

Randwick Local Planning Panel (Electronic) Meeting

Thursday 9 February 2023



RANDWICK LOCAL PLANNING PANEL (ELECTRONIC)

Notice is hereby given that a Randwick Local Planning Panel (Electronic) meeting will be held in the Coogee Room on Thursday, 9 February 2023

Declarations of Pecuniary and Non-Pecuniary Interests

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Kerry Kyriacou
ACTING GENERAL MANAGER

Development Application Report No. D2/23

Subject: 37 Haig Street, Maroubra (DA/540/2022)


Executive Summary

Proposal:	Alterations and an upper floor addition to a semi-detached dwelling.
Ward:	Central Ward
Applicant:	Edifice Design Pty Limited
Owner:	Mr M I & Ms M Haworth
Cost of works:	\$477,211.00
Reason for referral:	Request by Acting GM due to potential 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. DA/540/2022 for Alterations and an upper floor addition to a semi-detached dwelling at No. 37 Haig Street Maroubra, subject to the development consent conditions attached to the assessment report.

Attachment/s:

-  RLPP Dev Consent Conditions (dwellings dual occ) - DA/540/2022 - 37 Haig Street, MAROUBRA

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1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) at the request of the Acting General Manager due to potential conflict of interest relating to an objection received from a neighbour who is a Council employee.

The proposal seeks development consent for alterations and an upper floor addition to a semi-detached dwelling.

The key issues associated with the proposal relate to streetscape, rear setbacks and the originally proposed carport and view loss.

The proposal is recommended for approval subject to non-standard conditions that require highlight side windows at least 1.6m above finished floor level. The roof is to be of terra cotta tiles.

2. Site Description and Locality

The subject site is known as 37 Haig Street Maroubra and is legally described as Lot 1 in DP 503289. The site is 273.9m² by calculation, is nearly regular in shape and has an 8.37m frontage to Haig Street to the north. The rear southern boundary is 8.685m, the western boundary is 35.575 metres and the eastern boundary is approximately 34m. The survey is not a boundary survey and the slight flare out of the south eastern corner shown on the survey is inconsistent with the boundaries shown on Six Maps. The application does not impact upon this area which is potentially incorrect. The potential inaccuracy of the FSR caused by this will not impact upon the development because the RLEP 2012 does not set an FSR control for lots containing semi-detached dwellings in the R2 zone of 300m² or less.

The site contains a single storey semi-detached brick dwelling with tile roof and attic storage. A single driveway with no covering is on the western side.

39 Haig Street (the semi-detached dwelling) is on the eastern side of the site. It has a first floor addition placed about half way along the block to the rear with a tiled hipped roof.

The site is relatively flat with a slight slope down from RL 43 at the rear to RL 42.12 at the front north western corner.

To the west is 33A Haig Street which is a two storey semi-detached dwelling of brick at ground level. The first floor addition is weatherboard and placed closer to the street than the apex of the original hipped roof. It is not considered to be a form of extension which should be followed.

The locality is a mix of single and double storey dwellings and semi-detached dwellings.



Figure 1: 37 Haig Street with the red car in the driveway, 33A Haig Street to the right and 39 Haig Street to the left behind the tree. 41 Haig Street is the two storey dwelling on the left

3. Relevant history

The originally lodged plans included a carport on the front boundary with a nil setback. It included a first floor balcony to the rear and part of the family room and the balcony well within the 8m rear setback. The proposed extension on the first floor with a skillion roof also was placed well forward of the existing hipped roof form and also overhung the ground floor on the western side. The applicant was advised that these matters were unacceptable and amended plans were provided on 23 December 2022 which removed the parts of the development that were considered unsupportable including the carport.

4. Proposal

The proposal seeks development consent for alterations and an upper floor addition to a semi-detached dwelling. The carport which was originally included in the proposal has been removed. The amended plans propose a hipped roof design behind the ridge apex. A small portion of the first floor family room is within the 8m DCP rear setback.

5. Notification

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

- Unknown address

Issue	Comment
Second floor addition is at odds with the vast majority of homes in the street which are mostly federation / Californian Bungalow.	The proposal is now generally consistent with the streetscape presentation of a hipped roof design.
The carport is too close to the boundary setting a worrying precedent	The carport has been removed.

- 38 Haig Street Maroubra

Issue	Comment
Concerns with the size of the construction, materials, the flat roof and the streetscape which does not adhere to the era of the property and sets a precedent. Out of character with the age of the house and the adjoining semi.	The first floor addition is reduced by 22.51m ² and is placed further to the rear from the street, which complements other first floor additions in the area.
The plans do not show the addition set back from the hip of the roofline. It is much further forward than the adjoining semi	The roof is now hipped with tiles – similar to others in the vicinity and the adjoining semi-detached dwelling.
Size of the rear balcony extends past the adjoining property	The rear balcony has been removed. The first floor addition has a greater rear setback than the adjoining dwelling at 39 Haig Street.

- 43 Haig Street Maroubra

Issue	Comment
Affects the future amenity and value of their home	Noted. It is considered that the amendments are likely to have dealt with this concern.
They are attached to 41 Haig Street which is characteristic of a single storey dwelling and it lends itself to similar style as is proposed at 37 Haig Street which would not be in keeping with their residence (precedent)	The amended plans are now more consistent with other first floor dwellings in the area with a hipped roof design set behind the apex of the roof. It is not considered that a poor precedent would result.
Metal sheeting and modern roof style is not represented in the street and looks out of place – does not fit with the streetscape and sets a precedent	A hipped tiled roof is now proposed.
Shadowing over the rear of their property is probably greater due to the proposed enclosed balcony	Shadowing will be reduced as a result of the removal of the balcony and reduction in the first floor floorplate to the south, although the hipped roof is higher than the roof originally proposed. The building height of 8.305m is approximately 1.2m below the control and is a roof apex. It is considered that the roof height is not unreasonable and sunlight over the southern rear yard of the dwelling is likely to be blocked by the two storey development at 39 Haig Street rather than the proposal at 37 Haig Street,

- 39 Haig Street Maroubra

Issue	Comment
<p>Negative impact to streetscape and disharmony with No 39 Haig Street. It does not respect and enhance the architectural character of the pair of semis as coherent</p> <ul style="list-style-type: none"> • Façade treatment impacts bulk and scale. This is disrespectful, clumsy and unsympathetic to the streetscape and detracts from the streetscape • Non-compliance with DCP 4.2 for semi-detached dwellings. It should be placed behind the apex or ridge of the main roof • First floor additions should have a low profile roof form visually secondary to the front roof and compatible with the existing roof • Choice of materials should enhance. Metal cladding and colorbond roof and colour palette are insensitive to No 39. • Boundary line shown in north elevation on notification plans is wrong • Lack of integration with No. 39 – no attempt at symmetry • An unsightly downpipe emptying into the gutter of No 39 on the north façade • Skillion roof is not in keeping with the existing hip roof structure for the semis or the Haig Street streetscape 	<p>The amended hipped and tiled roof set back behind the apex of the roof for the two semi-detached dwellings has overcome the negative impacts to the streetscape from the original proposal.</p> <p>The amended plans have not included the materials and colours and this can be conditioned to be approved by Council prior to construction certificate.</p> <p>Stormwater plans are not generally approved as part of the DA consent and are conditioned.</p>
<p>Exposed blank party walls at the common boundary.</p> <ul style="list-style-type: none"> • 20m² of exposed party wall, exacerbated by the fully clad side enclosed rear balcony (see east elevation) • East elevation is an eyesore on the NE elevation with a monolithic structure negatively impacting the streetscape • Examples of sympathetic proposals are 72, 73, 85 Haig Street, 17 & 19 and 27 Byng Street, and 5, 8A and 9 Kitchener Street 	<p>The east elevation is considered satisfactory following the amended plans. The external colours, materials and finishes would be subject to condition and for further approval by the Manager Development Assessment prior to the issue of Construction Certificate.</p>
<p>Bulk and scale overstepping the boundary requirements</p> <ul style="list-style-type: none"> • The complying development works in c2015 breached the rear setback to 5.255m not the DCP 8m and is within the zone of influence of a Sydney Water asset. The main sewer is not located on the plans 	<p>The rear setback of the proposal at the first floor is now 7.34m – not compliant with the DCP control, however a greater rear setback than is at 39 Haig Street. It is not envisaged this will impact on the Sydney Water asset.</p>

Issue	Comment
Rear setback <ul style="list-style-type: none"> Rear setback is 5.255m not 8m for the balcony. Whilst ground floor may not comply, the second storey should. The enclosed clad design on east and west elevations extending beyond the roof ridge impinges on natural light and ventilation of a stairwell and westerly window at 39 Haig Street The balcony acts as a sail for strong winds posing a danger risk to neighbours Other have open balconies 	<p>The rear setback of the proposal at the first floor is now 7.34m – not compliant with the DCP control, however a greater rear setback than is at 39 Haig Street at the first floor.</p> <p>The balcony has been removed</p>
Front setback <ul style="list-style-type: none"> No shadow diagram for the carport No carports in Haig Street extend toward the front boundary and it affects the streetscape The carport sets a precedent in the street 	<p>The carport has been removed from the application.</p>
Incorrect assumptions in the Statement of Environmental Effects <ul style="list-style-type: none"> No 39 is not a lightweight clad dwelling it is full brick rendered Erroneous statement that the addition is symmetrical with No 39 in size, bulk and scale when viewed from the street Erroneous that no. 39 has a balcony larger than the proposed as no. 39 does not have a balcony Drainage is not similar to the existing as the front drainpipe poses an issue for No. 39. The west window of no. 39 is impacted by loss of natural light and ventilation, as are views to Botany Bay from this window 	<p>These points are noted.</p> <p>The issue of views has been considered in the presence of the owners of 37 Haig Street and considered acceptable.</p>
Acoustics <ul style="list-style-type: none"> The upstairs family/games room has sliding doors opening to a semi enclosed monolithic balcony adjacent to bedroom space at No 39 No indication of location of air conditioner condenser Metal roof and metal cladding create noise from rain adjacent to No 39's bedroom 	<p>The balcony has been removed. A fairly standard window with openings is now placed on the southern side of the games room and is considered reasonable.</p> <p>The applicant advises that the air conditioning unit forming part of the split system will be installed under exempt development.</p> <p>A tiled roof is now proposed</p>
Provides alternative development styles	An alternative style has now been presented

5.1. Renotification

Amended plans were provided. These were in accordance with the sketch plan which was discussed with the neighbour at 39 Haig Street. As the plans satisfactorily dealt with the issues raised in the submissions and reduced the impacts to the neighbours and the streetscape, the plans

were not required to be renotified. Despite formal renotification not being required, the amended plans were provided to the owners of 39 Haig Street for their comment. They advised:

- 39 Haig Street Maroubra

Issue	Comment
Overall they were happy with the design. They are not concerned about non-compliance with the rear setback	Noted. See section 8 Discussion of key issues
They would prefer that the front roof ridge be reduced to RL50.5, consistent with their first floor roof ridge, for the purpose that if they extended their first floor forwards, the roof ridge would be at a consistent height	Consultation with the architect indicates that it is not possible to reduce the roof level at the front and yet retain the roof pitch. The first floor is only 2.5m floor to ceiling. It is considered unreasonable to require the requested alteration when there is no application lodged for any amendment to 39 Haig Street. The requested roof apex is well under the maximum height under the LEP.
Materiality is not set out. Would like a terra cotta roof. Are happy with a condition requiring materials and colours prior to construction certificate	The applicant is happy to accept a condition to provide a terra cotta roof and to accept a condition requiring materials and colours prior to construction certificate for approval by Council.
Would like details of the box gutter between the properties within the construction certificate details	A condition is included requiring stormwater drainage to comply with the BCA and relevant standards within the construction certificate documentation

6. Relevant Environment Planning Instruments

6.1. SEPP (Building Sustainability Index: BASIX) 2004

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

6.2. Randwick Local Environmental Plan 2012 (LEP)

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

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

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4: Floor space ratio (max)	None as site is <300m ²	0.71:1	Yes
CI 4.3: Building height (max)	9.5m	8.305m	Yes

The site is unaffected by heritage, acid sulfate soils, foreshore building line and foreshore scenic protection, terrestrial biodiversity, or land reservation acquisition. No earthworks are proposed.

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 1.

8. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	The proposed amendments to the RLEP 2012 which were exhibited between May 31 and 12 July 2022 do not impact upon the site or its immediate surrounds
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 1 and the discussion in key issues below
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant residential character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

8.1. Discussion of key issues

8.1.1. Streetscape and character

Many of the submissions raised concern that the skillion roof style, the proposed materials, the façade treatment and the positioning of the first floor addition forward of the existing roof apex was inconsistent with the existing streetscape and provided an insensitive and uncharacteristic style within the built context of the site.

The original proposal had a poor relationship with the adjoining semi-detached dwelling.

The amended proposal now includes a tiled hipped roof design, set further back, and is considered to be compatible with the locality.

8.1.2. Carport

A carport was originally proposed on the front boundary within the front setback. This was out of character with the neighbourhood with no such structures in the area and had the potential to create an undesirable precedent. It was inconsistent with section 6.2 and 6.3 of Part C1 of the Randwick DCP 2013. It has since been deleted from the proposal.

8.1.3. Rear setback

The original plans included a balcony and part of the family room within the 8m rear setback. Although the existing ground floor is within the RDCP 2013 8m setback (at 5.255m), this does not provide a reason for an additional first floor to also encroach within the setback. This setback also led to unreasonable impositions on light access loss from the bedroom of 39 Haig Street.

The amended plans include a rear setback of 7.34m and have deleted the balcony from the proposal which also helps to reduce privacy impacts from the proposal. The rear setback is less than the required 8m, however is above the aligns with the existing rear indented gutter on the mutual boundary between 39 and 37 Haig Street. The rear setback at the level 1 is greater than the level 1 rear setback of 39 Haig Street which is approximately 6.8m. In the circumstances, and noting that the owners of 39 Haig Street are comfortable with the rear setback, it is considered that the non-compliance with the rear setback control is reasonable.

8.1.4. View loss

The objectors from 39 Haig Street indicated that the originally provided plans led to view loss to Botany Bay. Undertaking an assessment via the *Tenacity* principles:

- The view loss is largely to the west to the Meriton Eastgardens development. This is not iconic and is not highly valued. A narrow view to the container terminal and part of Botany Bay will be retained over the south west corner of the site.
- The views lost are across a side boundary from a sitting and standing position.
- The view to Eastgardens and to Botany Bay (which is largely to be retained) is obtained from the bedroom window. Other views to the south from other bedroom windows are retained. The view loss to Eastgardens will be moderate and the view loss to Botany Bay will be negligible.
- The development complies with all the controls other than the rear setback control. Even with compliance of the rear setback control, the view to Eastgardens will be lost.

It is considered that the view loss to Eastgardens is reasonable given that it is not a highly valued view, it is vulnerable being over a side boundary, it is from a bedroom window only, and a fully compliant development would still result in loss of that view. The view to Botany Bay will be largely retained. It is considered that the view loss is reasonable. This was discussed with the owners of 39 Haig Street on site and they agreed with this assessment.

9. Conclusion

That the application for alterations and an upper floor addition to a semi-detached dwelling be approved (subject to conditions) for the following reasons:

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- 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.

Appendix 1: DCP Compliance Table**Section C1: Low Density Residential**

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	Yes
2	Site planning		
2.1	Minimum lot size and frontage		
	Minimum lot size (RLEP): <ul style="list-style-type: none"> R2 = 400sqm R3 = 325sqm 	273.9m ² No change	No, but no change
	Minimum frontage		
	i) Min frontage R2 = 12m ii) Min frontage R3 = 9m iii) No battle-axe or hatchet in R2 or R3 iv) Minimum frontage for attached dual occupancy in R2 = 15m v) Minimum frontage for detached dual occupancy in R2 = 18m	Min = 12m Existing = 8.37m	No but no change
2.2	Layout Detached dual occupancy		
	i) Detached dual occupancies may be developed only if: <ul style="list-style-type: none"> Dual frontage Secondary access Street frontage of at least 18m in width. 	NA	
	Minimum separation: <ul style="list-style-type: none"> Dual frontage = 10m min. Secondary access: Merit assessment Detached in R2 = 1800mm min. (18m minimum frontage) 		
	900mm minimum footpath at rear lane Note: N/A to corner allotment.		
2.3	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45%	Site = 273.9m ² Existing = 132.62m ² (48.42%) Proposed = unchanged	Yes - unchanged
2.4	Landscaping and permeable surfaces		
	i) Up to 300 sqm = 20% ii) 301 to 450 sqm = 25% iii) 451 to 600 sqm = 30% iv) 601 sqm or above = 35% v) Deep soil minimum width 900mm. vi) Maximise permeable surfaces to front vii) Retain existing or replace mature native trees viii) Minimum 1 canopy tree (8m mature). Smaller (4m mature) If site restrictions apply. ix) Locating paved areas, underground services away from root zones.	Site = 273.96m ² Required = 54.8m ² Existing = 49.16m ² (17.95%) Proposed = 49.16m ² (17.95%)	No but unchanged
2.5	Private open space (POS)		
	Dwelling & Semi-Detached POS		
	Up to 300 sqm = 5m x 5m	Site = 273.9m ²	Yes

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DCP Clause	Controls	Proposal	Compliance
	301 to 450 sqm = 6m x 6m 451 to 600 sqm = 7m x 7m 601 sqm or above = 8m x 8m	Proposed = 5x5 = 25m ²	
3	Building envelope		
3.1	Floor space ratio LEP 2012 = None – see CI 4.4(2B) of RLEP 2012 as site is less than 300m²	Site area= 273.9m ² Existing FSR=0.43:1 (117.72m ²) Proposed FSR= 0.71:1 (194.33m ²)	Yes
3.2	Building height		
	Maximum overall height LEP 2012 = 9.5m	Existing = 6.07 Proposed = 8.305m	Yes
	i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded	Proposed= 5.95m	Yes
3.3	Setbacks		
3.3.1	Front setbacks i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary street frontage: - 900mm for allotments with primary frontage width of less than 7m - 1500mm for all other sites iii) do not locate swimming pools, above-ground rainwater tanks and outbuildings in front	Minimum= 6m Existing= 4.333m Proposed= First floor 10.195m	Yes for additions. First floor of No 33A setback is 7.531m
3.3.2	Side setbacks: Semi-Detached Dwellings: • Frontage less than 6m = merit • Frontage b/w 6m and 8m = 900mm for all levels Dwellings: • Frontage less than 9m = 900mm • Frontage b/w 9m and 12m = 900mm (Gnd & 1 st floor) 1500mm above • Frontage over 12m = 1200mm (Gnd & 1 st floor), 1800mm above. Refer to 6.3 and 7.4 for parking facilities and outbuildings	Minimum= 900mm Existing= 915mm Proposed= 900mm for first floor	Yes for first floor
3.3.3	Rear setbacks i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments. ii) Provide greater than aforementioned or demonstrate not required, having regard to: - Existing predominant rear setback line - reasonable view sharing (public and private) - protect the privacy and solar access	Minimum = 8m Existing = 5.255m Proposed first floor 7.34m	No for first floor – an 8.25% variation to the control.

DCP Clause	Controls	Proposal	Compliance
	iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions. iv) For irregularly shaped lots = merit assessment on basis of:- <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts Refer to 6.3 and 7.4 for parking facilities and outbuildings		
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 	Side elevations <12m Side is articulated	Yes
4.2	Additional Provisions for symmetrical semi-detached dwellings		
	i) Enhance the pair as coherent entity: <ul style="list-style-type: none"> • behind apex of roof; low profile or consistent with existing roof • new character that is first floor at front only after analysis streetscape outcome ii) Constructed to common boundary of adjoining semi iii & iv) avoid exposure of blank party walls to adjoining semi and public domain	Roof is behind the apex. Hipped and tiled roof is consistent with adjacent dwelling. Is constructed to the common boundary. No party walls are exposed	Yes
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	NA	
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.	None provided	NA

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DCP Clause	Controls	Proposal	Compliance
	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.		
4.5	Colours, Materials and Finishes		
	i) Schedule of materials and finishes ii) Finishing is durable and non-reflective. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) recycle and re-use sandstone (See also section 8.3 foreshore area.)	Roof and wall colours have not been provided in the amended documentation.	No, however can be conditioned
4.6	Earthworks		
	i) excavation and backfilling limited to 1m, unless gradient too steep ii) minimum 900mm side and rear setback iii) Step retaining walls. iv) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm. v) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping) vi) cut and fill for POS is terraced <i>where site has significant slope:</i> vii) adopt a split-level design viii) Minimise height and extent of any exposed under-croft areas.	None proposed	NA
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.	Single north facing living window will get >3 hours direct sun. It is unclear if POS will receive 3 hours sunlight because it is directly south of the dwelling. However this will only be a very small change from the existing scenario	Yes Living windows. POS – uncertain, however only a small change from existing

DCP Clause	Controls	Proposal	Compliance
	Solar access to neighbouring development:		
	i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. v) solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings. vi) Variations may be acceptable subject to a merits assessment with regard to: <ul style="list-style-type: none"> Degree of meeting the FSR, height, setbacks and site coverage controls. Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. Topography of the subject and adjoining allotments. Location and level of the windows in question. Shadows cast by existing buildings on the neighbouring allotments. 	No north facing living room windows. Solar panels are on 31 Haig Street but will retain solar access	NA
5.2	Energy Efficiency and Natural Ventilation		
	i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as: <ul style="list-style-type: none"> Skylights (ventilated) Clerestory windows Fanlights above doorways Highlight windows in internal partition walls ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries iii) living rooms contain windows and doors opening to outdoor areas <i>Note:</i> The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable	Windows are provided	Yes
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 	Highlight windows are shown with a sill height of 1.5m which should be 1.6m	Could be conditioned

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DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> - 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)		
	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.	None is proposed	NA
5.4	Acoustic Privacy		
	i) noise sources not located adjacent to adjoining dwellings bedroom windows <i>Attached dual occupancies</i> ii) Reduce noise transmission between dwellings by: <ul style="list-style-type: none"> - Locate noise-generating areas and quiet areas adjacent to each other. - Locate less sensitive areas adjacent to the party wall to serve as noise buffer. 	Family room adjacent to bedroom of 39 Haig Street. The deletion of the rear balcony improves acoustic impacts	Yes
5.5	Safety and Security		
	i) dwellings main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 square metres) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not to obstruct casual surveillance (maintain safe access)	Main entry remains at the side as existing. Bedroom window continues to overlook street.	No but existing
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	View sharing is assessed to be acceptable.	Yes

DCP Clause	Controls	Proposal	Compliance
	impacts in the DA. (certified height poles used)		
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)	1 access Located in front of front façade. Is single width.	Yes No Yes No change to the existing
6.2	Parking Facilities forward of front façade alignment (if other options not available)		
	i) The following may be considered: - An uncovered single car space - A single carport (max. external width of not more than 3m and - Landscaping incorporated in site frontage ii) Regardless of the site's frontage width, the provision of garages (single or double width) within the front setback areas may only be considered where: - There is no alternative, feasible location for accommodating car parking; - Significant slope down to street level does not adversely affect the visual amenity of the street and the surrounding areas; - does not pose risk to pedestrian safety and - does not require removal of significant contributory landscape elements (such as rock outcrop or sandstone retaining walls)	There is already an uncovered car space, similar to the rest of the street.	No change
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: - nil side setback on adjoining property; - streetscape compatibility; - safe for drivers and pedestrians; and - Amalgamated driveway crossing	No change	No change
6.4	Driveway Configuration		

DCP Clause	Controls	Proposal	Compliance
	Maximum driveway width: - Single driveway – 3m - Double driveway – 5m Must taper driveway width at street boundary and at property boundary	No change proposed. Driveway is about 3.6m wide	No change
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	NA	
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 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	NA	NA
6.7	Hardstand Car Space Configuration		
	i) Prefer permeable materials in between concrete wheel strips. ii) 2.4m x 5.4m minimum dimensions	NA	NA
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	NA	
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	NA	

DCP Clause	Controls	Proposal	Compliance
	<p>alignment of the primary street façade (tapered 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>	NA	
7.4	Outbuildings		
	<p>i) Locate behind the front building line.</p> <p>ii) Locate to optimise 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>	NA	

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DCP Clause	Controls	Proposal	Compliance
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.	NA	
7.6	Air conditioning equipment		
	i) Minimise visibility from street. ii) Avoid locating on the street or laneway elevation of buildings. iii) Screen roof mounted A/C from view by parapet walls, or within the roof form. iv) Locate to minimise noise impacts on bedroom areas of adjoining dwellings.	Not shown. Proposed to be installed via exempt development	Yes
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).	NA	
7.8	Clothes Drying Facilities		
	i) Located behind the front alignment and not be prominently visible from the street	Not shown, but unlikely to change as a result of the proposal	Yes
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	NA	

DCP Clause	Controls	Proposal	Compliance
	<p>rear setback). (Refer to Sub-Section 6 for controls relating to setback to garage entry.)</p> <p>iv) Nil side setback allowed subject to:</p> <ul style="list-style-type: none"> - adjoining building similarly constructed - no unreasonable visual, privacy and overshadowing impacts <p>v) Screen or match exposed blank walls on adjoining properties (ie on common boundary).</p>		

3.2 Section B7: Transport, Traffic, Parking and Access

DCP Clause	Controls	Proposal	Compliance
3.2	Vehicle Parking Rates		
	<ol style="list-style-type: none"> 1. Space per dwelling house with up to 2 bedrooms 2. Spaces per dwelling house with 3 or more bedrooms <p>Note: Tandem parking for 2 vehicles is allowed.</p>	1 – as existing	No but as existing

Responsible officer: Urban Perspectives, Town Planners

File Reference: DA/540/2022

Development Consent Conditions (Dwellings and Dual Occupancies)



Folder /DA No:	DA/540/2022
Property:	37 Haig Street, MAROUBRA NSW 2035
Proposal:	Alterations and an upper floor addition to a semi-detached dwelling.
Recommendation:	Approval

Development Consent Conditions

GENERAL CONDITIONS

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

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning 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
DA01 Issue B Streetscape	Ediface Design	21/12/2022
DA02 Rev B Site Plan	Ediface Design	21/12/2022
DA03 Rev B Ground level floor plan	Ediface Design	21/12/2022
DA04 Rev B First floor plan	Ediface Design	21/12/2022
DA05 Rev B Roof plan	Ediface Design	21/12/2022
DA06 Rev C North and west elevations	Ediface Design	21/12/2022
DA07 Rev C South and east elevations	Ediface Design	21/12/2022
DA08 Rev C Section A & B	Ediface Design	21/12/2022

BASIX Certificate No.	Dated
A469893	17 August 2022

Amendment of Plans & Documentation

- The approved plans and documents must be amended in accordance with the following requirements:
 - 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:
 - W03, W04, W06, W07

REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

The following conditions of consent must be complied with before a relevant 'Construction Certificate' is issued for the development by a Registered (Building) Certifier. All necessary information to demonstrate compliance with the following conditions of consent must be included in the documentation for the relevant construction certificate.

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, 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. The roof is to be terra cotta tiles.

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 \$477,211.00 the following applicable monetary levy must be paid to Council: \$4,772.10.

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

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

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

Where:

IDC = the indexed development cost

ODC = the original development cost determined by the Council

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

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

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

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 and Assessment Act 1979*.

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

Security Deposits

7. The following security deposits requirement must be complied with prior to a construction certificate being issued for the development, as security for making good any damage caused to Council's assets and infrastructure; and as security for completing any public work; and for remedying any defect on such public works, in accordance with section 4.17(6) of the *Environmental Planning and Assessment Act 1979*:

- \$1,000 - Damage / Civil Works Security Deposit

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

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

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

Sydney Water Requirements

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

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

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

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

Sydney Water's Tap in™ online service is available at:
<https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm>

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

REQUIREMENTS TO BE INCLUDED IN THE CONSTRUCTION CERTIFICATE

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

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, Councils development consent conditions and to achieve reasonable levels of environmental amenity.

Building Code of Australia

9. In accordance with section 4.17 (11) of the *Environmental Planning and Assessment Act 1979* and section 69 of the *Environmental Planning and Assessment Regulation 2021*, it is a prescribed condition that all building work must be carried out in accordance with the provisions of the National Construction Code - Building Code of Australia (BCA).

Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application.

BASIX Requirements

10. In accordance with section 4.17 (11) of the *Environmental Planning and Assessment Act 1979* and section 75 of the *Environmental Planning and Assessment Regulation 2021*, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.

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

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

Excavations & Support of Adjoining Land

11. Details of proposed excavations and support of the adjoining land and buildings are to be prepared by a professional engineer and be included in the construction certificate, to the satisfaction of the appointed Certifier.
12. A report must be obtained from a professional engineer prior to undertaking demolition, excavation or building work in the following circumstances, which details the methods of support for any buildings located 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 other building that is located on the adjoining land;
- when undertaking demolition work to a wall of a dwelling or other substantial structure 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; and
- as otherwise may be required by the Certifier for the development.

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*.

Stormwater Drainage

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

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF WORKS

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

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 public health, safety and environmental amenity.

Building Certification & Associated Requirements

14. The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work):
- a) a *Construction Certificate* must be obtained from a *Registered (Building) Certifier*, in accordance with the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.
- 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 *Registered (Building) Certifier* must be appointed as the *Principal Certifier* for the development 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 must be notified accordingly (in writing); 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 *Principal Certifier* and Council, in writing, prior to commencing any works.

Home Building Act 1989

15. In accordance with section 4.17 (11) of the *Environmental Planning and Assessment Act 1979* and sections 69 & 71 of the *Environmental Planning and Assessment Regulation 2021*, in relation to residential building work, the requirements of the *Home Building Act 1989* must be complied with.

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

Dilapidation Report

16. A dilapidation report (incorporating photographs of relevant buildings and structures) must be obtained from a *Professional Engineer*, detailing the current condition and status of the buildings and structures located upon all of the properties adjoining the subject site, and any other property or public land which may be affected by the works, to the satisfaction of the *Principal Certifier* for the development.

The dilapidation report must be submitted to the *Principal Certifier*, Council 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 Site Management Plan

17. 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 and hoardings
- location of site storage areas, sheds, plant & equipment
- location of building materials and stock-piles
- tree protective measures
- dust control measures
- details of sediment and erosion control measures
- site access location and construction
- methods of disposal of demolition materials
- 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
- measures to be implemented to ensure public health and safety.

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

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

18. A *Sediment and Erosion Control Plan* must be developed and implemented throughout the course of demolition and construction work in accordance with the manual for *Managing Urban Stormwater – Soils and Construction*, published by Landcom. A copy of the plan must be maintained on site and a copy is to be provided to the Principal Certifier and Council.

Construction Noise & Vibration Management Plan

19. Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies.

A *Construction Noise & Vibration Management Plan Guideline* must be prepared by a suitably qualified person in accordance with the Environment Protection Authority *Construction Noise* and the *Assessing Vibration: A Technical Guideline* and be implemented throughout the works. A copy of the Construction Noise Management Plan must be provided to the Principal Certifier and Council prior to the commencement of any site works.

Demolition Work

20. A Demolition Work Plan must be developed and be implemented for all demolition work, in accordance with the following requirements:

- a) Demolition work must comply with Australian Standard AS 2601 (2001), Demolition of Structures; SafeWork NSW requirements and Codes of Practice and Randwick City Council's Asbestos Policy.
- b) The Demolition Work Plan must include the following details (as applicable):
 - The name, address, contact details and licence number of the Demolisher /Asbestos Removal Contractor
 - Details of hazardous materials in the building (including materials containing asbestos)
 - Method/s of demolition (including removal of any hazardous materials including materials containing asbestos)
 - Measures and processes to be implemented to ensure the health & safety of workers and community
 - Measures to be implemented to minimise any airborne dust and asbestos
 - Methods and location of disposal of any hazardous materials (including asbestos)
 - Other measures to be implemented to ensure public health and safety
 - Date the demolition works will commence/finish.

The Demolition Work Plan must be provided to the Principal Certifier prior to commencing any demolition works or removal of any building work or materials. A copy of the Demolition Work Plan must be maintained on site and be made available to Council officers upon request.

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

Notes: it is the responsibility of the persons undertaking demolition work to obtain the relevant SafeWork licences and permits and if the work involves the removal of more than 10m² of bonded asbestos materials or any friable asbestos material, the work must be undertaken by a SafeWork Licensed Asbestos Removal Contractor.

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

Public Utilities

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

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

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

REQUIREMENTS DURING CONSTRUCTION & SITE WORK

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

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

Site Signage

22. A sign must be installed in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details:

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

Restriction on Working Hours

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

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as 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
Excavations in rock, sawing of rock, use of jack-hammers, driven-type piling/shoring or the like	<ul style="list-style-type: none"> • Monday to Friday - 8.00am to 3.00pm (maximum) • As may be further limited in Noise & Vibration Management Plan

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

Construction Site Management

24. Temporary site safety fencing must be provided to the perimeter of the site prior to commencement of works and throughout demolition, excavation and construction works.

Temporary site fences must have a height of 1.8 metres and be a cyclone wire fence (with geotextile fabric attached to the inside of the fence to provide dust control); heavy-duty plywood sheeting (painted white), or other material approved by Council in writing.

Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land.

All site fencing, hoardings and barriers must be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.

Notes:

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

25. Public safety and amenity must be maintained during demolition, excavation and construction works and the following requirements must be complied with at all times:
- a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.
 - b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident.
 - c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction.
 - d) 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.
 - e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.

- f) Noise and vibration from the work shall be minimised and appropriate strategies are to be implemented, in accordance with the Noise and Vibration Management Plan prepared in accordance with the relevant EPA Guidelines.
- g) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident.
- h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.
- i) 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.
- j) 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.

Demolition Work & Removal of Asbestos Materials

26. Demolition work must be carried out in accordance with relevant SafeWork NSW Requirements and Codes of Practice; Australian Standard – AS 2601 (2001) - Demolition of Structures and Randwick City Council's Asbestos Policy. Details of compliance are to be provided in a demolition work plan, which shall be maintained on site and a copy is to be provided to the Principal Certifier and Council.

Demolition or building work relating to materials containing asbestos must also be carried out in accordance with the following requirements:

- A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m² of bonded asbestos (i.e. fibro),
- Asbestos waste must be disposed of in accordance with the *Protection of the Environment Operations Act 1997* and relevant Regulations
- A sign must be provided to the site/building stating "Danger Asbestos Removal In Progress",
- Council is to be given at least two days written notice of demolition works involving materials containing asbestos,
- Copies of waste disposal details and receipts are to be maintained and made available to the Principal Certifier and Council upon request,
- A Clearance Certificate or Statement must be obtained from a suitably qualified person (i.e. Occupational Hygienist or Licensed Asbestos Removal Contractor) which is to be submitted to the Principal Certifier and Council upon completion of the asbestos removal works,

Details of compliance with these requirements must be provided to the Principal Certifier and Council upon request.

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 and Support of Adjoining Land

27. The adjoining land and buildings located upon the adjoining land must be adequately supported at all times and in accordance with section 74 of the Environmental Planning and Assessment Regulation 2021 and approved structural engineering details.

Excavations must also be properly guarded to prevent them from being dangerous to life, property or buildings.

Building Encroachments

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

Survey Report

29. 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:
- prior to construction (pouring of concrete) of footings for the building and boundary retaining structures,
 - prior to construction (pouring of concrete) of new floor levels,
 - prior to issuing an *Occupation Certificate*, and
 - 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.

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 and Assessment Act 1979* and associated Environmental Planning and Assessment Regulations, Council's development consent and to maintain reasonable levels of public health, safety and amenity.

Occupation Certificate Requirements

30. An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

BASIX Requirements & Certification

31. In accordance with the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that any relevant BASIX commitments and requirements have been satisfied.

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

Council's Infrastructure & Vehicular Crossings

32. All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering

and drainage works), must be carried out in accordance with Council's Policy for "Vehicular Access and Road and Drainage Works" and the following requirements:

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

Street and/or Sub-Address Numbering

33. 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.

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 and Assessment Act 1979* and associated Environmental Planning and Assessment Regulations, Council's development consent and to maintain reasonable levels of public health and environmental amenity.

External Lighting

34. 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

35. 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

36. The operation of all plant and equipment (including air conditioners and pool pumps or other 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.

D2/23

Development Application Report No. D3/23

Subject: 229 Anzac Parade, Kensington (DA/415/2022)

Executive Summary

Proposal:	Demolition of the existing structures and the construction of a part nine (9) part six (6) storey mixed use development comprising 1 retail premises, 20 residential apartments, and 15 car parking spaces.
Ward:	West Ward
Applicant:	Tektonik Pty Ltd
Owner:	Mountains8 Pty Ltd
Cost of works:	\$14,454,000
Reason for referral:	SEPP 65

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/415/2022 for the demolition of the existing structures and the construction of a part nine (9) part six (6) storey mixed use development comprising 1 retail premises, 20 residential apartments, and 15 car parking spaces, at No. 229 Anzac Parade, Kensington, for the following reasons:

1. The proposal does not comply with the provisions of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development; in particular:
 - a. Pursuant to Part 3B-1 and 3B-2 of the ADG, the height non-compliance does not minimise overshadowing.
 - b. Pursuant to Part 3E-1 of the ADG, the proposal does include deep soil landscaping and 88.5m² is required.
 - c. Pursuant to Part 3F-1 of the ADG, inadequate separation has been provided for visual privacy to the bedroom window at Unit 01 which overlooks the shared communal open space at Level 5.
 - d. Pursuant to Part 3J-1 of the ADG, the proposal does not provide the compliant number of bicycle and car parking spaces.
 - e. Pursuant to Part 4G of the ADG, the proposal does not allocate 50% of the storage space within the units and the majority of storage is located in the kitchens, bathrooms and/or bedrooms.
2. The proposal does not comply with the provisions of the Randwick Local Environmental Plan 2012 (RLEP) in particular:
 - a. The proposal does comply with the maximum height standard pursuant to clause 4.3 of RLEP 2012 and a Clause 4.6 Written Request has not been submitted.
 - b. Pursuant to Clauses 6.11(3) and (4), the proposal does not exhibit design excellence in regard to its ground floor interface with Anzac Parade and non-compliant minimum frontage width.
 - c. 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:

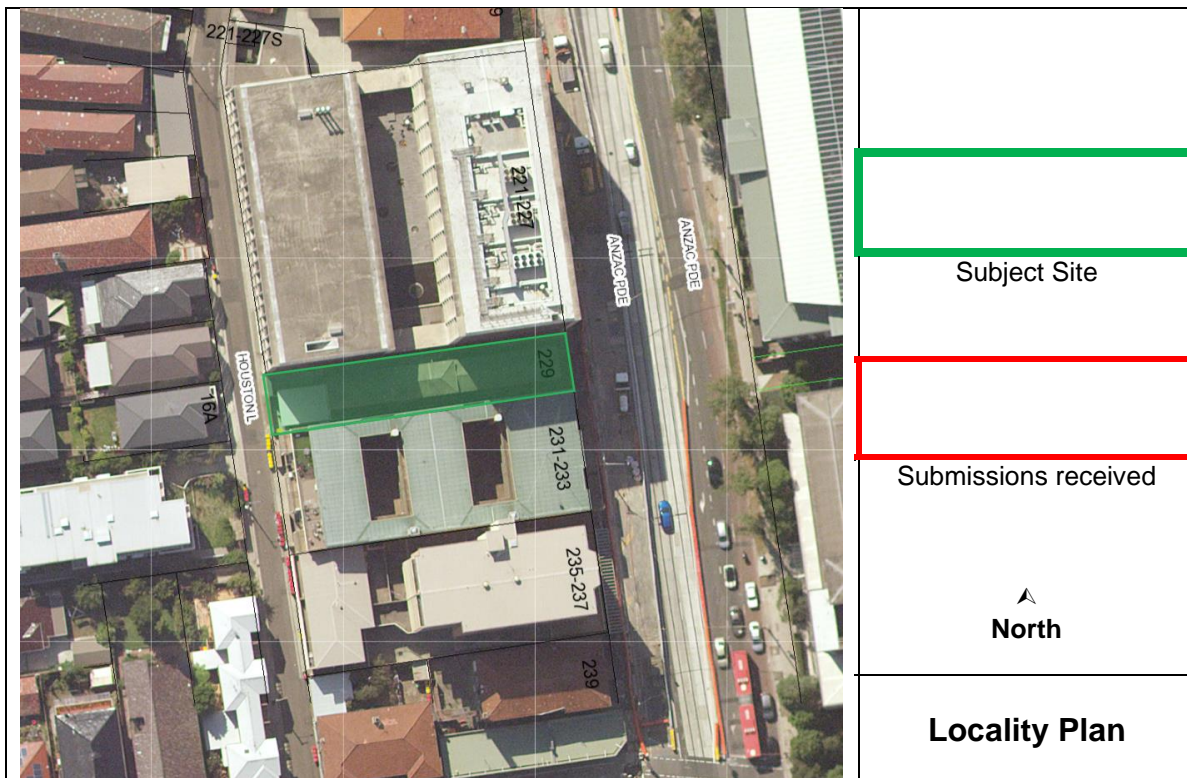
- a. Pursuant to Part 4 in the K2K RDCP, the proposal does not uphold the provisions relating to design excellence in regard to its ground floor interface with Anzac Parade.
 - b. Pursuant to Part 6 in the K2K RDCP, the proposal does not uphold the objectives or comply with the controls for site frontage, building height, number of storeys, street wall height, front setbacks and exposed party walls.
 - c. Pursuant to Part 11 in the K2K RDCP, the proposal must provide an additional 3 bedroom unit and relocate 3 bedrooms units on the lower four floors of the building.
 - d. Pursuant to Part 12 in the K2K RDCP, the floor to ceiling heights do not comply with the specified dimensions and contribute to the overall height non-compliance.
 - e. Pursuant to Part 16 in the K2K RDCP, the extent of the north-west party wall does not align with the neighbouring site and exposes a blank wall to the UNSW courtyard. Furthermore, the proposal has not considered the visual impact of the exposed party wall to the southern neighbouring property at 231-233 Anzac Parade.
 - f. Pursuant to Part 18 in the K2K RDCP, the proposal does not provide a continuous pedestrian shelter such as an awning to the Anzac Parade frontage.
 - g. Pursuant to Part 19 in the K2K RDCP, the ground floor level street frontage incorporates 50.6% (5.09m) of transparent glazing which does not comply with the 80% requirement.
 - h. Pursuant to Part 20 in the K2K RDCP, the proposal provides 60% of the site area as landscaping which does not comply with the 100% requirement and the proposed soil depths are inadequate to support mature trees/planting.
 - i. Pursuant to Part 21 in the K2K RDCP, Council's Engineer has confirmed the proposal does not provide the compliant number of car parking spaces (19 are required and 15 have been provided), bicycle spaces (22 are required and 16 have been provided) the use of mechanical devices has not been minimised, no electric vehicle points have been provided and insufficient information has been submitted for the car stackers regarding the waiting times and the manufactures specifications.
 - j. 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 6.17 of the RLEP, no details or a letter of offer to enter into a VPA have been submitted to Council.
 - 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 or details of any special conditions attached to any offer or independent valuations. Furthermore, the application does not adequately demonstrate an analysis of the likely future redevelopment pattern resulting from site isolation.
 - c. The shadow diagrams do not indicate the additional shadows cast by the non-compliant portion of the building.

- d. Northern and southern side elevations of the proposed development have not been submitted.
- e. Pursuant to Part 14 in the K2K RDCP, Council's Environmental Health Officer has confirmed the acoustic report incorrectly states that *The Kensington and Kingsford Town Centres Development Control Plan 2020* does not provide any acoustic criteria or objectives for noise emissions. In the K2K DCP, Part C Section 14 Acoustic Privacy, five Objectives and a series of acoustic controls are provided for residential and commercial uses. An amended Acoustic Assessment is required that includes the criteria and standards used to assess the future acoustic amenity of the proposal. Concerns are raised in relation to noise reverberation within the courtyard/lightwell, the proximity of one bedroom to another across the courtyard and potential impacts of noise from and to future building residents regarding the adjoining building to the south which is a residential development with open aerial walkways. This includes adverse noise impacts to the north at the UNSW teaching facility (221-227 Anzac Parade) and visa-versa.
- 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 or a 5 Star Green Rating Report have not been submitted for assessment.
- h. Pursuant to Part 22 of the K2K RDCP, an Automated Waste Collection System (AWCS) including FOGO bins and a separate area for bulky waste have not been provided.
- i. 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.

Attachment/s:

Nil

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* address from the submission was withheld

1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the proposal is subject to SEPP 65 and the Applicant filed a Class 1 deemed refusal appeal with the LEC. The Class 1 appeal was filed on 27 October 2022 and is listed for a Section 34 Conciliation Conference on 9 March 2023.

The proposal seeks development consent for the demolition of the existing structures and the construction of a part nine (9) part six (6) storey mixed use development comprising 1 retail premises, 20 residential apartments, and 15 car parking spaces. The site is subject to Part E6 Kensington to Kingsford Town Centres Development Control Plan (K2K RDCP).

The proposal is classified as Integrated Development and the General Terms of Approval have been provided by Water NSW under S90(2) of the *Water Management Act 2000*. The proposal was also referred to TfNSW, Ausgrid, Sydney Airport and NSW Police for concurrence. The concurrence from the relevant referral bodies is provided in Appendix 1. Comments from NSW Police have not been received and on the basis that the application was referred on 6 October 2022, deemed concurrence has been granted.

The key issues associated with the proposal relate to the non-compliances with the maximum height limit, number of storeys, floor to ceiling heights, B2 local centre zone objectives, design excellence objectives, inadequate active street frontage to Anzac Parade, minimum frontage width, finished floor level of the retail premises which is inconsistent with the footpath levels to Anzac Parade, glazing requirements to the retail premises, absence of a continuous pedestrian awning, desired future character objectives, non-compliant front setback at the ground floor level to Anzac Parade, adverse visual impact of the exposed party walls to the neighbouring properties, non-compliant landscaping requirements, ADG storage requirements, housing mix, car parking, bicycle parking, waste management, visual and acoustic privacy impacts.

Insufficient information has also been provided with regards to a letter of offer to enter into a VPA with Council, the extent of the height non-compliance shown on the architectural plans, no Clause 4.6 written was submitted for the height non-compliance, confirmation that the letters of offer to the neighbouring properties for amalgamation were declined, schematic diagrams demonstrating how

the isolated lot to the south is capable of being redeveloped in accordance with the K2K RDCP, and a site-wide sustainability strategy including a Five Star Green Rating Report.

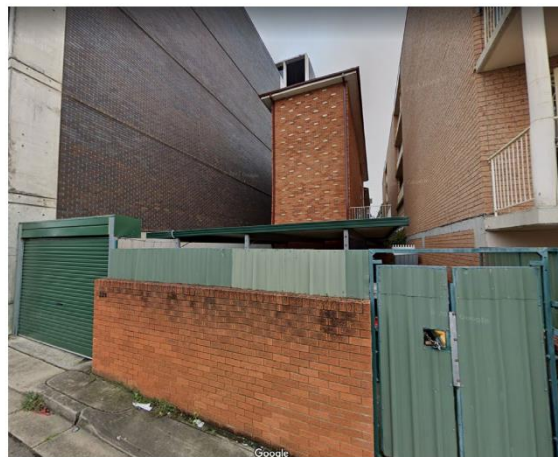
A detailed assessment of the above-mentioned non-compliances is provided throughout this report. As such, the proposal is recommended for refusal.

2. Site Description and Locality

The subject site is legally described as Lot 4 in DP 5633 (SP 9637). The subject site has a site frontage of 10.06m, a site depth of 50.29m along the northern and southern side boundaries, and a total site area of 505.9m². The site falls approximately 2.41m between the front and rear boundaries. The site is occupied by a three storey residential flat building with on-site parking at the rear. The site is zoned B2 Local Centre under the provisions of the RLEP.



Picture 1 Looking west at the front of the site along Anzac Parade



Picture 2 Looking east at the rear of the site along Houston Avenue

Figure 1 - The Site (*Source: Statement of Environmental Effects*)

To the north of the site is a 7-storey UNSW research building. Further north are two brick 3-storey residential flat buildings. To the east of the site across Anzac Parade is UNSW Campus, specifically New College and Warrane College, with the UNSW Village Green beyond.

To the south of the site is 4-storey shop top housing development and further south is 8-storey shop top housing development.

To the west of the site is a residential area comprising of predominantly single detached homes, with a range of single detached houses and a modern residential flat building directly across Houston Lane.

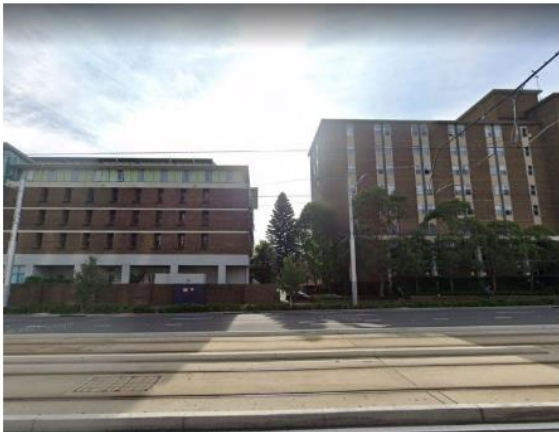
The site is within close proximity to Anzac Parade which is highly accessible to public transport including buses and the Kensington Light Rail.



Picture 3 Neighbouring apartments to the south



Picture 4 UNSW Global building to the north



Picture 5 New College (left) and Warrange College (right) to the east across Anzac Parade



Picture 6 Residential development to the west across Houston Lane

Figure 2 - Surrounding development (*Source: Statement of Environmental Effects*)

3. Relevant history

DA/163/1968

Development Application No. DA/163/1968 was approved on 21/05/1968 for the erection of a 3 storey 6 unit residential flat building.

PL/59/2020

Pre-lodgement Application No. PL/59/2020 was finalised on 30/06/2021 for the construction of an 8 level residential flat building development with ground floor level retail.

4. Proposal

The proposal seeks development consent for the demolition of the existing structures and the construction of a part nine (9) part six (6) storey mixed use development comprising 1 retail premises, 20 residential apartments, and 15 car parking spaces.

Level	Component
Basement Level	The basement will have 15 car parking spaces (using car stackers); 2 motorbike/scooter spaces; 12 bicycle spaces; a storage room, OSD tank, turntable and internal circulation (comprising a lift and stairs).
Lower Ground Floor	Vehicular and pedestrian access off Houston Lane, lobby area, plant equipment and servicing rooms, waste rooms and bin store, and bin collection area.
Ground Floor	A 67m ² retail tenancy in the eastern building block, water pump room, internal circulation, a landscaped central courtyard and two 1-bedroom units in the western building block.
Levels 1-3	Two 1-bedroom units with internal circulation the eastern building block and one 3-bedroom unit in the western block.
Level 4	Two 1-bedroom units with internal circulation in the eastern building block and one 2-bedroom unit in the western block.
Level 5	Two 1-bedroom units in the eastern building block with internal circulation, and a roof terrace above the western building block. The roof terrace will feature a lounge deck with BBQ and outdoor dining amenities, an Astro Turf Lawn, raised planters with integrated seating and tables, and seated concrete walls with lighting and feature planting to the edge of the rooftop.
Levels 6-7	Two 1-bedroom units with internal circulation in the eastern building block.
Roof	Plant equipment including roof fans, car park exhaust, AC plant and retail exhaust fans, and lift overrun.

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Figure 3 – Photomontage of the proposal from Anzac Parade



Figure 4 – Photomontage of the proposal from Houston Lane

5. Notification

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

- Address withheld

Issue	Comment
When will demolition and construction commence?	The application is recommended for refusal and as such, no consent is granted for demolition or construction works at the subject site.

6. Relevant Environment Planning Instruments

6.1. SEPP (Housing) 2021

According to Clause 46(2)(a) of SEPP Housing 2021, the existing building is strata subdivided and the provisions of Part 3 Retention of Existing Affordable Rental Housing do not apply.

6.2. SEPP (Building Sustainability Index: BASIX) 2004

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

6.3. 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 are satisfactory and provided the following comments:

"The subject DA submission includes A Preliminary Site Investigation. The report is titled "Preliminary Site Investigation, 229 Anzac Parade Kensington NSW, prepared by Metech Consulting, dated 12 January 2022 Project Number EP187-RP01"

In summary, on page iv of the report concludes the following:

"The historic land use activities undertaken at and directly adjacent to the property are considered to pose a contamination risk and the extent of any such contamination has not yet been determined"

Section 5.6 Potential for Migration (page 17 of the report) states: "considering the nature of the potential contaminants of concern and the environmental setting of the site, subsurface soils and groundwater are considered to be at the highest risk of being affected by any site or offsite derived contamination. Considering the land use activities at the site and at the adjoining properties, the site is considered to be at risk of being affected by residual contamination is likely to be limited due to the length of time since such activities were undertaken."

Page 21 Concludes that it is recommended further work is required. The Recommendations on page 22 of the Preliminary Report limit that the further works only include site specific soil vapour assessment be undertaken at the site in accordance with the NEPM (2013) and DECCW (2010) Vapour Intrusion: Technical Practice Note.

Reference is made to The 2020 Guidelines for Consultants reporting on contaminated Land: Contaminated land guidelines are made by the NSW Environment Protection Authority (EPA) under section 105 of the Contaminated Land Management Act 1997 (CLM Act) and will be referred to as the NSW EPA guidelines for consultants reporting on contaminated land, 2020.

The Preliminary Site Investigation report does not include site sampling and it is considered that limiting the further investigations to soil vapour assessment may not be adequately comprehensive and not in keeping with the NSW EPAs Guideline for Consultants reporting on Contaminated Land "The objective of a sampling and analysis quality plan is to provide the context, justification and details of the selected sampling and analysis approach. The 'sampling and analysis quality plan' has a critical role in ensuring that the data collected is representative and provides a robust basis for site assessment decisions, as indicated in Schedule B2 - Guideline on Site Characterisation, of the ASC NEPM. A sampling and analysis quality plan may be either a standalone document, or may be incorporated into the relevant investigation report." Page 8 of NSW EPA guidelines for consultants reporting on contaminated land, 2020.

"The objective of a detailed site investigation report is to provide more complete and definitive information on issues raised in the preliminary site investigation. The detailed site investigation report must be designed to provide information on the type, extent and level of contamination for the site and (as relevant) assessment of: • primary sources of contamination, for example potentially contaminating activities, infrastructure (such as underground storage tanks, fuel line, sumps or sewer lines) or site practices • contaminant dispersal in air, hazardous ground gases, surface water, groundwater, soil vapour, separate phase contaminants, sediments, infrastructure (e.g. concrete), biota, soil and dust • contaminant characterisation and behaviour (volatility, leachability, speciation, degradation products and physical and chemical conditions on-site which may affect how contaminants behave) • potential effects of contaminants on human health, including the health of occupants of built structures (for example arising from risks to service lines from hydrocarbons in groundwater, or risks to concrete from acid sulphate soils) and the environment • potential and actual contaminant migration routes including potential preferential pathways • the adequacy and completeness of all information available for use in the assessment of risk and for making decisions on management requirements, including an assessment of uncertainty • the review and update of the conceptual site model from the preliminary and detailed site investigations" page 9 of the NSW EPA guidelines for consultants reporting on contaminated land, 2020.

It is therefore suggested the wording for additional investigations not be limited to only soil vapour intrusion though to refer to the standard conditions and be more extensive."

Considering the above, the proposal satisfies the requirements of the Resilience and Hazards SEPP, subject to the recommended conditions of consent if the application was recommended for approval.

6.4. SEPP ADG

The proposed development is for a mixed use development that comprises 20 dwellings and is part nine (9) part six (6) storeys therefore SEPP 65 applies.

Clause 28 (2) of SEPP 65 states:

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

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

Due to the timing between filing of the deemed refusal, the deadline for the submission of the Statement of Facts and Contentions (SOFAC) and the date of the Design Excellence Advisory Panel (DEAP), it was not possible to refer the development proposal to the DEAP for review and comment. The reason for this is that the comments from the panel would not have been received and incorporated into the SOFAC before the document was required to be submitted.

Notwithstanding the above, an assessment has also been carried out against the design criteria of the Apartment Design Guide ("ADG") (refer to the table below). In summary, the development does not comply with the objectives of the ADG.

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

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

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

Assessing officer's comment: According to Council's Development Engineer, the proposal does not provide the required number of parking spaces (refer to Appendix 1).

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

Assessing officer's comment: All of the apartments have internal areas that comply with the ADG (refer to Appendix 3).

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

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

Assessing officer's comment: All units will be provided with 2.7m floor to ceiling heights and 3.1m floor to floor heights which complies with the requirements of the ADG. Notwithstanding this, the floor to ceiling heights do not comply with the RDCP K2K which is further discussed below.

(2) Development consent must not be granted if, in the opinion of the consent authority, the development or modification does not demonstrate that adequate regard has been given to:

(a) the design quality principles, and

(b) the objectives specified in the Apartment Design Guide for the relevant design criteria.

Assessing officer's comment: Adequate regard has been given to the SEPP 65 design quality principles and the ADG design criteria, and the Applicant has submitted a Design Verification Statement prepared by a qualified architect.

(3) To remove doubt:

(a) subclause (1) does not prevent a consent authority from refusing an application in relation to a matter not specified in subclause (1), including on the basis of subclause (2), and

(b) the design criteria specified in subclause (1) are standards to which section 79C (2) of the Act applies.

Apartment Design Guide (ADG)

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

Clause	Requirement	Proposal	Compliance
Part 3: Siting the Development			
3A -1	Site Analysis		
	Each element in the Site Analysis Checklist should be addressed.	Site analysis satisfactory and addresses elements in the checklist.	Yes
3B-1	Orientation		
	Buildings along the street frontage define the street, by facing it and incorporating direct access from the street (see figure 3B.1).	The building entry has direct entry to the street for access to the residential units above.	Yes
	Where the street frontage is to the north or south, overshadowing to the south should be minimised and buildings behind the street frontage should be oriented to the east and west.	The excessive number of storeys and height breach results in increased overshadowing to the neighbouring properties. As such, the proposal does not uphold the objective in that overshadowing is minimised. The shadow diagrams submitted with the application do not indicate the additional shadows cast by the non-compliant portion of the building. The increased overshadowing may undermine the amenity afforded to neighbouring properties and the public domain.	No
3B-2	Orientation		
	Living areas, private open space and communal open space should receive solar access in accordance with sections 3D Communal and public open space (50% direct sunlight to the principal part of the communal open space for 2 hours) and 4A Solar and daylight access.	The communal open spaces receive at least 3 hours of direct sunlight. Shadow diagrams to demonstrate the height non-compliant shadows have not been submitted (as discussed above).	No
	Solar access to living rooms, balconies and private open spaces of neighbours should be considered.		
	Where an adjoining property does not currently receive the required hours of solar access, the proposed building ensures solar access to neighbouring properties is not reduced by more than 20%.		
	If the proposal will significantly reduce the solar access of neighbours, building separation should be increased beyond minimums contained in section 3F Visual privacy.		

Clause	Requirement	Proposal	Compliance
	Overshadowing should be minimised to the south or downhill by increased upper-level setbacks.		
	A minimum of 4 hours of solar access should be retained to solar collectors on neighbouring buildings.		
3D-1	Communal and Public Open Space		
	Communal open space has a minimum area equal to 25% of the site (see figure 3D.3)	Minimum required for the site = 126.5m ² A communal area of 119m ² is provided on the roof top at the rear building, and the ground floor level between the front and rear buildings. The areas equate to over 126.5m ² and achieve compliance.	Yes
	Developments achieve a minimum of 50% direct sunlight to the principal usable part of the communal open space for a minimum of 2 hours between 9 am and 3 pm on 21 June (mid-winter).	The communal open space is located at the roof top and receives at least 3 hours of direct sunlight between 9am and 12pm.	Yes
3E-1	Deep Soil Zones		
	Deep soil zones are to meet the following requirements: Site Area: 650m ² – 1500m ² = 7% (88.5m ²) Minimum dimensions of deep soil = 3m	The proposal does not include any deep soil landscaping at the subject site.	No
3F-1	Visual Privacy		
	Separation between windows and balconies is provided to ensure visual privacy is achieved. Minimum required separation distances from buildings to the side and rear boundaries are as follows: Up to 12m (4 storeys) – 6m habitable rooms and balconies, 3m non-habitable rooms Up to 25m (5-8 storeys) – Habitable rooms and balconies = 9m, non-habitable rooms = 4.5m Over 25m (9+ storeys) - Habitable rooms and balconies = 12m, non-habitable rooms = 6m	The window of the bedroom in Unit 01 offers a direct view into the shared communal open space at Level 5, and the implementation of privacy measures is necessary. This would be recommended as a condition of consent if the application were approved. Notwithstanding this, the visual privacy concerns are a reason for refusal.	No
3J-1	Bicycle and Car Parking		
	The minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments, or the car parking requirement prescribed	As discussed in the Key Issues section, the proposal does not comply with the minimum car parking and bicycle parking requirements of the K2K RDCP and these forms a reason for refusal.	No

Clause	Requirement	Proposal	Compliance
	by the relevant council, whichever is less. The car parking needs for a development must be provided off street.		
Part 4: Designing the Building			
4A	Solar and Daylight Access		
	Living rooms and private open spaces of at least 70% of apartments in a building receive a minimum of 2 hours direct sunlight between 9 am and 3 pm at mid winter in the Sydney Metropolitan Area and in the Newcastle and Wollongong local government areas	75% of units (15/20 units) achieve in excess of 2 hours solar access to part of the living area and POS.	Yes
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter.	2 units (10%) do not receive solar access.	Yes
4B	Natural Ventilation		
	At least 60% of apartments are naturally cross ventilated in the first nine storeys of the building. Apartments at ten storeys or greater are deemed to be cross ventilated only if any enclosure of the balconies at these levels allows adequate natural ventilation and cannot be fully enclosed	All units are naturally cross-ventilated.	Yes
4C	Ceiling Heights		
	Measured from finished floor level to finished ceiling level, minimum ceiling heights are: Habitable Rooms – 2.7m Non-habitable – 2.4m	As discussed in the Key Issues section, the proposal complies with the 2.7m floor to ceiling height requirements in the ADG, however, the proposal does not comply with the floor to ceiling height controls in the K2K RDGP.	Yes
4D	Apartment Size and Layout		
	Apartments are required to have the following minimum internal areas: Studio - 35m ² 1 bedroom - 50m ² 2 bedroom - 70m ² 3 bedroom - 90m ² The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m ² each	All units comply with the minimum internal areas.	Yes
	Every habitable room must have a window in an external wall with a total minimum glass area of not less than 10% of the floor area of	All habitable rooms comprise of a window opening for the purposes of light and will not have an area less	Yes

Clause	Requirement	Proposal	Compliance
	the room. Daylight and air may not be borrowed from other rooms	than 10% of the floor area of the room.	
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height	All habitable room depths are within the maximum limit.	Yes
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	The maximum habitable room depths comply.	Yes
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space)	Bedrooms will achieve minimum area requirements.	Yes
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space)	All bedrooms have a minimum dimension of 3m.	Yes
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"> • 3.6m for studio and 1-bedroom apartments • 4m for 2- and 3-bedroom apartments 	The dimensions are greater than the minimum width requirement.	Yes
4E	Apartment Size and Layout		
	All apartments are required to have primary balconies as follows: Studio apartments 4m ² 1-bedroom apartments 8m ² 2m dim. 2-bedroom apartments 10m ² 2m dim. 3-bedroom apartments 12m ² 2.4m dim. The minimum balcony depth to be counted as contributing to the balcony area is 1m	All the private open space areas are adequate and are above the minimum requirement.	Yes
	For apartments at ground level or on a podium or similar structure, a private open space is provided instead of a balcony. It must have a minimum area of 15m ² and a minimum depth of 3m	The proposal does not include any ground floor level units.	Yes
4F	Common Circulation and Spaces		
	The maximum number of apartments off a circulation core on a single level is eight	The maximum number of apartments of a single lift core is 3.	Yes
4G	Storage		
	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided: Studio apartments 4m ³ 1 bedroom apartments 6m ³ 2 bedroom apartments 8m ³	The proposed development fails to meet the ADG requirements as it does not allocate 50% of storage space within the units. Additionally, the storage diagrams show that the majority of storage is located in the kitchens, bathrooms, or bedrooms,	No

Clause	Requirement	Proposal	Compliance
	3+ bedroom apartments 10m ³ At least 50% of the required storage is to be located within the apartment	which constitutes a reason for refusal.	

6.5. Randwick Local Environmental Plan 2012 (LEP)

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

The 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:

- The proposed development results in non-compliance with the height of buildings development standard established in Clause 6.17(4)(a) of the RLEP.
- The proposed landscaping presents substantial variations to the controls established in the K2K RDCP and the ADG.
- The non-compliance with the 4 storey street wall height does not facilitate built form with proportions envisaged by the K2K RDCP nor does it complement the desired future built form outcomes or neighbourhood character.
- The excessive height of the rear building and roof structures including the lift overrun and stair contribute to the overbearing bulk and scale, and height non-compliance which is inconsistent with the objectives of Zone B2 Local Centre.
- The design of the ground floor level retail premises at Anzac Parade will limit patronage and useability for the active frontage due to the change in RL from the footpath level to the premises.
- The 9.5m non-compliance with the minimum frontage width and insufficient information submitted to support the isolated site will result in an unacceptable built form the future redevelopment of neighbouring properties.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4: Floor space ratio (max)	4:1 (2024m ²)	3.67:1 (1859.09m ²)	Yes
CI 4.3: Building height (max)	19m & 31m	19.37m (RL43.70) to the roof terrace parapet and 23.15m to the lift overrun where the 19m	No

		alternative building height applies	
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6.5.1. *Clause 4.6 - Exceptions to development standards*

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

- (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 also provided,*
 - (b) *to ensure that those greater building heights and densities reflect the desired character of the localities in which they are allowed and minimise adverse impacts on the amenity of those localities,*
 - (c) *to provide for an intensity of development that is commensurate with the capacity of existing and planned infrastructure.*
- (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.*
- (3) *In deciding whether to grant development consent, the consent authority must—*
 - (a) *be satisfied that the development is consistent with the objectives of this Clause, and*
 - (b) *be satisfied that the community infrastructure is reasonably necessary at Kensington and Kingsford town centres, and*
 - (c) *take into account the nature of the community infrastructure and its value to the Kensington and Kingsford town centres community.*
- (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 ..."*

Pursuant to the Alternative Building Heights Map referred to in Clause 6.17(4)(a) of the RLEP, the site is subject to a maximum alternative building height of 19m (to the rear of the site) and 31m (to the front of the site).

The height plane on the architectural sections does not measure the 19m and 31m height limits from the existing ground levels. The architectural sections demonstrate the location of the RLEP height transition from 19m to 31m, 12m from the rear boundary. This is incorrect and the 19m height standard extends 14m from the rear boundary.

The proposed development has a maximum height of 19.37m (RL43.70) to the roof terrace parapet and 23.15m to the lift overrun where the 19m alternative building height applies. This exceeds the maximum building height permitted by 0.37m and 4.45m, or 2% and 21.8%. Refer to Figure 5 below.

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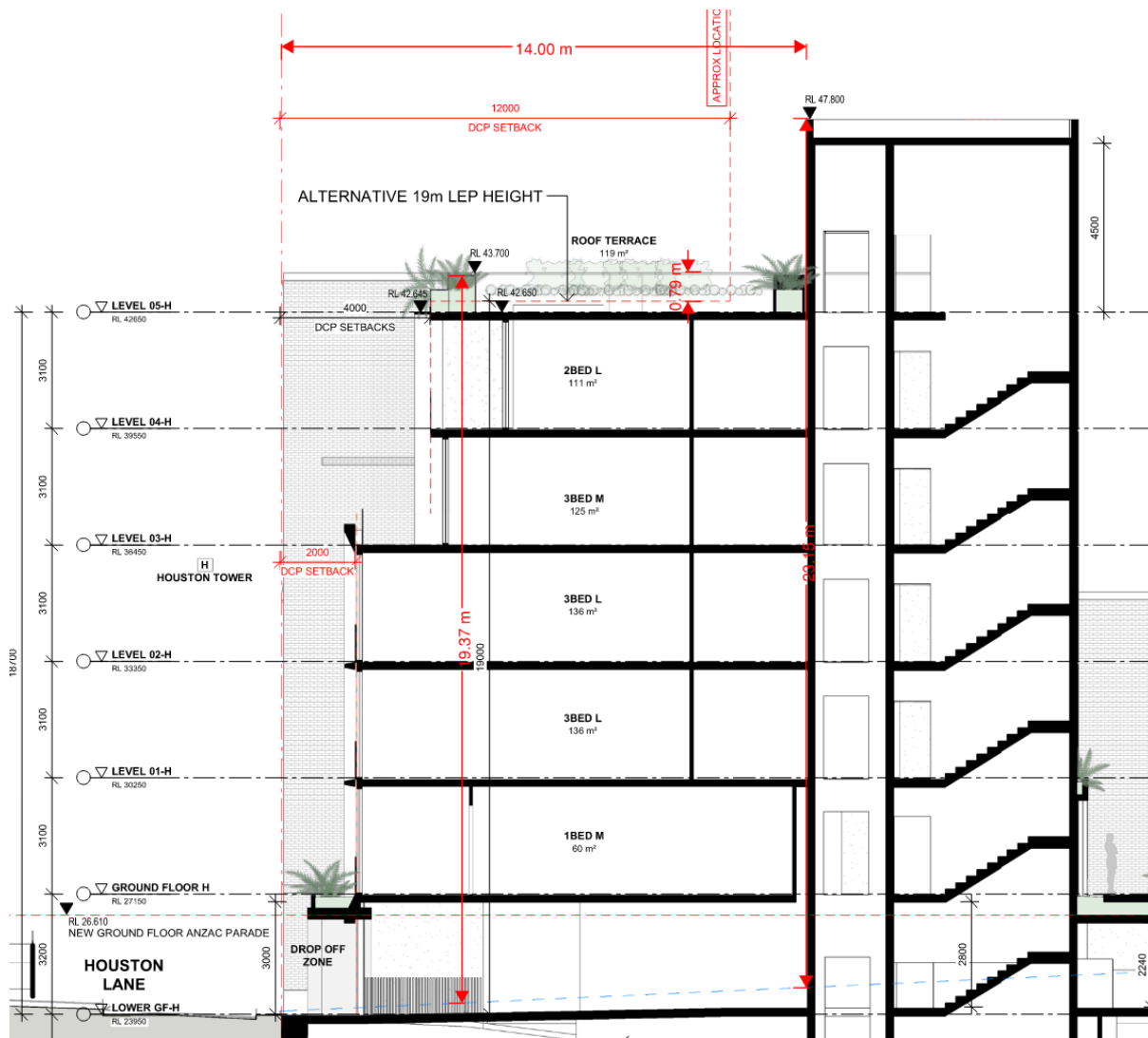


Figure 5 – Section-C

The Applicant has not submitted a written request pursuant to Clause 4.6 of the RLEP seeking to justify the contravention of the height of buildings development standard in Clause 4.6(4)(a) of the RLEP.

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

- (i) *A written request under Clause 4.6 of the RLEP has not been submitted to address 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 the RLEP and the objectives for development in Zone B2 Local Centre.*

The excessive height is not acceptable for the following reasons:

- The proposed built form exceeds the maximum alternative building height under clause 6.17(4)(a) of the RLEP, creates additional visual bulk to Houston Lane, fails to

complement the overall streetscape profile, reflect an appropriate transition to the residential zone to the rear and fails to respond to the desired future character.

- The proposed floor to ceiling heights do not comply with the minimum requirements prescribed by Part C Section 12 in 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 heights at the rear building are 2m-3m at the ground floor and 2.9m for the floors above.
- The proposed number of storeys to the rear building, seven (7) storeys including the roof terrace does not comply with the K2K RDCP controls which requires five (5) storeys where the maximum height is 19m. The number of storeys and floor to ceiling heights should comply to provide consistency with the future redevelopment of surrounding sites.
- The 4.5m floor to ceiling height at the rear building lift overrun and stair access is 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 building. The increased overshadowing may undermine the amenity afforded to neighbouring properties and the public domain.

These form reasons for refusal.

6.5.2. *Clause 5.10 - Heritage conservation*

The subject site is not identified as a local or state heritage item or located within a heritage conservation area. The proposal is therefore considered to satisfy the relevant provisions of Clause 5.10 of the RLEP.

6.5.3. *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 proposal on geotechnical, hydrogeological or structural grounds. Should consent be granted a condition would be 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.

6.5.4. *Clause 6.11 – Design Excellence*

Clause 6.11 of the RLEP applies to the proposed development as it is proposed to be greater than 15m 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, design and proportions of the built form does not improve the quality and amenity of the public domain nor does it achieve an acceptable relationship with other buildings on neighbouring sites due to site isolation and non-compliant minimum frontage width.

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

6.5.5. 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 Alternative Height of Buildings Map referred to in Clause 6.17(4)(a) as having an alternative maximum building height of 31 metres to the front of the site and 19m to the

rear of the site. On the Alternative 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.

Kensington and Kingsford Town Centres Community Infrastructure Contributions Plan identifies community infrastructure including Anzac Parade footpaths, public realm works and upgrades, and laneway improvements. Refer to the Kingsford CIC Map on page 10 of the CIC Plan.

The Statement of Environmental Effects states that the Community Infrastructure Contribution will be in the form of dedicated floor space or a monetary contribution. It is presumed the floor space or monetary contribution is provided in lieu of 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 (CIC Plan). No further details have been provided or a letter of offer to enter into a VPA with the Respondent in satisfaction of Clause 6.17 of the RLEP.

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

- (iii) *The Applicant's written request under Clause 4.6 of RLEP 2012 has adequately addressed the following matters required to be demonstrated:*
 - (3) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (4) *that there are sufficient environmental planning grounds to justify the contravention of the development standard in Clause 4.3 of RLEP 2012.*
- (iv) *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.

6.5.6. 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) relevantly provides 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.*

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 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 objectives in Clause 6.20(1) in that the non-compliance with the minimum frontage width, glazing width, pedestrian awning and finished floor level of the retail premises is unsatisfactory.

The proposal is not considered to satisfy Clause 6.20 of the RLEP and this forms a reason for refusal.

7. Development control plans and policies

7.1. Randwick Comprehensive DCP 2013

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

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

8. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal does not satisfy 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 not 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 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 accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal does not promote the objectives of the zone and will result in any significant adverse environmental, social or economic impacts on

Section 4.15 'Matters for Consideration'	Comments
	the locality. Accordingly, the proposal is not considered to be in the public interest.

8.1. Discussion of key issues

Anzac Parade Active Street Frontage

Clause 6.20 'Active Street Frontages at Kensington and Kingsford Town Centres' of the RLEP applies to the site. Clause 6.20(3) relevantly provides:

"(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."

The proposal is contrary to the objective of Clause 6.20(1) which is to *"promote uses that attract pedestrian traffic along certain ground floor street frontages within the Kensington and Kingsford town centres"*.

The proposal is not considered to promote the retail activation of the ground floor level due to the multiple non-compliances such as the frontage width. Part A Section 6 of the K2K RDCP requires a minimum street frontage of 20m, and the width of the subject site is 10.06m which represents a 50.3% variation to the control. The proposal is contrary to the objectives in Part A Section 6 of the K2K RDCP which 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.*

Section 6.1 of the K2K RDCP (Figure 6 below) nominates 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 finished floor level of the retail premises should be lowered to reflect the level of the footpath to promote uses that attract pedestrian traffic along the ground floor level street frontage.

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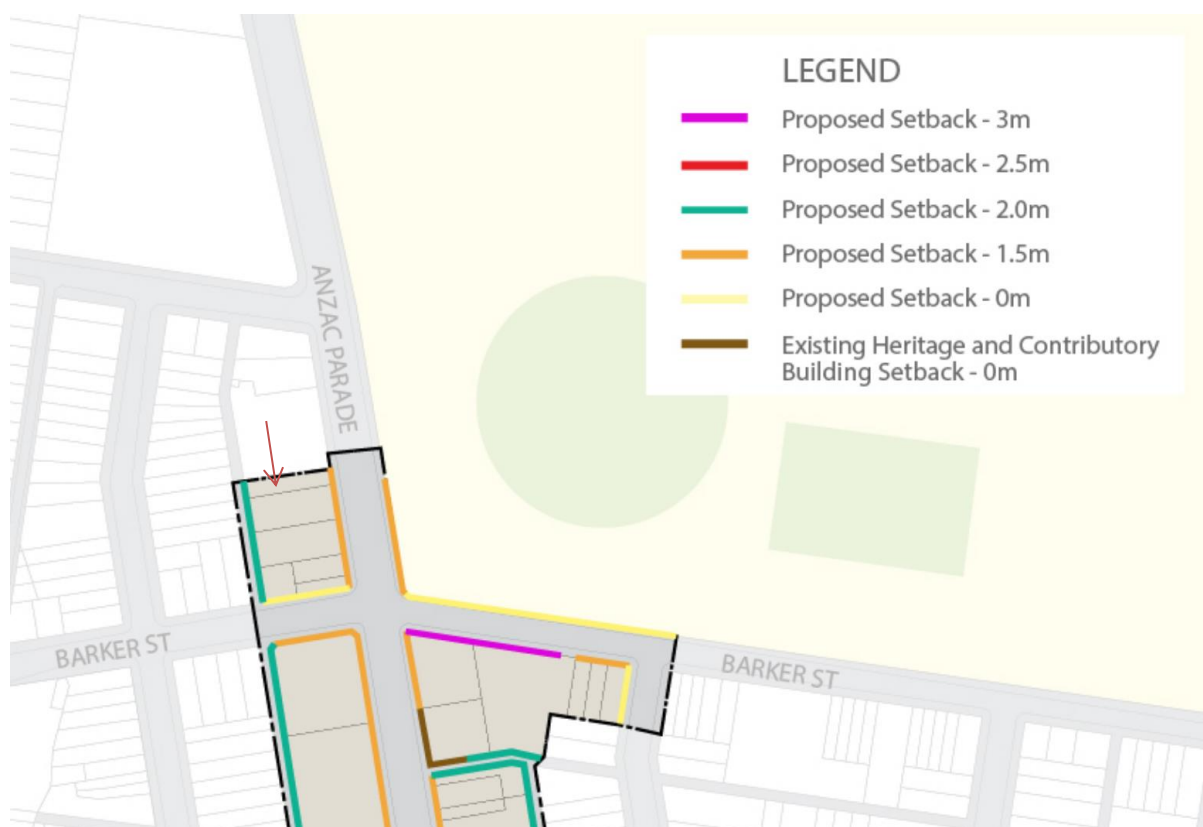


Figure 6 – Kingsford Building Street Setback (Figure 3b in Section 6.1 of the K2K RDCP)

The glazing to the retail premises equates to 50.6% (5.09m) of the 10.06m site frontage. This does not comply with the 80% (8.05m) requirement for translucent glazing in Part C Section 19 of the K2K RDCP. The full height metal balustrades to the residential entry doors are 3.3m wide and should be replaced with transparent glazing to comply with the 80% requirement.

The proposal does not provide a continuous pedestrian shelter such as an awning to the Anzac Parade frontage in accordance with Part C Section 18 of the K2K RDCP. This is contrary to the objectives which aim to provide shelter for pedestrians, reinforce the coordinating design element in the Kensington Town Centres, define the street edge, provide continuity to the streetscape, and ensure awning design and siting addresses public realm, pedestrian and road safety. A continuous awning of 3m width, with a minimum soffit height between 3.5m-4.2m should be provided to the Anzac Parade frontage of the building. The design should be refined and integrated with the overall architectural expression of the building.

Furthermore, the Statement of Environmental Effects states that an offer was made to the neighbouring site at 231-233 Anzac Parade to acquire and amalgamate with the subject site. Insufficient information has been submitted to demonstrate the declined offer including the valuation and copies of the correspondence.

Future Redevelopment

Part A Section 6 'Built Form' of the 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."*

As discussed above in the key issues section regarding the active frontage, insufficient information has been provided to demonstrate that adequate efforts have been made to amalgamate with the adjoining properties. The application does not provide sufficient information or demonstrate adequate analysis of, or regard for, the likely future development pattern resulting from the site isolation. For example, schematic diagrams demonstrating how the isolated site is capable of being redeveloped in accordance with relevant provisions of the RLEP 2012 and the K2K RDCP to achieve an appropriate urban form for the location, and an acceptable level of amenity.

Setbacks

Part A Section 6.1 of the K2K RDCP requires a 4-storey street wall. At the ground floor, the proposal must be setback 1.5m from Anzac Parade to allow for footpath widening.

At the ground floor level, the proposed development is nil setback to the side boundary walls, 0.38m to the planter box, 1m to the stairs, 1.5m to the blade wall, 1.5m to the building entry and 2.6m to the retail premises. At levels 1-3, the proposed development is setback 1.2m to the blade wall, 1.5m to the bedroom and southern winter garden and 0.64m to the northern winter garden. At levels 4-7, the proposed development is setback 1.15m to the blade wall, 1.62m to the northern winter garden, 1.95m to the bedroom, and 2.52m to the southern winter garden.

As discussed under the active frontages key issues above, the FFL of the retail premises should be at-grade with the level of the footpath to promote uses that attract pedestrian traffic along the ground floor level street frontage. All structures including the planter box, side elevations and blade walls should be setback to comply with the 1.5m control. This also includes the enclosed window gardens above which intrude into the 1.5m required setback,

The K2K RDCP requires a street wall height of 4 storeys which is consistent with the future built form context along Anzac Parade. The proposal should be amended to comply with the 4-storey street wall height.

Part A Section 6.1 of the K2K RDCP states development that results in an exposed party wall on an adjoining building is to incorporate architectural or vertical landscape treatment to imposed visual amenity.

The extent of the north-west party wall of the proposed development on Anzac Parade does not align with the UNSW teaching building to the north and exposes the party wall to the existing courtyard space. A photo of the UNSW building courtyard has been provided in Figure 7 below to illustrate the importance of this view which looks towards the subject site. Further the above, the proposal has not considered the visual impact of the exposed party wall to the southern neighbouring property at 231-233 Anzac Parade.



Figure 7 – UNSW building courtyard to the north of the site

Landscaping

The proposed development does not achieve compliance with Part C Section 20 of the K2K RDCP minimum landscaping requirements which requires 100% of the total site area as landscaped area. The proposal provides 60% of the site area as landscaping which should be increased to comply.

The applicant has not submitted diagrammatic calculations to demonstrate compliance with the following requirements in Part C Section 20 of the K2K RDCP:

- (i) 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.*
- (ii) 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.*
- (iii) 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.*

(iv) 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.

Control (d) in Part C Section 20 of the K2K RDCP requires sufficient soil depth to be provided to support mature trees and planting. While native feature palms and tree ferns are nominated for the ground floor level courtyard, the section plan (drawing no. DA601) proposes a maximum soil depth of 540mm. The soil depth is insufficient to sustain the long-term viability of the species and this includes the canopy trees at the roof top terrace. Soil depths and dimensions for all planters needs to be clearly represented on the architectural plans and include the RL's, construction details and measurements. The planting plans must also nominate the precise location of each nominated species.

The proposal does not include deep soil landscape which represents a non-compliance with the 7% requirement stated in Part 3E of the ADG.

The K2K RDCP non-compliance with the 20m minimum frontage width reduces the ability of the proposal being able to achieve compliance with the ADG deep soil landscaping requirement. Notwithstanding this, there are other means of maximising opportunities for planting on structures (to ADG soil depth and volume standards) which should be maximised to comply with the K2K RDCP requirements outlined above. The proposal does not achieve the objectives in Part C Section 20 of the K2K RDCP which 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.*

Car Parking

The development application should be refused as there is a 21% shortfall in the car parking provision required and the layout is totally reliant on mechanical devices which are excessive and will likely be a significant deterrent to use by occupants.

Part C Section 21 of the K2K RDCP specifies the following parking rates applicable to the subject site.

For residential component

- 0.2 space per studio units
- 0.6 spaces per 1 bedroom unit
- 0.8 spaces per 2 bedroom unit
- 1.1 spaces per 3 bedroom unit
- 1 visitor space per 5 units

For commercial component

- 1 space per 125m² GFA commercial
- 1 space per 100m² GFA cafes

NOTE: These are substantially reduced rates when compared to Council's normal parking rates in Part B7 of the RDCP, being in acknowledgement of the areas proximity to good public transport (including light rail) and local town centres.

The applicant's traffic and parking study does not acknowledge the applicable parking rates specified in Part C Section 21 of the K2K RDCP.

The residential component includes 20 units comprise of 16 x 1 bedroom, 1 x 2 bedroom and 3 x 3-bedroom dwellings thereby generating a parking demand of 18 spaces (including 4 visitor spaces) when adopting the above rates.

There is 1 commercial tenancy comprising of 67m2 GFA thereby generating a parking demand of 0.5-0.7 spaces (depending on future use) or 1 space when rounded. The total parking required for the development under the K2K RDCP is therefore **19 spaces**. As only 15 spaces are proposed **there is a shortfall of 4 spaces (21%)**.

There is a 100% reliance on mechanical devices to provide off-street parking with both a turntable and carstacker system proposed. This would be unprecedented within Randwick LGA and will not facilitate the provision of accessible parking or visitor parking. This is not supported.

No waiting times have been specified for the stacker system and it is unclear that the system will support the number of spaces proposed or can operate within the design space available. No manufacturers specifications of proposed model number have been submitted. The development must provide one electric vehicle charging point per five parking spaces.

The above form reasons for refusal.

Bicycle Parking

The development application should be refused as there is a 27% shortfall in bicycle parking provision which has not been justified or acknowledged in the applicants Traffic and parking report.

The K2K RDCP states that bicycle parking is to be provided for the residential component at a rate of 1 space per dwelling + 1 visitor space per 10 dwellings resulting in a requirement of 22 spaces.

The K2K RDCP states that bicycle parking is to be provided for the commercial component of 1 space per 1,000sqm is applicable resulting in a nil requirement for the retail premises (when rounded)

This amounts to a total parking provision for bicycles of 22 spaces required.

The submitted plans indicate the provision of 16 spaces and therefore do not meet the minimum requirements of the K2K RDCP with a shortage 6 bicycle spaces (27%).

These above form reasons for refusal.

Waste Management

The development application should be refused because the proposed development and waste management plan does not comply with the relevant controls in Section 22 of the K2K RDCP including how the building will achieve the future provision of an Automated Waste Collection System (AWCS).

Part C Section 22 of the K2K RDCP, control (h) requires an Automated Waste Collection System (AWCS), which has not been provided. The submitted plans and waste management plan assumes standard waste bin collection which is no longer appropriate for residential waste within the area of the K2K RDCP. Commercial waste is to be provided in bins and must be physically separated from the Localised Automated Waste Collection system for the residents. A separate area for bulky waste shall also be provided. These form reasons for refusal.

Acoustic Privacy

Council's Environmental Health Officer has confirmed The Acoustic Logic, DA Acoustic Assessment, 229 Anzac Parade, Kensington NSW (Rev0, 2/9/2021), Chapter 6 Noise Emission Assessment, 6.1.1 incorrectly states that *The Kensington and Kingsford Town Centres Development Control Plan 2020 does not provide any acoustic criteria or objectives for noise emissions*. In the K2K DCP, Part C Section 14 Acoustic Privacy, five Objectives and a series of acoustic controls are provided for residential and commercial uses. An amended Acoustic Assessment is required that includes the criteria and standards used to assess the future acoustic amenity of the proposal.

Concerns are raised in relation to noise reverberation within the courtyard/lightwell, the proximity of one bedroom to another across the courtyard and potential impacts of noise from and to future building residents regarding the adjoining building to the south which is a residential development with open aerial walkways. This includes adverse noise impacts to the north at the UNSW teaching facility (221-227 Anzac Parade) and visa-versa. These form reasons for refusal.

9. Conclusion

That the application be refused for the following reasons:

1. The proposal does not comply with the provisions of State Environmental Planning Policy No 65 – Design Quality of Residential Apartment Development; in particular:
 - a. Pursuant to Part 3B-1 and 3B-2 of the ADG, the height non-compliance does not minimise overshadowing.
 - b. Pursuant to Part 3E-1 of the ADG, the proposal does include deep soil landscaping and 88.5m² is required.
 - c. Pursuant to Part 3F-1 of the ADG, inadequate separation has been provided for visual privacy to the bedroom window at Unit 01 which overlooks the shared communal open space at Level 5.
 - d. Pursuant to Part 3J-1 of the ADG, the proposal does not provide the compliant number of bicycle and car parking spaces.
 - e. Pursuant to Part 4G of the ADG, the proposal does not allocate 50% of the storage space within the units and the majority of storage is located in the kitchens, bathrooms and/or bedrooms.
2. The proposal does not comply with the provisions of the Randwick Local Environmental Plan 2012 (RLEP) in particular:
 - a. The proposal does comply with the maximum height standard pursuant to clause 4.3 of RLEP 2012 and a Clause 4.6 Written Request has not been submitted.
 - b. Pursuant to Clauses 6.11(3) and (4), the proposal does not exhibit design excellence in regard to its ground floor interface with Anzac Parade and non-compliant minimum frontage width.
 - c. 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 in regard to its ground floor interface with Anzac Parade.
 - b. Pursuant to Part 6 in the K2K RDCP, the proposal does not uphold the objectives or comply with the controls for site frontage, building height, number of storeys, street wall height, front setbacks and exposed party walls.
 - c. Pursuant to Part 11 in the K2K RDCP, the proposal must provide an additional 3 bedroom unit and relocate 3 bedrooms units on the lower four floors of the building.
 - d. Pursuant to Part 12 in the K2K RDCP, the floor to ceiling heights do not comply with the specified dimensions and contribute to the overall height non-compliance.
 - e. Pursuant to Part 16 in the K2K RDCP, the extent of the north-west party wall does not align with the neighbouring site and exposes a blank wall to the UNSW courtyard. Furthermore, the proposal has not considered the visual impact of the exposed party wall to the southern neighbouring property at 231-233 Anzac Parade.

- f. Pursuant to Part 18 in the K2K RDCP, the proposal does not provide a continuous pedestrian shelter such as an awning to the Anzac Parade frontage.
 - g. Pursuant to Part 19 in the K2K RDCP, the ground floor level street frontage incorporates 50.6% (5.09m) of transparent glazing which does not comply with the 80% requirement.
 - h. Pursuant to Part 20 in the K2K RDCP, the proposal provides 60% of the site area as landscaping which does not comply with the 100% requirement and the proposed soil depths are inadequate to support mature trees/planting.
 - i. Pursuant to Part 21 in the K2K RDCP, Council's Engineer has confirmed the proposal does not provide the compliant number of car parking spaces (19 are required and 15 have been provided), bicycle spaces (22 are required and 16 have been provided) the use of mechanical devices has not been minimised, no electric vehicle points have been provided and insufficient information has been submitted for the car stackers regarding the waiting times and the manufactures specifications.
 - j. 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 6.17 of the RLEP, no details or a letter of offer to enter into a VPA have been submitted to Council.
 - 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 or details of any special conditions attached to any offer or independent valuations. Furthermore, the application does not adequately demonstrate an analysis of the likely future redevelopment pattern resulting from site isolation.
 - c. The shadow diagrams do not indicate the additional shadows cast by the non-compliant portion of the building.
 - d. Northern and southern side elevations of the proposed development have not been submitted.
 - e. Pursuant to Part 14 in the K2K RDCP, Council's Environmental Health Officer has confirmed the acoustic report incorrectly states that *The Kensington and Kingsford Town Centres Development Control Plan 2020* does not provide any acoustic criteria or objectives for noise emissions. In the K2K DCP, Part C Section 14 Acoustic Privacy, five Objectives and a series of acoustic controls are provided for residential and commercial uses. An amended Acoustic Assessment is required that includes the criteria and standards used to assess the future acoustic amenity of the proposal. Concerns are raised in relation to noise reverberation within the courtyard/lightwell, the proximity of one bedroom to another across the courtyard and potential impacts of noise from and to future building residents regarding the adjoining building to the south which is a residential development with open aerial walkways. This includes adverse noise impacts to the north at the UNSW teaching facility (221-227 Anzac Parade) and visa-versa.
 - 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 or a 5 Star Green Rating Report have not been submitted for assessment.
- h. Pursuant to Part 22 of the K2K RDCP, an Automated Waste Collection System (AWCS) including FOGO bins and a separate area for bulky waste have not been provided.
- i. 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.

D3/23

Appendix 1: Referrals

1. External referral comments:

1.1. Water NSW



General Manager
Randwick City Council
30 Frances St
RANDWICK NSW 2031

Contact: Suellen Howe
Email: suellen.howe@watnsw.com.au
Our ref: IDAS1146540
Our file: A-56083
Your ref: DA/415/2022

10 January, 2023

Attention: Tegan Ward

Dear Sir/Madam

RE: Integrated Development Referral – General Terms of Approval
Dev Ref: DA/415/2022
Description: Excavation
Location: 229 Anzac Parade, Kensington 2033

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

Please note Council's statutory obligations under section 91A (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:

1. 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 i) in the bed of any river, lake or estuary, ii) on the banks of any river, lake or estuary, iii) on land within 40 metres of the highest bank of a river, lake or estuary, or iv) 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.

2. If Council receives an application under s96 of the EP&A Act to modify the development consent and the modifications change the proposed work or activities described in the original DA.
3. Of any legal challenge to the consent.

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. Finalisation of an approval can take up to eight (8) weeks from the date the application and all required supporting documentation is received.

Application forms are available from the WaterNSW website which can be found at www.watnsw.com.au > customer Services > Applications & Fees.

Information to the proponent:

- Detailed information required to permit a hydrogeological assessment to be carried out is to be provided for any further application related to the subject property – the Minimum requirement for building site groundwater investigations and reporting (DPIE, 2021), describe what data needs to be collected and supplied.
- An extraction limit will be determined by the Department of Planning and Environment following a hydrogeological assessment using the detailed information and that will be included on the conditions applied to the approval for the dewatering activity.
- The approval will be issued for the purpose of temporary construction dewatering only and it does not constitute any form of permission for ongoing pumping of groundwater from basement levels after the building is issued an occupation certificate.

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 91A (6) of the EP&A Act.

Yours sincerely



General Terms of Approval

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

Reference Number: IDAS1146540
Issue date of GTA: 10 January 2023
Type of Approval: Water Supply Work
Description: Excavation
Location of work/activity: 229 Anzac Parade KENSINGTON 2033
DA Number: DA/415/2022
LGA: Randwick City Council
Water Sharing Plan Area: Greater Metropolitan Region Groundwater Sources 2011

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

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

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

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General Terms of Approval

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

D3/23

Reference Number:	IDAS1146540
Issue date of GTA:	10 January 2023
Type of Approval:	Water Supply Work
Description:	Excavation
Location of work/activity:	229 Anzac Parade KENSINGTON 2033
DA Number:	DA/415/2022
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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General Terms of Approval

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

Reference Number: IDAS1146540
Issue date of GTA: 10 January 2023
Type of Approval: Water Supply Work
Description: Excavation
Location of work/activity: 229 Anzac Parade KENSINGTON 2033
DA Number: DA/415/2022
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.watnsw.com.au/customer-service/water-licensing/dewatering

- GT0150-00001 The extraction limit shall be set at a total of 3ML per water year (being from 1 July to 30 June). The applicant may apply to WaterNSW to increase the extraction limit under this condition. Any application to increase the extraction limit must be in writing and provide all information required for a hydrogeological assessment. Advisory note: Any application to increase the extraction limit should include the following: - Groundwater investigation report describing the groundwater conditions beneath and around the site and subsurface conceptualisation - Survey plan showing ground surface elevation across the site - Architectural drawings showing basement dimensions - Environmental site assessment report for any sites containing contaminated soil or groundwater (apart from acid sulphate soils (ASS)) - Laboratory test results for soil sampling testing for ASS - If ASS, details of proposed management and treatment of soil and groundwater. Testing and management should align with the NSW Acid Sulphate Soil Manual
- GT0151-00001 Any dewatering activity approved under this approval shall cease after a period of two (2) years from the date of this approval, unless otherwise agreed in writing by WaterNSW (Term of the dewatering approval). Advisory note: an extension of this approval may be applied for within 6 months of the expiry of Term.
- GT0152-00001 This approval must be surrendered after compliance with all conditions of this approval, and prior to the expiry of the Term of the dewatering approval, in condition GT0151-00001. Advisory note: an extension of this approval may be applied for within 6 months of the expiry of Term.
- GT0155-00001 The following construction phase monitoring requirements apply (Works Approval): a. The monitoring bores must be installed in accordance with the number and location shown, as modified by this approval, unless otherwise agreed in writing with WaterNSW. b. The applicant must comply with the monitoring programme as amended by this approval (Approved Monitoring Programme). c. The applicant must submit all results from the Approved Monitoring Programme, to WaterNSW, as part of the Completion Report

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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/415/2022 as provided by Council:

- Statement of Environmental Effects
- Appendix A - architectural Plans
- Appendix F - Architectural Design Report
- Appendix I - Geotechnical Assessment Report

D3/23

1.2. Transport for NSW

Transport for NSW



Ms Tegan Ward
Senior Planning Officer
Randwick City Council
30 Frances Street
Randwick NSW 2031

Dear Ms Ward

Development Application for 229 Anzac Parade, Kensington (DA/415/2022) Concurrence Letter

Thank you for your correspondence via the ePlanning portal (ref: CNR-47449) on 28 October 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/415/2022. 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.

Transport for NSW

20-44 Ennis Road, Milson Point NSW 2061 | PO Box K659, Haymarket NSW 1240
T 02 8202 2200 | F 02 8202 2209 | W transport.nsw.gov.au | ABN 18 804 239 602

OFFICIAL

Transport

23 November 2022

TfNSW Reference: SYD22/01130 CNR-47449
Council reference: DA/415/2022



D3/23

Ms. Therese Manns
The General Manager
Randwick City Council
30 Frances Street
Randwick NSW 2031

Attention: Tegan Ward

**PROPOSED MIXED USE DEVELOPMENT
229 ANZAC PARADE KENSINGTON**

Dear Ms. Manns,

Reference is made to Council's referral regarding the abovementioned application, which was referred to Transport for NSW (TfNSW) for comment under Clause 2.119 of the *State Environmental Planning Policy (Transport and Infrastructure) 2021* and concurrence under Section 138 of the Roads Act 1993.

This submission should be read in conjunction with a separate response provided by TfNSW in relation to concurrence requirements under the rail related provisions under clauses 2.98 and 2.99 of the abovementioned State Environmental Planning Policy.

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 construction of the stormwater drainage pit 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.

OFFICIAL

27-31 Argyle Street Parramatta NSW 2150
PO Box 973 Parramatta CBD NSW 2124

W 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. The layout of the proposed car parking areas associated with the subject development (including, driveways, grades, turn paths, sight distance requirements in relation to landscaping and/or fencing, aisle widths, aisle lengths, and parking bay dimensions) should be in accordance with AS 2890.1-2004, AS2890.6-2009 and AS 2890.2-2018.
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,

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 Terraces, Balconies and 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 Cl 12090 ST Airspace and External Developments version 1.0. This would potentially avoid any modification application associated with compliance of condition in relation to Outdoor Terraces, Balconies and External Windows included in this letter.

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

Yours sincerely

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. The Sydney Light Rail Operator may grant or refuse a request for network shutdown at its discretion;
- The applicant shall provide safe and unimpeded access for Sydney Light Rail patrons traversing to and from the Sydney Light Rail stops at all times;
- TfNSW, and persons authorised by it for this purpose, are entitled to inspect the site of the approved development and all structures to enable it to consider whether those structures on that site have been or are being constructed and maintained in accordance with these conditions of consent, on giving reasonable notice to the principal contractor for the approved development or the owner or occupier of the part of the site to which access is sought; and
- All TfNSW, Altrac and Sydney Light Rail Operator's costs associated with review of plans, designs and legal must be borne by the applicant.

Prior to the Issue of the Construction 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.

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.

Outdoor Terraces, Balconies and External 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.

1.3. Sydney Airport Corporation



D3/23

Reg No.: 22/0878

Friday, 18 November 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: 229 ANZAC PARADE KENSINGTON

Sydney Airport received an application for approval of a controlled activity by the Secretary of the Department of Infrastructure dated 28/10/2022 from you.

Attached is a copy of a letter from Sydney Airport to the Secretary dated 18/11/2022 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,



D3/23

Reg No.: 22/0878

Friday, 18 November 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:	229 ANZAC PARADE KENSINGTON
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 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,

D3/23

Schedule 1

Details of Application for Approval Of Controlled Activity By Secretary

Controlled Activity Details	
Registration No:	22/0878
Date:	28/10/2022
Description:	PROPERTY DEVELOPMENT
Location:	229 ANZAC PARADE KENSINGTON
MGA94 Co-ord E:	336002
MGA 94 Co-ord N:	6245431
Start Date:	
Finish Date:	
BCR (m):	15.24
Ground Height (m) (AHD):	25
OLSType:	INNER HORIZONTAL
OLS (m)(AHD):	51
Dev/Equipt Height (m) (AEGH):	29.06
Dev/Equipt Height (m) (AHD):	54.06
Penetration (m):	3.06

Applicant Details			
Applicants Ref No.:	DA/415/2022	File No:	
Applicant	RANDWICK CITY COUNCIL & NSW PLANNING PORTAL	Proponent:	MOUNTAINS8 P/L
Contact	Tegan Ward	Contact:	Paul Fischmann
Address	30 Frances Street	Address:	
Suburb	RANDWICK, NSW	Suburb:	
Postcode	2031	Postcode:	0
Phone	02 9093 6253	Phone:	
Email	tegan.ward@randwick.nsw.gov.au	Email:	

Sydney Airport

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SYD Classification: Confidential

D3/23

Schedule 2**Regulatory Bodies' Submissions on The Proposed Activity****1. CASA:**

I refer to the request for advice from CASA under the Airports (Protection of Airspace) Regulations 1996 regarding the above proposal.

CASA has assessed the proposed ~9 storey apartment building at 229 Anzac Parade, Kensington, NSW.

The height of the proposed building is 54.06m above AHD or approximately 29 m Above Ground Level. The proposed building will infringe the inner horizontal surface by 3.06 m.

CASA has determined the building would not constitute a significant hazard to aviation safety. CASA is not recommending obstacle marking or lighting in this instance as other existing structures in the vicinity are of similar or greater height.

Any future addition to the height of the building and a separate assessment will be required.

This assessment does not include any cranes required for construction. Cranes that exceed a height of 51 m AHD will require a separate assessment.

2. Airservices:

Airservices are yet to provide a response.

Sydney Airport

- 4 -

SYD Classification: Confidential

Schedule 3**Sydney Airport's Comment of The Proposed Activity**

If CASA requires obstacle lighting as a condition of approval, Sydney Airport will seek advice from the Proponent on how this requirement will be met. Additional comments may be sent from Sydney Airport at that time; we request the determination be made following the submission of our additional comments.

At a maximum height of 54.06m AHD, the proposed development will penetrate the OLS by approx. 3.06 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.

Sydney Airport

- 5 -

SYD Classification: Confidential

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 13 13 65
ausgrid.com.au

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

Ausgrid does not object to the proposed development.

The applicant/developer should note the following information regarding any development proposal near existing electrical network assets.

Ausgrid Underground Cables are in the vicinity of the development

Care should be taken to ensure that construction activities do not interfere with existing underground cables located in the footpath or adjacent roadways.

It is recommended that the developer locate and record the depth of all known underground services prior to any excavation in the area. Information regarding the position of cables along footpaths and roadways can be obtained by contacting Dial Before You Dig (DBYD).

The following points should be taken into consideration.

Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels from previous activities after the cables were installed.

Should ground anchors be required in the vicinity of Ausgrid 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.

In addition to DBYD the proponent should refer to the following documents to support safety in design and construction:

- SafeWork Australia – Excavation Code of Practice.
- Ausgrid's Network Standard NS156 which outlines the minimum requirements for working around Ausgrid's underground cables. This document can be found by visiting the Ausgrid website via www.ausgrid.com.au.
- The Ausgrid Quick Reference Guide for Safety Clearances "Working Near Ausgrid Assets - Clearances". This document can also be found by visiting the Ausgrid website : www.ausgrid.com.au/Your-safety/Working-Safe/Clearance-enquiries

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

Regards,
Ausgrid Development Team

2. Internal referral comments:

2.1. Development Engineer

General Comments

The application is not supported in its present form on parking and waste management grounds. Details are provided below.

The floor levels have been set at the appropriate flood planning levels and the development has addressed the relevant food controls.

PARKING ISSUES

Residential Component

Parking Requirements for the residential units have been assessed as per the following applicable parking rates specified in Part C Section 21 of the Kensington to Kingsford DCP.

- 0.2 space per studio units
- 0.6 spaces per 1 bedroom unit
- 0.8 spaces per 2 bedroom unit
- 1.1 spaces per 3 bedroom unit
- 1 visitor space per 5 units

The proposed 20 units comprise of 16 x 1 bedroom, 1 x 2 bedroom and 3 x 3 bedroom dwellings

Parking required under DCP = $(16 \times 0.6) + (1 \times 0.8) + (3 \times 1.1) + 20/5$ (visitor)
 = $9.6 + 0.8 + 3.3 + 4$
 = 17.7
 = say 18 spaces

Retail

Parking Requirements for the residential units have been assessed as per the following applicable parking rates specified in Part C Section 21 of the Kensington to Kingsford DCP.

- 1 space per 125m²
- 1 space per 100m² (for café)

The commercial component comprises of one tenancy of GFA of 67m² generating a parking demand of between 0.5 & 0.7 spaces being 1 space when rounded.

TOTAL PARKING REQUIRED = 18 + 1 = 19 SPACES

TOTAL PARKING PROVIDED = 15 SPACES

TOTAL PARKING SHORTFALL = 4 SPACES (21%)

The parking shortfall is not supported when considering the development already receives a generous discounts on parking due to its location within the K2K planning area.

Motorbike Parking

The K2K DCP states that motorbike Parking is to be provided for the residential and retail components at a rate of 1 space per 12 vehicle spaces resulting in a requirement of $19/12 = 1.6$ (say 2) spaces. The submitted plans demonstrate compliance with this requirement

Bicycle Parking

The K2K DCP states that bicycle parking is to be provided for the residential component at a rate of 1 space per dwelling + 1 visitor space per 10 dwellings resulting in a requirement of 22 spaces.

The K2K DCP states that bicycle parking is to be provided for the residential component. For the commercial a rate of 1 space per 1000m² is applicable resulting in a nil requirement for the retail component (when rounded).

The submitted plans indicate the provision of 16 spaces and therefore do not meet the minimum requirements of the DCP with a shortage of 6 bicycle spaces.

Overuse of Mechanical devices

There is a 100% reliance on mechanical devices to provide off-street parking with both a turntable and car-stacker system proposed. This will not support the provision of accessible carspaces or visitor parking.

The carstacker system also appears to be combined shuffler/stacker system. No mechanical specifications model number of the proposed stacker system have been provided. It is unclear if the design space available will support the number of stacked spaces proposed.

Waste Management Issues

The application is not supported on waste management grounds for the following reasons.

- Section 22 in Part C of the Kensington to Kingsford section of RDCP 2013, control (h) requires an Automated Waste Collection System, which has not been provided.
- An area for waste storage tanks and a collection point on the laneway or Anzac Parade has not been identified
- An area of 15m³ for the storage of bulky waste shall also be provided.
- Commercial waste storage must be physically separated from the AWCS for residential waste.

Flooding Comments

The applicant is advised that the subject development site is located adjacent to a localised low point/overland flow path and the Council commissioned and adopted Kensington/Centennial Flood Study indicates the site will be subject to stormwater inundation during major storm events. The subject property has been tagged under section 10.7 of the Environmental Planning and Assessment Act as being subject to flood related development controls.



The study indicates flooding is restricted to the site frontage on Anzac Parade reaching maximum level of RL 26.61 AHD for the 1% AEP (1 in 100yr) flood event. Some flooding is evident in Houston

Lane just to the south of the subject site with a maximum flood level of RL 23.47 AHD. As the gutter level in front of the site on Houston Lane is RL 23.54 however, the flooding will not impact the Houston Lane frontage.

The submitted plans indicate the ground floor commercial will be constructed at the 1% AEP flood of RL 26.61 AHD and is satisfactory. There are no openings into the basement/lower ground levels which would create any concerns.

It is considered the accompanying flood management report has adequately considered the flood impacts and relevant controls and no objections are raised on flooding grounds.

2.2. Waste

The Waste Management Plan submitted (attached) does not satisfy the requirements of K2K DCP Part C, section 22. Specifically, no Localised Automated Collection System has been proposed.

2.3. Environmental Health

Land Contamination

The subject DA submission includes A Preliminary Site Investigation. The report is titled "Preliminary Site Investigation, 229 Anzac Parade Kensington NSW, prepared by Metech Consulting, dated 12 January 2022 Project Number EP187-RP01"

In summary, on page iv of the report concludes the following:

"The historic land use activities undertaken at and directly adjacent to the property are considered to pose a contamination risk and the extent of any such contamination has not yet been determined"

Section 5.6 Potential for Migration (page 17 of the report) states: "considering the nature of the potential contaminants of concern and the environmental setting of the site, subsurface soils and groundwater are considered to be at the highest risk of being affected by any site or offsite derived contamination. Considering the land use activities at the site and at the adjoining properties, the site is considered to be at risk of being affected by residual contamination is likely to be limited due to the length of time since such activities were undertaken."

Page 21 Concludes that it is recommended further work is required. The Recommendations on page 22 of the Preliminary Report limit that the further works only include site specific soil vapour assessment be undertaken at the site in accordance with the NEPM (2013) and DECCW (2010) Vapour Intrusion: Technical Practice Note.

Reference is made to The 2020 Guidelines for Consultants reporting on contaminated Land: Contaminated land guidelines are made by the NSW Environment Protection Authority (EPA) under section 105 of the Contaminated Land Management Act 1997 (CLM Act) and will be referred to as the NSW EPA guidelines for consultants reporting on contaminated land, 2020.

The Preliminary Site Investigation report does not include site sampling and it is considered that limiting the further investigations to soil vapour assessment may not be adequately comprehensive and not in keeping with the NSW EPAs Guideline for Consultants reporting on Contaminated Land "The objective of a sampling and analysis quality plan is to provide the context, justification and details of the selected sampling and analysis approach. The 'sampling and analysis quality plan' has a critical role in ensuring that the data collected is representative and provides a robust basis for site assessment decisions, as indicated in Schedule B2 - Guideline on Site Characterisation, of the ASC NEPM. A sampling and analysis quality plan may be either a standalone document, or may be incorporated into the relevant investigation report." Page 8 of NSW EPA guidelines for consultants reporting on contaminated land, 2020.

"The objective of a detailed site investigation report is to provide more complete and definitive information on issues raised in the preliminary site investigation. The detailed site investigation report must be designed to provide information on the type, extent and level of contamination for the site and (as relevant) assessment of: • primary sources of contamination, for example potentially contaminating activities, infrastructure (such as underground storage tanks, fuel line, sumps or sewer lines) or site practices • contaminant dispersal in air, hazardous ground gases, surface water, groundwater, soil vapour, separate phase contaminants, sediments, infrastructure (e.g. concrete),

biota, soil and dust • contaminant characterisation and behaviour (volatility, leachability, speciation, degradation products and physical and chemical conditions on-site which may affect how contaminants behave) • potential effects of contaminants on human health, including the health of occupants of built structures (for example arising from risks to service lines from hydrocarbons in groundwater, or risks to concrete from acid sulphate soils) and the environment • potential and actual contaminant migration routes including potential preferential pathways • the adequacy and completeness of all information available for use in the assessment of risk and for making decisions on management requirements, including an assessment of uncertainty • the review and update of the conceptual site model from the preliminary and detailed site investigations” page 9 of the NSW EPA guidelines for consultants reporting on contaminated land, 2020.

It is therefore suggested the wording for additional investigations not be limited to only soil vapour intrusion though to refer to the standard conditions and be more extensive.

Acoustics-

Report titled: “229 Anzac Pde, Kensington NSW, DA Acoustic Assessment, prepared by Acoustic Logic, dated 2/09/2021 project reference 20210944.1/0209A/R0/LA” has been reviewed.

The governing project criteria for the “Internal Noise Level Criteria” has been summarised on Table 7, page 14 of the report as follows:

Table 7 – Summary of Internal Noise Level Criteria

Ventilation System	Space/Activity Type	Internal Traffic Noise Criteria dB(A)Leq(period)
Natural	Bedroom	35dB(A)Leq(1 hour) (Windows closed, 10pm-7am) 40dB(A)Leq(1 hour) (Windows open, 24 Hours)
Natural	Living Area	40dB(A) Leq(15 hour) (Windows closed, 7am-10pm) 50dB(A)Leq(1 hour) (Windows open, 24 Hours)
Mechanical	Bedroom	35dB(A)Leq(9 hour) (Windows closed, 10pm-7am) 45dB(A)Leq(1 hour) (Windows closed, 7am-10pm)
Mechanical	Living Area	40dB(A)Leq(15hour) (Windows closed)

Table 10 – Project Amenity Noise Level Criteria

Location	Period Time	Project Amenity Noise Level Criteria dB(A)LAeq(15min)
Nearby residences – urban receivers	Day (7am-6pm)	58
Nearby residences – urban receivers	Evening (6pm-10pm)	48
Nearby residences – urban receivers	Night (10pm-7am)	43
Commercial	When in use	63
School Classroom (Internal)	When in use	33

Table 11 – Project Noise Trigger Level Criteria

Location	Period/Time	Project Noise Trigger Level Criteria dB(A)LAeq(15min)
R1	Day (7am-6pm)	50
M1 (Residential)	Day (7am-6pm)	58
R1 and M1 (Residential)	Evening (6pm-10pm)	48
R1 and M1 (Residential)	Night (10pm-7am)	43
C1	When in Use	63
S1	When in Use	33

6.2 MECHANICAL PLANT NOISE

Detailed plant selection has not been undertaken at this stage, as plant selections have not yet been determined.

Detailed acoustic review should be undertaken at CC stage to determine acoustic treatments to control noise emissions to satisfactory levels. Satisfactory levels will be achievable through appropriate plant selection and location and, if necessary, standard acoustic treatments such as duct lining, acoustic silencers and enclosures.

Noise emissions from all mechanical services to the closest residential receiver should comply with the requirements of Section 6.1" copied above

Suitable conditions to be recommended to be included on any consent to be issued so as to ensure the relevant criteria is achieved and complied with.

Appendix 2: DCP Compliance Table
Section E6: Kensington and Kingsford Town Centres

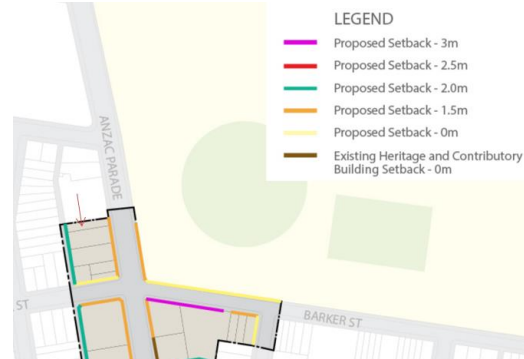
DCP Clause	Control	Proposal	Compliance
PART A			
2.	Urban Design and Place-Making		
2.1	Guiding Principals		
	<p>Development within the Kensington and Kingsford town centres must align with the following urban design and place making principles which are derived from the K2K Planning Strategy and community input:</p> <ul style="list-style-type: none"> • Provide quality affordable housing to meet local housing needs, particularly for key workers, essential workers and students • Reinforce boulevard character along Anzac Parade by strengthening the built form edge and adding greenery • Achieve a dominant typology of diverse mid-rise, mixed-use buildings throughout the town centres • Provide taller, slender landmark buildings at identified strategic node sites in conjunction with the delivery of substantial public benefits established through a design excellence process • Protect the heritage significance of heritage items, contributory buildings and/or heritage conservation areas located within the town centres and adjoining areas • Give priority to people walking, cycling and using public transport • Achieve a sensitive transition in relation to recently constructed development and surrounding established lower scaled residential neighbourhood • Create a positive street level environment through built form that allows solar amenity, permeability and maintains human scale • Ensure that new infill development respects the fine-grain character of contributory buildings • Establish building setback controls which provide for the creation of wider footpaths and street tree planting • Achieve urban design, place and architectural excellence, including best practice environmental design • Provide active street frontages throughout the town centres • Encourage precinct-scale benefits across all node sites that contributes to 	<p>The Applicant has submitted a statement that assesses against the relevant objectives and controls in Section E6 of the RDCP.</p>	Yes

DCP Clause	Control	Proposal	Compliance
	<p>the unique character of each town centre; and</p> <ul style="list-style-type: none"> 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>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>	For the reasons discussed in Clause 6.11 of the RLEP above, the proposal is not considered to meet design excellence requirements and a report confirming the 5 Star Green Rating has not been submitted. This forms a reason for refusal.	No
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</p>	The proposal complies with the maximum FSR stipulated under the RLEP. Refer to the relevant section in Clause 4.4 of the RLEP.	Yes

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DCP Clause	Control	Proposal	Compliance
	<p>D for details on Community Infrastructure Contribution)</p> <p>(b) In relation to the Kensington Town centre where an existing FSR Map does not apply, the Alternative FSR Map is applicable for the purposes of calculating the Community Infrastructure contribution referred to in clause (a) for any floor space above the existing height maximum control shown on the RLEP 2012 Height Map</p> <p>(c) A minimum non-residential FSR of 1:1 is to be provided at each strategic node site within the Todman Square, Kingsford Midtown and Kingsford Junction Precincts, in accordance with Clause 4.4 of the RLEP 2012</p> <p>(d) Non-residential floor space must be designed to be accessible, useable and functional for the purposes of commercial, business, entertainment and retail activities and the like</p>		
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 	<p>The proposed site frontage, 10.06m does not comply with the 20m requirement.</p> <p>Insufficient information has been provided to demonstrate that adequate efforts have been made to amalgamate with the adjoining properties. Furthermore, the application does not adequately demonstrate an analysis of, or regard for, the likely future development pattern resulting from the site isolation. For example, schematic diagrams demonstrating how the isolated site is capable of being redeveloped in accordance with relevant</p>	No

DCP Clause	Control	Proposal	Compliance
	<p>DCP to achieve a coherent built form outcome for the block.</p> <p>(d) Where lot consolidation cannot be achieved to comply with the maximum envelopes in the block diagrams, alternative designs may be considered where the proposal exhibits design excellence and can demonstrate consistency with the relevant objectives of the block controls (Part B).</p> <p><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>provisions of the RLEP 2012 and the K2K RDCP to achieve an appropriate urban form for the location, and an acceptable level of amenity.</p>	
	<p>Building Heights</p> <p>(a) The maximum height that can be achieved on a site is shown on the RLEP 2012 Height Map. An alternative maximum height is applicable in accordance with the RLEP 2012 Alternative Height Map where the proponent makes an offer to enter into a VPA for either a monetary contribution or the delivery of Community Infrastructure in accordance with the Community Infrastructure Contributions Plan. (see Part D for details on Community Infrastructure Contribution)</p> <p>(b) The maximum number of storeys on a site is to comply with the following:</p>	<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>

DCP Clause	Control	Proposal	Compliance
	<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> <ul style="list-style-type: none"> (a) Buildings must be designed with a street wall height of 4 storeys (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: <ul style="list-style-type: none"> (i) results in an improvement to the contributory building in accordance with established heritage principles to avoid facadism (ii) meets the objectives of this clause and exhibits design excellence (iii) retains contributory or heritage elements; and (iv) provides a transition to neighbouring sites. <p>Note 1: Street wall height can be established via podiums, datum lines or other design elements.</p> <p>Note 2: See Part A Section 9 for further requirements for heritage items and contributory buildings.</p>	The proposal does not provide a street wall height of 4 storeys.	No
	<p>Building Setbacks</p> <ul style="list-style-type: none"> (a) DAs are to comply with the minimum ground floor and upper level setbacks illustrated in the relevant block diagrams in Part B 	Refer to the Key Issues Section.	No
	<ul style="list-style-type: none"> (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 	Refer to the Key Issues section.	No

DCP Clause	Control	Proposal	Compliance
	<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><i>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.</i></p>	The site depth is 50.29m which complies with the 22m requirement.	Yes
9.	Heritage Conservation		
	<p><u>All Development</u></p> <p>(a) All development involving heritage items are to be in accordance with requirements for heritage set out in Part B2 of the DCP</p> <p>(b) All development involving heritage items and contributory buildings are required to:</p> <ul style="list-style-type: none">(i) Adhere to the principles of the Burra Charter(ii) Include the submission of a Heritage Impact Statement (or Heritage Impact Assessment) which considers the heritage significance of the item or contributory building, the impact of the proposal on the heritage significance of the building or heritage items within the vicinity, the rationale for the proposed development, and the compatibility of the development with the objectives and controls, and/or recommended management within relevant conservation management plans, planning instruments or heritage inventories <p>(c) Development located within the vicinity of another local government area requires the preparation of a Heritage Impact Statement to address the potential impact on adjoining or nearby heritage items or heritage conservation areas in the adjoining local government area.</p>	The subject site is not identified as a local or state heritage item or located within a heritage conservation area. The proposal is therefore considered to satisfy the relevant provisions of the RLEP and RDCP.	Yes
PART B			
10.	Block Controls		
	The subject site is not identified within Part B or provided with block by block envelope controls. As such, the provisions in Parts A, C and D apply.		
PART C			
11.	Housing Mix		
	a) Development is to comprise a mix of apartment types, where gardens,	The proposal provides 15% (3	No

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DCP Clause	Control	Proposal	Compliance						
	<p>adaptability and accessibility are more easily achievable for elderly people, families with children, or people living with disabilities</p> <p>b) At least 20% of the total number of dwellings (to the nearest whole number of dwellings) within a development are to be self-contained studio dwellings or one-bedroom dwellings, or both</p> <p>c) At least 20% of the total number of dwellings (to the nearest whole number of dwellings) within a development are to be 3 or more-bedroom dwellings and</p> <p>d) Family friendly apartments of 3 bedrooms or more are to be located on the lower four floors of the building.</p>	<p>units) as 3-bedroom units and this must be increased by 1 unit to achieve compliance. Furthermore, the additional 3-bedroom unit should be located on the lower four floors of the building.</p>							
12.	Floor to Ceiling Heights								
	<p>(a) Minimum floor to ceiling heights are to be provided for all development in accordance with the following requirements:</p> <table><tr><th>Ground Floor</th><th>First Floor</th><th>Upper Floors</th></tr><tr><td>3.5m</td><td>3.3m</td><td>2.7m</td></tr></table>	Ground Floor	First Floor	Upper Floors	3.5m	3.3m	2.7m	<p>The proposal does not comply with the minimum requirements. The proposed floor to ceiling heights at the rear building are 2m-3m to the ground floor, 2.9m to the first floor and the levels above. The proposed floor to ceiling heights at the front building are 3.5m to the ground floor, 2.7m to the first floor and the levels above.</p> <p>Notwithstanding this, the floor to ceiling heights contribute to the overall height non-compliance to the rear building and should be amended to comply with the specified requirements (including the front building). This is to ensure future redevelopment</p>	No
Ground Floor	First Floor	Upper Floors							
3.5m	3.3m	2.7m							

DCP Clause	Control	Proposal	Compliance
		around the site is consistent with the subject site.	
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. 	Notwithstanding that the proposal complies with the ADG requirements, the shadow diagrams submitted with the application do not indicate the additional shadows cast by the non-compliant portion of the building. The increased overshadowing may undermine the amenity afforded to neighbouring properties and the public domain.	Unsatisfactory
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 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</p>	Council's Environmental Health Officer has confirmed the acoustic report is unsatisfactory. Refer to the Key Issues section.	No

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DCP Clause	Control	Proposal	Compliance
	<p>Australia and Australian Standard AS 1668.2-2012), when doors and windows are shut. In such circumstances the repeatable maximum Leq (1hour) with the alternative ventilation operating should not exceed:</p> <ul style="list-style-type: none"> (i) 38 dB(A) between 10.00 pm and 7.00 am in sleeping areas; (ii) 46 dB(A) in living areas (24 hours); (iii) 45 dB(A) in sleeping areas between 7.00 am and 10.00 pm. <p>(d) Notwithstanding the general noise criteria for environmental noise set out in clauses b) and c) for habitable rooms in the residential component of the proposed development is to incorporate noise control measures to ensure the standard LA10 Condition imposed by Liquor & Gaming NSW is satisfied inside those occupied spaces with doors and windows closed and the alternative ventilation is operating as follows:</p> <ul style="list-style-type: none"> (i) The cumulative LA10* from licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8 kHz inclusive) by more than 5 dB between 7am and midnight. (ii) The cumulative LA10* from licensed premises shall not exceed the background noise level in any Octave Band Centre Frequency (31.5 Hz – 8 kHz inclusive) between midnight and 7am. (iii) The noise from licensed premises shall be inaudible in any habitable room of any residential premises between the hours of midnight and 7am (iv) For this clause, the LA10* can be taken as the average maximum deflection of the noise level emitted from the licensed premises. <p>(e) For the purpose of acoustic assessment with respect to clauses a), b) c) and d) the assessment must identify the noise environment for the site as a result of the existing situation (including any business operations that include outdoor areas for 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>		

DCP Clause	Control	Proposal	Compliance
	<p>(f) All development is to be designed to minimise noise transition between apartments by adopting general noise concepts of:</p> <ul style="list-style-type: none"> (i) locating busy, noisy areas next to each other and quieter areas next to other quiet areas, for example, living rooms next to living rooms, bedrooms with bedrooms (ii) locating bedrooms away from busy roads and other existing or potential noise sources (iii) using storage or circulation zones within the apartment to buffer noise from adjacent apartments, mechanical services or corridors and lobby areas; and (iv) minimising the amount of party (shared) walls with other apartments. <p>(g) Noise transmission is to be reduced from common corridors by providing seals at entry doors</p> <p>(h) Conflicts between noise, outlook and views are to be resolved using design measures such as double glazing, operable screening and ventilation taking into account noise targets for habitable rooms as identified in clauses b) c) and d) above are assessed inside the rooms with doors and windows closed and ventilation operating.</p> <p>(i) The design of the building is to address the requirements of clause d) with respect to noise from licensed premises and noise/vibration from mechanical plant and ventilation ducts associated with plant and equipment (including kitchen exhausts) serving the commercial spaces.</p> <p>(j) The design of new buildings or substantial alterations to existing buildings are to take into account the following noise conditions that would apply to each commercial tenancy in the development:</p> <ul style="list-style-type: none"> (i) Noise from commercial plant and the use of the premises when assessed 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 		

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DCP Clause	Control	Proposal	Compliance
	<p>residential use through and internal to internal transmission path is not to exceed the existing internal LA90, 15 minute level in any Octave Band Centre Frequency (31.5 Hz to 8 kHz inclusive) when assessed within a habitable room at any affected residential use within the mixed use development between the hours of 7am and midnight, and is to be inaudible between midnight and 7am.</p> <p>(iii) For any gymnasiums or similar facilities in mixed use development the above noise conditions would apply noting that the noise limits include the creation of noise as a result of any vibration induced into the building structure is to be inaudible in any residence between the hours of 10pm and 7am the following day.</p> <p>(iv) The noise limits in this clause applies with doors and windows closed and mechanical ventilation operating.</p> <p>(k) A noise and vibration assessment report, prepared by an appropriately qualified acoustical consultant/engineer, is to be submitted with DAs for new buildings or substantial alterations to existing buildings that include residential units or occupancies in student housing, boarding houses, serviced apartments, hotel and motel accommodation and any other sensitive land uses, addressing appropriate measures to minimise potential future noise and vibration impacts permissible in the B2 Local Centre Zone including amplified music associated with restaurants, small bars and cafes, noise from light rail movements. This assessment is to:</p> <p>(i) be prepared having regard to the NSW Environmental Protection Authority's Noise Policy for Industry, the DECC (EPA) Assessing Vibration, a Technical Guideline, and relevant Australian Standards pertaining to noise measurements and the noise conditions identified above</p> <p>(ii) incorporate an assessment of external noise sources and internal noise sources (such as mechanical ventilation) with respect to the criteria specified in b), c) and d); and</p>		

DCP Clause	Control	Proposal	Compliance
	<p>(iii) detail the design measures needed to achieve the required internal acoustic amenity specified in b), c) and d). <i>Note: The noise and vibration assessment report prepared at the DA stage will identify a noise design base for the entire mixed use building and would become the benchmark for subsequent assessments of the entire mixed use building (or existing buildings subject to substantial alterations) and would become the benchmark for subsequent acoustic assessments. Any individual Das for commercial occupation within the mixed-use building or the altered existing building for an accompanying acoustic assessment is required to rely on the acoustic benchmark described above.</i></p> <p>(iv) To maintain the intent of the acoustic objectives, prior to the issue of a Construction Certificate or an Occupation Certificate, a certificate of acoustic compliance confirming compliance with the specified noise limits referred to above and the noise design base for the mixed use building or alterations to existing buildings is to be submitted to Council.</p>		
	<p><u>Commercial Uses</u></p> <p>(l) The assessment for consideration of the future development within the town centre is to also consider an external noise external target of 70 dB(A) for general noise and an L10* level of 80 dB(A)/ 88 dB(C) when assessed at 1 metre from the future development, noting that future venues where entertainment is to be provided will be subject to the standard 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). <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> <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.

DCP Clause	Control	Proposal	Compliance
15.	Natural Ventilation		
	<p>(a) All buildings are to be designed to comply with the Apartment Design Guide (SEPP 65) to maximise opportunities for natural ventilation and sunlight by providing a combination of:</p> <ul style="list-style-type: none"> - corner apartments - dual aspect apartments - - shallow, single-aspect apartments - openable windows and doors - other ventilation devices <p>(b) Window placement, size, glazing selection and orientation are to maximise opportunities for cross ventilation, taking advantage of prevailing breezes;</p> <p>(c) Internal corridors, lobbies, communal circulation spaces and communal areas shall incorporate adequate natural ventilation;</p> <p>(d) Basements levels including spaces used for storage, garbage areas or commercial activities, are to be designed to include natural ventilation;</p> <p>(e) Apartment depth is to be limited to maximise the opportunity for cross ventilation and airflow.</p>	The proposal provides compliant natural ventilation to the residential units.	Yes
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>	Refer to the Key Issues section.	No
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,</p>	The proposed materials and finishes are considered	Yes

DCP Clause	Control	Proposal	Compliance
	<p>susceptible to degradation or high maintenance costs are to be avoided;</p> <p>(b) Architectural treatment of street facades is to clearly define a base, middle and top sections of a building so as to divide the mass of the building;</p> <p>(c) A combination of finishes, colours and materials are to be used to articulate building facades;</p> <p>(d) Design windows that can be cleaned from inside the building; and</p> <p>(e) For sites adjoining heritage and contributory buildings, materials and finishes are to allow for their clear interpretation.</p>	satisfactory and uphold the relevant provisions in Part 17.	
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 does not provide a continuous pedestrian shelter such as an awning to the Anzac Parade frontage. This is contrary to the objectives which aim to provide shelter for pedestrians, reinforce the coordinating design element in the Kensington Town Centres, define the street edge, provide continuity to the streetscape, and ensure awning design and siting addresses public realm, pedestrian and road safety. A continuous awning of 3m width, with a minimum soffit height between 3.5m-4.2m should be provided to the Anzac Parade frontage of the building. The design should be refined and integrated with the overall architectural</p>	No

DCP Clause	Control	Proposal	Compliance
		expression of the building.	
19.	Active Street Frontages		
	<p>(a) Required active frontages are to be provided in accordance with RLEP 2012 (Clause 6.20) Active frontages Map</p> <p>(b) Preferred active frontages are to be provided in accordance with Part B – Block Controls of this DCP c)</p> <p>(c) A minimum of 80% of the street frontage on Anzac Parade is to incorporate transparent glazing on the ground floor façade</p> <p>(d) The ground floor is to maximise entries or display windows and provide at least 1 pedestrian opening per 5m of facade on Anzac Parade or secondary streets and wrapping shopfronts around corners</p> <p>(e) The ground floor of uses fronting lane ways must provide a continuous retail frontage with at least 1 pedestrian entry or door per 10m of façade</p> <p>(f) The ground floor of uses fronting mid-block links/arcades must provide at least one 1 pedestrian entry or door per 15m of façade</p> <p>(g) A minimum of 50% of a blank wall (larger than 10m²) visible from the public domain must incorporate greenery and/or public art</p> <p>(h) Entrances to internally oriented shopping or commercial arcades and the arcades 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>The glazing to the retail premises equates to 50.6% (5.09m) of the 10.06m site frontage. This does not comply with the 80% (8.05m) requirement for translucent glazing. The full height metal balustrades to the residential entry doors are 3.3m wide and should be replaced with transparent glazing to comply with the 80% requirement.</p>	No
20.	Landscape Area		
	<p>(a) The total landscaped area to be provided on a site is to be at least 100% of the total site area, spread throughout the site and building as shown in Figure 16.</p> <p>(b) Landscaped open space requirements of Chapter C2 (Medium Density Residential) do not apply to land within the Kingsford and Kensington Town Centres other than clauses 2.2.2 and 2.3 relating to deep soil areas and private and communal open space.</p> <p>(c) Landscaping must be suitable to the building orientation aspect, wind and other relevant environmental factors.</p>	Refer to the Key Issues section.	No

DCP Clause	Control	Proposal	Compliance
	<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 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; 		

DCP Clause	Control	Proposal	Compliance
	<p>(iv) rainwater harvesting and other irrigation methods proposed;</p> <p>(v) full construction details of soil profile, method of attachment to the building, and drainage/waterproofing; and</p> <p>(vi) engineering certification confirming building can withstand planting and associated structures.</p> <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		
	<p>(a) Vehicle parking within the Kensington and Kingsford town centres is to be provided in accordance with the rates outlined in the tables below. Parking requirements for all other development types not specified in the table below are contained in section 3.2 Vehicle Parking Rates (of Chapter B7)</p> <p>(b) Where practical, parking access and/or loading is to be provided from secondary streets (rather than directly off Anzac Parade or gardeners Road), set back at least 6m from the intersection or the rear lane</p> <p>(c) Basement carpark access must comply with the requirements of B8: Water Management</p> <p>(d) Parking access and/or loading areas are to be designed as recessive components of the elevation so as to minimise the visual impact</p> <p>(e) Parking is to be accommodated underground where possible</p> <p>(f) Sub-basement car parking is to be no more than 1.2m above existing ground level;</p> <p>(g) Provide flexible hardstand area for the purposes of bicycle maintenance and repairs</p> <p>(h) Where a variation to the DCP Car Parking rates is sought, the proponent shall respond directly to Control i), 3.3 Exceptions to Parking Rates of the DCP 2013</p> <p>(i) A Green Travel Plan is required to accompany all DAs for new buildings and substantial alterations to existing buildings. The Green Travel Plans is to set out:</p> <p>(i) Future travel mode share targets, specifically a reduction in car driver mode share ii)</p>	<p>Council's Engineer has raised issues with the number of parking spaces for cars, the reliance on mechanical devices, lack of electric vehicle charging points and insufficient information regarding the waiting times for the car stackers including manufacturers specifications. These form reasons for refusal. Refer to the referral response in Appendix 1.</p>	No

DCP Clause	Control	Proposal	Compliance
	<p>(ii) Travel demand management strategies to encourage sustainable travel</p> <p>(iii) Initiatives to implement and monitor travel measures such as car share and bike share; and</p> <p>(iv) alignment with Control i), 3.3 Exceptions to Parking Rates of this DCP.</p> <p>(j) Car share spaces are to be provided in accordance with Part B7: 2.2 (Car Share) of this DCP</p> <p>(k) All DAs are to provide electric charging stations in an accessible location on site.</p> <p><i>Note 1: Any provision of parking above the maximum requirements will be counted towards gross floor area.</i></p>		
22.	Sustainability		
	<p>(a) All buildings must achieve a minimum green star certification rating of 5 or equivalent (other recognised rating tools)</p> <p>(b) DAs for strategic node sites must be designed to achieve a GBCA exceeding Five-Star Green Star Design as Built with a sustainability strategy giving priority to the following innovations: -</p> <ul style="list-style-type: none"> - Waste collection (e.g. Automated underground waste) - Renewable energy opportunities - Water harvesting and re-use - Vertical and Roof Greening - Buildings shall incorporate passive design strategies in addition to materials which have less embodied energy, reducing operational energy and focusing on on-going well being of occupants <p>(c) All development must address the requirements of Part B3- Ecologically Sustainable Development of this DCP</p> <p>(d) Applications for new commercial office development premises and hotel/motel accommodation with a floor area of 1,000m² or more must achieve a minimum NABERS 6- star Energy and NABERS 5-star or 6-star Water rating</p> <p>(e) All development must provide 1 electric vehicle charging point per 5 parking spaces where onsite parking is provided.</p> <p>(f) All development must address the requirements of B6 Recycling and Waste Management</p> <p>(g) All new buildings are to provide a space for storage and sorting of problem waste such as E-waste, clothing, and hazardous waste.</p> <p>(h) All new development (other than alterations and additions, or development that is minor or ancillary in nature) is to incorporate a</p>	<p>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 has not been submitted.</p> <p>The proposal must meet the mandatory NSW Government BASIX requirements for energy, water and thermal comfort, however this is not a substitute for achieving a Five Star Green Star Rating for the building design. The Green Star Rating system is a more comprehensive sustainability standard that addresses a broad range of</p>	No

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DCP Clause	Control	Proposal	Compliance
	localised automated waste collection system in accordance with Council's Automated Collection System Guidelines.	<p>sustainability criteria.</p> <p>Clause 6.11 Design Excellence of the RLEP, part 4(d) requires development to achieve design excellence, which includes meeting sustainable design principles, and RDCP 2013 sustainability Control a) requires all buildings to achieve a minimum Green Star Certification Rating of 5 stars.</p> <p>No report confirming the green star rating has been submitted to confirm compliance with the relevant criteria.</p> <p>These forms a reason for refusal.</p>	
23.	Water Management		
	<p>(a) DAs must address Part B8 – Water Management of the Randwick DCP 2013 in relation to water conservation, groundwater and flooding and Water Sensitive Urban Design</p> <p>(b) In addition to requirements of Part B8, applications for basement level/s must include:</p> <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 system will 	As above.	No

DCP Clause	Control	Proposal	Compliance
	<p>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		
	<p>(a) DAs for night time trading will be assessed in accordance with Part B9 of DCP 2013</p> <p>(b) DAs for mixed use/residential buildings must have regard to the late night trading character of the Kensington and Kingsford town centres by incorporating suitable noise attenuation measures for the residential component of the building as specified under section 14 of this part of the DCP</p>	N/A	N/A

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DCP Clause	Control	Proposal	Compliance
	<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>		
PART D			
27.	Solar Access – Public Open Space		
	<p>(a) New buildings and alterations and additions to existing buildings are to be designed to ensure that the following locations shown on Figures 17a and 17b are not overshadowed by more than 10% in mid-winter (June 22nd) between the hours of 12noon and 2pm:</p> <ul style="list-style-type: none"> – Kensington Public School – Duke St Plaza – Bowral St Plaza – Uni Lodge Plaza – Addison St Plaza – Kokoda Park – Todman Ave Plaza – Meeks St Plaza – Borrodale Road widening – Town Square Plaza – Market Site corner – Triangle site corner – Dacey Gardens <p>(b) New buildings and alterations to existing buildings are to retain solar access to a minimum of 50% of the site area of key public places identified in a) and shown on Figures 17a and 17b for a minimum of 3 hours in mid-winter (June 22nd).</p>	<p>The shadow diagrams submitted with the application do not indicate the additional shadows cast by the non-compliant portion of the building. The increased overshadowing may undermine the amenity afforded to neighbouring properties and the public domain.</p>	No
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>	N/A	N/A

DCP Clause	Control	Proposal	Compliance									
	<div><div>(i) 10 metres per second for active frontages along Anzac Parade and</div><div>(ii) 16 metres per second for all other streets</div><div>(c) Buildings over 9 storeys are to incorporate design features that ameliorate existing adverse wind conditions so that the above criteria is achieved</div><div>(d) Building design is to minimise adverse wind effects on recreation facilities and open spaces within developments</div><div>(e) Balconies are to be designed to minimise wind impacts and maximise usability and comfort through recessed balconies, operable screens, pergolas and shutters</div><div>(f) Balconies must be recessed on buildings over 45m in height.</div></div>											
29.	Public Art											
	<div><div>(a) Public Art is to be generally be consistent with Council’s Public Art Strategy</div><div>(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</div><div>(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</div><div>(d) Public art is to be located in areas which offer the public a free and unobstructed visual experience of the work</div><div>(e) Incorporate creative lighting, decorative elements and/or murals in laneways, share ways and pedestrian links</div><div>(f) Submit an Arts Statement which identifies the reasons for the chosen themes, and their interpretation into specific treatments with the DA.</div></div>	<div>The subject site does not have a frontage greater than 12m.</div>	<div>N/A</div>									
30.	Affordable Housing											
	<div><div>(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:</div><div><div>Table – Affordable Housing Contributions</div><table><tr><th>Date of DA lodgement</th><th>Percentage of residential gross floor area to be dedicated towards affordable housing</th><th>Equivalent Monetary contribution *</th></tr><tr><td>From 13 August 2020 up to and including 13 August 2022</td><td>3%</td><td>\$324.38/sqm</td></tr><tr><td>After 13 August 2022</td><td>5%</td><td>\$540.62/sqm</td></tr></table><div>* where less than whole unit is provided</div></div></div>	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	<div>If the application were approved, this would form a condition of consent.</div>	<div>Yes</div>
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
	<p>(b) Affordable Housing contributions are to be provided in accordance with the Affordable Housing Plan 2019 for the Kensington and Kingsford Town Centres</p> <p>(c) The affordable housing contribution rate is to apply to the residential gross floor area component of the development</p> <p>(d) Contributions towards affordable housing are to be provided through a dedication of completed units with any remainder paid as a monetary contribution in accordance with the affordable housing contributions table referred to in clause a).</p> <p><i>*Note the Affordable Housing Contributions Area corresponds to the B2 Local Centre Zone boundary.</i></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		

DCP Clause	Control	Proposal	Compliance
	<p>(a) Development within the public domain is to be consistent with Figures 17a and 17b: The Public Domain Strategy.</p> <p>(b) DAs for new buildings and substantial alterations and additions to more than 50% of the existing floor area are to be accompanied by a Public Domain Plan that demonstrates consistency with the public domain objectives within this DCP and addresses the following:</p> <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. 	N/A	N/A
33.	Advertising and Signage		
	(a) A signage plan is to be submitted as part of the redevelopment of sites. The signage plan is to address the following matters:	No details have been submitted to show the location	Insufficient information

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DCP Clause	Control	Proposal	Compliance
	<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 meet the objectives and controls set out in this clause</p>	of future signage for the retail component at the ground floor level.	
34.	Air Quality		
	<ul style="list-style-type: none"> (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 (b) DAs are to submit a statement which explains how the proposal has addressed 	N/A	N/A

DCP Clause	Control	Proposal	Compliance
	<p>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>		

Responsible officer: Tegan Ward, Senior Environmental Planning Officer

File Reference: DA/415/2022

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Development Application Report No. D4/23

Subject: 49 Lawson Street, Matraville (DA/799/2021)


Executive Summary

Proposal:	Strata title subdivision of an approved dual occupancy into two (2) allotments
Ward:	South Ward
Applicant:	Ms A Massain
Owner:	Mr L D Parker
Cost of works:	Nil
Reason for referral:	Variation to the Minimum Subdivision Lot Size Development Standard by more than 10%.

Recommendation

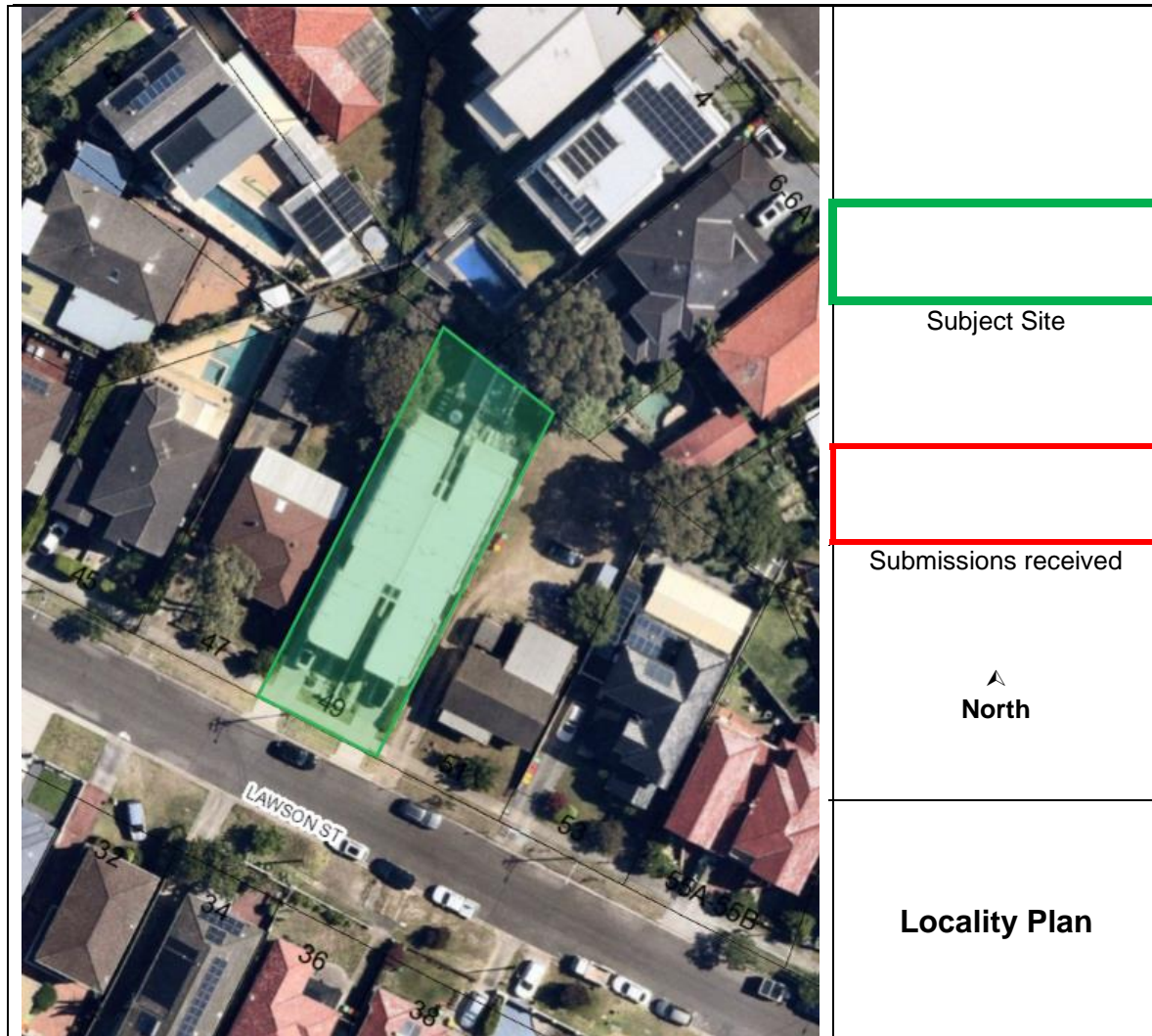
That the RLPP grant consent under Sections 4.16 and 4.17 of the *Environmental Planning and Assessment Act 1979*, as amended, to Development Application No. DA/799/2021 for Strata title subdivision of an approved dual occupancy into two (2) allotments, at No. 49 Lawson Street, Matraville NSW 2036, subject to the development consent conditions attached to the assessment report.

Attachment/s:

-  RLPP Dev Consent Conditions (general) - DA/799/2021 - 49 Lawson Street, MATRAVILLE NSW 2036 - DEV - Mr L D Parker

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D4/23



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 strata title subdivision of an approved dual occupancy 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 strata subdivision is supported given the consistency of the 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 17 DP 245585, 49 Lawson Street, Matraville. The site is located on the north-eastern side of Lawson Street, between Hillary Parade to the north-west and Oxley Street to the south-east.

The subject land is zoned R2 Low Density Residential. The site has an area of 695.5m² and a frontage width of 15.24m.

Existing on the site is a two storey attached dual occupancy with separate vehicular crossings and swimming pools at the rear of the site.

The surrounding area is characterised by low density residential development including dwelling houses and attached dual occupancies. Adjoining the site to the west at 47 Lawson Street is a single storey detached dwelling house, to the east at 51 Lawson Street is a single storey detached dwelling house, and to the north at the rear of the site at 4 & 6-6A Landy Street is a two storey detached dwelling house and a two storey attached dual occupancy dwelling respectively.

There is no predominant subdivision pattern of the surrounding area, considering the irregular street pattern and subsequent subdivision pattern.

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 dwelling house and dual occupancy developments within the vicinity of the site which adopt modern and contemporary architectural designs.



Figure 1: Google Street View (February 2021) - 49 Lawson Street, 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/598/2018

Development Application No. DA/598/2018 for demolition of existing structures, construction of a 2 storey attached dual occupancy with swimming pools to rear, garages to front, landscaping and associated works (variation to floor space ratio control) at the subject site was approved by Council under delegation on 28 February 2019.

DA/598/2018/A

Modification Application No. DA/598/2018/A for modification to approved development by alteration to windows and changes to street and side elevations was approved by Council under delegation on 21 November 2019.

DA/598/2018/B

Modification Application No. DA/598/2018/B for section 4.55(1A) modification of approved development to delete condition 15D was approved by Council under delegation on 12 April 2021.

CC/267/2019

Construction Certificate No. CC/267/2019 relating to Development Application No. DA/598/2018 was approved by the Principal Certifier Paul Aramini (BDC 0013) of Aramini & Leedham Consulting on 01 July 2019 (Certifier Reference No. 19/045).

An Interim Occupation Certificate was issued by the Principal Certifying Authority Mitch Tarlinton (BDC 2528) of Buildcert on 17 December 2020 (Certifier Reference No. PCA/9051751).

4. Proposal

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

	<u>Lot Size</u>	<u>Front Boundary</u> <u>(South-western)</u>	<u>Rear Boundary</u> <u>(North-eastern)</u>	<u>Side</u> <u>Boundary</u> <u>(North-</u> <u>western)</u>	<u>Side</u> <u>Boundary</u> <u>(South-</u> <u>eastern)</u>
Lot 110 (49)	352.47m ²	7.62m	7.753m	47.142m	45.707m
Lot 111 (49A)	342.8m ²	7.62m	7.753m	Common Boundary	44.272m

5. Notification

The owners of adjoining and likely affected neighbouring properties were not notified of the proposed development in accordance with Council's Community Participation Plan.

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.

On the 17th of August 2018, the *Randwick Local Environmental Plan 2012* (Amendment No 5) was published. The amendment incorporated a new Clause 4.1D that allows for strata subdivision of an attached dual occupancy (despite any other provisions in the RLEP) provided:

1. The land is zoned R2 Low Density Residential;
2. Development consent for the dual occupancy was granted before 6 July 2018; and
3. The development standards contained in Clause 6.2 of the SEPP (Exempt and Complying Development Codes) 2008 are met.

The subject site is zoned R2 Low Density Residential, however the consent for the dual occupancy was not granted prior to 6 July 2018, as the dual occupancy was approved on 28 February 2019. Consequently, the second criterion has not been met. As such, it is noted that Clause 4.1D of the RLEP 2012 is not satisfied and therefore not relevant to this application.

An assessment of the of the Low Density Residential zone objectives has been provided below.

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).

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 in relation to this application, the Planning Proposal seeks 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, there is no predominant subdivision pattern within the surrounding area and there are no proposed changes to the built form of the dual occupancy. In addition, as noted previously, the subdivision is in keeping with the 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)
Cl 4.1: Subdivision Lot Size (min)	400m ²	Lot 110 (49) = 352.47m ²	No
		Lot 111 (49A) = 342.8m ²	No

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.1: Lot Size (min)	400m ²	Lot 110 (49) = 352.47m ²	47.53m ²	11.9%
		Lot 111 (49A) = 342.8m ²	57.2m ²	14.3%

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

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

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

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

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

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

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

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

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

1. The written request must focus on the aspect or element of the development that contravenes the development standard, not the development as a whole (i.e. The written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole); and
2. The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. In *Four2Five Pty Ltd v Ashfield Council* [2015] NSWLEC 90 at [31] Judge Pain confirmed that the term

'sufficient' did not suggest a low bar, rather on the contrary, the written report must address sufficient environmental planning grounds to satisfy the consent authority.

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

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

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

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

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

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

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

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

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

7.1. Exception to the 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 4.1 (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 compliance with the development standard is unnecessary in the circumstances of this particular case with consideration of the Randwick Comprehensive Planning Proposal and the amendments permitting a minimum lot size subdivision being 275m².

The Applicant further justifies the proposal arguing that the contravention of the standard by allowing subdivision of the existing lot will not have any adverse impacts on the amenity of the adjoining properties as there are no proposed changes to the existing dual occupancy.

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 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 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.

In conclusion, the applicant's written request has adequately demonstrated that compliance with the minimum lot size 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 is acceptable with regard to the Randwick Comprehensive Planning Proposal that was on Public Exhibition during 2022.
- The proposal is compliant with the proposed amendments to the RLEP with regard to minimum lot size and minimum frontage.
- The proposal is will not have any adverse impacts on the amenity of the adjoining properties as there are no proposed changes to the existing dual occupancy.

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 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 352.47m and 342.8m² respectively. In addition, the subject site is not within a Heritage Conservation Area.

As noted previously, 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). It is noted that the dual occupancy was approved on 28 February 2019. As such, it is noted that Clause 4.1D of the RLEP 2012 is not satisfied and therefore not relevant to this application.

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 minimum lot size 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)(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 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(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.

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 7.62m 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 7.62m 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.

It is noted that at the 22 November 2022 Ordinary Council meeting, Council resolved to endorse the Stage 1 Draft DCP as an interim policy (includes changes to support the approved amendments to the Randwick LEP put forward under the Comprehensive Planning Proposal, including minimum lot size, dual occupancy development, heritage conservation areas and housing investigation areas), commencing on the date of gazettal of the Comprehensive LEP. Whilst this document is on public exhibition between 13 December 2022 to 14 February 2023, it proposes that the minimum lot primary street frontage widths for dual occupancy development in the R2 zone is 15m (being 7.5m each child lot). It is noted that the subdivision proposes a frontage width of 7.62m for each allotment, which would comply with this proposed draft control.

As such, the non-compliance is considered acceptable.

10. Conclusion

That the application for Strata Title Subdivision of an approved dual occupancy into two (2) allotments at 49 Lawson Street, Matraville NSW 2036 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 Engineering

Council's Development Engineer has confirmed the proposed development is satisfactory and provided the following comments:

"An application has been received for the Strata Title subdivision of the approved dual occupancy development at the above site into 2 lots.

This report is based on the following plans and documentation:

- *Draft Strata Plans by Superior Design dated*
- *Statement of Environmental Effects by ??*

General Comments

There are no objections to the strata subdivision subject to the comments and conditions provided in this report.

The dual occupancy development was approved under DA/598/2018 and CC/267/2019. A final occupation certificate has already been issued for this development on the 17th December 2020. Hence Development Engineering's standard condition requiring issuing of OC prior to issuing of a subdivision certificate is not necessary in this instance.

Positive Covenant and Restriction comments

It has been confirmed by title search on 21/03/2022 that the "Restriction on the use of land" and "Positive Covenant" (as required under condition 50 of DA/598/2018) has already been registered on the title (see below). Hence Development Engineering's standard condition requiring evidence of registration prior to issuing of a subdivision certificate is not necessary in this instance."

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POLIO: 17/245585
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SEARCH DATE      TIME      EDITION NO      DATE
-----
21/3/2022      10:07 AM      8      11/12/2020

LAND
-----
LOT 17 IN DEPOSITED PLAN 245585
AT MATRAVILLE
LOCAL GOVERNMENT AREA RANDWICK
PARISH OF BOTANY COUNTY OF CUMBERLAND
TITLE DIAGRAM DP245585

FIRST SCHEDULE
-----
LUKE DAVID PARKER (T AN551170)

SECOND SCHEDULE (6 NOTIFICATIONS)
-----
1 LAND EXCLUDES MINERALS AND IS SUBJECT TO RESERVATIONS AND
CONDITIONS IN FAVOUR OF THE CROWN - SEE CROWN GRANT(S)
2 EXCEPTING LAND BELOW A DEPTH FROM THE SURFACE OF 15.24 METRES
3 AN551171 MORTGAGE TO WESTPAC BANKING CORPORATION
4 AP667192 MORTGAGE TO WESTPAC BANKING CORPORATION
5 AQ612824 RESTRICTION(S) ON THE USE OF LAND
6 AQ612825 POSITIVE COVENANT

NOTATIONS
-----
UNREGISTERED DEALINGS: NIL

*** END OF SEARCH ***

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

Statement of Environmental Effects – 49 & 49A Lawson Street, Matraville

Appendix A

Clause 4.6 Request to Vary Development Standard

1. Name of the environmental planning instrument that applies to the land.

Randwick Local Environment Plan 2012.

2. Zoning of the land and what are the objectives of the zone.

Zone R2 Low Density Residential

1 Objectives of 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.

3. The Development Standard to which this Clause 4.6 Variation applies

The Development Standard from the planning instrument to which this Clause 4.6 variation applies to is the Randwick Council Local Environment Plan 2012, Clause 4.1 Minimum Subdivision lot size.

4. Objective of the development Standard

4.1 Minimum subdivision lot size

(1) 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.
- (2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.
- (3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

5. Numeric value of the development standard in the environmental planning instrument.

The numeric value of the development standard proposed to be varied for the subject site based on the Randwick Local Environment Plan 2012 Maps.

- R2 Low Density Residential requires a minimum lot size of 400sq m

6. Existing and proposed numeric values relative to the development standard and the percentage variation (between your proposal and the environmental planning instrument).

Prepared by Superior Designs December 2022

D4/23

Statement of Environmental Effects – 49 & 49A Lawson Street, Matraville

Current Lot Size

695.5sqm

Minimum Lots Size under the RLEP 2012

400sqm

Proposed Lot size

Lot 110 = 352.7sqm

Lot 111 = 342.8sqm

Minimum Lot size requirement under the RLEP Comprehensive Planning Proposal (m2).

275sqm

7. Compliance with the development standard is unreasonable or unnecessary in the circumstances of this particular case.

Compliance with the development standard is unnecessary in the circumstances of this particular case with consideration the Randwick Comprehensive Planning Proposal and the amendments permitting a minimum lot size of 275m2.

8. Sufficient environmental planning grounds to justify contravening the development standard.

Contravention to the standard is acceptable with due regard to the Randwick Comprehensive Planning Proposal and consideration of point 10 below. Furthermore, contravention of the standard by allowing subdivision of the existing lot will not have any adverse impacts on the amenity of the adjoining properties. This is due to there being no proposed changes to the existing dual occupancy.

9. The proposed development, despite the contravention to the development standard, is in the public interest.

The proposed development is consistent with the objectives for development within the R2 zone and the objectives of the standard in which the development is proposed to be carried out.

4.1 Minimum subdivision lot size

(1) 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,

- Non compliance with control for the minimum subdivision lot size will not have any adverse impact 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,

- Non compliance with control for the minimum subdivision lot size will maintain natural features of the site.

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

- Non compliance with control for the minimum subdivision lot size accommodates the existing development which is suitable for its purpose.

Prepared by Superior Designs December 2022

10. Other relevant information to be considered in order to justify varying the development standard.

The Environmental Planning and Assessment Act requires consideration of the following: *Clause 4.15 Evaluation*

(1) Matters for consideration—general In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application—

- (a) the provisions of—*
 - (i) any environmental planning instrument, and*
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) any development control plan, and*
 - (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
 - (v) (Repealed)*
- that apply to the land to which the development application relates,*
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) the suitability of the site for the development,*
- (d) any submissions made in accordance with this Act or the regulations,*
- (e) the public interest.*

As per Clause 4.15 (1), (a), (ii), consideration must be given to the Randwick Comprehensive Planning Proposal that was on public exhibition during 2022.

The proposed subdivision complies with the proposed amendments the RLEP with regards to minimum lot size and minimum frontage.

In the absence of any adverse environmental, social and economic impacts associated with the proposed development and when considered under the relevant heads of consideration in Section 4.15 (1) of the Environmental Planning and Assessment Act 1979, the proposal is considered worthy of the granting of development consent subject to the attachment of appropriate conditions.

Responsible officer: William Joannides, Environmental Planning Officer

File Reference: DA/799/2021

Development Consent Conditions

Folder / DA No:	DA/799/2021
Property:	49 Lawson Street, MATRAVILLE NSW 2036
Proposal:	Strata title subdivision of an approved dual occupancy into two (2) allotments
Recommendation:	Approval

Development Consent Conditions**GENERAL CONDITIONS**

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

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning 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
Site & Adjoining Landuse Plan, Dwg No. 58/20, Sheet 1 of 2, Issue B	Superior Design	12/01/2023	12/01/2023
Draft Strata Subdivision Plan, Dwg No. 58/20, Sheet 2 of 2, Issue B	Superior Design	12/01/2023	12/01/2023

REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

The following conditions of consent must be complied with prior to the 'Registered Certifier' or 'Randwick city Council' issuing a 'Subdivision/Strata certificate'.

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

Strata Plans

2. All floors, external walls and ceilings depicted in the proposed strata plan must correspond to the building as constructed.
3. All floors, external walls and ceilings depicted in the proposed strata plan must correspond to those depicted in the approved building plans for the site under DA/598/2018 (as amended) and CC/267/2019.
4. Prior to endorsement of the strata plans, all facilities required under previous development approvals (such as parking spaces, terraces and courtyards) must be provided in accordance with the relevant requirements.
5. The applicant shall create suitable right of carriageway and easements as required, however generally all services lines (including stormwater) over any strata lot serving another strata lot are to be common property.

Plan of Survey

6. The applicant shall provide Council with a copy of the base plan of survey (e.g. Plan of Redefinition) for the property prior to issuing of a strata certificate.

Sydney Water

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

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

The Section 73 Certificate must be submitted to the Registered Certifier and the Council prior to issuing of a Strata Certificate.

NOTE: The S73 compliance certificate issued under the construction approval (DA/598/2018 & CC/267/2019) will not be sufficient to satisfy this condition. A new Section 73 certificate must be obtained that refers to the strata subdivision of the subject property into 2 lots as approved under this consent.

Public Utilities

8. 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

9. 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

10. 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.

Strata Certificate

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

Development Application Report No. D5/23

Subject: 48 Elaroo Avenue, Phillip Bay (DA/816/2021)



Executive Summary

Proposal:	Strata title subdivision of an approved dual occupancy into two (2) allotments
Ward:	South Ward
Applicant:	Superior Designs
Owner:	Mr J A Clarke & Ms M Verrender
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/816/2021 for strata title subdivision of an approved dual occupancy into two (2) allotments, at No. 48 Elaroo Avenue, Phillip Bay, subject to the development consent conditions attached to the assessment report.

Attachment/s:

-   RLPP Dev Consent Conditions (general) - DA/816/2021 - 48 Elaroo Avenue, PHILLIP BAY NSW 2036 - DEV - Randwick City Council

D5/23

D5/23



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 strata title subdivision of an approved dual occupancy 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 strata subdivision is supported given the consistency of the 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 17 DP 245585, 48 Elaroo Avenue, Phillip Bay. The site is located on the north-eastern side of Lawson Street, between Adina Avenue to the north-west and Anzac Parade to the south-east.

The subject land is zoned R2 Low Density Residential. The site has an area of 613m² and a frontage width of 15.24m.

Existing on the site is a two storey attached dual occupancy with separate vehicular crossings and swimming pools at the rear of the site.

The surrounding area is characterised by low density residential development including dwelling houses, attached dual occupancies and multi-dwelling housing. Adjoining the site to the west at 46 Elaroo Avenue is a two storey multi dwelling house, to the east at 50 Elaroo Avenue is a two storey detached dwelling house, and to the north at the rear of the site at 41 Adina Avenue is a two storey detached dwelling house.

There is no predominant subdivision pattern of the surrounding area, considering the irregular street pattern and subsequent subdivision pattern.

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 dwelling house and dual occupancy developments within the vicinity of the site which adopt modern and contemporary architectural designs.



Figure 1: Google Street View (February 2021) – 48 Elaroo Avenue, Phillip Bay (*Source: Google Maps*)

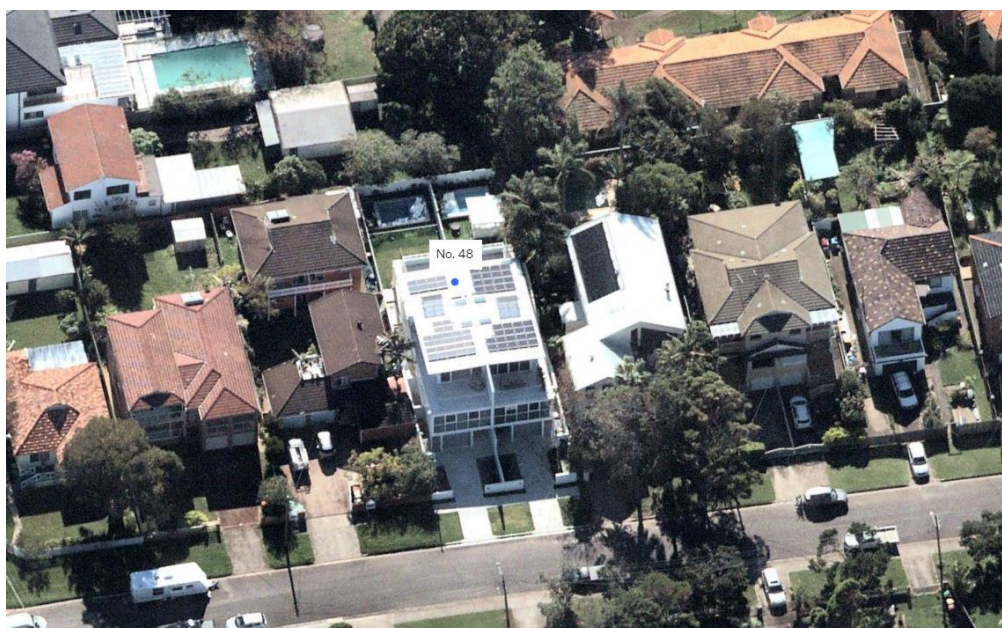


Figure 2: North-east oblique view of the subject neighbourhood (April 2022) – 48 Elaroo Avenue, Phillip Bay (*Source: Nearmap*)

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/152/2018

Development Application No. DA152/2018 for demolition of existing structures and construction of an attached dual occupancy (variation to floor space ratio control) at the subject site was approved by Council under delegation on 29 November 2018.

DA/152/2018/A

Modification Application No. DA/152/2018/A for modification of consent by relocating pool to rear yard at ground level, altered window openings, new (centrally located) rear stairs, reduction of privacy screen heights to 1.8m, new planter boxes to first and second rear terraces and rectification of original conditions of consent to correct numerical order was approved by Council under delegation on 15 March 2019.

DA/152/2018/B

Modification Application No. DA/152/2018/B for modification of approved development to remove two trees and alter windows with privacy treatment was approved by Council under delegation on 17 April 2020.

CC/267/2019

Construction Certificate No. CC/442/2019 for Development Application No. DA/152/2018 was approved by the Principal Certifier Cameron James (BDC 2000) of Building Control Group on 17 October 2019 (Certifier Reference No. C190132-01).

An Amended Construction Certificate was approved by the Principal Certifier Cameron James on 28 July 2021 (Certifier Reference No. C190132-02).

An Interim Occupation Certificate was issued by the Principal Certifying Authority Cameron James on 17 September 2021 (Certifier Reference No. C190132-03).

A Final Occupation Certificate was issued by the Principal Certifying Authority Cameron James on 22 October 2021 (Certifier Reference No. C190132-04).

4. Proposal

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

	<u>Lot Size</u>	<u>Front Boundary</u> <u>(South-western)</u>	<u>Rear Boundary</u> <u>(North-eastern)</u>	<u>Side</u> <u>Boundary</u> <u>(North-</u> <u>western)</u>	<u>Side</u> <u>Boundary</u> <u>(South-</u> <u>eastern)</u>
Lot 110 (48)	306.5m ²	7.62m	7.62m	40.234m	40.234m
Lot 111 (48A)	306.5m ²	7.62m	7.62m	Common Boundary	40.234m

5. Notification

The owners of adjoining and likely affected neighbouring properties were not notified of the proposed development in accordance with Council's Community Participation Plan.

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.

On the 17th of August 2018, the *Randwick Local Environmental Plan 2012* (Amendment No 5) was published. The amendment incorporated a new Clause 4.1D that allows for strata subdivision of an attached dual occupancy (despite any other provisions in the RLEP) provided:

1. The land is zoned R2 Low Density Residential;
2. Development consent for the dual occupancy was granted before 6 July 2018; and
3. The development standards contained in Clause 6.2 of the SEPP (Exempt and Complying Development Codes) 2008 are met.

The subject site is zoned R2 Low Density Residential, however the consent for the dual occupancy was not granted prior to 6 July 2018, as the dual occupancy was approved on 29 November 2018. Consequently, the second criterion has not been met. As such, it is noted that Clause 4.1D of the RLEP 2012 is not satisfied and therefore not relevant to this application.

An assessment of the of the Low Density Residential zone objectives has been provided below.

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).

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 in relation to this application, the Planning Proposal seeks 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, there is no predominant subdivision pattern within the surrounding area and there are no proposed changes to the built form of the dual occupancy. In addition, as noted previously, the subdivision is in keeping with the 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 110 (48) = 306.5m ²	No
		Lot 111 (48A) = 306.5m ²	No

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 110 (48) = 306.5m ²	93.5m ²	23.4%
		Lot 111 (48A) = 306.5m ²	93.5m ²	23.4%

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

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

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

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

Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 reinforces his previous decision in *Wehbe v Pittwater Council* [2007] NSWLEC 827 where

he identified five commonly invoked ways of establishing that compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. The most common is to demonstrate that the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

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

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

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

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

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

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

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

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

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

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

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

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

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

7.1. Exception to the 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 4.1 (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 compliance with the development standard is unnecessary in the circumstances of this particular case with consideration of the Randwick Comprehensive Planning Proposal and the amendments permitting a minimum lot size subdivision being 275m².

The Applicant further justifies the proposal arguing that the contravention of the standard by allowing subdivision of the existing lot will not have any adverse impacts on the amenity of the adjoining properties as there are no proposed changes to the existing dual occupancy.

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 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 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.

In conclusion, the applicant's written request has adequately demonstrated that compliance with the minimum lot size 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 is acceptable with regard to the Randwick Comprehensive Planning Proposal that was on Public Exhibition during 2022.
- The proposal is compliant with the proposed amendments to the RLEP with regard to minimum lot size and minimum frontage.
- The proposal is will not have any adverse impacts on the amenity of the adjoining properties as there are no proposed changes to the existing dual occupancy.

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 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 306.5m² for each lot. In addition, the subject site is not within a Heritage Conservation Area.

As noted previously, 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). It is noted that the dual occupancy was approved on 29 November 2018. As such, it is noted that Clause 4.1D of the RLEP 2012 is not satisfied and therefore not relevant to this application.

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 minimum lot size 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)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The environmental impacts of the proposed development on the natural and built environment have been addressed in this report. The proposed development is consistent with the desired character of the locality. The proposal will not result in detrimental social or economic impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	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.

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 7.62m 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 7.62m 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.

It is noted that at the 22 November 2022 Ordinary Council meeting, Council resolved to endorse the Stage 1 Draft DCP as an interim policy (includes changes to support the approved amendments to the Randwick LEP put forward under the Comprehensive Planning Proposal, including minimum lot size, dual occupancy development, heritage conservation areas and housing investigation areas), commencing on the date of gazettal of the Comprehensive LEP. Whilst this document is on public exhibition between 13 December 2022 to 14 February 2023, it proposes that the minimum lot primary street frontage widths for dual occupancy development in the R2 zone is 15m (being 7.5m each child lot). It is noted that the subdivision proposes a frontage width of 7.62m for each allotment, which would comply with this proposed draft control. As such, the non-compliance is considered acceptable.

10. Conclusion

That the application for Strata Title Subdivision of an approved dual occupancy into two (2) allotments at 48 Elaroo Avenue, Phillip Bay NSW 2036 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.

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Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineering

Council's Development Engineer has confirmed the proposed development is satisfactory and provided the following comments:

"An application has been received for the Strata Title subdivision of the approved dual occupancy development at the above site into 2 lots.

This report is based on the following plans and documentation:

- *Draft Strata Plans by Superior Design dated 22nd November 2021*
- *Statement of Environmental Effects by Superior Design dated 22nd November 2021*

General Comments

There are no objections to the strata subdivision subject to the comments and conditions provided in this report.

All floors, external walls and ceilings depicted in the proposed strata plan must correspond to those depicted in the approved building plans for the site under DA/152/2018 and CC/142/2019. A final occupation certificate was issued on the 22/10/2021."

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

Statement of Environmental Effects – 48 Elaroo Avenue, Phillip Bay

Appendix A

Clause 4.6 Request to Vary Development Standard

1. Name of the environmental planning instrument that applies to the land.

Randwick Local Environment Plan 2012.

2. Zoning of the land and what are the objectives of the zone.

Zone R2 Low Density Residential

1 Objectives of 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.

3. The Development Standard to which this Clause 4.6 Variation applies

The Development Standard from the planning instrument to which this Clause 4.6 variation applies to is the Randwick Council Local Environment Plan 2012, Clause 4.1 Minimum Subdivision lot size.

4. Objective of the development Standard

4.1 Minimum subdivision lot size

(1) 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.
- (2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.
- (3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

5. Numeric value of the development standard in the environmental planning instrument.

The numeric value of the development standard proposed to be varied for the subject site based on the Randwick Local Environment Plan 2012 Maps.

- R2 Low Density Residential requires a minimum lot size of 400sq m

6. Existing and proposed numeric values relative to the development standard and the percentage variation (between your proposal and the environmental planning instrument).

Prepared by Superior Designs December 2022

Statement of Environmental Effects – 48 Elaroo Avenue, Phillip Bay

Current Lot Size

695.5sqm

Minimum Lots Size under the RLEP 2012

400sqm

Proposed Lot size

Lot 110 = 306.5sqm

Lot 111 = 306.5sqm

Minimum Lot size requirement under the RLEP Comprehensive Planning Proposal (m2).

275sqm

7. Compliance with the development standard is unreasonable or unnecessary in the circumstances of this particular case.

Compliance with the development standard is unnecessary in the circumstances of this particular case with consideration the Randwick Comprehensive Planning Proposal and the amendments permitting a minimum lot size of 275m2.

8. Sufficient environmental planning grounds to justify contravening the development standard.

Contravention to the standard is acceptable with due regard to the Randwick Comprehensive Planning Proposal and consideration of point 10 below. Furthermore, contravention of the standard by allowing subdivision of the existing lot will not have any adverse impacts on the amenity of the adjoining properties. This is due to there being no proposed changes to the existing dual occupancy.

9. The proposed development, despite the contravention to the development standard, is in the public interest.

The proposed development is consistent with the objectives for development within the R2 zone and the objectives of the standard in which the development is proposed to be carried out.

4.1 Minimum subdivision lot size

(1) 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,

- Non compliance with control for the minimum subdivision lot size will not have any adverse impact 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,

- Non compliance with control for the minimum subdivision lot size will maintain natural features of the site.

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

- Non compliance with control for the minimum subdivision lot size accommodates the existing development which is suitable for its purpose.

10. Other relevant information to be considered in order to justify varying the development standard.

The Environmental Planning and Assessment Act requires consideration of the following: *Clause 4.15 Evaluation*

(1) Matters for consideration—general In determining a development application, a consent authority is to take into consideration such of the following matters as are of relevance to the development the subject of the development application—

- (a) the provisions of—*
 - (i) any environmental planning instrument, and*
 - (ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and*
 - (iii) any development control plan, and*
 - (iiia) any planning agreement that has been entered into under section 7.4, or any draft planning agreement that a developer has offered to enter into under section 7.4, and*
 - (iv) the regulations (to the extent that they prescribe matters for the purposes of this paragraph),*
 - (v) (Repealed)*
- that apply to the land to which the development application relates,*
- (b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,*
- (c) the suitability of the site for the development,*
- (d) any submissions made in accordance with this Act or the regulations,*
- (e) the public interest.*

As per Clause 4.15 (1), (a), (ii), consideration must be given to the Randwick Comprehensive Planning Proposal that was on public exhibition during 2022.

The proposed subdivision complies with the proposed amendments the RLEP with regards to minimum lot size and minimum frontage.

In the absence of any adverse environmental, social and economic impacts associated with the proposed development and when considered under the relevant heads of consideration in Section 4.15 (I) of the Environmental Planning and Assessment Act 1979, the proposal is considered worthy of the granting of development consent subject to the attachment of appropriate conditions.

Responsible officer: William Joannides, Environmental Planning Officer

File Reference: DA/816/2021

Development Consent Conditions



D5/23

Folder / DA No:	DA/816/2021
Property:	48 Elaroo Avenue, PHILLIP BAY NSW 2036
Proposal:	Strata title subdivision of an approved dual occupancy into two (2) allotments
Recommendation:	Approval

Development Consent Conditions

GENERAL CONDITIONS

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

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning 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
Dwg No. 52/20, Sheet 1 of 2	Superior Design	Not-dated	12/01/2023
Dwg No. 52/20, Sheet 2 of 2	Superior Design	Not-dated	12/01/2023

REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

The following conditions of consent must be complied with prior to the 'Registered Certifier' or 'Randwick city Council' issuing a 'Subdivision/Strata certificate'.

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

Strata Plans

- All floors, external walls and ceilings depicted in the proposed strata plan must correspond to the building as constructed.
- All floors, external walls and ceilings depicted in the proposed strata plan must

correspond to those depicted in the approved building plans for the site under DA/152/2018 and CC/442/2019.

4. Prior to endorsement of the strata plans, all facilities required under previous development approvals (such as parking spaces, terraces and courtyards) must be provided in accordance with the relevant requirements.
5. The applicant shall create suitable right of carriageway and easements as required, however generally all services lines (including stormwater) over any strata lot serving another strata lot are to be common property.

Plan of Survey

6. The applicant shall provide Council with a copy of the base plan of survey (e.g. Plan of Redefinition) for the property prior to issuing of a strata certificate.

Sydney Water

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

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

The Section 73 Certificate must be submitted to the Registered Certifier and the Council prior to issuing of a Strata Certificate.

NOTE: The S73 compliance certificate issued under the construction approval (DA/152/2018 & CC number) will not be sufficient to satisfy this condition. A new Section 73 certificate must be obtained that refers to the strata subdivision of the property as approved under this consent.

Public Utilities

8. 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

9. 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.

Strata Certificate

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

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