to control the bulk and scale of development, complement the desirable streetscape outcome and achieve a suitable urban design outcome. As the proposed development is for the purpose of a dual occupancy, the provisions of Part C1 of RDCP 2013 are applicable, which stipulates a maximum external wall height of 8m for steeply sloping sites. However, it is worth noting that the low density controls generally anticipate dual occupancies to be single to double storey with an additional storey of sloping sites. Due to the retention and use of the existing medium density building, being a Residential Flat Building, the proposed dual occupancy is one above the other, resulting in a four (4) storey development which would be more aligned with the medium density controls. The provisions of Part C2 of RDCP 2013 in relation to medium density residential development would permit an external wall of 10.5m.

Notwithstanding, the proposed development shall have a maximum external wall height of 13.1m as measured from existing ground level, with a substantial portion of the upper floor level sited above both the 8m and 10.5m external wall height.

The objectives of clause 3.2 are as follows:

- *To ensure development height establishes a suitable scale to the street and contributes to its character.*
- *To ensure development height does not cause unreasonable impacts upon the neighbouring dwellings in terms of overshadowing, view loss, privacy and visual amenity.*
- *To ensure the form and massing of development respect the topography of the site.*

The non-compliant wall height is a result of the existing building and the proposed upper floor level. The existing building does not comply with the 8m wall height and therefore any additions would be sited above the 8m. Due to the significant slope of the site, which exhibits a fall of 7.22m from south to north, achieving compliance with the maximum wall height of 10.5m would also be difficult, unless it was in the form of habitable roof space.

Rather than provide the upper level as habitable roof space which would severely compromise the internal amenity of the development, the Applicant has aimed to provide an upper level consistent with the same visual bulk as habitable roof space by setting the upper level back from the rear and side boundaries, along with the provision of a roof planter bed (for the rear portion of the development). As such, the rear portion of the development shall not be visually dominant in the streetscape when viewed from Queen Street. Furthermore, the proposal shall appear as a two (2) storey development as viewed from Coogee Bay Road which is not inconsistent with the existing streetscape that provides a mixture of single and two (2) storey developments. Notwithstanding, to ensure a consistent streetscape presentation along Coogee Bay Road, the plans were amended as a part of the Section 8.2 review to provide a pitched roof form that aligns the external wall height of the eastern wall with the same level as the adjoining property to the east at No. 72, as demonstrated in **Figure 5** below. The proposed front setback of the upper floor has also been revised in subject review to better align with the addition approved this neighbouring property for further consistency in terms of maximum wall height.

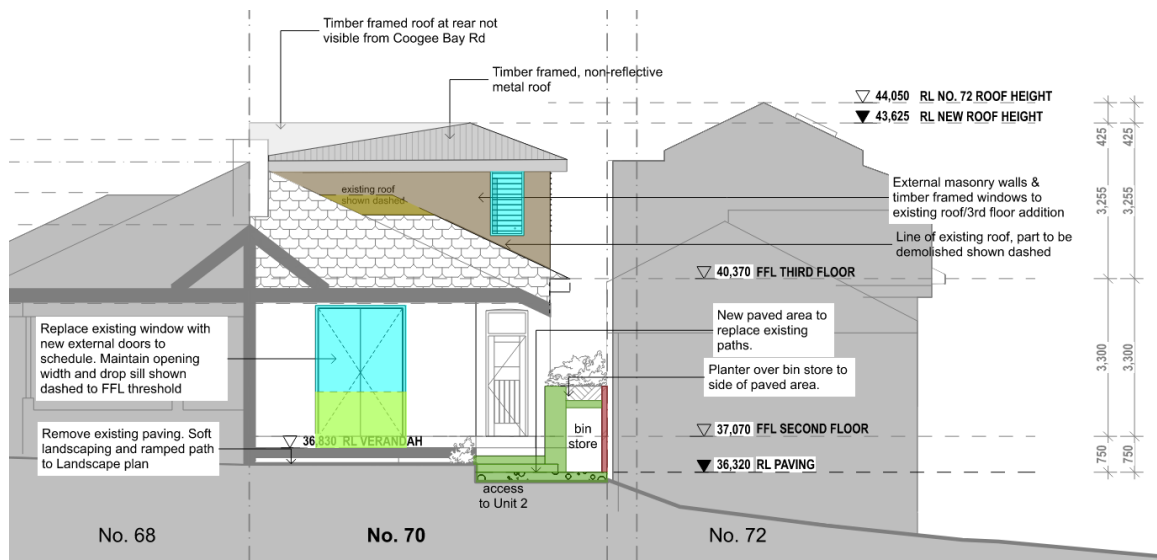


Figure 5 – Proposed wall height alignment with adjoining property.

The reduction of the eastern external wall and roof pitch would still enable the provision of a minimum 2.4m floor to ceiling heights to maintain compliance with the BCA.

The adjoining development to the east at 72 Coogee Bay Road does not have any windows on the western side elevation adjacent to the proposed development, and the proposal shall be sited behind the rear building alignment of the neighbouring property. Additionally, the proposed development shall maintain the rear building alignment of the adjoining property to the west at No. 68, which shares a common party wall with the proposal. As such it is considered that there would be no unreasonable impacts upon the neighbouring dwellings in terms of overshadowing, view loss, privacy and visual amenity.

The proposed development seeks to utilise the existing built form, with the key component of the development being the new upper floor level. The Applicant has minimised the impact of the addition by setting the upper level predominantly behind the existing roof ridge line to the south, and provides a significant setback and roof top landscaping to the north (rear), ensuring that the proposed top storey shall not be visually prominent as viewed from the public domain and streetscape. In this regard, it is considered that the form and massing of development respects the topography of the site.

In view of the above, the proposal is considered to be consistent with the objectives of the control and can be supported in this instance.

12. Conclusion

That the Section 8.2 review of determination for alterations and additions to the existing building including a new upper floor level, and conversion of the use of the development from a Residential Flat Building to an attached dual occupancy including strata subdivision (Variation to FSR & Height) be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013
- The proposal is consistent with the specific objectives of the R3 zone in that the proposed activity and built form will provide for the housing needs of the community, will not be inconsistent with the existing streetscape and subject to the recommended conditions will not result in any unreasonable amenity impacts upon surrounding residents.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.

- The proposed development shall not result in any unreasonable impacts upon the residential amenity of the surrounding properties.

D39/22

Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineer

Noting that the proposed design amendments to the upper floor addition and the reduction of GFA, would not constitute any alterations to engineering matters. It is considered that the below comments provided by Council's engineer would remain applicable to the subject review of determination and are outlined as follows:

An application has been received for major alterations and additions at the above site to convert the existing 3 unit building, fronting Coogee Bay Road, into a duplex with 3 bedrooms for each of the 2 remaining units. The application also includes Strata Subdivision.

This report is based on the following plans and documentation:

- Architectural Plans by Mary Ellen Hudson including draft Strata Plans and dated 26.07.2021;
- Statement of Environmental Effects by Two Trees & Co P/L dated July 2021;
- Detail & Level Survey by J B Stephen Surveying Services.

Comments for Consideration by Planning Officer

The proposal seeks to remove the eastern side boundary stairs which provide access to the lower level of the building from Coogee Bay Rd. This proposal, if approved, will then provide the lower level unit (Unit 1) with sole access from the Queen Street frontage and the upper level unit (Unit 2) with sole access from Coogee Bay Rd. The Planning Officer is to consider that with Unit 1 (lower level unit) having sole frontage to Queen Street what address should be allocated to the Unit for postal deliveries, emergency services etc as access from Coogee Bay Rd is to be totally removed.

The site currently has a 2 car garage located at the rear of the site which has access from Queen Street. It is unclear how the parking spaces are currently allocated amongst the existing 3 units however the application proposes to allocate Unit 1 (lower level unit) the 2 car garage which seems acceptable in its proposed form.

Undergrounding of power lines to site

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

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

*The subject **is** located within 15m of a power pole on the same side of the street hence the above clause **is** applicable.*

It is noted that the proposed works are located towards the rear and there are no alterations or additions proposed at the front of the dwelling where the existing electricity supply connects. It is therefore considered a nexus cannot be established between the council resolution and the proposed works and subsequently the condition has not been recommended in this instance.

Landscape Comments

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

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

Clause 4.6 Variation in relation to Clause 4.3 (Height of Buildings) and Clause 4.4 (Floor Space Ratio) of RLEP 2012

CLAUSE 4.6 VARIATION REQUEST

CLAUSE 4.1 HEIGHT OF BUILDINGS AND
CLAUSE 4.4 MAXIMUM FLOOR SPACE RATIO
RANDWICK LEP 2012

70 COOGEE BAY ROAD, COOGEE

PROPOSED ALTERATIONS AND ADDITIONS
AND CHANGE OF USE TO (ATTACHED)
DUAL OCCUPANCY

JUNE 2022 REVISED ARCHITECTURAL
SCHEME - SECTION 8.2 REVIEW

PREPARED BY

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D39/22

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1. INTRODUCTION

This variation request has been prepared to demonstrate that the proposed departure from the applicable height of buildings (HOB) and floor space ratio (FSR) can be supported by Council and the Local Planning Panel in accordance with Randwick Local Environmental Plan (LLEP) 2012 Clause 4.6 - Exceptions to Development Standards.

The objectives of Clause 4.6 of LLEP 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.*

DA 451/2021/ **(PAN-125455)** for 70 Coogee Bay Rd Randwick was refused by the Randwick Local Planning panel on 14 April 2022. This variation has been updated (June 2022) to take account of a revised architectural scheme prepared in response to the Local Planning Panel's concerns contained in the minutes of the RLPP meeting 14 April 2022:

The Panel was of the view that any Third Floor addition should be setback behind the existing roof ridge (by the deletion of bedroom 3 and adjoining bathroom), so that the southern wall of the development more closely aligns with the top floor extension of 72 Coogee Bay Road. Any Third Floor addition needs to be further simplified in terms of its architectural form and detailing, including the roof form and fenestration. The reduction in size and height of the third floor would reduce the extent of exceedance of height and floor space standards.

The amended plans include the following changes:

- Bed 3 has been deleted and the bathroom moved to the side, so that the overall addition has been reduced in size by 11.21 sqm and the southern wall of the addition more closely aligns with the top floor addition of 72 Coogee Bay Rd.
- The roof form has been changed to a traditional pitched roof to be more in keeping with the roof form of 72 Coogee Bay Rd and the adjoining property.
- The roof has been pitched toward Coogee Bay Rd, with the pitch matching the existing roof pitch.
- The window fenestration to Coogee Bay Rd has been amended to reflect a more traditional opening.

The deletion of Bed 3 from the upper level unit has reduced the GFA by 11.21sqm, with a reduction in FSR from 0.96:1 to 0.92:1.

The modification of the roof has resulted in no change to the numeric non compliance with the maximum HOB standard, but has enhanced and improved urban design and streetscape appearance outcomes in accordance with the RLPP's concerns.

This clause 4.6 request should be read in conjunction with the Statement of Environmental Effects (SEE) and the architectural drawings that accompany the DA. Prepared by MEH Architects. The SEE contains details of the site and surrounds including a photographic context that illustrates the existing character of the locality and the recent local approvals that demonstrate desired future character of the locality.

In summary this clause 4.6 request for variation of the development standards demonstrates that, in these circumstances, there are sufficient environmental planning grounds to justify the proposed non compliance with the maximum permissible FSR and HOB as evidenced by the:

- Compliance of the proposed development with the objectives of the Zone, HOB and FSR standards which in turn demonstrates that the proposed development is in the public interest as detailed at Section 4.1;
- Compliance with the FSR and HOB standard is unnecessary in this instance because the proposed development meets the objectives of the standards and the Zone and consequently the intent of the standards are achieved regardless of the non-compliance. This is demonstrated by the consistency of the proposed additional height and floor space and resulting building envelope with the precedent building envelope at 68 Coogee Bay Road as illustrated in Figures 4-6 and as detailed at Section 4.1.2 and Section 4.2;
- The proposed development helps to achieve the stated objectives of the strategic planning framework in relation to provision of housing diversity, meeting the community housing need for larger multi-generational duplex style dwellings as detailed at Section 4.1.1;
- Compliance with the FSR and HOB standard is unreasonable in this instance because the cumulative impact of the non-compliance with the standards is acceptable as demonstrated in the analysis of recent local approvals at Section 4.2 and illustrated in Figure 8 and Figure 9 and Attachment A which lists the precedents for approval of the proposed HOB and FSR non-compliances in the R3 Zone;
- Achievement of the draft revised test for Clause 4.6, notwithstanding the HOB and FSR non-compliances, and providing better planning outcomes for the site and the locality as detailed in Section 5;
- The absence of any matters of State or regional significance, detailed at Section 6.

In light of contribution of the proposed development to the achievement of the Zone, HOB and FSR standard objectives and the State Government's stated objectives in relation to housing diversity, there would be no public benefit in maintaining the development standard.

On this basis it has been demonstrated that the proposed development will achieve better planning, environmental, social and economic outcomes if flexibility is provided with regard to the FSR and HOB standard in the particular circumstances of this case in which these variations are sought.

2. MATTERS TO BE CONSIDERED IN THIS CLAUSE 4.6 REQUEST

The objectives of Clause 4.6¹ of RLEP 2012 are:

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

The subject site is zoned R3 Medium Density Residential and is subject to a mapped maximum floor space ratio of 0.9:1.



Figure 1: Floor Space Ratio Map (Source: Randwick LEP 2012)

The site area is 285.58m². The proposed development comprises a total GFA 264.96 m², which constitutes an FSR of 0.92:1. This exceeds the development standard by 7.9 m², which equates to a non-compliance of 3%.

Pursuant to Clause 4.3 of RLEP 2012 the site is subject to a mapped permissible building heightⁱⁱ of 12 metres.



Figure 2: Height of Buildings (Source: Randwick LEP 2012)

A variation of the maximum HOB development standard is proposed that equates to 1.64 m or 14 % variation of the maximum 12 metre standard as detailed in Table 1.

Where the variation of a development standard exceeds 10%, the DA must be determined by the Local Planning Panel. Clause 4.6 (2) provides that:

Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.

It is noted that the FSR and HOB controls are not expressly excluded from the operation of this clause. The revised scheme reduces the FSR exceedance such that it is less than 10% and does not need to be approved by the LPP. Notwithstanding, this clause 4.6 request considers to the two variations together as the proposed scale and height of the building are integrated and designed to meet the highest standards of urban design.

This Clause 4.6 request is prepared in accordance with the specific requirements of Clause 4.6 (3) and Clause 4.6 (5) and therefore includes consideration of:

- *Whether compliance with the development standard is unreasonable or unnecessary in the circumstances of the case;*
- *Whether there are sufficient environmental planning grounds to justify contravening the development standard;*
- *Whether contravention of the development standard raises any matter of significance for State or regional environmental planning; and*
- *The public benefit of maintaining the development standard.*

Clause 4.6 (4) provides that consent must not be granted for development that contravenes a development standard unless—

(a) The consent authority is satisfied that—

- (i) The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
- (ii) The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*

(b) The concurrence of the Planning Secretary has been obtained.

In accordance with planning circular PS 20-002 (5 May 2020) the Secretary's concurrence can be assumed where a decision is made by an Independent Hearing and Assessment Panel such as the Randwick Local Planning Panel where they are exercising the Council's functions as a consent authority in accordance with the relevant notice. Concurrence can only be assumed if the consent authority has first considered (in relation to a clause 4.6 request):

- *Whether contravention of the development standard raises any matter of significance for state or regional environmental planning; and*
- *The public benefit of maintaining the development standard.*

This request for variation of the standards has also been prepared with reference to *Varying development standards: A Guide* August 2011 published by the Department of Planning Infrastructure and Environment. This request considers the three relevant sections of the *Wehbe* 'five part test' (*Wehbe v Pittwater Council* (2007) 156 LGERA 446):

This request for variation of the standards has also been prepared with reference to *Varying development standards: A Guide August 2011* published by the Department of Planning Infrastructure and Environment. This request considers the three relevant sections of the Wehbe 'five part test' (Wehbe v Pittwater Council (2007) 156 LGERA 446):

1. *The objectives of the standard are achieved notwithstanding noncompliance with the standard;*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;*
3. *The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (not relevant in this instance);*
4. *The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;*

The compliance with development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in the zone (not relevant in this instance).

This clause 4.6 request for variation of the HOB and FSR development standards demonstrates that, in the circumstances of this case, there are sufficient environmental planning grounds to justify the proposed non compliance with the maximum permissible FSR and HOB as evidenced by the:

- Compliance of the proposed development with the objectives of the Zone and, HOB and FSR standards which in turn itself demonstrates that the proposed development is in the public interest as detailed at Section 4.1;
- Consistency of the proposed additional height and floor space and resulting bulk and scale with the existing character of the locality and the desired future character of the locality, as demonstrated by the approval precedent within Coogee Bay Road and Queen Street (refer Figures 4 -6 and Sections 4.1.2 and 4.2)
- The ability of the proposed development to help achieve the stated objectives of the strategic planning framework in relation to provision of housing diversity meeting the communities housing need as detailed at Section 4.1.1;
- Lack of any adverse cumulative impact associated with the HOB and FSR non-compliance as demonstrated in the analysis of recent local approvals at Section 4.2;
- Consistency with the Council's historic application of the HOB and FSR standard within the R3 Zone and Clause 4.6 in the local area as illustrated in Figure 8 and Figure 9 and detailed in **Attachment A** which includes the precedent approvals in the R3 Zone;
- Achievement of the draft revised test for Clause 4.6, notwithstanding the HOB and FSR non-compliance and providing better planning outcomes for the site and the locality as detailed in Section 5;
- The absence of any matters of State or regional significance, detailed at Section 6.

On this basis, the proposed development will achieve positive planning, environmental, social and economic outcomes, if flexibility is provided with regard to the FSR and HOB standard in the particular circumstances of the case in which this variation sought.

3. THE SITE AND THE PROPOSED VARIATION

This clause 4.6 request accompanies a Development Application (DA) seeking consent for an attached dual occupancy development including partial demolition of the existing structure and construction of two attached dwellings in a duplex formation. This clause 4.6 request should be read in conjunction with the Statement of Environmental Effects (SEE) and the post exhibition architectural drawings that accompany the DA prepared by MEH Architects that illustrate:

- Partial demolition of the existing structure including internal walls and floors;
- Construction of two units including an addition at the upper third floor of the building:
 1. Unit 1 accessed at grade from the rear Queen Street frontage of the site and providing living areas oriented to the north at ground floor, with associated private open space, and three bedrooms and bathroom at the first floor. This unit takes advantage of the existing two-car garage with frontage to Queen Street. No modification of the garage is proposed;
 2. Unit 2 accessed at grade from Coogee Bay Road with living areas oriented to the north, with associated private open space at the second floor and three bedrooms and bathroom in a third floor addition.

Strata subdivision of the two units is also sought as part of this DA.

The proposed development is permissible with consent in the R3 Medium Density Zone and is generally consistent with the relevant development standards and planning controls including the relevant provisions of *Randwick Local Environmental Plan 2012* (RLEP) with the exception of an exceedance of the maximum permissible floor space ratio and height of buildings controls.

The Gross Floor Area^h (GFA) and associated Floor Space ratioⁱ (FSR) calculated in accordance with RLEP are detailed in Table 1 and Table 2 accordingly GFA excludes floor space identified for vertical circulation, mechanical plant and basement storage.

Table 1 Proposed Height of Building

	RL Roof	RL Ground	Max Height in Metres	Non Compliance	Non Compliance
Coogee Bay Road	42,810	36,560	6.25	N/A	N/A
Queen Street	43,625	29,990	13.64	1.64	13.63%

The HOB variation request relates to the proposed additional 1.64 m of height, which comprises a 14% variation of the development standard.

The revised scheme responds to the concerns raised by the RLPP in relation to building height as follows:

- The upper level addition is now setback behind the existing roof ridge
- The southern wall of the development more closely aligns with the top floor extension of 72 Coogee Bay Road
- The third floor addition has been further simplified in terms of its architectural form and detailing, including the roof form and fenestration:

- o The roof form has been modified and a traditional pitched roof is proposed, more in keeping with the roof form of the adjoining properties.
- o The roof is proposed to be pitched toward Coogee Bay Rd, with the pitch matching that of the existing roof.
- o The proposed fenestration to Coogee Bay Rd has been modified and a more traditional (rectangular) opening is proposed in this location.

These changes improve the environmental outcomes of the proposed development though do not reduce the quantum of the non compliance with the HOB standard due to the nature of the site's topography.

The increase in the height of the proposed development is relatively modest when considered in the context of the very steep topography of the site, the existing development adjacent and the character of the locality.

Table 2 Proposed Floor Space Ratio

Gross Floor Area	Existing (m ²)	Proposed (m ²)
Total	242.6	264.96
Total FSR	0.8:1	0.92:1
Non-Compliance		7.9 m ² 3%

The revised scheme responds to the concerns raised by the RLPP in relation to FSR as follows. The proposed development has been amended to reduce the additional floor space and now comprises just 7.9 square metres more than permitted by the FSR standard. The revised schemes illustrates additional floor space at the upper level that is more appropriately designed and lightweight, sympathetic to the existing building and the Coogee Bay Road streetscape. The proposed additional upper floor is a similar height, bulk and scale to the recent upper level addition to the building adjacent at 68 Coogee Bay Road.

4. JUSTIFICATION FOR THE VARIATION

As held by the court in *Wehbe v Pittwater Council* [2007] NSWLEC827, development standards are not an end in themselves but a means of achieving environmental and planning objectives. Where the objectives of the development standard are achieved, strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).

4.1 COMPLIANCE WITH THE DEVELOPMENT STANDARDS IS UNNECESSARY

Section 4.1.1 and 4.1.2 demonstrate that compliance with the FSR and HOB standard is unnecessary in this instance because the proposed development meets the objectives of the standards and the Zone and consequently the intent of the standards are achieved regardless of the non-compliance.

4.1.1 COMPLIANCE WITH THE OBJECTIVES OF THE R3 ZONE

The proposed development complies with the relevant objectives of the zone, which are to:

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

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

These objectives require a response to community housing need that provides housing diversity and affordability, while respecting the built form character of the neighbourhood in which development is located. The manner in which the proposed development achieves these outcomes is addressed thematically following.

4.1.1.1 MEETING THE HOUSING NEEDS OF THE COMMUNITY

Council undertook a housing preference survey as part of the Vision 2040 - Shaping Randwick's Future community consultation. Of the 214 housing surveys "for those people who were thinking of moving in the next 5 years, the majority are likely or very likely to move to a freestanding house (57%) or a semi-detached/townhouse (56%). 41% would likely or very likely move to a small apartment block and 32% would likely or very likely move to a dual occupancy (duplex).

The majority of respondents (68%) are likely to stay in the Eastern Suburbs. These results mirror the research findings by the City Futures Research Centre (2013) on housing preferences in Greater Sydney which showed that people generally prefer to remain within their local area, with 82 per cent of residents moving into a new home within 15 kilometres of their former residence.

The proposed development will meet the community's housing needs and contribute to the development of greater liveability in an LGA that is accessible, safe and healthy with quality public spaces and attractive neighbourhoods and centres. It will provide for the multi-generational housing needs of the existing owners and the local community through contribution of two 3-bedroom units which are under-represented in the local dwelling mix. This will allow two larger families to enjoy the benefits of living on the site.

The Randwick Local Housing Strategy (LHS) relies on analysis of Randwick City's housing and demographic conditions and documents private dwellings by number of bedrooms between 2006 and 2016 when 2 and 3 bedroom dwellings were the dominant dwelling type. Despite this dominance in the housing mix, the proportion of 3 bedroom dwellings (as a proportion of Randwick City's total dwellings) decreased during this time by 2.1%, while the number of 0-1 bed dwellings increased by 2.1% (1,700 dwellings).

In 2016 there was a lower proportion of 3 bedroom dwellings (24.9% compared to the average for Greater Sydney 32.1%). Concurrently there was a higher proportion of 0-1 and 2 bedroom dwellings in Randwick City when compared to the average for the region (13% compared to 7.8% and 36.4% compared to 23.7% respectively).

Accompanying this loss of larger dwellings with 3 -4 bedrooms are demographic change and housing affordability factors that mean that children and grandchildren are spending longer in

the family home before they leave to create their own households. The proportion of population aged 65 and older is expected to increase, consistent with the ageing population trend occurring across Australia. However, for Randwick the projections also show a large increase in persons aged 5-14 and 15-24 (30% and 29% increases respectively). This means the demand for multi-generational housing will only increase.

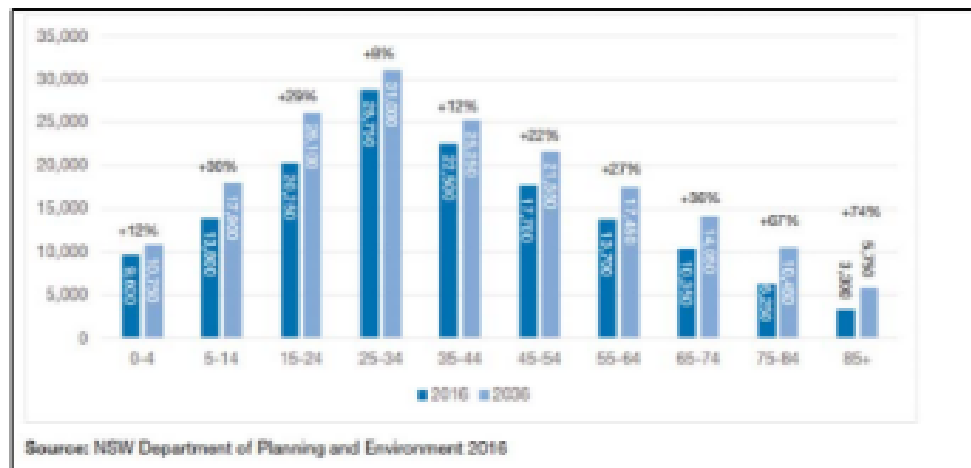


Figure 3 Projected population distribution by age 2016-2036 (Randwick Local Housing Strategy)

The proposed development caters to market need and stated desire of the strategic planning framework for a diversity of dwellings within the LGA. While intended to facilitate multi-generational family living for the building's owners, the proposed development responds to documented need for the replacement of lost larger dwellings in medium density format, making better and more efficient use of limited R3 land within the LGA. The LHS found that "a large part of the area zoned R3 Medium Density Residential is strata subdivided, limiting likely development outcomes." The proposed development represents a unique opportunity to redevelop an existing R3 site to achieve greater land-use efficiency that will be gained from the additional upper level and directly from the FSR and HOB variation.

4.1.1.2 PROTECTING AMENITY, THE STREETSCAPE AND BUILT FORM

The proposed development – and particularly the upper floor addition that constitutes the HOB and FSR variation - has been designed to complement and conserve the appearance and character of the existing semi-detached building on Coogee Bay Road.

The proposed development responds to the challenge of 'Better Placed' the NSW Government Architects design guide to use design to achieve the aspiration we have for place. The proposed development uses design to creatively synthesise the existing built form with a modern addition and in doing so expresses deep understanding of design ideas, planning issues and people's housing need.

The bulk and scale of the proposed development is similar to the building envelope of the existing development adjacent at 68 Coogee Bay Road as demonstrated in Figure 4 and Figure 5.



Figure 4: The northern (rear) elevation of Queen Street showing the location of the proposed upper floor addition



Figure 5: The northern (rear) elevations of the nearby flat building at 74 Coogee Bay Road and the adjacent flat building with modern upper level addition at 68 Coogee Bay Road. The proposed addition is of a similar height and scale as that existing at 68 Coogee Bay Road that sits behind a lower single storey garage.

The proposed addition of 7.9 m² of floor space and 1.64 m of height are proposed to be located at the rear of the existing upper level. From the public domain and the residences across the street the existing street trees will screen views to the site comprehensively.

Given the revision of the proposed scheme, the additional bulk will be minimally visible from Coogee Bay Road from the footpath outside the dwelling.



Figure 6: The southern (front) elevation is screened from view from the public domain by significant street trees

These views from the Coogee Bay Road footpath will be enhanced through the restoration and upgrade of the existing ground level façade and enhanced landscaping to the front setback. The rear upper level addition will be unobtrusive when viewed from the footpath outside the site, as it has been designed as a lightweight modern structure of high material quality. In this way also, the proposed addition will be readable as distinct from the existing semi-detached dwelling and will demonstrate architecturally the growth and change in the neighbourhood in a sympathetic and considered manner.

Views of the Queen Street façade of the building will be similarly limited. In this location this is due to the existing garage structures at the street boundary and the topography. Views towards the proposed addition will be available from some parts of the Queen Street footpath opposite the development and minimally from the front yards and carports of detached housing opposite.

While the scale and bulk of the proposed development is similar to that existing at no. 68, it will be differentiated from that addition through the use of simple, timeless, modern and lightweight detailing and materials contrasting with the existing traditional masonry finishes which are to be refurbished and enhanced.

Good design is characterised by the quality of spaces and places, their function, how they integrate, and what they contribute to the broader environment, their users, inhabitants and audiences. The proposed development will contribute to the built environment through good design and enhanced views towards the site from the public domain on Queen Street.

Together with significant landscaping, the proposed development will present as lush green terraces that will soften the built form and connect the viewer and resident with nature.

Importantly this design quality means that the terraced and staggered setbacks will not give rise to opportunities for overlooking and privacy concerns for neighbours or the proposed lower unit within the site. Similarly the proposed development will not give rise to overshadowing impacts and demonstrated in the SEE and shadow diagrams that accompany this Clause 4.6 request.

Overall, the proposed addition will complement and match the existing traditional semi-detached RFB built form – with restored and upgraded front elevation, plain face brick side elevation and terraced staggered and setback landscaped rear elevation – that will help maintain consistency within the existing streetscapes, and result in a built form that is sympathetic to the character of the existing building and the local area and protects the amenity of residents adjacent and within the site itself. In this way the proposed development recognises the desirable elements of the existing streetscape and built form and provides an integrated and sympathetic modern addition that contributes to the desired future character of the area.

4.1.2 COMPLIANCE WITH THE OBJECTIVES OF THE STANDARDS

Numerical standards are often a crude reflection of intent. Development may achieve the underlying purpose of a standard even though it does not strictly comply with the numerical control. It is widely recognised that such variations can be numerically small or large. The proposed development complies with the objectives of the FSR and HOB standards and these are assessed thematically following.

The objectives of clause 4.1 in relation to HOB are:

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

The objectives of clause 4.4 in relation to FSR are:

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

4.1.2.1 BULK AND SCALE

The desired future character is established by the recent residential development of a similar type in the surrounding streets. The approval at 68 Coogee Bay Road ([DA/610/2015](#)) sets the relevant bulk and scale precedent in the neighbourhood which establishes the desired future

character of this unusual group of semi-detached RFBs on the cliff face in this location (refer Figure 4 and Figure 5). The proposed maximum height is 400 mm less than the max RL of the adjacent property at RL44,050.

The approval at 5/80 Queen Street (DA/327/2014) sets the precedent for a high design quality modern addition that is distinct from the existing built form in materiality and appearance as illustrated in Figure 7.



Figure 7: The approved modern rooftop addition to apartment 5 at 80 Coogee Bay Road (DA/327/2014 determined 28 October 2014)

As illustrated in the architectural plans - but with significant differences and improvements in design quality and detailing as detailed above (at Section 3.1) - the bulk and scale of the development proposed is consistent with that previously approved at No. 68. The maximum HOB reached will be marginally less and the bulk of the addition at both the Coogee Bay Road and Queen Street frontages will be similar. On this basis the proposed bulk and scale is demonstrated to be acceptable within the streetscape.

Despite this there are important differences in the design resolution of the proposed development from these precedents. MEH Architects have delivered a vision for the site that is more integrated with the existing dwelling, more recessive within the streetscape and more reliant on landscaping to achieve visual identity and interest than either of the nearby recent approvals. In this way it builds on the desired future character and increases aspirations and expectations for good design.

In this manner the proposed development responds to the planning framework for Randwick and can directly contribute to the achievement of Vision 2040 (LSPS) Planning Priority 3, which is "to encourage development that responds to the local character and desired future character of our neighbourhoods."

The SEE that accompanies this C14.6 request demonstrates conclusively that there will be no adverse overshadowing impact as a result of the proposed variation to the HOB and FSR standards.

On this basis the proposed development, and specifically the variation to the HOB and FSR standards, is demonstrated to be consistent with the objective that requires that development be compatible with the desired future character of the locality and respectful of the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.

4.1.2.2 HERITAGE

Randwick residents aspire to tree-lined, green, low density/suburban, liveable, peaceful, safe, heritage, unique, relaxed and accessible neighbourhoods. On this basis the LSPS provides the strategic framework for land use planning and decision making over the next 20 years. It identifies the vision for Randwick:

In 2040 Randwick City will continue to have a strong sense of community. Our culturally diverse community will have access to quality housing, beautiful open spaces and our unique coastline.

The site is not located within a Conservation Area and is not a Heritage Item. It is located in close proximity to several locally listed heritage items as illustrated in Figure 6 of the SEE.

The proposed development will refurbish and restore the Coogee Bay road semi-detached frontage of the subject site and will thus conserve and enhance its contributions to the streetscape in this location. Minor modification of the existing front widow is proposed to install French doors that will better connect the internal living areas with the exterior private open space. This will not have any adverse impact on the appearance of the subject site and will not have any impact on the significance of nearby heritage items.

The existing row of semi-detached RFBs at 62-74 Coogee Bay Road are not identified as contributory buildings. However they have an aesthetic consistency that is enhanced by the consistent street tree planting adjacent.

As demonstrated in detail at Section 3.1 the proposed development will not adversely impact any views towards the site from the public domain and any (minor) contribution that the site makes to the setting of nearby heritage items will be unaffected by the proposed development. The scale and character of the site within the local context will remain appropriate and acceptable notwithstanding the proposed variation to the development standards.

4.1.2.3 ENVIRONMENTAL AND ARCHITECTURAL PERFORMANCE

The environmental capacity of the land and the Precinct can be determined by investigation of the proposed development's potential to cause adverse environmental or amenity impacts on:

- Adjoining development;
- The wider neighbourhood.

Such an assessment has been carried out in the SEE that demonstrates that the proposed development is of an acceptable intensity given the environmental capacity of both the land at 70 Coogee Bay road and the broader neighbourhood. This is described briefly following (and detailed in the attached SEE).

The upper floor addition is designed to ensure that it will not give rise to privacy or overlooking concerns for adjoining development or the lower unit proposed within the site itself. The shadow diagrams contained in the architectural plans and the overshadowing impacts described in the SEE are acceptable and, in fact, the proposed development including the upper floor addition will result in shadow conditions that are minimally different to those existing on adjacent development at present (refer Attachment A – DCP Compliance Table in the SEE).

The proposed development incorporates measures to reduce resource consumption, and particularly to reduce fossil fuel consumption through the inclusion of rainwater tanks, water efficient tap hardware and garden tap fittings, solar panels and low energy/high efficiency lighting which will directly contribute to lower carbon consumption and a more sustainable development. The upper floor addition that constitutes the vast majority of the proposed FSR and HOB variation will adopt these measures of ecologically sustainable design.

There is no change proposed to the existing parking conditions on site. Unit 1 will have exclusive access to the ground level garage, while Unit 2 will not have on-site parking. At present two units in the existing development rely solely on public transport, walking and cycling, which in this location is regular and reliable and achieves the 30-minute city conditions on both weekdays and weekends.

On this basis the proposed FSR and HOB variation does not exceed the environmental capacity of the site and surrounding neighbourhood. The ability of the proposed development to protect the amenity of existing and future residents of the site and surrounds is demonstrated by the absence of adverse impacts including overlooking, privacy or solar access.

The proposed development incorporating the additional GFA is designed holistically to function within the environmental and amenity capacity of the site and surrounds. The proposed development is thus demonstrated to be sympathetically designed and articulated and responsive to environmental and energy needs.

4.2 COMPLIANCE WITH THE FSR DEVELOPMENT STANDARD IS UNREASONABLE

Section 4.2.1 demonstrates that compliance with the FSR and HOB standard is unreasonable in this instance because the cumulative impact of the non-compliance with the standards is acceptable.

4.2.1 THE CUMULATIVE EFFECT OF VARIATIONS TO THE STANDARD

The following analysis of recent approvals in the LGA demonstrates that compliance with the standards is unreasonable in this instance (i.e. no purpose would be served). This is because Council has established a precedent for approvals of this nature, through the granting of consent to other development that contravenes the FSR HOB standard within the local area. Recent similar approvals are illustrated in Figure 8 and detailed in *Attachment A*.

These similar approvals demonstrate the significant pent up demand for residential accommodation across greater Sydney and the constrained nature of residential land in Randwick, and Coogee specifically. This is acknowledged in the local and State strategic planning framework. In particular, the Randwick LSPS acknowledges the need to cater to significant additional demand for housing and the need for the supply of a diversity of such housing, particularly through development of housing that forms the 'missing middle' such as the proposed development. In this regard Section 3.1. above details the need for 3- bedroom dwellings to make up for recent losses in such and the likely growth in demand for accommodation such as proposed that is suitable for multi-generational living to address housing affordability and supply issues.

The recent similar approvals documented herein and the proposed development increases the efficiency with which the site and the neighbourhood itself can be utilised. Council has approved a range of similar FSR and HOB non-compliances in the R3 zone as illustrated in Figure 8 These include a number of HOB variations of a similar scale to that proposed and in the order of 10 – 55% herein including HOB variations 10 – 55% and a FSR variations in the order of 10 – 68%. These are detailed in *Attachment A*.



Figure 8: Development Approvals in the locality with HGB Exceedance (source: Randwick cl 4.6 register)

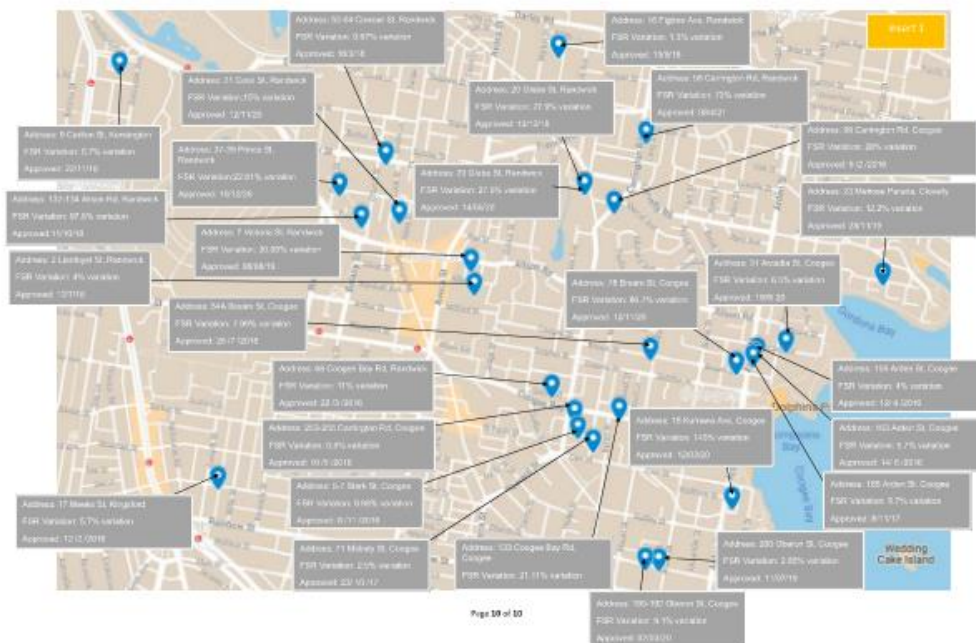


Figure 9: Development Approvals in the locality with FSR Exceedance (source: Randwick cl 4.6 register)

The cumulative effect of the similar approvals granted in the locality has not been and will not be to undermine the objectives of the development standard or the planning objectives for the zone.

This is because, the scarcity of developable R3 land in Randwick LGA and the Eastern City District is such that greater efficiency of land use through increased building envelopes, bulk and scale of development will be required to meet housing diversity needs into the future.

5. DRAFT REVISED TEST FOR VARIATION OF CLAUSE 4.6

The NSW Government is proposing changes to clause 4.6 of the Standard Instrument LEP in order to clarify the requirements for varying development standards, and improve transparency and accountability in the planning system.

The draft "revised test" will a variation to development standards to demonstrate that the proposed development will result in an "improved planning outcome", when compared with what would have been achieved if the development standard was not contravened, by consideration of the public interest and environmental, social and economic outcomes.

This proposed development, and specifically the departure from the FSR and HOB standard requested to permit additional floor space on the subject site will provide for an improved local and regional planning outcomes by:

- Facilitating development for an 3 bedroom dwellings that respond to the local loss in this elements of the dwelling mix;
- Providing opportunities for multi-generational living in 'missing middle' accommodation;
- Supporting the viability and sustainability of the R3 zone in Randwick and providing for the efficient use of finite infrastructure and resources by more efficient use of land.

On this basis it can be concluded that the FSR and HOB exceedance sought in this instance will improve planning outcomes for the site, the R3 Zone , the LGA and the Eastern City District more broadly by supporting, managing and sustaining the viability and efficiency of finite urban services land.

6. ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL PLANNING, OR THE PUBLIC INTEREST

Contravention of the FSR and HOB standards will, in this instance, support the State and regional objectives of delivering housing diversity. It will, in fact directly contribute to the increased efficiency of land use and development within this finite resource which are definitive objectives of both Council's LSPS and Local Housing Strategy.

Clause 4.6 provides flexibility in the application of development standards in circumstances where strict compliance with those standards would, in any particular case:

- Be unreasonable or unnecessary; or
- Tend to hinder the attainment of the objects specified in section 5 (a) (i) and (ii) of the Act.

The objects specified Section 1.3 Objects of Act (cf previous s 5) are to encourage:

- (i) The proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
- (ii) The promotion and co-ordination of the orderly and economic use and development of land,

Strict compliance with the development standard may hinder achievement of the objects of the Act, particularly the promotion of a better environment, social and economic welfare of the community and the promotion of orderly and economic use and development of the land. The proposal represents an innovative land use best located in an R3 Zone. It aims meet existing and growing consumer demand for the multi-generational housing.

Strict compliance with the development standards would restrict the ability of the proposal from achieving its objectives with the associated loss of social and economic benefits that would accrue from the development. Strict compliance would also result in flow on economic impacts related to limitations on housing supply and diversity.

The granting of consent to the development as proposed would therefore, in this case, be consistent with the objectives of Clause 4.6 providing for flexibility in these circumstances in which strict compliance with the FSR and HOB standards has been demonstrated to be unreasonable and unnecessary as well as having potential to be contrary to the attainment of the objects of the Act.

The proposed development will not give rise to any other matter of State or regional significance.

Council can be satisfied that the proposed development is in the public interest because the proposed development is not antipathetic to the objectives of the Zone, HOB and FSR standards as detailed in Section 4.1.

In light of contribution of the proposed development to the achievement of the Zone and HOB and FSR standard objectives and the State Government's stated objectives in relation to housing diversity, there would be no public benefit in maintaining the development standard.

7. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS TO JUSTIFY CONTRAVENING THE DEVELOPMENT STANDARD

This clause 4.6 request demonstrates that there are sufficient environmental planning grounds to justify contravening the RLEP 2012 HOB and FSR standards in this instance. This is demonstrated by the:

- Compliance of the proposed development with the objectives of the Zone and HOB and FSR standards which in turn demonstrates that the proposed development is in the public interest as detailed at Section 4.1;
- Consistency of the proposed additional height and floor space and resulting bulk and scale with the existing character of the locality and the desired future character of the locality, as demonstrated by the approval precedent within Coogee Bay Road and Queen Street (refer Figures 4 – 6 and as detailed at Section 4.1.2 and Section 4.2)
- The ability of the proposed development to help achieve the stated objectives of the strategic planning framework in relation to provision of housing diversity meeting the communities housing need as detailed at Section 4.1.1;
- Lack of any adverse cumulative impact associated with the HOB and FSR non-compliance as demonstrated in the analysis of recent local approvals at Section 4.2;
- Consistency with the Council's historic application of the HOB and FSR standard within the R3 Zone and Clause 4.6 in the local area as illustrated in Figure 8 and detailed in **Attachment A** which details the existing precedents for approval of the proposed HOB and FSR non-compliances in the R3 Zone;
- Achievement of the draft revised test for Clause 4.6, notwithstanding the HOB and FSR non-compliance and providing better planning outcomes for the site and the locality as detailed in Section 5 ;
- The absence of any matters of State or regional significance, detailed at Section 6.

On this basis it can be concluded that the proposed development will achieve better planning, environmental, social and economic outcomes if flexibility is provided with regard to the FSR and HOB standard in the particular circumstances of this case in which these variations are sought.

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

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R3	Dual occupancies are permitted within the R3 zone.
2	Site planning		
2.1	Minimum lot size and frontage		
	Minimum lot size (RLEP): <ul style="list-style-type: none"> R2 = 400sqm R3 = 325sqm 	There are no minimum provisions in relation to the minimum lot size or frontage for an attached dual occupancy within the R3 zone. The proposed development seeks a reduction in density from three (3) dwellings to two (2), utilising the existing building, and therefore the proposed development is considered to be acceptable for the site.	N/A
	Minimum frontage		
	i) Min frontage R2 = 12m ii) Min frontage R3 = 9m iii) No battle-axe or hatchet in R2 or R3 iv) Minimum frontage for attached dual occupancy in R2 = 15m v) Minimum frontage for detached dual occupancy in R2 = 18m		
2.3	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45%	Site = 285.58m ² Proposed = 55.2%	Complies.
2.4	Landscaping and permeable surfaces		
	i) Up to 300 sqm = 20% ii) 301 to 450 sqm = 25% iii) 451 to 600 sqm = 30% iv) 601 sqm or above = 35% v) Deep soil minimum width 900mm. vi) Maximise permeable surfaces to front vii) Retain existing or replace mature native trees viii) Minimum 1 canopy tree (8m mature). Smaller (4m mature) If site restrictions apply. ix) Locating paved areas, underground services away from root zones.	Site = 285.58m ² Proposed = 19.56% The minor shortfall in deep soil areas is supported noting that the existing building footprint shall be retained, and additional landscaping is provided to soften the built form by way of elevated planter boxes at the rear of the development.	Acceptable, on merit.
2.5	Private open space (POS)		
	Dual Occupancies (Attached and Detached) POS		
	451 to 600 sqm = 5m x 5m each 601sqm or above = 6m x 6m each	Site = 285.58m ²	Acceptable, refer to

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DCP Clause	Controls	Proposal	Compliance
	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 	Proposed = Dwelling 1 = 43.3m ² at Ground Floor level in the form or terrace and lawn area, 12.7m ² balcony at First Floor level. Dwelling 2 = 12.6m ² balcony off Living area.	discussion below.
	Private Open Space discussion The site is substantially lower than the 450m ² required for dual occupancies within the R2 zone, noting that the development of a dual occupancy is permitted within the R3 zone with no requirements in relation to site area. As such, there are no provisions for POS for sites under 450m ² . Notwithstanding, the proposal provides generous POS for the lower level dwelling and provides POS in excess of the minimum requirements for balconies under the medium density controls. Further the proposal site is within walking distance of numerous district parks and Coogee Beach. On this basis, the proposed POS is considered adequate in this instance.		
3	Building envelope		
3.1	Floor space ratio LEP 2012 = 0.9:1	Site area = 285.58m ² Proposed FSR = 0.92:1	Does not comply. <i>See Clause 4.6 assessment.</i>
3.2	Building height		
	Maximum overall height LEP 2012 = 12m	Proposed = 13.64m	Does not comply. <i>See Clause 4.6 assessment.</i>
	i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded	Proposed = 13.1m	Does not comply. <i>See Key Issues for further discussion.</i>
3.3	Setbacks		
3.3.1	Front setbacks i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary street frontage: <ul style="list-style-type: none"> 900mm for allotments with primary frontage width of less than 7m 1500mm for all other sites iii) do not locate swimming pools, above-ground rainwater tanks and outbuildings in front	The existing front setback is not altered as a result of the proposed development. The proposed upper floor level has been altered in the Section 8.2 review align this new addition predominantly behind the ridge line of the existing roof form and approximately in line with the adjoining addition at 72 Coogee Bay Road. The proposal provides this increased upper floor to Coogee Bay Road to reduce visual prominence and bulk from the street perspective.	Acceptable.

DCP Clause	Controls	Proposal	Compliance
3.3.2	Side setbacks: Dwellings and dual occupancies: <ul style="list-style-type: none"> • Frontage less than 9m = 900mm • Frontage b/w 9m and 12m = 900mm (Gnd & 1st floor) 1500mm above • Frontage over 12m = 1200mm (Gnd & 1st floor), 1800mm above. <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p>	<p>Minimum = 900mm for all levels.</p> <p>Proposed = 1.18m-1.27m to the eastern side, the western side adjoins the common party wall with the adjoining property at 68 Coogee Bay Road.</p>	Complies.
3.3.3	Rear setbacks <ol style="list-style-type: none"> Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments. 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 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. For irregularly shaped lots = merit assessment on basis of:- <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p>	<p>The subject site has a double street frontage and technically the rear setback is not applicable.</p>	Acceptable, refer to discussion below.
	Rear Setback discussion <p>Whilst it is noted that the proposed property has a dual street frontage to Coogee Bay Road and Queen Street, the proposed rear setback is considered acceptable for the following reasons:</p> <ul style="list-style-type: none"> ○ The proposed development is primarily consistent with the alignment of the attached property to the west, with minor protruding elements such as planter boxes extending beyond the rear building alignment which are considered acceptable to soften the visual of the built form. ○ The GF level seeks to provide a solid wall up to 2.88m in height along the western side boundary to partially enclose the rear terrace area. The height of the proposed wall has been designed achieve compliance with the BCA in relation to fire safety. It is acknowledged that the wall will extend above the 1.8m height normally specified for boundary fencing, however there is an existing solid wall already located along the common boundary which exceeds 1.8m, with a portion of the wall a full storey in height. Further, the enclosure of the rear terrace will also assist in mitigating noise impacts from the outdoor area, and given the existing boundary interface arrangement is supported in this instance. 		
4	Building design		
4.1	General		

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DCP Clause	Controls	Proposal	Compliance
	<p>Respond specifically to the site characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> articulated to enhance streetscape stepping building on sloping site, no side elevation greater than 12m encourage innovative design 	<p>The proposal results in a maximum wall length of 13.6m due to the partial enclosure of the rear balconies. However, it is considered that the extension of the wall to the balcony will assist in minimising acoustic and visual privacy impacts to neighbouring properties and the wall length is generally consistent with the adjoining property at 72 Coogee Bay Road.</p> <p>The massing of the eastern elevation has been broken up by window openings and new screen planting is proposed along the side boundary due to the removal of the side access stairs which will soften the built form as viewed from the adjoining property. Given the constraints of the site, including the narrow width and topography, and the limited windows on the side elevation of the adjoining property, the minor non-compliance is supported in this instance.</p>	Acceptable, on merit.
4.3	Additional Provisions for Attached Dual Occupancies		
	<p>Should present a similar bulk as single dwellings</p> <ul style="list-style-type: none"> i) Garage for each dwelling shall have a single car width only ii) Articulate and soften garage entry iii) Minimise driveway width iv) Maximum 2m setback of front entry from front façade v) Maximise landscape planting at front 	<p>The provisions of clause 4.3 generally anticipate a side by side attached dual occupancy and therefore is not wholly applicable to the proposed development. The development seeks to utilise the existing building, the proposed dual occupancy would not be incompatible with other developments within the street, viewed as two (2) storeys from Coogee Bay Road with</p>	Acceptable.

DCP Clause	Controls	Proposal	Compliance
		<p>the upper floor predominantly setback behind the existing roof ridgeline, and part 3, part 4 storey from Queen Street, noting the context of the surrounding RFBs and semi-detached dwellings.</p> <p>The existing parking shall be retained at the rear of the site fronting Queen Street. As such, the proposal is considered to be consistent with the objectives of the clause.</p>	
4.5	Colours, Materials and Finishes		
	<ul style="list-style-type: none"> i) Schedule of materials and finishes ii) Finishing is durable and non-reflective. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) recycle and re-use sandstone (See also section 8.3 foreshore area.) 	A condition of consent is recommended for a final colours and materials scheme to be submitted to Council for approval prior to the issue of a Construction Certification.	Complies, subject to condition.
4.6	Earthworks		
	<ul style="list-style-type: none"> i) excavation and backfilling limited to 1m, unless gradient too steep ii) minimum 900mm side and rear setback iii) Step retaining walls. iv) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm. v) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping) vi) cut and fill for POS is terraced <i>where site has significant slope:</i> vii) adopt a split-level design viii) Minimise height and extent of any exposed under-croft areas. 	Minimal earthworks are required to facilitate the proposed development.	Complies.
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	<ul style="list-style-type: none"> i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct 	The Living areas and main POS are orientated	Complies.

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DCP Clause	Controls	Proposal	Compliance
	ii) sunlight between 8am and 4pm on 21 June POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.	to the north and will receive adequate solar access.	
	Solar access to neighbouring development:		
	i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. v) solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings. vi) Variations may be acceptable subject to a merits assessment with regard to: <ul style="list-style-type: none"> Degree of meeting the FSR, height, setbacks and site coverage controls. Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. Topography of the subject and adjoining allotments. Location and level of the windows in question. Shadows cast by existing buildings on the neighbouring allotments. 	Due to the north-south orientation of the site, and rear setback of the proposal which is consistent with the adjoining property, the proposal does not result in any unreasonable impacts upon the adjoining properties with regards to solar access.	Complies.
5.2	Energy Efficiency and Natural Ventilation		
	i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as: <ul style="list-style-type: none"> Skylights (ventilated) Clerestory windows Fanlights above doorways Highlight windows in internal partition walls ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries iii) living rooms contain windows and doors opening to outdoor areas <i>Note:</i> The sole reliance on skylight or clerestory window for natural lighting and ventilation is not	A BASIX Certificate has been submitted with the application. Facilitating natural lighting and ventilation has been considered as a part of the design of the dwellings.	Complies.

DCP Clause	Controls	Proposal	Compliance
	acceptable		
5.3	Visual Privacy		
	Windows		
	i) proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures: <ul style="list-style-type: none"> - windows are offset or staggered - minimum 1600mm window sills - Install fixed and translucent glazing up to 1600mm minimum. - Install fixed privacy screens to windows. - Creating a recessed courtyard (minimum 3m x 2m). ii) orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)	New window openings are proposed on the eastern side elevation are located adjacent to windows on the neighbouring property and are considered to result in sight line conflicts. As such, it is recommended that privacy measures are imposed on side windows, with the exception of the upper most third level, where the proposed windows are not directly adjacent to any neighbouring windows.	Acceptable.
	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.	The proposed balconies are partially enclosed by walls to the sides to minimise overlooking into neighbouring properties. Furthermore, the location of the proposed balconies to the rear of the property is consistent with the existing balconies of neighbouring properties, and as such it is considered that the proposal would not result in any unreasonable impacts with regards to visual privacy.	Acceptable.
5.4	Acoustic Privacy		
	i) noise sources not located adjacent to adjoining dwellings bedroom windows <i>Attached dual occupancies</i> ii) Reduce noise transmission between dwellings by: <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. 	The proposed balconies are provided with solid walls along the side elevations to minimise noise impacts. Given the reduction in density from 3 units to 2 and the number of bedrooms has been reduced, it is also considered that the proposed development would not result in any unreasonable acoustic	Acceptable.

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DCP Clause	Controls	Proposal	Compliance
		impacts.	
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)	Each dwelling shall be accessed from their own street frontage, with Dwelling 1 accessed via Queen Street, and Dwelling 2 accessed via Coogee Bay Road. Further, the proposed dwellings will also have independent street numbering and mailboxes on each frontage.	Acceptable.
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)	It is anticipated that the proposed development will not result in any unreasonable view loss impacts. It is noted that no submissions in relation to view loss was received by Council and the property is not situated within the foreshore scenic protection area.	Acceptable.
6	Car Parking and Access		
	<u>General Comments</u> Car parking in the form of the existing double garage shall be maintained on the site fronting Queen Street and there are no changes to the off street car parking and access as a result of the proposed development. The existing car parking spaces shall be allocated to one (1) of the two (2) dwellings. However, given the reduction in density of the development, from three (3) dwellings to two (2) dwellings, the shortfall in parking is not considered unwarranted and no concerns were raised by Council's Development Engineer.		

Responsible officer: Ferdinando Macri, Senior Environmental Planning Officer

File Reference: DA/451/2021

Development Consent Conditions



D39/22

Folder /DA No:	DA/451/2021
Property:	70 Coogee Bay Road, Coogee NSW
Proposal:	Section 8.2 review of determination for alterations and additions to the existing building including a new upper floor level, and conversion of the use of the development from a Residential Flat Building to an attached dual occupancy including strata subdivision (variation to FSR & height of building standards).
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
DA06 (Roof & Site Plan) DA-B	Mary Ellen Hudson Architect	9 May 2022	12 May 2022
DA07 (Ground Floor Plan) DA-B	Mary Ellen Hudson Architect	9 May 2022	12 May 2022
DA08 (First Floor Plan) DA-B	Mary Ellen Hudson Architect	9 May 2022	12 May 2022
DA09 (Second Floor Plan) DA-B	Mary Ellen Hudson Architect	9 May 2022	12 May 2022
DA10 (Third Floor Plan) DA-B	Mary Ellen Hudson Architect	9 May 2022	12 May 2022
DA11 (Cross Section 01)	Mary Ellen Hudson Architect	9 May 2022	22 June 2022
DA12 (Cross Section 02)	Mary Ellen Hudson Architect	9 May 2022	22 June 2022
DA13 (Long Section 01)	Mary Ellen Hudson Architect	9 May 2022	22 June 2022
DA14 (Long Section 02)	Mary Ellen Hudson Architect	9 May 2022	22 June 2022
DA15 (South Elevation – Coogee Bay Road) DA-B	Mary Ellen Hudson Architect	9 May 2022	22 June 2022
DA16 (South Elevation)	Mary Ellen Hudson Architect	9 May 2022	22 June 2022
DA17 (West Elevation)	Mary Ellen Hudson Architect	9 May 2022	22 June 2022

DA18 (North Elevation)	Mary Ellen Hudson Architect	9 May 2022	22 June 2022
DA19 (North Elevation – Queen Street)	Mary Ellen Hudson Architect	9 May 2022	22 June 2022
DA20 (East Elevation)	Mary Ellen Hudson Architect	9 May 2022	22 June 2022
DA21 (Unit 1 Strata Plans)	Mary Ellen Hudson Architect	9 May 2022	12 May 2022
DA22 (Unit 2 Strata Plans) DA-B	Mary Ellen Hudson Architect	9 May 2022	12 May 2022

BASIX Certificate No.	Dated	Received by Council
A422709_02 (Unit 1)	10 May 2022	12 May 2022
A422716_02 (Unit 2)	10 May 2022	12 May 2022

Amendment of Plans & Documentation

2. The approved plans and documents must be amended in accordance with the following requirements:
 - a. The following windows must have a minimum sill height of 1.6m above floor level, or alternatively, the window/s are to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height:
 - Ground Floor Level
 - Three (3) Living room windows on the eastern elevation;
 - First Floor Level
 - Window to bathroom and en-suite on the eastern elevation;
 - Second Floor Level
 - Two (2) kitchen windows and bathroom window on the eastern elevation.

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

REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

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

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

Consent Requirements

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

External Colours, Materials & Finishes

4. The colours, materials and finishes of the external surfaces to the building are to be compatible with the adjacent development to maintain the integrity and amenity of the building and the streetscape.

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

Section 7.12 Development Contributions

5. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$1,287,000.00 the following applicable monetary levy must be paid to Council: \$12,870.00.

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

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

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

Where:

IDC = the indexed development cost

ODC = the original development cost determined by the Council

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

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

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

Compliance Fee

6. A development compliance and enforcement fee of \$2,702.70 shall be paid to Council in accordance with Council's adopted Fees & Charges Pricing Policy, prior to the issue of a Construction Certificate for development.

Long Service Levy Payments

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

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

Stormwater Drainage

8. Surface water from building work and structures must satisfy the following requirements (as applicable), to the satisfaction of the Certifier and details are to be included in the construction certificate:-
- Surface water/stormwater drainage systems must be provided in accordance with the relevant requirements of the Building Code of Australia (Volume 2);
 - The surface water/stormwater is to be drained and discharged to the street gutter or, subject to site suitability, the stormwater may be drained to a suitably designed absorption pit;
 - Any absorption pits or soaker wells should be located not less than 3m from any adjoining premises and the stormwater must not be directed to any adjoining premises or cause a nuisance;
 - External paths and ground surfaces are to be constructed at appropriate levels and be graded and drained away from the building and adjoining premises, so as not to result in the entry of water into the building, or cause a nuisance or damage to the adjoining premises;
 - Details of any proposed drainage systems or works to be carried out in the road, footpath or nature strip must be submitted to and approved by Council before commencing these works.
 - The pit is to be located a minimum of 900mm from any common boundary.

Sydney Water Requirements

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

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

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

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

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

Sydney Water's **Tap in™** online service is available at:

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

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

REQUIREMENTS TO BE INCLUDED IN THE CONSTRUCTION CERTIFICATE

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

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

Compliance with the Building Code of Australia & Relevant Standards

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

BASIX Requirements

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

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

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

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

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

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

Certification and Building Inspection Requirements

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

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

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

- b) a *Principal Certifier* must be appointed to carry out the necessary building inspections and to issue an *occupation certificate*; and

- c) a *principal contractor* must be appointed for the building work, or in relation to residential building work, an *owner-builder* permit may be obtained in accordance with the requirements of the *Home Building Act 1989*, and the Principal Certifier and Council are to be notified accordingly; and

- d) the *principal contractor* must be advised of the required *critical stage inspections* and other inspections to be carried out, as specified by the *Principal Certifier*; and

- e) at least two days notice must be given to the Council, in writing, prior to commencing any works.

Home Building Act 1989

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

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

Dilapidation Reports

14. A dilapidation report must be obtained from a Professional Engineer, Building Surveyor or other suitably qualified independent person, in the following cases:

- excavations for new dwellings, additions to dwellings, swimming pools or other substantial structures which are proposed to be located within the *zone of influence* of the footings of any dwelling, associated garage or other substantial structure located upon an adjoining premises;
- new dwellings or additions to dwellings sited up to shared property boundaries (e.g. additions to a semi-detached dwelling or terraced dwellings);
- excavations for new dwellings, additions to dwellings, swimming pools or other substantial structures which are within rock and may result in vibration and or potential damage to any dwelling, associated garage or other substantial structure located upon an adjoining premises;
- as otherwise may be required by the *Principal Certifier*.

The dilapidation report shall include details of the current condition and status of any dwelling, associated garage or other substantial structure located upon the adjoining premises and shall include relevant photographs of the structures, to the satisfaction of the *Principal Certifier*.

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

Construction Noise & Vibration Management Plan

15. Noise and vibration emissions during the construction of the building and associated site works must not result in an unreasonable loss of amenity to nearby residents and the relevant requirements of the *Protection of the Environment Operations Act 1997* and NSW EPA Guidelines must be satisfied at all times.

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

A *Construction Noise Management Plan*, prepared in accordance with the NSW EPA Construction Noise Guideline by a suitably qualified person, is to be implemented throughout the works, to the satisfaction of the Council. A copy of the strategy must be provided to the Principal Certifier and Council prior to the commencement of works on site.

Construction Site Management Plan

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

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

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

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

Demolition Work

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

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

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

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

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

- Demolition & Construction Waste Plan**
18. A *Demolition and Construction Waste Management Plan* (WMP) must be developed and implemented for the development.
- The Waste Management Plan must provide details of the type and quantities of demolition and construction waste materials, proposed re-use and recycling of materials, methods of disposal and details of recycling outlets and land fill sites.
- Where practicable waste materials must be re-used or recycled, rather than disposed and further details of Council's requirements including relevant guidelines and pro-forma WMP forms can be obtained from Council's Customer Service Centre or by telephoning Council on 1300 722 542.
- Details and receipts verifying the recycling and disposal of materials must be kept on site at all times and presented to Council officers upon request.
- Public Utilities**
19. A *Public Utility Impact Assessment* must be carried out on all public utility services on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the development/building works and include relevant information from public utility authorities and exploratory trenching or pot-holing, if necessary, to determine the position and level of service.
20. The applicant must meet the full cost for telecommunication companies, gas providers, Ausgrid, and Sydney Water to adjust/repair/relocate their services as required. The applicant must make the necessary arrangements with the service authority.

REQUIREMENTS DURING CONSTRUCTION & SITE WORK

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

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

- Inspections during Construction**
21. Building works are required to be inspected by the *Principal Certifier*, in accordance with the *Environmental Planning & Assessment Act 1979* and clause 162A of the *Environmental Planning & Assessment Regulation 2000*, to monitor compliance with the relevant standards of construction, Council's development consent and the construction certificate.
- Site Signage**
22. A sign must be erected and maintained in a prominent position on the site for the duration of the works, which contains the following details:
- name, address, contractor licence number and telephone number of the principal contractor, including a telephone number at which the person may be contacted outside working hours, or owner-builder permit details (as applicable)
 - name, address and telephone number of the Principal Certifier,
 - a statement stating that "unauthorised entry to the work site is prohibited".
- Restriction on Working Hours**
23. Building, demolition and associated site works must be carried out in accordance with the following requirements:

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as	<ul style="list-style-type: none">• Monday to Friday - 7.00am to 5.00pm• Saturday - 8.00am to 5.00pm

detailed below)	<ul style="list-style-type: none"> • Sunday & public holidays - No work permitted
Excavating or sawing of rock, use of jack-hammers, pile-drivers, vibratory rollers/compactors or the like	<ul style="list-style-type: none"> • Monday to Friday - 8.00am to 1.00pm • Saturday - No work permitted • Sunday & public holidays - No work permitted

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

Removal of Asbestos Materials

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

- Work Health & Safety legislation and SafeWork NSW requirements
- Preparation and implementation of a *demolition work plan*, in accordance with AS 2601 (2001) – Demolition of structures; NSW Work Health and Safety Regulation 2017 and Randwick City Council's Asbestos Policy. A copy of the demolition work plan must be provided to Principal Certifier and a copy must be kept on site and be made available for Council Officer upon request.
- A SafeWork NSW licensed demolition or asbestos removal contractor must undertake removal of more than 10m² of bonded asbestos (or as otherwise specified by SafeWork NSW or relevant legislation). Removal of friable asbestos material must only be undertaken by contractor that holds a current friable asbestos removal licence. A copy of the relevant licence must be provided to the Principal Certifier.
- On sites involving the removal of asbestos, a sign must be clearly displayed in a prominent visible position at the front of the site, containing the words 'Danger Asbestos Removal In Progress' and include details of the licensed contractor.
- Asbestos waste must be stored, transported and disposed of in compliance with the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Operations (Waste) Regulation 2014*. Details of the disposal of materials containing asbestos (including receipts) must be provided to the Principal Certifier and Council.
- A Clearance Certificate or Statement, prepared by a suitably qualified person (i.e. an occupational hygienist, licensed asbestos assessor or other competent person), must be provided to Council and the Principal Certifier as soon as practicable after completion of the asbestos related works, which confirms that the asbestos material have been removed appropriately and the relevant conditions of consent have been satisfied.

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

Excavations, Back-filling & Retaining Walls

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

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

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

Support of Adjoining Land

26. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 98 E of the *Environmental Planning & Assessment Regulation 2000*, it is a prescribed condition that the adjoining land and buildings located upon the adjoining land must be adequately supported at all times.
27. Prior to undertaking any demolition, excavation or building work in the following circumstances, a report must be obtained from a *professional engineer* which details the methods of support for the dwelling or associated structure on the adjoining land, to the satisfaction of the *Principal Certifier*:
- when undertaking excavation or building work within the zone of influence of the footings of a dwelling or associated structure that is located on the adjoining land;
 - when undertaking demolition work to a wall of a dwelling that is built to a common or shared boundary (e.g. semi-detached or terrace dwelling);
 - when constructing a wall to a dwelling or associated structure that is located within 900mm of a dwelling located on the adjoining land;
 - as may be required by the *Principal Certifier*.

The demolition, excavation and building work and the provision of support to the dwelling or associated structure on the adjoining land, must also be carried out in accordance with the abovementioned report, to the satisfaction of the *Principal Certifier*.

Sediment & Erosion Control

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

Details of the sediment and erosion control measures to be implemented on the site must be included in with the Construction Management Plan and be provided to the Principal Certifier and Council. A copy must also be maintained on site and be made available to Council officers upon request.

Public Safety & Site Management

29. Public safety and convenience must be maintained at all times during demolition, excavation and construction works and the following requirements must be complied with:
- a) Public access to the building site and materials must be restricted by existing boundary fencing or temporary site fencing having a minimum height of 1.5m, to Council's satisfaction.
- Temporary site fences are required to be constructed of cyclone wire fencing material and be structurally adequate, safe and constructed in a professional manner. The use of poor quality materials or steel reinforcement mesh as fencing is not permissible.
- b) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.
- c) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times. Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.

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

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

- e) Access gates and doorways within site fencing, hoardings and temporary site buildings or amenities must not open out into the road or footway.
- f) Site fencing, building materials, bulk bins/waste containers and other articles must not be located upon the footpath, roadway or nature strip at any time without the prior written approval of the Council. Applications to place a waste container in a public place can be made to Council's Health, Building and Regulatory Services department.
- g) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.
- h) A Road / Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the *Roads Act 1993* and all of the conditions and requirements contained in the Road / Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details.
- i) Temporary toilet facilities are to be provided, at or in the vicinity of the work site throughout the course of demolition and construction, to the satisfaction of WorkCover NSW and the toilet facilities must be connected to a public sewer or other sewage management facility approved by Council.

Site Signage

30. A sign must be erected and maintained in a prominent position on the site for the duration of the works, which contains the following details:
- name, address, contractor licence number and telephone number of the *principal contractor*, including a telephone number at which the person may be contacted outside working hours, or *owner-builder* permit details (as applicable)
 - name, address and telephone number of the *Principal Certifier*,
 - a statement stating that "unauthorised entry to the work site is prohibited".

Survey Requirements

31. A Registered Surveyor's check survey certificate or other suitable documentation must be obtained at the following stage/s of construction to demonstrate compliance with the approved setbacks, levels, layout and height of the building to the satisfaction of the Principal Certifier:
- prior to construction (pouring of concrete) of the footings or first completed floor slab,
 - upon completion of the building, prior to issuing an occupation certificate,
 - as otherwise may be required by the Principal Certifier.

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

Building Encroachments

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

Road / Asset Opening Permit

33. A Road / Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section

138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road / Asset Opening Permit must be complied with.

The owner/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

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

BASIX Requirements & Certification

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

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

Council's Infrastructure & Vehicular Crossings

36. The applicant must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.
37. All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must be carried out in accordance with Council's "Crossings and Entrances – Contributions Policy" and "Residents' Requests for Special Verge Crossings Policy" and the following requirements:
- 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.
38. That part of the naturestrip upon Council's footway which is damaged during the construction of the proposed works shall be excavated to a depth of 150mm, backfilled with topsoil

equivalent with 'Organic Garden Mix' as supplied by Australian Native Landscapes, and re-turfed with Kikuyu turf or similar. Such works shall be completed at the applicant's expense.

Street and/or Sub-Address Numbering

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

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

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

REQUIREMENTS PRIOR TO THE ISSUING OF A STRATA CERTIFICATE

The following conditions of consent must be complied with prior to the 'Principal Certifier' issuing a 'Strata Certificate'.

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

40. All floors, external walls and ceilings depicted in the proposed strata plan must be constructed.
41. All floors, external walls and ceilings depicted in the proposed strata plan must correspond to those depicted in the development consent (**DA/451/2021**) and construction certificate for the building.
42. Prior to endorsement of the strata plans, all facilities required under previous development approvals (such as parking spaces, terraces and courtyards) must be provided in accordance with the relevant requirements.
- Sydney Water**
43. A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994. Sydney Water's assessment will determine the availability of water and sewer services, which may require extension, adjustment or connection to their mains, and if required will issue a Notice of Requirements letter detailing all requirements that must be met. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator (WSC).
- Go to sydneywater.com.au/section73 or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.
- A Section 73 Compliance Certificate must be completed before a strata certificate can be issued.
44. The applicant shall create suitable right of carriageway and easements as required, however generally all services lines (including stormwater) over any strata lot serving another strata lot are to be common property.
45. The applicant shall provide Council with a copy of the base plan of survey (e.g. Plan of Redefinition) for the property prior to strata subdivision approval.
46. A formal application for a strata certificate is required to be submitted to and approved by the Council or registered certifier and all relevant conditions of this development consent are required to be satisfied prior to the release of the subdivision plans.
47. Details of critical stage inspections carried out by the Principal Certifier, together with any other certification relied upon, must be provided to Council or registered Certifier prior to the issuing of a strata/subdivision certificate.

Street and/or Sub-Address Numbering

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

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

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

49. Street numbering for Unit 1 shall need to be altered given that sole access will be from Queen Street and an application will need to be submitted to Council for approval accordingly. New street numbering should be clearly identifiable and provisions made for the purpose of postal deliveries and mail etc.

OPERATIONAL CONDITIONS

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

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

External Lighting

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

Use of Planter Boxes

51. The planter boxes to the north on the First Floor, Second Floor and Third Floor level are to be non-trafficable and are only to be accessed for the purpose of maintenance.

Waste Management

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

Plant & Equipment – Noise Levels

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

In this regard, the operation of the plant and equipment shall not give rise to an LAeq, 15 min sound pressure level at any affected premises that exceeds the background LA90, 15 min noise level, measured in the absence of the noise source/s under consideration by more than 5dB(A) in accordance with relevant NSW Environment Protection Authority (EPA) Noise Control Guidelines.

Use of parking spaces

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

GENERAL ADVISORY NOTES

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

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

Failure to comply with these requirements is an offence, which renders the responsible person liable to a maximum penalty of \$1.1 million. Alternatively, Council may issue a penalty infringement notice (for up to \$3,000) for each offence. Council may also issue notices and orders to demolish unauthorised or non-complying building work, or to comply with the requirements of Council's development consent.

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

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

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

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

- A5 Any proposed amendments to the design and construction of the building may require a new development application or a section 4.55 amendment to the existing consent to be obtained from Council, before carrying out such works

- A6 A Local Approval application must be submitted to and be approved by Council prior to commencing any of the following activities on a footpath, road, nature strip or in any public place:-

- Install or erect any site fencing, hoardings or site structures
- Operate a crane or hoist goods or materials over a footpath or road
- Placement of a waste skip or any other container or article.

For further information please contact Council on 9093 6971.

- A7 Specific details of the location of the building/s should be provided in the Construction Certificate to demonstrate that the proposed building work will not encroach onto the adjoining properties, Council's road reserve or any public place.

- A8 This consent does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is proposed to be carried out upon any adjoining or supported land, the land owner or principal contractor must obtain:

- the consent of the owners of such adjoining or supported land to trespass or encroach, or
- an access order under the Access to *Neighbouring Land Act 2000*, or
- an easement under section 88K of the *Conveyancing Act 1919*, or
- an easement under section 40 of the *Land & Environment Court Act 1979*, as appropriate.

Section 177 of the *Conveyancing Act 1919* creates a statutory duty of care in relation to support of land. Accordingly, a person has a duty of care not to do anything on or in relation

to land being developed (the supporting land) that removes the support provided by the supporting land to any other adjoining land (the supported land).

- A9 The finished ground levels external to the building must be consistent with the development consent and are not to be raised, other than for the provision of approved paving or the like on the ground
- A10 Prior to commencing any works, the owner/builder should contact *Dial Before You Dig* on 1100 or www.dialbeforeyoudig.com.au and relevant Service Authorities, for information on potential underground pipes and cables within the vicinity of the development site.
- A11 An application must be submitted to an approved by Council prior to the installation and operation of any proposed greywater or wastewater treatment systems, in accordance with the *Local Government Act 1993*.

Greywater/Wastewater treatment systems must comply with the relevant requirements and guidelines produced by NSW Health, NSW Office of Environment and Heritage and other relevant regulatory requirements.

- A12 Underground assets (eg pipes, cables etc) may exist in the area that is subject to your application. In the interests of health and safety and in order to protect damage to third party assets please contact Dial before you dig at www.1100.com.au or telephone on 1100 before excavating or erecting structures (This is the law in NSW). If alterations are required to the configuration, size, form or design of the development upon contacting the Dial before You Dig service, an amendment to the development consent (or a new development application) may be necessary. Individuals owe asset owners a duty of care that must be observed when working in the vicinity of plant or assets. It is the individual's responsibility to anticipate and request the nominal location of plant or assets on the relevant property via contacting the Dial before you dig service in advance of any construction or planning activities.
- A13 The applicant is to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.
- A14 Further information and details on Council's requirements for trees on development sites can be obtained from the recently adopted Tree Technical Manual, which can be downloaded from Council's website at the following link, <http://www.randwick.nsw.gov.au> - Looking after our environment – Trees – Tree Management Technical Manual; which aims to achieve consistency of approach and compliance with appropriate standards and best practice guidelines.
- Common Boundary Wall**
- A15 The applicant is to meet all requirements of NSW Land Registry Services as applicable in regards to any required vertical or horizontal extension of the cross easements for support over the common party wall. Confirmation of these requirements should be obtained from a registered surveyor.

Development Application Report No. D40/22

Subject: 9 Lucas Avenue, Malabar (DA/247/2020/B)

Proposal:	S4.55(2) Modification application to modify the approved development including ground and first floor extension, internal reconfiguration, new windows and associated works. Original consent: Demolition of the existing structures, removal of trees and construction of a two storey attached dual occupancy.
Ward:	South Ward
Applicant:	Mr M Zhang
Owner:	Mr A Azadi & Ms M Saadet
Cost of works:	\$1,169,607.00
Reason for referral:	The development contravenes the development standard for floor space ratio by more than 10%.

Recommendation

That the RLPP, as the consent authority, refuse the application made under Section 4.55 of the Environmental Planning and Assessment Act 1979, as amended, to modify Development Application No. DA/247/2020 to modify the approved development including ground and first floor extension, internal reconfiguration, new windows and associated works. Original consent: Demolition of the existing structures, removal of trees and construction of a two storey attached dual occupancy, for the following reasons.

1. The proposal is inconsistent with the objectives of the R2 Low Density Residential zone in that the proposal does not protect the amenity of the residents and does not recognise the desirable elements of the existing streetscape and built form.
2. The proposal is inconsistent with the objectives of Clause 4.4 of Randwick Local Environmental Plan 2012, in that the size and scale of the development is not compatible with the desired future character of the locality. The application seeks a large exceedance of the FSR control of 31.7% leading to an FSR of 0.66:1 instead of the approved 0.5:1.
3. The proposal is inconsistent with the objectives of Clause 4.4 of Randwick Local Environmental Plan 2012, in that the filling in of the voids at ground level and the reduced balcony depth will deprive the proposed development of visual articulation.
4. The proposal is inconsistent with the objectives of Clause 4.4 of Randwick Local Environmental Plan 2012, in that the development will adversely impact on the amenity of adjoining and neighbouring land in terms of overbearing presentation by way of visual bulk.
5. Section 4.55(3) of the Environmental Planning and Assessment Act 1979 requires consideration of the reasons given for the grant of consent. It is concluded that consent for the voids was granted for the specific purpose of improving the amenity to the living areas. The modification proposes to remove the very amenity which underpinned the original consent for the voids and is therefore not supportable.

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1. Reason for referral

This application is referred to the Randwick Local Planning Panel (RLPP) because:

- The development contravenes the development standard for floor space ratio by more than 10%.

2. Site Description and Locality

The site is located in an area that was developed and originally subdivided in the post war era. As a consequence, the housing stock is newer, but has already substantially been redeveloped with many lots being further subdivided. The immediately surrounding area contains such housing.

To the north of the site at Nos 7 and 7A Lucas Avenue is a contemporary two-storey semi-detached development. In the rear of 7a Lucas Avenue which adjoins the site is a large garage and an awning. Adjoining the site to the south at No 11 Lucas Avenue is a single storey dwelling house. Adjoining the site to the east is a single storey brick dwelling house at No 8 Nix Avenue, and two dwelling houses at Nos 10A and 10B Nix Avenue with one being on a battle axe block with access from Nix Avenue.

Opposite the site at Nos 20 and 22 Lucas Avenue are two modern two-storey dwelling houses.

Apart from low and medium density housing, the broader area contains a number of schools in the greater vicinity, the Long Bay Correctional Complex, and facilities including shops, and recreational facilities such as the golf courses, the coastal walk and national park on the Malabar Headland.

The site itself is an irregular shaped lot of 733.5m² in area, situated on the eastern side of Lucas Avenue. Currently on site is a single storey dwelling house, which is approved to be demolished under DA/247/2020, to enable the construction of two-storey dual occupancy (attached) dwellings.

3. Details of Current Approval

The original development application was determined by Council on the 10 February 2021.

The approved development is for demolition of the existing structures, removal of trees and construction of a two storey attached dual occupancy. The approval includes condition 2(a) as follows:

- a) *To ensure that the amenity of the dwellings are maintained, the void areas within the dwellings shall not be converted into gross floor area.*

4. Proposal

The application seeks alterations to the original proposal by filling in the voids which were approved in the building, filling in the undercroft areas at ground level adjacent to the garages, substantial internal reconfiguration, expansion of the front and rear rooms into the first floor balconies, new windows and a spa in the rear yard of each dwelling. This modification application is the same as that originally lodged on 4/06/2021 under DA No. DA/247/2020/A (Mod A), which was withdrawn on 9 March 2022.

In relation to Mod A, on 21 December 2021, a request for further information was issued by the assessing town planners with respect to the plans originally lodged with application No DA/247/2020/A. The request sought deletion of parts of the proposal which added additional floor space at the ground floor front of the dwellings, certain other amendments, and sought increased details on the plans including dimensions. Revised plans were provided on 4 February 2022 which sought to address some of the issues identified in the request for further information. Not all issues were adequately addressed, and an assessment report was prepared for consideration by the Randwick Local Planning Panel in its March 2022 meeting. Shortly before the RLPP met, that application was withdrawn by the Applicant on 9/03/2022.

The subject modification application reverts back to that originally lodged on 4/06/2021 under DA/247/2020/A without the subsequent revisions.

The modification application proposes to amend the consent to DA/247/2020 for 9 Lucas Avenue, Malabar by seeking the following modifications:

Ground Level

- Extension of the ground floor level adjacent to the garage to provide a new office /playroom, bathroom and laundry to both dwellings. This includes an extension into the western part of the courtyard area for Dwelling 1 to be in line with the first floor western extent of the courtyard
- Extension of the ground floor level living area for both dwellings into part of the approved rear deck
- Internal reconfiguration to both dwellings within the approved building footprint
- Extension of the rear deck, addition of spa to the rear and landscaping works to both dwellings.

First Level

- Internal reconfiguration to both dwellings
- Extension of the front, south-western elevation and the rear, north-eastern elevation by increasing the floor area of the habitable rooms and decreasing the area of the approved balconies with a consequent reduction in the depth of the front and rear balconies
- New main bathroom, walk-in-robe and study in the area of the previously approved void in Dwelling 1
- New bedroom within the area of the previously approved void in Dwelling 2
- Revised windows and openings for both dwellings
- New skylights above the stairs and the retained stairwell voids.

As a result of the proposed modifications, the application also seeks the following changes to the conditions of consent:

Condition 1: Approved Plans and Supporting Documentation

- It is sought to amend this condition to reflect the new plans.

Condition 2(a): Amendment of Plans and Documentation

- This condition currently states:
"To ensure that the amenity of the dwellings are (sic) maintained, the void areas within the dwellings shall not be converted into gross floor area."
- It is now proposed to fill in the voids with floor space and the applicants state that this is needed due to change of circumstances.
- This condition is sought to be deleted.

The gross floor area of the proposal is intended to increase by 116m² from an approved compliant GFA of 366m² (0.5:1 FSR) to 482m² (0.66:1 FSR) with a variation of 31.7% to the FSR development standard. This also represents a 31.7% increase in the gross floor area of the proposal.

5. Section 4.55 Assessment**(a) Section 4.55(2)**

Under the provisions of Section 4.55(2) of the Environmental Planning and Assessment Act, 1979 (the Act), as amended, Council may only agree to a modification of an existing Development Consent if the following criteria have been complied with:-

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

An assessment against the above criteria is provided below:

1. Substantially the Same Development

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

2. Consultation with Other Approval Bodies or Public Authorities:

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

3. Notification and Consideration of Submissions:

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Comprehensive DCP 2013. No submissions were received as a result of the notification process.

(b) Section 4.55(3)

Section 4.55(3) of the Environmental Planning and Assessment Act, 1979 (the Act), as amended, states as follows:

- (3) *In determining an application for modification of a consent under this section, the consent authority must take into consideration such of the matters referred to in section 4.15(1) as are of relevance to the development the subject of the application. The consent authority must also take into consideration the reasons given by the consent authority for the grant of the consent that is sought to be modified.*

The last sentence of section 4.55(3) requires the Consent Authority to take into consideration the reasons given by the consent authority for the original grant of consent. Consideration of this matter is set out in Key Issues (amenity) below.

Having taken into consideration the reasons given for the grant of consent, it is concluded that consent for the voids was granted for the specific purpose of improving the amenity to the living areas.

The modification proposes to remove the very amenity which underpinned the original consent for the voids and is therefore not supportable.

6. Key Issues

Key issues considered in the assessment relate to the apparent over development of the site as against the current planning requirements, most particularly the increase in the FSR and the impact on the amenity of the dwellings.

(a) FSR Exceedance

The modification plans provide for an increase in the GFA from the approved 366m² (and FSR of 0.5:1) to a proposed GFA of 482m² and a GFA of 0.66:1. This is an exceedance of 116m² or a 31.7% exceedance to the control. The site area is 733.5m² and the LEP control is an FSR of 0.5:1 (allowing for a GFA of 366.75m²).

A draft amendment to the Randwick LEP 2012 is currently on exhibition and contemplates the possible increase of the permissible FSR to 0.6:1 for a dual occupancy on a lot exceeding 600m², however the proposal also exceeds this contemplated increase. It is noted that as the proposed amendments are on exhibition that they are neither imminent nor certain and are of very limited influence in determining the proposal.

The increase in the GFA will be perceived as bulk at the ground level due to the filling in of the undercroft areas, and at the first level due to the increase of the bedroom sizes and the corresponding decrease in depth of the balconies.

The resultant presentation of the proposed dwellings to the street and to the adjoining properties is inconsistent with the third objective of the R2 Low Density Residential zone in that the proposal does not recognise the desirable elements of the existing streetscape, it does not contribute to the desired future character of the area, and it does not serve to protect the amenity of residents.

It is considered that the exceedance of the FSR control is inconsistent with the first objective in the FSR control clause 4.4(1)(a) of RLEP 2012, being "*to ensure that the size and scale of development is compatible with the desired future character of the locality*". The level of exceedance at 31.7% is excessive. The Statement of Environmental Effects refers to 7-7A Lucas Avenue – an approval from 2010 which included an FSR exceedance subject to a SEPP 1 objection. According to the assessment report of that DA, the FSR control was 0.5:1, and the approved FSR was 0.53:1. Given the site area, this was an exceedance of 22.6m² or 6%. It is not reasonable to use this approved exceedance of the FSR to seek to justify an exceedance of 116m² or a 31.7%. The proposed level of exceedance is not compatible with the desired future character of the locality and leads to a lack of articulation to the front façade which is not in harmony with the surrounding streetscape.

The site is in the R2 Low Density Residential zone and approved exceedances of this extent is extremely unusual in that zone because of the difficulty in attaining compatibility with the size and scale of the desired future character. Nothing in Council's planning documents would support an envisaged exceedance of controls by this level.

Additionally the reduced balcony depth will result in a 'flatter' appearance of the proposed building particularly at the streetfront, and an increase in its perceived scale. The infill of the undercroft areas will result in reduced articulation of the façade and the sides of the building that are visible from the street. This will also add to visual bulk of the building when viewed from the street. That bulk arises because of the exceedance of the FSR control. It provides for an unarticulated wall

length of approximately 15.75 metres, only relieved by the inset (now smaller) balconies on the first level. The proposal is therefore inconsistent with the objective of the FSR control set out in clause 4.4(1)(b) which aims to ensure that buildings are well articulated and respond to environmental and energy needs.

The proposal is also inconsistent with objective 4.4(1)(d) of RLEP 2012 being "*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 modification plans increase the visual bulk particularly at the ground level from the street which add to bulk as perceived by the neighbours and from the street.

(b) Amenity

The external envelope was approved under DA/247/2020 notwithstanding Council's reservations about the possible future filling in of the voids which contribute to the bulk of the proposal.

The assessment report for the original application included the following as the only key issue discussed:

Key Issues and areas of non-compliance

Randwick LEP 2012

Clause 4.4 - Floor Space Ratio

Whilst the proposed development complies with the FSR control, Council has concerns that the void areas which are meant to provide better amenity to the dwellings will be converted into floor area in the future. The applicant justified that the void area is necessary for the following reasons:

- *Our plan is to make the level 1 bedroom wall an internal feature wall matching it with the stairs material which will go all the way to the roof. This will create a very pleasant and light living area.*
- *By reducing the roof height for the void areas not only we exposed to additional cost due to different roof levels but more importantly it will completely change our plan for living/dining area with internal feature wall as well as the lighting.*
- *I know your concern was around Section 4.55 modification but I can assure you we have no intention to extend our floor or using such a section.*

It is agreed that the void areas would provide increased amenity and for this reason a condition is included within the consent to ensure the void areas are maintained and are not converted into floor area in the future.

Based on the provision of voids creating better amenity for the dwellings, approval was granted and a condition of consent (condition 2(a)) stipulated that the void areas within the dwellings shall not be converted into gross floor area. The applicants had warranted that this would not happen, yet the modification application seeks to do just that. The modification application also seeks to further expand the floor space into the undercroft areas at ground level and into the balconies at first floor level.

Condition 2(a) was designed to preserve the very amenity of the dwellings which was put forward by the applicant as justification to approve the voids in the original application. In granting consent, Council clearly considered the spatial amenity provided by the voids, including the increased ceiling height, and the increased light to the living areas, all of which could be beneficial for amenity for the residents. It was the improvement in amenity which was clearly the basis upon which Council was prepared to approve the voids in the original application. It was also designed to prevent the very modification that is sought under this application – being to use the void areas for a later infill of additional GFA which would breach the FSR control.

The Statement of Environmental Effects now states that that amenity will be enhanced by removing those voids to provide additional floor space and improve the internal layout. The applicant now seeks to delete the very reason for which consent was granted for the voids in the original consent.

The Statement of Environmental Effects in the modification application relies on the 'Newbury Principles' and states that the condition (2(a)) is unreasonable and does not serve a planning purpose beyond numerical compliance while it inhibits the orderly and economic use of the proposed development.

It is considered that Condition 2(a) which specifically identifies amenity as the reason for protection of the voids, clearly has a planning purpose. Given that amenity was both the justification for the voids by the applicant, and a reason for approval by Council of those voids, it is a reasonable condition as it seeks to preserve the amenity which underpinned the original consent. It is noted that the Applicant has not lodged legal proceedings stating that condition 2(a) breaches the Newbury principles.

The objectives of the R2 Low Density Residential zone include to protect the amenity of residents. The proposal to remove the voids which were originally approved for the very purpose of providing improved amenity to the living areas of the dwellings is inconsistent with the attainment of the objective of protecting the amenity of residents.

7. Referral comments

No referrals were sought.

8. Section 4.15 Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	<p>State Environment Planning Policy (Building Sustainability Index: BASIX) 2004.</p> <p>Standard conditions of consent requiring the continued compliance of the development with the SEPP: BASIX were included in the original determination.</p> <p>The applicant has submitted a new BASIX certificate. The plans have been checked with regard to this new certificate and they are consistent with the requirements indicated for DA stage. Standard conditions of consent requiring the continued compliance of the development with the SEPP: BASIX were included in the original determination.</p> <p>Randwick Local Environmental Plan 2012</p> <p>The proposal exceeds the FSR control under the LEP by 31.7%. No clause 4.6 request is required for a modification application. The proposal is inconsistent with the objectives of the R2 zone and Clause 4.4 of the RLEP 2012.</p>
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	<p>There are amendments to the RLEP 2012 regarding the FSR for dual occupancies, which in this case would provide for a maximum FSF of 0.6:1. The draft is on exhibition and is not imminent and certain. In any event the proposal still exceeds the proposed revised FSF control for the site</p>

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Section 4.15(1)(a)(iii) – Provisions of any development control plan	The development remains mostly compliant with the objectives and controls of the Randwick Comprehensive DCP 2013, however is inconsistent with the FSR control in the Building Envelope controls. It is also inconsistent with the objectives of the building design provisions in clause 4 concerning in that the proposed modifications lead to a form, scale, massing which is inconsistent with surrounding built context and a lack of articulation in the front façade such that it does not complement or enhance the existing streetscape and neighbourhood character. The modifications are also inconsistent with the objectives of clause 4.3 of the RDCP 2013 Part C1 in that the configuration, scale, massing and proportions of the dual occupancies are not compatible with other dwellings in the street. The proposal fails to meet the control to articulate the front façade, as it reduces the articulation which has been approved.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The proposed modifications will have an adverse impact on the built environment. The proposal is inconsistent with the residential character of the locality.
Section 4.15(1)(c) – The suitability of the site for the development	<p>The site has been assessed as being suitable for the development in the original development consent.</p> <p>The modified development will remain substantially the same as the originally approved development, however, is not considered to meet the relevant objectives and performance requirements in the RDCP 2013 and RLEP 2012. The proposed modifications will adversely affect the character or amenity of the locality and the amenity of the residents.</p>
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions were received in relation to this modification application in the course of the notification period.
Section 4.15(1)(e) – The public interest	The proposal to modify the original consent will result in adverse environmental impacts on the locality and the deletion of the amenity features which underpinned the original consent. Accordingly, the proposal is considered not to be in the public interest.

9. Conclusion

The proposed modifications are not supported for the following reasons:

1. The proposal is inconsistent with the objectives of the R2 Low Density Residential zone in that the proposal does not protect the amenity of the residents and does not recognise the desirable elements of the existing streetscape and built form.
2. The proposal is inconsistent with the objectives of Clause 4.4 of Randwick Local Environmental Plan 2012, in that the size and scale of the development is not compatible with the desired future character of the locality. The application seeks a large exceedance of the FSR control of 31.7% leading to an FSR of 0.66:1 instead of the approved 0.5:1.

3. The proposal is inconsistent with the objectives of Clause 4.4 of Randwick Local Environmental Plan 2012, in that the filling in of the voids at ground level and the reduced balcony depth will deprive the proposed development of visual articulation.
4. The proposal is inconsistent with the objectives of Clause 4.4 of Randwick Local Environmental Plan 2012, in that the development will adversely impact on the amenity of adjoining and neighbouring land in terms of overbearing presentation by way of visual bulk.
5. Section 4.55(3) of the Environmental Planning and Assessment Act 1979 requires consideration of the reasons given for the grant of consent. It is concluded that consent for the voids was granted for the specific purpose of improving the amenity to the living areas. The modification proposes to remove the very amenity which underpinned the original consent for the voids and is therefore not supportable.

Attachment/s:

Nil

Responsible officer: Urban Perspectives, Town Planners

File Reference: DA/247/2020/B

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Development Application Report No. D41/22

Subject: 81 Denning Street, South Coogee (DA/761/2012/D)

Proposal:	S4.55 (2) Modification of the approved development to delete DA condition 2A to allow for the extension of lift access and the enclosure of the rooftop terrace stair and access ramp.
Applicant:	Mr P Douroudis
Owner:	Ms M Douroudis
Cost of works:	\$32,450.00
Ward:	East Ward
Reason for referral:	Variation to FSR by more than 10%

Recommendation

That the RLPP, as the consent authority, refuse the application made under Section 4.55 of the Environmental Planning and Assessment Act 1979, as amended, to modify Development Application No. DA/761/2012/D for modification of the approved development including the deletion of condition 2A to extend the lift access to the rooftop terrace and the enclosure of the rooftop terrace stair and access ramp, at No. 81 Denning Street, South Coogee 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 proposed variation is not supported, given that it 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 0.75:1 floor space ratio development standard listed under Clause 4.4 of the RLEP 2012. The proposed variation is not supported, given that it 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.

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 Randwick Comprehensive Development Control Plan 2013 (RDCP 2013)**

The proposal does not comply with the following provisions of the RDCP 2013:

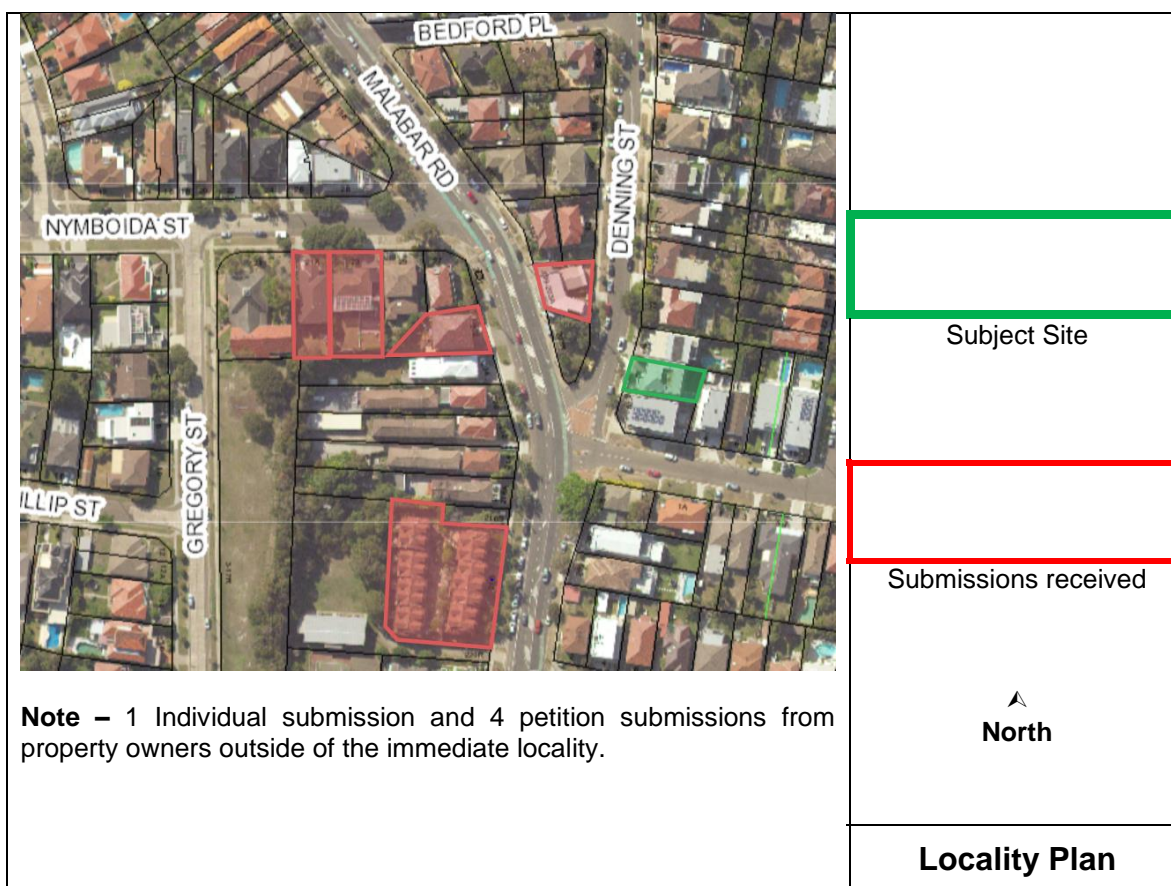
- a. Pursuant to Part 3.1, Section C1 of RDCP 2013, the proposed non-compliance with the floor space ratio development standard is not supported.
- b. Pursuant to Part 3.2, Section C1 of RDCP 2013, the proposed non-compliance with the building height development standard is not supported.
- c. Pursuant 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 2.73m external wall height non-compliance.
- d. 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 second floor level.
- e. Pursuant to Part 4.4, Section C1 of RDCP 2013, the proposal does not uphold the objectives and achieve compliance with Roof Design and Features, given the roof addition does not integrate or conform with the existing pitched roof form and is located within the front portion of the dwelling resulting in visual bulk impacts to the public domain.
- f. Pursuant to Part 5.1, Section C1 of RDCP 2013, the proposal does not uphold the objectives and achieve compliance with solar access and overshadowing noting that the proposed roof addition exceeds the height limit, floor space ratio and encroaches within the 1.8 side setback, resulting in further impacts to the living room and open space areas of adjoining properties.
- g. 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



D41/22

1. Reason for referral

This application is referred to the Randwick Local Planning Panel (RLPP) as it is made under Section 4.55(2) of the Environmental Planning and Assessment Act (1979) and the proposal results in variation to the development standard for floor space ratio by more than 10%.

The original development application (DA/761/2012) was approved under delegation. Notwithstanding, the previous modification DA/761/2012/C for the provision of accessible pathway, modifications to the lobby and stair, addition of a new lift, internal reconfiguration, changes to windows and doors and associated works was considered by the RLPP on 13 May 2021. This application was referred to RLPP as a Section 4.55(2) modification that received more than 10 unique submissions by way of objection and the proposal also resulted in variation to the development standard for floor space ratio by more than 10%.

2. Site Description and Locality

The subject property is Lot A DP 358843, known as 81 Denning Street, South Coogee and has a site area of 373.4m². The subject property currently contains an existing part two and part three storey detached dwelling house.

The surrounding area consists of low-density residential development predominately characterised by single or two storey built from facing the street with part 3 storey or part 4 storey dwelling houses and dual occupancies to the rear due to the topography of the sites which significantly drops towards the rear and the foreshore situated further to the east of the site. The more recent development within the immediate locality are modern contemporary houses being of larger scale and nature.

3. Details of Current Approval

The following works, determinations and proposals are relevant to the subject modification to the existing consent:

- A Development Application (DA/761/2012) for alterations and additions to the existing dwelling house including new upper level additions and new rear swimming pool was lodged on 22 November 2012 and approved under delegated authority on 5 July 2013. This application was notified for a period of 14 days from 28 November 2012 till 12 December 2012 and a total of 3 objections were received during the notification period.

This approval allows an overall height of building and external wall height of 9.95m and FSR of 0.82:1. The approved development was considered to be consistent with the corresponding objectives and performance requirements of the previous DCP.

It should be noted that the original DA was assessed under the previous LEP and DCP (i.e. LEP 1998 and DCP – Dwelling Houses and Attached Dual Occupancies) where there was no numerical controls in relation to the overall building height for dwelling houses.

- A Section 96(2) application (DA/761/2012/A) to modify the approved development by addition of a roof terrace, internal changes and addition of window to bedroom 5 was lodged on 29 November 2013. The adjoining neighbours were notified. The applicant was advised that Council could not support the application.

An appeal to the Land and Environment Court was lodged by the applicant and the application was approved as a result of a Section 34 conference by the Land and Environment Court on 19 June 2014. As a result of the Court's consent, the overall height of the building has been increased by up to approximately 1.6m to the highest point of the roof only. The remaining portion of the building (i.e. parapet walls) is only 200mm higher than the original approval.

- A Section 96(1A) application (DA/761/2012/B) to reconstruct sections of the existing walls on the southern side of the dwelling was approved under delegated authority on 11 July 2014. This application is minor as it only relates to the reconstruction of existing dilapidated walls in the same location that will not result in any additional amenity impact and was not required to be notified under the provisions under the Randwick Comprehensive Development Control Plan 2013.
- A Construction Certificate for the approved building works was issued by a Private Certifier on 15 August 2014.
- A Section 4.55(2) application (DA/761/2012/C) for the provision of accessible pathway, modifications to the lobby and stair, addition of a new lift, internal reconfiguration, changes to windows and doors and associated works was approved by the Randwick Local Planning Panel on 13 May 2021.

As a part of this most recent modification, the Panel endorsed the adoption of the following condition 2A, which excluded the roof terrace lift and roof extension from the previous approval:

2A. *The upper portion of the lift core and new roof above the existing dwelling shall be deleted. The height of the lift core including the associated lobby area shall not exceed RL56.19. Details of compliance are to be submitted to and approved by Council's Manager Development Assessment prior to the issue of Construction Certificate.*

- The abovementioned rooftop additions are proposed for reinstatement under the subject modification proposal through the deletion of condition 2A.

4. Proposal

The application is seeking the deletion of condition 2A to extend the lift access to the rooftop terrace and enclose the rooftop terrace stair and access ramp, in accordance with the configuration previously proposed under modification application No. DA/761/2012/C.

In comparison with the previous modification, the following design changes have been made to the proposed rooftop lift and roof enclosure:

- Overall lift and roof terrace parapet wall increased from RL 57.670 (9.31m) to RL 58.090 (9.73m) resulting in a breach of the 9.5m building height limit and further non-compliance with the 7m wall height control.
- The proposed roof enclosure has been extended to cover the stairwell and access ramp, resulting in an increase to GFA from the approved 326.57m² (0.87:1) to 332.44m² (0.89:1).
- The southern side boundary setback of the lift shaft and rooftop enclosure has been increased from 830mm to 900mm as required under approved consent condition 2C.
- The lift and roof enclosure material treatment have been altered from a rendered solid wall to a transparent glazed panel finish.

5. Section 4.55 Assessment

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

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

An assessment against the above criteria is provided below:

1. *Substantially the Same Development*

The proposed modification is not considered to result in a development that will fundamentally alter the originally approved development. The additional FSR and height of the development arise from the enclosure of the approved stairwell access and the extension of the lift shaft from the first floor to the roof terrace. The lift shaft and extended roof section over the stairwell would predominantly relate to areas approved under the previous modification and proposes an ancillary change to the residential use to facilitate equitable (mobility impaired) and sheltered access to the roof terrace.

The changes to the overall external building envelope are limited to a portion of the southern elevation and will not comparatively alter the approved development in a manner that is considered a substantial redesign of the existing dwelling house. It is also noted that departures to the height limit and FSR limit have been previously considered on merit as a part of the subject application history. Accordingly, the subject application relates to development which is substantially the same as the original development.

Notwithstanding, Council is not in support of the proposed roof additions due to the lack of integration of the subject design with the existing pitched roof form, along with the view loss and visual bulk impacts that would result from the subject modification's visual prominence from the street frontage. Further discussion is provided as a part of the Key Issues section of this report.

In reviewing the application, the test to ascertain whether the modification will result in substantially the same development is as follows:

In "*Moto Projects (No 2) Pty Ltd v North Sydney Council [1999] NSWLEC 280*" where at paragraphs 55 and 56, *Bignold J* described the process for consideration of a proposed modification of development as;

"The requisite factual finding obviously requires a comparison between the development, as currently approved, and the development as proposed to be modified. The result of the comparison

must be a finding that the modified development is “essentially or materially” the same as the approved development.”

Response

The proposed lift core addition and roof enclosure to the approved roof terrace access zone is not considered to be a significant external built form amendment in the context of the overall approved development.

The modification predominantly relates to the roof terrace circulation area previously approved under DA/761/2012/C. As such, it is considered that the proposed modification satisfies the requirements for assessment within Section 4.55 (2) of the Act, given that the amendment does not result in a significant material departure from the approved built form.

“The comparative task does not merely involve a comparison of the physical features or components of the development as approved and modified where that comparative exercise is undertaken in some type of sterile vacuum. Rather, the comparison involves an appreciation, qualitative, as well as quantitative, of the developments being compared in their proper contexts (including the circumstances in which the development consent was granted).”

Response

The proposed amendments are limited to a transient roof terrace access area adjacent to the southern side elevation, with the use and configuration of this area predominantly approved in the previous modification. The proposal solely relates to the extension of the lift core within this zone and the roof enclosure of the approved stair and ramp access. Council also notes that variations to building height and FSR have been considered on merit in previous applications.

As such, the proposed modifications are considered to not result in a development that will fundamentally alter the original approval to date.

2. Consultation with Other Approval Bodies or Public Authorities:

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

3. Notification and Consideration of Submissions:

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Comprehensive DCP 2013. In response a total of seven individual submissions were received, including the following six submissions:

- 21A Nymboida Street, South Coogee
- 23 Nymboida Street, South Coogee
- 5/203A Malabar Road, South Coogee
- 202 Malabar Road, South Coogee
- 4/218 Malabar Road, South Coogee
- 119 Oberon Street, Coogee

In addition, four duplicate petition style submissions were received from:

- 410/108 Maroubra Road, Maroubra
- 1027/6 Spring Street, Rosebery
- 1 Wattle Street, Rydalmere
- No address provided

Issue	Comment
<u>Application should have been lodged as a new DA and not as a modification</u> The submission raises concerns with the application being lodged under the provisions of Clause 4.55 despite the variations to development standards and the scope of the changes proposed.	The proposed modifications are considered to be substantially the same and will not result in a significant material change from the approved development, given that the proposal relates to the modification of the approved roof terrace access area.
<u>FSR variation</u> Further exceedance of the FSR control should not be supported.	Agreed, it is noted that the increase of the FSR to 0.89:1 will result in further environmental, and amenity impacts to neighbouring properties and is subsequently not supported.
<u>Notification to neighbouring properties</u> A number of concerns were raised regarding notification of the application.	The subject application was publicly exhibited and re-exhibited in accordance with Council's Community Participation Plan for 14 days in accordance with the previous modification area and objectors.
<u>Precedent of Overdevelopment</u> The submissions raise concerns with regards to the variations to the standards setting precedent for overdevelopment.	Noted, the application is not supported due to the proposed control variations and is recommended for refusal.
<u>Building Wall Height</u> Further exceedance of the 7m height requirement, should not be supported.	Agreed, the proposed wall height variation is not supported and is addressed in the body of this report.
<u>View Sharing</u> The submissions raise concerns with overall view sharing impacts upon their property.	This concern is addressed within the body of the report. In summary, the view sharing impacts are considered to be moderate and the application is recommended for refusal.
<u>Side Boundary Setback Breach</u> The submission raises concerns with regards to the proposed side boundary setback variation.	This element is assessed within the body of the report. Notwithstanding, the side boundary setback is not considered acceptable for the portion of terrace roof enclosure within 900mm and is not compliant with the DCP provision.
<u>Breach of the Height Control</u> The submission raises concerns with regards to the breaching of the height control development standard.	Agreed, the proposed lift area and roof enclosure subject to this assessment will breach the 9.5m height control and is not supported.
<u>Air Circulation</u> The submission raises concerns with regards to circulation and air movement with particular reference to sea breezes.	The proposal does not propose any change to built form separation. The existing setbacks allow for adequate circulation between buildings.
<u>Solar Access Impacts</u> The submission raises concerns with regards to any impacts upon solar access and overshadowing.	Solar Access impacts are addressed within the body of this report. In summary, the proposed exacerbation of overshadowing impacts are not supported.

Issue	Comment
<u>Privacy Impacts</u> The submission raises concerns with regards to privacy from the glass lift areas and the rooftop enclosure.	The lift shaft and lift proper are all transient areas and not "habitable" spaces as defined. The lift and stairways are not occupied for any great amount of time and are not used for long term occupation being strictly and clearly, access areas. Further, the proposed stairwell and ramp access was approved under the previous modification and the proposed amendments would not substantially alter the sight lines from this portion of the dwelling. . Therefore, overlooking and privacy impacts will be at the minimum in this part of the building.
<u>Acoustic Impacts from the lift</u> The submission raises concerns with regards to the noise generated from the lift.	An existing condition of consent is in place to ensure the design and operation of the lifts, remains below 5dBA as required by the POEO Act and Associated regulations.
<u>Streetscape character</u> The proposal is inconsistent with the future desired character of the area.	Agreed, the proposed lift access and roof enclosure will result in a roof form that is inconsistent with the locality and that generates further environmental impacts.
<u>Bulk and scale</u> The proposal results in excessive bulk and scale impacts.	Agreed, the proposed roof addition, height breach, wall height variation and FSR variation contributes to further bulk and scale impacts.
<u>Construction Noise</u> The noise associated with the continued renovation of the development.	The noise impacts associated with construction would be temporary and conditions are in place to regulate noise and vibration levels. The proposal will not alter these existing provisions.
<u>Public Interest</u> The proposed amendments are not in the public interest.	Noted, the application is not supported due to the resultant adverse environmental impacts outlined within this report.

4. Randwick Local Environmental Plan 2012 (LEP)

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

The proposal is inconsistent with the following objectives of the zone, given the proposed roof additions will not the proposed activity and built form will not enhance the aesthetic character of the area or protect the amenity of the local residents.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.3: Building height (max)	9.5m	9.73m (measured to the top of the lift extension)	NO (refer to discussion below)
Cl 4.4: Floor space ratio (max)	0.75:1	0.89:1	NO (refer to discussion below)

5. Key Issues

Clause 4.3 - Height of Buildings and Clause 4.4 Floor Space Ratio

Height of Buildings

The subject site has a maximum building height limit of 9.5m and the new lift extension and terrace roof enclosure has a proposed height of 9.73m, which is 2.42% (or 230mm) above the allowable

maximum. The proposal seeks to vary the development standards contained within the Randwick Local Environmental Plan 2012 (RLEP 2012) as follows:

Clause	Development Standard	Proposal	Variation (%)
Building Height	9.5m	9.73m (measured to the top of the lift extension)	2.42%

Floor Space Ratio

The subject site has an area of 373.4m². The maximum FSR for dwelling houses on land zoned R2 with a lot size more than 300m² but not more than 450m² is 0.75:1 (280.05m² of GFA).

The current approved FSR on the site is 0.87:1 (326.57m² of GFA). The subject modification proposes the increase of the FSR to 0.89:1 (332.44m² of GFA), which is 18.7% (52.39m² of GFA) above the allowable maximum standard. The proposal seeks to vary the development standard contained within the Randwick Local Environmental Plan 2012 (RLEP 2012) as follows:

Clause	Development Standard	Current approved	Proposal	Variation (%)
Floor space ratio	0.75:1 (GFA 280.05m ²)	0.87:1 (GFA 326.57m ²)	0.89:1 (GFA 332.44m ²)	18.7% (52.39m ²)

Legal Framework for variations

It is noted that the proposed modification is not captured by the provisions of Clause 4.6 of the Randwick LEP.

The relevant judgments (originating with *North Sydney Council v Michael Standley & Associates Pty Ltd* [1998] NSWSC 163) indicate that section 4.55 is a 'free-standing provision', meaning that "a modification application may be approved notwithstanding the development would be in breach of an applicable development standard were it the subject of an original development application".

Therefore, a section 4.55 modification application can be approved even though it would contravene a development standard, without the requirement of a Clause 4.6 request to vary the standard.

Section 4.55 (3) continues to require the consent authority to take into consideration the matters referred to in Section 4.15, which in turn include the provision of any environmental planning instrument. The assessment is provided below.

Assessment against the objectives

Height of Buildings

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

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

The upper level of the lift core and the new roof will contribute to additional visual bulk and will not be compatible with the desired future character of the locality. This roof extension will also result in further side setback, roof design and overshadowing non-compliances. In addition, the view sharing assessment has indicated that a moderate impact results from the upper areas of the lift structure. As such, it is recommended that condition 2A be retained to uphold consistency with the objective.

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

The development is not within a conservation area nor is it within the vicinity of a heritage item.

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

Whilst the bulk of the proposed additional area is limited to the southern side of the existing dwelling, the upper portion of the lift core and new roof addition will result in additional visual bulk, overshadowing and loss of views. For these reasons, condition 2A is recommended for retention to maintain consistency with this objective.

Floor Space Ratio

The objectives of the Floor Space Ratio standard are set out in Clause 4.4(1) of RLEP 2012. The objectives are addressed as follows:

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

Unsatisfactory, as above.

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

Condition 2A is recommended for retention to satisfy the objective and remove the side setback deficiency that would result from the addition of the upper floor lift core and roof enclosure within 900mm of the southern side setback and result in further overshadowing impacts to the adjoining property.

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

Unsatisfactory, as above.

- (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.*

Unsatisfactory, as above.

Overall, whilst the provisions of Clause 4.6 are not strictly applicable to the proposed modifications, it is recommended that condition 2A is retained and the subject modification is refused to uphold consistency with the objectives, having regard to those matters under Section 4.15(1) of the EP&A Act.

View sharing assessment

Introduction

Sharing of views is a design performance requirement in the Randwick Local Environmental Plan 2012 and Randwick Council's Development Control Plan 2013, given that the proposal site is mapped within the Foreshore scenic protection area.

The objectives of the view sharing control are as follows:

- To acknowledge the value of views to significant scenic elements, such as ocean, bays, coastlines, watercourses, bushland and parks; as well as recognised icons, such as city skylines, landmark buildings / structures and special natural features.
- To protect and enhance views from the public domain, including streets, parks and reserves.
- To ensure development is sensitively and skilfully designed to maintain a reasonable amount of views from the neighbouring dwellings and the public domain.

Controls

- i) The location and design of dwellings and outbuildings must reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas.

- ii) In assessing potential view loss impacts on the neighbouring dwellings, retaining existing views from the living areas (such as living room, dining room, lounge and kitchen) should be given a priority over those obtained from the bedrooms and non-habitable rooms.
- iii) Where a design causes conflicts between retaining views for the public domain and private properties, priority must be given to view retention for the public domain.
- iv) The design of fences and selection of plant species must minimise obstruction of views from the neighbouring dwellings and the public domain.
- v) Adopt a balanced approach to privacy protection and view sharing, and avoid the creation of long and massive blade walls or screens that obstruct views from the neighbouring dwellings and the public domain.
- vi) Clearly demonstrate any steps or measures adopted.

An assessment of the proposed development and its impact on views is carried out in accordance with the Land and Environment Court planning principle after Roseth SC pp.25-29 in *Tenacity Consulting v Warringah [2004] NSWLEC 140*. This assessment is guided by a four step process identified by the *Land and Environment Court*.

1. Quality of views:

Step 1. *"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."*

Response:

Referring to the photographs provided by the resident at 202 Malabar Road and 21A Nymboida Street, the views are partial ocean views. No iconic or significant views are impeded, there is a minor nexus between sea and land visible. It is noted that these views are gained across two separate streets and a park area and thus, at a distance from both objectors' properties. The view is a partial view due to existing developments.



Figure 2: View from the front of No. 202 Malabar Road

Source: Objectors Submission



Figure 3: View from habitable room window of No. 202 Malabar Road

Source: Objectors Submission

Please note further photographs from this property are available within Council documents and are able to be viewed by the panel on request. These photographs are included with written permission from the resident.



Figure 4: View from rear private open space of No. 21A Nymboida Street

Source: Objectors Submission

2. From what part of the property are the views obtained?

Step 2. 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 from a sitting 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.

Response:

The views are gained across the front boundary on Malabar Road and along the side boundaries of Nymboida Street. These views are gained from both the kitchen, dining/living and private open space areas (as per photographs), from both standing and sitting positions.

3. An assessment of the extent of the impact?

Step 3. 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.

Response:

When considering the entire property, the location of the objector's sites and the extent of the existing view, the impact is moderate. This is due to the extent of the view itself and the built form being focussed within one particular element of the vista. It should be noted that the remaining areas of these views are maintained.

4. An assessment of the reasonableness of the proposal that is causing the impact?

Step 4. *The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all the 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 more impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skilful design could provide the applicant with the same development potential and amenity and reduce the impact of views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.*

Response

The key built form control is the height and bulk of the proposed development. The modification proposal results in an external built form outcome that compromises the approved roof form and that fails to comply with the overall building height of 9.5m, FSR, side boundary setback and external wall height.

In terms of the design changes proposed under the subject modification, it is noted that the roof addition has incorporated glazed panels to all elevations in the aim of preserving sight lines to the foreshore. However, it is still considered that views would be obscured by the overall size of the metal framed structure and that this glazed material treatment particularly facing the western street frontage has the potential for increased solar glare resulting in additional view corridor impacts.

As demonstrated in the above assessment, the proposal has the potential to adversely affect the view from the nearby property owners. Accordingly, it is recommended that Condition 2A be retained to not permit the upper portion of the lift core and associated changes to the roof form and ensure the proposal is more in line with the expected outcome of the DCP that aims to minimise the extent of view loss from the nearby properties.

Given the above reasons, the subject modification is recommended for refusal to maintain view sharing between the site and the neighbouring properties further to the west.

Foreshore Protection Area

Noting the above assessment, it is also considered that the proposed bulk and scale of the development does not comply with the following objectives of the foreshore protection area:

- 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,
- d) to ensure development in these areas is appropriate for the location and does not detract from the scenic qualities of the coast.

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Section 3.2 Building Height (External Wall heights)

Referring to **Figure 5**, the new glazed curtain wall element proposed has a variation to the 7m external wall height up to 2.73m across a distance of 5m or 18% of the side boundary.

The following is an assessment against the underlying objectives relating to the controls:

- *To ensure development height establishes a suitable scale to the street and contributes to its character.*

Comment

The proposed rooftop lift and roof extension is positioned within the front portion of the existing dwelling and visually prominent from the adjoining street perspective. It is noted in this regard that the proposed modification has an overall building height and wall height above the respective control requirements and results in a roof form addition that is inconsistent with the scale and character of development within the immediate streetscape and the wider locality.

Further, due to moderate view loss impacts as assessed against *Tenacity Consulting v Warringah [2004] NSWLEC 140*, consent condition 2A is to be retained requiring the top floor of the lift structure to be deleted from the approved plans and for the lift to terminate within the first floor envelope.

- To ensure development height does not cause unreasonable impacts upon the neighbouring dwellings in terms of overshadowing, view loss, privacy and visual amenity.

Comment

These environmental impacts have been assessed within the body of this report. In summary, the proposed modification has shown to have an impact upon the views enjoyed by the dwellings to the west and will significantly increase the visual bulk of the development from the street perspective. As such, consent condition 2A is recommended for retention to uphold the requirement for the deletion of the upper floor lift and the roof extension.

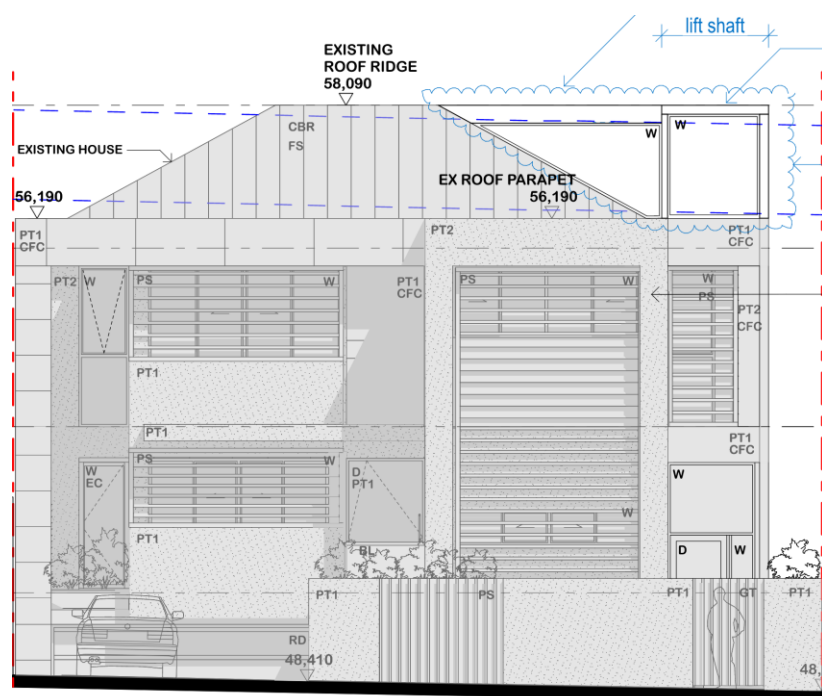


Figure 5: West Elevation

Source: Fox Johnson

- To ensure the form and massing of development respect the topography of the site.

Comment

The modification results in the alteration of the existing roof form in a manner that increases the massing of the development from the street frontage and the southern side boundary. The proposed lift and roof extension presents as an additional storey at roof level from the streetscape perspective and will exceed Council's building and wall height requirements. In this regard, the location of the lift extension and roof extension is an inappropriate response to the topographical characteristics of the site.

Sub-section 3.3 - Setbacks

The following table outlines the relevant side setback controls:

D41/22

D41/22

D41/22

- D41/22

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D41/22



D41/22

D41/22

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D41/22

D41/22

- *To enable a reasonable level of view sharing between a development and the neighbouring dwellings and the public domain.*

Comment:

Any impacts on view sharing have been addressed within the body of this report and are assessed against the four (4) step process outlined within *Tenacity Consulting v Warringah [2004] NSWLEC 140*. In summary, it was determined that the proposed roof addition would result in a moderate view impact to properties further to the west of the site.

The specific side setback controls are to be addressed below:

Sub-section 3.3.2 - Side setbacks

Controls

- i) *Comply with the minimum side setbacks as follows:*

The lift shaft and roof extension is proposed to be setback 900mm from the southern side boundary for a distance of 5m or 18% of the total side boundary on the rooftop level. The proposed side setback is not supported for the following reasons:

- The proposed setback of the upper level lift core and roof extension is not consistent with neighbouring properties and the provided setbacks result in building separation distances that impact solar access and views to adjoining sites.
- The proposed setback variations result in an unacceptable visual bulk from the street perspective and compromise the existing pitched roof form.
- The proposal will result in unreasonable visual impacts due to the upper floor of the lift area encroaching into the existing view that remains for dwellings to the west.

In this regard, consent condition 2A requiring the upper floor lift access and roof extension to be deleted from the approved plans should be retained.

Section 4.4 Roof Design and Features

The western street frontage elevation shown in Figure 5, illustrates that the proposed lift core and roof extension proposes to enclose the existing roof pitch in the south western portion of the dwelling.

The following is an assessment against the underlying objectives relating to the controls:

- *To ensure roof design integrates with the form, proportions and façade composition of the building.*

Comment

The proposed roof addition compromises the approved pitched form and the glazed rooftop addition protrudes from the existing external envelope as an additional storey within the front portion of the existing dwelling.

- *To ensure trafficable roof space is integrated with the built form and maintains satisfactory privacy relationship with the neighbouring dwellings.*

Comment

The proposed lift and roof extension has not been integrated with the existing roof form and the glazed lift area may contribute additional visual impacts to neighbouring dwellings.

Section 5.1 Solar Access and Overshadowing

Referring to **Figures 6 and 7**, the proposal site has an east-west orientation and the proposed upper floor additions are located within the southern elevation. An assessment of the proposed modification against the objectives is provided below:

- *To ensure new dwellings and alterations and additions are sited and designed to maximise solar access to the living areas and private open space*

Comment

The proposed lift extension and roof enclosure encroach 900mm within the 1800mm side boundary setback zone and will result in further shadow impacts to the living areas and private open space of the dwelling to the south of the site in the afternoon period.

- *To ensure development retains reasonable levels of solar access to the neighbouring dwellings and their private open space.*

Comment

The proposed roof addition is located on the southern elevation, exceeds the floor space ratio and height limit and encroaches within the side boundary setback. As such, the proposed solar access reduction to the adjoining property in the afternoon period is not considered acceptable.

- *To provide adequate ambient daylight to dwellings and minimise the need for artificial lighting.*

Comment

The proposed addition will result in further reliance on artificial lighting for adjoining properties to the south of the site and is not supported.

The proposal is unsatisfactory with regards to solar access and the retention of consent condition 2A is recommended to require the deletion of the roof lift access and the roof enclosure.

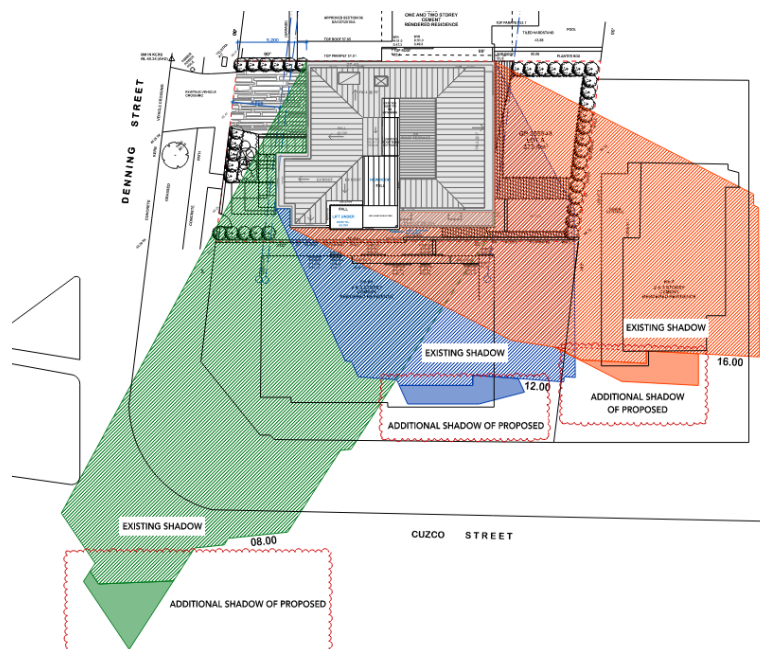


Figure 7 Shadow diagram Proposed

Source: Fox Johnson

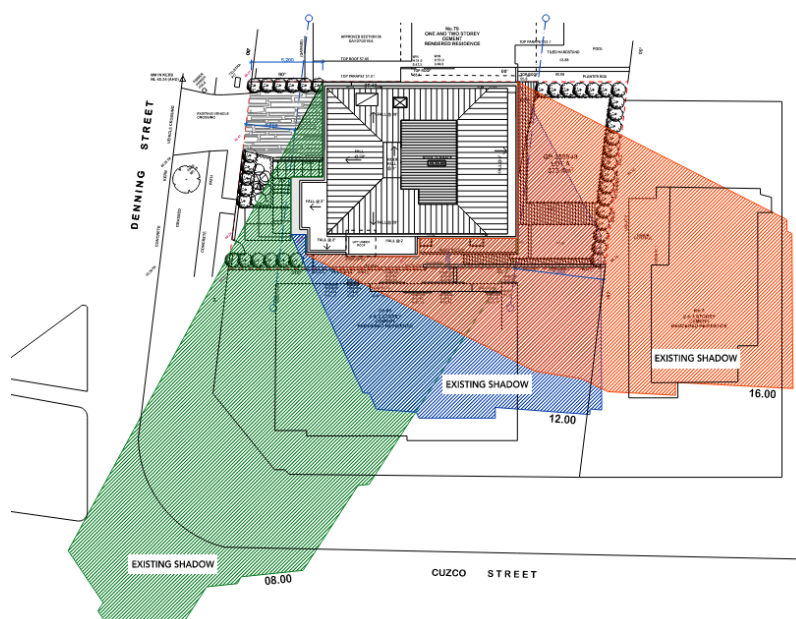


Figure 8 Shadow diagram Existing

Source: Fox Johnson

6. Referral comments

No referrals were required for the assessment of the subject modification.

7. Section 4.15 Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	<p>State Environment Planning Policy (Building Sustainability Index: BASIX) 2004. Standard conditions of consent requiring the continued compliance of the development with the SEPP: BASIX were included in the original determination.</p> <p>Randwick Local Environmental Plan 2012 The proposed modifications are not considered to be substantially the same, given the significant external roof form changes and the resultant adverse environmental impacts. Further, the development is not consistent with the general aims and objectives or the zone objectives of the RLEP 2012.</p>
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	<p>The development is non-compliant with the following objectives and controls of the Randwick Comprehensive DCP 2013:</p> <ul style="list-style-type: none"> • 3.2 Building Height (External Wall heights) • 3.3.2 Side Setbacks • 4.4 Roof Design and Features • 5.1 Solar Access and Overshadowing • 5.6 View Sharing
Section 4.15(1)(a)(iiia) – Provisions of any Planning	Not applicable.

Section 4.15 'Matters for Consideration'	Comments
Agreement or draft Planning Agreement	
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The proposed modifications have not responded appropriately to the relevant planning controls and will result in any significant adverse environmental and social impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	<p>The site has been assessed as being suitable for the development in the original development consent.</p> <p>The modified development is not considered substantially the same as the originally approved development and does not meet the relevant objectives and performance requirements in the RDCP 2013 and RLEP 2012. Further, it is anticipated that the proposed modifications will adversely affect the amenity of the locality.</p> <p>Therefore the site is not suitable for the modified development.</p>
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 is inconsistent with the objectives of the zone and will result in any significant adverse environmental and social impacts on the locality. Accordingly, the proposal is not considered to be in the public interest.

8. Conclusion

The proposed modifications are not supported for the following reasons:

1. The proposed modifications are not considered to result in a development that is substantially the same as the previously approved development.
2. The modified development results in adverse environmental impacts upon the amenity and character of the locality.
3. The modified development is inconsistent with the controls and objectives of the Randwick LEP 2012 and DCP 2013.
4. The proposed modifications are not considered to be in the public interest.

Responsible officer: Ferdinando Macri, Senior Environmental Planning Officer

File Reference: DA/761/2012/D