

Randwick Local Planning Panel (Electronic) Meeting

Thursday 26 May 2022



RANDWICK LOCAL PLANNING PANEL (ELECTRONIC)

Notice is hereby given that a Randwick Local Planning Panel (Electronic) meeting will be held online via Microsoft Teams on Thursday, 26 May 2022

Declarations of Pecuniary and Non-Pecuniary Interests

Development Application Reports

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Kerry Kyriacou
DIRECTOR CITY PLANNING

Development Application Report No. D25/22

Subject: 2/54 Coogee Bay Road, Randwick (DA/656/2021)

Proposal: Alterations and additions to existing residential flat building including alterations to unit 2 to enclose the lower terrace and associated works.

Ward: East Ward

Applicant: Design Your Space

Owner: Mr E Steiner & Mrs D Lederman


Cost of works: \$49,786

Reason for referral: Floor space ratio development standard non-compliance >10%

Recommendation

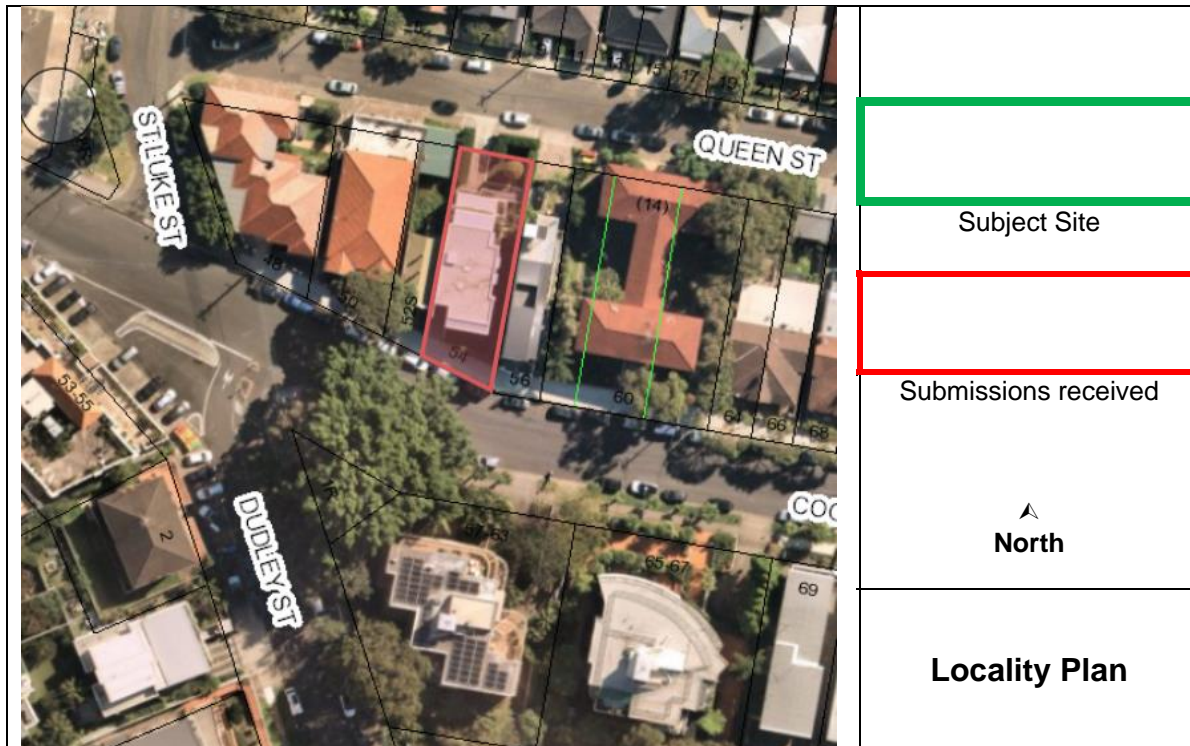
- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the floor space ratio development standard in Clause 4.4 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning, Industry and Environment may be assumed.
- B. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/656/2021 for alterations and additions to existing residential flat building including alterations to unit 2 to enclose the lower terrace and associated works, at No. 2/54 Coogee Bay Road, Randwick, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (med density res) - DA/656/2021 - 2/54 Coogee Bay Road, Coogee

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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 floor space ratio by more than 10%.

The proposal seeks development consent for alterations and additions to the existing residential flat building, specifically, alterations to unit 2 to enclose the lower terrace adjacent to the front boundary facing Coogee Bay Road and associated works.

The key issues associated with the proposal relate to the FSR non-compliance, the piecemeal enclosure of the front terrace and the glass awning.

The proposal is recommended for approval subject to a non-standard condition that requires the deletion of the glass awning within the front setback area.

2. Site Description and Locality

The site is located on the north side of Coogee Bay Road, near the intersection with Dudley Street and St Luke Street.

The subject site is a rectangular shaped allotment comprising a total site area of 445.3sqm, with splayed frontage of 12.65m to Coogee Bay Road to the south and 12.19m to Queen Street to the north. The eastern boundary of the site is 38.31m in length and the western boundary is 34.71m.

The site currently occupied by a part 3, part 4 storey residential flat building with four (4) units and basement level parking accessed via Queen Street to the rear.

The site is not a heritage item, located in heritage conservation area and does not contain any significant trees or landscape elements.



Figure 1 – Google Streetview



Figure 2 – Existing lower terrace (looking east)

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Figure 3 - Existing lower terrace (looking north)



Figure 4 – View from Coogee Bay Road



Figure 5 – View from the front boundary

3. Relevant history

DA/621/2020

Development Application No. DA/621/2020 was withdrawn on 11/03/2021 for proposed minor works to an existing apartment including winter garden enclosure of the existing lowered terrace.

Council's Assessment Officer for DA/621/2020 recommended the application be withdrawn on the basis that the substantial exceedance of the FSR development standard would not be supported and the enclosed terrace would not comply with Part 4.8 of the RDCP. In particular, that the **piecemeal enclosure of balconies or terraces to one dwelling within a building is not supported, and in this case there are no extenuating circumstances or compelling argument to justify the setting aside of those controls to a relatively new building.**

PL/27/2021

Pre-Lodgement Application No. PL/27/2021 was held on 16/06/2021 for minor works to an existing apartment including the replacement of the eastern awning windows with new sliding windows, a new window to bedroom 3, and to partially enclosed the lowered terrace with a glazed structure, while maintaining it open to the small garden in the east.

The following advice was provided by Council:

- *Replacement of eastern awning windows with new sliding windows and installation of new window to bedroom 3 of ground level unit 2.*

The proposed new and replacement windows are shown in eastern elevation plan and site plan as having a sill height of 1.65m above the internal floor level and will be offset from the windows opposite at No. 56 Coogee Bay Road. The proposed window will meet the minimum requirements for appropriate privacy protection of neighbouring properties under Part C2 of the Randwick DCP for medium density residential development. Therefore, Council does not raise any objections to the proposed new and replacement windows.

- *Partially enclosed the lowered terrace with a glazed structure, while maintaining it open to the small garden in the east.*

GFA: Whilst the proposed partial enclosure of the lower courtyard/terrace to the ground level unit 2 which is set below and facing Coogee Bay Road will be open at the eastern elevation above the planter wall, Council views this area as additional GFA as it will be substantially enclosed with a glazed roof and wall behind the front walls, western pedestrian entry.

This means Council will expect a future DA or S4.55 modification application to have GFA diagrams that include this area as additional GFA that count towards the FSR for the site the maximum of which is 0.9:1, despite the SEE indicating otherwise. It is noted that the previously approved FSR of 1.11:1 which exceeds the maximum FSR by 23%.

Delegation:

As the existing development currently exceeds the maximum FSR by more than 10%, the delegated authority for the development will be the Randwick Local Planning Panel (RLPP) irrespective of whether the proposal is sought under a new DA or a S4.55 modification application.

Should a DA be submitted for the partial enclosure, you're DA is required to include a cl.4.6 Exceptions to development standards and a proforma of a cl. 4.6 exception is attached to this advice in Appendix A to assist. In relation to a S4.55 modification application, whilst a cl.4.6 is not required with a s4.55 application, your SEE is required to address the objectives of the FSR standard and R3 zone objective – the most relevant are provided as follows:

FSR objective:

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

R3 zone objective:

- *To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.*

Council advises that there are concerns that a case can adequately be made to satisfy the objectives in that the proposed glass enclosure will be viewable from the street particularly for pedestrians walking along the footpath. Council advises that it does not generally support the piece meal enclosure of balconies or terraces on existing residential flat buildings (S4.8 of Part C2 of the RDCP). Whilst it is noted that the proposed glass framing is sought to be consistent with the framing of the existing balustrades sitting above, it is not considered to have achieved a level of integration with the overall architectural form and detail of the residential flat building due to the structure being located within the front setback and should the planting be removed the vertical elements would be more evident from street level.

It is recommended the Pre DA documentation be amended to be incorporated into a future DA or S4.55 modification by removing the vertical glazing at the southern end to ensure that this area remains substantially open to the southern street side and east thereby not being viewed as an enclosure and additional GFA affecting the FSR for the site.

This recommended amendment will also improve ventilation for Bedroom 2 which will be by the proposed Pre DA reduced to only an opening at the eastern end above the planter wall.

4. Proposal

The proposal seeks development consent for alterations and additions to existing residential flat building including alterations to unit 2 to enclose the lower terrace and associated works.

Amended proposal was received by Council on 22/04/2022 which reduced the size of the enclosed terrace and introduced a new awning to the uncovered portion of the terrace.

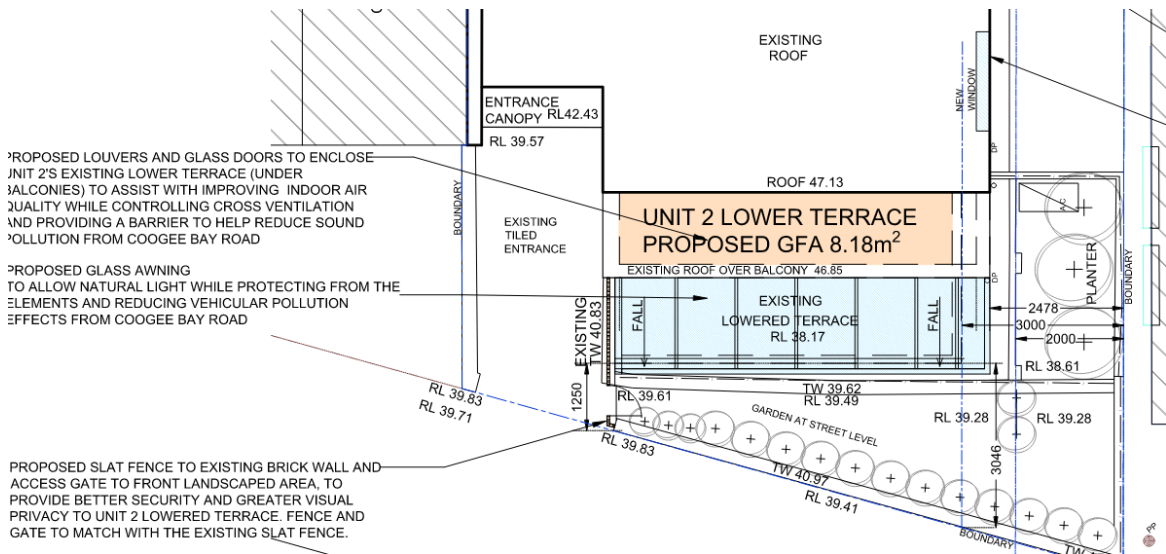


Figure 6 – Site Plan and Location Map

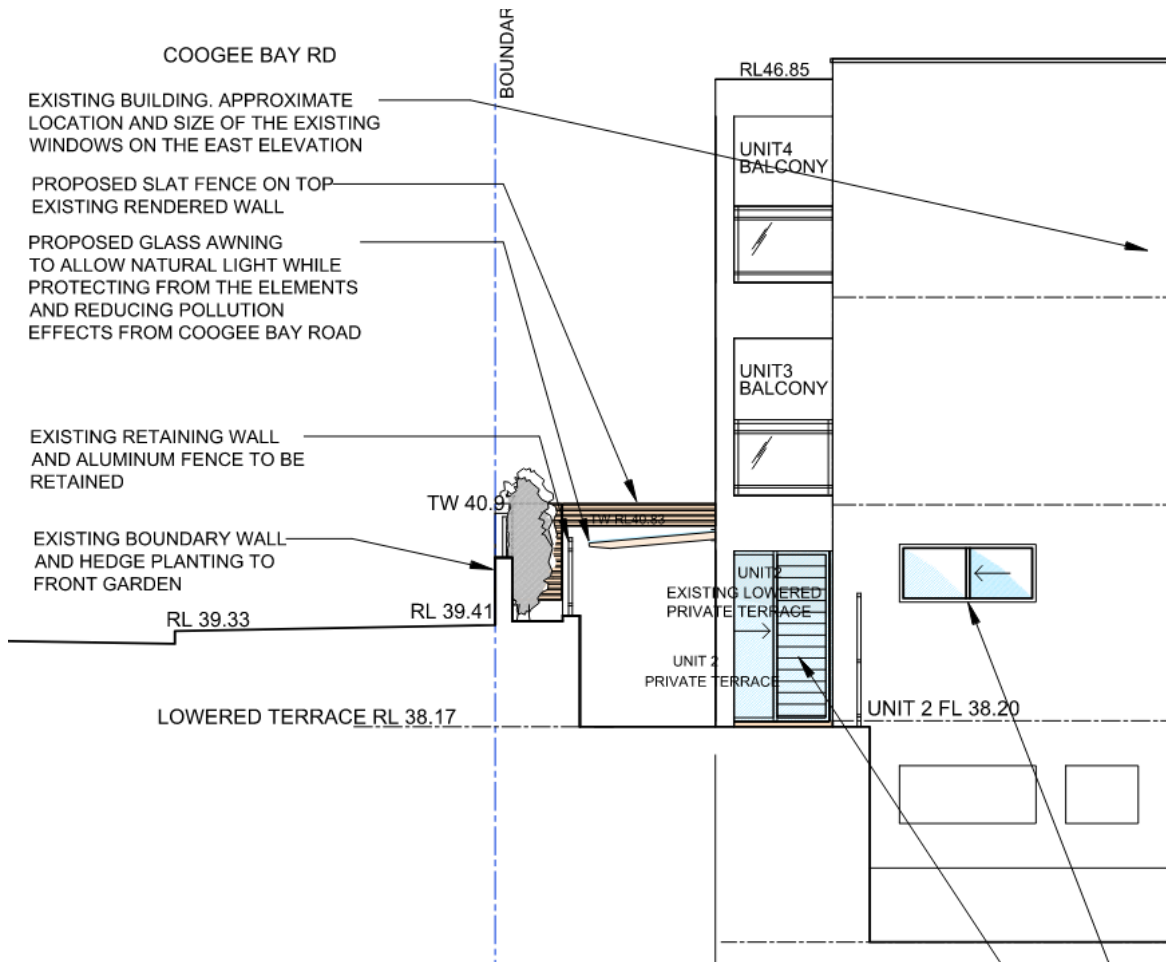


Figure 7 – Proposed East Elevation

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5. Notification

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

The amended proposal noted in Section 4 was not renotified as it was not considered to result in any additional environmental impacts to adjoining properties in accordance with the Randwick Community Participation Plan.

6. Relevant Environment Planning Instruments

6.1. SEPP 65 – Design Quality of Residential Apartment Development

SEPP 65: Design Quality of Residential Flat Development applies to all new residential flat buildings or substantial redevelopment where it comprises three or more storeys and four or more self-contained dwellings. The proposal is not classified as substantial redevelopment and as such, the provisions of SEPP 65 and the Apartment Design Guide (ADG) do not apply.

Notwithstanding the above, the provisions of Parts 4E (Private Open Space and Balconies) and 4J (Noise and Pollution) of the ADG are relevant to the proposal.

6.2. SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate is not required as the cost of works is below \$50,000.

6.3. Randwick Local Environmental Plan 2012 (LEP)

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

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.3: Building height (max)	12m	5.36m	Yes
Cl 4.4: Floor space ratio (max)	0.9:1	1.05:1	No

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

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

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Existing	Proposal	Proposed variation	Proposed variation (%)
Cl 4.4: Floor space ratio (max)	0.9:1 (400.7m ²)	1.03:1 (458.7m ²)	1.05:1 (466.9m ²)	66.2m ² Net increase from existing development = 8.18m ²	16.5% Net difference from existing development = 4.9%

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 (Cl 4.4)

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

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

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

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

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

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

“The proposed development relates to treatments proposed to an existing lower ground floor terrace. The works to the lower ground floor terrace will sit predominately below street level. The works proposed will have a negligible impact on the existing streetscape presentation and to the overall bulk and scale of the building. The works will not add any visual massing to the building that would significantly alter its current bulk and scale when viewed from the public domain. No impact to the desired future character of the locality is anticipated to the works not being readily discernible from the street.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development by virtue of its form, massing or scale (as reflected by FSR), offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site’s visual catchment.”

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

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

“The proposal relates to the semi-enclosure of the existing terrace which sits below street level. Currently, this terrace is subjected to adverse impacts with regard to noise and air quality as a result of its proximity to the busy Coogee Bay Road. In that regard, the development seeks to improve the environmental quality and amenity of this private open space area.

As previously mentioned, the proposal will have a negligible impact on the overall built form and its current level of articulation.”

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

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

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

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

“The apartment sits below ground level and the proposed works raise no issues of overshadowing, privacy impact or view impacts. No visual bulk issues are associated with the proposal given the siting of the terrace below street level.

The works have been setback 3m from the eastern side boundary which will minimise any potential privacy. The partial enclosure of this space will improve the acoustic amenity to units within the existing building and neighbouring properties.”

Assessing officer’s comment: The above statements are concurred with and the applicant’s written request has adequately demonstrated that compliance with the floor space ratio development standard is unreasonable or unnecessary in the circumstances of the case. The proposal seeks enclosure of an existing under covered balcony area within the building envelope and as such, does not add any significant bulk or scale to the existing built form. The proposal, as conditioned to delete the glass awning, would not result in any significant additional adverse amenity or visual impacts to the streetscape, the neighbouring properties, or the current occupants with regards to private open space, solar access, overshadowing, views, acoustic and visual privacy, and access to natural light and ventilation. A BASIX Certificate is not required for alterations and additions that cost under \$50,000 and the subject

site is not identified as an item of local heritage significance, or within a heritage conservation area. The proposal therefore satisfies the objectives of the floor space ratio development standard.

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

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

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

"Sufficient environmental planning grounds exist to justify the FSR variation namely that the proposal relates to the semi-enclosing of the terrace to improve and protect the amenity of this space. Currently, this terrace is going underutilised due to the adverse impacts associated with the terrace being in close proximity to the busy Coogee Bay Road. The works seek to minimise the impacts of the traffic noise and air quality as well as better weather protection. This is reflected in the design which provides a solid buffer between the street and the terrace which has triggered the need to include this space as gross floor area. In that regard, the additional floor space does not any additional massing to the existing built form. Furthermore, the terrace sits below street level and will have no impact on the existing and desired future character of the street.

The proposal does not raise any concerns regarding amenity impact neighbouring properties with regard to privacy, views or overshadowing.

I have formed the considered opinion that sufficient environmental planning grounds exist to justify the variation including the general maintenance of the overall of the height, bulk and scale of the development. The increase to the FSR is a result of the desire to improve the amenity of this terrace which can only be achieved with permanent fixed treatments which has triggered the need to include the area of terrace as gross floor area. The intent of this terrace will continue to be as a private open space for the occupants of unit 2.

The developments compliance with the objectives of the FSR standard and the general paucity of adverse environmental impact also giving weight to the acceptability of the variation sought."

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

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

To determine whether the proposal will be in the public interest, an assessment against the objectives of the Floor Space Ratio standard and R3 zone is provided below:

Assessment against objectives of floor space ratio standard

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

The development is consistent with the objectives of the floor space ratio standard.

Assessment against objectives of the R3 zone

The objectives of R3 zone are:

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

Assessing officer's comment: The reasons outlined by the applicant above are concurred with and it is considered that the proposal meets the objectives of the R3 Medium Density zone. The proposed development will provide for the housing needs of the community, provide a variety of housing types, contribute to the desired future character of the area, protect the amenity of residents and encourage housing affordability.

The development is consistent with the objectives of the floor space ratio standard and the R3 zone. Therefore the development will be in the public interest.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

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

Conclusion

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

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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

9. Environmental Assessment

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

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Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 2 and the discussion in key issues below
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant 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.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

10. Conclusion

That the application for alterations and additions to existing residential flat building including alterations to unit 2 to enclose the lower terrace, and associated works be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013
- The proposal is consistent with the specific objectives of the R3 zone.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- The development enhances the visual quality of the public domain/streetscape.
- The proposed development will make a positive contribution to the commercial centre.

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



Randwick Council
30 Frances Street
Randwick NSW 2031

RE: CLAUSE 4.6 REQUEST TO VARY THE FLOOR SPACE RATIO 2/54 COOGEE BAY ROAD, RANDWICK

1.0 Introduction

This clause 4.6 variation has been prepared having regard to the Land and Environment Court judgements in the matters of *Wehbe v Pittwater Council* [2007] NSWLEC 827 (*Wehbe*) at [42] – [48], *Four2Five Pty Ltd v Ashfield Council* [2015] NSWCA 248, *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118, *Baron Corporation Pty Limited v Council of the City of Sydney* [2019] NSWLEC 61, and *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

2.0 Randwick Local Environmental Plan 2012 (“RLEP”)

2.1 Clause 4.4 – Floor Space Ratio

Pursuant to Clause 4.4 of Randwick Local Environmental Plan 2012 (RLEP) the floor space ratio control applicable to the site is 0.9:1. The objectives of this control are as follows:

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

It has been determined that the existing building has an approved FSR of 1.11:1 per DA consent DA90/2008.

In determining the current GFA, as per the definition subject to the current in force RLEP, the existing GFA of the building is calculated at 1.03:1. The proposed works

to the terrace would require 8.18m² of GFA to be added. The proposed FSR of the building is proposed 1.05:1 which equates to a variation of 17.4%.

2.2 Clause 4.6 – Exceptions to Development Standards

Clause 4.6(1) of RLEP provides:

(1) *The objectives of this clause are:*

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

The decision of Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (“*Initial Action*”) provides guidance in respect of the operation of clause 4.6 subject to the clarification by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130 at [1], [4] & [51] where the Court confirmed that properly construed, a consent authority has to be satisfied that an applicant’s written request has in fact demonstrated the matters required to be demonstrated by cl 4.6(3).

Initial Action involved an appeal pursuant to s56A of the Land & Environment Court Act 1979 against the decision of a Commissioner.

At [90] of *Initial Action* the Court held that:

“In any event, cl 4.6 does not give substantive effect to the objectives of the clause in cl 4.6(1)(a) or (b). There is no provision that requires compliance with the objectives of the clause. In particular, neither cl 4.6(3) nor (4) expressly or impliedly requires that development that contravenes a development standard “achieve better outcomes for and from development”. If objective (b) was the source of the Commissioner’s test that non-compliant development should achieve a better environmental planning outcome for the site relative to a compliant development, the Commissioner was mistaken. Clause 4.6 does not impose that test.”

The legal consequence of the decision in *Initial Action* is that clause 4.6(1) is not an operational provision and that the remaining clauses of clause 4.6 constitute the operational provisions.

Clause 4.6(2) of RLEP provides:

- (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.

This clause applies to the clause 4.4 FSR Development Standard.

Clause 4.6(3) of RLEP provides:

- (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.*

The proposed development does not comply with the FSR provision at 4.4 of RLEP which specifies a maximum FSR however strict compliance is considered to be unreasonable or unnecessary in the circumstances of this case and there are considered to be sufficient environmental planning grounds to justify contravening the development standard.

The relevant arguments are set out later in this written request.

Clause 4.6(4) of RLEP provides:

- (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.*

In *Initial Action* the Court found that clause 4.6(4) required the satisfaction of two preconditions ([14] & [28]). The first precondition is found in clause 4.6(4)(a). That

precondition requires the formation of two positive opinions of satisfaction by the consent authority. The first positive opinion of satisfaction (cl 4.6(4)(a)(i)) is that the applicant's written request has adequately addressed the matters required to be demonstrated by clause 4.6(3)(a)(i) (*Initial Action* at [25]).

The second positive opinion of satisfaction (cl 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 development standard and the objectives for development of the zone in which the development is proposed to be carried out (*Initial Action* at [27]). The second precondition is found in clause 4.6(4)(b). The second precondition requires the consent authority to be satisfied that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (*Initial Action* at [28]).

Under cl 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.

Clause 4.6(5) of RLEP provides:

- (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.*

As these proceedings are the subject of an appeal to the Land & Environment Court, the Court has the power under cl 4.6(2) to grant development consent for development that contravenes a development standard, if it is satisfied of the matters in cl 4.6(4)(a), without obtaining or assuming the concurrence of the Secretary under cl 4.6(4)(b), by reason of s 39(6) of the Court Act. Nevertheless, the Court should still consider the matters in cl 4.6(5) when exercising the power to grant development consent for development that contravenes a development standard: *Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at 100; *Wehbe v Pittwater Council* at [41] (*Initial Action* at [29]).

Clause 4.6(6) relates to subdivision and is not relevant to the development. Clause 4.6(7) is administrative and requires the consent authority to keep a record of its assessment of the clause 4.6 variation. Clause 4.6(8) is only relevant so as

to note that it does not exclude clause 4.4 of RLEP from the operation of clause 4.6.

3.0 Relevant Case Law

In *Initial Action* the Court summarised the legal requirements of clause 4.6 and confirmed the continuing relevance of previous case law at [13] to [29]. In particular the Court confirmed that the five common ways of establishing that compliance with a development standard might be unreasonable and unnecessary as identified in *Wehbe v Pittwater Council* (2007) 156 LGERA 446; [2007] NSWLEC 827 continue to apply as follows:

17. *The first and 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: Wehbe v Pittwater Council at [42] and [43].*
18. *A second way is to establish that the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary: Wehbe v Pittwater Council at [45].*
19. *A third way is to establish that the underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable: Wehbe v Pittwater Council at [46].*
20. *A fourth way is to establish that the development standard has been virtually abandoned or destroyed by the Council's own decisions in granting development consents that depart from the standard and hence compliance with the standard is unnecessary and unreasonable: Wehbe v Pittwater Council at [47].*
21. *A fifth way is to establish that the zoning of the particular land on which the development is proposed to be carried out was unreasonable or inappropriate so that the development standard, which was appropriate for that zoning, was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in the circumstances of the case would also be unreasonable or unnecessary: Wehbe v Pittwater Council at [48]. However, this fifth way of establishing that compliance with the development standard is unreasonable or unnecessary is limited, as explained in Wehbe v Pittwater Council at [49]-[51]. The power under cl 4.6 to dispense with compliance with the development standard is not a general planning power to determine the appropriateness of the development*

standard for the zoning or to effect general planning changes as an alternative to the strategic planning powers in Part 3 of the EPA Act.

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

The relevant steps identified in *Initial Action* (and the case law referred to in *Initial Action*) can be summarised as follows:

1. Is clause 4.4 of RLEP a development standard?
2. Is the consent authority satisfied that this written request adequately addresses the matters required by clause 4.6(3) by demonstrating that:
 - (a) compliance is unreasonable or unnecessary; and
 - (b) there are sufficient environmental planning grounds to justify contravening the development standard
3. Is the consent authority satisfied that the proposed development will be in the public interest because it is consistent with the objectives of clause 4.4 and the objectives for development for in the zone?
4. Has the concurrence of the Secretary of the Department of Planning and Environment been obtained?
5. Where the consent authority is the Court, has the Court considered the matters in clause 4.6(5) when exercising the power to grant development consent for the development that contravenes clause 4.4 of RLEP?

4.0 Request for variation

4.1 Clause 4.6(3)(a) – Whether compliance with the development standard is unreasonable or unnecessary.

The common approach for an applicant to demonstrate that compliance with a development standard is unreasonable or unnecessary are set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827.

The first option, which has been adopted in this case, is to establish that compliance with the development standard is unreasonable and unnecessary

because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

Consistency with objectives of the Floor Space Ratio standard

An assessment as to the consistency of the proposal when assessed against the objectives of the standard is as follows:

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

Response: The proposed development relates to treatments proposed to an existing lower ground floor terrace. The works to the lower ground floor terrace will sit predominately below street level. The works proposed will have a negligible impact on the existing streetscape presentation and to the overall bulk and scale of the building. The works will not add any visual massing to the building that would significantly alter its current bulk and scale when viewed from the public domain. No impact to the desired future character of the locality is anticipated do to the works not being readily discernible from the street.

Consistent with the conclusions reached by Senior Commissioner Roseth in the matter of Project Venture Developments v Pittwater Council (2005) NSW LEC 191 I have formed the considered opinion that most observers would not find the proposed development by virtue of its form, massing or scale (as reflected by FSR), offensive, jarring or unsympathetic in a streetscape context nor having regard to the built form characteristics of development within the site's visual catchment.

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

Response: The proposal relates to the semi-enclosure of the existing terrace which sits below street level. Currently, this terrace is subjected to adverse impacts with regard to noise and air quality as a result of its proximity to the busy Coogee Bay Road. In that regard, the development seeks to improve the environmental quality and amenity of this private open space area.

As previously mentioned, the proposal will have a negligible impact on the overall built form and its current level of articulation.

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

Response: The subject site is not located within a conservation area nor in proximity to a heritage item. In any case, the development sits below street level and has no impact on the existing character of the streetscape.

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

Response: The apartment sits below ground level and the proposed works raise no issues of overshadowing, privacy impact or view impacts. No visual bulk issues are associated with the proposal given the siting of the terrace below street level.

The works have been setback 3m from the eastern side boundary which will minimise any potential privacy. The partial enclosure of this space will improve the acoustic amenity to units within the existing building and neighbouring properties.

Consistency with zone objectives

The subject site is zoned R3 Medium Density pursuant to RLEP 2012 with dwelling houses permissible in the zone with consent. The stated objectives of the zone are as follows:

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

Response: The development relates to alterations and additions to an existing residential flat building to partially enclose a terrace.

- *To provide a variety of housing types within a medium density residential environment.*

Response: The proposal maintains the established residential flat building use on the site consistent with this objective.

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

Response: N/A

- *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.*

Response: The works proposed to the terrace will have a negligible impact on the existing character of the streetscape. The terrace sits below street level and the proposed works would not be readily discernible from the street. As such, it is

considered that the proposed works are consistent with the desired future character of the area.

- *To protect the amenity of residents.*

Response: The works will have no impact on the amenity of residents with regard to privacy, views or overshadowing.

- *To encourage housing affordability.*

Response: N/A

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

Response: N/A

The proposed works are permissible and consistent with the stated objectives of the zone.

The non-compliant component of the development, as it relates to FSR, demonstrates consistency with objectives of the R3 Medium Density zone and the FSR standard objectives. Adopting the first option in *Wehbe* strict compliance with the FSR standard has been demonstrated to be unreasonable and unnecessary.

4.2 Clause 4.6(4)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

In Initial Action the Court found at [23]-[24] that:

23. *As to the second matter required by cl 4.6(3)(b), the grounds relied on by the applicant in the written request under cl 4.6 must be “environmental planning grounds” by their nature: see *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [26]. 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 s 1.3 of the EPA Act.*
24. *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].*

Sufficient environmental planning grounds exist to justify the FSR variation namely that the proposal relates to the semi-enclosing of the terrace to improve and protect the amenity of this space. Currently, this terrace is going underutilised due to the adverse impacts associated with the terrace being in close proximity to the busy Coogee Bay Road. The works seek to minimise the impacts of the traffic noise and air quality as well as better weather protection. This is reflected in the design which provides a solid buffer between the street and the terrace which has triggered the need to include this space as gross floor area. In that regard, the additional floor space does not any additional massing to the existing built form. Furthermore, the terrace sits below street level and will have no impact on the existing and desired future character of the street.

The proposal does not raise any concerns regarding amenity impact neighbouring properties with regard to privacy, views or overshadowing.

I have formed the considered opinion that sufficient environmental planning grounds exist to justify the variation including the general maintenance of the overall of the height, bulk and scale of the development. The increase to the FSR is a result of the desire to improve the amenity of this terrace which can only be achieved with permanent fixed treatments which has triggered the need to include the area of terrace as gross floor area. The intent of this terrace will continue to be as a private open space for the occupants of unit 2.

The developments compliance with the objectives of the FSR standard and the general paucity of adverse environmental impact also giving weight to the acceptability of the variation sought.

The proposed development achieves the objects in Section 1.3 of the EPA Act, specifically:

- The proposal promotes the orderly and economic use and development of land (1.3(c)).
- The development represents good design (1.3(g)).

- The building as designed facilitates its proper construction and will ensure the protection of the health and safety of its future occupants (1.3(h)).

It is noted that in *Initial Action*, the Court 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:

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.*

There are sufficient environmental planning grounds to justify contravening the development standard.

4.3 Clause 4.6(a)(iii) – Is the proposed development in the public interest because it is consistent with the objectives of clause 4.4 and the objectives of the R3 Medium Density Residential zone

The consent authority needs to be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

Preston CJ in *Initial Action* (Para 27) described the relevant test for this as follows:

"The matter in cl 4.6(4)(a)(ii), with which the consent authority or the Court on appeal 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, or the Court on appeal, cannot be satisfied that the development will be in the public interest for the purposes of cl 4.6(4)(a)(ii)."

As demonstrated in this request, the proposed development 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.

Accordingly, the consent authority can be satisfied that the proposed development will be in the public interest if the standard is varied because it is consistent with the objectives of the standard and the objectives of the zone.

4.4 Secretary's concurrence

By Planning Circular dated 21st February 2018, the Secretary of the Department of Planning & Environment advised that consent authorities can assume the concurrence to clause 4.6 request except in the circumstances set out below:

- Lot size standards for rural dwellings;
- Variations exceeding 10%; and
- Variations to non-numerical development standards.

The circular also provides that concurrence can be assumed when an LPP is the consent authority where a variation exceeds 10% or is to a non-numerical standard, because of the greater scrutiny that the LPP process and determinations are subject to, compared with decisions made under delegation by Council staff.

Concurrence of the Secretary can therefore be assumed in this case.

5.0 Conclusion

Having regard to the clause 4.6 variation provisions we have formed the considered opinion:

- (a) that the contextually responsive development is consistent with the zone objectives, and
- (b) that the contextually responsive development is consistent with the objectives of the FSR standard, and
- (c) that there are sufficient environmental planning grounds to justify contravening the development standard, and
- (d) that having regard to (a), (b) and (c) above that compliance with the FSR development standard is unreasonable or unnecessary in the circumstances of the case, and
- (e) that given the developments ability to comply with the zone and FSR standard objectives that approval would not be antipathetic to the public interest, and

- (f) that contravention of the development standard does not raise any matter of significance for State or regional environmental planning; and
- (g) Concurrence of the Secretary can be assumed in this case.

Pursuant to clause 4.6(4)(a), the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3) being:

- (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.*

As such, I have formed the highly considered opinion that there is no statutory or environmental planning impediment to the granting of a FSR variation in this instance.

Boston Blyth Fleming Pty Limited

William Fleming
Planner

Appendix 2: DCP Compliance Table

3.1 Section C2: Medium Density Residential

D25/22

DCP Clause	Control	Proposal	Compliance
2. Site Planning			
2.3	Private and communal open space		
2.3.1	Private open space		
	Private open space is to be: (i) Directly accessible from the living area of the dwelling. (ii) Open to a northerly aspect where possible so as to maximise solar access. (iii) Be designed to provide adequate privacy for residents and where possible can also contribute to passive surveillance of common areas.	The subject unit maintains adequate private open space and the existing rear balcony is directly accessible from the open plan living areas.	Yes
	For residential flat buildings: (vi) Each dwelling has access to an area of private open space in the form of a courtyard, balcony, deck or roof garden, accessible from within the dwelling. (vii) Private open space for apartments has a minimum area of 8m ² and a minimum dimension of 2m.	The rear balcony satisfies the minimum area/dimension requirements.	Yes
3. Building Envelope			
3.1	Floor space ratio		
	0.9:1	1.05:1	See Section 7.
3.2	Building height		
	12m	5.36m	Yes
3.4	Setbacks		
3.4.2	Front setback		
	i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street. Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances to allow for suitable landscaped areas to building entries.	See below.	Satisfactory, subject to condition
	The proposed glass awning is setback 1m to the front boundary and the balcony enclosure is setback 2.7m. The proposed balcony enclosure satisfies the setback objectives on the basis that the undercroft area is existing and the enclosure would maintain the alignment of private open space at the front façade of the building. Notwithstanding the above, the proposed awning protrudes forward of the building line and existing front façade. The awning is not consistent with the predominant		

DCP Clause	Control	Proposal	Compliance
	setback alignment and relies heavily upon the existing landscaping to minimize the visual impact from the street. The introduction of the awning element to the façade in addition to the balcony enclosure results in excessive glazing. The glass awning adds to the bulk and scale of the balcony enclosure and would set an undesirable precedent for the site and the neighbouring properties. The awning would not significantly benefit the occupant's amenity in terms of traffic noise and wind impacts beyond that associated with the as balcony enclose. For these reasons, Condition 2 requires the awning to be deleted.		
3.4.3	Side setback		
	Residential flat building Comply with the minimum side setback requirements stated below: 12m ≤ site frontage width < 14m: 2m	2.478m	Yes
4. Building Design			
4.4	External wall height and ceiling height		
	(iii) The minimum ceiling height is to be 2.7m for all habitable rooms.	The proposal maintains the floor to ceiling height of the existing unit.	Yes
4.7	Apartment layout		
	(i) Maximise opportunities for natural lighting and ventilation through the following measures: <ul style="list-style-type: none"> - Providing corner, cross-over, cross-through and double-height maisonette / loft apartments. - Limiting the depth of single aspect apartments to a maximum of 6m. - Providing windows or skylights to kitchen, bathroom and laundry areas where possible. Providing at least 1 openable window (excluding skylight) opening to outdoor areas for all habitable rooms and limiting the use of borrowed light and ventilation.	The proposal includes new glazed sliding doors, windows and louvres to bedrooms 1 and 2. This is not considered to result in significant adverse impacts with regards to natural lighting and ventilation to the bedrooms on the basis that louvres and windows may be opened, and the glazing allows natural lighting.	Satisfactory
	(ii) Design apartment layouts to accommodate flexible use of rooms and a variety of furniture arrangements.	The proposed enclosure provides additional space to the unit for flexible uses.	Yes
	(iii) Provide private open space in the form of a balcony, terrace or courtyard for each and every apartment unit in a development.	The existing rear balcony and front enclosure provide sufficient private open space to the occupants.	Yes
4.8	Balconies		
	i) Provide a primary balcony and/or private courtyard for all apartments with a minimum area of 8 square metres and a minimum dimension of 2m and consider secondary	See below.	Satisfactory, as conditioned.

D25/22

DCP Clause	Control	Proposal	Compliance
	<p>balconies or terraces in larger apartments.</p> <p>ii) Provide a primary terrace for all ground floor apartments with a minimum depth of 4m and minimum area of 12 square metres. All ground floor apartments are to have direct access to a terrace.</p> <p>iii) The piece meal enclosure of balconies or terraces on existing residential flat buildings will not generally be supported unless an overall scheme for the building is implemented using similar materials or materials which will harmonise with the existing building facade.</p>		
<p>The main private open space area for Unit 2 is located at the rear elevation and directly accessed from the living rooms. The subject terrace is a secondary area of private open space and is directly accessible from Bedrooms 2 and 3 only. The proposed enclosure of the balcony is supportable on the basis that the awning is deleted to minimize the level of glazing to the front elevation, the enclosure does not protrude forward of the balconies above, the front setback alignment, and is adequately integrated within the overall architectural form of the contemporary building. The balcony enclosure improves the functionality of the unit for the occupants and sufficient ventilation/lighting is maintained. For these reasons the enclosure is supported and the objectives of Part 4.8 are upheld.</p>			
4.9	Colours, materials and finishes		
	<p>(i) Provide a schedule detailing the materials and finishes in the development application documentation and plans.</p> <p>(ii) The selection of colour and material palette must complement the character and style of the building.</p> <p>(iv) Use the following measures to complement façade articulation:</p> <ul style="list-style-type: none"> - Changes of colours and surface texture - Inclusion of light weight materials to contrast with solid masonry surfaces - The use of natural stones is encouraged. 	<p>The proposal maintains the existing colours, materials and finishes at the subject site.</p>	<p>Yes</p>
5. Amenity			
5.1	Solar access and overshadowing		
Solar access for proposed development			
	<p>(i) Dwellings must receive a minimum of 3 hours sunlight in living areas and to at least 50% of the private open space between 8am and 4pm on 21 June.</p>	<p>Subject to Condition 2 that requires the awning to be deleted, the proposed conversion to the enclosure maintains the existing building envelope and would not result</p>	<p>Yes</p>

DCP Clause	Control	Proposal	Compliance
	(ii) Living areas and private open spaces for at least 70% of dwellings within a residential flat building must provide direct sunlight for at least 3 hours between 8am and 4pm on 21 June.	in any adverse overshadowing impacts beyond that associated with the existing development at the subject site.	
	(iii) Limit the number of single-aspect apartments with a southerly aspect to a maximum of 10 percent of the total units within a residential flat building.		
	(iv) Any variations from the minimum standard due to site constraints and orientation must demonstrate how solar access and energy efficiency is maximised.		
Solar access for surrounding development			
	(i) Living areas of neighbouring dwellings must receive a minimum of 3 hours access to direct sunlight to a part of a window between 8am and 4pm on 21 June.	Subject to Condition 2 that requires the awning to be deleted, the proposed conversion to the enclosure maintains the existing building envelope and would not result in any adverse overshadowing impacts beyond that associated with the existing development at the subject site.	Yes
	(ii) At least 50% of the landscaped areas of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight to a part of a window between 8am and 4pm on 21 June.		
	(iii) Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further.		
5.2 Natural ventilation and energy efficiency			
	(i) Provide daylight to internalised areas within each dwelling and any poorly lit habitable rooms via measures such as ventilated skylights, clerestory windows, fanlights above doorways and highlight windows in internal partition walls.	The proposed enclosure includes large glass windows and sliding doors for natural ventilation and sunlight to the unit. This includes a single pane of horizontal glass louvres to the southern elevation and eastern elevations. This is considered satisfactory subject to Condition 2 which requires additional louvres to the eastern side of the southern elevation.	Satisfactory, as conditioned.
	(ii) Sun shading devices appropriate to the orientation should be provided for the windows and glazed doors of the building.		
	(iii) All habitable rooms must incorporate windows opening		

D25/22

DCP Clause	Control	Proposal	Compliance
	<p>to outdoor areas. The sole reliance on skylight or clerestory windows for natural lighting and ventilation is not acceptable.</p> <p>(iv) All new residential units must be designed to provide natural ventilation to all habitable rooms. Mechanical ventilation must not be the sole means of ventilation to habitable rooms.</p> <p>(v) A minimum of 90% of residential units should be naturally cross ventilated. In cases where residential units are not naturally cross ventilated, such as single aspect apartments, the installation of ceiling fans may be required.</p> <p>(vi) A minimum of 25% of kitchens within a development should have access to natural ventilation and be adjacent to openable windows.</p> <p>(vii) Developments, which seek to vary from the minimum standards, must demonstrate how natural ventilation can be satisfactorily achieved, particularly in relation to habitable rooms.</p>		
5.3	Visual privacy		
	<p>(i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings.</p> <p>(ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to any habitable room windows on the side elevations of the adjoining residences.</p> <p>(iii) Orient buildings on narrow sites to the front and rear of the lot, utilising the street width and rear garden depth to increase the separation distance.</p> <p>(iv) Locate and design areas of private open space to ensure a high level of user privacy. Landscaping, screen planting, fences, shading devices and screens are used to prevent</p>	<p>The proposed enclosure and new windows are not considered to result in any additional adverse visual privacy impacts beyond that associated with the existing development.</p>	<p>Yes</p>

DCP Clause	Control	Proposal	Compliance
	overlooking and improve privacy. (v) Incorporate materials and design of privacy screens including: <ul style="list-style-type: none"> - Translucent glazing - Fixed timber or metal slats - Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings - Screen planting and planter boxes as a supplementary device for reinforcing privacy protection 		
5.4	Acoustic privacy		
	(i) Design the building and layout to minimise transmission of noise between buildings and dwellings. (ii) Separate “quiet areas” such as bedrooms from common recreation areas, parking areas, vehicle access ways and other noise generating activities. (iii) Utilise appropriate measures to maximise acoustic privacy such as: <ul style="list-style-type: none"> - Double glazing - Operable screened balconies - Walls to courtyards - Sealing of entry doors 	The proposed enclosure is not considered to result in any additional adverse acoustic privacy impacts beyond that associated with the existing terrace area.	Yes

Responsible officer: Tegan Ward, Senior Environmental Planning Officer

File Reference: DA/656/2021

D25/22

Development Consent Conditions (Medium density residential)



Folder /DA No:	DA/656/2021
Property:	2/54 Coogee Bay Road, COOGEE NSW 2034
Proposal:	Alterations and additions to existing residential flat building including alterations to unit 2 to enclose the lower terrace, and associated works.
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:

<i>Plan</i>	<i>Drawn by</i>	<i>Dated</i>
Site Plan and Location Map (Drawing No. A.00.01)	Design Your Space	22/04/2022
Existing Unit 2 – Proposed Development at the Lowered Terrace (Drawing No. A.02.01)	Design Your Space	22/04/2022
Proposed Street Elevation (Drawing No. A.04.01)	Design Your Space	22/04/2022
Proposed Fence and Gate to Entrance Area, Coogee Bay Rd (Drawing No. A.04.02)	Design Your Space	22/04/2022
Proposed Elevation (Drawing No. A.04.03)	Design Your Space	22/04/2022
Proposed East Elevation (Drawing No. A.04.04)	Design Your Space	22/04/2022
Proposed Sections (Drawing No. A.04.05)	Design Your Space	22/04/2022

Amendment of Plans & Documentation

- The approved plans and documents must be amended in accordance with the following requirements:
 - The glass awning fronting Coogee Bay Road shall be deleted.

REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED
The following conditions of consent must be complied with before a 'Construction Certificate' is issued by either Randwick City Council or an Accredited Certifier. All necessary information to demonstrate compliance with the following conditions of consent must be included in the documentation for the construction certificate.
These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, Council's development consent conditions and to achieve reasonable levels of environmental amenity.

Consent Requirements

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

External Colours, Materials & Finishes

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

Compliance Fee

- 5. A development compliance and enforcement fee of \$75 shall be paid to Council in accordance with Council's adopted Fees & Charges Pricing Policy, prior to the issue of a Construction Certificate for development.

Long Service Levy Payments

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

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

Security Deposits

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

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

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

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

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

Sydney Water Requirements

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

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

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

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

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

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

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

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

REQUIREMENTS TO BE INCLUDED IN THE CONSTRUCTION CERTIFICATE

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

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

Compliance with the Building Code of Australia & Relevant Standards

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).

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

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

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

Certification and Building Inspection Requirements

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

A copy of the construction certificate, the approved development consent plans and

consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.

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

Home Building Act 1989

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

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

<p>REQUIREMENTS DURING CONSTRUCTION & SITE WORK</p> <p>The following conditions of consent must be complied with during the demolition, excavation and construction of the development.</p> <p>These conditions have been applied to satisfy the relevant requirements of the <i>Environmental Planning & Assessment Act 1979</i>, <i>Environmental Planning & Assessment Regulation 2000</i> and to provide reasonable levels of public health, safety and environmental amenity during construction.</p>

Inspections during Construction

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

Building & Demolition Work Requirements

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

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

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

Public Safety & Site Management

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

Note: It is an offence under the Protection of the Environment Operations Act 1997 to cause or be likely to cause 'pollution of waters', which may result in significant penalties and fines.
 - d) Access gates and doorways within site fencing, hoardings and temporary site buildings or amenities must not open outwards into the road or footway.
 - e) Bulk bins/waste containers must not be located upon the footpath, roadway or nature strip at any time without the prior written approval of the Council. Applications to place a waste container in a public place can be made to Council's Health, Building and Regulatory Services department.
 - f) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.

Site Signage

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

Restriction on Working Hours

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

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

	<ul style="list-style-type: none"> • Sunday & public holidays - No work permitted
Additional requirements for all development	<ul style="list-style-type: none"> • Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted

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

Building Encroachments

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

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE
 The following conditions of consent must be complied with prior to the 'Principal Certifier' issuing an 'Occupation Certificate'.

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

Occupation Certificate Requirements

18. 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*.

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.

Environmental Amenity

19. 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

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

- A9 External paths and ground surfaces are to be constructed at appropriate levels and be graded and drained away from the building and adjoining premises, so as not to result in the entry of water into the building, or cause a nuisance or damage to any adjoining land.

Finished ground levels external to the building are to be consistent with the development consent and are not to be raised, other than for the provision of approved paving or the like on the ground.

- A10 Prior to commencing any works, the owner/builder should contact *Dial Before You Dig* on 1100 or www.dialbeforeyoudig.com.au and relevant Service Authorities, for information on potential underground pipes and cables within the vicinity of the development site.

- A11 An application must be submitted to an approved by Council prior to the installation and operation of any proposed greywater or wastewater treatment systems, in accordance with the *Local Government Act 1993*.

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

Development Application Report No. D26/22


Subject: 59 Carrington Street, Randwick (DA/532/2021)

Proposal:	Alterations and additions to existing attached dwelling including ground floor extension to the rear and new rear terrace, tree removal, landscaping and associated works.
Ward:	North Ward
Applicant:	Mr R Raso
Owner:	Mr M P Diamond and Mrs L V Diamond
Cost of works:	\$100,000
Reason for referral:	The development contravenes the development standard for floor space ratio by more than 10% and is a Local Heritage Item.

Recommendation

- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the Floor Space Ratio development standard in Clause 4.4 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning, Industry and Environment may be assumed.
- B. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/532/2021 for alterations and additions to existing attached dwelling including ground floor extension to the rear and new rear terrace, tree removal, landscaping and associated works, at No. 59 Carrington Road, Randwick, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (general) - DA/532/2021 - 59 Carrington Road, Randwick



1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development contravenes the development standard for floor space ratio by more than 10% and involves partial demolition works of a heritage item.

The proposal was notified and advertised in accordance with *Randwick Community Participation Plan 2019* and no submissions were received.

The proposal seeks development consent for alterations and additions to existing attached dwelling including partial demolition of internal and external walls, doors and windows at the rear of the terrace house, ground floor extension to the rear and new rear terrace, tree removal, landscaping and associated works.

The key issues associated with the proposal relate to the non-compliance to the FSR Development Standard and the impact that the development may have upon the heritage significance of the site. The Heritage Consultant Planner has reviewed the application and raises no objection to the proposal subject to conditions.

The proposal is recommended for approval subject to non-standard conditions recommended by the Heritage Consultant Planner that require the below conditions to be provided as part of the Construction Certificate documentation prior to commencement of any works:

- The proposed structural support where the rear wall is removed in its entirety (Renovation note 8) will need to be adequately detailed to allow for the interpretation of the location of the subject removed wall. It is recommended that a bulkhead is retained to the depth of minimum 300mm (below the cornice level of the adjoining dining room), and if necessary, allow for insertion of a steel or otherwise structural support underside as per future detailing of a structural engineer.
- The terrace at the rear is proposed to have concrete slab with no specific finish indicated (Renovation note 10). Reuse of the existing brick paving is recommended as a finish to maintain the traditional and consistent characteristics with the existing finishes and across the 'Nolan Terrace' group.
- There should be some detailing to consider for the proposed removal of walls and bricking in a door opening at the rear of the existing dining room (Renovation note 12). The subject door opening on the south side of east wall of the dining room relates to a modified original window facing the breezeway, a common traditional design treatment of Victorian terraces. It is recommended that a shadow line in the form of a (3-5mm) groove or an indent of 10-

50mm to create a presentation of an alcove marking the size and location of the subject opening (at the dining room side only).

2. Site Description and Locality

The subject site is known as 59 Carrington Road, Randwick and is legally described as Lot B in DP 437946. The site is 189.7m², is rectangular in shape and has a 5.135m frontage to Carrington Road, 14.325m side boundaries and a 5.135m rear boundary. The site topography is relatively flat.

The site currently contains a two storey attached terrace house with front access from Carrington Road to the west and rear access to a recently approved detached garage and studio above from Carey Street to the east.

The terrace is identified within the Randwick LEP 2012 to be of local heritage significance (Listing 312 under Schedule 5 of RLEP), known as 'Nolan Terrace' within a row of four terraces between 53-59 Carrington Road, Randwick.

The eastern side of Carrington Road between Douglas Street and Carey Lane contains a mixture of residential development types including dwelling houses, semi-detached dwellings and attached dwellings.

The western side of Carey Street is characterised by the rear frontages of residential development addressing Carrington Road; predominantly comprising garage development. The western side of Carey Street predominantly contains dwelling houses.

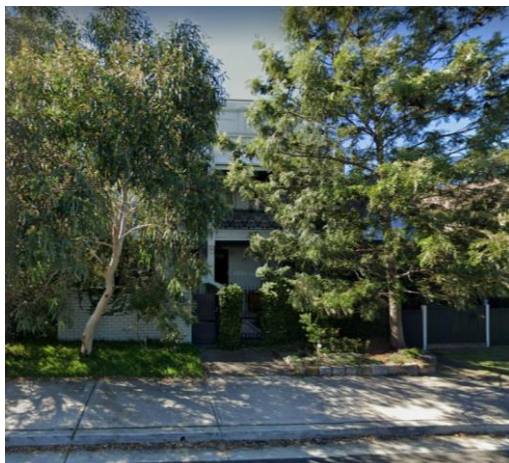


Figure 1: Streetscape view of existing terrace house from Carrington Road



Figure 2: View of rear existing terrace house

3. Relevant history

DA/652/2020 - Approval was granted under Randwick Local Planning Panel on 8 April 2021 for additions and alterations to existing garage with new studio above garage on Carey Street. The development was approved with an FSR of 0.87:1 (or GFA of 165m²) with a variation of 73% which is significantly over the allowable FSR on the site of 0.5:1.

4. Proposal

The proposal seeks development consent for alterations and additions to existing two storey attached dwelling including tree removal, landscaping and associated works.

Specifically, the proposed development comprises:

- Demolition of some internal and external walls, doors and windows at the rear of the terrace house;
- New roof form and skylight above southern portion of existing terrace house;

- Rear extension of existing ground floor level to increase the floor area of the open plan kitchen, living and dining area;
- New bathroom;
- New laundry; and
- New rear terrace area off the family room.

5. Notification

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

6. Relevant Environment Planning Instruments

6.1. 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 within a low density residential environment and protect the amenity of residents.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.4: Floor space ratio (max)	0.5:1 (or GFA of 94.85m ²)	0.965:1 (or GFA of 183.1m ²) NB: Existing FSR is 0.87:1 or 165sqm GFA	No. Refer Clause 4.6 exception to a development standard below.
Cl 4.3: Building height (max)	9.5m	The proposed development is single storey in form and has a maximum building height of approx. 5m from the natural ground level to the top of the ridge. The existing maximum building height on the site is not altered.	Yes

6.1.1. Clause 4.6 - Exceptions to development standards

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

6.1.2. Clause 5.10 - Heritage conservation

Clause 5.10 requires Council to consider the effect of the proposed development on the heritage significance of the heritage item. The site is listed as a local heritage item under Schedule 5 of the Randwick Local Environment Plan (LEP) 2012 which is known as 'Nolan Terrace' within a row of four terraces between 53-59 Carrington Road, Randwick.

The application has been referred to a heritage consultant City Planning who have reviewed the documentation and have recommended support subject to conditions. The Heritage consultant has concluded that the proposed rear ground floor extension is generally compatible with the identified heritage values of the subject terrace and its group 'Nolan Terrace' and will facilitate its improved amenity for the owners without impacting on its landmark qualities along Carrington Road. The heritage referral comments are included in **Appendix 1**.

7. Clause 4.6 exception to a development standard

The proposal seeks to vary the Floor Space Ratio (FSR) development standard contained within the Randwick Local Environmental Plan 2012 (RLEP 2012):

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.4: Floor space ratio (max)	0.5:1 (or GFA of 94.85m ²)	0.965:1 (or GFA of 183.1m ²)	88.25m ²	93.04%

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As noted above, the development (under DA/652/2020) was approved with an FSR of 0.87:1 (or GFA of 165m²) with a variation of 73% which is significantly over the allowable FSR on the site of 0.5:1.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.1. Exception to the Floor Space Ratio (FSR) development standard (CI 4.4)

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

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

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

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

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

The applicant's written justification demonstrates that this objective is satisfied by noting that there is an existing non compliance on the site and it's a common theme of adjoining properties along this section of the streetscape. The proposed development will be compatible with the existing character, built form and scale of other attached development in the immediate vicinity. Its location at the rear of the dwelling ensures that it will not adversely impact or compete with the integrity of the streetscape.

The proposed rear addition is located in line with the extended area of 57 Carrington Road to ensure consistency of built form and minimises potential amenity impacts to neighbouring properties with regards to visual, overshadowing and privacy.

The development will not impact on the appearance of the built form when viewed from the streetscape or historical value of the heritage item.

The proposed change will be consistent in size and scale in the context of surrounding development, including the existing main terrace row.

The small size of the allotment (189.7m²) impacts the ability of the site to adhere to the prescribed FSR and any minor increase to the FSR will amplify the non-compliance. However, despite the site limitation the development still provides reasonable opportunities for the orderly development of land for existing and future residents of the site.

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the development has been appropriately orientated on the site to allow for a reasonable level of solar access to the living areas and private open space areas on the site and adjoining site.

The proposed additional FSR variation to the development standard is very minor in nature and will not detrimentally impact on the amenity of adjoining properties given the articulated design and varied roof form, adequate side and rear setbacks and sufficient landscaping and private open space.

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

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the proposed rear addition will be in line with the rear built form of the attached terrace

at no. 57 Carrington Road and being single storey in form will not impact on the contribution that the building will have on the public domain or historical significance of the item on the site. The appearance of the development from the Carrington Street streetscape which is considered to be of primary importance to the Heritage significance of the subject site is not altered.

The development maintains the low-density characteristics of the building and will be in keeping with the prevailing characteristics of other attached terrace houses along this section of the streetscape.

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the development is single storey and is in line with the attached terrace house at no. 59 Carrington Road which minimizes potential amenity impacts to neighbouring properties in terms of overshadowing, visual bulk and privacy.

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

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

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

- The site has an existing non-compliance (variation of 57% from the standard with the inclusion of the approved studio will be 73%) which will increase to 93.04%, this is largely due to the small allotment size of 189.7m² which creates restrictions and amplifies the non-compliance and therefore, should be taken into account.
- The proposed change is a relatively modest addition of 18.1m² to the rear of the terrace which is single storey and has been carefully designed to minimise impact on the Heritage Item, primary road streetscape and neighbouring allotments.
- The proposed development will be maintaining a low-density scale and built form that will be in keeping with predominant characteristics of other additions to terrace houses along the streetscape.
- The development will not impact on the character and appearance of the built form when viewed from the streetscape or historical value of the heritage item.
- The additional floor area will improve the amenity of the site by providing a liveable and functional living space for the occupants which contributes to achieving the developments potential on a site with restricted lot width.
- The development is in line with the established rear built form within in this section of the block and being single storey, it is not expected to adversely impact on the amenity of neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.
- Despite the numeric non-compliance, the proposed development is consistent with the Land Use Zone objectives.

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

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

To determine whether the proposal will be in the public interest, an assessment against the objectives of the Floor Space Ratio standard and R2 – Low Density Residential zone is provided below:

Assessment against objectives of floor space ratio standard

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

Assessment against objectives of the R2 zone

The objectives of R2 zone are:

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

The applicant's written request seeks to demonstrate that the development satisfies the objectives of the R2 zone as follows:

The proposed development achieves the objectives of the R2 Low Density Residential zone by contributing towards the provision of housing needs for the community by adding additional floorspace which improves the amenity of the existing residential accommodation on the allotment. The additional floor area is minor in nature and will provide additional facilities and services to meet the day to day needs of residents.

The additional floor area is located to the rear of the terrace and being single storey will not detrimentally impact on the amenity of adjoining properties in terms of overshadowing, privacy, visual amenity and views. The addition is well articulated having a varied roof form, consistent side and rear setbacks to the adjoining terraces with sufficient landscaping and private open space provided on the site meets the intension of the zone.

The proposed development is in keeping with the desired future character of the area and is sympathetic of the prevailing built form characteristics and landscape design of the streetscape including being sympathetic to the heritage items.

In summary, it is considered that the proposed development will be in keeping with the objectives of the R2 Low Density Residential zone by contributing positively to the housing needs of the community and the desired future character of the area, whilst imposing no significant negative impacts on neighbouring allotments.

Assessing officer's comment: The proposed development is consistent with the objectives of the zone by providing for the housing needs of the community within a low density residential environment, contribute to the desired future character of the area and protect the amenity of residents.

The development is consistent with the objectives of the floor space ratio standard and the R2 zone. Therefore, the development will be in the public interest.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

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

Conclusion

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

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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

9. Environmental Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<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 have been received.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

9.1. Discussion of key issues

Part C2: Medium Density Residential

2.2 Landscaped open space and deep soil area

Objectives

- *To provide landscaped open space of sufficient size to enable the space to be used for recreational activities, or be capable of growing substantial vegetation.*
- *To reduce impermeable surface cover including hard paving.*
- *To improve stormwater quality and reduce quantity.*
- *To improve the amenity of open space with landscaped design.*

2.2.1 Landscaped open space

- i) *A minimum of 50% of the site area is to be landscaped open space (see clause (iii) below).*
- i) *For multi dwelling housing and attached dwellings, a minimum of 50% of the site area is to be landscaped open space. A minimum width of 2m of landscaped open space is to be provided. For attached dwellings, this refers to each allotment individually.*
- ii) *The following items are considered to constitute landscaped open space:*
 - (a) *“Landscaped area” as defined in RLEP (including areas of deep soil planting)*
 - (b) *Outdoor recreation areas including communal open space (not located on the roof)*
 - (c) *Unroofed swimming pools*
 - (d) *Clothes drying areas*
 - (e) *Barbecue areas and ancillary structures*
 - (f) *Footpaths*
 - (g) *Landscaped podium areas (not more than 1.5m above ground level existing) and water tanks at ground level*
 - (h) *Paved areas*
 - (i) *Areas covered by shading structures that are located at ground level and substantially open on the side elevations without wall enclosure, such as cabanas, pergolas, canopies and the like but excluding verandas, balconies and decks (see clause iv) below.*

- iv) *Landscaped open space area excludes:*
- a) *Areas used for parking*
 - b) *Driveways*
 - c) *Balconies*
 - d) *Rooftop gardens*
 - e) *Areas used for garbage or recycling material*
 - f) *Areas occupied by storage sheds and the like*

2.2.2 Deep soil area

- i) *A minimum of 25% of the site area should incorporate deep soil areas sufficient in size and dimensions to accommodate trees and significant planting. Note: The deep soil area is counted towards the required landscaped open space area.*
- ii) *Deep soil areas must be located at ground level, be permeable, capable for the growth of vegetation and large trees and must not be built upon, occupied by spa or swimming pools or covered by impervious surfaces such as concrete, decks, terraces, outbuildings, or other structures.*
- iii) *Deep soil areas are to have soft landscaping comprising a variety of trees, shrubs and understorey planting (refer to Part B section on Landscaping).*
- iv) *Deep soil areas cannot be located on structures or facilities such as basements, retaining walls, floor slabs, rainwater tanks or in planter boxes.*
- v) *Deep soil zones shall be contiguous with the deep soil zones of adjacent properties.*

The existing landscaped area on the site with the inclusion of approved studio (under DA/652/2020) is approx. 34.8% (or 66m²). The proposed development will reduce the landscaped area on the site to 11.23% (or 21.3m²) creating a further non-compliance to the control.

Despite the continued non-compliance with the Landscaping and Permeable surfaces control it is considered that the level of deep soil area provided on site will satisfy the objectives in that there is effective distribution of landscaped area on the site to achieve a visual balance between the building structures and open space and to assist with stormwater infiltration and reduction of overland flow. The proposed landscaping is not dissimilar to that of the row of adjoining terraces which have similar allotment size which creates difficulty in achieving the minimum control requirements.

The shortfall is largely due to the sites constraints as the land is relatively small making it difficult to incorporate additional amenity on the site such as a large canopy tree which is capable reaching a mature height of at least 6m. However, the site has accommodated a minimum of 5m x 5m of private open space which meets the objectives of the control and is adequate amenity for the users of the site.

Given the above reasons, the proposal will provide an adequate level of accessible, functional and useable POS which will enable passive recreational activities for the occupants of the site and therefore, will meet the objectives of the control.

3.4 - Setbacks

Objectives

- *To define the street edge and establish or maintain consistent rhythm of street setbacks and front gardens that contributes to the local character.*
- *To ensure adequate separation between buildings for visual and acoustic privacy, solar access, air circulation and views.*
- *To reserve contiguous areas for the retention or creation of open space and deep soil planting.*

3.4.2 Side setback Controls

Residential flat buildings and Multi dwelling housing

- i) Comply with the minimum side setback requirements stated below for residential flat buildings and multi dwelling housing:

Site Frontage Width	Minimum Side Setbacks
Irregularly shaped allotments	Merit assessment
Less than 12m	Merit assessment
$12\text{m} \leq \text{Width} < 14\text{m}$	2.0m
$14\text{m} \leq \text{Width} < 16\text{m}$	2.5m
$16\text{m} \leq \text{Width} < 18\text{m}$	3.0m
$18\text{m} \leq \text{Width} < 20\text{m}$	3.5m
20m and above	4.0m

Frontage width less than 12m is assessed on merit. The subject site has a frontage with of 5.135m and therefore is not subject to a minimum side setback control in the DCP.

The proposed rear addition to the southern side follows the existing footprint of the building and is sited on the boundary with a nil setback. The addition is single storey and abuts on the neighbouring properties blank wall at no. 61 Carrington Road. To the northern side the rear addition abuts on to common wall boundary with the adjoining terrace at no. 57 Carrington Road and is in line with the rear built form.

It is not considered that the nil setbacks to the side of the boundaries will result in any unreasonable amenity impacts to the neighbouring properties in terms of overshadowing and visual amenity.

The rear addition is not visible from the streetscape and the built form and scale is consistent with the row of terraces in the streetscape. Adequate separation is provided between the neighbouring buildings for private open space, visual and acoustic privacy and solar access.

Given the above reasons, the proposed side setbacks of the development are considered acceptable and will satisfy the objectives of the Control.

10. Conclusion

That the application to carryout alterations and additions to existing attached dwelling including ground floor extension to the rear and new rear terrace, tree removal, landscaping and associated works be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013.
- The proposal is consistent with the specific objectives of the R2 zone in that the development will facilitate its improved amenity for the owners without impacting on the amenity of neighbouring properties or heritage significance on its landmark qualities along Carrington Road.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- The development enhances the visual quality of the public domain/streetscape.

Non-standard conditions have been included to require:

- The proposed structural support where the rear wall is removed in its entirety (Renovation note 8) will need to be adequately detailed to allow for the interpretation of the location of the subject removed wall. It is recommended that a bulkhead is retained to the depth of minimum 300mm (below the cornice level of the adjoining dining room), and if necessary, allow for insertion of a steel or otherwise structural support underside as per future detailing of a structural engineer.

- The terrace at the rear is proposed to have concrete slab with no specific finish indicated (Renovation note 10). Reuse of the existing brick paving is recommended as a finish to maintain the traditional and consistent characteristics with the existing finishes and across the 'Nolan Terrace' group.
- There should be some detailing to consider for the proposed removal of walls and bricking in a door opening at the rear of the existing dining room (Renovation note 12). The subject door opening on the south side of east wall of the dining room relates to a modified original window facing the breezeway, a common traditional design treatment of Victorian terraces. It is recommended that a shadow line in the form of a (3-5mm) groove or an indent of 10-50mm to create a presentation of an alcove marking the size and location of the subject opening (at the dining room side only).

Appendix 1: Referrals

1. Internal referral comments:

1.1. Heritage Planner

City Plan Heritage (CPH) has been engaged by Randwick City Council to undertake a heritage assessment of the Development Application (DA/532/2021) for proposed works to the property located at 59 Carrington Road, Randwick NSW. The works are described in the development application as: Alterations and additions to existing attached dwelling including ground floor extension to the rear and new rear terrace, tree removal, landscaping and associated works (Local Heritage Item, variation to FSR of the RLEP 2012). The following sections provide an assessment of the subject Development Application (DA) in relation to heritage matters. 1. LOCATION The works relate to the south end of a terrace house group known as 'Nolan Terrace' located on the eastern side of Carrington Road with rear boundary and access to Cary Street on the eastern side. The group comprises the properties between number 53 and 59 Carrington Road and is recognised as a heritage item under the Randwick Local Environmental Plan (LEP) 2012. The address of the site is given as 59 Carrington Road, Randwick and is described in documents held by NSW Land Registry Services as Lot B in Deposited Plan 437946 (Parish of Alexandria, County of Cumberland). The immediate area is characterised by single to two-storey residential development constructed in the late nineteenth and early twentieth century.



Figure 1: Cadastral map showing the location of the subject site, 59 Carrington Road, Randwick. (Source. SIX Maps)

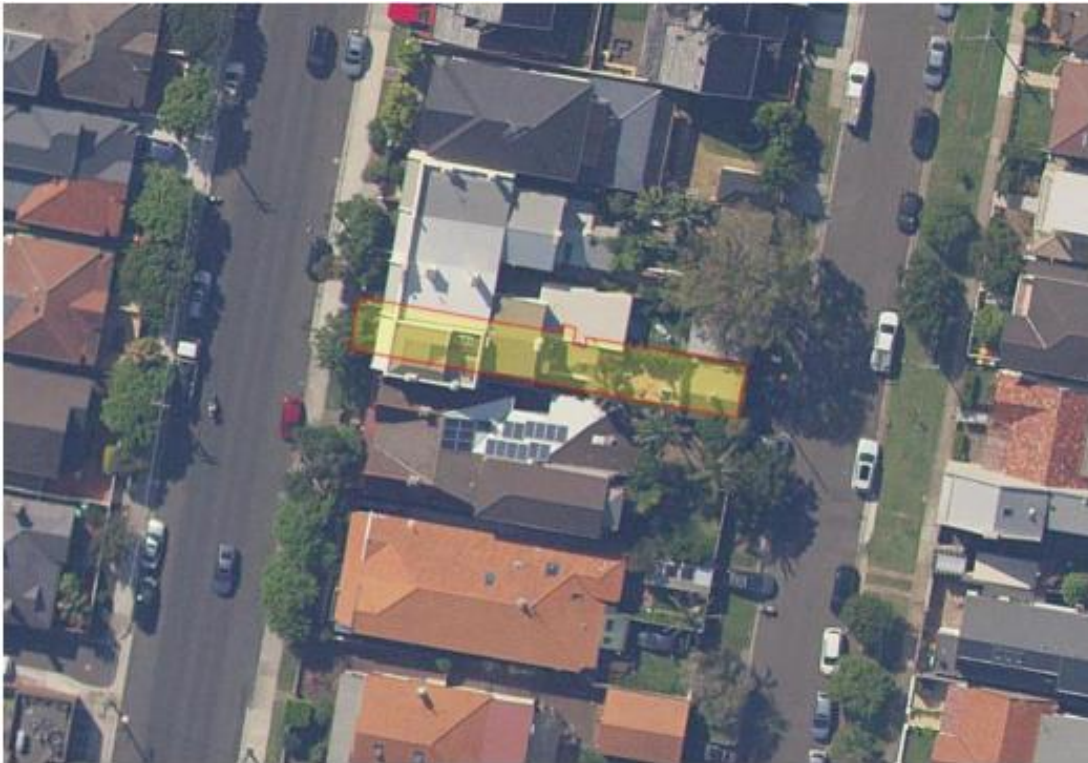


Figure 2: Aerial photograph showing the subject site in its urban context and the remainder of the Nolan Terrace group to its north (Source: SIX Maps)

2. DESCRIPTION OF THE DEVELOPMENT SITE

This application proposes works to one of the row of four Victorian terrace houses that are described as follows in the NSW State Heritage Inventory (SHI) Database No. 23101391

Row of four Victorian terraces, standing by 1890 (Water Board survey, also appearing for the first time in Sands Directory in 1890). No. 57 has a window opening altered and has lost window moulding in the process. Nos. 57 and 59 both have major balcony enclosures. No. 55 is the least altered and No. 53 is almost fully restored. Only No.57 has the original double curved balcony roof. No.53 also let down by a high fence. All have lost original fences (probably palisade). Excellent high parapet with urns and limited mouldings. Impressive streetscape contribution as a group. Quite extensive renovations have been carried out in 1993.

Since the compilation of the SHI form no. 59 is apparently underwent some restoration works to reinstate its front balcony and improve streetscape presentation. The subject terrace now features a wrought-iron friezes and balustrade to the Carrington Street façade. According to the real estate images available online the subject terrace has relatively intact layout with some changes to its rear on the ground floor with an attic and outdoor terrace to the rear. The rear courtyard is surfaced with recycled brick paving with limited planters along the perimeters. A brick garage occupies the rear boundary fronting Carey Street. It is noted that a recent development consent was issued on 8 April 2021 by Randwick Local Planning Panel (RLPP) for additions and alterations to the existing garage with studio over (DA/652/2020).

Further online research into the images of the adjoining terraces within the row clearly show that there have been a number of changes to the interiors and rear of the terraces at 55 and 57 Carrington Road in the Nolan Terrace group. A recent DA/176/2021 for number 55 was approved to undertake "Alterations and additions to existing attached dwelling including ground level rear extension and renovation, upper level renovation including new bathroom and skylights, new patio and landscaping. Demolition to existing rear hardscaping and existing rear ground-level structures as indicated (heritage item)". While the terrace group has a relatively intact configuration, form and presentation externally in particular to Carrington Road their internal finishes and layouts differ from each other with some of the terraces having ground floor extensions to the rear. The upper floor traditional breezeway form remaining intact and common to all 'Nolan Terrace' group.

The Heritage Impact Statement (HIS) prepared by Concise Planning (July 2021) and submitted with the DA/532/2021 documentation describes the existing conditions as below:

Nolan Terrace is Victorian Filigree in style, presenting to the Carrington Road streetscape as a row of two (2) storey scale terraces bays. The subject dwelling provides an exception within the row in that it partially comprises three storeys, being at the front of the building, behind the parapet, where a third storey attic-type area is accommodated. The roof of that “attic” level is partially visible behind the parapet but is not prominent. The subject dwelling is setback 2.4 m from the primary road boundary – measured from the road reserve boundary to the front balustrade – 3.8 metres when measured to the front wall. Each dwelling within Nolan Terrace includes a first-floor balcony with an iron filigree balustrade, along with additional ornamental iron filigree detailing fringes and friezes. The balconies are sheltered by corrugated iron roofs.

Images of 59 Carrington Road, Randwick sourced from the Real Estate website have been included as an attachment to provide better understanding of the existing conditions.

3. HERITAGE STATUS AND SIGNIFICANCE

This assessment considers the potential impacts of the development on the subject site located at 59 Carrington Road, Randwick NSW, and heritage items located near the subject site. The site is not situated within a heritage conservation area.

The subject site is listed as a heritage item of local significance under Part 1 of Randwick Local Environmental Plan (RLEP) 2012 as 'Nolan Terrace', 53-59 Carrington Road, Randwick (Item No. I312).

The Statement of Significance included for the 'Nolan Terrace' in the SHI Database citation (Database No. 2310139) is given as:

The group of four buildings at Nos. 53-59 Carrington Street is late nineteenth century Victorian terrace house group. The buildings are unified by and an impressive pediment surmounted by Classical urns and a central curved parapet. In the streetscape they are a landmark group.

The subject site adjoins with another heritage item of local significance to the south listed as 'Semidetached pair', 61-63 Carrington Road, Randwick (Item No. I313). No Statement of Significance for the adjoining semi-detached pair is provided in the SHI form of the pair in the Database (no. 2310140); however, they are described as below:²

Unusual turn-of-the century semi-detached featuring steep pitched gables. Slate roof with rendered chimneys. Bullnosed verandahs with turned timber posts. No. 63 has iron lace brackets, fringes and frieze which appear to be the original decorative feature. Very unusual, high, pressed metal *hoods* over rectangular bays. Alterations include fences, loss of gable decoration and loss of verandah decoration to No. 61. Otherwise good. Streetscape value with No.'s 53-54.

The HIS (Concise Planning, July 2021) notes the following in the absence of the significance ranking or mention of the interiors of the 'Nolan Terrace' group:

The listing is consistent with the view that the significance of the heritage item is principally in its presentation to Carrington Road. Notwithstanding that, it is consistent with a precautionary approach to maintaining heritage significance for intact features of the row to be retained, particularly where they are visible from public areas. In that regard, the general form of the second storey is partially visible from Carey Street. However, the rear ground floor levels are not visible from public areas such as Carey Street and in the case of 57 Carrington Road the ground level has been altered from the typical form for the rear of terraces...

There is nothing in the State Heritage Inventory database to indicate that the interiors of the dwellings in Nolan Terrace are of heritage significance, nor that the rear ground level form is of heritage significance. The proposed rear ground level alterations are consistent with the form at 57 Carrington Road, having the same rear setback and a similar boundary-to-boundary

construction form. Given that consistency, the proposed rear ground level alterations and additions should be considered to be acceptable from a heritage viewpoint.

The proposed rear ground level alterations and additions are consistent with commonly adopted design solutions in similar situations in that they remove configurations whereby relatively narrow allotments have wasted space and limited internal dimensions in areas to the rear where there is a lightwell-pathway area to one side of skillion-type rear extensions. The proposal replaces that inefficiently designed area with a modern rear ground level addition with a high floor to ceiling height and extensive rear, east-facing glazing that maximises desirable morning sunlight and provides a highly usable internal area, which is able to be provided in the modern era due to the availability of modern materials and construction methods. The outcome is to make the building far more desirable to live in and therefore far more likely to be properly maintained over the long term as well as improving building health by providing a component of sound construction and providing good air circulation to the more significant fabric in the front part of the building.

D26/22

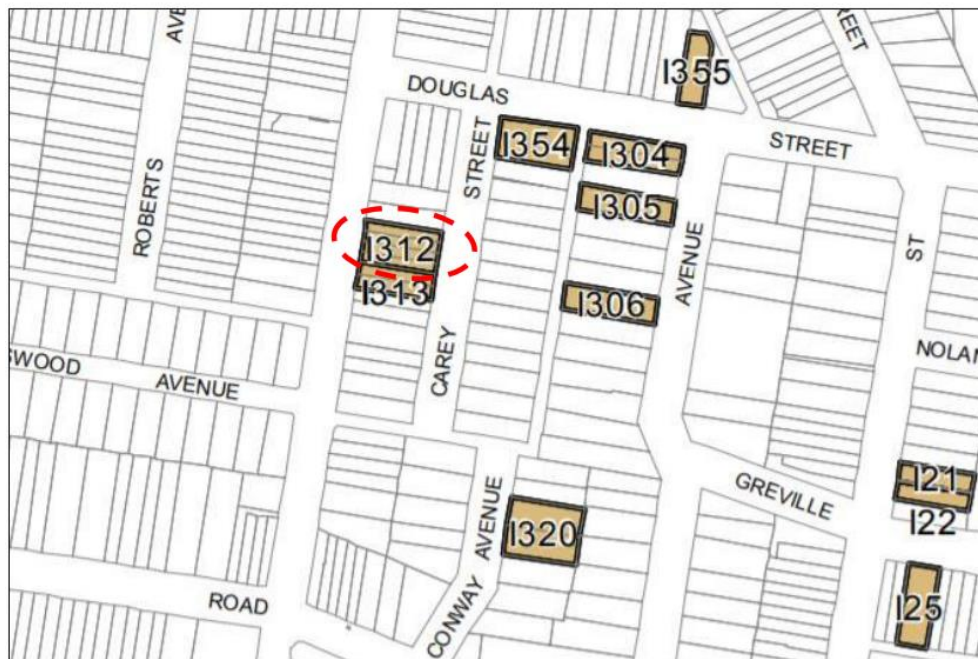


Figure 3. Extract from Heritage Map-Sheet HER_006 attached to Randwick LEP 2012 showing heritage items in the vicinity of the Nolan Terrace (Source: https://eplanningdlprod.blob.core.windows.net/pdfmaps/6550_COM_HER_006_010_20121206.pdf)

4. THE PROPOSAL

This application proposes alterations and additions to the rear ground floor of the subject terrace at 59 Carrington Road, Randwick. Works shown in the DA documentation submitted to Randwick Council include as detailed in the architectural plans prepared by Plan Ahead Designs Pty Ltd and described in the Heritage Impact Statement prepared by Concise Planning (dated 10 July 2021):

- Demolish the existing parts of the existing dwelling on the subject site that comprise only a single storey, being a 1.8 metre wide x 5.0 metre part that is to the south of the two storey rear component and being a generally 3.0 metre wide x 5.7 metre component to the rear (east) of the two storey component. Note: That component has an irregular width due to the irregular property boundary and building form, between 59 and 57 Carrington Road;
- Construct a new single storey component occupying the areas where demolition is proposed and extending into the currently un-built-upon area to the southern side of the existing rearmost component from boundary-to-boundary construction and extending 2.0 further to the rear. It is noted that the rear extension will align with the rear ground floor extension of adjoining terrace 57 Carrington Road and less than the southern semi-detached pair at 61 Carrington Road.

5. BACKGROUND

Background research into the previous development applications for the property has been undertaken to understand the recent approval given for the alterations and additions to the existing garage (DA/652/2020) as it would relate to the assessment of the current DA. Research into the previous DAs for the adjoining terraces have also been carried out to check the consistency of the current DA for 59 Carrington Street across the 'Nolan Terrace' houses. Details have been provided in section 2 above.

6. SUBMISSION

The documentation submitted and provided by Randwick City Council, and also available online at <https://planning.randwick.nsw.gov.au/Pages/XC.Track.Advanced/SearchApplication.aspx?id=781662>, has been evaluated in this assessment of the proposed development:

Dwg	Title (Drawings by Plan Ahead Designs)	Date	Issue
350.01-21	Site Plan and Section	19/08/21	-
350.01-21	Plans and Elevations	19/08/21	-
350.01-21	Elevations	19/08/21	-
350.01-21	External Images	19/08/21	-
350.01-21	Images	19/08/21	-
350.01-21	Aerial	19/08/21	-

This assessment has taken into consideration the following documents and statutory instruments:

- Heritage Impact Statement: 59 Carrington Road, Randwick 2031, Concise Planning, 10 July 2021 (Draft).
- Statement of Environmental Effects: Alterations and Additions to Existing Terrace House, In-House Design-Plan-Build (undated).
- Randwick Local Environmental Plan 2012.
- Randwick Development Control Plan 2013.

7. ASSESSMENT OF THE PROPOSED DEVELOPMENT

Following review of the documentation submitted as part of the current development application, we have assessed the proposed development for its impact on the heritage significance of the existing 'Nolan Terrace' group and heritage items in its vicinity. The assessment is set out in tabular form responding to the heritage provisions and controls contained in the Randwick LEP 2012 and Randwick DCP 2013.

Randwick LEP 2012 Clause 5.10 Heritage Conservation	Discussion
5.10 (2) Requirement for consent	<ul style="list-style-type: none"> ▪ A Development Application (DA/532/2021) has been lodged with Randwick Council, by

Development consent is required for any of the following -

(a) demolishing or moving any of the following or altering the exterior of any of the following (including, in the case of a building, making changes to its detail, fabric, finish or appearance)—

- (i) a heritage item,*
- (ii) an Aboriginal object,*
- (iii) a building, work, relic or tree within a heritage conservation area,*

(b) altering a heritage item that is a building by making structural changes to its interior or by making changes to anything inside the item that is specified in Schedule 5 in relation to the item,

...

the Applicant to obtain consent to undertake the works described in the documents listed above.

- The subject site is one of the four terrace row known as 'Nolan Terrace' listed as a local heritage item under Schedule 5 of the RLEP.
- The proposed works include removal of internal walls to the rear of the subject terrace, which form part of the original layout and configuration but modifications to the sizes of the openings and finishes and detailing. Based on the existing configuration and finishes, although the proposed amount of wall removal would not be considered minimal impact, in the case of the subject terrace at 59 Carrington Road and the changes made to the interiors of its adjoining terraces in the 'Nolan Terrace' group this will be an acceptable compromise.
- There should be some detailing to consider for the proposed removal of walls and bricking in a door opening at the rear of the existing dining room (Renovation note 12). The subject door opening on the south side of east wall of the dining room relates to a modified original window facing the breezeway, a common traditional design treatment of Victoriana terraces. It is recommended that a shadow line in the form of a (3-5mm) groove or an indent of 10-50mm to create a presentation of an alcove marking the size and location of the subject opening. A Condition has been included in this regard.
- Similarly, the proposed structural support where the rear wall is removed in its entirety (Renovation note 8) will need to be adequately detailed to allow for the interpretation of the location of the subject removed wall. It is recommended that a bulkhead is retained to the depth of minimum 300mm (below the cornice level of the adjoining dining room) and if necessary allow for insertion of a steel structural support underside as per future detailing of a structural engineer.

5.10 (5) Heritage assessment

- A Heritage Impact Statement (Concise Planning, 10 July 2021) was submitted as part of Development Application

<p><i>The consent authority may, before granting consent to any development -</i></p> <p><i>(a) on land on which a heritage item is located, or</i></p> <p>...</p>	<p>DA/532/2021 lodged with Randwick City Council for the alterations and additions to the rear ground floor level of the existing terrace house.</p>
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The following table addresses the relevant controls of the Randwick DCP 2013.

<p>Randwick DCP 2013 - Clause B2.2 Design and Character</p>	<p>Discussion:</p>
<p>Controls</p> <p>All Development</p> <p><i>i) Development must demonstrate how it respects the heritage values of the heritage item or the heritage conservation area (as detailed in the statements of significance and key characteristics outlined in this section of the DCP).</i></p>	<ul style="list-style-type: none"> ▪ The works have been assessed in the HIS (Concise Planning, July 2021) and demonstrate that the significant aspects of the 'Nolan Terrace' as a group have been taken into consideration. ▪ Although some of the internal walls will be removed and replaced by large open spaces of the new rear addition, this will be consistent with the other ground floor changes to the remainder of the terraces in the group. ▪ The design of the proposed rear extension is generally acceptable and simple in form and appropriate in scale in relation to the existing terrace and its adjoining terraces within the 'Nolan Terrace' group. ▪ The characteristics of the terrace group as a landmark within the streetscape of Carrington Road as described in the Statement of Significance will not be affected by the proposed rear extension.
<p><i>ii) Common elements and features of the streetscape are to be identified in a streetscape analysis and incorporated into the design (e.g. view corridors, built form, fencing styles, extent of soft landscaping, significant trees and driveway locations).</i></p>	<ul style="list-style-type: none"> ▪ The streetscape presentation of the subject terrace at 59 Carrington Road would be retained. No changes are proposed to the main portion of the terrace.
<p><i>iii) New development should be consistent with important horizontal lines of buildings in the streetscape, in particular ground floor levels and eaves lines, where appropriate.</i></p>	<ul style="list-style-type: none"> ▪ The proposed rear extension will not impact the street alignment of the subject terrace and its group and will be consistent with the rear ground floor alignment of the adjoining terrace at 57 Carrington Road. It is also setback from the southern neighbouring property at 61 Carrington Road.
<p><i>iv) Large blank areas of brick or rendered walls should be avoided. Where this is not possible in the design, contrasting building materials and</i></p>	<ul style="list-style-type: none"> ▪ The architectural character of the exterior of the 'Nolan Terrace' would be retained and conserved.

Randwick DCP 2013 - Clause B2.2 Design and Character	Discussion:
<i>treatments must be used to break up the expanse of wall.</i>	
<p>Heritage Items and Contributory Buildings</p> <p>v) <i>Street elevations and visible side elevations must not be significantly changed. Additions must be located to the rear or to one side of the building to minimise impact on the streetscape.</i></p>	<ul style="list-style-type: none"> ▪ No changes are proposed to the principal parts of the subject terrace. ▪ The proposed works are limited to the rear of the terrace on the ground floor level only with no visibility from the public domain.
<p>vi) <i>The design of any proposed additions or alterations must complement the existing building in its scale, form and detailing. However, it should be possible to distinguish the new work from the old, on close inspection, so that old and new are not confused or the boundaries/junctions blurred.</i></p>	<ul style="list-style-type: none"> ▪ The proposed rear extension has been designed in a contemporary style. The materiality, design, and detailing of the structure draw on the existing materials of the subject terrace and the other terraces in the group. ▪ The style and character of the extension will allow for it to be recognisable as a new work.
<p>vii) <i>All new work and additions must respect the proportions of major elements of significant existing fabric including doors, windows, openings and verandas.</i></p>	<ul style="list-style-type: none"> ▪ The rear extension is limited to the ground floor level only and although it will extend from boundary to boundary it will maintain the scale that is currently exist within the rear of the subject property. ▪ Windows to the rear provides for full length of sliding doors and based on its location use of traditional proportions of the existing windows of the terrace is not considered necessary to allow for improved amenity to the rear living spaces.
Randwick DCP 2013 - Clause B2.3 Scale & Form	Discussion:
<p>Controls</p> <p>All Development</p> <p>i) <i>In streetscapes where development is of a consistent single storey height, upper floor additions are appropriate only if not readily visible from the street. However, ground floor rear addition remains the preferred option.</i></p>	<ul style="list-style-type: none"> ▪ The proposed rear ground floor level extension is consistent with this control.
<p>ii) <i>Attic style additions may be permissible, but there should be no visible alteration to the front of previously unaltered buildings. Front dormer windows are especially discouraged where a building itself is a heritage item, or part of a relatively unaltered semi-detached pair or row</i></p>	<ul style="list-style-type: none"> ▪ Not applicable; no attic addition is proposed.
<p>iii) <i>Dormer windows and skylights must not be located to street elevations or where they will be</i></p>	<ul style="list-style-type: none"> ▪ Not applicable for the main terrace roof form. Notwithstanding, the existing glazed roofing

<p><i>prominent from a public place or dominate the original roof form. The design of dormer windows should generally be appropriate to the style of the building.</i></p>	<p>will be replaced with new skylights compatible with new roof and roof plumbing as part of the re-roofing works for the rear extension.</p>
<p>Heritage Items and Contributory Buildings <i>iv) Additions must not visually dominate, compete with or conceal the original form and massing of the existing buildings.</i></p>	<ul style="list-style-type: none"> ▪ The new rear extension is limited to the ground floor level only. There will be no visibility from the public domain including Carrington Road to the front and Carey Street to the rear.
<p><i>v) Additions to heritage items must not contain any major or prominent design elements which compete with the architectural features or detailing of the existing building.</i></p>	<ul style="list-style-type: none"> ▪ The proposed design is consistent with this control.
<p><i>vi) Where single storey rear additions are proposed to dwelling houses, the addition must not compromise the integrity of the main roof and is to be lower in scale and secondary to it.</i></p>	<ul style="list-style-type: none"> ▪ The proposed design is consistent with this control.
<p><i>vii) Upper floor additions to the main roof of any single storey dwelling house may be acceptable if contained wholly within the existing roof space without change to the roof pitch or eaves height.</i></p>	<ul style="list-style-type: none"> ▪ No upper floor additions are proposed.
<p><i>viii) Upper floor additions to the rear of any single storey dwelling house should preferably use pavilion-type forms, with a lower scale linking structure between the original building and any double storey addition.</i></p>	<ul style="list-style-type: none"> ▪ No upper floor additions are proposed.
<p><i>ix) If a pavilion-type form is not suitable or desirable in the location, an upper floor addition may be acceptable, set well to the rear of the building to minimise impact on the main roof and to minimise streetscape visibility.</i></p>	<ul style="list-style-type: none"> ▪ Not applicable.
<p><i>x) Where rear lanes exist, it may be possible to provide additional floor space in an outbuilding at the rear of the site, rather than as an upper level addition to the dwelling itself.</i></p>	<ul style="list-style-type: none"> ▪ Not applicable.
<p><i>xi) Where rear additions are proposed to semi-detached dwellings, the additions must not compromise the symmetry and integrity of the front elevation or dominate the other house in the pair.</i></p>	<ul style="list-style-type: none"> ▪ Not applicable.
<p><i>xii) Where rear additions are proposed to attached dwellings (e.g. terrace houses), the additions must not compromise the integrity of the front elevation or the forms of relatively intact rear wings.</i></p>	<ul style="list-style-type: none"> ▪ Although the 'Nolan Terrace' group has a consistent upper floor rear wing but not at the rear ground floor levels. Notwithstanding, the proposed rear addition will align with the rear
	<p>ground floor extension of adjoining 57 Carrington Road.</p> <ul style="list-style-type: none"> ▪ There will be no impact on the front elevation of the group of terraces.

Randwick DCP 2013 - Clause B2.4 Siting and Setbacks	Discussion:
<p>Controls</p> <p>All Development</p> <p><i>i) Development must conform to the predominant front setbacks in the streetscape.</i></p>	<ul style="list-style-type: none"> ▪ The rear setbacks are considered above and is consistent within the 'Nolan Terrace'.
<p><i>ii) Development must respect side setbacks and rear alignments or setbacks of surrounding development.</i></p>	<ul style="list-style-type: none"> ▪ Consistent.
<p><i>iii) Front and rear setbacks should be adequate to ensure the retention of the existing landscape character of the heritage item or conservation area and important landscape features.</i></p>	<ul style="list-style-type: none"> ▪ There is limited landscaping within the rear courtyard of the subject terrace and the new works allows for grassed areas to the rear beyond the proposed terrace. ▪ The terrace at the rear is proposed to have concrete slab with no specific finish indicated (Renovation note 10). A Condition recommendation has been provided to reuse of the existing brick paving to maintain the traditional and consistent characteristics with the existing finishes and across the 'Nolan Terrace' group.
<p><i>iv) Any significant historical pattern of subdivision and lot sizes must be retained. Subdivision or site amalgamation involving heritage items or contributory buildings must not compromise the setting or curtilage of buildings on or adjoining the site.</i></p>	<ul style="list-style-type: none"> ▪ No changes to the subdivision pattern are proposed.

Randwick DCP 2013 - Clause B2.5 Detailing	Discussion:
<p>Controls</p> <p>All Development</p> <p><i>i) Only detailing which is known to have been original to your building is acceptable. Do not add what was never there.</i></p>	<ul style="list-style-type: none"> ▪ The proposal is consistent with this control in the context of a rear extension.
<p>Heritage Items and Contributory Buildings</p>	
<p><i>ii) Retain and repair original doors, windows, original sunhoods, awnings, gable detailing and other decorative elements to principal elevations. Original leadlight and coloured glass panes should be retained.</i></p>	<ul style="list-style-type: none"> ▪ Not applicable.
<p><i>iii) Where original windows, doors and façade detailing have been removed and replaced with modern materials, consideration should be given to reconstructing original features.</i></p>	<ul style="list-style-type: none"> ▪ Not applicable.
<p><i>iv) Authentic reconstruction is encouraged. Decorative elements must not be introduced unless documentary or physical evidence indicates the decorative elements previously existed. Undertake thorough research before attempting to reconstruct lost detail and elements.</i></p>	<ul style="list-style-type: none"> ▪ Not applicable

<p>v) Alterations and additions should incorporate new doors and windows which are compatible with the position, size, and proportions and detailing of original windows and doors.</p>	<ul style="list-style-type: none"> ▪ This matter has been considered above for the proposed rear sliding doors. In the context of the proposed addition and door opening use of large opening is acceptable.
<p>vi) Alterations and additions should adopt a level of detailing which complements the heritage fabric and should (in general) be less elaborate than the original.</p>	<ul style="list-style-type: none"> ▪ The rear extension is contemporary but complimentary and plain in detailing.

<p>Randwick DCP 2013 - Clause B2.6 Materials, Finishes and Colour Schemes</p>	<p>Discussion:</p>
<p>Controls All Development i) Materials for pathways and driveways must be consistent with the character of the heritage item or heritage conservation area.</p>	<ul style="list-style-type: none"> ▪ Not applicable.
<p>Heritage Items and Contributory Buildings ii) Changes to materials (including roofs and walls) on elevations visible from a public place are not favoured. Original face brickwork must not be rendered, bagged or painted. The removal of external brickwork skin is not supported.</p>	<ul style="list-style-type: none"> ▪ Roof works are located behind the main two-storey section of the subject terrace and will not be visible from the public domain. Notwithstanding, the proposed roofing of custom orb roof sheeting is acceptable in this rear context.
<p>iii) Matching materials must be used in repairing the fabric of external surfaces. In the case of new face brickwork, the colour and texture of the brick, the type of jointing and mortar colour should be carefully matched.</p>	<ul style="list-style-type: none"> ▪ Not applicable.
<p>iv) New or replacement roof materials must match existing materials. Alternative materials may be considered appropriate to the architectural style of the building and the streetscape context, and must be submitted for approval.</p>	<ul style="list-style-type: none"> ▪ The works are not visible from the public domain but the palette of materials including selected brickwork, weatherboard cladding, and painted brickwork will be compatible with the existing finishes and materials of the subject terrace.
<p>v) Alterations and additions must use materials and colours similar to, or compatible with, the original material or colours.</p>	<ul style="list-style-type: none"> ▪ As above. Compatible.

<p>Randwick DCP 2013 Clause B2.7 Roofs and Chimneys</p>	<p>Discussion:</p>
<p>Controls All Development i) Attic rooms are to be contained within roof forms and should not dominate the street and visible side elevations.</p>	<ul style="list-style-type: none"> ▪ Not applicable.
<p>Heritage Items and Contributory Buildings ii) Roofs must not be repitched or have their eaves line raised to allow for the provision of attic rooms.</p>	<ul style="list-style-type: none"> ▪ Not applicable.
<p>iii) Chimneys must be retained.</p>	<ul style="list-style-type: none"> ▪ Existing chimneys and roof features are to be retained. No new roof features are proposed to the main two-storey height section of the terrace.

Randwick DCP 2013 - Clause B2.11 Gardens, Garden Elements and Swimming Pools	Discussion:
<p>Controls All Development <i>(i) Significant trees and landscape elements such as pathways, garden beds and structures must be retained.</i></p>	<ul style="list-style-type: none"> ▪ No significant trees are identified for removal. The works indicate one tree is to be removed to facilitate the construction of new rear extension.
<p><i>(ii) Large areas of hard paving are to be minimised.</i></p>	<ul style="list-style-type: none"> ▪ Landscaping works are generally limited to the adaptation of existing paving and new grassed area between the new rear terrace and the garage fronting Carey Street. ▪ It is noted that the existing courtyard is constructed of recycled brick paving and reuse of these brick paving as a finish to the new rear terrace that is noted to be a concrete slab. Recommendation for a Condition of consent is included in the Conclusion of this referral.
<p><i>(iii) Garden and ancillary structures must be appropriate to primary buildings in terms of scale, style and materials.</i></p>	<ul style="list-style-type: none"> ▪ As above.
<p><i>(iv) Swimming pools must be located at the rear of the property and where possible should retain important trees and areas of soft landscaping. Swimming pools must not result in significant changes to ground levels on the site.</i></p>	<ul style="list-style-type: none"> ▪ Not applicable.
<p>Controls All Development <i>(i) Significant trees and landscape elements such as pathways, garden beds and structures must be retained.</i></p>	<ul style="list-style-type: none"> ▪ Not applicable
<p><i>(ii) Large areas of hard paving are to be minimised.</i></p>	<ul style="list-style-type: none"> ▪ Landscaping works to the rear courtyard will reduce the area of the existing paving with provision of grassed area.

8. CONCLUSIONS AND RECOMMENDATIONS

Having reviewed the documentation cited in Section 6, we support the proposed rear ground floor extension in relation to heritage matter, as they are generally compatible with the identified heritage values of the subject terrace and its group 'Nolan Terrace' and will facilitate its improved amenity for the owners without impacting on its landmark qualities along Carrington Road.

Below recommendations should be included as conditions in any consent associated with the current DA/532/2021 and should be provided as part of the Construction Certificate documentation prior to commencement of any works.

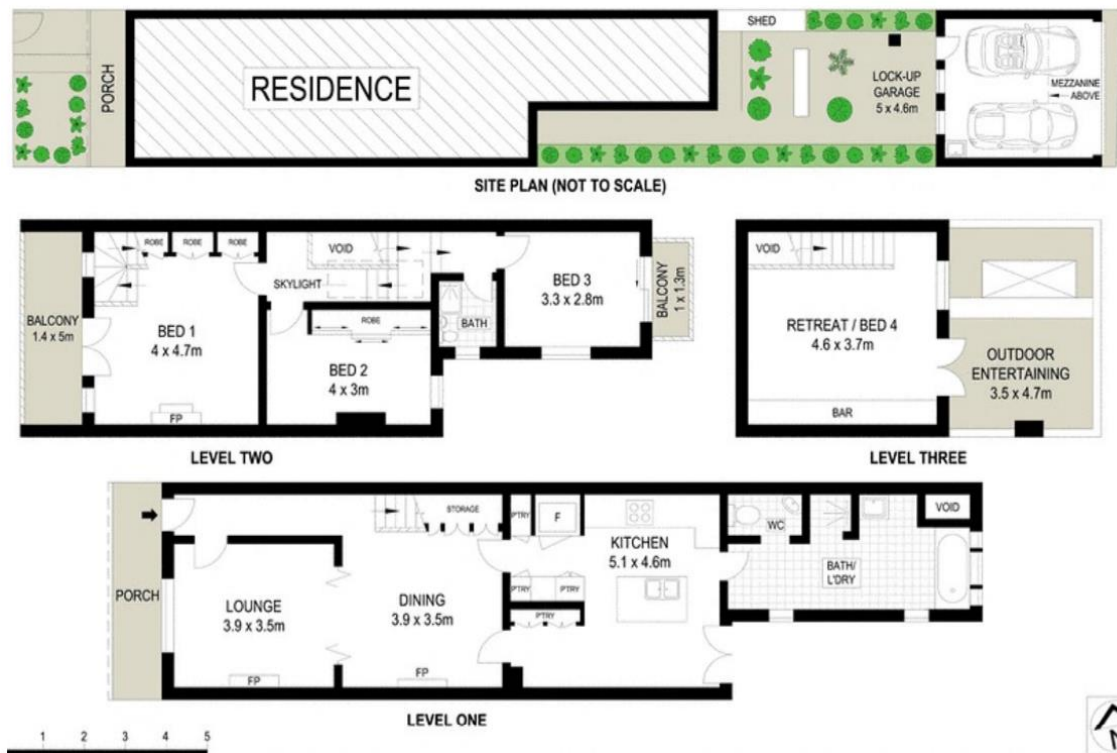
- The proposed structural support where the rear wall is removed in its entirety (Renovation note 8) will need to be adequately detailed to allow for the interpretation of the location of the subject removed wall. It is recommended that a bulkhead is retained to the depth of minimum 300mm (below the cornice level of the adjoining dining room), and if necessary, allow for insertion of a steel or otherwise structural support underside as per future detailing of a structural engineer.

- The terrace at the rear is proposed to have concrete slab with no specific finish indicated (Renovation note 10). Reuse of the existing brick paving is recommended as a finish to maintain the traditional and consistent characteristics with the existing finishes and across the 'Nolan Terrace' group.
- There should be some detailing to consider for the proposed removal of walls and bricking in a door opening at the rear of the existing dining room (Renovation note 12). The subject door opening on the south side of east wall of the dining room relates to a modified original window facing the breezeway, a common traditional design treatment of Victorian terraces. It is recommended that a shadow line in the form of a (3-5mm) groove or an indent of 10-50mm to create a presentation of an alcove marking the size and location of the subject opening (at the dining room side only).

I trust the above heritage assessment will assist the Council in its assessment of the proposed development to the subject Victorian terrace at 59 Carrington Road, Randwick. Please do not hesitate to contact me should you wish to discuss this matter further or require clarification of the recommended detailing.

ATTACHMENT: IMAGES OF THE 59 CARRINGTON ROAD, RANDWICK

IMAGES ARE SOURCED FROM THE REAL ESTATE WEBISTE AT <https://www.realestate.com.au/property/59-carrington-rd-randwick-nsw-2031>



59 Carrington Road, Randwick

McGrath

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

1 INTRODUCTION

This Clause 4.6 Variation Statement has been prepared to support a Development Application for alterations and additions to an existing terrace house located at 59 Carrington Road, Randwick. The purpose of this statement is to address a variation to Clause 4.4 - Floor Space Ratio of the Randwick Local Environmental Plan 2012 (RLEP 2012).

Clause 4.6 of the RLEP 2012 provides flexibility in the application of planning provisions by allowing the consent authority to approve a Development Application that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development. In determining whether to grant consent for development that contravenes a development standard, Clause 4.6(3) requires that the consent authority consider a written request from the applicant, which demonstrates:

- 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.

Wehbe v Pittwater Council [2007] NSWLEC 827 emphasised the need to demonstrate that the objectives of the relevant development standard are nevertheless achieved, despite the numerical standard being exceeded. Justification is then to be provided on environmental planning grounds. Wehbe sets out five ways in which numerical compliance with a development standard might be considered unreasonable or unnecessary as follows:

- 1) The objectives of the standard are achieved notwithstanding the 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 objective or 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; or
- 5) The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

The final development will result in a gross floor area of 183.1m² which equates to a non-compliant floor space ratio of 0.96:1. This document relies on objective 1) above as the proposed design achieves full compliance with all other objectives and provisions of the RLEP 2012 to ensure that any adverse impacts from the increased floor area are alleviated and a high level of amenity is achieved on the site and for adjoining properties. This document provides sufficient justification to support the proposed development and contend that the final design is appropriate for the subject site on environmental planning grounds.

2 RANDWICK LOCAL ENVIRONMENTAL PLAN 2012

Clause 4.4 of the RLEP 2012 requires that the floor space ratio on any land is not to exceed the floor space ratio prescribed on the Floor Space Ratio Map. The site is subject to a maximum floor space ratio of 0.5:1. The existing structures on the site have a gross floor area of 165m² and a floor space ratio of 0.87:1. The proposed development will increase the existing ground floor area by 18.1m², resulting in a minor increase in floor space ratio to 0.96:1. In this instance, the variation to the floor space ratio control relies on Clause 4.6 - Exception to Development Standards of the RLEP 2012 as set out below.

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 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.
- 5) 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.
- 6) 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.

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- 7) In deciding whether to grant concurrence, the Planning Secretary must consider—
- d) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - e) the public benefit of maintaining the development standard, and
 - f) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
- 8) 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 E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 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 all of these zones.

- 9) 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).
- 10) 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.

The objective of Clause 4.6 is understood to be a measure to ensure that the final development does not have an unreasonable impact on adjoining properties or the streetscape by way of overshadowing, overlooking or visual bulk. This document therefore establishes the written request to Randwick City Council as referred to in Clause 4.6(3) in relation to the proposals minor breach in floor space ratio and demonstrates that the proposal will not adversely impact on the streetscape. The assessment below has been prepared in accordance with the NSW Department of Planning and Infrastructure's guidelines on how to prepare Clause 4.6 Variation Statements.

3 CLAUSE 4.6 VARIATION

1 What is the name of the environmental planning instrument that applies to the land?

Randwick Local Environmental Plan 2012 (RLEP 2012)

2 What is the zoning of the land and what are the objectives of the zone?

The site is zoned R2 – Low Density Residential under the RLEP 2012. The objectives of the R2 zone are set out below.

- *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 ensure that land uses are carried out in a context and setting that minimises any impact on the character and amenity of the area.*

The proposed development achieves the objectives of the R2 zone by contributing to an existing form of low-impact residential development that contributes to the housing needs of the community. The proposed variation to the floor space ratio control is very minor in nature and will not detrimentally impact on the amenity of adjoining properties given the articulated

design and varied roof form, adequate side and rear setbacks and sufficient landscaping and private open space provided on the site. The development has been appropriately orientated on the site to allow for a reasonable level of solar access to living areas and private open space areas of adjoining properties.

3 What is the development standard being varied?

The development standard being varied is Clause 4.4 - Floor Space Ratio. Clause 4.4(2) states the following:

(2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.

4 What are the objectives of the development standard? The objectives of Clause 4.4 of the RLEP 2012 are as follows:

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

The proposed development achieves the objectives of Clause 4.4 as the final development is in keeping with the desired future character of the area and is sympathetic of the prevailing built form characteristics and landscape design of the streetscape. The proposed works are located at the rear of the existing terrace house and therefore will not impact on the contribution that the building makes to the public domain or the historical significance of the site.

The development maintains the low density characteristics of the building and is single storey in form in keeping with the prevailing characteristics of other additions to terrace houses experienced along the streetscape. The single storey form of the works also ensures that they are not highly visible from the public domain and will be suitably screened from adjoining properties by existing landscaping and fencing within the side and rear setbacks of the site. The development has been sensitively designed to respond to the existing topography of the site to minimise excavation and associated environmental impacts to the land.

5 What is the numeric value of the development standard in the environmental planning instrument?

The site is subject to a maximum floor space ratio of 0.50:1 under the RLEP 2012.

6 How do the existing and proposed numeric values relate to the development standard? What is the percentage variation?

The existing structures on the site have a gross floor area of 165m² and a floor space ratio of 0.87:1. The proposed development will increase the existing ground floor area by 18.1m², resulting in a minor increase in floor space ratio to 0.96:1.

In accordance with Clause 4.4, the maximum floor space ratio for the site is 0.5:1 or 94.85m². The final gross floor area of 183.1m² represents a variation of 88.25m² or 48%.

7 Matters to be considered under Clause 4.6 of the relevant EPI

The following table provides a summary of the key matters for consideration under Clause 4.6 of the RLEP 2012. A comment is provided against each matter demonstrating how compliance is achieved.

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Requirement / Subclause of Clause 4.6	Comment
<p>1) The objectives of this clause are as follows:</p> <ul style="list-style-type: none"> 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. 	<p>It is key to note that the objectives of the clause are to provide flexibility in applying development standards in that in doing so a better planning outcome ensues.</p>
<p>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.</p>	<p>The required floor space ratio described under Clause 4.4 is not expressly excluded from the operation of this clause.</p>
<p>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:</p> <ul style="list-style-type: none"> 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. 	<p>This written request seeks to justify the variation by demonstrating that both (a) and (b) are achieved.</p>
<p>4) Development consent must not be granted for development that contravenes a development standard unless:</p> <ul style="list-style-type: none"> a) the consent authority is satisfied that: <ul style="list-style-type: none"> 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. 	<p>This written request addresses all requirements of subclause (3).</p> <p>As demonstrated in this statement, the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for the zone.</p> <p>Concurrence is assumed but is a matter to be determined by the consent authority.</p>

<p>5) In deciding whether to grant concurrence, the Director-General must consider:</p> <ul style="list-style-type: none"> 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. 	<p>Contravention of the development standard is not considered to raise any matter of significance for State or regional environmental planning.</p> <p>The proposed building height will not impact the public benefit.</p>
<p>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 E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if.....</p>	<p>Not applicable.</p>
<p>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).</p>	<p>This is a matter for the determining authority.</p>
<p>8) This clause does not allow development consent to be granted for development that would contravene any of the following....</p>	<p>Not applicable.</p>

8 How is compliance with the development standard unreasonable or unnecessary in the circumstances of this particular case?

Strict compliance with the prescribed floor space ratio control is considered unreasonable and unnecessary in this particular circumstance. Non-compliance with the floor space ratio provision is existing on the site and is a common theme of adjoining properties along the streetscape. Examples are discussed below. 57 Carrington Road, Randwick (directly adjoining the subject site to the north) contains an attached terrace house with a rear extension and a detached garage at the rear. The building has a gross floor area of approximately 123m² which represents a floor space ratio of 0.64:1. The proposed rear extension of 59 Carrington Road has been located in line with the extended area of 57 Carrington Road to ensure consistency of the built form and minimise potential amenity or privacy issues. Aerial imagery of 57 Carrington Road is provided at Figure 1 below.



Figure 1: 57 Carrington Road, Randwick

61 Carrington Road, Randwick is located to the immediate south of the subject site and contains an attached dwelling house. There is a rear, single storey, pavilion-type addition to 61 Carrington Road having a nil side setback from the subject site and extending 3m further to the rear than the proposed extension on the subject site. The built form has a floor space ratio of approximately 0.7:1, with significant hardstand areas provided on the site and limited landscaping.

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Figure 2: 61 Carrington Road, Randwick

The proposed gross floor area is considered to be in keeping with the established built form characteristics of other attached developments in the vicinity of the site and its location at the rear of the terrace house ensures that it will not adversely impact or compete with the integrity of the streetscape. The additional floor area contributes positively to the functionality and liveability of the development and helps to achieve the development potential of the site, resulting in a terrace house that is better suited for modern family living. The submitted Architectural Plans demonstrate that the additional floor space ratio will not result in adverse overshadowing, privacy or amenity issues for surrounding properties as appropriate orientation, building articulation and setback distances have been incorporated into the design. The proposed works maintain a single storey form which is consistent with the rear extended areas of adjoining properties and therefore will not result in overlooking to adjoining private open space areas. The appearance of the built form is softened by landscaping within the side and rear setbacks of the site.

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

The Statement of Environmental Effects (SEE) prepared for this Development Application provides a holistic environmental planning assessment of the proposed development and concludes that there are sufficient environmental planning grounds to support the development. There is justification throughout the SEE and accompanying documentation to support the proposed development and contend that the final dwelling house is appropriate on environmental planning grounds.

Specific environmental grounds to justify the breach of the development standard are summarised as follows:

- 1) The non-compliance for this development is only a minor increase to the existing site conditions and is consistent with the built form characteristics of adjoining properties. The development will not impact on the appearance of the built form when viewed from the streetscape or the historical value of the building.
- 2) The intention of the proposed works and outcome is considered entirely reasonable. In general, the form of the development as experienced from the primary street frontage is to remain unchanged. The development will significantly improve the functionality and liveability of the terrace house for the existing residents.
- 3) The proposed development has been appropriately orientated on the site to allow for a reasonable level of solar access to living areas and private open space areas on the site and of adjoining properties.

10 Is the proposed development, despite the contravention to the development standard, in the public interest?

The proposed development is considered to be in the public interest as it successfully achieves the objectives of the R2 – Low Density Residential zone and the relevant Aims of the Plan. The final terrace house is in keeping with the residential nature of the streetscape and has been sensitively designed to respond to the existing topography of the site to minimise conflict between the built form and the natural environment. The proposed design minimises any adverse impacts to surrounding properties, the environment or the public domain through appropriate orientation, setbacks distances and an articulated built form that reduces overall bulk and massing when viewed from adjoining properties. The location of the proposed works at the rear of the site ensures that they are not highly visible from the streetscape.

It is therefore demonstrated that the application is entirely tenable and reasonable in its variation to this standard. It is also noted that the variation is considered suitable in the current context of the area and for the desired future character of Randwick.

4 CONCLUSION

This Clause 4.6 Variation Statement is well founded as it demonstrates, as required by Clause 4.6 of the RLEP 2012, that:

- 1) Compliance with the development standard would be unreasonable and unnecessary in this particular circumstance.
- 2) There are sufficient environmental planning grounds to justify the contravention and the proposal is considered to result in a positive planning outcome.
- 3) The development meets the objectives of the development standard and the objectives of the R2 – Low Density Residential zone notwithstanding the proposed variation.
- 4) The proposed development is in the public interest and there is no public benefit in maintaining the standard.
- 5) The contravention does not raise any matter of State or Regional Significance

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 C2: Medium Density Residential

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 below.

(Note: a number of control provisions that are not related to the proposal have been deliberately omitted)

DCP Clause	Control	Proposal	Compliance
2.	Site Planning		
2.2	Landscaped open space and deep soil area		
2.2.1	Landscaped open space		
	A minimum of 50% of the site area (94.85m ²) is to be landscaped open space.	Site area = 189.7m ² The existing landscaped area on the site with the inclusion of approved studio (under DA/652/2020) is approx. 34.8% (or 66m ²). The proposed development will be decreasing the landscaped area on the site to 11.23% (or 21.3m ²) creating a further non-compliance to the control.	No. Refer to Section 9.1 Discussion of key issues.
2.2.2	Deep soil area		
	(i) A minimum of 25% of the site area (47.4m ²) should incorporate deep soil areas sufficient in size and dimensions to accommodate trees and significant planting.	11.22% or (21.3m ²)	No. Refer to Section 9.1 Discussion of key issues.
	(ii) Deep soil areas must be located at ground level, be permeable, capable for the growth of vegetation and large trees and must not be built upon, occupied by spa or swimming pools or covered by impervious surfaces such as concrete, decks, terraces, outbuildings or other structures.		
	(iii) Deep soil areas are to have soft landscaping comprising a variety		

DCP Clause	Control	Proposal	Compliance
	of trees, shrubs and understorey planting.		
	(iv) Deep soil areas cannot be located on structures or facilities such as basements, retaining walls, floor slabs, rainwater tanks or in planter boxes.		
	(v) Deep soil zones shall be contiguous with the deep soil zones of adjacent properties.		
2.3.1	Private open space		
	<p>Private open space is to be:</p> <p>(i) Directly accessible from the living area of the dwelling.</p> <p>(ii) Open to a northerly aspect where possible so as to maximise solar access.</p> <p>(iii) Be designed to provide adequate privacy for residents and where possible can also contribute to passive surveillance of common areas.</p> <p>For residential flat buildings:</p> <p>(vi) Each dwelling has access to an area of private open space in the form of a courtyard, balcony, deck or roof garden, accessible from within the dwelling.</p> <p>(vii) Private open space for apartments has a minimum area of 8m² and a minimum dimension of 2m.</p>	<p>A minimum of 5m x 5m of contiguous private open space is provided to the rear of the dwelling.</p> <p>The subject site maintains adequate private open space which is directly accessible from the open plan living areas.</p>	Yes
3.	Building Envelope		
3.1	Floor space ratio		
	Floor space ratio LEP 2012 = 0.5:1	<p>Site area = 189.7m²</p> <p>Existing FSR = 165m²</p> <p>Proposed FSR = 183.1m²</p>	No. Refer to Section 9.1 Discussion of key issues.
3.2	Building height		
	Maximum overall height LEP 2012 = 9.5m	<p>Existing = The existing maximum building height on the site is not altered.</p> <p>Proposed = The proposed development is single storey in form and has a maximum building height of approx. 5m from the natural ground level to the top of the ridge.</p>	Yes
3.4	Setbacks		
3.4.2	Front setback		

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DCP Clause	Control	Proposal	Compliance
	i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street. Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances to allow for suitable landscaped areas to building entries.	The front setback is not altered as the additions are to the rear of the terrace.	Not applicable.
3.4.3	Side setback		
	Residential flat building Assessed on merit as the site has a frontage width less than 12m.	Frontage width = 5.135m Frontage less than 12m is assessed on merit. Proposed = The proposed addition is sited on the side boundaries with a nil setback.	No. Refer to Section 9.1 Discussion of key issues.
4.	Building Design		
4.4	External wall height and ceiling height		
	(iii) The minimum ceiling height is to be 2.7m for all habitable rooms.	The proposal has a floor to ceiling height of approx. 3.6m.	Yes
4.9	Colours, materials and finishes		
	(i) Provide a schedule detailing the materials and finishes in the development application documentation and plans. (ii) The selection of colour and material palette must complement the character and style of the building. (iv) Use the following measures to complement façade articulation: - Changes of colours and surface texture - Inclusion of light weight materials to contrast with solid masonry surfaces - The use of natural stones is encouraged.	The proposed works are not visible from the streetscape and the use of matching materials is unnecessary in this instance. Standard condition is included to ensure that the additions are compatible with the existing building and surrounding heritage buildings.	Conditioned
5.	Amenity		
5.1	Solar access and overshadowing		
	Solar access for proposed development		
	(i) Dwellings must receive a minimum of 3 hours sunlight in living areas and to at least 50% of the private open space between 8am and 4pm on 21 June.	The development is for a single storey dwelling. Adequate solar access is received to the living area.	Yes

DCP Clause	Control	Proposal	Compliance
	(ii) Living areas and private open spaces for at least 70% of dwellings within a residential flat building must provide direct sunlight for at least 3 hours between 8am and 4pm on 21 June.		
	(iii) Limit the number of single-aspect apartments with a southerly aspect to a maximum of 10 percent of the total units within a residential flat building.		
	(iv) Any variations from the minimum standard due to site constraints and orientation must demonstrate how solar access and energy efficiency is maximised.		
Solar access for surrounding development			
	(i) Living areas of neighbouring dwellings must receive a minimum of 3 hours access to direct sunlight to a part of a window between 8am and 4pm on 21 June.	Single storey which is attached to a row of terraces.	Not applicable.
	(ii) At least 50% of the landscaped areas of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight to a part of a window between 8am and 4pm on 21 June.		
	(iii) Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further.		
5.2 Natural ventilation and energy efficiency			
	(i) Provide daylight to internalised areas within each dwelling and any poorly lit habitable rooms via measures such as ventilated skylights, clerestory windows, fanlights above doorways and highlight windows in internal partition walls.	Adequate lighting and ventilation are provided to the dwelling.	Yes
	(ii) Sun shading devices appropriate to the orientation should be provided for the windows and glazed doors of the building.		
	(iii) All habitable rooms must incorporate windows opening to outdoor areas. The sole reliance on skylight or clerestory windows		

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DCP Clause	Control	Proposal	Compliance
	<p>for natural lighting and ventilation is not acceptable.</p> <p>(iv) All new residential units must be designed to provide natural ventilation to all habitable rooms. Mechanical ventilation must not be the sole means of ventilation to habitable rooms.</p> <p>(v) A minimum of 90% of residential units should be naturally cross ventilated. In cases where residential units are not naturally cross ventilated, such as single aspect apartments, the installation of ceiling fans may be required.</p> <p>(vi) A minimum of 25% of kitchens within a development should have access to natural ventilation and be adjacent to openable windows.</p> <p>(vii) Developments, which seek to vary from the minimum standards, must demonstrate how natural ventilation can be satisfactorily achieved, particularly in relation to habitable rooms.</p>		
5.3	Visual privacy		
	<p>(i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings.</p> <p>(ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to any habitable room windows on the side elevations of the adjoining residences.</p> <p>(iii) Orient buildings on narrow sites to the front and rear of the lot, utilising the street width and rear garden depth to increase the separation distance.</p> <p>(iv) Locate and design areas of private open space to ensure a high level of user privacy. Landscaping, screen planting, fences, shading devices and screens are used to prevent overlooking and improve privacy.</p> <p>(v) Incorporate materials and design of privacy screens including:</p> <ul style="list-style-type: none"> - Translucent glazing - Fixed timber or metal slats 	<p>There are no privacy impacts associated with the single storey addition.</p>	<p>Yes</p>

DCP Clause	Control	Proposal	Compliance
	<ul style="list-style-type: none"> - Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings - Screen planting and planter boxes as a supplementary device for reinforcing privacy protection 		
5.4	Acoustic privacy		
	<ul style="list-style-type: none"> (i) Design the building and layout to minimise transmission of noise between buildings and dwellings. (ii) Separate “quiet areas” such as bedrooms from common recreation areas, parking areas, vehicle access ways and other noise generating activities. (iii) Utilise appropriate measures to maximise acoustic privacy such as: <ul style="list-style-type: none"> - Double glazing - Operable screened balconies - Walls to courtyards - Sealing of entry doors 	<p>The proposal is not considered to result in any additional adverse acoustic privacy impacts beyond that associated with the existing terrace area.</p>	<p>Yes</p>

Responsible officer: Chahrazad Rahe, Senior Assessment Planner

File Reference: DA/532/2021

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Development Consent Conditions



DA No:	DA/532/2021
Property:	59 Carrington Road, RANDWICK NSW 2031
Proposal:	Alterations and additions to existing attached dwelling including ground floor extension to the rear and new rear terrace, tree removal, landscaping and associated works (Local Heritage Item, variation to FSR of the RLEP 2012).
Recommendation:	Approval

Development Consent Conditions

GENERAL CONDITIONS

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

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

Approved Plans & Supporting Documentation

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

Plan	Drawn by	Dated	Received by Council
350.00-21	Plan Ahead Design	19/08/2021	1 September 2021
350.01-21	Plan Ahead Design	19/08/2021	1 September 2021
350.02-21	Plan Ahead Design	19/08/2021	1 September 2021

BASIX Certificate No.	Dated	Received by Council
A381584	16 September 2020	1 September 2021

Amendment of Plans & Documentation

2. The approved plans and documents must be amended in accordance with the following requirements:
- The proposed structural support where the rear wall is removed in its entirety (Renovation note 8) will need to be adequately detailed to allow for the interpretation of the location of the subject removed wall. It is recommended that a bulkhead is retained to the depth of minimum 300mm (below the cornice level of the adjoining dining room), and if necessary, allow for insertion of a steel or otherwise structural support underside as per future detailing of a structural engineer.
 - The terrace at the rear is proposed to have concrete slab with no specific finish indicated (Renovation note 10). Reuse of the existing brick paving is recommended as

a finish to maintain the traditional and consistent characteristics with the existing finishes and across the 'Nolan Terrace' group.

- c) There should be some detailing to consider for the proposed removal of walls and bricking in a door opening at the rear of the existing dining room (Renovation note 12). The subject door opening on the south side of east wall of the dining room relates to a modified original window facing the breezeway, a common traditional design treatment of Victorian terraces. It is recommended that a shadow line in the form of a (3-5mm) groove or an indent of 10-50mm to create a presentation of an alcove marking the size and location of the subject opening (at the dining room side only).

REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

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

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

Consent Requirements

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

External Colours, Materials & Finishes

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

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

Compliance Fee

5. A development compliance and enforcement fee of \$100 shall be paid to Council in accordance with Council's adopted Fees & Charges Pricing Policy, prior to the issue of a Construction Certificate for development.

Long Service Levy Payments

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

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

Sydney Water Requirements

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

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

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

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

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

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

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

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

REQUIREMENTS TO BE INCLUDED IN THE CONSTRUCTION CERTIFICATE

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

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

Compliance with the Building Code of Australia

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

BASIX Requirements

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

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

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

Stormwater Drainage

10. A surface water/stormwater drainage system must be provided in accordance with the following requirements, to the satisfaction of the Certifier and details are to be included in the construction certificate:-
- a) Surface water/stormwater drainage systems must be provided in accordance with the relevant requirements of the Building Code of Australia (Volume 2);

- b) The surface water/stormwater must be drained and discharged to the street gutter or, subject to site suitability, the stormwater may be drained to a suitably designed absorption pit;
- c) Any absorption pits or soaker wells should be located not less than 3m from any adjoining premises and the stormwater must not be directed to any adjoining premises or cause a nuisance;
- d) External paths and ground surfaces are to be constructed at appropriate levels and be graded and drained away from the building and adjoining premises, so as not to result in the entry of water into the building, or cause a nuisance or damage to the adjoining premises;
- e) Details of any proposed drainage systems or works to be carried out in the road, footpath or nature strip must be submitted to and approved by Council before commencing these works.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

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

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

Certification & Other Requirements

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

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

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

- b) A *Principal Certifier* must be appointed to carry out the necessary building inspections and to issue an *occupation certificate*; and
- c) A *principal contractor* must be appointed for the building work, or in relation to residential building work, an *owner-builder* permit may be obtained in accordance with the requirements of the *Home Building Act 1989*, and the *Principal Certifier* and Council are to be notified accordingly; and
- d) The *principal contractor* must be advised of the required *critical stage inspections* and other inspections to be carried out, as specified by the *Principal Certifier*; and
- e) At least two days notice must be given to the Council, in writing, prior to commencing any works.

Home Building Act 1989

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

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

Dilapidation Reports

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

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

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

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

Construction Noise & Vibration Management Plan

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

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

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

Construction Site Management Plan

15. 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;

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- details of proposed sediment and erosion control measures;
- provisions for temporary stormwater drainage;
- construction noise and vibration management;
- construction traffic management details.

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

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

Demolition Work Plan

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

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

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

- b) Any materials containing asbestos (including Fibro) must be safely removed and disposed of in accordance with the NSW Work Health and Safety Regulation 2017, SafeWork NSW Code of Practice for the Safe Removal of Asbestos, Protection of Environment Operations (Waste) Regulation 2014 and Council's Asbestos Policy.

Public Utilities

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

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

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

REQUIREMENTS DURING CONSTRUCTION & SITE WORK

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

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

Inspections during Construction

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

Site Signage

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

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

Restriction on Working Hours

20. 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

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

- Work Health & Safety legislation and SafeWork NSW requirements
- Preparation and implementation of a *demolition work plan*, in accordance with AS 2601 (2001) – Demolition of structures; NSW Work Health and Safety Regulation 2017 and Randwick City Council's Asbestos Policy. A copy of the demolition work plan must be provided to Principal Certifier and a copy must be kept on site and be made available for Council Officer upon request.
- A SafeWork NSW licensed demolition or asbestos removal contractor must undertake removal of more than 10m² of bonded asbestos (or as otherwise specified by SafeWork NSW or relevant legislation). Removal of friable asbestos material must only be undertaken by contractor that holds a current friable asbestos removal licence. A copy of the relevant licence must be provided to the Principal Certifier.
- On sites involving the removal of asbestos, a sign must be clearly displayed in a prominent visible position at the front of the site, containing the words 'Danger Asbestos Removal In Progress' and include details of the licensed contractor.
- Asbestos waste must be stored, transported and disposed of in compliance with the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Operations (Waste) Regulation 2014*. Details of the disposal of materials

containing asbestos (including receipts) must be provided to the Principal Certifier and Council.

- A Clearance Certificate or Statement, prepared by a suitably qualified person (i.e. an occupational hygienist, licensed asbestos assessor or other competent person), must be provided to Council and the Principal Certifier as soon as practicable after completion of the asbestos related works, which confirms that the asbestos material have been removed appropriately and the relevant conditions of consent have been satisfied.

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

Public Safety & Site Management

22. 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.

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Support of Adjoining Land, Excavations & Retaining Walls

23. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 98 E of the *Environmental Planning & Assessment Regulation 2000*, it is a prescribed condition that the adjoining land and buildings located upon the adjoining land must be adequately supported at all times.
24. All excavations and backfilling associated with the erection or demolition of a building must be executed safely in accordance with appropriate professional standards and excavations must be properly guarded and supported to prevent them from being dangerous to life, property or buildings.

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

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

25. Prior to undertaking any demolition, excavation or building work in the following circumstances, a report must be obtained from a *professional engineer* which details the methods of support for the dwelling or associated structure on the adjoining land, to the satisfaction of the *Principal Certifier*:
- when undertaking excavation or building work within the zone of influence of the footings of a dwelling or associated structure that is located on the adjoining land;
 - when undertaking demolition work to a wall of a dwelling that is built to a common or shared boundary (e.g. semi-detached or terrace dwelling);
 - when constructing a wall to a dwelling or associated structure that is located within 900mm of a dwelling located on the adjoining land;
 - as may be required by the *Principal Certifier*.

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

Building Encroachments

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

Road/Asset Opening Permit

27. A *Road / Asset Opening Permit* must be obtained from Council prior to commencing any excavations or works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the *Roads Act 1993* and all of the conditions and requirements contained in the *Road / Asset Opening Permit* must be complied with.

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

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

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

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

Occupation Certificate Requirements

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

BASIX Requirements

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

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

Council's Infrastructure & Vehicular Crossings

30. All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must be carried out in accordance with Council's Policy for "Vehicular Access and Road and Drainage Works" and the following requirements:

- a) All work on Council land must be carried out by Council, unless specific written approval has been obtained from Council to use non-Council contractors.
- b) Details of the proposed civil works to be carried out on Council land must be submitted to Council in a *Pre-paid Works Application Form*, prior to issuing an occupation certificate, together with payment of the relevant fees.
- c) If it is proposed to use non-Council contractors to carry out the civil works on Council land, the work must not commence until the written approval has been obtained from Council and the work must be carried out in accordance with the conditions of consent, Council's design details and payment of a Council design and supervision fee.
- d) The civil works must be completed in accordance with Council's conditions of consent and approved design and construction documentation, prior to occupation of the development, or as otherwise approved by Council in writing.

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

31. The premises must only be used as a single residential dwelling and must not be used for dual or multi-occupancy purposes.

External Lighting

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

Plant & Equipment

33. Noise from the operation of all plant and equipment upon the premises shall not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997 and Regulations*.

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

ADVISORY NOTES

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

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

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

- A2 This determination does not include an assessment of the proposed works under the Building Code of Australia (BCA) and other relevant Standards. All new building work (including alterations and additions) must comply with the BCA and relevant Standards and you are advised to liaise with your architect, engineer and building consultant prior to lodgement of your construction certificate.

- A3 In accordance with the requirements of the *Environmental Planning & Assessment Act 1979*, building works, including associated demolition and excavation works (as applicable) must not be commenced until:

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

- A4 Council can issue your *Construction Certificate* and be your *Principal Certifier* for the development, to undertake inspections and ensure compliance with the development consent and relevant building regulations. For further details contact Council on 9093 6944.

- A5 A Local Approval application must be submitted to and be approved by Council prior to commencing any of the following activities on a footpath, road, nature strip or in any public place:

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

For further information please contact Council on 9093 6971.

- A6 Specific details of the location of the building/s should be provided in the Construction Certificate to demonstrate that the proposed building work will not encroach onto the adjoining properties, Council's road reserve or any public place.
- A7 Prior to commencing any works, the owner/builder should contact *Dial Before You Dig* on 1100 or www.dialbeforeyoudig.com.au and relevant Service Authorities, for information on potential underground pipes and cables within the vicinity of the development site.
- A8 This consent does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is proposed to be carried out upon any adjoining or supported land, the land owner or principal contractor must obtain:
- the consent of the owners of such adjoining or supported land to trespass or encroach, or
 - an access order under the *Access to Neighbouring Land Act 2000*, or
 - an easement under section 88K of the *Conveyancing Act 1919*, or
 - an easement under section 40 of the *Land & Environment Court Act 1979*, as appropriate.

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

Development Application Report No. D27/22

Subject: 349 Avoca Street, Randwick (DA/474/2021)

Proposal:	Alterations and additions to residential dwelling, convert to attached dual occupancy (one above the other) and strata subdivision (Variation to FSR).
Ward:	East Ward
Applicant:	Archispectrum
Owner:	Ms S A Aldred
Cost of works:	\$194,183
Reason for referral:	Greater than 10% variation to the 0.5:1 maximum FSR development standard in Clause 4.4(2) and 400sqm minimum strata lot size for each lot of a dual occupancy required in Clause 4.1A of the LEP.

Recommendation

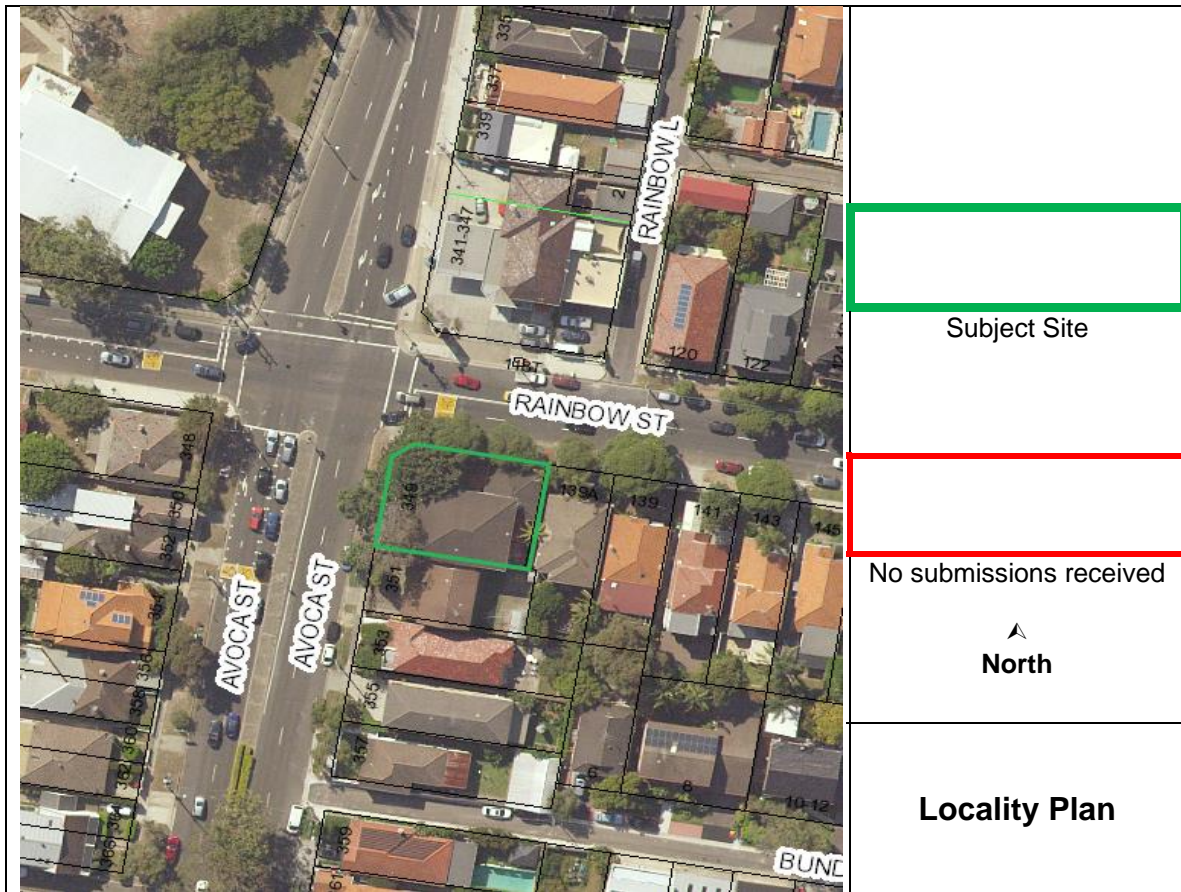
That the RLPP refuse consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/474/2021 for alterations and additions to residential dwelling, convert to attached dual occupancy (one above the other) and strata subdivision, at 349 Avoca Street, Randwick, for the following reasons:

1. The matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have not been adequately addressed and that consent may not be granted to the development application, which contravenes the Floor Space Ratio development standard in Clause 4.4 of Randwick Local Environmental Plan 2012.
2. The proposal is inconsistent with the relevant objectives contained within the RLEP 2012, the relevant requirements of the RDCP 2013 and the specific objectives of the R2 zone in that the proposal does not provide for the housing needs of the community within a low-density residential environment as it seeks additional dwelling entitlements that do not provide for suitable levels of amenity in regard to appropriately sited and dimensioned areas of private open space and solar access to living areas.
3. The proposed development is inconsistent with the objectives of the R2 zone in relation to providing for the housing needs of the community, recognising the desirable elements of the streetscape along Rainbow Street and the desired character of the area, protecting the amenity of residents, and encouraging housing affordability.
4. The proposal does not recognise the desirable elements of the existing streetscape and built form in seeking to extend the height of the garage along the secondary street setback zone along Rainbow Street which is predominately characterised by open space within front setbacks Rainbow Street.
5. The proposed does not protect the amenity of residents and the building does not respond to environmental and energy needs of future occupants of the site as it seeks a dual occupancy that has low standards of amenity with regards to size, location and dimensions of private open space and inadequate solar access to living rooms and areas of private open space.
6. The proposed garage extension and first floor balcony extension will be incompatible with the desired future character of the locality and result in adverse visual bulk and amenity impacts when viewed along Rainbow Street and within the front of the adjoining site at No. 139A Rainbow Street.

7. The development will detract from the visual quality of the public domain/streetscape.
8. The proposed development will be a negative impact on the surrounding area.
9. The proposed development is not sustainable form of development in the zone due to the negative impacts on the streetscape, substandard amenity for future occupants and adverse impacts on neighbouring properties in relation to visual bulk and overshadowing.
10. The proposed dual occupancy and strata lot sizes (measured at ground level) creates additional dwelling entitlements for occupancies with poor amenity on substandard sized strata lots. The application does not include a Clause 4.6 submission seeking a variation to the minimum lot sizes in clause 4.1A of the LEP

Attachment/s:

Nil



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1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the proposal exceeds the maximum FSR development standard for the proposed dual occupancy as a result of conversion from a single dwelling in an essentially top bottom arrangement and strata subdivision of each dwelling into 2 lots.

The applicant submitted an exception to the maximum FSR standard, noting that less FSR is proposed. Whilst less FSR is proposed, the proposal actually increases bulk and scale (extension of the garage and first floor balcony along the northern secondary boundary along Rainbow Street) noting that the FSR reduction is associated with a change of use of the third parking space which was excess parking for a single dwelling into an area that accommodates “access to parking” for the dual occupancy which is excluded from GFA/FSR pursuant to the LEP definition.

In relation to the proposed conversion of the single dwelling into a dual occupancy, the exceedance of the FSR standard is not supported for the following reasons:

- The proposed change of use necessitating the extensions to the garage, to accommodate car stackers to comply with parking requirements, results in additional adverse visual bulk along the secondary street frontage of Rainbow Street that is considered to detract from the open front setbacks characterizing this streetscape character,
- The private open space for unit 2 (living space at first floor level) provides an area of private open space (POS) at ground level that’s undersized and not directly connected to living space resulting in unsuitable areas for active and passive recreational purposes that does not comply with the relevant DCP controls and objectives
- There is insufficient solar access to the living room and rear yard of ground level dwelling (unit 1) as a result of the change of use necessitating the proposed garage extensions.

It’s also noted Council’s development engineer is not satisfied sufficient car stacker information has been submitted with the application to enable Council to verify that the car stackers can be accommodated within the nominated enclosed garage car spaces, noting that the eastern most

space appears to have a width that's well below the minimum required for an enclosed parking space.

In relation to the proposed strata subdivision, Clause 4.1A of the LEP is the applicable development standard requiring 400sqm for each strata lot of a dual occupancy in the R2 zone. The applicant indicates compliance whereas Council indicates non-compliance with the standard, noting that a clause 4.6 submission is absent from the application. The opposing views hinge on the way in which strata lot sizes are calculated, with the applicant proffering an accumulated calculation of strata lot at all levels that is in 3-Dimensional manner whereas Council proffering a 2-Dimensional method of calculation, only calculating the strata lots at ground level which would in essence require a minimum site area of 800sqm in order to meet the 400sqm minimum lot size standard for strata subdivision of a dual occupancy in the R2 or R3 zone in clause 4.1A.

The applicant indicates that their interpretation is assisted by a recent court case, however Council does not agree with this interpretation also noting there are differences in the circumstances of the case whereby a pre-existing dwelling occupancy was the subject of the case whereas this application seeks a dual occupancy and considered to create additional dwelling entitlements which is a key objective of the minimum lot size standard.

Irrespective of whether a clause 4.6 variation is submitted for a variation to the strata lot, the proposed dual occupancy and strata subdivision are not supported as it seeks a dual occupancy which creates additional dwelling entitlements. Moreover, it is considered that the applicant's methodology for calculating strata lot sizes relies on accumulating ingenuine and inordinately large areas of attic space which isn't shown as accessible and if it were, the majority of this area would have very shallow floor to floor heights severely compromising its usability even for storage space.

The proposal is recommended for refusal.

2. Site Description and Locality

The subject site is known as 349 Avoca Street and is legally described as Lot 1 in DP 1261732. The site is 463.7m², is regular in shape located on the corner of Avoca Street and Rainbow Street with a 15.79m frontage to Avoca Street to the west that splays 4.27m to a 21.875m fronting along Rainbow Street to the north. The site contains a detached two storey dwelling with a single attached garage at the northwestern corner of the site facing the Rainbow Street frontage.

The site has only gentle slope of approximately 500mm to 1m from north to south.

The adjoining property to the east contains a detached single storey dwelling on a site identified as No. 139A Rainbow Street and the adjoining property to the south contains a detached two storey dwelling on a site identified as No. 3351 Avoca Street.



Street view along Avoca Street – off white building at left is the subject site and at right is No. 351 Avoca Street.



Street view along Rainbow Street: off white building at right is subject site showing the existing two car garage and third roller door. At left in the photo is adjoining site at No. 139A Rainbow Street.

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3. History

- Refused: BA/1249/1994, Alts and adds to dwelling
- Approved: BA/344/1995, Alts and adds to dwelling including a third garage
- Building Certificate: Single storey brick dwelling with tile and metal roof.
- Approved: BA/593/1997, Erect masonry front and side boundary fence to existing two storey dwelling.

4. Proposal

The proposal seeks development consent for alterations and additions to a single detached two storey dwelling to convert into an attached dual occupancy (one above the other) and strata subdivision of each occupancy. A clause 4.6 variation is sought to the FSR development standard in cl. 4.4 of the LEP.

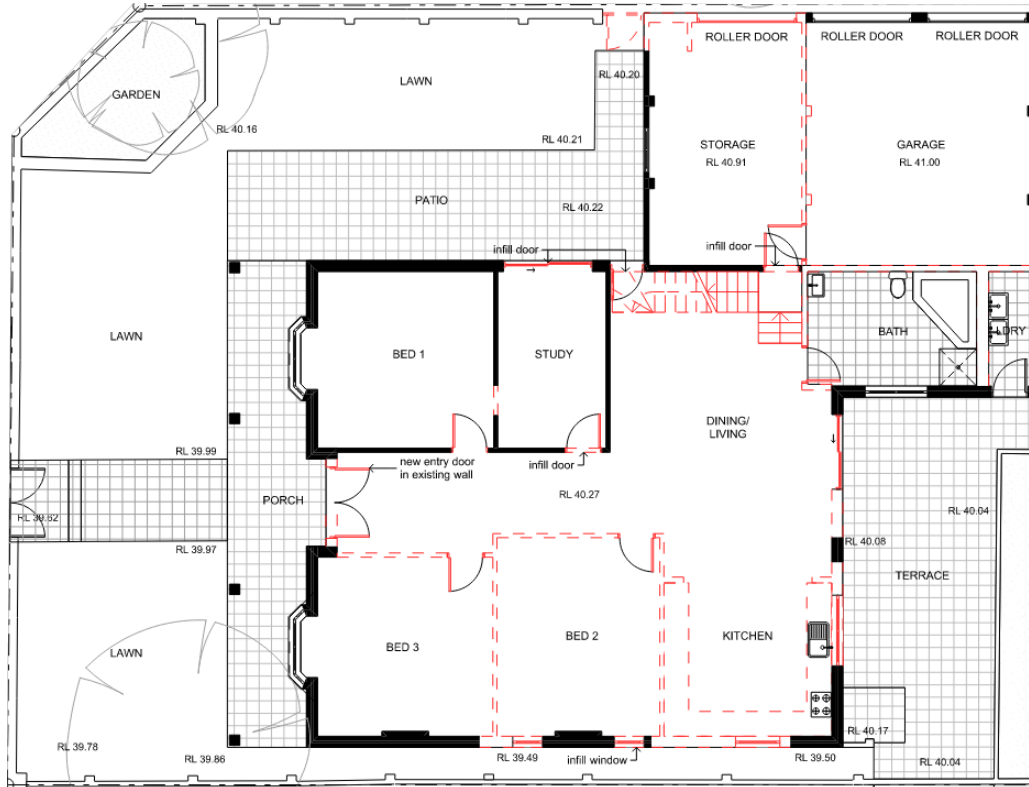
The proposed works include:

Ground level:

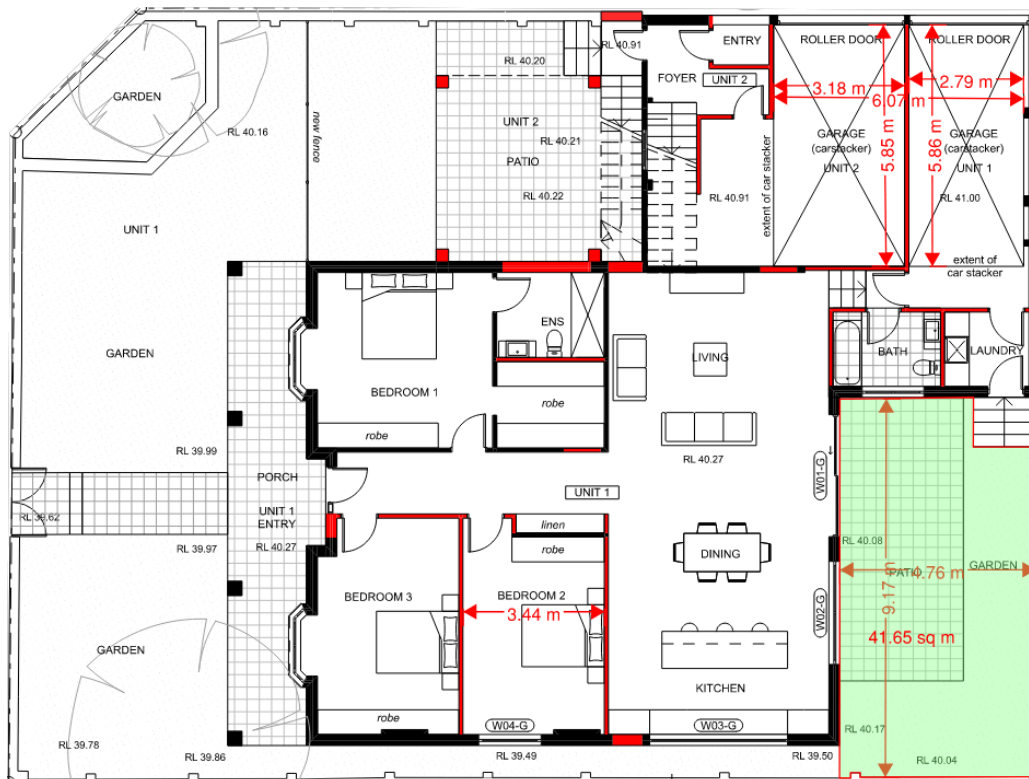
- Change use of and carry out alterations to the third garage space for use as an entry lobby the proposed first floor dwelling (lot 2) and altered ground level terrace for use of first floor dwelling.
- Two car garage alteration to internal layout and extension of height to provide individual parking areas for each dwelling to include a 2 stacker car spaces for each dwelling
- Conversion of third garage space into entry lobby for
- Reconfigure internal to provide 3 bedroom dwelling with open plan living/dining/kitchen, bathroom and ensuite (brick up windows to ensuite)
- Allocate rear yard (4.76m by 9.17m to ground level unit as private open space (POS)

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Existing:



Proposed:

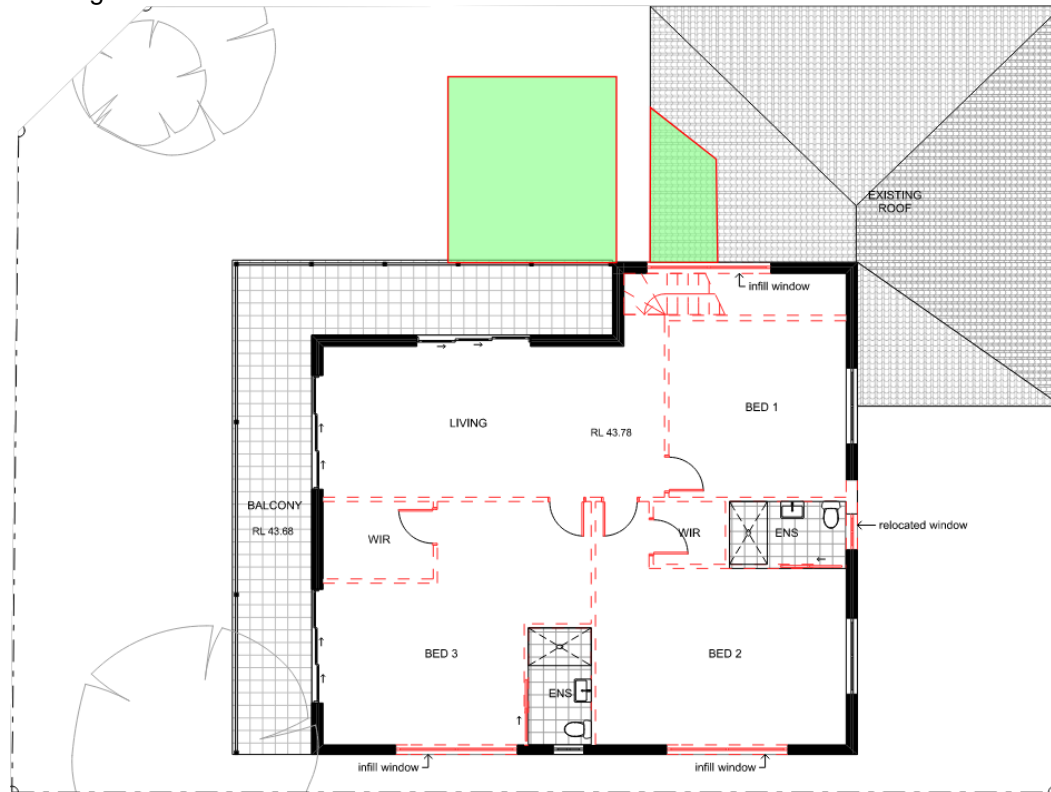


First floor level (dwelling 2):

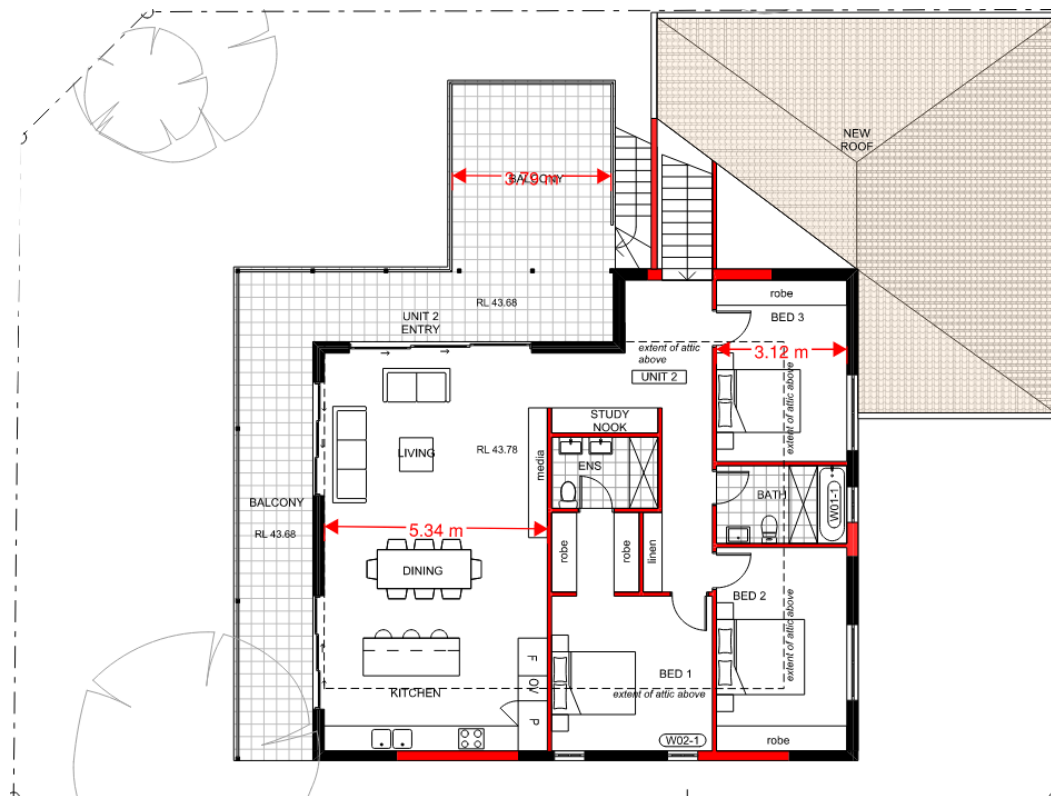
- Reconfigure internal layout to provide 3 bedroom dwelling, open plan living/dining/kitchen, bathroom and ensuite.

- Extend balcony to north providing partial weather protection to ground level terrace
- Internalised stair access from ground level lobby.

Existing



Proposed:



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Strata subdivision

The Applicants proposes strata subdivision stating compliance is achieved with the 400sqm minimum lot size required in clause 4.1A of the LEP. The applicant indicates compliance with the standard calculating all areas of the strata lots over multiple levels.

5. Notification

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

6. Relevant Environment Planning Instruments

6.1. SEPP (Housing) 2021

Not applicable.

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

The Vegetation SEPP provides approval pathways for the removal of vegetation in non-rural areas and matters for consideration in the assessment of applications to remove vegetation. Council’s Landscape Technician has reviewed the proposal and raised no objection as there are conditions imposed on the consent requiring the retention of a tree within the front setback along Avoca Street and no significant trees located within the subject site are sought to be removed..

Given the above context, the provisions of the Vegetation SEPP is suitably addressed.

6.3. State Environmental Planning Policy (Resilience and Hazards) 2021

The subject site continues its residential use and no known uses are considered to have been carried out on site which would compromise its suitability for residential use.

6.4. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned R2 low density residential under Randwick Local Environmental Plan 2012 and the proposal for a dual occupancy and strata subdivision are permissible with consent.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.4: Floor space ratio (max)	0.5:1 (231.85sqm of 463.7sqm)	Applicants’ calculation: 0.62:1 (287.494sqm or (24% above the standard).	No* see clause 4.6 assessment further below.
Cl 4.3: Building height (max)	9.5m	4.9m for garage extension	Yes
Cl 4.1A(4): Lot Size (min)	400sqm	Applicant’s calculation ^A : <ul style="list-style-type: none"> 400m² for each lot Council’s calculation ^B : <ul style="list-style-type: none"> Lot 1: 400m² Lot 2: 85.2m² 	No see discussion in key issues section

^A Applicants method adds up all strata areas over multiple levels to demonstrate compliance with the 400m² minimum strata lot size development standard in cl.4.1A of the LEP:

- Lot 1: 400m² at ground level comprising 379.9sqm and 20.1sqm in garage.
- Lot 2: 400m² comprising 85.2sqm at ground, 200.8sqm at 1st floor and 93.3sqm at attic level.

^B Assessment officer method The way to calculate strata lots, measured only strata areas at ground level only in a 2-Dimensional manner which has been consistently been applied by Council rather than the applicants 3-D method. In short, in order to strata subdivide a dual occupancy in the R2 zone and meet the 400m² minimum lot size for each strata lot under cl.4.1A, the subject site would be required to have an area of 800m². The proposed proposed strata lots are calculated as follows:

- Lot 1: 400m²
- Lot 2: 85.2m² comprising ground level terrace and car space.

6.4.1. *Clause 4.6 - Exceptions to development standards*

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

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.4: Floor space ratio (max)	0.5:1 (231.85sqm of 463.7sqm)	0.62:1 as calculated by the applicant. Note Attic space has been excluded from the calculation.	0.12:1 variation or 55m ² (287.494sqm -231.85sqm)	24%

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.1. Exception to the Floor Space Ratio (FSR) development standard (CI 4.4)

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

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

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

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

FSR reduction from that which exists

It is acknowledged that the proposal includes a variation from the FSR standard of 0.5:1, as the proposal has an FSR of 0.62:1, a variation of 0.12:1. However, as shown in the accompanying GFA diagrams, the conversion of the enclosed 3rd garage to an open stair actually reduces the FSR. On this basis, the proposed FSR variation is not unreasonable.

Streetscape

As shown in the photo below, the built form which includes the additional FSR beyond the 0.5:1 development standard, is provided in a discreet manner, noting that the modifications to the built form do not generate additional FSR, being an open stair and balcony. The dense canopy screen along both frontages minimises perception of the overall bulk and scale of the dwelling in the streetscape. The extensive nature of the vegetative screening is considered to make the FSR variation indiscernible in the streetscape, when viewed from both Avoca and Rainbow Streets.



Figure 2: Photo which confirm the substantial extent of established vegetative screening of the built form which reduces the visibility of the built form (including the FSR variation) on the site from the public domain

Visual bulk assessment to neighbouring dwellings

The proposed FSR variation is related to the existing GFA of the existing dwelling house. Therefore, there will be no change to the visual bulk of the existing built form when viewed from the neighbouring dwelling. It is also noted that the primary outlook of both adjoining dwellings is not to the subject site/built form on the subject site.

Such additional FSR thereby does not generate any adverse amenity impacts to any adjoining neighbour as the addition is concealed from neighbours to the east and south by the existing built form/dwelling.

Comparison with the FSR permitted for a dwelling house

It is reiterated that the proposed FSR of 0.62:1 is below that permitted for a dwelling house, which is permitted an FSR of 0.65:1. On this basis, the proposed FSR does not generate a bulk and scale beyond that which would be associated with a compliant dwelling house, noting that the existing dwelling has an FSR of 0.64:1.

Overshadowing

It is confirmed that the absence of additional bulk avoids any shadow impacts to any surrounding neighbour. The additional built form associated with the modification of the garage to enable mechanical car stackers does not generate additional GFA as the garaging is excluded from GFA calculations. On this basis, the additional FSR does not generate any shadow impacts.

Privacy

The additional FSR beyond that permitted does not generate any privacy impacts as all primary openings and balconies are oriented to the respective street frontages. Therefore, the additional FSR beyond the 0.5:1 standard is not responsible for any privacy impacts.

View loss

The additional FSR beyond that permitted does not generate any view impacts as there are no changes to the built form which would generate any view impacts.

Compliant building envelope

It is noted that the proposed FSR is contained within a compliant building envelope. The building envelope is generated by the front, side and rear setbacks, along with the wall and overall height limits. The additional FSR beyond that permitted which is associated with the proposed dual occupancy is fully within each of these parameters. The articulated presentation of the built form which includes balconies along both street facing elevations confirms that the building envelope and the associated FSR variation is reasonable in such circumstances.

Desired future character

As outlined above, the proposed FSR variation does not generate any inconsistency with the desired future character in the R2 Low Density Residential zone. The proposed dual occupancy is a permitted use in the zone and maintains the low-density character of the area, notwithstanding the variation to the FSR standard.

Compliance with the building envelope provisions, as outlined above, confirm that the variation will not generate any inconsistency with the desired future character in the R2 Low Density Residential zone.

Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning, as demonstrated in the following sections addressing compliance with the objectives of the standard and the zone.

Assessment officer's comments:

Localizing the variation to the reduced area of the dual occupancy is acknowledged as not having any adverse impacts on the neighbour's amenity or streetscape, noting that the additional bulk and scale to the garaging and balcony are not calculable GFA whilst necessitated by the proposed change of use into 2 x 3-bedroom dwellings on site results in adverse impacts on the streetscape character along Rainbow Street is more appropriately considered in the DCP and key issues section of this report.

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

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

The justification provided above within the unreasonable or unnecessary section of this Clause 4.6 variation is also considered to constitute sufficient environmental grounds.

Furthermore, it is considered that the following points confirm that there are sufficient environmental grounds to allow for a variation to the FSR standard in this instance:

- *The reduction of FSR from 0.64:1 to 0.62:1, in association with retention of the existing dwelling house's-built form is considered to represent a specific justification that constitutes an environmental ground. It is thereby confirmed that the FSR variation is not generated by any increase to the built form.*

- *The alterations and additions are of a minor nature and do not constitute any increase in GFA.*
- *The largely concealed nature of the built form from the surrounding public domain by established dense canopy tree screening confirms that the surplus FSR associated with the conversion will be indiscernible to any casual observer.*
- *The FSR variation is associated with conversion of a large single dwelling to 2 high quality 3-bedroom dwellings, thereby promoting housing affordability.*
- *The retained nature of the built form associated endures that there is no amenity impacts generated by the FSR variation to both adjoining neighbours. Absence of impact is considered to be an environmental ground.*

Assessing officer's comment: The environmental planning grounds are required to focus on elements that are specific to the site; the aspects of the development that contravene the development standard and the circumstances of the case. As such no further comment is made in relation to the environmental planning grounds.

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

To determine whether the proposal will be in the public interest, an assessment against the objectives of the Floor Space Ratio standard, and against the R2 zone below:

Assessment against objectives of the FSR standard

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

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

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

The size and scale of the development which includes the FSR variation does not generate any incompatibility with the desired future character of the area as there is no change to the built form which increases the FSR beyond that which exists on the site. In fact, the proposal includes a reduction to the FSR from that which currently exists (from 0.64:1 down to 0.62:1). The built form will present as that of a single dwelling, noting that the proposed FSR would be compliant for a single dwelling. On this basis, the proposed FSR variation will not be responsible for generating any inconsistency with the objective of the standard

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

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

This objective is not particularly relevant as there is no link between the existing or proposed FSR and the intent to achieve a building that is well articulated and responds to environmental and energy needs. Nevertheless, the proposed FSR variation is associated with a dual occupancy within a built form that is well articulated, particularly as it presents to both street frontages. The triple sided nature of both dwellings with numerous openings to each facade promotes a high degree of solar access, daylight and ventilation, thereby minimising reliance on artificial heating, lighting and cooling. The provision of 2 x 3-bedroom dwellings instead of a single 6-bedroom dwelling is considered to represent a more sustainable use of the site which is also considered to support the achievement of this

objective. On this basis, the proposed FSR variation will not be responsible for generating any inconsistency with the objective of the standard.

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

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

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

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

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

The additional FSR beyond that permitted does not generate any adverse impacts given that there is no change to the built form. As outlined above, the additional FSR does not generate any adverse visual bulk, privacy, overshadowing or view impacts.

Assessing officer's comment:

The applicant's written request is not considered to have adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

The key concern with the proposed FSR variation relates to the circumstances of the case in that there is a concern that the change of use from a single dwelling into a dual occupancy does not adequately respond to the environmental and energy needs for future occupants.

This objective is not satisfied for the following reasons:

- Unit 1 ground level dwelling is not provided with sufficient solar access to its private open space which is further reduced by the proposed extensions to the garage.
- Unit 2 first floor dwelling is not provided with a sufficiently sized area of Private Open Space and one that is directly connected to their living space.
- The proposal dual occupancy relies on providing compliant parking within an excessively large garage that will detract from the secondary street character along Rainbow Street which will also adverse impact on the visual amenity of the neighbouring property to the east at No. 139A Rainbow Street.

Overall, it is not considered that the applicant has adequately demonstrated that compliance with the floor space ratio development standard is unreasonable or unnecessary in the circumstances of the case.

Assessment against objectives of R2 low density zone

The applicant provides the following reasons in their written request:

The development is inconsistent with the objectives of the R2 zone.

Assessment against objectives of the R2 low-density residential zone

The objectives of R2 zone are:

- ***To provide for the housing needs of the community within a low-density residential environment.***
- ***To enable other land uses that provide facilities or services to meet the day to day needs of residents.***

- **To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.**
- **To protect the amenity of residents.**
- **To encourage housing affordability.**
- **To enable small-scale business uses in existing commercial buildings.**

Assessing officer's comment: By virtue of the proposed substandard layout, it is not considered that the proposal provides for the housing needs of the community within a low-density residential environment which would be better served by maintaining a single dwelling or at the very least an alternative arrangement to a side by side arrangement rather than the proposed top bottom arrangement.

The proposed development is inconsistent with the highlighted objective of the floor space ratio standard and the R2 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 floor space ratio standard will allow for the orderly use of the site and there is a no public benefit in maintaining the development standard in this instance.

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(4) have not been satisfied in the circumstances of the case being that the proposal fails to achieve the objectives of the FSR development standard and the R2 zone. In particular, it does not provide a dual occupancy that suitably responds to the environmental and energy needs of the FSR standard and does not provide for the housing needs of the community within a low-density residential environment or protect the amenity of future residents/occupants of the R2 zone, that would warrant a variation to the development standard in this instance. As such, the submitted clause 4.6 is not considered to be well founded and cannot be supported in this instance.

7.2. Exception to the Minimum lot size development standard (Clause 4.1)

A Clause 4.6 exception has not been submitted on the basis the applicant contends that the proposal complies with the minimum lot size standard for strata lots of dual occupancies in the R2 zone.

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 key issues section of this report.

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 above and the key issues section below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal does not satisfy the relevant objectives and controls of the Randwick Comprehensive DCP 2013. See discussion in key issues below
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is inconsistent with the dominant character in the locality.</p> <p>The proposal will 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 insufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered unsuitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	NA.
Section 4.15(1)(e) – The public interest	The proposal does not promote the objectives of the zone and will result in 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

Setbacks:

- Secondary front setback:

The DCP for low density residential development requires that secondary setbacks be consistent with the front setback along the secondary street frontage in this instance Rainbow Street. The subject site contains an existing single storey garage along the secondary street frontage already encroaching on the predominant secondary street setback observed along Rainbow Street.

The proposal seeks to add height to the garage and extend an existing 1st floor balcony closer to the secondary street frontage encroaching on the predominately open front setbacks along Rainbow Street.

The DCP control requires that for corner allotments, such as the subject site, that the setback from the secondary street frontage (Rainbow Street) be 1500mm.

The proposed height extension to the garage is sited on the secondary frontage and does not comply with the control.

An assessment is required against the relevant objectives for setbacks:

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

At the outset it is not out of the ordinary for an attached garage to be located on the secondary street frontage however they're generally limited to single storey structures given the adjoining site has its primary road frontage adjoining which is generally required to be kept free of structures such as swimming pools, above ground rainwater tanks and outbuildings which is not the case in this instance where No. 139A Rainbow Street front setback is free of structures where its dwelling (circa 1985) sits around 4.6m from the front boundary along Rainbow Street. In some instances where there are structures within the front setback zones, these are generally limited to either ground level hardstand car spaces and or single storey and single width structures with these front setbacks if the streetscape and site width permits.

The proposed alterations and additions to the garage are considered to result in a wall and overall height that is excessive and will be easily viewed from along the Rainbow Street streetscape and it is not considered that the existing street trees can be relied upon as providing for adequate screening of the proposal. It is noted that the proposed works to the garage results increases the wall height from between 2.74m and 3.2m from front to rear to between 3.73m and 4.2m from to rear and overall height from 4.16m up to 5.63m. These heights are considerably higher than the policy controls for detached outbuildings which limit the maximum wall height to 2.4m and maximum overall height to 3.6m.

– Rear setback

The DCP allows for garages, carports and outbuildings to encroach upon the required rear setback, in so far as they comply with other relevant provisions of this DCP. In this instance, the proposed extension of the garage and bricking up a ground level north facing window will result in loss of solar access to the ground level dwellings principal area of private open space and living room required by section 5.1(i) and (ii) of the DCP relating to solar access to proposed development.

Private open space:

The DCP requires a minimum area of 5m x 5m for each dwelling of a dual occupancy and located adjacent to a directly accessible from the living or dining room of the dwelling. The proposal seeks to provide open space for the first-floor dwelling at ground level and does not comply with the minimum dimensions and nor is it directly accessible to the living room at the first-floor level, noting that the first-floor level balcony extension is not considered private.

Solar access:

The proposal does not comply with the minimum requirements for solar access to the ground level dwellings private open space or their living room as discussed in the earlier section.

Minimum lot size standard in clause 4.1(A)

Pursuant to clause 4.1A(4) *Minimum subdivision lot size for strata plan schemes in Zone R2*, the size of each lot resulting from the subdivision of a dual occupancy (attached) in the R2 zone must not be less than 400m².

The applicant says that each of the proposed lots complies with the 400m² minimum lot size standard by accumulating the areas at each level of the site and building for each of the proposed lots (2).

The applicant interprets the clause differently, proffering that the calculation encompasses all areas of the proposal being at basement, ground level, first floor level, noting that this is consistent with the findings in *Albert Square NSW Pty Ltd v Randwick City Council [2021] NSW LEC 1401*. When calculated this way the proposal results in compliant lot sizes for Lot 1 and Lot 2. A salient difference between the case and the subject application is the case dealt with an existing dual occupancy whereas this DA seeks consent to create a dual occupancy which is particularly relevant to the development standards objective to not create additional dwelling entitlements.

The proposed site areas of the strata lots, as follows, do not satisfy this requirement.

- Lot 1 (Ground) – 379.9m²
- Lot 2 (Ground) – 85.2m²

Council does not agree with the applicant's interpretation of clause 4.1A(4) and considers the minimum lot size standard applies at ground level only and should not include areas below or above ground level that is in a two-dimensional form. This interpretation is consistent with the objective of the clause as it avoids the fragmentation of land for additional dwelling entitlements that is sought in this application to convert from a single dwelling into a dual occupancy.

The non-compliance with the development standard in clause 4.1A(4) of RLEP 2012, clause 4.6 of the LEP requires that development consent must not be granted for development that contravenes the development standard, unless the consent authority has considered a written request from the applicant which seeks to justify the contravention of the development standard.

No objection pursuant to clause 4.6 has been lodged to support the exception to development standard.

Notwithstanding the different interpretations, the following comments are made in relation to attaining the 400sqm lot size:

- Lot 1: Insufficient information has been submitted to verify car space for lot 1 is within the basement as per the LEP dictionary definition whereby the ground level (where the upper car is kept) cannot be less than 1m above adjacent ground levels. In particular, the application lacks details in the section plans, and car stacker details are not provided showing:
 - The proposed depth of excavation,
 - The level each car space will sit at within the car stacker relative to adjacent ground levels and
 - Car stacker specifications in terms of its height, depth, width and operational requirements can be accommodated within the proposed enclosed garage spaces.
- Lot 2: The applicant's reliance on using the 93.3m² of attic space to achieve compliance with the 400m² minimum lot size standard is exaggerated and ingenuine noting the following:
 - The 93.3sqm attic space is not defined as habitable or non-habitable or a combination of both.

- In either use, its ability to operate for any meaningful purpose is compromised as only around 24.94sqm of attic space (of the 93.3m²) has a floor to ceiling height of between 1.4m and 2.37m.

As such, if areas below 1.4m floor to ceiling heights were excluded from the lot 2 size, it would amount to a strata lot size of 331.64sqm is short of the 400m² minimum lot size standard representing a 17.09% variation.

Overall, the proposed dual occupancy and strata subdivision does not meet the minimum lot size development standard, a clause 4.6 is considered to be required and has not been submitted with the application, it will result in the fragmentation of land for the purposes of additional dwelling entitlements which provide for substandard amenity in relation to private open space, solar access and the proposed works will detract from the streetscape character along the secondary street frontage along Rainbow Street.

10. Conclusion

That the application to convert the existing dwelling into a dual occupancy and strata subdivision be refused for the following reasons:

- The proposal is inconsistent with the relevant objectives contained within the RLEP 2012, the relevant requirements of the RDCP 2013 and the specific objectives of the R2 zone in that:
 - It does not provide for the housing needs of the community within a low-density residential environment as it seeks
 - The proposed development is inconsistent with the objectives of the R2 zone in relation to providing for the housing needs of the community, recognising the desirable elements of the streetscape along Rainbow Street and the desired character of the area, protecting the amenity of residents, and encouraging housing affordability.
 - The proposal does not recognise the desirable elements of the existing streetscape and built form in seeking to extend the height of the garage along the secondary street setback zone along Rainbow Street which is predominately characterised by open space within front setbacks Rainbow Street.
 - The proposed does not protect the amenity of residents and the building does not respond to environmental and energy needs of future occupants of the site as it seeks a dual occupancy that has low standards of amenity with regards to size, location and dimensions of private open space and inadequate solar access to living rooms and areas of private open space.
 - The proposed garage extension and 1st floor balcony extension will be incompatible with the desired future character of the locality and result in adverse visual bulk and amenity impacts when viewed along Rainbow Street and within the front of the adjoining site at No. 139A Rainbow Street.
 - The development will detract from the visual quality of the public domain/streetscape.
 - The proposed development will be a negative impact on the surrounding area.
 - The proposed development is not sustainable form of development in the zone due to the negative impacts on the streetscape, substandard amenity for future occupants and adverse impacts on neighbouring properties in relation to visual bulk and overshadowing.
 - The proposed dual occupancy and strata lot sizes (measured at ground level) creates additional dwelling entitlements for occupancies with poor amenity on substandard

sized strata lots. The application does not include a 4.6 submission seeking a variation to the minimum lot sizes in clause 4.1A of the LEP

Advisory Note:

- A1 Insufficient details have been provided to enable Council to be satisfied that the car-stackers can be installed in accordance with the manufacturer's specification within the design space available.

D27/22

Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineer

An application has been received for alterations and additions to the existing residential dwelling, converting into an attached dual occupancy (one above the other) and strata subdivision (Variation to FSR) at the above site.

This report is based on the following plans and documentation:

- *Architectural Plans by Archispectrum, dwg's DA01-17, issue A, dated 03/08/21.*
- *Statement of Environmental Effects by ABC Planning, dated August 2021.*
- *Detail & Level Survey by Michael J Burg, rev 3-03-2020.*

Development Engineer.

Assessment Officers comment:

Councils Development Engineer did not provide final comments in relation to undergrounding of power lines, drainage requirements or the proposed parking as part of this application.

Council Development Engineer noted that as the proposed car-stackers were an integral part of the application to fulfill the parking requirements, Council was required to be satisfied that car-stackers can be installed in accordance with the manufacturer's specification within the design space available. The Development Engineer requested additional information via e-mail to the applicant (12 January 2022 whilst the assessment officer was on leave) for:

- An additional section/s through the garage showing the position of the stackers and head clearances available.
- Manufacturer's specifications of the selected car stackers system.

The Development Engineer indicates that the applicant has not responded to the RFI.

The Assessment officer considered it was unnecessary to issue a further request for information as it was considered the proposed dual occupancy and strata subdivision which are substantive elements of the proposal would not be supported, and that it would be on balance onerous to request the additional information noting that an advisory note is provided in the recommendation noting that insufficient information has been provided by way of the Development Engineers request for information.

Landscape officer

Tree Management & Landscape Comments

There is a row of three established, 6-10m tall Lophostemon confertus (Brush Box) on the Rainbow Street verge, comprising one just past the eastern site boundary, in front of the adjoining site at no.139A, then in front of the subject site, one just to the west of the existing vehicle crossing, and then one more towards the corner of Avoca Street, which are all protected by the DCP and contribute to the streetscape.

There are no new external works along this frontage that would pose a direct threat to their preservation, and while it is noted that the existing layback and crossing do not extend all the way over to the 3rd roller door/storage space/proposed entry foyer, it cannot be widened further given the presence of the tree in this same area, so only minor protection measures need to be imposed in recognition of their close proximity to the driveway, which will be the main point of access during works.

The other two similarly sized Gum Trees around on the Avoca Street verge, being one centrally across the width of this frontage then one more just past the southern site boundary will both

remain unaffected given their distance from both the access and works, so conditions are not needed.

*Within the front setback, in a dedicated stone bordered garden bed, right in the northwest site corner, are two mature, 8m tall co-joined *Hibiscus tileaceus* (Cottonwoods), which are also protected by the DCP, provide the occupants with valuable screening and privacy from the busy intersection, and also overhang the adjoining public domain.*

Only minimal protection measures are required for these given their distance from all works, with the same also applying to the other mature Gum to their south, along the southern boundary, adjacent the southwest corner of the existing dwelling, as works are to be contained mostly within the footprint of the existing building.

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

Clause 4.6 - FSR

349 Avoca Street, Randwick



CLAUSE 4.6 TO CLAUSE 4.4 OF RANDWICK LEP 2012
EXCEPTIONS TO DEVELOPMENT STANDARDS – FSR VARIATION

Alterations and additions to the existing dwelling house to provide for an attached dual occupancy with strata subdivision

349 AVOCA STREET, RANDWICK

PREPARED BY
ABC PLANNING PTY LTD

August 2021

RANDWICK LEP 2012 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS

This Clause 4.6 variation request has been prepared to accompany the development application for the Alterations and additions to the existing dwelling house to provide for an attached dual occupancy with strata subdivision at 349 Avoca Street, Randwick.

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

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

<p>Clause 4.6 Exceptions to development standards</p> <p>(1) <i>The objectives of this clause are as follows:</i></p> <p>(a) <i>to provide an appropriate degree of flexibility in applying certain development standards to particular development,</i></p> <p>(b) <i>to achieve better outcomes for and from development by allowing flexibility in particular circumstances.</i></p> <p>(2) <i>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.</i></p> <p>(3) <i>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:</i></p> <p>(a) <i>that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and</i></p> <p>(b) <i>that there are sufficient environmental planning grounds to justify contravening the development standard.</i></p> <p>(4) <i>Development consent must not be granted for development that contravenes a development standard unless:</i></p> <p>(a) <i>the consent authority is satisfied that:</i></p> <p>(i) <i>the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and</i></p> <p>(ii) <i>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</i></p> <p>(b) <i>the concurrence of the Director-General has been obtained.</i></p> <p>(5) <i>In deciding whether to grant concurrence, the Director-General must consider:</i></p> <p>(a) <i>whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and</i></p> <p>(b) <i>the public benefit of maintaining the development standard, and</i></p> <p>(c) <i>any other matters required to be taken into consideration by the Director-General before granting concurrence.</i></p>

Development Standard to be Varied

The proposal seeks a variation to the development standard contained within Clause 4.4 of the *Randwick LEP 2012* - maximum FSR of 0.5:1, demonstrated on the LEP map in Figure 1 below.

The proposed FSR of 0.62:1 represents a variation of 0.12:1 from the 0.5:1 development standard of 0.5:1.

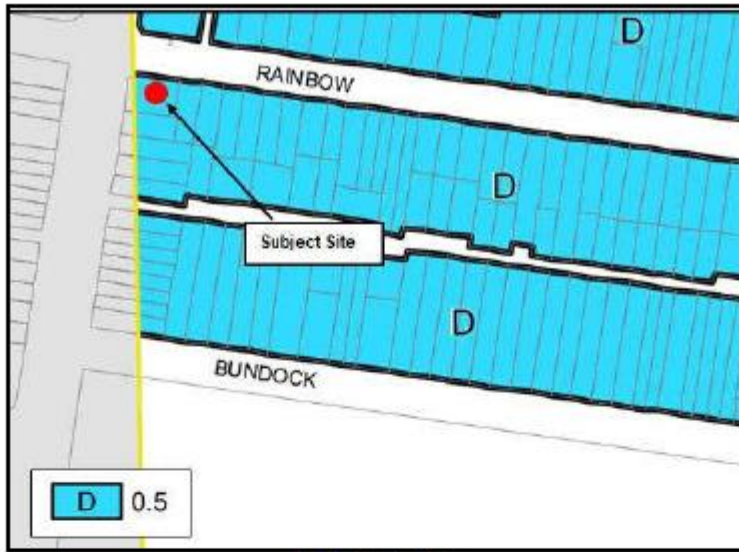


Figure 1: FSR Map

Justification for Contravention of the Development Standard

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

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

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

FSR reduction from that which exists

- It is acknowledged that the proposal includes a variation from the FSR standard of 0.5:1, as the proposal has an FSR of 0.62:1, a variation of 0.12:1. However, as shown in the accompanying GFA diagrams, the conversion of the enclosed 3rd garage to an open stair actually reduces the FSR. On this basis, the proposed FSR variation is not unreasonable.

Streetscape

- As shown in the photo below, the built form which includes the additional FSR beyond the 0.5:1 development standard, is provided in a discreet manner, noting that the modifications to the built form do not generate additional FSR, being an open stair and balcony. The dense canopy screen along both frontages minimises perception of the overall bulk and scale of the dwelling in the streetscape. The extensive nature of the vegetative screening is considered to make the FSR variation indiscernible in the streetscape, when viewed from both Avoca and Rainbow Streets.

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Figure 2: Photo which confirm the substantial extent of established vegetative screening of the built form which reduces the visibility of the built form (including the FSR variation) on the site from the public domain

Visual bulk assessment to neighbouring dwellings

- The proposed FSR variation is related to the existing GFA of the existing dwelling house. Therefore, there will be no change to the visual bulk of the existing built form when viewed from the neighbouring dwelling. It is also noted that the primary outlook of both adjoining dwellings is not to the subject site/built form on the subject site. Such additional FSR thereby does not generate any adverse amenity impacts to any adjoining neighbour as the addition is concealed from neighbours to the east and south by the existing built form/dwelling.

Comparison with the FSR permitted for a dwelling house

- It is reiterated that the proposed FSR of 0.62:1 is below that permitted for a dwelling house, which is permitted an FSR of 0.65:1. On this basis, the proposed FSR does not generate a bulk and scale beyond that which would be associated with a compliant dwelling house, noting that the existing dwelling has an FSR of 0.64:1.

Overshadowing

- It is confirmed that the absence of additional bulk avoids any shadow impacts to any surrounding neighbour. The additional built form associated with the modification of the garage to enable mechanical car stackers does not generate additional GFA as the garaging is excluded from GFA calculations. On this basis, the additional FSR does not generate any shadow impacts.

Privacy

- The additional FSR beyond that permitted does not generate any privacy impacts as all primary openings and balconies are oriented to the respective street frontages.

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Therefore the additional FSR beyond the 0.5:1 standard is not responsible for any privacy impacts.

View loss

- The additional FSR beyond that permitted does not generate any view impacts as there are no changes to the built form which would generate any view impacts.

Compliant building envelope

- It is noted that the proposed FSR is contained within a compliant building envelope. The building envelope is generated by the front, side and rear setbacks, along with the wall and overall height limits. The additional FSR beyond that permitted which is associated with the proposed dual occupancy is fully within each of these parameters. The articulated presentation of the built form which includes balconies along both street facing elevations confirms that the building envelope and the associated FSR variation is reasonable in such circumstances.

Desired future character

- As outlined above, the proposed FSR variation does not generate any inconsistency with the desired future character in the R2 Low Density Residential zone. The proposed dual occupancy is a permitted use in the zone and maintains the low density character of the area, notwithstanding the variation to the FSR standard. Compliance with the building envelope provisions, as outlined above, confirm that the variation will not generate any inconsistency with the desired future character in the R2 Low Density Residential zone.
- Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning, as demonstrated in the following table:

Consistency with the objectives of the FSR standard in the LEP	
Objectives	Assessment
<i>(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,</i>	The size and scale of the development which includes the FSR variation does not generate any incompatibility with the desired future character of the area as there is no change to the built form which increases the FSR beyond that which exists on the site. In fact, the proposal includes a reduction to the FSR from that which currently exists (from 0.64:1 down to 0.62:1). The built form will present as that of a single dwelling, noting that the proposed FSR would be compliant for a single dwelling. On this basis, the proposed FSR variation will not be responsible for generating any inconsistency with the objective of the standard.
<i>(b) to ensure that buildings are well articulated and respond to environmental and energy needs,</i>	This objective is not particularly relevant as there is no link between the existing or proposed FSR and the intent to achieve a building that is well articulated and responds to environmental and energy needs. Nevertheless, the proposed FSR variation is associated with a dual occupancy within a built form that is well articulated, particularly as it presents to both street frontages. The triple sided nature of both dwellings with numerous openings to each facade promotes a high degree of solar access, daylight and ventilation, thereby minimising reliance on artificial heating, lighting and cooling. The provision of 2 x 3 bedroom dwellings instead of a single 6 bedroom dwelling is considered to represent a more

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	<p>sustainable use of the site which is also considered to support the achievement of this objective.</p> <p>On this basis, the proposed FSR variation will not be responsible for generating any inconsistency with the objective of the standard.</p>
<p>(c) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,</p>	<p>This objective is not relevant.</p>
<p>(d) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.</p>	<p>The additional FSR beyond that permitted does not generate any adverse impacts given that there is no change to the built form. As outlined above, the additional FSR does not generate any adverse visual bulk, privacy, overshadowing or view impacts.</p>
<p>Consistency with the objectives of the R2 - Low Density Residential</p>	
<p>Objectives</p> <ul style="list-style-type: none"> 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. 	<p>Assessment</p> <p>It has been demonstrated that the proposed FSR variation will not generate any inconsistency with the zone objectives as the built form of the existing dwelling is retained. The low-density residential environment is thereby maintained.</p> <p>The modifications do not alter the character of the built form nor its setting in the public domain.</p> <p>The proposed conversion and associated FSR variation facilitates the provision of 2 high quality dual occupancy dwellings in contrast to a large single dwelling, thereby promoting housing affordability.</p> <p>On this basis, the FSR variation does not generate any inconsistency with the zone objectives, notwithstanding the FSR variation.</p>

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

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

Assessment: The justification provided above within the unreasonable or unnecessary section of this Clause 4.6 variation is also considered to constitute sufficient environmental grounds.

Furthermore, it is considered that the following points confirm that there are sufficient environmental grounds to allow for a variation to the FSR standard in this instance:

- The reduction of FSR from 0.64:1 to 0.62:1, in association with retention of the existing dwelling house's built form is considered to represent a specific justification that constitutes an environmental ground. It is thereby confirmed that the FSR variation is not generated by any increase to the built form. The alterations and additions are of a minor nature and do not constitute any increase in GFA.

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- The largely concealed nature of the built form from the surrounding public domain by established dense canopy tree screening confirms that the surplus FSR associated with the conversion will be indiscernible to any casual observer.
- The FSR variation is associated with conversion of a large single dwelling to 2 high quality 3-bedroom dwellings, thereby promoting housing affordability.
- The retained nature of the built form associated endures that there is no amenity impacts generated by the FSR variation to both adjoining neighbours. Absence of impact is considered to be an environmental ground.

Other Matters for Consideration

4(a)(ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out

Assessment: The above assessment demonstrates that the proposed FSR satisfies the objectives of the FSR standard and the R2 Low Density Residential zone.

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

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

(5) In deciding whether to grant concurrence, the Director-General must consider:

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

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

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

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

Concurrence

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

(b) the public benefit of maintaining the development standard

Assessment: There is no public benefit in maintaining the FSR standard given the limited amenity impacts associated with the development and the positive streetscape outcome that would arise from the redevelopment of the subject site.

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

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

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

Conclusion

For reasons mentioned herein, this Clause 4.6 variation is forwarded in support of the development proposal at 349 Avoca Street, Randwick and is requested to be looked upon favourably by the consent authority.

Responsible officer: Louis Coorey, Senior Environmental Planning Officer

File Reference: DA/474/2021

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Development Application Report No. D28/22

Subject: 154 Moverly Road, South Coogee (DA/769/2021)

Proposal:	Strata title subdivision of an approved attached dual occupancy into two (2) allotments.
Ward:	East Ward
Applicant:	Superior Designs
Owner:	Damami Pty Ltd
Cost of works:	Nil
Reason for referral:	The development contravenes the development standard for lot size 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/769/2021 for strata title subdivision of an approved attached dual occupancy into two (2) allotments at No. 154 Moverly Road, South Coogee, for the following reasons:

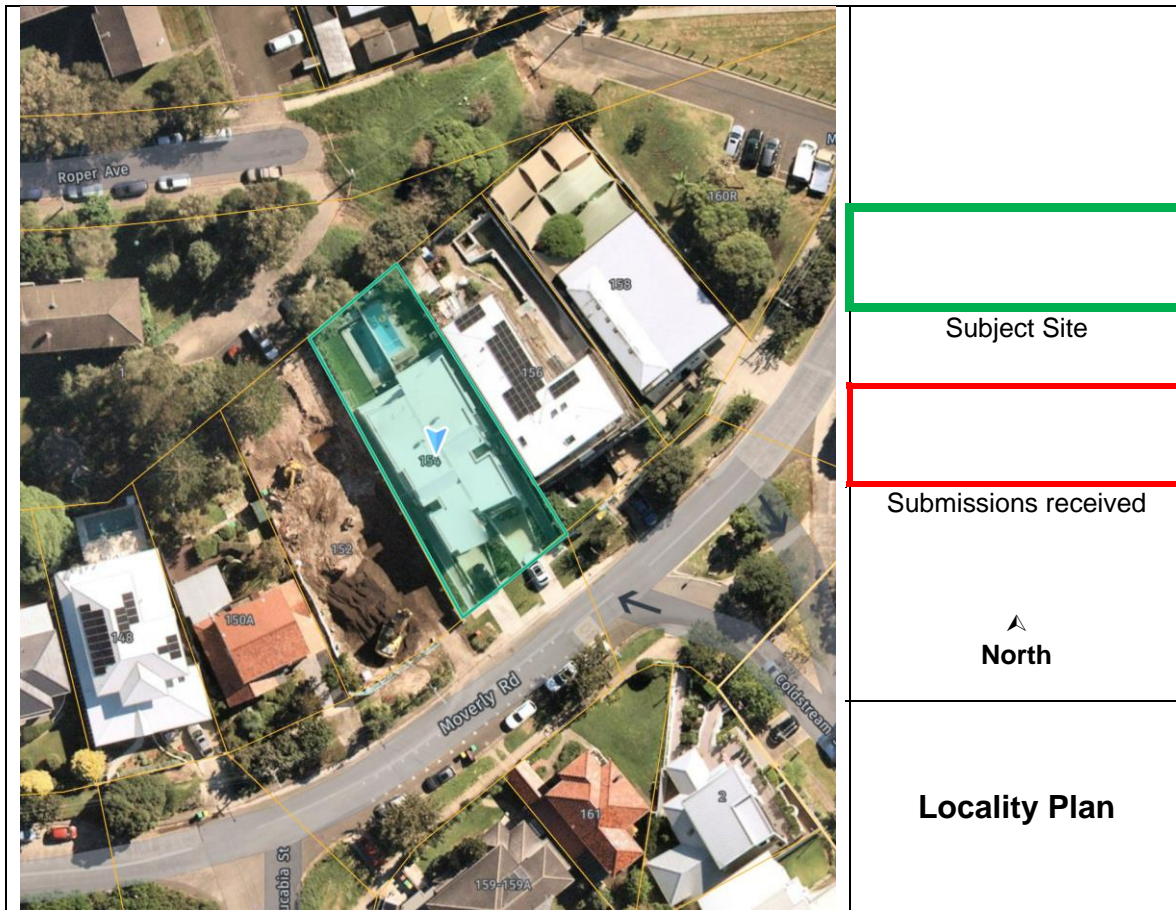
1. The proposed lot sizes do not comply with the minimum provisions in clause 4.1A of the RLEP 2012 and clause 2.1 of Part C1 of RDCP 2013, resulting in inadequate and undersized allotments. A written request under clause 4.6 of RLEP 2012 has not been submitted. Development consent must not be granted for development that contravenes the development standard set out in clause 4.1A(4) of RLEP 2012 unless the consent authority has considered a well-founded written request from the applicant pursuant to clause 4.6 of RLEP 2012 which seeks to justify the contravention of the development standard.
2. The proposed development is inconsistent with the objectives of the R2 zone in relation to providing for the housing needs of the community, recognising the desirable elements of the streetscape and the desired character of the area, protecting the amenity of residents, and encouraging housing affordability.
3. The variation to the development standard would create an undesirable precedent for similar development within the R2 zone and would not be in the public interest. As such the provisions of section 4.15 of the Environmental Planning and Assessment Act 1979 are not satisfied.

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 minimum subdivision lot size for strata plan schemes in Zone R2 by more than 10%.

The proposal seeks development consent for strata title subdivision of an approved attached dual occupancy into two (2) allotments.

The key issues associated with the proposal relate to non-compliance with the minimum lot size of 400m² specified by clause 4.1A of RLEP 2012, non-compliance with the provisions of clause 2.1 of Part C1, RDCP 2013 in relation to subdivision, inconsistency with the R2 zone objectives and setting an undesirable precedent which would not be in the public interest.

An assessment of the application has found that the proposed subdivision is inconsistent with the provisions and objectives of clause 4.1A in relation to the minimum lot sizes. The applicant indicates compliance whereas Council indicates non-compliance with the standard. The opposing views hinge on the way in which strata lot sizes are calculated, with the applicant proffering an accumulated calculation of strata lot at all levels that is in 3-Dimensional manner whereas Council proffering a 2-Dimensional method of calculation, only calculating the strata lots at ground level which would in essence require a minimum site area of 800sqm in order to meet the 400sqm minimum lot size standard for strata subdivision of a dual occupancy in the R2 in clause 4.1A.

The applicant indicates that their interpretation is assisted by court cases, however Council does not agree with this interpretation.

The applicant has not submitted a written request under clause 4.6 of RLEP 2012 for the minimum lot size non-compliance. Development consent must not be granted for development that contravenes the development standard set out in clause 4.1A(4) of RLEP 2012 unless the consent

authority has considered a well founded written request from the applicant pursuant to clause 4.6 of RLEP 2012 which seeks to justify the contravention of the development standard.

As such the proposal is recommended for refusal.

2. Site Description and Locality

The subject site is known as 154 Moverly Road, South Coogee and is legally described as Lot 4782 in DP 752015. The site is 708.2m², is regular in shape and has an 18.29m frontage to Moverly Road to the south-east . The site falls approximately 1.7m-2.5m from the south-western side boundary to the north-eastern side boundary.

The site contains a two storey dual occupancy with basement parking. Vehicular access is gained from Moverly Road.

The property is surrounded by residential properties to the north, south, east and west. The predominant subdivision pattern of the surrounding area is larger allotments in excess of the minimum 400m² lot size, with particular regard to the northern side of Moverly Road between Elphinstone Road to the west and Malabar Road to the east. The streetscape is undergoing a shift in building character, from older style one and two storey detached dwelling with pitched roofs, to new dual occupancy and dwelling house developments of contemporary architectural designs.

South Coogee Public School is located 60m south-west of the site and a childcare centre is located 18m north-east of the subject site.



Figure 1. Streetscape view (Source: Google Street View, February 2021)

3. Relevant history

The land has been used for residential purposes for an extended period of time. A search of Council's records revealed the following relevant application for the site:

DA/699/2018 – Development Application No. DA/699/2018 was approved on 14 February 2019 for demolition of existing structures construction of 2 storey attached dual occupancy with basement garages, swimming pools to rear, landscaping and associated works.

4. Proposal

The proposal seeks development consent for the Strata title subdivision of the approved dual occupancy development into two (2) allotments. The proposed lots shall comprise the following:

	<u>Lot Size</u>	<u>Front Boundary (South-eastern)</u>	<u>Rear Boundary (North-western)</u>	<u>Side Boundary (South-western)</u>	<u>Side Boundary (North-eastern)</u>
Lot 1 (154A)	354.1m ²	9.14m	7.61m	Not specified	42.52m
Lot 2 (154)	354.1m ²	9.14m	7.61m	42.99m	Not specified

5. Notification

In accordance with the Randwick Community Participation Plan 2019, notification is not required for this application for subdivision. No submissions were received.

6. Relevant Environment Planning Instruments

6.1. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned R2 under Randwick Local Environmental Plan 2012 and the proposal is permissible with consent pursuant to clause 2.6 of RLEP 2012.

R2 Low Density Residential Zone objectives

The R2 zone permits a variety of low density housing forms including dwelling houses, semi-detached dwellings, boarding houses, and attached dual occupancies, and the objectives of the R2 zone aim to ensure that a mix of housing options are provided to facilitate the housing needs of the community. The relevant objectives of the R2 zone are considered below:

- *To provide for the housing needs of the community within a low density residential environment.*
- *To encourage housing affordability.*

The intention of dual occupancy developments is to provide housing diversity and affordability within the R2 zone. Dual occupancy developments allow additional housing choice, being smaller and more affordable occupancies than single dwellings or semi-detached dwellings. This is supported by the development standards and planning controls applicable to dual occupancy development which sets a maximum FSR of 0.5:1 and prevent subdivision of dual occupancies with a site area of less than 800m² (requiring each new lot to be a minimum of 400m²).

Dual occupancy development also provides an important form of housing, being a form of rental accommodation (noting that the site requirements for a dual occupancy development is 450m², whereas the subdivision of dual occupancies and creation of semi-detached dwellings requires a minimum site area of 800m²). Approval of the proposed subdivision would be inconsistent with the objectives of the R2 zone with regards to providing for the housing needs of the community and encouraging housing affordability given that the constraints of the site lend its suitability to a dual occupancy and not semi-detached dwellings.

- *To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.*

The proposed subdivision is inconsistent with the predominant subdivision and development pattern of the area, with particular reference to the predominant character of the immediate vicinity along the northern side of Moverly Road between Elphinstone Road to the west and Malabar Road to the east. As such it cannot be said that the proposal recognises the desirable elements of the existing streetscape, also noting that there are no other examples of subdivided dual occupancies/semi-detached dwellings on the northern side of Moverly Road. Furthermore, the subdivision is inconsistent with the desired future character of the area as envisaged in the planning controls

contained within RLEP and RDCP, which stipulate a minimum lot size of 400m² for subdivision to prevent undersized allotments.

- *To protect the amenity of residents.*

It is considered that imposition of minimum lot sizes pursuant to clause 4.1A of RLEP 2012 are in order to prevent the subdivision of development where the resultant lots are undersized and inappropriate. As such, establishing a minimum lot size ensures that the amenity of neighbouring residents and occupants of the development is maintained. Approval of the proposed subdivision would result in a redefinition of the use from a dual occupancy to semi-detached dwellings, resulting in additional entitlements with regards to FSR, site coverage and deep soil areas, and a built form which could significantly exceed that identified for the site. As such it cannot be said that the proposed subdivision would protect the amenity of residents given that it will create the potential for significant adverse impacts given the minimal allotment size.

In view of the above, the proposed development is found to be inconsistent with the objectives of the R2 zone.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.1A: Lot Size (min)	400m ²	<u>Applicant's calculation:</u> 516.8m ² for each lot <u>Council's calculation:</u> Lot 1 (154A) = 354.1m ² Lot 2 (154) = 354.1m ²	No, see discussion below

Clause 4.1A(4) states:

Despite subclause (3), if the subdivision is of a lot on which there is a dual occupancy (attached)—

- (a) the size of each lot resulting from the subdivision is not to be less than 400 square metres, and*
- (b) 1 dwelling must be situated on each lot resulting from the subdivision.*

The applicant's calculation method adds up strata areas over each floor level to demonstrate compliance with the 400m² minimum strata lot size development standard in cl4.1A of the LEP:

Lot 1:

- Basement Floor 49.5m²
- Ground Floor 354.1m²
- First Floor 113.2m²
- Total 516.8m²

Lot 2:

- Basement Floor 49.5m²
- Ground Floor 354.1m²
- First Floor 113.2m²
- Total 516.8m²

The applicant's calculation method relies upon three decisions that were handed down by commissioner in the following court cases:

- Kelly v Randwick City Council [2019] NSWLEC 43 (Kelly)
- Kingsford Property Developments v Randwick City Council [2019] NSWLEC 1486 (Kingsford)
- MMP 888 Pty Ltd v Randwick City Council [2019] NSWLEC 1646 (MMP)

The applicant asserts that the lot size calculation includes the floor space at each level of the dwellings, which is consistent with the findings in Kelly and Kingsford. The applicant concludes that the size of each proposed lot is 516.8m² and claims that this is compliant with the lot size development standard in Clause 4.1A.

Council does not agree with the applicant’s interpretation of the lot size. The size of the lot comprises the two dimensional form, being the area on the ground. This interpretation has consistently been applied by Council to the calculation of lot size in strata subdivision. . In short, in order to strata subdivide a dual occupancy in the R2 zone and meet the 400m² minimum lot size for each strata lot under cl.4.1A, the subject site would be required to have an area of 800m². The proposed strata lots are calculated as follows:

- Lot 1 = 354.1m²
- Lot 2 = 354.1m²

This approach is consistent with the objective of the clause as it avoids the fragmentation of land and limits the density of development in a zone prescribed Low Density Residential. The ‘size’ of a strata lot as anticipated by Clause 4.1A cannot include floor area above the two dimensional area at the ground level. It is counterproductive to implement a development standard for minimum strata subdivision lot areas when the area that comprises the allotment includes both land and gross floor area. The applicant’s interpretation of the minimum subdivision lot size construes this development standard to confer a minimum gross floor area for the dual occupancy development. This does not align with the objective of Clause 4.1A in limiting the density of development in Zone R2.

As such, the proposed development does not satisfy the minimum lot size development standard specified in Clause 4.1A(4).

6.1.1. *Clause 4.6 - Exceptions to development standards*

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

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 4.1: Lot Size (min)	400m ²	Lot 1 (154A) = 354.1m ² Lot 2 (154) = 354.1m ²	45.9m ² 45.9m ²	11.48% 11.48%

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.

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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 Lot Size development standard (Cl 4.1A)

The applicant has not submitted a written request under clause 4.6 of RLEP 2012 to vary the minimum lot size development standard set out in clause 4.1A. The applicant contends that the proposal complies with the minimum lot size standard for strata lots of dual occupancies in the R2 zone.

Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a well-founded written request from the applicant pursuant to clause 4.6 of RLEP 2012 which seeks to justify the contravention of the development standard. As such, development consent cannot be granted for the proposed development and the application is recommended for refusal.

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 Key Issues 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 'Matters for Consideration'	Comments
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal is inconsistent with the objectives and controls of the Randwick Comprehensive DCP 2013. Refer to the discussion in Key Issues below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The environmental impacts of the proposed development on the natural and built environment have been addressed in this report. The proposed development is inconsistent with the desired character of the locality and the predominant subdivision pattern of the area.
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. However, the site does not have sufficient area to accommodate the proposed subdivision. Therefore, the site is not considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions were received.
Section 4.15(1)(e) – The public interest	The proposal does not promote the objectives of the zone and will result in any significant adverse environmental, social or economic impacts on the locality. Approval of the application would set an undesirable precedent for similar developments and accordingly, the proposal is not considered to be in the public interest

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9.1. Discussion of key issues

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

Clause 2.1 supplements the LEP provisions in relation to subdivision and aims to ensure that land subdivision respects the predominant subdivision and development pattern of the locality, and creates allotments which are adequate width and configuration to deliver suitable building design and maintain the amenity of neighbouring properties.

Subclause 2.1(i) specifies a minimum frontage width for resultant lots within the R2 zone of 12m for the purpose of dwelling houses and semi-detached dwellings. The proposed subdivision would result in the existing development being re-defined as semi-detached dwellings. The subdivision proposes a frontage width of 9.14m for each allotment, resulting in a substantial non-compliance with the minimum 12m requirement, and inadequate lot widths.

The predominant subdivision pattern on the northern side of Moverly Road is larger allotments approximately 632-708m² in size, containing dual occupancies or single dwellings. It is noted that there are examples of semi-detached dwellings within the vicinity of the site on Coldstream Street and Tucabia Street. A search of Council's records revealed that these were all approved prior to the current planning controls and standards, generally in excess of 50 years ago, and there are no recent examples of subdivisions, in the immediate vicinity of the subject site, approved under the minimum lot size pursuant to clause 4.1A.

As such, the proposed lot sizes of 354.1m² cannot be said to respect the predominant subdivision and development pattern of the area, and would be completely inconsistent with the existing subdivision pattern of the area, and the desired future character of area determined by the current controls.

The subject dual occupancy was approved in February 2019 and therefore does not benefit from the provisions of clause 4.1D. Furthermore, the application for the dual occupancy development on the subject site was lodged with Council on 17 October 2018 after the implementation of clause 4.1D, and therefore the applicant would have been aware at the time of lodgement that any future subdivision of the site would be reliant on compliance with the minimum lot size stipulated in clause 4.1 or clause 4.1A of RLEP 2012, being a minimum of 400m² in both instances.

The intention of the R2 zone is to maintain larger allotments, noting that there are no limitations to the size, width and configuration of allotments within the R3 zone, which allows the additional housing form of smaller semi-detached dwellings within the LGA. As such, it is anticipated that lots within the R2 zone shall be larger allotments, which provide increased amenity, and the proposed lots are not considered to be adequate in width or size to deliver suitable building design or maintain the amenity of neighbouring properties. As such, the proposal is inconsistent with the objectives of clause 2.1 and cannot be supported in this instance.

Precedent and Public Interest

In view of the above assessment, it is considered that approval of the proposed subdivision would set an undesirable precedent for subdivision of dual occupancies below that anticipated by the controls contained within RLEP and RDCP, and that expected of the community. As such the proposed development would not be considered to be in the public interest, and the application is not supported in this instance.

10. Conclusion

That the application for Strata title subdivision of an approved attached dual occupancy into two (2) allotments at 154 Moverly Road, South Coogee be refused for the following reasons:

1. The proposed lot sizes do not comply with the minimum provisions in clause 4.1A of the RLEP 2012 and clause 2.1 of Part C1 of RDCP 2013, resulting in inadequate and undersized allotments. A written request under clause 4.6 of RLEP 2012 has not been submitted. Development consent must not be granted for development that contravenes the development standard set out in clause 4.1A(4) of RLEP 2012 unless the consent authority has considered a well-founded written request from the applicant pursuant to clause 4.6 of RLEP 2012 which seeks to justify the contravention of the development standard.
2. The proposed development is inconsistent with the objectives of the R2 zone in relation to providing for the housing needs of the community, recognising the desirable elements of the streetscape and the desired character of the area, protecting the amenity of residents, and encouraging housing affordability.
3. The variation to the development standard would create an undesirable precedent for similar development within the R2 zone and would not be in the public interest. As such the provisions of section 4.15 of the Environmental Planning and Assessment Act 1979 are not satisfied.

Appendix 1: Referrals**1. Internal referral comments:****1.1. Development Engineer**

The application was referred to Council's Development Engineer who raised no objection to the proposed subdivision from an engineering perspective subject to recommended conditions of consent.

Responsible officer: Eunice Huang, Environmental Planning Officer

File Reference: DA/769/2021

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Development Application Report No. D29/22

Subject: 2 Bishops Avenue, Randwick (DA/796/2021)

Executive Summary

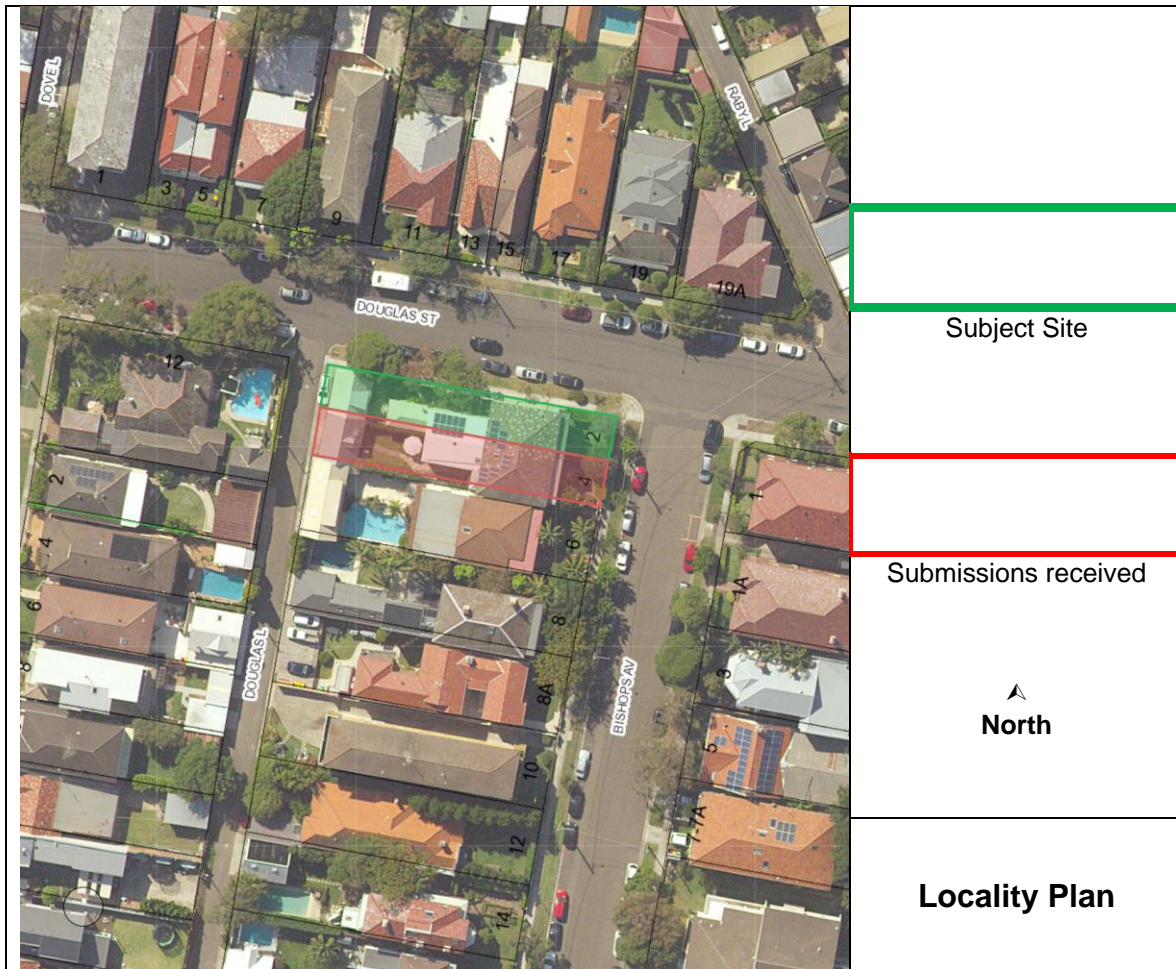
Proposal:	Alterations to existing ground floor living area and laundry/wash closet (Heritage Item).
Ward:	North Ward
Applicant:	McGregor Westlake Architecture
Owner:	Ms L J McGregor
Cost of works:	\$160,650.00
Reason for referral:	The site is a Local Heritage Item.

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/796/2021 for alterations to existing ground floor living area and laundry/wash closet at No. 2 Bishops Avenue, Randwick, subject to the development consent conditions attached to the assessment report.

Attachment/s:

- [1. !\[\]\(2a133ebb0337313d16cc068f19494aa2_img.jpg\) RLPP Dev Consent Conditions \(general\) - DA/796/2021 - 2 Bishops Avenue, Randwick](#)



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 to the existing ground floor living area and laundry/wash closet.

There are no key issues associated with the proposal, relevant to the site, only that it being a Local Heritage Item '2 storey stone pair of semi-detached houses' with the adjoining property, 2–4 Bishops Avenue, Randwick NSW 2031. The works are proposed to the heritage item dwelling are limited to the partial demolition of the original rear stone wall to create an additional access to the family/dining room, as well as the reconfiguration of the kitchen layout.

The proposal is recommended for approval subject to standard conditions.

2. Site Description and Locality

The site is identified as Lot 1, DP 525186, No. 2 Bishops Avenue, Randwick NSW 2031. The site is a corner allotment located on the western side of Bishops Avenue between Douglas Street to the north and Greville Street to the south.

The site is a rectangular shaped allotment with a 7.35 metre frontage to Bishops Avenue, a 46.125 metre northern side boundary that fronts Douglas Street, a 46.11 metre southern side boundary, a 7.165 metre western rear boundary that fronts Douglas Lane, and a total site area of 332.1m².

Existing on site is a part one part two storey semi-detached residential dwelling and a freestanding detached garage with loft storage located above. The front and rear of the site is landscaped with lawn and planting.

The surrounding area is characterised by residential development, including detached and semi-detached dwelling houses and residential flat buildings. Adjoining the site to the south at 4 Bishops Avenue is a two storey semi-detached dwelling house.

The site is listed as a Local Heritage Item with the adjoining semi-detached dwelling at No. 4 Bishops Avenue, as a 2 storey stone pair of semi-detached houses (Item I304 within Part 1, Schedule 5 of Randwick Local Environmental Plan 2012 (RLEP 2012)).



Figure 1: Photo of the front of the subject site at No. 2 Bishops Avenue, Randwick.



Figure 2: Photo of the side of the subject site at the Douglas Street frontage at No. 2 Bishops Avenue, Randwick.



Figure 3: Photo of the side of the entire subject site including the garage at the rear of Douglas Street frontage at No. 2 Bishops Avenue, Randwick.

3. Relevant history

- **DA/565/1997** – the Development Application was approved on 29 January 1998 for alterations and additions to the existing dwelling house including addition of a ground floor family room, laundry and bathroom, first floor bathrooms and garage with loft.

4. Proposal

The proposal seeks development consent for alterations to existing ground floor living area and laundry/wash closet. Specifically, the proposal is seeking to:

Ground Floor

- Demolish existing kitchen and removal of part of the original stone wall between the kitchen and family dining room
- Demolish the northern façade of the ground floor family dining extension
- Demolish existing laundry room
- Reconfiguration of a new kitchen fit out
- Reconfiguration of the existing laundry to combine into a combined WC and laundry room
- Addition of new bay windows with sliding windows on northern side of the family dining room
- Addition of an external blind on the northern side of the family dining room
- Relocation of external access stairs from laundry room to family dining room

Roof Floor

- Alterations to roof pitch above ground floor family living room
- Addition of a clerestory window to the ground floor family living room



Figure 4: Proposed demolition plan – 2 Bishops Avenue, Randwick (Source: McGregor Westlake Architecture)

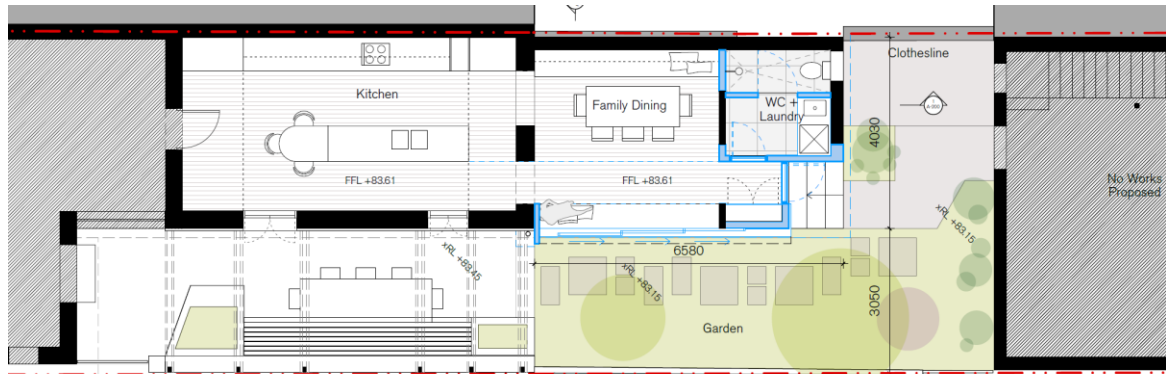


Figure 5: Proposed ground floor plan - 2 Bishops Avenue, Randwick (Source: McGregor Westlake Architecture)

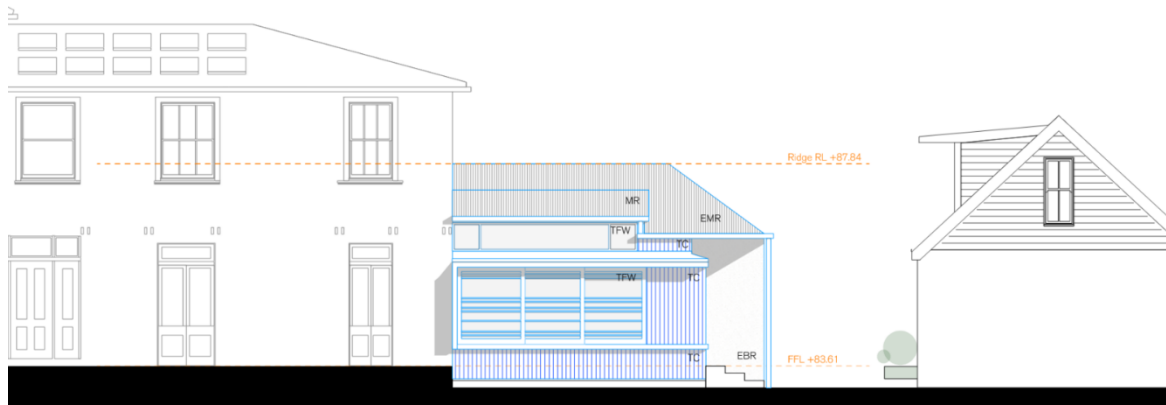


Figure 6: Proposed northern elevation - 2 Bishops Avenue, Randwick (Source: McGregor Westlake Architecture)

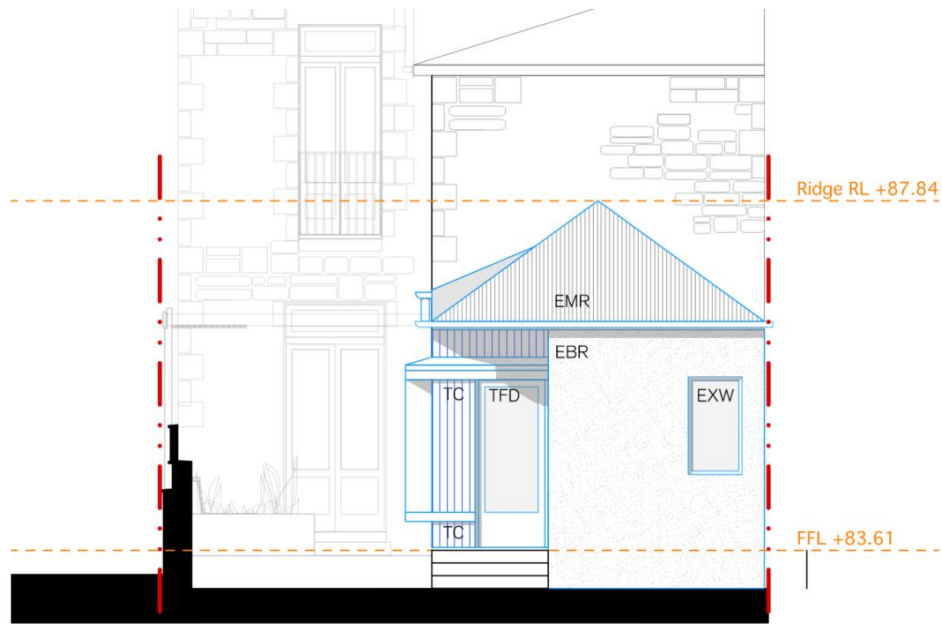


Figure 7: Proposed western elevation - 2 Bishops Avenue, Randwick (Source: McGregor Westlake Architecture)

5. Notification

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

- **4 Bishops Avenue**

Issue	Comment
An engineer's report be required prior to approval of building work to the shared two level heritage end stone wall. This wall is referred to in their plans as the 'rendered wall' between the kitchen and new dining section. As it's a shared wall and a heritage item, the structural integrity is important.	Agreed. A condition of consent will be issued requiring that a Certificate of Structural Adequacy be required as a section of the original stone wall is being removed, confirming the structural integrity of the first floor and adjoining semi-detached dwelling.

6. Relevant Environment Planning Instruments

6.1. SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate No. A443582 has been submitted, prepared by McGregor Westlake Architecture, dated 17 December 2021, satisfying the requirements of the State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004.

6.2. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned Residential R2 Low Density Residential under the Randwick Local Environmental Plan 2012 and the proposal is permissible with Council's 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)
Cl 4.3: Building height (max)	9.5m	4.7m	Yes
Cl 4.4: Floor space ratio (max)	0.75:1	Existing FSR = 0.72:1 (239.7m ²) Proposed FSR = 0.72:1 (239.6m ²)	Yes

6.2.1. Clause 5.10 - Heritage conservation

Controls

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

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

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

Comments

New works will have limited impact on the presentation of the house to the street and will not impact on the physical fabric or views to and from other heritage items in the vicinity. The new work integrates with the form, proportions and façade composition of the heritage building. The alterations have no impact on the southern attached neighbouring terrace.

The proposed external works to the façade will be limited in visibility from the street due to the existing side fence. The new works appear visually distinct yet complimentary to the heritage fabric, improving the clarity between contemporary and heritage elements. The new bay window does not

impact the heritage sandstone fabric and improves façade articulation between the heritage sandstone and rear addition.

The existing roof ridgeline and form are retained, with slight modulation in the roof of the later addition to allow for a highlight window. This is supported.

The proposal is considered suitable for the site and heritage locality.

7. Development control plans and policies

7.1. Randwick Comprehensive DCP 2013

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

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

8. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 above.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 2.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

9. Conclusion

That the application to alterations to existing ground floor living area and laundry/wash closet 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.

Appendix 1: Referrals

1. Internal Referral Comments:

1.1. Heritage Planner

The Site

The site is occupied by a two-storey semi-detached Victorian terrace, one of a matched pair, with a primary frontage to Bishops Avenue; a long street elevation facing north to Douglas Street and a rear frontage to Bishops Lane on its western boundary, with garage and first floor studio. The semi-detached pair are jointly listed as heritage items under Randwick LEP 2012 (I304), described as an interesting example of the Victorian Filigree style built c.1884 with an unusual front façade in picked sandstone with rusticated quoins to openings. It is a rare example of a two-storey, semi-detached stone residence.

To the west of the site, at 12 Douglas St, is a Federation house listed as a heritage item under Randwick LEP 2012 (I354). The dwelling, circa 1915, was specially built for its corner allotment and features complex roof form and verandah on both frontages and some highly unusual details.

Background

This property was the subject of a previous Development Application, which included a heritage impact statement by John Oultram Heritage. This has been resubmitted as a reference document for the current DA because it includes detailed background information about the building's original fabric and significance.

The current proposal's Heritage Impact Statement was prepared by the project's architect McGregor Westlake Architecture.

Proposal

It is proposed to make alterations and additions to the building's existing rear volume on the ground floor. The proposed changes are in a later addition altered under a previous DA and are shown on the architectural plans dated December 2021, prepared by McGregor Westlake Architecture. The affected area is not an original element of the heritage dwelling.

The proposal includes insertion of a bay window in the north facade, replacing an existing painted extruded brickwork. The window involves a shallow rise in the roof pitch to enable a clerestory window.

The existing roof form is proposed to be retained with demolition limited to a small northerly portion which will be modified to allow for a clerestory window above the bay window, which will increase natural light penetration deep into the room during winter.

No changes to the ridgeline or extent of the roof form are proposed. The works reduce the existing floor area marginally. No works are proposed that alter the external sandstone.

On the west façade, the existing masonry fabric is mostly retained (including the existing window and bathroom). It is proposed that the glazed door connecting this area to the rear yard be relocated northward to align with the circulation corridor and inset to create a porch and weatherproof the entry and steps.

Interior works proposed are a minor reworking of amenities within the existing rear room. A new opening in a rendered wall is created to link the 2 rear rooms. The existing laundry is consolidated with the existing bathroom and the back door is moved.

A new opening is proposed within the original wall on the western end of the kitchen. This will improve permeability and provide a meaningful connection between these spaces and is not visible from the exterior of the dwelling. All of the alterations sit within the existing roof form (but for a minor modulation of the existing roof for a highlight window).

Controls

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

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

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

Comments

New works will have limited impact on the presentation of the house to the street and will not impact on the physical fabric or views to and from other heritage items in the vicinity. The new work integrates with the form, proportions and façade composition of the heritage building. The alterations have no impact on the southern attached neighbouring terrace.

The proposed external works to the façade will be limited in visibility from the street due to the existing side fence. The new works appear visually distinct yet complimentary to the heritage fabric, improving the clarity between contemporary and heritage elements. The new bay window does not impact the heritage sandstone fabric and improves façade articulation between the heritage sandstone and rear addition.

The existing roof ridgeline and form are retained, with slight modulation in the roof of the later addition to allow for a highlight window. This is supported.

The proposal is considered suitable for the site and heritage locality.

1.2. Development Engineer

An application has been received for minor alterations to the rear ground floor level (family /dining area) at the above site.

This report is based on the following plans and documentation:

- Architectural Plans by McGregor Westlake Architecture and dated 16.12.21;
- Statement of Environmental Effects by McGregor Westlake Architecture dated Dec 2021

Development Engineering has reviewed the submitted plans and advise that there are no Development Engineering conditions/requirements in relation to this application.

Appendix 2: 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 = 332.1m ²	
3	Building envelope		
3.1	Floor space ratio		
	Maximum floor space ratio LEP 2012 = 0.75:1	Site area = 332.1m ² Existing FSR = 0.72:1 (239.7m ²) Proposed FSR = 0.72:1 (239.6m ²)	Yes, complies
3.2	Building height		
	Maximum overall height LEP 2012 = 9.5m	Proposed = 4.7m	Yes, complies
3.3	Setbacks		
3.3.2	Side setbacks: Semi-Detached Dwellings: <ul style="list-style-type: none"> • Frontage less than 6m = merit • Frontage b/w 6m and 8m = 900mm for all levels 	The proposal does not seek any changes to existing side boundary.	Yes, complies
4	Building design		
4.1	General		
	Respond specifically to the site characteristics and the surrounding natural and built context - <ul style="list-style-type: none"> • articulated to enhance streetscape • stepping building on sloping site, • no side elevation greater than 12m • encourage innovative design 	The proposed northern side street elevation will be articulated with windows.	Yes, complies
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 clerestory window to the ground floor family dining room is sympathetic to the design of the dwelling and integrates with the dwelling and 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	Following the referral from Council's Heritage Planner, a condition	Yes, subject to condition

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DCP Clause	Controls	Proposal	Compliance
	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.)	of consent will be issued requiring that the colours, materials and finishes of the external surfaces to the building are to be compatible with the existing building and surrounding heritage and consistent with the architectural style of the building and are to be in accordance with the Proposed Elevations and Finishes Schedule prepared by McGregor Westlake Architecture, dated 16/12/21.	
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.	The proposed bay windows will provide direct sunlight to ground floor family dining room.	Yes, complies
	Solar access to neighbouring development:		
	iii) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. v) Solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings. vi) Variations may be acceptable subject to a merits assessment with regard to: <ul style="list-style-type: none"> • Degree of meeting the FSR, height, setbacks and site coverage controls. • Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. • Topography of the subject and adjoining allotments. • Location and level of the windows in 	The proposed development will not impact solar access to neighbouring properties.	Yes, complies

DCP Clause	Controls	Proposal	Compliance
	question. <ul style="list-style-type: none"> • Shadows cast by existing buildings on the neighbouring allotments. 		
5.2	Energy Efficiency and Natural Ventilation		
	i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as: <ul style="list-style-type: none"> • Skylights (ventilated) • Clerestory windows • Fanlights above doorways • Highlight windows in internal partition walls ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries iii) living rooms contain windows and doors opening to outdoor areas <i>Note:</i> The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable	The submitted development has been accompanied with a BASIX Certificate identifying compliance with thermal and water energy. In addition, all proposed habitable rooms incorporate windows opening to outdoor areas.	Yes, complies
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 windows do not face adjacent dwellings and will not impact on visual privacy of these neighbours.	Yes, complies

D29/22

Responsible officer: William Joannides, Customer Service Planning and Development Officer

File Reference: DA/796/2021

Development Consent Conditions



DA No:	DA/796/2021
Property:	2 Bishops Avenue, RANDWICK NSW 2031
Proposal:	Alterations to existing ground floor living area and laundry/wash closet (Heritage Item).
Recommendation:	Approval

Development Consent Conditions

GENERAL CONDITIONS

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

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

Approved Plans & Supporting Documentation

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

Plan	Drawn by	Dated	Received by Council
Site Plan and Analysis, Project No. 221026, Dwg No. A-100 DA, Revision A	McGregor Westlake Architecture	16/12/2021	21/12/2021
Floor Plans – Demolition, Project No. 221026, Dwg No. A-102 DA, Revision	McGregor Westlake Architecture	16/12/2021	21/12/2021
Floor Plans – Proposed, Project No. 221026, Dwg No. A-103 DA, Revision A	McGregor Westlake Architecture	16/12/2021	21/12/2021
Sections, Project No. 221026, Dwg No. A-200 DA, Revision A	McGregor Westlake Architecture	16/12/2021	21/12/2021
Elevations, Project No. 221026, Dwg No. A-300 DA, Revision A	McGregor Westlake Architecture	16/12/2021	21/12/2021

BASIX Certificate No.	Dated	Received by Council
A443582	17 December 2021	21 December 2021

REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

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

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

Consent Requirements

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

External Colours, Materials & Finishes

3. The colours, materials and finishes of the external surfaces to the building are to be compatible with the existing building and surrounding heritage and consistent with the architectural style of the building and are to be in accordance with the Proposed Elevations and Finishes Schedule prepared by McGregor Westlake Architecture, dated 16/12/21.

Details of any changes to the proposed colours, materials and textures (i.e- a schedule and brochure/s or sample board) are to be submitted to and approved by Council's Director City Planning, in accordance with Section 4.17 of the *Environmental Planning and Assessment Act 1979* prior to a construction certificate being issued for the development.

Section 7.12 Development Contributions

4. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$160,650.00 the following applicable monetary levy must be paid to Council: \$803.25.

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

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

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

Where:

IDC = the indexed development cost

ODC = the original development cost determined by the Council

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

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

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

Compliance Fee

5. A development compliance and enforcement fee of \$337.35 shall be paid to Council in accordance with Council's adopted Fees & Charges Pricing Policy, prior to the issue of a Construction Certificate for development.

6. Long Service Levy Payments

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

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

7. Security Deposits

The following security deposits requirement must be complied with prior to a construction certificate being issued for the development, as security for making good any damage caused to Council's assets and infrastructure; and as security for completing any public work; and for remedying any defect on such public works, in accordance with Section 4.17(6) of the *Environmental Planning and Assessment Act 1979*:

- \$600.00 - Damage / Civil Works Security Deposit

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

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

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

8. Sydney Water

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

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

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

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

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

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

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

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

REQUIREMENTS TO BE INCLUDED IN THE CONSTRUCTION CERTIFICATE

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

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

- Compliance with the Building Code of Australia**
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.
- Structural Adequacy**
10. A Certificate of Structural Adequacy supplied by a *professional engineer* shall be submitted to the *certifying authority (and the Council, if the Council is not the certifying authority)*, certifying the structural adequacy of the existing structure to partially remove the original rear stone wall to the kitchen to support the first floor level and adjoining semi-detached dwelling.
- BASIX Requirements**
11. In accordance with section 4.17(11) of the *Environmental Planning & Assessment Act 1979* and clause 97A of the *Environmental Planning & Assessment Regulation 2000*, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.
- The required commitments listed and identified in the BASIX Certificate must be included on the construction certificate plans, specifications and associated documentation, to the satisfaction of the Certifying Authority.
- The design of the building must not be inconsistent with the development consent and any proposed variations to the building to achieve the BASIX commitments may necessitate a new development consent or amendment to the existing consent to be obtained, prior to a construction certificate being issued.
- Stormwater Drainage**
12. A surface water/stormwater drainage system must be provided in accordance with the following requirements, to the satisfaction of the Certifying Authority and details are to be included in the construction certificate:-
- a) Surface water/stormwater drainage systems must be provided in accordance with the relevant requirements of the Building Code of Australia (Volume 2);
 - b) The surface water/stormwater must be drained and discharged to the street gutter or, subject to site suitability, the stormwater may be drained to a suitably designed absorption pit;
 - c) Any absorption pits or soaker wells should be located not less than 3m from any adjoining premises and the stormwater must not be directed to any adjoining premises or cause a nuisance;
 - d) External paths and ground surfaces are to be constructed at appropriate levels and be graded and drained away from the building and adjoining premises, so as not to result in the entry of water into the building, or cause a nuisance or damage to the adjoining premises;

- e) Details of any proposed drainage systems or works to be carried out in the road, footpath or nature strip must be submitted to and approved by Council before commencing these works.

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 Certifying Authority' (PCA), 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

13. 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.

Home Building Act 1989

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

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

Dilapidation Reports

15. A dilapidation report must be obtained from a Professional Engineer, Building Surveyor or other suitably qualified independent person. The dilapidation report shall include details of the current condition and status of any dwelling, associated garage or other substantial structure located upon the adjoining premises and shall include relevant photographs of the structures, to the satisfaction of the *Principal Certifying Authority*.

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

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

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

17. **Construction Site Management Plan**
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.

18. **Demolition Work Plan**
Any Demolition Work must be carried out in accordance with Australian Standard AS2601-2001, Demolition of Structures and relevant work health and safety provisions.

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.

19. **Inspections during Construction**
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

20. 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

21. 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

22. 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

23. 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.

Support of Adjoining Land, Excavations & Retaining Walls

24. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 98 E of the *Environmental Planning & Assessment Regulation 2000*, it is a

prescribed condition that the adjoining land and buildings located upon the adjoining land must be adequately supported at all times.

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

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

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

26. Prior to undertaking any demolition, excavation or building work in the following circumstances, a report must be obtained from a *professional engineer* which details the methods of support for the dwelling or associated structure on the adjoining land, to the satisfaction of the *Principal Certifying Authority*:

- when undertaking excavation or building work within the zone of influence of the footings of a dwelling or associated structure that is located on the adjoining land;
- when undertaking demolition work to a wall of a dwelling that is built to a common or shared boundary (e.g. semi-detached or terrace dwelling);
- when constructing a wall to a dwelling or associated structure that is located within 900mm of a dwelling located on the adjoining land;
- as may be required by the *Principal Certifying Authority*.

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

Building Encroachments

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

Road/Asset Opening Permit

28. A *Road / Asset Opening Permit* must be obtained from Council prior to commencing any excavations or works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the *Roads Act 1993* and all of the conditions and requirements contained in the *Road / Asset Opening Permit* must be complied with.

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

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE
<p>The following conditions of consent must be complied with prior to the '<i>Principal Certifying Authority</i>' issuing an '<i>Occupation Certificate</i>'.</p> <p><i>Note: For the purpose of this consent, any reference to 'occupation certificate' shall also be taken to mean 'interim occupation certificate' unless otherwise stated.</i></p> <p>These conditions have been applied to satisfy the relevant requirements of the <i>Environmental Planning & Assessment Act 1979, Environmental Planning & Assessment Regulation 2000</i>, Council's development consent and to maintain reasonable levels of public health, safety and amenity.</p>

Occupation Certificate Requirements

29. An Occupation Certificate must be obtained from the Principal Certifying *Authority* 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

30. In accordance with Clause 154B of the *Environmental Planning & Assessment Regulation 2000*, a Certifying Authority must not issue an Occupation Certificate for this development, unless it is satisfied that each of the required BASIX commitments have been fulfilled.

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

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

31. The premises must only be used as a single residential dwelling and must not be used for dual or multi-occupancy purposes.

External Lighting

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

Plant & Equipment

33. Noise from the operation of all plant and equipment upon the premises shall not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997 and Regulations*.

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

ADVISORY NOTES

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

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

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

- A2 This determination does not include an assessment of the proposed works under the Building Code of Australia (BCA) and other relevant Standards. All new building work (including alterations and additions) must comply with the BCA and relevant Standards and you are advised to liaise with your architect, engineer and building consultant prior to lodgement of your construction certificate.
- A3 In accordance with the requirements of the *Environmental Planning & Assessment Act 1979*, building works, including associated demolition and excavation works (as applicable) must not be commenced until:
- A *Construction Certificate* has been obtained from an Accredited Certifier or Council,
 - An Accredited Certifier or Council has been appointed as the *Principal Certifying Authority* for the development,
 - Council and the Principal Certifying Authority have been given at least 2 days notice (in writing) prior to commencing any works.
- A4 Council can issue your *Construction Certificate* and be your *Principal Certifying Authority* for the development, to undertake inspections and ensure compliance with the development consent and relevant building regulations. For further details contact Council on 9093 6944.
- A5 A Local Approval application must be submitted to and be approved by Council prior to commencing any of the following activities on a footpath, road, nature strip or in any public place:
- Install or erect any site fencing, hoardings or site structures
 - Operate a crane or hoist goods or materials over a footpath or road
 - Placement of a waste skip or any other container or article.
- For further information please contact Council on 9093 6971.
- A6 Specific details of the location of the building/s should be provided in the Construction Certificate to demonstrate that the proposed building work will not encroach onto the adjoining properties, Council's road reserve or any public place.
- A7 Prior to commencing any works, the owner/builder should contact *Dial Before You Dig* on 1100 or www.dialbeforeyoudig.com.au and relevant Service Authorities, for information on potential underground pipes and cables within the vicinity of the development site.
- A8 This consent does not authorise any trespass or encroachment upon any adjoining or supported land or building whether private or public. Where any underpinning, shoring, soil anchoring (temporary or permanent) or the like is proposed to be carried out upon any adjoining or supported land, the land owner or principal contractor must obtain:
- the consent of the owners of such adjoining or supported land to trespass or encroach, or
 - an access order under the *Access to Neighbouring Land Act 2000*, or
 - an easement under section 88K of the *Conveyancing Act 1919*, or
 - an easement under section 40 of the *Land & Environment Court Act 1979*, as appropriate.

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