

Randwick Local Planning Panel (Electronic) Meeting

Thursday 13 October 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, 13 October 2022

Declarations of Pecuniary and Non-Pecuniary Interests

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DIRECTOR CITY PLANNING

Development Application Report No. D61/22

Subject: 6 Hamel Road, Matraville (DA/201/2022)


Executive Summary

Proposal:	Torrens title subdivision of an approved dual occupancy development into two (2) allotments.
Ward:	South Ward
Applicant:	Shorehouse Projects Pty Ltd
Owner:	Mr P D Bargery & Ms L T Waite
Cost of works:	Nil.
Reason for referral:	Variation to the Minimum Subdivision Lot Size Development Standard by more than 10%.

Recommendation

That the RLPP grant consent under Sections 4.16 and 4.17 of the *Environmental Planning and Assessment Act 1979*, as amended, to Development Application No. DA/179/2022 for Torrens Title subdivision of approved dual occupancy to create two allotments, at No. 6 Hamel Road, Matraville NSW 2036, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (general) - DA/201/2022 - 6 Hamel Road, MATRAVILLE NSW 2036 - DEV - Randwick City Council

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1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development contravenes the development standard for the minimum subdivision lot size in the R2 zone by more than 10%.

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

The key issues associated with the proposal relate to non-compliance with the minimum subdivision lot size of 400m² specified by Clause 4.1 of RLEP 2012 and the non-compliance with the provisions of Clause 2.1 of Part C1, RDCP 2013 in relation to subdivision. The proposed land subdivision is supported given the consistency of the land subdivision with the minimum lot size requirements and future desired characteristics of the R2 Zone, as per the draft Planning Proposal and amendments to the Randwick LEP.

The proposal is recommended for approval subject to standard conditions.

2. Site Description and Locality

The site is identified as Lot 33, DP 36250, No. 6 Hamel Road, Matraville NSW 2036. The site is located on the northern side of Hamel Road between Menin Road to the east and Combles Parade to the west.

The site is a rectangular shaped allotment with a 14.935 metre frontage to Hamel Road, a 38.145 metre eastern and western side boundary, and a total site area of 569.7m².

Existing on site is a single storey residential dwelling. The site has two vehicular crossings along the eastern and western side boundaries. The eastern driveway services a detached garage setback behind the dwelling. The front and rear of the site is landscaped with lawn and planting.

The surrounding area is characterised by residential development, including dwelling houses and multi-dwelling housing. Adjoining the site to the west at 2-4 Hamel Road & 15-17 Combles Parade are single storey attached dual occupancy dwellings, to the east at 8 Hamel Road is a single storey detached dwelling house, and to the north at the rear of the site at 19-85 Combles Parade is a 43 x two storey townhouse development.

There is no predominant subdivision pattern of the surrounding area. Allotments on the northern side of Hamel Road vary in shape and size, with the smallest of these lots being No. 10 Hamel Road at 373.1m². The southern side of Hamel Road has a more regular street pattern but allotments still vary in size, being in excess of 350m².

The prevailing architectural style of the streetscape and surrounding area is older one storey red brick dwelling houses with pitched roofs, however there are examples of newer dual occupancy and multi-dwelling housing developments within the vicinity of the site which adopt modern and contemporary architectural designs.



Figure 1: Google Street View (February 2021) - 6 Hamel Road, Matraville (Source: Google Maps)

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/968/2018

Development Application DA/968/2018 for demolition of existing structures, construction of two storey attached dual occupancy with semi-basement garages, landscaping and associated works (variation to floor space ratio control) at the subject site was approved by Council on 12 March 2020.

4. Proposal

The proposal seeks development consent for the Torrens 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</u> <u>(Southern)</u>	<u>Rear Boundary</u> <u>(Northern)</u>	<u>Side</u> <u>Boundary</u> <u>(Eastern)</u>	<u>Side</u> <u>Boundary</u> <u>(Western)</u>
Lot 1 (6A)	284.84m ²	7.467m	7.468m	38.145m	38.145m
Lot 2 (6B)	284.84m ²	7.467m	7.468m	38.145m	38.145m

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. 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 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).

On 6 September 2022, Council endorsed part of the Planning Proposal that amends the Randwick Local Environmental Plan 2012 in relation to minimum lot sizes for the R2 'Low Density Residential' Zone, specifically to amend clause 4.1 to reduce the minimum lot size for subdivision of land zoned R2 'Low Density Residential' from 400m² to 275m², with the exception of land within a Heritage Conservation Area. In considering the provision of this draft LEP under Section 4.15 (1) (a) (ii) of the *Environmental Planning and Assessment Act 1979*, the proposed land subdivision is consistent with the minimum lot size requirements and the housing needs for the community within the R2 zone. In addition, this will encourage housing affordability by providing increased housing options for the community. As such, the proposal meets the housing needs of the community in the R2 zone and is consistent with the draft Planning Proposal and amendments to the Randwick LEP.

- *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.*

As discussed above, the proposed subdivision would be consistent with the subdivision and development pattern of the area, with particular reference to desired future characteristic of lot sizes as per the draft Planning Proposal and amendments to the Randwick LEP. As such, the proposal contributes to the desired future character of the area.

- *To protect the amenity of residents.*

It is considered that imposition of minimum lot sizes pursuant to Clause 4.1 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. As discussed above, the proposed subdivision is consistent with the desired future characteristic of lot sizes as per the draft Planning

Proposal and amendments to the Randwick LEP. As such, the proposal protects the amenity of residents.

In view of the above, the proposed development is found to be consistent 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)
CI 4.1: Subdivision Lot Size (min)	400m ²	Lot 1 (6A) = 284.84m ²	No
		Lot 2 (6B) = 284.84m ²	No

6.1.1. Clause 4.6 - Exceptions to development standards

The non-compliances with the development standards 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 (%)
CI 4.1: Lot Size (min)	400m ²	Lot 1 (6A) = 284.84m ²	115.16m ²	28.79%
		Lot 2 (6B) = 284.84m ²	115.16m ²	28.79%

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 minimum lot size development standard (Cl 4.1)

The applicant's written justification for the departure from the minimum lot size 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 minimum lot size 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 minimum lot size standard are set out in Clause 4.4 (1) of RLEP 2012. The applicant has addressed each of the objectives as follows:

- (a) *to minimise any likely adverse impact of subdivision and development on the amenity of neighbouring properties,*
- (b) *to ensure that lot sizes allow development to be sited to protect natural or cultural features, including heritage items, and to retain special features such as trees and views,*
- (c) *to ensure that lot sizes are able to accommodate development that is suitable for its purpose.*

The Applicant argues that the objectives of the Clause are achieved as the proposed subdivision shall not introduce any adverse environmental impacts as the dual occupancy dwelling has been approved; and the site, in comparison with the streetscape and surrounding dwelling, is considered appropriate and in-line with similar development in the immediate locality, especially on the southern side of Hamel Road. The Applicant also states that the proposed subdivision will not impact any natural features and items, and that the site is not subject to cultural features or heritage items.

The Applicant further justifies the proposal using a statement from the Planner's Report from the approved Development Application, No. DA/968/2018, which states that *"there is no subdivision proposed as part of this DA. Notwithstanding, should the dual occupancy be subdivided in the future, the site would have a consistent pattern as the surrounding locality."* The Applicant argues that this comment refers to Council's support for a future provision of Torrens Title subdivision at the site, given the nature of the development and the surrounding locality.

In addition, the Applicant argues that the preparation and public exhibition of a Draft RLEP 2022 which includes reducing the minimum lot size from 400m² to 275m², as further justification for compliance with the development standard is unreasonable or unnecessary. The applicant notes that if a site is large enough to construct an attached dual occupancy, it should also be

large enough to subdivide into two lots (subject to assessment under other relevant standards of the LEP and DCP).

Assessing officer's comment:

The minimum lot size of 400m² aims to minimise any likely adverse impact of subdivision and development on the amenity of neighbouring properties by ensuring that subdivision of land is consistent with the existing and desired character of the area. Furthermore, proposed lot sizes should be able to accommodate development that is suitable for its purpose.

The current planning controls and development standards aim to ensure that new semi-detached dwellings have sufficient size and configuration to maintain a reasonable level of amenity to surrounding properties. Additionally, the desired future character of the area is determined by the current planning controls and development standards applicable to the development.

However, as previously noted, on 6 September 2022, Council endorsed part of the Planning Proposal that amends the Randwick Local Environmental Plan 2012 in relation to minimum lot sizes for the R2 'Low Density Residential' Zone, specifically to amend clause 4.1 to reduce the minimum lot size for subdivision of land zoned R2 'Low Density Residential' from 400m² to 275m², with the exception of land within a Heritage Conservation Area. In considering the provision of this draft LEP, the proposed land subdivision is consistent with the minimum lot size requirements and future desired characteristics of the R2 Zone, as per the draft Planning Proposal and amendments to the Randwick LEP. As such, it is considered that compliance with the development standard is unreasonable or unnecessary as much as Council has endorsed changes to the minimum lot size requirements and the changes to the subdivision and development of lots within the R2 zone.

However, it is to be noted that Council does not support the arguments from the applicant regarding their interpretation of the current LEP and DCP, and the comments noted in the approved DA for the construction of the dual occupancy.

Regarding the Applicant's reference to a comment from the Planner Report of the approved dual occupancy Development Application for the site (No. DA/968/2018), the full comments have been reproduced below:

"Minimum Lot Size and Frontage

As prescribed by Part C1, Section 2.1 Minimum Lot Size and Frontage of the RDCP 2013, the minimum lot width requirement for attached dual occupancies within the R2 Low Density Residential zone is 15m. The subject site has a frontage width of 14.935m which is a 65mm shortfall. The subject site is numerically non-compliant however, an assessment against this control's objectives follows.

The objectives and comments of Part C1, Section 2.1 Minimum Lot Size and Frontage are as follows:

- *To ensure land subdivision respects the predominant subdivision and development pattern of the locality.*
- *To ensure land subdivision creates allotments that have adequate width and configuration, to deliver suitable building design and to maintain the amenity of the neighbouring properties.*

There is no subdivision proposed as part of this DA. Notwithstanding, should the dual occupancy be subdivided in the future, the site would have a consistent pattern as the surrounding locality."

The substance of these comments refer to the minimum frontage required for dual occupancies of which was being assessed as part of the requirements under this application. As such, this comment is not in relation to the future subdivision of the site having a consistent frontage pattern to other sites in the locality. This comment is therefore not relevant to the justification for Torrens Title subdivision.

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

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

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

- The proposal carries the objectives for Zone R2.
- The proposal is in keeping with the surrounding two storey dwellings, townhouses and semi-detached housing that exists in the street and area.
- The proposal will have a lot size similar to dwellings in the street that are already subdivided.
- The proposal is to the benefit of the surrounding area and site.
- The proposal is compliant with the LEP and DCP provisions, notwithstanding the minimum lot size control, although it still meets the requirements as agreed with Council in the original development consent.
- The Applicant notes a statement from the Planner's Report from the approved Development Application, No. DA/968/2018, which states that "there is no subdivision proposed as part of this DA. Notwithstanding, should the dual occupancy be subdivided in the future, the site would have a consistent pattern as the surrounding locality."
- The Applicant has provided examples of minimum lot size variations within the LGA for dual occupancies which have been approved pursuant to Clause 4.1D.
- The Applicant references Development Application No. DA/45/2021 which was refused by Council, but further appealed in the Land & Environment Court under *Stalwart International Pty Limited v Randwick City Council* which upheld the appeal and granted approval of the application.
- The Applicant notes Council's Comprehensive Planning Proposal to amend RLEP 2012 which includes provisions allowing for subdivision of a dual occupancy being reduced from 400m² to 275m².

Assessing officer's comment:

As noted above, the proposal is in keeping with the minimum lot size requirements and future desired characteristics of the R2 Zone, as per the draft Planning Proposal and amendments to the Randwick LEP which has been endorsed by Council. The Planning Proposal was endorsed to reduce the minimum lot size for subdivision of land zoned R2 'Low Density Residential' from 400m² to 275m², with the exception of land within a Heritage Conservation Area. The subject site meets the requirements of minimum lot size, being 284.84m² for each lot. In addition, the subject site is not within a Heritage Conservation Area.

However, Council would like to note that under the existing LEP and streetscape and subdivision pattern, the proposal is not in keeping with existing development and lot sizes of the surrounding area, including Hamel Road.

The Applicant relies on five (5) existing allotments located in Hamel Road to demonstrate that the proposal is consistent with the subdivision pattern of the area, being No's 10, 11, 13, 15 & 17. The smallest of these allotments is No. 17 Hamel Road. The site contains a semi-detached dwelling with a lot size of 352.75m² and a frontage of 8.91m. The proposed application would subdivide the dual occupancy into two lots with a lot size of 284.84m² and a frontage of 7.467m to Hamel Road. As such, the proposal seeks to subdivide the sites far beyond the already small allotment at No. 17 Hamel Road, and is therefore not consistent with other development on Hamel Road. See the below aerial image noting the lot sizes and frontages of all sites in Hamel Road (with the subject site highlighted in pink).

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Figure 2: Aerial view of Hamel Road noting lot sizes and frontages.

The applicant also relies on six (6) existing allotments on the north-western side of Combes Parade which adjoins Hamel Road to the west being No's 22, 24, 34, 36, 38 & 38A. Again, No's 22, 24, 34 & 36 were approved before the 1970s. No's 38 & 38A were subdivided in 1996 under the previous Council LEP & DCP. In addition, the Applicant fails to acknowledge that Menin Road which adjoins Hamel Road to the east contains similar development as to Hamel Road with semi-detached and free-standing dwelling houses where all lots are >395m² in size and have frontages >11.5m. As such, whilst anomalies existing within the urban block and locality regarding lot sizes, it is apparent that the predominant subdivision pattern of the locality is larger allotments, consistent with objectives of the minimum lot size Clause of the current RLEP 2012 and the intention of the R2 zone.

In relation to other dual occupancies that have been subdivided with lot sizes <400m², Amendment 5 of RLEP 2012 was in relation to the implementation of Clause 4.1D. Clause 4.1D of RLEP 2012 was introduced in August 2018 and permits the subdivision of dual occupancy developments approved prior to 6 July 2018 in accordance with the provisions of the SEPP Exempt and Complying Development (which allows lesser allotment size requirements).

With regards to those variations approved under the provisions of Clause 4.1D, of the examples provided by the Applicant in the Clause 4.6 statement the following is noted:

- DA/326/2021 – 51-51A Pozieres Avenue, Matraville
The proposal was refused by Council as it did not satisfy the development standards – specifically development (a) – of Clause 6.2 of the *SEPP (Exempt and Complying Development Codes) 2008* as the approved dual occupancy DA No. DA/782/1999 that included Condition 3, which reads: “Subdivision of the property into two lots not being permitted.”
- DA/768/2021 – 23-23A Hunter Avenue, Matraville
The proposal was approved for strata subdivision pursuant to Clause 4.1D of RLEP 2012 as the original dual occupancy development was approved in 2013.
- DA/48/2022 - 48-52 Franklin Street, Matraville
The proposal was approved for strata subdivision pursuant to Clause 4.1D of RLEP 2012 as the original dual occupancy development was approved in 2017.
- DA/78/2022 - 5-5A Barwon Crescent, Matraville
The proposal was approved for strata subdivision pursuant to Clause 4.1D of RLEP 2012 as the original dual occupancy development was approved in 1999.

- DA/77/2022 - 52-52A Knowles Avenue, Matraville
The proposal was approved for strata subdivision pursuant to Clause 4.1D of RLEP 2012 as the original dual occupancy development was approved in 2015.

None of the above examples are comparable to the proposed subdivision, and it is apparent that the above variations had specific site circumstances and environmental planning grounds to warrant a variation.

Notwithstanding, the subject application is made pursuant to RLEP 2012 and therefore the provision of the SEPP Exempt and Complying Development are not relevant, with Clause 4.1D only relating to those applications approved prior to a specific date and therefore was never intended to apply to all future applications/allotments, ensuring the provision of affordable housing.

The Applicant further argues that Development Application No. DA/45/2021 provides additional justification for the support of the subject proposal. This application was for the Torrens Title subdivision of the existing, approved dual occupancy into two (2) separate Torrens Title allotments, seeking each lot size to be 377.1m² and 364.4m² respectively. The application was refused by Council under delegation on 15 March 2021.

The application was then appealed in the Land & Environment Court under *Stalwart International Pty Limited v Randwick City Council*. On 22 February 2022, the appeal with upheld and the Court granted approval for the application. The upholding of this appeal by the Court does not set a precedent to approve dual occupancies <400m² within the LGA. To note, Development Application No. DA/45/2021 proposed lot sizes of 377.1m² and 364.4m² representing a variation of 5.72% and 8.9% respectively to the development standard. The proposed Development Application No. DA/201/2022 proposes lot sizes of 284.84m², representing a variation of 28.79% to the development standard. As such, the applications are not comparable and does not provide further environmental planning support of this subject proposal.

However, in conclusion, it is considered that in this instance there is sufficient environmental planning grounds that would warrant a variation to the minimum lot size standard. The applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard, based on the provisions outlined in the draft Planning Proposal and amendments to the Randwick LEP.

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 minimum lot size standard and the R2 zone has been undertaken. See above and Section 6.1 of the report for further discussion.

The above assessment of the proposal has found that the proposed subdivision achieves the objectives of Clause 4.1 in relation to minimum lot size or the objectives of 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 Minimum Lot Size 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 the Discussion of Key Issues Section of the 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 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	See discussion in Sections 6 in relation to the Planning Proposal and draft Randwick LEP.
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 the discussion in Key Issues section of the report below.
Section 4.15(1)(a)(iia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the desired character of the locality. 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 'Matters for Consideration'	Comments
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions were received in relation to this application.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

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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 7.467m for each allotment, resulting in a substantial non-compliance with the minimum 12m requirement. As discussed under the Clause 4.6 assessment in Section 7.1 of the report, Council has endorsed part of the Planning Proposal that amends the Randwick Local Environmental Plan 2012 in relation to minimum lot sizes for the R2 'Low Density Residential' Zone, specifically to amend clause 4.1 to reduce the minimum lot size for subdivision of land zoned R2 'Low Density Residential' from 400m² to 275m², with the exception of land within a Heritage Conservation Area.

As such, the DCP controls relating to frontage width need to be considered within the context of Planning Proposal and amendment to the Randwick Local Environmental Plan 2012. As such, the frontage width is considered on a merit assessment against the objectives of the clause. Assessment of the proposal deems that the proposed 7.467m frontage for each dual occupancy provides sufficient width in relation to the dwelling on the site. In addition, the width is in keeping with the future desired design, pattern and amenity of the locality. As such, the non-compliance is considered acceptable.

10. Conclusion

That the application for Torrens Title subdivision of approved dual occupancy to create two allotments at 6 Hamel Road, Matraville be approved (subject to conditions) for the following reasons:

1. While the proposed lot sizes do not comply with the minimum provisions in Clause 4.1 of the RLEP 2012, the proposal is consistent with the Council endorsed Planning Proposal and amendments to the Randwick LEP 2012 regarding minimum lot size requirements and the future character of the R2 zone.
2. Compliance with the minimum lot size is considered to be unreasonable or unnecessary in the circumstances of this case and there are environmental planning grounds that would warrant a variation to the development standard, based on the Council endorsed Planning Proposal and amendments to the Randwick LEP 2012. As such, the written request pursuant to Clause 4.6 of the RLEP 2012 to vary the minimum lot size standard pursuant to Clause 4.1 is considered to be well founded.
3. The proposed development is consistent 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.

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.

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

CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARD

This report has been prepared as a request providing ground for variation to Clause 4.1 (Minimum subdivision lot size).

1. *What is the name of the environmental planning instrument that applies to the land?*
Randwick Local Environmental Plan 2012.
2. *What is the zoning of the land?*
R2 – Low Density Residential
3. *What are the objectives of the zone?*
 - 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.
4. *What is the development standard being varied?*
Minimum Subdivision Lot Size.
5. *Under what clause is the development standard listed in the environmental planning instrument?*
Clause 4.1
6. *What are the objectives of the development standard?*
The objectives of this clause are as follows—
 - (a) to minimise any likely adverse impact of subdivision and development on the amenity of neighbouring properties,
 - (b) to ensure that lot sizes allow development to be sited to protect natural or cultural features, including heritage items, and to retain special features such as trees and views,
 - (c) to ensure that lot sizes are able to accommodate development that is suitable for its purpose.
7. *What is the numeric value of the development standard in the environmental planning instrument?*
400m²

8. *What is the proposed numeric value of the development standard in your Development Application?*

284.85m²

9. *How is strict compliance with the development standard unreasonable or unnecessary in this particular case?*

Using the 'five part test' established by the NSW Land and Environment Court:

Part 1 – the objectives of the standard are achieved notwithstanding non-compliance with the standard:

The objectives of the development standard in question are:-

(a) to minimise any likely adverse impact of subdivision and development on the amenity of neighbouring properties,

Comment:

The proposal has been designed as a dual occupancy in which development consent (DA/968/2018) had been granted on 12th of March 2020 for "Demolition of existing structures, construction of two storey attached dual occupancy with semi-basement garages, landscaping and associated works (variation to floor space ratio control)".

As the proposal has already been approved as a dual occupancy the look and feel of the structure will result in a perceived 'subdivided lot' and when reviewed in comparison with the street scape and surrounding dwellings, it is considered to be appropriate and in-line with developments on the same street.

On the opposite side of the street, majority of the lots that are single dwellings are already subdivided as well and hence this Development will be in-line and appropriately justifies the requirement to be sub-divided.

In addition to the above, upon issue of the Development Consent, Council stated within their DA Report "there is no subdivision proposed as part of this DA. Notwithstanding, should the dual occupancy be subdivided in the future, the site would have a consistent pattern as the surrounding locality."

(b) to ensure that lot sizes allow development to be sited to protect natural or cultural features, including heritage items, and to retain special features such as trees and views,

Comment:

There are no impacts to any natural features and all items as approved in the development consent will be maintained.

There are no cultural features or heritage items associated with this development thus no impact in this respect.

(c) to ensure that lot sizes are able to accommodate development that is suitable for its purpose.

Comment:

As mentioned earlier development consent had been granted for dual occupancy and thus it was considered at the time that the lot size was suitable for a development of this nature.

This was reiterated through Council's comments in the DA Report that "there is no subdivision proposed as part of this DA. Notwithstanding, should the dual occupancy be subdivided in the future, the site would have a consistent pattern as the surrounding locality."

Part 2 – the underlying objective or purpose of the standard is not relevant to the development and therefore compliance is not necessary:

Not relevant to this instance.

Part 3 – the underlying objective or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable:

The proposal demonstrates the underlying objectives or purpose of the development standard as follows:

- *the proposal is in keeping with the surrounding two storey dwellings, townhouses and semi-detached housing that exists in the street and area.*
- *The proposal will have a lot size similar to dwellings in the street that are already subdivided.*
- *The proposal carries the objectives for Zone R2.*

The proposal is compliant with the LEP and DCP provisions, notwithstanding the minimum lot size control, although it still meets the requirements as agreed with Council in the original development consent.

The underlying objective or purpose will be met or exceeded with the proposed development, to the benefit of the surrounding area and site. The underlying objective or purpose will be thwarted if compliance was required with the consequence that compliance is considered unreasonable on this site, with the proposed building configuration and spatial arrangement described above.

Part 4 – the development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable:

The standard has not been abandoned by Council although with respect to the streetscape and surrounding dwellings in this particular area, they do not meet the

minimum lot size controls as required. As such we believe this request is suitable with respect to the similar lots nearby,

Part 5 – the compliance with the development standard is unreasonable or inappropriate due to existing use of land and current environmental character of the particular parcel of land. That is, the particular parcel of land should not have been included in this zone:

The zoning of the land (R2) is considered appropriate and the deviation from the FSR is considered in keeping with the character of the zone in this case. Strict compliance is considered unreasonable and unnecessary, as has been demonstrated by the five part test above.

10. How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

5. The objects of this Act are:

(a) to encourage:

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

Comment:

Strict compliance would hinder the attainment of the objectives of the Act as stated above.

The proposal is for orderly and appropriate development of the land as a dual occupancy development in keeping with the character for the area. The proposal will provide additional housing to the zone and benefit the social and economic welfare of the zone by presenting a high-quality building with excellent environmental performance and direct visual connection to the street, therefore meeting the objectives of the economic and social welfare. Dual occupancy offers a housing solution with better affordability and more efficient use of the land.

A better planning outcome is achieved by flexibility in the application of the standard for minimum lot size in this case. The positive outcomes of the proposal outweigh the minor non-compliance in this case.

11. Would strict compliance with the standard, in your particular case, be unreasonable or unnecessary? Why?

Strict compliance with the standard would result in an inflexible application of the policy in this case. The positive benefits of orderly and economic development of the land derived from the proposal are achieved and strict compliance would not serve any purpose that should outweigh this.

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

The proposal meets with the objectives of the Zone R2.

The proposal will deliver increased housing and density to the area while meeting the LEP and DCP controls and providing a positive contribution to the streetscape. The proposed minimum lot size variation is minor and when considered in the context of the objectives of the Zone and Development Standard and the positive contribution of the building to the future character of the area it is a reasonable variation to the standard.

As stated by Council upon approval of the Development Consent, the subdivision would be considered appropriate given the nature of the development and the surrounding locality.

As demonstrated in this request, the proposal is in the public interest, being consistent with the objectives of the standards and objectives of the R2 zone.

This submission demonstrates that compliance with the unreasonable and unnecessary in the circumstances of this case.

N.B. on 13 July 2022, an additional letter was submitted by the applicant to Council providing further justification for the support of the proposal. It has been reproduced below.

Surrounding Locality & Approved DA

The surrounding locality of Matraville and the greater region of Randwick City Council is characterised predominately by detached and attached single and two (2) storey residential dwellings of varying Architectural Design.

On the 12th of March 2020, Randwick City Council consented to the Development Application for the 'Demolition of Construction of an attached Dual Occupancy'. As part of this application there was a variation to the FSR control as well as a variation to the Development Control Plan on the minimum width required for Dual Occupancies.

Within Council's DA Report prepared by Alexandra Marks, on page 9, Council state the following:

Minimum Lot Size and Frontage

As prescribed by Part C1, Section 2.1 Minimum Lot Size and Frontage of the RDCP 2013, the minimum lot width requirement for attached dual occupancies within the R2 Low Density Residential zone is 15m. The subject site has a frontage width of 14.935m which is a 65mm shortfall. The subject site is numerically non-compliant however, an assessment against this control's objectives follows.

The objectives and comments of Part C1, Section 2.1 Minimum Lot Size and Frontage are as follows:

- *To ensure land subdivision respects the predominant subdivision and development pattern of the locality.*
- *To ensure land subdivision creates allotments that have adequate width and configuration, to deliver suitable building design and to maintain the amenity of the neighbouring properties.*

There is no subdivision proposed as part of this DA. Notwithstanding, should the dual occupancy be subdivided in the future, the site would have a consistent pattern as the surrounding locality.

Randwick City Council were aware that the Development was varying in both the minimum lot size and frontage and notwithstanding this fact upon Council's assessment of the dual occupancy, the site is consistent with the neighbouring properties that have lot sizes less than 400m² as prescribed within the LEP. Some of the properties are as follows:

- *11 Hamel Rd, Matraville: 359m²*
- *13 Hamel Rd, Matraville: 366m²*
- *15 Hamel Rd, Matraville: 360m²*
- *17 Hamel Rd, Matraville: 353m²*
- *10 Hamel Rd, Matraville: 375m²*

There are further properties along the adjoining street of Combles Parade, that further stipulate how the surrounding locality have subdivided lot sizes less than that prescribed in the LEP:

- *22 Combles Parade, Matraville: 315m²*
- *24 Combles Parade, Matraville: 318m²*
- *34 Combles Parade, Matraville: 295m²*
- *36 Combles Parade, Matraville: 294m²*
- *38 Combles Parade, Matraville: 250m²*
- *38a Combles Parade, Matraville: 277m²*

Given the approval of the Dual Occupancy by Council, the look of the building perceives that the building is subdivided and as such the requirement that Dual Occupancy's can be approved on a land size of 450m² although not subdivided unless the land is 800m² seems counter intuitive.

As such on the basis of the surrounding locality as well as Council's statement within the original DA Report that "notwithstanding, should the dual occupancy be subdivided in the future, the site would have a consistent pattern as the surrounding locality", we are of the opinion that the Planning Panel should accept this Development Consent for the Torrens Title or Strata Title Subdivision.

Previous DA Approvals

The LEP makes reference to any Development Applications submitted prior to the 6th of July 2018 that the minimum lot size does not apply to the Dual Occupancy subdivision. The Development Application DA968/2018 was lodged only a few months after the date mentioned above and given the short period, it is considered to be marginal and as such the subdivision should be approved.

The following Development Applications were approved for subdivision which are all similar to the subject land; 6 Hamel Rd Matraville:

- 51-51a Pozieres Ave, Matraville – approved 6th April 2022
- 5-5a Barwon Cre, Matraville – approved 12th April 2022
- 52-52a Knowles Ave, Matraville – approved 6th May 2022
- 48-52 Franklin St, Matraville – approved 1st April 2022
- 23-23a Hunter Ave, Matraville – approved 4th March 2022

All DA approvals above reference DA's submitted prior to or on the 6th of July 2018, although given the similarity between the above Development Applications and the Dual Occupancy approval at 6 Hamel Rd Matraville, the requirement for the DA to be lodged prior to that date being only a few months of difference is negligible and should not be applicable to this case.

Land Environmental Court Approval

In light of the Development Approvals referenced above, there was an additional Development Application that was lodged to Randwick City Council on the 3rd of February 2021 for the Torrens Title Subdivision of an existing Dual Occupancy. The property in question is 31 Windsor Street Matraville, in which the Dual Occupancy DA was lodged after the 6th of July 2018 and approved on the 3rd of May 2019.

On the 3rd of February 2021, the applicant lodged a Torrens Title Subdivision to Council in which upon Council's review, similar points were raised relating to the minimum lot size variation and therefore Council refused the Development Application on the 15th of March 2021.

The application was then appealed via the Land Environment Court (LEC) and a decision was obtained before Acting Commissioner of the Court J Bindon which resulted in the following:

- The orders of the Court are:
 - *The Applicant's amended written request under cl 4.6 of the Randwick Local Environmental Plan 2012 (RLEP) prepared by Jennie Askin of aSquare Planning Pty Ltd dated 16 July 2021 seeking a variation of the minimum lot size development standard at cl 4.1 of the RLEP is upheld.*

- *The appeal is upheld.*
- *Development Consent is granted to Development Application DA/45/2021 for Torrens title subdivision of an approved dual occupancy into two lots at 31 Windsor Street, Matraville subject to conditions contained in Annexure 'A'.*

This Court decision is a replica of the situation with the Development Application we have lodged for 6 Hamel Rd Matraville. Given the Courts approval for this development, we are of the opinion that this Development Application should be granted approval given the similarity in this application with 31 Windsor St Matraville and hence complying with the Courts order.

Draft Randwick LEP 2022

Given the nature of developments within the precinct of Randwick City Council and the Housing Strategy prepared, Council have proceeded to prepare a Draft LEP 2022 which has proposed changes to allow for further housing affordability and in particular the following key change:

- **Dual Occupancy in R2 Low Density Residential Zones:**
 - *Minimum lot sizes to subdivide a dual occupancy will reduce from 400m2 to 275m2. The change is designed to support this housing type which is popular with families and to permit either strata or Torrens titling of lots.*

As raised earlier within this letter, the current LEP allows the following:

CONTROL	EXISTING REQUIREMENT
<i>Minimum development lot size to construct a dual occupancy (attached)</i>	<i>450m2</i>
<i>Minimum lot size to subdivide a dual occupancy (attached)</i>	<i>800m2 (create two 400m2 lots)</i>
<i>Floor Space Ration</i>	<i>0.5:1 FSR</i>

There is definitely an inconsistency in the current LEP that permits the construction of a dual occupancy although does not permit the subdivision of that Dual Occupancy.

The new Draft Planning Proposal seeks to remove this inconsistency in Council's planning approach by aligning LEP controls for the construction and subdivision of attached dual occupancies within the R2 Low Density Residential zone. This means that if a site is large enough to construct an attached dual occupancy, it should also be large enough to subdivide into two lots (subject to assessment under other relevant standards of the LEP and DCP). Changes to floor space ratio controls are also proposed to allow appropriate built form with adequate deep soil planting and landscaping. Therefore the revised controls will be as follows:

CONTROL	PROPOSED REQUIREMENT
<i>Minimum development lot size to construct a dual occupancy (attached)</i>	<i>550m2</i>
<i>Minimum lot size to subdivide a dual occupancy (attached)</i>	<i>550m2 (create two 275m2 lots)</i>
<i>Floor Space Ration</i>	<i>0.65:1 FSR (550-600sqm) 0.6:1 FSR (> 600sqm)</i>

The Draft LEP has been publicly listed and this period has now closed. The LEP is now on its way to gateway for approval and to be in effect.

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Our development at 6 Hamel Rd Matraville has a land area of approximately 569m² and therefore will comply with the new proposed LEP controls. Given that the Draft LEP controls are to come into effect, it would be reasonable to allow for the Torrens Title Subdivision considering that gateway approval is imminent and thus to avoid any further delays to building and rise in construction cost we would kindly request that the Planning Panel provide an approval for this application.

Further to the new planning controls, there is substantial precedent set within the locality in which multiple lots are already subdivided either via Torrens or Strata and given that the development of a Dual Occupancy has already been approved, the casual observer would not be able to differentiate between a non-subdivided dual occupancy and a subdivided dual occupancy, noting that there are numerous dual occupancies in the vicinity of the site and the broader locality. This was also agreed by Council Planning Experts in the Land Environment Court Case – Kelly v Randwick City Council (2018) NSWLEC 1322.

In addition to the above, the LEC Approval for 31 Windsor St Matraville provides further verification as to why this Development Application for subdivision should be approved. It is clear that there is an inconsistency within the LEP allowing for Dual Occupancy's although not allowing subdivision, hence the court's decision in permitting the Torrens Title Subdivision.

Given the similarity of our application with that presented to the court, it is recommended that the proposed subdivision for 6 Hamel Rd Matraville is considered suitable and should be approved by the Planning Panel.

Responsible officer: William Joannides, Customer Service Planning and Development Officer

File Reference: DA/201/2022

Development Consent Conditions



DA No:	DA/201/2022
Property:	6 Hamel Road, MATRAVILLE NSW 2036
Proposal:	Torrens Title subdivision of approved dual occupancy to create two allotments (variation to minimum lot size).
Recommendation:	Approval

GENERAL CONDITIONS

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

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

Approved Plans & Supporting Documentation

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

Plan	Drawn by	Dated	Received by Council
Proposed Subdivision plan, Dwg No. A02, Issue 01	Shorehouse Projects	22/04/2022	28/04/2022

REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

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

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

- Sydney Water**
 A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994. Sydney Water's assessment will determine the availability of water and sewer services, which may require extension, adjustment or connection to their mains, and if required will issue a Notice of Requirements letter detailing all requirements that must be met. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator (WSC).

Go to sydneywater.com.au/section73 or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

A Section 73 Compliance Certificate must be completed before a subdivision certificate will be issued.

NOTE: The Section 73 certificate issued upon the completion of the dwellings will not be acceptable to comply with this condition. A separate S73 compliance certificate that specifically refers to the subdivision of the site into two lots must be provided.

Easements

3. The applicant shall create suitable rights of carriageway, easements for services, support and stormwater lines, as required. The applicant shall be advised that the minimum easement width for any stormwater line is 0.9 metres.

Public Utilities

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

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

Road / Asset Opening Permit

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

The owner/builder must ensure that all works within or upon the road reserve, footpath, nature strip or other public place are completed to the satisfaction of Council, prior to the issuing of a subdivision certificate.

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

Street and/or Sub-Address Numbering

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

An application must be submitted to and approved by Council's Director of City Planning, together with the required fee, for the allocation of appropriate street and/or unit numbers for the development. The street and/or unit numbers must be allocated prior to the issue of a subdivision certificate.

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

Restriction and Positive Covenant

7. A certificate of title providing evidence of registration of the "restriction on the use of land" and "positive covenant" (required under condition 47 of DA/968/2018) shall be provided to Council prior to the issuing of a subdivision certificate.

If the restriction and positive covenant have **not** yet been registered, a "restriction on the use of land" and "positive covenant" (under section 88B of the Conveyancing Act 1919) shall be placed on the title of the subject property, in conjunction with the registration of the proposed plan of subdivision for this property, to ensure that the onsite detention system is maintained and that no works which could affect the design function of the detention system are undertaken without the prior consent (in writing) from Council. Such restriction and positive covenant shall not be released, varied or modified without the consent of the Council.

Notes:

- a. The "restriction as to user" and "positive covenant" are to be to the satisfaction of Council. A copy of Council's standard wording/layout for the restriction and positive covenant may be obtained from Council's Development Engineer.
- b. The works as executed drainage plan and hydraulic certification must be submitted to Council prior to the "restriction on the use of land" and "positive covenant" being executed by Council.

Subdivision Certificate

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

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Development Application Report No. D62/22

Subject: 38 Prince Street, Randwick (DA/37/2022)

Executive Summary

Proposal:	Demolition of existing structures and construction of a semi-detached dwellings development with swimming pools and associated Torrens title subdivision.
Ward:	North Ward
Applicant:	Pinnacle Design Company Pty Ltd
Owner:	Ms L Hadhistavrou and Mr J Trimarchi
Cost of works:	\$1,159,092.00
Reason for referral:	Conflict of Interest

Recommendation

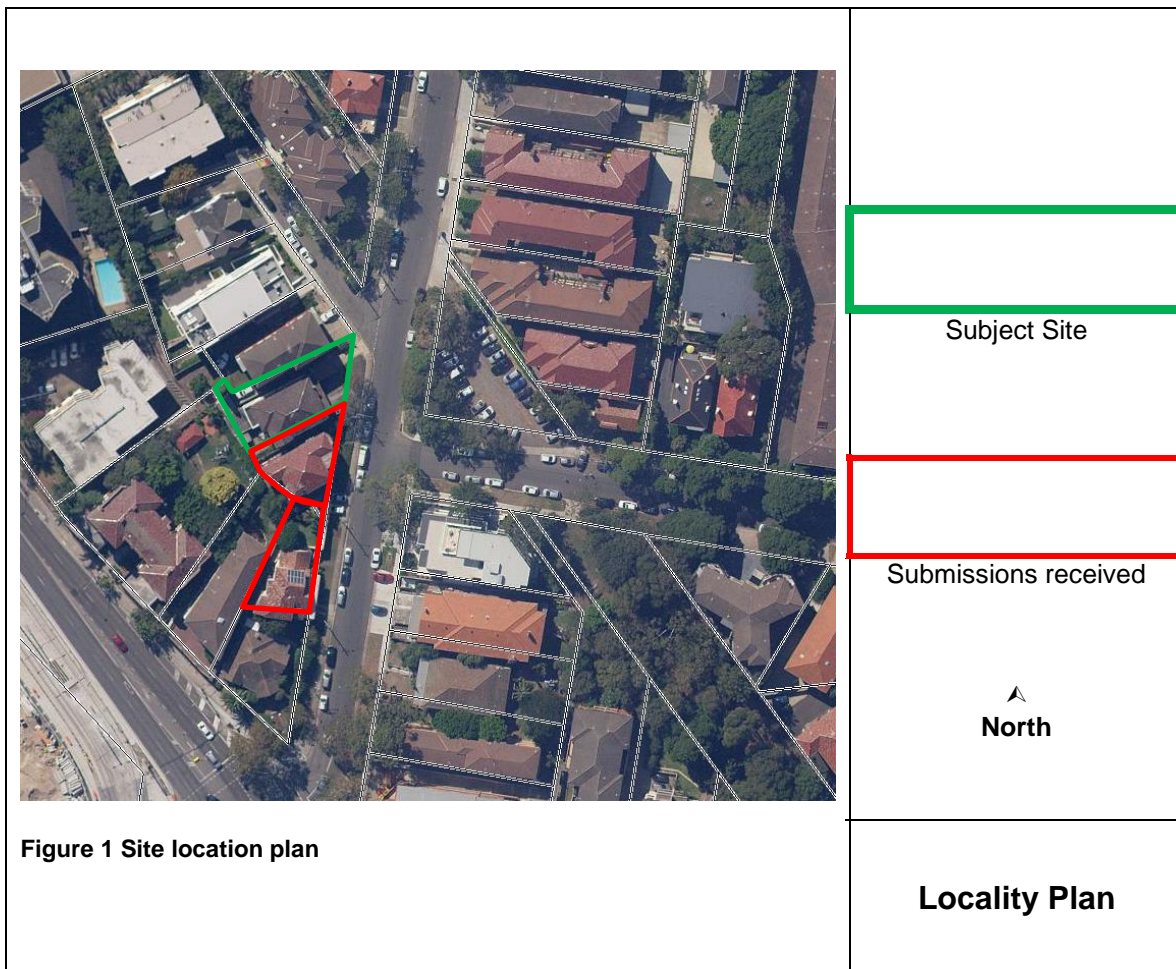
That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 37/2022 for demolition of existing structures and construction of a semi-detached dwellings development with swimming pools and associated Torrens Title subdivision at No. 38 Prince Street, Randwick, subject to the development consent conditions attached to the assessment report.

Attachment/s:

-  RLPP Dev Consent Conditions (dwellings dual occ) - DA/37/2022 - 38 Prince Street, RANDWICK NSW 2031 - DEV - Randwick City Council

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1. Executive summary

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

- The General Manager has made a discretionary referral due to a potential conflict of interest.

The proposal seeks development consent for the demolition of existing structures and construction of a semi-detached dwellings development with swimming pools and associated Torrens title subdivision.

The key issues associated with the proposal relate to:

- Building wall height;
- Setbacks; and
- Building design.

The proposal is recommended for approval subject to conditions included in the attachment to this report.

2. Site Description and Locality

The subject site is known as No. 38 Prince Street, Randwick and is legally described as Lot A in DP 333922. The site is 442.6m², is irregular in shape and has a 16.305m frontage to Prince Street to the east. The site contains a two-storey brick dwelling with hipped tiled roof and a brick garage forward of the building line. The site is generally flat in terms of topography.

The site is located in a R3 Medium Density Residential zone that includes a wide range of land uses with residential flat buildings (RFB's) of three (3) – four (4) storeys to the north along Holkham

Avenue, two (2) storey dwellings to the south along Prince Street, and three (3) – four (4) storey RFB's along the remainder of Prince Street. Please refer to Figure 2-7.



Figure 2 Subject site as viewed from Prince Street



Figure 3 Four (4) storey RFB at No. 2 Holkham Avenue

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Figure 4 Three (3) storey RFB at No. 4 Holkham Avenue



Figure 5 Two (2) storey dwelling at No. 44 Prince Street



Figure 6 Two (2) storey dwelling at No. 42 Prince Street, Randwick



Figure 7 Three (3) - Four (4) storey RFB opposite the subject site at No. 33 Prince Street



Figure 8 Series of three (3) - four (4) storey RFB's at 25 - 27 Prince Street

3. Relevant history

There is no relevant history of development for the subject site.

4. Proposal

The proposal seeks development consent for proposed demolition of existing structures and construction of a semi-detached dwellings development with swimming pools and associated Torrens title subdivision.

DA/37/2022 was received by Council on 28 January 2022. A preliminary assessment of the proposal illustrated that the proposal in its original form could not be supported by Council, and the applicant was notified of this via letter dated 13 April 2022. The applicant provided amended documentation which was accepted by Council to be assessed. A further review of this information demonstrated issues with the application that required a further additional information letter to be sent on the 19 August 2022. Amended information was received that addressed the concerns of Council, as will be discussed below.

Of note, the original proposed built form included a four (4) storey dwelling with ground floor undercroft car parking. The proposal has subsequently been amended to a three (3) storey built form with basement car parking.

5. Notification

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

- 40 Prince Street, Randwick
- 42 Prince Street, Randwick

Issue	Comment
Compliance of a four-storey built form.	Councils built form controls do not specifically restrict the number of storeys that a dwelling can contain, rather they include numerical controls on the height of external walls, which in turn leads to a restriction of stories. The application proposed a wall height of 12m, which was non-complaint with the 7m wall height control. This was later amended to a 9.5m wall height (3 storeys) which is discussed under key issues at section 8.1 of this report.
Proposed setback of 900mm.	<p>Section 3.3.2 of the Randwick DCP relates to side setbacks. Semi-detached dwellings with a frontage of over 8m do not require a specific setback requirement, and as the proposed lots include a frontage of 8.15m it is considered that a 900mm setback for the site is suitable.</p> <p>The proposal as amended, includes minimum side setbacks of 900mm at the ground and first floor and a side setback of 1.5m at the second floor.</p>
Open ground floor carport.	As part of the amended plans received by Council, the ground floor carport has been deleted and car parking is provided in a basement level.
Opposition to potential security lighting on the undercroft car park of the built form.	No security lighting is proposed, however the applicant may have decided to install this at a later date. The removal of the undercroft car park has removed this potential impact.

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Issue	Comment
Solar access to the northern elevation of No. 40 Prince Street.	<p>An amended scheme has been received that has reduced the overall height of the semi-detached dwellings and increased the front setback of the southern dwelling that adjoins No. 40 Prince Street.</p> <p>The northern elevation of No. 40 Prince Street contains 3 bedrooms, 1 bathroom, 1 toilet, and 1 sunroom on both levels.</p> <p>It is considered that the rooms on the northern elevation are of low use and a minor increase of overshadowing is not generally impactful to the amenity of the residents of No. 40 Prince Street.</p> <p>Elevational diagrams have been submitted that demonstrate that approximately half of the windows on the subject elevation receive solar access through portions of the day. While the proposal results in a decrease in the amount of solar access to windows at the front portion of the northern elevation of No. 40, the amount of solar access has been increased to the rear portion of windows on the northern elevation.</p> <p>Further, the front garden area of No. 40 Prince Street, which is not the primary area of private open space retains solar access from 9am to 12pm at midwinter.</p> <p>It is considered that the solar access provided to No. 40 Prince Street is acceptable.</p>
Acoustic privacy regarding the first floor living/dining room.	The first floor living and dining area has been relocated to the ground floor. The proposed opening has been reduced to a highlight window with a minimum sill of 1.6m. It is considered that adequate separation is proposed to avoid the transmission of negative noise across side boundaries.
Lack of privacy screening of third floor balcony	All proposed balconies of the amended scheme have provided sufficient screening or contain balustrades that have minimal returns along the side boundary facing portion of the balconies to limit any potential overlooking.
Removal of existing tree on Council's nature strip.	The removal of trees was reviewed by Council's landscape officer, who raised no objections subject to conditions.
Request that the application be assessed by the Local Planning Panel due to the conflict of interest.	The application is required to be determined by the Local Planning Panel due to the conflict of interest.
Overshadowing in relation to No. 42 Prince Street.	Due to the location and siting of the built form on No. 40 Prince Street and the subsequent location of the No. 42 Prince Street private open space and windows, the shadow diagrams indicate that the proposed development will not unduly increase overshadowing to No. 42 Prince Street

Issue	Comment
Visual Privacy in relation to upper floor windows and balconies.	<p>Amended plans have been received that adequately address the concerns of this submission, including but not limited to the deletion of the upper level.</p> <p>All side facing windows have been provided with a minimum sill height of 1.6m above FFL which will decrease any privacy impacts to neighboring properties.</p> <p>Adequate privacy mitigation has been considered to the proposed balconies to limit overlooking potential over side boundaries</p>
Inconsistency with the streetscape.	The proposal, originally designed as a four-storey pair of semi-detached dwellings has been redesigned as a three-storey pair of semi-detached dwellings which better relates to the transition from four-storey RFBs along Holkham Avenue to the north and two-storey dwellings to the south.
Loss of views from No. 42 Prince Street.	<p>An amended design has been received that has deleted the upper level of the proposal and reduced the maximum height from 12m to 9.5m.</p> <p>The proposed maximum RL of the application is 62.92m which, compared to the maximum RL of the ridgeline of No. 40 Prince Street of RL 62.74m, demonstrates that the proposal will not be generally discernible from No. 42 Prince Street due the location of the built form at No. 40 Prince Street.</p>

5.1. Renotification

Amended plans received on 7 May 2022 were required to be re-notified under the Randwick Community Participation Plan due to the inclusion of a basement level.

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

- 40 Prince Street, Randwick
- 42 Prince Street, Randwick

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Issue	Comment
Overshadowing to north facing windows and front garden of No. 40 Prince Street.	<p>The northern elevation of No. 40 Prince Street contains 3 bedrooms, 1 bathroom, 1 toilet, and 1 sunroom on both levels.</p> <p>It is considered that the rooms on the northern elevation are of low use and a minor increase of overshadowing is not generally impactful to the amenity of the residents of No. 40 Prince Street.</p> <p>Elevational diagrams have been submitted that demonstrate that approximately half of the windows on the subject elevation receive solar access through portions of the day. While the proposal results in a decrease in the amount of solar access to windows at the front portion of the northern elevation of No. 40, the amount of solar access has been increased to the rear portion of windows on the northern elevation.</p> <p>Further, the front garden area of No. 40 Prince Street, which is not the primary area of private open space retains solar access from 9am to 12pm at midwinter.</p> <p>It is considered that the solar access provided to No. 40 Prince Street is acceptable.</p>
Proximity of the living room to bedrooms of No. 40 Prince Street.	<p>The proposed development has limited openings to the side elevations of the development. Where openings are proposed, these are limited to a minimum sill height of 1.6m to limit visual and acoustic privacy impacts. Furthermore, the boundary fence of 1.8m will act as a visual and acoustic privacy barrier.</p>
Overshadowing of future photovoltaic panels on the roof form of NO. 40 Prince Street.	<p>As is demonstrated on the submitted elevational diagrams prepared by Pinnacle Design Studio, the majority of the roof form of No. 40 Prince Street that is north facing remain free of shadows from 9am – 3pm.</p>
Overshadowing on the private open space area and north facing windows of No. 42 Prince Street.	<p>Due to the location and siting of the built form on No. 40 Prince Street and the subsequent location of the No. 42 Prince Street private open space and windows, it is not considered that the proposed shadows will unduly impact on No. 42 Prince Street.</p>
Visual privacy impacts to the north facing windows of No. 42 Prince Street.	<p>All side facing windows have been provided a minimum sill height of 1.6m above FFL which will decrease any privacy impacts to neighboring properties.</p> <p>Adequate privacy mitigation has been considered to the proposed balconies to limit overlooking potential over side boundaries</p>

Issue	Comment
Inconsistency with streetscape	The proposal, originally designed as a four-storey pair of semi-detached dwellings has been redesigned as a three-storey pair of semi-detached dwellings which better relates to the transition from four-storey RFBs along Holkham Avenue to the north and two-storey dwellings to the south.
Loss of views from No. 42 Prince Street.	The proposed maximum RL of the application is 62.92m which compares to the maximum RL of the ridgeline of No. 40 Prince Street of RL 62.74m, and demonstrates that the proposal will not be generally discernible from No. 42 Prince Street due the location of the built form at No. 40 Prince Street.

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6. Relevant Environment Planning Instruments

6.1. SEPP (Building Sustainability Index: BASIX) 2004

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

6.2. SEPP (Biodiversity and Conservation) 2021

The proposed development seeks the removal of two (2) trees from the nature strip at the front of the site.

Council's landscape officer has reviewed the trees proposed to be removed and has determined that while these trees are protected by Council's DCP due to their location on public property, they are non-significant in nature. Subsequently, Council's landscape officer raises no objection to their removal, subject to condition, including a monetary contribution for replacement trees in a new location in the Randwick LGA.

6.3. SEPP (Resilience and Hazards) 2021

The available history of the site indicates that the site has been used for residential purposes for a significant period of time. An inspection of the site has not revealed any land uses that suggest contamination of land has occurred. No significant risk is posed and therefore under Clause 4.6 of SEPP (Resilience and Hazards) 2021, the land is considered suitable for the continued residential use.

6.4. Randwick Local Environmental Plan 2012 (LEP)

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

The proposal is consistent with the specific objectives of the zone, as demonstrated below:

- *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.*

Our response is located below:

- The proposed development of two (2) x three (3) storey dwellings will provide for a increase for the housing needs of the locality by providing two (2) new five (5) bedroom dwellings with adequate landscaping and private open space areas.
- The subdivision and development of a pair of semi-detached dwellings adds to the housing variety of the locality that includes, residential flat buildings, and detached dwelling houses. The development has provided increased housing of a varying land use when compared to the locality within a medium density area.
- The proposed development does not impact other land uses from providing facilities to meet day to day needs of the community.
- The proposal has translated desirable elements of the locality, being sympathetic facades to the examples of older stock housing in the locality, improved glazing to the front façade to increase safety and security of the streetscape, limiting car parking within the front facade and providing a positive interface by incorporating landscape areas and planter boxes within the façade to soften the impact of built form.
- The proposal has provided adequate measures to protect the amenity of future residents of the site and existing residents of adjoining sites. This includes allowing adequate solar access to the proposed area of living and private open space for the subject site and protecting these areas of adjoining sites. Privacy impacts have also been mitigated by providing the majority of openings towards the front or rear of the site and providing mitigation such as screening and increased sill heights to any side facing openings of the site.
- The proposal will not impact the housing affordability of the locality.
- Not applicable.

The proposal is consistent with the objectives of the zone.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4: Floor space ratio (max)	No control applicable to the site.	Proposed Lot A = 209.4m ² or 0.9:1. Proposed Lot B = 209.3m ² or 1:1	N/A.
CI 4.3: Building height (max)	9.5m (as per subclause 2A)	9.5m	YES
CI 4.1: Lot Size (min)	No control applicable to the site	Proposed Lot A = 238.4m ² Proposed Lot B = 204.2m ²	N/A.

6.4.1. Clause 4.1 Lot Size

No minimum lot size applies to the subject site as per the Lot Size map of the Randwick LEP 2012. The proposed subdivision is considered suitable as it has taken a underutilised allotment and provided an intensified development, in terms of two (2) x three (3) storey semi-detached dwellings.

These dwellings have been designed to be sympathetic to the existing built form of the locality, by providing adequate building heights that respect maximum controls under the LEP and respect existing ridgelines in the locality.

As will be explained in this assessment, the proposal does not result in any adverse amenity impacts to the locality, especially neighbouring properties. Adequate measures have been incorporated in the design to protect privacy of new residents of the two (2) dwellings and existing residents of neighbouring sites.

The proposal has provided adequate lot sizes that allow for the design of two (2) suitably sized dwellings, in terms of building height, floor space ratio, landscaping, site coverage, and private open space.

The subdivision of land is considered appropriate in this instance.

6.4.2. Clause 4.4 Floor Space Ratio

Clause 4.4 of the Randwick Local Environmental Plan 2012 states:

4.4 Floor space ratio

1. *The objectives of this clause are as follows—*
 - a. *to ensure that the size and scale of development is compatible with the desired future character of the locality,*
 - b. *to ensure that buildings are well articulated and respond to environmental and energy needs,*
 - c. *to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,*
 - d. *to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.*
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.*
- 2A. *Despite subclause (2), the maximum floor space ratio for a dwelling house or semi-detached dwelling on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential is not to exceed—*
 - (a) *if the lot is more than 300 square metres but not more than 450 square metres—0.75:1, or*
 - (b) *if the lot is more than 450 square metres but not more than 600 square metres—0.65:1, or*
 - (c) *if the lot is more than 600 square metres—0.6:1.*
- (2B) *Despite subclause (2), there is no maximum floor space ratio for a dwelling house or semi-detached dwelling on a lot that has an area of 300 square metres or less.*

As per subclause 2B of clause 4.4 of the Randwick LEP 2012 there is no maximum floor space ratio for a semi-detached dwelling on a lot with an area of less than 300m². The proposal provides adequate floor space for the site being 209.4m² or 0.9:1 for Lot A and 209.3m² or 1:1 for Lot B.

The proposal provides compliance with key built form controls such as building height under the LEP, and private open space, landscaping, and solar access controls of the DCP. The proposal will contribute to a variety of housing stock within a medium density area, being for two (2) x five (5) bedroom dwellings with car parking.

It is considered that the proposed floor space ratio is suitable for the development and subject site

6.4.3. Clause 5.10 - Heritage conservation

The subject site is not listed as a heritage item under the Randwick LEP 2012 nor is it located within a Heritage Conservation Area. The subject site however is in the vicinity of several individually listed items, these being:

- State listed item 1370, being an electricity sub-station in Spanish Mission style, located at 2S Francis Street, Randwick.
- Locally listed item 1368, being a Federation *Arts & Crafts* two storey house, located at 2-4 Francis Street Randwick.
- Locally listed item 1369, being a Federation *Arts & Crafts* two storey house, located at 2-4 Francis Street Randwick.
- A locally listed item 1332, being part of Normanhurst boundary wall (adjacent to former tramway reservation) located at 4-6 and 6A Cowper Street Randwick.

However, it is noted that these items are removed from the subject site by a reasonable distance and by their oblique orientation. Therefore, there is no direct line-of-site impact, nor any other reasonably perceived impact.

The proposal was reviewed by Council's Heritage Officer, who raised no issues from a heritage standpoint, but flagged potential planning issues which have been subsequently addressed in this assessment report. The heritage officer has recommended conditions to be included in any approval for the subject proposal.

No further comments are necessary under Clause 5.10 of the Randwick LEP.

6.4.4. *Clause 6.2 Earthworks*

The application is seeking consent for earthworks inclusive of up to 2.85m of excavation for a basement car parking level and 1.8m for the inclusion of a swimming pool in each rear yard.

Under subclause (3) of clause 6.2 of the RLEP 2012, the consent authority must consider the following before granting consent:

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

A site classification report has been prepared by AW Geotechnics and has suitably classified the site and included classifications to be carried out during construction. Furthermore, adequate conditions of consent will be included in any approval to ensure the excavation of land is adequately carried out without disruption to neighbouring sites. This is carried out through the conditioning through a dilapidation report.

It is considered that the site is suitable for excavation and has been adequately designed to be greater than 900mm off side and rear boundaries to limit adverse impacts.

It is considered that the proposed excavation is suitable in line with Clause 6.2 of the RLPE 2012.

6.5 Comprehensive Planning Proposal to update Randwick Local Environmental Plan 2012 (LEP)

The Comprehensive Planning Proposal (CPP) to update the Randwick Local Environmental Plan (RLEP) 2012 was exhibited to the public from the 31 May to the 12 July 2022.

The planning proposal has been undertaken to amend the Randwick LEP 2012 to align with the strategic direction and planning priorities as outlined by the NSW Government. The planning proposal has proposed changes to introduce five (5) new Housing Investigation Areas, changes to the construction and subdivision of attached dual occupancies in R2 land use zones, proposed new heritage items, changes to open space and recreation policies, introduction of controls to strengthen environmental resilience, introduction of new neighbourhood clusters to support local economic development, introduction of the employment land zones reform as stipulated by the NSW Government, and outlining existing rezoning request and housekeeping changes to the LEP.

Following the public exhibition period, a final Planning Proposal will be submitted to the Department of Planning and Environmental for Gazettal.

Although the site is located in a Housing Investigation Area, no changes to zoning, height or FSR controls are proposed.

Therefore, the proposal will not be adversely impacted by the subject changes under the CPP.

7. Development control plans and policies

7.1. Randwick Comprehensive DCP 2013

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

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

8. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	The Comprehensive Planning Proposal that updates the Randwick LEP 2012 needs to be considered under this section of the Act. See section 6.5 for discussion.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 2 and the discussion in key issues below
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant residential character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in	The issues raised in the submissions have been addressed in this report.

Section 4.15 'Matters for Consideration'	Comments
accordance with the EP&A Act or EP&A Regulation	
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

8.1. Discussion of key issues

The proposal has resulted in either minor non-compliances or requires on-merit assessment as per relevant controls. Please refer to Appendix 2 for a full review of the proposal's compliance with Council DCP controls.

- Building Height

Part 3.2 of the DCP in relation to Building Height includes objectives which seek:

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

The DCP includes a control for the maximum external wall height. The site is subject to a maximum external wall height of 7m. The proposal provides a 9.5m wall height due to the provision of a third storey that is not located within a distinctive roof form.

The proposed exceedance to the wall height control is entirely contained to the third storey which has been set back an additional 600mm at the side setbacks compared to the lower levels of the dwellings. The third storey has also provided a delineated colour palette to create a recessive form and to reduce the visual impact. The proposed exceedance to the control is not considered to result in an increase of amenity impacts to adjoining developments, and removing the non-complaint portion of the proposal and replacing it with a traditional roof form will not noticeably improve solar access to adjoining properties. Further, the proposed third storey does not result in any adverse visual or acoustic privacy impacts. All proposed openings and balconies are proposed with adequate privacy mitigation measures.

Of significance, the proposal only results in an increase in height of the ridgeline of 150mm when compared to the existing dwelling and is consistent with a range of ridgelines along Prince Street and Holkham Avenue, as is depicted in Figure 9 on page 18. The proposal will not add to visual bulk and scale when viewed from neighbouring areas of open space, as the immediate adjoining dwellings do not have private open space or common open space areas at rear yards.

It is considered that the exceedance of the control does not create adverse impacts to neighbouring sites, nor results in an adverse streetscape impact on the locality

The proposed variation also complies with the objectives of the control as demonstrated below.

- The subject site is located within an R3 Medium Density Residential zone which includes a mix of residential flat buildings, dwelling houses, and semi-detached dwellings throughout the immediate locality. Of note, the site adjoins a series of three (3) – Four (4) storey RFB's to the north. The proposal of a pair of three (3) storey dwellings provides a height that establishes a suitable scale to the street that contributes to the character of Prince Street and Holkham Avenue. The proposal does not exceed the maximum building height as prescribed for the subject site by the LEP and provides a transition from higher wall heights to the north, to lower wall heights to the south.

This is reflected when comparing the existing and proposed streetscape as presented in DA-06.40 of the architectural drawings prepared by Pinnacle Design Studio reproduced in Figure 9.



Figure 9 Comparison of the proposed and existing streetscape (DA-06.40 - Pinnacle Plus Design Studio)

The proposed built form is not dissimilar to the existing dwelling in terms of overall height, setbacks, and relationship to neighbouring dwellings. The proposed maximum RL of the new dwellings is only 150mm greater than the RL of the existing dwelling and presents a cohesive streetscape when viewed from the public domain and compared to adjoining dwellings.

- b) The proposed exceedance to the wall height does not result in any excessive impacts upon neighbouring dwellings. The proposal does result in additional shadows to the northern elevation to No. 40 Prince Street, however, these additional shadows occur to low-use rooms such as bathrooms and bedrooms, that are over a southern side boundary. Furthermore, the proposal does not reduce the solar access received to the sites primary living areas and private open space areas. The proposal does not result in adverse view loss, or visual and acoustic privacy impacts.

- c) The topography of the site is respected, with the ground floor of the development being generally consistent with natural ground level. While a basement is provided, this is considered to be a positive solution to car parking for the site through providing car parking outside of view of the public and increase the amenity of the frontage of the site as viewed from Prince Street.

The maximum building height control of 9.5m is not affected by this change to the maximum external wall height.

The increased external building wall height has achieved the relevant objectives of the Clause and is acceptable on merit.

- Front Setbacks

Control (i) of section 3.3.1 of the Randwick DCP requires the following in regard to front setbacks:

“The front setback must be consistent with the average setbacks of the adjoining dwellings. Where there are no adjoining dwellings, the setback must be no less than 6m. Where a development is proposed in an area identified as being under transition in the site analysis, the front setback will be determined on a merit basis.”

The surrounding location includes a range of setbacks for neighbouring sites such as 3m to No. 4 Holkham Avenue, 5m to No. 2 Holkham Avenue, 1.5m to No. 40 Prince street and 1.5m to No. 42 Prince Street.

The proposal, due to its splay, has provided a varied front setback that ranges from 7m for the northern portion of Lot A and 2.15m for the southern portion of Lot B.

These front setbacks are within the range of the setbacks provided to adjacent dwellings in the immediate vicinity of the site.

- Rear Setbacks

Part 3.3 of the DCP in relation to Setbacks includes objectives which seek;

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

The rear setback of the site is required to be either 25% of the allotment depth or 8m, whichever is lesser. Lot A requires a setback of 8m, which it is compliant with as a setback of 10.24m is provided. Lot B requires a setback of 7.82m to the northern portion of the lot and a 6.5m setback to the southern portion of the lot. The proposed setback of the built form from the rear boundary ranges from 7.4m in the northern portion of the dwelling to 7m at the southern portions of the dwellings. Due to the splay of the allotment, the rear setback is slightly non-compliant at this northern portion of the dwelling.

The non-compliance is considered acceptable on-merit as it relates solely to the splay of the allotment at the front and rear boundary and the requirement to set the dwelling back further to provide an acceptable front setback.

The proposed rear setback provides a suitable amount of private open space and landscape area. Furthermore, the proposed rear setback does not result in any adverse visual or acoustic privacy impacts nor solar access impacts to neighbouring dwellings.

The rear setback has achieved the relevant objectives and is acceptable on merit.

- **Building design**

Section 4.1 of the Randwick DCP specifically relates to building design. Of note control (iii) requires side elevations to be divided into sections of no more than 12m in length, including recesses of side courtyards and avoiding massive or unrelieved walls. The proposal includes two external side-facing walls of 17.60m on the southern elevation and 18.10m on the northern elevation.

In lieu of providing recesses and breaks the side walls have been provided adequate articulation to limit the perceived bulk and scale. This articulation provides a break in materials varying between light face brick, metal cladding, and fenestration. The fenestration has been broken up between all levels to ensure there are no portions of blank walls greater than 10m.

Furthermore, the side elevations are not generally discernible from the public domain and create a reasonable interface.

The proposal is considered appropriate on merit.

9. Conclusion

That the application for the 'Proposed demolition of existing structures and construction of a semi-detached dwellings development with swimming pools and associated Torrens Title subdivision' be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013
- The proposal is consistent with the specific objectives of the R3 zone in that the proposed activity and built form will provide for the housing needs of the community whilst enhancing the aesthetic character and protecting the amenity of the local residents.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- The proposal does not result in any adverse amenity impacts to neighbouring sites.
- The proposed subdivision of land and construction of two (2) x three (3) storey dwellings result in a variety of housing stock within a medium density locality.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Heritage planner

The application was referred to Council's heritage planner who returned the following comments. The recommendations of conditions have been included at the attachment of this report.

'The Site

The address for this development proposal is 38 Prince Street Randwick, and the legal land parcel is Lot A in DP 333922.

The site is currently occupied by a two-storey residence of unremarkable presentation. The original ground floor of the residence is substantially part of an early C20 Edwardian house and is currently rendered and painted in a bland style. While this component has had considerable alteration, it shows some remnants of bay and casement fenestration.

It seems that about 1970 a substantial brick veneer first-floor was added. This presents in mid-tone masonry with concrete tiled roof. Probably at about the same time, a flat-roofed brick garage was also added, forward of the dwelling. There is white painted concrete detail ornamentation to the balcony, columns, and fencing. The residence is sited prominently on a small knoll at a junction of local secondary streets.

The subject dwelling is not an individually listed heritage item and it is not located within a Heritage Conservation Area. It is in the vicinity of several individually listed items, these being:

- *State listed item 1370, being an electricity sub-station in Spanish Mission style, located at 2S Francis Street, Randwick.*
- *Locally listed item 1368, being a Federation Arts & Crafts two storey house, located at 2-4 Francis Street Randwick.*
- *Locally listed item 1369, being a Federation Arts & Crafts two storey house, located at 2-4 Francis Street Randwick.*
- *A locally listed item 1332, being part of Normanhurst boundary wall (adjacent to former tramway reservation) located at 4-6 and 6A Cowper Street Randwick.*

However, it is noted that these items are removed from the subject site by a reasonable distance and by their oblique orientation. Therefore, there is no direct line-of-site impact, nor any other reasonably perceived impact.

Background

Prince Street has been developed since at least the early twentieth century. From the major thoroughfare of Alison Road, the street proceeds up a relatively steep incline towards an intersection with Holkham Avenue, Frances Street, and a small triangular pocket-park.

The building stock in the immediate vicinity is characterised by some remnant early twentieth-century one and two storey dwellings, as well as a mix of two and three storey flat buildings. Styles range from the free Art-Deco through to modernist and contemporary, and in various tones of masonry. Because of the immediate landform and street patterns, the building stock presents an articulation at different directions and levels. As outlined above, the dwelling at number 38 Prince Street is a much

compromised two storey residence, sited between taller red brick flat buildings to the north and south.

Proposal

The proposal is for the demolition of all existing structures on site and the construction of a high quality, architecturally designed four-level semi-detached pair of dwellings in high-quality mix of fabric that is of a generally neutral presentation. Each dwelling is of four to five bedrooms and with generous open internal spaces that are well-lit and well-ventilated. The proposal states an aim to capture the visual mix of the immediate architectural elements of the precinct.

The land title is then to be divided by Torrens Title subdivision.

The maximum height for the immediate precinct is 12 metres and the development is proposed at that exact height, achieved by flat roofing. This does not have specific heritage import.

Landscaping to all sides is proposed, with no removal of existing trees. The proposal considers the existing boundary fencing sufficient for the development. These considerations are outside the remit of heritage, but may flag planning consideration.

Submission

The application has been accompanied by an acceptable Statement of Environmental Effects (SEE) which notes heritage and local character implications. The SEE argues for acceptability of the proposal in terms of the following:

- The proposal is a high-quality architectural solution to this site, which will greatly improve its presentation, efficiency and functionality.*
- The height, scale, form and fabric of the proposal is sympathetic to the existing mix of built elements and will not impact negatively on local character.*
- The proposal is enhanced by introduced plantings.*
- The lateral wall heights are arguably acceptable, and the flat roof proposal is a neutral aspect in terms of local character, as well as being within the building height controls for the precinct.*
- The placement, the orientation and the internal height of the lateral window openings respect the privacy and other amenity of neighbouring buildings.*
- The car garaging arrangements are within the building envelope and should be deemed as an open carport.*
- The existing boundary fencing is sufficient for privacy and other amenity*

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.

The proposal relates to a site that is neither an individually listed heritage item, nor within a Heritage Conservation Area. As noted above, it is sited in general proximity to several individually listed items, but these are substantially removed by distance and

orientation in terms of likely impact. Therefore, this Heritage Impact Assessment pertains largely to the immediate precinct character. It flags some considerations that are the remit of Councils Planning Officer.

Comments

- The proposal has an articulated setback. It is of relatively understated, neutral appearance and colouration in high-quality built fabric. It presents as a quality architectural solution to site.
- The large area of flat roof is acceptable from a heritage standpoint but may flag a planning consideration.
- The relatively bland and high side elevations may flag a planning consideration.
- The very narrow car-parking arrangement appears to make the opening of car doors a practical difficulty. It may be a questionable interpretation of the controls appropriate to a 'carport' and is more likely a building under-croft.
- The modernist-style scissor-form structural base appears to be at variance of character with the immediate precinct and has implications for the point above.
- Possible further consideration for Councils Planning Officer may include landscaping/planting and boundary separations at side and rear, as well as directional screening to side elevation windows.

Recommendation

The following conditions should be included in any consent:

- A salvage plan shall be prepared and submitted to and approved by Council's Director City Planning, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development. The plan should include, among other things, a plan for extant fabric in the early twentieth-century ground floor component of the existing building. The salvage plan is required to ensure that materials including fireplaces, architraves, skirtings, windows, doors and remnant components of significant heritage fabric are carefully removed and stored, sold or donated to a heritage salvaging yard to facilitate the conservation of other buildings of a similar period.
- The colours, materials and finishes of the external surfaces to the extension are to be in accord to the proposal submission as detailed in the External Finishes and Material Specifications prepared by Pinnacle Design Studio dated 25/01/2022 and received by Council on 28 January 2022, and are to remain compatible with the existing built character of surrounding buildings, and presented in a generally neutral format.
- In the unlikely event that historical archaeological remains or deposits are exposed during the works, all work should cease while an evaluation of their potential extent and significance is undertaken, and the NSW Heritage Office notified under the requirements of the Heritage Act.'

1.2. Development Engineer

The application was referred to Council's development engineer and landscape officers for comment, and the following comments were returned. Conditions have been included in the attachment to this report.

'An amended application has been received for construction of a new dual occupancy at the above site with swimming pools and Torrens Title Subdivision.

This report is based on the following plans and documentation:

- Amended Architectural Plans by Pinnacle Design Studio; Rev 4; dated 19.08.2022;
- Statement of Environmental Effects by Pinnacle Plus;
- Detail & Level Survey by Harrison Friedmann & Assoc dated 20.09.21;
- Landscape Plans by Conzept, dwg's LPDA 22-234, 01/05, rev C, dated 18/01/22.

General Comments

Amended Plans by Pinnacle Design Studio dated 19.08.2022 have been received to address basement garage levels which Development Engineering requested be raised to RL 51.28m AHD so as to improve internal driveway gradients from the sites from boundary. Development Engineering advises that the submitted amended plans satisfy the request.

Parking Comments

Under Part B7 of Council's DCP 2013 each of the proposed **5** bedroom residences is required to provide a minimum of **2** off-street car spaces. The submitted plans **do** demonstrate compliance with this requirement.

Drainage Comments

On site stormwater detention is required for this development.

The Planning Officer is advised that the submitted drainage plans should not be approved in conjunction with the DA, rather, the Development Engineer has included a number of conditions in this memo that relate to drainage design requirements. The applicant is required to submit detailed drainage plans to the Principal Certifier for approval prior to the issuing of a construction certificate.

The stormwater must be discharged (by gravity) either:

- i. Directly to the kerb and gutter in front of the subject site in Prince Street;
or
- ii. To Council's street drainage system in Alison Road via a private drainage easement through adjoining land/premises; or
- iii. To a suitably designed infiltration system (subject to confirmation in a full geotechnical investigation that the ground conditions are suitable for the infiltration system),

Undergrounding of power lines to site

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

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

The subject **is** located within 15m of a mains power distribution pole on the same side of the street hence the above clause **is** applicable. A suitable condition has been included in this report.

Tree Management Comments

The site inspection of 13 September 2022 revealed two mature, 5m tall trees on Council's raised Prince Street verge, being a *Lagerstroemia indica* (Crepe Myrtle) in the area between the existing vehicle crossing and the centrally located pedestrian

access path, then an Agonis flexuosa (Willow Myrtle) to the south of the path/steps, in line with the southern site boundary.

While both are protected by the DCP due to their location on public property, neither are significant, and as major excavations and civil works will be performed in this same area associated with lowering ground levels down to the footpath/kerb for the two new separate driveways, they could not remain given their direct conflict, with conditions allowing their removal as shown, wholly at the applicants cost.

There is no significant vegetation within this site that would pose a constraint in any way to the works, so conditions require full implementation of the submitted Landscape Plans which will actually increase the quality of treatment and amount of plant material at this property.'

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Appendix 2: DCP Compliance Table**2.1 Part B General Controls**

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
B4 Landscaping and Diversity			
3.1 Existing Vegetation and Natural Features	i) Maximise the retention and protection of existing vegetation including trees, shrubs and groundcover vegetation. ii) Retain and incorporate existing natural features, such as cliffs and rock outcrops into the landscape design where possible. iii) Retain and stockpile topsoil for reuse in the landscaped area.	The proposed development seeks to remove two (2) street trees to facilitate the proposed development. Council's landscape officer has not objected to the proposed tree removal sought subject to conditions of consent.	Yes, subject to conditions of consent.
3.2 Selection and Location of Plant Species	i) Native species must comprise at least 50% of the plant schedule, incorporating a mix of locally indigenous trees, shrubs and groundcovers appropriate to the area and surrounds. ii) Link, extend and enhance existing fauna and flora habitats through appropriate selection and location of plant species, where relevant. iii) Where suitable, incorporate food growing areas as part of the landscape design. iv) Select and locate plants to improve the environmental performance and living amenity.	Council's landscape officer has reviewed the proposed landscaping sought and has raised no objection subject to conditions of consent.	Yes, subject to conditions of consent.
B5 Preservation of Trees and Vegetation			
Development consent	i) Development consent is required for tree works to any tree listed on Council's Register of Significant Trees.	The proposed development seeks to remove two (2) street trees to facilitate the proposed development. Council's landscape officer has not objected to the proposed tree removal sought subject to conditions of consent.	Yes, subject to conditions of consent.
B6 Recycling and Waste Management			

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
4. On-Going Operation	<p>iv) Locate and design the waste storage facilities to visually and physically complement the design of the development. Avoid locating waste storage facilities between the front alignment of a building and the street where possible.</p> <p>v) Locate the waste storage facilities to minimise odour and acoustic impacts on the habitable rooms of the proposed development, adjoining and neighbouring properties.</p> <p>vi) Screen the waste storage facilities through fencing and/or landscaping where possible to minimise visual impacts on neighbouring properties and the public domain.</p> <p>vii) Ensure the waste storage facilities are easily accessible for all users and waste collection personnel and have step-free and unobstructed access to the collection point(s).</p> <p>viii) Provide sufficient storage space within each dwelling / unit to hold a single day's waste and to enable source separation.</p>	<p>The bin storage area for each dwelling is located at the basement level and will not be directly visible from the streetscape. An unobstructed path is provided between the bin storage room and front boundary, ensuring bins can be easily moved to the street on the nominated waste collection day.</p> <p>A condition of consent has been imposed requiring an updated waste management plan to be prepared that outlines how waste will be managed and collected from the subject site.</p>	Yes. Subject to conditions of consent.
B7 Transport, Traffic, Parking, Access			
3.2 Vehicle Parking Rates	<p>1. Space per dwelling house with up to 2 bedrooms</p> <p>2. Spaces per dwelling house with 3 or more bedrooms</p> <p>Note: Tandem parking for 2 vehicles is allowed.</p>	2 spaces proposed for semi-detached dwelling.	Yes.
3.7 Parking Layout, Configuration and Dimensions	<p>i) An off-street car space must be a minimum of 2.4m by 5.4m long and comply with AS 2890.1.</p> <p>ii) Small car spaces as provided for in the</p>	<p>Complies.</p> <p>Not relevant to the proposed development.</p>	<p>Yes.</p> <p>N/A.</p>

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>Australian Standard are not permitted for dwelling houses, terraces, semi detached dwellings or attached dwellings.</p> <p>iii) Motor cycle parking spaces must be a minimum 2.5m by 1.2m and clearly marked.</p> <p>iv) Motor cycle spaces are to be designed and located so they are not vulnerable to being struck by manoeuvring vehicles.</p> <p>v) Motor cycle spaces must be located on flat and even surfaces as they rely on side-stands to park.</p> <p>vi) In all development except dwelling houses, semi-detached dwellings, all vehicles must enter and exit in a forward direction.</p> <p>vii) Unless otherwise stated, development is to comply with the relevant Australian Standard and the RMS Guidelines for car parking layout, dimensions, aisle widths, grades, access requirements for different uses & users, driveway widths, service and delivery needs.</p>	<p>None required or proposed.</p> <p>The development is for a pair of semi-detached dwellings and as such is not required to enter or exit in a forward direction. Conditions of consent have been included that require changes to provide safe entry and exit for vehicles from the site.</p>	<p>N/A.</p> <p>Yes. Subject to conditions.</p>
3 Stormwater Management	This section sets out objectives and controls relating to the management, collection and discharge of stormwater into the stormwater system.	Council's Development Engineer has imposed conditions of consent to ensure drainage plans comply with the BCA and Australian Standards.	Yes, subject to conditions of consent.

2.2 Section C1: Low Density Residential

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R3 Medium Density Residential	Yes.
2	Site planning		

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DCP Clause	Controls	Proposal	Compliance
2.1	Minimum lot size and frontage		
	Minimum lot size (RLEP): • R2 = 400sqm • R3 = 325sqm	The proposal is for a pair of semi-detached dwellings, which does not entail a minimum lot size.	N/A.
	Minimum frontage		
	i) Min frontage R2 = 12m ii) Min frontage R3 = 9m iii) No battle-axe or hatchet in R2 or R3 iv) Minimum frontage for attached dual occupancy in R2 = 15m v) Minimum frontage for detached dual occupancy in R2 = 18m	The proposal is for a pair of semi-detached dwellings, which does not entail a minimum frontage.	N/A.
2.2	Layout Detached dual occupancy		
	i) Detached dual occupancies may be developed only if: - Dual frontage - Secondary access - Street frontage of at least 18m in width.	N/A.	N/A.
	Minimum separation: - Dual frontage = 10m min. - Secondary access: Merit assessment - Detached in R2 = 1800mm min. (18m minimum frontage)	N/A.	N/A.
	900mm minimum footpath at rear lane Note: N/A to corner allotment.	N/A.	N/A.
2.3	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45%	Site: Lot A = 238.4m ² Lot B = 204.2m ² . Existing: 244.04m ² (55%) Proposed: Lot A = 95.4m ² or 40%. Lot B = 97.5m ² or 47%.	Yes.
2.4	Landscaping and permeable surfaces		
	i) Up to 300 sqm = 20% ii) 301 to 450 sqm = 25% iii) 451 to 600 sqm = 30% iv) 601 sqm or above = 35% v) Deep soil minimum width 900mm. vi) Maximise permeable surfaces to front vii) Retain existing or replace mature native trees	Site = Lot A = 238.4m ² Lot B = 204.2m ² . Required: Lot A = 47.68m ² . Lot B = 40.84m ² Proposed = Lot A = 62.71m ² or 26.30%. Lot B = 50.33m ² or 24.6% Only areas greater than 900mm have been included in the landscape area, the loose gravel surface along	Yes.

DCP Clause	Controls	Proposal	Compliance
	viii) Minimum 1 canopy tree (8m mature). Smaller (4m mature) If site restrictions apply. ix) Locating paved areas, underground services away from root zones.	the side boundaries have been included as per Council's DCP. Each site is capable of providing 1 6m tree in the rear yard to provide canopy for the site. Conditions have been included regarding monetary contribution for the replacement of the removal of the trees.	
2.5	Private open space (POS)		
	Dwelling & Semi-Detached POS		
	Up to 300 sqm = 5m x 5m 301 to 450 sqm = 6m x 6m 451 to 600 sqm = 7m x 7m 601 sqm or above = 8m x 8m	Site = Lot A = 238.4m ² Lot B = 204.2m ² . Proposed = Lot A = 6.5m x 11m Lot B = 9m x 8m.	Yes.
	Dual Occupancies (Attached and Detached) POS		
	451 to 600 sqm = 5m x 5m each 601sqm or above = 6m x 6m each ii) POS satisfy the following criteria: <ul style="list-style-type: none"> • Situated at ground level (except for duplex) • No open space on podiums or roofs • Adjacent to the living room • Oriented to maximise solar access • Located to the rear behind dwelling • Has minimal change in gradient 	N/A.	N/A.
3	Building envelope		
3.1	Floor space ratio LEP 2012 = N/A.	N/A.	N/A.
3.2	Building height		
	Maximum overall height LEP 2012 = 9.5m	Proposed = 9.5m.	Yes.
	i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded	Proposed= 9.5m. Minimum floor to ceiling heights are achieved.	See key issues.
3.3	Setbacks		
3.3.1	Front setbacks	Average setbacks are discussed in key issues.	See key issues.
	i) Average setbacks of		

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DCP Clause	Controls	Proposal	Compliance
	<p>adjoining (if none then no less than 6m) Transition area then merit assessment.</p> <p>ii) Corner allotments: Secondary street frontage:</p> <ul style="list-style-type: none"> - 900mm for allotments with primary frontage width of less than 7m - 1500mm for all other sites <p>iii) do not locate swimming pools, above-ground rainwater tanks and outbuildings in front</p>		
3.3.2	<p>Side setbacks:</p> <p>Semi-Detached Dwellings:</p> <ul style="list-style-type: none"> • Frontage less than 6m = merit • Frontage b/w 6m and 8m = 900mm for all levels <p>Dwellings:</p> <ul style="list-style-type: none"> • Frontage less than 9m = 900mm • Frontage b/w 9m and 12m = 900mm (Gnd & 1st floor) 1500mm above • Frontage over 12m = 1200mm (Gnd & 1st floor), 1800mm above. <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p>	<p>Minimum= 900mm for all levels.</p> <p>Proposed:</p> <p>Ground level + first floor = minimum 900mm.</p> <p>Second level = minimum 1.5m.</p>	Yes.
3.3.3	<p>Rear setbacks</p> <p>i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments.</p> <p>ii) Provide greater than aforementioned or demonstrate not required, having regard to:</p> <ul style="list-style-type: none"> - Existing predominant rear setback line - reasonable view sharing (public and private) - protect the privacy and solar access <p>iii) Garages, carports,</p>	Merit assessment due to allotment irregularity	Refer to key issues.

DCP Clause	Controls	Proposal	Compliance
	<p>outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions.</p> <p>iv) For irregularly shaped lots = merit assessment on basis of:-</p> <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p>		
4	Building design		
4.1	General		
	<p>Respond specifically to the site characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> • articulated to enhance streetscape • stepping building on sloping site, • no side elevation greater than 12m • encourage innovative design 	Side elevations are greater than 12m in length.	See key issues.
4.2	Additional Provisions for symmetrical semi-detached dwellings		
	<p>i) Enhance the pair as coherent entity:</p> <ul style="list-style-type: none"> • behind apex of roof; low profile or consistent with existing roof • new character that is first floor at front only after analysis streetscape outcome <p>ii) Constructed to common boundary of adjoining semi</p> <p>iii & iv) avoid exposure of blank party walls to</p>	The proposal is for a new pair of semi-detached dwellings rather than alterations and additions.	N/A.

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DCP Clause	Controls	Proposal	Compliance
	adjoining semi and public domain		
4.3	Additional Provisions for Attached Dual Occupancies		
	Should present a similar bulk as single dwellings i) Garage for each dwelling shall have a single car width only ii) Articulate and soften garage entry iii) Minimise driveway width iv) Maximum 2m setback of front entry from front façade v) Maximise landscape planting at front	N/A.	N/A.
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 don't dominate iv) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof. v) Multiple dormers consistent vi) Suitable for existing <i>Celestial windows and skylights</i> vii) Sympathetic to design of dwelling <i>Mechanical equipment</i> viii) Contained within roof form and not visible from street and surrounding properties.	Not proposed	Not proposed.
4.5	Colours, Materials and Finishes		
	i) Schedule of materials and finishes ii) Finishing is durable and non-reflective. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration)	The proposal is designed with a mix of materials and finishes, including a series of glazing on the front, side, and rear balconies to add visual interest to the subject site. The main materials and finishes consist of light face brick and darker weatherboard cladding, this	Yes.

DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) recycle and re-use sandstone (See also section 8.3 foreshore area.) 	<p>matches normal development within the locality of lighter and more natural cladding, the delineation of face brick and metal cladding assists in creating a recessive second level to reduce visual amenity impacts when viewed from the public domain.</p> <p>The proposed colours, materials and finishes are considered suitable for the subject site.</p>	
4.6	Earthworks		
	<ul style="list-style-type: none"> i) excavation and backfilling limited to 1m, unless gradient too steep ii) minimum 900mm side and rear setback iii) Step retaining walls. iv) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm. v) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping) vi) cut and fill for POS is terraced <i>where site has significant slope:</i> vii) adopt a split-level design viii) Minimise height and extent of any exposed under-croft areas. 	<p>A basement and swimming pool is proposed, and as such exceeds the excavation limit. The proposed excavation is proposed 900mm from boundaries and will not adversely impact the natural environment.</p> <p>A geotechnical report prepared by AW Geotechnics was received by council due to the amount of excavation proposed for the site. The report has classified the subject site and has identified key concerns to be considered in construction, a dilapidation report will be conditioned to ensure no adverse damage occurs to adjacent properties.</p>	Yes. Subject to conditions of consent.
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	<ul style="list-style-type: none"> i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receive a minimum of 3 	<p>The living rooms of each dwelling receive solar access from 9am to 12pm for a total of 3 hours.</p> <p>The private open space open receives solar access from 12pm – 3pm for a total of 3 hours.</p>	Yes.

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DCP Clause	Controls	Proposal	Compliance
	hrs of direct sunlight between 8am and 4pm on 21 June.		
	Solar access to neighbouring development:		
	<p>i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June.</p> <p>iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.</p> <p>v) solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings.</p> <p>vi) Variations may be acceptable subject to a merits assessment with regard to:</p> <ul style="list-style-type: none"> • Degree of meeting the FSR, height, setbacks and site coverage controls. • Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. • Topography of the subject and adjoining allotments. • Location and level of the windows in question. • Shadows cast by existing buildings 	<p>The proposal does not provide any new impacts to primary living areas of No. 40 Prince Street.</p> <p>The proposal does not provide any new impacts on the principal private open space areas of No. 40 Prince Street which is elevated above garages on Prince Street.</p> <p>While new overshadowing is proposed to a front garden area of No. 40, this area is not a primary area of private open space. Nevertheless, the area retains solar access from 9am – 11am.</p>	Yes.

DCP Clause	Controls	Proposal	Compliance
	on the neighbouring allotments.		
5.2	Energy Efficiency and Natural Ventilation		
	<p>i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as:</p> <ul style="list-style-type: none"> • Skylights (ventilated) • Clerestory windows • Fanlights above doorways • Highlight windows in internal partition walls <p>ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries</p> <p>iii) living rooms contain windows and doors opening to outdoor areas</p> <p><i>Note: The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</i></p>	<p>The majority of internal areas have openings to receive natural day light and ventilation.</p> <p>A BASIX certificate has been received that shows compliance with key water, thermal and energy provisions.</p>	Yes. Subject to conditions of consent.
5.3	Visual Privacy		
	Windows		
	<p>i) proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures:</p> <ul style="list-style-type: none"> - windows are offset or staggered - minimum 1600mm window sills - Install fixed and translucent glazing up to 1600mm minimum. - Install fixed privacy screens to windows. 	<p>All side facing windows are providing a minimum sill height of 1.6m to minimise overlooking to adjacent properties.</p> <p>A window to a living area and dining area on the ground that face the side boundaries provides articulation on the ground floor side elevation. These windows are provided a minimum sill height of 1.6m and will not adversely impact on visual or acoustic privacy of adjoining properties.</p>	Yes.

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DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> - Creating a recessed courtyard (minimum 3m x 2m). ii) orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard) 		
	Balcony		
	<ul style="list-style-type: none"> iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side) iv) minimise overlooking of POS via privacy screens (fixed, minimum of 1600mm high and achieve minimum of 70% opaqueness (glass, timber or metal slats and louvers) v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure) vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space. 	All proposed balconies of the have provided sufficient screening or contain balustrades that have minimal returns along the side boundary facing portion of the balconies to limit any potential overlooking.	Yes.
5.4	Acoustic Privacy		
	<ul style="list-style-type: none"> i) noise sources not located adjacent to adjoining dwellings bedroom windows <p><i>Attached dual occupancies</i></p> <ul style="list-style-type: none"> ii) Reduce noise transmission between dwellings by: <ul style="list-style-type: none"> - Locate noise-generating areas and quiet areas adjacent to each other. - Locate less sensitive areas adjacent to the party wall to serve as noise buffer. 	Windows along noise generating rooms such as living areas have been reduced where they adjoin bedroom windows.	Yes.
5.5	Safety and Security		
	<ul style="list-style-type: none"> i) dwellings main entry on front elevation (unless narrow site) 	The main entry to the dwellings is located on the front elevation. Street numbering has been	Yes. Subject to conditions of consent.

DCP Clause	Controls	Proposal	Compliance
	ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 square metres) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not obstruct casual surveillance (maintain safe access)	conditioned. A series of habitable room windows overlook the public domain, with no obstructions occurring from front fences, parking facilities or landscaping.	
5.6	View Sharing		
	i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas. ii) retaining existing views from the living areas are a priority over low use rooms iii) retaining views for the public domain takes priority over views for the private properties iv) fence design and plant selection must minimise obstruction of views v) Adopt a balanced approach to privacy protection and view sharing vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA. (certified height poles used)	Side setback separation is maintained to promote view sharing corridors.	Yes.
6	Car Parking and Access		
6.1	Location of Parking Facilities:		
	i) Maximum 1 vehicular access ii) Locate off rear lanes, or secondary street frontages where available. iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling. <i>Note: See 6.2 for circumstances when</i>	Each dwelling is provided a singular vehicular access. Parking is located in a basement level behind the building line. Each parking area is single width. Long driveways are avoided.	Yes.

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DCP Clause	Controls	Proposal	Compliance
	<p><i>parking facilities forward of the front façade alignment may be considered.</i></p> <p>iv) Single width garage/carport if frontage <12m; Double width if:</p> <ul style="list-style-type: none"> - Frontage >12m, - Consistent with pattern in the street; - Landscaping provided in the front yard. <p>v) Minimise excavation for basement garages</p> <p>vi) Avoid long driveways (impermeable surfaces)</p>		
6.2	Parking Facilities forward of front façade alignment (if other options not available)		
	<p>i) The following may be considered:</p> <ul style="list-style-type: none"> - An uncovered single car space - A single carport (max. external width of not more than 3m and - Landscaping incorporated in site frontage <p>ii) Regardless of the site's frontage width, the provision of garages (single or double width) within the front setback areas may only be considered where:</p> <ul style="list-style-type: none"> - There is no alternative, feasible location for accommodating car parking; - Significant slope down to street level - does not adversely affect the visual amenity of the street and the surrounding areas; - does not pose risk to pedestrian safety and - does not require removal of significant contributory landscape elements (such as 	N/A.	N/A.

DCP Clause	Controls	Proposal	Compliance
	rock outcrop or sandstone retaining walls)		
6.3	Setbacks of Parking Facilities		
	i) Garages and carports comply with Sub-Section 3.3 Setbacks. ii) 1m rear lane setback iii) Nil side setback where: <ul style="list-style-type: none"> - nil side setback on adjoining property; - streetscape compatibility; - safe for drivers and pedestrians; and - Amalgamated driveway crossing 	N/A.	N/A.
6.4	Driveway Configuration		
	Maximum driveway width: <ul style="list-style-type: none"> - Single driveway – 3m - Double driveway – 5m Must taper driveway width at street boundary and at property boundary	Both proposed single driveways exceed 3m in width. This allows greater maneuvering when any vehicle has to exit the basement car park.	Yes.
6.5	Garage Configuration		
	i) recessed behind front of dwelling ii) The maximum garage width (door and piers or columns): <ul style="list-style-type: none"> - Single garage – 3m - Double garage – 6m iii) 5.4m minimum length of a garage iv) 2.6m max wall height of detached garages v) recess garage door 200mm to 300mm behind walls (articulation) vi) 600mm max. parapet wall or bulkhead vii) minimum clearance 2.2m AS2890.1	Car parking is included in a basement level which avoids the perspective of bulk and scale at the frontage of the dwellings.	Yes.
6.6	Carport Configuration		
	i) Simple post-support design (max. semi-enclosure using timber or metal slats minimum 30% open). ii) Roof: Flat, lean-to, gable or hipped with pitch that relates to	N/A.	N/A.

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DCP Clause	Controls	Proposal	Compliance
	dwelling iii) 3m maximum width. iv) 5.4m minimum length v) 2.6m maximum height with flat roof or 3.0m max. height for pitched roof. vi) No solid panel or roller shutter door. vii) front gate allowed (minimum 30% open) viii) Gate does not open to public land		
6.7	Hardstand Car Space Configuration		
	i) Prefer permeable materials in between concrete wheel strips. ii) 2.4m x 5.4m minimum dimensions	N/A.	N/A.
7	Fencing and Ancillary Development		
7.1	General - Fencing		
	i) Use durable materials ii) sandstone not rendered or painted iii) don't use steel post and chain wire, barbed wire or dangerous materials iv) Avoid expansive surfaces of blank rendered masonry to street	Where front fencing is proposed, it is open in design, with picket style metal, providing gate access to the site.	No front fencing is proposed.
7.2	Front Fencing		
	i) 1200mm max. (Solid portion not exceeding 600mm), except for piers. - 1800mm max. provided upper two-thirds partially open (30% min), except for piers. ii) light weight materials used for open design and evenly distributed iii) 1800mm max solid front fence permitted in the following scenarios: - Site faces arterial road - Secondary street frontage (corner allotments) and fence is behind the alignment of the primary street façade (tapered	Where front fencing is proposed for pedestrian access to the site, this does not exceed 1.2m, and is lightweight and open in design.	Yes.

DCP Clause	Controls	Proposal	Compliance
	<p>down to fence height at front alignment).</p> <p><i>Note: Any solid fences must avoid continuous blank walls (using a combination of materials, finishes and details, and/or incorporate landscaping (such as cascading plants))</i></p> <p>iv) 150mm allowance (above max fence height) for stepped sites</p> <p>v) Natural stone, face bricks and timber are preferred. Cast or wrought iron pickets may be used if compatible</p> <p>vi) Avoid roofed entry portal, unless complementary to established fencing pattern in heritage streetscapes.</p> <p>vii) Gates must not open over public land.</p> <p>viii) The fence must align with the front property boundary or the predominant fence setback line along the street.</p> <p>ix) Splay fence adjacent to the driveway to improve driver and pedestrian sightlines.</p>		
7.3	Side and rear fencing		
	<p>i) 1800mm maximum height (from existing ground level). Sloping sites step fence down (max. 2.2m).</p> <p>ii) Fence may exceed max. if level difference between sites</p> <p>iii) Taper down to front fence height once past the front façade alignment.</p> <p>iv) Both sides treated and finished.</p>	Side fencing is conditioned.	Yes. Subject to conditions of consent.
7.4	Outbuildings		
	<p>i) Locate behind the front building line.</p> <p>ii) Locate to optimise</p>	Not proposed.	Not proposed.

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DCP Clause	Controls	Proposal	Compliance
	<p>backyard space and not over required permeable areas.</p> <p>iii) Except for laneway development, only single storey (3.6m max. height and 2.4m max. wall height)</p> <p>iv) Nil side and rear setbacks where:</p> <ul style="list-style-type: none"> - finished external walls (not requiring maintenance; - no openings facing neighbours lots and - maintain adequate solar access to the neighbours dwelling <p>v) First floor addition to existing may be considered subject to:</p> <ul style="list-style-type: none"> - Containing it within the roof form (attic) - Articulating the facades; - Using screen planting to visually soften the outbuilding; - Not being obtrusive when viewed from the adjoining properties; - Maintaining adequate solar access to the adjoining dwellings; and - Maintaining adequate privacy to the adjoining dwellings. <p>vi) Must not be used as a separate business premises.</p>		
7.5	Swimming pools and Spas		
	<p>i) Locate behind the front building line</p> <p>ii) Minimise damage to existing tree root systems on subject and adjoining sites.</p> <p>iii) Locate to minimise noise impacts on the adjoining dwellings.</p> <p>iv) Pool and coping level related to site</p>	<p>The swimming pool is located behind the front building line.</p> <p>The swimming pool is located at NGL, and the coping is setback greater than 900mm from the side and rear boundary.</p> <p>Screen planting is proposed of a minimum height of 3m.</p> <p>Pool equipment is stored under the deck. It will be conditioned for the pool equipment to be contained in</p>	Yes.

DCP Clause	Controls	Proposal	Compliance
	topography (max 1m over lower side of site). v) Setback coping a minimum of 900mm from the rear and side boundaries. vi) Incorporate screen planting (min. 3m mature height unless view corridors affected) between setbacks. vii) Position decking to minimise privacy impacts. viii) Pool pump and filter contained in acoustic enclosure and away from the neighbouring dwellings.	an appropriate acoustic enclosure.	
7.6	Air conditioning equipment		
	i) Minimise visibility from street. ii) Avoid locating on the street or laneway elevation of buildings. iii) Screen roof mounted A/C from view by parapet walls, or within the roof form. iv) Locate to minimise noise impacts on bedroom areas of adjoining dwellings.	Not proposed.	Not proposed.
7.7	Communications Dishes and Aerial Antennae		
	i) Max. 1 communications dish and 1 antenna per dwelling. ii) Positioned to minimise visibility from the adjoining dwellings and the public domain, and must be: <ul style="list-style-type: none"> - Located behind the front and below roof ridge; - minimum 900mm side and rear setback and - avoid loss of views or outlook amenity iii) Max. 2.7m high freestanding dishes (existing).	These requirements will be conditioned.	Yes. Subject to conditions of consent.
7.8	Clothes Drying Facilities		
	i) Located behind the front alignment and not be prominently visible	Appropriate clothes drying facilities are located behind the front alignment and will not be generally	Yes.

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DCP Clause	Controls	Proposal	Compliance
	from the street	visible from the street.	
8	Area Specific Controls		
8.1	Development in Laneways		
	i) Max. 6m height. Max. 4.5m external wall height. Mass and scale to be secondary to primary dwelling and upper level contained within roof form (attic storey). ii) 1 operable window to laneway elevation (casual surveillance) iii) Aligns with consistent laneway setback pattern (if no consistent setback then 1m rear setback). (Refer to Sub-Section 6 for controls relating to setback to garage entry.) iv) Nil side setback allowed subject to: <ul style="list-style-type: none"> - adjoining building similarly constructed - no unreasonable visual, privacy and overshadowing impacts v) Screen or match exposed blank walls on adjoining properties (ie on common boundary).	N/A.	N/A.

Responsible officer: James Corry, GAT & Associates

File Reference: DA/37/2022

Development Consent Conditions (dwellings and dual occupancies)



D62/22

Folder /DA No:	DA/37/2022
Property:	38 Prince Street, RANDWICK NSW 2031
Proposal:	Demolition of existing structures and construction of a semi-detached dwellings development with swimming pools and associated Torrens title subdivision.
Recommendation:	Approval

GENERAL CONDITIONS

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

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

Approved Plans & Supporting Documentation

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

Plan	Drawn by	Dated	Received by Council
DA – 02.10 Demolition Plan – Revision 2	Pinnacle Plus	25.07.2022	29.07.2022
DA – 03.00 Site Plan – Revision 2	Pinnacle Plus	25.07.2022	29.07.2022
DA – 03.10 Site Analysis Plan – Revision 3	Pinnacle Plus	25.07.2022	29.07.2022
DA – 03.20 Subdivision Plan – Revision 2	Pinnacle Plus	25.07.2022	29.07.2022
DA – 03.30 Height Blanket – Revision 2	Pinnacle Plus	25.07.2022	29.07.2022
DA – 03.40 Wall height blanket – Revision 2	Pinnacle Plus	25.07.2022	29.07.2022
DA – 04.00 Basement – Revision 4	Pinnacle Plus	19.08.2022	19.08.2022
DA – 04.10	Pinnacle Plus	19.08.2022	19.08.2022

Ground Floor – Revision 4			
DA – 04.20 First Floor – Revision 3	Pinnacle Plus	25.07.2022	29.07.2022
DA – 04.30 Second Floor – Revision 3	Pinnacle Plus	25.07.2022	29.07.2022
DA – 04.40 Roof – Revision 3	Pinnacle Plus	25.07.2022	29.07.2022
DA – 05.00 Sections – Revision 4	Pinnacle Plus	19.08.2022	19.08.2022
DA – 05.10 Section C – Revision 4	Pinnacle Plus	19.08.2022	19.08.2022
DA – 05.20 Driveway Sections – Revision 4	Pinnacle Plus	19.08.2022	19.08.2022
DA – 06.00 Front and Rear Elevations – Revision 2	Pinnacle Plus	25.07.2022	29.07.2022
DA – 06.10 South Elevation – Revision 3	Pinnacle Plus	25.07.2022	29.07.2022
DA – 06.20 North Elevation – Revision 3	Pinnacle Plus	25.07.2022	29.07.2022

BASIX Certificate No.	Dated	Received by Council
1272370M_02	15 September 2022	15 September 2022

Boundary Fencing

- Any replacement of side fencing is to be depicted on construction certificate plans, and must not exceed 1.8m in height from Natural Ground Level. The side fencing when passing the approved front building line must taper down to the front fence line.

REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

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

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

Consent Requirements

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

External Colours, Materials & Finishes

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

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

Section 7.12 Development Contributions

5. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$1,159,092 the following applicable monetary levy must be paid to Council: \$11,590.90 .

The levy must be paid in **cash, bank cheque** or by **credit card** prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone 9093 6999 or 1300 722 542 for the indexed contribution amount prior to payment.

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

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

Where:

IDC = the indexed development cost

ODC = the original development cost determined by the Council

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

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

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

Long Service Levy Payments

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

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

Security Deposit

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

- \$5000.00 - Damage / Civil Works Security Deposit

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

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

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

Design Alignment Levels

8. The design alignment level (the finished level of concrete, paving or the like) at the property boundary for driveways, access ramps and pathways or the like, shall be as follows:

Northern Driveway Entrance

Northern Edge of Opening – RL 52.90m AHD
Southern Edge of Opening – RL 52.50m AHD

Northern Pedestrian Entrance – RL 52.35m AHD

Southern Driveway Entrance

Northern Edge of Opening – RL 51.90m AHD
Southern Edge of Opening – RL 51.50m AHD

Southern Pedestrian Entrance - RL 52.10m AHD

Note: Refer to Survey Plan by Harrison Friedmann & Assoc dated 20.9.21 for Reference Mark / Benchmark

The design alignment levels at the property boundary as issued by Council must be indicated on the building plans for the construction certificate. The design alignment level at the street boundary, as issued by the Council, must be strictly adhered to.

Any request to vary the design alignment level/s must be forwarded to and approved in writing by Council's Development Engineers and may require a formal amendment to the development consent via a Section 4.55 application.

9. The above alignment levels and the site inspection by Council's Development Engineering Section have been issued at a prescribed fee of **\$946.00** calculated at \$58.00 per metre of site frontage. This amount is to be paid prior to a construction certificate being issued for the development.

Internal Driveway Design

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

Retaining Wall Location on Council Property

11. Prior to the issuing of a Construction Certificate the submitted plans are to show a retaining wall being constructed on Council's nature strip at the southern end of the site. The retaining wall design, for the Construction Certificate, shall satisfy the following requirements:

The retaining wall being located opposite the sites southern side boundary and projected to finish 1.20m off the existing Ausgrid Power Pole on its northern side.

A note on the plans for the retaining wall shall state that the structural design of the retaining wall, including heights, finish, safety rails, footing design etc shall be submitted to Council's for approval and be approved prior to the commencement of any demolition/building works.

Sydney Water

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

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

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

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

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

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

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

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

Stormwater Drainage

13. Stormwater drainage plans have not been approved as part of this development consent.

Engineering calculations and plans with levels reduced to Australian Height Datum in relation to site drainage shall be prepared by a suitably qualified Hydraulic Engineer and submitted to and approved by the Principal Certifier. A copy of the engineering calculations and plans are to be forwarded to Council, if the Council is not the Principal Certifier. The drawings and details shall include the following information:

- a) A detailed drainage design supported by a catchment area plan, at a scale of 1:100 or as considered acceptable to the Council or an accredited certifier, and drainage calculations prepared in accordance with the Institution of Engineers publication, Australian Rainfall and Run-off, 1987 edition.
- b) A layout of the proposed drainage system including pipe sizes, type, grade, length, invert levels, etc., dimensions and types of all drainage pipes and the connection into Council's stormwater system.
- c) The separate catchment areas within the site, draining to each collection point or surface pit are to be classified into the following categories:
 - i. Roof areas
 - ii. Paved areas
 - iii. Grassed areas
 - iv. Garden areas
- d) Where buildings abut higher buildings and their roofs are "flushed in" to the higher wall, the area contributing must be taken as: the projected roof area of the lower building, plus one half of the area of the vertical wall abutting, for the purpose of determining the discharge from the lower roof.

- e) Proposed finished surface levels and grades of car parks, internal driveways and access aisles which are to be related to Council's design alignment levels.
- f) The details of any special features that will affect the drainage design eg. the nature of the soil in the site and/or the presence of rock etc.

14. The site stormwater drainage system is to be provided in accordance with the following requirements;

- a) The stormwater drainage system must be provided in accordance with the relevant requirements of the Building Code of Australia and the conditions of this consent, to the satisfaction of the *Principal Certifier* and details are to be included in the construction certificate.
- b) The stormwater must be discharged (by gravity) either:
 - i. Directly to the kerb and gutter in front of the subject site in Prince Street; or
 - ii. To Council's street drainage system located in Alison Road via a private drainage easement through adjoining land/premises; or
 - iii. To a suitably designed infiltration system (subject to confirmation in a full geotechnical investigation that the ground conditions are suitable for the infiltration system),

NOTES:

- Infiltration will not be appropriate if the site is subject to rock and/or a water table within 2 metres of the base of the proposed infiltration area, or the ground conditions comprise low permeability soils such as clay.
- If the owner/applicant is able to demonstrate to Council that he/she has been unable to procure a private drainage easement through adjoining premises and the ground conditions preclude the use of an infiltration system, a pump-out system may be permitted to drain the portion of the site that cannot be discharged by gravity to Council's street drainage system in front of the property. Pump-out systems must be designed by a suitably qualified and experienced hydraulic consultant/engineer in accordance with the conditions of this consent and Council's Private Stormwater Code.

- c) Should stormwater be discharged to Council's street drainage system, an on-site stormwater detention system must be provided to ensure that the maximum discharge from the site does not exceed that which would occur during a **20% AEP (1 in 5 year)** storm of one hour duration for existing site conditions. All other stormwater run-off from the site for all storms up to the 5% AEP (1 in 20 year) storm is to be retained on the site for gradual release to the street drainage system, to the satisfaction of the Principal Certifier.

An overland escape route or overflow system (to Council's street drainage system) must be provided for storms having an annual exceedance probability (AEP) of 1% (1 in 100 year storm), or, alternatively the stormwater detention system is to be provided to accommodate the 1% AEP (1 in 100 year) storm.

- d) Should stormwater be discharged to an infiltration system the following requirements must be met;
 - i. Infiltration systems/Absorption Trenches must be designed and constructed generally in accordance with Randwick City Council's Private Stormwater Code.

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- ii. The infiltration area shall be sized for all storm events up to the 5% AEP (1 in 20 year) storm event with provision for a formal overland flow path to Council's Street drainage system.

Should no formal overland escape route be provided for storms greater than the 5% AEP (1 in 20yr) design storm, the infiltration system shall be sized for the 1% AEP (1 in 100yr) storm event.
- iii. Infiltration areas must be a minimum of 3.0 metres from any structure (Note: this setback requirement may not be necessary if a structural engineer or other suitably qualified person certifies that the infiltration area will not adversely affect the structure)
- iv. Infiltration areas must be a minimum of 2.1 metres from any site boundary unless adjacent to Council land (eg. road, laneway or reserve).
- e) Determination of the required cumulative storage (in the on-site detention and/or infiltration system) must be calculated by the mass curve technique as detailed in Technical Note 1, Chapter 14 of the Australian Rainfall and Run-off Volume 1, 1987 Edition.

Where possible any detention tanks should have an open base to infiltrate stormwater into the ground. Infiltration should not be used if ground water and/or any rock stratum is within 2.0 metres of the base of the tank.
- f) Should a pump system be required to drain any portion of the site the system must be designed with a minimum of two pumps being installed, connected in parallel (with each pump capable of discharging at the permissible discharge rate) and connected to a control board so that each pump will operate alternatively. The pump wet well shall be sized for the 1% AEP (1 in 100 year), 2 hour storm assuming both pumps are not working.

The pump system must also be designed and installed strictly in accordance with Randwick City Council's Private Stormwater Code.
- g) Should a charged system be required to drain any portion of the site, the charged system must be designed such that;
 - i. There are suitable clear-outs/inspection points at pipe bends and junctions.
 - ii. The maximum depth of the charged line does not exceed 1m below the gutter outlet.
- h) If connecting to Council's underground drainage system, a reflux valve shall be provided (within the site) over the pipeline discharging from the site to ensure that stormwater from Council drainage system does not surcharge back into the site stormwater system.
- i) Any new kerb inlet pits (constructed within Council's road reserve) are to be constructed generally in accordance with Council's standard detail for the design of kerb inlet pits (drawing number SD6 which is available from Council).
- j) Generally all internal pipelines must be capable of discharging a 5% AEP (1 in 20 year) storm flow. However the minimum pipe size for pipes that accept stormwater from a surface inlet pit must be 150mm diameter. The site must be graded to direct any surplus run-off (i.e. above the 1 in 20 year storm) to the proposed drainage (detention/infiltration) system.

- k) A sediment/silt arrestor pit must be provided within the site near the street boundary prior to discharge of the stormwater to Council's drainage system and prior to discharging the stormwater to any absorption/infiltration system.

Sediment/silt arrestor pits are to be constructed generally in accordance with the following requirements:

- The base of the pit being located a minimum 300mm under the invert level of the outlet pipe.
- The pit being constructed from cast in-situ concrete, precast concrete or double brick.
- A minimum of 4 x 90 mm diameter weep holes (or equivalent) located in the walls of the pit at the floor level with a suitable geotextile material with a high filtration rating located over the weep holes.
- A galvanised heavy-duty screen being provided over the outlet pipe/s (Mascot GMS multipurpose filter screen or equivalent).
- The grate being a galvanised heavy-duty grate that has a provision for a child proof fastening system.
- A child proof and corrosion resistant fastening system being provided for the access grate (e.g. spring loaded j-bolts or similar).
- Provision of a sign adjacent to the pit stating, "This sediment/silt arrestor pit shall be regularly inspected and cleaned".

- l) The floor level of all habitable, retail, commercial and storage areas located adjacent to any detention and/or infiltration systems with above ground storage must be a minimum of 300mm above the maximum water level for the design storm or alternately a permanent 300mm high water proof barrier is to be provided.

(In this regard, it must be noted that this condition must not result in any increase in the heights or levels of the building. Any variations to the heights or levels of the building will require a new or amended development consent from the Council prior to a construction certificate being issued for the development).

- m) The maximum depth of ponding in any above ground detention areas and/or infiltration systems with above ground storage shall be as follows (as applicable):

- i. 150mm in uncovered open car parking areas (with an isolated maximum depth of 200mm permissible at the low point pit within the detention area)
- ii. 300mm in landscaped areas (where child proof fencing is not provided around the outside of the detention area and sides slopes are steeper than 1 in 10)
- iii. 600mm in landscaped areas where the side slopes of the detention area have a maximum grade of 1 in 10
- iv. 1200mm in landscaped areas where a safety fence is provided around the outside of the detention area
- v. Above ground stormwater detention areas must be suitably signposted where required, warning people of the maximum flood level.

Note: Above ground storage of stormwater is not permitted within basement car parks or store rooms.

- n) A childproof and corrosion resistant fastening system shall be installed on access grates over pits/trenches where water is permitted to be temporarily stored.

- o) A 'V' drain (or equally effective provisions) are to be provided to the perimeter of the property, where necessary, to direct all stormwater to the detention/infiltration area.
- p) Mulch or bark is not to be used in on-site detention areas.
- q) Seepage waters are required to be drained and disposed of within the site and are not to be drained into Council's stormwater drainage system.
- r) Site discharge pipelines shall cross the verge at an angle no less than 45 degrees to the kerb line and must not encroach across a neighbouring property's frontage unless approved in writing by Council's Development Engineering Coordinator.

Public Utilities

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

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

Undergrounding of Site Power from Ausgrid Power Pole

16. Power supply to the proposed development shall be provided via an underground (UGOH) connection from the nearest mains distribution pole in Prince Street. **No Permanent Private Poles are to be installed** with all relevant documentation submitted for the construction certificate to reflect these requirements to the satisfaction of the Principal Certifier. The applicant/owner is to liaise with an Ausgrid Accredited Service Provider to carry out the works to the requirements and satisfaction of Ausgrid and at no cost to Council.

Landscape Plan

17. Written certification from a qualified professional in the Landscape industry (must be eligible for membership with a nationally recognised organisation/association) must state that the scheme submitted for the Construction Certificate is substantially consistent with the Landscape Plans by Concept, dwg's LPDA 22-234, 01/05, rev D, dated 14.09.2022, with both this written statement and plans to then be submitted to, and be approved by, the Principal Certifier.

Street Tree Management

18. The applicant must submit a payment of **\$1,035.50** (GST inclusive) to cover the following costs:
- a. For Council to remove, stump-grind and dispose of the *Lagerstroemia indica* (Crepe Myrtle) that is located on Council's raised Prince Street verge, in the area between the existing vehicle crossing and the centrally located pedestrian access path, as well as the *Agonis flexuosa* (Willow Myrtle) to the south of the path/steps, in line with the southern site boundary, so as to accommodate the major civil works associated with lowering the ground levels and constructing two new, separate vehicle crossings in this same areas as shown;
 - b. A loss of amenity fee in recognition that the only reason these established public trees are being removed from public property is to accommodate the development of private property, with replacements back in front of this site not possible due to a combination of its corner position, line of sight requirements as well as the constraints created by the new vehicle crossings, so this part of the fee will be directed towards additional public plantings elsewhere in the street and surrounding area to ensure there is no 'net-loss' from the streetscape and environment.

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

The applicant must contact Council's Landscape Development Officer on 9093-6613 (quoting the receipt number) AND GIVING UP TO SIX WEEKS NOTICE to arrange for their removal prior to the commencement of any site works.

After advising of the receipt number, any further enquiries regarding scheduling/timing or completion of tree works are to be directed to Council's North Area Tree Preservation & Maintenance Coordinator on 9093-6843.

Heritage management

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

Waste Management

20. A Waste Management Plan detailing the waste and recycling storage and removal strategy for all of the development, is required to be submitted to and approved by Council's Director of City Planning.

The Waste Management plan is required to be prepared in accordance with Council's Waste Management Guidelines for Proposed Development and must include the following details (as applicable):

- The use of the premises and the number and size of occupancies.
- The type and quantity of waste to be generated by the development.
- Demolition and construction waste, including materials to be re-used or recycled.
- Details of the proposed recycling and waste disposal contractors.
- Waste storage facilities and equipment.
- Access and traffic arrangements.
- The procedures and arrangements for on-going waste management of the community facility including collection, storage and removal of waste and recycling of materials.

Further details of Council's requirements and guidelines, including pro-forma Waste Management plan forms can be obtained from Council's website at:

https://www.randwick.nsw.gov.au/_data/assets/pdf_file/0007/22795/Waste-Management-Plan-Guidelines.pdf

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

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

BASIX Requirements

22. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 97A of the *Environmental Planning & Assessment Regulation 2000*, the

requirements and commitments contained in the relevant BASIX Certificate must be complied with.

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

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

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

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

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

Certification and Building Inspection Requirements

23. 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

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

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

Dilapidation Reports

25. 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

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

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

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

Construction Site Management Plan

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

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

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

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

Demolition Work

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

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

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

Demolition & Construction Waste Plan

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

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

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

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

Retaining Wall Design on Council Property (Southern End)

30. Prior to the commencement of any demolition/building works the applicant is to submit and have approved, by Council's Coordinator of Engineering Services a Retaining Wall Design for the retaining wall on Council property at the southern end of the site frontage. The retaining wall design is to include footing details, heights of the retaining wall, existing and proposed adjacent ground levels, safety rail details, and proposed finish of the retaining wall, including any other requirements requested by Council

REQUIREMENTS DURING CONSTRUCTION & SITE WORK

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

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

Inspections during Construction

31. Building works are required to be inspected by the *Principal Certifier*, in accordance with section 6.5 of the *Environmental Planning & Assessment Act 1979* and clause 162A of the *Environmental Planning & Assessment Regulation 2000*, to monitor compliance with the

relevant standards of construction, Council's development consent and the construction certificate.

Site Signage

32. 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

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

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

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

Removal of Asbestos Materials

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

- Occupational Health & Safety legislation and WorkCover NSW requirements
- Randwick City Council's Asbestos Policy
- A WorkCover licensed demolition or asbestos removal contractor must undertake removal of more than 10m² of bonded asbestos (or as otherwise specified by WorkCover or relevant legislation). Removal of friable asbestos material must only be undertaken by contractor that holds a current friable asbestos removal licence. A copy of the relevant licence must be provided to the Principal Certifier.
- On sites involving the removal of asbestos, a sign must be clearly displayed in a prominent visible position at the front of the site, containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' and include details of the licensed contractor.
- Asbestos waste must be stored, transported and disposed of in compliance with the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Operations (Waste) Regulation 2005*. Details of the landfill site (which

must be lawfully able to receive asbestos materials) must be provided to the Principal Certifier.

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

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

Excavations, Back-filling & Retaining Walls

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

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

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

Support of Adjoining Land

36. 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.
37. Prior to undertaking any demolition, excavation or building work in the following circumstances, a report must be obtained from a *professional engineer* which details the methods of support for the dwelling or associated structure on the adjoining land, to the satisfaction of the *Principal Certifier*:
- when undertaking excavation or building work within the zone of influence of the footings of a dwelling or associated structure that is located on the adjoining land;
 - when undertaking demolition work to a wall of a dwelling that is built to a common or shared boundary (e.g. semi-detached or terrace dwelling);
 - when constructing a wall to a dwelling or associated structure that is located within 900mm of a dwelling located on the adjoining land;
 - as may be required by the *Principal Certifier*.

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

Sediment & Erosion Control

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

Details of the sediment and erosion control measures to be implemented on the site must be included in with the Construction Management Plan and be provided to the Principal Certifier

and Council. A copy must also be maintained on site and be made available to Council officers upon request.

Public Safety & Site Management

39. Public safety and convenience must be maintained at all times during demolition, excavation and construction works and the following requirements must be complied with:

- a) Public access to the building site and materials must be restricted by existing boundary fencing or temporary site fencing having a minimum height of 1.5m, to Council's satisfaction.

Temporary site fences are required to be constructed of cyclone wire fencing material and be structurally adequate, safe and constructed in a professional manner. The use of poor quality materials or steel reinforcement mesh as fencing is not permissible.

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

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

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

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Survey Requirements

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

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

Building Encroachments

41. 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

42. Any openings within or upon the road, footpath, nature strip or in any public place (i.e. for proposed drainage works or installation of services), must be carried out in accordance with the following requirements, to the satisfaction of Council:

- A *Road / Asset Opening Permit* must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the *Roads Act 1993* and all of the conditions and requirements contained in the *Road / Asset Opening Permit* must be complied with.
- The owner/builder must ensure that all works within or upon the road reserve, footpath, nature strip or other public place are completed to the satisfaction of Council, prior to the issuing of a *final occupation certificate* for the development.
- Relevant *Road / Asset Opening Permit* fees, repair fees, inspection fees and security deposits, must be paid to Council prior to commencing any works within or upon the road, footpath, nature strip or other public place.

For further information, please contact Council's Road / Asset Opening Officer on 9399 0691 or 1300 722 542.

Drainage

43. Adequate provisions must be made to collect and discharge stormwater drainage during construction of the building to the satisfaction of the Principal Certifier.

The prior written approval of Council must be obtained to connect or discharge site stormwater to Council's stormwater drainage system or street gutter.

Tree Management

44. Approval is granted for the removal of all vegetation within this site due to their small size and insignificance, as well as to accommodate the new works in these same areas as shown and is subject to full implementation of the approved Landscape Plans.

Heritage Management

45. In the unlikely event that historical archaeological remains or deposits are exposed during the works, all work should cease while an evaluation of their potential extent and significance is undertaken, and the NSW Heritage Office notified under the requirements of the Heritage Act.

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REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

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

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

Occupation Certificate Requirements

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

BASIX Requirements & Certification

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

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

Swimming Pool Safety

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

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

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

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

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

Spa Pool Safety

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

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

Swimming Pool & Spa Pool Requirements

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

Notification of Swimming Pools & Spa Pools

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

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

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

Council's Infrastructure, Vehicular Crossings & Road Openings

52. Prior to the issuing of an occupation certificate the applicant must meet the full cost for a Council approved contractor to:
- a) Construct new concrete vehicular crossings and laybacks at kerb opposite the vehicular entrance to the site, to Council's specifications and requirements.
 - b) Remove the redundant concrete vehicular crossing and layback and to reinstate the area with concrete footpath, turf and integral kerb and gutter to Council's specification.
 - c) Reconstruct the concrete kerb and gutter along the full site frontage including any associated road/asphalt works.
 - d) Reconstruct the concrete footpath along the full site frontage, adjacent to the Council kerb. Any unpaved areas on the nature strip must be turfed and landscaped to Council's specification.
53. The applicant must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.
54. All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must be carried out in accordance with Council's "Crossings and Entrances – Contributions Policy" and "Residents' Requests for Special Verge Crossings Policy" and the following requirements:
- a) Details of the proposed civil works to be carried out on Council land must be submitted to Council in a Civil Works Application Form. Council will respond, typically within 4 weeks, with a letter of approval outlining conditions for working on Council land,

associated fees and workmanship bonds. Council will also provide details of the approved works including specifications and construction details.

- b) Works on Council land, must not commence until the written letter of approval has been obtained from Council and heavy construction works within the property are complete. The work must be carried out in accordance with the conditions of development consent, Council's conditions for working on Council land, design details and payment of the fees and bonds outlined in the letter of approval.
- c) The civil works must be completed in accordance with the above, prior to the issuing of an occupation certificate for the development, or as otherwise approved by Council in writing.

Sydney Water

55. A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994. Sydney Water's assessment will determine the availability of water and sewer services, which may require extension, adjustment or connection to their mains, and if required will issue a Notice of Requirements letter detailing all requirements that must be met. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator (WSC).

Go to sydneywater.com.au/section73 or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

A Section 73 Compliance Certificate must be completed before an occupation certificate will be issued.

Undergrounding of Power from Ausgrid Power Pole

56. Prior to the issuing of an Occupation Certificate the Principal Certifier shall ensure that all power supply to the development site has been provided as an underground (UGOH) connection from the nearest main pole in Prince Street, with all work completed to the requirements and satisfaction of Ausgrid and at no cost to Council. **All private poles must be removed prior to the issuing of an occupation certificate.**

Stormwater Drainage

57. A "restriction on the use of land" and "positive covenant" (under section 88E of the Conveyancing Act 1919) shall be placed on the title of the subject property to ensure that the onsite detention/infiltration/pump-out system is maintained and that no works which could affect the design function of the detention/infiltration/pump-out system are undertaken without the prior consent (in writing) from Council. Such restriction and positive covenant shall not be released, varied or modified without the consent of the Council.

Notes:

- a) The "restriction on the use of land" and "positive covenant" are to be to the satisfaction of Council. A copy of Council's standard wording/layout for the restriction and positive covenant may be obtained from Council's Development Engineer.
 - b) The works as executed drainage plan and hydraulic certification must be submitted to Council prior to the "restriction on the use of land" and "positive covenant" being executed by Council.
 - c) Evidence of registration of the Positive Covenant and Restriction (by receipt and/or title search) on the title of the subject property must be provided to the satisfaction of the Principal Certifier.
58. A Works-As-Executed drainage plan prepared by a registered surveyor and approved by a suitably qualified and experienced hydraulic consultant/engineer must be forwarded to the Principal Certifier and the Council. The works-as-executed plan must include the following details (as applicable):

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Finished site contours at 0.2 metre intervals;
The location of any detention basins/tanks with finished surface/invert levels;
Confirmation that orifice plate/s have been installed and orifice size/s (if applicable);
Volume of storage available in any detention areas;
The location, diameter, gradient and material (i.e. PVC, RC etc) of all stormwater pipes;
Details of any infiltration/absorption systems; and
Details of any pumping systems installed (including wet well volumes).

59. The applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced Hydraulic Engineer, which confirms that the design and construction of the stormwater drainage system complies with the Building Code of Australia, Australian Standard AS3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and conditions of this development consent.

The certification must be provided following inspection/s of the site stormwater drainage system by the Hydraulic Engineers to the satisfaction of the Principal Certifier.

Landscape Certification

60. Prior to any Occupation Certificate, certification from a qualified professional in the Landscape industry must be submitted to, and be approved by, the Principal Certifier, confirming the date that the completed landscaping was inspected, and that it has been installed substantially in accordance with the Landscape Plans by Concept, dwg's LPDA 22-234, 01/05, rev D, dated 14.09.2022.
61. Suitable strategies shall be implemented to ensure that the landscaping is maintained in a healthy and vigorous state until maturity, for the life of the development.
62. The nature-strip upon Council's footway shall be re-graded and re-turfed with Kikuyu Turf rolls, including turf underlay, wholly at the applicant's cost, to Council's satisfaction, prior to any Occupation Certificate.

Waste Management

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

REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

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

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

Occupation Certificate

64. All conditions of DA/37/2022 must be satisfied and a final occupation certificate issued for the development prior to the issuing of a subdivision certificate.

Sydney Water

65. A compliance certificate must be obtained from Sydney Water, under Section 73 of the Sydney Water Act 1994. Sydney Water's assessment will determine the availability of water and sewer services, which may require extension, adjustment or connection to their mains, and if required will issue a Notice of Requirements letter detailing all requirements that must be met. Applications can be made either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator (WSC).

Go to sydneywater.com.au/section73 or call 1300 082 746 to learn more about applying through an authorised WSC or Sydney Water.

A Section 73 Compliance Certificate must be completed before a subdivision certificate will be issued.

Easements

66. The applicant shall create suitable rights of carriageway, easements for services, support and stormwater lines, as required. The applicant shall be advised that the minimum easement width for any stormwater line is 0.9 metres.

Public Utilities

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

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

Road / Asset Opening Permit

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

The owner/builder must ensure that all works within or upon the road reserve, footpath, nature strip or other public place are completed to the satisfaction of Council, prior to the issuing of a subdivision certificate.

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

Street and/or Sub-Address Numbering

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

An application must be submitted to and approved by Council's Director of City Planning, together with the required fee, for the allocation of appropriate street and/or unit numbers for the development. The street and/or unit numbers must be allocated prior to the issue of a subdivision certificate.

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

Restriction and Positive Covenant

70. A certificate of title providing evidence of registration of the "restriction on the use of land" and "positive covenant" (required under DA/37/2022) shall be provided to Council prior to the issuing of a subdivision certificate.

If the restriction and positive covenant have **not** yet been registered, a "restriction on the use of land" and "positive covenant" (under section 88B of the Conveyancing Act 1919) shall be placed on the title of the subject property, in conjunction with the registration of the proposed plan of subdivision for this property, to ensure that the onsite detention system is maintained and that no works which could affect the design function of the detention system are undertaken without the prior consent (in writing) from Council. Such restriction and positive covenant shall not be released, varied or modified without the consent of the Council.

Notes:

- a) The "restriction as to user" and "positive covenant" are to be to the satisfaction of Council. A copy of Council's standard wording/layout for the restriction and positive covenant may be obtained from Council's Development Engineer.
- b) The works as executed drainage plan and hydraulic certification must be submitted to Council prior to the "restriction on the use of land" and "positive covenant" being executed by Council.

Subdivision Certificate

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

OPERATIONAL CONDITIONS

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

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

External Lighting

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

Waste Management

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

Plant & Equipment – Noise Levels

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

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

Swimming/Spa Pools

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

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

Air Conditioners

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

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

Rainwater Tanks

77. The operation of plant and equipment associated with rainwater tanks are to be restricted to the following hours if the noise emitted can be heard within a habitable room in any other residential premises:
- ☐ before 8.00am or after 8.00pm on weekends or public holiday; or
 - ☐ before 7.00am or after 8.00pm on weekdays.

Use of parking spaces

78. The car spaces within the development are for the exclusive use of the occupants of the building. The car spaces must not be leased to any person/company that is not an occupant of the building.
79. The site stormwater system must be regularly cleaned and maintained to ensure it operates as required by the design.

Communication Dishes and Aerial Antennae

80. Provide a maximum of one (1) communication dish and one (1) antenna in respect to the development controls of section 7.7 of part C1 of the Randwick DCP 2013.

D62/22

Development Application Report No. D63/22

Subject: 15 Mermaid Avenue, Maroubra (DA/16/2022)


Executive Summary

Proposal:	Demolition of existing the dwelling house and the construction of new multi-storey dwelling house, swimming pool and landscaping (variation to the height of buildings of the RLEP 2012).
Ward:	Central Ward
Applicant:	Mrs M Binder
Owner:	Mrs M Binder
Cost of works:	\$2,602,191
Reason for referral:	Exceeds building height development standard by more the 10%

Recommendation

- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the Building Height development standard in Clause 4.3 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning, Industry and Environment may be assumed.
- B. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 16/2022 for demolition of the existing dwelling house and the construction of a new multi-storey dwelling, swimming pool and landscaping at No. 15 Mermaid Avenue, Maroubra subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (dwellings dual occ) - DA/16/2022 - 15 Mermaid Avenue, MAROUBRA NSW 2035 - DEV - Randwick City Council

D63/22

D63/22



1. Executive summary

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

The proposal seeks development consent for the demolition of the existing dwelling house and the construction of a new multi-storey dwelling house including swimming pool, associated landscaping and site works.

The key issues associated with the proposal relate to building height and potential impacts on foreshore area and amenity of neighbouring properties.

The proposal exceeds the maximum 9.5m Building Height development standard under Randwick Local Environmental Plan (RLEP) 2012 by 2m (21%). The application is accompanied by a written request seeking an exception to the Building Height development standard. The building height variation is largely driven by the steep topography of the site. The non-compliance does not result in any unreasonable amenity impacts to the adjoining properties. The applicant's written request seeking an exception to the development standard is well founded and adequately addresses those matters that are required to be demonstrated pursuant to Clause 4.6 of RLEP 2012.

The eastern part of the site is identified as a 'foreshore area' on the Foreshore Building Line (FBL) Map under RLEP 2012. The proposed swimming pool and the ancillary structures within the foreshore area constitute permitted development under Clause 6.6 of RLEP 2012. Subject to the deletion of the proposed paved deck on the eastern side of the swimming pool, the visual and environmental impacts within the foreshore area would be reduced to an acceptable level. A condition to this effect is included in the recommended development consent. The proposed built

form reads as single storey within the streetscape and it steps down to the foreshore area in response to the steep topography. The proposed development is contextually appropriate for the site and will not result in any significant adverse visual amenity impacts when viewed from the foreshore area.

The proposal will not result in any significant adverse amenity impacts to the adjoining residential properties in terms of overshadowing, visual bulk, privacy or view loss.

The proposal is recommended for approval.

2. Site Description and Locality

The subject site is known as 15 Mermaid Avenue, Maroubra and is legally described as Lot 8 in DP 12218. The site is 722m², is irregular in shape and has a 15.5m frontage to Mermaid Avenue to the west, a northern site depth of 50.3m, a southern site depth of 45m and a rear boundary width of 15.2m. The site slopes steeply downwards from the street to the rear boundary, representing a change in level in excess of 20m.

The site contains a two-storey detached dwelling house and a single detached garage at the front boundary. A swimming pool is located at the rear of the dwelling. The lower eastern part of the site between the existing pool and the rear boundary is overgrown with weeds and clumps of banana plants.

A 1.83m wide Council owned easement containing a 375mm stormwater pipe is located within the subject site along the southern boundary.

The adjoining property to the north at 11 Mermaid Ave contains a four-storey dwelling with internal garage parking at the street level and a swimming pool at the rear. The existing dwelling at 11 Mermaid Avenue was approved in 1983.

On 22 November 2018, the RLPP approved a development application (DA) at 11 Mermaid Ave for conversion of the existing dwelling to an attached dual occupancy and associated site and landscaping works (DA/9/2018). In its determination, the RLPP noted that even though the existing building did not comply with the Building Height and Floor Space Ratio (FSR) development standards, the proposal achieved greater compliance. Therefore, the written request seeking to an exception to the Building Height and FSR development standards was supported. On 11 March 2021, the RLPP refused a DA seeking approval for alterations and additions to the rear of the existing dwelling, including a new elevator (lift) and an in-ground swimming pool. The reasons for refusal primarily related to a variation to the FSR development standard and the envelope controls in RDCP 2013, and the adverse visual and environmental impact of the proposed swimming pool located seaward of the FBL (DA/293/2020).

The adjoining property to the south-west at 17 Mermaid Avenue contains a two-storey dwelling house located at the rear of the site, closer to Lurline Bay, and a single garage at the Mermaid Ave frontage. The existing dwelling at 17 Mermaid Avenue was approved in 1965.

Refer to **Figures 1 to 7**.

D63/22



Figure 1 – View from Mermaid Avenue of the existing dwelling on the site



Figure 2 – View of the existing dwelling from the lower part of the site



Figure 3 – View of existing dwelling at 11 Mermaid Avenue



Figure 4 – View from the existing pool on the site to Lurline Bay

D63/22

D63/22



Figure 5 – View of the existing dwelling at 17 Mermaid Avenue



Figure 6 – View of Mistral Point to the southeast from the site



Figure 7 – View of existing vegetation in the lower eastern part of the site

3. Relevant history

There are no previous determinations of relevance to this application.

4. Proposal

The application seeks development consent for the demolition of the existing dwelling house and the construction of new multi-storey dwelling house, swimming pool and landscaping. The proposed built form steps down over six levels from the street to the foreshore area in the lower eastern part of the site. A description of the proposal by level is provided below.

	Level	Uses
1	Garage (street)	• double garage and entry
2	Entry Level	• study, lift, plant room and bathroom
3	Living level	• family, dining, kitchen, lift, rear facing balcony, internal courtyard and bathroom
4	Bedroom level	• four bedrooms, ensuite, lift and laundry
5	Recreation Level	• storage, gym, lift, bedroom and bathroom
6	Garden Level	• outdoor entertainment area, lift, storage, swimming pool, pool decks and stairs

Amended Proposal

Concerns were raised by Council's Development Engineer in relation to the encroachment of the development on the drainage easement along the southern part of the site.

On 1 July 2022, the applicant submitted amended plans with the following changes:

- the southern setback to the garage and study was increased to 1.8m;
- all structures including walls and stairs removed along the southern boundary within the easement;
- side access has been relocated from the southern boundary to the northern boundary;
- the proposed southern facing louvre door to the plant room has been relocated to the north; and
- the proposed new drainage pits have been relocated to avoid the easement.

On 15 July 2022, Council requested clarification on the calculations in relation to GFA and deep soil landscape area and additional plan details to assist with its assessment.

On 10 August 2022, Council issued a Request for Information (RFI), including:

- updated GFA plans, excluding areas including storage rooms, vertical lift, cellar and the entertaining/bar area
- updated Deep Soil landscape plans, excluding planters, areas above floor levels below and that are not a minimum 900mm width.
- a recommendation to minimise the built form/structures and provide more deep soil landscape seaward of the Foreshore Building Line (FBL) in accordance with the objectives of the FBL and the Foreshore Scenic Protection Area (FSPA) requirements under RLEP 2012.

On 24 August 2022, the Applicant submitted amended plans with the following amendments to the design:

- increased setback to southern boundary from 1.8m to 2.1m;
- increased the rear setback by relocating the structures/pool adjacent to the rear boundary closer to the dwelling so that natural ground levels are retained and pool does not protrude more than 500mm above existing ground;
- removed protrusions of the balconies of the FBL;
- increased setback of the northern boundary walls by reducing the kitchen and pantry;

- reduced the area at bedroom level by introducing cutouts with raised planters;
- removed the enclosing doors to the outdoor entertaining area;
- removed tiered planters and retaining walls along the rear boundary in the foreshore area and replaced with a 1.8m high metal palisade fence; and
- provided increased deep soil landscape opportunities in the foreshore area.

The GFA plans were revised to exclude the storage areas that were not in a 'basement' and the vertical lift at garden level. The Deep Soil Landscape Plan was also revised to reflect the landscape changes in the foreshore area.

On 12 September 2022, the Applicant submitted an updated Landscape Plan to reflect the amended plans described above.

This assessment is based on the consolidated set of amended plans submitted to Council on 23 September 2022 and as shown in the rendered images at **Figures 8 and 9**. The amended proposal was not publicly notified as the changes reduce the impact on the adjoining residential properties and the foreshore area.



Figure 8 – Rendered image showing proposed development from the east (Lurline Bay)



Figure 9 – Rendered image showing proposed development from the Mermaid Avenue

5. Notification

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

- 17 Mermaid Avenue

Issue	Comment
Loss of sunlight to the side entry door to the kitchen at the winter solstice	The proposed development will not result in any unreasonable overshadowing impacts to the adjoining properties. Refer to the Key Issues section of this report.

- 12 Mermaid Avenue

Issue	Comment
View impacts from the proposed trees in the front setback	The proposed development will not result in any unreasonable view impacts from the adjoining properties. Refer to the Key Issues section of this report.
Proposed garden above the garage should have low lying plants	A condition to this effect is included in the recommended development consent.

- 8 Mermaid Avenue

Issue	Comment
View impacts from the proposed trees in the front setback	The proposed development will not result in any unreasonable view impacts from the adjoining properties. Refer to the Key Issues section of this report.

- 11 Mermaid Avenue

Issue	Comment
View impacts from the living area of the approved dwelling at level 2	The proposed development will not result in any unreasonable view impacts from the adjoining properties. Refer to the Key Issues section of this report.
View impact due to non-compliance with building height	The non-compliance with the Building Height development standard will not result in any unreasonable view impacts from the adjoining properties. Refer to the Key Issues section of this report.
Extension of the deck and roof at living area will result in significant view impacts to the south and southeast. The roof element should be deleted.	The roof and deck adjoining the living area will not result in any unreasonable view impacts. Refer to the Key Issues section of this report.
Council should undertake a site visit and erect height poles.	The View Impact Analysis submitted with the application is sufficient to enable Council to undertake a proper assessment of the potential view impacts to the surrounding properties.
Privacy impacts from north facing windows, louvres should be imposed	The recommended development consent includes conditions in relation to privacy screens to mitigate potential privacy impacts to the adjoining properties.

6. Relevant Environment Planning Instruments

6.1. SEPP (Building Sustainability Index: BASIX) 2004

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

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

Chapter 2 Coastal Management

Chapter 2 of the Resilience and Hazards SEPP seeks to balance social, economic and environmental interests by promoting a coordinated approach to coastal management consistent with the *Coastal Management Act 2016*. It applies to land within the coastal zone across NSW.

All foreshore land within the Randwick LGA is identified as being within the coastal zone, in some instances the coastal zone extends beyond waterfront properties. In addition, much of the foreshore is identified as being within the coastal environment area and the coastal use area.

Before granting development consent on any land within the coastal zone the consent authority must be satisfied that the proposed development is not likely to cause increased risk of coastal hazards on that land or other land. Council is satisfied that the proposed development is unlikely to cause increased risk of coastal hazards on that land or other land. It is noted at this stage Council does not have any certified coastal management programs which require consideration.

The subject site is within the coastal zone and is also identified on the Resilience and Hazards SEPP map as 'coastal environment area' and 'coastal use area'.

Development on land within the coastal environment area (clause 2.10)

The site is identified as being land within the “*coastal environment area*” on the Resilience and Hazards SEPP map. This requires the consent authority to consider certain factors before development consent is granted. These factors include the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment; coastal environmental values and natural coastal processes; the water quality of the marine estate (within the meaning of the [Marine Estate Management Act 2014](#)); marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms; existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability; Aboriginal cultural heritage, practices and places and the use of the surf zone.

These factors have been considered in the assessment of this application. The amended proposal will minimise its impact on the coastal foreshore by generally maintaining the existing ground levels and providing deep soil landscape opportunities seaward of the FBL in the eastern part of the site.

Development on land within the coastal use area (clause 2.11)

The site is identified as being land within the “*coastal use area*” on the Resilience and Hazards SEPP map. This requires the consent authority to consider certain factors and be satisfied of certain requirements before development consent is granted.

Specifically the consent authority must consider whether the proposed development is likely to cause an adverse impact on existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability; overshadowing, wind funneling and the loss of views from public places to foreshores; the visual amenity and scenic qualities of the coast, including coastal headlands; Aboriginal cultural heritage, practices and places, and cultural and built environment heritage.

These factors have been considered in the assessment of this application. The proposed built form (as amended) is contextually appropriate and will step down in response to the topography of the site to ensure the bulk and scale is adequately distributed and to minimise its impact on the visual amenity and scenic qualities of the coast.

Chapter 4 Remediation of Land

Chapter 4 of State Environmental Planning Policy (Resilience and Hazards) 2021 requires Council to consider whether the land subject to the development proposal is contaminated; and if the site is contaminated, Council must be satisfied that the site is suitable or can be made suitable (i.e. following remediation) for the proposed land use.

A site inspection identified that the site is currently occupied by a residential building. A review of Council’s GIS and historical aerial photos has shown that the site has been used for this purpose since prior to 1975. A search of Council’s contaminated land register specifies that the site is not potentially contaminated.

In conclusion, the site is suitable for the proposed development in accordance with contamination requirements of the Resilience and Hazards SEPP.

6.3. State Environmental Planning Policy (Biodiversity and Conservation) 2021**Chapter 2 Vegetation in non-rural areas**

The aims of Chapter 2 are:

- “(a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and*
- (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.”*

Clause 7(1) requires a permit to be granted by the Council for the clearing of vegetation in non-rural areas (such as City of Randwick). Council's Landscape Officer advised that there is no significant vegetation on the site that would be affected by the proposed development.

6.4. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned Residential R2 Low Density under RLEP 2012 and the proposal is permissible with consent.

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

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4: Floor space ratio (max)	0.6:1	0.6:1	Yes
CI 4.3: Building height (max)	9.5m	11.5m	No Refer to Section 7 of this report.

6.4.1. Clause 4.6 - Exceptions to development standards

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

6.4.2. Clause 6.6 - Foreshore Building line

The objective of this clause is to ensure that development in the foreshore area will not impact on natural foreshore processes or affect the significance and amenity of the area.

The following provisions apply:

- (2) *Development consent must not be granted for development on land in the foreshore area except for the following purposes*
 - (a) *the extension, alteration or rebuilding of an existing building wholly or partly in the foreshore area,*
 - (b) *the erection of a building in the foreshore area, if the levels, depth or other exceptional features of the site make it appropriate to do so,*
 - (c) *boat sheds, sea retaining walls, wharves, slipways, jetties, waterway access stairs, swimming pools, fences, cycleways, walking trails, picnic facilities or other recreation facilities (outdoors).*
- (3) *Development consent must not be granted under this clause unless the consent authority is satisfied that-*
 - (a) *the development will contribute to achieving the objectives for the zone in which the land is located, and*
 - (b) *the appearance of any proposed structure, from both the waterway and adjacent foreshore areas, will be compatible with the surrounding area, and*
 - (c) *the development will not cause environmental harm such as-*
 - (i) *pollution or siltation of the waterway, or*
 - (ii) *an adverse effect on surrounding uses, marine habitat, wetland areas, flora or fauna habitats, or*
 - (iii) *an adverse effect on drainage patterns, and*
 - (d) *the development will not cause congestion or generate conflicts between people using open space areas or the waterway, and*

- (e) opportunities to provide continuous public access along the foreshore and to the waterway will not be compromised, and
- (f) any historic, scientific, cultural, social, archaeological, architectural, natural or aesthetic significance of the land on which the development is to be carried out and of surrounding land will be maintained, and
- (g) in the case of development for the alteration or rebuilding of an existing building wholly or partly in the foreshore area, the alteration or rebuilding will not have an adverse impact on the amenity or aesthetic appearance of the foreshore, and
- (h) sea level rise or change of flooding patterns as a result of climate change has been considered.

The FBL traverses the eastern part of the site. Refer to **Figure 10**.

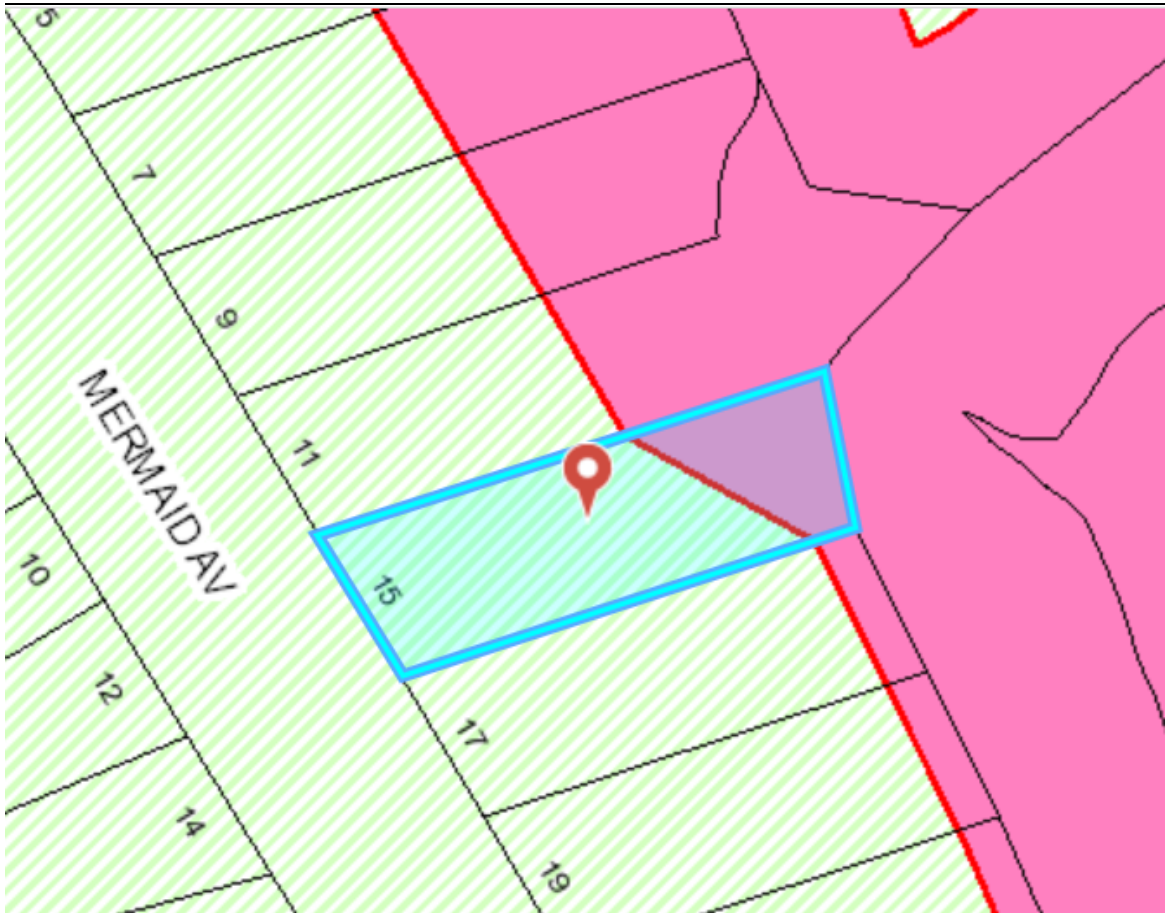


Figure 10 - Extract of the Foreshore Building Line map under RLEP 2012

Council's former Development Control Plan titled '*Dwelling Houses and Attached Dual Occupancies*' includes a map showing the FBL located 20m from the street boundary (northern alignment) and 4m from the rear boundary of the site adjacent to Lurline Bay. The FBL shown on the architectural plans submitted with the application has been plotted accurately in accordance with these dimensions.

The proposed structures that will encroach the FBL in the eastern part of the site, include:

- external stairs along the northern boundary;
- north-eastern corner of the outdoor entertaining area;
- stair and planter;
- swimming pool, pool fence, paved deck and a stair to the garden;
- boundary fence.

Refer to **Figure 11**.

Clause 2(c) restricts development in a 'foreshore area'. The proposed swimming pool is permitted in the foreshore area. The pool surrounds and fence, part of the outdoor entertaining area, stair access and landscape planters are ancillary elements to the swimming pool and therefore are permitted within the foreshore area. The swimming pool will be a maximum of 500mm above the existing ground level to minimise its visual impact within the foreshore. Subject to the deletion of the paved deck on the eastern side of the swimming pool, the visual and environmental impacts of the built form/structures within the foreshore area would be minimised to an acceptable level and the proposal would achieve the relevant environmental and visual requirements under Clause (3). A condition to this effect is included in the recommended development consent.

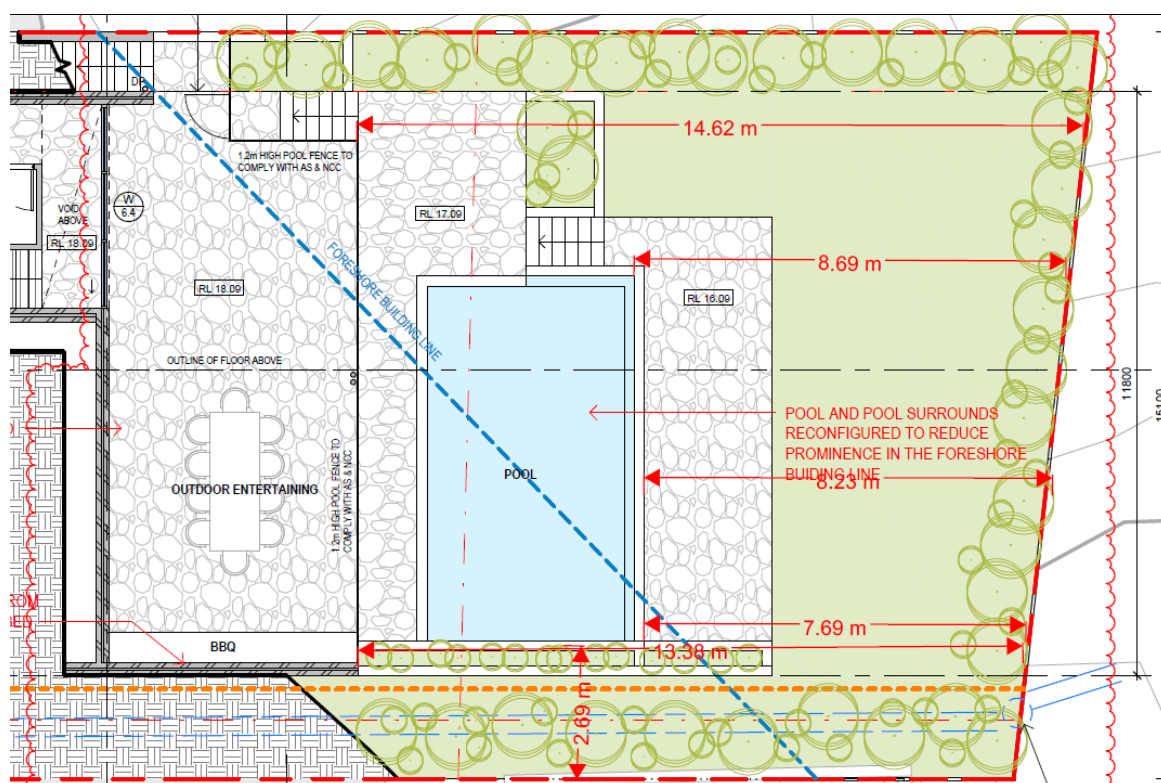


Figure 11 – Location of the FBL as shown on the architectural plans

6.4.3. Clause 6.7- Foreshore scenic protection area

The objectives of this clause are as follows-

- (a) to recognise, protect and enhance the natural, visual and environmental qualities of the scenic areas of the coastline,
 - (b) to protect and improve visually prominent areas adjoining the coastal foreshore,
 - (c) to protect significant public views to and from the coast,
 - (d) to ensure development in these areas is appropriate for the location and does not detract from the scenic qualities of the coast.
- (2) This clause applies to land identified as "Foreshore scenic protection area" on the [Foreshore Scenic Protection Area Map](#).
 - (3) Development consent must not be granted for development on land to which this clause applies unless the consent authority is satisfied that the development—
 - (a) is located and designed to minimise its visual impact on public areas of the coastline, including views to and from the coast, foreshore reserves, open space and public areas, and
 - (b) contributes to the scenic quality of the coastal foreshore.

The entire site is within the foreshore scenic protection area (FSPA). The proposed height, bulk and scale is contextually appropriate and does not adversely impact the environmental and scenic qualities of the foreshore, as well as public views to and from the coast. The proposal is therefore acceptable in terms of the objectives of the FSPA.

7. Clause 4.6 exception to a development standard

The proposal seeks to vary the following development standard contained within the RLEP 2012.

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
CI 4.3: Building height (max)	9.5m	11.5m	2m	21%

The non-compliance with the Building Height development standard is illustrated in **Figures 12 and 13.**

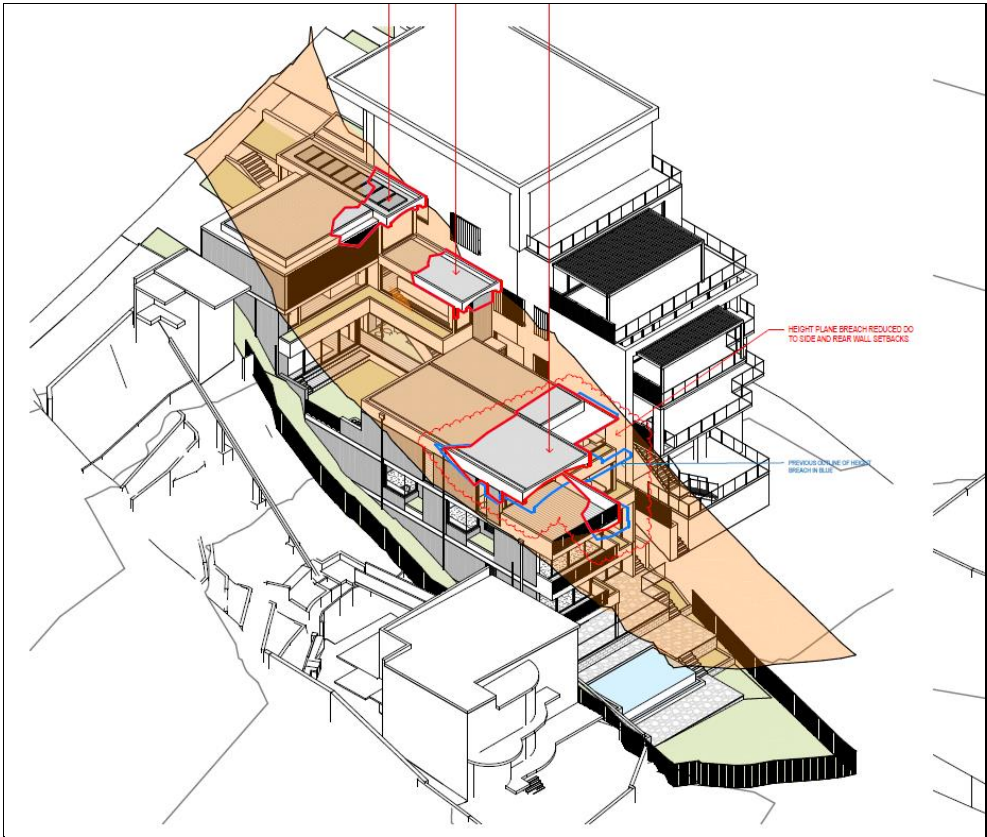


Figure 12 – Building elements exceeding the Building Height development standard (grey areas bordered in red)

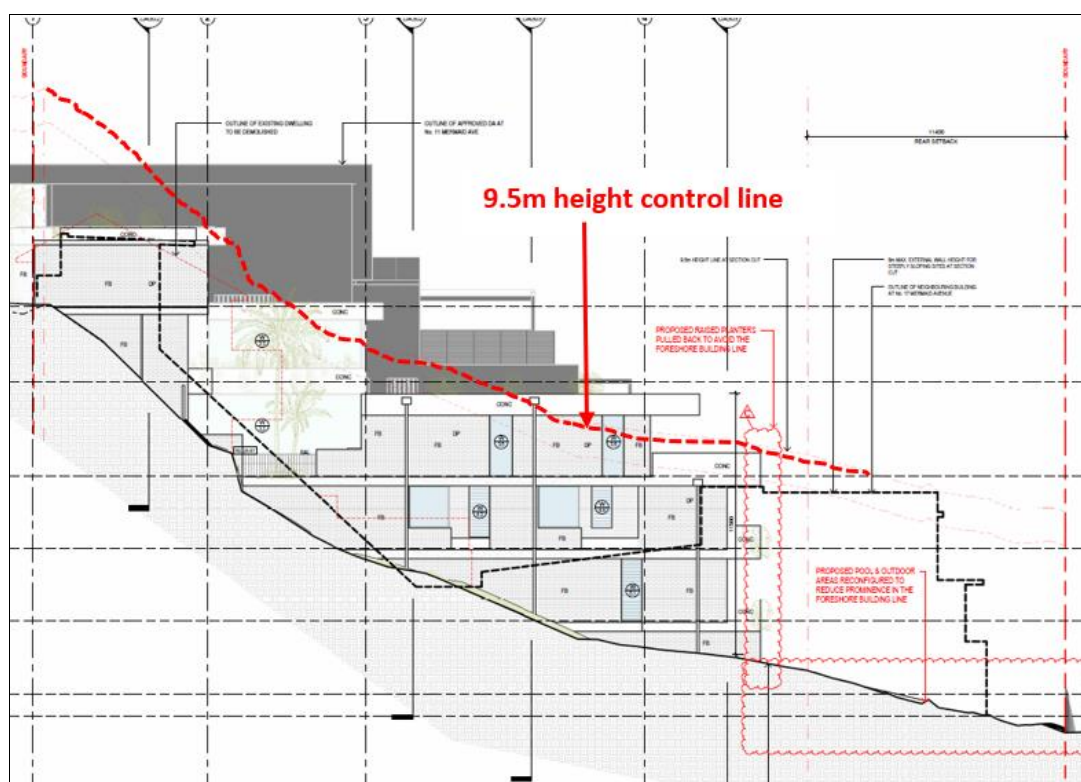


Figure 13 – Building Height control line

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.

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

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

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

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

The applicant has addressed each of the objectives as follows:

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

The proposed height variation associated with a multistorey residential dwelling is suitable for the subject site and within the context of the locality. The height variation associated with sections of the roof form will be indiscernible from the streetscape, noting the significant downward slope, which conceals the majority of the built form from the public domain. In this regard, the size and scale of the proposed dwelling will be viewed as a single storey dwelling from the Mermaid Avenue streetscape irrespective of the height variation. Therefore, the proposed dwelling will continue to reinforce the area's existing and future neighbourhood character.

Importantly, the proposed height variation will not be responsible for any adverse amenity impacts to neighbouring properties, including view loss, overshadowing or privacy impacts. The proposed height, bulk and scale of the proposed dwelling is compatible with the scale and design of contemporary dwellings, particularly with the adjoining dwellings to the northwest at 11, 9, 7 and 5A Mermaid Ave. The high-quality design and articulated façade outcome ensure that the proposed dwelling will sit comfortably along Mermaid Avenue's streetscape.

Compliant street setbacks, as well as the modest scale of development ensure that the built form will positively contribute to the physical definition of the street network and public spaces.

On this basis, the height variation does not generate any inconsistency with this objective.

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

The subject site does not adjoin any heritage item, conservation area or special character areas.

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

No significant or public views are affected by the proposed height variation.

Various architectural elements are incorporated into the design of the building, which seeks to mitigate visual bulk and scale, privacy and overshadowing impacts. In this regard, there are no unreasonable view loss impacts associated with the proposed height variation, noting that the development from the streetscape is compliant in relation to the LEP and DCP height limits.

The developments opposite the subject site to the southwest will continue to enjoy coastline views of Lurline Bay, with no change to coastal views given that the majority of the built form is stepped to follow the site's steep topography and would be indiscernible from the public domain. In addition, the proposed dwelling includes a height ridge that is lower than that of the existing dwelling from the streetscape, as demonstrated in the architectural plan.

The proposal is sensitively designed to mitigate amenity impacts to the surrounding neighbouring properties by reasonably preserving solar access, views and privacy.

The northeast-southwest orientation of the subject site ensures the adjoining neighbours receive 3 hours of solar access to north-facing primary areas and 5 hours of solar access to private open space areas, thereby exceeding the DCP solar access requirements, irrespective of the height variation.

Therefore, it can be stated that the proposed height variation associated with the built form will result in minimal amenity impacts to the surrounding developments.

On this basis, the height variation does not generate any inconsistency with this objective.

Assessing officer's comment:

The size and scale of the proposed development is consistent with other residential developments in the immediate vicinity of the site. The proposed built form responds to the topography of the site to ensure the bulk and scale is adequately distributed and to minimise its impact on the visual amenity and scenic quality of the coast. The proposed development is therefore compatible with the desired future character of the locality. In addition, the proposed development will not result in any significant adverse amenity impacts to the adjoining residential properties in terms of overshadowing, visual bulk, privacy or view loss (refer to the Key Issues section of this report).

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

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

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

- *The location of the height variations ensures that it will not be visible from the public domain and will therefore not be responsible for any unreasonable streetscape impacts, as shown on the photomontage and elevation above.*
- *The height variation is associated with a dwelling that has a particular site context, whereby all new (and almost all existing) dwellings already exceed the height limit and have a particular visual outcome when viewed from both Mermaid Avenue and foreshore areas. The proposed stepped form of building which responds to the steeply sloping topography is compatible with the recently constructed dwellings and that approved on the immediately approved dwelling at No. 11 Mermaid Avenue. The proposed height variation is therefore considered to be related to the particular site circumstances of properties along this section of Mermaid Avenue.*
- *The height variation allows for compliant floor-to-ceiling heights on all levels, ensuring that adequate internal amenity will be achieved.*
- *The steep downward topography of the site ensures that the height variation associated with the roof form will be indiscernible from the public domain and that the height variation will not be responsible for any unreasonable overshadowing or privacy impacts to neighbouring properties. Steeply sloping sites are often recognised as being a sufficient environmental planning ground.*

- *The height variation will not obstruct any significant views and aligns with other older and newer residential dwellings in the vicinity. The multi-storey built form is considered suitable for the site and consistent with the zoning's bulk and scale of development along the foreshore. Notably, the height, mass, bulk and scale proposed are compatible with adjoining dwellings.*
- *The height variation has been well integrated into the high-quality and articulated design aesthetic of the built form and positively contributes to locality, particularly when viewed from the sensitive foreshore areas.*

Assessing officer's comment:

The applicant's environmental planning grounds provided to justify contravention of the development standard relate to the site and its context and the paucity of environmental impacts to the adjoining properties. The non-compliance is confined to a portion of the roof form as the building steps down the site. These non-complying building roof elements will not result in any adverse amenity impacts to the adjoining residential properties or any undue visual impacts when viewed from the foreshore. The applicant's environmental planning grounds are therefore supported.

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 Building Height standard and R2 zone is provided below:

Assessment against objectives of building height standard

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

Assessment against objectives of the 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.*

Assessing officer's comment: The proposed development provides housing in a low-density residential environment, is compatible with the desired future character of the locality and protects the amenity of adjoining residents. The proposal is therefore consistent with the objectives of the Building Height 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?

The proposed development will achieve a suitable urban design outcome and is therefore of public benefit.

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 can be granted for development that contravenes the Building Height development standard.

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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

9. Environmental Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

9.1. Discussion of key issues

Building Height

A maximum Building Height of 9.5m applies to the site under RLEP 2012. The proposed development has a maximum building height of 11.5m, which exceeds the Building Height development standard by 2m or 21%. The Applicant submitted a clause 4.6 written request seeking an exception to the development standard. The applicant's written request seeking an exception to the development standard is well founded and has adequately addressed those matters that are required to be demonstrated pursuant to Clause 4.6 of RLEP 2012. Refer to **Section 7** of this report.

The maximum external wall height control applicable to the site is 8m under Randwick Development Control Plan (RDCP) 2013. The proposal has a maximum external wall height of 10.2m, resulting in a variation of 2.2m. The site is steeply sloping and the RDCP 2013 contemplates variations to external wall height in this circumstance. The non-compliance with the external wall height is acceptable as the amended proposal will not result in any unreasonable amenity impacts to the adjoining properties in terms of overshadowing, privacy or view loss. It is also noted the height, bulk and scale is compatible with other modern dwelling houses in the immediate locality, which also breach the maximum external wall height control. Furthermore, the proposed built form responds to the steep topography. The proposed development will not result in any significant adverse visual impacts when viewed from the coastal foreshore. The variation to the external wall height control is therefore acceptable.

View Impacts

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

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

Concerns were raised by the adjoining neighbour at 11 Mermaid Avenue, in relation to view impacts to the south and southeast from the approved dual occupancy development (refer to **Section 2** of this report). It was also requested that Council undertake a site visit and erect height poles to assess the view impact. In addition, concerns were raised by the neighbours at 8 and 12 Mermaid Avenue in relation to view impacts from the proposed trees in the front setback.

The Applicant submitted a View Impact Assessment (VIA) to assess the potential view impacts from 11 Mermaid Avenue. The VIA has been prepared by the Applicant's architect and is considered to be adequate to enable Council to undertake a proper assessment of potential view impacts. It was not considered necessary to undertake a site visit from within the existing dwelling at 11 Mermaid Avenue or erect height poles on the site.

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

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

1. Quality of Views:

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

The existing views are described in the table below.

Address	Type of View	Location/Position
11 Mermaid Avenue – living area and balcony at Level 2 (approved development)	<ul style="list-style-type: none"> views of Lurline Bay, panoramic ocean views to the east and Mistral Point to the southeast 	<ul style="list-style-type: none"> standing and sitting from living area and balcony
8 Mermaid Avenue	<ul style="list-style-type: none"> panoramic ocean views to the east 	<ul style="list-style-type: none"> standing and sitting from living area and balcony
12 Mermaid Avenue	<ul style="list-style-type: none"> panoramic ocean views to the east 	<ul style="list-style-type: none"> standing and sitting from living area and balcony

2. Reasonable Expectation of View Retention:

The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

The views are attained from living areas and balconies from a standing and sitting position across the rear and side boundary at 11 Mermaid Avenue and the front boundary at 8 and 12 Mermaid Avenue.

3. Extent of Impact:

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

The Applicant's VIA includes a photomontage showing the approved development at 11 Mermaid Avenue (refer to **Figures 14 to 21**).

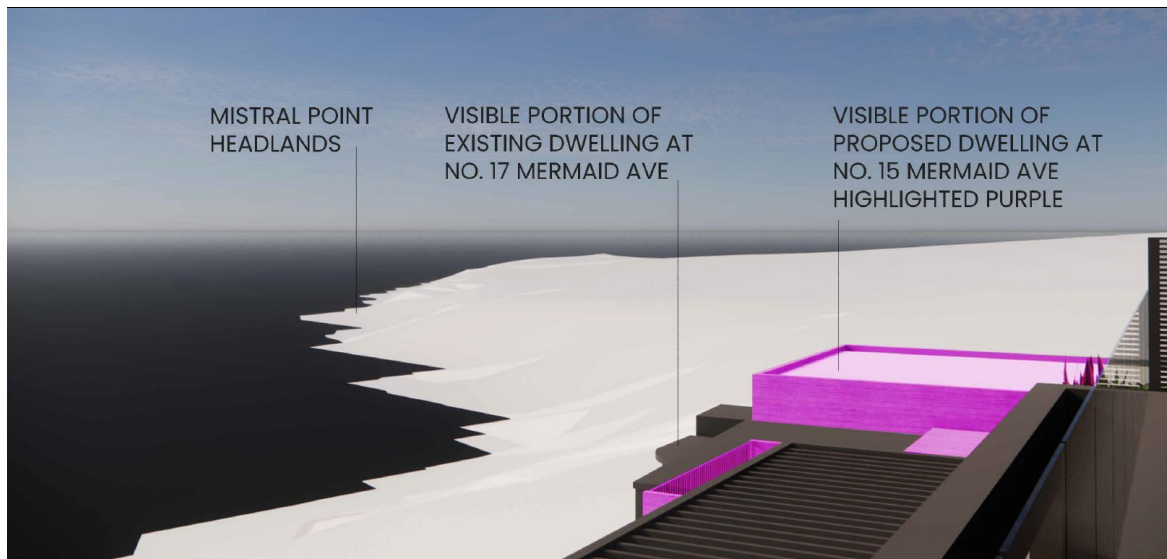


Figure 14 – View from the southern part of balcony at lower Level 1 (proposed development shown in pink)

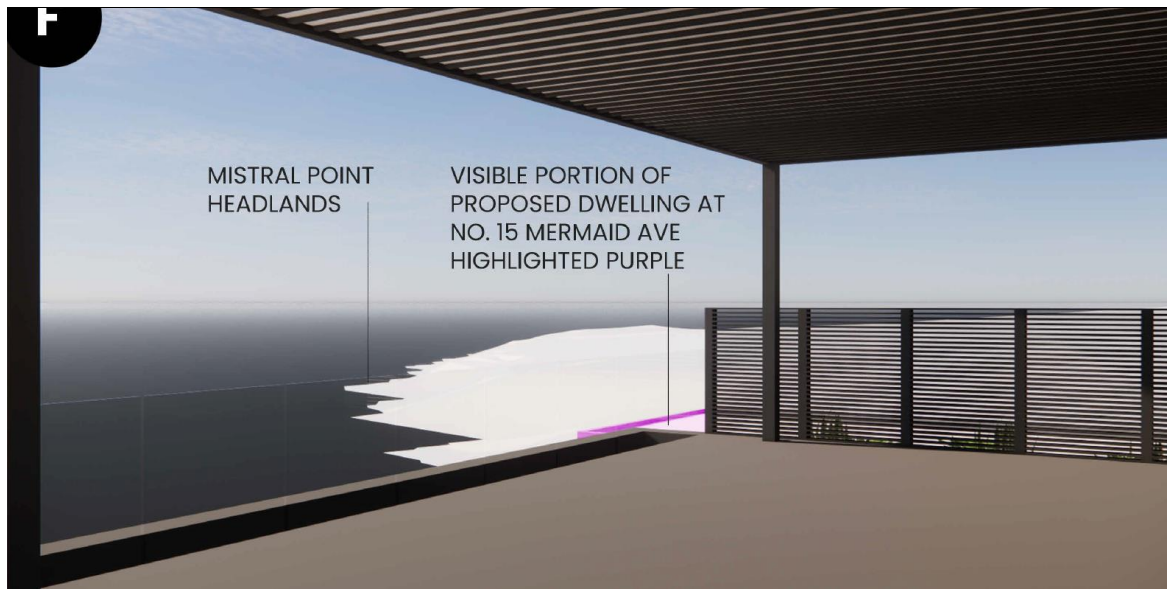


Figure 15 – View from the northern part of balcony at lower Level 1

D63/22



Figure 16 – View from the northern end of living room at lower Level 1

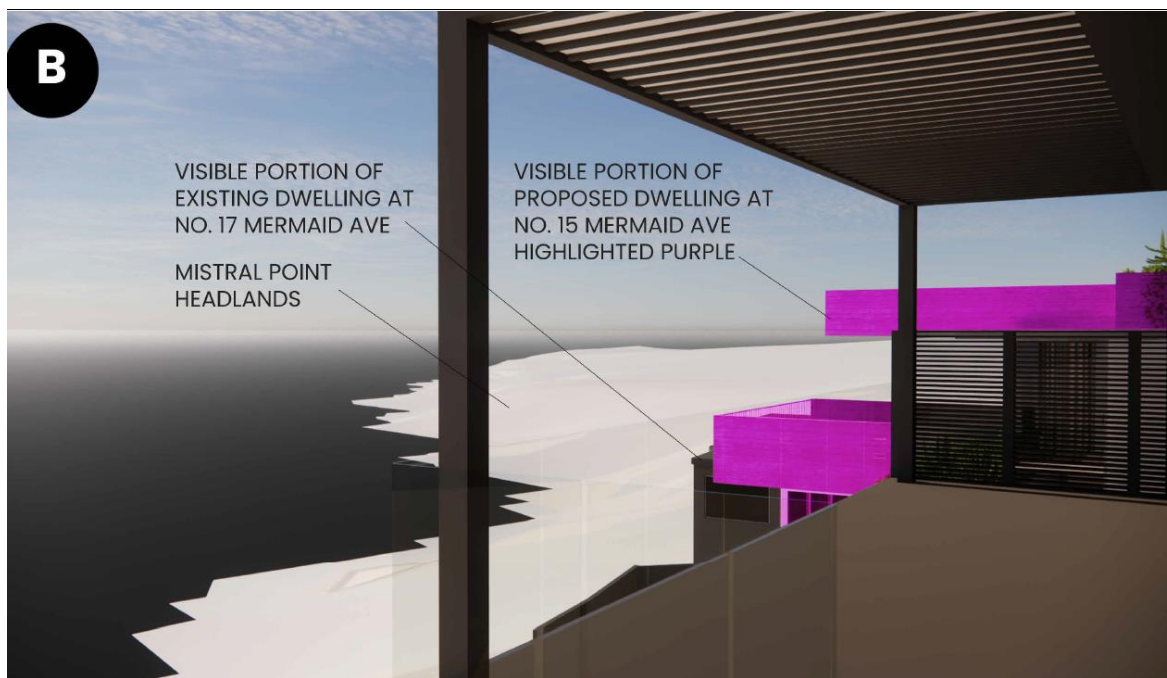


Figure 17 – View from the northern end of balcony at lower Level 2

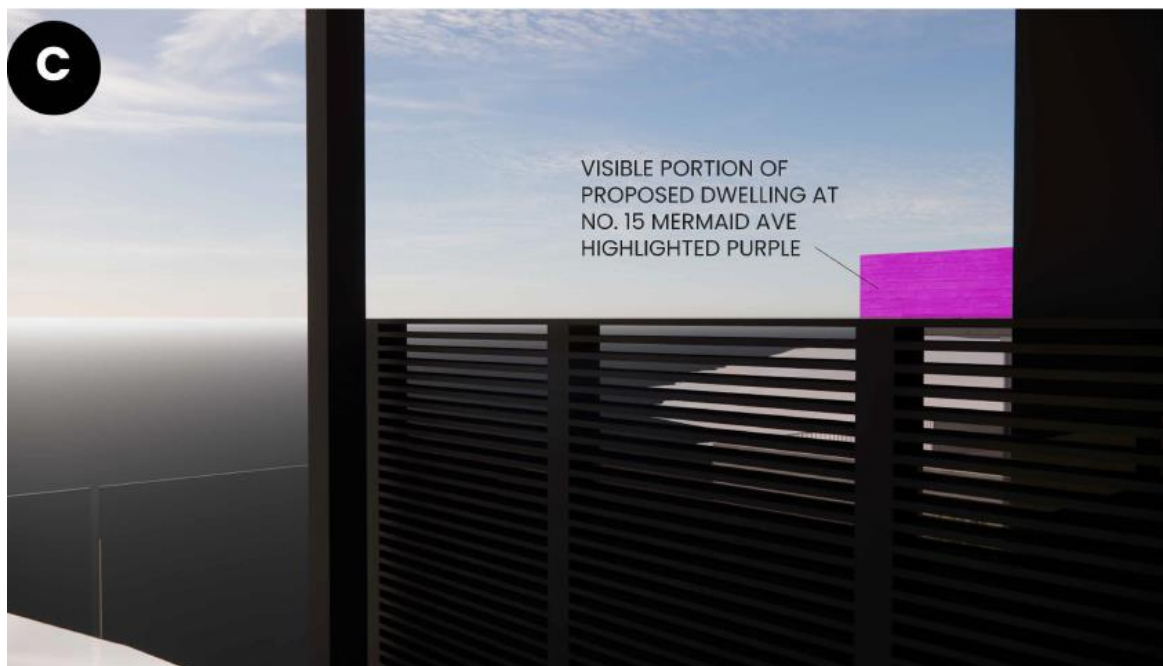


Figure 18 – View from the southern end of balcony at lower Level 2

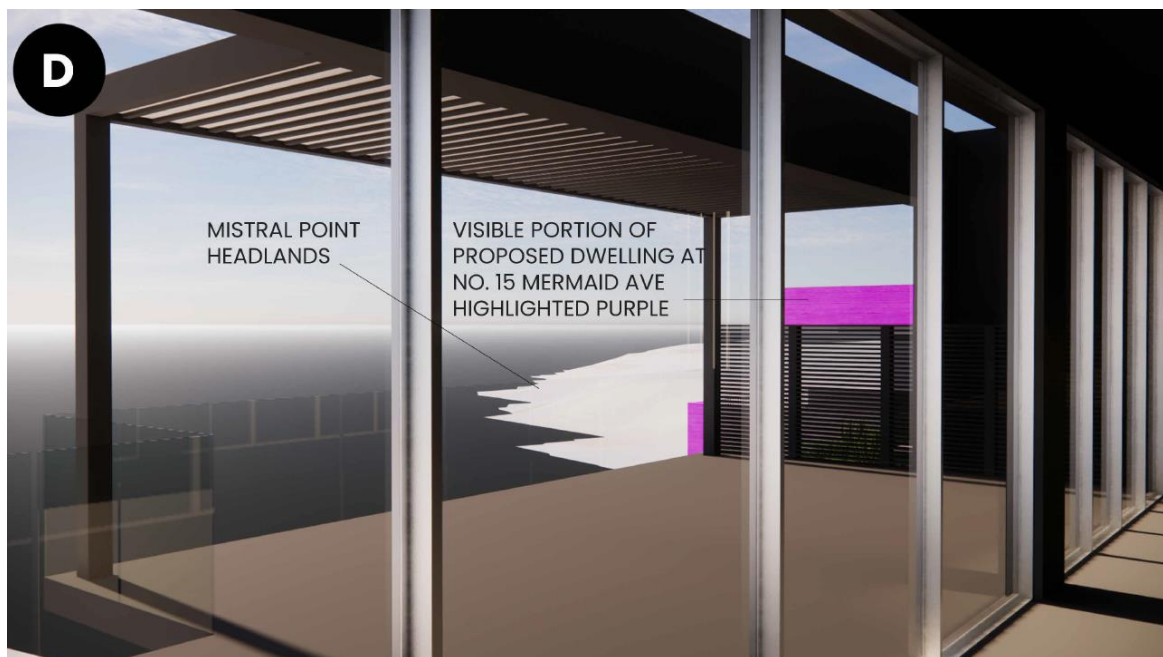


Figure 19 – View from the northern end of living room at lower Level 2



Figure 20 – View from 8 Mermaid Avenue (proposed Kentia Palm shown on far right at a 10m mature height)



Figure 21 – View from 12 Mermaid Avenue (proposed Kentia Palm at a 10m mature height)

The proposed development will not obstruct the existing land/water interface views at Mistral Point to the south from 11 Mermaid Avenue. The existing views to the east of Lurline Bay and the ocean beyond will also not be affected by the proposed development.

The oceans views attained from 8 and 12 Mermaid Avenue will not be adversely impacted as a result of the proposed Kentia Palm.

4. Reasonableness of Proposed Development:

The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a

complying proposal, the question should be asked whether a more skillful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbors. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

The proposed roof elements above the 9.5m Building Height development standard would not result in any adverse views impacts from the approved development at 11 Mermaid Avenue. The view impacts are therefore reasonable.

The proposed Kentia Palm in the front setback would not result in any adverse views impacts from the existing dwellings at 8 and 12 Mermaid Avenue. Notwithstanding, the mature height of any canopy tree within the front setback should be a maximum of 10m. A condition to this effect is included in the recommended development consent.

On that basis, the proposal is acceptable and view sharing is reasonable.

Overshadowing

Concerns were raised by the adjoining neighbour at 17 Mermaid Avenue in relation to overshadowing of the north facing openings of the existing dwelling.

RDCP 2013 requires a minimum of 3 hours of solar access to the north-facing living areas and 3 hours to private open space areas of adjoining dwellings between 8:00am and 4:00 pm on 21st June.

Based on the shadow diagrams submitted with the application, the north facing windows at 17 Mermaid Avenue will receive direct sunlight between 8:00am and 1:00pm at the winter solstice. Refer to an extract of the elevation shadow diagram at **Figure 22**. The proposal complies with the solar access requirements under RDCP 2013.

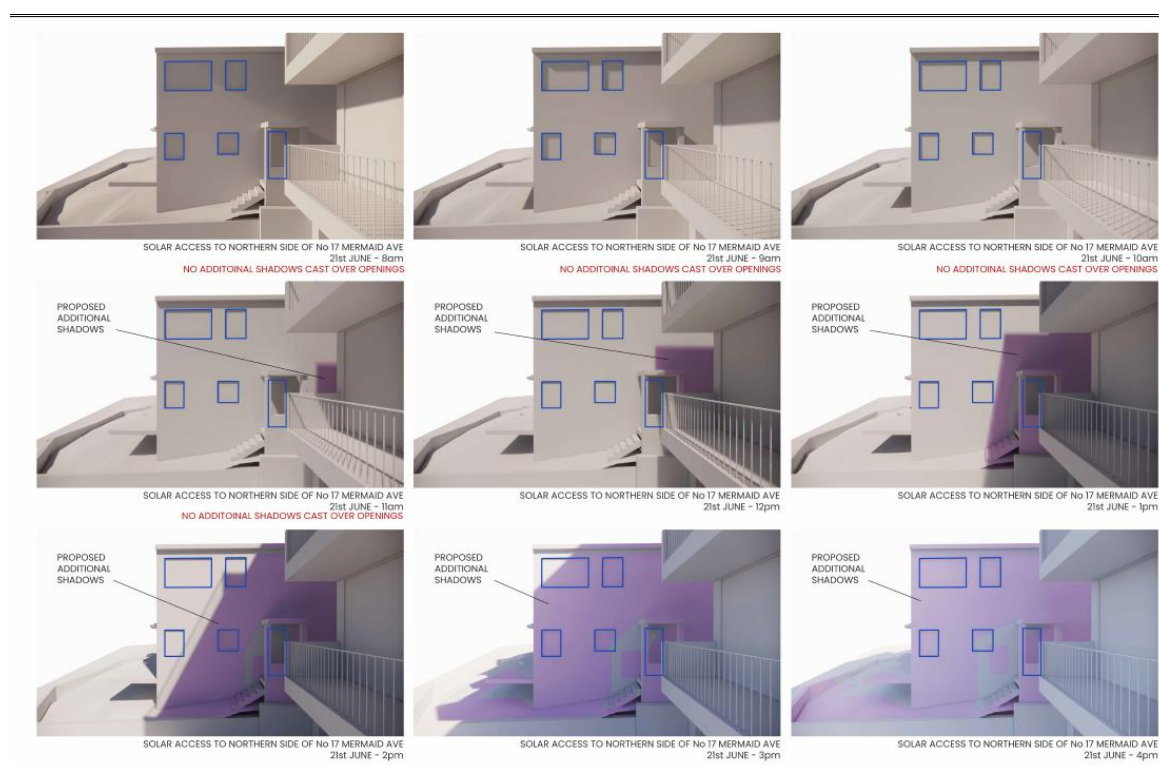


Figure 22 – Shadow diagram showing the north elevation at 17 Mermaid Avenue

Visual Privacy

Concerns were raised by the adjoining neighbour to the north at 11 Mermaid Avenue in relation to visual privacy impacts from the windows along the northern side elevation and requested privacy screens to be installed to mitigate potential privacy impacts. The proposed windows at the northern elevation that would result in potential privacy impacts are W4.8 bedroom and W2.5 and W3.9 circulation space. These windows should include a privacy screen to mitigate potential privacy impacts to the adjoining property to the north at 11 Mermaid Avenue.

The proposed bedroom and living room windows at the southern elevation would also result in potential privacy impacts to the adjoining property to the south at 17 Mermaid Avenue. These windows should include a privacy screen to mitigate potential privacy impacts to the adjoining property to the north at 17 Mermaid Avenue. A condition to this effect is included in the recommended development consent.

The rear facing balconies at the southern side of the dwelling adjoining the living room and bedrooms would result in potential overlooking of the adjoining property to the south at 17 Mermaid Avenue. Based on the VIA, the provision of a privacy screen along the southern side of the subject balconies is not expected to result in any significant adverse view impacts from the adjoining property to the north. A condition to this effect is included in the recommended development consent.

The incidence of overlooking is not uncommon amongst neighbours for residential properties along the waterfront. Subject to the imposition of privacy screens, the proposal will not result in any significant adverse privacy impacts to the adjoining properties.

10. Conclusion

That the application to demolish the existing dwelling house and construction of new multi storey dwelling, swimming pool and landscaping be approved (subject to conditions) for the following reasons:

- The applicant's written request seeking an exception to the Building Height development standard under Clause 4.3 of Randwick Local Environmental Plan 2012 satisfactorily addresses those matters that are required to be demonstrated pursuant to Clause 4.6 of Randwick Local Environmental Plan 2012.
- The proposal is consistent with the objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013
- The proposal is consistent with the specific objectives of the R2 zone in that the proposed activity and built form will provide for the housing needs of the community whilst enhancing the aesthetic character and protecting the amenity of the local residents.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- The proposed development will not result in any unreasonable amenity impacts to the adjoining properties.
- The proposal will not result in any significant adverse impact on the visual amenity and scenic qualities of the coastal foreshore.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineer

Council's Development Engineer and Landscape Officer raised no objection and provided the following comments:

General Comments

Amended Plans have been submitted at the request of Council's Development Engineers in relation to Council's Drainage Pipeline /Easement which runs along the southern side boundary, within the subject site

Drainage Easement Comments/Issues

Title Searches for the subject site showed that there was originally a 10ft wide easement which crossed the property, running southwest to northeast. The subject 10ft wide easement was cancelled in 1960 and replaced with a 6ft (1.83m) wide easement which runs down the southern side boundary. The easement is shown on the submitted Survey Plan by C.M.S Surveyors P/L

The 6ft wide easement commences 18 ft 6in (5.64m) in along the southern side boundary from the Mermaid Avenue front boundary and can also be accurately located from the eastern rear boundary for a length of 125 ft 6 ¾ inch (38.27m). There is a 375mm Council drainage pipe located within the 6ft wide drainage easement.

Development Engineering requested amended plans to ensure all existing structures and proposed structures within the development site were to be clear of the Council Drainage Easement. Development Engineering advises that the amended plans appear to satisfy the intent of the requirement.

Undergrounding of power lines to site

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

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

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

Landscape Comments

The inspection confirmed an absence of any significant vegetation that will be affected by this application, with the small Bottlebrush that is just beyond the front boundary, out on Council's land, to the north of the existing driveway having been planted by the owner/resident rather than Council, with the shrubs in the front setback, as well as the overgrown weeds and clumps of Musa (Banana) at the rear, in the lowest, most eastern part of the site all able to be removed so as to allow for the significant excavations and earthworks that will be undertaken in these same areas.

This site falls steeply by 20m+ from front to rear, with the new dwelling to be stepped down the block over seven levels, with the Landscape Plans showing planting/treatment at each and every one of these, to varying degrees, including Ground Floor/Garage (as well as podium planting above), Entry, Living, Bedroom, Recreation and Pool Levels.

While obviously creating a larger dwelling, this will also result in a significant increase of both plant material and formal garden areas, utilising a combination of native coastal species and hardy exotics, along with a drastic improvement to the accessibility and quality of private open spaces when compared to the existing situation, so conditions require full implementation of this scheme as part of any approval.

While the pool is noted as being constructed forward/below the foreshore building line, it does not protrude above existing ground levels, with the colours, finishes and materials specifically selected to assist with its integration into the natural settings.

Further, the Sewer Diversion Line that intersects southwest/northeast across the centre of the rear yard, as well as the stormwater pipe/easement along the length of the southern boundary are both significant constraints which prevent this structure being provided in any alternative location.

It is understood that concerns over the potential loss of water views from the planting of a single Bangalow Palm (mature height 12m+) in the front setback of this site, between the pedestrian and vehicle access has been raised by an owner on the opposite/western side of Mermaid Avenue.

However, given both the lineal distance and difference in height between these two sites (subject site being lower), along with the fact that this species presents an open crown of fronds rather than a dense evergreen canopy, it is the view of this officer that while the planting of this species of palm will grow into the eye line of this neighbour in the future, any obstruction would be partial only, due to its open habit described above, with such feature species seen to add visual interest to landscapes and assist with integration of new developments into a streetscape.

If no formal development was taken place, Council would be powerless to prevent such planting as they are not recognised as invasive or problematic in any way.

It is also noted that Slender Weavers Bamboo (6-8m mature height) is proposed within dedicated planters/garden areas along the northern boundary, at both the Living & Recreation Levels, and while they can form a 'green wall' which are well-known for obstructing solar access and views, they have been purposely nominated in these locations so as to provide screening of both the existing and future large expanses of wall of the adjoining building at no.11, and when comparing the RL's, they should not extend above the height of the garage/street level building.

The SEE details that this proposal satisfies Council's numerical controls for landscaped area and has also been designed to comply with the requirements of the Foreshore Scenic Protection Area.

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

RANDWICK LEP 2012 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS

This Clause 4.6 variation request has been prepared to accompany the development application for the demolition of the existing dwelling and erection of a residential dwelling with double garage parking, swimming pool and associated landscaping works.

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

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

Clause 4.6 Exceptions to development standards

- (1) *The objectives of this clause are as follows:*
 - (a) *to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
 - (b) *to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) *Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) *the concurrence of the Director-General has been obtained.*
- (5) *In deciding whether to grant concurrence, the Director-General must consider:*
 - (a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
 - (b) *the public benefit of maintaining the development standard, and*
 - (c) *any other matters required to be taken into consideration by the Director-General before granting concurrence.*

Development Standard to be Varied

The proposal seeks a variation to the development standard contained within Clause 4.3 of the *Randwick LEP 2012* - maximum height of 9.5m, demonstrated on the LEP map in Figure 1 below.

The proposed maximum height of 11.5m represents a variation of 2m (21.05%) from the numerical height standard in the LEP.

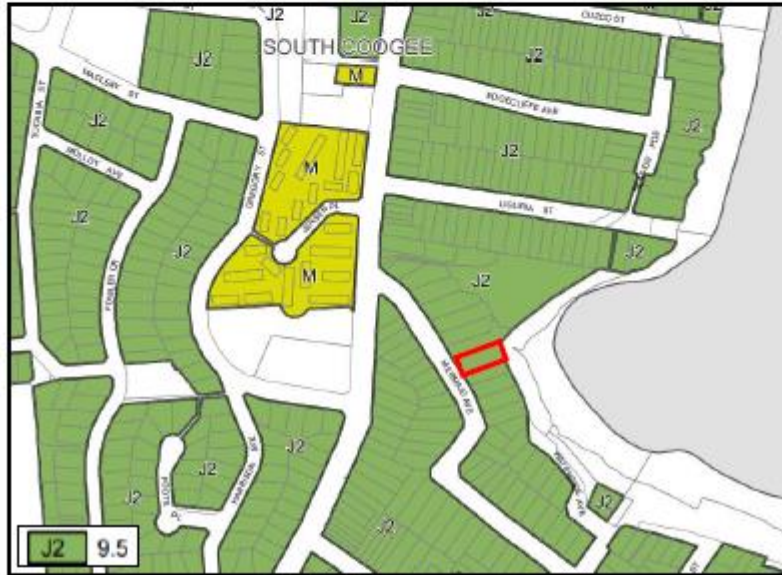


Figure 1: Building Height Map

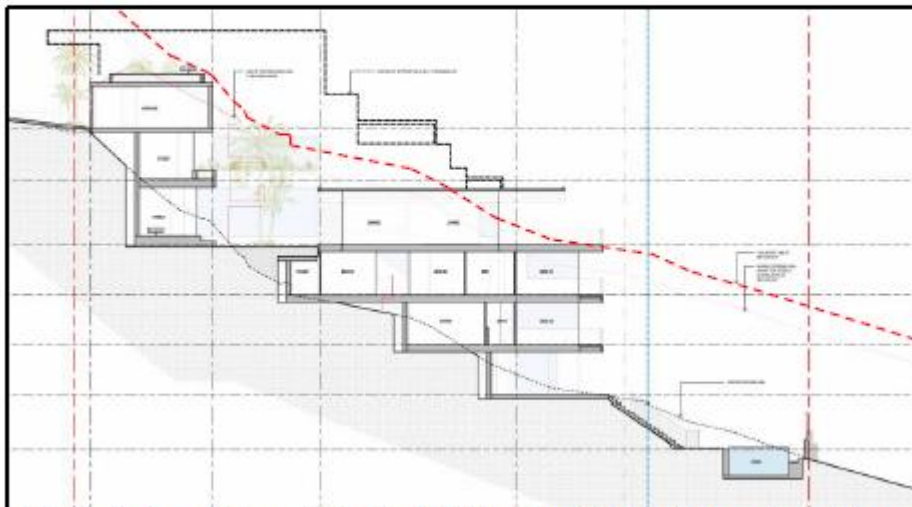


Figure 2: Section A-A excerpt demonstrating the height breach, which is limited to portions of the roof form, whilst the remainder of the built form is sited below the height standard of 9.5m

Justification for Contravention of the Development Standard

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

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

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

The proposal complies with the development standard's objectives and the R2 Low Density Residential zone, indicated in the assessment in Table 1. Furthermore, compliance with the development standard is unreasonable and unnecessary as it is in the public interest, achieving the objectives for development within the zone, notwithstanding non-compliance.

Isolated nature of the height variation

The height variation is limited to small portions of the roof form, as demonstrated below in the height plane diagram. The proposed 2m height breach will not result in additional overshadowing, view loss or visual bulk and scale impacts, noting the remainder of the proposed built form sits below the 9.5m height limit.

The proposed non-compliance is considered acceptable given the substantially steep slope of the site's topography, which conceals the majority of the multi-storey dwelling from the streetscape, thereby visually presenting as a single storey development from the public domain, as demonstrated in Figure 4. Therefore, any breach of the height will be indiscernible from Mermaid Avenue, and thus, no amenity impacts regarding visual amenity, solar access, privacy and views will result as a consequence.

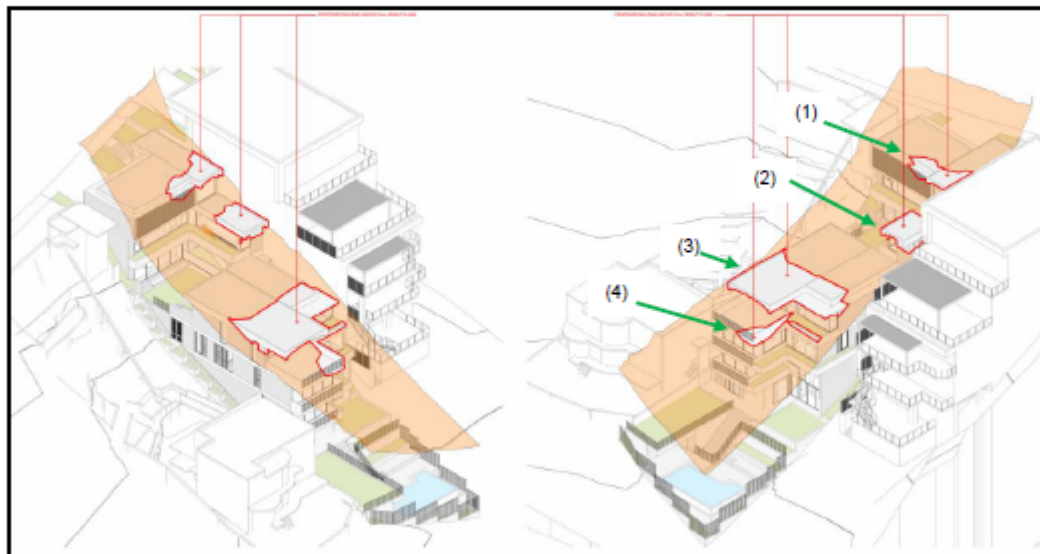


Figure 3: Height plane diagram demonstrating the height breach is limited to portions of the roof form, whilst the remainder of the built form sits below the height standard of 9.5m. The proposed height is compatible with older and newer surrounding developments, some of which exceed the height standard

1. Garage Level: The height variation associated with the roof ridge of the garage level is located towards the rear north-east end of the roof form due to the site's steep slope. As highlighted in the elevations and sections plan and the above height plane diagram, the height variation associated with the garage level is isolated to a portion of the roof form, whilst the remainder of the level sits below the 9.5m height control. This indicates that the variation will have minimal environmental amenity impacts regarding visual bulk, view loss, privacy, and overshadowing to the immediately adjoining dwellings considering it will be indiscernible from the Mermaid Avenue streetscape, continuing to present as a single storey detached dwelling.
2. Entry Level: The height variation associated with the roof ridge at the entry level is also isolated to a portion of the north-western corner of the built form and indiscernible from the Mermaid Avenue streetscape. Compared to the north-western neighbour (11 Mermaid Ave), which includes a topography higher than the subject site, the proposed dwelling is considerably lower in height, bulk and scale, irrespective of the height variation. In this regard, amenity impacts associated with the entry level height variation will have minimal amenity impacts to the adjoining north-western neighbour.
3. Living Level: The living level height variation is confined to the north-eastern portions of the roof form. Due to the topography and slope of the site, the height variation is significantly recessed and separated from the adjoining developments on either side, which will not withstand considerable visual bulk impacts. In addition, the majority of the level is sited below the permissible 9.5m development standard, further indicating the reasonable nature of the height breach.
4. Recreational Level: The minor height variation is isolated, also relating to sections of the roof form that breach the height standard due to the substantial slope of the site's topography. The height variation on the recreational level will not diminish the adjoining north-western neighbour's amenity, noting that No. 11 will continue to receive 3 hours of solar access to north-facing principal living and private open space areas. In addition, no visual bulk and view loss impacts are associated with the height variation. The adjoining neighbour will continue to have access to significant views over Lurline Bay and the coast, whilst the articulated and condensed nature of the built form will produce a positive visual outcome when viewed from the foreshore.

The photomontage below demonstrates the proposed dwelling as a single storey built form when viewed from the public domain, indicating any additional bulk and scale impacts associated with the variation will not be apparent. Thus, the proposed dwelling, irrespective of the height variation, will retain the streetscape character along this part of Mermaid Avenue and the desired future character of the locality:



Figure 4: Photomontage of the proposed multi-storey residential dwelling, visually presented as a single storey dwelling, as viewed from the Mermaid Avenue streetscape

Compatibility with the height of the surrounding streetscape

The proposed building envelope aligns with older and newer dwellings in the streetscape, some of which are 4-6-storeys and present greater heights, bulks and scales than proposed. In this regard, the proposed dwelling is compatible with the scale and design of contemporary dwellings, particularly with the adjoining dwellings to the northwest at No. 11, 9, 7 and 5A Mermaid Ave.



Figure 5: Front and rear montage of the approved attached dual occupancy under DA 9/2018 at No. 11 Mermaid Avenue. The approved montage also demonstrates the existing dwellings that comprise this component of Mermaid Avenue, indicating that the proposed development aligns with the existing and desired character of the foreshore. This image also confirms that neighbouring dwellings consist of 5-6 storeys and step down the steeply sloping topography

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figure 6: Front and rear montage of the approved dwelling under DA 958/2016 at No. 19 Mermaid Avenue, which demonstrates the desired height, bulk and scale of dwellings facing the foreshore



Figure 7: View of the subject site as viewed from foreshore areas and its relationship with adjoining developments, all of which include heights, bulks and scales similar to that proposed

The proposed height, bulk and scale of the dwelling is considered appropriate, noting its consistency and compatibility with other recently approved and constructed dwellings which are noted to breach the height limit to a greater extent, as demonstrated in the below height variation analysis:

SITE	HEIGHT	FSR
3A Mermaid Avenue (DA/80/2021) under assessment	10.848m (14% variation from the 9.5m standard)	
11 Mermaid Avenue (DA/9/2018)	18.72m (97.05% variation from the 9.5m standard)	0.78:1 (56% variation from the 0.5:1 standard)
19 Mermaid Avenue (DA 958/2016)	10.817m (13.86% variation from the 9.5m standard)	
23 Mermaid Avenue (DA 372/2015)	11.1m (16.84% variation from the 9.5m standard)	0.7:1 (14.28% variation from the 0.6:1 standard)

In this context, it is considered that the proposed height will not be overbearing in the streetscape but will sit comfortably and appropriately alongside the 4-6-storey dwellings along the foreshore.

Minimal environmental amenity impacts generated by the height variation

The proposed 2m height variation is not responsible for any unreasonable adverse impacts to surrounding properties, including overshadowing and view loss, given that the proposed components associated with the height variation will be indiscernible in the Mermaid Avenue

Streetscape. This is made evident by the site's significant downward slope, which conceals the majority of the built form from the public domain. The following analysis expands on the minimal environmental amenity impacts to surrounding dwellings and the locality:

The northeast-southwest orientation of the subject site ensures the adjoining neighbours receive 3 hours of solar access to north-facing primary areas and at least 3 hours of solar access to private open space areas, thereby exceeding the DCP solar access requirements. In addition, the open-plan layout of the dwelling and strategic breaks and openings permits adequate levels of solar access to north-facing principal living areas (3 hours) and private open space areas (8 hours). Therefore, the height variation will not generate any unreasonable shadow impacts to neighbouring dwellings, as displayed in the shadow diagram:



Figure 8: Shadow diagrams indicating the minimal level of overshadowing to neighbouring dwellings

There are no unreasonable view loss impacts associated with the proposed dwelling, considering that the development from the streetscape is compliant concerning the LEP and DCP height limits. The developments opposite the subject site to the southwest will continue to enjoy coastline views of Lurline Bay, with minimal change to coastal views given that the majority of the built form is stepped to follow the site's steep topography and would be indiscernible from the public domain. In addition, the proposed dwelling includes a height that is lower than the ridge of the existing dwelling, as shown below:

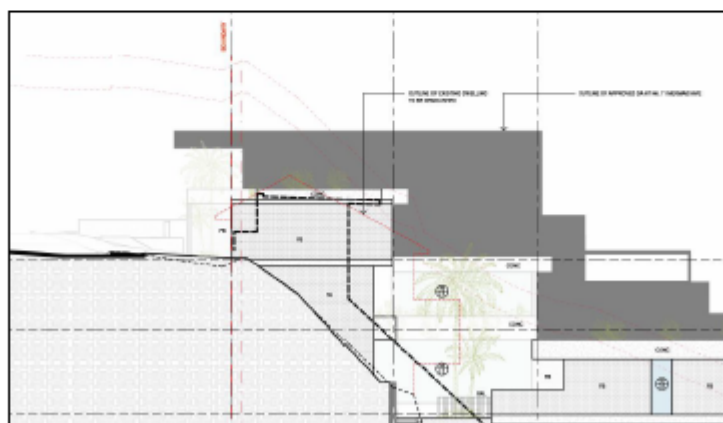


Figure 9: Partial excerpt of the south-eastern elevation, which confirms that the new roof/overall height will be below that of the existing dwelling (shown in red dotted outline), whilst also substantially lower than the approved dwelling to the north (shown in grey shading in the background). It is also apparent that the dwelling will present as a single storey in scale to 11 Mermaid Avenue and that such component is well below the height limit, thereby retaining views over the subject site from the properties along the high side of Mermaid Avenue opposite the site

From the foreshore and adjoining dwellings to the northwest and southeast of the site, the proposed height variation will be well integrated into the high-quality and articulated design of the built form through the provision of balconies, screening and perimeter planting on the ground floor and soft landscaping to the upper levels. Compliant front, side and rear setbacks ensure adequate separation distances between neighbouring development and the Lurline Bay foreshore to the northeast is provided. Simultaneously, indentations, modulation and various materials and colours are incorporated into the site's design and break down any perceived bulk and scale, ensuring that the built form and associated height variation will contribute positively to the locality.

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 height standard in the LEP	
Objectives	Assessment
4.3(a) to ensure that the size and scale of development is compatible with the desired future character of the locality	<p>The proposed height variation associated with a multi-storey residential dwelling is suitable for the subject site and within the context of the locality.</p> <p>The height variation associated with sections of the roof form will be indiscernible from the streetscape, noting the significant downward slope, which conceals the majority of the built form from the public domain. In this regard, the size and scale of the proposed dwelling will be viewed as a single storey dwelling from the Mermaid Avenue streetscape irrespective of the height variation. Therefore, the proposed dwelling will continue to reinforce the area's existing and future neighbourhood character.</p> <p>Importantly, the proposed height variation will not be responsible for any adverse amenity impacts to neighbouring properties, including view loss, overshadowing or privacy impacts.</p> <p>The proposed height, bulk and scale of the proposed dwelling is compatible with the scale and design of contemporary dwellings, particularly with the adjoining dwellings to the northwest at 11, 9, 7 and 5A Mermaid Ave. The high-quality design and articulated façade outcome ensure that the proposed dwelling will sit comfortably along Mermaid Avenue's streetscape.</p> <p>Compliant street setbacks, as well as the modest scale of development ensure that the built form will positively contribute to the physical definition of the street network and public spaces.</p> <p>On this basis, the height variation does not generate any inconsistency with this objective.</p>
4.3(b) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item	The subject site does not adjoin any heritage item, conservation area or special character areas.
4.3(c) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual	<p>No significant or public views are affected by the proposed height variation.</p> <p>Various architectural elements are incorporated into the</p>

<p><i>bulk, loss of privacy, overshadowing and views</i></p>	<p>design of the building, which seeks to mitigate visual bulk and scale, privacy and overshadowing impacts. In this regard, There are no unreasonable view loss impacts associated with the proposed height variation, noting that the development from the streetscape is compliant in relation to the LEP and DCP height limits. The developments opposite the subject site to the southwest will continue to enjoy coastline views of Lurline Bay, with no change to coastal views given that the majority of the built form is stepped to follow the site's steep topography and would be indiscernible from the public domain. In addition, the proposed dwelling includes a height ridge that is lower than that of the existing dwelling from the streetscape, as demonstrated in the architectural plan.</p> <p>The proposal is sensitively designed to mitigate amenity impacts to the surrounding neighbouring properties by reasonably preserving solar access, views and privacy. The northeast-southwest orientation of the subject site ensures the adjoining neighbours receive 3 hours of solar access to north-facing primary areas and 5 hours of solar access to private open space areas, thereby exceeding the DCP solar access requirements, irrespective of the height variation.</p> <p>Therefore, it can be stated that the proposed height variation associated with the built form will result in minimal amenity impacts to the surrounding developments.</p> <p>On this basis, the height variation does not generate any inconsistency with this objective.</p>
<p>Consistency with the objectives of the R2 Low Density Residential zone</p>	
<p>Objectives</p> <ul style="list-style-type: none"> • <i>To provide for the housing needs of the community within a low density residential environment.</i> • <i>To enable other land uses that provide facilities or services to meet the day to day needs of residents.</i> • <i>To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.</i> • <i>To protect the amenity of residents.</i> • <i>To encourage housing affordability.</i> • <i>To enable small-scale business uses in existing commercial buildings.</i> 	<p>Assessment</p> <p>The proposed dwelling is permissible in the R2 Low Density Residential zone and satisfies the objectives of the zone by providing for the housing needs of the community within a low density residential environment.</p> <p>The proposed multi-storey residential dwelling mitigates unreasonable adverse impacts to surrounding developments in terms of visual bulk, overshadowing, privacy or view loss. The proposed development does not prevent the redevelopment of other lots close to or adjacent to the site, given compliant separation distance to the northwest and southeast side setbacks are proposed.</p> <p>The proposed height, scale and external finishes will be in keeping with the character of the neighbourhood and streetscapes of the zone. The proposed landscaping will add amenity to the area and ensure that the development sits well within the local context.</p> <p>The proposal will not inhibit other land uses to be provided in the area that provides facilities or services to meet the day to day needs of residents.</p> <p>The proposed height variation is therefore not considered to generate any inconsistency with the zone objectives.</p>

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

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

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

- The location of the height variations ensures that it will not be visible from the public domain and will therefore not be responsible for any unreasonable streetscape impacts, as shown on the photomontage and elevation above.
- The height variation is associated with a dwelling that has a particular site context, whereby all new (and almost all existing) dwellings already exceed the height limit and have a particular visual outcome when viewed from both Mermaid Avenue and foreshore areas. The proposed stepped form of building which responds to the steeply sloping topography is compatible with the recently constructed dwellings and that approved on the immediately approved dwelling at No. 11 Mermaid Avenue. The proposed height variation is therefore considered to be related to the particular site circumstances of properties along this section of Mermaid Avenue.
- The height variation allows for compliant floor-to-ceiling heights on all levels, ensuring that adequate internal amenity will be achieved.
- The steep downward topography of the site ensures that the height variation associated with the roof form will be indiscernible from the public domain and that the height variation will not be responsible for any unreasonable overshadowing or privacy impacts to neighbouring properties. Steeply sloping sites are often recognised as being a sufficient environmental planning ground.
- The height variation will not obstruct any significant views and aligns with other older and newer residential dwellings in the vicinity. The multi-storey built form is considered suitable for the site and consistent with the zoning's bulk and scale of development along the foreshore. Notably, the height, mass, bulk and scale proposed are compatible with adjoining dwellings.
- The height variation has been well integrated into the high-quality and articulated design aesthetic of the built form and positively contributes to locality, particularly when viewed from the sensitive foreshore areas.

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

Other Matters for Consideration

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

Assessment: The above assessment demonstrates that the proposed height satisfies the height standard's objectives and the R2 Low Density Residential zone, notwithstanding the height variation.

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

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

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

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

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

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

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

Concurrence

The Secretary's concurrence under clause 4.6(4) of the LEP has been delegated to the Council by written notice dated 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 height standard given the limited amenity impacts associated with the development and the positive streetscape outcome that would arise from the subject site's redevelopment.

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

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

Generally as to concurrence, for the reasons outlined above – and particularly having regard to the site-specific nature of this clause 4.6 variation request – there is nothing about this proposed height 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 15 Mermaid Avenue, Maroubra and is requested to be looked upon favourably by the consent authority.

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

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	
2	Site planning		
2.3	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45%	28%	Yes
2.4	Landscaping and permeable surfaces		
	i) Up to 300 sqm = 20% ii) 301 to 450 sqm = 25% iii) 451 to 600 sqm = 30% iv) 601 sqm or above = 35% v) Deep soil minimum width 900mm. vi) Maximise permeable surfaces to front vii) Retain existing or replace mature native trees viii) Minimum 1 canopy tree (8m mature). Smaller (4m mature) If site restrictions apply. ix) Locating paved areas, underground services away from root zones.	35%	Yes
2.5	Private open space (POS)		
	Dwelling & Semi-Detached POS		
	Up to 300 sqm = 5m x 5m 301 to 450 sqm = 6m x 6m 451 to 600 sqm = 7m x 7m 601 sqm or above = 8m x 8m	15m x 15m	Yes
3	Building envelope		
3.1	Floor space ratio LEP 2012 = 0.6:1	0.6:1	Yes
3.2	Building height		
	Maximum overall height LEP 2012 = 9.5m	11.5m	No
	i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded	10.2m	No
3.3	Setbacks		
3.3.1	Front setbacks i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary street frontage: - 900mm for allotments with primary frontage width of less than 7m - 1500mm for all other sites iii) do not locate swimming pools, above-ground rainwater tanks and outbuildings in front	No change to the existing front setback is proposed from that currently existing. Excluding the adjoining southern neighbour at No. 17, the proposed setback is consistent with the	Yes

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DCP Clause	Controls	Proposal	Compliance
		prevailing setback of neighbouring dwellings to the northwest and southeast.	
3.3.2	Side setbacks: Semi-Detached Dwellings: <ul style="list-style-type: none"> Frontage less than 6m = merit Frontage b/w 6m and 8m = 900mm for all levels Dwellings: <ul style="list-style-type: none"> Frontage less than 9m = 900mm Frontage b/w 9m and 12m = 900mm (Gnd & 1st floor) 1500mm above Frontage over 12m = 1200mm (Gnd & 1st floor), 1800mm above. <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p>	The proposal will be setback 1.2m from the northern and southern side boundaries of the ground floor and firstfloor level and 1.8m from the second storey and above.	Yes
3.3.3	Rear setbacks i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments. ii) Provide greater than aforementioned or demonstrate not required, having regard to: <ul style="list-style-type: none"> Existing predominant rear setback line reasonable view sharing (public and private) protect the privacy and solar access iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions. iv) For irregularly shaped lots = merit assessment on basis of:- <ul style="list-style-type: none"> Compatibility POS dimensions comply minimise solar access, privacy and view sharing impacts <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p>	13.5-14.75m	Yes
4	Building design		
4.1	General		
	Respond specifically to the site characteristics and the surrounding natural and built context - <ul style="list-style-type: none"> articulated to enhance streetscape stepping building on sloping site, no side elevation greater than 12m encourage innovative design 	The proposed development steps down the site in response to the topography.	Yes
4.5	Colours, Materials and Finishes		
	i) Schedule of materials and finishes ii) Finishing is durable and non-reflective.	The proposal incorporates	Yes

DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) recycle and re-use sandstone (See also section 8.3 foreshore area.) 	white aluminium vertical screening to the balconies with a light coloured brick façade finish, which complements the natural elements of the coastal location.	
4.6	Earthworks		
	<ul style="list-style-type: none"> i) excavation and backfilling limited to 1m, unless gradient too steep ii) minimum 900mm side and rear setback iii) Step retaining walls. iv) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm. v) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping) vi) cut and fill for POS is terraced <i>where site has significant slope:</i> vii) adopt a split-level design viii) Minimise height and extent of any exposed under-croft areas. 	<p>Given the substantial slope of the site, the proposal includes excavation to accommodate the proposed dwelling. The proposed excavation is limited to a depth of approximately 5.3m below the existing ground level.</p> <p>The proposed degree of excavation is suitable for the site and is combined with appropriate setbacks to surrounding properties to safeguard the maintenance of structural integrity of surrounding properties.</p>	Yes
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	<ul style="list-style-type: none"> i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. 	The proposed development has been designed to maximise solar access to	Yes

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DCP Clause	Controls	Proposal	Compliance
		internal living areas of the dwelling. In this regard, the proposal will receive 3 hours of solar access to north-facing living areas and 8 hours of solar access to private open spaces on 21 June.	
	Solar access to neighbouring development:		
	<p>i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June.</p> <p>iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.</p> <p>v) solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings.</p> <p>vi) Variations may be acceptable subject to a merits assessment with regard to:</p> <ul style="list-style-type: none"> Degree of meeting the FSR, height, setbacks and site coverage controls. Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. Topography of the subject and adjoining allotments. Location and level of the windows in question. Shadows cast by existing buildings on the neighbouring allotments. 	Based on the shadow diagrams submitted with the application the adjoining properties will receive 3 hours of direct sunlight to north-facing living areas and more than 3 hours of direct sunlight to private open space areas between 8am and 4pm on 21 June (mid-winter).	Yes
5.2	Energy Efficiency and Natural Ventilation		
	<p>i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as:</p> <ul style="list-style-type: none"> Skylights (ventilated) Clerestory windows Fanlights above doorways Highlight windows in internal partition walls <p>ii) Where possible, provide natural lighting and ventilation to any internalised toilets,</p>	The proposed dwelling incorporates various architectural design elements to maximise the sites sunlight, daylight and ventilation opportunities. In	Yes

DCP Clause	Controls	Proposal	Compliance
	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	this regard, the proposed courtyard, which splits the built form's internal areas, allows multiple openings to the living, dining and kitchen areas, which in turn reduces reliance on artificial heating, cooling and lighting.	
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 proposal will not result in any unreasonable privacy impacts subject to the installation of privacy screens. Refer to the Key Issues section of this report.	Yes
	Balcony		
	iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side) iv) minimise overlooking of POS via privacy screens (fixed, minimum of 1600mm high and achieve minimum of 70% opaqueness (glass, timber or metal slats and louvers) v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure) vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.	The proposal will not result in any unreasonable privacy impacts subject to the installation of privacy screens. Refer to the Key Issues section of this report.	Yes
5.4	Acoustic Privacy		
	i) noise sources not located adjacent to adjoining dwellings bedroom windows <i>Attached dual occupancies</i> ii) Reduce noise transmission between dwellings by: <ul style="list-style-type: none"> - Locate noise-generating areas and quiet areas adjacent to each other. - Locate less sensitive areas adjacent to 	The dwelling is appropriately designed and sited to minimise acoustic impacts to the adjoining properties.	Yes

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DCP Clause	Controls	Proposal	Compliance
	the party wall to serve as noise buffer.		
5.5	Safety and Security		
	i) dwellings main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 square metres) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not to obstruct casual surveillance (maintain safe access)	The front entry provides direct obvious and secure access to the dwelling from mermaid Avenue	Yes
5.6	View Sharing		
	i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas. ii) retaining existing views from the living areas are a priority over low use rooms iii) retaining views for the public domain takes priority over views for the private properties iv) fence design and plant selection must minimise obstruction of views v) Adopt a balanced approach to privacy protection and view sharing vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA. (certified height poles used)	The proposal will not resulting any unreasonable view loss from the adjoining properties.	Yes Refer to the Key Issues section of this report.
6	Car Parking and Access		
6.1	Location of Parking Facilities:		
	i) Maximum 1 vehicular access ii) Locate off rear lanes, or secondary street frontages where available. iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling. <i>Note: See 6.2 for circumstances when parking facilities forward of the front façade alignment may be considered.</i> iv) Single width garage/carport if frontage <12m; Double width if: - Frontage >12m, - Consistent with pattern in the street; - Landscaping provided in the front yard. v) Minimise excavation for basement garages vi) Avoid long driveways (impermeable surfaces)	Two car spaces will be provided in a garage accessed directly from Mermaid Avenue. The double garage is consistent with the existing character in the street.	Yes
6.2	Parking Facilities forward of front façade alignment (if other options not available)		
	i) The following may be considered: - An uncovered single car space - A single carport (max. external width of not more than 3m and - Landscaping incorporated in site frontage	There is no opportunity to provide parking at the rear due to the site constraints.	Yes

DCP Clause	Controls	Proposal	Compliance
	ii) Regardless of the site's frontage width, the provision of garages (single or double width) within the front setback areas may only be considered where: <ul style="list-style-type: none"> - There is no alternative, feasible location for accommodating car parking; - Significant slope down to street level - does not adversely affect the visual amenity of the street and the surrounding areas; - does not pose risk to pedestrian safety and - does not require removal of significant contributory landscape elements (such as rock outcrop or sandstone retaining walls) 	The proposed double garage will not create adverse visual and safety impacts within the streetscape.	
6.3	Setbacks of Parking Facilities		
	i) Garages and carports comply with Sub-Section 3.3 Setbacks. ii) 1m rear lane setback iii) Nil side setback where: <ul style="list-style-type: none"> - nil side setback on adjoining property; - streetscape compatibility; - safe for drivers and pedestrians; and - Amalgamated driveway crossing 	The double garage is proposed at the front setback area, providing nil front setback. This complies with the DCP controls being consistent with the prevailing setback of neighbouring dwellings to the northwest, southeast, and southwest. The proposed double garage is setback 1.2m from the south-eastern side boundary.	Yes
6.4	Driveway Configuration		
	Maximum driveway width: <ul style="list-style-type: none"> - Single driveway – 3m - Double driveway – 5m Must taper driveway width at street boundary and at property boundary	The driveway is proposed to be a maximum width of 5m. The proposed car parking and access arrangements have been designed in accordance with the Randwick DCP 2013 and Australian	Yes

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DCP Clause	Controls	Proposal	Compliance
		Standards to ensure ease of access and egress.	
6.5	Garage Configuration		
	i) recessed behind front of dwelling ii) The maximum garage width (door and piers or columns): - Single garage – 3m - Double garage – 6m iii) 5.4m minimum length of a garage iv) 2.6m max wall height of detached garages v) recess garage door 200mm to 300mm behind walls (articulation) vi) 600mm max. parapet wall or bulkhead vii) minimum clearance 2.2m AS2890.1	The proposed garage satisfies the design requirements.	Yes
7	Fencing and Ancillary Development		
7.1	General - Fencing		
	i) Use durable materials ii) sandstone not rendered or painted iii) don't use steel post and chain wire, barbed wire or dangerous materials iv) Avoid expansive surfaces of blank rendered masonry to street	Open style metal fence along the side and rear boundaries.	Yes
7.2	Front Fencing		
	i) 1200mm max. (Solid portion not exceeding 600mm), except for piers. - 1800mm max. provided upper two-thirds partially open (30% min), except for piers. ii) light weight materials used for open design and evenly distributed iii) 1800mm max solid front fence permitted in the following scenarios: - Site faces arterial road - Secondary street frontage (corner allotments) and fence is behind the alignment of the primary street façade (tapered down to fence height at front alignment). <i>Note: Any solid fences must avoid continuous blank walls (using a combination of materials, finishes and details, and/or incorporate landscaping (such as cascading plants))</i> iv) 150mm allowance (above max fence height) for stepped sites v) Natural stone, face bricks and timber are preferred. Cast or wrought iron pickets may be used if compatible vi) Avoid roofed entry portal, unless complementary to established fencing pattern in heritage streetscapes. vii) Gates must not open over public land. viii) The fence must align with the front property boundary or the predominant fence setback line along the street. ix) Splay fence adjacent to the driveway to	No front fence is proposed.	Yes

DCP Clause	Controls	Proposal	Compliance
	improve driver and pedestrian sightlines.		
7.3	Side and rear fencing		
	i) 1800mm maximum height (from existing ground level). Sloping sites step fence down (max. 2.2m). ii) Fence may exceed max. if level difference between sites iii) Taper down to front fence height once past the front façade alignment. iv) Both sides treated and finished.	1.8m side and rear fencing are proposed, which will be stepped to follow the topography and gradient of the land.	Yes
7.5	Swimming pools and Spas		
	i) Locate behind the front building line ii) Minimise damage to existing tree root systems on subject and adjoining sites. iii) Locate to minimise noise impacts on the adjoining dwellings. iv) Pool and coping level related to site topography (max 1m over lower side of site). v) Setback coping a minimum of 900mm from the rear and side boundaries. vi) Incorporate screen planting (min. 3m mature height unless view corridors affected) between setbacks. vii) Position decking to minimise privacy impacts. viii) Pool pump and filter contained in acoustic enclosure and away from the neighbouring dwellings.	The proposed pool will be setback 2.7m to the southeast boundary and 7.7-8.7m to the rear boundary.	Yes
7.6	Air conditioning equipment		
	i) Minimise visibility from street. ii) Avoid locating on the street or laneway elevation of buildings. iii) Screen roof mounted A/C from view by parapet walls, or within the roof form. iv) Locate to minimise noise impacts on bedroom areas of adjoining dwellings.	No details have been provided regarding the location of air-conditioning equipment.	A condition included regarding the use of air-conditioning equipment
7.8	Clothes Drying Facilities		
	i) Located behind the front alignment and not be prominently visible from the street	There is scope to provide a drying area at the rear.	Yes

3.4 Section B10: Foreshore Scenic Protection Area

DCP Clause	Controls	Proposal	Compliance
	i) Consider visual presentation to the surrounding public domain, including streets, lanes, parks, reserves, foreshore walkways and coastal areas. All elevations visible from the public domain must be articulated. ii) Outbuildings and ancillary structures integrated with the dwelling design (coherent architecture).	The entire site is within the foreshore scenic protection area (FSPA). The proposed height, bulk and scale is	Yes

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	<ul style="list-style-type: none"> iii) Colour scheme complement natural elements in the coastal areas (light toned neutral hues). iv) Must not use high reflective glass v) Use durable materials suited to coast vi) Use appropriate plant species vii) Provide deep soil areas around buildings viii) Screen coping, swimming and spa pools from view from the public domain. ix) Integrate rock outcrops, shelves and large boulders into the landscape design x) Any retaining walls within the foreshore area (that is, encroaching upon the Foreshore Building Line) must be constructed or clad with sandstone. 	<p>contextually appropriate and does not adversely impact the environmental and scenic qualities of the foreshore, as well as public views to and from the coast. The proposal is therefore acceptable in terms of the objectives of the FSPA.</p>	
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Responsible officer: Thomas Mithen, Environmental Planner

File Reference: DA/16/2022

Development Consent Conditions (dwellings and dual occupancies)



D63/22

Folder /DA No:	DA/16/2022
Property:	15 Mermaid Avenue, Maroubra
Proposal:	Demolition of existing dwelling house and construction of new multi storey dwelling, swimming pool and landscaping
Recommendation:	Approval

GENERAL CONDITIONS

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

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

Approved Plans & Supporting Documentation

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

Plan	Drawn by	Dated	Received by Council
DA001 D TITLE SHEET & BASIX COMMITMENTS	Smyth & Smyth	22 August 2022	23 September 2022
DA055 A DEMOLITION PLAN	Smyth & Smyth	9 December 2021	23 September 2022
DA060 C PROPOSED SITE & ROOF PLAN	Smyth & Smyth	22 August 2022	23 September 2022
DA101 C PROPOSED GARAGE LEVEL FLOOR PLAN	Smyth & Smyth	22 August 2022	23 September 2022
DA102 C PROPOSED ENTRY LEVEL PLAN	Smyth & Smyth	22 August 2022	23 September 2022
DA103 C PROPOSED LIVING LEVEL PLAN	Smyth & Smyth	22 August 2022	23 September 2022
DA104 C PROPOSED BEDROOMS LEVEL PLAN	Smyth & Smyth	22 August 2022	23 September 2022
DA105 D PROPOSED RECREATION LEVEL PLAN	Smyth & Smyth	01 September 2022	23 September 2022

DA106 C PROPOSED GARDEN LEVEL PLAN	Smyth & Smyth	22 August 2022	23 September 2022
DA201 C PROPOSED SOUTH WESTERN & NORTH EASTERN ELEVATIONS	Smyth & Smyth	22 August 2022	23 September 2022
DA202 C PROPOSED NORTH EASTERN ELEVATION	Smyth & Smyth	22 August 2022	23 September 2022
DA203 C PROPOSED SOUTH EASTERN ELEVATION	Smyth & Smyth	22 August 2022	23 September 2022
DA204 C COURTYARD ELEVATIONS	Smyth & Smyth	22 August 2022	23 September 2022
DA301 B PROPOSED SECTION A-A	Smyth & Smyth	22 August 2022	23 September 2022
DA302 B PROPOSED SHORT SECTIONS AA & BB	Smyth & Smyth	22 August 2022	23 September 2022
DA303 B PROPOSED SHORT SECTIONS CC & DD	Smyth & Smyth	22 August 2022	23 September 2022
DA703 A PROPOSED DRIVEWAY SECTIONS	Smyth & Smyth	9 December 2021	23 September 2022

<i>BASIX Certificate No.</i>	<i>Dated</i>	<i>Received by Council</i>
1264495S	20 December 2021	17 January 2022

Amendment of Plans & Documentation

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

- a. A privacy screen having a height of 1.6m (measured above FFL) shall be provided to the following part of the building:

Northern elevation

- Window 4.8 - bedroom level
- Window 3.9 - living level
- Window 2.5 - entry level

Southern elevation

- Window 3.5 - living level
- Window 3.6 - living level
- Window 4.1 - bedroom level
- Window 4.3 - bedroom level
- Southern side of the rear facing deck and courtyard at living area level;
- Southern side of the rear facing balcony off the bedroom at bedroom level; and
- Southern side of the rear facing balcony off the bedroom at recreation level.

Privacy screen/s must be constructed with either:

- Translucent or obscured glazing (The use of film applied to the clear glass pane is unacceptable);
 - Fixed lattice/slats with individual openings not more than 30mm wide;
 - Fixed vertical or horizontal louvres with the individual blades angled and spaced appropriately to prevent overlooking into the private open space or windows of the adjacent dwellings.
- b. The following window/s must have a minimum sill height of 1.6m above floor level, or alternatively, the window/s are to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height:
- W4.2 bathroom at bedroom level; and
 - W4.4 robe at bedroom level.
- c. The paved area on the eastern side of the proposed swimming pool must be removed and replaced with deep soil planting.

REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

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

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

Consent Requirements

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

External Colours, Materials & Finishes

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

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

Section 7.12 Development Contributions

5. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$2,602,191 the following applicable monetary levy must be paid to Council: \$26,021.91.

The levy must be paid in **cash, bank cheque** or by **credit card** prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone 9093 6999 or 1300 722 542 for the indexed contribution amount prior to payment.

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

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

Where:

IDC = the indexed development cost

ODC = the original development cost determined by the Council

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

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

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

Long Service Levy Payments

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

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

Security Deposit

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

- \$5000.00 - Damage / Civil Works Security Deposit

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

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

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

Design Alignment levels

8. The design alignment level (the finished level of concrete, paving or the like) at the property boundary for driveways, access ramps and pathways or the like, shall be as follows:

Driveway / Garage Entrance – RL 35.20 AHD – Southern Edge
RL 35.30 AHD - Northern Edge
Pedestrian Entrance – RL 35.35 AHD

The design alignment levels at the property boundary as issued by Council and their relationship to the must be indicated on the building plans for the construction certificate. The design alignment level at the street boundary, as issued by the Council, must be strictly adhered to.

Any request to vary the design alignment level/s must be forwarded to and approved in writing by Council's Development Engineers and may require a formal amendment to the development consent via a Section 4.55 application.

9. The above alignment levels and the site inspection by Council's Development Engineering Section have been issued at a prescribed fee of **\$902.00** calculated at \$58.00 per metre of site frontage. This amount is to be paid prior to a construction certificate being issued for the development.

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Sydney Water

10. All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.
The approved plans must be submitted to the Sydney Water **Tap in™** online service, to determine whether the development will affect Sydney Water's waste water and water mains, stormwater drains and/or easements, and if any further requirements need to be met.

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

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

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

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

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

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

Council Drainage Easement

11. All proposed footings located adjacent to the Council drainage easements located on the southern side of the site shall either be:
1. Founded on rock,
OR
 2. Extended below a 30 degree line taken from the level of the pipe invert at the edge of the drainage reserve/easement (angle of repose).

Structural details demonstrating compliance with this condition shall be submitted with the construction certificate application.

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

Public Utilities

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

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

New Street Tree

13. The applicant must submit a payment of **\$107.25** (GST inclusive) to cover the costs for Council to supply, plant and maintain 1 x 25 litre Tuckeroo on the Mermaid Avenue verge, an equal distance between the new driveway and northern site boundary.

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

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

After advising of the receipt number, any further enquiries regarding scheduling/timing or completion of tree works are to be directed to Council's North Area Tree Preservation & Maintenance Coordinator on 9093-6843.

Amended Landscape Plans

14. The Landscape Plans by Lone Pine Landscapes, dwg's LPL_1401-1407, rev 03, dated 12/09/2022 must be amended to comply with the following requirements:

- a. The planting of *Bambusa textilis 'Gracilis'* (Slender Weavers Bamboo) along the length of the southern site boundary is not supported and must be completely deleted from all plans in this area due to being positioned within an overland flow path, as well as directly above the easement/Council drainage pipe in this same area;
- b. Only the planting of lower growing species, such as those which were shown here on the previous rev 01 plans, or, those which are currently indicated across the rear boundary on the current plans are permitted in the southern side setback, so must now be incorporated into this area;
- c. The mass planting of lower growing species that are currently shown across the width of the rear boundary can be extended into the area between the southeast corner of the new dwelling and southeast site corner, with the Planting Plans and Plant Schedule to be amended where necessary to comply with all of these requirements.

Written certification from a qualified professional in the Landscape industry (must be eligible for membership with a nationally recognised organisation/association) must state that the scheme submitted for the Construction Certificate, complies with the requirements specified above, with both this written statement and amended plans to then be submitted to, and be approved by, the Principal Certifier.

REQUIREMENTS TO BE INCLUDED IN THE CONSTRUCTION CERTIFICATE

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

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

Compliance with the Building Code of Australia & Relevant Standards

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

BASIX Requirements

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

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

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

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS

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

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

Certification and Building Inspection Requirements

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

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

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

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

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

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

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

Home Building Act 1989

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

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

Dilapidation Reports

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

- excavations for new dwellings, additions to dwellings, swimming pools or other substantial structures which are proposed to be located within the *zone of influence* of the footings of any dwelling, associated garage or other substantial structure located upon an adjoining premises;
- new dwellings or additions to dwellings sited up to shared property boundaries (e.g. additions to a semi-detached dwelling or terraced dwellings);

- excavations for new dwellings, additions to dwellings, swimming pools or other substantial structures which are within rock and may result in vibration and or potential damage to any dwelling, associated garage or other substantial structure located upon an adjoining premises;
- as otherwise may be required by the *Principal Certifier*.

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

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

Construction Noise & Vibration Management Plan

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

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

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

Construction Site Management Plan

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

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

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

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

Demolition Work

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

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

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

Demolition & Construction Waste Plan

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

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

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

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

Public Utilities

24. 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.

Demolition & Construction Waste

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

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

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

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

Council Drainage Pipeline

26. The 0.375m Council diameter pipeline burdening the southern side of the site shall be protected during all demolition, excavation and construction works. The applicant shall undertake a CCTV video survey of the pipeline and submit it to Council's Drainage Asset Engineer prior to commencing of any excavation works. The Principal Certifier shall ensure compliance with this requirement.

Sediment Control

27. Suitable erosion/sediment control measures must be provided around the lowest, eastern portion/levels of the site so as to prevent sediment and similar being washed directly into the adjoining native bushland and ocean, with the Principal Certifier to ensure that appropriate measures are installed prior to commencement and then maintained throughout the course of works, until completion.

Amended Stormwater Drainage Plan

28. The Stormwater Discharge – Garden & Pool Level Plan by Zimmerman Engineers, dwg 08, issue C, dated 30/06/22 must be amended to show that the 100mm UPVC stormwater line, Discharge Control Pit and Precast Concrete Headwall that are currently shown along the northern boundary, at the site northeast site corner will be deleted so as to prevent ongoing damage/scouring/weed invasion of Lurline Bay, with all drainage infrastructure needing to be formally directed and connected to the existing underground 375mm diameter stormwater pipe along the opposite, southern boundary, at the southeast site corner.
29. An amended plan complying with the requirements specified above must be submitted to, and be approved by, the Principal Certifier, who must then ensure that this is delivered as part of the works on-site.

NOTE: Refer also to Stormwater Drainage condition later in this report.

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

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

Site Signage

31. 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

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

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

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

Removal of Asbestos Materials

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

- Occupational Health & Safety legislation and WorkCover NSW requirements
- Randwick City Council's Asbestos Policy
- A WorkCover licensed demolition or asbestos removal contractor must undertake removal of more than 10m² of bonded asbestos (or as otherwise specified by WorkCover or relevant legislation). Removal of friable asbestos material must only be undertaken by contractor that holds a current friable asbestos removal licence. A copy of the relevant licence must be provided to the Principal Certifier.
- On sites involving the removal of asbestos, a sign must be clearly displayed in a prominent visible position at the front of the site, containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' and include details of the licensed contractor.
- Asbestos waste must be stored, transported and disposed of in compliance with the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Operations (Waste) Regulation 2005*. Details of the landfill site (which must be lawfully able to receive asbestos materials) must be provided to the Principal Certifier.
- A Clearance Certificate or Statement, prepared by a suitably qualified person (i.e. an occupational hygienist, licensed asbestos assessor or other competent person), must be provided to Council and the Principal Certifier upon completion of the asbestos related works which confirms that the asbestos material have been removed appropriately and the relevant conditions of consent have been satisfied.

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

Excavations, Back-filling & Retaining Walls

34. 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.

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Support of Adjoining Land

35. 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.
36. Prior to undertaking any demolition, excavation or building work in the following circumstances, a report must be obtained from a *professional engineer* which details the methods of support for the dwelling or associated structure on the adjoining land, to the satisfaction of the *Principal Certifier*:
- when undertaking excavation or building work within the zone of influence of the footings of a dwelling or associated structure that is located on the adjoining land;
 - when undertaking demolition work to a wall of a dwelling that is built to a common or shared boundary (e.g. semi-detached or terrace dwelling);
 - when constructing a wall to a dwelling or associated structure that is located within 900mm of a dwelling located on the adjoining land;
 - as may be required by the *Principal Certifier*.

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

Sediment & Erosion Control

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

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

Public Safety & Site Management

38. Public safety and convenience must be maintained at all times during demolition, excavation and construction works and the following requirements must be complied with:
- a) Public access to the building site and materials must be restricted by existing boundary fencing or temporary site fencing having a minimum height of 1.5m, to Council's satisfaction.

Temporary site fences are required to be constructed of cyclone wire fencing material and be structurally adequate, safe and constructed in a professional manner. The use of poor quality materials or steel reinforcement mesh as fencing is not permissible.
 - b) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.
 - c) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times. Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.
 - d) All building and site activities (including storage or placement of materials or waste and concrete mixing/pouring/pumping activities) must not cause or be likely to cause 'pollution' of any waters, including any stormwater drainage systems, street gutters or roadways.

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

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

Site Signage

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

Survey Requirements

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

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

Building Encroachments

41. 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

42. Any openings within or upon the road, footpath, nature strip or in any public place (i.e. for proposed drainage works or installation of services), must be carried out in accordance with the following requirements, to the satisfaction of Council:

- A *Road / Asset Opening Permit* must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the *Roads Act 1993* and all of the conditions and requirements contained in the *Road / Asset Opening Permit* must be complied with.
- The owner/builder must ensure that all works within or upon the road reserve, footpath, nature strip or other public place are completed to the satisfaction of Council, prior to the issuing of a *final occupation certificate* for the development.
- Relevant *Road / Asset Opening Permit* fees, repair fees, inspection fees and security deposits, must be paid to Council prior to commencing any works within or upon the road, footpath, nature strip or other public place.

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

Tree Management

43. Approval is granted for removal of the small Bottlebrush that is located just beyond the front property boundary, on Council's land, to the north of the driveway, wholly at the applicant's cost, along with all other vegetation within this development site, including those shrubs in the front setback and the overgrown weeds and clumps of *Musa* (Banana) in the rear setback, so as to accommodate the significant excavations and civil works that are shown for these same areas, subject to full implementation of the approved Landscape Plans.

Weed Removal

44. The mass of overgrown weeds throughout the lower, rear portion of this site must also be formally removed, eradicated and disposed of from site so as to eliminate future invasions into the adjoining Lurline Bay Foreshore, with details of how this is to be achieved to be submitted to, and be approved by, the Principal Certifier.

Council Drainage Easement – Building Footings

45. All proposed footings located adjacent to the Council drainage easements located on the southern side of the site shall either be:

1. Founded on rock,
OR
2. Extended below a 30 degree line taken from the level of the pipe invert at the edge of the drainage reserve/easement (angle of repose).

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

46. There is to be no storage of building materials/machinery etc within the Council Drainage Easement at any stage during the demolition/building works. The Principal Certifier is to ensure compliance with this requirement.

Stormwater Drainage

47. The proposed development shall be drained in general accordance with the submitted detailed drainage plans by *Zimmerman Engineers, Project No 2814, Drwg No's 01-08, Issue C, Dated 30.06.2022*

Note: The drainage plans/works are to include the amendment where the 100mm UPVC stormwater line, Discharge Control Pit and Precast Concrete Headwall that were proposed along the northern boundary, at the site northeast site corner being deleted and all drainage infrastructure needing to be formally directed and connected to the existing underground 375mm diameter stormwater pipe along the opposite, southern boundary, at the southeast site corner

Note: Connection to Council's 0.375m Stormwater Pipeline shall be in accordance with Council's Drainage Assets Engineers requirements and specifications.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

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

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

Occupation Certificate Requirements

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

BASIX Requirements & Certification

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

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

Swimming Pool Safety

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

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

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

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

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

Spa Pool Safety

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

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

Swimming Pool & Spa Pool Requirements

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

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

Notification of Swimming Pools & Spa Pools

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

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

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

Street and/or Sub-Address Numbering

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

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

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

Council's Infrastructure, Vehicular Crossings & Road Openings

55. The owner/developer must meet the full cost for a Council approved contractor to:
- a) Construct a new concrete vehicular crossing and layback at kerb opposite the vehicular entrance to the site, Council's specifications and requirements.
 - b) Remove any redundant concrete vehicular crossing and layback and to reinstate the area with concrete footpath, turf and integral kerb and gutter to Council's specifications and requirements.
 - c) Construct a concrete footpath & steps opposite the pedestrian entrance to the site to Council's specifications and requirements including any associate handrails etc.
56. The applicant must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.
57. All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must

be carried out in accordance with Council's "Crossings and Entrances – Contributions Policy" and "Residents' Requests for Special Verge Crossings Policy" and the following requirements:

- a) Details of the proposed civil works to be carried out on Council land must be submitted to Council in a Civil Works Application Form. Council will respond, typically within 4 weeks, with a letter of approval outlining conditions for working on Council land, associated fees and workmanship bonds. Council will also provide details of the approved works including specifications and construction details.
- b) Works on Council land must not commence until the written letter of approval has been obtained from Council and heavy construction works within the property are complete. The work must be carried out in accordance with the conditions of development consent, Council's conditions for working on Council land, design details and payment of the fees and bonds outlined in the letter of approval.
- c) The civil works must be completed in accordance with the above, prior to the issuing of an occupation certificate for the development, or as otherwise approved by Council in writing.

Stormwater Drainage

58. The applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced Hydraulic Engineer confirming that the design and construction of the stormwater drainage system complies with Australian Standard 3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and the conditions of this development consent, which includes the redirection of the bottom northeast corner drainage to the 375mm pipeline at the southeast corner of the site.

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

Landscape Certification

59. Prior to any Occupation Certificate, certification from a qualified professional in the Landscape industry must be submitted to, and be approved by, the Principal Certifier, confirming the date that the completed landscaping was inspected, and that it has been installed substantially in accordance with the Amended Landscape Plans by Lone Pine Landscapes, dwg's LPL_1401 – 1407, rev 03, dated 12/09/22, as well as any relevant conditions of consent.
60. Suitable strategies must then be implemented to ensure that the landscaping is maintained in a healthy and vigorous state until maturity, for the life of the development.
61. The nature-strip upon Council's footway shall be re-graded and re-turfed with Kikuyu Turf rolls, including turf underlay, wholly at the applicant's cost, to Council's satisfaction, prior to any Occupation Certificate.

Council's Drainage Pipeline

62. The applicant shall undertake another CCTV survey of the pipeline upon completion of the works to assess the condition of the pipeline. The applicant will be required to meet all costs associated with repairing/replacing any sections of the pipeline that are damaged as a result of the development prior to the issue of 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.

- External Lighting**
63. External lighting to the premises must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance.
- Waste Management**
64. Adequate provisions are to be made within the premises for the storage and removal of waste and recyclable materials, to the satisfaction of Council.
- Plant & Equipment – Noise Levels**
65. The operation of all plant and equipment on the premises shall not give rise to an 'offensive noise' as defined in the Protection of the Environment Operations Act 1997 and Regulations.
- In this regard, the operation of the plant and equipment shall not give rise to an LAeq, 15 min sound pressure level at any affected premises that exceeds the background LA90, 15 min noise level, measured in the absence of the noise source/s under consideration by more than 5dB(A) in accordance with relevant NSW Environment Protection Authority (EPA) Noise Control Guidelines.
- Swimming/Spa Pools**
66. The pool plant and equipment shall not be operated during the following hours if the noise emitted can be heard within a habitable room in any other residential premises, or, as otherwise specified in relevant Noise Control Regulations:
- before 8.00am or after 8.00pm on any Sunday or public holiday; or
 - before 7.00am or after 8.00pm on any other day.
- Air Conditioners**
67. Air conditioning plant and equipment shall not be operated during the following hours if the noise emitted can be heard within a habitable room in any other residential premises, or, as otherwise specified in relevant Noise Control Regulations:
- before 8.00am or after 10.00pm on any Saturday, Sunday or public holiday; or
 - before 7.00am or after 10.00pm on any other day.
- Rainwater Tanks**
68. The operation of plant and equipment associated with rainwater tanks are to be restricted to the following hours if the noise emitted can be heard within a habitable room in any other residential premises:
- before 8.00am or after 8.00pm on weekends or public holiday; or
 - before 7.00am or after 8.00pm on weekdays.
- Use of parking spaces**
69. The car spaces within the development are for the exclusive use of the occupants of the building. The car spaces must not be leased to any person/company that is not an occupant of the building.
- Canopy Tree**
70. The canopy tree in the front setback must be a maximum mature height of 10m.

Development Application Report No. D64/22

Subject: 311-313 Anzac Parade, Kingsford (DA/317/2022)

Executive Summary

Proposal:	Demolition of the existing structures and the construction of a nine storey co-living development
Ward:	West Ward
Applicant:	MHN Design Union Pty Ltd
Owner:	Forelead Pty Ltd & Great Golden Star Pty Ltd
Cost of works:	\$11,220,000
Reason for referral:	Developer has offered to enter into a planning agreement and a Class 1 deemed refusal appeal has been filed with the LEC

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/317/2022 for the demolition of the existing structures and the construction of a nine storey co-living development, at Nos. 311-313 Anzac Parade, Kingsford, for the following reasons:

1. The proposal does not comply with the provisions of State Environmental Planning Policy (Housing) 2021; in particular:
 - a. Pursuant to Clause 69(1)(b), the proposed lot size of 645.9m² does not meet the 800m² minimum lot size requirements for co-living housing.
 - b. Pursuant to Clause 69(1)(c), the proposal does not include an appropriate workspace for the manager, either within the communal living area or in a separate space.
 - c. Pursuant to Clause 69(1)(e), Council's Engineer has confirmed the proposal results in a parking shortfall of 8 spaces and 14 spaces is required.
 - d. Pursuant to Clause 69(1)(f), no communal or private laundries including external clothes drying facilities have been provided for the future occupants.
 - e. Pursuant to Clause 69(2)(b), the proposal does not comply with the 12m separation requirements in the ADG for privacy.
 - f. Pursuant to Clause 69(2)(f), the cumulative non-compliances result in a development that is not compatible with the desired future character of the precinct.
 - g. Pursuant to Clause 69(2)(h), the proposed bicycle parking spaces do not comply with the minimum requires of AS 2890.3.
2. The proposal does not comply with the provisions of the Randwick Local Environmental Plan 2012 (RLEP) in particular:
 - a. The proposal is inconsistent with objectives dot points 4, 5 and 6 of B2 Local Centre zone pursuant to Clause 2.3 of RLEP 2012.
 - b. The proposal does not satisfy the requirements under Clause 4.6 in that the request for the variation of the height of buildings (Clauses 4.3 and 6.17) development standard is not well founded, not in accordance with the relevant objectives of the standards and the B2 zone.
 - c. Pursuant to Clauses 6.11(3) and (4), the proposal does not exhibit design excellence.

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- d. Pursuant to Clauses 6.20(1) and (3), the proposal does not uphold the objectives of the active frontages.
3. The proposal does not comply with the provision of Randwick Comprehensive Development Control Plan 2013 (RDCP 2013) in particular:
 - a. Pursuant to Part 4 in the K2K RDCP, the proposal does not uphold the provisions relating to design excellence.
 - b. Pursuant to Part 6 in the K2K RDCP, the proposal does not uphold the objectives or comply with the controls for site frontage and building height.
 - c. Pursuant to Part 10.3 in the K2K RDCP, the proposal is not consistent with the Block 13 envelope controls and desired future character statement as a result of the height non-compliance.
 - d. Pursuant to Part 12 in the K2K RDCP, the floor to ceiling heights are considered excessive and contribute to the height non-compliance which is considered unsatisfactory.
 - e. Pursuant to Part 19 in the K2K RDCP, the ground floor level street frontage incorporates 52% (6.9m) of transparent glazing which does not comply with the 80% requirement. The location of the electrical substation should be relocated away from the front facade for retail activation.
 - f. Pursuant to Part 20 in the K2K RDCP, the proposal provides 16.3% of the site area as landscaping which does not comply with the 100% requirement.
 - g. Pursuant to Part 31 in the K2K RDCP, the alternative floor space ratio and building height permitted under Clause 6.17 of the RLEP and planning agreement has not been agreed by Council.
4. Insufficient information – a full and robust assessment of the proposal cannot be completed as there are a number of deficiencies and lack of detail in the information submitted with the development application including:
 - a. Pursuant to Clause 4.6 of the Resilience and Hazards SEPP, Council's Environmental Health Officer has stated a Preliminary Site Contamination Investigation must be undertaken in accordance with the NSW EPA Guidelines, and Council's Contaminated Land Policy 1999. Should the Detailed Site Investigation Report identify that the land is contaminated and the land requires remedial works to meet the relevant Health Based Investigation Level, a Remediation Action Plan (RAP) is required.
 - a. Pursuant to Clause 5.10 of the RLEP, the application did not include a Heritage Impact Statement/Heritage Impact Assessment addressing how the development responds sympathetically to the nearby contributory buildings, as required by the RDCP.
 - b. Pursuant to Part 6 of the K2K RDCP, the Applicant's has not demonstrated that amalgamation with the adjacent sites has been undertaken including letters of offer, information regarding purchase price, timing of payments of details, any special conditions attached to any officer or independent valuations.
 - c. Pursuant to Part 14 in the K2K RDCP, Council's Environmental Health Officer has confirmed the acoustic report does not contain sufficient information with regards to the assessment of all outdoor areas including advice on permitted times of usage and permitted numbers. As such, compliance with the specified criteria has not been demonstrated.

- d. Pursuant to Part 15 in the K2K RDCP, natural ventilation diagrams have not been submitted for the development and concerns are raised in relation to the depth and number of single aspect rooms. No ceiling fans have been indicated to assist the opening windows and louvres.
 - e. Pursuant to Part 20 in the K2K RDCP, the landscaping calculations do not specify the area that is included for the communal open space, ground plane, green walls and the roof top.
 - f. Pursuant to Parts 22 and 23 of the K2K RDCP, a site-wide sustainability strategy that includes provisions relating to water sensitive urban design has not been submitted for assessment.
 - g. Pursuant to Part 22 of the K2K RDCP, an Automated Waste Collection System (AWCS) including FOGO bins have not been provided.
 - h. Pursuant to Part 26 of the K2K RDCP, the Plan of Management does not specify the maximum number of students to be accommodated at any one time, information for community and education services, or management procedures over holiday periods.
 - i. Pursuant to Part 26 of the K2K RDCP, Council's Environmental Health Officer has stated that the acoustic report does contain sufficient information with regards to the assessment of all outdoor areas including advice on permitted times of usage and permitted numbers. As such, compliance with the specified criteria has not been demonstrated.
 - j. Pursuant to Part 29 in the K2K RDCP, an arts statement has not been submitted for assessment.
 - k. Pursuant to Part 33 in the K2K RDCP, no details have been submitted to show the location of future signage for the retail component at the ground floor level facing Anzac Parade.
5. Upon lodgement of the application, the proposal was not identified as integrated development and notified for 28 days in accordance with the Randwick Community Participation Plan.

Attachment/s:

Nil

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1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the developer has offered to enter into a planning agreement and the applicant filed a Class 1 deemed refusal appeal with the LEC. The Class 1 appeal was filed on the 23/08/2022 and is listed for a Section 34 Conciliation Conference on 09/11/2022.

The proposal seeks development consent for the construction of 65 co-living single rooms in two buildings comprising 9-storeys at the Anzac Parade frontage and 6-storeys to the rear fronting Houston Lane. The site is subject to the Block 13 Building Controls in accordance with Part E6 Kensington to Kingsford Town Centres Development Control Plan (K2K RDCP). Refer to Figures 1-2 below.

The proposal is classified as integrated development and general terms of approval have been provided by Water NSW under S90(2) of the *Water Management Act 200*. The proposal was also referred to RMS, TfNSW, Ausgrid, Sydney Airport and NSW Police for concurrence. The concurrence from the relevant referral bodies is provided in Appendix 1.

The key issues associated with the proposal relate to non-compliances with SEPP Housing 2021 (minimum lot size requirements, managers workspace, laundry facilities, ADG separation requirements and desired future character), Randwick Local Environmental Plan (B2 local centre zone objectives, height of buildings non-compliance, Clause 4.6 assessment, design excellence and active frontages), Randwick Development Control Plan for Kensington to Kingsford Town Centres (design excellence, site frontage, building height, Block 13 envelope controls, floor to ceiling heights, transparent glazing at the ground floor level frontage, landscaping and alternative height of buildings planning agreement).

Insufficient information has also been provided with regards to the SEPP Resilience and Hazards, amalgamation with the adjoining sites, acoustic impacts, natural ventilation of the co-living rooms, landscaping calculations, a site-wide sustainability strategy, automated waste collection system, plan of management, arts statement, and advertising signage details.

A detailed assessment of the above-mentioned non-compliances is provided throughout this report. As such, the proposal is recommended for refusal.

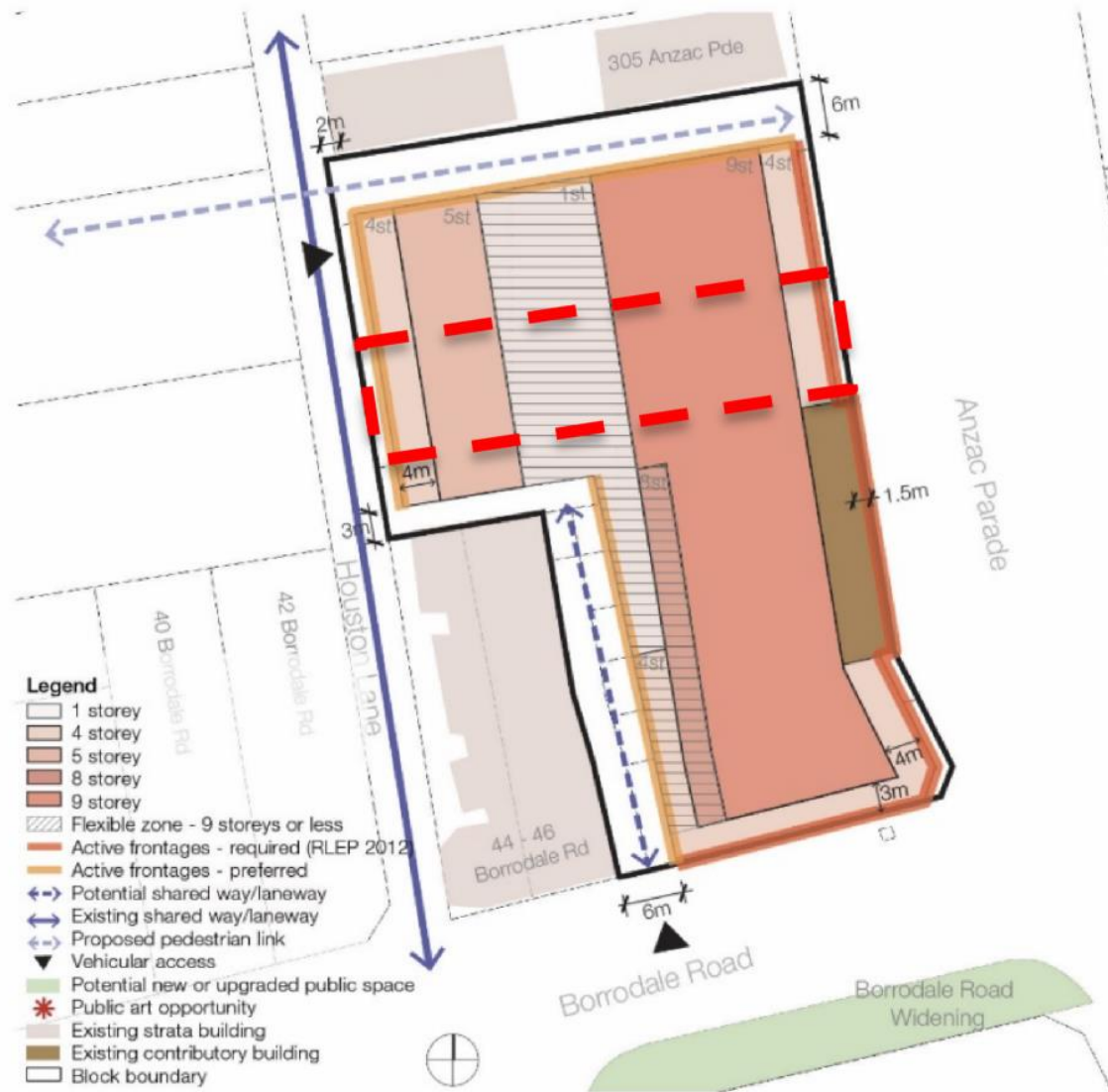


Figure 1 – Block 13

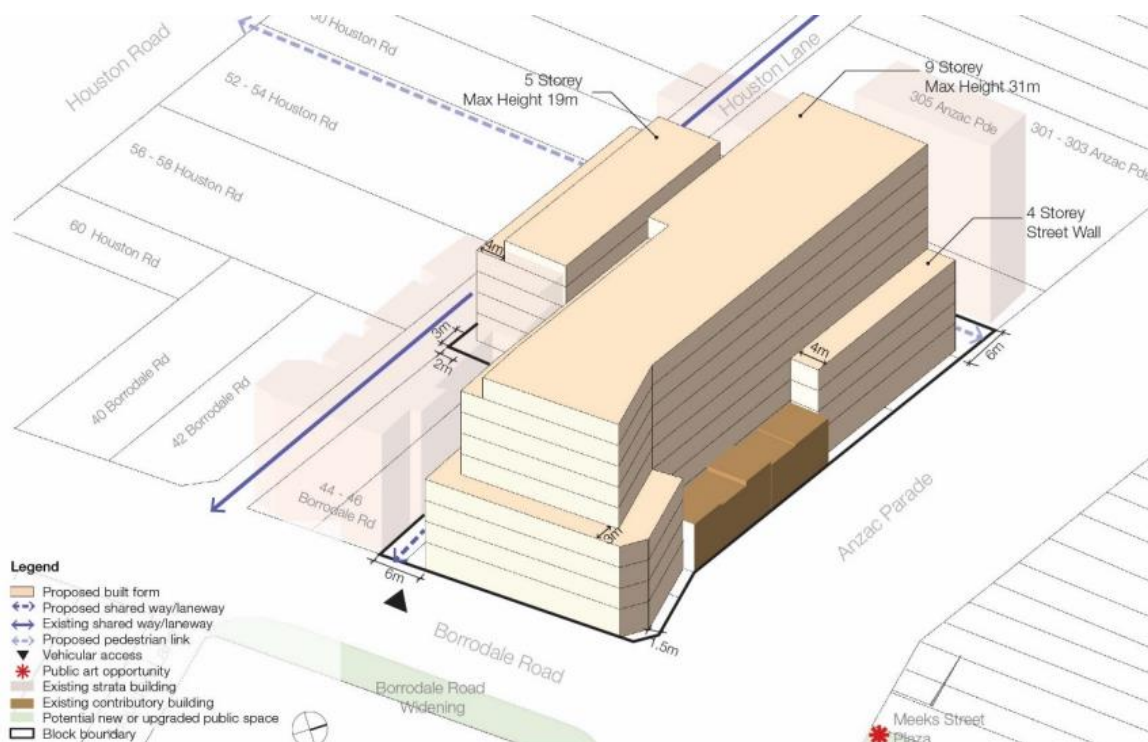


Figure 2 – Block 13 Building Envelope Controls

2. Site Description and Locality

The subject site is legally described as Lot 1002 in DP 668944 and encompasses a total site area of 645.9m². The subject site has a frontage of 13.31m to Anzac Parade, a site depth of 50.285m and 50.495m along the northern and southern side boundaries, and a 12.65m rear frontage to Houston Lane. The site is relatively flat with a 0.85m fall between the front and rear boundaries. The site is occupied by a two storey shop top housing development with on-site parking at the rear facing Houston Lane. The subject site adjoins 5 sites to the south that are identified as contributory heritage items in the RDCP, refer to the buildings to the left in Figure 3 below.



Figure 3 – Front view of subject site from Anzac Parade



Figure 4 – Rear view of subject site from Houston Lane

3. Relevant history

Nil.

4. Proposal

The proposal seeks development consent for:

- Demolition of the existing buildings and associated structures.
- Ground floor retail space facing Anzac Parade;
- Construction of 65 co-living single rooms in two buildings comprising 9 -storeys at the Anzac Parade frontage and 6-storeys to the rear fronting Houston Lane;
- One (1) basement level accessed by Houston Lane providing car parking for a total of 6 car parking spaces, including 1 accessible space, 66 bicycle spaces, 5 visitor bicycle spaces and 13 motorcycle spaces; and
- Communal landscaped terraces on levels 1, 5 (at the rear building) and level 9 (at the front building).

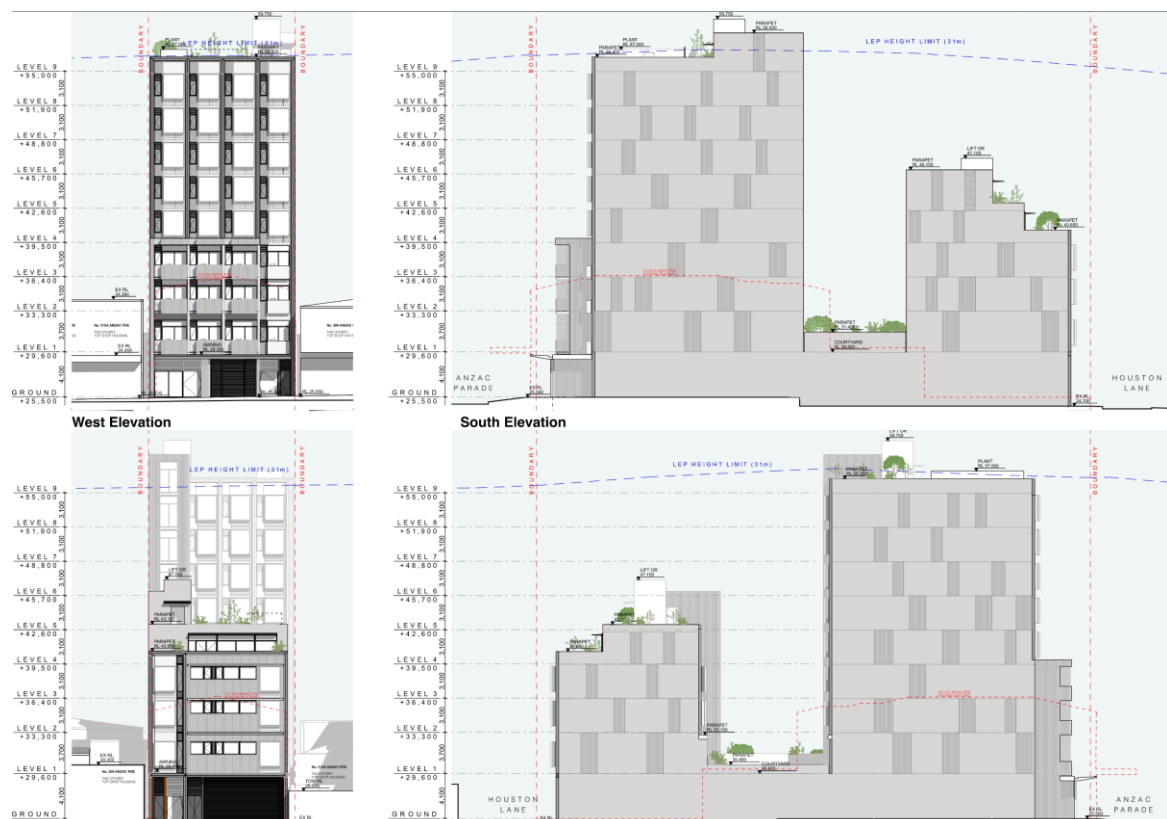


Figure 5 – Notification Plans

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development for 14 days in accordance with the Randwick Community Participation Plan. The proposal should have been notified for 28 days as integrated development. On the basis that the proposal is recommended for refusal, renotification was not undertaken and this forms a reason for refusal.

The following submission was received as a result of the notification process:

- 48 Houston Road, Kingsford

Issue	Comment
Traffic and parking	As discussed in Appendix 1, Council's Engineer has confirmed the proposed number of parking spaces does not satisfy Council's requirements and this forms a reason for refusal.
Waste collection	The proposal has not included an automated waste management collection system as per the requirements of the K2K RDCP. This forms a reason for refusal.

6. Relevant Environment Planning Instruments

6.1. SEPP (Housing) 2021

The subject application is made pursuant to SEPP Housing 2021. Clause 68 provides the non-discretionary development standards that, if complied with, prevent Council from requiring more onerous standards. Clause 69 provides the standards for co-living housing. An assessment of these standards is provided below:

Assessment of Clause 68 – Non-discretionary development standards		
<i>Standard</i>	<i>Assessment</i>	<i>Compliance</i>
Floor Space Ratio (a) for development in a zone in which residential flat buildings are permitted—a floor space ratio that is not more than— (i) the maximum permissible floor space ratio for residential accommodation on the land, and (ii) an additional 10% of the maximum permissible floor space ratio if the additional floor space is used only for the purposes of co-living housing.	Residential flat buildings are permitted within the B2 Local Centre zone and as such, the maximum permissible FSR is 4:1 and the proposed FSR of 3.65:1 complies.	Yes
Communal Living (c) for co-living housing containing more than 6 private rooms— (i) a total of at least 30m ² of communal living area plus at least a further 2m ² for each private room in excess of 6 private rooms, and (ii) minimum dimensions of 3m for each communal living area.	A total of 161m ² of communal living (indoor) is provided which meets the 160m ² requirement.	Yes
Communal Open Spaces (d) communal open spaces— (i) with a total area of at least 20% of the site area, and (ii) each with minimum dimensions of 3m,	A total of 278m ² of communal living (outdoor) is provided which equates to 25% of the site.	Yes

<p>Parking</p> <p>(e) unless a relevant planning instrument specifies a lower number—</p> <p>(i) for development on land in an accessible area—0.2 parking spaces for each private room, or</p> <p>(ii) otherwise—0.5 parking spaces for each private room,</p>	<p>Council's Engineer has confirmed the proposal does not provide sufficient parking spaces as discussed in Appendix 1.</p>	<p>No</p>
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Assessment of Clause 69 – Standards for co-living housing		
Standard	Assessment	Compliance
<i>(1) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority is satisfied that—</i>		
<p>(a) each private room has a floor area, excluding an area, if any, used for the purposes of private kitchen or bathroom facilities, that is not more than 25m² and not less than—</p> <p>(i) for a private room intended to be used by a single occupant—12m², or</p> <p>(ii) otherwise—16m², and</p>	<p>The room sizes for single and double occupants comply with the minimum dimension requirements.</p>	<p>Yes</p>
<p>(b) the minimum lot size for the co-living housing is not less than—</p> <p>for development on land in Zone R2 Low Density Residential—600m², or</p> <p>for development on other land—800m², and</p>	<p>The subject site is 645.9m² which does not comply with the 800m² requirement.</p>	<p>No</p>
<p>(d) the co-living housing will contain an appropriate workspace for the manager, either within the communal living area or in a separate space, and</p>	<p>No managers unit or allocated workspace has been shown on the architectural plans.</p>	<p>No</p>
<p>(e) for co-living housing on land in a business zone—no part of the ground floor of the co-living housing that fronts a street will be used for residential purposes unless another environmental planning instrument permits the use, and</p>	<p>The ground floor level that fronts Anzac Parade is allocated to the retail space and lobby. No residential uses are proposed on the ground floor level.</p>	<p>Yes</p>
<p>(f) adequate bathroom, laundry and kitchen facilities will be available within the co-living housing for the use of each occupant, and</p>	<p>All rooms have bathroom and kitchen facilities, however, no communal or private laundries have been provided.</p>	<p>No</p>
<p>(g) each private room will be used by no more than 2 occupants, and</p>	<p>If the application was recommended for approval, this would be required by condition of consent.</p>	<p>Yes</p>
<p>(h) the co-living housing will include adequate bicycle and motorcycle parking spaces.</p>	<p>Council's Engineer has confirmed the number of bicycle and motorcycle parking spaces complies, however do not appear to comply with the minimum size</p>	<p>No</p>

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	dimensions required by AS 2890.3. This forms a reason for refusal.	
<i>(2) Development consent must not be granted for development for the purposes of co-living housing unless the consent authority considers whether—</i>		
(b) if the co-living housing has at least 3 storeys—the building will comply with the minimum building separation distances specified in the Apartment Design Guide, and	The proposal complies with the nil side setback alignment in accordance with Council's K2K RDCP. The rooms within the development do not comply with the 12m separation requirement stipulated in the ADG and this forms a reason for refusal.	No
(c) at least 3 hours of direct solar access will be provided between 9am and 3pm at mid-winter in at least 1 communal living area, and	The communal living area at level 1 receives 2 hours of sunlight, however the area at level 4 receives 4 hours which complies.	Yes
(f) the design of the building will be compatible with— (i) the desirable elements of the character of the local area, or (ii) for precincts undergoing transition—the desired future character of the precinct.	For the reasons discussed in this report, the proposed non-compliances result in a development that is not consistent with the desired future character of the area as stipulated in the K2K RDCP development objectives and the controls.	No

6.2. SEPP (Resilience and Hazards) 2021

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

In light of the above, Clause 4.6 of the Resilience and Hazards SEPP requires that the consent authority must consider prior to granting consent whether the land is contaminated (previously Clause 7 in SEPP 55). Council's Environmental Health Officer has confirmed the application documents provide insufficient information to address potential contamination and provided the following comments:

“The following information is required to be provided with the development application.

1. *A Preliminary Site Contamination Investigation must be undertaken and a report, prepared by a suitably qualified environmental consultant is to be submitted to Council prior to determination of the application.*

This Preliminary Investigation shall be carried out in accordance with the requirements of the NSW EPA Guidelines and is to be undertaken by a suitably qualified environmental consultant. The Preliminary Site Contamination Investigation is to identify any past or present potentially contaminating activities and must be provided to Council, in accordance with Council's Land Contaminated Land Policy. The Preliminary Site Contamination Investigation report is to be submitted to Council prior to any consent being granted.

Should the Preliminary Site Contamination Investigation be unable to justifiably conclude that the site is currently suitable for the proposed use, a Detailed Site Contamination Investigation must be undertaken by an independent appropriately qualified environmental consultant.

2. *The reports are to be carried out in accordance with Council's Contaminated Land Policy 1999 and relevant NSW EPA Guidelines for Contaminated Sites. Also, as*

detailed in the Planning Guidelines to SEPP 55 – Remediation of Land, the report is to assess the nature, extent and degree of contamination upon the land. The Detailed Site Contamination report must be sufficiently detailed and be submitted to and approved by Council.

- i) *Should the Detailed Site Investigation Report not find any site contamination to both land and groundwater, the conclusion to the report must clearly state that 'the land is suitable for its intended land use' posing no immediate or long term risk to public health or the environment and is fit for occupation by persons, together with clear justification for the statement.*
- ii) *Should the Detailed Site Investigation Report identify that the land is contaminated and the land requires remedial works to meet the relevant Health Based Investigation Level, a Remediation Action Plan (RAP) is required to be submitted to and approved by Council prior to commencing remediation works.*

The RAP is also required to be reviewed and be acceptable to the accredited site auditor.

The RAP is to be prepared in accordance with the relevant Guidelines made or approved by NSW Office of Environment & Heritage/Environment Protection Authority, including the Guidelines for Consultants Reporting on Contaminated Sites.

This RAP is to include procedures for the following:

- *Excavation of Hydrocarbon-contaminated soil,*
 - *Validation sampling and analysis,*
 - *Prevention of cross contamination and migration or release of contaminants,*
 - *Site management planning,*
 - *Groundwater remediation, monitoring and validation,*
 - *Procedures for any unexpected finds.*
3. *Any remediation works are to be carried out in accordance with the requirements of the Contaminated Land Management Act 1997, environmental planning instruments applying to the site, guidelines made by the NSW Environment Protection Authority (EPA) and NSW Planning & Infrastructure, Randwick City Council's Contaminated Land Policy 1999 and the Protection of the Environment Operations Act 1997.*
 4. *Should the remediation strategy including the 'capping' or 'containment' of any contaminated land, details are to be included in the Site Audit Statement (SAS) and Environmental Management Plan (EMP) to the satisfaction of the Site Auditor.*

Details of the SAS and EMP (including capping and containment of contaminated land) are also required to be included on the Certificate of Title for the subject land under the provisions of section 88 of the Conveyancing Act 1919.
 5. *In relation to any asbestos contamination, a comprehensive remediation strategy and remedial action plan must be developed, to the satisfaction of the Site Auditor and NSW Department of Health or other suitably qualified and experienced specialist to the satisfaction of the Site Auditor.*

The remediation strategy and remedial action plan must demonstrate that the land will be remediated in accordance with relevant guidelines (if any) and to a level or standard where no unacceptable health risk remains from asbestos exposure, which shall be verified upon completion of the remediation works to the satisfaction of the Site Auditor."

Considering the above, the proposal does not satisfy the requirements of the Resilience and Hazards SEPP. This forms a reason for refusal.

6.3. SEPP (Building Sustainability Index: BASIX) 2004

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

6.4. Randwick Local Environmental Plan 2012 (LEP)

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

The objectives of the B2 are as follows:

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

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

1. The proposed development results in non-compliance with the height of buildings development standard established in Clause 6.17(4)(a) of the RLEP.
2. The 6.9m non-compliance with the minimum site frontage results in a lack of space at the ground floor level and requires a disproportionate amount of services which lacks balance with the social and public spaces of the building including the connection to the upper levels.
3. The built form does not adequately consider the existing development pattern, having regard to the impacts to the neighbouring heritage contributory items, nor does it complement the desired future built form outcomes or neighbourhood character.
4. The lack of adequate built form transition from the height non-compliance contributes to the overbearing bulk and scale contrast to the contributory items to the south, overshadowing and streetscape, which is inconsistent with the objectives of Zone B2 Local Centre.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.4: Floor space ratio (max)	0.4:1	3.65:1	Yes
Cl 4.3: Building height (max)	19m & 31m	33.8m	No

6.4.1. Clause 4.6 - Exceptions to development standards

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

6.4.2. Clause 5.10 - Heritage conservation

The subject site is not a local/state heritage item, located in a heritage conservation area or nearby any items of significance. Notwithstanding this, the subject site adjoins contributory items that are identified in the K2K RDCP Block 13 controls. Council's Heritage Officer has confirmed that insufficient information has been submitted to assess the likely impacts on the adjoining contributory items and provided the following response. Concerns are also raised in relation to the design of the

podium levels, tower elements and the impacts to the neighbouring contributory built forms. These form reasons for refusal.

"It is suggested that the development application submission should include a Heritage Impact Statement/Heritage Impact Assessment addressing how the development responds sympathetically to the nearby contributory buildings, as required by the Objectives and Controls in the Heritage Conservation section of the DCP.

Any development proposal for the site should be consistent with floor space ratios and building height controls contained in the K2K Planning Proposal, and the Building Envelope Controls contained in the K2K Development Control Plan in order to satisfy the Urban Design and Placemaking Guiding Principle of achieving a sensitive transition in relation to recently constructed development and surrounding established lower scaled residential neighbourhoods, and in order to ensure impacts on the setting and views to and from heritage properties in the vicinity of the site are minimised.

The building generally comprises a 4-storey podium element to Anzac Parade, and a 4-storey podium element to Houston Lane, with the upper levels set back. The Anzac Parade building section however comprises upper floors which are set back 4m from the "building line" while the front walls of the lower floors are set back from the building line by around 2.5m with the front balcony edges of the lower floors on the building line. The Anzac Parade building form comprises a tower element with a weakly defined podium to the street edge, formed by the edges of the cantilevered balconies which project from the apartments behind. There are concerns that the proposal is inconsistent with DCP for new development adjacent to contributory buildings which requires that they incorporate podiums and framed overlays that reference the principal influence line of historic streetscapes, and are cohesive with the established street frontage; and that they be designed to respect the historic scale, proportions and articulation of adjacent contributory built forms, including heights, and solid to void ratios.

The site has a width of around 13m, while the adjacent site to the north is somewhat wider. The ground floor frontage is dominated by a substation which is placed forward of the retail shopfront and residential entry lobby. It is suggested that a better development for the subject site in terms of its ground floor plan and street elevations could be achieved if both sites were amalgamated."

The proposal is therefore not considered to satisfy the relevant provisions in Clause 5.10 of the RLEP.

6.4.3. Clause 6.3 – Earthworks

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

- (i) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
- (ii) the effect of the development on the likely future use or redevelopment of the land,*
- (iii) the quality of the fill or the soil to be excavated, or both,*
- (iv) the effect of the development on the existing and likely amenity of adjoining properties,*
- (v) the source of any fill material and the destination of any excavated material,*
- (vi) the likelihood of disturbing relics,*
- (vii) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- (viii) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

The proposed development shows excavation for the basement adjoining the sites boundaries. The applicant submitted a Geotechnical report indicating that works can be performed whilst supporting the adjoining land. Council's Engineer raises no objections to the proposed on geotechnical, hydrogeological or structural grounds. Should consent be granted a condition is included requiring a report from a suitably qualified and experienced professional engineer which contains Geotechnical details that confirm the suitability and stability of the site for the development and

relevant design and construction requirements to be implemented to ensure the stability and adequacy of the development and adjacent land to the satisfaction of the Certifier.

6.4.4. Clause 6.11 – Design Excellence

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

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

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

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

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

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

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

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

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

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

(2) Despite clauses 4.3 and 4.4, the consent authority may consent to development on a site that results in additional building height or additional floor space, or both, in accordance with subclause (4) if the development includes community infrastructure on the site.

(4) Under subclause (2), a building on land in any of the areas identified on—
(a) the Alternative Building Heights Map—is eligible for an amount of additional building height determined by the consent authority but no more than that which may be achieved by applying the maximum height specified in relation to that area, and

(b) the Alternative Floor Space Ratio Map—is eligible for an amount of additional floor space determined by the consent authority but no

more than that which may be achieved by applying the maximum floor space ratio specified in relation to that area.”

The site is identified on the Alternate Height of Buildings Map referred to in Clause 6.17(4)(a) as having an alternate maximum building height of 31 metres to the front of the site and 19m to the rear of the site. On the Alternate Floor Space Ratio Map referred to in Clause 6.17(4)(b) of the RLEP, the site has an alternative FSR of 4:1.

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

The letter of offer received from the Applicant dated 21 June 2022 proposes to enter into a VPA with the Respondent, for the payment of a monetary contribution in satisfaction of Clause 6.17 of the RLEP rather than incorporating the relevant works as part of the site as per the schedule of community infrastructure under Kensington and Kingsford Town Centres Community Infrastructure Contributions Plan.

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

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

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

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

6.4.6. Clause 6.20 – Active Street Frontages

Clause 6.20 ‘Active Street Frontages at Kensington and Kingsford Town Centres’ of the RLEP applies to the site frontage.

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

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

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

The objective of Clause 6.20(1) is to promote uses that attract pedestrian traffic along certain ground floor street frontages within the Kensington and Kingsford town centres.

The proposed co-living development provides retail space at the ground floor and contributes to the retail activation along Anzac Parade, however, for the reasons discussed in the Key Issues section, the proposal does not uphold the objective in Clause 6.20(1) in that the location of the substation, non-compliance with the minimum frontage width and glazing width is unsatisfactory.

The proposal is not considered to satisfy Clause 6.20 of the RLEP and this forms a reason for refusal.

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.3: Building height (max)	19m-31m	31.68m-33.8m	0.68m-2.8m	9%

The front portion of the building attains a maximum height of 33.8m to the lift overrun, 32.52m to the stair access parapet and 31.68m to the fire/water tank rooms where the 31m alternative building height applies. The rear portion of the building complies where the 19m alternative height applies.

The proposal exceeds the maximum permitted building height by 0.68m-2.8m or 9%. Refer to Figure 6 below noting that the 19m height limit has not been shown.

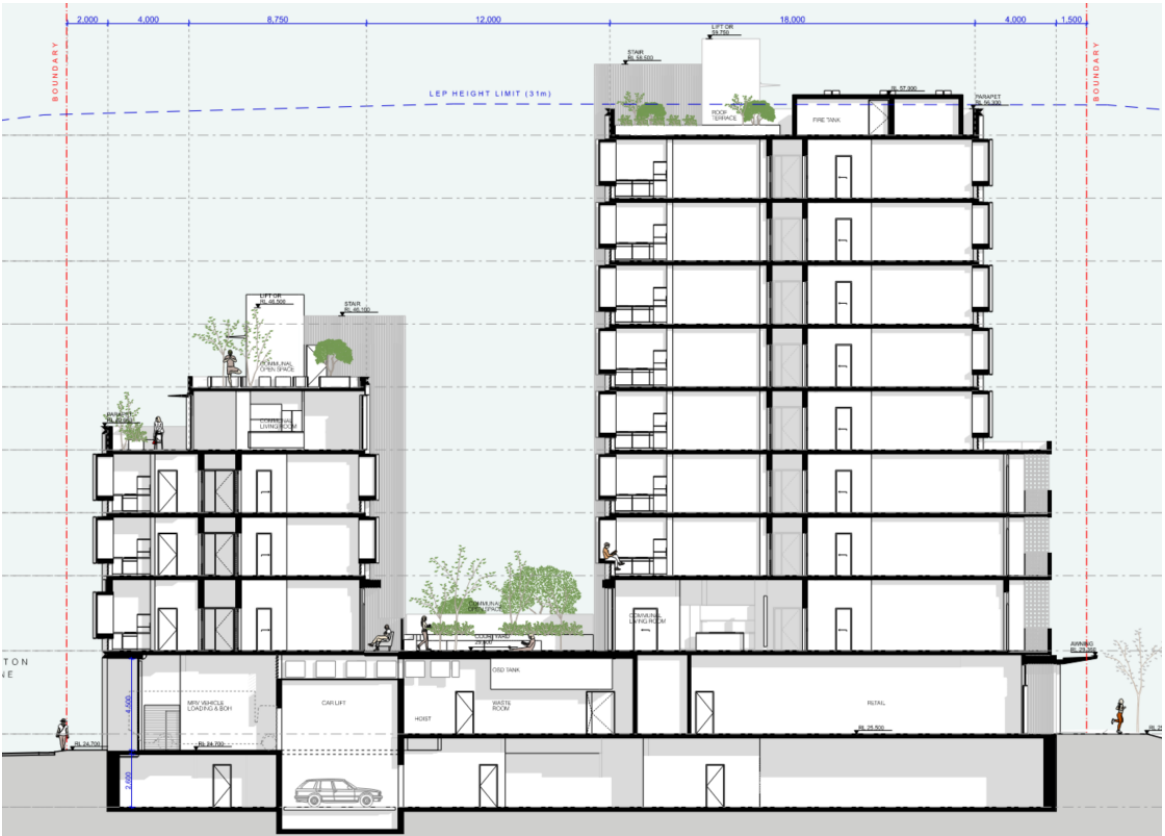


Figure 6 – Section A

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

3. *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.1. **Exception to the building height development standard (Cl 4.3)**

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

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

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

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

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

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

The site is located on the western side of the Kingsford Town Centre and is subject to the controls originally developed through the K2K Planning Strategy and associated Planning Proposal, which permits a 31m and 19m height control subject to delivery of community infrastructure on site. In light of this, the desired future character of the locality is to consist of high-density, mixed-use development with a greater bulk and scale compared to the existing built form within the streetscape.

The development, as proposed, only seeks to vary the height control to deliver an additional communal open space area at the top of both buildings. The variation relates to the required lift overrun, stairs associated with this additional communal benefit, as well as some of the plant the development requires. These structures are set back from the edges of the site, and therefore will not be able to be viewed from the public domain.

The building's height, as perceptible from the street, will therefore appear as compliant with the 31m control or compliant 19m control from Houston Lane.

The proposal is consistent with the DCP height in storeys control, which permits buildings of up to 5 and 9 storeys at this location. The use of the roof area to deliver communal open space is to deliver additional amenity associated with the development, in addition to the communal spaces proposed at lower levels of the development.

The additional height therefore provides an opportunity to concentrate high density development around a transport node whilst facilitating a gradual transition to the lower scaled built form located further southward along Anzac Parade. It is compatible with the built form controls for the block, as well as the approved development to the south and planning controls to the north. For these reasons, it is considered that the proposed development achieves the objective of the standard notwithstanding the non-compliance.

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

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

The site is not located in the immediate vicinity of a heritage item or an HCA. The site is located to the north of three (3) contributory buildings situated at the intersection of Anzac Parade and Darling Street (refer to **Figure 4**). These contributory buildings do not form part of an HCA.

The contributory buildings reach two storeys and have the potential to be redeveloped to support a six (6) storey street wall height in accordance with the DCP. These buildings are also designated a maximum height of 31m in accordance with the LEP controls.

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Figure 4 Location of Surrounding Contributory Buildings (DCP)

Consequently, the variation of the height development standard does not detract from the heritage values in the surrounds and the proposal is considered to achieve the objective notwithstanding the non-compliance.

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

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

Supporting architectural and consultant information confirms that the proposal, and the area of non-compliance related to the height control, will not give rise to additional amenity impacts beyond a development proposal that is entirely compliant with the standard. Further discussion is provided below. The relevant drawings and supporting information are referenced under each particular amenity issue below.

Privacy

The additional height relates to lift overrun and fire stairs to support the proposed rooftop communal area and plant required for the wider development. As the surrounding development currently consists of medium to low scale density developments with comparatively reduced heights, there will be no opportunity for direct sightlines to and from the structures proposed within the non-compliant height.

Building Separation

The exceeding elements of the building have no impact on the development's separation from surrounding properties.

Overshadowing

Overshadowing diagrams are included as part of the architectural package. The diagrams confirm that the additional height will not give rise to shadow impacts that would create any additional overshadowing to surrounding residential properties beyond a compliant envelope.

The overshadowing impacts of the height non-compliant elements of the development, therefore, do not prevent the development from achieving the objective of the development standard.

Private Views

The site is positioned within a mixed-use town centre and interfaces with residential development to the south and west. Due to the density anticipated by the LEP controls along with the strategic distribution of the building's mass, the proposal will not result in unacceptable private view impacts to surrounding properties.

The site is located within a highly urbanised setting whereby the controls permit significant density for the locality. In consideration of the site's context, it can reasonably be anticipated that adjacent properties will experience some degree of view loss from any future development at the site consistent with the planning controls.

The height non-compliance relates to the proposed plant, lift overruns and structures associated with roof terraces on the two buildings. The variation will create no additional impact to the view corridors obtained from private properties beyond that of a compliant scheme.

Visual bulk

The Randwick Development Control Plan 2013 (RDCP 2013) does not identify any significant view corridors or vantage points that require protection. A number of design measures have been incorporated to limit the visual impact of the proposal and non-compliant height when viewed from the general surrounds, including:

- The lift overruns are located centrally to the envelope and will not be perceptible from the ground plane; and
- The facade is highly articulated through expressed facade apertures and textural elements, creating the impression of a fine-grain scale built fabric that offers visual identity to each respective unit.

As a result of the above, the height exceeding elements will create no additional visual bulk impacts when viewed from the surrounding locality.

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

- The proposed floor to ceiling heights comply with the minimum requirements prescribed by Part 12 of the K2K RDCP which requires 3.5m at the ground floor, 3.3m at the first floor and 2.7m at the upper floors. The proposed floor to ceiling height at the ground floor is 3.9m, 3.5 at the first floor and 2.9m for the upper levels. The increased floor to ceiling heights contribute 1.6m to the overall height non-compliance and should be reduced to provide consistency with the future redevelopment of surrounding sites and appropriate transition to the neighbouring contributory items.
- The height of the lift overrun (4.75m) and stair access (3.5m) to the roof top are considered excessive. These components create additional visual bulk and scale when viewed from the streetscape, public domain and neighbouring properties.
- The shadow diagrams submitted with the application do not indicate the additional shadows cast by the non-compliant portion of the rooftop elements. The increased overshadowing undermines the amenity afforded to neighbouring properties and the public domain.

- As discussed by Council's Heritage Officer, insufficient information has been provided to demonstrate that the non-compliant structures result in a satisfactory visual impact to the neighbouring contributory items. Refer to Section 6.4.2.

In conclusion, the applicant's written request has not 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 height development standard as follows:

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118), also 'Rebel MH' and 'Baron' (2019).

The environmental planning grounds relied upon to justify the exceedance of the development standard in the circumstances of the proposal are considered sufficient and specific to the site and the proposed contravention.

As confirmed by supporting consultant reports and addressed throughout this variation request, the non-compliance with the development standard does not result in any adverse environmental planning impacts. Specifically, relative to a complying scheme that reached no higher than 19 and 31m (9 storeys), there will be no loss of significant or iconic views; no additional privacy impacts; unacceptable traffic impacts; adverse visual impacts or additional overshadowing to residential properties.

For the reasons discussed above, it is contended that there are sufficient environmental planning grounds to justify the contravention to the development standard in the circumstances of the case, particularly given that the design provides a tailored and well considered response to the site's constraints and articulation.

Assessing officer's comment:

The responses regarding how the height non-compliance satisfied the objectives of Clause 4.3 in the written request above are not concurred with for the reasons discussed above and detailed in this report. Specifically, the excessive elements at the roof top level, inadequate information regarding the impacts to heritage contributory items and overshadowing which may result in significant adverse amenity and visual impacts to the streetscape, desired future character and neighbouring properties. It is therefore not considered to have adequately demonstrated sufficient environmental planning grounds, with regard to the relevant objectives of the Act, to justify contravention of the building height development standard.

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

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

Assessment against objectives of height standard

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

Assessment against objectives of the B2 zone

The objectives of B2 zone are:

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

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

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

The proposal seeks the delivery of a mixed-use development. The ground floor accommodates continuous retail uses along the Anzac Parade frontage. Residential apartments are proposed at the upper levels and to the rear of the ground level where street activation is not attainable.

The additional height will facilitate the delivery of a new high-quality mixed-use development within the Kingsford Town Centre that is anticipated to undergo a process of urban renewal and be redeveloped for increased density in line with Council's strategic planning aspirations.

The proposed height variation will provide additional amenity to the future residents of the development through additional communal open space, as well as photovoltaic cells to support sustainability for both residential and retail uses.

The additional height will also assist in providing retail uses at street level with compliant ceiling heights that will promote flexibility of use. These uses have the opportunity to accommodate needed services for the community and potentially contribute to the night-time economy.

To encourage employment opportunities in accessible locations.

The proposal incorporates ground-floor retail at the ground-level of the building facing Anzac Parade. This floor space will contribute to an activated public domain and will assist in meeting the target to deliver 6,000 – 6,500m² of employment generating floor space for the Kingsford Town Centre by 2036. The site is located directly opposite the Kingsford Light Rail. Given the proximity to a transport node, the proposal will provide employment opportunities in a highly accessible location.

To maximise public transport patronage and encourage walking and cycling.

The proposal fosters the principles of transit-oriented development by co-locating housing and employment generating floor space on a site positioned within walking distance of the Sydney Light Rail and bus services along Anzac Parade.

The proposal provides a compliant amount of bicycle parking and parking numbers consistent with a transit-oriented development. Whilst consent is sought for additional height, the proposal does not propose a corresponding increase in the quantity of car parking.

For the reasons set out above, the proposal will encourage non-vehicular modes of transport, including walking and cycling.

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

The site is located within the B2 Local Centre zone. The primary function of the zone is to support a mix of uses, including employment generating uses and residential accommodation.

The existing buildings accommodated on the site are outdated. The proposal provides an opportunity to replace this building stock with a high-quality mixed-use development that will assist in revitalising the Kingsford Town Centre.

The contravention of the development standard will facilitate the provision of infrastructure to support the development in the form of communal open space and plant structures such as air conditioning to support the business and residential function of the development.

The retail tenancy is proposed along the Anzac Parade frontage, which will have the potential to contribute to the needs of the community and the night-time economy.

This retail floor space will be delivered alongside the proposed community infrastructure delivery on the site, which together will facilitate the activation of Anzac Parade.

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

The proposal incorporates public domain upgrades within and outside the bounds of the site along Anzac Parade, which represent a substantial public benefit.

An awning is proposed along the street frontage and will enhance pedestrian amenity. The additional height and the overall scale of the development will not result in wind impacts that would compromise pedestrian comfort and safety.

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

Supporting subconsultant reports and the environmental assessment provided within **Section 5.0** of the SEE confirm that the proposal will not result in unacceptable environmental impacts. Specifically, the proposed height variation does not result in any of the following:

- Additional overshadowing impacts beyond a compliant development;
- Impacts to heritage items, HCAs or contributory buildings;
- Building separation that could provide adverse visual privacy impacts;
- Acoustic impacts that are not capable of being managed through the adoption of mitigation measures;
- Unacceptable traffic generation and impacts to the functioning of the surrounding street network; or
- A reduction of on-street car parking or increased car dependency which may impact residents in the zone.

In consideration of the above, the additional height proposed by the variation is considered appropriate for the site's context considering the lack of resulting environmental and amenity impacts.

To facilitate a safe public domain.

Lighting, active retail uses, legible entries and the generally improvement to the appearance of the area as a result of the proposal will maximise opportunities for surveillance and contribute to a safe public domain.

Assessing officer's comment: The reasons outlined by the applicant above are not concurred with and it is considered that the proposal does not meet the objectives of the B2 zone. The reduction to the floor to ceiling heights may reduce the height non-compliance and therefore the built form does not achieve the desired future outcomes or complement the neighbourhood character.

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

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

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

Conclusion

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

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 6-9 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal does not satisfy the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is not consistent with the dominant character in the locality.</p> <p>The proposal will not 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 does not have sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is not considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in	The issues raised in the submissions have been addressed in this report.

Section 4.15 'Matters for Consideration'	Comments
accordance with the EP&A Act or EP&A Regulation	
Section 4.15(1)(e) – The public interest	The proposal does not promote 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

Future Redevelopment

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

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

***Note 1:** *A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property. To assist in this assessment, applicants are to submit details and diagrams of development for the isolated site, that is of appropriate urban form and amenity. The diagram is to indicate height, setbacks and resultant footprint (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts of the developments. Important considerations include solar access, deep soil landscaping, privacy impacts for any nearby residential development and the traffic impacts of separate driveways access. The application may need to include a setback greater than the minimum requirement in the relevant planning controls. Or the development potential of both sites may need to be reduced."*

The subject site does not meet the 20m minimum frontage control and is considered to create an isolated site. In accordance with the requirements above, insufficient information has been provided to demonstrate that adequate efforts have been made to amalgamate with the adjoining subject sites along Anzac Parade. The Statement of Environmental Effects does not make reference to any attempts to amalgamate or letters of offer to the neighbouring properties. As such, amalgamation and consolidation has not been demonstrated to Council. The isolation of the subject site does not

result in a suitable level of amenity and design at the ground floor level for the reasons discussed below. As such, these form reasons for refusal.

Anzac Parade Active Street Frontage

The standards for co-living housing in Clause 69(1)(b) of SEPP Housing states development consent must not be granted unless Council is satisfied that the minimum lot size is not less than 800m². The subject site is 645.9m² and for the reasons discussed below, the insufficient lot size results in multiple non-compliances and reasons why the application the proposal cannot be supported.

Part 6 of the K2K RDCP requires a minimum street frontage of 20m, and the width of the subject site is 13.1m which represents a 35.5% variation to the control. The objectives in Part 6 state the following:

- *To ensure retail and commercial uses provide active frontages along Anzac Parade and secondary streets to contribute to pedestrian interest, safety, natural surveillance and territoriality.*
- *To ensure appropriate design of active shop fronts is consistent with the vision of creating lively, interesting and inclusive town centres.*

The Block 13 Building Controls nominate a 1.5m setback from Anzac Parade to allow for widening of the footpath to improve the quality of the public domain surrounding the block. The proposal complies with this requirement, however, the single transmission substation and water meter equate to 40% (5.26m) of the 13.1m site frontage. This does not comply with the 80% (10.5m) requirement for translucent glazing in Part 19 of the K2K RDCP and results in a shortfall of 52% (6.9m).

The DEAP provided the following comments in relation to the layout of the ground floor level:

“Active frontages are required to Anzac Parade and preferred at Houston Lane. To achieve this, the design needs to be amended to eliminate services and other blank facades facing the public domain, including the substation on Anzac Parade. There is an opportunity to make the ground floor a fluid space that becomes a genuine public shared space within the life and activity of the building, and directly connected (spatially and visually) to Anzac Parade.. Circulation, including vertical circulation, should be readily visible and safely accessed with ease. The retail space should have a semi-open interface with the lobby space.”

“With such a high population, it is crucial that the communal areas, including the ground floor and all circulation areas are spacious and inviting. The naturally lit staircases are an example of the generosity required. With suggested changes and deletions of servicing elements from the ground floor, this level could comprise an enlarged and improved retail space, a continuously connected dual lobby extending from Anzac Parade to Houston Lane, a naturally lit, visible and easily accessible bike hub space, daylight and readily accessible stair connections to above, daylighting to ground floor areas, and a spatial, visual and daylight connection between the ground floor public spaces and the shared communal space on level one.”

The cumulation of the RDCP non-compliances results in a development that does not uphold the Active Street Frontages objective in Clause 6.20(1) of the RLEP which is to promote uses that attract pedestrian traffic along certain ground floor street frontages within the Kensington and Kingsford town centres. The comments from DEAP are concurred with and it is considered that the proposal does not uphold the objectives in Part 6 of the K2K RDCP listed above. Furthermore, the application has not demonstrated attempts to amalgamate with the neighbouring lots which reinforces the multiple non-compliances. Significant redesign of the ground floor level is required to address these concerns and as such, these forms reasons for refusal.

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Natural Ventilation

Part 15 of the K2K RDCP requires all buildings to comply with the ADG requirements, be designed to maximise opportunities for natural ventilation by providing a combination of corner apartments, dual aspect apartments, shallow/single-aspect apartments, openable windows/doors, and other ventilation devices. Internal corridors, lobbies, communal circulation spaces and communal areas shall incorporate adequate natural ventilation; and apartment depth is to be limited to maximise the opportunity for cross ventilation and airflow. These controls are designed to uphold the following objectives:

- *To ensure that all habitable rooms are designed with direct access to fresh air to assist in promoting thermal comfort for occupants.*
- *To provide occupants the choice and flexibility to manage natural ventilation of dwellings and avoid the need to use mechanical ventilation.*
- *To provide natural ventilation to other spaces such as communal areas and basements.*
- *To reduce energy consumption and contribute to sustainable building design.*

The application does not contain natural ventilation diagrams and the RDCP compliance table does not include Part 15 of the RDCP K2K. Ventilation diagrams and the room depths should be annotated on the architectural plans. The ADG requires 60% (39) of all rooms to be naturally cross ventilated and preliminary review of the plans indicate none of the rooms are capable of providing cross ventilation. As such, concerns are raised in relation to the unsatisfactory amenity afforded to the future occupants due to the lack of ventilation and sunlight to the communal circulation spaces and the depth of the single-aspect rooms (>8.2m). These issues form reasons for refusal.

Privacy

Pursuant to Clause 69(2)(b) of SEPP Housing, the proposal does not comply with the ADG separation requirements for privacy. The ADG requires the following separation distance requirements:

Building height	Habitable rooms and balconies	Non-habitable rooms
up to 12m (4 storeys)	6m	3m
up to 25m (5-8 storeys)	9m	4.5m
over 25m (9+ storeys)	12m	6m

Figure 7 – ADG Separation Requirements

The application has not submitted sufficient information to demonstrate the proposed privacy impact for rooms within the development result in suitable levels of amenity and privacy for future occupants. Concerns are raised in relation to the arrangement of units facing the communal outdoor space at the level 1 which is likely to result in poor amenity due to adverse privacy impacts from cross viewing between rooms at the front and rear buildings. Furthermore, the DEAP comments in Appendix 1 state that the level 4 communal living should be treated to avoid overlooking of the privacy rooms opposite and the level 1 communal terrace requires increase separation (or privacy treatments) from the adjacent private rooms.

Council’s Environmental Health Officer has identified that the acoustic report does not contain sufficient information with regards to the assessment of all outdoor areas including advice on permitted times of usage and permitted numbers. As such, compliance with the specified criteria in Part 26 of the K2K RDCP has not been demonstrated.

These form reasons for refusal.

Landscaping

Part 20 of the K2K RDCP requires the following landscaped area requirements:

1. The total landscaped area to be at least 100% (654.9m²) of the total site area.
2. A minimum of 40% (261.96m²) of the total gross landscaped area including communal open space is to include areas with sufficient soil depth and structure to accommodate mature trees and planting.
3. A minimum of 25% of the ground plane and share-ways are to be landscaped sufficient in size and dimensions to accommodate trees and significant planting.
4. Green walls can only contribute up to 20% (130.98m²) of the total gross landscaped area and will be assessed on the merits of the proposal in terms of quality of green infrastructure and verification from a qualified landscape architect.
5. Roof tops can only contribute up to 30% of the total gross landscape area and the area is to be designed to maximise visibility of planting from the public domain.

The objectives in Part 20 state the following:

- *To enhance the quality of life and attractiveness of the town centres by providing landscaped spaces for relief and social connection*
- *To ensure that high quality, long lasting landscaping is provided throughout a site both vertically and horizontally.*
- *To bring about environmental benefits such as mitigating the urban island heat effect, reducing flooding impacts and improving the air quality.*

Notwithstanding that the proposal complies with the SEPP Housing requirements for outdoor communal areas, the non-compliance of 16.3% should be increased to comply. The applicant has not submitted a breakdown of the proposed landscaping calculations in accordance with the requirements listed 1 to 5 above.

Concerns are raised by the DEAP in relation to the ongoing viability of the landscaping due to the high level of maintenance required, number of exotic species, and lack of solar access. The panel recommend the landscaping strategy be broadened to increase the visual impact and reduce the reliance on the outdoor space at level 1 by including vertical planting, green screens and inhabitable productive gardens that are integrated into the architecture of the building. There is little detail indicating the depth of soil proposed, irrigation measures and section details at the outdoor space at level 1. The landscape design also contributes to the unsatisfactory layout of the ground floor level and the connectivity between the two blocks.

In light of the above, the proposal does not uphold the objectives and controls in Part 20 of the K2K RDCP and insufficient landscaping has been provided. These form reasons for refusal.

Sustainability Measures

In accordance with Part 22 of the K2K RDCP, a site-wide sustainability strategy which considers passive environmental design, management of amenity within the site, impact on neighbouring properties, water conservation and management together with energy generation and minimisation must be submitted.

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

Public Art

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

The SEE states that these requirements may be imposed as a condition of consent, however, Control (e) in Part 29 requires the submission of an Arts Statement which identifies the reasons for

the chosen themes, and their interpretation into specific treatments with the DA. As such, insufficient information has been submitted with the application and this forms a reason for refusal.

10. Conclusion

That the application to demolition of the existing structures and the construction of a nine storey co-living development be refused for the following reasons:

1. The proposal does not comply with the provisions of State Environmental Planning Policy (Housing) 2021; in particular:
 - a. Pursuant to Clause 69(1)(b), the proposed lot size of 645.9m² does not meet the 800m² minimum lot size requirements for co-living housing.
 - b. Pursuant to Clause 69(1)(c), the proposal does not include an appropriate workspace for the manager, either within the communal living area or in a separate space.
 - c. Pursuant to Clause 69(1)(e), Council's Engineer has confirmed the proposal results in a parking shortfall of 8 spaces and 14 spaces is required.
 - d. Pursuant to Clause 69(1)(f), no communal or private laundries including external clothes drying facilities have been provided for the future occupants.
 - e. Pursuant to Clause 69(2)(b), the proposal does not comply with the 12m separation requirements in the ADG for privacy.
 - f. Pursuant to Clause 69(2)(f), the cumulative non-compliances result in a development that is not compatible with the desired future character of the precinct.
 - g. Pursuant to Clause 69(2)(h), the proposed bicycle parking spaces do not comply with the minimum requires of AS 2890.3.
2. The proposal does not comply with the provisions of the Randwick Local Environmental Plan 2012 (RLEP) in particular:
 - a. The proposal is inconsistent with objectives dot points 4, 5 and 6 of B2 Local Centre zone pursuant to Clause 2.3 of RLEP 2012.
 - b. The proposal does not satisfy the requirements under Clause 4.6 in that the request for the variation of the height of buildings (Clauses 4.3 and 6.17) development standard is not well founded, not in accordance with the relevant objectives of the standards and the B2 zone.
 - c. Pursuant to Clauses 6.11(3) and (4), the proposal does not exhibit design excellence.
 - d. Pursuant to Clauses 6.20(1) and (3), the proposal does not uphold the objectives of the active frontages.
3. The proposal does not comply with the provision of Randwick Comprehensive Development Control Plan 2013 (RDCP 2013) in particular:
 - a. Pursuant to Part 4 in the K2K RDCP, the proposal does not uphold the provisions relating to design excellence.
 - b. Pursuant to Part 6 in the K2K RDCP, the proposal does not uphold the objectives or comply with the controls for site frontage and building height.
 - c. Pursuant to Part 10.3 in the K2K RDCP, the proposal is not consistent with the Block 13 envelope controls and desired future character statement as a result of the height non-compliance.
 - d. Pursuant to Part 12 in the K2K RDCP, the floor to ceiling heights are considered excessive and contribute to the height non-compliance which is considered unsatisfactory.

- e. Pursuant to Part 19 in the K2K RDCP, the ground floor level street frontage incorporates 52% (6.9m) of transparent glazing which does not comply with the 80% requirement. The location of the electrical substation should be relocated away from the front facade for retail activation.
 - f. Pursuant to Part 20 in the K2K RDCP, the proposal provides 16.3% of the site area as landscaping which does not comply with the 100% requirement.
 - g. Pursuant to Part 31 in the K2K RDCP, the alternative floor space ratio and building height permitted under Clause 6.17 of the RLEP and planning agreement has not been agreed by Council.
4. Insufficient information – a full and robust assessment of the proposal cannot be completed as there are a number of deficiencies and lack of detail in the information submitted with the development application including:
- a. Pursuant to Clause 4.6 of the Resilience and Hazards SEPP, Council's Environmental Health Officer has stated a Preliminary Site Contamination Investigation must be undertaken in accordance with the NSW EPA Guidelines, and Council's Contaminated Land Policy 1999. Should the Detailed Site Investigation Report identify that the land is contaminated and the land requires remedial works to meet the relevant Health Based Investigation Level, a Remediation Action Plan (RAP) is required.
 - b. Pursuant to Clause 5.10 of the RLEP, the application did not include a Heritage Impact Statement/Heritage Impact Assessment addressing how the development responds sympathetically to the nearby contributory buildings, as required by the RDCP.
 - c. Pursuant to Part 6 of the K2K RDCP, the Applicant's has not demonstrated that amalgamation with the adjacent sites has been undertaken including letters of offer, information regarding purchase price, timing of payments of details, any special conditions attached to any officer or independent valuations.
 - d. Pursuant to Part 14 in the K2K RDCP, Council's Environmental Health Officer has confirmed the acoustic report does not contain sufficient information with regards to the assessment of all outdoor areas including advice on permitted times of usage and permitted numbers. As such, compliance with the specified criteria has not been demonstrated.
 - e. Pursuant to Part 15 in the K2K RDCP, natural ventilation diagrams have not been submitted for the development and concerns are raised in relation to the depth and number of single aspect rooms. No ceiling fans have been indicated to assist the opening windows and louvres.
 - f. Pursuant to Part 20 in the K2K RDCP, the landscaping calculations do not specify the area that is included for the communal open space, ground plane, green walls and the roof top.
 - g. Pursuant to Parts 22 and 23 of the K2K RDCP, a site-wide sustainability strategy that includes provisions relating to water sensitive urban design has not been submitted for assessment.
 - h. Pursuant to Part 22 of the K2K RDCP, an Automated Waste Collection System (AWCS) including FOGO bins have not been provided.
 - i. Pursuant to Part 26 of the K2K RDCP, the Plan of Management does not specify the maximum number of students to be accommodated at any one time, information for community and education services, or management procedures over holiday periods.

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- j. Pursuant to Part 26 of the K2K RDCP, Council's Environmental Health Officer has stated that the acoustic report does contain sufficient information with regards to the assessment of all outdoor areas including advice on permitted times of usage and permitted numbers. As such, compliance with the specified criteria has not been demonstrated.
 - k. Pursuant to Part 29 in the K2K RDCP, an arts statement has not been submitted for assessment.
 - l. Pursuant to Part 33 in the K2K RDCP, no details have been submitted to show the location of future signage for the retail component at the ground floor level facing Anzac Parade.
5. Upon lodgement of the application, the proposal was not identified as integrated development and notified for 28 days in accordance with the Randwick Community Participation Plan.

Appendix 1: Referrals

1. External referral comments:

1.1. Water NSW



Contact: Lauren Preston
Phone: (02) 6022 5327
Email: lauren.preston@watensw.com.au

General Manager
Randwick City Council
192 Storey St
MAROUBRA NSW 2035

Our file: IDAS1144740
Your ref: DA/317/2022

Attention: Tegan Ward

5 September 2022

Dear Tegan,

Re: Integrated Development Referral – General Terms of Approval

Dev Ref: DA/317/2022

Description: 80mm submersible pump

Location: 311-313 Anzac Parade KINGSFORD NSW 2032

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

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

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

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

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

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

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

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

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

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

Information to the proponent:

- An extraction limit will be determined by the Department of Planning and Environment (DPE) following a further hydrogeological assessment and included on the conditions applied to the approval authorisation for the dewatering activity.
- Detailed information required to permit the hydrogeological assessment to be carried out is to be provided by the applicant otherwise the issue of the authorisation will be subject to delay. The [Minimum requirements for building site groundwater investigations and reporting](#) (DPIE, 2021) identify what data needs to be collected and supplied.
- The authorisation will be issued for the purpose of temporary construction dewatering only and it does not constitute any form of approval for ongoing pumping of groundwater from basement levels after the building is issued an occupation certificate.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Lauren Preston", written over a light blue horizontal line.

Lauren Preston
Water Regulation Officer
WaterNSW



General Terms of Approval

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

Reference Number: IDAS1144740
Issue date of GTA: 05 September 2022
Type of Approval: Water Supply Work
Description: 80mm submersible pump
Location of work/activity: 311-313 Anzac Parade KINGSFORD NSW 2032
DA Number: DA/317/2022
LGA: Randwick City Council
Water Sharing Plan Area: Greater Metropolitan Region Groundwater Sources 2011

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

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

Level 14, 169 Macquarie Street, Parramatta, NSW 2150 | PO BOX 398, Parramatta, NSW 2124
 water.enquiries@waterNSW.com.au | www.waterNSW.com.au

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General Terms of Approval

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

Reference Number: IDAS1144740

Issue date of GTA: 05 September 2022

Type of Approval: Water Supply Work

Description: 80mm submersible pump

Location of work/activity: 311-313 Anzac Parade KINGSFORD NSW 2032

DA Number: DA/317/2022

LGA: Randwick City Council

Water Sharing Plan Area: Greater Metropolitan Region Groundwater Sources 2011

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

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



General Terms of Approval

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

D64/22

Reference Number:	IDAS1144740
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DA Number:	DA/317/2022
LGA:	Randwick City Council
Water Sharing Plan Area:	Greater Metropolitan Region Groundwater Sources 2011
	of the dewatering activity, and any monitoring required under the Approved Monitoring Programme, the applicant must submit a completion report to WaterNSW. (b) The completion report must, unless agreed otherwise in writing by WaterNSW, include matters set out in any guideline published by the NSW Department of Planning Industry and Environment in relation to groundwater investigations and monitoring. Where no guideline is current or published, the completion report must include the following (unless otherwise agreed in writing by WaterNSW): 1) All results from the Approved Monitoring Programme; and 2) Any other information required on the WaterNSW completion report form as updated from time to time on the WaterNSW website. c) The completion report must be submitted using "Completion Report for Dewatering work form" located on WaterNSW website www.waternsw.com.au/customer-service/water-licensing/dewatering
GT0150-00001	The extraction limit shall be set at a total of 3ML per water year (being from 1 July to 30 June). The applicant may apply to WaterNSW to increase the extraction limit under this condition. Any application to increase the extraction limit must be in writing and provide all information required for a hydrogeological assessment. Advisory note: Any application to increase the extraction limit should include the following: - Groundwater investigation report describing the groundwater conditions beneath and around the site and subsurface conceptualisation - Survey plan showing ground surface elevation across the site - Architectural drawings showing basement dimensions - Environmental site assessment report for any sites containing contaminated soil or groundwater (apart from acid sulphate soils (ASS)) - Laboratory test results for soil sampling testing for ASS - If ASS, details of proposed management and treatment of soil and groundwater. Testing and management should align with the NSW Acid Sulphate Soil Manual
GT0151-00001	Any dewatering activity approved under this approval shall cease after a period of two (2) years from the date of this approval, unless otherwise agreed in writing by WaterNSW (Term of the dewatering approval). Advisory note: an extension of this approval may be applied for within 6 months of the expiry of Term.
GT0152-00001	This approval must be surrendered after compliance with all conditions of this approval, and prior to the expiry of the Term of the dewatering approval, in condition GT0151-00001. Advisory note: an extension of this approval may be applied for within 6 months of the expiry of Term.
GT0155-00001	The following construction phase monitoring requirements apply (Works Approval): a. The monitoring bores must be installed in accordance with the number and location shown, as modified by this approval, unless otherwise agreed in writing with WaterNSW. b. The applicant must comply with the monitoring programme as amended by this approval (Approved Monitoring Programme). c. The applicant must submit all results from the Approved Monitoring Programme, to WaterNSW, as part of the Completion Report

SCHEDULE 1

The plans and associated documentation listed in this schedule are referred to in general terms of approval (GTA) issued by WaterNSW for integrated development associated with DA/317/2022 as provided by Council:

- -Crozier Geotechnical Consultants, 2022. Report on Geotechnical Site Investigation for Proposed New
- Boarding House Development at 311 – 313 Anzac Parade, Kingsford. Project 2022-018 report prepared by
- Crozier Geotechnical Consultants (a division of PJC Geo-Engineering Pty Ltd) for Charas Constructions. April.
- -DPIE, 2021. Minimum requirements for building site groundwater investigations and reporting & information for
- developers and consultants. Report PUB20/940, prepared by NSW Department of Planning, Industry and
- Environment, Water Group. January. ISBN 978-1-76058-419-1.
- -The Planning Studio, 2022. 311-313 Anzac Parade, Kingsford NSW 2032, Statement of Environmental
- Effects. Report prepared by The Planning Studio for Charas Constructions. June

1.2. RMS (TfNSW)**Transport**

29 July 2022

TfNSW Reference: SYD22/00800
CNR-42155

Ms Therese Manns
General Manager
Randwick City Council
30 Frances Street
Randwick NSW 2031

Attention: Tegan Ward



**PROPOSED CONSTRUCTION OF A 9-STOREY CO-LIVING DEVELOPMENT (DA/317/2022)
311-313 ANZAC PARADE, KINGSFORD**

Dear Ms Manns,

Reference is made to Council's referral, regarding the abovementioned application which was referred to Transport for NSW (TfNSW) for concurrence under *Section 138 of the Roads Act 1993*.

This letter provides a response in relation to concurrence requirements under Section 138 of the Roads Act, 1993. A separate response letter of 27 July 2022 has been provided to Council under the rail related provisions of the T&ISEPP (clauses 2.98 and 2.99).

TfNSW has reviewed the submitted application and would provide concurrence to the proposed civil works on the Anzac Parade frontage under Section 138 of the Roads Act 1993, subject to Council's approval and the following requirements being included in the development consent:

1. All buildings and structures (other than pedestrian footpath awnings), together with any improvements integral to the future use of the site are to be wholly within the freehold property (unlimited height or depth), along the Anzac Parade boundary.
2. The stormwater and associated works on Anzac Parade shall be in accordance with TfNSW requirements. Details of these requirements should be obtained by email to developerworks.sydney@transport.nsw.gov.au.

Detailed design plans of the proposed works are to be submitted to TfNSW for approval prior to the issue of a construction certificate and commencement of any road works. Please send all documentation to development.sydney@transport.nsw.gov.au.

A plan checking fee and lodgement of a performance bond is required from the applicant prior to the release of the approved road design plans by TfNSW.

The developer is required to enter into a Works Authorisation Deed (WAD) for the abovementioned works. TfNSW fees for administration, plan checking, civil works inspections and project management shall be paid by the developer prior to the commencement of works.

3. The developer is to submit design drawings and documents relating to the excavation of the site and support structures to TfNSW for assessment, in accordance with Technical Direction GTD2020/001.

The developer is to submit all documentation at least six (6) weeks prior to commencement of construction and is to meet the full cost of the assessment by TfNSW. Please send all documentation to development.sydney@transport.nsw.gov.au.

If it is necessary to excavate below the level of the base of the footings of the adjoining roadways, the person acting on the consent shall ensure that the owner/s of the roadway is/are given at least seven (7) day notice of the intention to excavate below the base of the footings. The notice is to include complete details of the work.

4. Detailed design plans and hydraulic calculations of any changes to the stormwater drainage system on Anzac Parade are to be submitted to TfNSW for approval, prior to the commencement of any works. Please send all documentation to development.sydney@transport.nsw.gov.au.

A plan checking fee will be payable and a performance bond may be required before TfNSW approval is issued.

5. Any public utility adjustment/relocation works on the state road network will require detailed civil design plans for road opening /underboring to be submitted to TfNSW for review and acceptance prior to the commencement of any works.

The developer must also obtain necessary approvals from the various public utility authorities and/or their agents. Please send all documentation to development.sydney@transport.nsw.gov.au

A plan checking fee will be payable and a performance bond may be required before TfNSW approval is issued.

6. A Road Occupancy Licence (ROL) should be obtained from Transport Management Centre for any works that may impact on traffic flows on Anzac Parade during construction activities. A ROL can be obtained through <https://myrta.com/oplinc2/pages/security/oplincLogin.jsf>

For more information, please contact Vic Naidu, Land Use Planner, by email at development.sydney@transport.nsw.gov.au.

Yours sincerely,



James Hall
Senior Land Use Planner
Land Use Assessment Eastern
Planning and Programs, Greater Sydney Division

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1.3. TfNSW

Transport for NSW



Ms Tegan Ward
 Senior Environmental Planning Officer
 Randwick City Council
 30 Frances Street
 Randwick NSW 2031

Dear Ms Ward

**Development Application for 311-313 Anzac Parade, Kingsford (DA/317/2022)
 Concurrence Letter**

Thank you for your correspondence via the ePlanning portal (ref: CNR-42155) on 7 July 2022, requesting Transport for NSW (TfNSW) to provide concurrence, pursuant to the provisions of the State Environmental Planning Policy (Transport & Infrastructure) 2021 (T&ISEPP).

This letter provides a response in relation to concurrence requirements under the rail related provisions of the T&ISEPP (clauses 2.98 and 2.99). A separate response will be submitted to provide concurrence under section 138 of the Roads Act 1993.

Protection of Sydney Light Rail (SLR) Corridor

The proposed development is located within 25m of the Sydney Light Rail corridor and includes ground penetration deeper than 2m, which requires concurrence from TfNSW in accordance with Clause 2.99 of the T&ISEPP. Clause 2.99 of the T&ISEPP requires TfNSW to take into consideration:

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

TfNSW has undertaken an assessment of the information provided in accordance with the provisions outlined in the T&ISEPP and has decided to grant concurrence to the development proposed in development application DA/317/2022. This concurrence is subject to Council imposing the conditions provided in **TAB A**.

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

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

Design of Outdoor Terrace, Balconies, External Windows

Comment

The information provided in the development application does not specify whether the outdoor terrace area, balconies and external windows facing Anzac Parade have openings that face the light rail corridor and Anzac Parade. Measures are needed to prevent objects being dropped or thrown onto the rail corridor from balconies, windows and other external features (eg roof terraces and external fire escapes) that are within 20 metres of, and face, the rail corridor.

Recommendation

The applicant must design outdoor terraces, balconies, external windows and other external features that face onto the light rail corridor and Anzac Parade in accordance with Section 5.4 of the ASA standard T HR CI 12090 ST Airspace and External Developments version 1.0. Complying with this condition upfront is recommended to avoid potential future modifications.

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

Yours sincerely



27/7/2022

David Hartmann

Director, Corridor & Network Protection
Customer Strategy and Technology

Objective Reference CD22/04172

D64/22

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

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

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Prior to the Issue of the Construction CertificateProcess of Endorsement of Conditions

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

- Consult with TfNSW, Altrac and the Sydney Light Rail Operator to ascertain requirements in relation to the protection of TfNSW's infrastructure and to confirm the timing of the each construction certificate and associated documentation and activities prior to preparation of requested documentation;
- Sign Infrastructure Assess Deed Poll, Safety Interface Agreement and Works Deed with TfNSW and/or the Sydney Light Rail Operator;
- Confirm in writing with TfNSW what each Construction Certificate stage will involve; and
- Submit all relevant documentation to TfNSW as requested by TfNSW and obtain its written endorsement for each construction stage. A summary report for each construction stage shall also be provided to TfNSW to demonstrate the following:
 - No adverse impacts to the light rail corridor and light rail operation by clearly identifying impacts and mitigation measures; and
 - Submitted documentation has satisfied the relevant conditions.

The Principal Certifying Authority (PCA) is not to issue the relevant Construction Certificate until they have received written confirmation from TfNSW that the relevant conditions have been complied with for each Construction Certificate.

Review and Endorsement of Documents

- Prior to the issue of any construction certificate or any preparatory, demolition or excavation works, whichever occurs first, the following documentation shall be provided for the review and endorsement of TfNSW:
 - Final geo-technical and structural report / drawings. Geotechnical reports should include any potential impact on the light rail corridor located adjacent to the subject development site, easement and substratum;
 - Final construction methodology with construction details pertaining to structural support during excavation or ground penetration. Any temporary components, for example, shoring systems, formwork and falsework, that are located such that their failure has the potential to affect rail infrastructure facilities or operations shall have a minimum service life of 10 years;
 - Details of the vibration and movement monitoring system that will be in place before excavation commences;
 - Final cross sectional drawings showing ground surface, rail tracks, sub soil profile, proposed basement excavation and structural design of sub ground support adjacent to the Rail Corridor located adjacent to the subject development site. Cross sectional drawings should also include the accurate RL depths and horizontal distances from assets (tracks, overhead lines, structures and cables) to the nearest point of excavation or ground penetration works. All measurements are to be verified by a Registered Surveyor; and
 - Detailed survey plan with location of services.

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Pre-construction Work Dilapidation Report

A pre-construction work Dilapidation Report of the Sydney Light Rail and its assets shall be prepared by a qualified structural engineer. The dilapidation survey shall be undertaken via a joint site inspection by the representatives of the Sydney Light Rail Operator, TfNSW and the applicant. These dilapidation surveys will establish the extent of existing damage and enable any deterioration during construction to be observed.

Acoustic Assessment

Prior to the issue of the relevant Construction Certificate, the final acoustic assessment is to be submitted to the PCA demonstrating how the proposed development will comply with the Department of Planning's document titled "Development Near Rail Corridors and Busy Roads-Interim Guidelines". All recommendations of the acoustic assessment are to be incorporated in the construction documentation.

Electrolysis Analysis

Prior to the issue of the relevant Construction Certificate, the applicant is to engage an Electrolysis Consultant to prepare a report on the Electrolysis Risk to the development from stray currents. The applicant must incorporate in the development all the measures recommended in the report to control that risk. A copy of the report is to be provided to the PCA with the application for the relevant Construction Certificate.

Reflectivity Report

Prior to the issue of the relevant Construction Certificate, the applicant shall design lighting, signs and surfaces with reflective materials, whether permanent or temporary, which are (or from which reflected light might be) visible from the rail corridor limiting glare and reflectivity to the satisfaction of Altrac, TfNSW and the Sydney Light Rail Operator.

Balconies and Windows

Given the possible likelihood of objects being dropped or thrown onto the rail corridor from balconies, windows and other external features (eg roof terraces and external fire escapes) that are within 20 metres of, and face, the rail corridor, the development must have measures installed, to the satisfaction of TfNSW (eg awning windows, louvres, enclosed balconies, window restrictors etc) which prevent the throwing of objects onto the rail corridor. The Principal Certifying Authority is not to issue the Construction Certificate until written confirmation has been received from TfNSW confirming that this condition has been satisfied.

Consultation Regime

Prior to the issue of the relevant Construction Certificate, a detailed regime is to be prepared for consultation with and approval by TfNSW for the excavation of the site and the construction of the building foundations (including ground anchors) for the approved development, which may include geotechnical and structural certification in the form required by TfNSW.

Insurance Requirements

Prior to the issue of the relevant Construction Certificate, the applicant must hold current public liability insurance cover for a sum acceptable to TfNSW. TfNSW's standard public liability insurance requirement for this type of development adjacent to a rail corridor is minimum of \$250M. This insurance shall not contain any exclusion in relation to works on or near the rail corridor, rail infrastructure. The applicant is to contact TfNSW to obtain the level of insurance required for this particular proposal. Prior to issuing the relevant Construction Certificate the PCA must witness written proof of this insurance in conjunction with TfNSW's written advice to the applicant on the level of insurance required.

Works Deed / Agreements

Prior to the issue of any construction certificate or any preparatory, demolition or excavation works, whichever occurs first, if required by TfNSW, Works Deed (s) between the applicant, TfNSW and/or Altrac and the Sydney Light Rail Operator must be agreed and executed by the parties. These agreements may deal with matters including, but not limited to, the following:

- Sydney Light Rail Operational requirements;
- Sydney Light Rail access requirements;
- Altrac and Sydney Light Rail Operator policies, rules and procedures compliance requirements;
- Indemnities and releases;
- Security of costs;
- Insurance requirements and conditions;
- TfNSW, Altrac and the Sydney Light Rail Operator's recovery of costs from the applicant for costs incurred by these parties in relation to the development (e.g. review of designs and reports, legal, shutdown /power outages costs including alternative transport, customer communications, loss of revenue etc) risk assessments and configuration change processes;
- Interface coordination between the Sydney Light Rail Operator and the subject development construction works, including safety interface;
 - Infrastructure Assess Deed Poll and Safety Interface Agreement between the applicant and the Sydney Light Rail Operator must be agreed and executed by the parties. This agreement may deal with matters including, but not limited to, the following:
 - Pre and post construction dilapidation reports;
 - The need for track possessions;
 - Review of the machinery to be used during excavation/ground penetration / construction works;
 - The need for track monitoring;
 - Design and installation of lights, signs and reflective material;
 - Endorsement of Risk Assessment/Management Plan and Safe Work Method Statements (SWMS);
 - Endorsement of plans regarding proposed craneage and other aerial operations;
 - Erection of scaffolding/hoarding;
 - Light Rail Operator's rules and procedures; and
 - Alteration of rail assets such as the OHW along of track and associated hoarding demarcation system, if undertaken by the applicant.
- Altrac and the Sydney Light Rail Operator's reviews and impact assessment of the applicant's proposal, engineering design and construction works methodology on Sydney Light Rail Operations and assets;
- Attendance and participation in the construction works risk assessment of construction activities to be performed in, above, about, and/or below the Sydney Light Rail Corridor;

- Arrangements for shutdowns and Sydney Light Rail restricted operations related costs attributed to the applicant; and
- Sydney Light Rail site works access approval and access permit to work.

During Construction

- Construction vehicles shall not be stopped or parked on Anzac Parade at any time without prior approval of TfNSW;
- All piling and excavation works are to be supervised by a geotechnical engineer experienced with such excavation projects;
- No rock anchors/bolts (temporary or permanent) are to be installed into the light rail corridor without approval from TfNSW;
- No metal ladders, tapes and plant/machinery, or conductive material are to be used within 6 horizontal metres of any live electrical equipment unless a physical barrier such as a hoarding or structure provides separation;
- During all stages of the development extreme care shall be taken to prevent any form of pollution entering the light rail corridor. Any form of pollution that arises as a consequence of the development activities shall remain the full responsibility of the applicant;
- The applicant must mitigate all noise and vibration to the extent possible and provide vibration monitoring equipment and provide the results to the Sydney Light Rail Operator at intervals required by TfNSW and the Sydney Light Rail Operator, and immediately implement corrective actions in the event that the noise or vibration exceeds acceptable limits;
- Rainwater from the roof must not be projected and/or falling into the rail corridor/assets and must be piped down the face of the building which faces the rail corridor. Given the site's location next to the rail property, drainage from the development must be adequately disposed of/managed and not allowed to be discharged into the corridor unless prior approval has been obtained from TfNSW and the Sydney Light Rail Operator (or the delegated authority); and
- No scaffolding is to be used within 6 horizontal metres of the rail corridor unless prior written approval has been obtained from the Sydney Light Rail Operator and TfNSW and a physical barrier such as a hoarding or structure provides separation. To obtain approval the applicant will be required to submit details of the scaffolding, the means of erecting and securing this scaffolding, the material to be used, and the type of screening to be installed to prevent objects falling onto the rail corridor.

Prior to the Issue of the Occupation Certificate

Post - construction Dilapidation Report

Prior to the Issue of the Occupation Certificate, a post-construction dilapidation survey shall be undertaken via a joint inspection with representatives from TfNSW, Altrac, the Sydney Light Rail Operator and the applicant. The dilapidation survey will be undertaken on the rail infrastructure and property in the vicinity of the project. These dilapidation surveys will establish the extent of any existing damage and enable any deterioration during construction to be observed. The submission of a detailed dilapidation report to TfNSW and the Sydney Light Rail Operator will be required unless otherwise notified by TfNSW. The applicant needs to undertake rectification of any damage to the satisfaction of TfNSW and the Sydney Light Rail Operator and if applicable the local council.

Reflectivity Report

Prior to the Issue of the Occupation Certificate, the applicant shall demonstrate that lights, signs and reflective materials, whether permanent or temporary, which are (or from which reflected light might be) visible from the rail corridor were installed limiting glare and reflectivity to the satisfaction of TfNSW, Altrac and the Sydney Light Rail Operator.

1.4. Ausgrid



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

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

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

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

Overhead Powerlines

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

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

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

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

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

Underground Cables

Special care should also be taken to ensure that driveways and any other construction activities within the footpath area do not interfere with the existing cables in the footpath. Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed. Hence it is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area.

Safework Australia – Excavation Code of Practice, and Ausgrid's Network Standard NS156 outlines the minimum requirements for working around Ausgrid's underground cables. Should ground anchors be required in the vicinity of the underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable.

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

Regards,

Ausgrid Development Team

D64/22

1.5. Sydney Airport

SYD

Reg No.: 22/0500

Friday, 29 July 2022

To: RANDWICK CITY COUNCIL & NSW PLANNING
PORTAL

Notification to Proponent Controlled Activity Referred to Secretary

Dear Sir / Madam,

Application for approval of a controlled activity pursuant to:

s.183 Airports Act - Notice to Proponent under Reg 11(3)(b) of Referral to the Secretary of the Department of Infrastructure, Transport, Cities and Regional Development under Reg 11(2) of the Airports (Protection of Airspace) Regulations 1996

Location: 311-313 ANZAC PARADE KINGSFORD

Sydney Airport received an application for approval of a controlled activity by the Secretary of the Department of Infrastructure dated 08/07/2022 from you.

Attached is a copy of a letter from Sydney Airport to the Secretary dated (date) with your application and other prescribed material, being submissions from certain regulatory entities as prescribed by the Regulation 10(2). The Secretary is required by Regulation 15 (1) to give written notice of his decision to you within 28 days of the date of Sydney Airport's letter to the Secretary.

Where submissions have not been received from any one of the prescribed entities, this has been stated. The Secretary may contact such entities, the proponent or Sydney Airport for further information under Regulation 15(1) in which case the time for giving notice of the Secretary's decision is extended to 28 days from when the Secretary receives such information.

The Secretary will give written notice of his determination of your application and the reasons for his decision having regard to the matters set out in Regulation 13. The Secretary must approve a proposal unless carrying out the controlled activity would interfere with the safety, efficiency or regularity of existing or future air transport operations into or out of Sydney Airport. The Secretary may approve a proposal subject to conditions.

Sydney Airport

Sydney Airport Corporation Limited ACN 082 578 809 — The Nigel Love Building, 10 Arrivals Court, Locked Bag 5000
Sydney International Airport NSW 2020 Australia — Telephone +61 2 9667 9111 — sydneyairport.com.au

SYD Classification: Confidential

If you wish to contact the Department they may be reached through Flysafes@infrastructure.gov.au

Note:

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

The Secretary must not approve a proposal if CASA believes that it would have an unacceptable effect on the safety of existing or future air transport operations into or out of Sydney Airport.

Sincerely,



Robert King
Senior Airspace Protection Officer

Sydney Airport

- 2 -

SYD Classification: Confidential

D64/22

1.6 Sydney Airport

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

Reg No.: 22/0500

Friday, 29 July 2022

To: The Secretary

Dear Sir / Madam,

Application for approval of a controlled activity pursuant to:

s.183 Airports Act - Referral to the Secretary under Reg 11(2) of the Airports (Protection of Airspace) Regulations 1996

Proposed Activity:	PROPERTY DEVELOPMENT
Location:	311-313 ANZAC PARADE KINGSFORD
Proponent:	RANDWICK CITY COUNCIL & NSW PLANNING PORTAL

Sydney Airport has received the attached application for approval by the Secretary.

The controlled activity is as set out in **Schedule 1**.

Sydney Airport is required to invite submissions from CASA & Airservices as well as the Airlines within 7 days of receiving the application. Sydney Airport therefore sought submissions regarding the proposed activity from those entities. Their submissions (if received) are set out in **Schedule 2**.

Where submissions have not been received from any one of the prescribed entities, this has been stated in **Schedule 2**. You may of course wish to contact such entities, the Proponent or Sydney Airport for further information under Regulation 15(1). In that case the time for giving notice of your decision is extended to 28 days from when you receive such information. Sydney Airport requests that you advise it of any such requests for information.

Sydney Airport's comments on the application are set out in **Schedule 3**.

We look forward to your notice of determination of the application and reasons for your decision

Sydney Airport

Sydney Airport Corporation Limited ACN 082 578 809 — The Nigel Love Building, 10 Arrivals Court, Locked Bag 5000
Sydney International Airport NSW 2020 Australia — Telephone +61 2 9667 9111 — sydneyairport.com.au

SYD Classification: Confidential

having regard to the matters set out in Regulation 13 and the effect that the controlled activity, if carried out, would have on the efficiency or regularity of existing or future air transport operations into or out of Sydney Airport.

Sincerely,



Robert King
Senior Airspace Protection Officer

Schedule 1

Details of Application for Approval Of Controlled Activity By Secretary

Controlled Activity Details	
Registration No:	22/0500
Date:	08/07/2022
Description:	PROPERTY DEVELOPMENT
Location:	311-313 ANZAC PARADE KINGSFORD
MGA94 Co-ord E:	336067
MGA 94 Co-ord N:	6245038.86
Start Date:	
Finish Date:	
BCR (m):	15.24
Ground Height (m) (AHD):	26
OLSType:	INNER HORIZONTAL
OLS (m)(AHD):	51
Dev/Equip Height (m) (AEGH):	33.75
Dev/Equip Height (m) (AHD):	59.75
Penetration (m):	8.75

Applicant Details			
Applicants Ref No.:	DA/317/2022 or CNR-42155	File No:	
Applicant	RANDWICK CITY COUNCIL & NSW PLANNING PORTAL	Proponent:	RANDWICK CITY COUNCIL & NSW PLANNING PORTAL
Contact	Tegan Ward	Contact:	Tegan Ward
Address	30 Frances Street	Address:	30 Frances Street
Suburb	RANDWICK, NSW	Suburb:	RANDWICK, NSW
Postcode	2031	Postcode:	2031
Phone	02 9093 6253	Phone:	02 9093 6253
Email	tegan.ward@randwick.nsw.gov.au	Email:	tegan.ward@randwick.nsw.gov.au

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Schedule 2

Regulatory Bodies' Submissions on The Proposed Activity

1. CASA:

CASA has received the details of the proposed structure in accordance with Regulation 139.165 of the Civil Aviation Safety Regulations (CASR) 1998. The obstacle has been assessed in accordance with Subsection 7.19 of the Part 139

(Aerodromes) Manual of Standards (the MOS) to ascertain whether it could be a hazard to aircraft operations.

The height of the proposed building is 59.75 m above AHD. The proposed building will infringe the inner horizontal surface by 8.75 m.

CASA has determined that the structure would not constitute a significant hazard to aviation safety. Accordingly, CASA is not recommending obstacle marking or lighting in this instance.

Any future addition to the height of the structure will require a separate assessment.

This assessment does not include any cranes required for construction. Cranes that exceed a height of 51 m above AHO will require a separate assessment.

2. Airservices:

Waiting on response.

Schedule 3

Sydney Airport's Comment of The Proposed Activity

Sydney Airport does not support the development of any permanent structure that intrudes into the Obstacle Limitation Surfaces as defined by the International Civil Aviation Organization (ICAO). The Obstacle Limitation Surfaces were developed to ensure the safety of aircraft operations in the vicinity of airports, and these surfaces should be protected to maintain the safety of present and future aircraft operations.

Furthermore, Sydney Airport believes that the approval of developments that penetrate the OLS allows for the increase in height of other adjacent potential developments using the shielding principle, which compounds the issues surrounding Airspace Protection.

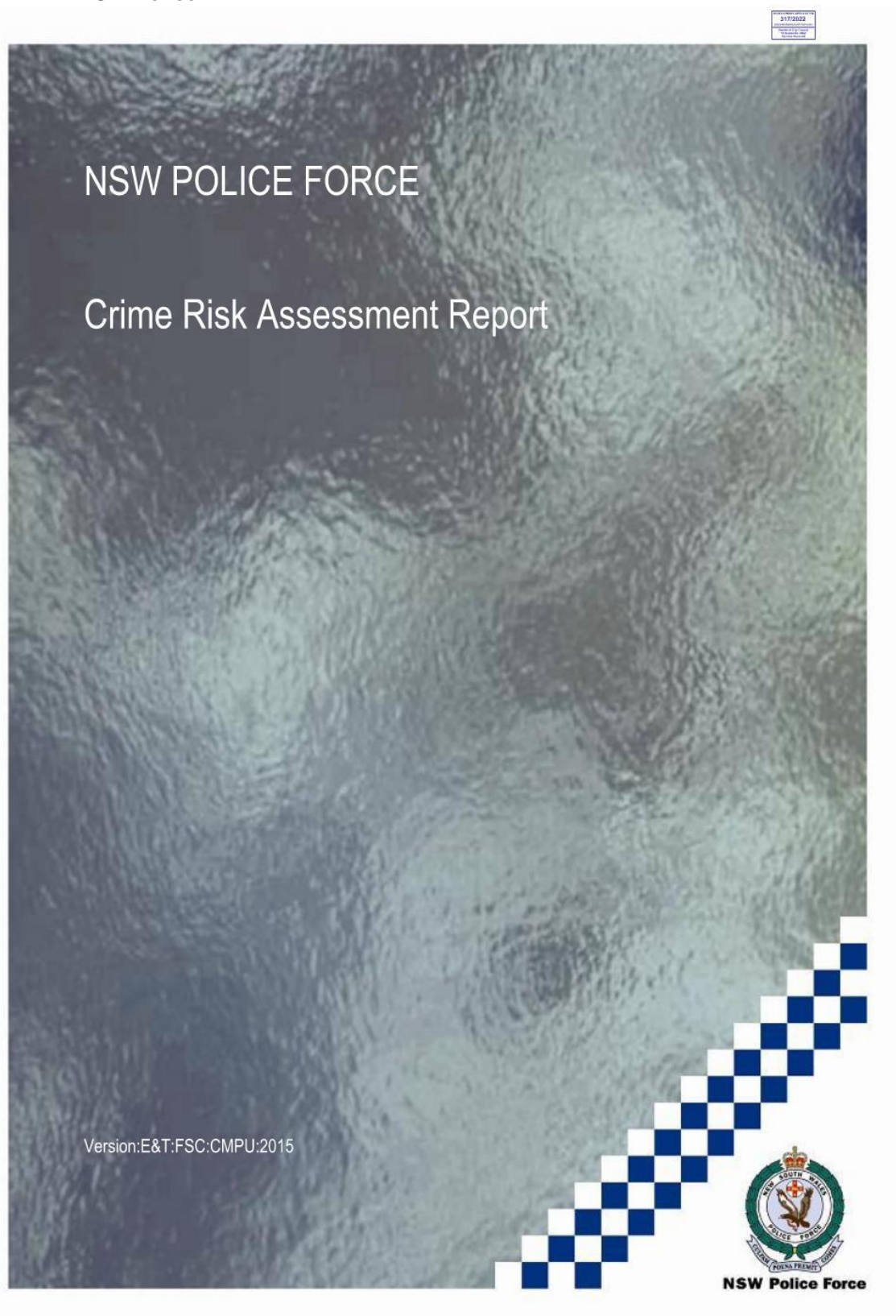
At a maximum height of 59.75m AHD, the proposed development will penetrate the OLS by approx. 8.75 metres.

If the Department decides to approve the proposed development, we recommend that the following minimum conditions be imposed on that approval, which the Department is entitled to do under r14 (3) of the Regulations.

We believe that these conditions are in the interests of the safety, efficiency and regularity of air transport operations at Sydney Airport:

- At the completion of the construction of the building, a certified surveyor is to notify (in writing) the Sydney Airport Manager, Airfield Spatial & Technical Planning of the finished height of the building.
- Separate approval must be sought under the Airports (Protection of Airspace) Regulations 1996 for any cranes required to construct the buildings. Construction cranes may be required to operate at a height significantly higher than that of the proposed controlled activity and consequently, may not be approved under the Airports (Protection of Airspace) Regulations, therefore Sydney Airport advises that approval to operate construction equipment (ie cranes) should be obtained prior to any commitment to construct

1.7. NSW Police



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Eastern Beaches Local Area Command

136 Maroubra Road,
Maroubra NSW 2035
Telephone: 02 9349 9299
Facsimile: 02 9349 9227

Manager,
Randwick City Council
30 Frances Street,
Randwick NSW 2035

Referral of Development Application for comment under the NSW Environmental Planning & Assessment Act 1979, 79C Crime Prevention Through Environmental Design Guidelines.

Development Application No: DA/317/2022
Property: 311-313 Anzac Parade, Kingsford
Proposed: Demolition of an existing commercial premises and construction of an 8 storey co-living residential building with 65 single rooms and ground floor retail, including a communal landscaped terraces on levels 1, 4 and 5 and six car parking space and 13 motorcycle parking spaces.

1. Introduction

On Monday 25th of July 2022 a Crime Risk Assessment was conducted upon a proposed mixed development to be situated at 311-313 Anzac Parade, Kingsford by Senior Constable Benjamin O'REILLY, the Crime Prevention Officer at Eastern Beaches Local Area Command.

This Crime Risk Assessment will help planners, architects, crime prevention practitioners and design consultants to determine when, where and how to use Crime Prevention Through Environmental Design (CPTED) to reduce opportunities for crime.

It is based upon the International Risk Management Standard, AS/NZS/ISO:31000, and uses qualitative and quantitative measures of the physical and social environment to create a contextually adjustable approach to the analysis and treatment of crime opportunity.

The proposed development is for the construction of a mixed use development comprising of;

- Ground Floor Parking
- Ground floor commercial
- 8 floors of co-living single bedrooms

The proposed development is to be situated on the western side of Anzac Parade, just north of Borrodale Road, Kingsford. The area characterised largely as a commercial area, predominantly comprised of shops, food outlets, licensed premises large amounts of traffic, including private road traffic,

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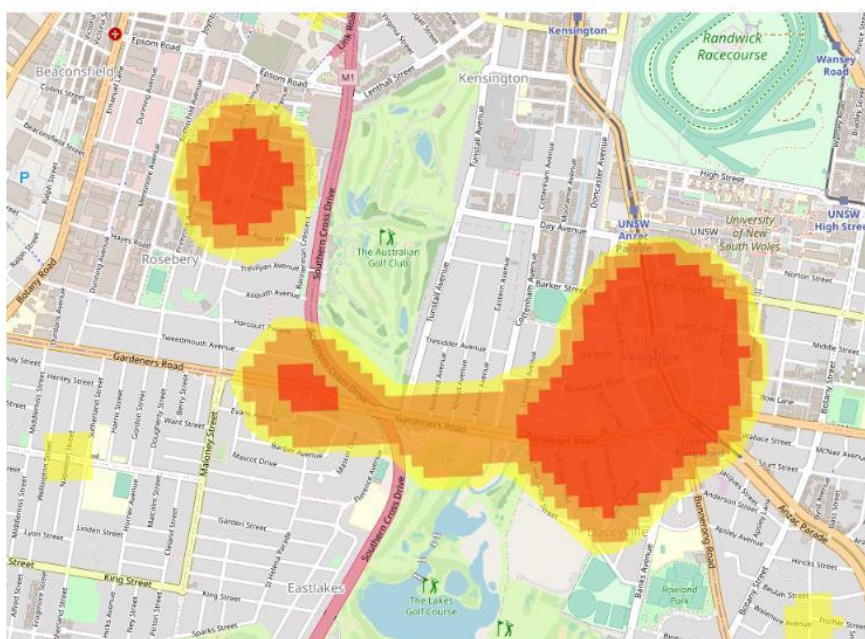
busses and a light rail system which divides Anzac Parade. Many businesses centres within this Command often experience higher incidents of crime than other areas. The area is more prone to be targeted for robbery and has ample access to public transport, including the new tramline and the bus network. This development may experience higher incidents of crime than other locations due to these factors.

Police have reviewed the Statement of Environmental Effects (SEE). The SEE briefly addresses CPTED principles in section 5.4.1-4.

Prior to addressing concerns with the design brief, Police wish to pass the following observations:

1. **The design of the building is co-living.** It does not specifically state that it is targeting international students, however given the proximity to the University of New South Wales and its significant body of international students, Police assume a high percentage of the resident population will be international students. Police have observed over many years that international university students are frequently targeted for robberies within Eastern Beaches Police Area Command, with many occurring in the Kingsford/Kensington region where the vast majority of student housing already exists.

Please see the below crime heat map for robbery between July 2020 and June 2021. The proposed development resides in the middle of the robbery hot-spot. Also please note that the DA location falls within the 2018, 2014, 2013, 2012, 2011, 2010, 2009, 2008, 2007 and 2016 BOCSAR crime hotspots for robbery. Surrounding areas are relatively unaffected by this crime type. This stresses the importance for CPTED principals to be applied to the application to protect its residents and contribute to crime reduction within the command.



Source: NSW Bureau of Crime Statistics and Research (BOCSAR)

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Police have observed that the DA is for a large residential building, which is significantly larger than all the nearby structures, and may house a concentrated population of students.

Police recommend that installation of CCTV and ample lighting to the front and rear of the building be installed for the protection of its residents.

2. **In five years, this single laneway with sparse foot traffic has been the location of:**
 - a. Three (3) robberies
 - b. Three (3) assaults
 - c. Multiple drug detections
 - d. A significant amount of move-on directions for anti-social behaviour

Given the concentration of crime and anti-social behaviour that has occurred within the street Police recommend extra attention be applied to the rear of the proposed development in the way of marked CCTV and focussed lighting.

3. **The proposed development has significantly fewer parking spots than potential residents.** Police acknowledge that purpose of the proposal is to create accommodation that does not necessitate private vehicle ownership, however the result may inevitably be that vehicle owners may still rent or own apartments within the premises. This will force vehicle owners to park illegally on Houston Lane or cause them to walk through back alleys to get to their vehicles. The increase of vehicles parked on the road may lead to an increase in foot traffic in hours of darkness for people coming home in a **known robbery hotspot**. This potential for parked vehicle congestion on other streets also reduces passive surveillance in other locations.

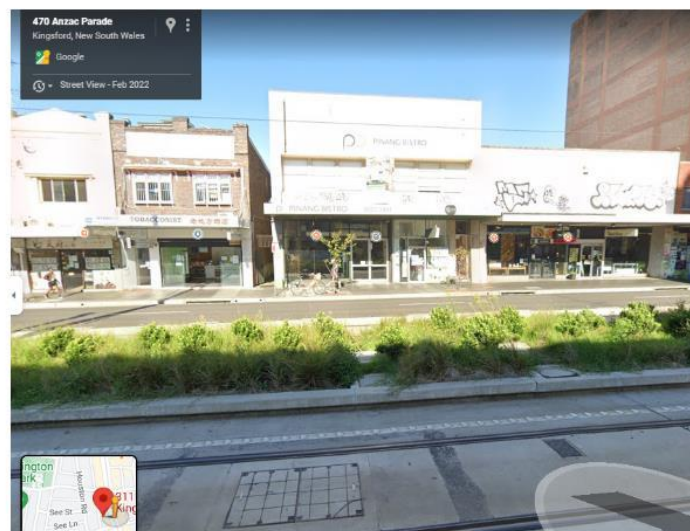
Due to the potential increase of car owners walking from the parallel parking spaces on **Houston Road** near Borrodale Road, Kingsford, Police hold concerns that increased foot traffic in darkened areas in a known robbery hotspot may lead to an increase in crime in the area.

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2. Location



Source: Google



Source: Google Street View

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3. Identify, assess & rate the issues

The following issues have been identified, assessed and rated for these types of developments;

Issue	Activity	Likelihood	Consequence	Rating
Robbery	Stealing from a person with threat of violence or actual violence	Possible	Major	High
Fall from height	Inappropriate use of windows or balconies relating in falling from height	Rare	Catastrophic	Medium
Sexual Assault	Use threat of or violence to harm people	Unlikely	Moderate	Medium
Break, enter & steal	Force entry to property to take property without owners consent.	Unlikely	Moderate	Medium
Drug distribution	Distribute illegal substances.	Possible	Minor	Medium
Drug possession	Possess illegal substances.	Possible	Minor	Medium
Fraud	Use deception to take property without the owners consent.	Possible	Moderate	Medium
Malicious damage	Damage property maliciously without owners consent.	Possible	Minor	Medium
Traffic related	Vehicle congestion which may lead to impeding emergency service response	Unlikely	Moderate	Medium
Steal from motor vehicle	Take property from motor vehicle without the owner's consent.	Possible	Minor	Medium
Steal from mail box	Take property from mail box without the owner's consent.	Possible	Moderate	Medium
Stolen motor vehicles	Take motor vehicle without the owner's consent.	Unlikely	Moderate	Medium
Assault	Use threat of or violence to harm people	Unlikely	Moderate	Medium
Arson	Use fire to injure people or damage property.	Rare	Moderate	Low
Trespass	Enter or remain upon property without owners consent.	Unlikely	Insignificant	Low
Anti-social behaviour	Behave in an inappropriate manner against the norms of society.	Possible	Insignificant	Low

Determine what course of action should be taken?

E	Extreme	This level of risk is considered unacceptable and must be given immediate priority.
H	High	This level of risk is considered borderline unacceptable and must be given immediate priority.
M	Medium	This level of risk is generally regarded as tolerable , but should be further mitigated if a benefit to so can be demonstrated and there is additional control measures which are recognised as best practice.
L	Low	This level of risk is tolerable and should be monitored continuously.

Based upon the International Risk Management Standard, AS/NZ/ISO:31000.

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4. Community Safety Concerns

Police have community safety concerns with the proposed development and the location;

Similar developments to this within the Local Area Command have experienced a number of issues which need to be addressed to reduce opportunities for crime.

High rise buildings pose concern which is people falling from either balconies or windows. In many instances people who may be affected by drugs or alcohol try to scale between balconies or fall over railings. Balconies need to be designed to restrict people scaling between balconies or falling from balconies. Windows need to be fitted with devices to restrict people falling from these areas.

There have also been issues with sexual assaults taking place on people using the isolated car park areas, gymnasiums, loading or bin areas. In many instances the victims have been dragged by Persons of Interest into these areas and sexually assault. Try to limit these types of areas.

Areas with poor surveillance, access control and confusion over who owns or cares for the space will often result in inappropriate use by people involved in criminal or anti social behaviour. This could result in drug use or distribution or groups of unwanted people congregating in this area. It is important that all areas of the proposed development be connected in some way to the development to clearly demonstrate ownership and control of the space.

Unit complexes such as this will sometimes be used by criminal to abandoned vehicles that they have used in the commission of crimes. In many instances they have set fire to these vehicles with the intent to destroy DNA they may have left. This can result in major fires within the car park areas which in turn result in the building having to be evacuated causing major disruptions to the owners of properties within the complex.

There have also been reports of break, enter and steal dwelling. The Persons of Interest will either access the main building by tailgating (following people inside) or using the access control system posing as delivery persons. Over the years there this Command has also experienced instances where the thieves have scaled the sides of the building to access the units via the balconies which are often left unsecured by residents believing that no person would be able to reach their property on the upper level.

There have been a number of reports to police of thieves breaking into the **mailboxes to steal the contents such as credit card, PIN numbers, or driver's licences are being targeted**. In some instances statements for utility services such as water, electricity, council, etc are being stolen and used as points to create an identity. More and more unit complex mailboxes are being broken into because you have a large number in a smaller area, rather than having to target a number of houses in a street. The location of the mailboxes is often isolated and not seen (poor surveillance) from the premises or located in areas where offenders can use excuses to loiter around the mailboxes. In many instances the owner of these items are not aware that the property has been taken because they were not aware the item had been sent and it is sometimes a considerable time later that they find their identity has been taken and used for the wrong purposes.

There have been a number of steal from motor vehicle or stealing reports made to police. The offenders gain access to the resident's car parks and steal property from either the cars or from storage areas within these locations.

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Older model vehicles which are not fitted are often the targets of thieves. These vehicles are stolen to either get from one location to another or in many instances are often used to commit other crimes.

5. Recommendations

The proposed developments have the potential to introduce new victims, crime opportunities and offenders to the development sites and their surroundings. With this in mind Crime Prevention Through Environmental Design (CPTED) treatments need to be considered to reduce opportunities for crime;

5.1 Surveillance

Surveillance is achieved when users of the space can see or be seen. Generally people involved in anti social or criminal behaviour do not like to have their activities monitored. With this in mind the layout of the developments, orientation and location, the strategic use of design, lighting and landscaping can increase the effort and reduce the rewards for people involved in anti social or criminal behaviour to operate with ease. Surveillance should be a by product of a well planned, well designed and well used space to reduce opportunities for crime.

Objectives

- a) Ensure that there is good surveillance to and from the development and neighbouring properties to reduce opportunities for crime.
- b) Ensure that the design of the development does not impede surveillance to reduce opportunities for crime.
- c) Ensure that a Closed Circuit Television System which complies with **Australian Standards - Closed Circuit Television System (CCTV), AS:4608.1.2.3.4.** is installed to monitor activity in and around the development.
- d) Ensure lighting is designed to increase surveillance opportunities to and from the property during the hours of darkness.
- e) Ensure that lighting in and around the development is commensurate with CCTV requirements to illuminate the development and surrounds during the hours of darkness.
- a) Ensure fences and gates are designed to increase surveillance opportunities to and from the property.
- b) Ensure that movement (predictors) pathways and corridors in the development do not become, or lead to possible assault sites.

Recommendations

1. The mailbox must be installed in an area which can be seen from the premises (surveillance opportunities).
2. The mailbox must be well lit to increase surveillance opportunities during the hours of darkness.
3. A Closed Circuit Television System (CCTV) which complies with **Australian Standard – Closed Circuit Television System (CCTV) AS:4806.1.2.3.4.** <http://www.standards.org.au> must be installed within these development to receive, hold or process data for the identification of people involved in anti-social or criminal behaviour. The system is obliged to

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conform with Federal and State Privacy and Surveillance Legislation. Digital or analogue technology should be used to receive, store and process data.

4. This system should consist of surveillance cameras strategically located in and around the premises to provide maximum surveillance coverage of the area, particularly areas which are difficult to supervise.
5. A minimum of two cameras should be strategically mounted across the front of the development to monitor activity around these areas. These cameras should be positioned to watch one another to protect them from tampering.
6. One or more cameras should be strategically mounted at entry/egress points to monitor activities around these areas.
7. CCTV equipment should be secured away from public access areas to restrict tampering with the equipment and data.
8. Staff need to be trained in the operation of the system.
9. Lighting which complies with the Australian Standard - Lighting must be installed in and around the property to increase surveillance opportunities during the hours of darkness.
10. Emphasis should be on installing low glare/high uniformity lighting levels over all areas.
11. Lighting is to deny criminals the advantage of being able to operate unobserved however, if an area cannot be overlooked or viewed during the hours of darkness, then lighting will only help a criminal see what they are doing, not deter them.
12. Light covers must be designed to reduce opportunities for malicious damage (vandalism).
13. Lighting sources should be compatible with requirements of any surveillance system installed.
14. A limited amount of internal lighting should be left on at night to enable patrolling police, security guards or passing people to monitor activities within the business.
15. The lighting must also be commensurate with the Closed Circuit Television requirements to enhance surveillance during darkness.
16. Landscaping should be designed to maximise surveillance opportunities to and from the development.
17. Trees & shrubs should be trimmed to reduce concealment opportunities and increase visibility to and from the development.
18. Optically permeable (open design) style fences and gates must be considered to increase surveillance and reduce concealment opportunities particularly between the development and the pathway on the northern side of the property.
19. Pathways must be sufficiently well lit at all times to avoid use of unsafe routes.
20. Good sightlines and signage must be installed at decision making points to assist people using pathways.
21. Paths to be located near activity generators and areas with natural surveillance
22. Pathways and stairs should be located so that they are easily accessible and designed such that there are no blind corners. Straight or gently curved pathways are encouraged.
23. Walkways and pathways should be designed to have at least one clearly marked "exit" sign to an area of traffic (vehicular, pedestrian or residential) every 50 metres.
24. Multi-storey car parks should be designed to permit maximum natural surveillance, access control and illumination, e.g. by using cable railings in place of concrete retaining walls.

5.2 Access control

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Access control should restrict, channel and encourage people into, out of and throughout the development. It can be used to increase the time and effort required to commit a crime and to increase the risk to people and reduce rewards involve in anti social and criminal behaviour. The tactical use of design features including facility construction, configuration, location, security hardware, and on site guardians (*guardians; are those people that are likely to take action should an incident take place*) such as staff or security should be used to reduce opportunities for crime.

Objectives

- a) Ensure that access to the developments is controlled to reduce opportunities for crime.
- b) Ensure that access to restricted areas within development is controlled to reduce opportunities for crime.
- c) Ensure fences and gates are designed to control access to and from the property.

Recommendations

1. The mailboxes must be of solid construction and designed to restrict access. (See Annexure 8.1.)
2. The mailboxes must be securely anchored to reduce opportunities of removal.
3. The mailboxes must be secure with a lockset which is difficult to access or manipulate.
4. Fences must be installed around the perimeter of the development to control access.
5. Gates must be secured with quality locks which comply with the **Australian Standards, Lock Sets, AS:4145** to control access.
6. The main entry/egress doors to the buildings must be fitted with an access control system similar to key, code or card operated system to restrict, control the movement of people and vehicles into and throughout the complex.
7. An intercom system must be installed at entry/egress points to enable visitors to communicate with businesses and residents within the complex.
8. Doors to the complex should be of appropriate construction to restrict and control access into and throughout the complex.
9. Doors must be fitted with locksets which comply with the Australian Standards – Locksets for buildings and the building code (fire regulations).
10. Doors should be secured to control and restrict access to and from the development and individual properties.
11. Doors to plant and equipment areas must be fitted with access control to restrict and control the movement of authorised people into and throughout these areas in order to reduce opportunities for injury to people or tampering with equipment.
12. Doors or gates must be installed to car park entry/egress points to restrict access to these areas.
13. The access control system similar to key, code or card operated system must be fitted to these doors or gates to restrict, control the movement of people and vehicles into and throughout the car park.
14. An intercom system must be installed at entry/egress points to enable visitors to communicate with businesses and residents within the complex.
15. Windows which can be opened must be fitted with key operated locks which comply with the **Australian Standards – Locksets for windows in buildings**.
16. By law in NSW, windows above ground level in strata schemes must have safety devices installed to reduce opportunities for people falling. To find out more check out the window safety device

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requirements page;

http://www.fairtrading.nsw.gov.au/ftw/Tenants_and_home_owners/Strata_schemes/Window_and_balcony_safety/Window_safety_device_requirements.page

17. Balconies on the development must be designed at a height to reduce opportunities for people scaling the railings to access other balconies and falling. This can also assist in reducing opportunities for children falling from balconies.
18. The public car park and residential car park should be separated by barriers to restrict unauthorised access to the residential car parks.
19. Access to parking areas should be via a surveillance entry point.
20. The storerooms in the car park areas must be of solid construction.
21. The doors to the storerooms must be fitted with locksets which comply with the Australian Standards – Locksets for buildings and the building code (fire regulations).

5.3 Territorial Re-enforcement

Territorial re-enforcement is about ownership, who owns the development, who manages the development, and who cares for the development. Criminals are more likely to be deterred by the presence of people who are connected with and protective of a development than by people who are just passing through. It employs actual and symbolic boundary markers, spatial legibility and environmental cues to 'connect' people with the development, to encourage community responsibility for the development and to communicate to people where they should and should not be and what activities are appropriate.

Objectives

- a) Identify the location of the property to comply with the Local Government Act, 1993, Section 124, Order No. 8,
- b) Identify the location of the property to assist visitors and emergency services to locate the property in the event of an emergency situation.
- c) Identify individual levels in each of the buildings to assist visitors and emergency services to locate the property in the event of an emergency situation.
- d) Identify individual units in each of the buildings to assist visitors and emergency services to locate the property in the event of an emergency situation.
- e) Ensure that signs are posted in and around the property to warn intruders of what security treatments may be in place and reduce excuse making opportunities.
- f) Ensure that signs are posted in and around the property to provide guidance to users.
- g) Promote the development of landscape plans which enhance the visual amenity of an area but which do not have the potential to jeopardise the safety of the users of a site.
- h) Ensure that landscaping is designed so as not to impede surveillance opportunities to and from the property.
- i) Ensure that landscaping is designed so as not to provide concealment or entrapment areas.
- j) Ensure fences and gates are designed to clearly define the property boundaries.

Recommendations

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1. The street number must be prominently displayed at the front of this property to comply with the Local Government Act, 1993 Section 124 (8). Failure to comply with any such order is an offence under Section 628 of the Act can result in penalties. Offences committed under Section 628 of the Act attract a maximum penalty of 50 penalty units (currently \$5500) for an individual and 100 penalty units (currently \$11000) for a corporation.
2. The number of each level must be prominently displayed adjacent the elevators and fire stairs to assist users of the property identify locations particularly in emergency situations.
3. The number of each unit must be prominently displayed on the front doors to assist users of the property identify locations particularly in emergency situations.
4. The numbers should be in contrasting colours to building materials and be a minimum height of 120 mm.
5. The mailbox must be located on the property to reduce excuse making opportunities by offenders.
6. Signs should be strategically posted around the property to warn intruders of what security treatments have been implemented to reduce opportunities for crime. Warning, trespasser will be prosecuted. Warning, no large amounts of money kept on premises. Warning, these premises are under electronic surveillance.
7. Directional signage should be posted at decision making points (eg. Entry/egress points) to provide guidance to visitors. This can also assist in access control and reduce excuse making opportunities by intruders.
8. Landscaping needs to be maintained on a regular basis to reduce concealment opportunities.
9. Obstacles & rubbish should be removed from property boundaries, footpaths, driveways, car parks & buildings to reduce concealment & prevent offenders scaling your property.
10. A zone of at least 1.5 metres in width on either side of a fence line should be kept free of vegetation to increase surveillance and restrict un-authorised by scaling fences.
11. Fences must be installed around the perimeter of the property to clearly define the property boundary.
12. Fences and gates must be maintained in good condition and should be checked regularly to assist with the protection of your property.
13. Lighting needs to be checked on a regular basis to ensure that it is operating effectively.
14. Good signage must be used for way-finding to assist people using the buildings and car parks.
15. No parking should be permitted adjacent the building core, elevators or fire stairs to reduce opportunities for vehicles loading with improvised explosive devices being parked against these structure with the intention to damage or destroy the buildings.

5.4 Space & Activity Management

Space and activity management involves the supervision, care and control of the development. All space, even well planned and well-designed areas need to be effectively used and maintained to maximise community safety. Places that are infrequently used are commonly abused. Space and activity management strategies are an important means of developing and maintaining *natural* community control. This can assist you to determine whether a development should remain or be relocated to a more appropriate location.

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Objectives

- a) Ensure that a monitored intruder alarm system to monitor & detect unauthorised entry to the development and facilities is installed.
- b) Ensure that a fire safety assessment of essential fire safety measures is conducted each year.
- c) Ensure that a Fire Safety Schedule and Fire Safety Statement is displayed in the property.
- d) Ensure that a Fire Safety Schedule and Fire Safety Statement is provided to local Council and the Commissioner, Fire & Rescue NSW.
- e) Ensure that a plan of management is established for the development for management, staff and residents.
- f) Ensure that an emergency plan has been prepared, implemented and tested to ensure that people within the development can escape in the event of an emergency.

Recommendations

1. A Intruder Alarm System (IAS) which complies with the **Australian Standard – Systems Installed within Clients Premises, AS:2201** must be installed in the development to enhance the physical security and monitor activity on the development.
2. This standard specifies the minimum requirements for intruder alarm equipment and installed systems.
3. It shall apply to intruder alarm systems in private premises, commercial premises and special installations.
4. The Intruder Alarm System (IAS) must be monitored by a security company or your own staff.
5. Duress facility should be incorporated into the system to enable staff to activate the system manually in the event of an emergency, such as a robbery. **NB Duress devices should only be used when it is safe to do so.**
6. Detectors must be fitted to the doors of plant room areas to detect unauthorised access to these areas. This can reduce the opportunity for litigation against your organisation.
7. The light emitting diodes (LEDs red lights) within the detectors should be deactivated, to avoid offenders being able to test the range of the system.
8. The system must be checked and tested on a regular (at least monthly) basis to ensure that it is operating effectively.
9. Staff should be trained in the correct use of the system.
10. As a number of premises have had telephone lines cut to prevent alarms being reported to the security monitoring company, a supplementary system such as Global Satellite Mobile (GSM) or Radio Frequency (RF) systems should be used to transmit alarm signal by either mobile telephone or radio frequency.
11. The owner of the development must ensure that an annual fire safety assessment of essential fire safety measures for your property is carried out each year.
12. The owner of the development must ensure that a Fire Safety Schedule listing essential fire safety measures for your property is displayed near the entrance to your property to comply with the **Environmental Planning and Assessment Act, 1993**.
13. The owner of the development must ensure that a Fire Statement is displayed near the entrance to your property to comply with the **Environmental Planning and Assessment Act, 1993**.

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14. The owner of the development must ensure that a copy of the Fire Safety Schedule and Fire Safety Statement is provided to your local Council and the Commissioner for Fire & Rescue NSW to comply with the **Environmental Planning and Assessment Act, 1993**. Failure to comply with these requirements can result in financial penalties against your property
15. Private spaces such as court yards, stairwells and parking bays must be clearly identified to reduce use by undesirable users.
16. A plan of management must be established so that management, staff and residents are aware of what they need to do in the event of situations taking place or what is permitted or not permitted within the development.
17. An emergency plan must be developed, implemented and tested on a regular basis to ensure that users of the development understand what is required of them particularly in emergency situations. The emergency plan must provide, emergency procedures including, an effective response to an emergency, evacuation procedures, notifying emergency service organisations promptly, medical treatment and assistance, effective communication between the authorised person who coordinates the emergency response and all persons in the development, testing of the emergency procedures, including the frequency of testing.
18. information, training and instruction to relevant workers in relation to implementing the emergency procedures.
19. When preparing and maintaining an emergency plan, the PCBU must consider all relevant matters including, the nature of the work being carried out at the workplace, the nature of the hazards at the workplace, the size and location of the workplace, the number and composition of the workers and other persons at the workplace.
20. The code of practice *Managing the work environment and facilities* provides more information about preparing and maintaining an emergency plan. Call Workcover NSW 13 10 50 or check out Workcover NSW website: www.workcover.nsw.gov.au for more information about emergency plans.

6. Conclusion

In conclusion the New South Wales Police Force has a vital interest in ensuring the safety of the members of the community and the security of their property. By using the recommendations contained in this assessment, any person acknowledges that;

- It is not possible to make areas assessed by the NSWPF absolutely safe for members of the community or the security of their property.
- It is based upon information provided to the NSWPF at the time the assessment was undertaken.
- This assessment is a confidential document and is for the use by the organisation referred to on page one only.
- The contents of this assessment are not to be copied or circulated otherwise than for the purposes of the organisation referred to on page one.

The NSW Police Force hopes that by using the treatments recommended in this assessment, criminal activity will be reduced and the safety of members of the community and the security of their property

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increased. However it does not guarantee that all risks have been identified, or that the area assessed will be free from criminal activity if its treatments are followed.

Should you have any questions in relation to this report contact Senior Constable Benjamin O'REILLY, Crime Prevention Officer, Eastern Beaches Local Area Command, Phone 02 9349 9299.

Yours in crime prevention,

Senior Constable Benjamin O'REILLY
Crime Prevention Officer
Eastern Beaches LAC
PH: 9349 9299
E/N: 57275

7. References;

Australian Standards - Closed Circuit Television System (CCTV), AS:4608.1.2.3.4.
Local Government Act, 1993, Section 124, Order No. 8, Street Numbers.
Australian Standards - Lock Sets for buildings.
Australian Standards – Locksets for windows in buildings.
Australian Standard – Systems Installed within Clients Premises.
Environmental Planning and Assessment Act, 1993.

8. Annexure

Annexure 8.1 – Design of mailbox facility.

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Photograph – External view of mailboxes, no access to contents from this side.



Photograph – Internal view of mailboxes, access to contents from this side through locked box. Located within an access controlled foyer area.

2. Internal referral comments:

2.1. Heritage planner

The Site

The narrow site has a primary frontage to Anzac Parade and a secondary rear frontage to Houston Lane and is occupied by a two storey building with a high parapet to the street. It appears that the building may date from the 1960s with subsequent changes to the street elevation.

To the north east of the site, at nos.424 – 436 Anzac Parade, is “O’Dea’s Corner”, a commercial/residential group, listed as a heritage item under Randwick LEP 2012. Immediately to the south of the site nos.315 – 323 Anzac Parade is identified in the Kensington and Kingsford Town Centres DCP as a contributory item.

Proposal

The proposal is for demolition of the existing building and construction of a development comprising a 9 storey building to the Anzac Parade frontage and a 5 storey building to the Houston lane frontage, separated by an elevated courtyard. A basement level includes carparking and services. The ground level is to comprise a substation, retail, lobby and service areas, the first floor is to comprise a communal terrace, communal areas in the Anzac Parade building as well as residential floor space, while upper levels are to comprise residential floor space, with communal areas at level 4 in the Houston Lane building. A communal terrace is to be provided at level 5 of the Houston Lane building, while a communal open space is to be provided in addition to service areas at level 9 of the Anzac Parade building.

Submission

The application is accompanied by a Statement of Environmental Effects prepared by The Planning Studio. The SEE appears to contain no information addressing the heritage impact of the proposal on the adjacent contributory buildings.

Controls

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

Randwick LEP 2012 Amendment No.8 (gazetted on 14 August 2020)

The LEP amendment for the Kensington and Kingsford town centres (clauses 6.17 to 6.21) includes floor space ratios and building heights, as well as provisions in relation to community infrastructure, affordable housing, non-residential floor space, active street frontages and design excellence. In relation to design excellence, Council is required to have regard to how the development addresses heritage issues and streetscape constraints.

Development Control Plan- Kensington and Kingsford Town Centres

Part E6 (adopted 17 November 2020)

The Development Control Plan- Kensington and Kingsford Town Centres provides detailed Objectives and Controls, including sections addressing Urban Design and Place-Making and Heritage Conservation, and includes Block Controls for Strategic Node sites and other sites. The site is identified as part of Block 13 within the Kingsford Town Centre. The Heritage items and contributory buildings mapping for the Kingsford Town Centre identifies nos.315 – 323 Anzac Parade as contributory item.

Part 9 of the draft DCP- Heritage Conservation, includes the following Objectives and Controls for development involving Heritage Items and Contributory Buildings:

Objectives

- To conserve and enhance the character and heritage significance of heritage items
- To retain and conserve distinctive elevations and significant fabric of contributory buildings
- To encourage sensitive adaptation of heritage items and contributory buildings
- To ensure infill development is designed to respond sympathetically to the historic built form, character and detailing of nearby heritage items and contributory buildings

- To ensure that the heritage significance of heritage items and/or conservation areas located in the vicinity of the town centres is considered in the assessment of development applications

Controls

All Development

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

New development adjacent to heritage items and contributory buildings:

- a) Development adjacent to heritage items and contributory buildings (infill development) should:
 - i. Be designed to respect the historic scale, proportions and articulation of adjacent contributory built forms, including heights, solid to void ratios and alignments of street awnings
 - ii. Incorporate podiums and framed overlays that reference the principle influence line of historic streetscapes, and are cohesive with the established street frontage
 - iii. Be designed to incorporate setbacks which retain the profile and massing of exposed side elevations to retained contributory built forms
 - iv. Ensure new street elevations maintain the vertical articulation and segmented character of historic building groups which provide variety to the streetscape and sense of human scale, and avoid unrelated horizontally emphasised articulation
 - v. Provide contemporary new signage that compliments the character of the contributory buildings and
 - vi. Ensure that new finishes to side elevations should not detract from street front detailing and finishes.
- b) Development should maintain and reinstate the emphasis of street corners and cross routes through reinforcement of historic height lines remaining at, and adjacent to intersections.

Comments

It is suggested that the development application submission should include a Heritage Impact Statement/Heritage Impact Assessment addressing how the development responds sympathetically to the nearby contributory buildings, as required by the Objectives and Controls in the Heritage Conservation section of the DCP.

Any development proposal for the site should be consistent with floor space ratios and building height controls contained in the K2K Planning Proposal, and the Building Envelope Controls contained in the K2K Development Control Plan in order to satisfy the Urban Design and Placemaking Guiding Principle of achieving a sensitive transition in relation to recently constructed development and surrounding established lower scaled residential neighbourhoods, and in order to

ensure impacts on the setting and views to and from heritage properties in the vicinity of the site are minimised.

The building generally comprises a 4 storey podium element to Anzac Parade, and a 4 storey podium element to Houston Lane, with the upper levels set back. The Anzac Parade building section however comprises upper floors which are set back 4m from the “building line” while the front walls of the lower floors are set back from the building line by around 2.5m with the front balcony edges of the lower floors on the building line. The Anzac Parade building form comprises a tower element with a weakly defined podium to the street edge, formed by the edges of the cantilevered balconies which project from the apartments behind. There are concerns that the proposal is inconsistent with DCP for new development adjacent to contributory buildings which requires that they incorporate podiums and framed overlays that reference the principle influence line of historic streetscapes, and are cohesive with the established street frontage; and that they be designed to respect the historic scale, proportions and articulation of adjacent contributory built forms, including heights, and solid to void ratios.

The site has a width of around 13m, while the adjacent site to the north is somewhat wider. The ground floor frontage is dominated by a substation which is placed forward of the retail shopfront and residential entry lobby. It is suggested that a better development for the subject site in terms of its ground floor plan and street elevations could be achieved if both sites were amalgamated.

Recommendation

It is suggested that a meeting be organised to discuss these issues.

2.2. Development Engineer

SUMMARY OF ENGINEERING ASSESSMENT

Vehicle Parking Provision

The proposed development will comprise of a ground floor commercial tenancy (87m²) and co-living component containing a total of 65 rooms

For commercial component

The K2K DCP specifies a parking requirement of 1 space per 125m² for commercial or 1 space per 100m² if it is to be a café resulting in a parking requirement of between 0.7 & 0.9 spaces (for 87m²). In both case this would be rounded to 1 space.

For Co living component

Under the non-discretionary development standard in the SEPP (Housing) 2021 for developments in a accessible area (of which this development is) 0.2 spaces are required for each private room resulting in a parking standard of 13 spaces (for 65 rooms) for the co-living component

A total parking requirement of 14 spaces would therefore generally be required should the above standards be adopted.

The development only proposes **6 spaces** which are all to be dedicated to the co-living component resulting in **a parking shortfall of 8 spaces (comprising of 7 co-living and 1 retail)**

This is not supported. The development already receives a very generous discount on parking due to its location within an accessible area and K2K area. Hence a 57% (8 space) shortfall based on these significantly lower parking rates is unacceptable and will likely lead to additional parking impacts within an area that is already suffering from high parking pressures.

Motorbike and Bicycle Parking

Clause 69(2) of the SEPP (Housing) 2021 requires motorbike and bicycle parking to be provided at the following rates

- At least 1 bicycle parking space will be provided for each private room, resulting in a requirement of 65 spaces for proposed development

- At least 1 motorcycle space will be provided for each 5 private rooms, resulting in a requirement of 13 spaces for proposed development

The proposed development provides for 71 bicycle spaces and 13 motorbike spaces and so complies with the above requirements although it is noted Integrated Transport have raised issues with the size of the bicycle spaces.

Development Engineering concurs as the proposed bicycle spaces do not appear to comply with the minimum requirements of AS 2890.3

Parking Layout

Access to the basement is via a car lift. Mechanical specifications of the car-lift have not been provided however the lift speed is given as 0.25m/s. This is considered acceptable

Parking space and aisle width appear to comply with AS 2890.1. vehicle can enter and exit the site in a forward direction.

Waste Management

Section 22, control (h) of the Kensington to Kingsford DCP requires all new development (other than alterations and additions or minor in nature) to incorporate a localised automated waste collection system (LAWCS) in accordance with Council's automated Collection system guidelines.

The development proposes traditional bin collection which is no longer appropriate within the area covered by the K2K DCP.

The development has not made allowance for the LAWCS or a connection point for connection to a Council LAWCS vehicle .

In addition

- Waste storage areas for commercial must be physically separated from the residential waste
- An area for bulky waste (min 20m³) shall be provided
- No Waste Management plan has been provided

Flooding

No flooding issues. The neighbouring site at 309 Anzac Parade has some minor flooding issues with flood depths of up to 150mm in the rear laneway and with a top water level of RL 24.40 AHD for the 1% AEP (1 in 100yr) flood

This will not impact the subject site.

Drainage

The site has a about a metre fall from Anzac Parade to the rear laneway. The stormwater drainage system is proposed to be discharged to council's underground drainage system in Anzac parade. This is satisfactory given the lack of Council drainage underground infrastructure in the laneway. Discharge to the kerb and gutter in the laneway will also be permissible.

A On Site Detention (OSD) system will be required and this is indicated as being provided on the drainage plans.

2.3. Integrated Transport

It appears Council's Engineer has covered many of the onsite issues with regards to parking.

Our main (Integrated Transport) contention would be the ability of a loading / unloading truck accessing the proposed loading dock from narrow lane. The swept paths provided by Traffic Consultant demonstrate is not satisfactory. Therefore, we requested the following:

1. DWG Plans including swept paths must be provided for Council review.

2. (Prior to CC) A Loading Dock Management Plan must be provided to Council's satisfaction, outlining:
 - a. Induction process for tenants
 - b. Scheduling process
 - c. Rules and procedures for accessing, utilising, and departing from the loading dock, with particular emphasis on measures to maintain public safety.
 - d. All vehicles using the loading dock must be road worthy, with working taillights and fitted with audible reverse warnings (squawkers).

2.4. Design Excellence Advisory Panel

INTRODUCTION

Attached is a copy of the minutes relating to this Design Excellence Advisory Panel meeting.

The Panel's comments are intended to assist Council in their design consideration of an application against the SEPP 65 or/and Design Excellence principles. The absence of a comment under a head of consideration does not imply that particular matter to be satisfactorily addressed, more likely the changes are suggested elsewhere to generate a desirable change.

Your attention is drawn to the following;

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

Both documents are available from the NSW Department of Planning.

Note:

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

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

PANEL COMMENTS

The subject site is located in the middle of Block 12 in Part B of the Kensington to Kingsford RDCP. The future desired character in the RDCP states:

The preferred development outcome for the block is to achieve a quality designed building that responds to the site's context, respects existing contributory buildings whereby with height transitions from Anzac Parade to Houston Lane. A 2m setback off Houston Lane is to be provided. A 4 storey street wall together with a 1.5m ground floor setback from Anzac Parade (with the exception of the contributory building) is required to allow widening of the footpath to improve the quality of the public domain surrounding the block. A 4m upper level setback is to be provided along Anzac Parade and a 3m upper level setback is to be provided along Borodale Road.

The proposal does not comply with the RDCP envelope for the site in certain respects, eg active frontage, setbacks and height. The Panel is therefore considering the alternatives promised.

1. Context and Neighbourhood Character

The building presents a four-storey podium to Anzac Parade with the main body setback 4m from the podium, with bay windows protruding into the setback. The panel supports the extent of modulation in the facade. The required 2m setback on Houston Lane is again interrupted by bay windows which provide relief to the facade. Besides the bay windows, all the remaining wall faces should comply with the setbacks.

The building rises above the LEP height limit; however, the panel considers this acceptable, providing this additional bulk is not visible from the public domain.

Active frontages are required to Anzac Parade and preferred at Houston Lane. To achieve this, the design needs to be amended to eliminate services and other blank facades facing the public domain, including the substation on Anzac Parade. There is an opportunity to make the ground floor a fluid space that becomes a genuine public shared space within the life and activity of the building, and directly connected (spatially and visually) to Anzac Parade.. Circulation, including vertical circulation, should be readily visible and safely accessed with ease. The retail space should have a semi-open interface with the lobby space.

Considering the relatively narrow width of the site and the nature of the residents, likely to be students despite the co-living proposal, the applicant could explore the option of removing car parking and achieving waste collection on the laneway, thereby eliminating the need for a complicated lay-by space within the ground floor. The rubbish room should be investigated to achieve reductions in size, through the use of compactors or other solutions, which would free up even more valuable ground floor space.

2. Built Form and Scale

The height and bulk of the built form are generally acceptable, as discussed above.

3. Density

The proposal amounts to an increase in density for this well-serviced area.

4. Sustainability

Natural ventilation in these small private rooms will be critical for thermal comfort. Ceiling fans would assist the opening windows and louvres.

Systems for outdoor clothes drying, in particular inside private rooms, would improve the energy efficiency of the building.

Given the extreme site coverage, all rainwater falling on the site should be harvested, stored, treated and re-used. This could occupy some of the basement space vacated by parking and services.

5. Landscape

The landscaping proposed is a stock standard solution to what typically become barren and deracinated spaces, due to lack of light and maintenance attention to the planting. A much more progressive approach to landscape should be adopted, which considers the artificiality of the level one space, and the verticality possible in this building type and its designated envelope. Exotic decorative species are unlikely to thrive in this environment, nor have much impact on the physical and experiential character of the space. Consideration should be given to low maintenance vertical planting, green screens and inhabitable productive gardens integrated into the architecture of the building. The scheme is resolutely one of built form, pretending that the internal space is a ground level courtyard garden denies the potential robust urbanity of what the central space could become. (See note below regarding connectivity between the two blocks).

6. Amenity

The principal opportunity for improvement in this design is at ground floor. Refer to 1. Context and Neighbourhood Character above.

With such a high population, it is crucial that the communal areas, including the ground floor and all circulation areas are spacious and inviting. The naturally lit staircases are an example of the generosity required. With suggested changes and deletions of servicing elements from the ground floor, this level could comprise an enlarged and improved retail space, a continuously connected dual lobby extending from Anzac Parade to Houston Lane, a naturally lit, visible and easily accessible bike hub space, daylit and readily accessible stair connections to above, daylighting to ground floor areas, and a spatial, visual and daylight connection between the ground floor public spaces and the shared communal space on level one.

This generosity and innovation in circulation, connectivity and movement should extend to the upper levels of the building, emphasising the naturally illuminated public stairs as the primary means of circulation. Connecting the stairs at an upper level would reinforce the dense urbanity of the central courtyard, open up the possibilities of vertical landscapes, and allow all the residents of the block to easily access all the shared public spaces of the building. This would also increase the dynamism and activation of the central space, along with connecting it to the ground floor.

Internally, the apartments facing Anzac Parade are long and narrow, and circulation around beds is cumbersome. Consideration should be given to improving user flows, assuming that the beds will generally be left in an open position.

The occupants' privacy in rooms adjacent to communal areas requires improvement. For example, the level 4 communal living should be treated to avoid overlooking of the private rooms opposite and the level one communal terrace needs increased separation from the adjacent private rooms.

7. Safety

The plans should be developed to allow for passive surveillance of all the circulation areas. In particular long window-less corridors to the staircases should be avoided.

The Co-Living manager's work-space should be located to provide an additional level of security and accessibility to the co-living tenants and is to be identified in the plans and the plan of management.

8. Housing Diversity and Social Interaction

There is limited diversity in the room types offered, however, the incorporation of co-living features will hopefully encourage a variety of tenants.

The applicant should consider lobby area adjacencies with visibility between ground floor retail and building lobby and circulation and encourage the use of the stairs.

9. Aesthetics

Architectural Design, Materials and Detailing

The facades are skillfully managed and composed. As much design attention needs to be paid to the internal facades of the building, as well as the design of ground floor public spaces, and their relationships to Anzac Parade and Houston Lane.

SUMMARY AND RECOMMENDATIONS

The panel considers the overall form of the proposal to be acceptable, and in line with what the DCP controls suggest. However, these building types often result in highly segregated buildings, with poor amenity and equally substandard outcomes in landscaping and social interaction.

The co-living remit provides an opportunity to improve upon the quality of this type of building – this demands a much more proactive design approach, in which much more emphasis is placed on the qualitative outcomes as they impact the residents and users of this building, and much less attention dedicated to simply solving technical requirements.

As discussed, the Panel feels that there is great opportunity to be had in de-emphasising the servicing, and instead focusing on the social and public spaces of the building, including the ground

floor, its connection to light and air and the central space, and this space's extension and connection to the upper levels of the building.

These changes would celebrate the dense vertical urbanity of this building type, and instead of suffering its liabilities by delivering a series of sub-standard public and outdoor spaces, instead celebrate its density, verticality interactivity and potential urban dynamism.

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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 request has been prepared by The Planning Studio on behalf of the applicant and is submitted to Randwick City Council (Council) in support of a Development Application (DA) for 311-313 Anzac Parade Kingsford (the site), which proposes a mixed-use development of retail premises and co-living.

The request seeks to vary the development standard for maximum Height of Buildings under Clause 4.3 of the RLEP 2012 as amended by Clause 6.17 of the RLEP 2012. This Clause 4.6 variation request demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of case, that there are sufficient environmental planning grounds to justify contravening the development standard and that the proposed development will be in the public interest because it is consistent with the objectives of the Height of Buildings standard and the objectives for development within the B2 Local Centre zone in which the development is proposed to be carried out.

The variation allows for a development that provides for the orderly and economic use of the land in a manner which is appropriate when considering the site's context and specific environmental conditions.

This Clause 4.6 variation written request adequately demonstrates that, notwithstanding the numerical non-compliance, the proposed development:

- Achieves the objectives of the Height of Buildings development standard in Clauses 4.3 and 6.17 of the RLEP2012 (Wehbe#1);
- Has sufficient environmental planning grounds to justify the variation;
- Is consistent with the objectives of the B2 Local Centre zone prescribed by RLEP 2012;
- Is consistent with the applicable and relevant State and Regional planning policies; and therefore
- Is in the public interest.

As a result, the development application may be approved as proposed in accordance with the flexibility afforded under Clause 4.6 of the RLEP 2012.

2 The Development Standard to be varied

This Clause 4.6 variation has been prepared as a written request seeking to justify a contravention of the maximum Height of Buildings development standard as set out in Clause 4.3(2) of the RLEP 2012.

Clause 4.3(1) states:

4.3 Height of buildings

1. The objectives of this Clause are as follows:
 - a. To ensure that the size and scale of development is compatible with the desired future character of the locality
 - b. To ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,

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

As identified on the RLEP 2012 Height of Buildings Map associated with Clause 4.3, the site is subject to a 'base' height limit of 24m (refer to **Figure 1**).

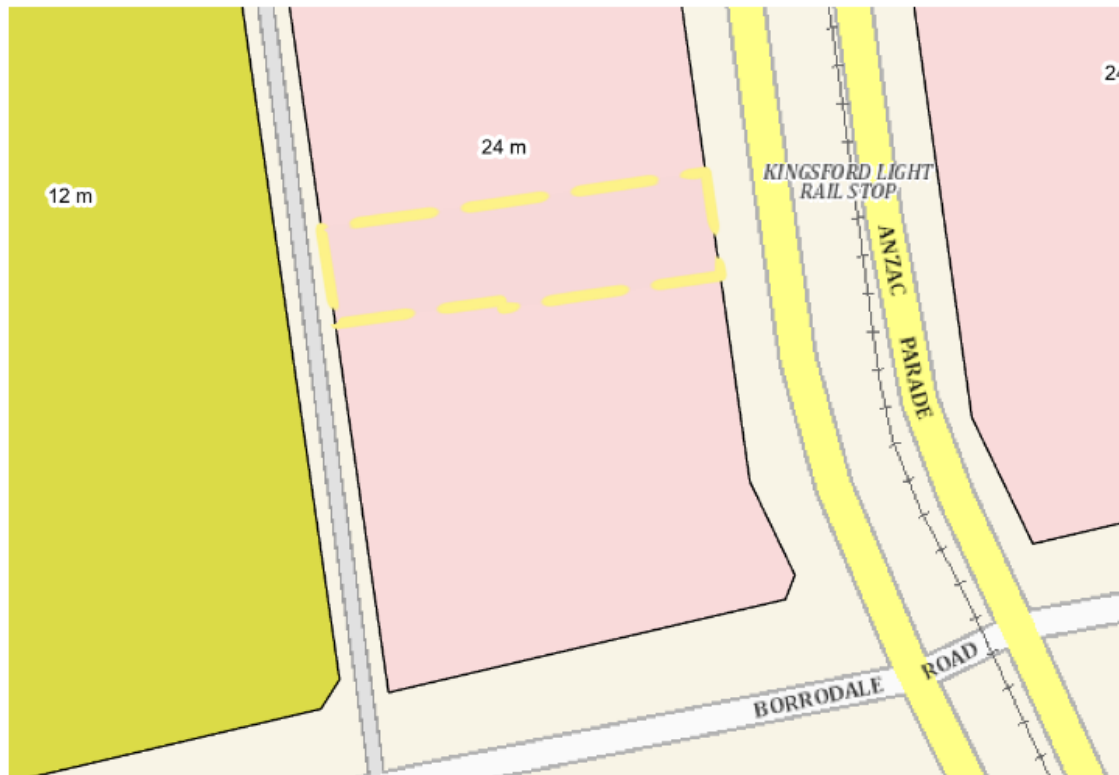


Figure 1 Height of Buildings Map Extract Illustrating the 'Base' Height Limit (NSW Planning Portal)

This 24m 'base' height limit is supplemented by Clause 6.17 of the RLEP 2012 which permits an increased alternative height limit where a proposed development provides community infrastructure.

Clause 6.17(1-2) states:

6.17 Community Infrastructure Height of Buildings and Floor Space at Kensington and Kingsford Town Centres

1. The objectives of this Clause are as follows:
 - a. to allow greater building heights and densities at Kensington and Kingsford town centres where community infrastructure is provided,
 - b. to ensure that those greater building heights and densities reflect the desired character of the localities in which they are allowed and minimise adverse impacts on the amenity of those localities,
 - c. to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.
2. Despite Clauses 4.3 and 4.4 the consent authority may consent to development on a site that results in additional building height or additional

floor space, or both, in accordance with sub-Clause (4) if the development includes community infrastructure on the site.

As established by the RLEP 2012 Alternative Height of Buildings Map associated with Clause 6.17 (refer to Figure 2), the site is subject to a maximum building height limit of 31m and 19m. This request proceeds upon the assumption that Cl.6.17 applies so as to establish the Alternative Height.

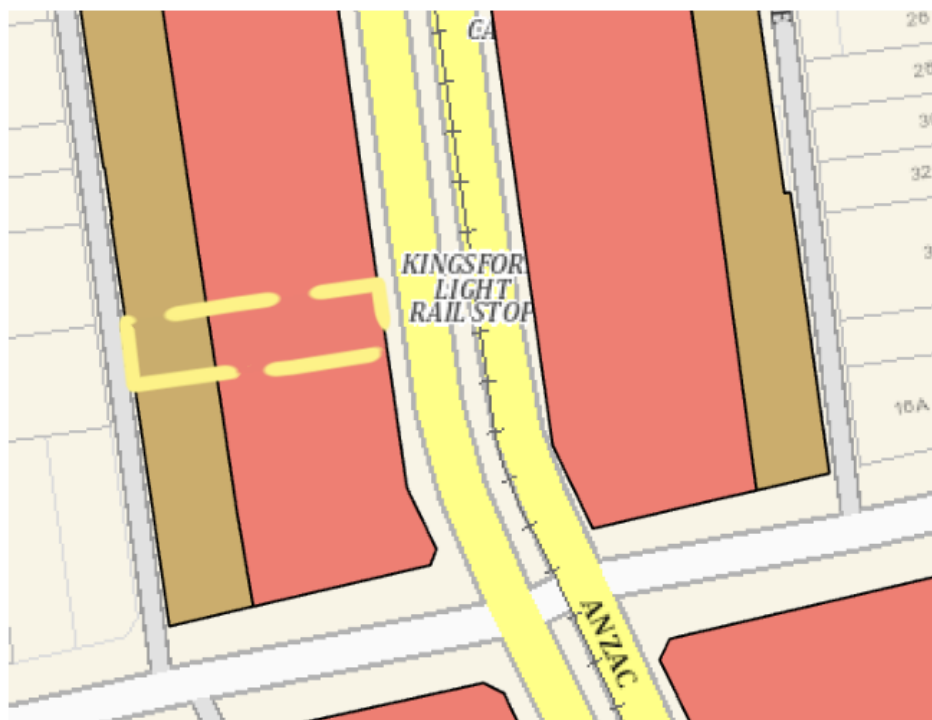


Figure 2 Alternative Height of Buildings Map Extract Illustrating Maximum Height Under Clause 6.17 (NSW Planning Portal)

3 Extent of Variation to the Development Standard

As addressed above, Clause 4.3 as supplemented by Clause 6.17 of the RLEP 2012 prescribes a maximum height of 31m for the site where development proposed on the site includes community infrastructure. The proposed maximum building height is RL 59.75 or 33.8 metres when measured from existing ground level to the top of the lift overrun.

This results in a variation to the 31m maximum Height of Buildings development standard of 2.8m, representing an exceedance of 9%.

For the portion of the site with a 19m height control, the lift overrun sits at RL47.150, which also represents a 2.8m exceedance or 14.7% exceedance of the 19m control.

The variation proposed results only from lift overrun and fire stair associated with the proposed communal roof terrace, as well as plant (air conditioning units and a fire tank) servicing the development. The building parapet sits at RL56.3, which is generally below the 31m height control. No floor space is within the structures breaching the height control.

The lift overruns are inset from the façade and will therefore have no visibility when viewed from the surrounding ground plane.

The height variation is illustrated in **Figure 3**.

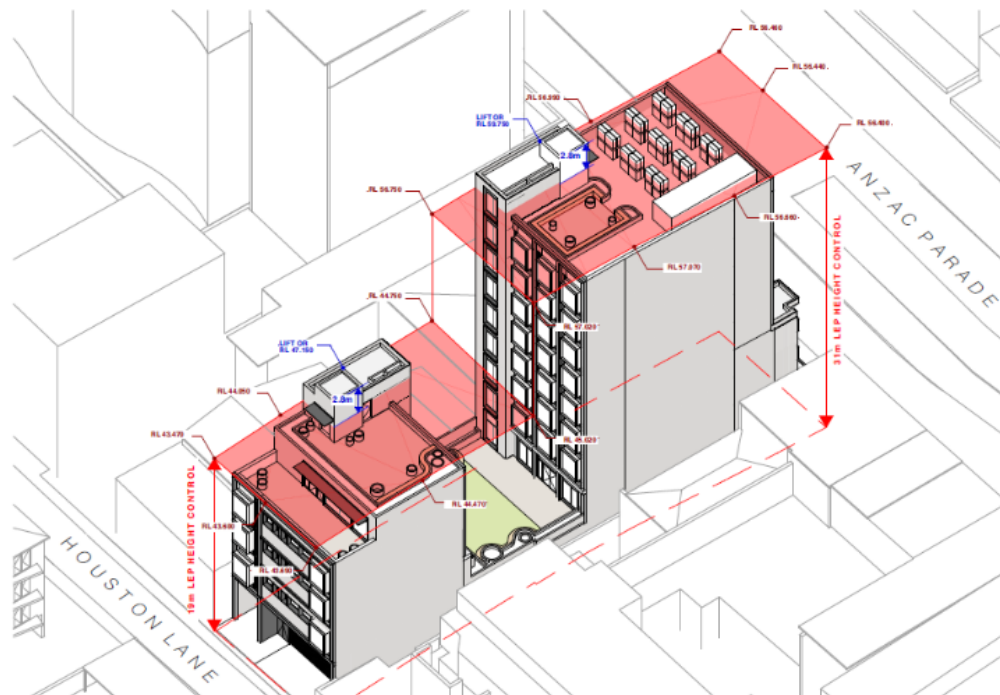


Figure 3 Proposed Height Exceedance (DA9604 - MHNDU) - to be updated with 19m

4 Objectives of the Standard

The objectives of the Clause 4.3 Height of Buildings development standard are as follows:

- To ensure that the size and scale of development is compatible with the desired future character of the locality,
- To ensure that development is compatible with the scale and character of contributory buildings in a conversation area or near a heritage item,
- 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 objective of Clause 6.17 Community Infrastructure Height of Buildings at Kensington and Kingsford Town Centres development standard are as follows:

- To allow greater building heights and densities at Kensington and Kingsford town centres where community infrastructure is also provided,
- To ensure that those greater building heights and densities reflect the desired character of the localities in which they are allowed and minimise adverse impacts on the amenity of those localities,

- c) To provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.

5 Objectives of the Zone

The objectives of the B2 Local Centre zone are as follows:

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

6 Assessment

Clause 4.6(3)(a) - Is Compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Compliance with the height standard is considered unreasonable and unnecessary in the circumstances for the reasons outlined in **Section 7.1 below**.

6.1 The Objectives of the Standard are Achieved Notwithstanding Non-Compliance with the Standard (Wehbe#1)

The following sections demonstrate that the proposed variation will result in a built form outcome that achieves the objectives set out under Clause 4.3 and Clause 6.17 of the RLEP 2012.

6.1.1 Objectives of Clause 4.3 - Height of Buildings Development Standard

The following sections demonstrate that the objectives associated with the Clause 4.3 development standard are achieved notwithstanding the proposed non-compliance.

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

The site is located on the western side of the Kingsford Town Centre and is subject to the controls originally developed through the K2K Planning Strategy and associated Planning Proposal, which permits a 31m and 19m height control subject to delivery of community infrastructure on site. In light of this, the desired future character of the locality is to consist of high-density, mixed-use development with a greater bulk and scale compared to the existing built form within the streetscape.

The development, as proposed, only seeks to vary the height control to deliver an additional communal open space area at the top of both buildings. The variation relates to the required lift overrun, stairs associated with this additional communal benefit, as well as some of the plant the development requires. These structures are set back from the edges of the site, and therefore will not be able to be viewed from the public domain.

The building's height, as perceptible from the street, will therefore appear as compliant with the 31m control or compliant 19m control from Houston Lane.

The proposal is consistent with the DCP height in storeys control, which permits buildings of up to 5 and 9 storeys at this location. The use of the roof area to deliver communal open space is to deliver additional amenity associated with the development, in addition to the communal spaces proposed at lower levels of the development.

The additional height therefore provides an opportunity to concentrate high density development around a transport node whilst facilitating a gradual transition to the lower scaled built form located further southward along Anzac Parade. It is compatible with the built form controls for the block, as well as the approved development to the south and planning controls to the north. For these reasons, it is considered that the proposed development achieves the objective of the standard notwithstanding the non-compliance.

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

The site is not located in the immediate vicinity of a heritage item or an HCA. The site is located to the north of three (3) contributory buildings situated at the intersection of Anzac Parade and Darling Street (refer to **Figure 4**). These contributory buildings do not form part of an HCA.

The contributory buildings reach two storeys and have the potential to be redeveloped to support a six (6) storey street wall height in accordance with the DCP. These buildings are also designated a maximum height of 31m in accordance with the LEP controls.

Block 13**Figure 4** Location of Surrounding Contributory Buildings (DCP)

Consequently, the variation of the height development standard does not detract from the heritage values in the surrounds and the proposal is considered to achieve the objective notwithstanding the non-compliance.

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

Supporting architectural and consultant information confirms that the proposal, and the area of non-compliance related to the height control, will not give rise to additional amenity impacts beyond a development proposal that is entirely compliant with the standard. Further discussion is provided below. The relevant drawings and supporting information are referenced under each particular amenity issue below.

Privacy

The additional height relates to lift overrun and fire stairs to support the proposed rooftop communal area and plant required for the wider development. As the surrounding development currently consists of medium to low scale density developments with comparatively reduced heights, there will be no opportunity for direct sightlines to and from the structures proposed within the non-compliant height.

Building Separation

The exceeding elements of the building have no impact on the development's separation from surrounding properties.

Overshadowing

Overshadowing diagrams are included as part of the architectural package. The diagrams confirm that the additional height will not give rise to shadow impacts that would create any additional overshadowing to surrounding residential properties beyond a compliant envelope.

The overshadowing impacts of the height non-compliant elements of the development, therefore, do not prevent the development from achieving the objective of the development standard.

Private Views

The site is positioned within a mixed-use town centre and interfaces with residential development to the south and west. Due to the density anticipated by the LEP controls along with the strategic distribution of the building's mass, the proposal will not result in unacceptable private view impacts to surrounding properties.

The site is located within a highly urbanised setting whereby the controls permit significant density for the locality. In consideration of the site's context, it can reasonably be anticipated that adjacent properties will experience some degree of view loss from any future development at the site consistent with the planning controls.

The height non-compliance relates to the proposed plant, lift overruns and structures associated with roof terraces on the two buildings. The variation will create no additional impact to the view corridors obtained from private properties beyond that of a compliant scheme.

Visual bulk

The Randwick Development Control Plan 2013 (RDCP 2013) does not identify any significant view corridors or vantage points that require protection. A number of design measures have been incorporated to limit the visual impact of the proposal and non-compliant height when viewed from the general surrounds, including:

- The lift overruns are located centrally to the envelope and will not be perceptible from the ground plane; and
- The facade is highly articulated through expressed facade apertures and textural elements, creating the impression of a fine-grain scale built fabric that offers visual identity to each respective unit.

As a result of the above, the height exceeding elements will create no additional visual bulk impacts when viewed from the surrounding locality.

6.1.2 Objectives of Clause 6.17 - Community Infrastructure Height of Buildings and Floor Space at Kensington and Kingsford Town Centres

The following sections demonstrate that the objectives associated with the Clause 6.17 development standard are achieved notwithstanding the proposed non-compliance.

a) To allow greater building heights and densities at Kensington and Kingsford town centres where community infrastructure is also provided,

In accordance with Clause 6.17(2), the application includes the delivery of community infrastructure on site that is consistent with Council's DCP, including appropriate development and public domain improvements, as well as other relevant matters. It is also noted that the ground-floor setback of the building along the eastern elevation to provide additional footpath width on Anzac Parade, as well as space for potential future footpath dining.

- b) To ensure that those greater building heights and densities reflect the desired character of the localities in which they are allowed and minimise adverse impacts on the amenity of those localities,**

The proposed height variation, which only relates to structures on the roof for communal facilities and plant, is considered to be compatible with the desired character for the Kingsford Town Centre for the reasons addressed in Section 7.1.1(b).

The proposal has been designed to minimise impacts to the locality to the greatest extent possible. For the reasons addressed in Section 7.1.1(c), the height exceeding elements of the proposal will not give rise to unreasonable or additional amenity impacts beyond that of an entirely compliant development thereby ensuring that the development achieves the objective notwithstanding the height non-compliance.

- c) To provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.**

The site is located opposite the recently constructed Kingsford Light Rail Station which forms part of the CBD and South East Light Rail network. It is also in walking distance of several bus routes located along Anzac Parade and Gardeners Road which provide connections to the CBD, Redfern, Bondi Junction and Wolli Creek. The site is therefore well serviced by existing public transport infrastructure.

Notwithstanding the height variation, the proposal complies with the maximum FSR of 4:1 prescribed by Clause 6.17, and the structures above the height control do not contain any floorspace. The recently adopted FSR maximum was determined as being suitable for the site in recognition of its proximity to the light rail and following the completion of an infrastructure capacity analysis which forms part of the K2K Planning Strategy.

Considering the above, the height variation does not necessitate a corresponding contravention to the FSR development standard and therefore does not increase the intensity of the proposed development beyond that of a complying scheme. Rather, the height variation is merely a consequence of the proposed massing strategy which distributes the building's bulk vertically. In turn, irrespective of the height variation, the proposal continues to provide a land use intensity commensurate with the capacity of surrounding infrastructure.

In addition, the proposal accommodates a quantity of parking to encourage sustainable modes of transport and optimise its proximity to the light rail. In turn, the height exceeding elements of the proposal will not give rise to additional traffic generation that would adversely impact the capacity and functioning of the surrounding road network. This conclusion is supported by the findings of the traffic generation assessment included within the Traffic and Parking Assessment that accompanies this application.

6.2 Clause 4.6(3)(b) - There are sufficient Environmental Planning Grounds to Justify Contravening the Development Standard.

Clause 4.6(3)(b) of the RLEP 2012 requires that the consent authority be satisfied that the applicant's written request has adequately demonstrated that:

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

The environmental planning grounds relied on in the written request under Clause 4.6 must be sufficient to justify contravening the development standard. The focus is on the aspect of the development that contravenes the development standard, not the development as a whole. Therefore, the environmental planning grounds advanced in the written request must justify the contravention of the development standard and not simply promote the benefits of carrying out the development as a whole (*Turland v Wingecarribee Shire Council* [2018] NSWLEC 1511 and *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118), also 'Rebel MH' and 'Baron' (2019).

The environmental planning grounds relied upon to justify the exceedance of the development standard in the circumstances of the proposal are considered sufficient and specific to the site and the proposed contravention.

As confirmed by supporting consultant reports and addressed throughout this variation request, the non-compliance with the development standard does not result in any adverse environmental planning impacts. Specifically, relative to a complying scheme that reached no higher than 19 and 31m (9 storeys), there will be no loss of significant or iconic views; no additional privacy impacts; unacceptable traffic impacts; adverse visual impacts or additional overshadowing to residential properties.

For the reasons discussed above, it is contended that there are sufficient environmental planning grounds to justify the contravention to the development standard in the circumstances of the case, particularly given that the design provides a tailored and well considered response to the site's constraints and articulation.

6.3 Clause 4.6(4)(a)(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

6.3.1 Consistency with the objectives of the development standard

The proposed development is consistent with the objectives of the Height of Buildings development standard and the Community Infrastructure Height of Buildings at Kensington and Kingsford Town Centres development standard for the reasons discussed in **Section 7.1** of this report.

6.3.2 Consistency with the B2 – Local Centre Objectives

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

The proposal seeks the delivery of a mixed-use development. The ground floor accommodates continuous retail uses along the Anzac Parade frontage. Residential apartments are proposed at the upper levels and to the rear of the ground level where street activation is not attainable.

The additional height will facilitate the delivery of a new high-quality mixed-use development within the Kingsford Town Centre that is anticipated to undergo a process of urban renewal and be redeveloped for increased density in line with Council's strategic planning aspirations.

The proposed height variation will provide additional amenity to the future residents of the development through additional communal open space, as well as photovoltaic cells to support sustainability for both residential and retail uses.

The additional height will also assist in providing retail uses at street level with compliant ceiling heights that will promote flexibility of use. These uses have the opportunity to accommodate needed services for the community and potentially contribute to the night-time economy.

To encourage employment opportunities in accessible locations.

The proposal incorporates ground-floor retail at the ground-level of the building facing Anzac Parade. This floor space will contribute to an activated public domain and will assist in meeting the target to deliver 6,000 - 6,500m² of employment generating floor space for the Kingsford Town Centre by 2036. The site is located directly opposite the Kingsford Light Rail. Given the proximity to a transport node, the proposal will provide employment opportunities in a highly accessible location.

To maximise public transport patronage and encourage walking and cycling.

The proposal fosters the principles of transit-oriented development by co-locating housing and employment generating floor space on a site positioned within walking distance of the Sydney Light Rail and bus services along Anzac Parade.

The proposal provides a compliant amount of bicycle parking and parking numbers consistent with a transit-oriented development. Whilst consent is sought for additional height, the proposal does not propose a corresponding increase in the quantity of car parking.

For the reasons set out above, the proposal will encourage non-vehicular modes of transport, including walking and cycling.

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

The site is located within the B2 Local Centre zone. The primary function of the zone is to support a mix of uses, including employment generating uses and residential accommodation.

The existing buildings accommodated on the site are outdated. The proposal provides an opportunity to replace this building stock with a high-quality mixed-use development that will assist in revitalising the Kingsford Town Centre.

The contravention of the development standard will facilitate the provision of infrastructure to support the development in the form of communal open space and plant structures such as air conditioning to support the business and residential function of the development.

The retail tenancy is proposed along the Anzac Parade frontage, which will have the potential to contribute to the needs of the community and the night-time economy.

This retail floor space will be delivered alongside the proposed community infrastructure delivery on the site, which together will facilitate the activation of Anzac Parade.

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

The proposal incorporates public domain upgrades within and outside the bounds of the site along Anzac Parade, which represent a substantial public benefit.

An awning is proposed along the street frontage and will enhance pedestrian amenity. The additional height and the overall scale of the development will not result in wind impacts that would compromise pedestrian comfort and safety.

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

Supporting subconsultant reports and the environmental assessment provided within **Section 5.0** of the SEE confirm that the proposal will not result in unacceptable environmental impacts. Specifically, the proposed height variation does not result in any of the following:

- Additional overshadowing impacts beyond a compliant development;
- Impacts to heritage items, HCAs or contributory buildings;
- Building separation that could provide adverse visual privacy impacts;
- Acoustic impacts that are not capable of being managed through the adoption of mitigation measures;
- Unacceptable traffic generation and impacts to the functioning of the surrounding street network; or
- A reduction of on-street car parking or increased car dependency which may impact residents in the zone.

In consideration of the above, the additional height proposed by the variation is considered appropriate for the site's context considering the lack of resulting environmental and amenity impacts.

To facilitate a safe public domain.

Lighting, active retail uses, legible entries and the generally improvement to the appearance of the area as a result of the proposal will maximise opportunities for surveillance and contribute to a safe public domain.

7 Secretary's Concurrence

Under Clause 4.6(5) of the RLEP 2012, the Secretary's concurrence is required prior to granting consent to a variation. Under Clause 64 of the Environmental Planning and Assessment Regulation (2000), the Secretary has given written notice dated 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 Clause 4.6, subject to the conditions in the table in the notice.

The Planning Circular PS 20-002, issued on 5 May 2020 (the Planning Circular), outlines the conditions for assuming concurrence. The Planning Circular establishes that all consent authorities may assume the Secretary's concurrence under Clause 4.6 of the Standard Instrument (Local Environmental Plans) Order 2006 (with some exceptions). The RLEP 2012 is a standard instrument LEP and accordingly, the relevant consent authority may assume the Secretary's concurrence in relation to Clause 4.6(5). This assumed concurrence notice takes effect immediately and applies to pending development applications.

Under the Planning Circular this assumed concurrence is subject to conditions. Where the development contravenes a numerical standard by greater than 10%, the Secretary's concurrence may not be assumed by a delegate of council unless the Council has requested it.

7.1 Clause 4.6(5)(a): Any Matters of Significance for State or Regional Environmental Planning

The contravention of the height standard does not raise any matter of State or regional planning significance. The proposed variation will not contravene any overarching State or regional objectives or standards.

7.2 Clause 4.6(5)(b): Any Public Benefit of Maintaining the Development Standard

As demonstrated above there is no public benefit in maintaining the development standard in terms of State and regional planning objectives, or in terms of minimising the environmental impacts of the development given the proposal's compliance with other key DCP and Housing SEPP built form and amenity controls.

7.3 Clause 4.6(5)(b): Other Matters Required to be Taken into Consideration Before Granting Concurrence

Other than those identified above, there are no further matters that the Secretary (or Consent Authority under delegation) must consider before granting concurrence.

8 Conclusion

The assessment above confirms that compliance with the maximum Height of Buildings development standard contained in Clause 4.3 of RLEP 2012 (as amended by Clause 6.17) is unreasonable and unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the contravention to the development standard.

This Clause 4.6 variation request demonstrates that notwithstanding the non-compliance with the Height of Buildings development standard, the proposal:

- Achieves the objectives of the development standard in Clause 4.3 of the RLEP 2012;
- Achieves the objectives of the development standard in Clause 6.17 of the RLEP 2012;

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- Delivers a development that is appropriate for its context despite the breaches to development standards and therefore has sufficient environmental planning grounds to permit the variation;
- There are no matters of State or regional planning significance and no public benefit associated with maintaining the height standard in this case;
- Is in the public interest as it is consistent with the objectives of the development standards nominated under Clause 4.3 and Clause 6.17 as well as the B2 Local Centre zone under the RLEP 2012; and
- Therefore, compliance with the development standard is unreasonable or unnecessary in the circumstances of this proposal.

Appendix 3: DCP Compliance Table**3.1 Section E6: Kensington and Kingsford Town Centres**

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

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

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

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(c) A minimum non-residential FSR of 1:1 is to be provided at each strategic node site within the Todman Square, Kingsford Midtown and Kingsford Junction Precincts, in accordance with Clause 4.4 of the RLEP 2012</p> <p>(d) Non-residential floor space must be designed to be accessible, useable and functional for the purposes of commercial, business, entertainment and retail activities and the like</p>		
6.	Built Form		
	<p>Lot Amalgamation</p> <p>(a) A minimum street frontage of 20m is to be provided for each development site along Anzac Parade and Gardeners Road</p> <p>(b) When development/redevelopment/amalgamation is proposed, sites between and adjacent to developable properties are not to be limited in their future development potential</p> <p>(c) Where a development proposal results in an isolated site, the applicant must demonstrate that negotiations between the owners of the lots have commenced prior to the lodgement of the DA to avoid the creation of an isolated site. The following information is to be included with the DA:</p> <ul style="list-style-type: none"> (i) evidence of written offer (s) made to the owner of the isolated site* and any responses received (ii) schematic diagrams demonstrating how the isolated site is capable of being redeveloped in accordance with relevant provisions of the RLEP 2012 and this DCP to achieve an appropriate urban form for the location, and an acceptable level of amenity (iii) schematic diagrams showing how the isolated site could potentially be integrated into the development site in the future in accordance with relevant provisions of the RLEP 2012 and this DCP to achieve a coherent built form outcome for the block. <p>(d) Where lot consolidation cannot be achieved to comply with the maximum</p>	<p>The proposed site frontage, 13.1m does not comply with the 20m requirement. As discussed by the DEAP above, the lack of space at the ground floor level requires a disproportionate amount of services that lacks balance with the social and public spaces of the building including the connection to the upper levels.</p> <p>No evidence or information has been provided to confirm a letter of offer was made to the neighbouring properties, or schematic diagrams demonstrated how the isolated site could be integrated into the future development site.</p>	No

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>envelopes in the block diagrams, alternative designs may be considered where the proposal exhibits design excellence and can demonstrate consistency with the relevant objectives of the block controls (Part B).</p> <p><i>*Note 1: A reasonable offer, for the purposes of determining the development application and addressing the planning implications of an isolated lot, is to be based on at least one recent independent valuation and may include other reasonable expenses likely to be incurred by the owner of the isolated property in the sale of the property. To assist in this assessment, applicants are to submit details and diagrams of development for the isolated site, that is of appropriate urban form and amenity. The diagram is to indicate height, setbacks and resultant footprint (both building and basement). This should be schematic but of sufficient detail to understand the relationship between the subject application and the isolated site and the likely impacts of the developments. Important considerations include solar access, deep soil landscaping, privacy impacts for any nearby residential development and the traffic impacts of separate driveways access. The application may need to include a setback greater than the minimum requirement in the relevant planning controls. Or the development potential of both sites may need to be reduced.</i></p> <p><i>Note 2: Development proposals that cannot achieve a minimum frontage of 20m are unlikely to realise the maximum FSR indicated for the site on the RLEP 2012 FSR maps given the application of the Apartment Design Guide and other DCP requirements. Applicants are advised to obtain professional design advice.</i></p>		
	<p>Building Heights</p> <p>(a) The maximum height that can be achieved on a site is shown on the RLEP 2012 Height Map. An alternative maximum height is applicable in accordance with the RLEP 2012 Alternative Height Map where the proponent makes an offer to enter into a VPA for either a monetary contribution or the delivery of Community Infrastructure in accordance with the Community Infrastructure Contributions</p>	<p>The proposal does not comply with the prescribed building height development standard and this forms a reason for refusal. Refer to the Clause 4.6 assessment.</p>	<p>No</p>

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>Plan. (see Part D for details on Community Infrastructure Contribution)</p> <p>(b) The maximum number of storeys on a site is to comply with the following:</p> <ul style="list-style-type: none"> i) on sites with a maximum of 16m – 4 storeys ii) on sites with a maximum of 19m – 5 storeys iii) on sites with a maximum of 31m – 9 storeys iv) on sites with a maximum 57m – 17 storeys v) on sites with a maximum 60m – 18 storeys 		
	<p>Street Walls</p> <p>(a) Buildings must be designed with a street wall height of 4 storeys</p> <p>(b) On sites with contributory buildings, the consent authority may consider a variation to the four-storey street wall height requirement of between 2 and 6 storeys if the design:</p> <ul style="list-style-type: none"> (i) results in an improvement to the contributory building in accordance with established heritage principles to avoid facadism (ii) meets the objectives of this clause and exhibits design excellence (iii) retains contributory or heritage elements; and (iv) provides a transition to neighbouring sites. <p>Note 1: Street wall height can be established via podiums, datum lines or other design elements.</p> <p>Note 2: See Part A Section 9 for further requirements for heritage items and contributory buildings.</p>	<p>The proposal provides a street wall height of 4 storeys.</p>	<p>Yes</p>
	<p>Building Setbacks</p> <p>(a) DAs are to comply with the minimum ground floor and upper level setbacks illustrated in the relevant block diagrams in Part B</p> <p>(b) Development that results in an exposed party wall on an adjoining building is to incorporate architectural or vertical landscape treatment to improve visual amenity</p>	<p>The proposal complies with the required setbacks in the Block 13 Building Diagram such as the 1.5m front setback control from the GF to Level 4. The ground floor is setback 1.5m to Anzac Parade and the balconies to Levels 1-4 are setback 1.75m.</p>	<p>Satisfactory</p>

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
		<p>Notwithstanding this, the proposal includes minor protrusions into the front and rear setbacks. The bay windows at the rear project 0.7m into the 2m rear setback at Levels 1-3. At the front of the building, Levels 5-9 are subject to a 5.5m front setback, however the projecting bay windows are setback 4.64m.</p> <p>Refer to the comments from Council's Heritage Officer in the RLEP assessment regarding the podium levels, tower elements and concerns regarding the adjacent contributory built forms.</p>	
	<p>Building Depth</p> <p>(a) The residential component of development fronting Anzac Parade and Gardeners Road is to have a maximum building depth of 22m including balconies.</p> <p>Note 1: Building depth refers to the dimension measured from the front to the back of a building's floorplate. It has a significant influence on building circulation and configuration and impacts upon internal residential amenity such as access to light and air. For residential development, narrower building depths generally have a greater potential to achieve optimal natural ventilation and solar access than deeper floor plates.</p>	<p>The site depth is 50.25m which complies with the 22m requirement.</p>	<p>Yes</p>
9.	Heritage Conservation		
	<p>All Development</p> <p>(a) All development involving heritage items are to be in accordance with requirements for heritage set out in Part B2 of the DCP</p> <p>(b) All development involving heritage items and contributory buildings are required to:</p>	<p>Council's Heritage Officer has confirmed insufficient information has been submitted to demonstrate the proposal is satisfactory with regards to the neighbouring</p>	<p>No – insufficient information</p>

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none"> (i) Adhere to the principles of the Burra Charter (ii) Include the submission of a Heritage Impact Statement (or Heritage Impact Assessment) which considers the heritage significance of the item or contributory building, the impact of the proposal on the heritage significance of the building or heritage items within the vicinity, the rationale for the proposed development, and the compatibility of the development with the objectives and controls, and/or recommended management within relevant conservation management plans, planning instruments or heritage inventories (c) Development located within the vicinity of another local government area requires the preparation of a Heritage Impact Statement to address the potential impact on adjoining or nearby heritage items or heritage conservation areas in the adjoining local government area. 	contributory items.	
PART B			
10.	Block Controls		
10.3	Block by Block Controls – Other Sites		
	<ul style="list-style-type: none"> (a) Development must be consistent with the relevant block envelope controls including heights, setbacks, street walls, mid-block links and laneways (b) Built form within 'Flexible Zones' is to be designed to comply with the maximum building height in the RLEP 2012, objectives of this clause and the requirements of the ADG to achieve transition to adjoining lower scale development. 	The proposed height non-compliance and Clause 4.6 assessment details the proposals inconsistency with the building envelope controls.	No
Block 13			

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<div><p>Legend</p><ul style="list-style-type: none">1 storey4 storey5 storey8 storey9 storeyFlexible zone - 9 storeys or lessActive frontages - required (RLEP 2012)Active frontages - preferredPotential shared way/lanewayExisting shared way/lanewayProposed pedestrian linkVehicular accessPotential new or upgraded public spacePublic art opportunityExisting strata buildingExisting contributory buildingBlock boundary</div>		
	<p>Future Desired Character</p> <p>Future Desired Character The block is bounded by Anzac Parade, Borrodale Road and Houston Lane on the western side of Kensington town centre. It is currently occupied by a row of mainly two storey shop fronts featuring restaurants, retail and other uses. A multi-level mixed use development is located immediately north of the block at 305 Anzac Parade which is unlikely to be redeveloped in the immediate future.</p> <p>The preferred development outcome for the block is to achieve a quality designed building that responds to the site's context, respects existing contributory buildings whereby with height transitions from Anzac Parade to Houston Lane. A 2m setback off Houston Lane is to be provided.</p> <p>A 4 storey street wall together with a 1.5m ground floor setback from Anzac Parade (with the exception of the contributory building) is required to allow widening of the footpath to improve the quality of the public domain surrounding the block. A 4m upper level setback is to be provided along Anzac Parade and a 3m upper level setback is to be provided along Borrodale Road. A pedestrian link at the northern boundary to 305 Anzac Parade will improve permeability between Anzac Parade and Houston Lane. Development is to be built to the boundary on the southern frontage along Borrodale Road. A shared way is to be provided off Borrodale Road to enable pedestrian and service access to the block. A flexible zone is included within the middle of the block to enable built form to be suitably distributed across the site and designed to respond to ADG requirements for setback and amenity.</p>		

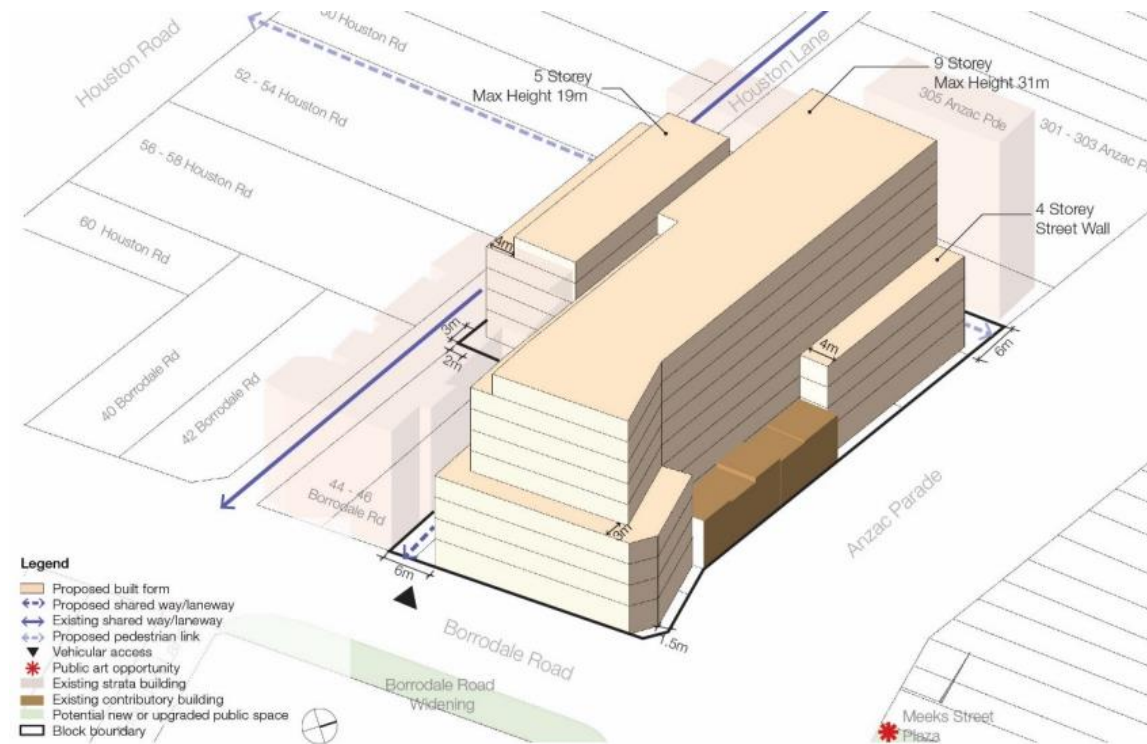
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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
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The fine grain proportions of existing shop fronts will be interpreted through a well articulated built form particularly on the Anzac Parade frontage to contribute towards a cohesive streetscape within the Kensington town centre.

Continuous active frontages are to be provided along Anzac Parade and Borrodale Road through appropriate location of uses such as shops, cafes, and restaurants, to facilitate a visual connection between the building and public realm and support a thriving economy. A well-designed corner treatment is to be provided at the intersection of Borrodale Road and Anzac Parade.



PART C

12. Floor to Ceiling Heights

(a) Minimum floor to ceiling heights are to be provided for all development in accordance with the following requirements:

Ground Floor	First Floor	Upper Floors
3.5m	3.3m	2.7m

The proposed floor to ceiling heights at ground floor is 3.9m, 3.5m at the first floor and 2.9m for the levels above which complies with the minimum requirements (including adequate slab depth for the floor to floor heights).

Notwithstanding this, the floor to ceiling heights attributed to the height non-compliance and should be reduced to accord with the

Yes, however, unsatisfactory

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
		specified requirements. This is to ensure future redevelopment around the site is consistent with the subject site. Refer to Section X.	
13.	Solar and Daylight Access		
	<p>(a) Solar access is to be provided in accordance with the recommendations of PART 4 of the Apartment Design Guide (ADG)</p> <p>(b) Buildings must ensure that areas of private or public open space are oriented to achieve the recommended level of solar amenity as per the ADG</p> <p>(c) In relation to student accommodation proposals:</p> <ul style="list-style-type: none"> (i) the design is to ensure that at least 60% of rooms achieve solar access during mid-winter for sites that have a north-south orientation (ii) common spaces such as lounge rooms or communal study areas are designed with a northerly aspect where possible (iii) atriums or slots in the façade are to be considered to maximise solar access to rooms. 	<p>As discussed under the SEPP Housing assessment, the proposal provides 2 hour and 4 hours of solar access to the indoor communal living rooms on level 1 and level 4. The communal outdoor space receives a minimum 3 hours and 5 hours at levels 1 and levels 4/5/9. The student accommodation rooms receive compliant solar access being, 1 unit without solar access, 4 units with less than 2 hours solar access and 61 units with over 2 hours of solar access (from a total of 65 units).</p>	Yes
14.	Acoustic Privacy		
	<p><u>Residential uses</u></p> <p>(a) All new development is to be constructed to achieve the following acoustic amenity criteria for the residential component of the building in accordance with Australian Standard AS2107:2016 based on an acoustic report specified in clauses d) and k). For the purposes of this clause, the residential component includes dwellings situated within shop top housing, mixed use buildings, or occupancies in student housing, boarding houses, serviced apartments, hotel and motel accommodation.</p> <p>(b) In naturally ventilated spaces for the residential component, the repeatable maximum Leq (1hour) should not exceed: i) 35 dB(A) between 10.00 pm and 7.00 am in sleeping areas when the windows are closed; ii) 40 dB(A) in</p>	<p>Council's Environmental Health Officer has confirmed the acoustic report does not contain sufficient information with regards to the assessment of all outdoor areas including advice on permitted times of usage and permitted numbers. As such, compliance with the specified criteria has not been demonstrated and this forms a reason for refusal.</p>	No - Insufficient information.

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>sleeping areas when windows are open (24 hours); iii) 45 dB(A) in living areas (24 hours) when the windows are closed, and iv) 50 dB(A) in living areas (24 hours) when the windows are open.</p> <p>(c) Where natural ventilation cannot achieve the limits listed in clause b) the development is to include mechanical ventilation, air conditioning or other complying means of ventilation (in accordance with the ventilation requirements of the Building Code of Australia and Australian Standard AS 1668.2-2012), when doors and windows are shut. In such circumstances the repeatable maximum Leq (1hour) with the alternative ventilation operating should not exceed:</p> <ul style="list-style-type: none"> (i) 38 dB(A) between 10.00 pm and 7.00 am in sleeping areas; (ii) 46 dB(A) in living areas (24 hours); (iii) (45 dB(A) in sleeping areas between 7.00 am and 10.00 pm. <p>(d) Notwithstanding the general noise criteria for environmental noise set out in clauses b) and c) for habitable rooms in the residential component of the proposed development is to incorporate noise control measures to ensure the standard LA10 Condition imposed by Liquor & Gaming NSW is satisfied inside those occupied spaces with doors and windows closed and the alternative ventilation is operating as follows:</p> <ul style="list-style-type: none"> (i) The cumulative LA10* from licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8 kHz inclusive) by more than 5 dB between 7am and midnight. (ii) The cumulative LA10* from licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8 kHz inclusive) between midnight and 7am. (iii) The noise from licensed premises shall be inaudible in any habitable room of any residential 		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>premises between the hours of midnight and 7am</p> <p>(iv) For this clause, the LA10* can be taken as the average maximum deflection of the noise level emitted from the licensed premises.</p> <p>(e) For the purpose of acoustic assessment with respect to clauses a), b) c) and d) the assessment must identify the noise environment for the site as a result of the existing situation (including any business operations that include outdoor areas for use by patrons, and/or the provision of music entertainment) and noise generated by commercial premises within the mixed use building (this may involve consideration of potential uses if the commercial use is unknown at the time of the application for the mixed-use building).</p> <p>(f) All development is to be designed to minimise noise transition between apartments by adopting general noise concepts of:</p> <ul style="list-style-type: none"> (i) locating busy, noisy areas next to each other and quieter areas next to other quiet areas, for example, living rooms next to living rooms, bedrooms with bedrooms (ii) locating bedrooms away from busy roads and other existing or potential noise sources (iii) using storage or circulation zones within the apartment to buffer noise from adjacent apartments, mechanical services or corridors and lobby areas; and (iv) minimising the amount of party (shared) walls with other apartments. <p>(g) Noise transmission is to be reduced from common corridors by providing seals at entry doors</p> <p>(h) Conflicts between noise, outlook and views are to be resolved using design measures such as double glazing, operable screening and ventilation taking into account noise targets for habitable rooms as identified in clauses b) c) and d) above are assessed inside the rooms with doors and windows closed and ventilation operating.</p>		

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(i) The design of the building is to address the requirements of clause d) with respect to noise from licensed premises and noise/vibration from mechanical plant and ventilation ducts associated with plant and equipment (including kitchen exhausts) serving the commercial spaces.</p> <p>(j) The design of new buildings or substantial alterations to existing buildings are to take into account the following noise conditions that would apply to each commercial tenancy in the development:</p> <ul style="list-style-type: none"> (i) Noise from commercial plant and the use of the premises when assessed as in LAeq, 15 minute must not exceed the LA90, 15 minute background noise level by more the 3dB when assessed inside any habitable room of any affected residence or noise sensitive commercial premises when in use. (ii) Noise from the provision of entertainment and patron noise when assessed as an LA10* enters any residential use through and internal to internal transmission path is not to exceed the existing internal LA90, 15 minute level in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) when assessed within a habitable room at any affected residential use within the mixed use development between the hours of 7am and midnight, and is to be inaudible between midnight and 7am. (iii) For any gymnasiums or similar facilities in mixed use development the above noise conditions would apply noting that the noise limits include the creation of noise as a result of any vibration induced into the building structure is to be inaudible in any residence between the hours of 10pm and 7am the following day. 		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(iv) The noise limits in this clause applies with doors and windows closed and mechanical ventilation operating.</p> <p>(k) A noise and vibration assessment report, prepared by an appropriately qualified acoustical consultant/engineer, is to be submitted with DAs for new buildings or substantial alterations to existing buildings that include residential units or occupancies in student housing, boarding houses, serviced apartments, hotel and motel accommodation and any other sensitive land uses, addressing appropriate measures to minimise potential future noise and vibration impacts permissible in the B2 Local Centre Zone including amplified music associated with restaurants, small bars and cafes, noise from light rail movements. This assessment is to:</p> <ul style="list-style-type: none"> (i) be prepared having regard to the NSW Environmental Protection Authority's Noise Policy for Industry, the DECC (EPA) Assessing Vibration, a Technical Guideline, and relevant Australian Standards pertaining to noise measurements and the noise conditions identified above (ii) incorporate an assessment of external noise sources and internal noise sources (such as mechanical ventilation) with respect to the criteria specified in b), c) and d); and (iii) detail the design measures needed to achieve the required internal acoustic amenity specified in b), c) and d). <p><i>Note: The noise and vibration assessment report prepared at the DA stage will identify a noise design base for the entire mixed use building and would become the benchmark for subsequent assessments of the entire mixed use building (or existing buildings subject to substantial alterations) and would become the benchmark for subsequent acoustic assessments. Any individual Das for commercial occupation within the mixed-use building or the altered existing building for an accompanying acoustic assessment is required to rely on the acoustic benchmark described above.</i></p>		

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(iv) To maintain the intent of the acoustic objectives, prior to the issue of a Construction Certificate or an Occupation Certificate, a certificate of acoustic compliance confirming compliance with the specified noise limits referred to above and the noise design base for the mixed use building or alterations to existing buildings is to be submitted to Council.		
	<p>Commercial Uses</p> <p>(l) The assessment for consideration of the future development within the town centre is to also consider an external noise external target of 70 dB(A) for general noise and an L10* level of 80 dB(A)/ 88 dB(C) when assessed at 1 metre from the future development, noting that future venues where entertainment is to be provided will be subject to the standard LA10 Condition in relation to the operation of those premises.</p> <p>(m) The site and building layout for new development in the town centre is to maximise acoustic privacy by providing adequate building separation within the development and from neighbouring buildings (refer 3.1.6: Building Separation).</p> <p><i>Note 1: The noise and vibration report prepared at the DA stage will identify a noise design base for the entire mixed use building and would become the benchmark for subsequent acoustic assessments of that building.</i></p> <p><i>Note 2: To maintain the intent of the acoustic objectives prior to the issue of a Construction Certificate or an Occupation Certificate there will be a requirement for a certificate of acoustic compliance confirming compliance with the specified noise limits referred to above and the noise design base for the mixed use building.</i></p>	As above.	As above.
15.	Natural Ventilation		
	<p>(a) All buildings are to be designed to comply with the Apartment Design Guide (SEPP 65) to maximise opportunities for natural ventilation and sunlight by providing a combination of:</p> <ul style="list-style-type: none"> - corner apartments - dual aspect apartments 	<p>No ventilation diagrams have been submitted with the application. Concerns are raised in relation to the depth of the single aspect apartments. This forms a reason</p>	No - Refer to Key Issues.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none"> - shallow, single-aspect apartments - openable windows and doors - other ventilation devices <p>(b) Window placement, size, glazing selection and orientation are to maximise opportunities for cross ventilation, taking advantage of prevailing breezes;</p> <p>(c) Internal corridors, lobbies, communal circulation spaces and communal areas shall incorporate adequate natural ventilation;</p> <p>(d) Basements levels including spaces used for storage, garbage areas or commercial activities, are to be designed to include natural ventilation;</p> <p>(e) Apartment depth is to be limited to maximise the opportunity for cross ventilation and airflow.</p>	for refusal.	
16.	Articulation and Modulation		
	<p>(a) All buildings are to provide articulation by incorporating a variety of window openings, balcony types, balustrades, fins, blade walls, parapets, sun-shade devices and louvres to add visual depth to the façade;</p> <p>(b) The design of buildings are to avoid large areas of blank walls. Where blank walls are unavoidable, they must be treated and articulated to achieve an appropriate presentation to the public domain;</p> <p>(c) Ground floor shopfronts must demonstrate 'fine grained' articulation by dividing the façade into discreet bays or sections;</p> <p>(d) Entries to business premises should be clearly defined and distinguished from entries to residential components;</p> <p>(e) Specific architectural response to articulation and modulation is to be provided at key node sites through the architectural competition process;</p> <p>(f) Building articulation should be sympathetic and complementary to the adjoining built form;</p>	As discussed by the DEAP, the extent of modulation to the façade is considered satisfactory. A variety of window openings, balcony types and parapets have been utilized. The blank walls to the side elevations have been treated with ribbed concrete panels and pre-cast smooth panels to achieve an appropriate presentation to the public domain.	Yes
17.	Materials and Finishes		
	<p>(a) External walls are to be constructed of high quality and durable materials and finishes. Materials that may be subject to corrosion, susceptible to degradation or high maintenance costs are to be avoided;</p>	The proposed materials and finishes are considered satisfactory and uphold the relevant provisions in Part 17.	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(b) Architectural treatment of street facades is to clearly define a base, middle and top sections of a building so as to divide the mass of the building;</p> <p>(c) A combination of finishes, colours and materials are to be used to articulate building facades;</p> <p>(d) Design windows that can be cleaned from inside the building; and</p> <p>(e) For sites adjoining heritage and contributory buildings, materials and finishes are to allow for their clear interpretation.</p>		
18.	Awnings		
	<p>(a) Continuous pedestrian shelter must be provided to Anzac Parade, Gardeners Road and secondary streets by elements including awnings, posted verandas, colonnades or cantilevered building mass</p> <p>(b) The design of new awnings should complement the design of adjoining awnings and complement the building façade</p> <p>(c) Awnings are to be carefully located and set back to avoid obstructing vehicle sightlines, traffic signals, intersections, pedestrian crossings and other critical road infrastructure.</p> <p>(d) Awnings should wrap around corners where a building is sited on a street corner</p> <p>(e) Awning dimensions for buildings fronting Anzac Parade, secondary streets off Anzac Parade, and Gardeners Road are to provide:</p> <ul style="list-style-type: none"> - a minimum width of 3m - a minimum soffit height of 3.5m and no higher than 4.2m above the footpath - a minimum 1 metre setback from the kerb - a low profile, with slim vertical facias or eaves, generally not exceeding 300mm <p>(f) In relation to laneways, awnings: - must be well designed to provide shelter for entrances and should relate to the ground floor building uses such as outdoor dining; - are to be cantilevered with no posts (with a retractable arm); - must allow for a minimum 1.8m path of travel along the building edge.</p>	<p>The proposal provides a continuous pedestrian awning to the Anzac Parade frontage. This upholds the objectives which aim to provide shelter for pedestrians, reinforce the coordinating design element in the K2K precinct, define the street edge, provide continuity to the streetscape, and ensure awning design and siting addresses public realm, pedestrian and road safety.</p>	Yes
19.	Active Street Frontages		
	<p>(a) Required active frontages are to be provided in accordance with RLEP 2012 (Clause 6.20) Active frontages Map</p>	<p>The proposal provides an active street frontage and a retail use at the ground floor level</p>	No - Refer to Key Issues.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(b) Preferred active frontages are to be provided in accordance with Part B – Block Controls of this DCP c)</p> <p>(c) A minimum of 80% of the street frontage on Anzac Parade is to incorporate transparent glazing on the ground floor façade</p> <p>(d) The ground floor is to maximise entries or display windows and provide at least 1 pedestrian opening per 5m of facade on Anzac Parade or secondary streets and wrapping shopfronts around corners</p> <p>(e) The ground floor of uses fronting lane ways must provide a continuous retail frontage with at least 1 pedestrian entry or door per 10m of façade</p> <p>(f) The ground floor of uses fronting mid-block links/arcades must provide at least one 1 pedestrian entry or door per 15m of façade</p> <p>(g) A minimum of 50% of a blank wall (larger than 10m²) visible from the public domain must incorporate greenery and/or public art</p> <p>(h) Entrances to internally oriented shopping or commercial arcades and the arcades themselves, must be a minimum of 6m wide</p> <p>(i) Solid non-transparent roller shutters are discouraged. Where security grills or screens are required, they are to be installed at least 1m behind the glazing line and of lattice design with an openness to allow viewing of the interior and internal lighting to spill onto the footpath</p> <p>(j) Incorporate outdoor dining wherever possible in accordance with Part D12, Footpath Dining and Trading of DCP 2013.</p>	<p>fronting Anzac Parade. The ground floor level street frontage incorporates 52% (6.9m) of transparent glazing which does not comply with the 80% requirement. This is a result of the non-compliance with the 20m lot frontage requirement (the proposed frontage is 13.31m). Furthermore, the location of the electrical substation which should be relocated within the building envelope for retail activation.</p> <p>This forms a reason for refusal.</p>	
20.	Landscape Area		
	<p>(a) The total landscaped area to be provided on a site is to be at least 100% of the total site area, spread throughout the site and building as shown in Figure 16.</p> <p>(b) Landscaped open space requirements of Chapter C2 (Medium Density Residential) do not apply to land within the Kingsford and Kensington Town Centres other than clauses 2.2.2 and 2.3 relating to deep soil areas and private and communal open space.</p>	<p>The proposal provides 16.3% of the site area as landscaping which does not comply with the 100% (654.9m²) requirement. The justification provided by the applicant states that there are no requirements under the SEPP and compliance is not</p>	<p>No - Refer to Key Issues.</p>

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(c) Landscaping must be suitable to the building orientation aspect, wind and other relevant environmental factors.</p> <p>(d) A minimum of 40% of the total gross landscaped area including communal open space is to include areas with sufficient soil depth and structure to accommodate mature trees and planting. A combination of trees, shrubs and ground cover is encouraged to make the landscaping more attractive and long lasting.</p> <p>(e) A minimum of 25% of the ground plane and share-ways are to be landscaped sufficient in size and dimensions to accommodate trees and significant planting.</p> <p>(f) Green walls can only contribute up to 20% of the total gross landscaped area and will be assessed on the merits of the proposal in terms of quality of green infrastructure and verification from a qualified landscape architect.</p> <p>(g) Roof tops can only contribute up to 30% of the total gross landscape area and the area is to be designed to maximise visibility of planting from the public domain. Rooftops may include communal food farms and food production areas.</p> <p>(h) Technical, structural and ongoing maintenance arrangements of proposed roof top gardens and green walls are to be documented by a qualified landscape architect and incorporated into the development proposal.</p> <p>(i) The area dedicated to roof top solar (PV infrastructure) is not to be counted as part of the total gross landscape area.</p> <p>(j) Where green roofs and green walls are provided, these shall comply with requirements contained in Chapter B4 (clause 4).</p> <p>(k) Despite the provision of a green wall, all facades are to meet design excellence requirements including building articulation and modulation specified in section 16 of this section of the DCP.</p> <p>(l) In addition to the requirements of Part B4 (Landscaping and Biodiversity), all DAs for sites within the Kensington and Kingsford town centres must submit a</p>	<p>achievable on a 654.9m² site. This is unsatisfactory and insufficient information has been provided to specify the percentages that count towards the specific requirements. This forms a reason for refusal.</p>	

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>landscape plan addressing the following requirements:</p> <ul style="list-style-type: none"> (i) quantity of landscaping provided on site; (ii) scaled drawings of all areas; (iii) how landscaping would complement the architectural style of building and assists in its presentation to the streetscape and high visibility; (iv) rainwater harvesting and other irrigation methods proposed; (v) full construction details of soil profile, method of attachment to the building, and drainage/waterproofing; and (vi) engineering certification confirming building can withstand planting and associated structures. <p>Note 1 'Ground plane' refers to spaces between buildings on the ground level providing for landscaping, pedestrian access and physical connections to the street.</p> <p>Note 2: 'Gross Landscape Area' refers to the sum of all landscaped areas within a development and may include (but is not limited to) ground plane, gardens, outdoor terraces, planter boxes, sky gardens, roof terraces, and green walls.</p>		
21.	Transport, Traffic, Parking & Access		
	<ul style="list-style-type: none"> (a) Vehicle parking within the Kensington and Kingsford town centres is to be provided in accordance with the rates outlined in the tables below. Parking requirements for all other development types not specified in the table below are contained in section 3.2 Vehicle Parking Rates (of Chapter B7) (b) Where practical, parking access and/or loading is to be provided from secondary streets (rather than directly off Anzac Parade or gardeners Road), set back at least 6m from the intersection or the rear lane (c) Basement carpark access must comply with the requirements of B8: Water Management (d) Parking access and/or loading areas are to be designed as recessive components of the elevation so as to minimise the visual impact 	<p>Council's Engineer has raised issues with the number of parking spaces for cars and the required dimensions for bicycle parking. These form reasons for refusal. Refer to the referral response in Appendix 1.</p>	<p>No</p>

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(e) Parking is to be accommodated underground where possible</p> <p>(f) Sub-basement car parking is to be no more than 1.2m above existing ground level;</p> <p>(g) Provide flexible hardstand area for the purposes of bicycle maintenance and repairs</p> <p>(h) Where a variation to the DCP Car Parking rates is sought, the proponent shall respond directly to Control i), 3.3 Exceptions to Parking Rates of the DCP 2013</p> <p>(i) A Green Travel Plan is required to accompany all DAs for new buildings and substantial alterations to existing buildings. The Green Travel Plans is to set out:</p> <ul style="list-style-type: none"> (i) Future travel mode share targets, specifically a reduction in car driver mode share ii) (ii) Travel demand management strategies to encourage sustainable travel iii) (iii) Initiatives to implement and monitor travel measures such as car share and bike share; and iii) (iv) alignment with Control i), 3.3 Exceptions to Parking Rates of this DCP. <p>(j) Car share spaces are to be provided in accordance with Part B7: 2.2 (Car Share) of this DCP</p> <p>(k) All DAs are to provide electric charging stations in an accessible location on site.</p> <p><i>Note 1: Any provision of parking above the maximum requirements will be counted towards gross floor area.</i></p>		
22.	Sustainability		
	<p>(a) All buildings must achieve a minimum green star certification rating of 5 or equivalent (other recognised rating tools)</p> <p>(b) DAs for strategic node sites must be designed to achieve a GBCA exceeding Five-Star Green Star Design as Built with a sustainability strategy giving priority to the following innovations: -</p> <ul style="list-style-type: none"> - Waste collection (e.g. Automated underground waste) - Renewable energy opportunities - Water harvesting and re-use - Vertical and Roof Greening 	<p>Notwithstanding compliance with the BASIX requirements, the proposal has not incorporated an AWCS or provided a site-wide sustainability strategy to address the specified criteria. These forms a reason for refusal.</p>	<p>No - Refer to Key Issues.</p>

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none"> - Buildings shall incorporate passive design strategies in addition to materials which have less embodied energy, reducing operational energy and focusing on on-going well being of occupants (c) All development must address the requirements of Part B3- Ecologically Sustainable Development of this DCP (d) Applications for new commercial office development premises and hotel/motel accommodation with a floor area of 1,000m² or more must achieve a minimum NABERS 6- star Energy and NABERS 5-star or 6-star Water rating (e) All development must provide 1 electric vehicle charging point per 5 parking spaces where onsite parking is provided. (f) All development must address the requirements of B6 Recycling and Waste Management (g) All new buildings are to provide a space for storage and sorting of problem waste such as E-waste, clothing, and hazardous waste. (h) All new development (other than alterations and additions, or development that is minor or ancillary in nature) is to incorporate a localised automated waste collection system in accordance with Council's Automated Collection System Guidelines. 		
23.	Water Management		
	<ul style="list-style-type: none"> (a) DAs must address Part B8 – Water Management of the Randwick DCP 2013 in relation to water conservation, groundwater and flooding and Water Sensitive Urban Design (b) In addition to requirements of Part B8, applications for basement level/s must include: <ul style="list-style-type: none"> (i) detailed designs by a qualified hydrological or structural engineer for a water-proof retention system (fully-tanked structure) with adequate provision for future fluctuations of water table variation of at least +/- 1 metre; and (ii) certification from a second qualified hydrological engineer experienced in the design of structures below a water table that the design of the groundwater management 	As above.	No

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>system will not have any adverse effects on surrounding property or infrastructure.</p> <p>Note: Council will include conditions of development consent relating to excavation, shoring, piling, dewatering and other construction activities relating to basements affected by groundwater, including requirements for information/certification to be provided prior to approval to commence construction works.</p>		
	<p>Flooding</p> <p>(a) Building design is to facilitate adaptation to different commercial and retail uses, as well as the integration of flooding solutions into the built form, resulting in a floor-to-floor ground floor height between 4.5m and 6m.</p>	N/A	N/A
24.	Aircraft Operations		
	<p>(a) DAs involving the use of cranes during construction and light poles must ensure compliance with Clause 6.8 of the RLEP 2012 in relation to Airport Operations</p> <p>(b) Applications for new buildings and cranes during construction must meet the requirements of Part F3 - Sydney Airport Planning and Noise Impacts of the Randwick DCP 2013</p> <p>(c) Applications for development that exceed 51m AHD at Kingsford will be subject to an assessment process under the Airports (Protection of Airspace) Regulations, 1996.*</p> <p>*Note: Proposals that penetrate prescribed airspace above 51m AHD may affect the safety of existing and future air transport operations at Sydney Airport and as such may not be approved under the Airports (Protection of Airspace) Regulations, 1996. Further information can be obtained from the Commonwealth Department of Infrastructure, Transport, Regional Development and Communications, the agency responsible for development approvals that constitute "controlled activities" (under the Airports Act 1996) affecting Sydney Airport.</p>	Concurrence has been received from the Sydney Airport Corporation.	Yes
25.	Night Time Economy		
	(a) DAs for night time trading will be assessed in accordance with Part B9 of DCP 2013	N/A	N/A

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(b) DAs for mixed use/residential buildings must have regard to the late night trading character of the Kensington and Kingsford town centres by incorporating suitable noise attenuation measures for the residential component of the building as specified under section 14 of this part of the DCP</p> <p>(c) DAs must incorporate CPTED principles into the design of public realm for night time activation, safety and security</p> <p>(d) Proposals shall include details of creative lighting to be used to improve the visual amenity of buildings at night</p> <p>(e) DAs for late night operations must include measures for ensuring adequate safety, security and crime prevention both on the site of the premises and in the public domain immediately adjacent to, and generally surrounding, the premises</p> <p>DAs should consider night time activation measures during construction such as creative lighting, attractive hoardings, pop ups and other temporary activations.</p>		
26.	Student Accommodation		
	<p>DAs for all student accommodation or boarding house proposals must provide the following:</p> <p>(a) A design report that demonstrates compliance with the minimum amenity standards under the AHSEPP and where improvements to these standards have been incorporated into the development in order to achieve a higher standard of living amenity for occupants e.g. size of communal living areas, ceiling heights, bedroom width</p> <p>(b) How the built form relates to the desired local character and surrounding context including relationship to heritage or contributory buildings (Refer to Part B Block controls), delivery of high quality built form design and public/private domain interface at the ground level</p> <p>(c) How the development delivers improved sustainability, natural cross ventilation and sunlight, passive thermal design reducing reliance on technology and operation costs and waste management</p> <p>(d) Communal living areas with a minimum area of 20m² or 1.25m² per resident, whichever is greater and a minimum dimension of 3m</p>	<p>The submitted DA documentation provides an assessment against the co-living development standards contained within SEPP Housing. The indoor communal living areas equate to 164m² or 1.25m² per resident (should all 65 rooms be occupied by 2 lodgers) which complies. The Plan of Management does not specify the maximum number of students to be accommodated at any one time, information for community and education services, or management procedures over holiday periods.</p> <p>As requested by</p>	<p>Insufficient information</p>

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(e) A Management Plan in Accordance with the Management Plan Template in Part B of this DCP addressing the following additional requirements:</p> <ul style="list-style-type: none"> (i) Maximum number of students to be accommodated at any one time (ii) Provision for at-call contact details of a suitably responsible contact person for response 24 hours a day (iii) On site security arrangements (iv) A schedule detailing furnishings for sleeping rooms iv) Cleaning and maintenance arrangements (v) Ongoing operational arrangements to minimise and manage noise transmission to adjoining properties (vi) Management and staffing arrangements and overview of each role's key responsibilities (vii) Measures to ensure ongoing workability of emergency systems including lighting and smoke detectors, sprinkler systems, and air conditioning (viii) Placement and composition of furnishing and fittings to achieve the appropriate fire safety requirements (ix) Measures to ensure how premises are to be regularly checked to ensure fire safety including that all required exits and egress paths are clear and free of locks and obstructions (x) Provision of information on community and education services, including health, counselling and cultural services (xi) House rules regarding occupancy and behaviour of students and visitors (xii) Critical Incident Management and Emergency & Evacuation Procedures (xiii) Management procedures over holiday periods. <p>(f) DAs for boarding houses and student accommodation must submit an Acoustic Report prepared by a suitably qualified acoustic consultant in</p>	<p>Council's Environmental Health Officer, the acoustic report does not contain sufficient information with regards to the assessment of all outdoor areas including advice on permitted times of usage and permitted numbers. As such, compliance with the specified criteria has not been demonstrated. These form reasons for refusal.</p>	

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>accordance with the requirements of section 15 Part C of this DCP addressing:</p> <ul style="list-style-type: none"> (i) Potential noise sources from the operation of the development including any outdoor communal areas, mechanical plant and equipment and kitchen exhaust systems (ii) Desirable acoustics performance criteria addressing potential external night time noise activities including outdoor dining, cafes, restaurants, small bars, outdoor performances and live music; (iii) Mitigation measures such as appropriate sound proofing construction and management practices to achieve the relevant noise criteria (refer to section 15 Part C of this DCP) <p>(g) DAs for boarding houses (including student accommodation) incorporating 20 or more bedrooms are to be supported by a Traffic and Transport Report prepared by a suitably qualified person, addressing as a minimum the following:</p> <ul style="list-style-type: none"> - the prevailing traffic conditions - ingress and egress arrangements - waste collection - the likely impact of the proposed development on existing traffic flows and the surrounding street system - pedestrian and traffic safety - an assessment on-site parking provision for students, staff and business operations - the recommendations of a site specific Green Travel Plan (as required under Section 22 Part C of this DCP) outlining initiatives to encourage active transports options and shared use of vehicles for students, employees and other visitors to the site. 		
PART D			
27.	Solar Access – Public Open Space		
	(a) New buildings and alterations and additions to existing buildings are to be designed to ensure that that the following locations shown on Figures 17a and 17b are not overshadowed by	The proposed development does not result in a non-compliance with the solar access	Yes

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

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)									
	(f) Balconies must be recessed on buildings over 45m in height.											
29.	Public Art											
	(a) Public Art is to be generally be consistent with Council's Public Art Strategy (b) All sites with frontages greater than 12 metres and corner sites, must incorporate artistic elements into the built form such as creative paving, window treatments, canopy design, balustrading, signage and wayfinding, lighting to assist illumination levels after dark and the promotion of active uses in the public spaces (c) In addition to clause 29(b) site specific public art is to be provided on identified sites, plazas and mid-block links as per the block by block controls in Part B of this DCP (d) Public art is to be located in areas which offer the public a free and unobstructed visual experience of the work (e) Incorporate creative lighting, decorative elements and/or murals in laneways, share ways and pedestrian links (f) Submit an Arts Statement which identifies the reasons for the chosen themes, and their interpretation into specific treatments with the DA.	The subject site has a frontage greater than 12m and public art must be included. The SEE states that these requirements may be imposed as a condition of consent, however, Control (e) in Part 29 requires the submission of an Arts Statement which identifies the reasons for the chosen themes, and their interpretation into specific treatments with the DA. Therefore insufficient information has been provided and this forms a reason for refusal.	Insufficient information									
30.	Affordable Housing											
	(a) All development within the 'Kensington and Kingsford Town Centres Affordable Housing Contributions Area' (Figure 18) must contribute towards the provision of affordable housing based on the following rates: <table><caption>Table – Affordable Housing Contributions</caption><thead><tr><th>Date of DA lodgement</th><th>Percentage of residential gross floor area to be dedicated towards affordable housing</th><th>Equivalent Monetary contribution *</th></tr></thead><tbody><tr><td>From 13 August 2020 up to and including 13 August 2022</td><td>3%</td><td>\$324.38/sqm</td></tr><tr><td>After 13 August 2022</td><td>5%</td><td>\$540.62/sqm</td></tr></tbody></table> * where less than whole unit is provided (b) Affordable Housing contributions are to be provided in accordance with the Affordable Housing Plan 2019 for the Kensington and Kingsford Town Centres (c) The affordable housing contribution rate is to apply to the residential gross floor area component of the development (d) Contributions towards affordable housing are to be provided through a dedication of completed units with any remainder paid as a monetary	Date of DA lodgement	Percentage of residential gross floor area to be dedicated towards affordable housing	Equivalent Monetary contribution *	From 13 August 2020 up to and including 13 August 2022	3%	\$324.38/sqm	After 13 August 2022	5%	\$540.62/sqm	If the application were approved, this would form a condition of consent.	Yes
Date of DA lodgement	Percentage of residential gross floor area to be dedicated towards affordable housing	Equivalent Monetary contribution *										
From 13 August 2020 up to and including 13 August 2022	3%	\$324.38/sqm										
After 13 August 2022	5%	\$540.62/sqm										

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

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

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>signage plan is to address the following matters:</p> <ul style="list-style-type: none"> (i) Alignment with the desired future character of the town centres (ii) Design excellence in terms of innovation, materiality, creativity, streetscape contribution and integration with the building design (iii) Relationship to the heritage character of heritage items and contributory buildings where applicable (iv) Whether signage will contribute to visual clutter (v) The public benefit of proposed signage (vi) Any impacts resulting from sign illumination on residential development and aircraft safety; and (vii) Cumulative impacts having regard to existing signage in the vicinity. <p>(b) All new DAs are to remove unsympathetic signage where possible</p> <p>(c) Signs must not distract drivers and be located where drivers require a higher level of concentration, for example at major intersections</p> <p>(d) Above awning signage, roof/sky signs and/or signs greater than 20m² are to:</p> <ul style="list-style-type: none"> (i) be compatible with the desired future character of each town centre (ii) be consistent with the scale and proportion of the building on which it is located and should not dominate the building or skyline (iii) respect the important design features, openings and articulation of the building on which it is situated (iv) not create adverse impacts when viewed from surrounding residential areas (v) result in an improvement to the building and streetscape; and (vi) demonstrate a clear public benefit and justification for the signage <p>Note: Above awning signage, roof/sky signs and signs greater than 20m² are generally discouraged where they do not</p>	<p>signage for the retail component at the ground floor level.</p>	

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<i>meet the objectives and controls set out in this clause</i>		
34.	Air Quality		
	<p>(a) DAs are to include a report from a suitably qualified air quality consultant that addresses building design solutions and construction measures that reduce air pollution and improve indoor air quality for occupants</p> <p>(b) DAs are to submit a statement which explains how the proposal has addressed the NSW Government 'Development near rail corridors and busy roads – Interim Guideline'</p> <p>(c) Air intake for proposals are to be sited well away from Anzac Parade or the pollution source (e.g on top of tall buildings) or provided with filtration to remove particulates; and</p> <p>(d) DAs for sensitive land uses such as childcare centres, schools or aged care facilities must submit an air quality study prepared by a suitably qualified expert demonstrating how air pollution exposure and health risks will be mitigated.</p>	N/A	N/A

Responsible officer: Tegan Ward, Senior Environmental Planning Officer

File Reference: DA/317/2022

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Development Application Report No. D65/22

Subject: 54B Bream Street, Coogee (DA/119/2020/A)

Executive Summary

Proposal:	Section 4.55(2) modification of the approved development to delete condition 1A and request formal application for the continued use of the approved swim school. Original consent: Use of an existing area on the western side of the lower ground floor level of the building as a swim school.
Ward:	East Ward
Applicant:	GSA Planning
Owner:	The Trustee for ACMP Holdsworth Family Trust
Cost of works:	N/A
Reason for referral:	S4.55(2) application for the deletion of a condition imposed by RLPP.

Recommendation

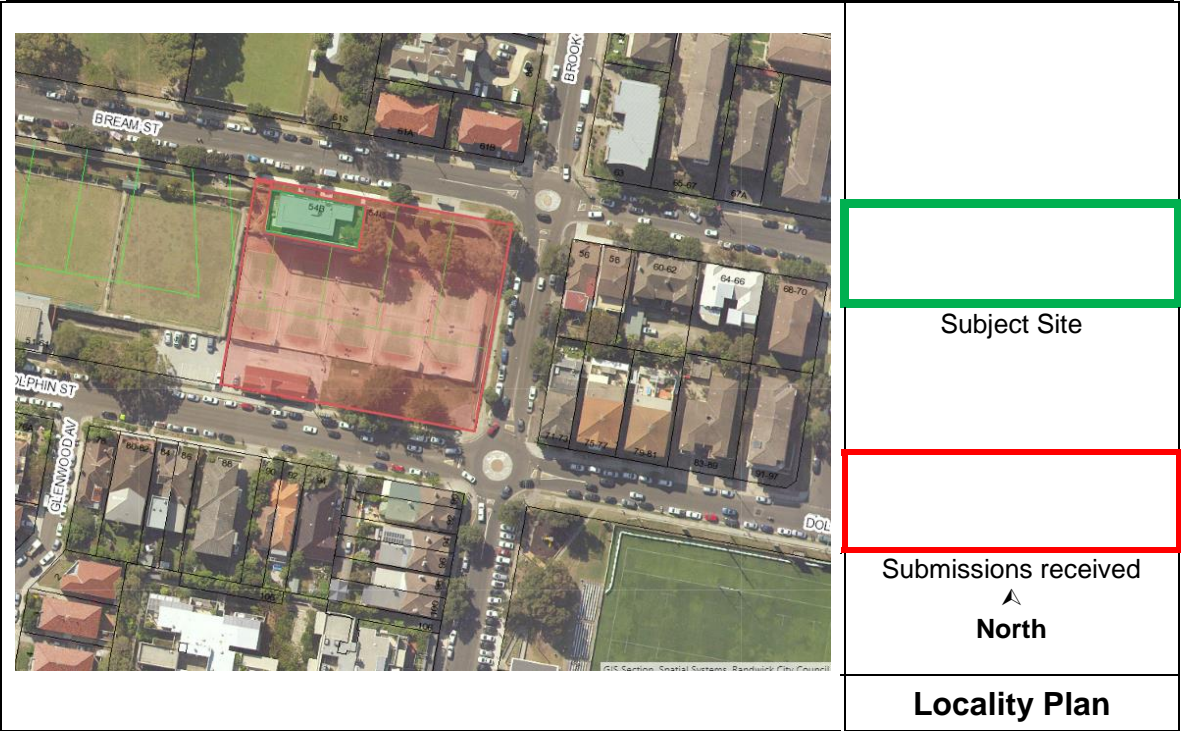
That the RLPP, as the consent authority, approve the application made under Section 4.55 of the Environmental Planning and Assessment Act 1979, as amended, to modify Development Application No. DA/119/2020 for use of an existing area on the western side of the lower ground floor level of the building as a swim school, at No. 54B Bream Street, Coogee, in the following manner:

- **Delete Condition 1A which reads:**
 - 1A. *This consent is issued subject to a trial period of 1 year commencing from the date of commencement of use. Council shall be advised in writing of the commencement date. This is imposed to gauge the effective management of the use and its environmental impacts, which include access within the building as well as traffic and parking. Prior to the expiration of the one year trial period, a further application may be made to Council to allow continuation of the use. In assessing that application, Council will have regard to compliance with conditions of consent, materials submitted demonstrating adequate management and any substantiated complaints.*

Attachment/s:

Nil

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1. Reason for referral

This application is referred to the Randwick Local Planning Panel (RLPP) as the application is made under Section 4.55(2) of the Environmental Planning and Assessment Act (1979) and seeks to modify a condition previously imposed by the Panel.

The original development application was referred to RLPP as more than ten (10) unique submissions by way of objection were received.

2. Site Description and Locality

The subject site is known as 54B Bream Street, Coogee, and is legally described as Lot 1502 in DP 752011. The site is located on the southern side of Bream Street between Mount and Brook Street. The site is rectangular in shape with a northern frontage to Bream Street of 30.48m, eastern and western boundaries of 13.66m and a southern boundary of 30.48m with a total site area of 418.3m².

The site contains an existing part three part four storey building containing the Eastern Suburbs Tennis Club, Childcare Centre and Fitness Studio. The built form facing Bream Street is three storeys with the lower ground floor level being sited below the street level facing the Tennis Courts to the south.

The subject site is privately owned and associated with the Tennis Club where the surrounding land taken up by Tennis Courts - identified as NSW Department of Lands - Crown Land Division (Crown Land) and managed by Council in its Land Register (see Figure 1 aerial and cadastral below).



Figure 1: Aerial Image of subject site and surrounding area.

3. Details of Current Approval

The original development application sought development consent for the use of the western portion of the as-built lower ground floor level of the building as a swim school and a small area fronting Bream Street at ground floor level as a pram drop off zone. Unauthorised works had been undertaken at the site in relation to the lower ground floor level and as such, the original application sought consent for the 'use' of the as-built works only, and a change of use to a swim school. The application also approved new minor building works involving new changing rooms and shower, accessible change room and bathroom, separate accessible shower, and plant/equipment room.

The application was approved by the RLPP on 10 September 2020, subject to an additional condition imposed by the Panel for the development to be for a trial period for 1 year from the date of commencement. The reason for the imposition of the trial period was as follows:

The Panel supports the application for the reasons given in the assessment report and has imposed an additional condition to address concerns about potential impacts of the development on existing users of the building and parking availability in the locality. In this regard, the Panel notes that the concerns can be addressed if the premises is appropriately managed.

4. Proposal

The subject application seeks consent for the following modifications:

- Deletion of Condition 1A to allow the continued use of the swim school on a permanent basis.

5. Section 4.55 Assessment

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

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

An assessment against the above criteria is provided below:

1. *Substantially the Same Development*

The proposed modification is not considered to result in a development that will fundamentally alter the originally approved development. The subject condition requires the Applicant to make a further application by way of a subsequent modification application prior to the expiration of the one (1) year trial to allow the continuation of the use.

2. *Consultation with Other Approval Bodies or Public Authorities:*

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

3. *Notification and Consideration of Submissions:*

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Community Participation Plan. As a result of the notification process, a total of eight (8) submissions were received, being one (1) submission in support of the proposal and five (5) unique submissions in objection to the application.

The submission in support of the application was received from the operator of the gym on the Ground Floor level of the building at 54B Bream Street.

The submissions in objection to the proposal were received from or on behalf of the following properties:

- Tenants of 54B Bream Street, Coogee
 - Operator of My Stepping Stones Childcare, located on the upper two levels;
 - Eastern Suburbs Tennis Club, located on level one;
 - HWL Ebsworth Lawyers on behalf of My Stepping Stones and Eastern Suburbs Tennis Club.
 - Coogee Precinct.

The submissions received raised concerns with regards to the following:

Issue	Comment
<p>Non-compliance with condition 5 of the development consent in relation to use of the existing common storage area adjacent to the swim school, including the following concerns:</p> <ul style="list-style-type: none"> • In contradiction to condition 5, access to the LGF common storage area has not been granted and is inaccessible to the building tenants. • Request that the use of the swim school cease until the storage area is made accessible to all tenants. • Request Council to enforce permanent compliance with condition 5 by having the applicant register on title an instrument mandating permanent compliance. • Concerns that approval of the subject application will prevent practical opportunity to enforce condition 5. 	<p>See Key Issues for further discussion.</p>

It should be noted that none of the submissions received specifically object to the ongoing use of the swim school on a permanent basis, and raise concerns with access to the common storage area only.

6. Key Issues

Trial Period

Condition 1A reads:

This consent is issued subject to a trial period of 1 year commencing from the date of commencement of use. Council shall be advised in writing of the commencement date. This is imposed to gauge the effective management of the use and its environmental impacts, which include access within the building as well as traffic and parking. Prior to the expiration of the one year trial period, a further application may be made to Council to allow continuation of the use. In assessing that application, Council will have regard to compliance with conditions of consent, materials submitted demonstrating adequate management and any substantiated complaints.

The Applicant advised Council in writing on 23 July 2021 that an Occupation Certificate for the operation of the swim school had been issued on 10 May 2021 and that the official commencement of use commenced on Monday 28 June 2021. The subject modification application was lodged with Council on 01 June 2022 prior to the expiration of the trial period and seeks to permit the ongoing use of the swim school on a permanent basis in accordance with the condition.

The swim school has been in operation for one (1) year, a search of Council's records did not reveal any complaints in regards to the swim school and as noted above, the other tenants within the building have not raised any concerns with the operation of the swim school specifically. As such, it is considered that the swim school has not resulted in any adverse amenity impacts upon the local community or the building tenants during its operation. Furthermore, in the absence of any complaints or objection to the ongoing operation of the swim school it is considered that the hours of operation of the swim school are appropriate, and therefore no changes are necessary in this regard. Acoustic reports have been provided as required by the development consent. The operational conditions, including the Plan of Management, limitation on the capacity of the swim school and hours of operation outside peak hours and weekends, shall ensure the ongoing use of the swim school shall not result in any unreasonable impacts upon nearby properties or wider community. In view of the above it is considered that the deletion of condition 1A is appropriate in this instance and shall not result in any adverse built or environmental impacts.

Non-compliance with condition 5

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The submissions received raised concerns regarding non-compliance with condition 5 of the development consent in relation to the common storage areas. Condition 5 reads as follows:

5. *The common storage area on the eastern side of the building at the lower ground floor adjacent to the swimming school must only be used for communal storage purposes so that it does not generate any additional parking or traffic demand and shall remain accessible to all tenants within the building.*

The submissions have been received from or on behalf of the tenants of the building at 54B Bream Street who have advised that access to the common storage area at the Lower Ground Floor level has not been granted in contradiction to condition 5 of the development consent. The submissions seek to have this matter addressed as part of the subject modification application and request that the use of the swim school cease until access to the common storage area has been granted.

A partial Occupation Certificate was issued for the operation of the swim school on 10 May 2021 which legally authorises the use of the swim school. While Council acknowledges the concerns raised regarding the use of the common storage areas, it is considered that this is a separate matter outwith the scope of the subject application. The subject application relates to the removal of the condition in regards to the trial period only, with no other modifications proposed. The trial period was imposed by the Panel to monitor the use of the swim school to ensure that the development does not result in any adverse impacts upon the locality, and to assess the impacts of the swim school which could not be fully verified until the swim school was operational. As such, any further conditions in relation to the common storage areas would not be reasonable to impose under this application. Notwithstanding the above, the matter has been referred to Council's Regulatory Compliance team for investigation separately.

7. Referral comments

Development Engineer

The modification application seeks to delete condition 1A of the development consent which was imposed by the RLPP to provide for a trial period. The original application was referred to Council's Development Engineer who recommended a series of conditions to minimise the impacts of the development on the surrounding parking and road network, including restricted hours of operation involving no operation during peak hours or on weekends. The original operational conditions shall be retained with particular regards to limitations on the capacity of the swim school and maintenance of the operating hours. As such, it is considered that the original conditions of the Development Engineer remain valid and the proposed modification shall not alter the original recommendation or conditions.

8. Section 4.15 Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	Randwick Local Environmental Plan 2012 The proposed modifications are ancillary to the approved development, which will remain substantially the same. The development remains consistent with the general aims and objectives of the RLEP 2012.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The development remains compliant with the objectives and controls of the Randwick Comprehensive DCP 2013.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The proposed modifications have responded appropriately to the relevant planning controls and will not result in any significant adverse environmental, social or economic impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	<p>The site has been assessed as being suitable for the development in the original development consent.</p> <p>The modified development will remain substantially the same as the originally approved development and is considered to meet the relevant objectives and performance requirements in the RDCP 2013 and RLEP 2012. Further, the proposed modifications will not adversely affect the character or amenity of the locality.</p> <p>Therefore the site remains suitable for the modified development.</p>
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

9. Conclusion

The application is recommended for approval for the following reasons:

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

Responsible officer: Angela Manahan, Executive Planner

File Reference: DA/119/2020/A