

Randwick Local Planning Panel (Electronic) Meeting

Thursday 28 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, 28 July 2022

Declarations of Pecuniary and Non-Pecuniary Interests

Development Application Reports

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DIRECTOR CITY PLANNING

Development Application Report No. D43/22

Subject: 6-10 Bowral Street, Kensington (DA/172/2022)

Executive Summary

Proposal:	Demolition of the existing structures and the construction of a part six, part nine storey residential flat building with shared-way, basement parking and landscaping.
Ward:	West Ward
Applicant:	Mr D Dugandzic
Owner:	Mr D Dugandzic
Cost of works:	\$16,755,000
Reason for referral:	Height non-compliance >10%

Recommendation

That the RLPP refuse consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/172/2022 for the demolition of the existing structures and the construction of a part six, part nine storey residential flat building with shared-way, basement parking and landscaping, at No. 6-10 Bowral Street, Kensington, for the following reasons:

1. The proposal does not comply with the provisions of State Environmental Planning Policy 65 - Design Quality of Residential Apartment Developments (SEPP 65) and associated Apartment Design Guide (ADG); in particular:
 - a. Pursuant to Part 3B-1 and 3B-2 of ADG, the proposed height non-compliance and excessive number of storeys does not minimise overshadowing and reduces amenity to the neighbouring properties.
 - b. Pursuant to Part 3D-1 of ADG, the proposal needs to offer a minimum area of 25% (316m²) as communal open space and 23.7% is proposed. This area should not be limited to the roof top space or contribute to the height non-compliance.
 - c. Pursuant to Part 3E-1 of ADG, the proposal needs to offer a minimum area of 7% (88.5m²) for deep soil with minimum dimensions of 3m. The proposal offers 6.1% and should be amended to comply given the residential use.
 - d. Pursuant to Part 3F-1 of ADG, the proposal does not provide adequate visual privacy to the units adjacent to the laneway/shared zone and communal roof top open space.
 - e. Pursuant to Part 4C of ADG, it has not been demonstrated that the 2.7m floor to ceiling height can be achieved in only 3.075m floor to floor heights. This is based on current fire and services requirements, and interfaces from balconies to internal living areas. This is also inconsistent with Part 12.1 of the Kensington to Kingsford RDCP.
2. The proposal does not comply with the provisions of the Randwick Local Environmental Plan 2012 (RLEP) in particular:

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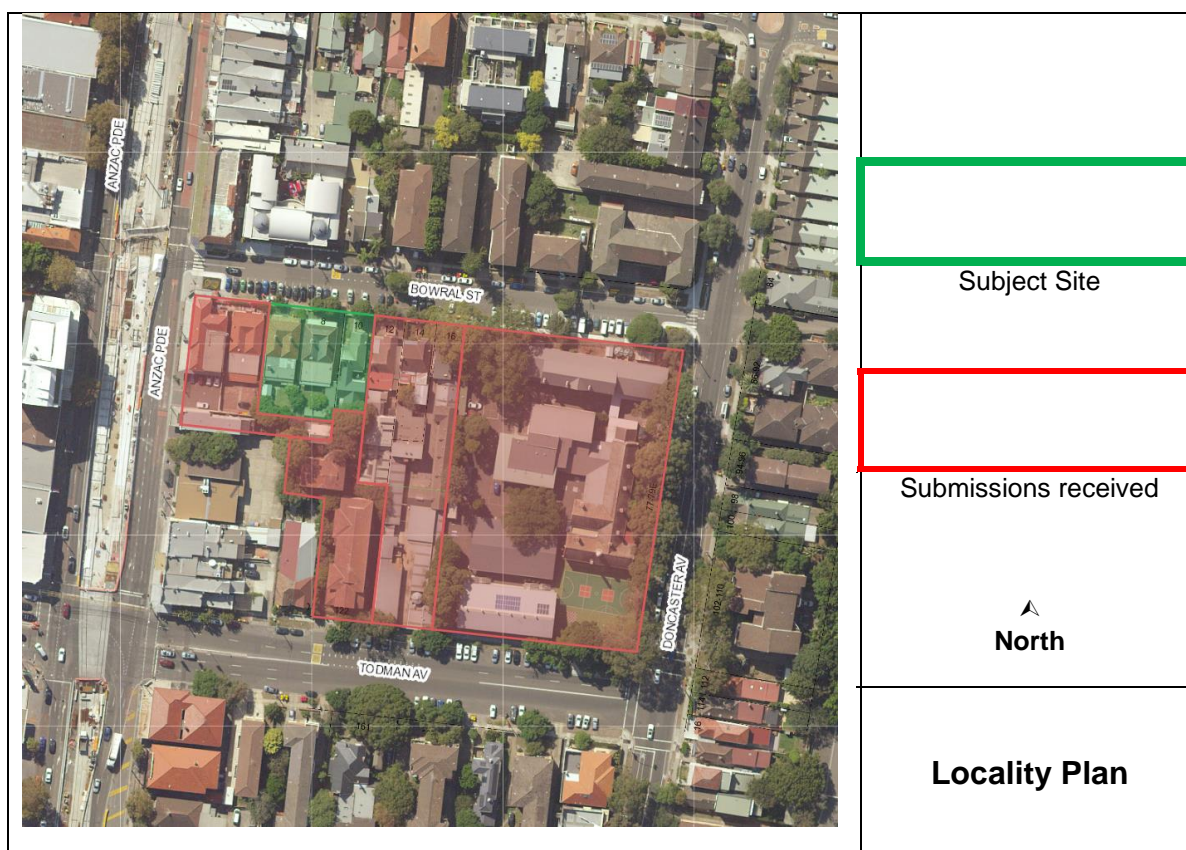
- a. The proposal is inconsistent with all objectives of B2 Local Centre zone pursuant to Clause 2.3 of RLEP 2012.
 - b. The proposal does not satisfy the requirements under Clause 4.6 in that the request for the variation of the height of buildings (Clauses 4.3 and 6.17) and active street frontages (Clause 6.20) development standards are not well founded, not in accordance with the relevant objectives of the standards and the zone.
 - c. Pursuant to Clause 6.14(3)(a) of the RLEP, the development cannot be approved as the proposed form of development is not permissible within the B2 zone. There are no existing residential flat buildings at the site when the RLEP commenced.
 - d. Pursuant to Clause 5.10, the proposal is not consistent with the objectives in that the height, bulk and scale of the development will detrimentally impact the significance of the heritage listed Kensington Public School buildings, their setting, and views from the public domain. The proposal fails to provide sufficient transition to the School and the surrounding and intervening residential area to the east which is contrary to the desired future character of the area.
 - e. Pursuant to Clause 6.11(4), the proposal does not exhibit design excellence.
3. The proposal does not comply with the provision of Randwick Comprehensive Development Control Plan 2013 (RDCP 2013) in particular:
- a. Pursuant to Part 4 in the K2K RDCP, the proposal does not uphold the provisions relating to design excellence and results in adverse impacts to the strategic node to the south, the Todman Avenue Square Precinct.
 - b. Pursuant to Part 6 in the K2K RDCP, the proposal does not uphold or comply with the objectives and controls for the laneway/shared zones, building heights, and building setbacks.
 - c. Pursuant to Part 8 in the K2K RDCP, the proposal does not provide a laneway/shared zone in accordance with Block Diagrams 28B and 28C.
 - d. Pursuant to Part 9 in the K2K RDCP, the proposal results in adverse heritage impacts to the neighbouring item at Kensington Public School.
 - e. Pursuant to Part 10.2 in the K2K RDCP, the proposal does not comply with the desired future character and built form controls for Blocks 28B and 28C.
 - f. Pursuant to Part 13 in the K2K RDCP, the proposal height non-compliance and excessive number of storeys does not minimise overshadowing and reduces amenity to the neighbouring properties.
 - g. Pursuant to Part 14 in the K2K RDCP, the proposal results in unacceptable acoustic impacts to the future residents in the units adjacent to the enclosed laneway/shared zone and roof top communal open space.
 - h. Pursuant to Part 15 in the K2K RDCP, the proposal does not provide adequate cross ventilation through the operable windows the shared way and communal open space at the roof top level.
 - i. Pursuant to Part 16 in the K2K RDCP, the proposed elevations of the building and presentation of a blank wall façade to the western elevation do not provide satisfactory articulation and modulation.
 - j. Pursuant to Part 18 in the K2K RDCP, the proposal does not provide a continuous pedestrian shelter to the Bowral Street Frontage or uphold the relevant objectives.

- k. Pursuant to Part 19 in the K2K RDCP, the proposal does not provide an active street frontage or contribute to the retail activation of the commercial core and the future Bowral Street Plaza.
 - l. Pursuant to Part 20 in the K2K RDCP, the proposal provides 90% of the site as landscaped area which does not comply with the 100% requirement. The landscape treatment to the laneway is considered poor quality and, the small pocked of deep soil at the rear does not allow for landscaping buffering alongside boundaries, is not accessible for communal use, maintenance and is compromised by the driveway. Further, no passive surveillance is provided to the area and concerns are raised in relation to the future occupants of Unit G04.
 - m. Pursuant to Part 21 in the K2K RDCP, the proposal does not provide adequate safety to the pedestrians from the configuration of the laneway design, which may result in safety impacts to the neighbouring approved driveway at 4 Bowral Street, future users of the Bowral Street Plaza, and the Kensington Public School drop-off and pick-up times.
 - n. Pursuant to Part 31 in the K2K RDCP, the alternative floor space ratio and building height permitted under Clause 6.17 of the RLEP and planning agreement has not been agreed by Council.
4. Insufficient information – a full and robust assessment of the proposal cannot be completed as there are a number of deficiencies and lack of detail in the information submitted with the development application including:
- a. Pursuant to Part 4D of ADG, it has not been demonstrated on the architectural floor plans that all habitable room depths are within the maximum 8m limit as measured in open plan layouts from a window. It appears that the majority of units do not comply, with the exception of Units G.01, 1.01, 4.05, 6.02, and 6.03.
 - b. The HIS does not address the specific controls for Heritage Conservation in the K2K RDCP, assess the significance of each of the buildings proposed for demolition in accordance with the “Assessing Heritage Significance” Guidelines prepared by the NSW Heritage Office and, the impacts of the proposal on the significance of the listed Kensington Public School, their setting as well as the impact on views to the heritage items from the public domain.
 - c. Pursuant to Part 6 of the K2K RDCP, the Applicant’s letter of offer to amalgamate with the adjacent sites is refuted by the neighbouring properties in that no information was provided regarding purchase price, timing of payments of details of any special conditions attached to any officer. No independent valuations have been provided to Council.
 - d. The dependence of effective landscaping at all levels of the Bowral Street façade is not reflected on the submitted documentation or section details, for example, the soil depths and irrigation measures. This includes the extensive landscaping at Level 4.
 - e. Pursuant to Parts 22 and 23 of the K2K RDCP, a site-wide sustainability strategy that includes provisions relating to water sensitive urban design has not been submitted for assessment.
 - f. Pursuant to Part 22 of the K2K RDCP, an Automated Waste Collection System (AWCS) including FOGO bins have not been provided.
 - g. Pursuant to Part 29 in the K2K RDCP, an Arts Statement has not been submitted for assessment.

Attachment/s:

Nil

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1. Executive summary

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

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

The proposal seeks development consent for the demolition of the existing structures and the construction of a part six, part nine storey residential flat building with shared-way, basement parking and landscaping.

The proposal was notified in accordance with the Randwick Community Participation Plan. The proposal attracted a total of 4 unique submissions raising key concerns with traffic, parking, inconsistencies with the K2K RDCP, privacy, visual impacts, overshadowing, heritage, setbacks, site consolidation, safety and construction impacts.

The bulk, scale and density of the development being out of character with the street and the local area and not complying the ADG, RLEP and RDCP standards. There were also concerns raised with amenity impacts in terms of noise, overshadowing, overlooking, landscaping, solar access, and excavation.

The subject application is currently subject to a Class 1 appeal against the deemed refusal of the application (No. 2022/00140932) with the Land and Environment Court. The application is listed for a section 34 conciliation conference on 02/09/2022.

The key issues associated with the proposal relate to community infrastructure, permissibility within the B2 zone including the zone objectives, non-compliances with the permissible building height, insufficient design excellence, incompatibility with the desired future character, block and lot layout non-compliances in the K2K RDCP, inadequate floor to ceiling heights, lack of an active street frontages, non-compliant laneway/shared way zone, the adverse visual impacts from the enclosed undercroft laneway, pedestrian access and safety, future redevelopment of the neighbouring sites, the western building façade, amenity impacts, inadequate landscaping, waste management, and

heritage impacts. Further, insufficient information pertaining to sustainability, external referral responses, and public art. For the reasons discussed in this report, the proposal is thereby recommended for refusal.

2. Site Description and Locality

- The subject site comprises of 3 lots; 6 Bowral Street (Lots 1 and 2 in DP 130135), 8 Bowral Street (Lot 1 in DP 172438) and 10 Bowral Street (Lot 11 in DP 828574).
- The subject site, being the amalgamation of three (3) lots, has a site frontage of 35.735m, a site depth of 36.575m and 32.305m along the western and eastern side boundaries, and a total site area of 1264m².
- The site is relatively flat with a 0.5m cross fall between the western and eastern side boundaries.
- The site is occupied by three (3) x single-storey detached dwellings (6, 8 and 10 Bowral Street), which are located on the southern side of Bowral Street between Anzac Parade to the west and Doncaster Avenue to the east. The sites at 8 and 10 Bowral Street include a vehicular driveways adjacent to the eastern side boundary and provide off-street parking in the rear setback areas.
- An aerial photograph of the site is provided below in **Figure 1**.



Figure 1 Aerial image of subject site



Figure 2 Subject Site viewed from Bowral Street

Figures 1 & 2: The Site (*Source: Statement of Environmental Effects*)

- The immediate streetscape is characterised by an eclectic mix of development densities and typologies for example four storey residential flat buildings, two storey dual occupancies, detached dwelling houses, shop top housing and a public place of worship known as the Saint George Coptic Orthodox Church.
- The site is within close proximity to Anzac Parade which is highly accessible to public transport including buses and the Kensington Light Rail.
- On 22 September 2017, development consent was granted to the western adjoining sites, 4 Bowral Street and 160-164 Anzac Parade for the demolition of the existing buildings and the construction of a 7 storey shop top housing development comprising three ground floor commercial tenancies and thirty nine residential units above with two levels of basement parking (DA/938/2016). It is noted that the neighbouring development was approved prior to the gazettal of the Kensington to Kingsford Randwick Development Control Plan (K2K RDCP) provisions on 20 November 2020.
- Development to the east of the site at 12 and 14 Bowral Street, is comprised of detached single storey residential dwellings and 16 Bowral Street is a public place of worship known as the Mount Zion Church. Further to the east, on the corner of Bowral Street and Doncaster Avenue is Kensington Public School.

3. Relevant history

Nil.

4. Proposal

The proposal seeks development consent for the demolition of the existing structures and the construction of a part six, part nine storey residential flat building with shared-way, basement parking and landscaping. Specifically, the proposal includes the following:

- Demolition of the existing buildings and associated structures.

- Construction of a part six (6) and nine (9) storey residential flat building comprising 44 units of 8 x studio, 7 x 1-bedroom units, 15 x 2-bedroom units and 14 x 3-bedroom units, including nine (9) adaptable units.
- Two (2) basement levels providing car parking for a total of 42 car parking spaces, including 33 resident, 9 visitor, 5 accessible, 4 motorcycle spaces, 44 bicycle spaces (plus 5 at-grade spaces) and 1 loading bay.
- The roof top level above Level 9 contains the lift overrun, building services and green roof and is only accessible for maintenance and not by residents or visitors. The roof top level above Level 5 contains a communal open space, swimming pool, BBQ area and platform roof with landscaping around the perimeter.

The development data for the proposal includes:

- Overall height of 28.55m to the lift overrun where the 31m alternative height standard applies; 28.73m to the lift overrun and 27.5m to the parapet edge of the uppermost floor where the 19m building height standard applies.
- Part six (6) and nine (9) storeys above two (2) basement levels.
- FSR of 3.38:1 with a gross floor area of 1,505.7m² at 6 Bowral Street.



Figure 3 – Photomontage of the proposal

5. Notification

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

1. 14/122 Todman Avenue, Kensington
2. 160-166 Anzac Parade & 4 Bowral Street, Kensington
3. 12, 14 & 16 Bowral Street, Kensington

4. 77-79E Doncaster Avenue, Kensington (Kensington Public School)

Issue	Comment
<ul style="list-style-type: none"> Inconsistencies with the K2K RDCP relating to the varied built form outcome, desired outcome of the Block, continuous street wall, shared laneway vehicle access rights and discontinuing the pedestrian link resulting in adverse amenity impacts. Inadequate separation. Overlooking and privacy. Adverse acoustic impacts. Outlook and visual impact. Solar access and overshadowing. Impacts to the heritage significance of the Kensington Public School. Comparative solar analysis required for a RDCP compliant scheme required. Natural cross ventilation. Inadequate setbacks. The applicant must negotiate the ROW to ensure vehicle access from Bowral Street to the neighbouring property and conditioned in the consent. The Applicants purchase offer to the neighbouring properties did not contain information about the purchase price, timing of payments and details of any special conditions attached to any offer. Pedestrian and vehicular access and safety from work zones and the School's drop-off and pick-up spaces. 	<p>These reasons are concurred with and form reasons for refusal.</p>
<ul style="list-style-type: none"> Traffic and parking. 	<p>Council's Engineer has confirmed the proposed traffic and parking arrangements are satisfactory.</p>
<ul style="list-style-type: none"> Highest impact construction noise and vibration should be undertaken outside of school hour, where possible. If not, a condition requiring periods of reprieve during noisy activities 	<p>Subject to standard conditions of consent, the proposed construction hours are considered satisfactory if consent was to be granted.</p>

6. Relevant Environment Planning Instruments

6.1. SEPP 65 – Design Quality Residential Flat Buildings

The proposed development is for a new RFB that comprises 44 dwellings and is 6-9 storeys, therefore SEPP 65 applies.

Clause 28 (2) of SEPP 65 states:

(2) In determining a development application for consent to carry out development to which this Policy applies, a consent authority is to take into consideration (in addition to any other matters that are required to be, or may be, taken into consideration):

- (a) the advice (if any) obtained from the design review panel, and*
- (b) the design quality of the development when evaluated in accordance with the design quality principles, and*
- (c) the Apartment Design Guide.*

Assessing Officer's Comment: The development was referred to Council's Design Excellence Panel ("DEAP") and the DEAP advice has been considered (refer to Appendix 1).

An assessment has also been carried out against the design criteria of the Apartment Design Guide ("ADG") (refer to Appendix 4). In summary, the development does not demonstrate compliance with the objectives of the ADG in relation to privacy, communal open space, overshadowing and solar access. These form reasons for refusal.

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

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

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

Assessing officer's comment: According to Council's Development Engineer, the proposal provides the required number of parking spaces (refer to Appendix 1).

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

Assessing officer's comment: All of the apartments have internal areas that comply with the ADG (refer to Appendix 4).

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

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

Assessing officer's comment: All units will be provided with 2.9m floor to ceiling heights which complies with the BCA, however, refer to the Key Issues section and RDCP table for the reasons of refusal pertaining to this issue.

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

Assessing officer's comment: Based on comments provided by Council's DEAP, adequate regard has been given to the SEPP 65 design quality principles and the ADG design criteria (refer to Appendix 1), and the Applicant has submitted a Design Verification Statement prepared by a qualified architect.

- (3) To remove doubt:*

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

Apartment Design Guide (ADG)

An assessment has been carried out in accordance with Part 3: Siting the Development and Part 4: Designing the Building of the Apartment Design Guide against the design criteria requirements. Any non-compliance to the design criteria includes a merit-based assessment as per the design guidance of the Apartment Design Guide.

Clause	Requirement	Proposal	Compliance
Part 3: Siting the Development			
3A -1	Site Analysis		
	Each element in the Site Analysis Checklist should be addressed.	Site analysis satisfactory and addresses elements in the checklist.	Yes
3B-1	Orientation		
	Buildings along the street frontage define the street, by facing it and incorporating direct access from the street (see figure 3B.1).	Four ground floor level apartments have direct access from the street due and include landscaping within the front setback.	Yes
	Where the street frontage is to the north or south, overshadowing to the south should be minimised and buildings behind the street frontage should be oriented to the east and west.	The excessive number of storeys and height breach results in increased overshadowing to the neighbouring properties. As such, the proposal does not uphold the objective in that overshadowing is minimised.	No
3B-2	Orientation		
	Living areas, private open space and communal open space should receive solar access in accordance with sections 3D Communal and public open space (50% direct sunlight to the principal part of the communal open space for 2 hours) and 4A Solar and daylight access.	The communal open space at the roof top receives at least 3 hours of direct sunlight.	No
	Solar access to living rooms, balconies and private open spaces of neighbours should be considered.	As discussed above, the proposed height non-compliance results in increased overshadowing to the neighbouring properties which is considered to be unsatisfactory. Whilst it may be considered that the K2K RDCP controls do not specify numerical requirements, overshadowing in accordance with the block diagrams and controls is envisaged. The shadow diagrams that demonstrate the additional overshadowing outside the height control results in adverse amenity impacts to the neighbouring properties.	
	Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%.		
	If the proposal will significantly reduce the solar access of neighbours, building separation should be increased beyond minimums contained in section 3F Visual privacy.		

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Clause	Requirement	Proposal	Compliance
	Overshadowing should be minimised to the south or downhill by increased upper-level setbacks.		
	A minimum of 4 hours of solar access should be retained to solar collectors on neighbouring buildings.		
3D-1	Communal and Public Open Space		
	Communal open space has a minimum area equal to 25% of the site (see figure 3D.3)	Minimum required for the site = 316m ² A communal area of 300m ² (23.7%) is provided on the roof top. No details of change facilities or shade provision has been provided. Refer to Key Issues section regarding location of communal open space being limited to the roof top area. This exacerbates the height non-compliance and unsuitable amenity for the future residents.	No
	Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).	The communal open space is located at the roof top and receives at least 3 hours of direct sunlight between 9am and 12pm.	Yes
3E-1	Deep Soil Zones		
	Deep soil zones are to meet the following requirements: Site Area: 650m ² – 1500m ² = 7% (88.5m ²) Minimum dimensions of deep soil = 3m	The proposed deep soil zone is 6.1%. The south-eastern rear corner has a dimension of 8.2m x 9.4m. The proposal is a residential use and therefore should be expected to meet the minimum requirement.	No
3F-1	Visual Privacy		
	Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows: Up to 25m (5-8 storeys) – Habitable rooms and balconies = 9m, non-habitable rooms = 4.5m Over 25m (9+ storeys) - Habitable rooms and balconies = 12m, non-habitable rooms = 6m	Concerns are raised in relation to the amenity, visual and acoustic privacy, and/or odor from the driveway. This pertains to the units that rely on operable windows to the shared way as well as the communal open space.	No
3J-1	Bicycle and Car Parking		
	The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating	The proposal complies with the relevant requirements for car parking and bicycle parking.	Yes

Clause	Requirement	Proposal	Compliance
	Developments, or the car parking requirement prescribed by the relevant council, whichever is less. The car parking needs for a development must be provided off street.		
Part 4: Designing the Building			
4A	Solar and Daylight Access		
	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas	98% of units (43/44) achieve in excess of 2 hours solar access to part of their living area and POS.	Yes
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.	1 unit (2%) does not receive solar access.	Yes
4B	Natural Ventilation		
	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed	64% of all units (28/44) are naturally cross-ventilated.	Yes
4C	Ceiling Heights		
	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: Habitable Rooms – 2.7m Non-habitable – 2.4m	2.9m floor to ceiling heights for habitable rooms is reflected on the sections provided, however, insufficient information has been provided to demonstrate that the 2.7m height can be achieved in only 3.075m floor to floor heights. This is based on current fire and services requirements, and interfaces from balconies to internal living areas.	No
4D	Apartment Size and Layout		
	Apartments are required to have the following minimum internal areas: Studio - 35m ² 1 bedroom - 50m ² 2 bedroom - 70m ² 3 bedroom - 90m ² The minimum internal areas include only one bathroom. Additional bathrooms increase	All units comply with the minimum internal areas.	Yes

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Clause	Requirement	Proposal	Compliance
	the minimum internal area by 5m ² each		
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of the room. Daylight and air may not be borrowed from other rooms	All habitable rooms comprise of a window opening for the purposes of light and will not have an area less than 10% of the floor area of the room.	Yes
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height	All habitable room depths are within the maximum limit.	Yes
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	The SEE states that all habitable room depths are within the maximum limit, however, this information has not been annotated on the architectural plans. It appears that the majority of units do not comply, with the exception of Units G.01, 1.01, 4.05, 6.02, and 6.03.	No
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space)	Bedrooms will achieve minimum area requirements.	Yes
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space)	All bedrooms have a minimum dimension of 3m.	Yes
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> • 3.6m for studio and 1-bedroom apartments • 4m for 2- and 3-bedroom apartments 	The dimensions are greater than the minimum width requirement.	Yes
4E	Apartment Size and Layout		
	All apartments are required to have primary balconies as follows: Studio apartments 4m ² 1-bedroom apartments 8m ² 2m dim. 2-bedroom apartments 10m ² 2m dim. 3-bedroom apartments 12m ² 2.4m dim. The minimum balcony depth to be counted as contributing to the balcony area is 1m	All the private open space areas are adequate and are above the minimum requirement.	Yes
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m	The ground floor units have private open space that is 13m ² -19m ² with minimum 3m dimensions. Given these are for studio units, this is considered satisfactory.	Satisfactory
4F	Common Circulation and Spaces		

Clause	Requirement	Proposal	Compliance
	The maximum number of apartments off a circulation core on a single level is eight	The maximum number of apartments of a single lift core is 4.	Yes
4G	Storage		
	<p>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:</p> <p>Studio apartments 4m³ 1 bedroom apartments 6m³ 2 bedroom apartments 8m³ 3+ bedroom apartments 10m³ At least 50% of the required storage is to be located within the apartment</p>	All units comply with the minimum storage requirements.	Yes

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6.2. SEPP (Resilience and Hazards) 2021

The application was lodged under the now repealed, SEPP 55 – Remediation of Land. Notwithstanding any savings provisions, consideration of the application under the new Resilience and Hazards SEPP is provided below as there are no material policy changes and the new SEPP was made as part of a SEPP consolidation initiative. The Resilience and Hazards SEPP consolidated 3 SEPPs being the Coastal Management SEPP, SEPP 33, and SEPP 55.

In light of the above, Clause 4.6 of the Resilience and Hazards SEPP requires that the consent authority must consider prior to granting consent whether the land is contaminated (previously Clause 7 in SEPP 55). The site is unlikely to be contaminated given the use of the site has been residential. Accordingly, it is considered that the site is unlikely to be contaminated and is therefore generally consistent with the Resilience and Hazards SEPP.

6.3. SEPP (Building Sustainability Index: BASIX) 2004

A satisfactory BASIX Certificate has been submitted in accordance with the requirements of the BASIX SEPP.

6.4. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned B2 under Randwick Local Environmental Plan 2012

The development cannot be approved as the proposed form of development is not permissible within the B2 zone. There is no building which existed on that land when the RLEP commenced and was designed or constructed for the purpose of a residential flat building, contrary to Clause 6.14 (3)(a) of the RLEP. This forms a reason for refusal.

The objectives of the B2 are as follows:

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

The proposed development is not considered compatible with the desired future character envisaged by the applicable planning controls for the following reasons:

1. The proposed development results in non-compliance with the height of buildings development standard established in Clause 6.17(4)(a) of the RLEP.
2. The proposed massing strategy presents substantial variations to the building envelope controls specific to the site established in the K2K RDCP.
3. The enclosed laneway/shared zone presentation to the streetscape, western and southern elevations result in a built form that contrasts with the envelope proportions envisaged by the K2K RDCP.
4. The built form does not adequately consider the existing development pattern, having regard to the non-compliance with the storey controls and the lack of built form transition to the east and west, nor does it complement the desired future built form outcomes or neighbourhood character.
5. The lack of adequate built form transition to the western interface contributes to the overbearing bulk and scale contrast to the east, which is inconsistent with the objectives of Zone B2 Local Centre.
6. The absence of retail activation of the commercial core jeopardises the future Bowral Street Plaza which is contrary to providing a range of uses that serve the needs of people and employment opportunities.
7. The enclosure of the laneway/shared zone will limit patronage and useability for pedestrians and cyclists due to safety and poor amenity. This results in a poor standard of urban design that does not foster the K2K RDCP aims of creating a sense of place for the local community at the future Bowral Street Plaza.

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)	4:1 (6 Bowral Street) (No FSR specified for 8-10 Bowral Street)	3.38:1 (1,505.7m ²)	Yes
CI 4.3: Building height (max)	31m (6 Bowral Street) 19m (8-10 Bowral Street)	28.55m (top of lift) 28.73m	Yes No

6.4.1. Clause 4.6 - Exceptions to development standards

The non-compliances with the building height development standard is discussed in section 7 below.

6.4.2. Clause 5.10 - Heritage conservation

Council's Heritage Officer has confirmed insufficient information has been provided to enable an against the relevant provisions in Clause 5.10 of the RLEP and the K2K RDCP. As such, the proposal is recommended for refusal. See comments below.

- (a) *"The proposed development is not consistent with the objectives of Clause 5.10 of the RLEP, specifically:*
 - (a) *to conserve the environmental heritage of Randwick,*
 - (b) *to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings, and views,*
- (b) *The proposed development is not consistent with the objectives and specific controls for Heritage Conservation within the K2K RDCP, specifically:*

Objectives

- *To conserve and enhance the character and heritage significance of heritage items*

- To ensure infill development is designed to respond sympathetically to the historic built form, character and detailing of nearby heritage items and contributory buildings
- To ensure that the heritage significance of heritage items and/or conservation areas located in the vicinity of the town centres is considered in the assessment of development applications

Controls

Part A, Section 2 - Urban Design and Place-Making Guiding Principles of the Kensington to Kingsford DCP, development within the Kensington and Kingsford town centres must protect the heritage significance of heritage items, contributory buildings and/or heritage conservation areas located within the town centres and adjoining areas.

Part A, Section 3 - Desired Future Character Kensington and Kingsford Town Centres recommends that it evolve into a vibrant and dynamic town centre situated along Anzac Parade, Sydney's finest grand green boulevard. The integrity of existing heritage and contributory buildings located within and adjoining the town centres will be respected and integrated with high-quality and sympathetic contemporary architecture that enhances the character and layering of the urban experience.

Part A, Section 6 – Built Form aims for controls that focus on achieving an appropriate scale for new development so that buildings reinforce a coherent, harmonious and appealing urban environment, and contribute to the enhancement of the public realm. Objectives: To ensure development responds to the existing siting, scale, form and character of heritage items, contributory buildings and adjoining properties.

Part A, Section 9 – Heritage Conservation contain controls for:

All Development

- All development involving heritage items are to be in accordance with requirements for heritage set out in Part B2 of the DCP*
- All development involving heritage items and contributory buildings are required to:*
 - Adhere to the principles of the Burra Charter*
 - Include the submission of a Heritage Impact Statement (or Heritage Impact Assessment) which considers the heritage significance of the item or contributory building, the impact of the proposal on the heritage significance of the building or heritage items within the vicinity, the rationale for the proposed development, and the compatibility of the development with the objectives and controls, and/or recommended management within relevant conservation management plans, planning instruments or heritage inventories*
- Development located within the vicinity of another local government area requires the preparation of a Heritage Impact Statement to address the potential impact on adjoining or nearby heritage items or heritage conservation areas in the adjoining local government area.*

New development adjacent to heritage items and contributory buildings:

- Development adjacent to heritage items and contributory buildings (infill development) should:*
 - Be designed to respect the historic scale, proportions and articulation of adjacent contributory built forms, including heights, solid to void ratios and alignments of street awnings*
 - Incorporate podiums and framed overlays that reference the principle influence line of historic streetscapes, and are cohesive with the established street frontage*
 - Be designed to incorporate setbacks which retain the profile and massing of exposed side elevations to retained contributory built forms*
 - Ensure new street elevations maintain the vertical articulation and segmented character of historic building groups which provide variety to the streetscape and sense of human scale, and avoid unrelated horizontally emphasised articulation*

- v. *Provide contemporary new signage that compliments the character of the contributory buildings and*
 - vi. *Ensure that new finishes to side elevations should not detract from street front detailing and finishes.*
- (c) The Heritage Impact Statement submitted with the development application does not address the specific Controls for Heritage Conservation within the K2K RDCP.
 - (d) The Heritage Impact Statement submitted with the development application does not adequately and thoroughly assess the significance of each of the buildings proposed for demolition in accordance with, among other things, the "Assessing Heritage Significance" Guidelines prepared by the NSW Heritage Office.
 - (e) The Heritage Impact Statement does not adequately address the impacts of the proposal on the significance of the identified nearby listed Kensington Public School Buildings, their setting, as well as its impact on views to the heritage items from the public domain.
 - (f) The proposed height, bulk and scale of the development does not relate to the adjacent nearby heritage item at No. 77-79E Doncaster Avenue - Kensington Public School buildings (item no. I126) in that:
 - The proposed built form substantially exceeds the maximum permissible building height under the Building Envelope Controls for the site contained within the K2K DCP and the RLEP with a propose 6 storey and trafficable roof-top element in the eastern section of the building whereas the DCP contemplates a maximum 5 storey component where the maximum 19m building height control applies. The excessive height, size and visibility of the proposed development will detrimentally impact the significance of the identified nearby listed Kensington Public School Buildings, their setting, as well as views to the heritage items from the public domain.
 - The proposed built form has an excessive height, bulk and scale as it proposes a 9 storey component that extends beyond the designated part of the site envisaged by the RDCP controls which will detrimentally impact upon the heritage value and setting of the heritage item at 77-79E Doncaster Avenue - Kensington Public School by failing to provide sufficient transition to the Kensington Public School in the surrounding and intervening residential area to the east contrary to the desired future character of the area."

6.4.3. *Clause 6.3 - Earthworks*

The RLEP states that *before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:*

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

The proposed development shows excavation for the basement adjoining the sites boundaries. The applicant submitted a Geotechnical report indicating that works can be performed whilst supporting the adjoining land. Council's Engineer raises no objections to the proposed on geotechnical, hydrogeological or structural grounds. Should consent be granted a condition is included requiring

a report from a suitably qualified and experienced professional engineer which contains Geotechnical details that confirm the suitability and stability of the site for the development and relevant design and construction requirements to be implemented to ensure the stability and adequacy of the development and adjacent land to the satisfaction of the Certifier.

6.4.4 Clause 6.11 Design Excellence

Clause 6.11 of the RLEP applies to the proposed development as it is proposed to be greater than 15 metres in height. The proposed development is accordingly required to exhibit design excellence. Clause 6.11(3) and (4) relevantly provide as follows:

“(3) Development consent must not be granted to development to which this Clause applies unless the consent authority is satisfied that the proposed development exhibits design excellence.

(4) In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters—

- (a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,*
- (b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,*
- (c) how the proposed development responds to the environmental and built characteristics of the site and whether it achieves an acceptable relationship with other buildings on the same site and on neighbouring sites,*
- (d) whether the building meets sustainable design principles in terms of sunlight, natural ventilation, wind, reflectivity, visual and acoustic privacy, safety and security and resource, energy and water efficiency.”*

The K2K DCP provides a range of objectives and three-dimensional block controls for development in the Kensington Centre. Section 4 sets out objectives relating to “Design Excellence”. Objective for Design Excellence include, amongst others, the following key outcomes:

- *To achieve outstanding architectural, urban and landscape design within the Kensington and Kingsford town centres.*
- *To deliver high quality landmark buildings that contribute positively to their surroundings and help to create a sense of place and identity.*

The proposed development does not exhibit design excellence (4) having regard to the reasons summarised in this report as the form, detailed design and external appearance does not improve the quality and amenity of the public domain nor does it achieve an acceptable relationship with other buildings on neighbouring sites.

The proposal is therefore unacceptable with regards to Clause 6.11 and this forms a reason for refusal.

6.4.5 Clause 6.17 Community Infrastructure Height of Buildings and Floor Space Ratio

Clause 6.17 ‘Community Infrastructure height of buildings and floor space at Kensington and Kingsford town centres’ relevantly provides as follows:

- (2) Despite clauses 4.3 and 4.4, the consent authority may consent to development on a site that results in additional building height or additional floor space, or both, in accordance with subclause (4) if the development includes community infrastructure on the site.*
- (4) Under subclause (2), a building on land in any of the areas identified on—*
 - (a) the Alternative Building Heights Map—is eligible for an amount of additional building height determined by the consent authority but no more than that which may be achieved by applying the maximum height specified in relation to that area, and*

- (b) *the Alternative Floor Space Ratio Map—is eligible for an amount of additional floor space determined by the consent authority but no more than that which may be achieved by applying the maximum floor space ratio specified in relation to that area.”*

Pursuant to the Height of Buildings Map referred to in Clause 4.3(2) of RLEP, the maximum height for a building on the site is 21 metres for 6 Bowral Street and 19 metres for 8 and 10 Bowral Street. No maximum floor space ratio (FSR) is shown on the Floor Space Ratio Map as applying to the subject site pursuant to the RLEP.

The site at 6 Bowral Street is identified on the Alternate Height of Buildings Map referred to in Clause 6.17(4)(a) as having an alternate maximum building height of 31 metres, and on the Alternate Floor Space Ratio Map referred to in Clause 6.17(4)(b) of the RLEP as having an alternate FSR of 4:1. No alternative building height or floor space ratio is applicable to 8 and 10 Bowral Street.

Clause 6.17(2) of the RLEP prescribes that a consent authority may consent to development that results in an additional building height or floor space ratio, or both, in accordance with subclause (4) “if the development includes community infrastructure **on the site**” (emphasis in bold added). Kensington and Kingsford Town Centres Community Infrastructure Contributions Plan provides the relevant requirements in relation to community infrastructure.

The letter of offer received from the Applicant dated 3 April 2022 proposes to enter into a VPA with the Respondent, for the payment of a monetary contribution in satisfaction of Clause 6.17 of the RLEP rather than incorporating the relevant works as part of the site as per the schedule of community infrastructure under Kensington and Kingsford Town Centres Community Infrastructure Contributions Plan.

In circumstances where payment of a monetary contribution does not satisfy the requirements of Clause 6.17(2) of the RLEP for the proposed development to include community infrastructure on the site, the consent authority does not have the power to grant consent to the development on the basis of the additional building height or floor space ratio in Clause 6.17(4) of the RLEP.

Council, as the consent authority, is not satisfied of the following:

- (i) *The Applicant’s written request under Clause 4.6 of RLEP 2012 has adequately addressed the following matters required to be demonstrated:*
 - (1) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (2) *that there are sufficient environmental planning grounds to justify the contravention of the development standard in Clause 4.3 of RLEP 2012.*
- (ii) *The proposed development will be in the public interest because it is consistent with the objectives of Clause 4.3 of RLEP 2012 and the objectives for development in Zone B2 Local Centre.*

It is therefore considered that the proposal is unacceptable with regards to Clause 6.17(2) and this forms a reason for refusal.

6.4.6 Clause 6.20 Active Street Frontages

Clause 6.20 ‘Active Street Frontages at Kensington and Kingsford Town Centres’ of the RLEP applies to the corner of the allotment at 6 Bowral Street as shown in Figure 4 below.

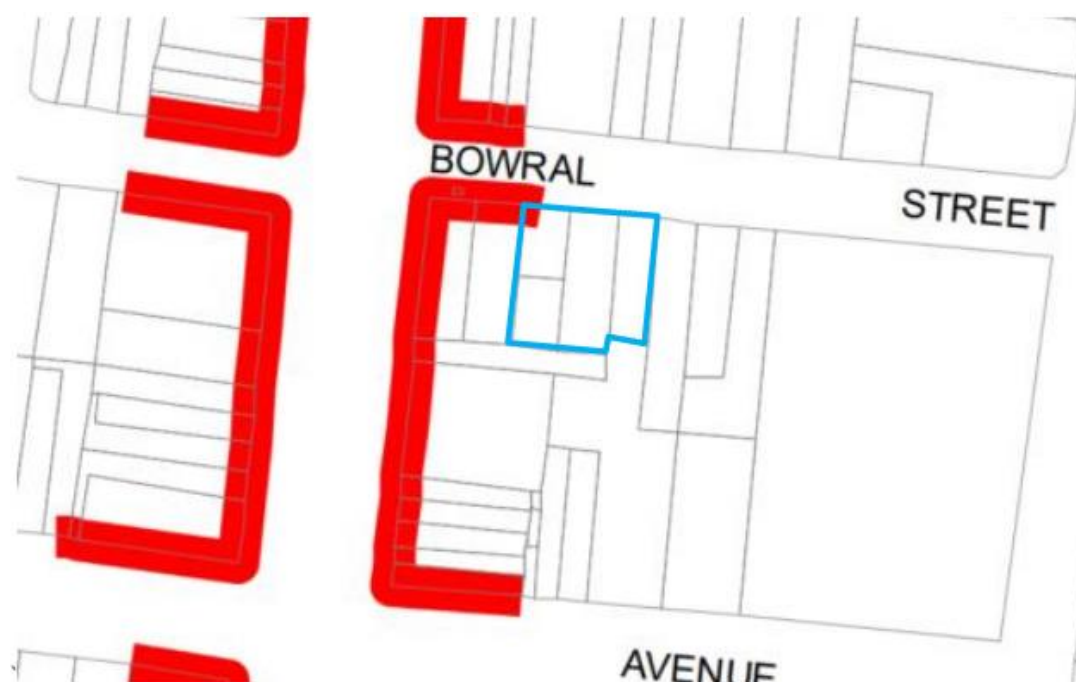


Figure 4 – Active Street Frontages Map (RLEP)

Clause 6.20(3) and (4) relevantly provide as follows:

“(3) Development consent must not be granted to the erection of a building on land to which this Clause applies unless the consent authority is satisfied that all premises on the ground floor of the building facing the street are to be used for the purposes of commercial premises after the erection of the building.

“(4) Development consent must not be granted to a change of use of premises on the ground floor of a building on land to which this Clause applies unless the new use is for the purposes of commercial premises.”

The residential flat building use does not contribute to retail activation of the Kensington Town Centre and the future Bowral Street Plaza. Refer to the assessment provided below under Clause 4.6.

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.3: Building height (max)	19m (8-10 Bowral Street)	28.73m	9.73m	51.2%

The proposed development has a maximum height of 28.55m to the top of the lift overrun where the 31m alternative building height applies and is compliant, however where the 19m building height applies, the proposal attains a maximum height of 28.73. This exceeds the maximum building height permitted by 9.73m or 51.2%.

The proposal also includes an 8.5m non-compliance to the parapet edge of the uppermost level (height of 27.5m), a 2.2m non-compliance to the swimming pool balustrade (height of 21.2m) and a 1m non-compliance to swimming pool floor (height of 20m). Refer to Figure 5 below.



Figure 5 – Height Blanket Diagrams

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

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

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

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

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

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

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

The grounds relied on by the applicant in their written request must be "environmental planning grounds" by their nature. Chief Justice Preston at [23] notes the adjectival phrase

“environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s1.3 of the EPA Act.

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

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

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

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

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

4. *The concurrence of the Secretary has been obtained.*
Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [28] notes that the other precondition in cl 4.6(4) that must be satisfied before consent can be granted is whether the concurrence of the Secretary has been obtained (cl 4.6(4)(b)). In accordance with Clause 4.6 (5), in deciding whether to grant concurrence, the Secretary must consider:
 - (a) whether contravention of the development standard raises any matter of significance for state or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard

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

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

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

The applicant’s written justification for the departure from the building height standard is contained in Appendix 2.

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

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

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

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

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

It is noted that objective (a) refers to being "compatible" with adjoining development. It is considered that "compatible" does not promote "sameness" in built form but rather requires that development fits comfortably with its urban context. Of relevance to this assessment are the comments of Roseth SC in *Project Venture Developments Pty Ltd v Pittwater Council* [2005] NSWLEC 191:

"22 There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve."

Council does not have any specific desired future character objectives under RLEP 2012 but reiterate that the desired future character is set by the applicable planning controls. However, the use of a DCP to determine desired future character of an LEP was overturned by Preston CJ in *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115. That is, the desired future character of the locality is not defined under RLEP 2012 and is subjective.

Therefore, the desired future character of the neighbourhood must be set by the existing, recently approved and proposed buildings within the neighbourhood. The subject site is zoned B2 Local Centre within a locality which is anticipated to undergo a significant increase in density. That is, the existing size and scale of development in the immediate locality is not definitive. Directly to the east and west, the neighbouring properties are underdeveloped and do not represent the desired future character of the locality as anticipated by the relevant development standards and controls. Similarly and to the south, these buildings are also underdeveloped relative to the standards. Importantly, although the church structure to the north of the subject site and education facility further to the east are considered part of the local character, they do not represent the anticipated increase of density as envisaged. Regardless, these building have been considered as part of the character of the locality given the architectural variety they provide to the streetscape.

As detailed, the immediate locality is zoned B2 Local Centre and reflects Council's objective of increasing population density within close proximity to the Kingsford and Kensington hubs. The proposal is best described as a residential flat building development which is permissible in the zone and is consistent with the numerous properties along the eastern side of Bowral Street. Importantly and when considering nearby approvals, the properties to the west are permitted the construction of an eight storey mixed use development (under DA/938/2016) at Nos. 4 Bowral Street and 160 Anzac Parade. However, it is noted that this was approved prior to the gazettal of the recent LEP and DCP amendments and is therefore permitted a greater building height. Further to the south-west, is Nos. 172-180 Anzac Parade and 116R Todman Avenue which also contains an approval for the construction of an 18 storey mixed use development under DA/414/2020 per the current planning controls. As evident by these recent approvals, the character within the locality is undergoing transformation, better reflecting Council's desired character and density.

In accordance with the above, the proposed height encroachment does not result in a building which is incompatible with the emerging character of the immediate locality and is representative of the anticipated typology of the surrounding developments. The proposal will provide a high quality built form and a coherent streetscape appearance with building elements that reflect the emerging contemporary character of the locality. As identified, the height breach is consistent with the objectives and principles of the LEP and DCP and is provided as a contemporary form which is generally

simplistic so that the variation will not be jarring to the casual observer. The design has integrated various elements to reduce visual bulk and scale at the point of greatest variation, including framed elements, parapet edges, balcony articulation and glazing within a recessed floorplate as to ensure the proposal is visually compatible with the locality. The built form, which is consistent with the intent of Blocks 28B and 28C per the Kensington and Kingsford DCP, is considered to respond to the existing and desired future character of the locality.

Furthermore, it is also noted that the proposal provides a building envelope which is reflective of the objectives of the RDCP and character of the locality, in that the development will provide a stepped built form with shared laneway appropriately addressing the streetscape and rear of the site. This ensures that despite non-compliance, the proposal is consistent with the desired building pattern in the locality. The burden on insisting on strict compliance would result in the removal of high quality, residential apartments which would be an unreasonable and unnecessary outcome given the scale of the proposal is compatible with the character of the locality. Additionally, the proposal does not result in any adverse impacts to the amenity of the neighbouring properties as is discussed in objective (c).

The proposal is therefore consistent with objective (a), despite the height breach.

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

The subject site is not located within a heritage conservation area and is not adjacent to a heritage or contributory item. However, the site is within proximity to a number of heritage items including *Crewell Victorian Terrace House* (I124) at No. 58 Doncaster Avenue, *Detached Cottage Group* (I125) at Nos. 69-82 Doncaster Avenue, *Kensington Public School Buildings* (I126) at Nos. 77-79E Doncaster Avenue and *Victorian Mansion* (I127) at Nos. 86-92 Doncaster Avenue.

When considering the nearby heritage items, the *Kensington Public School Buildings* bears the greatest relationship to the subject site. However and when considering the proposed non-compliance, this heritage item is separated by three properties (being Nos. 12 to 16 Bowral Street) which are permitted a maximum height of 19m (upon redevelopment), in addition to the compliant portion of the proposed development. Given the physical and visual separation between the heritage item and non-compliant elements, the built form will not be visually obtrusive or jarring given it is designed within a recessive and simplified built form. As discussed, the width of the variation is limited to 7.5m and maintains the anticipated step in the built form as desired by both the LEP and DCP. Accordingly, as the proposal will continue to deliver a built form which is anticipated on the subject site (albeit in slightly modified location), the extent of non-compliance will have no adverse impact to the heritage character of this item.

It follows that the contemporary built form, which integrates framed elements, balcony articulation, fenestration and high quality materials, will not have any adverse impact to this item which is bolstered by virtue of separation. Importantly, the part of the building which bears the greatest potential impact to the nearby heritage item is the podium level. As detailed in this Statement, this element complies with the built form as desired by the DCP and includes sympathetic curved balcony features, considerable landscaping and fenestration to limit the potential impact. Importantly, it is noted that the remaining heritage items (as listed), are located on the eastern side of Doncaster Avenue which obscures direct lines of sight and is therefore acceptable in this regard.

For the reasons discussed above, the extent of the height breach is compatible with the scale of desired built form and it follows that the extent of the height breach will be compatible with the character of the heritage listed items. The proposal is therefore consistent with objective (b), despite the minor height breach.

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

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

In terms of visual bulk, the scale of the proposed development has largely been addressed in objective (a). For the reasons discussed in objective (a), including setbacks, design and materiality, the proposed development represents a scale which is compatible with the existing and desired future character of the locality. Furthermore, when viewed from

the public domain and neighbouring properties, the proposed building design and siting of the non-compliance provides visual and physical separation mitigating any potential sense of enclosure or visual impact. The contemporary design, including modulation, balcony articulation and fenestration, in conjunction with the modern materials and neutral colour scheme, ensures that the proposal not visually jarring from the streetscape.

In terms of privacy, the height breach does not result in any adverse additional privacy impacts. The areas of the height breaches are concentrated to Bowral Street and are setback considerably from the rear boundary. When considering the openings to the south, these are generally compliant with the ADG separation requirements which therefore mitigates potential overlooking. On the upper most level, where a variation to the separation requirements is sought, the openings only pertain to lower trafficked bedrooms and secondary balcony spaces which limits any adverse overlooking.

To the west, the proposal is provided with a blank façade and nil setback, whilst to the east, the proposal is setback considerably from the neighbouring properties and is predominantly provided as a blank façade. The proposed design measures (per the above) limit any impact as far as practicable (where the breach is proposed to the residential apartment). When considering the swimming pool, the setbacks of this element also limits overlooking to the neighbouring property and is acceptable in this regard. As such, the parts of the building which do not comply with the height development standard do not result in any further privacy impact beyond a compliant built form given the above-mentioned design measures.

With regards to overshadowing, the proposed height breach will not result in any adverse overshadowing as opposed to an entirely compliant built form. The shadow diagrams submitted with the architectural plans confirm that the proposal will not result in any significant additional overshadowing to the surrounding properties beyond what is permitted by the increase of density envisaged by the RLEP and RDCP. That is, despite the site orientation and anticipated density, the proposal will retain appropriate solar access to the neighbouring properties during mid-winter. As such, the additional overshadowing impact as a result of the height breach when compared to a compliant development are insignificant.

In terms of view loss, the proposed variation will not result in any significant loss of views or outlook compared to a building with a compliant height. Importantly, there are no significant views currently enjoyed across the subject site from the public domain or neighbouring properties and the applicable planning controls effectively anticipate a continuous 31m and 19m high built form along Bowral Street. As the existing buildings are under-developed relative to the height control, the expectation to retain views through the permissible building envelope is considered unreasonable. It follows that there is a reasonable expectation that the views would be lost with any redevelopment of the site and therefore loss of views must be considered against the back drop of the permissible planning controls. Accordingly, any potential loss of views created by the non-compliance is considered to be reasonable within the Local Centre zone.

Therefore objective (c) is achieved.

Assessing officer's comment: The justification provided by the applicant above is not concurred with and the following comments are made:

- The proposed built form substantially exceeds the maximum permissible building height under the RLEP. By extending the 9-storey component further east (against what is sought by the RLEP and K2K RDCP block diagram) the proposal fails to respond to the desired future character and does not provide sufficient transition to Kensington Public School and residential areas further east.
- The increased 9 storey component creates additional visual bulk to Bowral Street and fails to complement the overall desired streetscape profile by extending the built form emphasis and scale from the corner of Anzac Parade along the Bowral Street frontage.
- The taller 9 storey form occupies a greater part of the site frontage width than as envisaged by the controls. The proposal exceeds the intended 5 storeys maximum in the K2K RDCP intended for the eastern part of the site as RDCP contemplates maximum 5 storeys in areas where a maximum 19m building height control applies (6.1). The proposal is 6 storeys.

- The increased number of storeys, in combination with the increased extent of the 31m building footprint, creates increased bulk and scale presentation to the public realm and neighbouring sites, poor streetscape proportions and undermines the desired sense of transition to the eastern part of Bowral Street.
- The excessive number of storeys also causes a height breach for the communal rooftop areas, increased overshadowing and inadequate floor to ceiling heights on the building's lower floors relative to Section 12 in the RDCP.
- Part 12.1 of the RDCP which requires minimum floor to ceiling heights of 3.5m to the ground level and 3.3m to the first floor. The proposal only provides 3.075m floor to floor for both the ground and first floor and only provides 3.075m to all other residential floors. SEPP 65 and the ADG indicate a minimum floor to floor height of 3.1m to achieve a 2.7m floor to ceiling height for residential levels. Insufficient information has been provided such as sectional diagrams to prove that the 2.7m floor to ceiling heights can be achieved in only 3.075m floor to floor heights given current fire and services requirements and managing floor level interfaces from balconies to internal living areas.
- The distribution of the massing and the extension of the taller height beyond that contemplated in the controls does not consider the wider streetscape outcomes nor does it have regard for current or future approvals on neighbouring sites as discussed in the Key Issues section.
- The desired future character of the local area is established by current planning controls. The proposed development is not considered compatible with the desired future character envisaged by the K2K building envelope and block controls. The built form outcomes do not have regard for the desired built form relationships established for the Todman Square Precinct and will detract from the emerging character of the key node. The proposed massing strategy and the design of the podium form is not compatible with the future character of the precinct.
- As discussed by Council's Heritage Officer, insufficient information has been submitted to enable an assessment of the proposed impact to the nearby listed heritage items. Notwithstanding this, it is noted that the excessive height, size and visibility of the proposal will detrimentally impact the significance of the listed Kensington Public School Buildings, their setting, and views to the heritage items from the public domain. The proposal fails to provide sufficient transition to the School within the surrounding and intervening residential area which is contrary to the desired future character of the area.

In conclusion, the applicant's written request has not adequately demonstrated that compliance with the height development standard is unreasonable or unnecessary in the circumstances of the case.

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

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

1. The height breach is at its greatest for the lift overrun located above the nine storey portion (RL 55.75) when measured from natural ground as is located within the 19m building height standard. There is an additional non-compliance to the parapet of the level 8 and swimming pool provided for the communal open space. The proposed non-compliances are a result of the dual building height standards (namely the interface between the alternative and standard building height), lot shape, amalgamation pattern and features as desired by the RDCP.
2. As detailed, the maximum non-compliance is a result of the interface between the two building height development standards on the subject site and constraints imposed by the lot ownership and amalgamation patterns of the neighbouring properties. Of relevance, the building envelope and alternative height standard relies upon amalgamation with the neighbouring properties, which is not possible for the subject development given the complex lot ownership pattern. As a result, the built form has been designed to satisfy the objectives and intent of the LEP and DCP, however has resulted in a variation to the building height development standard. Given the difference in height between the 31m alternative and 19m standard height, the inability to amalgamate has resulted in the proposed non-compliance to ensure the provision of an efficient building footprint and proportionate architectural design.
3. Furthermore, the non-compliant building height is a result of the desired building envelope contained within the RDCP, specifically, the shared-way located along the western (side) boundary. The provision of this element has, in-part, located the built form on the upper levels which extends between the 31m and 19m height limit. Additionally, the proposal has sought to provide a 9m rear setback across the entirety of the façade which is significantly greater than what is permitted by the RDCP. That is, the DCP includes the provision of a flexible 9 storey zone to the south in which the development could technically provide. However, the relocation of floor space within the 19m height limit represents a superior outcome which will complement the character of the locality.

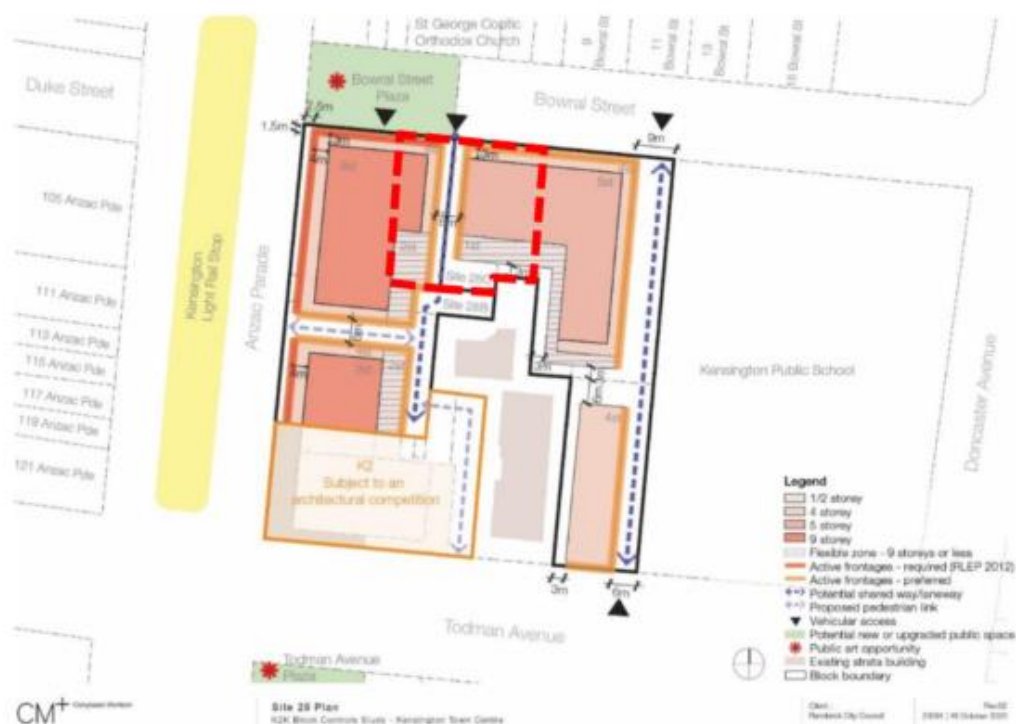


Figure 23 Building envelope controls per the DCP

4. It follows that the proposed location of floor space (resulting in non-compliance) is a far superior outcome to providing this elsewhere on-site, particularly in the rear setback. That is, the provision of additional floor area in alternate locations will result in a greater privacy and solar impact to the adjoining properties, but will also deliver a slender and undesirable tower form in direct response to the LEP height standards. As such, the proposal provides a cohesive built form in which the extent of non-compliance only occupies a maximum width of 7.5m (or 20% of the site) within the recessed uppermost levels. This ensures that when viewed from the streetscape, despite being technically non-compliant, the development is of a suitable bulk and scale, delivering the desired transition along the streetscape. Of relevance, the neighbouring properties to the east are similarly permitted a 19m building height which will reinforce the transition of bulk and scale from Anzac Parade to Doncaster Avenue, along Bowral Street. From an urban design perspective, the extent of non-compliance delivers cohesive single lot development, whilst maintaining the desired character per the DCP.

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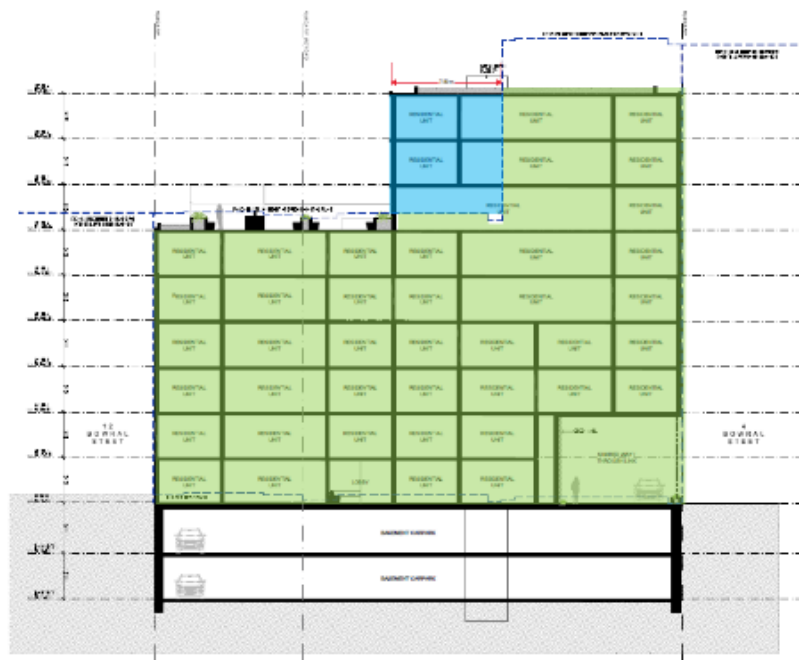


Figure 24 Section indicating 7.5m wide area of non-compliance (blue), in comparison to the remaining built form (green)

5. Further to the above and when considering the proposed height in comparison to the properties to the north and south, the non-compliance will merge into the anticipated bulk and scale of the locality, per the overlay provided in **Figure 25** below. That is, on the northern side of Bowral Street the 31m height limit (as is permitted by the alternative building height) extends to the eastern boundary of Nos. 1-3 Bowral Street (St George Coptic Orthodox Church). Given it is unlikely (but not improbable) that the opposing church will be redeveloped, as the non-compliant height opposes a structure that is somewhat uncharacteristic of the streetscape, the perceivable impact created by the proposal will be less apparent by virtue of the differing typologies. Upon the potential redevelopment of this church, it will similarly be permitted a 31m building height aligning with the subject site.

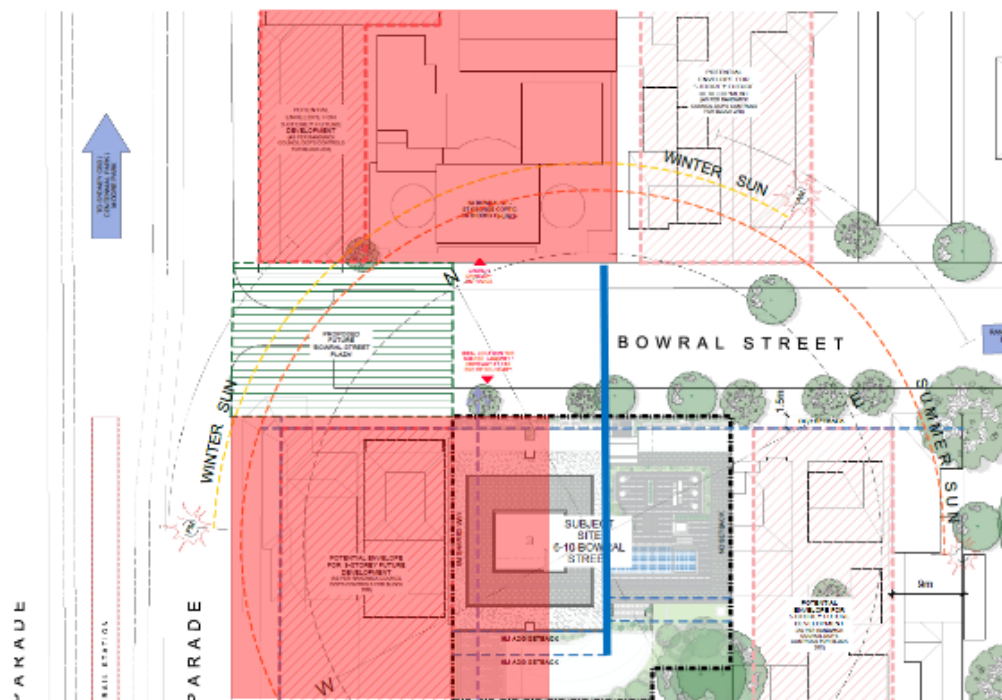


Figure 25 Site plan (Red hatch denotes 31m height limit, blue line denotes edge of predominant non-compliance)

Similarly and when considering the properties to the rear, it is noted that a 54m height limit is permitted, inclusive of the residential accommodation which is not captured as part of the approved 18 storey mixed use development at Nos. Nos. 172-180 Anzac Parade and 116R Todman Avenue. As such and when viewed from Bowral Street, the considerable height of the buildings immediately to the rear will ensure the proposed non-compliance will be visually and physically subordinate.

6. As detailed, the maximum extent of non-compliance is integrated into the overall building form as is anticipated by RLEP and is consistent with the building envelope envisaged under the RDCP. The non-compliance will not be visually jarring as the built form is situated within a well-articulated mass extending seamlessly between the varying building heights. To the casual observer, the well-designed built form conceals that the proposal is non-compliant, as the expected building height is retained albeit slightly shifted. Furthermore, the difference in height between the 19m and 31m standard also limits the visual and physical extent of the variation. That is, the difference in height between the alternative and standard controls will be maintained, but shifted 7.5m to the east as a result of the previously mentioned constraints. Importantly, the non-compliant elements form part of a recessed built form and includes framing, balcony articulation, fenestration and contemporary materiality to ensure the delivery of a high quality built form.
7. The maximum extent of non-compliance is setback 4.5m from the Bowral Street and 9m to the rear. These setbacks, which are consistent with (or greater than) the RDCP, ensures that the elements above the height limit will not result in any adverse visual impact when viewed from the public

domain given compatibility with the redevelopment of future properties. Further, the non-compliance is also provided with a nil setback to the western (side) boundary which be obscured by the future redevelopment of the neighbouring properties.

To the east, the non-compliant elements are setback by 16m from the boundary shared with the neighbouring property. However, given the proposal provides a six storey built form in which the building envelope is entirely compliant with the 19m standard (excluding the ancillary swimming pool), the relationship to Nos. 12 to 16 Bowral Street will be retained. As such, the proposed setbacks and overall architectural design ensures that the non-compliance will be entirely compatible with the character of the locality.

8. The recess and stepping of the façade, in addition to the provision of balcony articulation, glazed elements and framing limits any adverse visual impact to the public domain. Furthermore, given the setback of this non-compliant element and the generally narrower width of Bowral Street, this confines the sight lines as viewed from the public domain. When considering the non-compliances from the wider view, this is considered acceptable as discussed in detail above.
9. When considering the relatively minor non-compliances to the swimming pool balustrades and floor, these will improve the amenity of future occupants without having any adverse impact to the streetscape or neighbouring properties. That is, the swimming pool is raised above the finished floor level of the roof top terrace to enable the provision of a sufficient depth for the use of future occupants. In order to minimise the impact of this feature, it has been recessed from the outer edge of the built form and site boundaries. This ensures that the swimming pool and associated balustrades will not be visually obtrusive or jarring from the public domain or neighbouring properties, as the compliant building envelope below will obscure sightlines from natural ground. Given the subordinate nature of these elements, they are not anticipated to result in any visual impact and is considered acceptable. With regards to amenity, the setback of these elements limits any potential privacy, solar access or view impacts and is considered acceptable.
10. It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality. Specifically:
 - a. The extent of the additional height creates no significant adverse overshadowing impacts to adjoining properties when compared to a compliant building envelope. That is, although the additional height results in a minor degree of overshadowing, it will retain adequate solar access to neighbouring properties and is predominantly cast onto roof forms. As such, the increase to overshadowing caused by the non-compliant elements would be insignificant;

- b. The height breach does not result in any adverse additional privacy impacts. The extent of privacy impacts caused by the height breach will have no greater impact on the privacy of adjoining properties when compared to a compliant built form. The non-compliant elements are setback considerably from respective boundaries, are orientated to the public domain and will not result in any further overlooking. When considering the southern (rear) setback, the openings pertain to lower trafficked bedrooms and secondary balcony spaces which mitigates any aural or visual impact. As such, the loss of privacy caused by the non-compliant elements would be insignificant; and
 - c. The height breach will not result in any significant view loss as the subject site does not contain any significant views across or from the public domain. The maximum height non-compliance is limited and is consistent with the building height of the surrounding locality. As such, the extent of view loss caused by the non-compliant element would be insignificant.
- 11. The social benefits of providing housing stock within a highly sought after location should be given weight in the consideration of the variation request. The distribution of floor space is predicated on the allotment shape, principles of the DCP and lot ownership pattern. This has resulted in a building envelope which extends form the within the 31m alternative building height into the 19m building height and therefore necessitates a form and scale that breaches the height limit. It would be a loss to the community (and contrary to the public interest) to deny the variation and require the removal of residential accommodation within a well located and well-designed development.
- 12. Insistence on compliance with the height control would result in the removal of a high quality residential apartments and communal open space elements (being the swimming pool) which is disproportionate response to the impacts created by the proposal. Specifically and as discussed, the non-compliance is provided within a high quality built form which limits any visual impact and has been designed to ensure the amenity of neighbouring properties is protected.
- 13. The proposed development meets the objectives of the development standard and meets the objectives of the B2 Local Centre zone (as further detailed in Section 7 below);
- 14. The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:
 - a. The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilise site (1.3(c));
 - b. To promote the delivery and maintenance of affordable housing (1.3(d));

- c. The proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).

15. The variation to the height of buildings development standard will give better effect to the aims of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* (SEPP 65). In particular:

- a. The proposed variation will provide more sustainable housing in social and environmental terms and better achieve urban planning policies (clause 2(3)(a)(i));
- b. to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define (clause 2(3)(b));
- c. to contribute to the provision of a variety of dwelling types to meet population growth (clause 2(3)(f));
- d. Approval of the proposed variation will support a variety of housing types by providing a well-located and compact development that will be a better choice for families (clause 2(3)(g)).

The above environmental planning grounds are not general propositions and are unique circumstances to the proposed development, particularly the dual alternative building heights, lot ownership pattern, amalgamation and desired building envelope. Insistence on compliance with the height will result in the removal of a number of residential apartments and communal open space elements which is a disproportionate outcome given the limited impacts of the proposal. Specifically, the additional height does not significantly impact the amenity of the neighbouring properties (when compared to a compliant development) and has been designed to address Bowral Street and ensure the non-compliance is not visual jarring from the public domain or neighbouring properties.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. *The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.*

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

Assessing officer's comment: The responses regarding how the height non-compliance satisfied the objectives of Clause 4.3 in the written request above are not concurred with for the reasons discussed above and detailed in this report. Specifically, adequate efforts made to amalgamate with the neighbouring lots, non-compliances with K2K RDCP block controls that establish the desired future character, massing, and design strategy for the site. It is therefore not considered to have adequately demonstrated sufficient environmental planning grounds, with regard to the relevant objectives of the Act, to justify contravention of the building height development standard.

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

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

Assessment against objectives of height standard

For the reasons outlined above, the development is not consistent with the objectives of the height standard.

Assessment against objectives of the B2 zone

The objectives of B2 zone are:

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

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

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

The proposal will provide a residential flat building development which is not antipathetic to this objective. Specifically, the proposal will provide for a variety of residential accommodation (ranging from studio to three bedroom dwellings) which will support the existing and future commercial and community uses in the area. Furthermore, the residential apartments will also allow for residents to work and live in the Kensington locality.

- *To encourage employment opportunities in accessible locations.*

As identified above, the proposal will increase residential accommodation in close proximity to numerous employment opportunities and is not antipathetic to this objective. It is noted that the variation to maximum building height will not impact any employment opportunities on site or within the local centre.

- *To maximise public transport patronage and encourage walking and cycling.*

The subject site located within walking distance to numerous bus stops located along Anzac Parade and Kensington Light Rail Stop, which will resultantly improve public transport patronage, walking and cycling. The non-compliance with the building height will have no impact on the development satisfying this objective.

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

The proposal provides a well design and integrated residential flat building consistent with the desired future character of the locality. The variation to the standard will have no impact to the delivery of the residential accommodation and will continue support the businesses in the locality.

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

The proposal will provide an articulated design which will address the public domain and support a high quality pedestrianised streetscape. The non-compliance to maximum building height will not impact the pedestrianised scale and forms part of the recessed upper levels.

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

The proposed variation will have no impact to the amenity of surrounding properties as discussed in this Variation (and Statement). That is, the additional building height will not impact the solar gain, privacy or views of the adjoining properties and is considered acceptable.

- *To facilitate a safe public domain.*

The proposals will significantly improve safety of the public domain through the provision of residential accommodation orientated to Bowral Street within the podium and upper levels. The height non-compliance will have no impact to facilitating a safe public domain.

The proposed development, including those parts of the building that breach the height of buildings development standard, is not antipathetic to the objectives for the zone and for that reason the proposed variation is acceptable.

Assessing officer's comment: The reasons outlined by the applicant above are not concurred with and it is considered that the proposal does not meet the objectives of the B2 zone. Section 6.4 details that the height non-compliance presents substantial variations to the building envelope controls. The built form does not adequately consider the existing development pattern, lacks built form transition to the east and west, does not complement the desired future outcomes, or neighbourhood character.

The development is not consistent with the objectives of the height standard and the B2 zone. Therefore the development will not be in the public interest.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

Variation of the maximum height standard will not allow for the orderly use of the site and there is a public benefit in maintaining the development standard in this instance.

Conclusion

On the basis of the above assessment, it is not considered that the requirements of Clause 4.6(4) have not been satisfied and that development consent may not be granted for development that contravenes the height development standard.

7.3 Exception to the Active Frontages development standard (Clause 6.20)

The applicant's written justification for the departure from the active frontages development 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 active frontages 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 objective of the development standard is to promote uses that attract pedestrian traffic along certain ground floor street frontages within the Kensington and Kingsford town centres which is set out in Clause 6.20(1) of the RLEP.

Clause 6.20(3) states development consent must not be granted to the erection of a building on land to which this clause applies unless the consent authority is satisfied that all premises on the ground floor of the building facing the street are to be used for the purposes of commercial premises after the erection of the building.

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

The proposed residential flat building development has been designed to promote pedestrian traffic along Bowral Street, through the subject site via the shared-way and ultimately lead to Anzac Parade. As detailed in this Variation, the subject site is constrained with regards to the provision of typical active street frontages. That is, the subject site is

located within a predominately residential (and non-commercial) alignment of Bowral Street and is affected by a complex lot ownership pattern. Following this, achieving compliance with the desired built form and links as prescribed by the RDCP has resultantly relocated the shared-way along the western (side) boundary, where the active street frontage is sought. As discussed, the shared-way, although not a typical commercial frontage, will promote pedestrian movement along the public domain. To the east of the shared-way, the proposed at-grade residential accommodation is considered to be a suitable response to the typical character of Bowral Street as it approaches Doncaster Avenue. Accordingly, the proposed design outcome has therefore responded to the limitations of site to ensure a high level of articulation and streetscape presence is achieved, despite the variation.

It follows that a number of design measures have been implemented in order to maximise pedestrian traffic along Bowral Street, through the shared-way and towards Anzac Parade. Of relevance, the shared-way (located in place of the active frontage) is clearly defined as viewed from the public domain and is integrated into the overall built form to promote pedestrian traffic along the streetscape and through the site to neighbouring properties and other pedestrian links. Specifically, the shared-way is provided as a double height feature which is framed as viewed from the public domain and includes landscaping, materiality and lighting to provide visual cues from the public domain. To the east, the remainder of the development is designed with ground floor terraces, residential apartments and the primary lobby entry which reflects the non-commercial character of Bowral Street.

The abovementioned elements have been purposefully designed with a level of hierarchy in which the pedestrian and vehicular access to the shared-way is visually dominant when compared remainder of the built form. The design intent seeks to direct pedestrian circulation along the streetscape and through the shared-way thus satisfying the objective of Clause 6.20. That is, despite not providing a typical active street frontage, the shared-way delivers the same outcome in that it will attract pedestrian traffic along the streetscape and via the site links.

It follows that the high quality architectural design of the development (both at a pedestrianised and wider scale) is considered imperative to attracting pedestrian traffic along Bowral Street to the shared-way, Anzac Parade and Doncaster Avenue. As such, despite not providing a typical active frontage, the proposal is considered to maximise pedestrian traffic from the public domain. Importantly and as discussed, the proposed activation of the street is further reinforced through optimisation of through-site accessibility and circulation via the shared-way.

Accordingly, despite technical non-compliance, the proposed development is considered to satisfy *Objective (1)*.

Assessing officer's comment: The justification provided by the applicant above is not concurred with and the following comments are made:

- The desired future character of the local area is established by current planning controls. The proposed development is not considered compatible with the desired future character envisaged by the K2K building envelope and block controls. The built form outcomes do not have regard for the desired built form relationships established for the Todman Square Precinct and will detract from the emerging character of the key node.
- The residential flat building use does not contribute to retail activation of the Kensington Town Centre and the future Bowral Street Plaza. In the context of the shared way/laneway, active street frontages encourage pedestrian movements by enhancing passive surveillance and pedestrian safety as envisaged by the Block Diagram 28B and 28C of the K2K RDCP.
- As a result of the non-compliance with the active frontage, the proposal does not provide a continuous pedestrian shelter such as an awning to the Bowral Street frontage in accordance with Part 18 (Awnings) of the K2K RDCP. This is contrary to the objectives which aim to provide shelter for pedestrians, reinforce the coordinating design element in the Kensington Town Centres, define the street edge, provide continuity to the streetscape, and ensure awning design and siting addresses public realm, pedestrian, and road safety.
- An active frontage is the preferred outcome to the shared way/laneway and the proposal fails to deliver key outcomes sought by the Part 8 (Laneway/Shared Way Zones) of the K2K RDCP. Refer to RDCP compliance table in the Key Issues section regarding the non-compliance with Block 28B and 28C block diagrams, preferred activation, and Part 8 of the K2K RDCP in terms of the treatment of the laneway/shared zone.

In conclusion, the applicant's written request has not adequately demonstrated that compliance with the active frontages development standard is unreasonable or unnecessary in the circumstances of the case.

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

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

1. The proposed variation is a result of the existing site conditions, lot ownership pattern and building envelope that is envisaged by the DCP. That is, the inability to amalgamate with the neighbouring properties to the east and west of the subject site has resulted in a variation to the building envelope controls, specifically, the provision of a shared-way along the western (side) boundary in place of an active street frontage. This has ultimately resulted in the non-compliance as it

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pertains to No. 6 Bowral Street, in that achieving strict compliance is not possible when considering the desired site arrangement.

2. In addition to the above, the sites general location in relation to the eastern side of Bowral Street (which is characterised by non-commercial uses) does not necessarily require a typical active street frontage in the form of a commercial premises. In this context, articulation of the street frontage via the shared-way is deemed to be appropriate given this will achieve the objective of Clause 6.20 through providing a high level of articulation and encouraging pedestrian movement along Bowral Street and through the site.
3. It follows that the proposal will provide a high level of articulation along the streetscape. The design has purposefully provided a hierarchy of building elements in order to activate the frontage and provide visual interest as viewed from the public domain. Specifically, the proposal provides a clearly delineated shared-way (in place of the typical active street frontage) which is visually dominant when compared to the remainder to the ground floor façade. The utilisation of framing, a double height structure, landscaping and lighting will encourage access and movement along the streetscape. This is integrated with the overall built form and includes high quality materials which are representative of the desired character of the locality.
4. The remainder of the ground floor has also been designed to provide a high level of visual and physical articulation from the streetscape. Although not affected by Clause 6.20, this is complementary to the shared-way to encourage safety, movement and a high quality public domain. The ground level apartments, residential lobby and podium above is designed to provide a high level of visual articulation and ultimately achieve the objective of the standard through improving the pedestrianised scale of Bowral Street. As discussed in this Statement, the built form will encourage movement to Anzac Parade, Doncaster Avenue and through the site via the shared-way.
5. The abovementioned design elements provide both physical and visual signals for residents and the general public regarding movement through the shared-way and ultimately deliver an active frontage as desired within the corner of No. 6 Bowral Street. That is, although the shared-way is not typical in its streetscape activation (being a commercial frontage), it provides an articulated façade which encourages pedestrian access through the site and by virtue, activation of Bowral Street (and Bowral Street Plaza).
6. Despite not providing active uses to the street frontage itself, the proposal provides a number of residential dwellings fronting the public domain at the lower and upper levels. Given the generally non-commercial and residential character of Bowral Street, the proposed design is considered to be an appropriate response to the character of the immediate locality.

7. As discussed, the proposal provides a built form which is an appropriate response to the site constraints and objectives of the RDCP. Despite non-compliance with the active street frontage, the proposal is compatible with the existing and desired future character of the locality and provides consistency in built form as is anticipated by the building envelope controls. Of relevance, the site is located at a juncture of a number of properties with various owners and therefore the desired envelope per the DCP has been amended. As discussed, this has resulted in the location of the shared-way along the western (side) boundary which satisfies the intent of the block controls. Importantly, the design is a response which ensures that the proposal will not impact pedestrian movement whilst delivering a high quality development.
8. Upon redevelopment of the properties to the west (under the current controls), these are anticipated to provide an active frontage to Bowral Street given they will not be burdened by the provision of a shared-way. As these allotment are owned by a single proprietor and have a direct connection to Anzac Parade (and Bowral Plaza), the provision of commercial frontages to these lots are considered acceptable with regards to the overall vision of Bowral Street and Kensington. Furthermore, it is noted that the shared-way will provide a direct extension to Bowral Plaza further activating the streetscape as desired by the objective of the Clause.
9. Insistence on strict compliance with the development standard would result in an inferior site planning and design outcome which would require a "tokenistic" commercial premises orientated to the streetscape and ultimately relocate the share-way which will not align with the intent of the block controls of the RDCP. It follows that this would be is antipathetic to the vision of the DCP which is to provide a benefit to the character of the locality and streetscape.
10. The social benefits of providing a shared-way in place of a 'tokenistic' commercial property should be given weight in the consideration of the variation request. It would be a loss to the community (and contrary to the public interest) to deny the variation and require significant redesign given the numerous site limitations and restrictions.
11. It is considered that there is an absence of any significant material impacts attributed to the non-compliance on the amenity or the environmental values of surrounding properties, the amenity of future building users and on the character of the locality. Specifically:
 - a. The extent of non-compliance has no adverse additional overshadowing impacts to adjoining properties. That is, the proposed design approach does not impact the solar gain of the properties to the east, west and south beyond a typical active streetscape façade. As such, additional overshadowing caused by the non-compliant elements would be insignificant; and

- b. The variation does not result in any adverse privacy impacts. The proposed design includes the provision of a non-habitable shared-way which will not impact the privacy of adjoining or nearby residential accommodation and is insignificant; and
- c. The breach does not result in any view loss which is not reasonably anticipated within the planning controls and site context. When considering the extent of view sharing, it is noted that the proposed design is a result of the site constraints and limitations and there are no significant views enjoyed across the subject site. As such, it is anticipated the extent of view loss is insignificant or nil.

12. The proposed development meets the objectives of the development standard and meets the objectives of the B2 Local Centre zone (as further detailed in Section 7 below);
13. The proposed development achieves the objects in Section 1.3 of the EP&A Act 1979, specifically:
 - a. The proposal promotes the orderly and economic use and development of land through the redevelopment of a dilapidated and underutilised site for commercial uses (1.3(c)); and
 - b. The proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).

Assessing officer's comment: The responses regarding how the active frontages non-compliance satisfied the objectives of Clause 6.20 in the written request above are not concurred with for the reasons discussed above and detailed in this report. It is therefore not considered to have adequately demonstrated sufficient environmental planning grounds, with regard to the relevant objectives of the Act, to justify contravention of the active frontages development standard.

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

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

Assessment against objectives of active frontages standard

For the reasons outlined above, the development is not consistent with the objectives of the active frontages development standard.

Assessment against objectives of the B2 zone

The objectives of B2 zone are:

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

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

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

The proposed development will provide a residential flat building development which is not antipathetic to this objective. Specifically, the proposal will provide for a variety of residential accommodation (ranging from studio to three bedroom dwellings) which will support the existing and future commercial and community uses in the area. Furthermore, the residential apartments will also allow for residents to work and live in the Kensington locality.

- *To encourage employment opportunities in accessible locations.*

As identified above, the proposal will increase residential accommodation in close proximity to numerous employment opportunities and is not antipathetic to this objective. It is noted that the variation to active street frontages will not impact any employment opportunities on site or within the local centre.

- *To maximise public transport patronage and encourage walking and cycling.*

As discussed, the subject site located within walking distance to numerous bus stops located along Anzac Parade and Kensington Light Rail Stop, which will resultantly improve public transport patronage, walking and cycling. Importantly, the proposed shared-way which is located in place of the active street frontage will improve pedestrian permeability throughout the Block 28B and 28C per the RDCP, particularly upon redevelopment of the neighbouring properties. As such, the non-compliance with the active street frontages development standard, is not antipathetic to the objectives for the zone and for that reason the proposed variation is acceptable.

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

The proposal provides a well design and integrated residential flat building within Bowral Street. The variation to the standard will have no impact to the delivery of the residential accommodation and will support the businesses in the locality. As described, the active frontage is occupied by the shared-way which will improve access for future residents and the general public.

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

As above, the provision of the shared-way, which supports vehicular and pedestrian movement, is desired by the RDCP. The proposal, despite non-compliance, will provide a high quality, contemporary design which will significantly improve streetscape presence, sense of place and character of the Kensington locality and Bowral Street.

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

The proposed variation to the active street frontage will have no impact to the amenity of surrounding properties as discussed in this Variation.

- *To facilitate a safe public domain.*

The proposals will significantly improve safety of the public domain through the provision of residential accommodation orientated to Bowral Street. The shared-way will be highly visible from the public domain and its provision in place of an active street frontage is considered acceptable.

Assessing officer's comment: The reasons outlined by the applicant above are not concurred with and it is considered that the proposal does not meet the objectives of the B2 zone. The absence of retail activation of the commercial core jeopardises the future Bowral Street Plaza which is contrary to providing a range a uses that serve the needs of people and employment opportunities. The enclosure of the laneway/shared zone will limit patronage and useability for pedestrians and cyclists due to safety and poor amenity. This results in a poor standard of urban design that does not foster the K2K RDCP aims of creating a sense of place for the local community at the future Bowral Street Plaza.

The development is not consistent with the objectives of the active frontages standard and the B2 zone. Therefore the development will not be in the public interest.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

Variation of the active frontages standard will not allow for the orderly use of the site and there is a public benefit in maintaining the development standard in this instance.

Conclusion

On the basis of the above assessment, it is not considered that the requirements of Clause 4.6(4) have not been satisfied and that development consent may not be granted for development that contravenes the active frontages development standard.

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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

9. Environmental Assessment

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

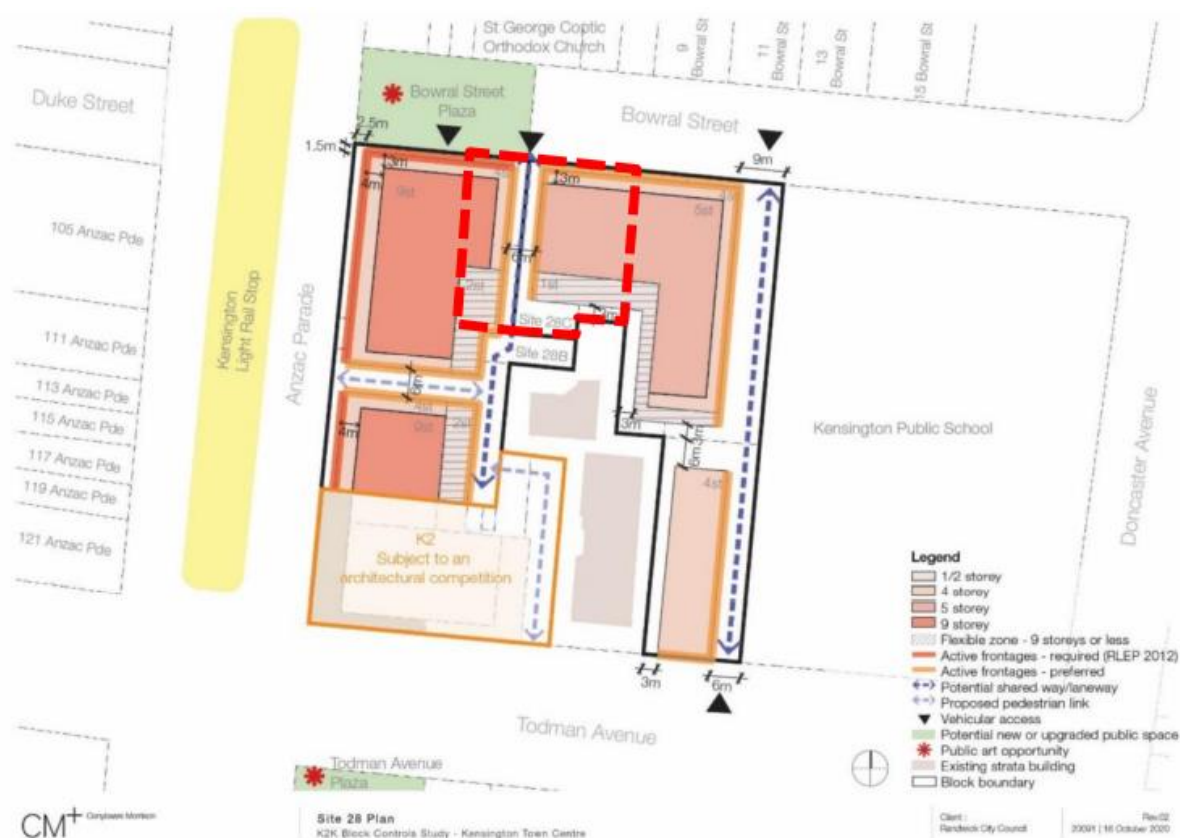
Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal does not satisfy the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is not consistent with the dominant character in the locality.</p> <p>The proposal will not in adverse social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	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 does not promote the objectives of the zone and will result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is not considered to be in the public interest.

9.1. Discussion of key issues

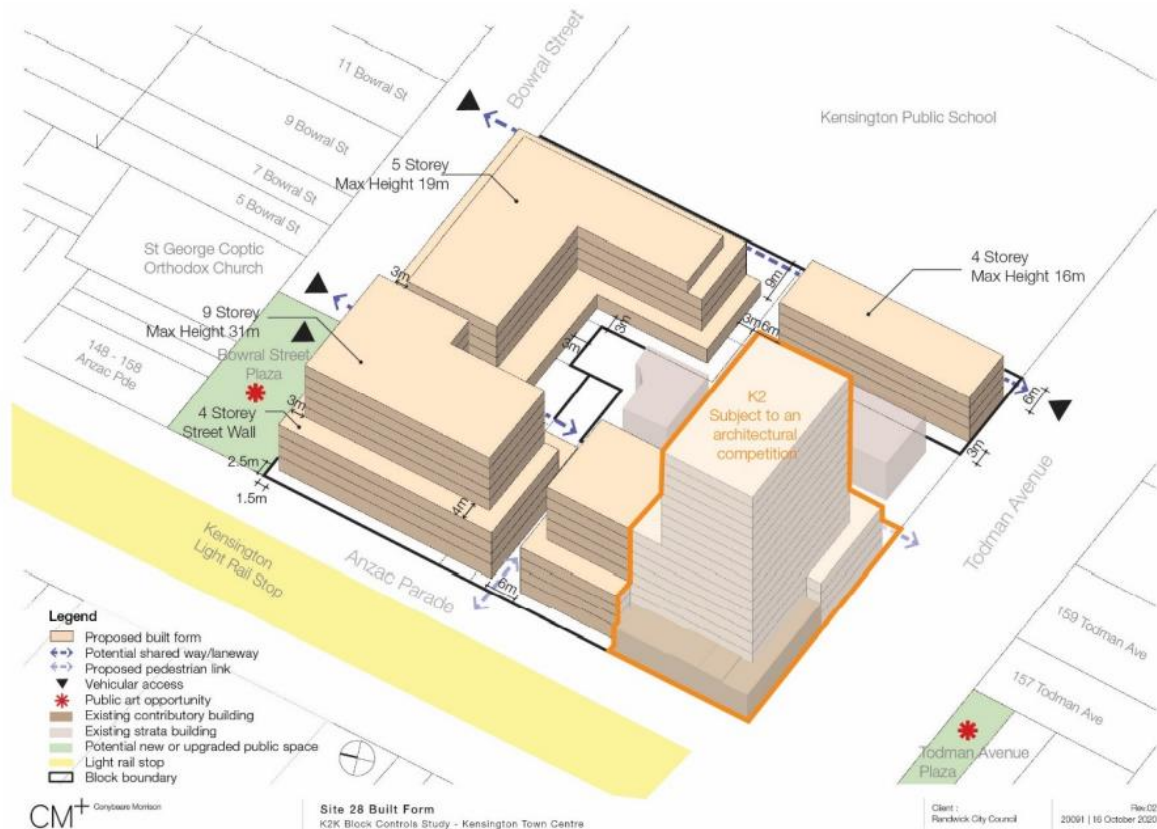
Laneway/Shared Zone

Section 10.3 in Part B of the K2K RDCP prescribes the desired future character and built form controls for Blocks 28B and 28C, in which the subject site is located. An extract of the Site Plan for Blocks 28B-C contained within the K2K RDCP is provided in Figures 6 and 7 below:



Figures 6– Block 28B (K2K RDCP)

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Figures 7– Block 28C (K2K RDCEP)

The precinct controls nominate a 6m wide laneway/shared way zone that traverses the subject sites as shown in Figures 6-7 above. The RDCEP states that the laneway/shared way zone shall be established on the eastern edge of the block to connect Todman Avenue and Bowral Street at the north, while also providing for vehicle access. Active frontages along Bowral Street and Todman Avenue are required to facilitate engagement between ground floor businesses and street life.

Contrary to the controls for Blocks 28B and 28C, the proposal has the link as double-storey tunnel with open sides to the adjoining boundary providing access for all cars and service vehicles with the loading dock directly off and visible to the link. It is therefore inconsistent with Part 8 of the K2K RDCEP and for the reasons discussed below, forms a reason for refusal.

Adverse Visual Impacts from Enclosed Undercroft Laneway

The K2K DCP block diagram contemplates an open pedestrian link which is open to the sky, activated by active uses and providing a break in the street wall and built form, separating the built forms.

Section 8 of the K2K RDCEP partially anticipates that there may be some level of enclosure of shared ways, however the proposal fully occupies the air space over the laneway for the full depth of the building. This creates an unpleasant and unsafe undercroft space and link dominated by car and truck movements where apartment windows also depend for outlook and air intake. The proposal should be consistent with design excellence and provide an open link to the sky, improving the public amenity and the character of the laneway network within the block.

The block plan also demonstrates that a break between the development on the corner (160-164 Anzac Parade) and the subject site is a 'full break' i.e. to the ground level. This manages the extent of the continuous street wall and the start of the transition towards the school. The proposal presents a blank side wall with little visual interest to 4 Bowral Street, the corner property (noting that the

approval for Development Application No. DA/938/2016 has balconies and habitable windows facing the side boundary) and does not provide the break in the built form above the laneway.

Access and Safety

The laneway/shared way connects to the future Bowral Street Plaza which will be a key pedestrian node in the precinct, connecting to the Kensington Light rail Station. The Bowral Street frontage will be subject to high levels of pedestrian movement, especially around school drop-off and pickup times. Concerns are raised with the configuration of the laneway design in this regard.

The shared way entry is located immediately adjacent to the approved driveway for 4 Bowral Street (DA/938/2016). This locates a pedestrian laneway link immediately next to a wide driveway and creates significant disruption to pedestrian movement due to the double 'driveways' right on the plaza frontage. If approved, vehicular movements will dominate a significant part of the Bowral Street frontage adjacent to Plaza, detracting from the desired pedestrian character and key outcomes sought for this part of the precinct.

Concerns are raised in relation to the arrangement and compromised pedestrian safety especially given the proximity to the large intersection, the frequency of school traffic and the presence of vulnerable younger pedestrians utilising the southern footpath along Bowral Street to/from Kensington Public School.

The link presents as double storey driveway entry and will not encourage public access or other desired outcomes such as enhancing social gatherings, outdoor dining, or play as envisaged by Part 8 of the K2K RDCP. Instead, the link is entirely dominated by service areas, vehicular and loading access points without genuine activation or any meaningful pedestrian desire lines to encourage through site movements. The proposed arrangement results in an acoustic and visually undesirable environment which may also compromise pedestrian safety due to exposed loading area and open driveway ramp.

Future Redevelopment

Clause 6 'Built Form' Part A of K2K RDCP relevantly provides the following controls in relation to Lot Amalgamation:

- "b) *When development/redevelopment/amalgamation is proposed, sites between and adjacent to developable properties are not to be limited in their future development potential*
- c) *Where a development proposal results in an isolated site, the applicant must demonstrate that negotiations between the owners of the lots have commenced prior to the lodgement of the DA to avoid the creation of an isolated site. The following information is to be included with the DA:*
 - i) *evidence of written offer (s) made to the owner of the isolated site* and any responses received*
 - ii) *schematic diagrams demonstrating how the isolated site is capable of being redeveloped in accordance with relevant provisions of the RLEP 2012 and this DCP to achieve an appropriate urban form for the location, and an acceptable level of amenity*
 - iii) *schematic diagrams showing how the isolated site could potentially be integrated into the development site in the future in accordance with relevant provisions of the RLEP 2012 and this DCP to achieve a coherent built form outcome for the block.*
- d) *Where lot consolidation cannot be achieved to comply with the maximum envelopes in the block diagrams, alternative designs may be considered where the proposal exhibits design excellence and can demonstrate consistency with the relevant objectives of the block controls (Part B).*

***Note 1:** *A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other reasonable expenses likely to be incurred by*

the owner of the isolated property in the sale of the property. To assist in this assessment, applicants are to submit details and diagrams of development for the isolated site, that is of appropriate urban form and amenity. The diagram is to indicate height, setbacks and resultant footprint (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts of the developments. Important considerations include solar access, deep soil landscaping, privacy impacts for any nearby residential development and the traffic impacts of separate driveways access. The application may need to include a setback greater than the minimum requirement in the relevant planning controls. Or the development potential of both sites may need to be reduced."

The development application should be refused because approval of the proposal in its current form and failure to provide an open laneway link may limit/compromise the development potential of the adjoining properties to the east at 12-16 Bowral Street, Kensington.

The 3 lots to the east form the edge of the Kensington Town Centre precinct and are required to provide a 9m laneway link along the southern site edge, adjacent to the heritage listed Kensington Public School. Based on the site analysis plan (Drawing No. DA011), the neighbouring site to the east is considered as being burdened with creating the street wall break that was intended to be provided by the development approved by DA/938/2016 at 160-164 Anzac Parade and 4 Bowral Street.

The narrow setback proposed along the western boundary to 12 Bowral Street (eastern boundary of the subject site) would result in a 5 storey blank wall visually exposed to the public domain, which burdens the street wall break to the neighbouring site. This leaves a very narrow frontage available to this neighbouring site, which would impact its ability to achieve a viable development and create a poor streetscape. The current controls envisage the subject site providing the building break whilst transitioning to a reduced building scale. The proposal and the subject site should not burden adjacent sites.

The application does not provide sufficient information or demonstrate adequate analysis of, or regard for, the likely future development pattern and some of the information is inconsistent or inaccurate. For example:

- The site analysis plan (Drawing No. DA011) shows the neighbouring footprints with no setbacks.
- The 3D Perspectives plan (Drawing No. DA411) appear to show two different scenarios for the neighbouring site.
- Given the substantial variation from the recently adopted K2K RDCP and the block diagrams, the proposal should be accompanied by robust contextual investigations that justify and document clearly why an alternative block form massing is a preferable outcome to enable Council and the court to assess the outcomes and potential impacts.

Insufficient information has been provided to demonstrate that adequate efforts have been made to amalgamate with 12, 14 and 16 Bowral Street, Kensington.

- The Applicant's position in relation to amalgamation of the site with 12-16 Bowral Street is set out in the SEE which states that the letters of offer for the neighbouring properties demonstrates that amalgamation and consolidation is not an option.
- The letters of offer are refuted by the neighbouring properties in that no information was regarding the purchase price, timing of payments or details of any special conditions attached to any offer. This position is concurred with on the basis that no independent valuations have been provided as required by Clause 6 above.

For the reasons discussed above, the inconsistencies and resultant impacts from the shared zone/laneway is unacceptable and forms multiple reasons for refusal.

Western Building Façade

The visual impact resulting from the western building façade is considered unsatisfactory for the reasons discussed below.

The proposed built form abuts the western boundary, presenting a blank wall interface to the neighbouring site at 4 Bowral Street. The exposed wall will severely compromise visual and outlook amenity to the approved units within the neighbouring development which all rely on outlook to the shared boundary. The proposed exposed nil setback blank wall exceeds the height of the current approval at 160-164 Anzac Parade and 4 Bowral Street by 2 storeys. The location of the open driveway on this adjacent western site means that the blank wall of the site at 160-164 Anzac Parade and 4 Bowral Street will be permanently exposed to the new plaza and public domain, detracting from the character of the streetscape and surrounding areas. The nil setback will also compromise the amenity of the apartments on the corner site at 160-164 Anzac Parade which will face the tall blank wall.

In light of the above, the proposed bulk and scale of the western building façade is unacceptable and forms a reason for refusal.

Amenity

The proposed open drive ramp on the laneway and rear boundary is contrary to the SEPP 65 Amenity Principle in that the location detracts from the visual and acoustic amenity to the laneway link, neighbouring sites, ground floor and Level 1 units. The driveway should be relocated within the building envelope and avoid the setback areas to increase landscaping and communal open space. The location of the driveway results in the communal open space being located at the upper levels which attribute to the height non-compliance.

The proposal should comply with the ADG Design Criteria under Objective 4D-2 which requires habitable room depths to be limited to 8m for open plan layouts. The depth of the living, dining, and kitchen areas should also be annotated on the architectural plans.

The SEE states that 64% of apartments are naturally cross-ventilated which meets ADG Design Criteria under Objective 4B-3. However, the cross-ventilation diagrams indicate that the units rely on operable windows to the shared way and the communal open space. This results in unacceptable amenity impacts due to the acoustic/visual privacy and odour from the driveway. The cross-ventilation diagrams and calculations should be amended and the proposal should comply with the ADG and SEPP 65.

The proposal fails to meet the ADG Design Guidance under Objective 4F-1 as it does not allow for daylight intake or ventilation to common corridors.

Along the western boundary, the driveway is only partially screened for the lower 2 floors, resulting in adverse visual and acoustic impacts to the neighbouring site.

The arrangement of windows facing the shared way from Unit G01 and 101 results in poor amenity, compromised acoustic privacy, discourages the use of the windows for ventilation, and creates security concerns (Unit G01) for the future occupants.

For the reasons discussed above, the proposal should be refused as a result of multiple non-compliance with the provisions of SEPP 65 and the ADG in terms of visual and acoustic privacy, communal open space, cross ventilation and solar access.

Landscaping

The proposal does not comply with the following requirements for landscaping at the subject site.

The proposed 6.1% of deep soil should be increased to comply with the 7% requirement stated in Part 3E of the ADG Design Criteria. Notwithstanding that the site is located within a B2 zone, it is a residential use and should therefore be expected to meet the minimum requirement.

The proposed development does not achieve compliance with Part 20 of the K2K RDCP minimum landscaping requirements which includes 100% of the total site as landscaped area. The non-compliance of 90% should be increased to comply.

The landscape treatment proposed within the laneway is considered poor quality and does not contribute to the quality of the overall landscape design. Consideration of the landscaping must be considered in the context of the development site to the west.

The small pocket of deep soil at the rear of the site is an isolated soil pocket that does not allow for landscape buffering alongside boundaries. The area does not appear to be accessible for communal use, maintenance and is severely compromised by the exposed driveway. There is no passive surveillance to this area which may be CPTED issue and concerns are raised in relation to the future occupants of Unit G04.

The dependence on effective landscaping at all levels of the Bowral Street façade is not reflected in the submitted documentation for example, there is little detail indicating the depth of soil proposed, irrigation measures and section details with the units or the extensive landscape at Level 4.

For the reasons discussed above, the proposal should be refused because insufficient landscaping has been provided.

External Referrals

Comments and/or conditions have not been received by TfNSW, RMS, Sydney Water and NSW Police. In accordance with Clause 53(2) of the *Environmental Planning Assessment and Regulation 2021*, Council may determine an application by refusing to grant consent before the end of the period under subsection (1).

Sustainability Measures

A site-wide sustainability strategy which considers passive environmental design, management of amenity within the site, impact on neighbouring properties, water conservation and management together with energy generation and minimisation must be submitted.

The information submitted with the application does not demonstrate how the above issues have been addressed including water collection, storage and reuse, photovoltaic panels to generate electricity for communal purposes including lighting and heating, charging electronic vehicles within the basement, provision of air conditioning to the units. As such, insufficient information has been submitted with the application and this forms a reason for refusal.

Public Art

Part 29 of the K2K RDCP requires sites with frontages greater than 12m to incorporate artistic elements into the built form such as creative paving, window treatments, canopy design, balustrading, signage and wayfinding, lighting to assist illumination levels after dark and the promotion of active uses in the public spaces.

The SEE states that these requirements may be imposed as a condition of consent, however, Control (e) in Part 29 requires the submission of an Arts Statement which identifies the reasons for the chosen themes, and their interpretation into specific treatments with the DA. As such, insufficient information has been submitted with the application and this forms a reason for refusal.

10. Conclusion

That the application be refused for the following reasons:

1. The proposal does not comply with the provisions of State Environmental Planning Policy 65 - Design Quality of Residential Apartment Developments (SEPP 65) and associated Apartment Design Guide (ADG); in particular:

- a. Pursuant to Part 3B-1 and 3B-2 of ADG, the proposed height non-compliance and excessive number of storeys does not minimise overshadowing and reduces amenity to the neighbouring properties.
 - b. Pursuant to Part 3D-1 of ADG, the proposal needs to offer a minimum area of 25% (316m²) as communal open space and 23.7% is proposed. This area should not be limited to the roof top space or contribute to the height non-compliance.
 - c. Pursuant to Part 3E-1 of ADG, the proposal needs to offer a minimum area of 7% (88.5m²) for deep soil with minimum dimensions of 3m. The proposal offers 6.1% and should be amended to comply given the residential use.
 - d. Pursuant to Part 3F-1 of ADG, the proposal does not provide adequate visual privacy to the units adjacent to the laneway/shared zone and communal roof top open space.
 - e. Pursuant to Part 4C of ADG, it has not been demonstrated that the 2.7m floor to ceiling height can be achieved in only 3.075m floor to floor heights. This is based on current fire and services requirements, and interfaces from balconies to internal living areas. This is also inconsistent with Part 12.1 of the Kensington to Kingsford RDCP.
2. The proposal does not comply with the provisions of the Randwick Local Environmental Plan 2012 (RLEP) in particular:
 - a. The proposal is inconsistent with all objectives of B2 Local Centre zone pursuant to Clause 2.3 of RLEP 2012.
 - b. The proposal does not satisfy the requirements under Clause 4.6 in that the request for the variation of the height of buildings (Clauses 4.3 and 6.17) and active street frontages (Clause 6.20) development standards are not well founded, not in accordance with the relevant objectives of the standards and the zone.
 - c. Pursuant to Clause 6.14(3)(a) of the RLEP, the development cannot be approved as the proposed form of development is not permissible within the B2 zone. There are no existing residential flat buildings at the site when the RLEP commenced.
 - d. Pursuant to Clause 5.10, the proposal is not consistent with the objectives in that the height, bulk and scale of the development will detrimentally impact the significance of the heritage listed Kensington Public School buildings, their setting, and views from the public domain. The proposal fails to provide sufficient transition to the School and the surrounding and intervening residential area to the east which is contrary to the desired future character of the area.
 - e. Pursuant to Clause 6.11(4), the proposal does not exhibit design excellence.
3. The proposal does not comply with the provision of Randwick Comprehensive Development Control Plan 2013 (RDCP 2013) in particular:
 - a. Pursuant to Part 4 in the K2K RDCP, the proposal does not uphold the provisions relating to design excellence and results in adverse impacts to the strategic node to the south, the Todman Avenue Square Precinct.
 - b. Pursuant to Part 6 in the K2K RDCP, the proposal does not uphold or comply with the objectives and controls for the laneway/shared zones, building heights, and building setbacks.

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- c. Pursuant to Part 8 in the K2K RDCP, the proposal does not provide a laneway/shared zone in accordance with Block Diagrams 28B and 28C.
 - d. Pursuant to Part 9 in the K2K RDCP, the proposal results in adverse heritage impacts to the neighbouring item at Kensington Public School.
 - e. Pursuant to Part 10.2 in the K2K RDCP, the proposal does not comply with the desired future character and built form controls for Blocks 28B and 28C.
 - f. Pursuant to Part 13 in the K2K RDCP, the proposal height non-compliance and excessive number of storeys does not minimise overshadowing and reduces amenity to the neighbouring properties.
 - g. Pursuant to Part 14 in the K2K RDCP, the proposal results in unacceptable acoustic impacts to the future residents in the units adjacent to the enclosed laneway/shared zone and roof top communal open space.
 - h. Pursuant to Part 15 in the K2K RDCP, the proposal does not provide adequate cross ventilation through the operable windows the shared way and communal open space at the roof top level.
 - i. Pursuant to Part 16 in the K2K RDCP, the proposed elevations of the building and presentation of a blank wall façade to the western elevation do not provide satisfactory articulation and modulation.
 - j. Pursuant to Part 18 in the K2K RDCP, the proposal does not provide a continuous pedestrian shelter to the Bowral Street Frontage or uphold the relevant objectives.
 - k. Pursuant to Part 19 in the K2K RDCP, the proposal does not provide an active street frontage or contribute to the retail activation of the commercial core and the future Bowral Street Plaza.
 - l. Pursuant to Part 20 in the K2K RDCP, the proposal provides 90% of the site as landscaped area which does not comply with the 100% requirement. The landscape treatment to the laneway is considered poor quality and, the small pocked of deep soil at the rear does not allow for landscaping buffering alongside boundaries, is not accessible for communal use, maintenance and is compromised by the driveway. Further, no passive surveillance is provided to the area and concerns are raised in relation to the future occupants of Unit G04.
 - m. Pursuant to Part 21 in the K2K RDCP, the proposal does not provide adequate safety to the pedestrians from the configuration of the laneway design, which may result in safety impacts to the neighbouring approved driveway at 4 Bowral Street, future users of the Bowral Street Plaza, and the Kensington Public School drop-off and pick-up times.
 - n. Pursuant to Part 31 in the K2K RDCP, the alternative floor space ratio and building height permitted under Clause 6.17 of the RLEP and planning agreement has not been agreed by Council.
4. Insufficient information – a full and robust assessment of the proposal cannot be completed as there are a number of deficiencies and lack of detail in the information submitted with the development application including:
 - a. Pursuant to Part 4D of ADG, it has not been demonstrated on the architectural floor plans that all habitable room depths are within the maximum 8m limit as measured in open plan layouts from a window. It appears that the majority of units do not comply, with the exception of Units G.01, 1.01, 4.05, 6.02, and 6.03.
 - b. The HIS does not address the specific controls for Heritage Conservation in the K2K RDCP, assess the significant of each of the buildings proposed for demolition in accordance with the “Assessing Heritage Significance” Guidelines

prepared by the NSW Heritage Office and, the impacts of the proposal on the significance of the listed Kensington Public School, their setting as well as the impact on views to the heritage items from the public domain.

- c. Pursuant to Part 6 of the K2K RDCP, the Applicant's letter of offer to amalgamate with the adjacent sites is refuted by the neighbouring properties in that no information was provided regarding purchase price, timing of payments of details of any special conditions attached to any officer. No independent valuations have been provided to Council.
- d. The dependence of effective landscaping at all levels of the Bowral Street façade is not reflected on the submitted documentation or section details, for example, the soil depths and irrigation measures. This includes the extensive landscaping at Level 4.
- e. Pursuant to Parts 22 and 23 of the K2K RDCP, a site-wide sustainability strategy that includes provisions relating to water sensitive urban design has not been submitted for assessment.
- f. Pursuant to Part 22 of the K2K RDCP, an Automated Waste Collection System (AWCS) including FOGO bins have not been provided.
- g. Pursuant to Part 29 in the K2K RDCP, an Arts Statement has not been submitted for assessment.

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Appendix 1: Referrals

1. External referral comments:

1.1. Sydney Airport Corporation

The logo for Sydney Airport, consisting of the letters 'SYD' in a bold, blue, sans-serif font.

Reg No.: 22/0497

Thursday, 7 July 2022

To: RANDWICK CITY COUNCIL & NSW PLANNING
PORTAL

Notice to Proponent of Property Development

Dear Sir / Madam,

Application for approval of a controlled activity pursuant to:

*s.183 Airports Act - Notification of decision under Reg 15A (2) of the Airports (Protection of
Airspace) Reg's 1996*

Proposed Activity: PROPERTY DEVELOPMENT
Location: 6-10 BOWRAL ST KENSINGTON
Proponent: RANDWICK CITY COUNCIL & NSW
PLANNING PORTAL
Date: 07/07/2022

Sydney Airport received the above application from you.

This location lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 45.72 metres above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority.

The application sought approval for the PROPERTY DEVELOPMENT to a height of 55.75 metres Australian Height Datum (AHD).

In my capacity as Senior Airspace Protection Officer and an authorised person of the Civil Aviation Safety Authority (CASA) under Instrument Number: CASA 229/11, in this instance, I have no objection to the erection of this development to a maximum height of 55.75 metres AHD.

The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.

Note:

1. a person who conducts a controlled activity otherwise than with an approval commits an offence against the Act.
 - s. 183 and s. 185 Airports Act 1996.
 - Penalty: 250 penalty units.
2. if a structure is not authorised, the Federal Court may order a person to carry out remedial works, mark or light, or reduce the height of or demolish, dismantle or remove a structure.

Sydney Airport

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Should you wish to exceed this height a new application must be submitted.

Should the height of any temporary structure and/or equipment be greater than 45.72 metres AEGH, a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.

Construction cranes may be required to operate at a height significantly higher than that of the proposed development and consequently, may not be approved under the Airports (Protection of Airspace) Regulations.

Sydney Airport advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct.

Information required by Sydney Airport prior to any approval is set out in Attachment A.

"Prescribed airspace" includes "the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) surface for the airport (Regulation 6(1)).

The height of the prescribed airspace at this location is 70 metres above AHD.

Planning for Aircraft Noise and Public Safety Zones:

Current planning provisions (s.117 Direction 3.5 NSW Environmental Planning and Assessment Act 1979) for the assessment of aircraft noise for certain land uses are based on the Australian Noise Exposure Forecast (ANEF). The current ANEF for which Council may use as the land use planning tool for Sydney Airport was endorsed by Airservices in December 2012 (Sydney Airport 2033 ANEF).

Whilst there are currently no national aviation standards relating to defining public safety areas beyond the airport boundary, it is recommended that proposed land uses which have high population densities should be avoided.

Sincerely,

Attachment A**Application for Approval of Crane Operation****[Sections s.182, 183, Airports Act 1996]****[Airports (Protection of Airspace) Regulations 1996 – Reg 7]**

TO: Sydney Airport Corporation Ltd

c/- Airport Design Services
Locked Bag 5000
Sydney International Airport
NSW 2020
Email: airspaceprotection@syd.com.au

Application pursuant to airport (protection of airspace) regulations reg 7:

- a) Pursuant to s. 183 of the *Airports Act 1996* and Reg 7 of the *Airports (Protection of Airspace) Regulations 1996*, the Proponent must apply through the Airport to the Secretary of the Department of Infrastructure and Regional Development for approval of the operation ("controlled activity") set out in the Schedule.
- b) An Application for approval must be given to the Airport at least 28 days before commencement of the operation.
- c) The operation must not commence without approval and must only proceed in compliance with any conditions imposed on such approval.
- d) Sydney Airport has delegated authority from the Secretary to determine "short term" operations (less than 3 months).
- e) The Airport is required to invite submissions from CASA and Airservices regarding the proposed operation.
- f) The Secretary and the Airport, as applicable, may request further information before determining an application.
- g) The "**Important Notes**" must be read and accepted.
- h) The Proponent must complete this Application and provide it to Sydney Airport, with a copy to the Council as part of the relevant Development Application.

CERTIFICATE BY PROPONENT:

Sydney Airport

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I certify that the Application for approval is complete to the best of my knowledge.

Dated:

Signature of Proponent:

Title of signatory:

Sydney Airport

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SYD Classification: Confidential

Schedule to Application for Approval of Crane Operation
Information required by the Airports (Protection of Airspace) Reg's – Reg 7:

APPLICANT:.....[Proponent]

Of:

Contact:

Phone:

Email:

1. Description of proposed crane operation:

.....

2. Period of Operation:

fromto.....

3. Days and hours of operation:

days:.....

hours:.....

4. Location:

Address:.....

Mapping Grid of Australia (MGA94) co-ordinates:

.....E

.....N

Sydney Airport

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5. Details of crane height

- (i) maximum height: metres above ground
- (ii) maximum height: metres AHD
- (iii) resting crane height: metres AHD

6. Purpose of the crane operation:

.....

7. Reference to relevant Development Application:

Council and DA reference:.....

SAFETY CASE FOR ACTIVITY: The Proponent proposes the following safety case:

.....

.....

.....

Sydney Airport

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**IMPORTANT NOTES TO APPLICATION FOR APPROVAL OF CRANE OPERATION
WHICH IS A CONTROLLED ACTIVITY**

[Airports Act 1996]

[Airports (Protection of Airspace) Regulations 1996]

1. Section 182: defines "controlled activities" – includes intrusions by cranes into prescribed airspace.
2. Section 187: if a controlled activity is carried out without approval, or is carried out otherwise than in accordance with an approval, the Federal Court may order a person to carry out remedial work on a building, structure or thing; to mark it or light it or both; to reduce its height.
3. Section 183: a person who carries out a controlled activity without the approval of the Secretary or Airport commits an offence against section 183 of the Act.
a) Penalty: 250 penalty units for each such offence.
4. Regulation 8: a building authority that receives a proposal for a building activity that, if undertaken, would constitute a controlled activity in relation to an airport must give notice of the proposal to the airport
a) Penalty: 50 penalty units for each such offence.
5. If the activity is a short term activity (less than 3 months), the Airport will determine the application pursuant to delegated authority from the Secretary.
6. If the activity is a long term activity (greater than 3 months), the Secretary will determine the application.
7. If the activity is a long term intrusion into PANS-OPS, the application will not be approved. [Reg 9].
8. The Airport will give notice of the application to, and invite submissions from, the Civil Aviation Safety Authority of Australia (CASA) and Airservices Australia. [Reg 10].
9. Upon receipt of submissions from CASA and Airservices, the Airport will refer the application and any submissions from CASA and Airservices, as well as the Airport, to the Secretary, or will determine the application itself if it is a short term activity. The Secretary or the Airport will notify you in writing of their decision.
10. Neither the Secretary or the Airport will approve any activity if CASA advises that carrying out the activity would have an unacceptable effect on the safety of existing or future air transport operations into or out of the Airport. [Reg14(6)].

Sydney Airport

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1.2. Ausgrid

TELEPHONE: 13 13 65
EMAIL: development@ausgrid.com.au



24-28 Campbell St
Sydney NSW 2000
All mail to
GPO Box 4009
Sydney NSW 2001
T +61 2 131 525
ausgrid.com.au

This letter is Ausgrid's response under clause 45(2) of the State Environmental Planning Policy (Infrastructure) 2007.

Ausgrid does not have any objections for the proposed development. The applicant/developer should note the following comments below regarding any proposal within the proximity of existing electrical network assets.

Overhead Powerlines

Safe work NSW Document – Work Near Overhead Powerlines: Code of Practice, outlines the minimum safety separation requirements between these mains/poles to structures within the development throughout the construction process. It is a statutory requirement that these distances be maintained throughout construction. Special consideration should be given to the positioning and operating of cranes and the location of any scaffolding.

The "as constructed" minimum clearances to the mains should also be considered. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid's website, www.ausgrid.com.au

It remains the responsibility of the developer and relevant contractors to verify and maintain these clearances onsite.

"Should the existing overhead mains require relocating due to the minimum safety clearances being compromised in either of the above scenarios, this relocation work is generally at the developers cost.

It is also the responsibility of the developer to ensure that the existing overhead mains have sufficient clearance from all types of vehicles that are expected be entering and leaving the site."

Should you have any enquiries, please contact Ausgrid at development@ausgrid.com.au

Regards,

Ausgrid Development Team

1.3. Water NSW



Contact: David Stephens
Email: david.stephens@watnsw.com.au

General Manager
Randwick City Council
Attention: Tegan Ward
192 Storey St
MAROUBRA NSW 2035

Our ref: IDAS1144260
Our file: A-45897
Your ref: DA/172/2022

20 June 2022

Dear Sir/Madam

Re: Integrated Development Referral – General Terms of Approval
Dev Ref: DA/172/2022
Description: 80mm submersible pump
Location: 6 – 10 Bowral St, Kensington NSW 2033

I refer to your recent letter regarding an integrated Development Application (DA) proposed for the above location. Attached, please find the WaterNSW General Terms of Approval (GTA) for part of the proposed development requiring a Water Supply Work approval under the *Water Management Act 2000* (WM Act), as detailed in the subject DA.

Please note Council's statutory obligations under section 4.47 (3) of the *Environmental Planning and Assessment Act 1979* (EP&A Act) which requires a consent, granted by a consent authority, to be consistent with the general terms of any approval proposed to be granted by the approval body.

If the proposed development is approved by Council, WaterNSW requests these GTA be included (in their entirety) in Council's development consent. Please also note WaterNSW requests notification:

- if any plans or documents are amended and these amendments significantly change the proposed development or result in additional works or activities that relate to any excavation which interferes with an aquifer. WaterNSW will ascertain from the notification if the amended plans require review of the GTA. This requirement applies even if the amendment is part of Council's proposed consent conditions and do not appear in the original documentation.
- if Council receives an application under s4.55 of the EP&A Act to modify the development consent and the modifications change the proposed work or activities described in the original DA.
- of any legal challenge to the consent.

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As the proposed work or activity cannot commence before the applicant applies for and obtains an approval, WaterNSW recommends the following condition be included in the development consent:

The attached GTA issued by WaterNSW do not constitute an approval under the Water Management Act 2000. The development consent holder must apply to WaterNSW for a Water Supply Work approval **after consent** has been issued by Council **and before** the commencement of any work or activity.

A completed application form must be submitted to WaterNSW together with any required plans, documents, application fee, and proof of Council's development consent.

Application forms are available from the WaterNSW website which can be found [here](#).

WaterNSW requests that Council provides a copy of this letter to the development consent holder.

WaterNSW also requests a copy of the determination for this development application be provided by Council as required under section 4.47 (6) of the EP&A Act.

Information to the proponent:

- An extraction limit will be determined by the Department of Planning and Environment (DPE) following a further hydrogeological assessment and included on the conditions applied to the authorisation for the dewatering activity.
- Detailed information required to permit the hydrogeological assessment to be carried out is to be provided by the applicant otherwise the issue of the authorisation will be subject to delay—the [Minimum requirements for building site groundwater investigations and reporting](#) (DPIE, 2021) identify what data needs to be collected and supplied.
- DPE expects that site-specific groundwater-related investigations and monitoring will be continued until an approval application is lodged, and the information reported to WaterNSW at that time, should a development consent be granted by Randwick City Council. Site-specific data gathering according to the '**Minimum requirements for building site groundwater investigations and reporting**' needs to be continued for that period to provide the necessary information to be supplied with the approval application and to confirm the volume required for the dewatering activity so an appropriate extraction limit can be determined by DPE.
- The authorisation will be issued for the purpose of temporary construction dewatering only and it does not constitute any form of approval for ongoing pumping of groundwater from basement levels after the building is issued an occupation certificate.

Yours Sincerely



General Terms of Approval

for proposed development requiring approval
under s89, 90 or 91 of the Water Management Act 2000

Reference Number:	IDAS1144260
Issue date of GTA:	20 June 2022
Type of Approval:	Water Supply Work
Description:	80mm submersible pump
Location of work/activity:	6 - 10 Bowral St, KENSINGTON NSW 2033
DA Number:	DA/172/2022
LGA:	Randwick City Council
Water Sharing Plan Area:	Greater Metropolitan Region Groundwater Sources 2011

The GTA issued by WaterNSW do not constitute an approval under the *Water Management Act 2000*. The development consent holder must apply to WaterNSW for the relevant approval **after** development consent has been issued by Council **and before** the commencement of any work or activity.

Condition Number	Details
Dewatering	
GT0115-00001	Groundwater must only be pumped or extracted for the purpose of temporary construction dewatering at the site identified in the development application. For clarity, the purpose for which this approval is granted is only for dewatering that is required for the construction phase of the development and not for any dewatering that is required once construction is completed.
GT0116-00001	Before any construction certificate is issued for any excavation under the development consent, the applicant must: 1. apply to WaterNSW for, and obtain, an approval under the Water Management Act 2000 or Water Act 1912, for any water supply works required by the development; and 2. notify WaterNSW of the programme for the dewatering activity to include the commencement and proposed completion date of the dewatering activity. Advisory Note: 3. An approval under the Water Management Act 2000 is required to construct and/or install the water supply works. For the avoidance of doubt, these General Terms of Approval do not represent any authorisation for the take of groundwater, nor do they constitute the grant or the indication of an intention to grant, any required Water Access Licence (WAL). A WAL is required to lawfully take more than 3ML of water per water year as part of the dewatering activity. 4. A water use approval may also be required, unless the use of the water is for a purpose for which a development consent is in force.
GT0117-00001	A water access licence, for the relevant water source, must be obtained prior to extracting more than 3ML per water year of water as part of the construction dewatering activity. Advisory Notes: 1. This approval is not a water access licence. 2. A water year commences on 1 July each year. 3. This approval may contain an extraction limit which may also restrict the ability to take more than 3ML per water year without further information being provided to WaterNSW. 4. Note that certain water sources may be exempted from this requirement - see paragraph 17A, Schedule 4 of the Water Management (General) Regulation 2018.
GT0118-00001	If no water access licence is obtained for the first 3ML / year (or less) of water extracted, then, in accordance with clause 21(6), Water Management (General) Regulation 2018, the applicant must: (a) record water taken for which the exemption is claimed, and (b) record the take of water not later than 24 hours after water is taken, and (c) make the record on WAL exemption form located on WaterNSW website "Record of groundwater take under exemption", and (d) keep the record for a period of 5 years, and (e) give the record to WaterNSW either via email to Customer.Helpdesk@watnsw.com.au or post completed forms to - PO Box 398 Parramatta NSW 2124 (i) not later than 28 days after the end of

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water.enquiries@watnsw.com.au | www.watnsw.com.au

Template Ref: WLS 004A, Version 1.0 – May 2016

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General Terms of Approval

for proposed development requiring approval
under s89, 90 or 91 of the Water Management Act 2000

Reference Number:	IDAS1144260
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Type of Approval:	Water Supply Work
Description:	80mm submersible pump
Location of work/activity:	6 - 10 Bowral St, KENSINGTON NSW 2033
DA Number:	DA/172/2022
LGA:	Randwick City Council
Water Sharing Plan Area:	Greater Metropolitan Region Groundwater Sources 2011
	the water year (being 30 June) in which the water was taken, or (ii) if WaterNSW directs the person in writing to give the record to WaterNSW on an earlier date, by that date.
GT0119-00001	All extracted groundwater must be discharged from the site in accordance with Council requirements for stormwater drainage or in accordance with any applicable trade waste agreement.
GT0120-00001	The design and construction of the building must prevent: (a) any take of groundwater, following the grant of an occupation certificate (and completion of construction of development), by making any below-ground levels that may be impacted by any water table fully watertight for the anticipated life of the building. Waterproofing of below-ground levels must be sufficiently extensive to incorporate adequate provision for unforeseen high water table elevations to prevent potential future inundation; (b) obstruction to groundwater flow, by using sufficient permanent drainage beneath and around the outside of the watertight structure to ensure that any groundwater mounding shall not be greater than 10 % above the pre-development level; and (c) any elevated water table from rising to within 1.0 m below the natural ground surface.
GT0121-00001	Construction phase monitoring bore requirements GTA: a) A minimum of three monitoring bore locations are required at or around the subject property, unless otherwise agreed by WaterNSW. b) The location and number of proposed monitoring bores must be submitted for approval, to WaterNSW with the water supply work application. c) The monitoring bores must be installed and maintained as required by the water supply work approval. d) The monitoring bores must be protected from construction damage.
GT0122-00001	Construction Phase Monitoring programme and content: a) A monitoring programme must be submitted, for approval, to WaterNSW with the water supply work application. The monitoring programme must, unless agreed otherwise in writing by WaterNSW, include matters set out in any Guide published by the NSW Department of Planning Industry and Environment in relation to groundwater investigations and monitoring. Where no Guide is current or published, the monitoring programme must include the following (unless otherwise agreed in writing by WaterNSW): i. Pre-application measurement requirements: The results of groundwater measurements on or around the site, with a minimum of 3 bore locations, over a minimum period of 3 months in the six months prior to the submission of the approval to WaterNSW. ii. Field measurements: Include provision for testing electrical conductivity; temperature; pH; redox potential and standing water level of the groundwater; iii. Water quality: Include a programme for water quality testing which includes testing for those analytes as required by WaterNSW; iv. QA: Include details of quality assurance and control v. Lab assurance: Include a requirement for the testing by National Association of Testing Authorities accredited laboratories. b) The applicant must comply with the monitoring programme as approved by WaterNSW for the duration of the water supply work approval (Approved Monitoring Programme)
GT0123-00001	(a) Prior to the issuing of the occupation certificate, and following the completion

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water.enquiries@waterNSW.com.au | www.waterNSW.com.au



General Terms of Approval

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Water Sharing Plan Area:	Greater Metropolitan Region Groundwater Sources 2011
	of the dewatering activity, and any monitoring required under the Approved Monitoring Programme, the applicant must submit a completion report to WaterNSW. (b) The completion report must, unless agreed otherwise in writing by WaterNSW, include matters set out in any guideline published by the NSW Department of Planning Industry and Environment in relation to groundwater investigations and monitoring. Where no guideline is current or published, the completion report must include the following (unless otherwise agreed in writing by WaterNSW): 1) All results from the Approved Monitoring Programme; and 2) Any other information required on the WaterNSW completion report form as updated from time to time on the WaterNSW website. c) The completion report must be submitted using "Completion Report for Dewatering work form" located on WaterNSW website www.watarnsw.com.au/customer-service/water-licensing/dewatering
GT0150-00001	The extraction limit shall be set at a total of 3ML per water year (being from 1 July to 30 June). The applicant may apply to WaterNSW to increase the extraction limit under this condition. Any application to increase the extraction limit must be in writing and provide all information required for a hydrogeological assessment. Advisory note: Any application to increase the extraction limit should include the following: - Groundwater investigation report describing the groundwater conditions beneath and around the site and subsurface conceptualisation - Survey plan showing ground surface elevation across the site - Architectural drawings showing basement dimensions - Environmental site assessment report for any sites containing contaminated soil or groundwater (apart from acid sulphate soils (ASS)) - Laboratory test results for soil sampling testing for ASS - If ASS, details of proposed management and treatment of soil and groundwater. Testing and management should align with the NSW Acid Sulphate Soil Manual
GT0151-00001	Any dewatering activity approved under this approval shall cease after a period of two (2) years from the date of this approval, unless otherwise agreed in writing by WaterNSW (Term of the dewatering approval). Advisory note: an extension of this approval may be applied for within 6 months of the expiry of Term.
GT0152-00001	This approval must be surrendered after compliance with all conditions of this approval, and prior to the expiry of the Term of the dewatering approval, in condition GT0151-00001. Advisory note: an extension of this approval may be applied for within 6 months of the expiry of Term.
GT0155-00001	The following construction phase monitoring requirements apply (Works Approval): a. The monitoring bores must be installed in accordance with the number and location shown, as modified by this approval, unless otherwise agreed in writing with WaterNSW. b. The applicant must comply with the monitoring programme as amended by this approval (Approved Monitoring Programme). c. The applicant must submit all results from the Approved Monitoring Programme, to WaterNSW, as part of the Completion Report

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water.enquiries@watarnsw.com.au | www.watarnsw.com.au

SCHEDULE 1

The plans and associated documentation listed in this schedule are referred to in general terms of approval (GTA) issued by WaterNSW for integrated development associated with DA/172/2022 as provided by Council:

- DPIE, 2021 - Minimum requirements for building site groundwater investigations and reporting & information for developers and consultants.
- EI Australia, 2021 - Geotechnical Investigation - Report E25081.G03.
- Planning Ingenuity, 2022 - Statement of Environmental Effects - Report M210023.

2. Internal referral comments:**2.1. DEAP****“INTRODUCTION**

These minutes record the advice provided at the Design Excellence Advisory Panel meeting. The Panel's comments are intended to assist Council in their design consideration of an application against the SEPP 65 or/and Design Excellence principles. The absence of a comment under a head of consideration does not imply that particular matter to be satisfactorily addressed, more likely the changes are suggested elsewhere to generate a desirable change. Your attention is drawn to the following;

- *SEPP 65, including the 9 Design Quality Principles and the requirements for a Qualified Designer (a Registered Architect) to provide Design Verification Statements throughout the design, documentation and construction phases of the project.*
- *The Apartment Design Guide, as published by Planning NSW (July 2015), which provides guidance on all the issues addressed below.*

Both documents are available from the NSW Department of Planning.

Note:

The Design Excellence Advisory Panel is appointed by Randwick Council. The Panel's written and verbal comments are their professional opinions and constitute expert design quality advice to Randwick Council, the architect and the applicant.

1. *To address the Panel's comments, the applicant may need to submit amended plans. **Prior to preparing any amended plans or attending additional Panel presentations, the applicant MUST discuss the Panel's comments and any other matter that may require amendment with Council's assessing Planning Officer.***
2. *When addressing the Panel's comments by way of amendments, if the applicant does not propose to address all or the bulk of the Panel's comments, and wishes to make minor amendments only, then it should be taken that the Panel considers the proposal does not meet the SEPP 65 requirements or Design Excellence Principles. In these instances it is unlikely the scheme will be referred back to the Panel for further review.*

PANEL COMMENTS

The Panel noted that the Development Application follows an earlier pre-DA Panel meeting on 19 July 2021 and subsequent meetings with Council officers in August 2021.

The proposed development reflects issues of concern that had been identified by the Panel in 2021 and subsequent negotiations by the Applicant with Council.

The proposal involves a part six, part nine-storey residential flat building providing for 44 apartments, a 7m to 8m wide ground level shared-way and two levels of basement parking. The roof top above the six-storey component contains a communal open space, swimming pool, BBQ area and roof with landscaping around the perimeter. The roof top above the nine-storey building

contains lift overrun, building services and a green roof that is accessible only for maintenance and not by residents or visitors.

Context & Neighbourhood Character

The Panel discussed the applicable planning controls related to the K2K corridor which impact on the subject site. In particular, there is a need to resolve the preferred alignment and status of the proposed north-south laneway.

Until there is clarity about the location and linkage between Bowral Street and Todman Avenue, there is potential (as demonstrated by this submission) for the proposed north-south shared way to become an enclosed laneway primarily servicing the subject site and Anzac Parade buildings rather than a pedestrian way open to the sky.

The Panel noted the potential importance of B2 north-facing active commercial uses at ground floor within the subject site. Such uses would be removed from the more intense Anzac Parade environment and reinforce the proposed Bowral St public open space Reserve.

In the Panel's view, there is a need for the Applicant to resolve the environmental and functional issues associated with the north-south link with Council's strategic planners before further design work is undertaken. There is a need to take into account the approved development commitments within the precinct spanning between Bowral Street and Todman Avenue as an integral step in the design resolution process.

The position of the present through site link, at the western edge of the site, appears to reduce the size of the Bowral Street Plaza compared to the Block Plan from the K2K DCP.

Built Form

The Panel noted that in the comments prepared following the pre-DA presentation that there were a number of issues that still need to be resolved.

Previous advice indicated that publicly accessible laneways should be open to the sky. It is clear that the current access link is enclosed within the built form and provides for servicing waste management and access to basement car parking with limited landscape and limited surveillance.

The Panel remains concerned that the double storey laneway does not provide for a pleasant, safe pedestrian way open to the sky and will be further impacted by construction of future development on adjacent lands to the west that will extend to Anzac Parade.

The Panel had also previously noted that the depth of the eight-storey building component appeared to be excessive and greater than the depth identified under ADG.

As a consequence, there are a number of long north-south apartments that will be relatively dark, especially in the middle, with no opportunity to gain any additional light from the eastern or western boundaries of the 8/9 storey building.

The Panel supported the articulation of the northern façade to Bowral Street but noted that it is dependent on an adjustment of the defined DCP height planes and involved the transfer of potential development at Level 9 to lower levels. The level of articulation on the southern façade is limited.

The Panel is supportive of commercial development at ground and possibly first floor level. In that context, the additional floor to floor height identified in the ADG at ground level has not been provided and could impose restraints on the potential development of retail / amenity facilities that would complement the proposed Bowral Street plaza.

The revised scheme continues to propose a major non-compliance with the prescribed building envelope. Impacts of the non-compliant built form on adjacent development and open space should be clearly identified and resolved to council officers satisfaction.

Density

The adoption of a number of issues raised by the Panel could influence the operational character of the building, particularly if the introduction of commercial uses at ground and possibly first floor level was implemented.

Limiting the depth of the eight-storey residential component would reduce GFA but would not necessarily reduce residential density.

Sustainability

In the Panel comments prepared following the pre-DA review, there was reference to the need to prepare a site-wide sustainability strategy that considered passive environmental design, management of amenity within the site, impact on neighbouring properties, water conservation and management together with energy generation and minimisation.

The Panel recommends that the applicant prepare further detailed documentation demonstrating how these issues have been addressed given that the documentation presented does not show how water would be collected, stored and reused, nor does it address the use of photovoltaic panels to generate electricity for communal purposes including lighting and heating.

There was little evidence of any attempt to provide measures to charge electric vehicles within the basement structure.

It is unclear whether the proposed development is to provide air conditioning to apartments and if intended, how it will be provided.

It is recommended that a site-wide sustainability strategy form part of the final DA documentation.

Landscape

In the Panel's pre-DA comments it was suggested that the relationship between the subject site and Bowral Place be developed to reinforce the proximity to active public space. There is little evidence of such relationships given the apparent intention to provide for residential use at ground floor.

The project documentation suggests that the landscape within the proposed north-south link is limited apart from the proposed trellis which would be of little effective use once the development site to the west is committed.

Landscape at ground level appears to be limited to the south-eastern corner of the site and is not readily accessible. There do not appear to be any significant landscape elements to celebrate the entry point to the complex or to enhance the Bowral St environment.

The significant dependence on effective landscape at all levels to the Bowral St façade does not appear to be reflected in the submitted documentation. There is little detail indicating the depth of soil proposed and irrigation measures (particularly in the context of the extensive landscape at Level 4) and the sectional details with apartments.

The architects need to review the scheme for compliance with the landscape and communal open space requirements of the ADG

Amenity

The Panel noted that there were a number of key issues that will have a direct effect on amenity including:

- The lack of natural light to both lift lobbies generally throughout the building, contrary to ADG requirements.
- The constraint on the scale of the primary entry to the building from Bowral Street by the introduction of a 'services plant' room
- Direct access to a bulky goods store immediately adjacent to the primary entry
- Long, narrow north-south apartments with limited provision for light other than from the north or south.
- Nearly all bathrooms have no natural light
- Transfer from garbage rooms to garbage holding area is not resolved
- The environmental quality of the north-south link is impaired by blank walls, waste management access and access ramp to basement. There is no provision for access to open sky
- The lack of shade provision and change facilities in the communal roof top area should be addressed
- Explore access flexibility to lift cores to provide for individual lift shut-downs, including extension of the six-level lift core to the communal roof space.

Safety

The exit from the fire stair complex needs to be cross-checked against BCA requirements given that it appears to provide for exit from basement/s which merge with fire stairs serving upper floors.

The juxtaposition of waste management, fire exit and ramp to basement together with vehicular movement in the north-south link raised concerns about safety and surveillance.

Housing Diversity & Social Interaction

The provision of a single point of entry to the complex from Bowral Street and common access to the Level 6 roof top recreational garden communal area will provide opportunities for social interaction.

Aesthetics

The Panel is generally supportive of the architectural expression that has been developed since the previous submission and the proposed introduction of significant landscape components, subject to the issues raised under 'Amenity'.

Summary & Recommendations

Given the complexities associated with the K2K corridor and the north-south laneway in this block, it is critical that there is clarification and agreement about Council's objectives and a clear relationship between the subject site and the development approvals that have been determined for sites within the Bowral Street /Todman Place precinct. In particular, the criticality of open sky laneways needs to be resolved to avoid the progressive introduction of covered multi-purpose access paths with poor wayfinding and safety.

The panel strongly recommend that the proposal should include a Future Site Context drawing including a ground floor plan of all known approvals in the western end of the subject block.

The key issues that have been identified above include:

- *The introduction of commercial/retail uses at ground level to support the Bowral Place plaza to provide critical public activation*
- *The potential reduction of the depth of the western building*
- *The resolution of the character, wayfinding and safety of the laneway*
- *Consideration of landscaping at street level to reinforce the introduction of commercial uses*
- *Enhancing lobby design to provide for natural light at all levels (ADG)*
- *Reinforcing the potential use of the communal roof top area by introducing shade and change facilities and universal access.*
- *Subject to resolution of the through-site link alignment, there may be a need for Council to reconsider the scale of the Bowral Street Plaza.”*

2.2. Heritage planner

- (a) *“The proposed development is not consistent with the objectives of Clause 5.10 of the RLEP, specifically:*

- (a) to conserve the environmental heritage of Randwick,*
- (b) to conserve the heritage significance of heritage items and heritage conservation areas, including associated fabric, settings, and views,*

- (b) *The proposed development is not consistent with the objectives and specific controls for Heritage Conservation within the K2K RDCP, specifically:*

Objectives

- *To conserve and enhance the character and heritage significance of heritage items*
- *To ensure infill development is designed to respond sympathetically to the historic built form, character and detailing of nearby heritage items and contributory buildings*
- *To ensure that the heritage significance of heritage items and/or conservation areas located in the vicinity of the town centres is considered in the assessment of development applications*

Controls

Part A, Section 2 - Urban Design and Place-Making Guiding Principles of the Kensington to Kingsford DCP, development within the Kensington and Kingsford town centres must protect the heritage significance of heritage items, contributory buildings and/or heritage conservation areas located within the town centres and adjoining areas.

Part A, Section 3 - Desired Future Character Kensington and Kingsford Town Centres recommends that it evolve into a vibrant and dynamic town centre situated along Anzac Parade, Sydney’s finest grand green boulevard. The integrity of existing heritage and contributory buildings located within and adjoining the town centres will be respected and integrated with high-quality and sympathetic contemporary architecture that enhances the character and layering of the urban experience.

Part A, Section 6 – Built Form aims for controls that focus on achieving an appropriate scale for new development so that buildings reinforce a coherent, harmonious and appealing urban environment, and contribute to the enhancement of the public realm. Objectives: To ensure development responds to the existing siting, scale, form and character of heritage items, contributory buildings and adjoining properties.

Part A, Section 9 – Heritage Conservation contain controls for:

All Development

- a) *All development involving heritage items are to be in accordance with requirements for heritage set out in Part B2 of the DCP*
- b) *All development involving heritage items and contributory buildings are required to:*
 - iii) *Adhere to the principles of the Burra Charter*
 - iv) *Include the submission of a Heritage Impact Statement (or Heritage Impact Assessment) which considers the heritage significance of the item or contributory building, the impact of the proposal on the heritage significance of the building or heritage items within the vicinity, the rationale for the proposed development, and the compatibility of the development with the objectives and controls, and/or recommended management within relevant conservation management plans, planning instruments or heritage inventories*
- c) *Development located within the vicinity of another local government area requires the preparation of a Heritage Impact Statement to address the potential impact on adjoining or nearby heritage items or heritage conservation areas in the adjoining local government area.*

New development adjacent to heritage items and contributory buildings:

- b) *Development adjacent to heritage items and contributory buildings (infill development) should:*
 - vii. *Be designed to respect the historic scale, proportions and articulation of adjacent contributory built forms, including heights, solid to void ratios and alignments of street awnings*
 - viii. *Incorporate podiums and framed overlays that reference the principle influence line of historic streetscapes, and are cohesive with the established street frontage*
 - ix. *Be designed to incorporate setbacks which retain the profile and massing of exposed side elevations to retained contributory built forms*
 - x. *Ensure new street elevations maintain the vertical articulation and segmented character of historic building groups which provide variety to the streetscape and sense of human scale, and avoid unrelated horizontally emphasised articulation*
 - xi. *Provide contemporary new signage that complements the character of the contributory buildings and*
 - xii. *Ensure that new finishes to side elevations should not detract from street front detailing and finishes.*
- (c) *The Heritage Impact Statement submitted with the development application does not address the specific Controls for Heritage Conservation within the K2K RDCP.*
- (d) *The Heritage Impact Statement submitted with the development application does not adequately and thoroughly assess the significance of each of the buildings proposed for demolition in accordance with, among other things, the "Assessing Heritage Significance" Guidelines prepared by the NSW Heritage Office.*
- (e) *The Heritage Impact Statement does not adequately address the impacts of the proposal on the significance of the identified nearby listed Kensington Public School Buildings, their setting, as well as its impact on views to the heritage items from the public domain.*
- (f) *The proposed height, bulk and scale of the development does not relate to the adjacent nearby heritage item at No. 77-79E Doncaster Avenue - Kensington Public School buildings (item no. 1126) in that:*
 - *The proposed built form substantially exceeds the maximum permissible building height under the Building Envelope Controls for the site contained within the K2K DCP and the RLEP with a propose 6 storey and trafficable roof-top element in the eastern section of the building whereas the DCP contemplates a maximum 5 storey component where the maximum 19m building height control applies. The excessive height, size and visibility of the proposed development will detrimentally impact the significance of the identified nearby listed Kensington Public School*

Buildings, their setting, as well as views to the heritage items from the public domain.

- The proposed built form has an excessive height, bulk and scale as it proposes a 9 storey component that extends beyond the designated part of the site envisaged by the RDCP controls which will detrimentally impact upon the heritage value and setting of the heritage item at 77-79E Doncaster Avenue - Kensington Public School by failing to provide sufficient transition to the Kensington Public School in the surrounding and intervening residential area to the east contrary to the desired future character of the area.

2.3. Development Engineer

Waste Management

1. *The development application should be refused because the proposed development and waste management plan does not comply with the relevant controls in Section 22 of the RDCP 2012 including how the building will achieve the future provision of an Automated Waste Collection System (AWCS).*
 - (a) *Section 22 in Part C of the Kensington to Kingsford section of RDCP 2013, control (h) requires an Automated Waste Collection System (AWCS), which has not been provided.*
 - (b) *The submitted waste management plan assumes standard waste bin collection which is no longer appropriate within the area of the Kensington to Kingsford DCP.*
 - (c) *Green & Food Waste shall be collected via Council's Food Organic and Garden Organic (FOGO) collection service which commenced in March 2021 for all residential development. FOGO bins are currently only available in 240L. Waste storage will therefore need to be provided for the FOGO bins, which will be a diverted waste stream from the normal garbage stream. Although addressed in the Operational Waste Management Plan, no provision for FOGO has been indicated on the architectural plans.*

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

Clause 4.6 Variation Statement – Building Height (Clause 4.3)

1. Height of Buildings Standard

Clause 4.3 of RLEP 2012 relates to the maximum height requirements and refers to the *Height of Buildings Map*. The relevant map identifies the subject site as having a maximum height of 21m to No. 6 Bowral Street, and 19m to Nos. 8 and 10 Bowral Street. It is noted however that the subject site is located within the Kensington and Kingsford town centre which permits additional height and refers to the *Alternative Building Heights Map*. The relevant map identifies that No. 6 Bowral Street is permitted an alternative maximum height of 31m, whilst Nos. 8 and 10 Bowral Street will continue to rely on the standard building height of 19m.

Building height is defined as:

building height (or height of building) means—

- (a) in relation to the height of a building in metres—the vertical distance from ground level (existing) to the highest point of the building, or
- (b) in relation to the RL of a building—the vertical distance from the Australian Height Datum to the highest point of the building,

including plant and lift overruns, but excluding communication devices, antennae, satellite dishes, masts, flagpoles, chimneys, flues and the like.

The relevant maps [sheets *Height of Buildings_001* and *Alternative Height of Building_001*] indicates that the maximum building height permitted at the subject site is 19m for Nos. 8 and 10 Bowral Street and 31m for No. 10 Bowral Street, respectively.

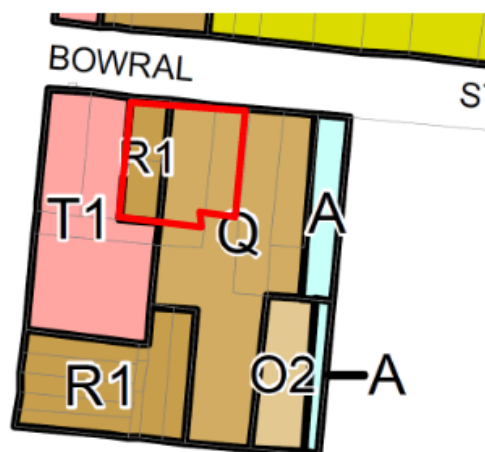


Figure 19 Extract from the Height of Buildings Map [R1=21m, Q=19m]

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Figure 20 Extract from the Alternative Height of Buildings Map [U1=31m]

2. Proposed variation to height of buildings development standard.

The architectural plans indicate that the proposed development has a height of 28.55m to the lift overrun where the 31m alternative building height applies and is therefore compliant. Where the standard 19m building height applies, the proposal provides a maximum height of 28.73m to the lift overrun and is non-compliant. This is measured from natural ground line in accordance with the definition of height under the RLEP 2012.

Accordingly, the proposal is non-compliant with the 19m building height development standard and seeks a maximum variation of 9.73m or 51.2%. It is noted that the proposal also provides an 8.5m non-compliance to the parapet edge of the uppermost level (height of 27.5m), 2.2m non-compliance to the swimming pool balustrade (height of 21.2m) and 1m variation to the swimming pool floor (height of 20m).





Figure 21 Height Blanket Diagrams



Figure 22 Sectional diagram demonstrating proposed non-compliances

3. Clause 4.6 to RLEP 2012

The objectives and provisions of clause 4.6 are as follows:

- (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 Planning Secretary has been obtained.

(5) In deciding whether to grant concurrence, the Planning Secretary must consider—

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and

(b) the public benefit of maintaining the development standard, and

(c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.

(6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—

(a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or

(b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note— When this Plan was made, it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E3 Environmental Management or Zone E4 Environmental Living.

(7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).

(8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*

- (a) a development standard for complying development,*
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
- (c) clause 5.4,*
- (caa) clause 5.5,*
- (ca) clause 6.16(3)(b).*

The development standards in clause 4.3 are not “expressly excluded” from the operation of Clause 4.6.

Objective 1(a) of Clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of Subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of Subclauses 4.6(3) & (4) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of “an appropriate degree of flexibility” in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by Subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, Subclause 4.6(6).

It is hereby requested that a variation to this development standard be granted pursuant to Clause 4.6 so as to permit a maximum building height of 28.73m which equates to a numerical variation of 9.73m, noting that the maximum height relates to the lift overrun as measured from natural ground line. The results in a percentage variation of 51.2%.

4. Compliance is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a))

Of relevance to Clause 4.6(3)(a), in *Wehbe V Pittwater Council* (2007) NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

“ An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.”

The judgement goes on to state that:

“ The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).”

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

1. The objectives of the standard are achieved notwithstanding non-compliance 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;
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;
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to Wehbe and states:

"...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."

Clause 4.6(3)(a) requires that the written request to vary a development standard demonstrate that compliance with the development standard is unnecessary or unreasonable in the circumstances of the case. Requiring strict compliance with the standard is unreasonable or unnecessary because:

- the development is consistent with the standard and zone objectives, even with the proposed variation (refer to Section 7 below);
- there are no additional significant adverse impacts arising from the proposed non-compliance; and
- important planning goals are achieved by the approval of the variation.

On this basis, the requirements of Clause 4.6(3)(a) are satisfied.

5. Sufficient environmental planning grounds (Clause 4.6(3)(b))

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. Specifically, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 24) states:

The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development

*standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].*

The assessment of this numerical non-compliance is also guided by the decisions of the NSW LEC in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 and *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 whereby Justice Pain ratified the original decision of Commissioner Pearson. The following planning grounds are submitted to justify contravening the maximum building height:

1. The height breach is at its greatest for the lift overrun located above the nine storey portion (RL 55.75) when measured from natural ground as is located within the 19m building height standard. There is an additional non-compliance to the parapet of the level 8 and swimming pool provided for the communal open space. The proposed non-compliances are a result of the dual building height standards (namely the interface between the alternative and standard building height), lot shape, amalgamation pattern and features as desired by the RDCP.
2. As detailed, the maximum non-compliance is a result of the interface between the two building height development standards on the subject site and constraints imposed by the lot ownership and amalgamation patterns of the neighbouring properties. Of relevance, the building envelope and alternative height standard relies upon amalgamation with the neighbouring properties, which is not possible for the subject development given the complex lot ownership pattern. As a result, the built form has been designed to satisfy the objectives and intent of the LEP and DCP, however has resulted in a variation to the building height development standard. Given the difference in height between the 31m alternative and 19m standard height, the inability to amalgamate has resulted in the proposed non-compliance to ensure the provision of an efficient building footprint and proportionate architectural design.
3. Furthermore, the non-compliant building height is a result of the desired building envelope contained within the RDCP, specifically, the shared-way located along the western (side) boundary. The provision of this element has, in-part, located the built form on the upper levels which extends between the 31m and 19m height limit. Additionally, the proposal has sought to provide a 9m rear setback across the entirety of the façade which is significantly greater than what is permitted by the RDCP. That is, the DCP includes the provision of a flexible 9 storey zone to the south in which the development could technically provide. However, the relocation of floor space within the 19m height limit represents a superior outcome which will complement the character of the locality.

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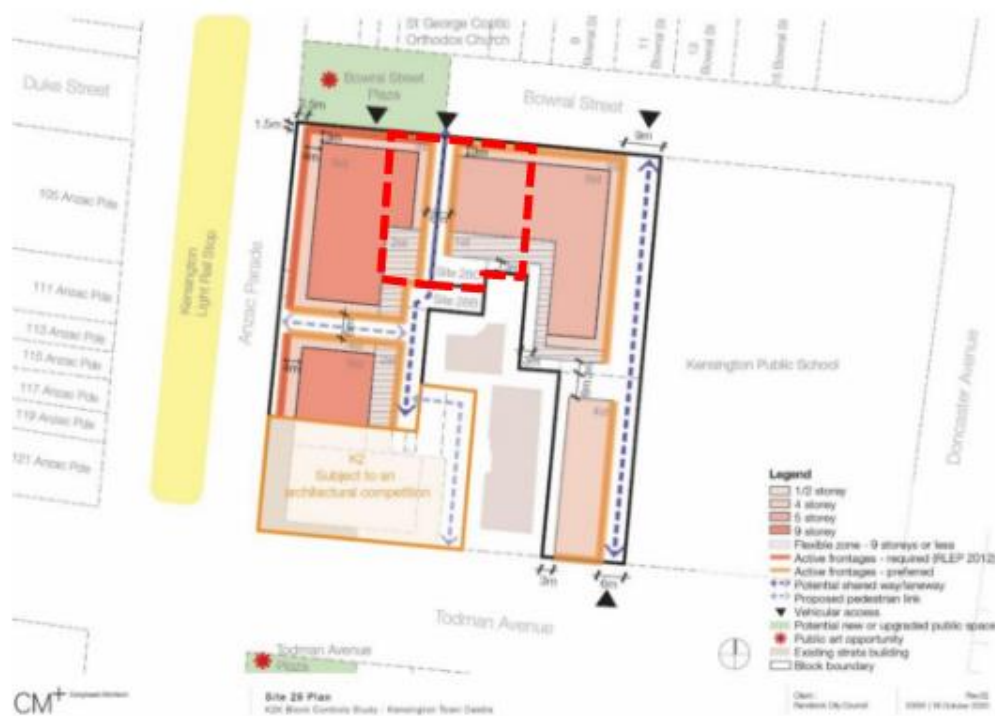


Figure 23 Building envelope controls per the DCP

4. It follows that the proposed location of floor space (resulting in non-compliance) is a far superior outcome to providing this elsewhere on-site, particularly in the rear setback. That is, the provision of additional floor area in alternate locations will result in a greater privacy and solar impact to the adjoining properties, but will also deliver a slender and undesirable tower form in direct response to the LEP height standards. As such, the proposal provides a cohesive built form in which the extent of non-compliance only occupies a maximum width of 7.5m (or 20% of the site) within the recessed uppermost levels. This ensures that when viewed from the streetscape, despite being technically non-compliant, the development is of a suitable bulk and scale, delivering the desired transition along the streetscape. Of relevance, the neighbouring properties to the east are similarly permitted a 19m building height which will reinforce the transition of bulk and scale from Anzac Parade to Doncaster Avenue, along Bowral Street. From an urban design perspective, the extent of non-compliance delivers cohesive single lot development, whilst maintaining the desired character per the DCP.

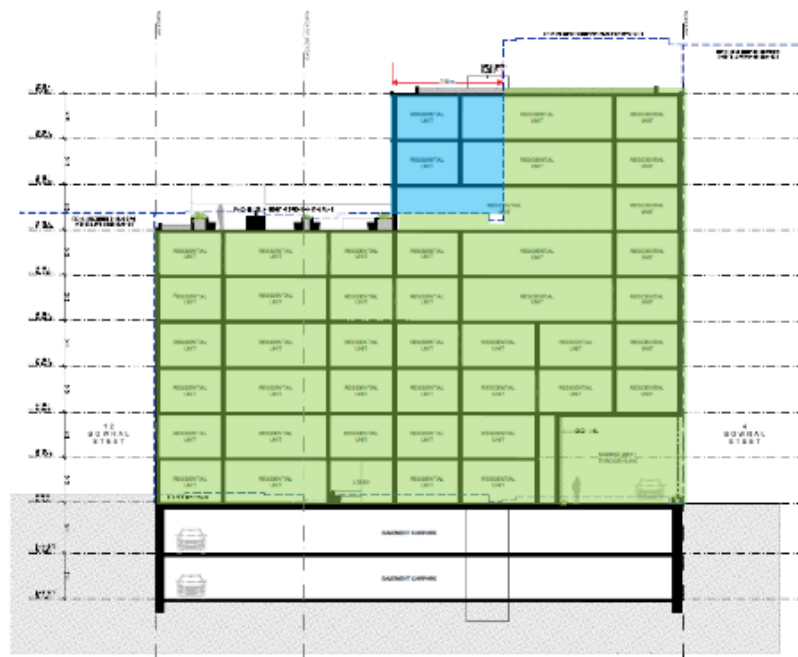


Figure 24 Section indicating 7.5m wide area of non-compliance (blue), in comparison to the remaining built form (green)

5. Further to the above and when considering the proposed height in comparison to the properties to the north and south, the non-compliance will merge into the anticipated bulk and scale of the locality, per the overlay provided in **Figure 25** below. That is, on the northern side of Bowral Street the 31m height limit (as is permitted by the alternative building height) extends to the eastern boundary of Nos. 1-3 Bowral Street (St George Coptic Orthodox Church). Given it is unlikely (but not improbable) that the opposing church will be redeveloped, as the non-compliant height opposes a structure that is somewhat uncharacteristic of the streetscape, the perceivable impact created by the proposal will be less apparent by virtue of the differing typologies. Upon the potential redevelopment of this church, it will similarly be permitted a 31m building height aligning with the subject site.

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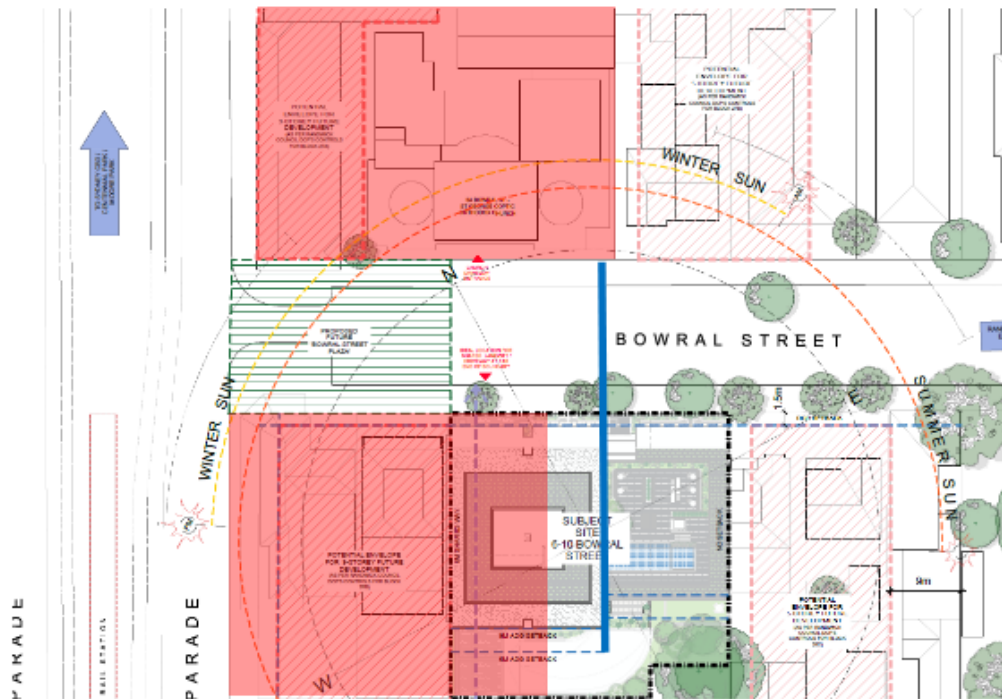


Figure 25 Site plan (Red hatch denotes 31m height limit, blue line denotes edge of predominant non-compliance)

Similarly and when considering the properties to the rear, it is noted that a 54m height limit is permitted, inclusive of the residential accommodation which is not captured as part of the approved 18 storey mixed use development at Nos. Nos. 172-180 Anzac Parade and 116R Todman Avenue. As such and when viewed from Bowral Street, the considerable height of the buildings immediately to the rear will ensure the proposed non-compliance will be visually and physically subordinate.

6. As detailed, the maximum extent of non-compliance is integrated into the overall building form as is anticipated by RLEP and is consistent with the building envelope envisaged under the RDCP. The non-compliance will not be visually jarring as the built form is situated within a well-articulated mass extending seamlessly between the varying building heights. To the casual observer, the well-designed built form conceals that the proposal is non-compliant, as the expected building height is retained albeit slightly shifted. Furthermore, the difference in height between the 19m and 31m standard also limits the visual and physical extent of the variation. That is, the difference in height between the alternative and standard controls will be maintained, but shifted 7.5m to the east as a result of the previously mentioned constraints. Importantly, the non-compliant elements form part of a recessed built form and includes framing, balcony articulation, fenestration and contemporary materiality to ensure the delivery of a high quality built form.
7. The maximum extent of non-compliance is setback 4.5m from the Bowral Street and 9m to the rear. These setbacks, which are consistent with (or greater than) the RDCP, ensures that the elements above the height limit will not result in any adverse visual impact when viewed from the public

domain given compatibility with the redevelopment of future properties. Further, the non-compliance is also provided with a nil setback to the western (side) boundary which be obscured by the future redevelopment of the neighbouring properties.

To the east, the non-compliant elements are setback by 16m from the boundary shared with the neighbouring property. However, given the proposal provides a six storey built form in which the building envelope is entirely compliant with the 19m standard (excluding the ancillary swimming pool), the relationship to Nos. 12 to 16 Bowral Street will be retained. As such, the proposed setbacks and overall architectural design ensures that the non-compliance will be entirely compatible with the character of the locality.

8. The recess and stepping of the façade, in addition to the provision of balcony articulation, glazed elements and framing limits any adverse visual impact to the public domain. Furthermore, given the setback of this non-compliant element and the generally narrower width of Bowral Street, this confines the sight lines as viewed from the public domain. When considering the non-compliances from the wider view, this is considered acceptable as discussed in detail above.
9. When considering the relatively minor non-compliances to the swimming pool balustrades and floor, these will improve the amenity of future occupants without having any adverse impact to the streetscape or neighbouring properties. That is, the swimming pool is raised above the finished floor level of the roof top terrace to enable the provision of a sufficient depth for the use of future occupants. In order to minimise the impact of this feature, it has been recessed from the outer edge of the built form and site boundaries. This ensures that the swimming pool and associated balustrades will not be visually obtrusive or jarring from the public domain or neighbouring properties, as the compliant building envelope below will obscure sightlines from natural ground. Given the subordinate nature of these elements, they are not anticipated to result in any visual impact and is considered acceptable. With regards to amenity, the setback of these elements limits any potential privacy, solar access or view impacts and is considered acceptable.
10. It is considered that there is an absence of any significant material impacts attributed to the breach on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality. Specifically:
 - a. The extent of the additional height creates no significant adverse overshadowing impacts to adjoining properties when compared to a compliant building envelope. That is, although the additional height results in a minor degree of overshadowing, it will retain adequate solar access to neighbouring properties and is predominantly cast onto roof forms. As such, the increase to overshadowing caused by the non-compliant elements would be insignificant;

- b. The height breach does not result in any adverse additional privacy impacts. The extent of privacy impacts caused by the height breach will have no greater impact on the privacy of adjoining properties when compared to a compliant built form. The non-compliant elements are setback considerably from respective boundaries, are orientated to the public domain and will not result in any further overlooking. When considering the southern (rear) setback, the openings pertain to lower trafficked bedrooms and secondary balcony spaces which mitigates any aural or visual impact. As such, the loss of privacy caused by the non-compliant elements would be insignificant; and
 - c. The height breach will not result in any significant view loss as the subject site does not contain any significant views across or from the public domain. The maximum height non-compliance is limited and is consistent with the building height of the surrounding locality. As such, the extent of view loss caused by the non-compliant element would be insignificant.
11. The social benefits of providing housing stock within a highly sought after location should be given weight in the consideration of the variation request. The distribution of floor space is predicated on the allotment shape, principles of the DCP and lot ownership pattern. This has resulted in a building envelope which extends form the within the 31m alternative building height into the 19m building height and therefore necessitates a form and scale that breaches the height limit. It would be a loss to the community (and contrary to the public interest) to deny the variation and require the removal of residential accommodation within a well located and well-designed development.
12. Insistence on compliance with the height control would result in the removal of a high quality residential apartments and communal open space elements (being the swimming pool) which is disproportionate response to the impacts created by the proposal. Specifically and as discussed, the non-compliance is provided within a high quality built form which limits any visual impact and has been designed to ensure the amenity of neighbouring properties is protected.
13. The proposed development meets the objectives of the development standard and meets the objectives of the B2 Local Centre zone (as further detailed in Section 7 below);
14. The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:
 - a. The proposal promotes the orderly and economic use and development of land through the redevelopment of an underutilise site (1.3(c));
 - b. To promote the delivery and maintenance of affordable housing (1.3(d));

- c. The proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).
15. The variation to the height of buildings development standard will give better effect to the aims of *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* (SEPP 65). In particular:
- a. The proposed variation will provide more sustainable housing in social and environmental terms and better achieve urban planning policies (clause 2(3)(a)(i));
 - b. to achieve better built form and aesthetics of buildings and of the streetscapes and the public spaces they define (clause 2(3)(b));
 - c. to contribute to the provision of a variety of dwelling types to meet population growth (clause 2(3)(f));
 - d. Approval of the proposed variation will support a variety of housing types by providing a well-located and compact development that will be a better choice for families (clause 2(3)(g)).

The above environmental planning grounds are not general propositions and are unique circumstances to the proposed development, particularly the dual alternative building heights, lot ownership pattern, amalgamation and desired building envelope. Insistence on compliance with the height will result in the removal of a number of residential apartments and communal open space elements which is a disproportionate outcome given the limited impacts of the proposal. Specifically, the additional height does not significantly impact the amenity of the neighbouring properties (when compared to a compliant development) and has been designed to address Bowral Street and ensure the non-compliance is not visual jarring from the public domain or neighbouring properties.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. *The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.*

87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

6. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), (Clause 4.6(4)(a)(i))

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) in Section 4 above (and furthermore in terms of meeting the objectives of the development standard, this is addressed in Section 7 below). Clause 4.6(3)(b) is addressed in Section 5 above.

The second opinion of satisfaction, in clause 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(ii). The matters in Clause 4.6(4)(a)(ii) are addressed in Section 7 below.

7. 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 (Clause 4.6(4)(a)(ii))

Clause 4.3 - Height of Buildings Objectives

The objectives and relevant provisions of clause 4.3 of RLEP 2012 are as follows, inter alia:

- (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.

In order to address the requirements of Subclause 4.6(4)(a)(ii), the objectives of Clause 4.3 are addressed in turn below.

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

It is noted that objective (a) refers to being “compatible” with adjoining development. It is considered that “compatible” does not promote “sameness” in built form but rather requires that development fits comfortably with its urban context. Of relevance to this assessment are the comments of Roseth SC in *Project Venture Developments Pty Ltd v Pittwater Council* [2005] NSWLEC 191:

“22 There are many dictionary definitions of compatible. The most apposite meaning in an urban design context is capable of existing together in harmony. Compatibility is thus different from sameness. It is generally accepted that buildings can exist together in harmony without having the same density, scale or appearance, though as the difference in these attributes increases, harmony is harder to achieve.”

Council does not have any specific desired future character objectives under RLEP 2012 but reiterate that the desired future character is set by the applicable planning controls. However, the use of a DCP to determine desired future character of an LEP was overturned by Preston CJ in *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115. That is, the desired future character of the locality is not defined under RLEP 2012 and is subjective.

Therefore, the desired future character of the neighbourhood must be set by the existing, recently approved and proposed buildings within the neighbourhood. The subject site is zoned B2 Local Centre within a locality which is anticipated to undergo a significant increase in density. That is, the existing size and scale of development in the immediate locality is not definitive. Directly to the east and west, the neighbouring properties are underdeveloped and do not represent the desired future character of the locality as anticipated by the relevant development standards and controls. Similarly and to the south, these buildings are also underdeveloped relative to the standards. Importantly, although the church structure to the north of the subject site and education facility further to the east are considered part of the local character, they do not represent the anticipated increase of density as envisaged. Regardless, these building have been considered as part of the character of the locality given the architectural variety they provide to the streetscape.

As detailed, the immediate locality is zoned B2 Local Centre and reflects Council's objective of increasing population density within close proximity to the Kingsford and Kensington hubs. The proposal is best described as a residential flat building development which is permissible in the zone and is consistent with the numerous properties along the eastern side of Bowral Street. Importantly and when considering nearby approvals, the properties to the west are permitted the construction of an eight storey mixed use development (under DA/938/2016) at Nos. 4 Bowral Street and 160 Anzac Parade. However, it is noted that this was approved prior to the gazettal of the recent LEP and DCP amendments and is therefore permitted a greater building height. Further to the south-west, is Nos. 172-180 Anzac Parade and 116R Todman Avenue which also contains an approval for the construction of an 18 storey mixed use development under DA/414/2020 per the current planning controls. As evident by these recent approvals, the character within the locality is undergoing transformation, better reflecting Council's desired character and density.

In accordance with the above, the proposed height encroachment does not result in a building which is incompatible with the emerging character of the immediate locality and is representative of the anticipated typology of the surrounding developments. The proposal will provide a high quality built form and a coherent streetscape appearance with building elements that reflect the emerging contemporary character of the locality. As identified, the height breach is consistent with the objectives and principles of the LEP and DCP and is provided as a contemporary form which is generally

simplistic so that the variation will not be jarring to the casual observer. The design has integrated various elements to reduce visual bulk and scale at the point of greatest variation, including framed elements, parapet edges, balcony articulation and glazing within a recessed floorplate as to ensure the proposal is visually compatible with the locality. The built form, which is consistent with the intent of Blocks 28B and 28C per the Kensington and Kingsford DCP, is considered to respond to the existing and desired future character of the locality.

Furthermore, it is also noted that the proposal provides a building envelope which is reflective of the objectives of the RDCP and character of the locality, in that the development will provide a stepped built form with shared laneway appropriately addressing the streetscape and rear of the site. This ensures that despite non-compliance, the proposal is consistent with the desired building pattern in the locality. The burden on insisting on strict compliance would result in the removal of high quality, residential apartments which would be an unreasonable and unnecessary outcome given the scale of the proposal is compatible with the character of the locality. Additionally, the proposal does not result in any adverse impacts to the amenity of the neighbouring properties as is discussed in objective (c).

The proposal is therefore consistent with objective (a), despite the height breach.

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 subject site is not located within a heritage conservation area and is not adjacent to a heritage or contributory item. However, the site is within proximity to a number of heritage items including *Crewell Victorian Terrace House* (I124) at No. 58 Doncaster Avenue, *Detached Cottage Group* (I125) at Nos. 69-82 Doncaster Avenue, *Kensington Public School Buildings* (I126) at Nos. 77-79E Doncaster Avenue and *Victorian Mansion* (I127) at Nos. 86-92 Doncaster Avenue.

When considering the nearby heritage items, the *Kensington Public School Buildings* bears the greatest relationship to the subject site. However and when considering the proposed non-compliance, this heritage item is separated by three properties (being Nos. 12 to 16 Bowral Street) which are permitted a maximum height of 19m (upon redevelopment), in addition to the compliant portion of the proposed development. Given the physical and visual separation between the heritage item and non-compliant elements, the built form will not be visually obtrusive or jarring given it is designed within a recessive and simplified built form. As discussed, the width of the variation is limited to 7.5m and maintains the anticipated step in the built form as desired by both the LEP and DCP. Accordingly, as the proposal will continue to deliver a built form which is anticipated on the subject site (albeit in slightly modified location), the extent of non-compliance will have no adverse impact to the heritage character of this item.

It follows that the contemporary built form, which integrates framed elements, balcony articulation, fenestration and high quality materials, will not have any adverse impact to this item which is bolstered by virtue of separation. Importantly, the part of the building which bears the greatest potential impact to the nearby heritage item is the podium level. As detailed in this Statement, this element complies with the built form as desired by the DCP and includes sympathetic curved balcony features, considerable landscaping and fenestration to limit the potential impact. Importantly, it is noted that the remaining heritage items (as listed), are located on the eastern side of Doncaster Avenue which obscures direct lines of sight and is therefore acceptable in this regard.

For the reasons discussed above, the extent of the height breach is compatible with the scale of desired built form and it follows that the extent of the height breach will be compatible with the character of the heritage listed items. The proposal is therefore consistent with objective (b), despite the minor height breach.

Objective (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”

In terms of visual bulk, the scale of the proposed development has largely been addressed in objective (a). For the reasons discussed in objective (a), including setbacks, design and materiality, the proposed development represents a scale which is compatible with the existing and desired future character of the locality. Furthermore, when viewed from

the public domain and neighbouring properties, the proposed building design and siting of the non-compliance provides visual and physical separation mitigating any potential sense of enclosure or visual impact. The contemporary design, including modulation, balcony articulation and fenestration, in conjunction with the modern materials and neutral colour scheme, ensures that the proposal not visually jarring from the streetscape.

In terms of privacy, the height breach does not result in any adverse additional privacy impacts. The areas of the height breaches are concentrated to Bowral Street and are setback considerably from the rear boundary. When considering the openings to the south, these are generally compliant with the ADG separation requirements which therefore mitigates potential overlooking. On the upper most level, where a variation to the separation requirements is sought, the openings only pertain to lower trafficked bedrooms and secondary balcony spaces which limits any adverse overlooking.

To the west, the proposal is provided with a blank façade and nil setback, whilst to the east, the proposal is setback considerably from the neighbouring properties and is predominantly provided as a blank façade. The proposed design measures (per the above) limit any impact as far as practicable (where the breach is proposed to the residential apartment). When considering the swimming pool, the setbacks of this element also limits overlooking to the neighbouring property and is acceptable in this regard. As such, the parts of the building which do not comply with the height development standard do not result in any further privacy impact beyond a compliant built form given the above-mentioned design measures.

With regards to overshadowing, the proposed height breach will not result in any adverse overshadowing as opposed to an entirely compliant built form. The shadow diagrams submitted with the architectural plans confirm that the proposal will not result in any significant additional overshadowing to the surrounding properties beyond what is permitted by the increase of density envisaged by the RLEP and RDCP. That is, despite the site orientation and anticipated density, the proposal will retain appropriate solar access to the neighbouring properties during mid-winter. As such, the additional overshadowing impact as a result of the height breach when compared to a compliant development are insignificant.

In terms of view loss, the proposed variation will not result in any significant loss of views or outlook compared to a building with a compliant height. Importantly, there are no significant views currently enjoyed across the subject site from the public domain or neighbouring properties and the applicable planning controls effectively anticipate a continuous 31m and 19m high built form along Bowral Street. As the existing buildings are under-developed relative to the height control, the expectation to retain views through the permissible building envelope is considered unreasonable. It follows that there is a reasonable expectation that the views would be lost with any redevelopment of the site and therefore loss of views must be considered against the back drop of the permissible planning controls. Accordingly, any potential loss of views created by the non-compliance is considered to be reasonable within the Local Centre zone.

Therefore objective (c) is achieved.

Clause 6.17 - Community infrastructure height of buildings and floor space at Kensington and Kingsford town centres

The objectives and relevant provisions of clause 6.17 of RLEP 2012 are as follows, inter alia:

- (a) to allow greater building heights and densities at Kensington and Kingsford town centres where community infrastructure is also provided,*
- (b) to ensure that those greater building heights and densities reflect the desired character of the localities in which they are allowed and minimise adverse impacts on the amenity of those localities,*
- (c) to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.*

As the proposal complies with the alternative building height standard applies, this objectives are therefore satisfied.

Objectives of the Zone

Clause 4.6(4)(a)(ii) requires that the consent authority be satisfied that the development is in the public interest because it is consistent with relevant zone objectives. The objectives of Zone B2 Local Centre are as follows:

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

The proposal will provide a residential flat building development which is not antipathetic to this objective. Specifically, the proposal will provide for a variety of residential accommodation (ranging from studio to three bedroom dwellings) which will support the existing and future commercial and community uses in the area. Furthermore, the residential apartments will also allow for residents to work and live in the Kensington locality.

- *To encourage employment opportunities in accessible locations.*

As identified above, the proposal will increase residential accommodation in close proximity to numerous employment opportunities and is not antipathetic to this objective. It is noted that the variation to maximum building height will not impact any employment opportunities on site or within the local centre.

- *To maximise public transport patronage and encourage walking and cycling.*

The subject site located within walking distance to numerous bus stops located along Anzac Parade and Kensington Light Rail Stop, which will resultantly improve public transport patronage, walking and cycling. The non-compliance with the building height will have no impact on the development satisfying this objective.

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

The proposal provides a well design and integrated residential flat building consistent with the desired future character of the locality. The variation to the standard will have no impact to the delivery of the residential accommodation and will continue support the businesses in the locality.

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

The proposal will provide an articulated design which will address the public domain and support a high quality pedestrianised streetscape. The non-compliance to maximum building height will not impact the pedestrianised scale and forms part of the recessed upper levels.

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

The proposed variation will have no impact to the amenity of surrounding properties as discussed in this Variation (and Statement). That is, the additional building height will not impact the solar gain, privacy or views of the adjoining properties and is considered acceptable.

- *To facilitate a safe public domain.*

The proposals will significantly improve safety of the public domain through the provision of residential accommodation orientated to Bowral Street within the podium and upper levels. The height non-compliance will have no impact to facilitating a safe public domain.

The proposed development, including those parts of the building that breach the height of buildings development standard, is not antipathetic to the objectives for the zone and for that reason the proposed variation is acceptable.

8. The concurrence of the Secretary has been obtained (Clause 4.6(4)(b))

The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice, attached to the Planning Circular PS 20-002 issued on 5 May 2020, 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.

9. Whether contravention of the development standard raises any matter of significance for State or Regional environmental planning (Clause 4.6(5)(a))

Contravention of the maximum height development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

10. The public benefit of maintaining the development standard (Clause 4.6(5)(b))

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the maximum building height. As such there is no public benefit in maintaining strict compliance with the development standard. Whilst the proposed building height exceeds the maximum permitted on the site by 9.73m (51.2%), the proposed development 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.

11. Conclusion

This written request has been prepared in relation to the proposed variation to the 19m height of buildings development standard contained in Clause 4.3 of RLEP 2012.

Having regard to all of the above, it is our opinion that compliance with the alternative maximum height development standard is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. The proposal has also demonstrated sufficient environmental planning grounds to support the breach.

Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied and the variation supported.

Appendix 3: Applicant's written request seeking to justify the contravention of the active frontages development standard

Clause 4.6 Variation Statement – Active street frontages at Kensington and Kingsford town centres (Clause 6.20)

1. Active Street Frontages standard

Clause 6.20 of *Randwick Local Environmental Plan 2012* (RLEP 2012) relates to the provision of *Active street frontages* at Kensington and Kingsford town centres and refer to the Active Street Frontages Map. Clause 6.20(3) and (4) of RLEP 2012 requires that:

(3) Development consent must not be granted to the erection of a building on land to which this clause applies unless the consent authority is satisfied that all premises on the ground floor of the building facing the street are to be used for the purposes of commercial premises after the erection of the building.

(4) Development consent must not be granted to a change of use of premises on the ground floor of a building on land to which this clause applies unless the new use is for the purposes of commercial premises.

As such, Clause 6.20(3) applies to the subject site, specifically, a corner of the allotment identified as No. 6 Bowral Street, as reproduced in **Figure 26** below.

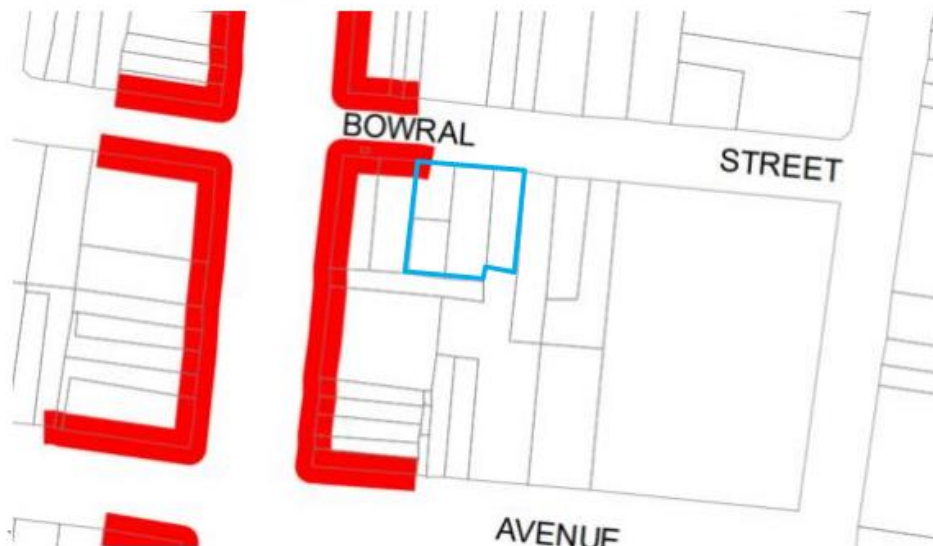


Figure 26 Active Street Frontages Map (Site edged in Blue)

It is noted that the RLEP 2012 does not provide a definition for active street frontage, however Clause 6.20(3) envisages that the part of the building identified as an active street frontage is to be provided as a commercial premises.

2. Proposed variation to the active street frontages development standard

As demonstrated in **Figure 27** below, the subject site does not provide an active street frontage to the corner of the allotment (per the active street frontages map) within No. 6 Bowral Street. The corner of this site is proposed to be occupied by the shared-way and therefore the extent of variation sought is 100%.



Figure 27 Floor Plan with approximate portion of the site expected to be active street frontage per the map

3. Clause 4.6 to RLEP 2012

The objectives and provisions of clause 4.6 are as follows:

(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 Planning Secretary has been obtained.*
- (5) *In deciding whether to grant concurrence, the Planning Secretary must consider—*
- (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.*
- (6) *Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—*
- (a) *the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) *the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*
- Note—** *When this Plan was made, it did not include Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E3 Environmental Management or Zone E4 Environmental Living.*
- (7) *After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) *This clause does not allow development consent to be granted for development that would contravene any of the following—*
- (a) *a development standard for complying development,*
 - (b) *a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) *clause 5.4,*
 - (caa) *clause 5.5,*
 - (ca) *clause 6.16(3)(b).*

The development standards in Clause 6.20 are not "expressly excluded" from the operation of Clause 4.6.

Objective 1(a) of Clause 4.6 is satisfied by the discretion granted to a consent authority by virtue of Subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of Subclauses 4.6(3) & (4) in order to demonstrate to the consent authority that the exception sought is consistent with the exercise of "an appropriate degree of flexibility" in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by Subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, Subclause 4.6(6).

It is hereby requested that a variation to the Clause 6.20 development standard be granted pursuant to Clause 4.6 so which equates to a percentage variation of 100%.

4. Compliance is unreasonable or unnecessary in the circumstances of the case (Clause 4.6(3)(a))

Of relevance to Clause 4.6(3)(a), in *Wehbe V Pittwater Council (2007) NSW LEC 827* Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. It states, inter alia:

"An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard."

The judgement goes on to state that:

"The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served)."

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 and 2 for the purposes of this Clause 4.6 variation [our underline]):

1. The objectives of the standard are achieved notwithstanding non-compliance 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;
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;
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard that would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to Wehbe and states:

"...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary."

Clause 4.6(3)(a) requires that the written request to vary a development standard demonstrate that compliance with the development standard is unnecessary or unreasonable in the circumstances of the case. Requiring strict compliance with the standard is unreasonable or unnecessary because:

- the development is consistent with the standard and zone objectives, even with the proposed variation (refer to Section 7 below);
- there are no additional significant adverse impacts arising from the proposed non-compliance; and
- important planning goals are achieved by the approval of the variation.

On this basis, the requirements of Clause 4.6(3)(a) are satisfied.

5. Sufficient environmental planning grounds (Clause 4.6(3)(b))

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. Specifically, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 24) states:

*The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 at [15]. Second, the written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31].*

The assessment of this numerical non-compliance is also guided by the decisions of the NSW LEC in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 and *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248 whereby Justice Pain ratified the original decision of Commissioner Pearson. The following planning grounds are submitted to justify contravening the active street frontage standard:

1. The proposed variation is a result of the existing site conditions, lot ownership pattern and building envelope that is envisaged by the DCP. That is, the inability to amalgamate with the neighbouring properties to the east and west of the subject site has resulted in a variation to the building envelope controls, specifically, the provision of a shared-way along the western (side) boundary in place of an active street frontage. This has ultimately resulted in the non-compliance as it

pertains to No. 6 Bowral Street, in that achieving strict compliance is not possible when considering the desired site arrangement.

2. In addition to the above, the sites general location in relation to the eastern side of Bowral Street (which is characterised by non-commercial uses) does not necessarily require a typical active street frontage in the form of a commercial premises. In this context, articulation of the street frontage via the shared-way is deemed to be appropriate given this will achieve the objective of Clause 6.20 through providing a high level of articulation and encouraging pedestrian movement along Bowral Street and through the site.
3. It follows that the proposal will provide a high level of articulation along the streetscape. The design has purposefully provided a hierarchy of building elements in order to activate the frontage and provide visual interest as viewed from the public domain. Specifically, the proposal provides a clearly delineated shared-way (in place of the typical active street frontage) which is visually dominant when compared to the remainder to the ground floor façade. The utilisation of framing, a double height structure, landscaping and lighting will encourage access and movement along the streetscape. This is integrated with the overall built form and includes high quality materials which are representative of the desired character of the locality.
4. The remainder of the ground floor has also been designed to provide a high level of visual and physical articulation from the streetscape. Although not affected by Clause 6.20, this is complementary to the shared-way to encourage safety, movement and a high quality public domain. The ground level apartments, residential lobby and podium above is designed to provide a high level of visual articulation and ultimately achieve the objective of the standard through improving the pedestrianised scale of Bowral Street. As discussed in this Statement, the built form will encourage movement to Anzac Parade, Doncaster Avenue and through the site via the shared-way.
5. The abovementioned design elements provide both physical and visual signals for residents and the general public regarding movement through the shared-way and ultimately deliver an active frontage as desired within the corner of No. 6 Bowral Street. That is, although the shared-way is not typical in its streetscape activation (being a commercial frontage), it provides an articulated façade which encourages pedestrian access through the site and by virtue, activation of Bowral Street (and Bowral Street Plaza).
6. Despite not providing active uses to the street frontage itself, the proposal provides a number of residential dwellings fronting the public domain at the lower and upper levels. Given the generally non-commercial and residential character of Bowral Street, the proposed design is considered to be an appropriate response to the character of the immediate locality.

7. As discussed, the proposal provides a built form which is an appropriate response to the site constraints and objectives of the RDCP. Despite non-compliance with the active street frontage, the proposal is compatible with the existing and desired future character of the locality and provides consistency in built form as is anticipated by the building envelope controls. Of relevance, the site is located at a juncture of a number of properties with various owners and therefore the desired envelope per the DCP has been amended. As discussed, this has resulted in the location of the shared-way along the western (side) boundary which satisfies the intent of the block controls. Importantly, the design is a response which ensures that the proposal will not impact pedestrian movement whilst delivering a high quality development.
8. Upon redevelopment of the properties to the west (under the current controls), these are anticipated to provide an active frontage to Bowral Street given they will not be burdened by the provision of a shared-way. As these allotment are owned by a single proprietor and have a direct connection to Anzac Parade (and Bowral Plaza), the provision of commercial frontages to these lots are considered acceptable with regards to the overall vision of Bowral Street and Kensington. Furthermore, it is noted that the shared-way will provide a direct extension to Bowral Plaza further activating the streetscape as desired by the objective of the Clause.
9. Insistence on strict compliance with the development standard would result in an inferior site planning and design outcome which would require a "tokenistic" commercial premises orientated to the streetscape and ultimately relocate the share-way which will not align with the intent of the block controls of the RDCP. It follows that this would be is antipathetic to the vision of the DCP which is to provide a benefit to the character of the locality and streetscape.
10. The social benefits of providing a shared-way in place of a 'tokenistic' commercial property should be given weight in the consideration of the variation request. It would be a loss to the community (and contrary to the public interest) to deny the variation and require significant redesign given the numerous site limitations and restrictions.
11. It is considered that there is an absence of any significant material impacts attributed to the non-compliance on the amenity or the environmental values of surrounding properties, the amenity of future building users and on the character of the locality. Specifically:
 - a. The extent of non-compliance has no adverse additional overshadowing impacts to adjoining properties. That is, the proposed design approach does not impact the solar gain of the properties to the east, west and south beyond a typical active streetscape façade. As such, additional overshadowing caused by the non-compliant elements would be insignificant; and

- b. The variation does not result in any adverse privacy impacts. The proposed design includes the provision of a non-habitable shared-way which will not impact the privacy of adjoining or nearby residential accommodation and is insignificant; and
 - c. The breach does not result in any view loss which is not reasonably anticipated within the planning controls and site context. When considering the extent of view sharing, it is noted that the proposed design is a result of the site constraints and limitations and there are no significant views enjoyed across the subject site. As such, it is anticipated the extent of view loss is insignificant or nil.
12. The proposed development meets the objectives of the development standard and meets the objectives of the B2 Local Centre zone (as further detailed in Section 7 below);
13. The proposed development achieves the objects in Section 1.3 of the EP&A Act 1979, specifically:
- a. The proposal promotes the orderly and economic use and development of land through the redevelopment of a dilapidated and underutilised site for commercial uses (1.3(c)); and
 - b. The proposed development promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3(g)).

The above environmental planning grounds are not general propositions and are unique circumstances to the proposed development, particularly given the sites location, lot ownership pattern and building envelope as envisaged by the RDCP. The mentioned site specific conditions are not anticipated by the development standard which relies a consolidated development scenario per the RDCP controls. It follows that the proposed design represents a superior outcome when considering the limitations of the site, including significant improvements to the architectural character, circulation and quality of Bowral Street and amenity of neighbouring properties. As such, the non-compliance with the active street frontages development standard does not negatively impact the articulation of the proposed development and has been designed in such a way to provide a high quality, contemporary development.

It is noted that in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. The second way is in an error because it finds no basis in cl 4.6. Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.

87. The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to

a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.

As outlined above, it is considered that in many respects, the proposal will provide for a better planning outcome than a strictly compliant development. At the very least, there are sufficient environmental planning grounds to justify contravening the development standard.

6. The applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), (Clause 4.6(4)(a)(i))

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by clause 4.6(3). These matters are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) in Section 4 above (and furthermore in terms of meeting the objectives of the development standard, this is addressed in Section 7 below). Clause 4.6(3)(b) is addressed in Section 5 above.

The second opinion of satisfaction, in clause 4.6(4)(a)(ii), is that the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(ii). The matters in Clause 4.6(4)(a)(ii) are addressed in Section 7 below.

7. 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 (Clause 4.6(4)(a)(ii))

Active Street Frontage Objectives

The objective and relevant provision of Clause 6.20 of RLEP 2012 is as follows:

(1) The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor street frontages within the Kensington and Kingsford town centres.

In order to address the requirements of subclause 4.6(4)(a)(ii), the objective of Clause 6.20 is addressed in turn below.

(1) The objective of this clause is to promote uses that attract pedestrian traffic along certain ground floor street frontages within the Kensington and Kingsford town centres.

The proposed residential flat building development has been designed to promote pedestrian traffic along Bowral Street, through the subject site via the shared-way and ultimately lead to Anzac Parade. As detailed in this Variation, the subject site is constrained with regards to the provision of typical active street frontages. That is, the subject site is

located within a predominately residential (and non-commercial) alignment of Bowral Street and is affected by a complex lot ownership pattern. Following this, achieving compliance with the desired built form and links as prescribed by the RDCP has resultantly relocated the shared-way along the western (side) boundary, where the active street frontage is sought. As discussed, the shared-way, although not a typical commercial frontage, will promote pedestrian movement along the public domain. To the east of the shared-way, the proposed at-grade residential accommodation is considered to be a suitable response to the typical character of Bowral Street as it approaches Doncaster Avenue. Accordingly, the proposed design outcome has therefore responded to the limitations of site to ensure a high level of articulation and streetscape presence is achieved, despite the variation.

It follows that a number of design measures have been implemented in order to maximise pedestrian traffic along Bowral Street, through the shared-way and towards Anzac Parade. Of relevance, the shared-way (located in place of the active frontage) is clearly defined as viewed from the public domain and is integrated into the overall built form to promote pedestrian traffic along the streetscape and through the site to neighbouring properties and other pedestrian links. Specifically, the shared-way is provided as a double height feature which is framed as viewed from the public domain and includes landscaping, materiality and lighting to provide visual cues from the public domain. To the east, the remainder of the development is designed with ground floor terraces, residential apartments and the primary lobby entry which reflects the non-commercial character of Bowral Street.

The abovementioned elements have been purposefully designed with a level of hierarchy in which the pedestrian and vehicular access to the shared-way is visually dominant when compared remainder of the built form. The design intent seeks to direct pedestrian circulation along the streetscape and through the shared-way thus satisfying the objective of Clause 6.20. That is, despite not providing a typical active street frontage, the shared-way delivers the same outcome in that it will attract pedestrian traffic along the streetscape and via the site links.

It follows that the high quality architectural design of the development (both at a pedestrianised and wider scale) is considered imperative to attracting pedestrian traffic along Bowral Street to the shared-way, Anzac Parade and Doncaster Avenue. As such, despite not providing a typical active frontage, the proposal is considered to maximise pedestrian traffic from the public domain. Importantly and as discussed, the proposed activation of the street is further reinforced through optimisation of through-site accessibility and circulation via the shared-way.

Accordingly, despite technical non-compliance, the proposed development is considered to satisfy *Objective (1)*.

Objectives of the Zone

Clause 4.6(4)(a)(ii) requires that the consent authority be satisfied that the development is in the public interest because it is consistent with relevant zone objectives. The objectives of Zone B2 are as follows:

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

The proposed development will provide a residential flat building development which is not antipathetic to this objective. Specifically, the proposal will provide for a variety of residential accommodation (ranging from studio to three bedroom dwellings) which will support the existing and future commercial and community uses in the area. Furthermore, the residential apartments will also allow for residents to work and live in the Kensington locality.

- *To encourage employment opportunities in accessible locations.*

As identified above, the proposal will increase residential accommodation in close proximity to numerous employment opportunities and is not antipathetic to this objective. It is noted that the variation to active street frontages will not impact any employment opportunities on site or within the local centre.

- *To maximise public transport patronage and encourage walking and cycling.*

As discussed, the subject site located within walking distance to numerous bus stops located along Anzac Parade and Kensington Light Rail Stop, which will resultantly improve public transport patronage, walking and cycling. Importantly, the proposed shared-way which is located in place of the active street frontage will improve pedestrian permeability throughout the Block 28B and 28C per the RDCP, particularly upon redevelopment of the neighbouring properties. As such, the non-compliance with the active street frontages development standard, is not antipathetic to the objectives for the zone and for that reason the proposed variation is acceptable.

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

The proposal provides a well design and integrated residential flat building within Bowral Street. The variation to the standard will have no impact to the delivery of the residential accommodation and will support the businesses in the locality. As described, the active frontage is occupied by the shared-way which will improve access for future residents and the general public.

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

As above, the provision of the shared-way, which supports vehicular and pedestrian movement, is desired by the RDCP. The proposal, despite non-compliance, will provide a high quality, contemporary design which will significantly improve streetscape presence, sense of place and character of the Kensington locality and Bowral Street.

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

The proposed variation to the active street frontage will have no impact to the amenity of surrounding properties as discussed in this Variation.

- *To facilitate a safe public domain.*

The proposals will significantly improve safety of the public domain through the provision of residential accommodation orientated to Bowral Street. The shared-way will be highly visible from the public domain and its provision in place of an active street frontage is considered acceptable.

8. The concurrence of the Secretary has been obtained (Clause 4.6(4)(b))

The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice, attached to the Planning Circular PS 20-002 issued on 5 May 2020, 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.

9. Whether contravention of the development standard raises any matter of significance for State or Regional environmental planning (Clause 4.6(5)(a))

Variation of the active street frontages development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.

10. The public benefit of maintaining the development standard (Clause 4.6(5)(b))

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the active street frontages development standard. As such there is no public benefit in maintaining strict compliance with the development standard. Whilst not complying with the active street frontages standard, the proposed development 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.

11. Conclusion

This written request has been prepared in relation to the proposed variation to the active street frontages development standard contained in Clause 6.20 of RLEP 2012.

Having regard to all of the above, it is our opinion that compliance with the active street frontages development standard is unreasonable and unnecessary in the circumstances of this case as the development meets the objectives of that standard and the zone objectives. The proposal has also demonstrated sufficient environmental planning grounds to support the breach. Therefore, insistence upon strict compliance with that standard would be unreasonable. On this basis, the requirements of Clause 4.6(3) are satisfied and the variation supported.

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Appendix 4: DCP Compliance Table**3.1 Section E6: Kensington and Kingsford Town Centres**

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
PART A			
2.	Urban Design and Place-Making		
2.1	Guiding Principals		
	<p>Development within the Kensington and Kingsford town centres must align with the following urban design and place making principles which are derived from the K2K Planning Strategy and community input:</p> <ul style="list-style-type: none"> • Provide quality affordable housing to meet local housing needs, particularly for key workers, essential workers and students • Reinforce boulevard character along Anzac Parade by strengthening the built form edge and adding greenery • Achieve a dominant typology of diverse mid-rise, mixed-use buildings throughout the town centres • Provide taller, slender landmark buildings at identified strategic node sites in conjunction with the delivery of substantial public benefits established through a design excellence process • Protect the heritage significance of heritage items, contributory buildings and/or heritage conservation areas located within the town centres and adjoining areas • Give priority to people walking, cycling and using public transport • Achieve a sensitive transition in relation to recently constructed development and surrounding established lower scaled residential neighbourhood • Create a positive street level environment through built form that allows solar amenity, permeability and maintains human scale • Ensure that new infill development respects the fine-grain character of contributory buildings • Establish building setback controls which provide for the creation of wider footpaths and street tree planting • Achieve urban design, place and architectural excellence, including best practice environmental design 	<p>The Applicant has submitted a statement that assesses against the relevant objectives and controls in Section E6 of the RDCP.</p>	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none"> Provide active street frontages throughout the town centres Encourage precinct-scale benefits across all node sites that contributes to the unique character of each town centre; and Achieve innovative place-led solutions for local hydrology and resilience. <p>A statement must be submitted with all DAs that demonstrates consistency with the Guiding Principles of this Part.</p>		
3.	Desired Future Character		
3.2	Strategic Node Sites		
	Submit a statement with the DA demonstrating how the proposed design meets the desired future character of the relevant town centre and where applicable, the strategic node site based on the block controls contained in Part B.	As above.	Yes
4.	Design Excellence		
	<p>(a) All new development involving the construction of a new building or external alterations to an existing building is to meet the requirements of Clause 6.11 of the RLEP 2012 relating to design excellence Buildings are to be designed to achieve at least 5-star green star performance as a component for achieving design excellence on strategic node sites</p> <p>(b) DAs involving the construction of a new building on the following strategic node sites are subject to an architectural design competition in accordance with Clause 6.21 of RLEP 2012:</p> <ul style="list-style-type: none"> Todman Square Precinct Kingsford Midtown Precinct Kingsford Junction Precinct <p>(c) Prior to lodgement of DAs for strategic node sites, the architectural design competition process is to be undertaken in accordance with Council's "Architectural Competition Policy" adopted 10 December 2019</p> <p>(d) For DAs at strategic node sites that successfully demonstrate design excellence, the consent authority may consider the following:</p> <p>(i) additional building height and FSR in accordance with the RLEP 2012 Additional Heights and Additional FSR maps; and</p>	The site is immediately to the north of the Todman Avenue Square Precinct strategic node. For the reasons discussed in the Clause 6.11 assessment of the RLEP, the proposal is not considered to uphold the relevant provisions in relation to design excellence. This forms a reason for refusal.	No

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(ii) exclusion of social infrastructure floor space provided on the site from the total gross floor area calculation, subject to the social infrastructure floor space being dedicated to Council.</p> <p>Note 1: Refer to Randwick City Architectural Design Competition Policy for further information on the Requirements for holding an architectural design competition.</p> <p>Note 2: A number of strategic node sites have been identified for the physical provision of social infrastructure as part of the design excellence competition process as follows:</p> <ul style="list-style-type: none"> Todman Square Precinct: Multi-functional creative space, innovation centres and public art Kingsford Midtown Precinct: Innovation centre; and Kingsford Junction Precinct: Community hub <p>Refer to Part B block by block controls for further information.</p>		
5.	Floor Space Ratio		
	<p>(a) The maximum FSR that can be achieved on a site is shown on the RLEP 2012 FSR Map. An alternative FSR is applicable in accordance with the RLEP 2012 Alternative FSR Map where the proponent makes an offer to enter into a VPA for either a monetary contribution or the delivery of Community Infrastructure in accordance with the Community Infrastructure Contributions Plan (see Part D for details on Community Infrastructure Contribution)</p> <p>(b) In relation to the Kensington Town centre where an existing FSR Map does not apply, the Alternative FSR Map is applicable for the purposes of calculating the Community Infrastructure contribution referred to in clause (a) for any floor space above the existing height maximum control shown on the RLEP 2012 Height Map</p> <p>(c) A minimum non-residential FSR of 1:1 is to be provided at each strategic node site within the Todman Square, Kingsford Midtown and Kingsford Junction Precincts, in accordance with Clause 4.4 of the RLEP 2012</p>	The proposal complies with the maximum FSR stipulated under the RLEP. Refer to the relevant section in the DA Report.	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(d) Non-residential floor space must be designed to be accessible, useable and functional for the purposes of commercial, business, entertainment and retail activities and the like		
6.	Built Form		
	<p>Lot Amalgamation</p> <p>(a) A minimum street frontage of 20m is to be provided for each development site along Anzac Parade and Gardeners Road</p> <p>(b) When development/redevelopment/amalgamation is proposed, sites between and adjacent to developable properties are not to be limited in their future development potential</p> <p>(c) Where a development proposal results in an isolated site, the applicant must demonstrate that negotiations between the owners of the lots have commenced prior to the lodgement of the DA to avoid the creation of an isolated site. The following information is to be included with the DA:</p> <ul style="list-style-type: none"> (i) evidence of written offer (s) made to the owner of the isolated site* and any responses received (ii) schematic diagrams demonstrating how the isolated site is capable of being redeveloped in accordance with relevant provisions of the RLEP 2012 and this DCP to achieve an appropriate urban form for the location, and an acceptable level of amenity (iii) schematic diagrams showing how the isolated site could potentially be integrated into the development site in the future in accordance with relevant provisions of the RLEP 2012 and this DCP to achieve a coherent built form outcome for the block. <p>(d) Where lot consolidation cannot be achieved to comply with the maximum envelopes in the block diagrams, alternative designs may be considered where the proposal exhibits design excellence and can demonstrate consistency with the relevant objectives of the block controls (Part B).</p> <p>*Note 1: A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an</p>	Refer to the Key Issues section relating to the laneway/shared way zone and future redevelopment. This forms a reason for refusal.	No

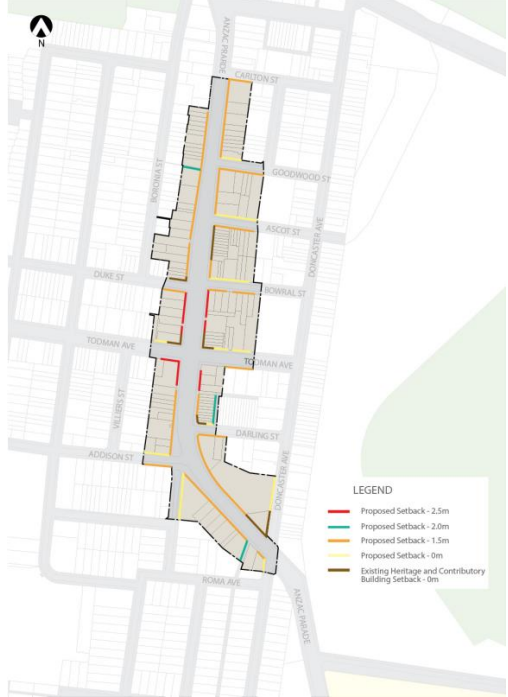
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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p><i>isolated lot, is to be based on at least one recent independent valuation and may include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property. To assist in this assessment, applicants are to submit details and diagrams of development for the isolated site, that is of appropriate urban form and amenity. The diagram is to indicate height, setbacks and resultant footprint (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts of the developments. Important considerations include solar access, deep soil landscaping, privacy impacts for any nearby residential development and the traffic impacts of separate driveways access.</i></p> <p><i>The application may need to include a setback greater than the minimum requirement in the relevant planning controls. Or the development potential of both sites may need to be reduced.</i></p> <p>Note 2: <i>Development proposals that cannot achieve a minimum frontage of 20m are unlikely to realise the maximum FSR indicated for the site on the RLEP 2012 FSR maps given the application of the Apartment Design Guide and other DCP requirements. Applicants are advised to obtain professional design advice.</i></p>		
	<p>Building Heights</p> <p>(a) The maximum height that can be achieved on a site is shown on the RLEP 2012 Height Map. An alternative maximum height is applicable in accordance with the RLEP 2012 Alternative Height Map where the proponent makes an offer to enter into a VPA for either a monetary contribution or the delivery of Community Infrastructure in accordance with the Community Infrastructure Contributions Plan. (see Part D for details on Community Infrastructure Contribution)</p> <p>(b) The maximum number of storeys on a site is to comply with the following:</p> <ul style="list-style-type: none"> i) on sites with a maximum of 16m – 4 storeys ii) on sites with a maximum of 19m – 5 storeys iii) on sites with a maximum of 31m – 9 storeys iv) on sites with a maximum 57m – 17 storeys 	<p>The proposal does not comply with the prescribed building height development standard and this forms a reason for refusal. Refer to the Clause 4.6 assessment.</p>	No

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	v) on sites with a maximum 60m – 18 storeys		
	<p>Street Walls</p> <p>(a) Buildings must be designed with a street wall height of 4 storeys</p> <p>(b) On sites with contributory buildings, the consent authority may consider a variation to the four-storey street wall height requirement of between 2 and 6 storeys if the design:</p> <ul style="list-style-type: none"> (i) results in an improvement to the contributory building in accordance with established heritage principles to avoid facadism (ii) meets the objectives of this clause and exhibits design excellence (iii) retains contributory or heritage elements; and (iv) provides a transition to neighbouring sites. <p>Note 1: Street wall height can be established via podiums, datum lines or other design elements.</p> <p>Note 2: See Part A Section 9 for further requirements for heritage items and contributory buildings.</p>	The proposal provides a street wall height of 4 storeys.	Yes
	<p>Building Setbacks</p> <p>(a) DAs are to comply with the minimum ground floor and upper level setbacks illustrated in the relevant block diagrams in Part B</p> <p>(b) Development that results in an exposed party wall on an adjoining building is to incorporate architectural or vertical landscape treatment to improve visual amenity</p>	As discussed in the Key Issues section, the proposal does not provide adequate setbacks to the future development and this forms a reason for refusal.	No

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
			
	<p>Building Depth</p> <p>(a) The residential component of development fronting Anzac Parade and Gardeners Road is to have a maximum building depth of 22m including balconies.</p> <p>Note 1: Building depth refers to the dimension measured from the front to the back of a building's floorplate. It has a significant influence on building circulation and configuration and impacts upon internal residential amenity such as access to light and air. For residential development, narrower building depths generally have a greater potential to achieve optimal natural ventilation and solar access than deeper floor plates.</p>	N/A	N/A
7.	Through Site Links/Mid-Block Connections		
	<p>(a) Through site links and mid-block connections are to be provided in accordance with the relevant block diagram in Part B</p> <p>(b) Where new site links or variations are proposed, the consent authority is to consider the need for and desirability of the links or connections having regard to the objectives of this section</p> <p>(c) Through site links and mid-block connections are to have an easement for public access on title or covenant on title unless identified for dedication to Council</p> <p>(d) Through-site links/ mid-block links are to be designed to:</p>	N/A	N/A

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none"> (i) have a minimum width of 6m, and a clear height of at least 6m (ii) be direct and publicly accessible 24 hours a day (iii) allow visibility along the length of the link and be open to the sky as much as is practicable (iv) be easily identified by users and have a public character (v) include signage advising of the publicly accessible status of the link and the places to which it connects (vi) be clearly distinguished from vehicle accessways (vii) align with breaks between buildings so that views are extended and there is less sense of enclosure (viii) provide active edges and opportunities for natural surveillance (ix) include materials and finishes (paving materials, tree planting, furniture etc.) integrated with adjoining streets and public spaces and be graffiti and vandalism resistant (x) ensure no structures (for example, electricity substations, carpark exhaust vents, swimming pools etc.) are constructed in the through-site link; and (xi) include landscaping to assist in guiding people along the link while enabling long sightlines. <p>(e) Through-site links are only to pass through or under a building where:</p> <ul style="list-style-type: none"> (i) the building's height is greater than 3 storeys; and (ii) the maximum distance of the link under any structure is 18m 		
8.	Laneway/Shared Way Zoned		
	<ul style="list-style-type: none"> (a) Laneways and shared zones are to be provided in accordance with the relevant block diagram (see Part B) (b) Laneways are to be a minimum of 6 metres wide (for larger developments, a carriageway width greater than 6 metres may be required) and shall provide landscaping, lighting and high quality materials and finishes and opportunities for art to enhance the pedestrian environment (c) Buildings that front lanes shall be articulated to create visual interest and shall incorporate passive surveillance by 	The Key Issues section details the non-compliance with the laneway/shared way zone including the resultant impacts. This forms a reason for refusal.	No

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>orienting windows and balconies onto the lane</p> <p>(d) Ground floor uses fronting lanes shall incorporate openings onto the lane so as to contribute to the enjoyment and activation of the lane including outdoor dining</p> <p>(e) Applicants are to negotiate Rights of carriageway with adjoining property owners where required for access.</p> <p>Note 1: Evidence of the attempt to obtain the adjoining property owner's agreement to the Right of Carriageway is to be submitted as part of the Development Application</p> <p>Note 2: Refer to the Roads and Maritime Services Technical Direction 'Design and Implementation of Shared Zones Including Provision for Parking' in the planning and design of shared way zones.</p>		
9.	Heritage Conservation		
	<p><u>All Development</u></p> <p>(a) All development involving heritage items are to be in accordance with requirements for heritage set out in Part B2 of the DCP</p> <p>(b) All development involving heritage items and contributory buildings are required to:</p> <ul style="list-style-type: none"> (i) Adhere to the principles of the Burra Charter (ii) Include the submission of a Heritage Impact Statement (or Heritage Impact Assessment) which considers the heritage significance of the item or contributory building, the impact of the proposal on the heritage significance of the building or heritage items within the vicinity, the rationale for the proposed development, and the compatibility of the development with the objectives and controls, and/or recommended management within relevant conservation management plans, planning instruments or heritage inventories <p>(c) Development located within the vicinity of another local government area requires the preparation of a Heritage Impact Statement to address the potential impact on adjoining or nearby heritage items or heritage conservation areas in the adjoining local government area.</p> <p><u>Heritage items and contributory buildings</u></p>	<p>Council's Heritage Officer has confirmed insufficient information has been submitted to enable an assessment of the application. Refer to the assessment comments in Clause 5.10 of the RLEP.</p>	No

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(a) Alterations and additions to heritage items and contributory buildings should conserve original characteristic built form, and not significantly alter the appearance of principal, or historically significant facades, except to remove detracting elements</p> <p>(b) Alterations and additions to heritage items and contributory buildings should:</p> <ul style="list-style-type: none"> (i) Retain, restore and reinstate (where possible) significant features and building elements to principal elevations, shop fronts and visible side elevations, including, original openings and decorative features such as original doors, windows, sun hoods, awnings, lighting and historic signage (ii) Remove unsympathetic alterations and additions, and building elements where possible (iii) Retain and encourage adaptive re-use of historic shop fronts and avoid unnecessary screening through planting, signage or other works (iv) Retain and conserve the form and articulation of historic street frontages (such as the first structural bay/or first room to preserve inset verandas) and avoid 'facadism' (v) Include a minimum 6.5m upper level setback for additions to existing contributory buildings at strategic node sites. A minimum 5.5m upper level setback applies to contributory buildings on all other sites (vi) Be designed to be clearly distinguishable as new work when undertaking extensions, alterations, reconstruction or repairs (vii) Incorporate new doors and windows which compatible with the positioning, size and proportions of original windows and doors (viii) Ensure that conservation works including the reinstatement and restoration of historic fabric is appropriately balanced with the impacts of larger development on the site. Restoration works should enhance the quality of finishes, form and detail (ix) Incorporate materials, finishes and colours which are visually 		

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>compatible with the heritage or contributory building and enhance its appearance</p> <p>(x) Ensure that new services are discretely integrated within and behind retained street frontages and not above awnings</p> <p>(xi) Introduce new signage to be set below, or no higher than street awning level. Signage above the awning detracts from the detail and quality of historic fabric.</p> <p><u>New development adjacent to heritage items and contributory buildings:</u></p> <p>(c) Development adjacent to heritage items and contributory buildings (infill development) should:</p> <p>(i) Be designed to respect the historic scale, proportions and articulation of adjacent contributory built forms, including heights, solid to void ratios and alignments of street awnings</p> <p>(ii) Incorporate podiums and framed overlays that reference the principle influence line of historic streetscapes, and are cohesive with the established street frontage</p> <p>(iii) Be designed to incorporate setbacks which retain the profile and massing of exposed side elevations to retained contributory built forms</p> <p>(iv) Ensure new street elevations maintain the vertical articulation and segmented character if historic building groups which provide variety to the streetscape and sense of human scale, and avoid unrelated horizontally emphasised articulation</p> <p>(v) Provide contemporary new signage that compliments the character of the contributory buildings and</p> <p>(vi) Ensure that new finishes to side elevations should not detract from street front detailing and finishes.</p> <p>(d) Development should maintain and reinstate the emphasis of street corners and cross routes through reinforcement of historic height lines remaining at, and adjacent to intersections.</p>		
PART B			
10.	Block Controls		
10.2	Strategic Node Sites		
	Todman Square Precinct, Kensington	As discussed in the	No

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(a) Future built form at Todman Square must be consistent with the applicable block envelope controls shown in Figures 6, 7, 8 and 9</p> <p>(b) DAs for strategic node sites are to be undertaken in accordance with the winning design of the architectural design competition</p> <p>(c) A minimum non-residential floor space is to be provided in accordance with Clause 6.17 of the RLEP 2012</p> <p>(d) Buildings are to respond to the site's context to provide visual interest and minimise and mitigate potential for overshadowing and privacy impacts upon surrounding land uses</p> <p>(e) Buildings are to be well articulated and respond sensitively to nearby heritage and contributory buildings in accordance with the requirements under section 9 Part A of this DCP</p> <p>(f) Buildings are to ensure a cohesive urban design outcome across the Todman Square Precinct in terms of built form, scale and massing and contribute to a high quality streetscape environment</p> <p>(g) Built form within 'Flexible Zones' is to be designed to comply with the maximum building height in the RLEP 2012, objectives of this clause and the requirements of the ADG to achieve a suitable transition to adjoining lower scale development</p> <p>(h) Continuous active street frontages on the ground floor and adjacent to laneways are to be provided in accordance with the requirements of section 19 Part C of this DCP</p> <p>(i) A multi-functional creative space with a minimum floor area of 200m² is to be provided at the K1 site and dedicated to Council. Floor area for the creative space is to be excluded from the total gross floor area of the site</p> <p>(j) A public plaza is to be provided immediately north of the K1 site in accordance with Figure 6</p> <p>(k) An innovation hub with a minimum floor area of 200m² is to be provided at the K3 site and dedicated to Council. Floor area for the innovation hub is to be excluded from the total gross floor area of the site</p>	<p>Key Issues section, the proposed development and non-compliances with the block controls including the shared way zone do not have regard for the desired built form relationships established for the Todman Square Precinct. This will detract from the emerging character of the key node and forms a reason for refusal.</p>	

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)						
	(l) Green walls, roofs and landscaping is to be provided in accordance with section 21 Part C of this DCP.								
10.3	Block by Block Controls – Other Sites								
	(a) Development must be consistent with the relevant block envelope controls including heights, setbacks, street walls, mid-block links and laneways (b) Built form within 'Flexible Zones' is to be designed to comply with the maximum building height in the RLEP 2012, objectives of this clause and the requirements of the ADG to achieve transition to adjoining lower scale development.	As detailed in the Key Issues section, the proposal is not consistent with the relevant block envelope controls and this forms several reasons for refusal.	No						
PART C									
11.	Housing Mix								
	(a) Development is to comprise a mix of apartment types, where gardens, adaptability and accessibility are more easily achievable for elderly people, families with children, or people living with disabilities (b) At least 20% of the total number of dwellings (to the nearest whole number of dwellings) within a development are to be self-contained studio dwellings or one-bedroom dwellings, or both (c) At least 20% of the total number of dwellings (to the nearest whole number of dwellings) within a development are to be 3 or more-bedroom dwellings and (d) Family friendly apartments of 3 bedrooms or more are to be located on the lower four floors of the building.	The proposal complies with the relevant numerical provisions for housing mix as per the following: <ul style="list-style-type: none">• 34% studios and one bedroom units• 32% three bedroom units• Three bedroom units are located throughout the built form.	Yes						
12.	Floor to Ceiling Heights								
	(a) Minimum floor to ceiling heights are to be provided for all development in accordance with the following requirements: <table><tr><th>Ground Floor</th><th>First Floor</th><th>Upper Floors</th></tr><tr><td>3.5m</td><td>3.3m</td><td>2.7m</td></tr></table>	Ground Floor	First Floor	Upper Floors	3.5m	3.3m	2.7m	The proposed floor to ceiling heights at ground and first floor levels are not sufficient to provide the required amenity and the flexibility for the first floor level to be converted to non-residential uses in future that the objectives in Section 12 seek to achieve. The proposed floor to floor heights (and	No
Ground Floor	First Floor	Upper Floors							
3.5m	3.3m	2.7m							

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
		therefore ceiling heights) are not consistent with a building that achieves design excellence in terms of the amenity and flexibility for future occupants.	
13.	Solar and Daylight Access		
	<p>(a) Solar access is to be provided in accordance with the recommendations of PART 4 of the Apartment Design Guide (ADG)</p> <p>(b) Buildings must ensure that areas of private or public open space are oriented to achieve the recommended level of solar amenity as per the ADG</p>	For the reasons discussed in the ADG compliance table, the height non-compliance results in substantial additional overshadowing than envisaged by the RDCP controls and as such, is considered unsatisfactory and forms a reason for refusal.	No
14.	Acoustic Privacy		
	<p>Residential uses</p> <p>(a) All new development is to be constructed to achieve the following acoustic amenity criteria for the residential component of the building in accordance with Australian Standard AS2107:2016 based on an acoustic report specified in clauses d) and k). For the purposes of this clause, the residential component includes dwellings situated within shop top housing, mixed use buildings, or occupancies in student housing, boarding houses, serviced apartments, hotel and motel accommodation.</p> <p>(b) In naturally ventilated spaces for the residential component, the repeatable maximum Leq (1hour) should not exceed:</p> <p>i) 35 dB(A) between 10.00 pm and 7.00 am in sleeping areas when the windows are closed; ii) 40 dB(A) in sleeping areas when windows are open (24 hours); iii) 45 dB(A) in living areas (24 hours) when the windows are closed, and iv) 50 dB(A) in living areas (24 hours) when the windows are open.</p> <p>(c) Where natural ventilation cannot achieve the limits listed in clause b) the development is to include mechanical ventilation, air conditioning or other</p>	As discussed in the Key Issues section, concerns are raised in relation to the units facing the enclosed laneway/shared zone. The link is dominated by service areas, vehicular and loading access points which results in an undesirable environment for the future residents. Furthermore, concerns are also raised in relation to the units adjacent to the roof top communal open space. The acoustic impacts are therefore considered unsatisfactory and forms a reason for refusal.	No

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>complying means of ventilation (in accordance with the ventilation requirements of the Building Code of Australia and Australian Standard AS 1668.2-2012), when doors and windows are shut. In such circumstances the repeatable maximum Leq (1hour) with the alternative ventilation operating should not exceed:</p> <ul style="list-style-type: none"> (i) 38 dB(A) between 10.00 pm and 7.00 am in sleeping areas; (ii) 46 dB(A) in living areas (24 hours); (iii) 45 dB(A) in sleeping areas between 7.00 am and 10.00 pm. <p>(d) Notwithstanding the general noise criteria for environmental noise set out in clauses b) and c) for habitable rooms in the residential component of the proposed development is to incorporate noise control measures to ensure the standard LA10 Condition imposed by Liquor & Gaming NSW is satisfied inside those occupied spaces with doors and windows closed and the alternative ventilation is operating as follows:</p> <ul style="list-style-type: none"> (i) The cumulative LA10* from licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8 kHz inclusive) by more than 5 dB between 7am and midnight. (ii) The cumulative LA10* from licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8 kHz inclusive) between midnight and 7am. (iii) The noise from licensed premises shall be inaudible in any habitable room of any residential premises between the hours of midnight and 7am (iv) For this clause, the LA10* can be taken as the average maximum deflection of the noise level emitted from the licensed premises. <p>(e) For the purpose of acoustic assessment with respect to clauses a), b) c) and d) the assessment must identify the noise environment for the site as a result of the existing situation (including any business operations that include outdoor areas for</p>		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>use by patrons, and/or the provision of music entertainment) and noise generated by commercial premises within the mixed use building (this may involve consideration of potential uses if the commercial use is unknown at the time of the application for the mixed-use building).</p> <p>(f) All development is to be designed to minimise noise transition between apartments by adopting general noise concepts of:</p> <ul style="list-style-type: none"> (i) locating busy, noisy areas next to each other and quieter areas next to other quiet areas, for example, living rooms next to living rooms, bedrooms with bedrooms (ii) locating bedrooms away from busy roads and other existing or potential noise sources (iii) using storage or circulation zones within the apartment to buffer noise from adjacent apartments, mechanical services or corridors and lobby areas; and (iv) minimising the amount of party (shared) walls with other apartments. <p>(g) Noise transmission is to be reduced from common corridors by providing seals at entry doors</p> <p>(h) Conflicts between noise, outlook and views are to be resolved using design measures such as double glazing, operable screening and ventilation taking into account noise targets for habitable rooms as identified in clauses b) c) and d) above are assessed inside the rooms with doors and windows closed and ventilation operating.</p> <p>(i) The design of the building is to address the requirements of clause d) with respect to noise from licensed premises and noise/vibration from mechanical plant and ventilation ducts associated with plant and equipment (including kitchen exhausts) serving the commercial spaces.</p> <p>(j) The design of new buildings or substantial alterations to existing buildings are to take into account the following noise conditions that would apply to each commercial tenancy in the development:</p> <ul style="list-style-type: none"> (i) Noise from commercial plant and the use of the premises when assessed 		

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>as in LAeq, 15 minute must not exceed the LA90, 15 minute background noise level by more the 3dB when assessed inside any habitable room of any affected residence or noise sensitive commercial premises when in use.</p> <p>(ii) Noise from the provision of entertainment and patron noise when assessed as an LA10* enters any residential use through and internal to internal transmission path is not to exceed the existing internal LA90, 15 minute level in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) when assessed within a habitable room at any affected residential use within the mixed use development between the hours of 7am and midnight, and is to be inaudible between midnight and 7am.</p> <p>(iii) For any gymnasiums or similar facilities in mixed use development the above noise conditions would apply noting that the noise limits include the creation of noise as a result of any vibration induced into the building structure is to be inaudible in any residence between the hours of 10pm and 7am the following day.</p> <p>(iv) The noise limits in this clause applies with doors and windows closed and mechanical ventilation operating.</p> <p>(k) A noise and vibration assessment report, prepared by an appropriately qualified acoustical consultant/engineer, is to be submitted with DAs for new buildings or substantial alterations to existing buildings that include residential units or occupancies in student housing, boarding houses, serviced apartments, hotel and motel accommodation and any other sensitive land uses, addressing appropriate measures to minimise potential future noise and vibration impacts permissible in the B2 Local Centre Zone including amplified music associated with restaurants, small bars and cafes, noise from light rail movements. This assessment is to:</p>		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(i) be prepared having regard to the NSW Environmental Protection Authority's Noise Policy for Industry, the DECC (EPA) Assessing Vibration, a Technical Guideline, and relevant Australian Standards pertaining to noise measurements and the noise conditions identified above</p> <p>(ii) incorporate an assessment of external noise sources and internal noise sources (such as mechanical ventilation) with respect to the criteria specified in b), c) and d); and</p> <p>(iii) detail the design measures needed to achieve the required internal acoustic amenity specified in b), c) and d).</p> <p><i>Note: The noise and vibration assessment report prepared at the DA stage will identify a noise design base for the entire mixed use building and would become the benchmark for subsequent assessments of the entire mixed use building (or existing buildings subject to substantial alterations) and would become the benchmark for subsequent acoustic assessments. Any individual Das for commercial occupation within the mixed-use building or the altered existing building for an accompanying acoustic assessment is required to rely on the acoustic benchmark described above.</i></p> <p>(iv) To maintain the intent of the acoustic objectives, prior to the issue of a Construction Certificate or an Occupation Certificate, a certificate of acoustic compliance confirming compliance with the specified noise limits referred to above and the noise design base for the mixed use building or alterations to existing buildings is to be submitted to Council.</p>		
	<p><u>Commercial Uses</u></p> <p>(l) The assessment for consideration of the future development within the town centre is to also consider an external noise external target of 70 dB(A) for general noise and an L10* level of 80 dB(A)/ 88 dB(C) when assessed at 1 metre from the future development, noting that future venues where entertainment is to be provided will be subject to the standard</p>	N/A	N/A

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>LA10 Condition in relation to the operation of those premises.</p> <p>(m) The site and building layout for new development in the town centre is to maximise acoustic privacy by providing adequate building separation within the development and from neighbouring buildings (refer 3.1.6: Building Separation).</p> <p><i>Note 1: The noise and vibration report prepared at the DA stage will identify a noise design base for the entire mixed use building and would become the benchmark for subsequent acoustic assessments of that building.</i></p> <p><i>Note 2: To maintain the intent of the acoustic objectives prior to the issue of a Construction Certificate or an Occupation Certificate there will be a requirement for a certificate of acoustic compliance confirming compliance with the specified noise limits referred to above and the noise design base for the mixed use building.</i></p>		
15.	Natural Ventilation		
	<p>(a) All buildings are to be designed to comply with the Apartment Design Guide (SEPP 65) to maximise opportunities for natural ventilation and sunlight by providing a combination of:</p> <ul style="list-style-type: none"> - corner apartments - dual aspect apartments - - shallow, single-aspect apartments - openable windows and doors - other ventilation devices <p>(b) Window placement, size, glazing selection and orientation are to maximise opportunities for cross ventilation, taking advantage of prevailing breezes;</p> <p>(c) Internal corridors, lobbies, communal circulation spaces and communal areas shall incorporate adequate natural ventilation;</p> <p>(d) Basements levels including spaces used for storage, garbage areas or commercial activities, are to be designed to include natural ventilation;</p> <p>(e) Apartment depth is to be limited to maximise the opportunity for cross ventilation and airflow.</p>	<p>As discussed in the Key Issues section, cross ventilation through operable windows to the shared way and communal open space are relied upon which results in adverse amenity impacts for future occupants. This forms a reason for refusal.</p>	No
16.	Articulation and Modulation		
	<p>(a) All buildings are to provide articulation by incorporating a variety of window openings, balcony types, balustrades, fins, blade walls, parapets, sun-shade devices and louvres to add visual depth to the façade;</p>	<p>The Key Issues section discusses concerns regarding the elevations of the building and</p>	No

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(b) The design of buildings are to avoid large areas of blank walls. Where blank walls are unavoidable, they must be treated and articulated to achieve an appropriate presentation to the public domain;</p> <p>(c) Ground floor shopfronts must demonstrate 'fine grained' articulation by dividing the façade into discreet bays or sections;</p> <p>(d) Entries to business premises should be clearly defined and distinguished from entries to residential components;</p> <p>(e) Specific architectural response to articulation and modulation is to be provided at key node sites through the architectural competition process;</p> <p>(f) Building articulation should be sympathetic and complementary to the adjoining built form;</p> <p>(g) Corner buildings are to be expressed by giving visual prominence to parts of the façade (eg a change in building articulation, material or colour, roof expression or increased height). Corner buildings should be designed to add variety and interest to the street and present each frontage as a main street.</p>	<p>presentation of a blank wall façade to the western side elevation. The non-compliance forms a reason for refusal.</p>	
17.	Materials and Finishes		
	<p>(a) External walls are to be constructed of high quality and durable materials and finishes. Materials that may be subject to corrosion, susceptible to degradation or high maintenance costs are to be avoided;</p> <p>(b) Architectural treatment of street facades is to clearly define a base, middle and top sections of a building so as to divide the mass of the building;</p> <p>(c) A combination of finishes, colours and materials are to be used to articulate building facades;</p> <p>(d) Design windows that can be cleaned from inside the building; and</p> <p>(e) For sites adjoining heritage and contributory buildings, materials and finishes are to allow for their clear interpretation.</p>	<p>The proposed materials and finishes are considered satisfactory and uphold the relevant provisions in Part 17.</p>	Yes
18.	Awnings		
	<p>(a) Continuous pedestrian shelter must be provided to Anzac Parade, Gardeners Road and secondary streets by elements including awnings, posted verandas, colonnades or cantilevered building mass</p> <p>(b) The design of new awnings should complement the design of adjoining</p>	<p>The proposal does not provide a continuous pedestrian shelter such as an awning to the Bowral Street frontage. As</p>	No

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>awnings and complement the building façade</p> <p>(c) Awnings are to be carefully located and set back to avoid obstructing vehicle sightlines, traffic signals, intersections, pedestrian crossings and other critical road infrastructure.</p> <p>(d) Awnings should wrap around corners where a building is sited on a street corner</p> <p>(e) Awning dimensions for buildings fronting Anzac Parade, secondary streets off Anzac Parade, and Gardeners Road are to provide:</p> <ul style="list-style-type: none"> - a minimum width of 3m - a minimum soffit height of 3.5m and no higher than 4.2m above the footpath - a minimum 1 metre setback from the kerb - a low profile, with slim vertical facias or eaves, generally not exceeding 300mm <p>(f) In relation to laneways, awnings: - must be well designed to provide shelter for entrances and should relate to the ground floor building uses such as outdoor dining; - are to be cantilevered with no posts (with a retractable arm); - must allow for a minimum 1.8m path of travel along the building edge.</p>	<p>discussed in the Clause 6.20 assessment of the active street frontage, this is contrary to the objectives which aim to provide shelter for pedestrians, reinforce the coordinating design element in the Kensington Town Centres, define the street edge, provide continuity to the streetscape, and ensure awning design and siting addresses public realm, pedestrian and road safety.</p>	
19.	Active Street Frontages		
	<p>(a) Required active frontages are to be provided in accordance with RLEP 2012 (Clause 6.20) Active frontages Map</p> <p>(b) Preferred active frontages are to be provided in accordance with Part B – Block Controls of this DCP c)</p> <p>(c) A minimum of 80% of the street frontage on Anzac Parade is to incorporate transparent glazing on the ground floor façade</p> <p>(d) The ground floor is to maximise entries or display windows and provide at least 1 pedestrian opening per 5m of facade on Anzac Parade or secondary streets and wrapping shopfronts around corners</p> <p>(e) The ground floor of uses fronting lane ways must provide a continuous retail frontage with at least 1 pedestrian entry or door per 10m of façade</p> <p>(f) The ground floor of uses fronting mid-block links/arcades must provide at least one 1 pedestrian entry or door per 15m of façade</p> <p>(g) A minimum of 50% of a blank wall (larger than 10m²) visible from the public domain must incorporate greenery and/or public art</p> <p>(h) Entrances to internally oriented shopping or commercial arcades and the arcades</p>	<p>The proposal does not provide an active street frontage or contribute to the retail activation of the commercial core and the future of the Bowral Street Plaza. As discussed in the Key Issues section, this forms a reason for refusal.</p>	No

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>themselves, must be a minimum of 6m wide</p> <p>(i) Solid non-transparent roller shutters are discouraged. Where security grills or screens are required, they are to be installed at least 1m behind the glazing line and of lattice design with an openness to allow viewing of the interior and internal lighting to spill onto the footpath</p> <p>(j) Incorporate outdoor dining wherever possible in accordance with Part D12, Footpath Dining and Trading of DCP 2013.</p>		
20.	Landscape Area		
	<p>(a) The total landscaped area to be provided on a site is to be at least 100% of the total site area, spread throughout the site and building as shown in Figure 16.</p> <p>(b) Landscaped open space requirements of Chapter C2 (Medium Density Residential) do not apply to land within the Kingsford and Kensington Town Centres other than clauses 2.2.2 and 2.3 relating to deep soil areas and private and communal open space.</p> <p>(c) Landscaping must be suitable to the building orientation aspect, wind and other relevant environmental factors.</p> <p>(d) A minimum of 40% of the total gross landscaped area including communal open space is to include areas with sufficient soil depth and structure to accommodate mature trees and planting. A combination of trees, shrubs and ground cover is encouraged to make the landscaping more attractive and long lasting.</p> <p>(e) A minimum of 25% of the ground plane and share-ways are to be landscaped sufficient in size and dimensions to accommodate trees and significant planting.</p> <p>(f) Green walls can only contribute up to 20% of the total gross landscaped area and will be assessed on the merits of the proposal in terms of quality of green infrastructure and verification from a qualified landscape architect.</p> <p>(g) Roof tops can only contribute up to 30% of the total gross landscape area and the area is to be designed to maximise visibility of planting from the public domain. Rooftops may include communal food farms and food production areas.</p>	<p>The proposal provides 90% of the site area as landscaping which does not comply with the 100% requirement.</p> <p>The insufficient area of landscaping is discussed in the Key Issues section and forms a reason for refusal.</p>	No

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(h) Technical, structural and ongoing maintenance arrangements of proposed roof top gardens and green walls are to be documented by a qualified landscape architect and incorporated into the development proposal.</p> <p>(i) The area dedicated to roof top solar (PV infrastructure) is not to be counted as part of the total gross landscape area.</p> <p>(j) Where green roofs and green walls are provided, these shall comply with requirements contained in Chapter B4 (clause 4).</p> <p>(k) Despite the provision of a green wall, all facades are to meet design excellence requirements including building articulation and modulation specified in section 16 of this section of the DCP.</p> <p>(l) In addition to the requirements of Part B4 (Landscaping and Biodiversity), all DAs for sites within the Kensington and Kingsford town centres must submit a landscape plan addressing the following requirements:</p> <ul style="list-style-type: none"> (i) quantity of landscaping provided on site; (ii) scaled drawings of all areas; (iii) how landscaping would complement the architectural style of building and assists in its presentation to the streetscape and high visibility; (iv) rainwater harvesting and other irrigation methods proposed; (v) full construction details of soil profile, method of attachment to the building, and drainage/waterproofing; and (vi) engineering certification confirming building can withstand planting and associated structures. <p>Note 1 'Ground plane' refers to spaces between buildings on the ground level providing for landscaping, pedestrian access and physical connections to the street.</p> <p>Note 2: 'Gross Landscape Area' refers to the sum of all landscaped areas within a development and may include (but is not limited to) ground plane, gardens, outdoor terraces, planter boxes, sky gardens, roof terraces, and green walls.</p>		
21.	Transport, Traffic, Parking & Access		
	(a) Vehicle parking within the Kensington and Kingsford town centres is to be provided in accordance with the rates outlined in the	Council's Engineer has not raised any objections in relation	No

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>tables below. Parking requirements for all other development types not specified in the table below are contained in section 3.2 Vehicle Parking Rates (of Chapter B7)</p> <p>(b) Where practical, parking access and/or loading is to be provided from secondary streets (rather than directly off Anzac Parade or gardeners Road), set back at least 6m from the intersection or the rear lane</p> <p>(c) Basement carpark access must comply with the requirements of B8: Water Management</p> <p>(d) Parking access and/or loading areas are to be designed as recessive components of the elevation so as to minimise the visual impact</p> <p>(e) Parking is to be accommodated underground where possible</p> <p>(f) Sub-basement car parking is to be no more than 1.2m above existing ground level;</p> <p>(g) Provide flexible hardstand area for the purposes of bicycle maintenance and repairs</p> <p>(h) Where a variation to the DCP Car Parking rates is sought, the proponent shall respond directly to Control i), 3.3 Exceptions to Parking Rates of the DCP 2013</p> <p>(i) A Green Travel Plan is required to accompany all DAs for new buildings and substantial alterations to existing buildings. The Green Travel Plans is to set out:</p> <p>(i) Future travel mode share targets, specifically a reduction in car driver mode share ii)</p> <p>(ii) Travel demand management strategies to encourage sustainable travel iii)</p> <p>(iii) Initiatives to implement and monitor travel measures such as car share and bike share; and iii)</p> <p>(iv) alignment with Control i), 3.3 Exceptions to Parking Rates of this DCP.</p> <p>(j) Car share spaces are to be provided in accordance with Part B7: 2.2 (Car Share) of this DCP</p> <p>(k) All DAs are to provide electric charging stations in an accessible location on site.</p> <p><i>Note 1: Any provision of parking above the maximum requirements will be counted towards gross floor area.</i></p>	<p>to transport, traffic, parking and access. However, Council's Assessment Officer has raised concerns in relation to the laneway/shared way as discussed in the Key Issues section. This forms a reason for refusal.</p>	

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
22.	Sustainability		
	<p>(a) All buildings must achieve a minimum green star certification rating of 5 or equivalent (other recognised rating tools)</p> <p>(b) DAs for strategic node sites must be designed to achieve a GBCA exceeding Five-Star Green Star Design as Built with a sustainability strategy giving priority to the following innovations: -</p> <ul style="list-style-type: none"> - Waste collection (e.g. Automated underground waste) - Renewable energy opportunities - Water harvesting and re-use - Vertical and Roof Greening - Buildings shall incorporate passive design strategies in addition to materials which have less embodied energy, reducing operational energy and focussing on on-going well being of occupants <p>(c) All development must address the requirements of Part B3- Ecologically Sustainable Development of this DCP</p> <p>(d) Applications for new commercial office development premises and hotel/motel accommodation with a floor area of 1,000m² or more must achieve a minimum NABERS 6- star Energy and NABERS 5- star or 6-star Water rating</p> <p>(e) All development must provide 1 electric vehicle charging point per 5 parking spaces where onsite parking is provided.</p> <p>(f) All development must address the requirements of B6 Recycling and Waste Management</p> <p>(g) All new buildings are to provide a space for storage and sorting of problem waste such as E-waste, clothing, and hazardous waste.</p> <p>(h) All new development (other than alterations and additions, or development that is minor or ancillary in nature) is to incorporate a localised automated waste collection system in accordance with Council's Automated Collection System Guidelines.</p>	<p>Insufficient information has been provided in relation to a site-wide sustainability strategy and this forms a reason for refusal.</p>	No
23.	Water Management		
	<p>(a) DAs must address Part B8 – Water Management of the Randwick DCP 2013 in relation to water conservation, groundwater and flooding and Water Sensitive Urban Design</p> <p>(b) In addition to requirements of Part B8, applications for basement level/s must include:</p>	<p>As above.</p>	No

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(i) detailed designs by a qualified hydrological or structural engineer for a water-proof retention system (fully-tanked structure) with adequate provision for future fluctuations of water table variation of at least +/- 1 metre; and</p> <p>(ii) certification from a second qualified hydrological engineer experienced in the design of structures below a water table that the design of the groundwater management system will not have any adverse effects on surrounding property or infrastructure.</p> <p>Note: Council will include conditions of development consent relating to excavation, shoring, piling, dewatering and other construction activities relating to basements affected by groundwater, including requirements for information/certification to be provided prior to approval to commence construction works.</p>		
	<p>Flooding</p> <p>(a) Building design is to facilitate adaptation to different commercial and retail uses, as well as the integration of flooding solutions into the built form, resulting in a floor-to-floor ground floor height between 4.5m and 6m.</p>	N/A	N/A
24.	Aircraft Operations		
	<p>(a) DAs involving the use of cranes during construction and light poles must ensure compliance with Clause. 6.8 of the RLEP 2012 in relation to Airport Operations</p> <p>(b) Applications for new buildings and cranes during construction must meet the requirements of Part F3 - Sydney Airport Planning and Noise Impacts of the Randwick DCP 2013</p> <p>(c) Applications for development that exceed 51m AHD at Kingsford will be subject to an assessment process under the Airports (Protection of Airspace) Regulations, 1996.*</p> <p>*Note: Proposals that penetrate prescribed airspace above 51m AHD may affect the safety of existing and future air transport operations at Sydney Airport and as such may not be approved under the Airports (Protection of Airspace) Regulations, 1996. Further information can be obtained from the</p>	Concurrence has been received from the Sydney Airport Corporation.	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<i>Commonwealth Department of Infrastructure, Transport, Regional Development and Communications, the agency responsible for development approvals that constitute "controlled activities" (under the Airports Act 1996) affecting Sydney Airport.</i>		
25.	Night Time Economy		
	<p>(a) DAs for night time trading will be assessed in accordance with Part B9 of DCP 2013</p> <p>(b) DAs for mixed use/residential buildings must have regard to the late night trading character of the Kensington and Kingsford town centres by incorporating suitable noise attenuation measures for the residential component of the building as specified under section 14 of this part of the DCP</p> <p>(c) DAs must incorporate CPTED principles into the design of public realm for night time activation, safety and security</p> <p>(d) Proposals shall include details of creative lighting to be used to improve the visual amenity of buildings at night</p> <p>(e) DAs for late night operations must include measures for ensuring adequate safety, security and crime prevention both on the site of the premises and in the public domain immediately adjacent to, and generally surrounding, the premises</p> <p>DAs should consider night time activation measures during construction such as creative lighting, attractive hoardings, pop ups and other temporary activations.</p>	N/A	N/A
26.	Student Accommodation		
	<p>DAs for all student accommodation or boarding house proposals must provide the following:</p> <p>(a) A design report that demonstrates compliance with the minimum amenity standards under the AHSEPP and where improvements to these standards have been incorporated into the development in order to achieve a higher standard of living amenity for occupants e.g. size of communal living areas, ceiling heights, bedroom width</p> <p>(b) How the built form relates to the desired local character and surrounding context including relationship to heritage or contributory buildings (Refer to Part B Block controls), delivery of high quality built form design and public/private domain interface at the ground level</p>	N/A	N/A

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(c) How the development delivers improved sustainability, natural cross ventilation and sunlight, passive thermal design reducing reliance on technology and operation costs and waste management</p> <p>(d) Communal living areas with a minimum area of 20m² or 1.25m² per resident, whichever is greater and a minimum dimension of 3m</p> <p>(e) A Management Plan in Accordance with the Management Plan Template in Part B of this DCP addressing the following additional requirements:</p> <ul style="list-style-type: none"> (i) Maximum number of students to be accommodated at any one time (ii) Provision for at-call contact details of a suitably responsible contact person for response 24 hours a day (iii) On site security arrangements (iv) A schedule detailing furnishings for sleeping rooms iv) Cleaning and maintenance arrangements (v) Ongoing operational arrangements to minimise and manage noise transmission to adjoining properties (vi) Management and staffing arrangements and overview of each role's key responsibilities (vii) Measures to ensure ongoing workability of emergency systems including lighting and smoke detectors, sprinkler systems, and air conditioning (viii) Placement and composition of furnishing and fittings to achieve the appropriate fire safety requirements (ix) Measures to ensure how premises are to be regularly checked to ensure fire safety including that all required exits and egress paths are clear and free of locks and obstructions (x) Provision of information on community and education services, including health, counselling and cultural services (xi) House rules regarding occupancy and behaviour of students and visitors (xii) Critical Incident Management and Emergency & Evacuation Procedures 		

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(xiii) Management procedures over holiday periods.</p> <p>(f) DAs for boarding houses and student accommodation must submit an Acoustic Report prepared by a suitably qualified acoustic consultant in accordance with the requirements of section 15 Part C of this DCP addressing:</p> <ul style="list-style-type: none"> (i) Potential noise sources from the operation of the development including any outdoor communal areas, mechanical plant and equipment and kitchen exhaust systems (ii) Desirable acoustics performance criteria addressing potential external night time noise activities including outdoor dining, cafes, restaurants, small bars, outdoor performances and live music; (iii) Mitigation measures such as appropriate sound proofing construction and management practices to achieve the relevant noise criteria (refer to section 15 Part C of this DCP) <p>(g) DAs for boarding houses (including student accommodation) incorporating 20 or more bedrooms are to be supported by a Traffic and Transport Report prepared by a suitably qualified person, addressing as a minimum the following:</p> <ul style="list-style-type: none"> - the prevailing traffic conditions - ingress and egress arrangements - waste collection - the likely impact of the proposed development on existing traffic flows and the surrounding street system - pedestrian and traffic safety - an assessment on-site parking provision for students, staff and business operations - the recommendations of a site specific Green Travel Plan (as required under Section 22 Part C of this DCP) outlining initiatives to encourage active transports options and shared use of vehicles for students, employees and other visitors to the site. 		
PART D			
27.	Solar Access – Public Open Space		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(a) New buildings and alterations and additions to existing buildings are to be designed to ensure that the following locations shown on Figures 17a and 17b are not overshadowed by more than 10% in mid-winter (June 22nd) between the hours of 12noon and 2pm:</p> <ul style="list-style-type: none"> – Kensington Public School – Duke St Plaza – Bowral St Plaza – Uni Lodge Plaza – Addison St Plaza – Kokoda Park – Todman Ave Plaza – Meeks St Plaza – Borrodale Road widening – Town Square Plaza – Market Site corner – Triangle site corner – Dacey Gardens <p>(b) New buildings and alterations to existing buildings are to retain solar access to a minimum of 50% of the site area of key public places identified in a) and shown on Figures 17a and 17b for a minimum of 3 hours in mid-winter (June 22nd).</p>	The proposed development does not result in a non-compliance with the solar access provisions relating to the Bowral Street Plaza.	Yes
28.	Wind Flow		
	<p>(a) DAs are to include a Wind Impact Assessment for new buildings over nine (9) storeys in height. The findings of the Wind Impact Assessment are to provide design solutions to minimise the impact of wind on the public and private domain</p> <p>(b) Development must not create a ground level environment where additional generated wind speeds exceed:</p> <ul style="list-style-type: none"> (i) 10 metres per second for active frontages along Anzac Parade and (ii) 16 metres per second for all other streets <p>(c) Buildings over 9 storeys are to incorporate design features that ameliorate existing adverse wind conditions so that the above criteria is achieved</p> <p>(d) Building design is to minimise adverse wind effects on recreation facilities and open spaces within developments</p> <p>(e) Balconies are to be designed to minimise wind impacts and maximise usability and comfort through recessed balconies, operable screens, pergolas and shutters</p> <p>(f) Balconies must be recessed on buildings over 45m in height.</p>	N/A	N/A

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)									
29.	Public Art											
	<p>(a) Public Art is to be generally be consistent with Council's Public Art Strategy</p> <p>(b) All sites with frontages greater than 12 metres and corner sites, must incorporate artistic elements into the built form such as creative paving, window treatments, canopy design, balustrading, signage and wayfinding, lighting to assist illumination levels after dark and the promotion of active uses in the public spaces</p> <p>(c) In addition to clause 29(b) site specific public art is to be provided on identified sites, plazas and mid-block links as per the block by block controls in Part B of this DCP</p> <p>(d) Public art is to be located in areas which offer the public a free and unobstructed visual experience of the work</p> <p>(e) Incorporate creative lighting, decorative elements and/or murals in laneways, share ways and pedestrian links</p> <p>(f) Submit an Arts Statement which identifies the reasons for the chosen themes, and their interpretation into specific treatments with the DA.</p>	<p>The subject site has a frontage greater than 12m and public art must be included. The SEE states that these requirements may be imposed as a condition of consent, however, Control (e) in Part 29 requires the submission of an Arts Statement which identifies the reasons for the chosen themes, and their interpretation into specific treatments with the DA. Therefore insufficient information has been provided and this forms a reason for refusal.</p>	No									
30.	Affordable Housing											
	<p>(a) All development within the 'Kensington and Kingsford Town Centres Affordable Housing Contributions Area' (Figure 18) must contribute towards the provision of affordable housing based on the following rates:</p> <div><p>Table – Affordable Housing Contributions</p><table><tr><th>Date of DA lodgement</th><th>Percentage of residential gross floor area to be dedicated towards affordable housing</th><th>Equivalent Monetary contribution *</th></tr><tr><td>From 13 August 2020 up to and including 13 August 2022</td><td>3%</td><td>\$324.38/sqm</td></tr><tr><td>After 13 August 2022</td><td>5%</td><td>\$540.62/sqm</td></tr></table><p>* where less than whole unit is provided</p></div> <p>(b) Affordable Housing contributions are to be provided in accordance with the Affordable Housing Plan 2019 for the Kensington and Kingsford Town Centres</p> <p>(c) The affordable housing contribution rate is to apply to the residential gross floor area component of the development</p> <p>(d) Contributions towards affordable housing are to be provided through a dedication of completed units with any remainder paid as a monetary contribution in accordance with the affordable housing contributions table referred to in clause a).</p>	Date of DA lodgement	Percentage of residential gross floor area to be dedicated towards affordable housing	Equivalent Monetary contribution *	From 13 August 2020 up to and including 13 August 2022	3%	\$324.38/sqm	After 13 August 2022	5%	\$540.62/sqm	<p>If the application were approved, this would form a condition of consent.</p>	Yes
Date of DA lodgement	Percentage of residential gross floor area to be dedicated towards affordable housing	Equivalent Monetary contribution *										
From 13 August 2020 up to and including 13 August 2022	3%	\$324.38/sqm										
After 13 August 2022	5%	\$540.62/sqm										

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<i>*Note the Affordable Housing Contributions Area corresponds to the B2 Local Centre Zone boundary.</i>		
31.	Community Infrastructure		
	<p>(a) In accordance with Clause 6.17 of the RLEP 2012 an alternative building height and additional floor space ratio may be achievable where Council and the proponent of the DA have agreed to or entered into a planning agreement for the basis of paying the Community Infrastructure Charge</p> <p>(b) The delivery of Community Infrastructure is to be carried out in accordance with the Kensington and Kingsford Town Centres Community Infrastructure Contributions Plan 2019.</p> <p>Note 1: <i>Community Infrastructure Charge</i> Community infrastructure is identified in the Schedule of community Infrastructure within the Kensington and Kingsford Town Centres Community Infrastructure Contributions Plan 2020. It includes development for the purposes of recreation areas, recreation facilities, public roads, community facilities and drainage. In order for this community infrastructure to be provided, the following types of community infrastructure contributions will be considered:</p> <ul style="list-style-type: none"> • A monetary contribution (Community Infrastructure Charge); or • Dedication of land or property; or • Carrying out works; or • A combination of all the above. <p>The Community Infrastructure Charge is set out in the Kensington and Kingsford Town Centres Community Infrastructure Contributions Plan 2019. A voluntary planning agreement is the means by which the Community Infrastructure will be delivered on a given site.</p>	Refer to the assessment provided in Clause 6.17 of the RLEP.	No
32.	Public Domain and Landscape		
	<p>(a) Development within the public domain is to be consistent with Figures 17a and 17b: The Public Domain Strategy.</p> <p>(b) DAs for new buildings and substantial alterations and additions to more than 50% of the existing floor area are to be accompanied by a Public Domain Plan that demonstrates consistency with the public domain objectives within this DCP and addresses the following:</p> <p>(i) street levels</p>	N/A	N/A

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none"> (ii) interface between the public and private domains, including levels (iii) detail of the entire adjoining streets (iv) collection, flow and treatment of stormwater (v) paving and other hard surfaces (vi) street trees and other vegetation – Randwick Street Tree Master Plan (vii) lighting (viii) safety (ix) seating and other furniture (x) stairs and other methods of managing gradient change (xi) refuse bins (xii) signage, including interpretation and wayfinding signage (xiii) public art (xiv) water sensitive urban design (WSUD) such as landscaped swales to improve the quality of water entering the ground (xv) through site links and shared zones <p>(c) Street trees are to be provided in accordance with the Randwick Street Tree Master Plan and the Light Rail Urban Design Guidelines.</p> <p>(d) Development adjacent to lanes should provide for:</p> <ul style="list-style-type: none"> (i) Active ground floor uses to encourage pedestrian activity (ii) Adequate setbacks from sensitive land uses such as residential and schools (iii) Adequate lighting to address safety (iv) Design solutions that maintain public access at all times regardless of mobility impairments (v) Business servicing that can reasonably take place with minimal pedestrian conflict. 		
33.	Advertising and Signage		
	<p>(a) A signage plan is to be submitted as part of the redevelopment of sites. The signage plan is to address the following matters:</p> <ul style="list-style-type: none"> (i) Alignment with the desired future character of the town centres (ii) Design excellence in terms of innovation, materiality, creativity, streetscape contribution and integration with the building design (iii) Relationship to the heritage character of heritage items and 	N/A	N/A

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>contributory buildings where applicable</p> <p>(iv) Whether signage will contribute to visual clutter</p> <p>(v) The public benefit of proposed signage</p> <p>(vi) Any impacts resulting from sign illumination on residential development and aircraft safety; and</p> <p>(vii) Cumulative impacts having regard to existing signage in the vicinity.</p> <p>(b) All new DAs are to remove unsympathetic signage where possible</p> <p>(c) Signs must not distract drivers and be located where drivers require a higher level of concentration, for example at major intersections</p> <p>(d) Above awning signage, roof/sky signs and/or signs greater than 20m² are to:</p> <p>(i) be compatible with the desired future character of each town centre</p> <p>(ii) be consistent with the scale and proportion of the building on which it is located and should not dominate the building or skyline</p> <p>(iii) respect the important design features, openings and articulation of the building on which it is situated</p> <p>(iv) not create adverse impacts when viewed from surrounding residential areas</p> <p>(v) result in an improvement to the building and streetscape; and</p> <p>(vi) demonstrate a clear public benefit and justification for the signage</p> <p>Note: Above awning signage, roof/sky signs and signs greater than 20m² are generally discouraged where they do not meet the objectives and controls set out in this clause</p>		
34.	Air Quality		
	<p>(a) DAs are to include a report from a suitably qualified air quality consultant that addresses building design solutions and construction measures that reduce air pollution and improve indoor air quality for occupants</p> <p>(b) DAs are to submit a statement which explains how the proposal has addressed the NSW Government 'Development near rail corridors and busy roads – Interim Guideline'</p> <p>(c) Air intake for proposals are to be sited well away from Anzac Parade or the pollution</p>	N/A	N/A

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>source (e.g on top of tall buildings) or provided with filtration to remove particulates; and</p> <p>(d) DAs for sensitive land uses such as childcare centres, schools or aged care facilities must submit an air quality study prepared by a suitably qualified expert demonstrating how air pollution exposure and health risks will be mitigated.</p>		

Responsible officer: Tegan Ward, Senior Environmental Planning Officer

File Reference: DA/172/2022

Development Application Report No. D44/22

Subject: 203-207 Anzac Parade, Kensington (DA/630/2021)

Executive Summary

Proposal:	Demolition of existing structures and construction of an eight-storey mined-use development comprising ground floor retail with seven (7) levels above containing 51 boarding rooms and one (1) manager's room, communal areas, four (4) at-ground floor car parking spaces including 2 carshare spaces, landscaping and associated works (variation to height of buildings of the RLEP 2012).
Ward:	West Ward
Applicant:	Hassarati Finance Pty Ltd
Owner:	Hassarati Finance Pty Ltd
Cost of works:	\$8,426,000
Reason for referral:	The development contravenes the development standard for building height by more than 10%.

Recommendation

That the RLPP refuse consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/630/2021 for demolition of existing structures and construction of an eight-storey mined-use development comprising ground floor retail with seven (7) levels above containing 51 boarding rooms and one (1) manager's room, communal areas, four (4) at-ground floor car parking spaces including 2 carshare spaces, landscaping and associated works (variation to height of buildings of the RLEP 2012, at No. 203-207 Anzac Parade, Kensington, for the following reasons:

1. The proposed development does not comply with the minimum number of motorcycle parking spaces pursuant to clause 30(1)(h) of the *State Environmental Planning Policy (Affordable Rental Housing) 2009*. A written request pursuant to clause 4.6 of the RLEP 2012 to vary the development standard for motorcycle parking has not been submitted. In the absence of a written request to vary the development standard, the development application must be refused.
2. The proposed development provides a boarding room for the Manager in excess of 25m² and does not comply with the maximum GFA standard for boarding rooms pursuant to clause 30(1)(b) of the *State Environmental Planning Policy (Affordable Rental Housing) 2009*. A written request pursuant to clause 4.6 of the RLEP 2012 to vary the development standard for accommodation size has not been submitted. In the absence of a written request to vary the development standard, the development application must be refused.
3. The proposal does not provide commercial premises at the Ground Floor level fronting Doncaster Avenue in contradiction to clause 6.20 of Randwick Local Environmental Plan 2012 in relation to active street frontages. A written request pursuant to clause 4.6 of the RLEP 2012 to vary the development standard for an active street frontage on Doncaster Avenue has not been submitted. In the absence of a written request to vary the development standard, the development application must be refused.
4. The proposal exceeds the maximum building height development standard pursuant to clause 4.3 of Randwick Local Environmental Plan 2012. The proposed height results in an excessive level of bulk and scale and detrimental impacts upon the amenity of the adjoining properties and the heritage significance of the area. Compliance with the maximum height is not considered to be unreasonable or unnecessary in the circumstances of this case and there are no environmental planning grounds that would warrant a variation to the

development standard. As such, the written request pursuant to clause 4.6 of the RLEP 2012 to vary the height of buildings standard in clause 4.3 is not considered to be well founded.

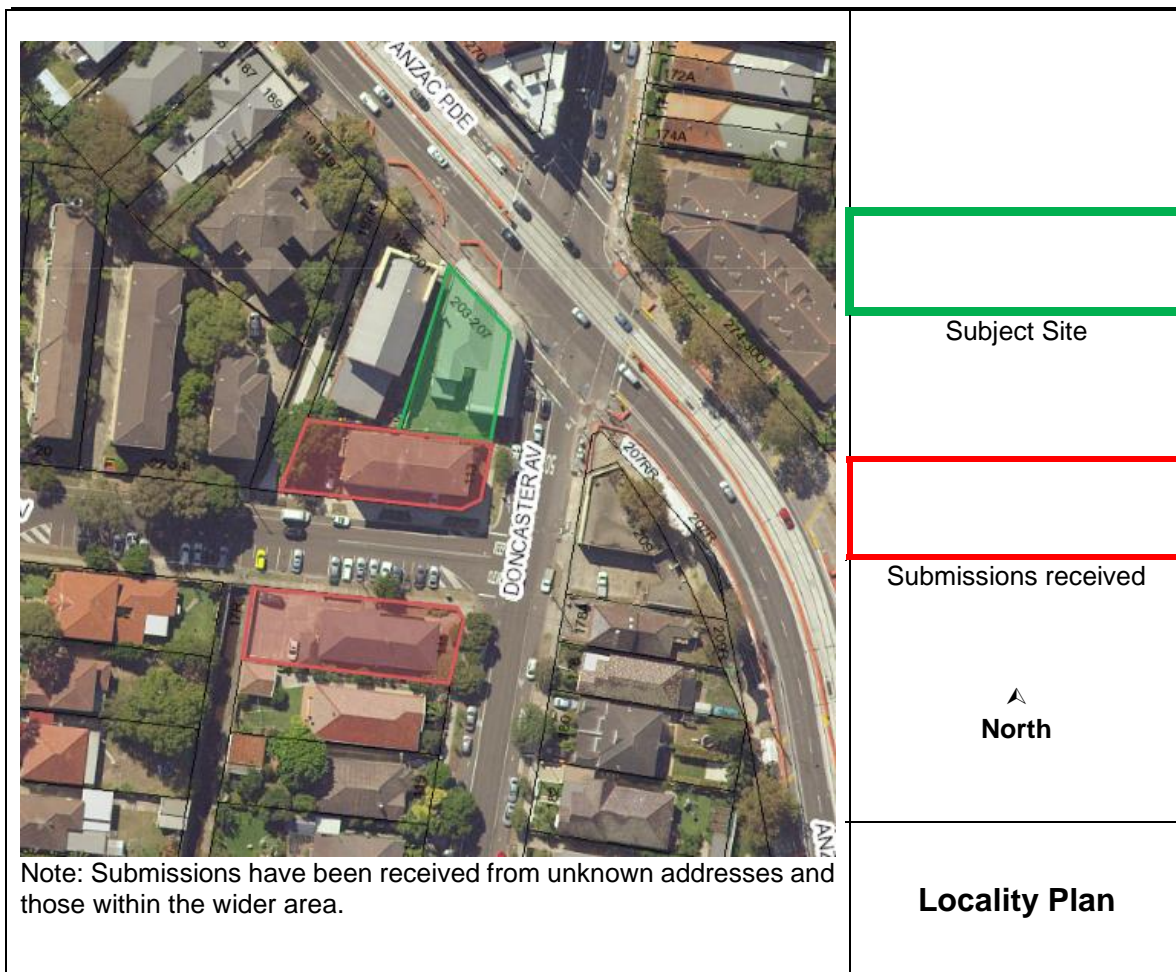
5. Concurrence has not been granted by Transport for NSW pursuant to s138 of the Roads Act 1993 and clause 101 of the *State Environmental Planning Policy (infrastructure) 2007*. The location of the vehicular access shall adversely impact upon road safety and the proposal does not provide sufficient parking provisions to accommodate the proposed development.
6. The proposed development is not compatible with the existing or desired future character of the local area, particularly having regard to its excessive height, bulk and scale and poor design in contradiction to clause 30A of *State Environmental Planning Policy (Affordable Rental Housing) 2009*.
7. The proposed development does not provide adequate residential amenity for occupants due to the following:
 - a. A significant number of the proposed boarding rooms are undersized and do not comply with the minimum provisions specified in clause 29 of the *State Environmental Planning Policy (Affordable Rental Housing) 2009* in relation to accommodation size. The combination of the undersized boarding rooms, low ceiling heights and poor configuration of rooms combined with the inadequate communal spaces results in the development not meeting the objectives of Section 20 of Part C of Part E6: Kensington and Kingsford Town Centres DCP.
 - b. The communal indoor space is significantly undersized and does not comply with the minimum area required under section 26 of Part C of Part E6: Kensington and Kingsford Town Centres DCP;
 - c. The Acoustic report is based on a maximum occupancy level of twelve (12) persons for the outdoor communal space. Given that the boarding house shall accommodate a total of 102 residents, the outdoor communal space is not considered to be adequate, shall result in poor amenity for occupants, and would result in adverse privacy impacts upon adjoining properties.
 - d. The residential amenity of the occupants will be compromised due to poor cross ventilation in the boarding rooms.
 - e. The proposed boarding rooms provide screening on the upper level windows creating a sense of enclosure and compromising the internal amenity of the rooms.
 - f. The entry and circulation space of the boarding house is constrained, providing minimal widths and no formal Lobby or Entrance, resulting in poor internal amenity.
8. The proposed development is inconsistent with the provisions of Randwick Local Environmental Plan 2012 with regards to the following:
 - a. The proposed development is inconsistent with the objectives of B2 Local Centre zone pursuant to Clause 2.3 of RLEP 2012.
 - b. The proposed development does not satisfy the requirements under Clause 4.6 in that the request for the variation of the height of buildings under clause 4.3 is not well founded.
 - c. Pursuant to Clause 5.10, the proposal is inconsistent with the objectives of the clause as it shall detrimentally impact the significance of the nearby heritage items and heritage conservation area, due to the height, bulk and scale of the development. The proposal fails to provide sufficient transition to the Masonic Temple to the north-west and the surrounding residential area to the south and east, resulting in a visually dominating building.
 - d. The proposed development fails to exhibit design excellence pursuant to clause 6.11 of RLEP 2012.
 - e. The proposal fails to provide an active street frontage to Doncaster Avenue pursuant to clause 6.20 of RLEP 2012.
9. The proposed development is inconsistent with the provisions of Part E6: Kensington and Kingsford Town Centres DCP with regards to the following:

- a. The proposed built form is considered to be inconsistent with the guiding principals of Section 2.1 of Part A of Part E6: Kensington and Kingsford Town Centres DCP.
 - b. The proposed built form does not comply with the building envelope and built form controls specified in section 6.1 of Part A of Part E6: Kensington and Kingsford Town Centres DCP 2020 and section 10.3 of Part B of Part E6: Kensington and Kingsford Town Centres DCP 2020.
 - c. The proposed development does not provide sufficient landscape area or deep soil zones, and results in a significant shortfall of landscaping to that required under section 20 of Part C of Part E6: Kensington and Kingsford Town Centres DCP.
 - d. The design of the proposed development is unacceptable and will not provide adequate articulation and modulation in accordance with Section 16 and 17 of the K2K RDCP 2020.
 - e. The proposed development and waste management plan does not comply with the relevant controls in Section 22 of Part C of Part E6: Kensington and Kingsford Town Centres DCP including how the building will achieve the future provision of an Automated Waste Collection System (AWCS).
 - f. The proposed development is in contradiction to the objectives of section 26 of Part C of Part E6: Kensington and Kingsford Town Centres DCP which aim to provide a high level of amenity for occupants of boarding houses.
10. The proposed development is excessive in its bulk and scale as a result of the excessive height, number of storeys, excessive gross floor area and inadequate setbacks, resulting in unacceptable building mass and a development is inconsistent with the desired future character for the location.
 11. The proposed development shall result in adverse privacy impacts upon the adjoining properties as a result of the roof top terrace and windows to the circulation areas on the southern elevation which shall have the capacity to overlook the adjoining properties to the south.
 12. The proposed development will result in adverse overshadowing of the southern adjoining property at 113 Doncaster Avenue. These impacts arise from a development that is non-compliant with the relevant built form controls for the site under RLEP 2012 and RDCP.
 13. The application does not provide sufficient information to allow the full and proper assessment of the proposed development, with regards to the following:
 - a. Pursuant to Clause 7 of State Environmental Planning Policy 55 – Remediation of Land, it has not been demonstrated that the site is suitable for the proposed development. Specifically, a Detailed Site Contamination Investigation should be undertaken.
 - b. In accordance with section 34 of RDCP Part E6 Kensington and Kingsford Town Centres Part D, an Air Quality report prepared by a suitably qualified air consultant has not been provided.
 - c. In accordance with section 22 of RDCP Part E6 Kensington and Kingsford Town Centres Part C, it has not been demonstrated that the proposal shall achieve a minimum green star rating of 5 stars or equivalent.
 - d. The Building Code of Australia assessment report states that insufficient detail has been provided to determine if compliance is achieved in relation to Sections C1.1, C2, C3, D1, D2, E, E2, E3, E4, F1, F4, F5, and J6. Insufficient information has been provided to determine how the development shall achieve the deemed to satisfy provisions of the relevant sections.
 14. In view of the reasons above, the proposed development is not in the public interest and will set an undesirable precedent for similar inappropriate development in the locality.

Attachment/s:

Nil

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1. Executive summary

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

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

The proposal seeks development consent for demolition of existing structures and construction of an eight-storey mixed-use development comprising ground floor retail with seven (7) levels above containing 51 boarding rooms and one (1) manager's room, communal areas, four (4) at-ground floor car parking spaces including 2 carshare spaces, landscaping and associated works.

The proposal was notified in accordance with the Randwick Community Participation Plan. As a result of the notification of the application a total of eight (8) submissions in objection to the proposal were received. The submissions raised concerns regarding non-compliance with the block 31 building envelope; height non-compliance; number of storeys; rear setback non-compliance; lack of landscaping; bulk and scale; excessive built form; overdevelopment of the site; poor quality design; cumulative impact of numerous boarding house developments within the locality; overshadowing; visual privacy; acoustic privacy; traffic and parking; location of vehicular access; safety issues with the proposed location of driveway; and waste management.

The subject application is currently subject to a Class 1 appeal against the deemed refusal of the application with the Land and Environment Court.

The key issues associated with the proposal relate to non-compliance with the accommodation size and parking provisions within SEPP ARH, non-compliance with the maximum height standard pursuant to clause 4.3 of RLEP 2012 and a deviation from the building envelope controls contained

within the K2K, insufficient landscaping, lack of active street frontage on Doncaster Avenue, detrimental impacts upon nearby heritage items and the Heritage Conservation Area within the vicinity of the site, adverse impacts upon the residential amenity of neighbouring properties, and traffic and parking including the location of the vehicular access. The application also provides insufficient information with regards to air quality, land contamination, sustainability, and compliance with the Building Code of Australia. As a result of the issues raised, the proposal is also found to be inconsistent with the objectives of the B2 Local Centre zone. For the reasons discussed in this report, the proposal is thereby recommended for refusal.

2. Site Description and Locality

The site is known as 203-207 Anzac Parade, Kensington and is legally described as Lot 62 in Deposited Plan 7698. The site is irregular in shape. The site is a corner allotment, with a frontage width of 21.77m to Doncaster Avenue to the east, and a frontage width of 18.335m to Anzac Parade to the north. The site has a western boundary of 34.315m and a southern boundary of 18.29m, with a total site area of 466.00m². Vehicular access is currently gained via the 21.77m frontage to Doncaster Avenue to the east, however there is no formal on-site parking within the site. Pedestrian access gained via the frontage to Anzac Parade and Doncaster Avenue. The site is predominantly flat and experiences a slight fall of approximately 0.52m from the front northern boundary of the site, down towards the rear southern boundary, with a slope of approximately 1.96%. The site is currently occupied by a two (2) storey shop-top housing development, with commercial premises on the Ground Floor level and residential dwellings above. The site is identified as being within the vicinity of two (2) heritage items listed in Schedule 5 of RLEP 2012 at 199-201 Anzac Parade and 268-270 Anzac Parade, and within the vicinity of a Heritage Conservation Area, being the Randwick Racecourse Heritage Conservation Area.

The surrounding residential area is characterised by a mixture of low density and medium density residential development, with the R2 low density zoning to the south and south-west of the site predominantly dwelling houses and semi-detached dwellings of one (1) and two (2) storeys, and the R3 medium density zoning to the immediate south, south-west and north-west comprising residential flat buildings (RFB) of three (3) and four (4) storeys in height, and dwelling houses and semi-detached dwellings of one (1) and two (2) storeys. Royal Randwick Racecourse is located to the east of the site, extending from the far north-east through to the south-east. The surrounding area has a variety of architectural styles with the prevailing form of development older style mixed-use developments, shop-top housing, dwellings and residential flat buildings. However, there are examples of newer developments, including the mixed-use development at 240-266 Anzac Parade which was constructed in 2005.

3. Relevant history

The site has been used for the purpose of mixed-uses of residential and commercial for an extended period of time, a search of Council's records has revealed that there are no recent or relevant development applications for the site.

Subject Development Application

Development Application DA/630/2021 was lodged with Council on 13 October 2021. The application was externally referred to Transport for NSW and Sydney Airport, and internally referred to Council's Development Engineer, Landscape Officer, Heritage Planner and Environmental Health Officer. The application was also referred to Council's Design Excellence Advisory Panel for comment and/or recommendation.

On 10 May 2022, the Applicant commenced proceedings in Class 1 of the NSW Land and Environment Court's jurisdiction appealing against the deemed refusal of the development application.

4. Proposal

The proposal seeks development consent for demolition of existing structures and construction of an eight-storey mixed-use development comprising ground floor retail with seven (7) levels above containing 51 boarding rooms and one (1) manager's room, communal areas, four (4) at-ground floor car parking spaces including 2 carshare spaces, landscaping and associated works.

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Specifically, the application seeks consent for the following works:

- Demolition of existing structures on site;
- Construction of an eight (8) storey mixed-use development comprising commercial premises and a boarding house containing:
 - Ground Floor Level
One (1) commercial premises with accessible toilet and Waste Room, Manager's Office, Garbage Room, accessible toilet, services, entry to residential lobby, internal circulation space including lift and access stairs, four (4) car parking spaces including two (2) accessible spaces and two (2) car share spaces, ten (10) bicycle spaces, four (4) motorcycle spaces;
 - Levels One (1) to Three (3)
Eight (8) self-contained boarding rooms with en-suite and kitchenette, one (1) private balcony to the west, one (1) self-contained accessible boarding room with en-suite and kitchenette, internal access and circulation;
 - Level Four (4)
Eight (8) self-contained boarding rooms with en-suite and kitchenette, two (2) private balconies to the north and one (1) private balcony to the west, internal access stairs and circulation;
 - Levels Five (5) and Six (6)
Eight (8) self-contained boarding rooms with en-suite and kitchenette, one (1) private balcony to the west, internal access stairs and circulation;
 - Level Seven (7)
One (1) bedroom Manager's room with en-suite and kitchenette, Manager's private open space roof terrace, indoor communal room with accessible toilet, Storage, internal access stairs and circulation, and communal roof terrace;
- New vehicular access off Doncaster Avenue;
- Associated landscaping and earthworks.

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Consultation Plan. As a result of the notification process, submissions were received from or on behalf of the following properties:

- 4/113 Doncaster Avenue, Kensington
- 2/115 Doncaster Avenue, Kensington
- 115 Doncaster Avenue, Kensington
- 12/22 Roma Avenue, Kensington
- Balfour Road, Kensington
- Doncaster Avenue, Kensington
- Unknown addresses.

The submissions raised concerns with regards to the following:

Issue	Comment
Non-compliance with the block 31 building envelope.	The proposed built form is considered to be excessive and is not supported. See Key Issues for further discussion.
Height non-compliance and number of storeys.	The proposed height is considered to be excessive and results in an exceedance to the maximum number of storeys permitted. As such the proposed height is not supported. See Key Issues for further discussion.
Rear setback non-compliance.	The proposal does not comply with the minimum setbacks provided within RDCP which results in adverse impacts upon adjoining properties, and the proposed setback is not supported. See Key Issues for further discussion.
Lack of landscaping.	The proposal is significantly deficient in landscaping and deep soil planting and is not supported. See Key Issues for further discussion.
Bulk and Scale and excessive built form.	The proposed built form is considered to be excessive and is not supported. See Key Issues for further discussion.
Overdevelopment of the site.	The proposed built form is considered to be excessive and is not supported. See Key Issues for further discussion.
Poor quality design	The proposed development is not considered to exhibit design excellence and shall result in a poor urban design outcome. See Key Issues for further discussion.
Cumulative impact of numerous boarding house developments within the locality.	The proposed boarding house is a permissible use within the B2 Local Centre zone. The proposal provides commercial premises on the Ground Floor level and provide a mixed-use development. While it is recognised that there are a number of boarding houses and student accommodation within the local area, given the permissibility of the use, refusal of the application for this reason would not be warranted.
Overshadowing	The proposal shall result in adverse impacts upon adjoining properties with regards to solar access and overshadowing. See Key Issues for further discussion.
Visual privacy	The proposal shall result in adverse impacts upon adjoining properties with regards to visual privacy. See Key Issues for further discussion.
Acoustic privacy	The proposal shall result in adverse impacts upon adjoining properties with regards to acoustic privacy. See Key Issues for further discussion.
Construction management and associated adverse impacts including construction noise, access to Anzac Parade during construction, and damage to neighbouring buildings.	It is considered that the construction management of the development can be dealt with by standard conditions of consent should the application be approved, including the requirement for construction traffic management plans, and dilapidation reports.
Concerns regarding the adequacy of the BCA report, and the accreditation of the author.	Insufficient information has been provided. See Key Issues for further discussion.

Issue	Comment
Traffic and Parking, including the location of vehicular access and safety issues with the proposed location of driveway.	Transport for NSW are not supportive of the location of the proposed driveway, and Council's Development Engineer has raised concerns regarding the inadequate parking provisions. The proposed parking provisions are not supported and are identified as a reason for refusal.
Waste Management	The proposal does not facilitate an automated waste collection system in contradiction to section 22 of the K2K DCP. The inadequate waste management provisions form a reason for refusal.

6. Relevant Environment Planning Instruments

6.1. SEPP (Affordable Rental Housing) 2009

The proposed development includes development for the purpose of a boarding house and as such Part 1, Division 3 of the ARH SEPP is applicable to the proposed development. See assessment in Appendix 3, and where relevant, discussion of issues below.

Clause 29 – Standards that cannot be used to refuse consent

Accommodation Size

Clause 29(2)(f) of SEPP ARH specifies minimum accommodation size for each boarding room of 12m² for single rooms and 16m² for double rooms. It is calculated that forty-one (41) of the double boarding rooms shall be less than 16m² in size. The discrepancy between Council's calculation and the Applicant's is in relation to the exclusion of an area 600mm in width adjoining the kitchen which would be defined as "*an area used for the purpose of a private kitchen*". It is considered that a combination of the undersized boarding rooms, low ceiling heights and poor configuration of rooms combined with the inadequate communal spaces results in the development not meeting the objectives of Section 26 of the K2K RDCP 2020 that aim to achieve a "*high level of residential amenity for occupants...*" and as such the proposed room sizes are not supported.

Parking Provisions

The proposed development does not comply with the minimum parking provisions stipulated by clause 29(2)(e), which requires a minimum of twenty-six (26) car parking spaces. A total of four (4) parking spaces, including two (2) car share spaces, are provided which results in a sufficient shortfall to the minimum parking. Council's Development Engineer does not support the proposed parking. See further comment in Appendix 1.

Clause 30 – Standards for Boarding Houses

Maximum GFA of Boarding Rooms

Clause 30(1)(b) of SEPP ARH states that "*no boarding room will have a gross floor area of more than 25m²*". The Manager's room shall have a GFA of 30.48m² which exceeds the maximum permitted. The Applicant has not submitted a written request pursuant to clause 4.6 of RLEP 2012 in relation to the contravention of the development standard in clause 30(1)(b) of SEPP ARH.

Motorcycle Parking

Clause 30(1)(h) of SEPP ARH requires a minimum of one (1) motorcycle space to be provided for every five (5) boarding room. As such a total of ten (10) motorcycle spaces are required for the proposed development. The proposal provides a total of four (4) motorcycle spaces. The Applicant has not submitted a written request pursuant to clause 4.6 of RLEP 2012 in relation to the contravention of the development standard in clause 30(1)(h) of SEPP ARH.

Clause 30A - Character of the Local Area

Clause 30A of the ARH SEPP states that "*a consent authority must not consent to development to which this Division applies unless it has taken into consideration whether the design of the development is compatible with the character of the local area*". The proposed development is not

considered compatible with the desired future character envisaged by the applicable planning controls for the following reasons:

- The proposed development results in a significant variation to the maximum height of buildings development standard pursuant to clause 4.3 of RLEP 2012;
- The proposed built form and massing presents substantial variations to the building envelope controls specific to the site established in the K2K RDCP 2020 in relation to Block 31 resulting in an excessive FSR;
- The proposed development is not sympathetic to or compatible with the scale and character of heritage items within the vicinity of the site;
- The proposed commercial component at the Ground Floor level is not considered to be adequate in providing an active street frontage in contradiction to clause 6.20 of RLEP 2012 and Clause 19.1 of the K2K RDCP 2020.

In summary, the proposed development does not meet the character test and is inconsistent with the provisions of the ARH SEPP in relation to accommodation size and parking.

SEPP (Housing) 2021

During the course of the assessment of the application, the new SEPP (Housing) 2021 was gazetted and came into force on 26 November 2021. The new Housing SEPP shall replace the ARH SEPP. The provisions in relation to Boarding Houses have been amended under the new Housing SEPP which require boarding houses to be managed by a registered community housing provider. Under the new SEPP, the proposed development would be more appropriately defined as “co-living housing” with Chapter 3, Part 3 of the new Housing SEPP applicable to the proposed development.

While the new Housing SEPP contains saving provisions and the subject application will ultimately be determined under the ARH SEPP, consideration of the new Housing SEPP has been undertaken in accordance with the provisions of 4.15 of the Act. The provisions of Chapter 3, Part 3 of the Housing SEPP are consistent with the provisions of the ARH SEPP with regards to the size of the boarding rooms, co-living housing in business zones and parking. However, it is noted that provisions in relation to communal space, landscaping, solar access, and separation are more onerous under the new SEPP. It is considered that the proposed development would be inconsistent with the relevant provisions of the new SEPP.

6.2. SEPP (Infrastructure) 2007

The applicant was referred to Transport for NSW for concurrence pursuant to s138 of the Roads Act 1993, and clause 86 and 101 of the SEPP (Infrastructure) 2007. A response was provided from TfNSW on 12 November 2021 who raised concerns regarding the proposed vehicular access as follows:

- *TfNSW recommends that the proposed vehicular crossover on Doncaster Street is relocated to the most southern side of the property on Doncaster St to ensure the vehicle movements do not impact the safety and efficiency of the existing signalised intersection and operation of the surrounding classified network (Anzac Parade).*
- *To mitigate any road safety impacts of the proposed vehicle crossover's location, TfNSW recommends that the Applicant undertakes a Road Safety Audit (RSA) for the proposed vehicle and pedestrian access arrangement to the subject site shall be provided in accordance with Austroads Guide to Road Safety Part 6: Managing Road Safety Audits and Austroads Guide to Road Safety Part 6A: Implementing Road Safety Audits by an independent TfNSW accredited road safety auditor.
Based on the results of the road safety audit, the design drawings should be reviewed to identify safety measures that may need to be implemented as part of the development.*

In view of the above, concurrence to the development has not been granted, and therefore pursuant to s138 of the Roads Act 1993 development consent cannot be granted. Furthermore, it is considered that the location of the proposed vehicular access shall compromise the effective and ongoing operation and function of Anzac Parade and therefore in accordance with clause 101 of the Infrastructure SEPP development consent cannot be granted.

State Environmental Planning Policy (Transport and Infrastructure) 2021

The Transport and Infrastructure SEPP came into force on 1 March 2022. The new Transport and Infrastructure SEPP shall replace the Infrastructure SEPP, with Division 17, Subdivision 2 of the new Transport and Infrastructure SEPP applicable to the proposed development.

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

The provisions of the Infrastructure SEPP have generally been transferred over to the new Transport and Infrastructure SEPP with particular regards to clause 101 which is provided under clause 2.119 of the new SEPP. As such, it is considered that the proposed development would remain inconsistent with the provisions of the new Infrastructure SEPP, noting the above.

6.3. SEPP (Building Sustainability Index: BASIX) 2004

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

6.4. SEPP 55 – Remediation of Land

The application was referred to Council's Environmental Health Officer for comment and/or recommendation who advised that the Applicant has not demonstrated that the subject site is suitable for the proposed development. See detailed comments in Appendix 1. Clause 7 of SEPP 55 requires consideration of whether the land is contaminated and Clause 7(1) states that a consent authority must not consent to the carrying out of any development on land unless it is satisfied that the land is suitable for the development. In the absence of any detailed site contamination investigation, the Applicant has not provided sufficient information to determine whether the land is contaminated, nor demonstrated that the site is suitable for the purpose of the proposed development, and therefore development consent cannot be granted.

SEPP (Resilience and Hazards) 2021

The Resilience and Hazards SEPP came into force on 2 March 2022. The new Resilience and Hazards SEPP shall replace the SEPP 55, with Chapter 4 of the new Resilience and Hazards SEPP applicable to the proposed development.

While the new Resilience and Hazards SEPP contains saving provisions and the subject application will ultimately be determined under SEPP 55, consideration of the new SEPP has been undertaken in accordance with the provisions of 4.15 of the Act.

The provisions of SEPP 55 have generally been transferred over to the new Resilience and Hazards SEPP with particular regards to considerations before development consent can be granted. As such, it is considered that the proposed development would be inconsistent with the provisions of the new Resilience and Hazards SEPP, noting the comments above.

6.5. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned B2 Local Centre under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent.

The proposal is considered to be inconsistent with the specific objectives of the zone in that:

- The proposed activity and built form does not provide a range of retail, business, entertainment, and community uses to serve the needs of people in the local area as the proposal provides insufficient commercial premises at the Ground Floor level and no commercial premises to Doncaster Avenue in contradiction to clause 6.20 of RLEP 2012 and Clause 19.1 of the K2K RDCP 2020.
- Employment opportunities are not maximised as the First Floor level of the development is not designed to allow flexibility and conversion to non-residential uses.

- The built form does not provide an adequate transition between the site and adjoining and surrounding developments to the north, south, east and west, including the low and medium density zones to the south and south-west, and the heritage item to the west. As a result of the excessive bulk and scale, the proposed development does not facilitate a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community.
- The excessive bulk and scale shall result in adverse visual amenity, overshadowing and privacy impacts upon adjoining and surrounding properties and the residential amenity of nearby residents shall not be minimised or protected.

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)	None applicable.	3.65:1	Yes
CI 4.3: Building height (max)	21m	26.77m	No

6.5.1. Clause 4.6 - Exceptions to development standards

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

6.5.2. Clause 5.10 - Heritage conservation

The subject site is identified as being within the vicinity of two (2) heritage items listed in Schedule 5 of RLEP 2012, and within the vicinity of a Heritage Conservation Area as follows:

- To the north of the site, on the opposite side of Anzac Parade is a four (4) storey building comprising a Hotel and pub use, known as the Doncaster Hotel at 268-270 Anzac Parade. The site and existing building is identified as an item of local heritage pursuant to Schedule 5 of RLEP 2012.
- To the west of the site at 199-201 Anzac Parade, is a two (2) storey building comprising a Masonic Centre. The property is known as the Masonic Temple and is identified as an item of local heritage pursuant to Schedule 5 of RLEP 2012.
- Adjacent to the site to the north-east, on the northern side of Anzac Parade and the eastern side of Doncaster Avenue is Randwick Racecourse Heritage Conservation Area. The Heritage Conservation Area contains the Royal Randwick Racecourse and adjoining residential properties, and is predominantly characterised by Victorian and Federation period housing mainly consisting of dwelling houses.

As such the application was referred to Council's Heritage Planner for comment and/or recommendations. Council's Heritage Planner raised several concerns with the proposed development, with particular regards to the inconsistency with the building envelope controls of the K2K DCP 2020 and the proposed height, and the determinantal impacts upon the surrounding heritage items and HCA. The proposed development is considered to be inconsistent with clause 5.10 of RLEP 2012 and cannot be supported. Detailed referral comments are provided in Appendix 1.

6.5.3. Clause 6.11 – Design Excellence

Clause 6.11 of RLEP 2012 requires development to exhibit design excellence where the building will be at least 15m in height. The proposed development shall be greater than 15m in height, with a proposed maximum height of 26.77m and the provisions of clause 6.11 are applicable. . As such, the subject application was referred to Council's Design Excellence Advisory Panel ("DEAP") who considered the proposal and raised concerns with the design and architectural merits of the proposal in relation to design excellence. Detailed comments are provided in Appendix 1. In view of the DEAP comments, and in consideration of the objectives of clause 6.11 of RLEP 2012 and Section 4.1 of the K2K RDCP 2020, the proposed development is not considered to exhibit design excellence having regard to the following:

- The proposed development, due to the excessive bulk and scale resulting from excessive building height, exceedance of the maximum number of storeys, excessive FSR, insufficient

setbacks, and inadequate landscaping, does not respond appropriately to the scale and character of the adjoining developments, and shall result in a poor urban design outcome.

- The aesthetic proposition lacks tangible expression or response to place, context or building use, particularly given the high visibility of the site.
- The proposal presents as an ungainly, ill-proportioned form clad with an aggregation of painted rendered surfaces and superficial pattern making. The proposal does not provide high quality materials and finishes.
- The excessive number of storeys and height result in the development presenting as “top heavy”.
- The proposal does not provide a welcoming entrance to the residential area and no Lobby is provided resulting in poor amenity.
- The width of the boarding rooms, undersized indoor communal areas and lack of private balconies shall result in poor internal amenity.
- In view of the above, the proposed development will not result in a building of the highest standard architectural and urban design.

6.5.4. Clause 6.20 – Active street frontages at Kensington and Kingsford town centres

The subject site is identified as requiring an active street frontage to both Anzac Parade and Doncaster Avenue pursuant to clause 6.20 of RLEP 2012 and the Active Street Frontages Map. Clause 6.20 is supported by Section 19.1 of the K2K RDCP 2020 which provides additional specifications in relation to active street frontages. The proposal includes commercial premises fronting Anzac Parade, however the Doncaster Avenue frontage primarily comprises vehicular access and parking, and the residential entrance to the boarding house. As such, no active street frontage is provided to Doncaster Avenue and the proposed commercial component at the Ground Floor level is not considered to be adequate in providing an active street frontage in contradiction to clause 6.20 of RLEP 2012 and Clause 19.1 of the K2K RDCP 2020.

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.3: Building height (max)	21m	26.77m	5.77m	27.4%

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.1. Exception to 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 relevant objectives of the standard are still achieved.

The objectives of the height of buildings standard are set out in Clause 4.3 (1) of RLEP 2012 and are provided below:

- (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.*

Assessing officer's comment:

The subject site is identified as Block 31 under Section 10.3 of the K2K RDCP 2020. Block 31 comprises the site at 203-207 Anzac Parade, with a specific building envelope provided for the subject site. It is noted that the Block 31 controls do not require the amalgamation of the subject site with any adjoining allotments, and therefore the building envelope specified within Block 31 can be easily achieved on the subject site. The proposed development results in a significant deviation from the building envelope stipulated in Section 10.3 of the DCP, with particular regards to non-compliance with the maximum height and number of storeys permitted, setbacks, building depth and landscaping. The proposed development also fails to provide an adequate active street frontage to Doncaster Avenue, and does not provide suitable articulation of the building façades nor demonstrate design excellence.

The applicant's justification relies heavily on the approval of the development at 177-197 Anzac Parade to the north-west which provides a nine (9) storey development, and the existing

development at 258 Anzac Parade which is nine (9) storeys. However, the neighbouring site at 177-197 is subject to a maximum height of 25m, with an alternative building height of 31m pursuant to clause 6.17 of RLEP 2012 which anticipates a total of nine (9) storeys at that site. It is noted that no alternative or increased building height is permitted for the subject site. The development at 258 Anzac Parade was approved prior to the current planning controls and permitted a greater height than anticipated for the subject site. The objectives and controls of the K2K RDCP 2020 are based on an extensive site and built form analysis of the area. The subject site adjoins a heritage item to the north-west, a medium density zoning to the south with a maximum height of 12m permitted, a low density zoning to the east, permitting a maximum height of 9.5m, and is located adjacent to a heritage item, being the Doncaster Hotel, to the north. The subject site is the gateway to the Kensington Town Centre, being on the boundary of the B2 Local Centre zone. As such, a lower height and built form has been specified for the site to ensure an appropriate transition into the Town Centre and to ensure the scale of the development is sympathetic to the adjoining heritage and lower density developments. In view of the above, and the significant variations to the built form control contained within the K2K RDCP 2020, the proposal cannot be said to be consistent with the desired future character of the locality.

Council's Heritage Planner has also raised concerns regarding the scale of the development, including the height and departure from the DCP controls, and it is considered that the scale and character of the proposal shall not be consistent with the nearby heritage items and HCA.

Due to the increased height and non-compliant setbacks, the proposal shall also result in adverse impacts upon the surrounding properties with regards to visual bulk, privacy and solar access.

In view of the above, the proposal does not achieve the objectives of the height standard, and in conclusion, the applicant's written request has not adequately demonstrated that compliance with the height of buildings development standard is unreasonable or unnecessary in the circumstances of the case.

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

The applicant's written request seeks to demonstrate that there are sufficient environmental planning grounds to justify contravening the building height development standard stating that the assessment under the unreasonable and unnecessary section demonstrates that there are sufficient environmental planning grounds. The justification relates to consistency with the surrounding nine (9) storeys developments, and the absence of any adverse impacts upon the residential amenity of surrounding properties and the heritage items.

As discussed above, the proposal is considered to be inconsistent with the objectives of clause 4.3 and the B2 zone, and it has not been demonstrated that compliance with the standard is unreasonable or unnecessary in the circumstances. Furthermore, there does not appear to be any environmental planning grounds applicable to the subject site that would warrant the variation. The neighbouring nine (9) storey developments are not considered to be justification for the height breach, noting that these sites are subject to an increased height, and the subject site must transition from the low and medium density zones.

In conclusion, the applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

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

To determine whether the proposal will be in the public interest, an assessment is undertaken against the objectives of the height of buildings standard and B2 Local Centre zone. As discussed in section 6.5 of the report and as demonstrated above, the development is inconsistent with the objectives of the height of buildings standard and the B2 zone. Therefore the development will not be in the public interest.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

Variation of the maximum height of buildings standard results in an excessive level of built form on the site, and adverse amenity impacts upon surround properties. The excessive height results in a poor urban design outcome, providing a development that shall be jarring in the streetscape and an adverse visual impact as view from the public domain. As such, there is a public benefit in maintaining the development standard in this instance.

Conclusion

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

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

The relevant provisions of the DCP are addressed in Appendix 3 and Key Issues section below.

9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 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 is inconsistent with the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below.
Section 4.15(1)(a)(iia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.

Section 4.15 'Matters for Consideration'	Comments
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 inconsistent with the desired future 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 is inconsistent with the objectives of the zone and will result in any significant adverse environmental impacts on the locality. Furthermore, the application received numerous submissions in objection to the proposed development. Accordingly, the proposal is not considered to be in the public interest.

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9.1. Discussion of key issues

Waste Management

- **Section 22 of Part C of Part E6: Kensington and Kingsford Town Centres DCP 2020**

Section 22 in Part C of the K2K DCP 2020, requires an Automated Waste Collection System to be incorporated at the subject site. The proposed development provides for a standard waste bin collection and does not incorporate a AWCS system. Furthermore, a private collection of residential waste is proposed in contradiction to s496 of the Local Government Act 1993. Council's Development Engineer has advised that the proposed waste provisions are not supported as they are inconsistent with the objectives of section 22.

BUILT FORM

- **Clause 4.4 (Floor Space Ratio) of RLEP 2012**

Pursuant to the Floor Space Ratio Map of RLEP 2012, there is no numerical FSR applicable to the subject site. As such, the proposed development is considered against the objectives of the FSR standard. As discussed under the relevant headings within the report with regards to built form, heritage, amenity and sustainability, the proposed development does not achieve the objectives of the FSR standard as the size and scale of the development is not compatible with the desired future character of the locality nor is the development compatible with the scale and character of the nearby heritage buildings, the building is not well articulated nor does it respond to environmental and energy needs, and the proposal shall not minimise impacts upon the residential amenity of surrounding properties. Given the significant departure from the maximum building height which results in an additional two (2) storeys on the site above that which is permitted, the proposed FSR is considered to be excessive, noting that it would be comparable with a level of FSR applicable to those sites with a 31m height limit.

- **Section 2.1 (Urban Design and Place-Making) of Part A of Part E6: Kensington and Kingsford Town Centres DCP 2020**

The proposed built form is considered to be inconsistent with the guiding principals of Section 2.1 of the K2K RDCP 2020 in that it will not protect the heritage significance of the surrounding heritage

items and conservation area, and does not achieve a sensitive transition in relation to surrounding established lower scaled residential neighbourhood, does not create a positive street level environment through built form that allows solar amenity, permeability and maintains human scale, and does not achieve urban design, place and architectural excellence, including best practice environmental design.

Building Envelope

- **Section 6.1 (Built Form) of Part A of Part E6: Kensington and Kingsford Town Centres DCP 2020**
- **Section 10.3 (Block by Block Controls) of Part B of Part E6: Kensington and Kingsford Town Centres DCP 2020**

Height and Number of Storeys

Section 10.3 in Part B of the K2K RDCP 2020 prescribes the desired future character and built form controls for Block 31, in which the subject site is located. An extract of the Site Plan for Block 31 contained within K2K RDCP 2020 is provided below:



Figure 1 – Block 31 Building Envelope

The eight (8) storey built form exceeds the maximum six (6) storey control under Section 10.3, resulting in a bulk and scale which significantly exceeds that anticipated for the desired future character of the area. In this regard, the additional two (2) non-compliant storeys are sited above the maximum height pursuant to clause 4.3 of RLEP 2012 which also anticipates a maximum of six (6) storeys at the site. The site is the gateway to the Kensington Town Centre and the block controls provide a six (6) storey form in order to provide a scale transition with the heritage listed Masonic Hall to the west and the four (4) storey medium density residential flat building to the south at 113 Doncaster Avenue. Due to the excessive height the proposed development does not provide a transition between the heritage item and RFB, nor between the low density residential area to the south, and the medium density residential areas to the north-east and south-west, which afford a maximum height of 12m and 9.5m. The additional two (2) storeys contribute to the bulky presentation of the development and the proposed eight (8) storeys would be jarring in the streetscape and visually dominant given the prominent corner location of the site. Furthermore, proposed eight (8) storeys is not sympathetic to the adjacent development to the north at 268-270 Anzac Parade (The Doncaster Hotel), and would be incompatible with the maximum height permitted on the adjacent site of 21m, detrimentally impacting on the visual amenity of the area from the public domain, and comprising the visual amenity of the gateway into the Town Centre. The additional height and storeys also result in adverse visual impact to the existing developments to the south and west, presenting an increased maximum number of storeys to that anticipated and

sought by the DCP building envelope. The inadequate built form transition to the west shall result in an overbearing bulk and scale.

Setbacks and Separation

The setback controls set out in the K2K RDCP 2020 in relation to Block 31 require:

- (i) The northern setback to Anzac Parade above the four (4) storey street wall shall be 5.5m from the site boundary and 4m from the lower building alignment. The stipulated setback of 4m is to maintain view lines to the Masonic Hall and ensure a cohesive streetscape.
- (ii) The southern setback to the adjoining property at 113 Doncaster Avenue shall be 3m at Ground Floor level and 6m for the upper levels above the Ground Floor level in order to minimise impacts upon the adjoining residential development.

The proposed development provides a 3.5m setback to the Anzac Parade building alignment (5m to the site boundary) for Levels 4-7. The non-compliant setback shall impact upon view corridors to the adjoining heritage item (Masonic Lodge) from the public domain, and the inadequate setback for the tower element fronting Anzac Parade shall be unsympathetic to the proportions of the surrounding sites to the west, and shall compromise the future streetscape. The proposal also results in non-compliance with the maximum building depth of 22m, providing a maximum depth of 26.8m which can be attributed to the lesser setbacks. The proposed development provides a minimum setback of 3m for all the upper levels above the Ground Floor level along the southern elevation. The inadequate setback shall result in adverse visual impacts, overshadowing and privacy impacts upon the adjoining residential flat building to the south in contradiction to the objectives of the control and the desired future character statement.

Articulation, Modulation, Colours and Materials

- **Section 16 (Articulation and Modulation) of Part C of Part E6: Kensington and Kingsford Town Centres DCP 2020**
- **Section 17 (Materials and Finishes) of Part C of Part E6: Kensington and Kingsford Town Centres DCP 2020**

The proposed development does not provide suitable articulation of the building facades in accordance with Section 16 of the K2K RDCP 2020, and the materiality of the development does not provide a high quality finish or an appropriate combination of materials. Combined with the inadequate setbacks, the proposal shall result in a detrimental visual impact as viewed from the public domain and the adjoining properties. The proposed development does not provide adequate articulation or appropriate visual depth to the facades in contradiction to the requirements of Section 16. No balconies are provided to the boarding rooms with the exception of the two (2) balconies on Level 4 above the podium fronting Anzac Parade and one (1) internalised balcony on the western façade on Levels 1-6 which attributes to the uninteresting and flat facades. The materials are predominantly brick, concrete and painted rendered of similar colour palette which do not provide sufficient variation. The proposed development does not incorporate high quality materials or a sufficient combination of finishes, colours and materials to appropriately articulate the building elevations and break up the building mass. The proposed elevations also do not utilise any protruding or recessed architectural features such as blade walls, fins, or shade devices further contributing to the lack of articulation of the building.

In view of the above, the proposal is found to be inconsistent with the objectives of Section 16 and 17.

- **Section 20 (Landscaping) of Part C of Part E6: Kensington and Kingsford Town Centres DCP 2020**

Section 20 requires the total landscaped area to be at least 100% of the total site area, and a minimum of 25% of the ground plane to be landscaped sufficient in size and dimensions to accommodate trees and significant planting.

The proposal is significantly deficient in terms of the minimum total landscaped area and minimum landscaping of the ground plane, providing a total landscaped area of 9.76%, resulting in a variation of 90.2% or a shortfall of 420.33m². The landscaped area at the ground plane shall be 5.24%,

resulting in a variation of 19.7% and a shortfall of 92.08m². The proposal does not provide podium planting along the western elevation at Level 1 or on the upper levels to soften the built form. Furthermore, the planter boxes provided on Level 4 fronting Anzac Parade are not considered to be sufficient to add any landscape value, and the planter boxes provided on Level 7 are provided along the western elevation and a minor portion of the northern elevation only. The proposed planters are inadequate in size and number. The treatment of Level 7 is also lacking in variety with no landscaping elements such as herbs, Fruit Trees etc. to cater for occupants, BBQ area etc. Due to the full width awning the proposed development does not facilitate the planting of any street trees or eye level planting. Furthermore, no landscaping is provided on the building facades, with particular regards to the street corner elevations, which attributes to the apparent bulk and scale of the development and there is no landscaping relief in the built form to break up the building mass. With regards to the southern elevation, no landscaping is provided on the upper levels resulting in large expanses of blank wall and adverse visual amenity as viewed from the neighbouring properties to the south.

The substantial lack of landscaping attributes to the excessive bulk and scale, and the proposed development is inconsistent with the objectives of the landscape area control as follows:

- (i) The proposed development does not provide any landscaped spaces for relief or social connection.
- (ii) No vertical landscaping is provided through the site and minimal horizontal landscaping is provided.
- (iii) The proposed development shall not adequately achieve environmental benefits such as mitigating the urban island heat effect.

- **Section 26 (Student Accommodation) of Part C of Part E6: Kensington and Kingsford Town Centres DCP 2020**

The proposed development provides undersized boarding rooms and inadequate communal spaces in contradiction to the objectives of Section 26. Pursuant to clause 30(1)(a) of SEPP ARH at least one (1) communal living room is to be provided. Section 26 requires that communal living areas are a minimum area of 20m² or 1.25m² per resident, whichever is greater and a minimum dimension of 3m. The proposed development will have one hundred and two (102) residents and a communal indoor area of 127.5m² is required for the development, exclusive of any bathroom or kitchen. Council calculates that the proposed communal living area is 64m², resulting in a 50% variation and a significant shortfall in communal indoor space. Furthermore, the proposed boarding room sizes do not compensate for the lack of communal indoor space provided, given that the majority of the rooms are under the minimum size required under SEPP ARH. Clause 29(2) of SEPP ARH requires communal private open space consisting of one area a minimum of 20m² with a minimum dimension of 3m and the proposal complies with the numerical requirement, proposing a roof top terrace area of 48.5m². However, Acoustic assessment provided with the development application is based on the outdoor communal area being occupied by a maximum of twelve (12) people at any one time. Only eight (8) of the fifty-one (51) boarding rooms shall have access to private open space in the form of a balcony with the remaining rooms provided with no private open space. The lack of POS and the size and limitations on the occupancy level of the communal terrace is not considered to provide sufficient outdoor space for occupants, resulting in poor amenity. The roof terrace does not provide a mixture of soft and hard landscaping for the outdoor space nor does it provide any cover further attributing to reduced amenity and usability of the area. The proposed communal outdoor space shall also result in adverse privacy impacts upon adjoining properties.

- **Visual Privacy**

The proposed development provides windows to the circulation areas on the southern elevation which shall have the capacity to overlook the adjoining properties to the south. The roof top terrace has the capacity to directly overlook the adjoining properties to the south. Furthermore, privacy screening shall adversely attribute to the overall size and scale of the building and is not supported

- **Solar Access and Overshadowing**

The submitted shadow diagrams demonstrate that the northern windows of the adjoining properties to the south shall be overshadowed by the proposed development. The proposal shall also result in overshadowing to the private open space balconies of the adjoining properties. In view of the gross non-compliances with the built form controls, with particular regards to the height, number of storeys and the southern setback in which the entire top two (2) storeys are sited above the maximum height standard and the proposed building provides a minimal setback of 3m for the upper levels, the proposed development will result in unreasonable overshadowing to the adjoining properties.

Insufficient Information

- **Section 22 (Sustainability) Part C of Part E6: Kensington and Kingsford Town Centres DCP 2020**

Section 22 requires all buildings to achieve a minimum green star certification rating of 5 stars or equivalent. The documentation provided with the application does not include any green star rating/sustainability report and it has not been demonstrated that the proposal shall comply with the provisions of Section 22(a).

- **Building Code of Australia**

The application was supported by a BCA compliance report, however the submitted BCA Assessment states that insufficient detail has been provided to determine if compliance is achieved in relation to Sections C1.1, C2, C3, D1, D2, E, E2, E3, E4, F1, F4, F5, and J6. The assessment relies on compliance with the deemed to satisfy provisions, however no detail has been provided in this regard or which demonstrates that this can be achieved.

10. Conclusion

That the application to demolish the existing structures and for construction of an eight-storey mixed-use development comprising ground floor retail with seven (7) levels above containing 51 boarding rooms and one (1) manager's room, communal areas, four (4) at-ground floor car parking spaces including 2 carshare spaces, landscaping and associated works be refused for the following reasons:

1. The proposed development does not comply with the minimum number of motorcycle parking spaces pursuant to clause 30(1)(h) of the *State Environmental Planning Policy (Affordable Rental Housing) 2009*. A written request pursuant to clause 4.6 of the RLEP 2012 to vary the development standard for motorcycle parking has not been submitted. In the absence of a written request to vary the development standard, the development application must be refused.
2. The proposed development provides a boarding room for the Manager in excess of 25m² and does not comply with the maximum GFA standard for boarding rooms pursuant to clause 30(1)(b) of the *State Environmental Planning Policy (Affordable Rental Housing) 2009*. A written request pursuant to clause 4.6 of the RLEP 2012 to vary the development standard for accommodation size has not been submitted. In the absence of a written request to vary the development standard, the development application must be refused.
3. The proposal does not provide commercial premises at the Ground Floor level fronting Doncaster Avenue in contradiction to clause 6.20 of Randwick Local Environmental Plan 2012 in relation to active street frontages. A written request pursuant to clause 4.6 of the RLEP 2012 to vary the development standard for an active street frontage on Doncaster Avenue has not been submitted. In the absence of a written request to vary the development standard, the development application must be refused.
4. The proposal exceeds the maximum building height development standard pursuant to clause 4.3 of Randwick Local Environmental Plan 2012. The proposed height results in an excessive level of bulk and scale and detrimental impacts upon the amenity of the adjoining properties and the heritage significance of the area. Compliance with the maximum height is not considered to be unreasonable or unnecessary in the circumstances of this case and there are no environmental planning grounds that would warrant a variation to the

development standard. As such, the written request pursuant to clause 4.6 of the RLEP 2012 to vary the height of buildings standard in clause 4.3 is not considered to be well founded.

5. Concurrence has not been granted by Transport for NSW pursuant to s138 of the Roads Act 1993 and clause 101 of the *State Environmental Planning Policy (infrastructure) 2007*. The location of the vehicular access shall adversely impact upon road safety and the proposal does not provide sufficient parking provisions to accommodate the proposed development.
6. The proposed development is not compatible with the existing or desired future character of the local area, particularly having regard to its excessive height, bulk and scale and poor design in contradiction to clause 30A of *State Environmental Planning Policy (Affordable Rental Housing) 2009*.
7. The proposed development does not provide adequate residential amenity for occupants due to the following:
 - a. A significant number of the proposed boarding rooms are undersized and do not comply with the minimum provisions specified in clause 29 of the *State Environmental Planning Policy (Affordable Rental Housing) 2009* in relation to accommodation size. The combination of the undersized boarding rooms, low ceiling heights and poor configuration of rooms combined with the inadequate communal spaces results in the development not meeting the objectives of Section 20 of Part C of Part E6: Kensington and Kingsford Town Centres DCP.
 - b. The communal indoor space is significantly undersized and does not comply with the minimum area required under section 26 of Part C of Part E6: Kensington and Kingsford Town Centres DCP;
 - c. The Acoustic report is based on a maximum occupancy level of twelve (12) persons for the outdoor communal space. Given that the boarding house shall accommodate a total of 102 residents, the outdoor communal space is not considered to be adequate, shall result in poor amenity for occupants, and would result in adverse privacy impacts upon adjoining properties.
 - d. The residential amenity of the occupants will be compromised due to poor cross ventilation in the boarding rooms.
 - e. The proposed boarding rooms provide screening on the upper level windows creating a sense of enclosure and compromising the internal amenity of the rooms.
 - f. The entry and circulation space of the boarding house is constrained, providing minimal widths and no formal Lobby or Entrance, resulting in poor internal amenity.
8. The proposed development is inconsistent with the provisions of Randwick Local Environmental Plan 2012 with regards to the following:
 - a. The proposed development is inconsistent with the objectives of B2 Local Centre zone pursuant to Clause 2.3 of RLEP 2012.
 - b. The proposed development does not satisfy the requirements under Clause 4.6 in that the request for the variation of the height of buildings under clause 4.3 is not well founded.
 - c. Pursuant to Clause 5.10, the proposal is inconsistent with the objectives of the clause as it shall detrimentally impact the significance of the nearby heritage items and heritage conservation area, due to the height, bulk and scale of the development. The proposal fails to provide sufficient transition to the Masonic Temple to the north-west and the surrounding residential area to the south and east, resulting in a visually dominating building.
 - d. The proposed development fails to exhibit design excellence pursuant to clause 6.11 of RLEP 2012.
 - e. The proposal fails to provide an active street frontage to Doncaster Avenue pursuant to clause 6.20 of RLEP 2012.
9. The proposed development is inconsistent with the provisions of Part E6: Kensington and Kingsford Town Centres DCP with regards to the following:

- a. The proposed built form is considered to be inconsistent with the guiding principals of Section 2.1 of Part A of Part E6: Kensington and Kingsford Town Centres DCP.
 - b. The proposed built form does not comply with the building envelope and built form controls specified in section 6.1 of Part A of Part E6: Kensington and Kingsford Town Centres DCP 2020 and section 10.3 of Part B of Part E6: Kensington and Kingsford Town Centres DCP 2020.
 - c. The proposed development does not provide sufficient landscape area or deep soil zones, and results in a significant shortfall of landscaping to that required under section 20 of Part C of Part E6: Kensington and Kingsford Town Centres DCP.
 - d. The design of the proposed development is unacceptable and will not provide adequate articulation and modulation in accordance with Section 16 and 17 of the K2K RDCP 2020.
 - e. The proposed development and waste management plan does not comply with the relevant controls in Section 22 of Part C of Part E6: Kensington and Kingsford Town Centres DCP including how the building will achieve the future provision of an Automated Waste Collection System (AWCS).
 - f. The proposed development is in contradiction to the objectives of section 26 of Part C of Part E6: Kensington and Kingsford Town Centres DCP which aim to provide a high level of amenity for occupants of boarding houses.
10. The proposed development is excessive in its bulk and scale as a result of the excessive height, number of storeys, excessive gross floor area and inadequate setbacks, resulting in unacceptable building mass and a development is inconsistent with the desired future character for the location.
 11. The proposed development shall result in adverse privacy impacts upon the adjoining properties as a result of the roof top terrace and windows to the circulation areas on the southern elevation which shall have the capacity to overlook the adjoining properties to the south.
 12. The proposed development will result in adverse overshadowing of the southern adjoining property at 113 Doncaster Avenue. These impacts arise from a development that is non-compliant with the relevant built form controls for the site under RLEP 2012 and RDCP.
 13. The application does not provide sufficient information to allow the full and proper assessment of the proposed development, with regards to the following:
 - e. Pursuant to Clause 7 of State Environmental Planning Policy 55 – Remediation of Land, it has not been demonstrated that the site is suitable for the proposed development. Specifically, a Detailed Site Contamination Investigation should be undertaken.
 - f. In accordance with section 34 of RDCP Part E6 Kensington and Kingsford Town Centres Part D, an Air Quality report prepared by a suitably qualified air consultant has not been provided.
 - g. In accordance with section 22 of RDCP Part E6 Kensington and Kingsford Town Centres Part C, it has not been demonstrated that the proposal shall achieve a minimum green star rating of 5 stars or equivalent.
 - h. The Building Code of Australia assessment report states that insufficient detail has been provided to determine if compliance is achieved in relation to Sections C1.1, C2, C3, D1, D2, E, E2, E3, E4, F1, F4, F5, and J6. Insufficient information has been provided to determine how the development shall achieve the deemed to satisfy provisions of the relevant sections.
 14. In view of the reasons above, the proposed development is not in the public interest and will set an undesirable precedent for similar inappropriate development in the locality.

Appendix 1: Referrals

1. External referral comments:

1.1. Transport for NSW



Ms Angela Manahan
Senior Environmental Planning Officer
Randwick City Council
30 Frances Street
Randwick NSW 2031

Dear Ms Manahan

Development Application for 203-207 Anzac Parade, Kensington (DA/630/2021) Concurrence Letter

Thank you for your correspondence via the ePlanning portal (ref: CNR-30123) on 3 November 2021, requesting Transport for NSW (TfNSW) to review and comment on the above.

TfNSW response (Reference SYD21/01296) in regards to Clause 101 of the State Environmental Planning Policy (Infrastructure) 2007 and concurrence under section 138 of the Roads Act 1993 should be read in conjunction with this letter.

Protection of Sydney Light Rail (SLR) Corridor

It is noted that the Geotechnical Report prepared to support the development application states the following:

"We recommend that proposed buildings are raft slab or piles founding on dense sand layers. To transfer column or building loads to more competent strata at depth and to limit the possibility of adverse foundation settlements or excavation movement, a piled foundation system may be considered. This will depend on specific load cases and specific load bearing locations, which can be optimised once intrusive investigations are undertaken."

The proposed development is located within 25m of the Sydney Light Rail corridor and is likely to include ground penetration deeper than 2m, which requires concurrence from TfNSW in accordance with Clause 86 of the State Environmental Planning Policy (Infrastructure) 2007 (ISEPP). Clause 86 of the ISEPP requires TfNSW to take into consideration:

- (a) the potential effects of the development (whether alone or cumulatively with other development or proposed development) on:
 - i. the safety or structural integrity of existing or proposed rail infrastructure facilities in the rail corridor, and
 - ii. the safe and effective operation of existing or proposed rail infrastructure facilities in the rail corridor, and
- (b) what measures are proposed, or could reasonably be taken, to avoid or minimise those potential effects.

TfNSW has undertaken an assessment of the information provided in accordance with the provisions outlined in the ISEPP and has decided to grant concurrence to the development proposed in development application DA/630/2021. This concurrence is subject to Council imposing the conditions provided in TAB A.

Should Council choose not to impose the conditions provided in TAB A (as written), then concurrence from TfNSW has not been granted to the proposed development.

Transport for NSW

20-44 Ennis Road, Milsons Point 2061 | PO Box K659, Haymarket NSW 1240
T 02 8202 2200 | F 02 8202 2209 | W transport.nsw.gov.au | ABN 18 804 239 802

In the event that this development proposal is the subject of a Land and Environment Court appeal, Council's attention is drawn to Section 8.12 of the Environmental Planning and Assessment Act 1979, which requires Council to give notice of that appeal to a concurrence authority. TfNSW therefore requests that Council comply with this requirement should such an event occur.

Design of Outdoor Terrace, Balconies, External Windows

Comment

It is noted that the outdoor terrace area, balconies and external windows facing Anzac Parade are proposed to have an opening facing the light rail corridor and Anzac Parade. It is not clear from the development application that any measures are proposed to prevent objects being dropped or thrown onto the rail corridor from balconies, windows and other external features (eg roof terraces and external fire escapes) that are within 20 metres of, and face, the rail corridor.

Recommendation

It is requested that the applicant designs outdoor terrace, balconies, external Windows facing the light rail corridor and Anzac Parade in accordance with Section 5.4 of the ASA standard T HR CI 12090 ST Airspace and External Developments version 1.0, prior to the approval of the development application. This would potentially avoid any future modification application associated with compliance of condition in relation to Balconies and Windows included in this letter.

Thank you again for the opportunity of providing advice for the above development application. If you require further clarification regarding this matter, please don't hesitate to contact Mark Ozinga, Senior Manager Land Use Planning and Development on 0439 489 298.

Yours sincerely

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TAB A – Required Conditions of Consent – Protection of TfNSW Infrastructure and Light Rail Operations

General

- The applicant must comply with all Altrac Light Rail Partnership (Altrac) or any subsequent operator of Sydney Light Rail (Sydney Light Rail Operator) policies, rules and procedures when working in and about the Sydney Light Rail corridor;
- The applicant must comply with the requirements of ASA standards T HR CI 12090 ST Airspace and External Developments version 1.0 and Development Near Rail Corridors and Busy Roads- Interim Guidelines;
- Activities of the applicant must not affect and/or restrict Sydney Light Rail operations without prior written agreement between the applicant, Transport for NSW (TfNSW), Altrac, and the Sydney Light Rail Operator, and it is a condition precedent that such written agreement must be obtained no later than two (2) months prior to the activity. Any requests for agreement are to include as a minimum the proposed duration, location, scope of works, and other information as required by the Sydney Light Rail Operator;
- The applicant must apply to Altrac and the Sydney Light Rail Operator for any required network shutdowns four (4) months prior to each individual required network shutdown event. Each request for network shutdown must include as a minimum the proposed shutdown dates, duration, location, scope of works, and other information as required by the Sydney Light Rail Operator. It is likely in the first two (2) years there will not be a light rail shutdown for maintenance purposes. The Sydney Light Rail Operator may grant or refuse a request for network shutdown at its discretion;
- The applicant shall provide safe and unimpeded access for Sydney Light Rail patrons traversing to and from the Sydney Light Rail stops at all times;
- TfNSW, and persons authorised by it for this purpose, are entitled to inspect the site of the approved development and all structures to enable it to consider whether those structures on that site have been or are being constructed and maintained in accordance with these conditions of consent, on giving reasonable notice to the principal contractor for the approved development or the owner or occupier of the part of the site to which access is sought; and
- All TfNSW, Altrac and Sydney Light Rail Operator's costs associated with review of plans, designs and legal must be borne by the applicant.

Prior to the Issue of the Construction Certificate

Process of Endorsement of Conditions

Prior to the issue of any construction certificate or any preparatory, demolition or excavation works, whichever is the earlier, the applicant shall:

- Consult with TfNSW, Altrac and the Sydney Light Rail Operator to ascertain requirements in relation to the protection of TfNSW's infrastructure and to confirm the timing of the each construction certificate and associated documentation and activities prior to preparation of requested documentation;
- Sign Infrastructure Assess Deed Poll, Safety Interface Agreement and Works Deed with TfNSW and/or the Sydney Light Rail Operator;
- Confirm in writing with TfNSW what each Construction Certificate stage will involve; and
- Submit all relevant documentation to TfNSW as requested by TfNSW and obtain its written endorsement for each construction stage. A summary report for each construction stage shall also be provided to TfNSW to demonstrate the following:
 - No adverse impacts to the light rail corridor and light rail operation by clearly identifying impacts and mitigation measures; and
 - Submitted documentation has satisfied the relevant conditions.

The Principal Certifying Authority (PCA) is not to issue the relevant Construction Certificate until received written confirmation from TfNSW that the relevant conditions have been complied with for each Construction Certificate.

Review and Endorsement of Documents

- Prior to the issue of any construction certificate or any preparatory, demolition or excavation works, whichever is the earlier, the following documentation shall be provided for the review and endorsement of TfNSW:
 - Final geo-technical and structural report / drawings. Geotechnical reports should include any potential impact on the light rail corridor located adjacent to the subject development site, easement and substratum;
 - Final construction methodology with construction details pertaining to structural support during excavation or ground penetration;
 - Details of the vibration and movement monitoring system that will be in place before excavation commences;
 - Final cross sectional drawings showing ground surface, rail tracks, sub soil profile, proposed basement excavation and structural design of sub ground support adjacent to the Rail Corridor located adjacent to the subject development site. Cross sectional drawings should also include the accurate RL depths and horizontal distances from assets (tracks, overhead lines, structures and cables) to the nearest point of excavation or ground penetration works. All measurements are to be verified by a Registered Surveyor; and
 - Detailed survey plan with location of services.

Pre-construction Work Dilapidation Report

A pre-construction work Dilapidation Report of the Sydney Light Rail and its assets shall be prepared by a qualified structural engineer. The dilapidation survey shall be undertaken via a joint site inspection by the representatives of the Sydney Light Rail Operator, TfNSW and the applicant. These dilapidation surveys will establish the extent of existing damage and enable any deterioration during construction to be observed.

Acoustic Assessment

Prior to the issue of the relevant Construction Certificate, the final acoustic assessment is to be submitted to the PCA demonstrating how the proposed development will comply with the Department of Planning's document titled "Development Near Rail Corridors and Busy Roads-Interim Guidelines". All recommendations of the acoustic assessment are to be incorporated in the construction documentation.

Electrolysis Analysis

Prior to the issue of the relevant Construction Certificate, the applicant is to engage an Electrolysis Consultant to prepare a report on the Electrolysis Risk to the development from stray currents. The applicant must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report is to be provided to the PCA with the application for the relevant Construction Certificate.

Reflectivity Report

Prior to the issue of the relevant Construction Certificate, the applicant shall design lighting, signs and surfaces with reflective materials, whether permanent or temporary, which are (or from which reflected light might be) visible from the rail corridor limiting glare and reflectivity to the satisfaction of Altrac, TfNSW and the Sydney Light Rail Operator.

Balconies and Windows

Given the possible likelihood of objects being dropped or thrown onto the rail corridor from balconies, windows and other external features (eg roof terraces and external fire escapes) that are within 20 metres of, and face, the rail corridor, the development must have measures installed, to the satisfaction of TfNSW (eg awning windows, louvres, enclosed balconies, window restrictors etc) which prevent the throwing of objects onto the rail corridor. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from TfNSW confirming that this condition has been satisfied.

Consultation Regime

Prior to the issue of the relevant Construction Certificate, a detailed regime is to be prepared for consultation with and approval by TfNSW for the excavation of the site and the construction of the building foundations (including ground anchors) for the approved development, which may include geotechnical and structural certification in the form required by TfNSW.

Insurance Requirements

Prior to the issue of the relevant Construction Certificate, the applicant must hold current public liability insurance cover for a sum acceptable to TfNSW. TfNSW's standard public liability insurance requirement for this type of development adjacent to a rail corridor is minimum of \$250M. This insurance shall not contain any exclusion in relation to works on or near the rail corridor, rail infrastructure. The applicant is to contact TfNSW to obtain the level of insurance required for this particular proposal. Prior to issuing the relevant Construction Certificate the PCA must witness written proof of this insurance in conjunction with TfNSW's written advice to the applicant on the level of insurance required.

Works Deed / Agreements

Prior to the issue of any construction certificate or any preparatory, demolition or excavation works, whichever is the earlier, if required by TfNSW, Works Deed (s) between the applicant, TfNSW and/or Altrac and the Sydney Light Rail Operator must be agreed and executed by the parties. These agreements may deal with matters including, but not limited to, the following:

- Sydney Light Rail Operational requirements;
- Sydney Light Rail access requirements;
- Altrac and Sydney Light Rail Operator policies, rules and procedures compliance requirements;
- Indemnities and releases;
- Security of costs;
- Insurance requirements and conditions;
- TfNSW, Altrac and the Sydney Light Rail Operator's recovery of costs from the applicant for costs incurred by these parties in relation to the development (e.g. review of designs and reports, legal, shutdown /power outages costs including alternative transport, customer communications, loss of revenue etc) risk assessments and configuration change processes;
- Interface coordination between the Sydney Light Rail Operator and the subject development construction works, including safety interface;
 - Infrastructure Assess Deed Poll and Safety Interface Agreement between the applicant and the Sydney Light Rail Operator must be agreed and executed by the parties. This agreement may deal with matters including, but not limited to, the following:
 - Pre and post construction dilapidation reports;
 - The need for track possessions;
 - Review of the machinery to be used during excavation/ground penetration / construction works;
 - The need for track monitoring;
 - Design and installation of lights, signs and reflective material;
 - Endorsement of Risk Assessment/Management Plan and Safe Work Method Statements (SWMS);
 - Endorsement of plans regarding proposed craneage and other aerial operations;
 - Erection of scaffolding/hoarding;
 - Light Rail Operator's rules and procedures; and
 - Alteration of rail assets such as the OHW along of track and associated hoarding demarcation system, if undertaken by the applicant.
- Altrac and the Sydney Light Rail Operator's reviews and impact assessment of the applicant's proposal, engineering design and construction works methodology on Sydney Light Rail Operations and assets;
- Attendance and participation in the construction works risk assessment of construction activities to be performed in, above, about, and/or below the Sydney Light Rail Corridor;
- Arrangements for shutdowns and Sydney Light Rail restricted operations related costs attributed to the applicant; and
- Sydney Light Rail site works access approval and access permit to work.

During Construction

- Construction vehicles shall not be stopped or parked on Anzac Parade at any time without prior approval of TfNSW;
- All piling and excavation works are to be supervised by a geotechnical engineer experienced with such excavation projects;
- No rock anchors/bolts (temporary or permanent) are to be installed into the light rail corridor without approval from TfNSW;
- No metal ladders, tapes and plant/machinery, or conductive material are to be used within 6 horizontal metres of any live electrical equipment unless a physical barrier such as a hoarding or structure provides separation;
- During all stages of the development extreme care shall be taken to prevent any form of pollution entering the light rail corridor. Any form of pollution that arises as a consequence of the development activities shall remain the full responsibility of the applicant;
- The applicant must mitigate all noise and vibration to the extent possible and provide vibration monitoring equipment and provide the results to the Sydney Light Rail Operator at intervals required by TfNSW and the Sydney Light Rail Operator, and immediately implement corrective actions in the event that the noise or vibration exceeds acceptable limits;
- Rainwater from the roof must not be projected and/or falling into the rail corridor/assets and must be piped down the face of the building which faces the rail corridor. Given the site's location next to the rail property, drainage from the development must be adequately disposed of/managed and not allowed to be discharged into the corridor unless prior approval has been obtained from TfNSW and the Sydney Light Rail Operator (or the delegated authority); and
- No scaffolding is to be used within 6 horizontal metres of the rail corridor unless prior written approval has been obtained from the Sydney Light Rail Operator and TfNSW and a physical barrier such as a hoarding or structure provides separation. To obtain approval the applicant will be required to submit details of the scaffolding, the means of erecting and securing this scaffolding, the material to be used, and the type of screening to be installed to prevent objects falling onto the rail corridor.

Prior to the Issue of the Occupation Certificate

Post - construction Dilapidation Report

Prior to the Issue of the Occupation Certificate, a post-construction dilapidation survey shall be undertaken via a joint inspection with representatives from TfNSW, Altrac, the Sydney Light Rail Operator and the applicant. The dilapidation survey will be undertaken on the rail infrastructure and property in the vicinity of the project. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The submission of a detailed dilapidation report to TfNSW and the Sydney Light Rail Operator will be required unless otherwise notified by TfNSW. The applicant needs to undertake rectification of any damage to the satisfaction of TfNSW and the Sydney Light Rail Operator and if applicable the local council.

Reflectivity Report

Prior to the Issue of the Occupation Certificate, the applicant shall demonstrate that lights, signs and reflective materials, whether permanent or temporary, which are (or from which reflected light might be) visible from the rail corridor were installed limiting glare and reflectivity to the satisfaction of TfNSW, Altrac and the Sydney Light Rail Operator.



Transport
for NSW

Our Reference: SYD21/01296
Council Reference: DA/630/2021

D44/22

12 November 2021

Ms. Therese Manns
General Manager
Randwick City Council
30 Frances Street
Randwick NSW 2031

Attention: Angela Manahan

Dear Ms. Manns,

**PROPOSED SHOP-TOP HOUSING DEVELOPMENT
207 ANZAC PARADE, KENSINGTON**

Reference is made to Council's referral, regarding the abovementioned application which was referred to Transport for NSW (TfNSW) for comment in accordance with clause 101 of the *State Environmental Planning Policy (Infrastructure) 2007*. TfNSW response (reference CD21/07010) regarding concurrence under clause 86 of the *State Environmental Planning Policy (Infrastructure) 2007* should be read in conjunction with this letter.

TfNSW has reviewed the submitted application and notes that the development proposes a driveway along Doncaster Street, which is near the existing signalised intersection of Doncaster Street / Anzac Parade. In this regard, raises the following concerns with the proposed development:

- TfNSW recommends that the proposed vehicular crossover on Doncaster Street is relocated to the most southern side of the property on Doncaster St to ensure the vehicle movements do not impact the safety and efficiency of the existing signalised intersection and operation of the surrounding classified network (Anzac Parade).
- To mitigate any road safety impacts of the proposed vehicle crossover's location, TfNSW recommends that the Applicant undertakes a Road Safety Audit (RSA) for the proposed vehicle and pedestrian access arrangement to the subject site shall be provided in accordance with Austroads Guide to Road Safety Part 6: Managing Road Safety Audits and Austroads Guide to Road Safety Part 6A: Implementing Road Safety Audits by an independent TfNSW accredited road safety auditor.

Based on the results of the road safety audit, the design drawings should be reviewed to identify safety measures that may need to be implemented as part of the development.

In addition to the above, TfNSW requires a stormwater plan to be submitted to ensure that any discharge does not impact the surrounding classified road network.

Upon receipt of amended plans that reflect the abovementioned requirements, TfNSW will review and provide a response accordingly.

For more information, please contact Vic Naidu, Land Use Planner, by email at development.sydney@transport.nsw.gov.au.

Yours sincerely,

D44/22

1.2. Sydney Airport

SYD

Reg No.: 21/0821
Your Reference: DA/630/2021
To: RANDWICK CITY COUNCIL & NSW PLANNING
PORTAL

Thursday, 28 October 2021

Notice to Proponent of Property Development

Dear Sir / Madam,

Application for approval of a controlled activity pursuant to:

s.183 Airports Act - Notification of decision under Reg 15A (2) of the Airports (Protection of Airspace) Reg's 1996

Proposed Activity: PROPERTY DEVELOPMENT
Location: 207 ANZAAC PARADE KENSINGTON
Proponent: RANDWICK CITY COUNCIL & NSW
PLANNING PORTAL
Date: 13/10/2021

Sydney Airport received the above application from you.

This location lies within an area defined in schedules of the Civil Aviation (Buildings Control) Regulations which limit the height of structures to 15.24 metres above existing ground height (AEGH) without prior approval of the Civil Aviation Safety Authority.

The application sought approval for the PROPERTY DEVELOPMENT to a height of 50.3 metres Australian Height Datum (AHD).

In my capacity as Manager, Airfield Spatial & Technical Planning and an authorised person of the Civil Aviation Safety Authority (CASA) under Instrument Number: CASA 229/11, in this instance, I have no objection to the erection of this development to a maximum height of 50.3 metres AHD.

The approved height is inclusive of all lift over-runs, vents, chimneys, aerials, TV antennae, construction cranes etc.

Sydney Airport

Sydney Airport Corporation Limited ACN 082 578 809 — The Nigel Love Building, 10 Arrivals Court, Locked Bag 5000
Sydney International Airport NSW 2020 Australia — Telephone +61 2 9667 9111 — sydneyairport.com.au

Should you wish to exceed this height a new application must be submitted.

Should the height of any temporary structure and/or equipment be greater than 15.24 metres AEGH, a new approval must be sought in accordance with the Civil Aviation (Buildings Control) Regulations Statutory Rules 1988 No. 161.

Construction cranes may be required to operate at a height significantly higher than that of the proposed development and consequently, may not be approved under the Airports (Protection of Airspace) Regulations.

Sydney Airport advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct.

Information required by Sydney Airport prior to any approval is set out in Attachment A.

"Prescribed airspace" includes "the airspace above any part of either an Obstacle Limitation Surface (OLS) or Procedures for Air Navigation Services – Aircraft Operations (PANS-OPS) surface for the airport (Regulation 6(1)).

The height of the prescribed airspace at this location is 55 metres above AHD.

Planning for Aircraft Noise and Public Safety Zones:

Current planning provisions (s.117 Direction 3.5 NSW Environmental Planning and Assessment Act 1979) for the assessment of aircraft noise for certain land uses are based on the Australian Noise Exposure Forecast (ANEF). The current ANEF for which Council may use as the land use planning tool for Sydney Airport was endorsed by Airservices in December 2012 (Sydney Airport 2033 ANEF).

Whilst there are currently no national aviation standards relating to defining public safety areas beyond the airport boundary, it is recommended that proposed land uses which have high population densities should be avoided.

Sincerely,

D44/22

Note:

1. a person who conducts a controlled activity otherwise than with an approval commits an offence against the Act.
 - s. 183 and s. 185 Airports Act 1996.
 - Penalty: 250 penalty units.
2. if a structure is not authorised, the Federal Court may order a person to carry out remedial works, mark or light, or reduce the height of or demolish, dismantle or remove a structure.

Sydney Airport

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Attachment A**Application for Approval of Crane Operation****[Sections s.182, 183, Airports Act 1996]****[Airports (Protection of Airspace) Regulations 1996 – Reg 7]**

TO: Sydney Airport Corporation Ltd

c/- Airport Design Services
Locked Bag 5000
Sydney International Airport
NSW 2020
Email: airspaceprotection@syd.com.au

Application pursuant to airport (protection of airspace) regulations reg 7:

- a) Pursuant to s. 183 of the *Airports Act 1996* and Reg 7 of the *Airports (Protection of Airspace) Regulations 1996*, the Proponent must apply through the Airport to the Secretary of the Department of Infrastructure and Regional Development for approval of the operation ("controlled activity") set out in the Schedule.
- b) An Application for approval must be given to the Airport at least 28 days before commencement of the operation.
- c) The operation must not commence without approval and must only proceed in compliance with any conditions imposed on such approval.
- d) Sydney Airport has delegated authority from the Secretary to determine "short term" operations (less than 3 months).
- e) The Airport is required to invite submissions from CASA and Airservices regarding the proposed operation.
- f) The Secretary and the Airport, as applicable, may request further information before determining an application.
- g) The "Important Notes" must be read and accepted.
- h) The Proponent must complete this Application and provide it to Sydney Airport, with a copy to the Council as part of the relevant Development Application.

CERTIFICATE BY PROPONENT:

Sydney Airport

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D44/22

I certify that the Application for approval is complete to the best of my knowledge.

Dated:

Signature of Proponent:

Title of signatory:

Sydney Airport

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Schedule to Application for Approval of Crane Operation**Information required by the Airports (Protection of Airspace) Reg's – Reg 7:**

APPLICANT:.....[Proponent]

Of:

Contact:

Phone:

Email:

1. Description of proposed crane operation:

.....

2. Period of Operation:

fromto.....

3. Days and hours of operation:

days:.....

hours:.....

4. Location:

Address:.....

Mapping Grid of Australia (MGA94) co-ordinates:

.....E

.....N

Sydney Airport

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D44/22

D44/22

5. Details of crane height

(i) maximum height: metres above ground

(ii) maximum height: metres AHD

(iii) resting crane height: metres AHD

6. Purpose of the crane operation:

.....

7. Reference to relevant Development Application:

Council and DA reference:.....

SAFETY CASE FOR ACTIVITY: The Proponent proposes the following safety case:

.....

.....

.....

Sydney Airport

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IMPORTANT NOTES TO APPLICATION FOR APPROVAL OF CRANE OPERATION WHICH IS A CONTROLLED ACTIVITY

[Airports Act 1996]

[Airports (Protection of Airspace) Regulations 1996]

1. Section 182: defines "controlled activities" – includes intrusions by cranes into prescribed airspace.
2. Section 187: if a controlled activity is carried out without approval, or is carried out otherwise than in accordance with an approval, the Federal Court may order a person to carry out remedial work on a building, structure or thing; to mark it or light it or both; to reduce its height.
3. Section 183: a person who carries out a controlled activity without the approval of the Secretary or Airport commits an offence against section 183 of the Act.
a) Penalty: 250 penalty units for each such offence.
4. Regulation 8: a building authority that receives a proposal for a building activity that, if undertaken, would constitute a controlled activity in relation to an airport must give notice of the proposal to the airport
a) Penalty: 50 penalty units for each such offence.
5. If the activity is a short term activity (less than 3 months), the Airport will determine the application pursuant to delegated authority from the Secretary.
6. If the activity is a long term activity (greater than 3 months), the Secretary will determine the application.
7. If the activity is a long term intrusion into PANS-OPS, the application will not be approved. [Reg 9].
8. The Airport will give notice of the application to, and invite submissions from, the Civil Aviation Safety Authority of Australia (CASA) and Airservices Australia. [Reg 10].
9. Upon receipt of submissions from CASA and Airservices, the Airport will refer the application and any submissions from CASA and Airservices, as well as the Airport, to the Secretary, or will determine the application itself if it is a short term activity. The Secretary or the Airport will notify you in writing of their decision.
10. Neither the Secretary or the Airport will approve any activity if CASA advises that carrying out the activity would have an unacceptable effect on the safety of existing or future air transport operations into or out of the Airport. [Reg14(6)].

Sydney Airport

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2. Internal referral comments:

2.1. Heritage Planner

The Site

The site is located on the southwest corner of Anzac Parade and Doncaster Avenue. It is known as 203-207 Anzac Parade and with a legal land parcel identity of 62/14/DP7698. Currently it is occupied by a two storey Interwar building comprising ground floor retail and first floor commercial/residential. The subject site is not an individually listed heritage item nor is it within a Heritage Conservation Area (HCA).

However, there are several heritage considerations located in close and extended vicinity:

- *Immediately adjacent to the west of the site, at no.199-201 Anzac Parade, is the Masonic Temple, listed as a heritage item under Randwick Local Environmental Plan (LEP) 2012 (I106).*

The Masonic temple is described in original Randwick Council heritage studies as a Community Building and constructed about 1930 in the Classical Revival style. It is of simple symmetrical form with prominent siting. The front is fully rendered at the ground floor level, with plastered columns over original brick masonry at the first-floor level, and richly decorative rendered parapet and gable above.

- *To the north of the site, on the northwest corner of Anzac Parade and Doncaster Avenue, the Doncaster Hotel is also listed as a heritage item under Randwick Local Environmental Plan (LEP) 2012 (I107).*

The Doncaster Hotel occupies a unique position in the history and development of the Kensington area as free house hotel which has remained in the one ownership for more than 70 years. It is a dominant local landmark representing an important stage of development of the suburb in the 1920s. The building is given added prominence by its corner position and relative isolation from other significant development.

- *To the east and diagonally opposite the site is the Randwick Racecourse Heritage Conservation Area (HCA) (C13). This HCA has remnant historical connections this section of Anzac Parade.*

All the above all of local significance pursuant to RLEP2012.

- *The nearest Contributory Building as identified in the Kensington to Kingsford Planning strategy is some distance to the north, on the corner of Anzac parade and Darling Street.*

Background

On 14 September 2020 Council received by email a PDF document prepared by URBIS Planning on 8 September 2020, on behalf of the owners of the site. This 15-page URBIS document addressed several height consideration issues that it proposed were anomalies in the documentary trail and the public engagement for the development of the Kensington to Kingswood Planning Strategy. In particular it notes:

- *The development process for height transition mapping*
- *Proposed inconsistencies of understanding between the owners of the site and Randwick Council following a meeting of 19 August 2020, as well as following on from previous communications.*

Proposal

The application proposes demolition of the existing shop-top housing development and the construction of an eight-storey building over a ground-level space that includes a commercial tenancy fronting Anzac parade and boarding house services accessed from Doncaster Avenue. The boarding house arrangements incorporate an entrance lobby with stair and lift access, a manager's office, services room, bin storage room and two accessible toilets. Vehicular access is also from Doncaster Avenue with carparking for four (4) vehicles, including two (2) carshare spaces, four (4) motorcycle parking spaces, and ten (10) bicycle storage spaces.

Levels one to six then comprise 51 double boarding house rooms with self-contained kitchen and bathroom. Level seven provides a community room and managers' room, some private open space, a large communal room with kitchen facilities, and an adjoining communal open space with BBQ facilities. The building envelope comprises a four-storey podium, with a further four storeys above.

- At the north side, fronting Anzac Parade, the podium is set back 1.5 m from the north land parcel boundary to allow for the introduction of a utilitarian stair and ramp access. stairs and ramp. It features an awning over the public footpath area. The four upper floors are then stepped back from the podium a further 1.5m, and therefore from the north land parcel boundary by three metres.
- At the rear south side, the entire building is set back from the land parcel boundary by three metres, to enable substantial plantings. However, it presents with a continuous seven-level height, relieved by a patterned change in materials and colouration between the lower four-level podium and the upper three floors. The top floor is stepped back.
- At the east side, fronting Doncaster Avenue, the building aligns with the land parcel boundary and presents as being of eight-storeys. This elevation is relieved by the awning over the public footpath, and then by a patterned change in materials and colouration between the lower four level podium and the top four levels.
- At the west side, immediately adjacent to the heritage item (Masonic Temple), levels one to six are stepped back above the ground floor level, and level seven has a part-height step back, as the top area presents with communal open space.

Submission

The application is accompanied by:

- An extensive and detailed Statement of Environmental Effects (SEE) prepared by ABC Planning Pty Ltd
- A Statement of Heritage Impact prepared by Colin Israel Heritage Advice.
- A full set of architectural drawings, prepared by CK Design
- A detailed schedule of materials and finishes by CK Design
- Several specialist reports, including Flood Investigation, Acoustic Assessment, Geotechnical Study, and Transport and Traffic Assessment

Apart from heritage considerations, several variations from the Controls are noted for the proposal:

- Heights greater than prescribed
- Setbacks that are less than prescribed
- Ceiling height variations

However, it is contended that the proposal is consistent with the desired future the character of the local area, is in keeping with forthcoming development proposals and is compatible with established development. And that this is particularly apt given the constraints of a relatively tight footprint.

- It should be noted that the SEE proposes in its text both an eight-storey and a nine-storey development (e.g., see page 36).

Controls

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

Randwick LEP 2012 Amendment No.8 (gazetted on 14 August 2020)

The LEP amendment for the Kensington and Kingsford town centres (clauses 6.17 to 6.21) includes floor space ratios and building heights, as well as provisions in relation to community infrastructure, affordable housing, non-residential floor space, active street frontages and design excellence. In relation to design excellence, Council is required to have regard to how the development addresses heritage issues and streetscape constraints.

Development Control Plan- Kensington and Kingsford Town Centres Part E6 (adopted 17 November 2020)

The Development Control Plan - Kensington and Kingsford Town Centres provides detailed Objectives and Controls, including sections addressing Urban Design and Place-Making and Heritage Conservation, and includes Block Controls for Strategic Node sites and other sites. The site is part of the Block 31 within the Kensington Town Centre. The Heritage items and contributory buildings mapping for the Kensington Town Centre identifies the following heritage properties in the vicinity of the site:

To the west of the site, is the following heritage property:

- no.199 – 201 Anzac Parade- Masonic Temple

To the north west of the site, is the following heritage property:

- no.268-270 Anzac Parade- Doncaster Hotel

To the east of the site, is the following heritage property:

- Randwick Racecourse Heritage Conservation Area

Part 9 of the draft DCP - Heritage Conservation, includes the following Objectives and Controls for development involving Heritage Items and Contributory Buildings:

Objectives

- To conserve and enhance the character and heritage significance of heritage items
- To retain and conserve distinctive elevations and significant fabric of contributory buildings
- To encourage sensitive adaptation of heritage items and contributory buildings
- To ensure infill development is designed to respond sympathetically to the historic built form, character and detailing of nearby heritage items and contributory buildings
- To ensure that the heritage significance of heritage items and/or conservation areas located in the vicinity of the town centres is considered in the assessment of development applications

Controls

All Development

- a) All development involving heritage items are to be in accordance with requirements for heritage set out in Part B2 of the DCP
- b) All development involving heritage items and contributory buildings are required to:
 - i) Adhere to the principles of the Burra Charter

- ii) *Include the submission of a Heritage Impact Statement (or Heritage Impact Assessment) which considers the heritage significance of the item or contributory building, the impact of the proposal on the heritage significance of the building or heritage items within the vicinity, the rationale for the proposed development, and the compatibility of the development with the objectives and controls, and/or recommended management within relevant conservation management plans, planning instruments or heritage inventories*
- c) *Development located within the vicinity of another local government area requires the preparation of a Heritage Impact Statement to address the potential impact on adjoining or nearby heritage items or heritage conservation areas in the adjoining local government area.*

New development adjacent to heritage items and contributory buildings:

- a) *Development adjacent to heritage items and contributory buildings (infill development) should:*
 - i. *Be designed to respect the historic scale, proportions and articulation of adjacent contributory built forms, including heights, solid to void ratios and alignments of street awnings*
 - ii. *Incorporate podiums and framed overlays that reference the principle influence line of historic streetscapes, and are cohesive with the established street frontage*
 - iii. *Be designed to incorporate setbacks which retain the profile and massing of exposed side elevations to retained contributory built forms*
 - iv. *Ensure new street elevations maintain the vertical articulation and segmented character of historic building groups which provide variety to the streetscape and sense of human scale, and avoid unrelated horizontally emphasised articulation*
 - v. *Provide contemporary new signage that compliments the character of the contributory buildings and*
 - vi. *Ensure that new finishes to side elevations should not detract from street front detailing and finishes.*
- b) *Development should maintain and reinstate the emphasis of street corners and cross routes through reinforcement of historic height lines remaining at, and adjacent to intersections.*

Comments

The Statement of heritage Impact (SHI) contends that the proposal is not expected to have an adverse impact on the associated fabric and setting or heritage significance of heritage items in this context. It contends that views are unaffected since; (i) The Masonic Temple Item is setback from and angled to Anzac Parade and (ii) The Doncaster Hotel is substantially separated by Anzac parade. It contends that the proposal responds well to the current site conditions. The SHI includes a View Analysis, and it addresses the Heritage NSW required questions for a Statement of Heritage Impact.

However, the SHI does not adequately address the specific Controls for Heritage Conservation within the Kensington and Kingsford Town Centres DCP 2020. These include Placemaking Guiding Principles for achieving a sensitive transition between recently constructed developments and surrounding established lower-scaled residential neighbourhoods.

In finality, height consideration will be a planning matter. However, in heritage terms the K2K Planning Proposal, and the Building Envelope Controls aim to ensure against negative impacts on the setting and views to and from heritage properties. From this principal corner the views both north and south along Doncaster Avenue are toward substantially lower-scale residential developments and towards a Heritage Conservation Area. An abrupt un-articulated edge should be avoided.

Moreover, the precedence reference within the SEE to the height of the forthcoming Unilodge development should also note its softened curved termination and its stepped down reference to the Masonic Temple. Likewise, the precedence reference to development on the other side

of Anzac Parade, adjacent to the Doncaster Hotel, fails to note the substantial setback of the upper levels.

The documentation for the proposal states that the challenge is to reduce the perceived bulk of the built form and to create visual interest by enhanced indentation and recesses, and by materials and finishes. It is contended that the scale and articulation of the podium element generally responds to the scale, proportions and articulation of traditional buildings in Anzac Parade. Similarly, that the rooftop balconies above the podium relate to parapet treatments of traditional buildings.

However, it is noted that in the current proposal the form and scale variations, as well as the impression of a podium, are achieved at least on two sides by patterning and finishes. In this regard also, it is noted that the 3D impressions are at variance with the submitted plans, particularly regarding open centre balconies on the Anzac Parade façade and the strong impression of articulations that in fact do not quite exist.

No recessed balconies have been provided on either the Anzac Parade or the Doncaster Avenue elevations which dialogue with the façade depth of traditional buildings.

Therefore, please consider the following:

1. That the overall height be reduced from 26 metres to 23 metres, that is, by one floor level.
2. The sharply bladed northwest corner, that currently obscures the Masonic Temple may be softened by rounding-off. This would achieve an approximate extra 500mm line-of-sight that would reference the importance of both the Temple, as well as the curved end of the Unilodge proposal. This would reasonably address the present inconsistency with Building Envelope Controls for the site contained within the K2K DCP, which require a four-metre setback.
3. On levels one, two and three, along Anzac Parade, at the end of the internal corridor, consideration could be given to the creation of a balcony space. This may be indented by 500mm and extended outwards by 500mm, and with a bladed metal balustrade. This would reference the articulations of the opposite Doncaster Hotel.
4. Doncaster Avenue is a principal elevation and the entrance to the boarding house. Façade relief may be achieved on this East side by reviewing the fenestration arrangement for levels one two and three. Consideration may be given to orienting these nine window presentations vertically rather than horizontally, and incorporating within each opening a bladed metal balustrade, to provide at least a balcony impression as a reference to façade depth and variations of traditional buildings.

In summary it is essential that the proposal has an aesthetic dialogue with its immediate precinct in terms of the relationship to specific heritage items, as well as to general precinct character, which is primarily a residential suburb. This is especially so given that the proposed development will be sited at the visually prominent corner of Doncaster Avenue and Anzac Parades.

Recommendation

A meeting should be organised to discuss these issues.

2.2. Environmental Health

Proposed Development:

Council is in receipt of a development application for the demolition of existing structures and construction of an eight-storey shop-top housing development comprising ground floor retail with seven (7) levels above containing 51 double boarding rooms and one (1) double manager's room, communal areas, four (4) at-ground floor car parking spaces including 2 carshare spaces, landscaping and associated works.

Comments:**Acoustic Amenity**

An acoustic assessment prepared by Acoustic Logic (Document Reference: 20211210.1/2409A/R0/HD) dated 24 September 2021 was submitted to Council. In undertaking an acoustic assessment of the development, Acoustic Logic have utilised the following documents and regulations;

- The Randwick City Council 'Kensington and Kingsford Town Centres' DCP, 2020.
- Australian Standard AS 2107:2016 Acoustics for Building Interiors
- NSW Department of Planning – 'Developments near Rail Corridors or Busy Roads – Interim Guideline';
- NSW Department of Planning – 'State Environmental Planning Policy (SEPP) (INFRASTRUCTURE) 2007';
- NSW Department of Environment and Heritage, Environmental Protection Agency (EPA) documents
 - o Noise Policy for Industry (NPfI) 2017
 - o DECC Assessing Vibration- A technical guideline

Site investigation indicates that the major external noise sources around the project site will be from light-rail and traffic movements along the adjacent on-grade light rail corridor.

The report assessed noise impacts associated with the development using predicted measurements. The report concluded that provided the acoustic treatments within the report are implemented, that the noise emissions from the development will comply with relevant noise criteria.

The use and the operation of the boarding house accommodation has the potential to create offensive noise and the patrons behaviours is likely to impact on the other users of the boarding house and/or the neighbouring residential properties.

The potential for noise nuisance has been considered and appropriate conditions have been included in this referral.

Air Quality

In accordance with the adopted K2K DCP Section 34, the applicant is required to submit a report from a suitably qualified air quality consultant that outlines the objectives to encourage the design to provide good indoor air quality for occupants and to protect residents from the harmful effects of air pollution. A report must be provided which addresses the following criteria:

- a) Include a report from a suitably qualified air quality consultant that addresses building design solutions and construction measures that reduce air pollution and improve indoor air quality for occupants;
- b) DAs are to submit a statement which explains how the proposal has addressed the NSW Government "Development near rail corridors and busy roads – Interim Guideline"; and
- c) Air Intake for proposals are to be sited well away from Anzac Pde or the pollution source (e.g. top of tall buildings) or be provided with filtration to remove particulates.

Land Contamination

A discussion was held with Joanne Brown (Senior EHO) and it was concluded that for the development to address the requirements of SEPP 55 that a Detailed Site Contamination Investigation should be undertaken. This would be used to determine the suitability of the land for the proposed development, having regard to the provisions of the Environmental Planning & Assessment Act 1979, SEPP 55, Contaminated Land Management Act 1997 and Council's Contaminated Land Policy 1999.

Recommendation:

The following information is required to be provided to Council.

Land Contamination

D44/22

1. *A Detailed Site Contamination Investigation must be undertaken and a report prepared by a suitably qualified environmental consultant must be submitted to Council prior to determination of the application. The report must include details of land and ground water contamination upon the site (and any off-site migration), having regard to the current and previous use of the land and activities undertaken.*

The report is to be carried out in accordance with Council's Contaminated Land Policy 1999 and relevant NSW EPA Guidelines for Contaminated Sites. Also, as detailed in the Planning Guidelines to SEPP 55 – Remediation of Land, the report is to assess the nature, extent and degree of contamination upon the land. The detailed site contamination report must be sufficiently detailed and be submitted to and approved by Council.

- i) *Should the Detailed Site Investigation Report not find any site contamination to both land and groundwater, the conclusion to the report must clearly state that 'the land is suitable for its intended land use' posing no immediate or long term risk to public health or the environment and is fit for occupation by persons, together with clear justification for the statement.*
- ii) *Should the Detailed Site Investigation Report identify that the land is contaminated and the land requires remedial works to meet the relevant Health Based Investigation Level:-*
 - a) *A Remediation Action Plan (RAP) is required to be submitted to and approved by Council prior to commencing remediation works. The RAP is also required to be reviewed and be acceptable to the accredited site auditor.*

The RAP is to be prepared in accordance with the NSW Environmental Protection Authority Guidelines for Consultants Reporting on Contaminated Sites.

This RAP is to include procedures for the following:

- *Excavation of Hydrocarbon-contaminated soil*
- *On-site treatment by land farming*
- *Validation sampling and analysis*
- *Ground water monitoring*
- *Groundwater remediation, monitoring and validation*
- *Procedures for any unexpected finds*

2. *Any remediation works are to be carried out in accordance with the requirements of the Contaminated Land Management Act 1997, environmental planning instruments applying to the site, guidelines made by the NSW Environment Protection Authority (EPA) and NSW Planning & Infrastructure, Randwick City Council's Contaminated Land Policy 1999 and the Protection of the Environment Operations Act 1997.*
3. *In relation to any asbestos contamination, a comprehensive remediation strategy and remedial action plan must be developed, to the satisfaction of the Site Auditor and NSW Department of Health or other suitably qualified and experienced specialist to the satisfaction of the Site Auditor.*

The remediation strategy and remedial action plan must demonstrate that the land will be remediated in accordance with relevant guidelines (if any) and to a level or standard where no unacceptable health risk remains from asbestos exposure, which shall be verified upon completion of the remediation works to the satisfaction of the Site Auditor.

4. *Should the remediation strategy including the 'capping' or 'containment' of any contaminated land, details are to be included in the Site Audit Statement (SAS) and Environmental Management Plan (EMP) to the satisfaction of the Site Auditor.*

Details of the SAS and EMP (including capping and containment of contaminated land) are also required to be included on the Certificate of Title for the subject land under the provisions of section 88 of the Conveyancing Act 1919.

Air Quality

In accordance with Section 34 of Council's K2K DCP, the applicant is to submit a report from a suitably qualified air quality consultant demonstrating compliance with the following:

- 1. How the development proposal addresses building design solutions and construction measures that reduce air pollution and improve indoor air quality for occupants, and*
- 2. a statement which explains how the development proposal has addressed the NSW Government 'Development near rail corridors and busy roads – Interim Guideline' and*
- 3. Air intake for proposals are to be sited well away from Anzac Parade or the pollution source (e.g. on top of tall buildings) or be provided with filtration to remove particulates*

2.3. Development Engineer

Council's Development Engineer raised several concerns with the proposal development in relation to parking and waste management, with the following comments provided:

Car Parking

The development application should be refused as inadequate car parking is provided to service the proposed development.

For parking to the boarding house Clause 29(2)(e) of SEPP ARH provides as follows in relation to the car parking standards envisaged for development to which Division 3 applies:

"29 Standards that cannot be used to refuse consent

*...
(2) A consent authority must not refuse consent to development to which this Division applies on any of the following grounds:*

*...
(e) **parking**
if:*

*(iia) in the case of development not carried out by or on behalf of a social housing provider—at least 0.5 parking spaces are provided for each boarding room, and
(iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,
..."*

The proposed boarding house will not be carried out by or on behalf of a social housing provider. Accordingly, pursuant to clause 29(2)(e)(iia) of SEPP ARH, if the proposed development provides parking at a rate of 0.5 spaces for each boarding room, it cannot be refused on the ground of parking.

*Having regard to the 51 boarding rooms + managers room proposed, the proposed development would not be refused on the grounds of parking pursuant to clause 29(2)(e)(iia) of SEPP ARH if **26 spaces** were provided for the boarding house. This standard has not been met.*

Notwithstanding, Council does have the discretion to vary the parking requirements in accordance with Clause 29(4) of the AHSEPP. In this regard it is noted the K2K DCP specifies a zero parking rate for student accommodation however this DCP clause is not applicable to parking requirements for non-student accommodation. The application does not indicate the accommodation will be specifically dedicated to students hence further consideration of parking is required.

For the commercial floor area of 96m² the K2K DCP specifies a parking rate of 1 space per 125m² for business premises and 1 space per 100m² for a café. This would generate a parking demand of around 1 space .

When considering all components of the development the proposed development will require a minimum parking provision of approximately 27 spaces. Only a total of four(4) car parking spaces are provided for the entire development resulting in a shortfall of 23 spaces (85%). This is considered to be inadequate and is not supported. Two of the spaces are

indicated to be carshare. Council is prepared to give a credit of 5 spaces per carshare space which results in a revised parking provision of 12 spaces (1 + 1 + 2 carshare (10)). Even when allowing for this credit the development is still parking deficient by up to 15 spaces. The number of car parking spaces provided will not cater for the demand generated by future residents and commercial tenancies and will result in an unacceptable impact on the amenity of residents in the locality due to the additional demand for on-street parking generated by the proposed development.

Motorcycle Parking

The development application should be refused because insufficient motorcycle parking has been provided, which is inconsistent with the requirements of clause 30 in SEPP ARH..

Clause 30 'Standards for boarding houses' of SEPP ARH relevantly states:

"30 Standards for boarding houses

- (1) A consent authority must not consent to development to which this Division applies unless it is satisfied of each of the following:
 - (h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms."

The proposed development contains 51 rooms thereby generating a compulsory requirement for 10 spaces. The proposed development provides for only 4 motorcycle spaces and is therefore deficient by 6 spaces (60%). The Applicant has not submitted a written request pursuant to clause 4.6 of RLEP 2012 seeking to justify the contravention of the development standard in clause 30(1)(h) of SEPP ARH.

Waste Management

The development application should be refused because the proposed development and waste management plan does not comply with the relevant controls in Section 22 of the RDCP 2012 including how the building will achieve the future provision of an Automated Waste Collection System (AWCS).

Section 22 in Part C of the Kensington to Kingsford section of RDCP 2013, control (h) requires an Automated Waste Collection System, which has not been provided. The submitted waste management plan assumes standard waste bin collection which is no longer appropriate within the area of the Kensington to Kingsford DCP. The Applicant proposes private collection of residential waste on-site with a collection frequency of 2 times a week. The proposed private waste collection is not acceptable because Section 496 of the Local Government Act 1993 requires Councils to charge a levy for waste services. Accordingly, Councils are obliged to collect waste from residential developments and waste management facilities should therefore be designed to accommodate Council's requirements & collection frequencies. Green & Food Waste shall be collected via Council's Food Organic and Garden Organic (FOGO) collection service which commenced in March 2021 for all residential development. FOGO bins are currently only available in 240L. Waste storage will therefore need to be provided for the FOGO bins, which will be a diverted waste stream from the normal garbage stream (approx. 40%). No provision for FOGO has been indicated.

Landscape Officer

Council's Landscape Officer raised several concerns regarding the lack of landscaping and provided the following comments/recommendations:

There seems opportunity to increase landscaped area to improve presentation of the building etc:

- Introduce podium/spill-over type planting in the 3m wide area along the western boundary at Level 1; and/or, provide planters along the Western Elevation at Level 4 to soften this edge, and could then wrap around & match up with the planter that is already shown fronting Anzac Pde;
- Given its prominent location, some sort of planter/greenery would be highly desirable to address the street corner, but understand this would be dependent on

re-designing other elements. This is also relevant due to an inability to provide eye level planting (street trees etc) due to presence of a full width awning;

- *Level 4. Increase width of planter to 1m and introduce more substantial planting around the perimeter of this balcony. Could even be increased in width at various points only (eg, at corners, halfway along) rather than the whole length if that would restrict pedestrian access in this area;*
- *Level 7. Size of planters and treatment needs to be increased substantially around the perimeter of this whole area, with the COS requiring a wider variety of treatment such as herbs, Fruit Trees etc, to cater to occupants/BBQ area etc;*
- *The southern edge of the Managers POS/outdoor terrace provides no planting at all, surely something could be provided there;*
- *Southern Elevation – introduce Green Wall system to the large expanses of blank wall that directly face the adjoining residential unit complex at 113 Roma Avenue.*

2.4. Design Excellence Advisory Panel

PANEL COMMENTS

INTRODUCTION

DA INFORMATION	
App Number	DA/630/2021
Proposal	<i>Demolition of existing structures and construction of an eight-storey shop-top housing development comprising ground floor retail with seven (7) levels above containing 51 boarding rooms and one (1) manager's room, communal areas, four (4) at-ground floor car parking spaces including 2 carshare spaces, landscaping and associated works (variation to height of buildings of the RLEP 2012).</i>
Key dimensions	<i>Site area Floor Space Ratio / No FSR control Height Control / 21m Proposed: 35.45m to lift overrun (does not comply) Storey Control = 1 - 9 storeys in DCP envelope (does not comply with DCP envelope storey heights and volume)</i>

K2K DCP Applicable – Kensington Town Centre (Block 31)

- *The site is not subject to alternative height provisions under RLEP.*
- *Within the vicinity of heritage items and heritage conservation area, including the adjoining property to the west, which is identified as a heritage item.*
- *Prominent corner lot and gateway into the Kensington area.*

1. Context and Neighbourhood Character **the quality and amenity of the public domain**

The area is under redevelopment in line with the Kensington to Kingsford controls within the Randwick Development Control Plan which describes the desired future character of the blocks.

The DCP describes the desired future character:

Desired Future Character The block presently contains a small cluster of 2 storey shop fronts located immediately to the southeast of the Masonic Hall and across the road from the Doncaster Hotel. The block occupies a prominent corner location. The preferred option is a 6-storey built form to provide a scale transition with the heritage-listed Masonic Hall and the 4-storey residential flat building to the south (113 Doncaster Ave).

Future development is to incorporate a distinctive built form that highlights the corner location, marks the southern boundary of the town centre and is sympathetic to adjoining and opposite heritage-listed properties

The site is a significant corner adjacent to a heritage item (a historic cultural building); it is also a Gateway site at the threshold of the Kensington part of the K2K precinct. Therefore, the design response should make the corner a distinct block-end and gateway. It should also respond appropriately to the scale and character of the Masonic Hall.

2. Built Form and Scale

The panel supports the emphasis on the street corner and acknowledges the effort to create a podium. However, the proposal includes a set of non-compliances with the development controls:

- *DCP specifies a max of 6 storeys, where 8 are proposed, and the proposal results in a significant breach of the height standard (27%).*
- *Floor to floor heights are 3m which does not comply with the ADG; compliance would result in greater height breach.*
- *Upper levels don't comply with 4m setback to Anzac Pde (3.5m proposed)*
- *Southern setback above ground, 3m proposed, 6m required*
- *Does not comply with 25% landscaping at Ground level or 100% of total landscaped area.*

The panel notes that the DCP setbacks create a somewhat awkward built form and would consider supporting a departure from the DCP form if it demonstrated a superior outcome to the DCP. As presented the DCP breaches have collective negative consequences, offered without justification.

Any proposed breach must be justified by demonstrating the proposal is superior to a complying scheme. This should be done by presenting a complying reference scheme to allow direct comparison and justification.



Suggestions relating to built form and scale follow:

- *The ground level relationship to the adjacent heritage item would be improved if set back from the western boundary to establish planting adjacent to heritage (noting requirement for 25% landscaping) and removal of the blank wall.*
- *Reveal heritage and respond to Masonic Hall orientation by providing a chamfer NW corner of the building (i.e. set behind the alignment of the temple).*
- *Reduce the overall height to 6 stories to mitigate impact and improve the scale/proportional relationship between lower and upper elements.*
- *Increase rear setback to 6 metres as per DCP.*
- *Remove car parks from within southern setback to allow for landscaped buffer zone.*

3. **Density**

Refer to Item 2 – Built Form and Scale.

4. **Sustainability**

Daylit circulation is noted.

Transom windows and naturally ventilated corridors may aid cross ventilation.

Convenient access to a naturally lit stair would offer energy and health benefits.

5. **Landscape**

Inadequate area is provided for landscape.

Ramps and handrails dominate street frontage.

The boundary conditions should consider/minimise the need for fences.

Given the ground floor level is elevated above the street and adjacent to heritage, the NW corner could include a terrace or a glazed corner with an outlook.

6. **Amenity**

The following items should be considered:

- *The street threshold should be integrated with the letterboxes and refined. If this element serves as an informal seat, this could provide a positive basis for its refinement. Utility services located at street level should be thoughtfully integrated into the design proposal.*
- *The lobby should provide a more generous width and include a seat or 'bump space.'*
- *Provide surveillance/line of sight from managers office to the entry door & outside*
- *Stair entry located closer to lift would encourage use (subject to NCC compliance)*
- *Room 36 is identified as a double room. However, it appears too narrow width 2.7 furnish*
- *Amenity of the rooms would be improved with the addition of balconies*
- *Under minimum requirement for indoor common room*

7. **Safety**

No comment.

8. **Housing Diversity and Social Interactions**

There is sufficient diversity in the accommodation offered within the building.

The communal rooftop space could be a thriving space for social interaction if thoughtfully designed.

9. **Aesthetics Architectural Design, Materials and Detailing**

The podium façade design follows the intent of the DCP's vision of the future character in terms of scale, proportion and material. However, the upper levels present as 'top heavy', which would be resolved if the overall building height complied with the controls.

The commercial frontage, which is wholly glazed, could be improved with solid elements to respond to the heavily-trafficked frontage. This could include a masonry (stone or brick base wall with glazing above.

The aesthetic proposition for this highly visible threshold site lacks tangible expression or response to place, context or building use. It presents as an ungainly, ill-proportioned form clad with an aggregation of painted, rendered surfaces and superficial pattern making.

The designers should at a minimum consider the opportunities offered by a thoughtful response to facade orientations, relationship to heritage, and introduction of higher quality materials in the lower portion of the building.

SUMMARY AND RECOMMENDATIONS

The bulk and scale of the proposal is not supported in its present form. The building should conform with the DCP and ADG rear setbacks. Any non-compliance must be justified by demonstrating a superior outcome to a complying reference scheme. A more substantial architectural proposition is required.

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

Clause 4.6 - Height

203 – 207 Anzac Parade Kensington

RANDWICK LEP 2012 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS

This Clause 4.6 variation request has been prepared to accompany the development application that seeks demolition of the existing shop-top housing development and the construction of a eight-storey shop-top housing development, comprising ground floor retail with 7 levels containing 51 boarding rooms and one (1) manager's room above, plus four (4) ground floor car parking spaces, including two (2) carshare spaces at Lot 62 Section 14, in DP 7698, commonly known as Nos. 203 – 207 Anzac Parade, Kensington 2033.

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 from *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

Pursuant to Clause 4.3 of the RLEP2012, the site is subject to a maximum building height of 21m, demonstrated on the LEP map in Figure 1 below.

The proposed maximum height of 26.65m, above existing ground level represents a variation of 26.90% (6.3m) from the numerical height standard in the LEP (Figure 2).

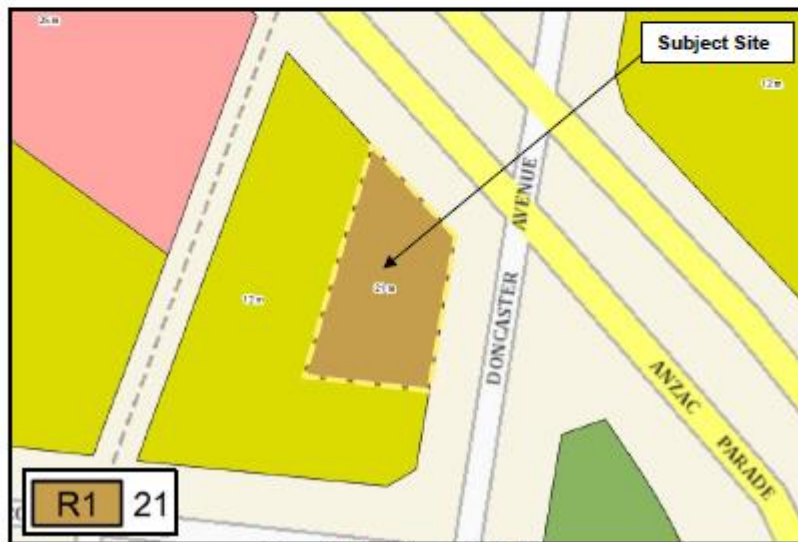


Figure 1: Building Height Map



Figure 2: Excerpt North Elevation Plan illustrating maximum height building

Justification for Contravention of the Development Standard

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

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

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

- The proposal complies with the objectives of the development standard and the B2 Local Centre land use zone, indicated in the assessment at Table 1 below. Furthermore, compliance with the development standard is unreasonable and unnecessary as it is in the public interest given it is consistent with the objectives for the development within the zone.
- Notwithstanding the numeric departure, the proposed shop-top housing development will have a height, bulk, and scale compatible with the scale of the existing and proposed built form of the surrounding local area which have at-grade or basement parking facilities with, with ground floor retail and up to nine levels of residential accommodation above.
- In this regard, the neighbouring site at Nos. 177 – 197 has a proposal for a nine-storey boarding house development, with 604 boarding rooms (DA/20/2021), lodged 18/01/2021. The proposed consistent context of the proposal with the approved this approved development is demonstrated in Figures 3, 4 & 5 below.

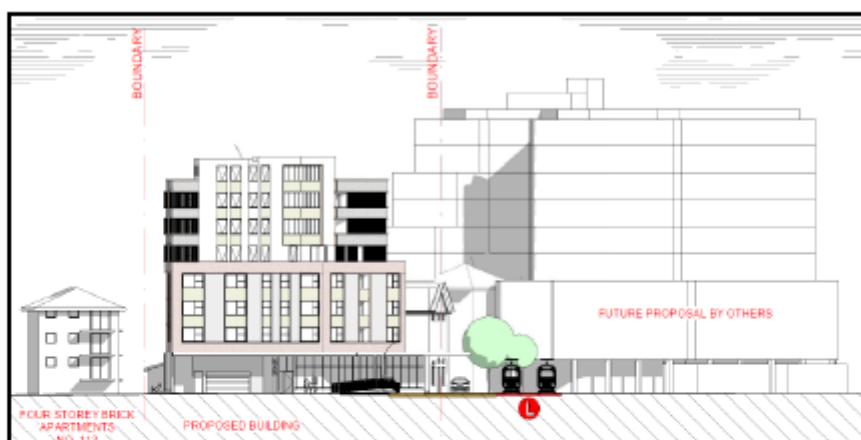


Figure 3: Excerpt North Elevation Plan indicating building height consistent and subservient to proposed development at No. 177 – 197 Anzac Parade (DA/20/2021)



Figure 4: Excerpt North Elevation Plan indicating building height consistent and subservient to proposed development at No. 177 – 197 Anzac Parade (DA/20/2021)



Figure 5: Excerpt photomontage of the proposal and proposed development at No. 177 – 197 Anzac Parade (DA/20/2021)

Streetscape

- The proposed development represents a compatible streetscape outcome when viewed in the context of the surrounding properties which ensures that the proposed height can be supported on the subject site and that strict compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case. The corner location and the site's location being at the eastern end of the Kensington Town Centre are considered to combine to make the site a 'gateway' site to the Town centre which ensures that such height is appropriate in the circumstances. The height is also compatible with established development across Anzac Parade on the northern side adjacent to the Doncaster Hotel, being 'Capella' at No. 258 Anzac Parade.



Figure 6: View northwest along Anzac Parade, with nine-storey development at Capelle being, No. 258 Anzac Parade



Figure 7: View northwest along Anzac Parade, with nine-storey development at Capelle being, No. 258 Anzac Parade

Overshadowing

- Some additional overshadowing of the adjoining lot to the south associated with the proposed development. However, Shadow Diagrams and Sun Eye Views accompanying this application indicate that the overshadowing impact from the proposed height 5.65m variation is not significant, with three hours of sunlight maintained to north facing living areas and POS of the adjoining dwellings to the south, between 8am and 4pm during midwinter.

- The proposal is for 100% of boarding rooms to be provided with at least two (2) hours of sunlight to be between 8am and 4pm during mid-winter.

Visual Impact from Bulk and Scale

- It is considered that the proposed height variation will not have a significant visual bulk and scale impact, given the proposal has been designed to have a variety of architectural features including indentation and recesses, and steps in the floor levels at Levels 1, 5 and 7, creating good articulation to the built form and building façade, with a four-storey street wall.
- Additionally, a range of materials and finishes are proposed to be incorporated to provide visual interest and character to the development so as to reduce the visual bulk of the built form and 5.65m height variant when viewed from surrounding properties and the streetscape.
- As illustrated in the streetscape elevation (Figures 3, 4, 5, 6, & 7), the proposed shop-top housing development is contained within a building envelope that is compatible with the built form of the surrounding area. It is therefore considered that the proposed height of the development does not represent an overdevelopment of the site, or a development with a height that is not compatible with the context in which it is located. In this regard, it is considered that the proposed height and variation would be compatible with the context of the surrounding built environment.
- The height variation is well integrated into the high-quality, articulated design of the proposal and ensures that the built form will contribute positively to the locality.

Visual and Acoustic Privacy

- Visual and acoustic privacy impacts to adjoining neighbours from the 5.65m of additional height has also been carefully considered, with the primary entranceway oriented towards Anzac Parade and Doncaster Avenue. Furthermore, openings to primary living areas to boarding rooms are oriented to the Doncaster Avenue street frontage and to the adjoining Masonic Lodge, while the communal open space located on the recessed roof terrace is orientated to Anzac parade.
- The southern elevation of the proposal presents a blank wall interface to limit visual and acoustic privacy impacts. However, the southern setback is softened with extensive landscaping, including two (2) Blueberry Ash feature trees, and seven (7) Lilly Pilly, all capable of reaching a mature height of 6 – 10m. Furthermore, a mix shrubs, grasses, and ground covers are proposed to the Ground Floor southern setback area.

Heritage

- The proposal is for compliant setbacks and good separation from the items of heritage, with the built form proposed in accordance with the desired future character for the site, as outlined in the K2K DCP. The proposal is considered fit within the heritage context of the surrounding local area, and responds well to the current site conditions. It is considered that the proposed additional height will have no adverse impact on the local streetscape and a limited but acceptable visual impact to the heritage items. In this regard, the proposal height variation will not have an adverse impact on the associated fabric and setting or heritage significance of the adjoining heritage item.

View Impacts

- There are no iconic views in the vicinity of the site.
- The topography of the local area, plus proposed setbacks with adequate separation distance between the proposed and neighbouring dwellings mitigates significant view impacts from the proposed height variation to surrounding neighbours and the public domain.

Amenity

There are no internal amenity grounds that would determine that the additional height variation should not be granted, including:

- 100% of boarding rooms are naturally cross ventilated.
- 100% of boarding rooms achieve at least two (2) hours of sunlight between 8am and 4pm during midwinter.
- North facing communal open space and communal room on the roof terrace provide for enhanced access to northern sunlight.
- Compliance with desired future character expressed contemplated in the K2K DCP with regard to front building alignments, plus side setback, and appropriate southern boundary setback, ensures the proposed additional height provides a good level of building separation, access, landscaping, privacy, plus natural lighting, and ventilation.
- A variety of new landscape plantings are proposed to enhance the appearance of the site. The rear setback is extensively landscaped including two (2) Blueberry Ash feature trees, and seven (7) Lilly Pilly, all capable of reaching a mature height of 6 – 10m. Furthermore, a mix shrubs, grasses, and ground covers are proposed to the ground floor plus Levels 4 and 7, that will make a positive contribution to the streetscape over time.
- The site is well serviced by public transport being in close proximity to public transport including the regular L3 Light Rail route services. In this regard, the subject site is conveniently located to UNSW Anzac Parade station being 400m walking distance from the site.

Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning, as demonstrated in the following table:

Table 1: Assessment against the Objectives of the Development Standard and Land Use zone.

Consistency with the objectives of the height standard in the LEP	
Objectives	Assessment
4.3 <i>(1)(a) to ensure that the size and scale of development is compatible with the desired future character of the locality,</i>	Complies The proposed development supports the economic and orderly development of land, as intended by the RLEP2012 and RDCP13, including the K2K DCP controls. The proposed shop-top housing development is permitted in the B2 Local Centre zoning of the site, and is consistent with the intent for development on the subject site. It is considered that the proposed built form represents a suitable infill development within a medium density residential context.

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	<p>The proposed height variation is generally in accordance with the future character of the area as envisaged by the planning controls.</p> <p>The replacement of the existing outdated and deteriorated shop-top housing with a high-quality contemporary shop-top housing with Ground Floor commercial and 51 double boarding rooms above provides for improved sustainability and an excellent level of internal amenity, and is considered to be consistent with the objectives of the zone which seek to provide for the housing needs of the community within a medium density residential environment.</p> <p>The proposed built form when viewed from the streetscape is consistent with existing and recently approved developments in the locality which have ground floor commercial and up to eight levels of residential accommodation above (Figures 3, 4, 5, 6, & 7).</p>
<p>4.3 (1)(b) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,</p>	<p>Complies</p> <p>The subject site is not heritage listed or within a heritage conservation area. However, the site is adjacent to an item of heritage (I106 – Masonic Temple at 199–201 Anzac Parade). Furthermore, the proposal is in close proximity to heritage I107 (Doncaster Hotel) and heritage conservation area C13 (Racecourse), all of local significance pursuant to RLEP2012.</p> <p>A Statement of Heritage Impact, prepared by Colin Israel Heritage Advice, accompanies this proposal, which concludes the following:</p> <p><i>Views within the Anzac Parade and Doncaster Avenue Streetscapes of the Masonic Temple Item are unaffected by the proposed development due to its setback from and angled orientation to Anzac Parade. There are no visual impacts to the Doncaster Hotel from the proposal due to the separation provided by Anzac parade.</i></p> <p><i>The proposal would work visually with the Doncaster Hotel to complete a "Gateway" to the Kensington Commercial Precinct.</i></p> <p><i>The proposal as presented is suitable for the context.</i></p> <p><i>It is recommended that the proposal be assessed favourably in terms of its heritage impacts.</i></p> <p>The proposal is for compliant setbacks and good separation from the items of heritage, with the built form proposed in accordance with the desired future character for the site, as outlined in the K2K DCP. The proposal is considered fit within the heritage context of the surrounding local area, and responds well to</p>

Clause 4.6 - Height

203 – 207 Anzac Parade Kensington

	the current site conditions. It is considered that the proposal will have no adverse impact on the local streetscape and a limited but acceptable visual impact to the heritage items. In this regard, the proposal is not expected to have an adverse impact on the associated fabric and setting or heritage significance of the adjoining heritage item.
4.3 (1)(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.	Complies An adverse impact on the amenity of the streetscape or adjoining or neighbouring land is not expected, with the proposal not resulting in any additional visual or acoustic privacy impacts, visual impact from the height, bulk and scale, or overshadowing, or loss of views. An assessment of these impacts has been provided above.
Consistency with the objectives of the B2 Local Centre Zone	
Objectives	Assessment
<ul style="list-style-type: none"> To provide a range of retail, business, entertainment and community uses that serve the needs of people who live in, work in and visit the local area. To encourage employment opportunities in accessible locations. To maximise public transport patronage and encourage walking and cycling. To enable residential development that is well-integrated with, and supports the primary business function of, the zone. To facilitate a high standard of urban design and pedestrian amenity that contributes to achieving a sense of place for the local community. To minimise the impact of development and protect the amenity of residents in the zone and in the adjoining and nearby residential zones. To facilitate a safe public domain. 	<p>Complies</p> <p>The proposed demolition of an existing shop-top housing development and the construction of a new shop-top housing development with Ground Floor commercial and 51 double boarding rooms above is permissible in the B2 Local Centre land use zone.</p> <p>The proposal is for 51 new generation self-contained boarding rooms, and provides for a variety of housing types, with a mix of one, two, and three-bedroom units within a medium density context.</p> <p>Housing choice is further proposed, with the provision of four liveable units which are capable of being reconfigured to adaptable units to accommodate the changing needs of occupants, in accordance with Australian Standard AS 4299-1995 Adaptable Housing.</p> <p>The replacement of an existing outdated shop-top housing with a high-quality contemporary new shop-top housing development with Ground Floor commercial and 51 new generation self-contained double boarding rooms will provide improved internal amenity for residents with no additional external amenity impacts to adjoining neighbours.</p> <p>The subject site is in close proximity to public transport including the regular L3 Light Rail route services. In this regard, the subject site is conveniently located to UNSW Anzac Parade station being 400m walking distance from the site.</p> <p>The proposal seeks to demolish an outdated shop-top housing development, and replace with 51 boarding room development, capable of accommodating 102 lodgers, plus the</p>

	<p>manger, which will increase the stock and range of housing available in the locality, contributing to improved housing choice and affordability.</p> <p>The proposed height variation is therefore not considered to generate any inconsistency with the zone objectives.</p>
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Based on the above assessment, it is considered that strict compliance with the LEP height standard is unreasonable and unnecessary in this instance.

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

Assessment: The assessment under the unreasonable and unnecessary section of this Clause 4.6 variation demonstrates that there are sufficient environmental grounds to permit the variation in this instance, including:

- Consistent with surrounding character including proposed nine-storey boarding house development, with 604 boarding rooms (DA/20/2021), lodged 18/01/2021, plus established nine-storey development across Anzac Parade on the northern side adjacent to the Doncaster Hotel, being 'Capella' at No. 258 Anzac Parade.
- Shadow Diagrams and Sun Eye Views accompanying this application indicate that the overshadowing impact from the proposed height 5.65m variation is not significant, with three hours of sunlight maintained to north facing living areas and POS of the adjoining dwellings to the south, between 8am and 4pm during midwinter.
- As illustrated in the streetscape elevation (Figures 3, 4, 5, 6, & 7), the proposed shop-top housing development is contained within a building envelope that is compatible with the built form of the surrounding area.
- The height variation is well integrated into the high-quality, articulated design of the proposal and ensures that the built form will contribute positively to the locality.
- Visual and acoustic privacy impacts to adjoining neighbours from the 5.65m of additional height has also been carefully considered, with the primary entranceway oriented towards Anzac Parade and Doncaster Avenue. Furthermore, openings to primary living areas to boarding rooms are oriented to the Doncaster Avenue street frontage and to the adjoining Masonic Lodge, while the communal open space located on the recessed roof terrace is orientated to Anzac parade.
- There are no internal amenity grounds that would determine that the additional height variation should not be granted.
- Compliance with desired future character expressed contemplated in the K2K DCP with regard to front building alignments, plus side setback, and appropriate southern boundary setback, ensures the proposed additional height provides a good level of building separation, access, landscaping, privacy, plus natural lighting, and ventilation.
- The site is well serviced by public transport being in close proximity to public transport including the regular L3 Light Rail route services. In this regard, the subject site is

conveniently located to UNSW Anzac Parade station being 400m walking distance from the site.

In this regard, it is reiterated that the proposed height variation is not responsible for any streetscape, overshadowing, privacy, view, heritage, or visual bulk impacts.

On this basis, there are sufficient environmental grounds to permit the height variation in this instance.

Other Matters for Consideration

4(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Assessment: The above assessment in Table 1 demonstrates that the proposed height satisfies the objectives of the height standard and the B2 Local Centre land use zone.

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

The development is in the public interest given the proposed height variation allows for the provision of 51 new generation self-contained boarding rooms, all with excellent internal amenity, plus communal outdoor and indoor spaces, in an accessible location, being in close proximity to public transport and local services.

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

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

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

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

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

Concurrence

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

*Clause 4.6 - Height**203 – 207 Anzac Parade Kensington****(b) the public benefit of maintaining the development standard***

Assessment: There is no public benefit in maintaining the height standard given the limited amenity impacts associated with the development and the positive streetscape outcome that would arise from the redevelopment of the subject site.

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

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

Conclusion

For reasons mentioned herein, this Clause 4.6 variation is forwarded in support of the development proposal at Nos. 203 – 207 Anzac Parade, and is requested to be looked upon favourably by the consent authority.

Appendix 3: Compliance Tables

3.1 SEPP ARH

Assessment of Clause 29 – Standards that cannot be used to refuse consent	
Standard	Assessment
<p>(1) Floor Space ratio The density and scale of the buildings when expressed as a floor space ratio are not more than:</p> <p><i>(a) the existing maximum floor space ratio for any form of residential accommodation permitted on the land, or</i></p> <p><i>(b) if the development is on land within a zone in which no residential accommodation is permitted—the existing maximum floor space ratio for any form of development permitted on the land, or</i></p> <p><i>(c) if the development is on land within a zone in which residential flat buildings are permitted and the land does not contain a heritage item that is identified in an environmental planning instrument or an interim heritage order or on the State Heritage Register—the existing maximum floor space ratio for any form of residential accommodation permitted on the land, plus:</i></p> <p><i>(i) 0.5:1, if the existing maximum floor space ratio is 2.5:1 or less.</i></p>	<p>Complies. No numerical FSR is applicable to the site pursuant to the Floor Space Ratio Map of RLEP 2012.</p>
<p>(2) (a) Building height <i>if the building height of all proposed buildings is not more than the maximum building height permitted under another environmental planning instrument for any building on the land,</i></p>	<p>Does not comply, refer to Key issues and Clause 4.6 statement. The maximum permitted building height is 21m. The proposed development has a building height of 26.77m as measured from existing ground level.</p>
<p>(b) Landscaped area <i>if the landscape treatment of the front setback area is compatible with the streetscape in which the building is located,</i></p>	<p>Complies. The site is located within the B2 Local Centre zone, and thus there is limited landscaping within the front of the site, however the proposal is not inconsistent with the landscape treatment of the streetscape given the business zoning.</p>
<p>(c) Solar access <i>where the development provides for one or more communal living rooms, if at least one of those rooms receives a minimum of 3 hours direct sunlight between 9am and 3pm in mid-winter,</i></p>	<p>Complies. The communal room is located on the most upper level and shall receive solar access in accordance with the control.</p>
<p>(d) Private open space <i>if at least the following private open space areas are provided (other than the front setback area):</i></p> <p><i>(i) one area of at least 20 square metres with a minimum dimension of 3 metres is provided for the use of the lodgers,</i></p>	<p>Complies.</p>

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Assessment of Clause 29 – Standards that cannot be used to refuse consent	
Standard	Assessment
<i>(ii) if accommodation is provided on site for a boarding house manager—one area of at least 8 square metres with a minimum dimension of 2.5 metres is provided adjacent to that accommodation,</i>	
(e) Parking <i>if:</i> <i>(i) in the case of development in an accessible area—at least 0.2 parking spaces are provided for each boarding room, and</i> <i>(ii) in the case of development not in an accessible area—at least 0.4 parking spaces are provided for each boarding room, and</i> <i>(iii) in the case of any development—not more than 1 parking space is provided for each person employed in connection with the development and who is resident on site,</i>	Does not comply, refer to key issues.
(f) Accommodation Size <i>if each boarding room has a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of at least:</i> <i>(i) 12 square metres in the case of a boarding room intended to be used by a single lodger, or</i> <i>(ii) 16 square metres in any other case.</i>	Does not comply, refer to section 6.1 of report.
(3) A boarding house may have private kitchen or bathroom facilities in each boarding room but is not required to have those facilities in any boarding room.	Complies

Assessment of Clause 30 - Standards for Boarding Houses	
Standard	Assessment
1 (a) if a boarding house has 5 or more boarding rooms, at least one (1) communal living room will be provided.	Complies. More than 5 boarding rooms are proposed, and a communal living room has been provided.
(b) no boarding room will have a gross floor area (excluding any area used for the purposes of private kitchen or bathroom facilities) of more than 25 square metres.	Does not comply, refer to section 6.1 of report.
(c) no boarding room will be occupied by more than 2 adult lodgers.	Complies
(d) adequate bathroom and kitchen facilities will be available within the boarding house for the use of each lodger.	Complies Adequate bathroom and kitchen facilities are provided in each boarding room.
(e) if the boarding house has capacity to accommodate 20 or more lodgers, a boarding	Complies A boarding house manager is accommodated on-site.

Assessment of Clause 30 - Standards for Boarding Houses	
Standard	Assessment
<i>room or on-site dwelling will be provided for a boarding house manager.</i>	
<i>(g) if the boarding house is on land zoned primarily for commercial purposes, no part of the ground floor of the boarding house that fronts a street will be used for residential purposes unless another environmental planning instrument permits such a use.</i>	Complies The land is zoned B2 – Local Centre.
<i>(h) at least one parking space will be provided for a bicycle, and one will be provided for a motorcycle, for every 5 boarding rooms.</i>	Does not comply, refer to section 6.1 of report.
Assessment of Clause 30A- Character of the local area	
The proposal is incompatible with the desired future character of the area, noting that the area is undergoing transition, refer to section 6.1 of report.	

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3.2 Part E6: Kensington and Kingsford Town Centres DCP 2020

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
PART A			
2.	Urban Design and Place-Making		
2.1	Guiding Principals		
	<p>Development within the Kensington and Kingsford town centres must align with the following urban design and place making principles which are derived from the K2K Planning Strategy and community input:</p> <ul style="list-style-type: none"> • Provide quality affordable housing to meet local housing needs, particularly for key workers, essential workers and students • Reinforce boulevard character along Anzac Parade by strengthening the built form edge and adding greenery • Achieve a dominant typology of diverse mid-rise, mixed-use buildings throughout the town centres • Provide taller, slender landmark buildings at identified strategic node sites in conjunction with the delivery of substantial public benefits established through a design excellence process • Protect the heritage significance of heritage items, contributory buildings and/or heritage conservation areas located within the town centres and adjoining areas • Give priority to people walking, cycling and using public transport • Achieve a sensitive transition in relation to recently constructed development and surrounding established lower scaled residential neighbourhoods • Create a positive street level environment through built form that allows solar amenity, permeability and maintains human scale • Ensure that new infill development respects the fine-grain character of contributory buildings • Establish building setback controls which provide for the creation of wider footpaths and street tree planting 		<p>Does not comply. See <i>Key Issues</i> for further discussion.</p>

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none"> Achieve urban design, place and architectural excellence, including best practice environmental design Provide active street frontages throughout the town centres Encourage precinct-scale benefits across all node sites that contributes to the unique character of each town centre; and Achieve innovative place-led solutions for local hydrology and resilience. 		
3.	Desired Future Character		
4.	Design Excellence		
	<p>(a) All new development involving the construction of a new building or external alterations to an existing building is to meet the requirements of Clause 6.11 of the RLEP 2012 relating to design excellence Buildings are to be designed to achieve at least 5-star green star performance as a component for achieving design excellence on strategic node sites</p> <p>(b) DAs involving the construction of a new building on the following strategic node sites are subject to an architectural design competition in accordance with Clause 6.21 of RLEP 2012:</p> <ul style="list-style-type: none"> Todman Square Precinct Kingsford Midtown Precinct Kingsford Junction Precinct <p>(c) Prior to lodgement of DAs for strategic node sites, the architectural design competition process is to be undertaken in accordance with Council's "Architectural Competition Policy" adopted 10 December 2019</p> <p>(d) For DAs at strategic node sites that successfully demonstrate design excellence, the consent authority may consider the following:</p> <ul style="list-style-type: none"> (i) additional building height and FSR in accordance with the RLEP 2012 Additional Heights and Additional FSR maps; and (ii) exclusion of social infrastructure floor space provided on the site from the 		<p>Does not comply. See Section 6.5.3 of report for further discussion.</p>

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	total gross floor area calculation, subject to the social infrastructure floor space being dedicated to Council.		
5.	Floor Space Ratio		
	<p>(a) The maximum FSR that can be achieved on a site is shown on the RLEP 2012 FSR Map. An alternative FSR is applicable in accordance with the RLEP 2012 Alternative FSR Map where the proponent makes an offer to enter into a VPA for either a monetary contribution or the delivery of Community Infrastructure in accordance with the Community Infrastructure Contributions Plan (see Part D for details on Community Infrastructure Contribution)</p> <p>(b) In relation to the Kensington Town centre where an existing FSR Map does not apply, the Alternative FSR Map is applicable for the purposes of calculating the Community Infrastructure contribution referred to in clause (a) for any floor space above the existing height maximum control shown on the RLEP 2012 Height Map</p> <p>(c) A minimum non-residential FSR of 1:1 is to be provided at each strategic node site within the Todman Square, Kingsford Midtown and Kingsford Junction Precincts, in accordance with Clause 4.4 of the RLEP 2012</p> <p>(d) Non-residential floor space must be designed to be accessible, useable and functional for the purposes of commercial, business, entertainment and retail activities and the like</p>		Complies. <i>See Key Issues for further discussion.</i>
6.	Built Form		
	<p>Building Heights</p> <p>(a) The maximum height that can be achieved on a site is shown on the RLEP 2012 Height Map. An alternative maximum height is applicable in accordance with the RLEP 2012 Alternative Height Map where the proponent makes an offer to enter into a VPA for either a monetary contribution or the delivery of</p>		Does not comply. <i>See Key Issues for further discussion.</i>

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>Community Infrastructure in accordance with the Community Infrastructure Contributions Plan. (see Part D for details on Community Infrastructure Contribution)</p> <p>(b) The maximum number of storeys on a site is to comply with the following:</p> <ul style="list-style-type: none"> i) on sites with a maximum of 16m – 4 storeys ii) on sites with a maximum of 19m – 5 storeys iii) on sites with a maximum of 31m – 9 storeys iv) on sites with a maximum 57m – 17 storeys v) on sites with a maximum 60m – 18 storeys 		
	<p>Street Walls</p> <p>(a) Buildings must be designed with a street wall height of 4 storeys</p> <p>(b) On sites with contributory buildings, the consent authority may consider a variation to the four-storey street wall height requirement of between 2 and 6 storeys if the design:</p> <ul style="list-style-type: none"> (i) results in an improvement to the contributory building in accordance with established heritage principles to avoid facadism (ii) meets the objectives of this clause and exhibits design excellence (iii) retains contributory or heritage elements; and (iv) provides a transition to neighbouring sites. 		Complies.
	<p>Building Setbacks</p> <p>(a) DAs are to comply with the minimum ground floor and upper level setbacks illustrated in the relevant block diagrams in Part B</p> <p>(b) Development that results in an exposed party wall on an adjoining building is to incorporate architectural or vertical landscape treatment to improve visual amenity</p>		Does not comply. See Key Issues for further discussion.

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
			
	<p>Building Depth</p> <p>(a) The residential component of development fronting Anzac Parade and Gardeners Road is to have a maximum building depth of 22m including balconies.</p>		<p>Does not comply. See Key Issues for further discussion.</p>
9.	Heritage Conservation		
	<p>All Development</p> <p>(a) All development involving heritage items are to be in accordance with requirements for heritage set out in Part B2 of the DCP</p> <p>(b) All development involving heritage items and contributory buildings are required to:</p> <ul style="list-style-type: none"> (i) Adhere to the principles of the Burra Charter (ii) Include the submission of a Heritage Impact Statement (or Heritage Impact Assessment) which considers the heritage significance of the item or contributory building, the impact of the proposal on the heritage significance of the building or heritage items within the vicinity, the rationale for the proposed development, and the compatibility of the development with the objectives and controls, and/or recommended management within relevant 		<p>Does not comply. See Section 6.5.2 of report for further discussion.</p>

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>conservation management plans, planning instruments or heritage inventories</p> <p>(c) Development located within the vicinity of another local government area requires the preparation of a Heritage Impact Statement to address the potential impact on adjoining or nearby heritage items or heritage conservation areas in the adjoining local government area.</p> <p><u>New development adjacent to heritage items and contributory buildings:</u></p> <p>(a) Development adjacent to heritage items and contributory buildings (infill development) should:</p> <ul style="list-style-type: none"> (i) Be designed to respect the historic scale, proportions and articulation of adjacent contributory built forms, including heights, solid to void ratios and alignments of street awnings (ii) Incorporate podiums and framed overlays that reference the principle influence line of historic streetscapes, and are cohesive with the established street frontage (iii) Be designed to incorporate setbacks which retain the profile and massing of exposed side elevations to retained contributory built forms (iv) Ensure new street elevations maintain the vertical articulation and segmented character of historic building groups which provide variety to the streetscape and sense of human scale, and avoid unrelated horizontally emphasised articulation (v) Provide contemporary new signage that compliments the character of the contributory buildings and (vi) Ensure that new finishes to side elevations should not detract from street front detailing and finishes. <p>(b) Development should maintain and reinstate the emphasis of street</p>		

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)						
	corners and cross routes through reinforcement of historic height lines remaining at, and adjacent to intersections.								
PART B									
10.	Block Controls								
10.3	Block by Block Controls – Other Sites								
	(a) Development must be consistent with the relevant block envelope controls including heights, setbacks, street walls, mid-block links and laneways (b) Built form within 'Flexible Zones' is to be designed to comply with the maximum building height in the RLEP 2012, objectives of this clause and the requirements of the ADG to achieve transition to adjoining lower scale development.		Does not comply. See Key Issues for further discussion.						
PART C									
12.	Floor to Ceiling Heights								
	(a) Minimum floor to ceiling heights are to be provided for all development in accordance with the following requirements: <table><tr><th>Ground Floor</th><th>First Floor</th><th>Upper Floors</th></tr><tr><td>3.5m</td><td>3.3m</td><td>2.7m</td></tr></table>	Ground Floor	First Floor	Upper Floors	3.5m	3.3m	2.7m	The proposal does not provide compliant ceiling heights for the first floor level which limits the future use and flexibility of the development.	Does not comply.
Ground Floor	First Floor	Upper Floors							
3.5m	3.3m	2.7m							
13.	Solar and Daylight Access								
	(a) Solar access is to be provided in accordance with the recommendations of PART 4 of the Apartment Design Guide (ADG) (b) Buildings must ensure that areas of private or public open space are oriented to achieve the recommended level of solar amenity as per the ADG (c) In relation to student accommodation or boarding house proposals: (i) the design is to ensure that at least 60% of rooms achieve solar access during mid-winter for sites that have a north-south orientation (ii) common spaces such as lounge rooms or communal study areas are designed with a northerly aspect where possible (iii) atriums or slots in the façade are to be considered to maximise solar access to rooms.		Complies.						
14.	Acoustic Privacy								
	Residential uses		Complies.						

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(a) All new development is to be constructed to achieve the following acoustic amenity criteria for the residential component of the building in accordance with Australian Standard AS2107:2016 based on an acoustic report specified in clauses d) and k). For the purposes of this clause, the residential component includes dwellings situated within shop top housing, mixed use buildings, or occupancies in student housing, boarding houses, serviced apartments, hotel and motel accommodation.</p> <p>(b) In naturally ventilated spaces for the residential component, the repeatable maximum Leq (1hour) should not exceed: i) 35 dB(A) between 10.00 pm and 7.00 am in sleeping areas when the windows are closed; ii) 40 dB(A) in sleeping areas when windows are open (24 hours); iii) 45 dB(A) in living areas (24 hours) when the windows are closed, and iv) 50 dB(A) in living areas (24 hours) when the windows are open.</p> <p>(c) Where natural ventilation cannot achieve the limits listed in clause b) the development is to include mechanical ventilation, air conditioning or other complying means of ventilation (in accordance with the ventilation requirements of the Building Code of Australia and Australian Standard AS 1668.2-2012), when doors and windows are shut. In such circumstances the repeatable maximum Leq (1hour) with the alternative ventilation operating should not exceed:</p> <ul style="list-style-type: none"> (i) 38 dB(A) between 10.00 pm and 7.00 am in sleeping areas; (ii) 46 dB(A) in living areas (24 hours); (iii) (45 dB(A) in sleeping areas between 7.00 am and 10.00 pm. <p>(d) Notwithstanding the general noise criteria for environmental noise set out in clauses b) and c) for habitable rooms in the residential component of the proposed development is to incorporate noise control measures to ensure the standard LA10 Condition</p>		

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>imposed by Liquor & Gaming NSW is satisfied inside those occupied spaces with doors and windows closed and the alternative ventilation is operating as follows:</p> <ul style="list-style-type: none"> (i) The cumulative LA10* from licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8 kHz inclusive) by more than 5 dB between 7am and midnight. (ii) The cumulative LA10* from licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8 kHz inclusive) between midnight and 7am. (iii) The noise from licensed premises shall be inaudible in any habitable room of any residential premises between the hours of midnight and 7am (iv) For this clause, the LA10* can be taken as the average maximum deflection of the noise level emitted from the licensed premises. <p>(e) For the purpose of acoustic assessment with respect to clauses a), b) c) and d) the assessment must identify the noise environment for the site as a result of the existing situation (including any business operations that include outdoor areas for use by patrons, and/or the provision of music entertainment) and noise generated by commercial premises within the mixed use building (this may involve consideration of potential uses if the commercial use is unknown at the time of the application for the mixed-use building).</p> <p>(f) All development is to be designed to minimise noise transition between apartments by adopting general noise concepts of:</p> <ul style="list-style-type: none"> (i) locating busy, noisy areas next to each other and quieter areas next to other quiet areas, for example, living rooms next to 		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>living rooms, bedrooms with bedrooms</p> <p>(ii) locating bedrooms away from busy roads and other existing or potential noise sources</p> <p>(iii) using storage or circulation zones within the apartment to buffer noise from adjacent apartments, mechanical services or corridors and lobby areas; and</p> <p>(iv) minimising the amount of party (shared) walls with other apartments.</p> <p>(g) Noise transmission is to be reduced from common corridors by providing seals at entry doors</p> <p>(h) Conflicts between noise, outlook and views are to be resolved using design measures such as double glazing, operable screening and ventilation taking into account noise targets for habitable rooms as identified in clauses b) c) and d) above are assessed inside the rooms with doors and windows closed and ventilation operating.</p> <p>(i) The design of the building is to address the requirements of clause d) with respect to noise from licensed premises and noise/vibration from mechanical plant and ventilation ducts associated with plant and equipment (including kitchen exhausts) serving the commercial spaces.</p> <p>(j) The design of new buildings or substantial alterations to existing buildings are to take into account the following noise conditions that would apply to each commercial tenancy in the development:</p> <p>(i) Noise from commercial plant and the use of the premises when assessed as in LAeq, 15 minute must not exceed the LA90, 15 minute background noise level by more the 3dB when assessed inside any habitable room of any affected residence or noise sensitive commercial premises when in use.</p>		

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(ii) Noise from the provision of entertainment and patron noise when assessed as an LA10* enters any residential use through and internal to internal transmission path is not to exceed the existing internal LA90, 15 minute level in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) when assessed within a habitable room at any affected residential use within the mixed use development between the hours of 7am and midnight, and is to be inaudible between midnight and 7am.</p> <p>(iii) For any gymnasiums or similar facilities in mixed use development the above noise conditions would apply noting that the noise limits include the creation of noise as a result of any vibration induced into the building structure is to be inaudible in any residence between the hours of 10pm and 7am the following day.</p> <p>(iv) The noise limits in this clause applies with doors and windows closed and mechanical ventilation operating.</p> <p>(k) A noise and vibration assessment report, prepared by an appropriately qualified acoustical consultant/engineer, is to be submitted with DAs for new buildings or substantial alterations to existing buildings that include residential units or occupancies in student housing, boarding houses, serviced apartments, hotel and motel accommodation and any other sensitive land uses, addressing appropriate measures to minimise potential future noise and vibration impacts permissible in the B2 Local Centre Zone including amplified music associated with restaurants, small bars and cafes, noise from light rail movements. This assessment is to:</p> <p>(i) be prepared having regard to the NSW Environmental Protection Authority's Noise</p>		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>Policy for Industry, the DECC (EPA) Assessing Vibration, a Technical Guideline, and relevant Australian Standards pertaining to noise measurements and the noise conditions identified above</p> <p>(ii) incorporate an assessment of external noise sources and internal noise sources (such as mechanical ventilation) with respect to the criteria specified in b), c) and d); and</p> <p>(iii) detail the design measures needed to achieve the required internal acoustic amenity specified in b), c) and d).</p> <p><i>Note: The noise and vibration assessment report prepared at the DA stage will identify a noise design base for the entire mixed use building and would become the benchmark for subsequent assessments of the entire mixed use building (or existing buildings subject to substantial alterations) and would become the benchmark for subsequent acoustic assessments. Any individual Das for commercial occupation within the mixed-use building or the altered existing building for an accompanying acoustic assessment is required to rely on the acoustic benchmark described above.</i></p> <p>(iv) To maintain the intent of the acoustic objectives, prior to the issue of a Construction Certificate or an Occupation Certificate, a certificate of acoustic compliance confirming compliance with the specified noise limits referred to above and the noise design base for the mixed use building or alterations to existing buildings is to be submitted to Council.</p>		
	<p><u>Commercial Uses</u></p> <p>(l) The assessment for consideration of the future development within the town centre is to also consider an external noise external target of 70 dB(A) for general noise and an L10* level of 80 dB(A)/ 88 dB(C) when assessed at 1 metre from the future development, noting that future venues where entertainment is to be provided will be</p>		

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>subject to the standard LA10 Condition in relation to the operation of those premises.</p> <p>(m) The site and building layout for new development in the town centre is to maximise acoustic privacy by providing adequate building separation within the development and from neighbouring buildings (refer 3.1.6: Building Separation).</p> <p><i>Note 1: The noise and vibration report prepared at the DA stage will identify a noise design base for the entire mixed use building and would become the benchmark for subsequent acoustic assessments of that building.</i></p> <p><i>Note 2: To maintain the intent of the acoustic objectives prior to the issue of a Construction Certificate or an Occupation Certificate there will be a requirement for a certificate of acoustic compliance confirming compliance with the specified noise limits referred to above and the noise design base for the mixed use building.</i></p>		
15.	Natural Ventilation		
	<p>(a) All buildings are to be designed to comply with the Apartment Design Guide (SEPP 65) to maximise opportunities for natural ventilation and sunlight by providing a combination of:</p> <ul style="list-style-type: none"> - corner apartments - dual aspect apartments - - shallow, single-aspect apartments - openable windows and doors - other ventilation devices <p>(b) Window placement, size, glazing selection and orientation are to maximise opportunities for cross ventilation, taking advantage of prevailing breezes;</p> <p>(c) Internal corridors, lobbies, communal circulation spaces and communal areas shall incorporate adequate natural ventilation;</p> <p>(d) Basements levels including spaces used for storage, garbage areas or commercial activities, are to be designed to include natural ventilation;</p> <p>(e) Apartment depth is to be limited to maximise the opportunity for cross ventilation and airflow.</p>		Complies.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
16.	Articulation and Modulation		
	<p>(a) All buildings are to provide articulation by incorporating a variety of window openings, balcony types, balustrades, fins, blade walls, parapets, sun-shade devices and louvres to add visual depth to the façade;</p> <p>(b) The design of buildings are to avoid large areas of blank walls. Where blank walls are unavoidable, they must be treated and articulated to achieve an appropriate presentation to the public domain;</p> <p>(c) Ground floor shopfronts must demonstrate 'fine grained' articulation by dividing the façade into discreet bays or sections;</p> <p>(d) Entries to business premises should be clearly defined and distinguished from entries to residential components;</p> <p>(e) Specific architectural response to articulation and modulation is to be provided at key node sites through the architectural competition process;</p> <p>(f) Building articulation should be sympathetic and complementary to the adjoining built form;</p> <p>(g) Corner buildings are to be expressed by giving visual prominence to parts of the façade (eg a change in building articulation, material or colour, roof expression or increased height). Corner buildings should be designed to add variety and interest to the street and present each frontage as a main street.</p>		Does not comply. <i>See Key Issues for further discussion.</i>
17.	Materials and Finishes		
	<p>(a) External walls are to be constructed of high quality and durable materials and finishes. Materials that may be subject to corrosion, susceptible to degradation or high maintenance costs are to be avoided;</p> <p>(b) Architectural treatment of street facades is to clearly define a base, middle and top sections of a building so as to divide the mass of the building;</p> <p>(c) A combination of finishes, colours and materials are to be used to articulate building facades;</p> <p>(d) Design windows that can be cleaned from inside the building; and</p>		Does not comply. <i>See Key Issues for further discussion.</i>

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(e) For sites adjoining heritage and contributory buildings, materials and finishes are to allow for their clear interpretation.		
18.	Awnings		
	<p>(a) Continuous pedestrian shelter must be provided to Anzac Parade, Gardeners Road and secondary streets by elements including awnings, posted verandas, colonnades or cantilevered building mass</p> <p>(b) The design of new awnings should complement the design of adjoining awnings and complement the building façade</p> <p>(c) Awnings are to be carefully located and set back to avoid obstructing vehicle sightlines, traffic signals, intersections, pedestrian crossings and other critical road infrastructure.</p> <p>(d) Awnings should wrap around corners where a building is sited on a street corner</p> <p>(e) Awning dimensions for buildings fronting Anzac Parade, secondary streets off Anzac Parade, and Gardeners Road are to provide:</p> <ul style="list-style-type: none"> - a minimum width of 3m - a minimum soffit height of 3.5m and no higher than 4.2m above the footpath - a minimum 1 metre setback from the kerb - a low profile, with slim vertical facias or eaves, generally not exceeding 300mm <p>(f) In relation to laneways, awnings: - must be well designed to provide shelter for entrances and should relate to the ground floor building uses such as outdoor dining; - are to be cantilevered with no posts (with a retractable arm); - must allow for a minimum 1.8m path of travel along the building edge.</p>		Complies.
19.	Active Street Frontages		
	(a) Required active frontages are to be provided in accordance with RLEP 2012 (Clause 6.20) Active frontages Map		Does not comply. <i>See Section 6.5.4 of report for further discussion.</i>

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none"> (b) Preferred active frontages are to be provided in accordance with Part B – Block Controls of this DCP c) (c) A minimum of 80% of the street frontage on Anzac Parade is to incorporate transparent glazing on the ground floor façade (d) The ground floor is to maximise entries or display windows and provide at least 1 pedestrian opening per 5m of facade on Anzac Parade or secondary streets and wrapping shopfronts around corners (e) The ground floor of uses fronting lane ways must provide a continuous retail frontage with at least 1 pedestrian entry or door per 10m of façade (f) The ground floor of uses fronting mid-block links/arcades must provide at least one 1 pedestrian entry or door per 15m of façade (g) A minimum of 50% of a blank wall (larger than 10m²) visible from the public domain must incorporate greenery and/or public art (h) Entrances to internally oriented shopping or commercial arcades and the arcades themselves, must be a minimum of 6m wide (i) Solid non-transparent roller shutters are discouraged. Where security grills or screens are required, they are to be installed at least 1m behind the glazing line and of lattice design with an openness to allow viewing of the interior and internal lighting to spill onto the footpath (j) Incorporate outdoor dining wherever possible in accordance with Part D12, Footpath Dining and Trading of DCP 2013. 		
20.	Landscape Area		
	<ul style="list-style-type: none"> (a) The total landscaped area to be provided on a site is to be at least 100% of the total site area, spread throughout the site and building as shown in Figure 16. (b) Landscaped open space requirements of Chapter C2 (Medium Density Residential) do not apply to land within the Kingsford and Kensington Town Centres other than clauses 2.2.2 and 		Does not comply. <i>See Key Issues for further discussion.</i>

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>2.3 relating to deep soil areas and private and communal open space.</p> <p>(c) Landscaping must be suitable to the building orientation aspect, wind and other relevant environmental factors.</p> <p>(d) A minimum of 40% of the total gross landscaped area including communal open space is to include areas with sufficient soil depth and structure to accommodate mature trees and planting. A combination of trees, shrubs and ground cover is encouraged to make the landscaping more attractive and long lasting.</p> <p>(e) A minimum of 25% of the ground plane and share-ways are to be landscaped sufficient in size and dimensions to accommodate trees and significant planting.</p> <p>(f) Green walls can only contribute up to 20% of the total gross landscaped area and will be assessed on the merits of the proposal in terms of quality of green infrastructure and verification from a qualified landscape architect.</p> <p>(g) Roof tops can only contribute up to 30% of the total gross landscape area and the area is to be designed to maximise visibility of planting from the public domain. Rooftops may include communal food farms and food production areas.</p> <p>(h) Technical, structural and ongoing maintenance arrangements of proposed roof top gardens and green walls are to be documented by a qualified landscape architect and incorporated into the development proposal.</p> <p>(i) The area dedicated to roof top solar (PV infrastructure) is not to be counted as part of the total gross landscape area.</p> <p>(j) Where green roofs and green walls are provided, these shall comply with requirements contained in Chapter B4 (clause 4).</p> <p>(k) Despite the provision of a green wall, all facades are to meet design excellence requirements including building articulation and modulation</p>		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>specified in section 16 of this section of the DCP.</p> <p>(l) In addition to the requirements of Part B4 (Landscaping and Biodiversity), all DAs for sites within the Kensington and Kingsford town centres must submit a landscape plan addressing the following requirements:</p> <ul style="list-style-type: none"> (i) quantity of landscaping provided on site; (ii) scaled drawings of all areas; (iii) how landscaping would complement the architectural style of building and assists in its presentation to the streetscape and high visibility; (iv) rainwater harvesting and other irrigation methods proposed; (v) full construction details of soil profile, method of attachment to the building, and drainage/waterproofing; and (vi) engineering certification confirming building can withstand planting and associated structures. 		
21.	Transport, Traffic, Parking & Access		
	<p>(a) Vehicle parking within the Kensington and Kingsford town centres is to be provided in accordance with the rates outlined in the tables below. Parking requirements for all other development types not specified in the table below are contained in section 3.2 Vehicle Parking Rates (of Chapter B7)</p> <p>(b) Where practical, parking access and/or loading is to be provided from secondary streets (rather than directly off Anzac Parade or gardeners Road), set back at least 6m from the intersection or the rear lane</p> <p>(c) Basement carpark access must comply with the requirements of B8: Water Management</p> <p>(d) Parking access and/or loading areas are to be designed as recessive components of the elevation so as to minimise the visual impact</p> <p>(e) Parking is to be accommodated underground where possible</p> <p>(f) Sub-basement car parking is to be no more than 1.2m above existing ground level;</p>		<p>Does not comply. See Section 6.1 of report and Appendix 1 for further discussion.</p>

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(g) Provide flexible hardstand area for the purposes of bicycle maintenance and repairs</p> <p>(h) Where a variation to the DCP Car Parking rates is sought, the proponent shall respond directly to Control i), 3.3 Exceptions to Parking Rates of the DCP 2013</p> <p>(i) A Green Travel Plan is required to accompany all DAs for new buildings and substantial alterations to existing buildings. The Green Travel Plans is to set out:</p> <ul style="list-style-type: none"> (i) Future travel mode share targets, specifically a reduction in car driver mode share ii) (ii) Travel demand management strategies to encourage sustainable travel iii) (iii) Initiatives to implement and monitor travel measures such as car share and bike share; and iii) (iv) alignment with Control i), 3.3 Exceptions to Parking Rates of this DCP. <p>(j) Car share spaces are to be provided in accordance with Part B7: 2.2 (Car Share) of this DCP</p> <p>(k) All DAs are to provide electric charging stations in an accessible location on site.</p> <p><i>Note 1: Any provision of parking above the maximum requirements will be counted towards gross floor area.</i></p>		
22.	Sustainability		
	<p>(a) All buildings must achieve a minimum green star certification rating of 5 or equivalent (other recognised rating tools)</p> <p>(b) DAs for strategic node sites must be designed to achieve a GBCA exceeding Five-Star Green Star Design as Built with a sustainability strategy giving priority to the following innovations: -</p> <ul style="list-style-type: none"> - Waste collection (e.g. Automated underground waste) - Renewable energy opportunities - Water harvesting and re-use - Vertical and Roof Greening - Buildings shall incorporate passive design strategies in addition to materials which have 		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>less embodied energy, reducing operational energy and focussing on on-going well being of occupants</p> <p>(c) All development must address the requirements of Part B3- Ecologically Sustainable Development of this DCP</p> <p>(d) Applications for new commercial office development premises and hotel/motel accommodation with a floor area of 1,000m² or more must achieve a minimum NABERS 6- star Energy and NABERS 5-star or 6-star Water rating</p> <p>(e) All development must provide 1 electric vehicle charging point per 5 parking spaces where onsite parking is provided.</p> <p>(f) All development must address the requirements of B6 Recycling and Waste Management</p> <p>(g) All new buildings are to provide a space for storage and sorting of problem waste such as E-waste, clothing, and hazardous waste.</p> <p>(h) All new development (other than alterations and additions, or development that is minor or ancillary in nature) is to incorporate a localised automated waste collection system in accordance with Council's Automated Collection System Guidelines.</p>		
23.	Water Management		
	<p>(a) DAs must address Part B8 – Water Management of the Randwick DCP 2013 in relation to water conservation, groundwater and flooding and Water Sensitive Urban Design</p> <p>(b) In addition to requirements of Part B8, applications for basement level/s must include:</p> <p>(i) detailed designs by a qualified hydrological or structural engineer for a water-proof retention system (fully-tanked structure) with adequate provision for future fluctuations of water table variation of at least +/- 1 metre; and</p> <p>(ii) certification from a second qualified hydrological engineer experienced in the design of structures below a water table that the design of the groundwater management</p>		Complies.

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	system will not have any adverse effects on surrounding property or infrastructure.		
	Flooding (a) Building design is to facilitate adaptation to different commercial and retail uses, as well as the integration of flooding solutions into the built form, resulting in a floor-to-floor ground floor height between 4.5m and 6m.		Complies.
24.	Aircraft Operations		
	(a) DAs involving the use of cranes during construction and light poles must ensure compliance with Clause 6.8 of the RLEP 2012 in relation to Airport Operations (b) Applications for new buildings and cranes during construction must meet the requirements of Part F3 - Sydney Airport Planning and Noise Impacts of the Randwick DCP 2013 (c) Applications for development that exceed 51m AHD at Kingsford will be subject to an assessment process under the Airports (Protection of Airspace) Regulations, 1996.*		Complies.
26.	Student Accommodation		
	DAs for all student accommodation or boarding house proposals must provide the following: (a) A design report that demonstrates compliance with the minimum amenity standards under the AHSEPP and where improvements to these standards have been incorporated into the development in order to achieve a higher standard of living amenity for occupants e.g. size of communal living areas, ceiling heights, bedroom width (b) How the built form relates to the desired local character and surrounding context including relationship to heritage or contributory buildings (Refer to Part B Block controls), delivery of high quality built form design and public/private domain interface at the ground level (c) How the development delivers improved sustainability, natural cross ventilation and sunlight, passive thermal design reducing reliance on technology and operation costs and waste management		Does not comply. <i>See Key Issues for further discussion.</i>

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(d) Communal living areas with a minimum area of 20m² or 1.25m² per resident, whichever is greater and a minimum dimension of 3m</p> <p>(e) A Management Plan in Accordance with the Management Plan Template in Part B of this DCP addressing the following additional requirements:</p> <ul style="list-style-type: none"> (i) Maximum number of students to be accommodated at any one time (ii) Provision for at-call contact details of a suitably responsible contact person for response 24 hours a day (iii) On site security arrangements (iv) A schedule detailing furnishings for sleeping rooms (v) Cleaning and maintenance arrangements (vi) Ongoing operational arrangements to minimise and manage noise transmission to adjoining properties (vii) Management and staffing arrangements and overview of each role's key responsibilities (viii) Measures to ensure ongoing workability of emergency systems including lighting and smoke detectors, sprinkler systems, and air conditioning (ix) Placement and composition of furnishing and fittings to achieve the appropriate fire safety requirements (x) Measures to ensure how premises are to be regularly checked to ensure fire safety including that all required exits and egress paths are clear and free of locks and obstructions (xi) Provision of information on community and education services, including health, counselling and cultural services (xii) House rules regarding occupancy and behaviour of students and visitors (xiii) Critical Incident Management and Emergency & Evacuation Procedures 		

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(xiii) Management procedures over holiday periods.</p> <p>(f) DAs for boarding houses and student accommodation must submit an Acoustic Report prepared by a suitably qualified acoustic consultant in accordance with the requirements of section 15 Part C of this DCP addressing:</p> <ul style="list-style-type: none"> (i) Potential noise sources from the operation of the development including any outdoor communal areas, mechanical plant and equipment and kitchen exhaust systems (ii) Desirable acoustics performance criteria addressing potential external night time noise activities including outdoor dining, cafes, restaurants, small bars, outdoor performances and live music; (iii) Mitigation measures such as appropriate sound proofing construction and management practices to achieve the relevant noise criteria (refer to section 15 Part C of this DCP) <p>(g) DAs for boarding houses (including student accommodation) incorporating 20 or more bedrooms are to be supported by a Traffic and Transport Report prepared by a suitably qualified person, addressing as a minimum the following:</p> <ul style="list-style-type: none"> - the prevailing traffic conditions - ingress and egress arrangements - waste collection - the likely impact of the proposed development on existing traffic flows and the surrounding street system - pedestrian and traffic safety - an assessment on-site parking provision for students, staff and business operations - the recommendations of a site specific Green Travel Plan (as required under Section 22 Part C of this DCP) outlining initiatives to encourage active transports options and shared use of 		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)									
	vehicles for students, employees and other visitors to the site.											
PART D												
29.	Public Art											
	(a) Public Art is to be generally be consistent with Council's Public Art Strategy (b) All sites with frontages greater than 12 metres and corner sites, must incorporate artistic elements into the built form such as creative paving, window treatments, canopy design, balustrading, signage and wayfinding, lighting to assist illumination levels after dark and the promotion of active uses in the public spaces (c) In addition to clause 29(b) site specific public art is to be provided on identified sites, plazas and mid-block links as per the block by block controls in Part B of this DCP (d) Public art is to be located in areas which offer the public a free and unobstructed visual experience of the work (e) Incorporate creative lighting, decorative elements and/or murals in laneways, share ways and pedestrian links (f) Submit an Arts Statement which identifies the reasons for the chosen themes, and their interpretation into specific treatments with the DA.	No public art has been incorporated into the built form in contradiction to Section 29.	Does not comply.									
30.	Affordable Housing											
	(a) All development within the 'Kensington and Kingsford Town Centres Affordable Housing Contributions Area' (Figure 18) must contribute towards the provision of affordable housing based on the following rates: <table><tr><th>Date of DA lodgement</th><th>Percentage of residential gross floor area to be dedicated towards affordable housing</th><th>Equivalent Monetary contribution *</th></tr><tr><td>From 13 August 2020 up to and including 13 August 2022</td><td>3%</td><td>\$324.38/sqm</td></tr><tr><td>After 13 August 2022</td><td>5%</td><td>\$540.62/sqm</td></tr></table> * where less than whole unit is provided (b) Affordable Housing contributions are to be provided in accordance with the Affordable Housing Plan 2019 for the Kensington and Kingsford Town Centres	Date of DA lodgement	Percentage of residential gross floor area to be dedicated towards affordable housing	Equivalent Monetary contribution *	From 13 August 2020 up to and including 13 August 2022	3%	\$324.38/sqm	After 13 August 2022	5%	\$540.62/sqm		Conditioned.
Date of DA lodgement	Percentage of residential gross floor area to be dedicated towards affordable housing	Equivalent Monetary contribution *										
From 13 August 2020 up to and including 13 August 2022	3%	\$324.38/sqm										
After 13 August 2022	5%	\$540.62/sqm										

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(c) The affordable housing contribution rate is to apply to the residential gross floor area component of the development (d) Contributions towards affordable housing are to be provided through a dedication of completed units with any remainder paid as a monetary contribution in accordance with the affordable housing contributions table referred to in clause a).		
33.	Advertising and Signage		
	(a) A signage plan is to be submitted as part of the redevelopment of sites. The signage plan is to address the following matters: <ul style="list-style-type: none"> (i) Alignment with the desired future character of the town centres (ii) Design excellence in terms of innovation, materiality, creativity, streetscape contribution and integration with the building design (iii) Relationship to the heritage character of heritage items and contributory buildings where applicable (iv) Whether signage will contribute to visual clutter (v) The public benefit of proposed signage (vi) Any impacts resulting from sign illumination on residential development and aircraft safety; and (vii) Cumulative impacts having regard to existing signage in the vicinity. (b) All new DAs are to remove unsympathetic signage where possible (c) Signs must not distract drivers and be located where drivers require a higher level of concentration, for example at major intersections (d) Above awning signage, roof/sky signs and/or signs greater than 20m ² are to: <ul style="list-style-type: none"> (i) be compatible with the desired future character of each town centre (ii) be consistent with the scale and proportion of the building on which it is located and should 	No advertising or signage is proposed.	N/A

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>not dominate the building or skyline</p> <p>(iii) respect the important design features, openings and articulation of the building on which it is situated</p> <p>(iv) not create adverse impacts when viewed from surrounding residential areas</p> <p>(v) result in an improvement to the building and streetscape; and</p> <p>(vi) demonstrate a clear public benefit and justification for the signage</p> <p>Note: Above awning signage, roof/sky signs and signs greater than 20m² are generally discouraged where they do not meet the objectives and controls set out in this clause</p>		
34.	Air Quality		
	<p>(a) DAs are to include a report from a suitably qualified air quality consultant that addresses building design solutions and construction measures that reduce air pollution and improve indoor air quality for occupants</p> <p>(b) DAs are to submit a statement which explains how the proposal has addressed the NSW Government 'Development near rail corridors and busy roads – Interim Guideline'</p> <p>(c) Air intake for proposals are to be sited well away from Anzac Parade or the pollution source (e.g on top of tall buildings) or provided with filtration to remove particulates; and</p> <p>(d) DAs for sensitive land uses such as childcare centres, schools or aged care facilities must submit an air quality study prepared by a suitably qualified expert demonstrating how air pollution exposure and health risks will be mitigated.</p>	No report has been submitted. See Appendix 1 for further comment.	Does not comply.

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Responsible officer: Angela Manahan, Executive Planner

File Reference: DA/630/2021

Development Application Report No. D45/22

Subject: 71 Darley Road, Randwick (DA/179/2022)


Executive Summary

Proposal:	Alterations and additions to the existing dwelling house including changes to the window openings on southern elevation and internal works (Heritage Item and Heritage Conservation Area)
Ward:	North Ward
Applicant:	Elevate Builders Pty Ltd
Owner:	Mr A C Sheumack & Mrs J M Sheumack
Cost of works:	\$155,595.00
Reason for referral:	The dwelling is a Heritage Item.

Recommendation

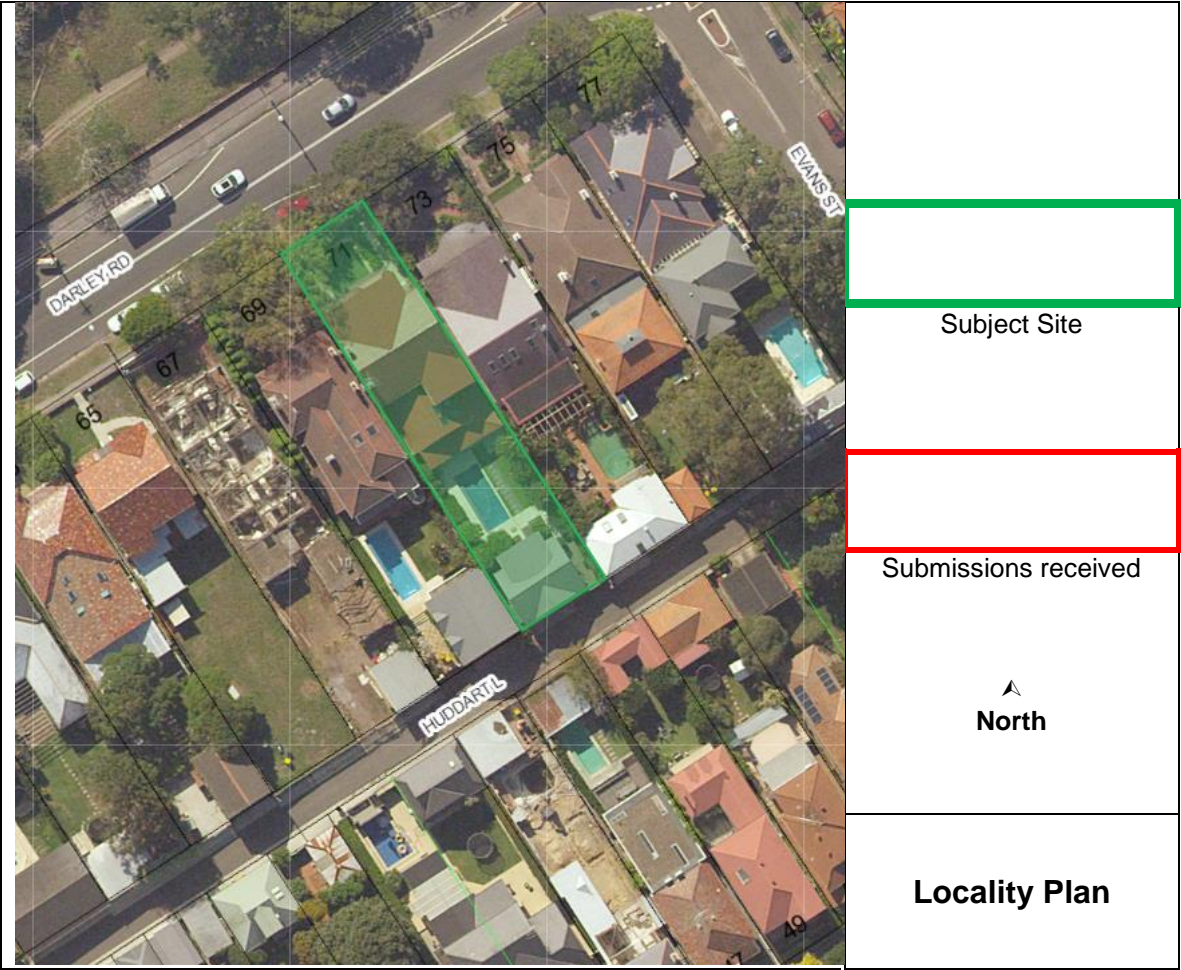
That the RLPP grant consent under Sections 4.16 and 4.17 of the *Environmental Planning and Assessment Act 1979*, as amended, to Development Application No. DA/179/2022 for alterations and additions to the existing dwelling house including changes to the window openings on southern elevation and internal works, at No. 71 Darley Road, Randwick NSW 2031, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (general) - DA/179/2022 - 71 Darley Road, RANDWICK NSW 2031 - DEV - Randwick City Council

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1. Executive summary

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

The proposal seeks development consent for alterations and additions to the existing dwelling house including changes to the window openings on southern elevation and internal works.

There are no major issues associated with the proposal, relevant to the site, only that it being a Local Heritage Item 'Federation House' (Item I340 with Part 1, Schedule 5 of the RLEP 2012). The works proposed to the heritage item dwelling are limited to the demolition of internal features of the dwelling including internal walls, doors and cabinetry as well as windows on the south-eastern elevation. The construction works are for a new first floor layout including for a new first floor plan including a Master Bedroom with a walk-in-robe and ensuite bathroom, fit out of the existing bathroom, and a new linen cupboard. In addition, a new window is proposed on the south-eastern façade orientated to the rear of the site, as well as 2 x skylights located above the proposed Walk-in-robe and ensuite.

The only issue in relation to the proposal is the height of the proposed skylight located above the walk-in-robe. The existing dwelling contravenes the maximum height standard of 9.5m as noted in Clause 4.3 'Height of buildings' of the Randwick LEP 2012 (RLEP 2012). The window top is measured at RL 59.76, which is 9.91m above the natural ground level of the dwelling. As such, this contravenes the standard by 4.3%. This would normally be assessed under delegation of the Manager Development Assessment, however as the property is a heritage item, this is to be considered by the Randwick Local Planning Panel (RLPP).

The proposal is recommended for approval subject to standard conditions.

2. Site Description and Locality

The site is identified as Lot 15, Sec 24, DP 4589, No. 71 Darley Road, Randwick NSW 2031. The site is located on the south-eastern side of Darley Road between Evans Street to the north-east and Govett Street to the south-west.

The site is a rectangular shaped allotment with a 12.19 metre frontage to Darley Road, a 54.865 metre north-eastern and south-western side boundary, a 12.19 metre south-eastern rear boundary fronting Huddart Lane, and a total site area of 668.9m².

Existing on site is a part one part two storey residential dwelling, a swimming pool and a two storey freestanding detached garage accessed from Huddart Lane. The front and rear of the site is landscaped with lawn and planting.

The surrounding area is characterised by residential development, including semi-detached and detached dwelling houses. Adjoining the site to the south-west at 69 Darley Road is a two storey detached dwelling house, and to the north-east of the site at 73 Darley Road is a single storey detached dwelling. Located to the north-west on the opposite side of Darley Road is Queen's Park which forms part of the Centennial Parklands.

The site is listed as a Local Heritage Item 'Federation House' in the RLEP 2012 (Item I340 within Part 1, Schedule 5 of the RLEP 2012). In addition, the site is also situated within the North Randwick Heritage Conservation Area (Item C1 within Part 2, Schedule 5 of RLEP 2012).



Figure 1: Photo of the front of the subject site at No. 71 Darley Road, Randwick.



Figure 2: Photo of the rear of the subject dwelling at No. 71 Darley Road, Randwick.

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Figure 3 & 4: Photos of the first floor non-original bathroom of the subject dwelling at No. 71 Darley Road, Randwick.



Figure 5: Photo of the first floor non-original study of the subject dwelling at No. 71 Darley Road, Randwick.



Figure 6: Photo of the first floor non-original window to be removed at the subject dwelling at No. 71 Darley Road, Randwick.

3. Relevant history

- **BA/1215/1985** – the Building Application was approved on 19 November 1985 for alterations to the dwelling house including internal works and reconfiguration, 2x new windows on the south-eastern façade and an additional porch to the rear.
- **DA/593/2002** – the Development Application was approved on 1 November 2002 for alterations and ground and first floor additions to existing dwelling house including new front litch gate and new rear garage and covered terrace above & new swimming pool. This included the removal and replacement of 2x windows on the south-eastern façade of the dwelling.



Figure 7: Approved south-eastern elevation of DA/593/2002 showing the removal and replacement of 2x windows at No. 71 Darley Road, Randwick.

- **DA/593/2002/A** – Section 96 was approved on 7 March 2003 to modify and clarify conditions 2, 6, 7 and review conditions 52 & 53 of development consent
- **DA/593/2002/B** – Section 96 was approved on 19 June 2003 for modification for installation of bi-folding doors to terrace area.
- **DA/593/2002/C** – Section 96(2) was approved on 11 August 2004 to provide new side boundary fences - pool and plant and garbage bin storage area and associated planters. Internal garage alterations and associated landscaping.

4. Proposal

The proposal seeks development consent for alterations and additions to the existing dwelling house including changes to the window openings on southern elevation and internal works. Specifically, the proposal is seeking to:

First Floor

- Demolition of and installation of a new bathroom.
- Demolition of existing study and bedroom to be converted into a new walk-in-robe and ensuite bathroom to the Master bedroom.
- Demolition of existing wall between the Master bedroom and proposed walk-in-robe and install a new sliding door access between the rooms.
- Demolition of existing wardrobe in the Master bedroom.
- Relocate the existing attic storage door 340mm to the south-west to retain access to the existing attic storage above the ground floor extension.
- Demolition of existing linen cupboard and replaced with a new linen cupboard (retaining and protecting the timber lacework in the first floor landing).

- Demolition of 2 x windows to the proposed bathroom to the south-eastern rear façade with 1 x bricked up to match existing brickwork and the other to be partially bricked up and a new smaller window installed matching the existing window style.
- Addition of 2 x skylights to the rear roof plane above the walk-in-robe and ensuite bathroom respectively.

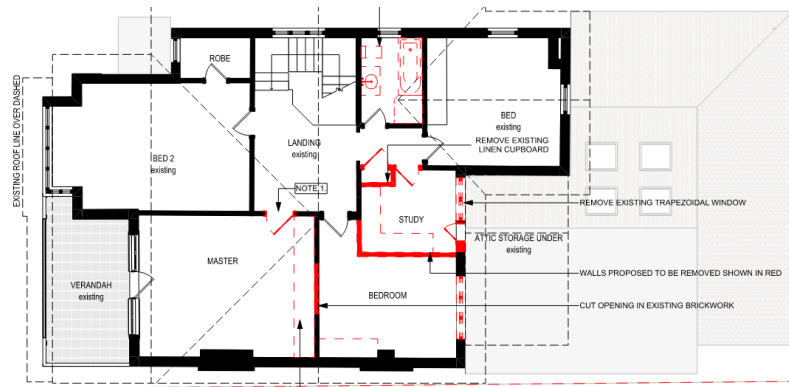


Figure 8: Proposed first floor demolition plan - 71 Darley Road, Randwick (Source: Pamment Projects)

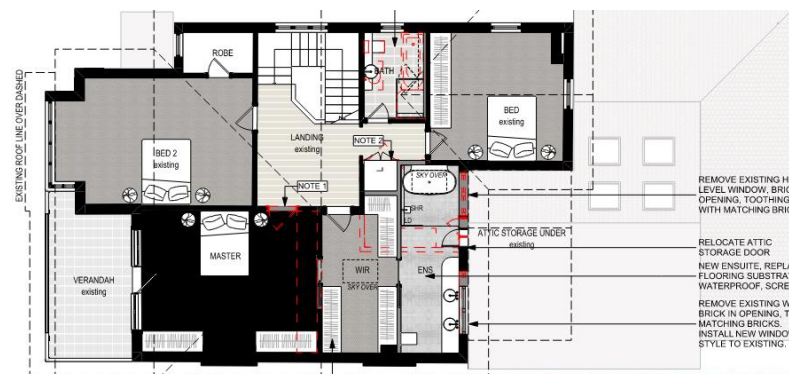


Figure 9: Proposed first floor plan - 71 Darley Road, Randwick (Source: Pamment Projects)

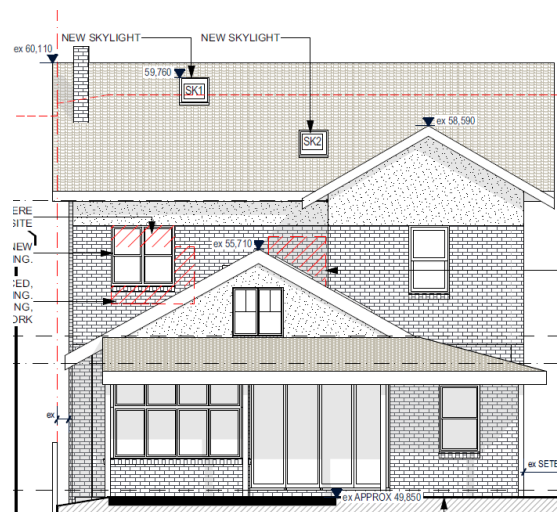


Figure 10: Proposed south-eastern elevation - 71 Darley Road, Randwick (Source: Pamment Projects).

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Council's Community Participation Plan. No submissions were received as a result of the notification process.

6. Relevant Environment Planning Instruments

6.1. SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate No. A453096 has been submitted, prepared by Whitby Design, dated 21 March 2022, satisfying the requirements of the *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.

6.2. SEPP (Resilience and Hazards) 2021

Chapter 4 'Remediation of land'

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

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

6.3. Randwick Local Environmental Plan 2012 (LEP)

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

The 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 4.3: Building height (max)	9.5m	9.91m	No, see Clause 4.6 assessment below.
CI 4.4: Floor space ratio (max)	0.6:1 Site area = 668.9m ²	No proposed changes to the FSR.	N/A

6.3.1. *Clause 4.6 - Exceptions to development standards*

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

6.3.2. *Clause 5.10 - Heritage conservation*

Controls

The site is identified as a heritage item under the Randwick LEP 2012, in Schedule 5 Environmental Heritage, as Item Number I340.

The site is also part of North Randwick Heritage Conservation Area (HCA).

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

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

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

These considerations include:

- Minimisation of any impact on the general perception of the heritage building itself.
- Minimisation of any impact on the general perception of the heritage building within its context by a sensitive approach to publicly visible elevations, height, visual dominance or competing design or pattern of any introduced elements.
- The retainment of the item in a condition of good repair.

Comments

Exterior:

- The proposed fenestration changes at the first-floor rear of the dwelling are relatively minor. These are not visible from the public domain. Nor are they readily visible from the ground level of the enclosed rear portion of the property. This rear façade is assessed to be of 'low' significance.
- Likewise, the skylights will not be visible from the public domain and this rear plane of the roof line is assessed to be of low significance.
- The proposal does not alter any other external contributory features or characteristics that are significant original components of the dwelling
- There would be no perceptible visual impact on the characteristics of the wider precinct of the HCA as outlined in the Randwick DCP 2013, since there are no changes proposed to height, form, detailing, grounds, boundaries or general presentation.
- The proposal does not impact either physically or visually on neighbouring properties
- The proposed fabric, finishes and colours for the alterations and additions are matching and neutral.

Interior:

- It is noted that there have already been layout reconfigurations and introduced elements within the interior rear section of the dwelling.
- The proposed alterations and additions are confined to these rear rooms, which have already been subject to some refurbishment.
- The proposed works are considered respectful to the heritage significance of the original internal components and layout of building itself, as well as the need to introduce contemporary amenity to the dwelling.
- It is noted that there would be no alteration to key elements and layout of the dwelling, such as the existing stair arrangement and publicly perceived principal spaces and entry points.

In general, therefore, the development is consistent with the longstanding intention of the building as a family dwelling. It generally promotes and implements the planning principles, aims and objectives of:

- Randwick Local Environmental Plan 2012 (LEP 2012);
- Randwick Development Control Plan 2013 (DCP 2013).

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.3: Building height (max)	9.5m	9.91m	0.41m	4.3%

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.1. Exception to the Floor Space Ratio (FSR) development standard (CI 4.4)

The applicant’s written justification for the departure from the FSR standard is contained in Appendix 2.

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

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

The objectives of the FSR 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 seeks to demonstrate that this objective is satisfied in the following manner:

"The works are entirely reasonable given the built form context of the site. Figure 1 above demonstrates that the appearance of the structure when viewed from the rear garden is entirely reasonable and the works above the height limit are entirely reasonable and are hardly visible from the rear of the site. There is no rear lane or street from where the skylight could be viewed.

The height and form of the dwelling is not altering. The rear roof form is not altering. The plane of the rear roof form is unaffected. The character and appearance of the dwelling is unaffected. The desired future character of the area is unaffected."

- (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 applicant's written justification seeks to demonstrate that this objective is satisfied in the following manner:

"The works above the height limit do not impact the heritage significance of the site. The overall interpretation of the dwelling is unaffected. Views to the skylight are minimal and no view from any public place to the skylight is available. The dwelling's heritage significance is not affected. The interpretation of the building form remains."

- (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 seeks to demonstrate that this objective is satisfied in the following manner:

"The proposal has no amenity impacts to neighboring sites. No additional overshadowing occurs due to the skylight. No privacy impact occurs as the skylight does not allow overlooking to any neighbour's property. The skylight does not affect any view as it is within the rear roof plane and does not project above the roof plane to any significant degree."

Assessing officer's comment:

The proposal is considered to respond appropriately to the constraints of the site. The height of the proposal is an appropriate response to the site and building attributes. The proposal is a thoughtful approach to the development.

The extent of departure is for installation of a skylight, due to the existing Heritage Item dwelling being over 9.5m in height. The proposed skylight is located on the existing roof form with no changes proposed to the roof outside the skylight. This will not create any additional bulk and scale to the dwelling nor will it affect overshadowing or views. As such, the proposal is compatible with the desired future character of the area.

The proposed skylight is located to the rear roof form and is not visible from Darley Road. It will not create any additional bulk nor detract from the dwelling or adjoining dwelling within the

heritage conservation area, subservient to the existing building. It will not have any adverse impact to privacy as the skylight is orientated to the sky and caters to a walk-in-robe, which is considered a low-use room.

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

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

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:

- *"It has been demonstrated that the proposal and its height breach remains consistent with the objectives of the subject zone as well as Clause 4.3 and 4.6 of the Randwick LEP 2012, despite the numerical non-compliance.*
- *The height of the built form is not increased.*
- *The proposal would not compromise the character or nature of the area sought by the local environmental planning framework.*
- *The non-compliant height does not result in any unreasonable visual impacts.*
- *The height non-compliance assists with providing improved internal amenity for future residents."*

Assessing officer's comment:

The overall height, bulk and scale of the development is compatible with the existing building and surrounding buildings on the southern side of Darley Road. The proposed variation for the skylight enables good design without adverse amenity impacts. In conclusion, there are grounds to justify contravention of the policy.

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 R2 Low Density Residential zone is provided below:

Assessment against objectives of R2 Low Density Residential zone

The objectives of the Residential R2 Low Density Residential zone are:

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

The applicant's written request seeks to demonstrate that the objectives of the zone are satisfied in the following way:

- *“The works will allow for improved amenity on the site, allowing the existing owner occupiers to provide additional light to the rear of the house. Thereby providing for the owner occupants housing needs.*
- *Not applicable.*
- *Impacts to the streetscape are minimal. The subject skylight cannot be viewed from the public domain. The overall form and interpretation of the dwelling is unaffected.*
- *Amenity to neighbour’s is not impacted. No impacts occur with respect to overshadowing, loss of privacy, outlook or view impact.*
- *Not applicable.*
- *On the basis of the above, the works are consistent with the objectives of the zone.*

Therefore, compliance with the standard is considered to be unnecessary and would be unreasonable.”

Assessing officer’s comment:

The proposal demonstrates consistency with the zone objectives and does not affect the streetscape and the amenity of adjoining residents. As demonstrated above, the proposed development is in the public interest because as it is consistent with the objectives of the height development standard and the objectives of the R2 zone.

In addition, the above demonstrates that compliance with the control is unreasonable and unnecessary in the circumstances of this case. Therefore, the development will be in the public interest.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

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

Conclusion

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

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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

9. Environmental Assessment

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

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

10. Conclusion

That the application for alterations and additions to the existing dwelling house including changes to the window openings on southern elevation and internal works be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013.
- The proposal is consistent with the specific objectives of the R2 zone in that it provides housing and amenity needs for the community whilst protecting the amenity of the local residents.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.

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Appendix 1: Referrals

1. Internal referral comments:

1.1. Heritage Planner

The Site

The address of the subject site is 71 Darley Road Randwick. The legal title of the property is Lot 15, Section 24, DP 4589.

The site is a locally listed heritage item in Schedule 5 of the Randwick Local environmental Plan (LEP) 2012. Its heritage designation is as Local Item Number I340. It is described as a two-storey Federation dwelling, presenting in masonry brick and stone, with timber joinery, and constructed about 1915.

The site is also located adjacent to a further individually listed local heritage item, located at 73 Darley Road, with a legal title as Lot 16, section 24, DP 4589. Its heritage designation is as Local item Number I341. The adjacent item is an inter-war single storey dwelling representing a simple and elegant presentation of what is typically described as a Californian bungalow.

These two items have been assessed as making a positive contribution to the streetscape in their representation of early C20 domestic architectural forms and materials.

Both properties are located within a Heritage Conservation Area (HCA) known as the North Randwick Heritage Conservation Area. This area is characterised by parklands with high scenic landscape significance, including recreational and parklands architectural elements, and by its streetscapes, comprising interwar and period character housing stock set in natural topography, and with valued views and vistas. Housing stock comprises fine examples of Federation and Inter-War dwellings that are associated with the delayed release of these land parcels given that the Centennial Parklands were originally reserved for water supply purposes. (Heritage Map 006 and 4.9 DCP HCA Description).

Background

Description of Property

The subject two-storey Federation dwelling at 71 Darley Road had a relatively detailed front façade description set out in the 1988 Perumal Murphy *Pty Ltd* Heritage Study, conducted for Randwick Municipal Council. This description was subsequently adopted by the *NSW Office of Environment and Heritage* as its descriptor of the site for its Database Listing. The use of this description by both Randwick Council and the State Office is important in that both clearly deem the heritage significance of the site to be its contribution to streetscape in terms of its north façade, grounds and front boundary fencing. The 1988 description reads:

Magnificent two storey Federation style house, about 1915. Recently, reconstructed. Only inauthentic feature is pebblecrete pathway. Slightly unusual variation in form. Front projects slightly with deep recessed porch and balcony on one side. Porch has brick arch and whole base of front is stone. Balcony has limited timber decoration with solid paired posts. Leadlight glazing is of special note as is original style main door. Two colour brick with roughcast above level of flat balcony roof. Small porch. Entry to main door with its own terra cotta roof. Original stone fence and beautiful front garden.

Further heritage analysis, including the 2022 report of *Damien O'Toole Town Planning and Heritage Services* notes:

The dwelling has an overall high degree of intactness and integrity, with some recent alterations and additions.

Regarding the interior of the dwelling, and the rear external presentation its site there are several previously approved development applications:

- 2002: Alterations and additions to existing dwelling. (CCP/758/2003).

- 2003: Application for renovation/extension of the rear ground floor rooms to form an open plan living, kitchen and dining area (DA: CCP/758/2003).
- 2004: Application to provide new side boundary fences - pool and plant and garbage bin storage area and associated planters; as well as internal garage alterations and associated landscaping.
- 2005: Alterations and ground and first floor additions to existing dwelling house including new front litch-gate and new rear garage and covered terrace above & new swimming pool (CCP/187/2005).

These approved changes indicate that it is practical and reasonable to maintain that the assessed contribution to precinct character consists substantially in its ongoing Federation-style streetscape presentation:

- Traditional built and roof form
- Combinations of brick and stone masonry
- Decorative joinery elements
- Garden spaces and front perimeter fencing
- The public perception of spatial arrangements of principal front rooms, entry points and key elements from the front side of the dwelling

At its rear side, and away from street view, the dwelling has had substantial alterations and additions including the enclosure of the site by built arrangements at the rear boundary. It has also had several interior reconfigurations, including fenestration alterations.

Proposal

The proposed works are substantially limited to internal alterations at the rear of the first-floor level.

- Reconfiguration of the rooms, viz:
 - (a) Demolition of a non-original bathroom and installation of a new bathroom
 - (b) Demolition of a non-original study and repurpose as an *ensuite* bathroom
 - (c) Removal of existing wall between study and rear bedroom
 - (d) New opening in wall between rear bedroom and front bedroom
 - (e) Doorway to front bedroom off stair landing be sealed up and original door to be repositioned to a proposed new linen cupboard.
- Rear façade fenestration adjustments, which include the resizing of one window with a slightly smaller window and the masonry infill of another window space.
- The introduction of two small skylights to the rear roof plane.

It is noted that these rear rooms have already been subject to substantial modification with much non-original and now tired fabric and fit-out. There is no alteration proposed to key layout features, such as the stair arrangement or to publicly perceived principal rooms or entry points on either the ground or first floors.

It is noted especially that there will be no changes to the streetscape, nor impact on neighbouring dwellings.

Submission

The submission includes:

- An extensive set of detailed plans
- An acceptable Statement of Environmental Effects (SEE)

- An acceptable Heritage Impact Assessment (HIA)

The SEE and the HIA Reports (*Damien O'Toole Town Planning & Heritage Services*) include photos which demonstrate that in the upper rear section of the dwelling, numerous interior aspects, such as room configurations, elements and finishes (architraves, cornices, skirtings and linings), doorways and fenestration do not present as original components.

The submission notes that the rear façade and grounds have been extensively modified and added to over time. The rear aspect of site does not have public view, being entirely shielded by the introduced built arrangements at the rear boundary. By reasonable and practical assessment this contained rear aspect of the site cannot now be considered contributory to the key established heritage values of the dwelling itself or its contextual perception within the HCA

Controls

The site is identified as a heritage item under the Randwick LEP 2012, in Schedule 5 Environmental Heritage, as Item Number I340.

The site is also part of North Randwick Heritage Conservation Area (HCA).

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

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

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

These considerations include:

- Minimisation of any impact on the general perception of the heritage building itself.
- Minimisation of any impact on the general perception of the heritage building within its context by a sensitive approach to publicly visible elevations, height, visual dominance or competing design or pattern of any introduced elements.
- The retainment of the item in a condition of good repair.

Comments

Exterior:

- The proposed fenestration changes at the first-floor rear of the dwelling are relatively minor. These are not visible from the public domain. Nor are they readily visible from the ground level of the enclosed rear portion of the property. This rear façade is assessed to be of 'low' significance.
- Likewise, the skylights will not be visible from the public domain and this rear plane of the roof line is assessed to be of low significance.
- The proposal does not alter any other external contributory features or characteristics that are significant original components of the dwelling
- There would be no perceptible visual impact on the characteristics of the wider precinct of the HCA as outlined in the Randwick DCP 2013, since there are no changes proposed to height, form, detailing, grounds, boundaries or general presentation.
- The proposal does not impact either physically or visually on neighbouring properties

- The proposed fabric, finishes and colours for the alterations and additions are matching and neutral.

Interior:

- It is noted that there have already been layout reconfigurations and introduced elements within the interior rear section of the dwelling.
- The proposed alterations and additions are confined to these rear rooms, which have already been subject to some refurbishment.
- The proposed works are considered respectful to the heritage significance of the original internal components and layout of building itself, as well as the need to introduce contemporary amenity to the dwelling.
- It is noted that there would be no alteration to key elements and layout of the dwelling, such as the existing stair arrangement and publicly perceived principal spaces and entry points.

In general, therefore, the development is consistent with the longstanding intention of the building as a family dwelling. It generally promotes and implements the planning principles, aims and objectives of:

- Randwick Local Environmental Plan 2012 (LEP 2012);
- Randwick Development Control Plan 2013 (DCP 2013)

Recommendation

The following conditions should be included in any consent:

- An architect or tradesperson suitably qualified and experienced in heritage conservation shall be engaged to oversee the carrying out of these works.
- All work shall be carried out in accordance with the principles of the Australia ICOMOS *Burra Charter* and to the satisfaction of the Director City Planning.
- A brief photographic record of the key elements of the spaces proposed for alteration shall be submitted to Council to be attached to the DA. That is any original door and door furniture, fenestration openings, elements of the removed wall such as skirting or picture rail or vents.
- Any original fabric and elements are recommended to be recycled on site where possible. These should be discretely marked (reverse side) where possible with date of work and former location (e.g. former door to master bedroom).
- Colours, materials and finishes of external surfaces are to be compatible with the existing building and surrounding buildings in the heritage conservation area and consistent with the architectural style of the building.

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

71 Darley Road, Randwick

REQUEST TO VARY DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6 OF RANDWICK LOCAL ENVIRONMENTAL PLAN 2012

TO ACCOMPANY A DEVELOPMENT APPLICATION TO RANDWICK CITY COUNCIL FOR ALTERATIONS AND ADDITIONS TO A DWELLING

Property: 71 Darley Road, Randwick.
Proposal: Alterations and additions to a dwelling.
Zoning: R2 Low Density Residential.

Development standard to which the request to vary the standard is taken: Clause 4.3 of the Randwick LEP 2012 (LEP 2012) prescribes a maximum building height of 9.5m applying to the site.

The Aim of the request

To allow works that are above the 9.5m height limit, being up to a height of 9.74m for the works. The works relate to a skylight which is on the rear roof plane, and which cannot be viewed from any public place. The overall height of the building is not increased.

Clause 4.6 of LEP 2012 allows the applicant to request a departure from compliance with a development standard.

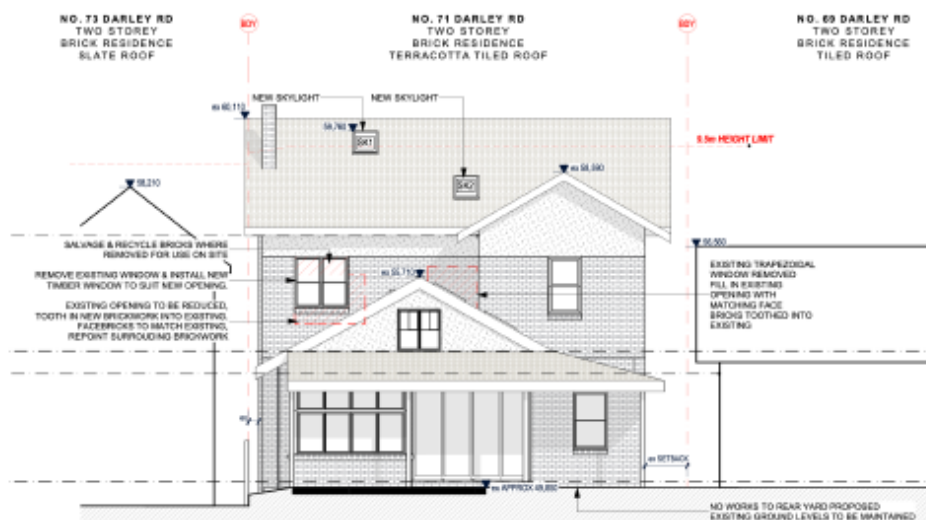


Fig 1 - Image of rear façade of proposed dwelling and the immediately adjoining structures.

Objectives of the Standard

The objectives in relation to Height of Buildings in LEP 2012 are given as,

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Clause 4.3 Height of buildings

1) *The objectives of this clause are as follows:*

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

Application and Assessment of Clause 4.6 Exceptions to development standards

Clause 4.6 of LEP 2012 is designed to provide the consent authority some flexibility in the strict compliance with the application of the development standard. There have been various Land and Environment Court judgments that have some relevance to addressing the application of Clause 4.6, among them being,

1. Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46
2. Wehbe v Pittwater Council [2007] NSWLEC 827
3. Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009; NSWLEC 90; NSWCA 248
4. Moskovich v Waverley Council [2016] NSWLEC 1015
5. Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118

In the assessment of using Clause 4.6 it is particularly relevant to address parts (3) and (4) of the clause, being,

- (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 assessment of the proposal against parts 3(a), 3(b) and 4(ii) the following is offered.

71 Darley Road, Randwick

How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

The NSW Land and Environment Court in *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90, considered how this question may be answered and referred to the earlier Court decision in *Wehbe v Pittwater Council* [2007] NSW LEC 827. Under *Wehbe*, the most common way of demonstrating that compliance is unreasonable or unnecessary, was whether the proposal met the objectives of the standard regardless of the non-compliance. Under *Four2Five*, whilst this can still be considered under this heading, it is also necessary to consider it under Clause 4.6 (3)(a). Furthermore in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, the applicant must demonstrate that Clause 4.6(3) must be adequately justified. The standard method is in using the five part *Wehbe* test (as noted in the judgement) as an approach in justifying this requirement.

The five part test described in *Wehbe* are therefore appropriately considered in this context, as follows:

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

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

The works are entirely reasonable given the built form context of the site.

Figure 1 above demonstrates that the appearance of the structure when viewed from the rear garden is entirely reasonable and the works above the height limit are entirely reasonable and are hardly visible from the rear of the site. There is no rear lane or street from where the skylight could be viewed.

The height and form of the dwelling is not altering. The rear roof form is not altering. The plane of the rear roof form is unaffected. The character and appearance of the dwelling is unaffected. The desired future character of the area is unaffected.

(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 works above the height limit do not impact the heritage significance of the site. The overall interpretation of the dwelling is unaffected. Views to the skylight are minimal and no view from any public place to the skylight is available. The dwelling's heritage significance is not affected. The interpretation of the building form remains.

(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.

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The proposal has no amenity impacts to neighboring sites. No additional overshadowing occurs due to the skylight. No privacy impact occurs as the skylight does not allow overlooking to any neighbour's property. The skylight does not affect any view as it is within the rear roof plane and does not project above the roof plane to any significant degree.

In light of the above, this request provides that the non-compliant height satisfies the objective in question.

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary;

Not applicable. The underlying objective or purpose of the standard is relevant to the development and is achieved.

3. The underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

The exception request does not rely on this reason.

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 exception request does not rely on this reason.

5. 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.

The zoning of the land is appropriate for the site. The exception request does not rely on this reason.

In addition to demonstrating that the principles of Wehbe are satisfied, strict compliance with the standard is considered to be unreasonable and unnecessary in the circumstances of this case for the following additional reasons.

In the case of *Moskovich v Waverley Council*, the Land and Environment Court accepted that compliance with the standard (FSR in that case) was unreasonable and unnecessary because the design achieved the objectives of the standard and the respective zone, in a way that addressed the particular circumstances of the site, and resulted in a better streetscape and internal and external amenity outcome than a complying development. For the subject application, the proposed development which seeks to vary the height standard, achieves a better response to the objectives of the subject R2 Low Density Zone in that it provides a high level of internal amenity

71 Darley Road, Randwick

for occupants and safeguards the street appearance of the site which is consistent with various LEP and DCP heritage requirements.

Additionally the objectives of the Residential R2 Zone are noted below, and the proposal's consistency with the objectives is addressed:

Objectives of the Zoning Clause

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

The works will allow for improved amenity on the site, allowing the existing owner occupiers to provide additional light to the rear of the house. Thereby providing for the owner occupants housing needs.

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

Not applicable.

- *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.*

Impacts to the streetscape are minimal. The subject skylight cannot be viewed from the public domain. The overall form and interpretation of the dwelling is unaffected.

- *To protect the amenity of residents.*

Amenity to neighbour's is not impacted. No impacts occur with respect to overshadowing, loss of privacy, outlook or view impact.

- *To encourage housing affordability.*
- *To enable small-scale business uses in existing commercial buildings.*

Not applicable.

On the basis of the above, the works are consistent with the objectives of the zone.

Therefore, compliance with the standard is considered to be unnecessary and would be unreasonable.

71 Darley Road, Randwick

Sufficient environmental planning grounds to justify the contravention

In satisfying Clause 4.6 (3)(b) the consent authority must be satisfied that the applicant has submitted justification that there are sufficient environmental planning grounds to justify the contravention.

This request provides that there is sufficient environmental planning ground to justify the contravention. These ground are:

It has been demonstrated that the proposal and its height breach remains consistent with the objectives of the subject zone as well as Clause 4.3 and 4.6 of the Randwick LEP 2012, despite the numerical non-compliance.

The height of the built form is not increased.

The proposal would not compromise the character or nature of the area sought by the local environmental planning framework.

The non-compliant height does not result in any unreasonable visual impacts.

The height non-compliance assists with providing improved internal amenity for future residents.

Is the variation in the public interest?

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the proposed development will be in the public interest. The proposal is considered to be in the public interest because it is consistent with the objectives of the particular standard, and the objectives for development within the zone in which the development is proposed to be carried out. The objectives of the standard have been addressed above and are demonstrated to be satisfied. The works are consistent with the requirements for the R2 Low Density Zone because of significant improvements to the amenity of the housing stock on the site.

Is the variation well founded?

This Clause 4.6 variation request is well founded as it demonstrates, as required by Clause 4.6 of the Randwick LEP 2012, that:

Compliance with the development standard would be unreasonable and unnecessary in the circumstances of this development;

There are sufficient environmental planning grounds to justify the requested contravention;

The development achieves and is consistent with the objectives of the development standard and the objectives of the R2 Low Density Zone;

71 Darley Road, Randwick

The proposed development is in the public interest and there is no public benefit in maintaining the standard; and

The contravention does not raise any matter of State or Regional Significance.

The variation is therefore considered well founded.

Prepared by Damian O'Toole Town Planning Pty Ltd

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Appendix 3: DCP Compliance Table

3.1 Section B2: Heritage

The relevance of the provisions under Section B2 of the DCP has been considered by Council's Heritage Planner and the comments have been provided in Appendix 1 of this report.

3.2 Section C1: Low Density Residential

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	
2	Site planning	Site = 668.9m ²	
4	Building design		
4.4	Roof Design and Features		
	<i>Rooftop terraces</i> i) on stepped buildings only (not on uppermost or main roof) ii) above garages on sloping sites (where garage is on low side) <i>Dormers</i> iii) Dormer windows do not dominate iv) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof. v) Multiple dormers consistent vi) Suitable for existing <i>Clerestory windows and skylights</i> vii) Sympathetic to design of dwelling <i>Mechanical equipment</i> viii) Contained within roof form and not visible from street and surrounding properties.	The proposed 2x skylights are sympathetic to the design of the dwelling and are not visible from the streetscape.	Yes, complies
4.5	Colours, Materials and Finishes		
	i) Schedule of materials and finishes ii) Finishing is durable and non-reflective. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) recycle and re-use sandstone (See also section 8.3 foreshore area.)	A condition of consent will be issued requiring that the finishes are to be consistent with the existing building and adjacent development to maintain the integrity and amenity of the heritage dwelling.	Yes, subject to condition
5	Amenity		
5.2	Energy Efficiency and Natural Ventilation		
	i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as: <ul style="list-style-type: none"> • Skylights (ventilated) • Clerestory windows • Fanlights above doorways • Highlight windows in internal partition walls 	The submitted development has been accompanied with a BASIX Certificate identifying compliance with thermal and water energy. In addition, the	Yes, complies

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DCP Clause	Controls	Proposal	Compliance
	ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries iii) living rooms contain windows and doors opening to outdoor areas <i>Note:</i> The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable	location of windows is considered as acceptable, addressing the matter of natural light and ventilation.	
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)	The proposed window faces the rear of the dwelling. As such, there are minimal concern of visual privacy.	Yes, complies

Responsible officer: William Joannides, Customer Service Planning and Development Officer

File Reference: DA/179/2022

Development Consent Conditions



D45/22

DA No:	DA/179/2022
Property:	71 Darley Road, RANDWICK NSW 2031
Proposal:	Alterations and additions to the existing dwelling house including changes to the window openings on southern elevation and internal works (Heritage Item and Heritage Conservation Area).
Recommendation:	Approval

Development Consent Conditions

GENERAL CONDITIONS

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

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

Approved Plans & Supporting Documentation

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

Plan	Drawn by	Dated	Received by Council
Proposed Site Roof Plan, Project No. PP-03, Dwg No. A100, Rev. A	Pamment Projects	04/04/2022	07/04/2022
Level 1, Project No. PP-03, Dwg No. A201, Rev. A	Pamment Projects	04/04/2022	07/04/2022
Roof Plan, Project No. PP-03, Dwg No. A202, Rev. A	Pamment Projects	04/04/2022	07/04/2022
Existing Level 1 & Demolition Plan, Project No. PP-03, Dwg No. A212, Rev. A	Pamment Projects	04/04/2022	07/04/2022
Existing Roof & Demolition Plan, Project No. PP-03, Dwg No. A213, Rev. A	Pamment Projects	04/04/2022	07/04/2022

South Elevation, Project No. PP-03, Dwg No. A301, Rev. B	Pamment Projects	15/06/2022	24/06/2022
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BASIX Certificate No.	Dated	Received by Council
A453096	21 March 2022	07 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

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

Heritage Conservation

- A brief photographic record of the key elements of the spaces proposed for alteration shall be submitted to Council to be attached to the DA. That is any original door and door furniture, fenestration openings, elements of the removed wall such as skirting or picture rail or vents.
- Any original fabric and elements are recommended to be recycled on site where possible. These should be discretely marked (reverse side) where possible with date of work and former location (e.g. former door to master bedroom).

External Colours, Materials & Finishes

- Colours, materials and finishes of external surfaces are to be compatible with the existing building and surrounding buildings in the heritage conservation area and consistent with the architectural style of the building.

Section 7.12 Development Contributions

- In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$155,595.00 the following applicable monetary levy must be paid to Council: \$777.95.

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

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

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

Long Service Levy Payments

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

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

Security Deposits

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

- \$600.00 - Damage / Civil Works Security Deposit

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

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

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

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

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

BASIX Requirements

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

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

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

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

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

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

Certification, PCA & Other 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 Certifying Authority (PCA)* 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 PCA 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 Certifying Authority*; and
- e) at least two days notice must be given to the Council, in writing, prior to commencing any works.

Construction Site Management Plan

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

- location and construction of protective fencing / hoardings to the perimeter of the site;
- location of site storage areas/sheds/equipment;
- location of building materials for construction;
- provisions for public safety;
- dust control measures;
- site access location and construction;
- details of methods of disposal of demolition materials;

- protective measures for tree preservation;
- provisions for temporary sanitary facilities;
- location and size of waste containers/bulk bins;
- details of proposed sediment and erosion control measures;
- provisions for temporary stormwater drainage;
- construction noise and vibration management;
- construction traffic management details.

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

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

Demolition Work Plan

13. 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 Certifying Authority (PCA), 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.

- a) 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.

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

14. Building works are required to be inspected by the Principal Certifying Authority, 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

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

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

Restriction on Working Hours

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

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

17. 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 Certifying Authority 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 Certifying Authority.
 - 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 Certifying Authority 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 Certifying authority as soon as practicable after completion of the asbestos related works, which confirms that the asbestos

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

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

Public Safety & Site Management

18. Public safety and convenience must be maintained at all times during demolition, excavation and construction works and the following requirements must be complied with:

- a) Public access to the building site and materials must be restricted by existing boundary fencing or temporary site fencing having a minimum height of 1.5m, to Council's satisfaction.

Temporary site fences are required to be constructed of cyclone wire fencing material and be structurally adequate, safe and constructed in a professional manner. The use of poor quality materials or steel reinforcement mesh as fencing is not permissible.

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

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

- e) Sediment and erosion control measures, must be implemented throughout the site works in accordance with the manual for Managing Urban Stormwater – Soils and Construction, published by Landcom, and details are to be included in the *Construction site Management Plan*.
- 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.

Protection of Heritage Item

19. An architect or tradesperson suitably qualified and experienced in heritage conservation shall be engaged to oversee the carrying out of these works.

20. All work shall be carried out in accordance with the principles of the Australia ICOMOS Burra Charter and to the satisfaction of the Director City Planning.

REQUIREMENTS 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

21. 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

22. 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.

OPERATIONAL CONDITIONS

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

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

Use of Premises

23. The premises must only be used as a single residential dwelling and must not be used for dual or multi-occupancy purposes.

External Lighting

24. 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.

GENERAL ADVISORY NOTES

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

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

Failure to comply with these requirements is an offence, which renders the responsible person liable to a maximum penalty of \$1.1 million. Alternatively, Council may issue a penalty infringement notice (for up to \$6,000) for each offence. Council may also issue notices and

orders to demolish unauthorised or non-complying building work, or to comply with the requirements of Council's development consent.

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

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

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

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

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

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

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

For further information please contact Council on 9093 6971.

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

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

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

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

- A9 External paths and ground surfaces are to be constructed at appropriate levels and be graded and drained away from the building and adjoining premises, so as not to result in the entry of water into the building, or cause a nuisance or damage to any adjoining land.
- Finished ground levels external to the building are to be consistent with the development consent and are not to be raised, other than for the provision of approved paving or the like on the ground.
- A10 Prior to commencing any works, the owner/builder should contact *Dial Before You Dig* on 1100 or www.dialbeforeyoudig.com.au and relevant Service Authorities, for information on potential underground pipes and cables within the vicinity of the development site.
- A11 The necessary development consent and a construction certificate or a complying development certificate (as applicable) must be obtained for any proposed *cooling towers* and external plant and equipment, if not included in this consent.
- A12 An application must be submitted to an approved by Council prior to the installation and operation of any proposed greywater or wastewater treatment systems, in accordance with the *Local Government Act 1993*.
- Greywater/Wastewater treatment systems must comply with the relevant requirements and guidelines produced by NSW Health, NSW Office of Environment and Heritage and other relevant regulatory requirements.
- A13 There are to be no emissions or discharges from the premises, which will give rise to an environmental or public nuisance or result in an offence under the *Protection of the Environment Operations Act 1997* and *Regulations*.