

Randwick Local Planning Panel (Electronic) Meeting

Thursday 23 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, 23 February 2023

Declarations of Pecuniary and Non-Pecuniary Interests

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Roman Wereszczynski
ACTING DIRECTOR CITY PLANNING

Development Application Report No. D7/23

Subject: 27 Endeavour Avenue La Perouse (DA/197/2022)

Executive Summary

Proposal:	Proposed works to the existing dwelling to allow for an additional storey, swimming pool to the rear and minor façade changes.
Ward:	South Ward
Applicant:	Pinnacle Design Company Pty Ltd
Owner:	Mr S L L & Mrs S M Cuda
Cost of works:	\$840,859.00
Reason for referral:	The applicant has a Conflict of Interest with staff member/s of Randwick City Council.

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/197/2022 for 'Proposed works to the existing dwelling to allow for an additional storey, swimming pool to the rear and minor façade changes' at No. 27 Endeavour Avenue, LA PEROUSE, for the following reasons:

1. The proposal does not comply with Clause 4.4 Floor Space Ratio development standard of Randwick Local Environmental Plan 2012. No written request to vary the development standard in accordance with Clause 4.6 of Randwick Local Environmental Plan 2012 was submitted with the application. Council therefore does not have the power to approve the application.
2. The proposal does not comply with the provisions of the Randwick Local Environmental Plan 2012 (RLEP) in particular:
 - a. The proposal is inconsistent with the objectives of the R2 Low-Density Residential land use zone.
 - b. The proposal is non-compliant with the maximum Floor Space Ratio applicable to the site pursuant to Clause 4.4.
 - c. The proposal is contrary to the objectives of Clause 5.10 in relation to Heritage Conservation.
 - d. The proposal is not consistent with the objectives of Clause 6.2 in relation to Earthworks.
 - e. The proposal is not consistent with the objectives of Clause 6.7 in relation to Foreshore Scenic Protection Area.
3. The proposal does not comply with the provision of Randwick Comprehensive Development Control Plan 2013 (RDCP 2013) in particular:
 - a. Pursuant to Section B10 of Part B, the proposal is inconsistent with the controls and objectives of the Foreshore Scenic Protection Area.
 - b. Pursuant to Control i of Section 2.3, Part C1, the proposal does not comply with site coverage.
 - c. Pursuant to Control i of Section 2.4, Part C1, the proposal does not comply with the landscaped area.
 - d. Pursuant to Control i of Section 3.2, Part C1, the proposal does not comply with building wall height.
 - e. Pursuant to Section 3.3.2, Part C1, the proposal does not comply with side setbacks.
 - f. Pursuant to Section 4.6, Part C1, the proposal has not demonstrated that the earthworks are appropriate for the site.
 - g. Pursuant to Section 5.1, Part C1, the proposal has not provided sufficient solar access to the proposed private open space area or to adjoining properties.

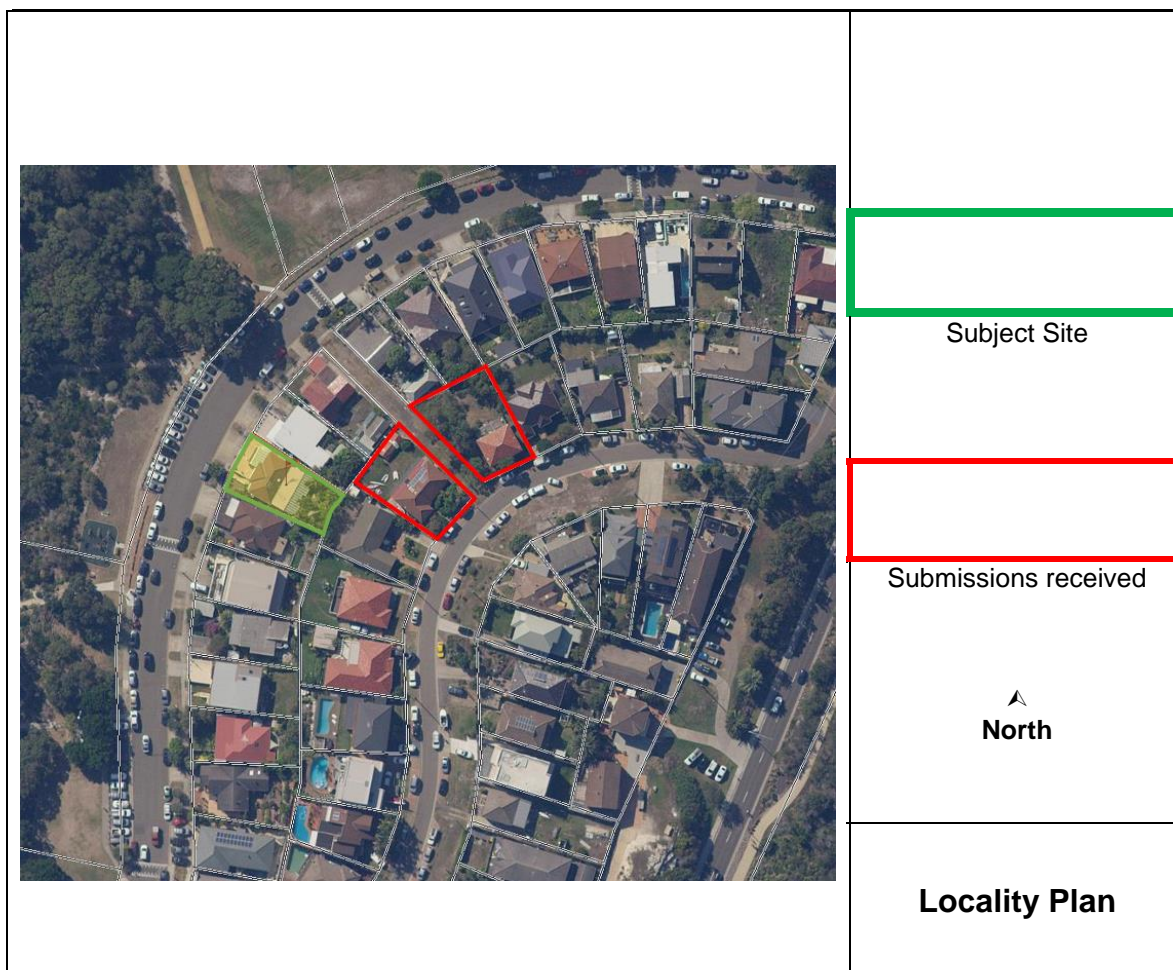
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- h. Pursuant to Section 5.3, Part C1, the proposal has not demonstrated that the visual privacy of adjoining properties is retained.
 - i. Pursuant to Section 5.6, Part C1, the proposal has not adequately addressed view-sharing with neighbouring properties.
 - j. Pursuant to Section 7.3, Part C1, the proposal has not adequately demonstrated side and rear fencing details.
 - k. Pursuant to Section 7.5, Part C1, the proposal has resulted in a swimming pool location that is inappropriate to the site topography.
 - l. Pursuant to Section 7.6, Part C1, insufficient information has been submitted to determine whether any air conditioning unit will result in adverse impacts on neighbouring sites.
 - m. Pursuant to section 7.8, Part C1, Insufficient information has been submitted to determine whether any proposed clothes drying facilities complies with the relevant controls.
- 4. The proposal does not comply with the provision of State Environmental Planning Policy (Resilience and Hazards) 2021.
 - a. The proposal is inconsistent with Section 2.11 of Division 4 of Chapter 2.
 - 5. Pursuant to Section 4.15(1)(b) of the Environmental Planning & Assessment Act 1979, the application has not demonstrated that the development does not impact the natural or built environment or that it does not result in adverse social or economic impacts.
 - 6. Pursuant to Section 4.15(1)(c) of the Environmental Planning & Assessment Act 1979, the application has not demonstrated that the subject site is suitable for the development.
 - 7. Pursuant to Section 4.15(1)(d) of the Environmental Planning & Assessment Act 1979, the application has not demonstrated that the development is in the public interest.

Attachment/s:

Nil



1. Executive summary

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

- There is a conflict of interest between the applicant and staff member/s of Randwick City Council.
- The applicant filed a Class 1 Appeal with the Land and Environment Court on 16 December 2022 against the deemed refusal.

The proposal seeks development consent for proposed works to an existing dwelling to allow for an additional storey, swimming pool to the rear and minor façade changes.

A preliminary assessment of the proposal illustrated that the proposal in its original form could not be supported by Council, and additional information would be required. The applicant was notified of this via a letter dated 30 August 2022. The following issues were raised in this letter:

- Provide a correct description of the proposal.
- Clarify correct site area.
- Clarify correct gross floor area (GFA) and floor space ratio (FSR).
- Request a geotechnical report and clarify the extent of excavation.
- Request a site coverage plan.
- Clarify landscaped area calculation.
- Clarify the maximum wall height of the proposal.
- Request details on privacy measures proposed to windows facing side boundaries.
- Request a view loss analysis.

- Request details on the boundary fencing proposed.
- Request information relating to the swimming pool equipment enclosure and address privacy concerns from neighbours resulting from the elevated pool and cabana.
- Rectify inconsistencies on the architectural plans.

The applicant provided additional information, which was formally received by Council on 7th November 2022. A further review of this information determined that a number of issues remained outstanding. Consequently, the proposal is recommended for refusal.

The key issues associated with the proposal relate to:

- Incorrect description of the development.
- Inconsistency with the objectives of the R2 Low-Density Residential land use zone under the RLEP 2012.
- Non-compliance with the maximum Floor Space Ratio (FSR) Development Standard under Clause 4.4 of the RLEP 2012.
- Inconsistency with the objectives of Clause 5.10 of the RLEP 2012 relating to Heritage Conservation.
- Insufficient information to determine the extent of excavation and thus, compliance with the controls and objectives of Clause 6.2 of the RLEP 2012.
- Inconsistency with the objectives of Clause 6.7 of the RLEP 2012 relating to the foreshore scenic protection area.
- Inconsistency with the objectives and controls under Section B10 of Part B of the RDCP 2013 relating to the foreshore scenic protection area.
- Non-compliance with the maximum site coverage control under Section 2.3, Part C1, of the RDCP 2013.
- Non-compliance with the minimum required landscaped area control under Section 2.4, Part C1, of the RDCP 2013.
- Non-compliance with the maximum wall height control under Section 3.2, Part C1, of the RDCP 2013.
- Non-compliance with the minimum required side setbacks under Section 3.3.2, Part C1, of the RDCP 2013.
- Insufficient information to demonstrate solar access to the private open space of the subject site and adjoining properties to allow for passive recreation under Section 5.1, Part C1, of the RDCP 2013.
- Non-compliance with the maximum allowable excavation under Section 4.6, Part C1, of the RDCP 2013.
- Non-compliance with visual privacy protection under Section 5.3, Part C1, of the RDCP 2013.
- Adverse view-sharing impacts under Section 5.6, Part C1, of the RDCP 2013.
- Non-compliance with swimming pool controls under Section 7.5, Part C1, of the RDCP 2013.
- Insufficient information to determine the height and construction details of side and rear fencing under Section 7.3, Part C1, of the RDCP 2013.
- Non-compliance with Section 7.5, Part C1, of the RDCP 2013, which relates to swimming and spa pools.
- Insufficient information to determine the location of any air conditioning unit under Section 7.6, Part C1, of the RDCP 2013.
- Insufficient information to determine the location of the clothes drying facilities under Section 7.8, Part C1, of the RDCP 2013.

A detailed assessment of the above-mentioned non-compliances is provided throughout this report.

The applicant filed a Class 1 Appeal with the Land and Environment Court on 16 December 2022 against the deemed refusal.

2. Site Description and Locality

The subject site is formally identified as Lot 290 in DP 752015 and has a street address of 27 Endeavour Avenue, La Perouse.

The site has a total area of 435.3m². The site is irregular in shape with a wider street frontage than the rear. The western street frontage measures 16.87 metres and the depth of the site measures 30.2 metres along the southern boundary and 30.525 metres along the northern boundary. The rear boundary length is 12.19 metres in total.

The site falls steeply from the rear to the front, with a difference in level of approximately 6 metres.

The site currently contains a single-storey detached dwelling set above a triple garage presenting to Endeavour Avenue, refer to Figure 1.

The existing private open space area is located at the rear of the site.

The site contains Two (2) trees within the rear of the site and one (1) tree within the road reserve.

Due to the slope of the immediate area, the dwellings along the eastern side of Endeavour Avenue within the immediate vicinity of the site are sited above the street level and typically have garages presenting to the street with side pedestrian access.

Development to the south at No. 29 Endeavour Avenue is a two-storey dwelling sited above a triple car garage, refer to Figure 2.

Development to the north at No. 25 Endeavour Avenue is a single-storey dwelling sited above a triple-width garage, refer to Figure 3.

Located opposite the site to the west is Frenchmans Beach and Reserve, which accesses Frenchmans Bay refer to Figure 4.



Figure 1 Subject Site (No. 27 Endeavour Avenue)

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Figure 2 No. 29 Endeavour Avenue, located to the south of the subject site.



Figure 3 No. 25 Endeavour Avenue, located to the north of the subject site.



Figure 4 Frenchmans Beach and Reserve located on the opposite side of Endeavour Avenue.

3. Relevant history

DA/401/2020

DA/401/2020 for 'Major ground floor alterations, first-floor addition and re-cladding of existing dwelling' was approved by Delegated Authority on 12/03/2021. This application included the alterations and additions to the existing dwelling and the addition of a first-floor level.

4. Proposal

The proposal seeks development consent for proposed works to an existing dwelling to allow for an additional storey, swimming pool to the rear and minor façade changes.

DA/197/2022 was received by Council on 26 April 2022. A preliminary assessment of the proposal illustrated that the proposal in its original form could not be supported by Council, and additional information would be required. The applicant was notified of this via a letter dated 30 August 2022.

The applicant provided amended documentation which was received formally by Council on 7 November 2022. A review of this information demonstrated that the amendments failed to address all the issues raised.

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Comprehensive DCP 2013. The following submissions were received as a result of the notification process:

- 6 & 8 Goorawahl Avenue, La Perouse
- 10 Goorawahl Avenue, La Perouse

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Issue	Comment
Conflict of interest between the applicant and Council.	<p>A conflict of interest has been declared by the applicant of the application due to a business interest with a Council Officer. As a result, the development application has been assessed by an external consultant.</p> <p>Under Ministerial directions, applications with certain conflicts of interest must go before the Local Planning Panel. As a result, the application has been referred to the Local Planning Panel for determination.</p>
Description of the application and previous Development Application approval.	<p>The subject application and DA/401/2020 are two separate matters. The description of the works does not reflect the extent of development proposed for the existing dwelling.</p> <p>As the proposal has been submitted as a new development application for works to the existing dwelling and not a modification to the works approved under DA/401/2020.</p> <p>Further comment regarding this issue is included in the key issues section of this report.</p>
Inconsistency with the streetscape of Endeavour Avenue.	<p>The development application proposes a three (3) storey dwelling atop an existing lower ground floor garage.</p> <p>The western portion of Endeavour Avenue does not include any examples in line with that proposed. The proposed structure will result in substantial excavation and breaches to Council's building wall height control.</p> <p>Further comments regarding these issues are discussed in the key issues section of this report</p>
View Loss	<p>As part of the amended information formally submitted on the 7th November 2022 a View Loss Assessment has been prepared.</p> <p>This Assessment is referenced in the Key Issues section of this report.</p>
Exceedance of the 1m excavation maximum.	<p>The application proposes a maximum excavation of 2.2m. This results in a subterranean private open space area and undesirable amenity for the subject site and neighbouring properties.</p> <p>See the Key Issues section of this report for further comment.</p>
Floor Space Ratio.	<p>The application has incorrectly calculated Floor Space Ratio and therefore is non-compliant with the maximum FSR control of Clause 4.4 of the RLEP 2013.</p> <p>See the Key Issues section of this report.</p>

Issue	Comment
Bulk and scale.	<p>The proposed built form results in breaches to the maximum building wall height, side setbacks, floor space ratio, and site coverage.</p> <p>The exceedance of these controls results in adverse bulk and scale as viewed from the public domain and as viewed from neighbouring properties.</p> <p>See the Key Issues section of this report.</p>
Site coverage.	<p>The proposed built form exceeds the maximum site coverage control of the RDCP 2013, due to the exclusion of the cabana.</p> <p>This, coupled with non-compliance with the minimum landscape area results in an adverse outcome for the site.</p> <p>See the Key Issues section of this report.</p>
Side setbacks.	<p>The proposal provides insufficient side setbacks for all three proposed levels.</p> <p>See the Key Issues section of this report.</p>
Removal of landscaping.	<p>Council's landscape officer has reviewed the proposed development and does not object to the removal of the landscaping, subject to conditions requiring suitable replacements.</p>
Lack of screen planting surrounding the proposed swimming pool area.	<p>Amended plans have been received that demonstrate that planting around the proposed swimming pool area is capable of reaching 3m in height when mature.</p>
Loss of Privacy	<p>The proposal has not adequately considered visual privacy alongside boundary setbacks.</p> <p>See the Key Issues section of this report.</p>
Precedence for developments resulting in visual bulk and scale in the street and within the foreshore scenic protection area.	<p>The proposal results in adverse visual bulk and has not been designed to minimise the visual impact on the public areas of the coastline, including views to and from the coast, foreshore reserves, open space and public areas to the west of the site.</p> <p>See the Key Issues section of this report.</p>

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, demonstrating compliance.

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

The western portion of the Site is located within a "Coastal Environment Area" and the eastern portion of the Site is located within a "Coastal Use Area".

It is not considered that the proposal will impact the Coastal Environment Area. This is because the proposal does not adversely impact the following:

- Any biophysical, hydrological or ecological environment;
- Any natural coastal processes;
- Any water quality;
- Any marine, native vegetation or fauna;
- Any existing open space or safe access to the foreshore; and
- Any use of the surf zone.

The proposal has not taken into consideration its impact on the Coastal Use Area, specifically, the following:

- The visual amenity and scenic qualities of the coast, including coastal headlands.

The proposal will result in adverse bulk and scale that will compromise the visual amenity and scenic qualities of the coast.

6.3. 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 not consistent with the specific objectives of the zone in that the proposed built form does not recognise the desirable elements of the existing streetscape and built form, and does not protect the amenity of residents.

The proposal results in a three-storey dwelling atop lower ground-floor garages, which is visualised from the public domain (Endeavour Avenue) as a four-storey structure. Endeavour Avenue has a character of two-storey dwellings atop lower ground-floor garages, which are read from the public domain (Endeavour Avenue) as three-storey structures. It is not considered that the proposal has recognised and provided consistency with the desirable elements of the existing streetscape and built form.

Furthermore, the proposal is not considered to protect the amenity of residents, as the built form provides inadequate solar access as the result of excessive bulk and scale and excessive excavation. The proposal has not provided adequate visual privacy mitigation to the side facing first and second-floor windows.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4: Floor space ratio (max)	0.75:1 (326.40m ²)	0.814:1 (354.57m ²)	No.
CI 4.3: Building height (max)	9.5m	9.1m	Yes.

6.3.1. Clause 4.4 Floor Space Ratio

The applicant's calculation of GFA is not consistent with the definition under RLEP 2012. In this regard, the calculation excludes the internal garden area around the spiral staircase at the ground floor level and appears to exclude a portion of the study area at the second floor level. The inclusion of these areas results in a non-compliant FSR. A Clause 4.6 was not submitted to justify the non-compliance. Notwithstanding this, a variation would be inconsistent with the objectives of Clause 4.4 of the RLEP 2012 as follows:

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

The additional FSR provides for additional bulk and mass that conflicts with the desired future character of the low-density locality, evident by breaches to other planning controls including wall height, setbacks, site coverage, landscaped area, and amenity issues to adjoining properties including view loss.

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

The proposed development will adversely impact the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, view loss, and overshadowing as a result of the proposed design, size and scale.

The above forms a reason for refusal.

6.3.2. Clause 5.10 - Heritage Conservation

The proposed development is contrary to the objectives under Clause 5.10 Heritage Conservation of RLEP 2012 in that it does not conserve the heritage significance of the setting and views of the Botany Bay National Park Heritage Conservation Area located on the western side of Endeavour Avenue.

The above forms a reason for refusal.

6.3.3. Clause 6.2 – Earthworks

The proposed development is contrary to the objectives under Clause 6.2 Earthworks of the RLEP 2012 as it does not demonstrate that no detrimental impacts of environmental features and processes, neighbourhood uses, cultural or heritage items or features of surrounding land will occur.

The proposed excavation has resulted in an adverse outcome for the subject site in relation to the surrounding area.

The above forms a reason for refusal.

6.3.4. Clause 6.7- Foreshore Scenic Protection Area

The proposal has not demonstrated that the development is consistent with the objectives of Clause 6.7 Foreshore Scenic Protection Area under RLEP 2012

The proposal has not been designed to minimise visual impact on the public areas of the coastline, including views to and from the coast, foreshore reserves, open space and public areas to the west of the site.

The proposed development is not considered to contribute to the quality of the coastal foreshore.

The above forms a reason for refusal.

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

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

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

economic development, the introduction of the employment land zones reform as stipulated by the NSW Government, and outlining existing rezoning request and housekeeping changes to the LEP.

The comprehensive planning proposal will not alter any of the main controls applicable to the site.

Council on 22 November 2022, resolved to endorse the Stage 1 Draft DCP as an interim policy once the Comprehensive LEP is gazetted.

The Comprehensive LEP is yet to be gazetted therefore, the proposal will not be adversely impacted by the subject changes under the CPP.

7. Development control plans and policies

7.1. Randwick Comprehensive DCP 2013

The DCP provisions are structured into two components: objectives and controls. The objectives provide the framework for assessment under each requirement and outline key outcomes that 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 the discussion in sections 6 & 7 and the 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 the table in Appendix 2 and the discussion in key issues below
Section 4.15(1)(a)(iia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is inconsistent with the dominant residential character in the locality.</p>

Section 4.15 for 'Matters for Consideration'	Comments
environment and social and economic impacts in the locality	The proposal will 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 does not have a sufficient area to accommodate the proposed development. 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 the locality. Accordingly, the proposal is not considered to be in the public interest.

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8.1. Discussion of key issues

Description of Proposed Development

The submitted Statement of Environmental Effects describes the proposal as “Proposed works to the existing dwelling to allow for an additional storey, swimming pool to the rear and minor façade changes.”

The existing dwelling on the site is single-storey, set above a garage level. The proposed development will result in a three (3) storey dwelling set above the garage level. This is an additional two (2) storeys to the existing dwelling.

The front façade will completely change, and the changes are not considered minor as described in the description of the development.

Drawing No. DA-02.00 Revision 2 dated 14.09.2022 titled “Demolition Works Roof” prepared by Pinnacle Design Studio notates that all existing structures including the dwelling, front stairs, rear structure and pond will be demolished. The floor plans are shown on Drawings No. DA-04.00, 04.10, 04.20 and 04.30 Revision 2 dated 14.09.2022 prepared by Pinnacle Design Studio indicate elements of the existing dwelling to be retained, with the proposed additions coloured in blue. The additions are shown at the lower ground, ground and first-floor levels. No additions are shown at the second-floor level, which currently does not exist. The elevations are shown in Drawings No. DA-06.00, 06.10 and 06.20 Revision 2 dated 14.09.2022 prepared by Pinnacle Design Studio and show the proposed additions coloured in blue.

A comparison of the proposed plans against the approved plans issued under DA/401/2020 indicates that the proposed additions coloured in blue relate to the approved development, and not the existing development as referred to in the application. A comparison of the proposed plans against the approved plans issued under DA/401/2020 also indicates that the floor levels do not match. For example, the lower ground floor level approved under DA/401/2020 is RL 7.840 and RL 8.020, the ground floor level is RL12.400 and the first-floor level is RL15.850, while the plans submitted under the current application show the lower ground floor level at RL 7.850, the ground floor level at RL10.850 and the first floor at RL13.950.

The proposal is not considered to be alterations and additions to the existing dwelling, as the only component being retained is the lower ground floor level. The submitted documentation does not properly indicate the extent of works proposed for the existing dwelling and does not make a proper comparison against the development approved under DA/401/2021.

The above forms a reason for refusal.

Foreshore Scenic Protection Area

The subject site is located in a Foreshore Scenic Protection Area, as identified by the RLEP 2012 Map.

The proposal has not been designed to minimise visual impact on the public areas of the coastline, including views to and from the coast, foreshore reserves, open space and public areas to the west of the site.

The proposal does not satisfy the objectives of this section that relate to protect the natural landscape and aesthetic appeal of foreshore areas and does not reflect a high-quality design that is sympathetic to the natural landform, colours or landscape character of foreshore areas.

The proposed development is not considered to contribute to the quality of the coastal foreshore.

The above forms a reason for refusal.

Site Coverage

The applicant has excluded the cabana from the site coverage calculation, which is not consistent with the definition of "site coverage" under Part C1, Section 2.3 Site Coverage, Control (i) of RDCP 2013. The inclusion of the cabana would result in maximum site coverage of 255.09m² or 58% which is non-compliant with the maximum 55% for sites with an area of 301m² to 450m².

The proposal does not satisfy the objectives of the site coverage control. The proposal does not reserve adequate unbuilt upon areas for deep soil planting, or permeable surfaces. The excessive site coverage also results in adverse bulk and scale impacts on the streetscape and adjoining properties.

The above forms a reason for refusal.

Landscape

The proposal does not satisfy the landscaping and permeable surfaces requirement under Part C1, Section 2.4 Landscaping and Permeable Surfaces, Control (i) of the RDCP 2013 which requires a minimum 25% of the site area to be deep soil permeable surfaces.

The applicant states that 25.1% of the site will be landscaped. This calculation includes an area to the south of the proposed cabana that is noted on the floor plan as containing pool equipment, and it is not considered that this area should be contained in the calculated landscaped area. The applicant has also included areas that are planter boxes or planted areas above basements, podiums, roofs or slabs, which is contrary to the definition of "deep soil permeable surface" contained under Part C1, Section 2.4 of the RDCP 2013.

Furthermore, the proposed landscape plan dated 14.09.2022 has not illustrated a canopy tree that is capable of reaching 8m at maturity.

The non-compliance with the landscaped area is a result of the proposed building footprint and excessive FSR. The proposal does not satisfy the objectives of the landscaping control. The proposal does not ensure landscaped areas are effectively distributed on the site and does not provide screening between dwellings.

The above forms a reason for refusal.

External wall height

The proposal does not satisfy the external wall height under Part C1, Section 3.2 Building Height, Control (i) of RDCP 2013, which states that the maximum external wall height is 7 metres. For steeply sloping sites, the maximum external wall height is 8 metres.

The applicant is relying on the greater wall height of 8 metres on the basis that the site is steeply sloping.

The SEE submitted with the application states that the proposal complies with the 8-metre wall height. The 8-metre wall height is only shown in Drawing No. DA-05.00 Revision 2 dated 14.09.22 Section A prepared by Pinnacle Design Studio, and this indicates that the front of the dwelling exceeds the control.

The survey, sections and elevations submitted with the application show the site is generally level where the existing building footprint is located. The site slopes at the rear, outside of the building footprint. The wall height control of 7 metres should be applied to the proposal. Thus, the proposal provides a 1.5m exceedance to the maximum building wall height control.

The proposal does not satisfy the objectives of the wall height control. The development does not establish a suitable scale to the street or contribute to its character; the development proposal has not demonstrated that there will be no unreasonable impacts to neighbouring dwellings in terms of overshadowing, view loss, privacy and visual amenity; and the form and massing of the development does not respect the topography of the site. The above forms a reason for refusal.

Setbacks

The proposal does not satisfy Part C1, Section 3.3.2 Side Setbacks, Control (i) of RDCP 2013 which requires a 1.2 metre side setback at the ground and first floor levels, and a 1.8 metre side setback at the second storey and above, for sites with a frontage width of more than 12 metres.

The minimum side setbacks proposed are nil at the lower ground level, 900mm at the ground and first floor levels, and approximately 1.3 metres at the second floor level.

The diagram and note included under Part C1, Section 3.3.2 Side Setbacks, Control (i) of RDCP 2013 states *“any basement or semi-basement protruding less than 1.2m above ground level (finished) will not be counted as a storey. In this case, the “ground storey” is taken to be the level immediately above and will be subject to the relevant side setback controls”*.

The lower ground parking level protrudes more than 1.2 metres above the finished ground level and is therefore counted as a storey for the purpose of this control.

The development is non-compliant with the side setback controls at lower ground, ground, first and second-floor levels.

The proposed setbacks do not align with the objectives of the control, which are to ensure the form and massing of development complement and enhance the streetscape character; to ensure adequate separation between neighbouring buildings for visual and acoustic privacy and solar access; and to enable a reasonable level of view sharing between development and the neighbouring dwellings and the public domain

The above forms a reason for refusal.

Roof Design and Features

The proposal is not consistent with Part C1, Section 4.4, Control (viii) of the RDCP 2013 which requires:

“Any plant and equipment must be contained within the roof form or screened behind parapet walls, so that they are not readily visible from the public domain and surrounding properties”

The location of the air conditioning unit has not been demonstrated on the submitted architectural plans. It is cannot be determined whether the location of any air-conditioning unit will result in adverse visual or acoustic impacts on neighbouring properties.

Earthworks

The amount of excavation is considered excessive and in breach of Part C1, Section 4.6 Earthworks, Control (i) of RDCP 2013 which requires:

“Any excavation and backfilling within the building footprint must be limited to 1m at any point on the allotment, unless it is demonstrated that the site gradient is too steep to reasonably construct a dwelling within this extent of site modification. These requirements do not apply to swimming or spa pool structures.”

The maximum amount of excavation proposed is 2.2m and occurs within 900mm of the side boundaries.

The proposal does not meet the objectives of Part C1, Section 4.6 Earthworks of RDCP 2013 which seeks to maintain or minimise change to the natural ground levels, and to ensure excavation of a site does not result in unreasonable structural, visual, overshadowing and privacy impacts on the adjoining dwellings.

The above forms a reason for refusal.

Solar Access and Overshadowing

The proposal has not demonstrated compliance with Part C1, Section 5.1 Solar Access and Overshadowing of RDCP 2031. Control 5.1 requires the following:

“The private open space of the proposed development must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. The area covered by sunlight must be capable of supporting passive recreation activities.”

Or

“The private open space of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. The area covered by sunlight must be capable of supporting passive recreation activities.”

The excavation proposed behind the building footprint will result in a subterranean rear yard that is approximately 2 metres lower than the swimming pool and cabana and will have side boundary fencing of more than 3 metres in height. This results in adverse overshadowing for the rear yard.

It is considered that a development that respects the topography of the land will result in greater solar access for the rear yard of the subject site.

Insufficient information has been submitted to demonstrate whether the increased height of the dwelling, compared to the existing dwelling results in adverse overshadowing to the neighbouring property to the south at No. 29 Endeavour Avenue.

The proposed solar access to the private open space area does not align with the objectives of the control, which is to ensure new dwellings are sited and designed to maximise solar access to the private open space.

The above forms a reason for refusal.

Visual Privacy

The proposal has not demonstrated compliance with Part C1, Section 5.3 Visual Privacy, Control (i) of RDCP 2013 which requires all habitable room windows to be located so as to minimise any direct viewing or existing habitable room windows in adjacent dwellings.

The proposal includes windows on the first and second floor along the side elevations that have not considered appropriate mitigation measures in line with Control i of Section 5.3, These include:

- *Offsetting or staggering windows away from those of the adjacent buildings.*
- *Setting the window sills at a minimum of 1600mm above finished floor level.*
- *Installing fixed and translucent glazing up to a minimum of 1600mm above finished floor level.*
- *Installing fixed privacy screens outside the windows in question.*

The proposal does include translucent glazing to 1.5m above Finished Floor Level, however, it is not considered that this is sufficient to decrease visual privacy impacts.

The proposal does not align with the objectives of the control that relate to minimising overlooking and maintaining reasonable levels of privacy.

The above forms a reason for refusal.

View Sharing

The Visual Impact Assessment prepared by Urbaine Architectural dated October 2022 illustrates a substantial district and ocean view loss from adjacent properties at No. 6, 8 and 10 Goorawahl Avenue, Le Prouse.

A comparison of the view loss resulting from the approved development under DA/401/2020 against the view loss resulting from the proposed development has not been provided.

View loss from adjoining and adjacent properties is impacted by the breaches to the FSR control under the RLEP 2012, and breaches to the wall height and side setback controls under the RDCP 2013.

The applicant has not demonstrated that a more skilful design could not be achieved in order to improve view sharing.

As a result, the application has not demonstrated compliance with Part C1, Section 5.6 View Sharing, nor has it addressed the objectives of the Section which relate to ensuring development is sensitively and skilfully designed to maintain a reasonable amount of views from the development, neighbouring dwellings and public domain.

The above forms a reason for refusal.

Side and Rear Fencing

While the submitted architectural plans have illustrated existing side fencing along the side boundaries of the site. Insufficient information is provided regarding how the side fencing will be retained with the construction of a nil setback retaining wall. Additionally, a lack of detail is provided to determine the overall height of the retaining wall and side fencing.

The above forms a reason for refusal.

Swimming and Spa Pools

The application proposes a swimming pool at the rear of the subject site. The swimming pool has been located on the high side of the site and due to the proposed excavation of the remainder of the site, the pool will be elevated above Finished Ground Level. This will create an undesirable outcome as the pool will appear out of the ground as viewed internally from the subject site's private open space area and will compromise amenity by the enclosure of the area with large retaining walls. The proposed swimming pool is not consistent with Part C1, Section 7.5 Swimming and Spa Pools, Control iv of the RDCP 2013.

Furthermore, in relation to Control viii of Section 7.5, no information has been provided relating to the proposed pool equipment enclosure. It is not clear whether this area is open or enclosed, underground or above ground. No details have been provided of the elevations or sections to determine whether the location may result in adverse acoustic impacts to neighbouring dwellings.

The above forms a reason for refusal.

Air Conditioning Equipment

Insufficient information has been submitted to determine whether the proposal is consistent with the controls of Part C1, Section 7.6 Air Conditioning Equipment of Part C1 of the RDCP 2013. No air-conditioning unit has been illustrated on the plan, as such, any acoustic issues cannot be assessed.

The above forms a reason for refusal.

Lothes Drying Facilities

Insufficient information has been submitted to determine whether any clothes drying facilities are proposed and whether it is located behind the front façade alignment. As such, the proposal is inconsistent with Part C1, Section 7.8 Clothes Drying Facilities of the RDCP 2013.

The above forms a reason for refusal.

9. Conclusion

That the application for the *'proposed works to the existing dwelling to allow for an additional storey, swimming pool to the rear and minor façade changes'* be refused for the following reasons:

1. The proposal does not comply with the provisions of the Randwick Local Environmental Plan 2012 (RLEP) in particular:
 - a. The proposal is inconsistent with the objectives of the R2 Low-Density Residential land use zone.
 - b. The proposal is non-compliant with the maximum Floor Space Ratio applicable to the site pursuant to Clause 4.4.
 - c. The proposal is contrary to the objectives of Clause 5.10 in relation to Heritage Conservation.
 - d. The proposal is not consistent with the objectives of Clause 6.2 in relation to Earthworks.
 - e. The proposal is not consistent with the objectives of Clause 6.7 in relation to Foreshore Scenic Protection Area.
2. The proposal does not comply with the provision of Randwick Comprehensive Development Control Plan 2013 (RDCP 2013) in particular:
 - a. Pursuant to Section B10 of Part B, the proposal is inconsistent with the controls and objectives of the Foreshore Scenic Protection Area.
 - b. Pursuant to Control i of Section 2.3, Part C1, the proposal does not comply with site coverage.
 - c. Pursuant to Control i of Section 2.4, Part C1, the proposal does not comply with the landscaped area.
 - d. Pursuant to Control i of Section 3.2, Part C1, the proposal does not comply with building wall height.
 - e. Pursuant to Section 3.3.2, Part C1, the proposal does not comply with side setbacks.
 - f. Pursuant to Section 4.6, Part C1, the proposal has not demonstrated that the earthworks are appropriate for the site.
 - g. Pursuant to Section 5.1, Part C1, the proposal has not provided sufficient solar access to the proposed private open space area or to adjoining properties.
 - h. Pursuant to Section 5.3, Part C1, the proposal has not demonstrated that the visual privacy of adjoining properties is retained.
 - i. Pursuant to Section 5.6, Part C1, the proposal has not adequately addressed view-sharing with neighbouring properties.
 - j. Pursuant to Section 7.3, Part C1, the proposal has not adequately demonstrated side and rear fencing details.
 - k. Pursuant to Section 7.5, Part C1, the proposal has resulted in a swimming pool location that is inappropriate to the site topography.
 - l. Pursuant to Section 7.6, Part C1, insufficient information has been submitted to determine whether any air conditioning unit will result in adverse impacts on neighbouring sites.

- m. Pursuant to section 7.8, Part C1, Insufficient information has been submitted to determine whether any proposed clothes drying facilities complies with the relevant controls.
- 3. The proposal does not comply with the provision of State Environmental Planning Policy (Resilience and Hazards) 2021.
 - a. The proposal is inconsistent with Section 2.11 of Division 4 of Chapter 2.
- 4. Pursuant to Section 4.15(1)(b) of the Environmental Planning & Assessment Act 1979, the application has not demonstrated that the development does not impact the natural or built environment or that it does not result in adverse social or economic impacts.
- 5. Pursuant to Section 4.15(1)(c) of the Environmental Planning & Assessment Act 1979, the application has not demonstrated that the subject site is suitable for the development.
- 6. Pursuant to Section 4.15(1)(d) of the Environmental Planning & Assessment Act 1979, the application has not demonstrated that the development is in the public interest.

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Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineer

The application was referred to Council's Land Development Engineer and Landscaping officer, who returned the following comments. The referral raised no objection subject to Conditions.

"An application has been received for alterations and additions at the above site including an inground pool in the rear yard.

This report is based on the following plans and documentation:

- *Architectural Plans by Pinnacle Design Studio and dated 15.03.22;*
- *Statement of Environmental Effects by ABC Planning;*
- *Survey Plan by C & A Surveyors P/L.*

Undergrounding of power lines to site

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

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

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

Tree Management & Landscape Comments

The site inspection of 29 June 2022 confirmed a mature, 5-6m tall Banksia serrata (Saw Toothed Banksia) within the Endeavour Avenue verge, to the south of the driveway, towards the southern site boundary, of good health and condition which is protected by the DCP and can be retained in-situ as the driveway is shown as being maintained in its current position, with relevant protection conditions and a bond imposed.

The clump of Strelitzia nichloii (Giant Bird of Paradise) and others in the raised front setback of this site, around the southwest corner, are insignificant, so no objections are raised to their removal given the extensive excavations and civil works that will be performed in this same area for the Basement Level, with the same also applying to the other Strelitzia's and Golden Cane Palms in the rear setback, as well as the single Bangalow Palm on the northern boundary, subject to suitable replacement planting being provided in their place."

Appendix 2: DCP Compliance Table**2.1 Section C1: Low Density Residential**

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2 Low-Density Residential.	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 	No subdivision is proposed.	N/A.
	Minimum frontage		
	i) Min frontage R2 = 12m ii) Min frontage R3 = 9m iii) No battle-axe or hatchet in R2 or R3 iv) Minimum frontage for attached dual occupancy in R2 = 15m v) Minimum frontage for detached dual occupancy in R2 = 18m	No subdivision is proposed.	N/A.
2.3	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45%	Site = 435.3m ² . Maximum = 239.415m ² Proposed = 255.09m ² or 58%.	No. Refer to Key Issues.
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 = 435.3m ² . Minimum = 108.825m ² Proposed = 94.47m ² or 21.7%. A canopy tree, capable of reaching 8m has not been proposed.	No. Refer to Key Issues.
2.5	Private open space (POS)		
	Dwelling & Semi-Detached POS		
	Up to 300 sqm = 5m x 5m 301 to 450 sqm = 6m x 6m 451 to 600 sqm = 7m x 7m 601 sqm or above = 8m x 8m	Site = 435.3m ² Proposed = 8.5m x 11.5m.	Yes.
3	Building envelope		
3.1	Floor space ratio LEP 2012 =	Site area = 435.3m ² Maximum FSR = 0.75:1 (326.40m ²) Proposed FSR = 0.814:1 (354.57m ²)	No. Refer to Key Issues.

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DCP Clause	Controls	Proposal	Compliance
3.2	Building height		
	Maximum overall height LEP 2012 =	Maximum = 9.5m Proposed = 9.1m.	Yes.
	i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded	Proposed = 8.5m.	No. Refer to Key Issues.
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	The front building line is setback a minimum of 7.090m from Endeavour Avenue. This is consistent with the neighbouring dwellings at No. 25 and No. 29 Endeavour Avenue. The proposed dwelling has structures within the articulation zone including balconies and a rooftop terrace on the garage. This is consistent with neighbouring dwellings and is considered appropriate.	Yes.
3.3.2	Side setbacks: Dwellings: • Frontage over 12m = 1200mm (Gnd & 1 st floor), 1800mm above. Refer to 6.3 and 7.4 for parking facilities and outbuildings	Lower ground level = a minimum of 0mm. Ground and first floor = a minimum of 900mm. Second floor = a minimum of 1.3m.	No. Refer to Key Issues.
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 -	Minimum = 7.56m Proposed = 8.4m.	Yes.

DCP Clause	Controls	Proposal	Compliance
	<p>reasonable view sharing (public and private)</p> <ul style="list-style-type: none"> - protect the privacy and solar access <p>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.</p> <p>iv) For irregularly shaped lots = merit assessment on basis of:-</p> <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p>		
4	Building design		
4.1	General		
	<p>Respond specifically to the site characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> • articulated to enhance streetscape • stepping building on sloping site, • no side elevation greater than 12m • encourage innovative design 	<p>The proposal has not responded to key site characteristics such as the sloping nature of the site. The proposal has excessive excavation to attempt to have a level building and private open space of the site, rather than stepping the building and respecting the topography.</p>	No.
4.4	Roof Design and Features		
	<p><i>Rooftop terraces</i></p> <p>i) on stepped buildings only (not on uppermost or main roof)</p> <p>ii) above garages on sloping sites (where garage is on low side)</p> <p><i>Mechanical equipment</i></p> <p>viii) Contained within roof form and not visible from street and surrounding properties.</p>	<p>A balcony is provided on the uppermost level, however, is not on the main roof. A terrace area is retained above the garages.</p> <p>Air conditioning is not illustrated in the plans.</p>	<p>Yes.</p> <p>Yes.</p> <p>No.</p>
4.5	Colours, Materials and Finishes		
	<p>i) Schedule of materials and finishes</p> <p>ii) Finishing is durable and non-reflective.</p>	<p>The proposed schedule of</p>	<p>Yes.</p>

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DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) recycle and re-use sandstone (See also section 8.3 foreshore area.) 	materials and finishes are acceptable for the locality, and respect the character of the coastal setting.	
4.6	Earthworks		
	<ul style="list-style-type: none"> i) excavation and backfilling limited to 1m, unless gradient too steep ii) minimum 900mm side and rear setback iii) Step retaining walls. iv) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm. v) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping) vi) cut and fill for POS is terraced <i>where site has significant slope:</i> vii) adopt a split-level design viii) Minimise height and extent of any exposed under-croft areas. 	<p>The maximum amount of excavation proposed is 2.2m and occurs within 900mm of the rear and side boundaries.</p> <p>The proposal has not responded to the slope of the land by adopting a split-level design.</p>	No. Refer to Key Issues.
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	<ul style="list-style-type: none"> i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June. ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. 	<p>The north-facing living room windows occur over side boundaries. It is considered that the living area retained adequate solar access between 8am and 4pm on 21 June.</p> <p>The proposed excavation in the rear yard has resulted in increased overshadowing of the private open space area. It is considered that a better solar access outcome for the rear yard can be obtained.</p>	<p>Yes.</p> <p>No. Refer to Key issues.</p>

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. 	The submitted solar access diagrams have insufficient information to determine overshadowing impacts to neighbouring dwellings.	Insufficeint Information.
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	Daylight to internalized areas is 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 	The proposal includes first and second-floor side-facing windows that may conflict with	No. Refer to Key Issues.

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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)	adjoining windows or private open space areas.	
	Balcony		
	iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side) iv) minimise overlooking of POS via privacy screens (fixed, minimum of 1600mm high and achieve minimum of 70% opaqueness (glass, timber or metal slats and louvers) v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure) vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.	The first and second-floor balconies are orientated to the front of the site and contained minimal returns.	Yes.
5.4	Acoustic Privacy		
	i) noise sources not located adjacent to adjoining dwellings bedroom windows	Noise sources are located away from sensitive areas of adjoining properties.	Yes.
5.5	Safety and Security		
	i) dwellings main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iv) 1 habitable room window (glazed area min 2 square metres) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not to obstruct casual surveillance (maintain safe access)	The dwelling entrance is located on the front elevation. The front façade includes substantial glazing. Due to the slope of the land, the proposed fencing and parking facilities do not obstruct casual surveillance.	Yes.
5.6	View Sharing		
	i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas. ii) retaining existing views from the living areas are a priority over low use rooms iii) retaining views for the public domain takes priority over views for the private properties	The proposal has not appropriately considered view sharing.	No. Refer to Key Issues.

DCP Clause	Controls	Proposal	Compliance
	iv) fence design and plant selection must minimise obstruction of views v) Adopt a balanced approach to privacy protection and view sharing vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA. (certified height poles used)		
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)	Vehicular access is existing. N/A. Site topography allows a variation. N/A. The majority of the basement excavation is existing. N/A.	Yes.
6.2	Parking Facilities forward of front façade alignment (if other options not available)		
	i) The following may be considered: - An uncovered single car space - A single carport (max. external width of not more than 3m and - Landscaping incorporated in site frontage 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)	The existing site has a three-car garage that is at the lower-ground floor portion of the site. The proposal is retaining this form, however, in an improved manner. The character of the locality has several lower-ground floor garages.	Yes.
6.3	Setbacks of Parking Facilities		
	i) Garages and carports comply with Sub-	The garage	Yes.

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DCP Clause	Controls	Proposal	Compliance
	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	parking area is compatible with the existing site and streetscape.	
6.4	Driveway Configuration		
	Maximum driveway width: - Single driveway – 3m - Double driveway – 5m Must taper driveway width at street boundary and at property boundary	Driveway configuration is existing.	Yes.
6.5	Garage Configuration		
	i) recessed behind front of dwelling ii) The maximum garage width (door and piers or columns): - Single garage – 3m - Double garage – 6m iii) 5.4m minimum length of a garage iv) 2.6m max wall height of detached garages v) recess garage door 200mm to 300mm behind walls (articulation) vi) 600mm max. parapet wall or bulkhead vii) minimum clearance 2.2m AS2890.1	The existing site has a three-car garage that is at the lower-ground floor portion of the site. The proposal is retaining this form, however, in an improved manner. The character of the locality has several lower-ground floor garages.	Yes.
7	Fencing and Ancillary Development		
7.1	General - Fencing		
	i) Use durable materials ii) sandstone not rendered or painted iii) don't use steel post and chain wire, barbed wire or dangerous materials iv) Avoid expansive surfaces of blank rendered masonry to street	The proposed front fencing is durable, not of painted sandstone, or post or chain wire, and does not have expansive surfaces of blank masonry.	Yes.
7.2	Front Fencing		
	i) 1200mm max. (Solid portion not exceeding 600mm), except for piers. - 1800mm max. provided upper two-thirds partially open (30% min), except for piers. ii) light weight materials used for open design and evenly distributed iii) 1800mm max solid front fence permitted in the following scenarios: - Site faces arterial road	A front fence of 3.1m is proposed. This is considered appropriate due to the location of the lower ground	Yes.

DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> - Secondary street frontage (corner allotments) and fence is behind the alignment of the primary street façade (tapered down to fence height at front alignment). <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> <ul style="list-style-type: none"> iv) 150mm allowance (above max fence height) for stepped sites v) Natural stone, face bricks and timber are preferred. Cast or wrought iron pickets may be used if compatible vi) Avoid roofed entry portal, unless complementary to established fencing pattern in heritage streetscapes. vii) Gates must not open over public land. viii) The fence must align with the front property boundary or the predominant fence setback line along the street. ix) Splay fence adjacent to the driveway to improve driver and pedestrian sightlines. 	floor garages.	
7.3	Side and rear fencing		
	<ul style="list-style-type: none"> i) 1800mm maximum height (from existing ground level). Sloping sites step fence down (max. 2.2m). ii) Fence may exceed max. if level difference between sites iii) Taper down to front fence height once past the front façade alignment. iv) Both sides treated and finished. 	Architectural plans demonstrate that side fencing is retained. However, a lack of detail is provided regarding retaining walls for the subject site.	Insufficient Information was provided.
7.4	Outbuildings		
	<ul style="list-style-type: none"> i) Locate behind the front building line. ii) Locate to optimise backyard space and not over required permeable areas. iii) Except for laneway development, only single storey (3.6m max. height and 2.4m max. wall height) iv) Nil side and rear setbacks where: <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 v) First floor addition to existing may be considered subject to: <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; 	A cabana is proposed in the rear yard.	Yes.

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DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> - Maintaining adequate solar access to the adjoining dwellings; and - Maintaining adequate privacy to the adjoining dwellings. vi) Must not be used as a separate business premises.		
7.5	Swimming pools and Spas		
	i) Locate behind the front building line ii) Minimise damage to existing tree root systems on subject and adjoining sites. iii) Locate to minimise noise impacts on the adjoining dwellings. iv) Pool and coping level related to site topography (max 1m over lower side of site). v) Setback coping a minimum of 900mm from the rear and side boundaries. vi) Incorporate screen planting (min. 3m mature height unless view corridors affected) between setbacks. vii) Position decking to minimise privacy impacts. viii) Pool pump and filter contained in acoustic enclosure and away from the neighbouring dwellings.	The pool is behind the front building line. The pool is located away from large trees on adjoining sites. The pool is located to the rear of the dwelling, away from habitable areas of adjoining dwellings. The swimming pool is located on the high side of the site and results in adverse excavation. Yes, coping is a minimum of 900mm from side and rear boundaries. Screen planting has been incorporated. Insufficient information received. Insufficient information received.	No. Refer to Key Issues.
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.	Insufficient information received.	No. Refer to Key Issues.
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,	Noted.	

DCP Clause	Controls	Proposal	Compliance
	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).		
7.8	Clothes Drying Facilities		
	i) Located behind the front alignment and not be prominently visible from the street	Insufficient information received.	No. Refer to Key Issues.

3.2 Section B7: Transport, Traffic, Parking and Access

DCP Clause	Controls	Proposal	Compliance
3.2	Vehicle Parking Rates		
	2 Spaces per dwelling house with 3 or more bedrooms Note: Tandem parking for 2 vehicles is allowed.	3 spaces are proposed.	Yes.

3.4 Section B10: Foreshore Scenic Protection Area

DCP Clause	Controls	Proposal	Compliance
	i) Consider visual presentation to the surrounding public domain, including streets, lanes, parks, reserves, foreshore walkways and coastal areas. All elevations visible from the public domain must be articulated. ii) Outbuildings and ancillary structures integrated with the dwelling design (coherent architecture). iii) Colour scheme complement natural elements in the coastal areas (light toned neutral hues). iv) Must not use high reflective glass v) Use durable materials suited to coast vi) Use appropriate plant species vii) Provide deep soil areas around buildings viii) Screen coping, swimming and spa pools from view from the public domain. ix) Integrate rock outcrops, shelves and large boulders into the landscape design x) Any retaining walls within the foreshore area (that is, encroaching upon the Foreshore Building Line) must be constructed or clad with sandstone.	The proposal has not been designed to minimise visual impact on the public areas of the coastline, including views to and from the coast, foreshore reserves, open space and public areas to the west of the site.	No. Refer to Key Issues.

Responsible officer: GAT & Associates, Town Planners

File Reference: DA/197/2022

Development Application Report No. D8/23

Subject: 19 Oswald Street, Randwick (DA/413/2022)


Executive Summary

Proposal:	Alterations and additions to the existing dwelling including extension to enclose lightwell, removal of internal walls, door and pavers, increase height of existing boundary wall and installation of glass roof with operable window (Heritage Item).
Ward:	East Ward
Applicant:	Mrs J M King
Owner:	Mr L J King & Mrs J M King
Cost of works:	\$80,000
Reason for referral:	Heritage item & the development contravenes the development standards for floor space ratio by more than 10%

Recommendation

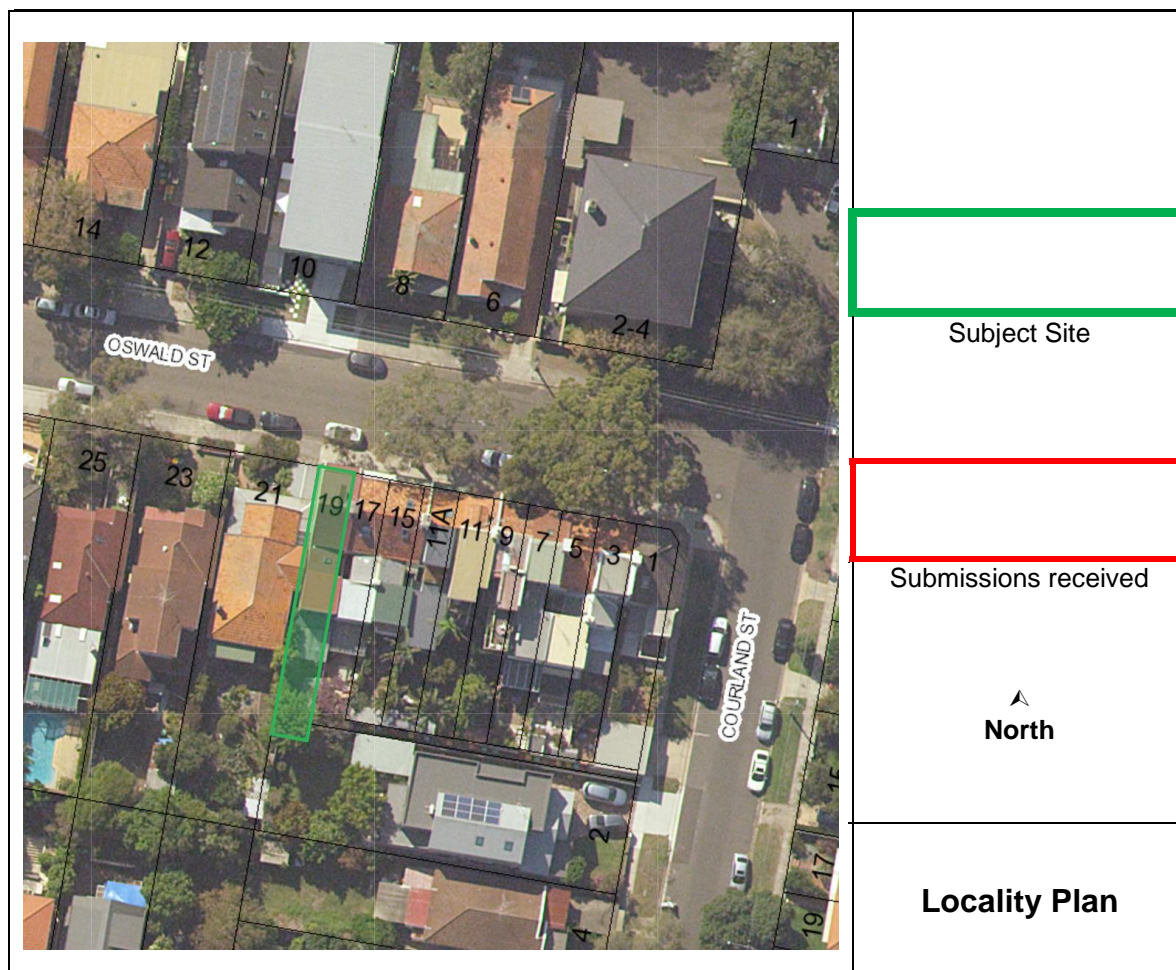
- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the floor space ratio development standard in Clause 4.4 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning, Industry and Environment may be assumed.
- B. That the RLPP grant consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/413/2022 for alterations and additions to the existing dwelling including extension to enclose lightwell, removal of internal walls, door and pavers, increase height of existing boundary wall and installation of glass roof with operable window (Heritage Item), at No. 19 Oswald Street, Randwick, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (med density res) - DA/413/2022 - 19 Oswald Street, RANDWICK

D8/23

D8/23



1. Executive summary

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

- The development involves partial demolition of a heritage item.
- The development contravenes the development standard for floor space ratio by more than 10%

The proposal seeks development consent for alterations and additions to an existing attached dwelling. Specifically the proposal comprises a ground floor extension into the existing courtyard/lightwell, to the eastern side boundary. This involves demolition of internal walls, removal of door and pavers, increase height of existing boundary wall and installation of glass roof with operable window. The extension is for the purposes of a kitchen.

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

The key issues associated with the proposal relate to alterations and additions to a heritage item, and exceedance of the FSR development standard.

The proposed development does not comply with the maximum 0.75:1 FSR development standard within Clause 4.4 of Randwick Local Environmental Plan 2012 (RLEP 2012). The proposed FSR of 0.88:1 represents an 18% variation to the development standard.

The proposal is recommended for approval, subject to the inclusion of the following non-standard condition:

- The proposed glass roof over the kitchen must be fixed.

2. Site Description and Locality

The subject site is known as 19 Oswald Street, Randwick and is legally described as Lot 10 in DP 108445. The site has an area of 123.4m², is irregular in shape and has a 4.11m frontage to Oswald Street to the north. The site is relatively level.

The site comprises an existing two (2) storey attached dwelling. A deck and awning are attached to the rear of the dwelling. The rear of the site includes two outbuildings and artificial grass. There is no vehicular access.

The site is a part of a terraced row comprising nos. 1-19 Oswald Street, listed as a heritage item under RLEP 2012. A right of carriageway adjoins the site to the east, connecting to Courland Street.

The locality is residential in nature and contains a mixture of low-density and medium-density residential development comprising attached dwellings, dwelling houses, semi-detached dwellings and residential flat buildings.



Figure 1. Streetscape view – 19 Oswald Street, Randwick

3. Relevant history

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

- Application No. DA/746/2007/A was approved on 14 March 2014 for modification of approved development by altering the height and design of the pergola roof for the rear deck, including the installation of 1.8m high walls on the eastern and western boundaries.
- Development Application No. DA/580/2009 was approved on 16 October 2009 for alterations and rear additions to the first floor level of the existing terrace dwelling.
- Development Application No. DA/746/2007 was approved on 26 October 2007 for construction of new timber deck & covered pergola at rear; new storeroom adjacent to rear boundary; and replacement of lintel to first floor bathroom window at rear.

4. Proposal

The proposal seeks development consent for alterations and additions to an existing attached dwelling. Specifically the proposal comprises a ground floor extension into the existing courtyard/lightwell, to the eastern side boundary. This involves demolition of internal walls, removal

of door and pavers, increase height of existing boundary wall and installation of glass roof with operable window. The extension is for the purposes of a kitchen.



Figure 2. Proposed site plan – 19 Oswald Street, Randwick

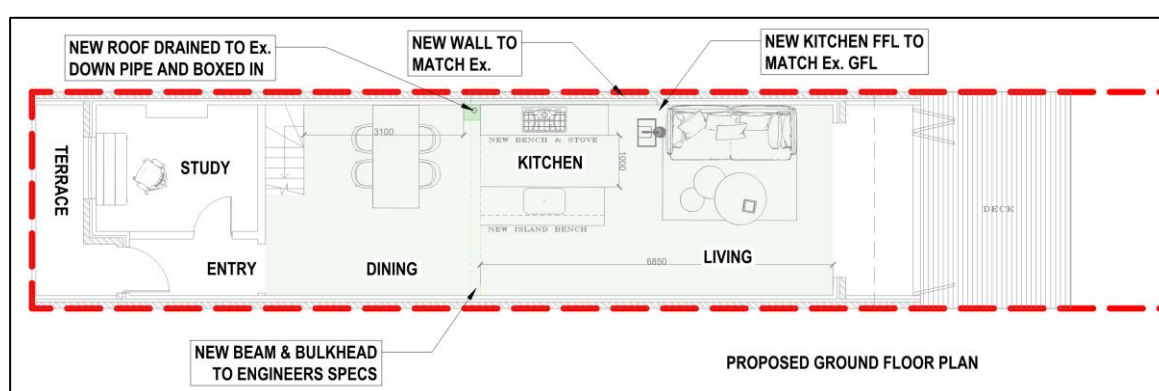


Figure 3. Proposed ground floor plan – 19 Oswald Street, Randwick

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Participation Plan 2019. No submissions were received.

6. Relevant Environment Planning Instruments

6.1. SEPP (Building Sustainability Index: BASIX) 2004

State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies to the proposed development. The proposed development is a 'BASIX affected development' as defined under Schedule 7 of the Environmental Planning and Assessment Regulation 2021.

Clause 27 of Environmental Planning and Assessment Regulation 2021 requires the submission of a BASIX Certificate. BASIX Certificate No. A461636, dated 2 June 2022, has been submitted with the application.

6.2. Randwick Local Environmental Plan 2012 (LEP)

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

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will provide for the housing needs of the community within a medium density residential environment, while protecting the amenity of residents.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4: Floor space ratio (max)	0.75:1 (92.55m ²)	1.02:1 (125.97m ²). It should be noted that the existing FSR is 0.98:1 (121.37m ²)	Yes
CI 4.3: Building height (max)	9.5m	3.58m	Yes

D8/23

6.2.1. Clause 4.6 - Exceptions to development standards

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

6.2.2. Clause 5.10 - Heritage conservation

Clause 5.10 requires Council to consider the impact of the proposed development on the heritage significance of the heritage item. The site is listed as Item No. 420 under Schedule 5 of RLEP. The application was subsequently referred to Council's Heritage Planner. The comments provided by Council's Heritage Planner are included in Appendix 1.

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Existing	Proposal	Proposed variation	Proposed variation (%)
CI 4.4: Floor space ratio (max)	0.75:1 (92.55m ²)	0.98:1 (121.37m ²)	1.02:1 (125.97m ²)	33.42m ²	36%

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In accordance with Clause 4.6 (5), in deciding whether to grant concurrence, the Secretary must consider:

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

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

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

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

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

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

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

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

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

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

"The row of attached terrace houses, numbers 1-19 Oswald street Randwick share similar heritage features including ornate balustrades, shared chimneys and awnings. The front façade of the proposed development will not change."

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

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

"The alterations are not visible from the street and will not change the façade of the building or the streetscape. In addition, the alterations will not be visible from the back of the dwelling."

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

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

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

“The development is consistent with the height, scale and character of development in the area. The bulk and scale of the development is fitting with the area and does not visually overshadow neighbouring properties.

The proposed variation of 36% from the maximum FSR is reasonable in comparison to nearby sites. The below are examples obtained from the Planning Register (2008-2021) available on Randwick Councils website. These properties are located within the same locality and have exceeded their maximum FSR, as stipulated by Clause 4.4 of the RLEP 2012. This highlights that the area is characterised by similar densities to that of the proposal. The nearest development approval to the proposed development at 19 Oswald Street is located 15 Oswald Street - approval of alterations and additions under DA/267/2016. This adjoining property proposed works of a similar scale to that proposed within this Development Application. DA/267/2016 at number 15 sees a 33.57% exceedance of the FSR with the proposed attic extension approved 4,078mm from the ridge line including a 1200mm balcony and was approved with consideration to Heritage significance. The proposed development at the subject site at 19 Oswald Street, proposes a development of a similar scale which aligns with the precedent established by the development so recently approved by Randwick Council in 2016 at number 15 Oswald Street.

Address	FSR Variation
59 Carrington Road Randwick	48%
15 Oswald Street Randwick	33.57%
132- 143 Alison Road Randwick	67.8%”

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

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

“The development will not have any adverse impacts on the adjoining property at 17 Oswald Street Randwick. There will be no loss of privacy, natural light or changes to the façade of the building. It should also be noted that the neighbours at 17 Oswald Street have written a letter supporting the proposed development and have also had a similar development approved.”

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

The additional gross floor area of 4.6m² is a ground floor infill of the existing courtyard/lightwell that adjoins the approved blank party wall of 17 Oswald Street. The proposed ground floor addition is centrally located within the site, and will not impact the existing street façade. The single storey infill will not have an adverse bulk impact, solar impact or privacy impact on neighbouring properties.

As noted in the applicant’s written request, the adjoining neighbour at 17 Oswald received development consent to similarly infill the courtyard/lightwell on the ground floor level, under DA/302/2020. The alterations and additions approved under DA/302/2020 reached a total FSR of 1.12:1, which is a 49.96% variation.

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

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

"The development application has been developed to complement the existing building with no changes to scale or character. It is proposed that the development will not interfere with any adjoining properties by way of shadowing, loss of privacy or bulk of the building. The current streetscape will remain as is with no changes proposed.

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

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

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

Assessment against objectives of floor space ratio standard

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

Assessment against objectives of the R3 zone

The objectives of R3 zone are:

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

The applicant's written request seeks to demonstrate that the proposal is consistent with the zone objectives by noting:

"The development is consistent with the zone objectives. The development proposes to increase the amenity of the property to meet the day to day needs of the residents. The application respects the existing streetscape and heritage significance with no change to the existing heritage significant elements of the property including the front balconies, shared chimney, and current streetscape from Oswald Street.

The proposed variation in floor space ratio does not present the development incompatible with the zone objectives, in accordance with the approach of the former Chief Judge, Justice Pearlman in *Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21, in Paragraph [27]:

"The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible."

Assessing officer's comment: The proposed development will provide for the housing needs of the community. The bulk and scale of the proposal remains consistent with the medium density

residential character of the area and is sympathetic to surrounding built form, including the heritage item terrace group. No additional bulk is visible from the Oswald Street streetscape or the rear façade. The massing of the alterations and additions is consistent with that of the terrace group. The development maintains the amenity of residents – the proposed FSR does not result in adverse visual bulk impact, overshadowing, privacy impact or view impact.

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

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

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

Conclusion

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

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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

9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.

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

Heritage

The site is part of a terraced row, comprising nos.1-19 Oswald Street, listed as a heritage item (I 420) under Schedule 5 of Randwick LEP 2012. Therefore, under Clause 5.10 of the RLEP, consideration must be given to the impact that that development may have upon the significance of the heritage item.

The application has been accompanied by a Heritage Impact Statement prepared by Carmela Litonjua.

The proposal has been considered by Council's Heritage Planner, who concludes that the proposed alterations and additions are satisfactory. Suitable conditions of consent have been recommended for inclusion with respect to photographic archival recording. See **Appendix 1** below.

Glass roof

The proposal includes an operable glass roof over the proposed addition, constructed up to the common boundary. Council's building surveyor has advised that this glass roof would be subject to fire rating requirements of the Building Code of Australia; i.e. it would need to be fixed or an alternative solution would need to be proposed, such as an extension in the height of the boundary wall. In order to maintain the bulk and scale of the development as proposed, a condition of consent will be imposed to require the glass roof to be fixed.

10. Conclusion

That the application for kitchen extension to lightwell, including demolition of internal walls, removal of door and pavers, increase height of existing boundary wall and installation of glass roof with operable window be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013.
- The proposal is consistent with the specific objectives of the R3 zone in that the proposed development will provide for the housing needs of the community within a medium density residential environment and protects the amenity of residents.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- The applicant's written requests under Clause 4.6 of RLEP has adequately demonstrated that compliance is unreasonable and unnecessary and that there are sufficient environmental planning grounds to justify contravening the FSR development standards.

The following non-standard condition is included to minimise the environmental impact of the development:

- The proposed glass roof over the kitchen must be fixed.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Heritage planner

The Site

The site is part of a terraced row, comprising Nos.1 – 19 Oswald Street, listed as a heritage item under Randwick LEP 2012. The Heritage NSW database sheet for the building describes the building as:

Row of Victorian terraces, c. 1880? Most have suffered minor alterations (false shutters, dormer windows, concrete roof tiles, quarry tiles, security grilles) and are inconsistent in colour schemes and minor details. Latter includes style of door and treatment of verandah and balcony fringes. Most altered detail reasonably sympathetic but tends to be inconsistent from house to house. Corner house ruined but this does not spoil group. A very good row, of considerable streetscape value. Good street planting in front consists of tall mature Eucalypts.

No.19 retains much of its original character including iron palisade fencing and balcony railing, double hung timber window at ground floor level, and upper level french doors and sidelights. A dormer window in the front plane of the roof which detracts from the integrity of the group appears to have been approved as part of a 1968 building application. To the north east of the site the Bungalow at no.5 Courland Street is also listed as a heritage item.

Proposal

The current proposal is for internal and external alterations and additions to the dwelling. At ground floor level a wall is to be removed between the dining and kitchen areas, and the kitchen enlarged by widening it into a lightwell area, with a new glass roof over.

Submission

The proposal has been accompanied by a Statement of Heritage Impact which argues that:

- a) All works are internal to No. 19 Oswald. All proposed will not be directly visible from the street or any public spaces. These are deemed small in scale and will have nil adverse effect on the existing patterns, character and streetscape of the heritage item and its immediate locality;
- b) The materials to be used for the new components of the dwelling will be of high quality that will ensure long-term maintenance of the viability of the subject structure.
- c) The colour palette to be used for the new components of the dwelling will be in keeping with the original colours of the dwelling;
- d) The proposed alterations and additions are deemed necessary to ensure the continued functionality, practicality and adaptability of the subject building to the changing usage needs and patterns of the current, more modern population. Subsequently, this ensures that the upkeep of the structure is maintained thereby preserving its life and ultimately its sustained contribution to the character of the conservation area.

Controls

Clause 5.10(1) of Randwick Local Environmental Plan 2012 includes an Objective of conserving the heritage significance of heritage items and heritage conservation areas, including associated fabric, setting and views.

Clause 5.10(4) of Randwick Local Environmental Plan 2012 requires Council to consider the effect of the proposed development on the heritage significance of the heritage item or heritage conservation area.

The Heritage section of Randwick Development Control Plan 2013 provided Objectives and Controls in relation to heritage properties. In relation to Design and Character, clause 2.2 of the DCP includes an Objective that street elevations and visible side elevations must not be significantly changed. Additions must be located to the rear or to one side of the building to minimise impact in the streetscape. In relation to Scale and Form, clause 2.3 of the DCP includes a Control where rear additions are proposed to attached dwellings (e.g.- terrace houses) the additions must not compromise the integrity of the front elevation or the forms of relatively intact rear wings.

Comments

It appears from physical and documentary evidence that the original form of the terrace consisted of the main pitched roof, together with a two storey rear wing with a skillion roof falling to the side, and a possibly a single storey wing extending further to the rear. A range of alterations and additions to the rear of individual dwellings in the group have been carried out including extending the ground and first floor level wings towards the rear and to the side (so that the rear wing extends from boundary to boundary), as well as boxy rear attic level additions.

Ground floor changes

Proposed external changes include enlarging the original rear wing by widening it into a lightwell area, with a new glass roof over supported by a new brick wall on the boundary to no.17, to increase the size of the kitchen. Proposed internal changes include removal of a wall between the dining and kitchen areas. The rear wing has already been considerably modified and comprises secondary building fabric. The dwelling and a number of other dwellings in the group have rear additions which extend across the site from boundary to boundary. The beam which is required to support the walls above will provide evidence of the original layout of the dwelling. The proposed internal and external changes, are not inconsistent with changes to the rear wings of other dwellings in the group and will not be visible from Oswald or Courland Streets. A consent condition should be included requiring archival recording of the areas of the dwelling affected by the proposed changes.

The Schedule of External Finishes which has been provided indicates that external finishes are to remain as per existing, with no change to external colours and materials.

Recommendation

The following conditions should be included in any consent:

- A digital photographic archival recording of the property internally and externally shall be prepared and submitted to and approved by Council prior to a construction certificate being issued for the development. This recording shall be in accordance with the NSW Heritage Office 2006 Guidelines for Photographic Recording of Heritage Items using Digital Capture. One digital copies (DVD or USB) of the archival recording is to be submitted to Council for deposit in the Local History Collection of Randwick City Library and Council's own records incorporating the following:
 - A PDF copy of the archival record incorporating a detailed historical development of the site, purpose of the archival recording, copyright permission for Council to use the photographs for research purposes, photographic catalogue sheet cross-referenced to the base floor and site plans showing the locations of archival photographs taken, and index print of the photographs;
 - Digital copies of the archival photographs in JPEG and TIFF formats.

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

Clause 4.6 Variation

19 Oswald Street Randwick

Introduction

Clause 4.4 of Randwick Local Environmental Plan (LLEP) 2012 refers to the maximum floor space ratio (FSR) requirements and states 'the maximum floor space ratio for a building of any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map

The plans submitted for the Development application for 19 Oswald Street, Randwick specify that the existing GFR is currently 121.37 m² making this variation of 33.42 m² or 36%, to bring the new FSR to approximately 1.02:1 sqm, as seen in the below table. The existing development had already exceeded the maximum FSR of the site. The majority of adjoining terrace house in the street currently exceed the maximum FSR, as well as other surrounding properties within the area.

Existing GFA	121.37m²
<i>Existing ground floor</i>	<i>55.57m²</i>
<i>Existing first floor</i>	<i>50.86m²</i>
<i>Existing attic</i>	<i>7.32m²</i>
<i>Existing outbuilding</i>	<i>7.62m²</i>
Proposed additional GFA	4.6m²
Total proposed GFA	125.97m²
Total proposed FSR	1.02:1
Variation	33.42m² (36%)

Figure 1 Current Floor Space ratio and proposed ratios

The development proposal is of a reasonable scale providing quality housing to meet the demand for increased demand for spacious housing within the Randwick area. The development will stay comparable to other properties within the street and not negatively impact on the privacy, natural light or views of other properties while improving amenity for the site, 19 Oswald Street Randwick.

Clause 4.6

Clause 4.6(3) states the following.

Clause 4.6(3) specifies that:

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.

Clause 4.6(4) specifies that:

Development consent must not be granted for development that contravenes a development standard unless:

- (a) the consent authority is satisfied that:
- (b) the concurrence of the Secretary has been obtained.

These matters are considered below.

- (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

3. Justification of proposed variance

Samadi v Council of the City of Sydney [2014] NSWLEC 1199 provides jurisdictional guidance on the assessment of variations under Clause 4.6.

Paragraph 27 of the judgement states:

'Clause 4.6 of LEP 2013 requires four preconditions on the Court in exercising the power to grant consent to the proposed development. The first precondition (and not necessarily in the order in cl 4.6) requires the Court to be satisfied that the proposed development will be consistent with the objectives of the zone (cl 4.6(4)(a)(ii)). The second precondition requires the Court to be satisfied that the proposed development will be consistent with the objectives of the standard in question (cl 4.6(4)(a)(ii)). The third precondition requires the Court to consider a written request that demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(a) and cl 4.6(4)(a)(i)). The fourth precondition requires the Court to consider a written request that demonstrates that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court finding that the matters required to be demonstrated have been adequately addressed (cl 4.6(3)(b) and cl 4.6(4)(a)(i)).'

4. Precondition 1 – Consistency with zone objectives

The land is located in the R3 – Medium Density Residential zone under the Randwick Local Environmental Plan 2012.

The objectives of the zone are:

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

The development is consistent with the zone objectives. The development proposes to increase the amenity of the property to meet the day to day needs of the residents. The application respects the existing streetscape and heritage significance with no change to the existing heritage significant elements of the property including the front balconies, shared chimney, and current streetscape from Oswald Street.

The proposed variation in floor space ratio does not present the development incompatible with the zone objectives, in accordance with the approach of the former Chief Judge, Justice Pearlman in *Schaffer Corporation v Hawkesbury City Council* (1992) 77 LGRA 21, in Paragraph [27]:

‘The guiding principle, then, is that a development will be generally consistent with the objectives, if it is not antipathetic to them. It is not necessary to show that the development promotes or is ancillary to those objectives, nor even that it is compatible.’

5. Precondition 2 – Consistency with the objectives of the standard

The objectives of the floor space ratio controls as specified in Clause 4.4 are:

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

The variation is supporting all of the above variations as follows;

Objective (a) –The development will not have any adverse impacts on the adjoining property at 17 Oswald Street Randwick. There will be no loss of privacy, natural light or changes to the façade of the building. It should also be noted that the neighbours at 17 Oswald Street have written a letter supporting the proposed development and have also had a similar development approved.

As seen in the image below, the row of attached terrace houses, numbers 1-19 Oswald street Randwick share similar heritage features including ornate balustrades, shared chimneys and awnings. The front façade of the proposed development will not change.



Objectives (b) and (c) – The proposal is considered consistent within its environment for the following:

- The development is consistent with the height, scale and character of development in the area. The bulk and scale of the development is fitting with the area and does not visually overshadow neighbouring properties.
- The proposed variation of 36% from the maximum FSR is reasonable in comparison to nearby sites. The below are examples obtained from the Planning Register (2008-2021) available on Randwick Councils website. These properties are located within the same locality and have exceeded their maximum FSR, as stipulated by Clause 4.4 of the RLEP 2012. This highlights that the area is characterised by similar densities to that of the proposal. The nearest development approval to the proposed development at 19 Oswald Street is located 15 Oswald Street - approval of alterations and additions under DA/267/2016. This adjoining property proposed works of a similar scale to that proposed within this Development Application. DA/267/2016 at number 15 sees a 33.57% exceedance of the FSR with the proposed attic extension approved 4078mm from the ridge line including a 1200mm balcony and was approved with consideration to Heritage significance. The proposed development at the subject site at 19 Oswald Street, proposes a development of a similar scale which aligns with the precedent established by the development so recently approved by Randwick Council in 2016 at number 15 Oswald Street.

Address	FSR Variation
59 Carrington Road Randwick	48%
15 Oswald Street Randwick	33.57%
132- 143 Alison Road Randwick	67.8%

The alterations are not visible from the street and will not change the façade of the building or the streetscape. In addition, the alterations will not be visible from the back of the dwelling.

6. Precondition 3 – To consider a written request that demonstrates that compliance with the development standards is unreasonable or unnecessary in the circumstance of the case.

Wehbe vs Pittwater Council [2007] NSWLEC 827 establishes the five-part test for determining whether strict compliance with the development standard is deemed unnecessary or unreasonable. These five ways have recently been re-emphasised in the *Four2Give Pty Ltd v*

Ashfield Council [2015] NSELEC 1009 cases, by Commissioner Morris in Mecone Pty Limited v Waverley Council [2015] NSWLEC 1312 and by Commissioner Tuor in Moskovich v Waverley Council [2016] NSWLEC 1015.

In the decision of *Wehbe vs Pittwater Council*, it was established that the five ways of establishing that compliance with a development standard might be unreasonable and unnecessary continue to apply as follows;

1. That the objectives of the development standard are achieved notwithstanding non-compliance with the standard;
Response: The proposed development meets the objects as stated in section 5 above;
2. That the underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
Response: The underlying objective or purpose is relevant, therefore this clause is not applicable;
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that compliance is unreasonable;
Response: Not applicable. Compliance would not defeat or thwart the standard development but would satisfy the objectives of zoning as stated in section 4
4. The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable;
Response: The FSR are not applicable to this proposal
5. The zoning of particular land was unreasonable or inappropriate so that a development standard appropriate for that zoning was also unreasonable or unnecessary as it applied to that land and that compliance with the standard in that case would also be unreasonable or unnecessary.'
Response: The zoning of this land is not unreasonable or inappropriate

These 5 ways are not a fully comprehensive way that demonstrates that compliance is unreasonable or unnecessary. It may not be necessary to demonstrate all of the five ways that compliance is unnecessary or unreasonable.

The proposed development does not require strict compliance as it is unreasonable and unnecessary. The application proposes quality housing to meet the modern needs of the resident and is meets the objectives of the development standards

8. Precondition 4 – Consider a written request to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard and with the Court [or consent authority] finding that the matters required to be demonstrated have been adequately addressed

The development application has been developed to complement the existing building with no changes to scale or character. It is proposed that the development will not interfere with any adjoining properties by way of shadowing, loss of privacy or bulk of the building. The current streetscape will remain as is with no changes proposed.

This document is a written request to demonstrate that it is justified to deviate from the development standard. It has been outlined that compliance with the development standard is unreasonable or unnecessary in this development and that the proposed development would be in the public interest as it is consistent with the objectives of the particular standard.

9. Conclusion

The proposal for a variation to the floor space ratio addresses the Clause 4.6 criteria and demonstrates that

- The development is consistent with the zone objectives – R3 Medium Density Residential zone;
- Consistent with the objectives of the FSR standard;
- There are sufficient environmental planning grounds to justify non-compliance
- That compliance to the FSR is unnecessary or unreasonable

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Appendix 3: DCP Compliance Table

3.1 Section B2 – Heritage

The relevance of the provisions under Section B2 of the DCP has been considered by Council's Heritage Planner and the comments have been provided in Appendix 1 of this report.

3.2 Section C2: Medium Density Residential

DCP Clause	Control	Proposal	Compliance
2.	Site Planning		
2.2	Landscaped open space and deep soil area		
2.2.1	Landscaped open space		
	A minimum of 50% of the site area (74.2m ²) is to be landscaped open space.	<p>Site = 123.4m² Existing (approx.) = 29m² = 23.5% Proposed (approx.) = 26m² = 21%</p> <p>The proposed landscaped open space provision is consistent with that of neighbouring attached dwellings in the terrace row. These sites have small allotment areas, which constrain the provision of landscaped open space while providing for the housing needs of the community.</p> <p>The reduction of landscaped open space stems from the infill of the existing courtyard/lightwell, which is paved. This courtyard/lightwell is of a restricted size that does not enable its use for recreational activities or substantially contribute to a landscaped character. This proposal does not reduce permeable surface cover. For these reasons, the proposed landscaped open space is acceptable.</p>	Acceptable on merit
3.	Building Envelope		
3.1	Floor space ratio		

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DCP Clause	Control	Proposal	Compliance
	Maximum floor space ratio development standard: 0.75:1	Proposed = 1.02:1	No, refer to Detailed Assessment.
3.2	Building height		
	Maximum building height development standard: 9.5m	Proposed addition = 3.58m	Yes
3.4	Setbacks		
3.4.2	Side setback		
	<p>Attached Dwellings</p> <p>(i) Attached dwellings should comply with the minimum side setback requirements for dwelling houses and dual occupancies (attached and detached) (see Section C1 Low Density Residential: 3.3.2 Side Setbacks).</p> <p>Notwithstanding the above, side setbacks do not need to comply where they attach to another dwelling within the same development.</p>	The existing attached dwelling is constructed to each side boundary. The proposed infill addition is consistent with the existing nil setback on the eastern side. The nil side setbacks are characteristic of the terraces in this row.	Yes
4.	Building Design		
4.4	External wall height and ceiling height		
	(ii) Where the site is subject to a 9.5m building height limit under the LEP, a maximum external wall height of 8m applies.	Proposed addition = 2.98m	Yes
	(iii) The minimum ceiling height is to be 2.7m for all habitable rooms.	The new addition maintains the existing floor to ceiling height of the existing kitchen; albeit with a new beam and bulkhead to engineers' specification.	Satisfactory
4.9	Colours, materials and finishes		
	<p>(i) Provide a schedule detailing the materials and finishes in the development application documentation and plans.</p> <p>(ii) The selection of colour and material palette must complement the character and style of the building.</p> <p>(iv) Use the following measures to complement façade articulation:</p> <ul style="list-style-type: none"> - Changes of colours and surface texture - Inclusion of light weight materials to contrast with solid masonry surfaces - The use of natural stones is 	Conditioned.	Conditioned.

DCP Clause	Control	Proposal	Compliance
	<p>encouraged.</p> <p>(v) Avoid the following materials or treatment:</p> <ul style="list-style-type: none"> - Reflective wall cladding, panels and tiles and roof sheeting - High reflective or mirror glass - Large expanses of glass or curtain wall that is not protected by sun shade devices - Large expanses of rendered masonry - Light colours or finishes where they may cause adverse glare or reflectivity impacts <p>(vi) Use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration.</p> <p>(vii) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used.</p>		
4.10	Alterations and additions to attached dwellings		
	<p>(i) Additional storeys to the main building or street frontage are generally not supported where:</p> <p>(a) A building is part of an intact group or streetscape;</p> <p>(b) The existing building is comparable to a consistent or predominant building height in the streetscape;</p> <p>(c) The predominant height of development in the vicinity of the site is single storey;</p> <p>(ii) Additional storeys should respect the parapet or ridge line of immediately adjoining buildings</p> <p>(iii) Rear additions to terraces must not alter the parapet, ridgeline, chimneys and profile of party walls projecting above the roof of the terrace, as perceived from the front streetscape.</p> <p>(iv) Where the rear of a group of attached dwellings (terraces) displays a consistent form that is visible from a public space, alterations and additions are to be restricted to the ground floor.</p> <p>(v) Lean-to additions are the most traditional form of rear extension, and are suitable for most buildings. Generally, lean-to additions are to have a skillion roof with a low pitch that pitches away from the building</p>	<p>The addition is a ground floor infill of the existing courtyard/lightwell that is centrally located on the site, adjacent to the eastern side boundary. There is no impact on the streetscape presentation and no adverse bulk impact.</p>	Yes

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DCP Clause	Control	Proposal	Compliance
	<p>or a flat roof may be acceptable at rear (as shown in the figure above).</p> <p>(vi) A detached pavilion can be located at the rear boundary, limited to single storey where the allotment is long enough to provide adequate private open space and where the new structure will not adversely affect the amenity of neighbours. This may be extended to two storeys, on rear laneways.</p>		
5. Amenity			
5.1	Solar access and overshadowing		
	Solar access for proposed development		
	<p>(i) Dwellings must receive a minimum of 3 hours sunlight in living areas and to at least 50% of the private open space between 8am and 4pm on 21 June.</p>	<p>The proposal does not impact solar access to the private open space.</p> <p>The kitchen addition is provided with a glass roof to maximise solar access. This solar access can be considered an improvement upon the existing lightwell arrangement for the kitchen.</p>	Yes
	Solar access for surrounding development		
	<p>(i) Living areas of neighbouring dwellings must receive a minimum of 3 hours access to direct sunlight to a part of a window between 8am and 4pm on 21 June.</p> <p>(ii) At least 50% of the landscaped areas of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight to a part of a window between 8am and 4pm on 21 June.</p> <p>(iii) Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further.</p>	<p>The proposed single storey addition adjoins the approved courtyard/lightwell of infill of 17 Oswald Street, which presents a blank party wall on the common boundary.</p> <p>Hence, there is no adverse shadow impact on neighbouring properties.</p>	Yes
5.2	Natural ventilation and energy efficiency		
	<p>(i) Provide daylight to internalized areas within each dwelling (for example hallways and stairwells) and any poorly lit habitable rooms (that is living rooms, dining rooms, rumpus rooms, kitchens and bedrooms) via measures such as ventilated skylights, clerestory windows,</p>	<p>The open plan kitchen, dining and living room has access to sunlight and natural ventilation through the rear full width bifold doors. The glass roof also provide natural sunlight. It is conditioned</p>	Yes

DCP Clause	Control	Proposal	Compliance
	<p>fanlights above doorways and highlight windows in internal partition walls.</p> <p>(ii) Sun shading devices appropriate to the orientation should be provided for the windows and glazed doors of the building.</p> <p>(iii) All habitable rooms must incorporate windows opening to outdoor areas. The sole reliance on skylight or clerestory windows for natural lighting and ventilation is not acceptable.</p>	to be fixed, because it is located adjacent to the common boundary and it will be subject to fire rating requirements of the Building Code of Australia.	
5.3	Visual privacy		
	<p>(i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings.</p> <p>(ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to any habitable room windows on the side elevations of the adjoining residences.</p> <p>(iii) Orient buildings on narrow sites to the front and rear of the lot, utilising the street width and rear garden depth to increase the separation distance.</p> <p>(iv) Locate and design areas of private open space to ensure a high level of user privacy. Landscaping, screen planting, fences, shading devices and screens are used to prevent overlooking and improve privacy.</p> <p>(v) Incorporate materials and design of privacy screens including:</p> <ul style="list-style-type: none"> - Translucent glazing - Fixed timber or metal slats - Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings - Screen planting and planter boxes as a supplementary device for reinforcing privacy protection 	No windows are proposed, and the glass roof does not result in any visual privacy impact.	Yes
5.4	Acoustic privacy		
	<p>(i) Design the building and layout to minimise transmission of noise between buildings and dwellings.</p> <p>(ii) Separate "quiet areas" such as bedrooms from common recreation areas, parking areas, vehicle access ways and other noise generating activities.</p>	No noise sources are proposed adjacent to bedroom windows.	Yes

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DCP Clause	Control	Proposal	Compliance
	(iii) Utilise appropriate measures to maximise acoustic privacy such as: <ul style="list-style-type: none">- Double glazing- Operable screened balconies- Walls to courtyards- Sealing of entry doors		

Responsible officer: Eunice Huang, Environmental Planning Officer

File Reference: DA/413/2022

Development Consent Conditions (Medium Density Residential)



D8/23

Folder /DA No:	DA/413/2022
Property:	19 Oswald Street, RANDWICK NSW 2031
Proposal:	Alterations and additions to the existing dwelling including extension to enclose lightwell, removal of internal walls, door and pavers, increase height of existing boundary wall and installation of glass roof with operable window (Heritage Item).
Recommendation:	Approval

GENERAL CONDITIONS

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

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

Approved Plans & Supporting Documentation

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

Plan	Drawn by	Dated
Existing Site Plan Revision AR1/DA2	Sam Osakwe	22/05/2022
Existing Floor Plan & Elevations Revision AR2/DA2		
Demolition Plan & Elevations Revision AR3/DA2		
Proposed Floor Plan & East Elevation Revision AR3/DA2		

BASIX Certificate No.	Dated
A461636	2 June 2022

Amendment of Plans & Documentation

- The approved plans and documents must be amended in accordance with the following requirements:
 - The proposed glass roof over the kitchen must be fixed and must not be openable.

Heritage

3. A digital photographic archival recording of the property internally and externally shall be prepared and submitted to and approved by Council prior to a construction certificate being issued for the development. This recording shall be in accordance with the NSW Heritage Office 2006 Guidelines for Photographic Recording of Heritage Items using Digital Capture. One digital copies (DVD or USB) of the archival recording is to be submitted to Council for deposit in the Local History Collection of Randwick City Library and Council's own records incorporating the following:
 - A PDF copy of the archival record incorporating a detailed historical development of the site, purpose of the archival recording, copyright permission for Council to use the photographs for research purposes, photographic catalogue sheet cross-referenced to the base floor and site plans showing the locations of archival photographs taken, and index print of the photographs;
 - Digital copies of the archival photographs in JPEG and TIFF formats.

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

4. 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

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

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*.

Sydney Water Requirements

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

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

The [Tap in™](#) service provides 24/7 access to a range of services, including:

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

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

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

REQUIREMENTS TO BE INCLUDED IN THE CONSTRUCTION CERTIFICATE

The requirements contained in the following conditions of consent must be complied with and details of compliance must be included in the 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

8. 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

9. 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.

Stormwater Drainage

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

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

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF 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 and Associated Requirements

11. 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

12. 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 Reports

13. A dilapidation report (incorporating photographs of relevant buildings and structures) must be obtained from a Professional Engineer, detailing the current condition and status of all 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).

Noise & Vibration Management Plan

14. 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.

Construction Site Management Plan

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

- location and construction of protective 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.

Sediment Control Plan

16. 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.

Demolition Work & Hazardous Materials

17. 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.*

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

18. 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".

Building & Demolition Work Requirements

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

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as detailed below)	<ul style="list-style-type: none"> • Monday to Friday - 7.00am to 5.00pm • Saturday - 8.00am to 5.00pm • Sunday & public holidays - No work permitted
Excavating or sawing of rock, use of jack-hammers, driven-type piling or shoring work 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 • Saturday - No work permitted • Sunday & public holidays - No work permitted
Additional requirements for all development (except for single residential dwellings)	<ul style="list-style-type: none"> • Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted

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

Noise & Vibration

20. Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies, in accordance with the *Construction Noise & Vibration Management Plan*, prepared for the development and as specified in the conditions of consent.

Site Management

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

- D8/23**
- 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) 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.
 - g) Public safety must be maintained at all times and public access to any demolition and building works, materials and equipment on the site is to be restricted. If necessary, a temporary safety fence or hoarding is to be provided to the site to protect the public. Temporary site fences are to 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.

Site access gates and doors must open into the construction site/premises and must not open out into the road or footway at any time.

If it is proposed to locate any site fencing, hoardings, skip bins or other articles upon any part of the footpath, nature strip or any public place, or articles or, operate a crane, hoist or concrete pump on or over Council land, a Local Approval application must be submitted to and approved by Council beforehand.

- 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.

Dust Control

22. Dust control measures must be provided to the site prior to the works commencing and the measures and practices must be maintained throughout the demolition, excavation and construction process, to the satisfaction of Council.

Dust control measures and practices may include:

- *Provision of geotextile fabric to all perimeter site fencing (attached on the prevailing wind side of the site fencing).*
- *Covering of stockpiles of sand, soil and excavated material with adequately secured tarpaulins or plastic sheeting.*
- *Installation of water sprinkling system or provision hoses or the like.*
- *Regular watering-down of all loose materials and stockpiles of sand, soil and excavated material.*
- *Minimisation/relocation of stockpiles of materials, to minimise potential for disturbance by prevailing winds.*
- *Landscaping and revegetation of disturbed areas.*

Removal of Asbestos Materials

23. 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 & Support of Adjoining Land

24. In accordance with section 4.17 (11) of the *Environmental Planning and Assessment Act 1979* and section 74 of the *Environmental Planning and Assessment Regulation 2021*, it is a prescribed condition that the adjoining land and buildings located upon the adjoining land must be adequately supported at all times.

Building Encroachments

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

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

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

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning 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

26. 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

27. In accordance with the *Environmental Planning and Assessment (Development, Certification & 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.

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.

Use of Premises

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

External Lighting

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

Plant & Equipment

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

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

Development Application Report No. D9/23

Subject: 29 Nix Avenue, Malabar (DA/618/2022)



Executive Summary

Proposal:	Torrens title subdivision of an attached dual occupancy into two lots
Ward:	South Ward
Applicant:	Mr A Hamilton
Owner:	Ms A Hamilton
Cost of works:	Nil
Reason for referral:	Variation to the minimum subdivision lot size development standard by more than 10%.

Recommendation

- A. That the RLPP is satisfied that the matters detailed in Clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the subdivision lot size development standard in Clause 4.1 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning and Environment may be assumed.
- B. That the RLPP grant consent under Section 4.16 of the *Environmental Planning and Assessment Act 1979*, as amended, to Development Application No. DA/618/2022 for Torrens title subdivision of an attached dual occupancy into two lots (variation to min. lot size standard RLEP 2012) at No. 29 Nix Avenue, Malabar, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (general) - DA/618/2022 - 29 Nix Avenue, MALABAR
 NSW 2036 - DEV - Mr A Hamilton

D9/23



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 Torrens title subdivision of an attached dual occupancy into two lots.

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 Torrens Title 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 34 Sec 11 DP 31637, 29 Nix Avenue, Malabar NSW 2036. The site is located on the eastern side of Nix Street, between Adams Avenue to the north and Bilga Crescent to the south.

The subject land is zoned R2 Low Density Residential. The site has an area of 710.8m² and a frontage width of 15.24m.

Existing on the site is an under construction 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 north at 27 Nix Avenue is a single storey detached dwelling house, to the south at 31 Nix Avenue is a single storey detached dwelling house, and to the east at the rear of the site at 26 Adams Avenue is a single 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: South-east oblique view of the subject allotment and surrounding area (April 2022) - 20 Hume Street, Chifley (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/291/2020

Development Application No. DA/291/2020 for demolition of existing structures and construction of a two storey attached dual occupancy, rear inground swimming pools, landscaping and associated works (Variation to FSR control) at the subject site was approved by Council under delegation on 15 April 2021.

DA/291/2020/A

Modification Application No. DA/291/2020/A for Section 4.55 (2) - Modification to approved development for partial reinstate voids with a height reduction & modification to privacy screens to streetscape at the subject site was approved by Council under delegation on 01 July 2021.

CC/325/2021

Construction Certificate No. CC/325/2021 relating to Development Application No. DA/291/2020 was approved by the Principal Certifier Yousuf (Joe) Awada (BDC 2250) of Exclusive Certifiers Pty Ltd on 18 August 2021 (Certifier Reference No. 2221).

To date, no Occupation Certificate has been received by Council relating to this subject Construction Certificate.

4. Proposal

The proposal seeks development consent for the Torrens title subdivision of an attached dual occupancy into two lots. The proposed lots shall comprise the following:

	<u>Lot Size</u>	<u>Front Boundary (Western)</u>	<u>Rear Boundary (Eastern)</u>	<u>Side Boundary (North)</u>	<u>Side Boundary (South)</u>
Lot 1 (29)	351.9m ²	7.62m	7.675m	45.725m	46.64m
Lot 2 (29A)	358.9m ²	7.62m	7.675m	Common Boundary	47.55m

5. Notification

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

6. Relevant Environment Planning Instruments

6.1. Randwick Local Environmental Plan 2012 (LEP)

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

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 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 22 May 2020. 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 noted 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 1 (29) = 351.9m ²	No
		Lot 2 (29A) = 358.9m ²	No

6.1.1. Clause 4.6 - Exceptions to development standards

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

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
CI 4.1: Lot Size (min)	400m ²	Lot 1 (29) = 351.9m ²	48.1m ²	12.025%
		Lot 2 (29A) = 358.9m ²	41.1m ²	10.275%

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 arguing that the subdivision would not cause any additional adverse impacts from what has been approved by way of consent 291/2020/A.

The Applicant further justifies the proposal arguing that the Council has endorsed the Randwick Comprehensive Planning Proposal and the amendments permitting a minimum lot size subdivision being 275m².

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 Randwick LEP currently allows dual occupancies to be constructed on lots of 450m², but subdivision is only permitted on 800m². These controls should operate in conjunction with one another but are currently contrary to one another.
- The proposal is acceptable with regard to the Randwick Comprehensive Planning Proposal that was on Public Exhibition during 2022 and endorsed at Council's extraordinary meeting on the 6 September 2022.

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 351.9m² and 358.9m² 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 22 May 2020. As such, it is noted that Clause 4.1D of the RLEP 2012 is not satisfied and therefore not relevant to this application.

In addition, it is noted that the intention of dual occupancy developments is to provide housing diversity and affordability within the R2 zone. Dual occupancy developments allow additional housing choice, being smaller and more affordable occupancies than single dwellings or semi-detached dwellings. This is supported by the development standards and planning controls applicable to dual occupancy development which sets a maximum FSR of 0.5:1 and prevent subdivision of dual occupancies with a site area of less than 800m² (requiring each new lot to be a minimum of 400m²). Dual occupancy development also provides an important form of housing, being a form of rental accommodation (noting that the site requirements for a dual occupancy development is 450m², whereas the subdivision of dual occupancies and creation of semi-detached dwellings requires a minimum site area of 800m²).

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

Section 4.15 'Matters for Consideration'	Comments
	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 to Torrens Title Subdivision of an attached dual occupancy into two lots (variation to min. lot size standard RLEP 2012) at 29 Nix Avenue, Malabar 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 Torrens Title Subdivision, into 2 Lots, of the approved Dual Occupancy at the above site.

This report is based on the following plans and documentation:

- *Draft Subdivision Plans by surveyor G Najjar;*
- *Statement of Environmental Effects dated November 2022*

General Comments

The above site was subject to a DA Approved Dual Occupancy - DA/291/2020 & DA/291/2020/A.

A Construction Certificate was issued for the Dual Occupancy CC/325/2021.

The subject development is nearing completion and is not in an OSD catchment area."

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



**CLAUSE 4.6
VARIATION
REQUEST
29 NIX AVENUE,
MALABAR**

Subdivision of existing attached dual occupancy

NOVEMBER 2022

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Executive summary

This Clause 4.6 Exception to Development Standards Request has been prepared to accompany a development application (DA) for the subdivision of an approved attached dual occupancy at t 29 Nix Avenue, Malabar (site area of 710.80m²) legally known as Lot 34 Sec 11 DP 31637 (the site).

Randwick City Council approved the two-storey attached dual occupancy at the site on 15 April 2021 by way of development consent no. 291/2020/A subject to several conditions. The attached dual occupancy is due for completion in December 2022.

Council has proposed changes to the proposed minimum lot size for the subdivision of a dual occupancy under the draft comprehensive Randwick Local Environmental (LEP) Planning Proposal endorsed at Council's extraordinary meeting on the 6 September 2022. This Clause 4.6 request considers these changes.

As reported in the Statement of Environmental Effects (SEE), the DA seeks to vary the existing minimum lot size controls as set out in existing clause 4.1 of the Randwick LEP 2012 relevant to the site.

Under Clause 4.1 of the Randwick LEP, the minimum subdivision lot size for an attached dual occupancy in the R2 zone is 400m² (that is, a minimum 800m² parent lot is required). Under the draft comprehensive Randwick LEP Planning Proposal the minimum subdivision lot size is 275m² (that is a minimum 550m² parent lot is required). The DA seeks to subdivide the site at 710.8m² to create 2 Torrens Title lots:

- Proposed Lot 1 at 351.9m² with a frontage of 7.62m
- Proposed Lot 2 at 358.9m² with a frontage of 7.62m.

The proposal complies with the proposed new subdivision planning controls but does not comply with the existing. Therefore, this clause 4.6 Variation Request seeks to justify the noncompliance to the existing subdivision controls.

Clause 4.6 of Randwick LEP requires that a consent authority be satisfied of three matters before granting consent to a development that contravenes a development standard that the:

- Applicant has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case
- Applicant has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard
- 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 development is proposed to be carried out.

This request has considered the relevant matters prescribed under clause 4.6 of Randwick LEP and the principles set out in decisions in the Land and Environment Court in relation to demonstrating that compliance with the development standard is unreasonable and unnecessary in the circumstances.

This request justifies the contravention of the Clause 4.1 and demonstrates that there are sufficient planning grounds as the:

- Objectives of development standard Clause 4.1 and the R2 Low Density Residential Zone are achieved
- Size of the lot is suitable to accommodate the development with the attached dual occupancy already being approved
- Subdivision will not affect the amenity of neighbouring properties, any special features of the area or result in any adverse impacts.

There are no environmental planning grounds that warrant strict compliance with the numerical lot size development standards in this instance. Rather, there are clear and justifiable environmental planning merits that validate the flexible application of the controls allowed by Clause 4.6 of the Randwick LEP.

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1 Introduction

This Clause 4.6 Exception to Development Standards Request has been prepared to justify the contravention of Clause 4.1 of Randwick Local Environmental Plan (LEP) 2012 and changes to this clause under the comprehensive Randwick Local Environmental Planning Proposal which sets out the minimum subdivision requirements under Torrens Title.

This request is submitted to the Randwick City Council (Council) in support of a Development Application (DA) for the subdivision of an approved dual occupancy at 29 Nix Avenue, Malabar (site area of 710.80m²) legally known as Lot 34 Sec 11 DP 31637 (the site).

The site has a total area of 710.8m² and width of 15.24m at the street frontage. An aerial view of the Site is shown at Figure 1.

Council approved the two-storey attached dual occupancy at the site on 15 April 2021 by way of development consent no. 291/2020 subject to several conditions. The consent enabled the demolition of existing structures and construction of a two storey attached dual occupancy, rear inground swimming pools, landscaping and associated works. The dual occupancy is under construction and nearing completion.

The minimum subdivision lot size for the site under the existing planning controls in clause 4.1 of the Randwick LEP is 400m² (that is, a minimum 800m² parent lot is required) and under the proposed comprehensive Randwick Planning Proposal is 275m² (that is a minimum 550m² parent lot is required).

The DA seeks approval to subdivide the site to create 2 Torrens Title lots:

- Proposed Lot 1 at 351.9m² with a frontage of 7.62m
- Proposed Lot 2 at 358.9m² with a frontage of 7.62m.

This request should be read in conjunction with the Statement of Environmental Effects (SEE) and other supporting documentation submitted with the DA.

Figure 1 Aerial view of the site



Source: NearMap 29/10/2022

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2 Development standards

2.1 Clause 4.1 Minimum subdivision lot size

The development standard to which this Clause 4.6 request relates is Clause 4.1 Minimum Subdivision Lot Size (set out below) in the Randwick LEP.

Pursuant to Clause 4.1 the minimum subdivision lot size for the site is 400m² as shown in Figure 2.

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.*

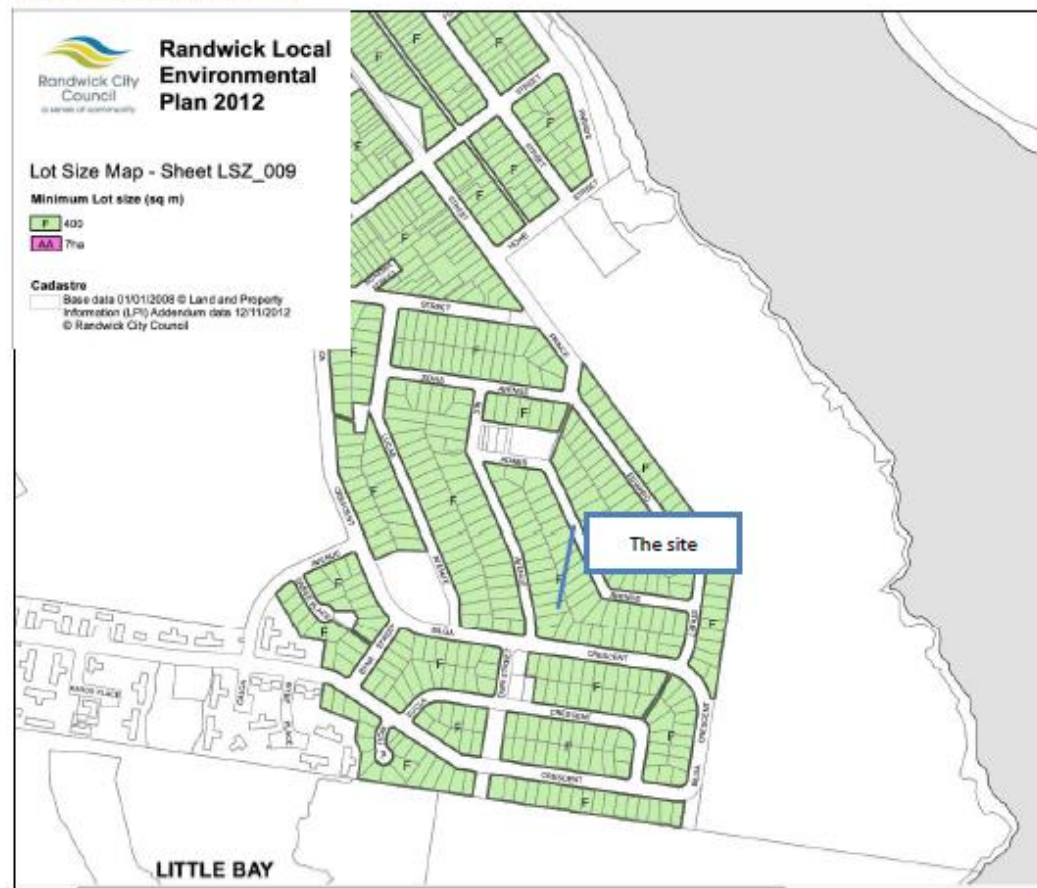
(2) This clause applies to a subdivision of any land shown on the [Lot Size Map](#) that requires development consent and that is carried out after the commencement of this Plan.

(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.

(4) This clause does not apply in relation to the subdivision of any land—

- (a) by the registration of a strata plan or strata plan of subdivision under the [Strata Schemes Development Act 2015](#), or*
- (b) by any kind of subdivision under the [Community Land Development Act 1989](#).*

Figure 2 Excerpt Lot Size map



Source: RLEP 2012 Current version 15 Feb 2013 to date (accessed 23/11/2022)

2.2 Proposed subdivision lot size controls

Pursuant to comprehensive Randwick LEP Planning Proposal the proposed minimum subdivision lot size for dual occupancy (attached) is 550m² set out below in Table 1.

The planning proposal was publicly exhibited 31 May to 12 July 2022 and subsequently endorsed at Council's extraordinary meeting on the 6 September 2022. The draft Planning Proposal has been forwarded to the Department of Planning and Environment for formal approval and gazettal expected take place soon.

The proposal complies with the minimum subdivision lot size for attached dual occupancies.

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Table 1 Existing and proposed controls - attached dual occupancies R2 Low Density Residential zone

CONTROL	EXISTING	PROPOSED
Minimum development lot size to construct a dual occupancy (attached)	450m ²	550m ²
Minimum lot size to subdivide a dual occupancy (attached)	800m ² (create two 400m ² lots)	550m ² (create two 275m ² lots)
Floor space ratio	0.5:1 FSR	550-600sqm: 0.65:1 FSR 600sqm and greater: 0.6:1 FSR

Proposed controls

Construction

Proposed lot size and frontage requirements for an attached dual occupancy without subdivision in the R2 Low Density Residential zone

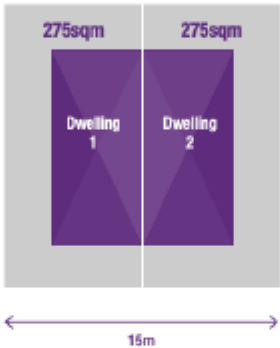


Proposed Lot Size and Frontage Requirements

Subdivision

Proposed Torrens title and Strata Title subdivision lot size and frontage requirements for an attached dual occupancy in the R2 Low Density Residential zone.

- Note:
- Proposed changes are not applicable for land within Heritage Conservation Area.
 - Subdivision frontages are to be reviewed as a part of the DCP review



Source: Randwick Comprehensive Planning Proposal – Information Sheet Dual occupancies and minimum lot sizes

3 Clause 4.6 Framework

Clause 4.6 of Randwick LEP provides for a variation to a development standard under certain circumstances.

The objectives of clause 4.6 are:

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

Clause 4.6 provides flexibility in the application of planning provisions by allowing the consent authority to approve a development application that does not comply with certain development standards, where it can be shown that flexibility in the particular circumstances of the case would achieve better outcomes for and from the development.

In determining whether to grant consent for development that contravenes a development standard, clause 4.6 requires that the consent authority consider a written request from the applicant, which demonstrates that:

- a) *compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
- b) *there are sufficient environmental planning grounds to justify contravening the development standard.*

As per subclause (4) the consent authority must be satisfied that the matters above have been satisfied, and 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, and the concurrence of the Secretary has been obtained.

In deciding whether to grant concurrence, subclause (5) requires that the Secretary consider:

- a) *whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and*
- b) *the public benefit of maintaining the development standard, and*
- c) *any other matters required to be taken into consideration by the Secretary before granting concurrence.*

Clause 4.6 is set out below.

4.6 Exceptions to development standards*(1) The objectives of this clause are as follows—*

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,*
- (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.*
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.*
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—*
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.*
- (4) Development consent must not be granted for development that contravenes a development standard unless—*
 - (a) the consent authority is satisfied that—*
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
 - (b) the concurrence of the Secretary has been obtained.*
- (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, and*
 - (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.*
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if—*
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or*
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.*

Note.

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

- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).*
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following—*
 - (a) a development standard for complying development,*
 - (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,*
 - (c) clause 5.4,*
 - (caa) clause 5.5,*
 - (ca) clause 6.16 (3) (b).*

4 Clause 4.6 Case Law

The Land and Environment Court (LEC) reiterated in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 per Preston CJ at [11] the four tests imposed by clause 4.6 as follows:

1. That compliance with the relevant development standard must be unreasonable or unnecessary in the circumstances of the case
2. That there are sufficient environmental planning grounds to justify contravening the development standard
3. That the applicant's written request has adequately addressed the matters required to be demonstrated by subclause 3
4. That the proposed development would be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the relevant zone.

The test for "unreasonable or unnecessary" has also been settled by the LEC. In *Wehbe V Pittwater Council* (2007) NSW LEC 827, Preston CJ identified a five-part test that could be applied to demonstrate that an objection to a development standard is reasonable and will deliver an outcome consistent with the relevant policy framework. The five elements are identified below:

1. The objectives of the standard are achieved notwithstanding the non-compliance with the development standard
2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary
3. The underlying object or purpose would be defeated if compliance was required therefore compliance is unreasonable
4. The development standard has been virtually abandoned or destroyed by the council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable
5. The zoning of the particular land is unreasonable or inappropriate so that a development standard appropriate for that zoning is also unreasonable and unnecessary as it applies to the land and compliance with the standard would be unreasonable or unnecessary. That is, the particular parcel of land should not have been included in the particular zone.

In this judgment in *Randwick City Council v Micaul Holdings Pty Ltd* [2016] NSWLEC 7 the Chief Judge also noted that under Clause 4.6, the consent authority (in that case, the Court) did not have to be directly satisfied that compliance with the development standard was unreasonable or unnecessary but that the applicant's written request adequately addresses (our emphasis) the matters in clause 4.6(3)(a) that compliance with each development standard is unreasonable or unnecessary.

In respect of concurrence of the Secretary, under clause 64 of the *Environmental Planning and Assessment Regulation 2000*, the Secretary has given written notice dated 21 February 2018 by way of 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).

5 Proposed variation

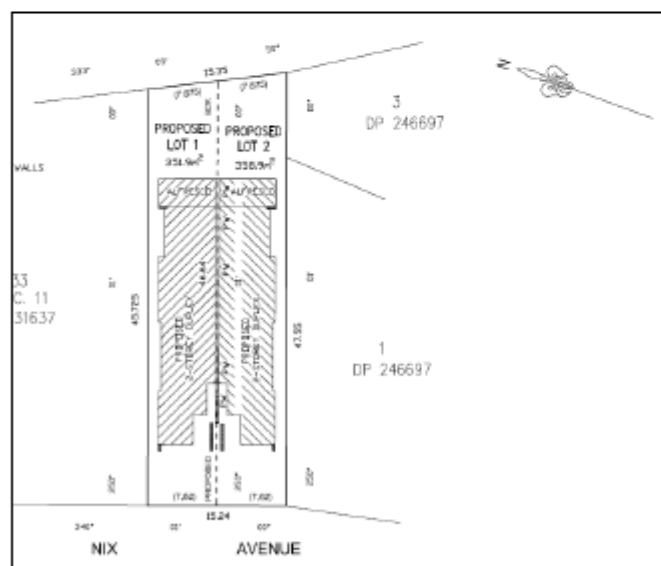
This request is submitted in support of a DA for the subdivision of an approved dual occupancy at the site. The DA seeks to subdivide the site, Lot 34 Sec 11 DP 31637 to create 2 Torren Title lots of rectangular shape. An excerpt of the proposed subdivision plan is provided at Figure 3.

The existing minimum subdivision lot size for a dual occupancy attached in the R2 zone is 800m² (400m² each allotment) as set out in Clause 4.1 of the Randwick LEP which results in a variation of approximately 12% for Proposed Lot 1 and 10% for Proposed lot 2 as detailed in Table 2.

Table 2 Variation to lot controls

Clause	Development standard	Proposal	Proposed Variation	Proposed variation %
4.1 Minimum subdivision lot size	400m ² for subdivided lot	Proposed Lot 1 at 351.9m ²	Proposed lot 1 at 48.1m ²	12.025%
		Proposed Lot 2 at 358.9m ²	Proposed lot 2 at 41.1m ²	10.275%

Figure 3 Proposed Plan of subdivision



Source: George Najjar 17/11/2022

6 Assessment Clause 4.6

In considering clause 4.6 it is confirmed that the:

- planning controls being varied are numerical development standards imposed under clause 4.1 of the Randwick LEP
- the development standards are not excluded from the operation of clause 4.6.

Under clause 4.6(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.*

6.1 Clause 4.6(3)(a) – Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case?

Yes, strict compliance with the minimum lot size control is considered both unreasonable and unnecessary in this instance.

As noted above, the test for unreasonable or unnecessary is a 'five-part test' outlined in *Wehbe v Pittwater* [2007] NSWLEC 827. It is noted that an applicant does not need to establish all of the tests or 'ways' the standard is unreasonable or unnecessary. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

The development is justified against the five-part test in *Wehbe* as set out below.

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

As demonstrated in the table below, the objectives of the Clause 4.1 are achieved notwithstanding the non-compliance with the development standard.

Table 3 Assessment of proposal against the Clause 4.1 Minimum subdivision lot size

Randwick LEP	Assessment
4.1 Minimum subdivision lot size – Objectives	
(a) to minimise any likely adverse impact of subdivision and development on the amenity of neighbouring properties,	<p>Consistent</p> <p>The subdivision would not cause any additional adverse impacts.</p> <p>The attached dual occupancy has already been approved and constructed by way of consent 291/2020/A with amenity impacts being considered as part of this DA.</p>
(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,	<p>Consistent</p> <p>The lot is a suitable size given the:</p> <ul style="list-style-type: none"> • Randwick LEP permits the construction of dual occupancies on lot of 450m² as per Clause 4.1C • Council has endorsed planning controls that will enable the subdivision of a dual occupancy sat 275m² (that is, a minimum 550m² parent lot will be required) • Development consent has been granted for construction of the dual occupancy by way of DA 291/2020/A. <p>The proposal does not adversely affect natural or cultural features, including heritage items, and to retain special features such as trees and views. The development has been sited to respond to the existing topography with minimal excavation to maximise the attributes of the site to achieve a high-quality development.</p>
(c) to ensure that lot sizes are able to accommodate development that is suitable for its purpose.	

2. The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary

The underlying objectives are considered irrelevant given that Clause 4.1C of the LEP enables dual occupancies to be erected on lots of 450m² with amenity impacts considered as part of DA for the construction of the attached dual occupancy on a lot of this size. Furthermore, Council has endorsed planning controls that will enable the subdivision of a dual occupancy sat 275m² (that is, a minimum 550m² parent lot will be required).

3. The underlying object or purpose would be defeated if compliance was required therefore compliance is unreasonable

Not relied on.

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

Not relied on. However, it is noted that Council amended their controls in August 2018 to enable the subdivision of attached dual occupancies to 240m². However, this only applies to dual occupancies approved on or before 6 July 2018.

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

Not applicable as this request does not vary the zoning controls.

6.2 Clause 4.6(3)(b) – Are there sufficient environmental planning grounds to justify contravening the development standard?

Yes.

Currently, the Randwick LEP allows dual occupancies to be constructed on lots of 450m², which demonstrates that the lot size is suitable to accommodate the development. However, torrens title subdivision or strata subdivision of the land is not permitted unless the parent lot is 800m². The two controls should operate in conjunction with one another but are currently contrary to one another.

Council has since proposed changes to the proposed minimum lot size for the subdivision of a dual occupancy under the draft comprehensive Randwick Local Environmental Planning Proposal. The includes minimum subdivision lot sizes to both build and subdivide a dual occupancy within the R2 Low Density Residential zone (except conservation areas) will be standardised at 275m² (that is, a minimum 550m² parent lot will be required). The planning proposal was publicly exhibited 31 May to 12 July 2022 and subsequently endorsed at Council's extraordinary meeting on the 6 September 2022. The draft Planning Proposal has been forwarded to the Department of Planning and Environment for formal approval and gazettal is expected take place soon.

Under the existing controls under the comprehensive Randwick Planning Proposal the proposed subdivision of the existing dual occupancy would result in a small variation of approximately 12% for Proposed Lot 1 and 10% for Proposed lot 2. Under the proposed subdivision controls the proposal would comply. It is on this basis; it is considered that justifiable to vary the controls in this instance.

6.3 Clause 4.6(4)(a)(ii) – Is the proposed development in the public interest?

Yes. The proposed development is consistent with the objectives of the minimum lot size development standard as detailed above and the objectives of the R2 zone as detailed in Table 4 below.

Table 4 Assessment of proposal against the R2 Zone Objectives

Randwick LEP	Assessment
R2 Low Density Residential – Objectives	
To provide for the housing needs of the community within a low density residential environment.	Consistent The subdivision would enable the additional housing choice for the local community to meet different community needs, preferences and budgets.
To enable other land uses that provide facilities or services to meet the day to day needs of residents.	N/A
To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.	Consistent The attached dual occupancy provides a modern design that integrates well with the streetscape and built form character of the area. The subdivision would not comprise the design of the approved attached dual occupancy.
To protect the amenity of residents.	Consistent The subdivision will not affect the amenity of neighbouring dwellings, streetscape or character of the area. The attached dual occupancy is nearly complete and provides adequate amenity for the site and neighbouring dwellings
To encourage housing affordability.	Consistent The subdivision will deliver a more affordable housing option for the community than in a single tenancy arrangement.
To enable small-scale business uses in existing commercial buildings.	N/A

Further, the site is an appropriate location for the proposed development and the subdivision is in the public interest as:

- Land use “Attached dual occupancy” is permissible with consent within the current zone R2 Low Density Zone
- The size of the lot is suitable for dual occupancy as per Clause 4.1C and clause 4.6 Variation request
- The proposed development:
 - Is consistent with the aims of the plan, and objectives of Clause 4.1 and the R2 zone

- complies with the requirements of the Codes SEPP with respect to minimum subdivision sizes for dual occupancies.
- The proposed subdivision of the site
 - will not compromise the amenity of the neighbouring residents, the streetscape or affect any special areas
 - will enable the additional housing choice (mix and tenure choice) for the local community to meet different community needs, preferences, and budgets
 - contributes to sustainable population and housing growth as well as the efficient use of land through the provision of denser form of low-density residential development
 - will not have any adverse environmental, social, or economic impacts but rather provides numerous benefits as detailed in this report.

Overall, it is considered that the proposed development is in the public interest by complying with the relevant objectives from the R2 zone, the minimum lot size development standard and will not result in any adverse impacts.

7 Conclusion

This request demonstrates that compliance with the minimum lot size development standard contained in the Clause 4.1 of the Randwick LEP is unreasonable and unnecessary in the circumstances of the case and that the justification is well founded.

This request has considered the relevant matters prescribed under clause 4.6 of the Randwick LEP and the principles set out in decisions in the Land and Environment Court.

This request demonstrates that the:

- Objectives of development standard Clause 4.1 and the R2 Low Density Residential Zone are achieved
- Size of the lot is suitable to accommodate the development with the attached dual occupancy already being approved and constructed
- Subdivision will not affect the amenity of neighbouring properties, any special features of the area or result in any adverse impacts.

There are no environmental planning grounds that warrant strict compliance with the numerical lot size development standards in this instance. Rather, there are clear and justifiable environmental planning merits that validate the flexible application of the controls allowed by Clause 4.6 of the Randwick LEP.

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

File Reference: DA/618/2022



Development Consent Conditions

D9/23

Folder / DA No:	DA/618/2022
Property:	29 Nix Avenue, MALABAR NSW 2036
Proposal:	Torrens title subdivision of an attached dual occupancy into two lots
Recommendation:	Approval

GENERAL CONDITIONS

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

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

Approved Plans & Supporting Documentation

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

Plan	Drawn by	Dated	Received by Council
Proposed Torrens Subdivision of Lot 34 Section 11 in DP 31637, Reference 1854DP-DA Approval, Sheet 1 of 1 Sheets	George Najjar	17/11/2022	28/11/2022

REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

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

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

Sydney Water

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

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

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

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

Easements

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

Public Utilities

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

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

Road / Asset Opening Permit

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

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

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

Street and/or Sub-Address Numbering

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

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

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

Occupation Certificate

7. All conditions of DA/291/2020 & DA/291/2020/A are to have been complied with and a Final Occupation Certificate is to have been provided for the development prior to the issuing of a subdivision certificate

Note: This includes construction of the Council driveways and removal of any private power poles servicing the site.

Subdivision Certificate

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

Development Application Report No. D10/23

Subject: 17-17A Woonah Street, Little Bay (DA/632/2022)


Executive Summary

Proposal:	Torren title subdivision of an attached dual occupancy
Ward:	South Ward
Applicant:	Mr P B Cornish
Owner:	Mr R M Kolbe, Mr S E K Kolbe, Mrs A E C Cornish & Mr P B Cornish
Cost of works:	Nil.
Reason for referral:	Variation to the minimum subdivision lot size development standard by more than 10%.

Recommendation

- A. That the RLPP is satisfied that the matters detailed in Clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the subdivision lot size development standard in Clause 4.1 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning and Environment may be assumed.
- B. That the RLPP grant consent under Section 4.16 of the *Environmental Planning and Assessment Act 1979*, as amended, to Development Application No. DA/632/2022 for Torren Title Subdivision of an attached dual occupancy at Nos. 17-17A Woonah Street, Little Bay, subject to the development consent conditions attached to the assessment report.

Attachment/s:

- 1.  RLPP Dev Consent Conditions (general) - DA/632/2022 - 17-17A Woonah Street, LITTLE BAY NSW 2036 - DEV - Randwick City Council

D10/23

D10/23



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 Torren title subdivision of an attached dual occupancy.

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 Torren Title 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 57 DP 28008, 20 Hume Street, Chifley NSW 2036. The site is located on the south-western side of Woonah Street, between Alkoo Avenue to the north-west and Mirrabooka Crescent to the south-east.

The subject land is zoned R2 Low Density Residential. The site has an area of 683.5m² and a frontage width of 15.25m.

Existing on the site is a two storey attached dual occupancy with separate vehicular crossings and a swimming pool at the rear of the northern-western dwelling.

The surrounding area is characterised by low density residential development including dwelling houses and attached dual occupancies. Adjoining the site to the north-west at 15 Woonah Street is a single storey detached dwelling house, to the south-east at 19 Woonah Street is a single storey detached dwelling house, and to the south-west at the rear of the site at 10 Mirrabooka Crescent is a two storey semi-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: South-west oblique view of the subject allotment and surrounding area (April 2022) – 17-17A Woonah Street, Little 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/709/2010

Development Application No. DA/709/2010 for construction of two storey attached dual occupancy with garaging, swimming pool to rear, fencing and associated works (SEPP1 objection to floor space ratio control) at the subject site was approved by the Council Planning Committee on 09 November 2010.

CC/138/2011

Construction Certificate No. CC/138/2011 relating to Development Application No. DA/709/2010 was approved by the Principal Certifier Paul Gearin (BPB0132) of Local Certification Services Pty Ltd on 23 February 2011 (Certifier Reference No. CC8003165).

An Interim Occupation Certificate was issued by the Principal Certifying Authority Paul Gearin on 19 July 2012. A Final Occupation Certificate issued by the Principal Certifying Authority Paul Gearin on 20 January 2014.

4. Proposal

The proposal seeks development consent for the Torren title subdivision of an attached dual occupancy. The proposed lots shall comprise the following:

	<u>Lot Size</u>	<u>Front Boundary (North-eastern)</u>	<u>Rear Boundary (South-western)</u>	<u>Side Boundary (North-western)</u>	<u>Side Boundary (South-eastern)</u>
Lot 73 (17)	356.4m ²	7.625m	8.86m	46.31m	44.75m
Lot 74 (17A)	327.1m ²	7.625m	6.77m	Common Boundary	43.425m

5. Notification

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

6. Relevant Environment Planning Instruments

6.1. Randwick Local Environmental Plan 2012 (LEP)

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

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 Torrens title 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 6.4 of the SEPP (Exempt and Complying Development Codes) 2008 are met.

The subject site is zoned R2 Low Density Residential and the proposal for the dual occupancy was granted prior to 6 July 2018, as the dual occupancy was approved on 09 November 2010. However, criterion 3 refers to the development standards contained in Clause 6.4 of the Codes SEPP. Clause (1)(d) notes the following:

- (d) if the subdivision relates to a dual occupancy, the area of each resulting lot must be at least—
- (i) the minimum size specified for the subdivision of land for the purpose of a dual occupancy in the environmental planning instrument that applies to the land, or
 - (ii) if no minimum size is specified—200m²,

The RLEP 2012 (as an environmental planning instrument) specifies that the minimum lot size for subdivision is 400sqm for each subject site. The proposal seeks lot sizes of 356.4m² and 327.1m² respectively. 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 noted 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 73 (17) = 356.4m ²	No
		Lot 74 (17A) = 327.1m ²	No

6.1.1. Clause 4.6 - Exceptions to development standards

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

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.1: Lot Size (min)	400m ²	Lot 73 (17) = 356.4m ²	43.6m ²	10.9%
		Lot 74 (17A) = 327.1m ²	72.9m ²	18.225%

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. Consideration must be given to the Proposal as per Clause 4.15 (1)(a)(ii) of the *Environmental Planning and Assessment Act*.
- 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 356.4m² and 327.1m² 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 22 May 2020. 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	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	No submissions were received in relation to this application.

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

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 7.625m 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 7.625m 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 7.625m for each allotment, which would comply with this proposed draft control.

As such, the non-compliance is considered acceptable.

10. Conclusion

That the application to Torren Title Subdivision of an attached dual occupancy (variation to min lot size) at 17-17A Woonah Street, Little 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.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineering

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

"An application has been received for Torrens Title Subdivision of the constructed Dual Occupancy into 2 lots.

This report is based on the following plans and documentation:

- Draft Subdivision Plans by surveyor D Singh;*
- Statement of Environmental Effects by Smyth & Smyth*

General Comments

The above site was subject to a Dual Occupancy Approval - DA/709/2010 & CC/138/2011.

An Occupation Certificate has been issued for the Development, CC/138/2011 dated 20.06.2021."

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



Statement of Environmental Effects

No. 17-17A Woonah Street, Little Bay

Appendix B

Clause 4.6 Request to Vary Development Standard

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

Randwick Local Environmental 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.

Statement of Environmental Effects

No. 17-17A Woonah Street, Little Bay

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

LEP Map Extracts:



Zoning



Lot Size

Lot Size Map - Sheet LSZ_010

Minimum Lot size (sq m)



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

<u>Minimum Subdivision Lot Size</u>				
Current Lot Size (m ²)	Minimum Lot Size Requirement under RLEP2012 (m ²)	Proposed Lot Size (m ²)	Percentage Variation	Minimum Lot Size Requirement under Randwick Comprehensive Planning Proposal (m ²)
683.5	400	356.4	10.9	275
		327.1	18.2	

Statement of Environmental Effects

No. 17-17A Woonah Street, Little Bay

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.

Statement of Environmental Effects

No. 17-17A Woonah Street, Little Bay

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.

Responsible officer: William Joannides, Environmental Planning Officer

File Reference: DA/632/2022

Development Consent Conditions

Folder / DA No:	DA/632/2022
Property:	17-17A Woonah Street, LITTLE BAY NSW 2036
Proposal:	Torren title subdivision of an attached dual occupancy
Recommendation:	Approval

GENERAL CONDITIONS

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

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

Approved Plans & Supporting Documentation

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

Plan	Drawn by	Dated	Received by Council
Plan of Subdivision of Lot 57 in DP28008, Reference 431, Sheet 1 of 2 Sheets	Robert Francis Lyon	22/10/2021	06/12/2022
Plan of Subdivision of Lot 57 in DP28008, Reference 431, Sheet 2 of 2 Sheets	Robert Francis Lyon	22/10/2021	06/12/2022

REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

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

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

Sydney Water

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

either directly to Sydney Water or through a Sydney Water accredited Water Servicing Coordinator (WSC).

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

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

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

Easements

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

Public Utilities

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

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

Road / Asset Opening Permit

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

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

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

Street and/or Sub-Address Numbering

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

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

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

Restriction and Positive Covenant

7. A certificate of title providing evidence of registration of the "restriction on the use of land" and "positive covenant" (required under condition 76 of DA/709/2010) shall be provided to Council prior to the issuing of a subdivision certificate.

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

Notes:

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

Subdivision Certificate

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

D10/23

Development Application Report No. D11/23

Subject: 20 Hume Street, Chifley (DA/81/2022)


Executive Summary

Proposal:	Strata title subdivision of an approved dual occupancy into two (2) allotments.
Ward:	South Ward
Applicant:	Mr J McDonald
Owner:	Mr J McDonald, Mrs E McDonald & Mr C Pearson
Cost of works:	Nil
Reason for referral:	Variation to the Minimum Subdivision Lot Size Development Standard by more than 10%.

Recommendation

- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the minimum strata subdivision lot size development standard in Clause 4.1A of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning, Industry and Environment may be assumed.
- B. That the RLPP grant consent under Section 4.16 of the *Environmental Planning and Assessment Act 1979*, as amended, to Development Application No. DA/81/2022 for Strata title subdivision of an approved dual occupancy into two (2) allotments at No. 20 Hume Street, Chifley, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (general) - DA/81/2022 - 20 Hume Street, CHIFLEY NSW 2036 - DEV - Randwick City Council

D11/23

D11/23



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 north-west at 18 Hume Street is a single storey detached dwelling house, to the south-east at 22 Hume Street is a single storey detached dwelling house, and to the south-west at the rear of the site at 28 Burke Street is a single 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: South-east oblique view of the subject allotment and surrounding area (April 2022) - 20 Hume Street, Chifley (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/652/2019

Development Application No. DA/652/2019 for construction of two storey semi-detached dwellings (variation to floor space ratio control) at the subject site was approved by Council under delegation on 22 May 2020.

CC/222/2020

Construction Certificate No. CC/222/2020 relating to Development Application No. DA/652/2019 was approved by the Principal Certifier Cameron James (BDC 2000) of Building Control Group on 26 June 2020 (Certifier Reference No. C200155-01).

An Final Occupation Certificate was issued by the Principal Certifying Authority Cameron James (BDC 2000) of Building Control Group on 07 May 2021 (Certifier Reference No. C200155-02).

DA/659/2020

Development Application No. DA/659/2020 for Strata subdivision of an approved dual occupancy into two strata allotments at the subject site was withdrawn by the applicant on 03 March 2021.

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 (North-eastern)</u>	<u>Rear Boundary (South-western)</u>	<u>Side Boundary (North-western)</u>	<u>Side Boundary (South-eastern)</u>
Lot 1 (20)	277m ²	7.724m	8.035m	Common Boundary	35.04m
Lot 2 (20A)	296m ²	7.72m	8.035m	40.27m	Common Boundary

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

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 22 May 2020. 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 noted 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 4.1A of RLEP 2012 are in order to prevent the subdivision of development where the resultant lots are undersized and inappropriate. As such, establishing a minimum lot size ensures that the amenity of neighbouring residents and occupants of the development is maintained. 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)
CI4.1A: Strata Subdivision Lot Size of Attached Dual Occupancy (min)	400m ²	Lot 1 (20) = 277m ²	No
		Lot 2 (20A) = 296m ²	No

6.1.1. Clause 4.6 - Exceptions to development standards

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

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
CI4.1A: Strata Subdivision Lot Size of Attached Dual Occupancy (min)	400m ²	Lot 1 (20) = 277m ²	123m ²	30.75%
		Lot 2 (20A) = 296m ²	104m ²	26%

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:*
 - (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 contravening the development standard.*
4. *Development consent must not be granted for development that contravenes a development standard unless:*
 - (1) *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*
 - (2) *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 4.1A)

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 objective of the minimum lot size standard is set out in Clause 4.1A (1) of RLEP 2012. The applicant has addressed the following objective:

- (1) *to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements.*

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 277m² and 296m² 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 22 May 2020. 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 4.1A 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)(iia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	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 7.72m and 7.724m respectively 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 4.1A 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 7.72m and 7.724m respective 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 7.72m and 7.724m respectively for each allotment, which would comply with this proposed draft control.

As such, the non-compliance is considered acceptable.

10. Conclusion

That the application to Strata Title Subdivision of an approved dual occupancy into two (2) allotments at 20 Hume Street, Chifley 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 4.1A 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 4.1A 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 strata subdivision of the Dual Occupancy at the above site.

This report is based on the following plans and documentation:

- *Draft Strata Plans by surveyor by D J Tremain;*
- *Statement of Environmental Effects by Bondi Constructions*

General Comments

The above site was subject to a Dual Occupancy - DA/652/2019 & CC/222/2020.

An Occupation Certificate has been issued (10.5.2021) for the development under CC/222/2020."

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

Statement of Environmental Effects- Variation to Lot Size – 20 Hume Street, Chifley

Appendix A

Clause 4.6 Request to Vary Development Standard

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

Randwick Local Environmental 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 4.1A Minimum Subdivision lot size.

4. Objective of the development Standard

4.1A Minimum subdivision lot size for strata plan schemes in Zone R2

- (1) The objective of this clause is to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements.
- (2) This clause applies to land in Zone R2 Low Density Residential.
- (3) The size of any lot resulting from a subdivision of land to which this clause applies for a strata plan scheme (other than any lot comprising common property within the meaning of the *Strata Schemes (Freehold Development) Act 1973* or *Strata Schemes (Leasehold Development) Act 1986*) is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

Note—

Part 6 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* provides that strata subdivision of a building in certain circumstances is specified complying development.

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

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

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

Prepared by Superior Designs February 23

Statement of Environmental Effects- Variation to Lot Size – 20 Hume Street, Chifley

The numeric value of the development standard proposed to be varied for the subject site based on 4.1A (4) *Despite subclause (3), if the subdivision is of a lot on which there is a dual occupancy (attached)—*

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

The proposal ensures that the land to which we are discussing is not fragmented by the subdivision as the existing Subdivision pattern has already been established with the Subdivision of over 400 similar sized lots since 2018

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

Current Lot Size

573sqm

Minimum Lots Size under the RLEP 2012

400sqm

Proposed Lot size

Lot 1 = 277sqm

Lot 2 = 296sqm

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.

4.1A Minimum subdivision lot size for strata plan schemes in Zone R2

- (1) The objective of this clause is to ensure that land to which this clause applies is not fragmented by subdivisions that would create additional dwelling entitlements.*
- (2) This clause applies to land in Zone R2 Low Density Residential.*

Prepared by Superior Designs February 23

Statement of Environmental Effects- Variation to Lot Size – 20 Hume Street, Chifley

(3) The size of any lot resulting from a subdivision of land to which this clause applies for a strata plan scheme (other than any lot comprising common property within the meaning of the Strata Schemes (Freehold Development) Act 1973 or Strata Schemes (Leasehold Development) Act 1986) is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

Note—

Part 6 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 provides that strata subdivision of a building in certain circumstances is specified complying development.

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

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

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.

Statement of Environmental Effects- Variation to Lot Size – 20 Hume Street, Chifley

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 (l) 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.

Prepared by Superior Designs February 23

Responsible officer: William Joannides, Environmental Planning Officer

File Reference: DA/81/2022

Development Consent Conditions



Folder / DA No:	DA/81/2022
Property:	20 Hume Street, CHIFLEY 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

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

Plan	Drawn by	Dated	Received by Council
Plan of Subdivision of Lot 4052 DP 752015, Reference 67782DT, Sheet 1 of 2	David John Tremain	03/01/2023	05/01/2023
Plan of Subdivision of Lot 4052 DP 752015, Reference 67782DT, Sheet 2 of 2	David John Tremain	03/01/2023	05/01/2023

REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

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

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

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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 (reference DA/652/2019 & CC/222/2020).
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 Principal Certifying Authority and the Council prior to issuing of a Strata Certificate.

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

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.

Restriction and Positive Covenant

10. A certificate of title providing evidence of registration of the "restriction on the use of land" and "positive covenant" (required under condition 48 of DA/652/2019) shall be provided to Council or the accredited certifier prior to the issuing of a strata certificate.

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

Notes:

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

Strata Certificate

11. A formal application for a strata certificate is required to be submitted to and approved by the Council or accredited certifier and all relevant conditions of this development consent are required to be satisfied prior to the release of the strata subdivision plans.
12. Details of critical stage inspections carried out by the principal certifying authority, together with any other certification relied upon, must be provided to Council or the accredited certifier prior to the issuing of a strata certificate.

Street and/or Sub-Address Numbering

13. 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.

Development Consent Conditions (DA/652/2019)

14. The development is to have complied with all conditions of the Development Consent (DA/652/2019) prior to the release of the strata subdivision plans/certificate.

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Development Application Report No. D12/23

Subject: 29 Stanley Street, Randwick (DA/427/2022)

Executive Summary

Proposal:	Alterations and additions to the approved residential flat building including changes to the internal layout, reduction in common lobby size and increase in total units by two (2).
Ward:	North Ward
Applicant:	Hamid Samavi
Owner:	Parseh Holdings Pty Ltd
Cost of works:	\$4,073,956.00
Reason for referral:	Floor Space Variation (58%) and the development is subject to SEPP 65 as the building is 3 or more storeys and contains at least 4 dwellings.

Recommendation


That the RLPP refuse consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 427/2022 for alterations and additions to an approved residential flat building, at No. 29 Stanley Street, Randwick, for the following reasons:

1. The building height does not comply with the development standard for height of buildings in clause 4.3 of RLEP 2012, and the Applicant failed to provide a written request made under clause 4.6 of RLEP 2012 regarding the contravention to the development standard.
2. The floor space ratio of the proposed development does not comply with the development standard in clause 4.4 of the RLEP 2012, and the written request made in relation to the contravention of the development standard does not satisfy the requirements of clause 4.6.
3. The application failed to provide a geotechnical report to allow the consideration of the matters required by clause 6.2 of RLEP 2012 relating to earthworks.
4. The proposed development is inconsistent with the site planning objectives and controls in section 3.4 of Part C2 of RDCP 2013 in relation to the rear setback.
5. The proposed development is inconsistent with the visual privacy and building separation objectives and provisions in section 3F-1 of the Apartment Design Guide (ADG).
6. The proposed development it is inconsistent with the visual privacy and building separation objectives and provisions in section 3F-2 of the Apartment Design Guide (ADG).
7. The proposed development is inconsistent with the building design objectives and controls in section 4 of Part C2 of RDCP 2013.
8. The proposed design of the development is inferior to the approved scheme including bulk and scale, fragmentary roof formation and adverse privacy impacts.
9. The proposed development is inconsistent with pedestrian access and proposed development entries objectives and provisions in section 3C-2, 3G-1, 3G-2 and 4F-2 of the Apartment Design Guide (ADG).
10. The proposal has not demonstrated that the single exit only from the basement car park will be able to be justified by a performance solution due to the presence of the car stacker. The BCA Assessment Report dated 16 August 2022 by Credwell lodged raised this concern in section 5.5 of the report.

11. The amenity of the occupants is compromised because the proposal has not demonstrated that Level 3 units satisfy the requirements of Part F3.1 of the National Construction Code 2019 BCA Volume 1 (NCC) relating to minimum ceiling heights, and any increase proposed would impact the height of the building.
12. The proposed development is inconsistent with the landscaped open space and deep soil area objectives and controls in section 2.2.1 and 2.2.2 of Part C2 of RDCP 2013.
13. The proposed development is inconsistent with the communal open space objectives and design criteria in section 3D-1 of the ADG and with the objectives and controls of section 2.3 of RDCP 2013.
14. The proposed development is inconsistent with the objectives and design criteria in part 4G-1 and 4G-2 of the ADG in relation to storage.
15. The proposed development includes many aspects which will unreasonably negatively impact upon the amenity of the residents and their neighbours.
16. The proposed development will provide a poor public domain interface, given it does not recognise the desirable elements of the streetscape. It does not provide an acceptable relationship to the heritage conservation area to the west.
17. The application should be refused because there is a shortfall of parking (including no visitor parking) and the parking provision is 100% reliant on mechanical devices.
18. The proposed development is not in the public interest as it represents an over intensification of the site.
19. Insufficient information has been provided to allow for the proper assessment of the proposed development, with relation to the following:
 - a. No clause 4.6 variation request was provided for the variation to the height of building control.
 - b. The clause 4.6 written request for the contravention of the floor space ratio development standard does not satisfy the requirements of this clause.
 - c. No geotechnical assessment has been provided.
 - d. A car parking survey has not been undertaken in support of the car parking deficit.
 - e. No swept path diagrams have been provided in support of the car stackers.
 - f. No retaining walls or sections have been provided detailing how the drop in elevation is addressed.
 - g. Storage calculation is incorrect.
 - h. No information has been provided detailing compliance of the floor to ceiling heights on Level 3.
 - i. No performance solution for the car park access/egress has been provided.

Attachment/s:

Nil

	
	Subject Site
	Submissions received 4 unique submissions received, one of which included a petition with 44 signatures.
	North Locality Plan

D12/23

1. Executive summary

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

- The development contravenes the development standard for floor space ratio by more than 10%; and
- The development is subject to SEPP 65 as the building is 3 or more storeys and contains at least 4 dwellings.

The proposal seeks development consent for alterations and additions to an approved 3 storey residential flat building not yet constructed, and seeks changes to the internal layout, reduction in common lobby size and increase in total number of units by two (2).

Development application DA/627/2020 was approved subject to conditions with consent by the parties under Land and Environment Court proceedings number 2021/54299 on 11 March 2022 in proceedings referred to as *Mark Zhang v Randwick City Council [2022]* NSWLEC 1120.

The approved development comprises a three-storey residential flat building of 6 x 2 bedroom units, above a basement, with a front setback of 5.8m, rear setback of 6.21m and side setbacks of 2m. The approved development has a compliant 0.89:1 FSR and was stated to comply with the 12m height limit. Details include:

- Basement:
Car park with 9 residential spaces using a car stacker system, 1 motor bike and 5 bicycle spaces, a visitor parking space, lift, garbage room, storage, service rooms;
- Ground Level:
2 x 2 bedroom apartments separated by an large open lobby with lift, with the rear apartment including a balcony at the rear;
- First and Second Levels:
2 x 2 bedroom apartments separated by an large open lobby with lift, with the rear apartment including a balcony at the rear and the front apartments with a balcony to the front;
- Roof: Low hipped roof, without a full pitch.

The key issues associated with the proposed alterations and additions relate to:

- Building height non-compliance;
- Floor Space Ratio non-compliance;
- Insufficient information provided with relation to:
 - Earthworks;
 - Building Code of Australia requirements;

- No clause 4.6 provided for building height variation; and
 - Car parking.
- Setback inconsistencies;
- Non compliance with ADG objectives and provisions with relation to:
 - Visual privacy;
 - Building design;
 - Pedestrian entry and access;
 - Communal open space;
 - Storage; and
 - Car parking.
- Non compliance with Randwick Development Control Plan (DCP) 2013 with relation to:
 - Deep soil planting and landscaping;
 - Communal open space; and
 - Car parking.
- Adverse amenity impacts; and
- Adverse impacts on the public domain and character of the locality and heritage;

The proposal is recommended for refusal, noting that a Class 1 Proceeding has been lodged with the Land and Environment Court, and a S34 date is set for April 2023.

2. Site Description and Locality

The subject site is located on the southern side of Stanley Street, between Waverley Street and Avoca Street and is known as No. 29 Stanley Street, Randwick described as Lot 1 in DP304856. The site is a rectangular parcel of land, with a northern and southern boundary of 13.715 metres, an eastern and western boundary of 41.505 metres, providing a total site area of 569.1m².

The site is occupied by an ageing single storey brick dwelling with a pitched tiled roof. The dwelling is setback behind landscaping, a brick front fence and lawn, and has a covered verandah at the front door. The dwelling currently comprises three bedrooms. The site has vehicular access via a single crossover off Stanley Street leading to a driveway extending down the eastern boundary. Pedestrian access to the site is also available via the eastern driveway.

At the rear of the site is a shed located in the south-western corner and accessed by the eastern boundary driveway. Also at the rear of the site is a lawn area, shrubs and small trees. Topographically, the site has a gentle slope down to the rear of approximately 1.79m from approximately RL78.02 at Stanley Street to RL76.23 at the rear boundary. This is a 4% fall over the site length. The site and immediate neighbouring dwellings are zoned R3 Medium Density Residential pursuant to the *Randwick Local Environmental Plan 2012* (RLEP 2012).

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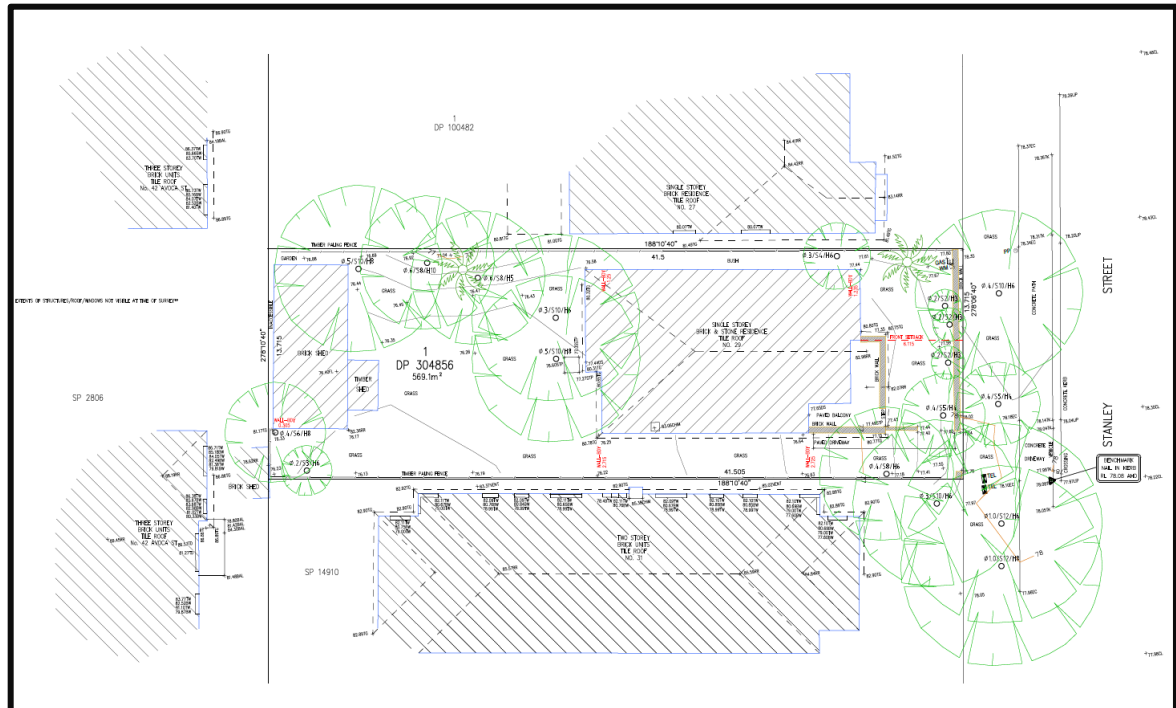
[illegible]

Figure 2: Site Locality Plan Demonstrating the Development Site Outlined in Blue (Source: NSW Planning Portal).

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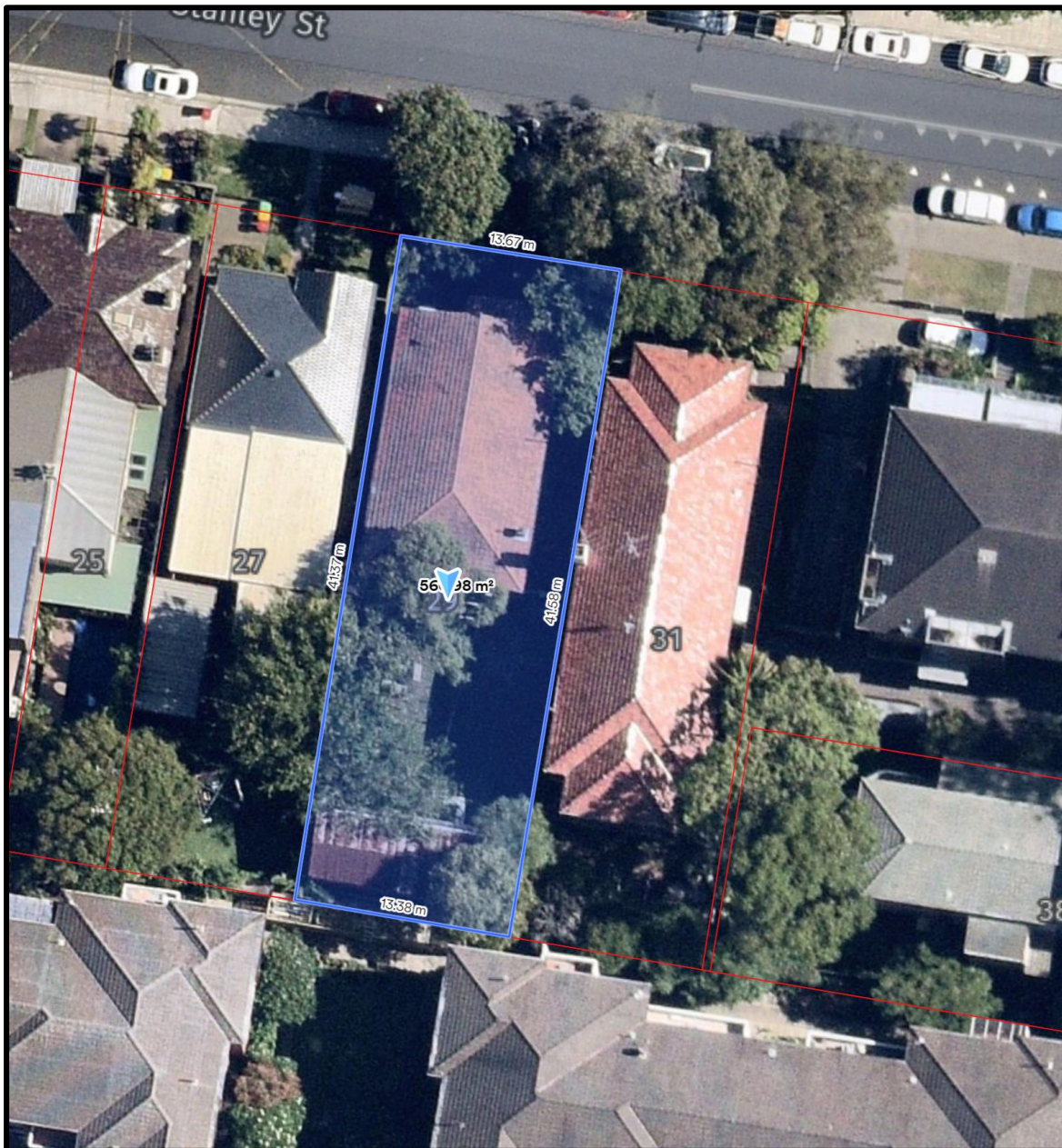


Figure 3: Location Plan Demonstrating the Site Area Hatched in Blue (Source: Nearmap).

Residential development surrounding the site comprises a mix of low and medium density residential development. The built form varies in terms of scale and form but predominantly represents older housing stock.

To the north across Stanley Street is the stated heritage listed Emanuel School. To the east is 31 Stanley Street which includes a residential flat building of 8 units from approximately 1940s.

To the west is 27 Stanley Street which includes a single storey dwelling from approximately the 1930s. To the south at the rear is 42 Avoca Street which is a large multi storey residential flat building complex.

Other than Emanuel School and the Frank Doyle Park 115m to the west, the remaining development in the area is residential. The area to the north and immediate west is within the North Randwick Heritage Conservation Area. **Figure 10** illustrates this, and the state heritage listed Emanuel School to the north.



Figure 4 & 5: Northern Elevation of 29 Stanley Street, Randwick (Source: Randwick City Council).



Figure 6 & 7: West & East Elevation of 29 Stanley Street, Randwick (Source: Randwick City Council).

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Figures 8 & 9 Northern Elevation of 27 and 31 Stanley Street, Randwick (Source: Randwick City Council).

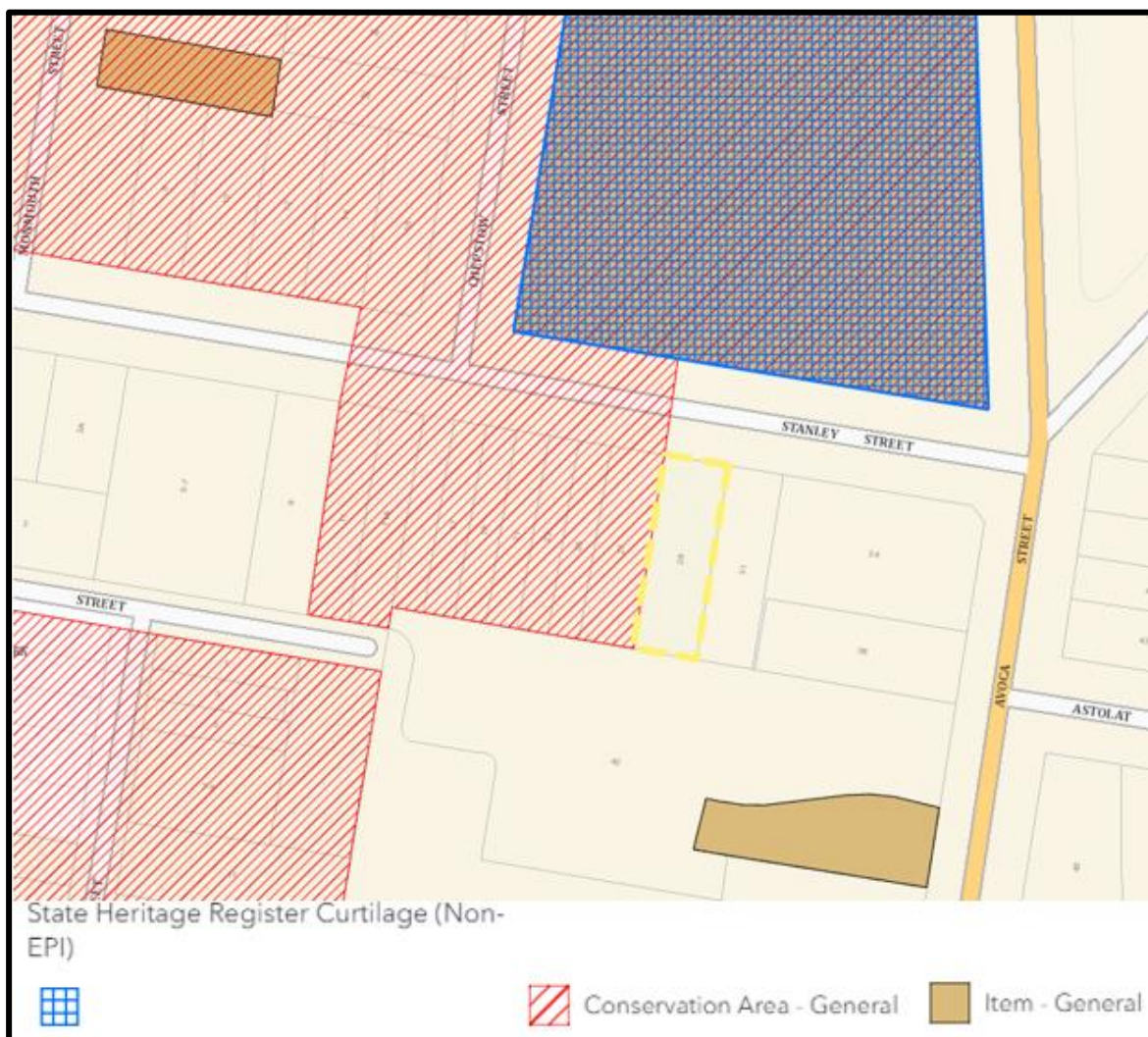


Figure 10: Heritage Map with Subject Site Outlined in Yellow (Source: NSW Planning Portal).

3. Relevant history

Previous history relating to this site and DA/625/2020 is summarised as follows:

- DA/625/2020 was lodged on 20 November 2020 and was considered by the Design Excellence Panel and Council's engineers, heritage officer, landscape officer and Design Review Panel. Generally, the responses were not supportive.
- Seven (7) submissions were received, with concerns including solar access, bulk/overdevelopment, traffic congestion and parking, acoustic and visual privacy, inconsistency with the Heritage Conservation Area, Council's Vision 2040, and the Local Strategic Planning Statement.
- On 25 February 2021 the applicant appealed to the Land and Environment Court. Amended plans were submitted in the section 34 conference, although the conference was terminated.
- Further amended plans were submitted on 12 October 2021 amending the structure to a three storey building over basement parking, under the SEPP (Affordable Rental Housing) 2009 ("ARH SEPP"). Those plans were re-notified and one submission was received.
- On 15 February 2022 the parties held a section 34 conference and on 16 February 2022 the parties entered into a section 34 agreement.
- On 11 March 2022 the court ordered that the appeal be upheld and the DA as amended be granted consent subject to conditions. There is nothing within the judgment, the agreement between the parties, the jurisdictional statement, or the conditions of consent indicating that the approved proposal relied upon provisions in the ARH SEPP.

4. Proposal

The Proposal seeks to insert an additional level which is generally achieved by reducing the basement level by 1.9m, reducing the floor to floor levels by 0.05m and inserting a new level within the roof as a mansard roof form. The outcomes from the proposed development are generally the following changes to the approved development:

- a) FSR:

The FSR is increased from 0.89:1 to 1.42:1. The GFA has increased from 506m² to 808m². The increased FSR is a result of:

 - Additional Level 3 with two units;
 - Enclosure of the lobby areas on ground level, Level 1 and Level 2, including the conversion of some of the lobby area into GFA within these units;
 - Enclosure of the rear balcony on Ground Level;
- b) Building Height:

Increases from RL88.53 to RL89.03 (at the north – front);
- c) Apartment mix of 4 x 2 bed and 4 x 3 bed are achieved with internal alterations:
 - Ground: 2 x 3 bed
 - Level 1: 2 x 2 bed
 - Level 2: 1 x 2 bed, 1 x 3 bed
 - Level 3: 1 x 2 bed, 1 x 3 bed
- d) Car parking:

Increased from 9 to 12 car spaces, bicycle spaces reduced from 7 to 5 and the single motor bike space remains unchanged. The approved car stacker system is expanded. Instead of a ramp access, access via a car lift at entry is proposed.
- e) Landscaping:

The basement is increased to the side boundary on the south west of the site, however despite this the plans indicate that there is no change to the deep soil provided on the site.

The Proposal does not seek to use the bonus FSR which could be obtainable under the State Environmental Planning Policy (Housing) 2021 (Housing SEPP), which allows up to 0.5:1 additional

FSR provided that at least 50% of the dwellings are proposed as affordable dwellings. It is noted that if the Housing SEPP were applied, the proposed FSR would only exceed the controls by 0.02:1.

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Comprehensive DCP 2013. The following submissions were received as a result of the notification process:

- Four independent submissions were received objecting to the development application, with one of those including a petition with 44 signatures, mostly from the adjoining property at 42 Avoca Street Randwick.

Issue	Comment
Construction Noise	As with all developments, amenity impacts arising from construction noises can be mitigated through conditions.
Impact on privacy from the balconies and windows	Agreed, refer to key issues discussion below.
Overdevelopment, bulk	Agreed, refer to key issues discussion below.
Inadequate parking under Council's controls, no access for service vehicles	Agreed, refer to key issues discussion below.
The car lift is unsatisfactory due to lack of queuing space	Agreed, refer to key issues discussion below.
Significant variance to the FSR control	Agreed, refer to key issues discussion below.
Garbage collection concerning utilization of the lift.	Agreed, refer to key issues discussion below.
It is a whole new development not alterations and additions – completely different in terms of design, bulk and visual appearance.	Agreed, refer to key issues discussion below.
Lack of communal areas.	Council notes that communal areas, or lack thereof, was considered under that of the original application by the Courts.
Solar access to eastern wing of 42 Avoca Street.	Agreed, refer to key issues discussion below.
Deep soil has been reduced due to increase in footprint.	Agreed, refer to key issues discussion below.

5.1. Renotification

N/A

6. Relevant Environment Planning Instruments

6.1. SEPP 65 - Design Quality of Residential Apartment Developments

The proposed development is for alterations and additions to an approved RFB that is not yet constructed, that comprises 3 storeys, therefore SEPP 65 applies.

Clause 28 (2) of SEPP 65 states:

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

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

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

An assessment has also been carried out against the design criteria of the Apartment Design Guide ("ADG") (refer to **Appendix 3**). In summary, the development does not demonstrate compliance with the objectives of the ADG in relation to; visual privacy; building design; pedestrian entry and access; communal open space, storage and car parking. These form reasons for refusal.

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

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

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

Assessing officer's comment: According to Council's Development Engineer, the proposal fails to comply with 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: There concern around insufficient ceiling height for adequate use of some areas within the sloping roof section of some of the units. It is not considered that the toilets for instance, will have a ceiling height of 2.1m in accordance with the BCA.

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

(a) *the design quality principles, and*

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

Assessing officer's comment: Based on comments provided by Council's DEP, adequate regard has been given to the SEPP 65 design quality principles and the ADG design criteria (refer to **Appendix 1 & 4**), 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.*

6.2. SEPP (Housing) 2021

State Environmental Planning Policy (Housing) 2021 relates to development that is defined as infill affordable housing, secondary dwellings, boarding houses, supportive accommodation and group homes and, where applicable, allows certain concessions in appropriate locations.

The Proposal does not seek to use the bonus FSR which could be obtainable under the State Environmental Planning Policy (Housing) 2021 (Housing SEPP), which allows up to 0.5:1 additional FSR provided that at least 50% of the dwellings are proposed as affordable dwellings. It is noted that if the Housing SEPP were applied, the proposed FSR would only exceed the controls by 0.02:1.

6.3. SEPP (Building Sustainability Index: BASIX) 2004

SEPP (Building Sustainability Index: BASIX) 2004 was gazetted on 26 June 2004, and applies to the subject site. SEPP BASIX requires all new residences in NSW to meet sustainability targets of 40% reduction in potable water consumption, and a 50% reduction in greenhouse gas emissions. In considering the merits of the proposal, it is appropriate to refer to the sustainability targets of the SEPP.

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

6.4. SEPP (Resilience and Hazards) 2021

SEPP (Resilience and Hazards) 2021 came into effect on 1 March 2022 and consolidated the previous Coastal Management, Remediation of Land and Hazardous and Offensive Development SEPPs as Chapters 2, 3 and 4 within the new SEPP. The remediation of land provisions are relevant in this instance.

Clause 4.6(1) requires the consent authority to consider whether land is contaminated prior to the consent of development on that land.

The owners have advised that as the long-term use of the site has been residential, the site is unlikely to be contaminated. This was accepted by Commissioner Dickson in the recent judgement for the site (*Mark Zhang v Randwick City Council [2022] NSWLEC 1120*) at 4(2). On this basis, further investigation is not considered necessary.

6.5. Randwick Local Environmental Plan 2012 (LEP)

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

The proposal is not consistent with the specific objectives of the zone in that the proposed activity and built form will result in a development that does not provide adequate amenity for the future occupants at the subject site and would result in adverse amenity impacts to the neighbouring properties.

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

Clause	Development Standard	Previous Approved Development (DA/625/2020)	Proposal	Compliance (Yes/No)
Cl 4.4: Floor space ratio (max)	0.9:1	0.89:1	1.42:1 (808m ²)	No
Cl 4.3: Building height (max)	12m	12m	12.39m	No

6.5.1. *Clause 4.3 Building Height*

The proposal does not comply with the development standard for the height of buildings. It is noted that no variation request has been submitted concerning the contravention.

Natural ground level (RL 76.64) on the eastern elevation provides a height of 12.39m. Natural ground level (RL 76.26) in the middle of the site provides a height of approximately 12.27m.

6.5.2. *Clause 4.4 Floor Space Ratio*

The proposal does not comply with the development standard for floor space ratio. It is noted that the variation request does not satisfy the requirements of clause 4.6, discussed further below.

The maximum permitted FSR under the RLEP 2012 is 0.9:1. Given the site area of 569.1m² the permissible GFA is 512.19m². The proposed GFA is identified as 808m² (1.42:1) which is a variation of 295.81m² or 58%.

6.5.3. *Clause 4.6 - Exceptions to development standards*

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

6.5.4. *Clause 5.10 - Heritage conservation*

Clause 5.10 of the LEP relates to heritage items and heritage conservation areas. Any effect of the proposed development on the heritage significance of the item, nearby item, surrounding conservation area must be considered in the assessment of any proposed development. While the subject site is located within the vicinity of the North Randwick Heritage Conservation Area and a state listed heritage item (Emanuel School), the subject site is not identified as a heritage item.

The majority of buildings in Stanley Street were built in the 1930s or interwar period and the majority have hipped, or hipped and gabled, roof forms. The exception is Emanuel School which includes both heritage buildings and modern buildings, including some under construction. The area includes 2-4 storey residential flat buildings and dwellings. The site is opposite the North Randwick Heritage Conservation Area (refer to **Figure 10** above).

Clause 1.12 in Part B2 of RDCP 2013 requires all new development in the vicinity of a heritage conservation area or heritage item to be considered for its likely effect on heritage significant and setting. The mansard roof form will erode the pitched roof form which is approved that was intended to relate the development to the surrounding buildings. The side elevations and vertical emphasis to openings and large overhanging dormer windows will increase the apparent bulk and scale of the development in the streetscape which is inconsistent with the two storey scale of adjoining development within the heritage conservation area to the west and the two and three storey scale of development to the east. The proposed roof form has failed to recognize the desirable elements of the streetscape.

The application was referred to Council's Heritage Officer for comment. Comments are included as **Appendix 1**.

6.5.5. *Clause 6.2 - Earthworks*

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

- a. *the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,*
- b. *the effect of the development on the likely future use or redevelopment of the land,*
- c. *the quality of the fill or the soil to be excavated, or both,*
- d. *the effect of the development on the existing and likely amenity of adjoining properties,*
- e. *the source of any fill material and the destination of any excavated material,*
- f. *the likelihood of disturbing relics,*

- g. *the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,*
- h. *any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.*

A geotechnical report has not been provided in support of the proposed development. Council notes that the approved development has a basement level of RL 73.53 with the car stacker at an RL of 71.13. The alterations and additions require the basement to have an RL of 71.63 with the car stacker at RL69.28.

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Previous Approved Development (DA/625/2020)	Proposal	Proposed variation	Proposed variation (%)
CI 4.4: Floor space ratio (max)	0.9:1	0.89:1	1.42:1 (808m ²)	295.81m ²	58%
CI 4.3: Building height (max)	12m	12m	12.39m	0.39	3.3%

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Under clause 64 of the Environmental Planning and Assessment Regulation 2000, the Secretary has given written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018, to each consent authority, that it may assume the

Secretary's concurrence for exceptions to development standards in respect of applications made under cl 4.6 (subject to the conditions in the table in the notice).

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

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

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

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

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

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

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

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

'Desired future character' is not defined in the LEP. The meaning of 'desired future character' is derived from the text and context of the provisions of the LEP in which it is used and the other provisions of the LEP that form the urban character and built form of the area. The relevant clauses in the LEP which relate to urban character and built form are:

- a) The zoning of the land (Clause 2.2 and the Land Zoning Map);*
- b) The zone objectives (Clause 2.3);*
- c) The land use table (at the end of Part 2); and*
- d) The development standards in Part 4:*
 - i. Clause 4.3 Height of Buildings and Height of Buildings Map which prescribes a maximum height of 12m; and*
 - ii. Clause 4.4 Floor Space Ratio and Floor Space Ratio Map which prescribes a maximum FSR of 0.9:1.*

The R3 Medium Density Residential zoning permits a wide range of uses and built form on the site, which promotes the eclectic desired future character. The permissible uses are:

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Business premises; Car parks; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Group homes; Home businesses; Hostels; Hotel or motel accommodation; Multi dwelling housing; Neighbourhood shops; Office premises; Oyster aquaculture; Passenger transport facilities; Places of public worship; Recreation facilities (indoor); Recreation facilities (outdoor); Residential flat buildings; Respite day care centres; Restaurants or cafes; Roads; Semi-detached dwellings; Seniors housing; Serviced apartments; Shops; Tank-based aquaculture

The proposal will continue to contribute to the eclectic mix of permissible uses in the R3 zone. The proposal also remains compatible with the envelope of nearby developments recently approved and constructed. Importantly, this includes the previously approved

residential flat building on the subject site (DA 625/2020), which had a maximum roof height of RL 88.53 AHD and setbacks to match the proposal. In other words, the height and envelope is consistent with these buildings and compatible with the area's desired future character as per the Court judgement of SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112. In this judgement, Clay AC notes:

The desired future character in my opinion must take into account the form of the buildings to the east which the Council approved under effectively the same controls as present. Those buildings exceed the height and floor space ratio controls. As the Applicant pointed out in submissions, this is not a case where there is an adjacent development approved and constructed many years ago which sits as an anomaly in the street. The developments under construction represent the recently expressed attitude of the Respondent to the controls and what is desired in this part of Cross Street.

This approach was confirmed in the Appeal by Preston CJ, that the desired future character should be informed by the nearby and future development, and not limited by the development standards. Indeed, the Chief Judge linked this to Clause 4.6 and stated at [60], inter alia:

...the application of cl 4.6 of WLEP to the height and FSR development standards supports a broader not narrower construction of the term 'desired future character used in those development standards. Clause 4.6 provides an appropriate degree of flexibility in applying certain development standards to particular development (cl 4.6(1)(a)). However, cl 4.6 does not apply to a development standard that is expressly excluded from the operation of the clause (cl 4.6(2)). Neither the height of buildings development stand in cl 4.3 nor the FSR development standard in cl 4.4 is expressly excluded from the operation of cl 4.6. This contemplates that development that contravenes the height and development standards may be approved under cl 4.6.

*The subject site is in an area which includes several other residential flat buildings, many of which are between three and four storeys in height (see **Figure 2**).*

D12/23



Figure 11: Figure 2 Referenced in the Applicant's 4.6 Variation request (Source: GSA Planning).

When viewed from Stanley Street, the proposed residential flat building will appear as three storeys with a mansard roof form, with no apparent addition to the bulk and scale of the proposal (see **Figure 3** on the following page). Where additional floor space is proposed at the Third Floor level, this has been designed to form part of a mansard roof which will match the height of the approved form, thus providing a similar appearance. The proposed area of additional floor space, at the central lobby area and within the roof form will not alter this compatibility.



Source: OROSI

Figure 3: Proposed Photomontage

Figure 12: Figure 3 Referenced in the Applicant's 4.6 Variation request (Source: GSA Planning).

It is noted that the approved and proposed residential flat building use is listed as a permissible use and is envisioned appropriate in the location. Further, the application of a 12 metre maximum building height allows for a four storey built form, as is proposed. Irrespective of the additional floor space, the proposal will match the existing approved building height, which will continue to comply with the LEP height limit. While the approved built form complied with the FSR provision, where additional floor-compliance is proposed, this relates solely to the central lobby and habitable roof form, which will not limit compatibility with the desired future character of the locality.

Accordingly, the proposed alterations and additions to the approved built form remains consistent with the desired future character of Randwick.

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

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

The proposed alterations and additions to the approved residential flat building will maintain a similar contemporary style, as an architecturally designed built form. This ensures that the proposal provides a well-articulated built form which contributes to visual interest when viewed from Stanley Street and neighbouring properties. The proposed building facades incorporates articulation breaks and openings, particularly at the front and rear facades.

The proposal will continue to provide an environmentally sensitive design, with natural cross-ventilation achieved for 100% of the units (both approved and proposed), while each unit will receive compliant levels of solar access. The alterations and additions will also meet the requirements under State Environmental Planning Policy (SEPP) BASIX – 2004 and the majority of provisions under SEPP 65 – Design Quality of Residential Apartment Development.

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

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

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

The subject site is neither a heritage or contributory item, nor does it directly adjoin any items of heritage significant. The site does adjoin the North Randwick Heritage Conservation Area and is opposite a heritage item which is to the north (Item Nos. 1449). The surrounding neighbourhood, including the subject site, is all zoned R3 Medium Density Residential. The R3 zone is characterised by a variety of detached dwellings, multi-unit housing and residential flat buildings. The proposal is unlikely to affect the amenity of nearby heritage items and will maintain the approved contemporary style, residential flat building use and overall building envelope. In the recent judgement for the approved residential flat building on the site (Mark Zhang v Randwick City Council [2022] NSWLEC 1120), Commissioner Dickson provided the following comment with regards to potential heritage impacts:

The site is not a heritage item nor is it located in a heritage conservation area. However, the land across from the site is within the North Randwick Heritage Conservation area, and the land to the north (Emanuel School) contains a state listed heritage item. Clause 5.10 of LEP 2012 does not apply. The proposed works are therefore considered unlikely to impact on the heritage significance of nearby heritage items or conservation areas.

While the proposal seeks to provide habitable roof space as part of the approved roof form, this has been designed to match the existing overall height at RL 88.53 AHD. The proposal will therefore match the approved bulk and scale, with the front glazing line of proposed Unit 301 recessed from the front façade by an additional 2.4m. The proposal maintains the approved building height, which remains compliant, and the extent of additional floor space is located within the approved building envelope. The proposed built form will continue to be perceived as three storeys from the front and rear, with a mansard roof form. This remains a compatible scale and character with the nearby provides an appropriate transition in scale to the adjoining medium density development.

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

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

In our opinion, given the proposal will maintain the approved building height and building envelope, with the extent of non-compliance to form part of the approved built form, the proposal will not result in unreasonable impacts on adjoining or nearby properties in respect of views, privacy or overshadowing. The location of the additional floor space, as part of the enclosed central lobbies which are towards the centre of the site and at the proposed habitable roof form, does not add to the visual bulk of the residential flat building and limits its visibility from the public domain and surrounding properties.

The area of non-compliance will not affect solar access for neighbouring properties and their private open space. As demonstrated by the shadow diagrams prepared by OROSI (submitted separately), the proposal will not result in a discernible increase in shadowing to the adjoining properties, given it will generally maintain the approved envelope.

In terms of view loss, it should be noted that we have not had the opportunity to inspect the surrounding properties. However, given the proposal will retain the approved maximum building height at RL 88.53 AHD, it is unlikely that the proposed additional floor space within the approved envelope will impact on views from surrounding properties.

Notwithstanding the proposed FSR non-compliance, compliance with visual and acoustic privacy has been achieved. All primary habitable rooms along each of the side boundaries have included privacy screens to maintain visual privacy for residents of adjoining properties. This limits any potential sightlines from the subject site to adjoining properties and their private open space. In our opinion, the area of non-compliance is not likely to result in significant impacts in terms of view loss, privacy, overshadowing and visual intrusion and satisfies the intent of objective (d).

Accordingly, although the proposal will exceed the FSR control, this is unlikely to have any significant adverse impacts as the design is generally contained within a compliant building envelope.

Assessing officer's comment: As discussed below, the reasons stated in the applicant's written request are not concurred with. It is considered that the proposal does not uphold objectives a) and d) of the floor space ratio development standard. As such, the applicant has not adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

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

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

The proposal is permissible in the R3 Medium Density Residential zone, is consistent with the zone objectives and satisfies an 'unreasonable and unnecessary' test established by the court in Wehbe. The non-compliance relates to additional floor space at the roof form and central lobbies and is part of the approved building envelope. Sufficient environmental planning grounds to justify the proposed FSR exceedance include consistency within the context and environmental amenity.

Consistency within the Context

The proposal will provide increased housing stock in a medium-density residential environment while retaining the approved scale of the residential flat building on the site (DA 625/2020). The proposed alterations and additions to the approval will maintain a similar overall envelope, overall design and appearance, with two additional apartments provided within the habitable roof form which was considered acceptable by the Court (Mark Zhang v Randwick City Council [2022] NSWLEC 1120). Notwithstanding the approved development on the site, the proposal remains compatible with the envelope of nearby developments recently approved and constructed. In other words, the height and envelope are consistent with these buildings and compatible with the area's desired future character as per the Court judgement of SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112.

The proposal will continue to present a built form of a similar scale to the area's existing and desired high-quality developments in the streetscape. The proposal will consist of two- and three-bedroom units, which will add to the supply of housing options in Randwick. The elevation to Stanley Street has been designed to create visual interest and will provide an enhanced visual outcome which will maintain the site's relationship with the evolving character and has been designed to create visual interest. The incorporation of a variety of materials and landscaping on the site and building will provide further visual and amenity benefits.

In Initial Action v Woollahra Municipal Council [2019] NSWLEC 1097, Commissioner O'Neill states at [42], inter alia:

I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by His Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act).

This report demonstrates the proposed alterations and additions to the approved residential flat building will be compatible with the nearby developments. As noted, three and four storey residential flat buildings are not uncommon in the streetscape. The areas of contravention for the additional floor space will be contained within the approved roof form. With the exception of the balcony openings, the proposed third floor level will not be easily discernible from Stanley Street and therefore will not impact the streetscape amenity or existing characteristics of the area.

Environmental Amenity

Our assessment has demonstrated the proposal will preserve neighbours' privacy, solar access and views, as per the approved residential flat building on the site. Despite the proposed additional floor space, this forms part of the approved envelope and will therefore maintain a similar relationship with neighbouring properties. Conversely, the proposed additional floor space will contribute to amenity improvements for future occupants, with larger unit sizes facilitated by reducing the extent of the central lobby. As the floor space variation forms part of an architecturally designed residential flat building which substantially improves the amenity of the future occupants, we consider the proposal is in the public interest.

As detailed, strict compliance with the development standard would not result in a better outcome for development. It would unnecessarily complicate orderly and economic development of the land in accordance with the intentions of the zoning and objects of the EPA Act and would limit the provision of the proposed one two-bedroom and one three-bedroom unit within the approved building envelope.

Accordingly, in our opinion, the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the variation to the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).

Assessing officer's comment:

In the written request, the Applicant has addressed how the FSR non compliance relates to additional floor space within the roof and central lobbies is within the approved building envelope. Furthermore, the Applicant states that the proposal is consistent with the objectives of the R3 zone as well as maintaining consistency with the context of the locality.

The Applicant has not adequately addressed how compliance with the development standard is unreasonable and unnecessary in this case. In conclusion, the Applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify the contravention. Furthermore, Council is of the opinion that the entire building envelope is being altered given the changes proposed, and therefore it is argued that the additional GFA is contained within the approved envelope.

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

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

Assessment against objectives of floor space ratio standard

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

Assessing officer's comment: The desired future character of the locality is established in the planning standards and controls that apply to the site. The proposal does not retain the overall appearance of the approved design, it does not retain the same height, and therefore does not retain the same building envelope, it encloses a balcony on the ground floor and increases the floor plate of the basement (not acknowledged within the Applicant's written request) and will appear as a four storey development.

The proposed floor space ratio non-compliance of 1.42:1 is substantially higher than the 0.9:1 permitted at the subject site and the neighbouring properties. The non-compliance results in a building that is greater in bulk and scale than the predominant form of development in the immediate locality and substantially greater than what is permissible on surrounding sites. Therefore, the size and scale of the development is not compatible with the desired future character of the locality.

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

Assessing officer's comment: The BASIX certificate (submitted by the applicant) shows that the development meets the relevant water and energy saving targets.

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

Assessing officer's comment: Council's heritage planner has reviewed the application and has advised that:

The application proposes a three storey building over basement carparking, with a fourth level partially contained within a roof form which comprises a 30 degree pitched roof "skirt" around the perimeter of a low pitched roof.

Immediately to the west of the site, within the heritage conservation area is a single storey Federation style cottage. Further to the west is a group of early twentieth century two storey semi-detached dwellings. To the east of the site is a two storey Interwar residential flat building, and further to the east on the corner of Avoca Street is a three storey residential flat building. The Emanuel School site includes a number of 2 and 3 storey buildings to its southern and western perimeter.

The site is separated from the heritage items to the north and south and will not impact on their fabric. Subject to standard consent conditions in relation to excavation, the proposal will not impact of the physical fabric of the dwelling to the west, within the heritage conservation area.

The proposed basement level car lift will not result in substantial changes to the approved building envelope. Changes to apartment sizes at ground, first floor and second floor levels will fill in previously open circulation areas, but will have minimal streetscape visibility. There are concerns that the additional fourth level partially contained within the roof form will erode the pitched roof form which was intended to relate the development to the surrounding buildings. There are concerns that the treatment of the side elevations, including vertical emphasis to openings, and large overhanging "dormer windows" will increase the apparent scale and bulk of the development in the streetscape. There are concerns that the scale and bulk of the proposal is inconsistent with the two storey scale of adjoining development within the

heritage conservation area to the west, and with the two and three storey scale of development to the east.

In relation to materials and finishes, it is suggested that a traditional brickwork colour would better relate to the face brickwork of existing development to the east and west of the site than the white bricks proposed.

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

The development will adversely impact the amenity of the adjoining properties in terms of visual bulk, loss of privacy, solar access and overshadowing. Refer to the Key Issues in Section 7 for further discussion.

The development is therefore not consistent with the objectives of the floor space ratio standard.

Assessment against objectives of R3 Medium Density zone

The objectives of the Residential R3 Medium Density zone are:

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

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

Clause 4.6(4)(a) guides the consent authority's consideration of this Clause 4.6 variation request. It provides that:

(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*

The applicant submits that the consent authority can be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this written request, and having regard to the site and locality.

In our opinion, the proposal is consistent with the objectives of the FSR Development Standard, as already demonstrated; and the R3 Medium Density Residential zone, as discussed below:

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

Response: *The proposed works to the approved residential flat building will provide for the housing needs of the community by providing an additional two units, which will form part of a residential flat building that has previously been considered consistent within the R3 zone.*

Objective: To provide a variety of housing types within a medium density residential environment.

Response: The proposal will continue to provide a mixture of two- and three-bedroom units within a four storey residential flat building, which will contribute to the variety of housing types in this zone.

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

Response: N/A

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

Response: The proposal will continue to present as three storeys above basement parking, with the proposed fourth storey to form part of the roof form. This design approach will recognise the desirable elements of the streetscape by providing a well-designed contemporary building which remains consistent with the previous approval on the site (DA 625/2020) and those for nearby properties on Stanley and Avoca Street. The proposal remains compliant with the building height control, which ensures the height and scale of the proposal is consistent in the context.

Objective: To protect the amenity of residents.

Response: The proposal will predominately retain the approved building envelope and will match the approved building height at RL 88.53 AHD, which ensures the proposal will have no discernible impact on amenity of neighbouring residents and will benefit future occupants of the site.

Objective: To encourage housing affordability.

Response: The proposal will encourage housing affordability by providing two additional units, which will increase housing supply in the locality.

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

Response: N/A

From this, we consider the proposal is in the public interest and should be supported.

Assessing officer's comment: As discussed above and in the Key Issues in Section 7, the proposal is inconsistent with the specific objectives of the zone in that the proposed built form will not contribute to the desired future character of the area and results in adverse amenity impacts to the neighbouring properties.

The development is therefore inconsistent with the objectives of the FSR standard and the R3 zone. Therefore, the development will not be in the public interest.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

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

Conclusion

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

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

Clause 4.6 of RLEP 2012 applies to vary a development standard imposed by the LEP or any other environmental planning instrument. The Applicant has not submitted a written request pursuant to clause 4.6 of RLEP 2012 seeking to justify the contravention of the height of building control development standard in clause 4.3 of RLEP 2012.

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

The relevant provisions of the DCP are addressed in **Appendix 4**.

Note: Clause 6A of SEPP 65 states:

(1) This clause applies in respect of the objectives, design criteria and design guidance set out in Parts 3 and 4 of the Apartment Design Guide for the following:

- (a) visual privacy,*
- (b) solar and daylight access,*
- (c) common circulation and spaces,*
- (d) apartment size and layout,*
- (e) ceiling heights,*
- (f) private open space and balconies,*
- (g) natural ventilation,*
- (h) storage.*

(2) If a development control plan contains provisions that specify requirements, standards or controls in relation to a matter to which this clause applies, those provisions are of no effect.

(3) This clause applies regardless of when the development control plan was made.

Consequently, where the Randwick DCP provides controls in relation to the matters listed in item (1), the assessment has been made against the relevant controls in parts 3 and 4 of the ADG (refer to **Appendix 3**) rather than those in the DCP.

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	There are a number of draft amendments to the RLEP 2012 that have been the subject of public consultation under the Act. Whilst these draft amendments apply to the land within the LGA, it is noted that none of these amendments specifically change the provisions affecting this subject site.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal does not satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 4 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 inconsistent with the dominant character of the locality.</p> <p>The proposal will result in detrimental environmental impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	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 intended use.
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 and social impacts on the locality. Accordingly, the proposal is not considered to be in the public interest.

9.1. Discussion of key issues

Building height non compliance

As outlined above in this report, the building does not comply with the development standard within 4.3 of the RLEP 2012.

No written request has been provided in support of this contravention.

Floor Space Ratio non compliance

As outlined above in this report, the building does not comply with the development standard within 4.4 of the RLEP 2012.

The applicants written variation request does not adequately addressed how compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there is enough environmental planning grounds to justify the contravention.

Insufficient information provided with relation to Earthworks

No geotechnical report was provided in support of the application. The proposal seeks to undertake further earthworks to extend the approved RL of the Basement from RL73.53 to RL 71.63 and subsequently the RL for the car stacker is changing from RL 71.63 to 69.28. furthermore, clause 4.12 of Part C2 within the RDCP 2013 limits excavation to 1m which is exceeded.

Setback inconsistencies

Rear Setback

Clause 3.4.3 of the RDCP 2013 requires rear setbacks to be 15% of the allotment depth or 5m whichever is the greater. In the instance of the subject site, the minimum rear setback should be 6.225m. The proposed setback is identified as 6.21m.

Furthermore, on ground level, a balcony is proposed to be enclosed, which compounds the non-complaint rear setback. Given the setback fails to provide adequate separation between neighbouring properties with regards to visual and acoustic privacy, and solar access, and the inability to provide for adequate private open space and deep soil planting, the developmental fails to meet the objectives of the control.

Noncompliance with ADG objectives and provisions with relation to Visual Privacy

The proposal is inconsistent with the objectives and provisions for visual privacy and building separation as outlined in Section 3F-1 of the Apartment Design Guide (ADG).

The ADG requires a 6m setback to the side boundaries to ensure reasonable levels of external and internal visual privacy are achieved. 2m side setbacks are proposed, which in Council's opinion result in poor separation with adjoining properties.

Furthermore, the proposal fails to comply with the objectives and provisions of 3F-2 of the ADG with regard to the access path and stairs descending from the street. These steps overlook the private open space of G01 with no privacy screen provided. The main access pathway passes through habitable spaces of G01 with no privacy screening and overlooking capacity through the windows. If privacy screening were imposed, Council believe that the screening would create adverse impacts on solar access and ventilation within this unit. Subsequently, the POS and living room windows for this unit are compromised in terms of visual privacy from the street.

Noncompliance with DCP objectives and provisions with relation to Building design

Building Façade

Control iv) of section 4.1 of Part C2 of RDCP 2013 requires development to avoid massive or continuous unrelieved blank walls, including by dividing building elevations into sections, bays or modules of not more than 10m in length and to stagger wall planes.

The Proposal removes the articulation previously approved along the side facades. The inset to the lift is approximately 200mm and the inset to the stairs approximately 400mm – virtually indecipherable from the neighbouring properties and fails to achieve the objective of an articulated façade.

Roof Design

Control i) of section 4.2 of Part C2 of RDCP 2013 requires development to be designed in terms of massing, pitch, profile and silhouette to relate to the three-dimensional form (size and scale) and façade composition of the building.

The proposed mansard roof form, heavily segmented by large dormers and balcony openings fails to achieve both the control and the objective.

(e) Control iii) of section 4.2 of Part C2 of RDCP 2013 requires development to use a similar roof pitch to adjacent buildings, particularly if there is consistency of roof forms across the streetscape. The overwhelming predominant roof form is hipped as discussed earlier in this report. The approved development includes a half hipped / half mansard style. The Proposal amends that roof form to a full mansard form incorporating habitable space and is inconsistent with the roof forms in the streetscape.

Habitable Roof Space

Control i) of section 4.3 of Part C2 of RDCP 2013 requires habitable roof space to be considered on the provision that various matters are met including that it has a maximum floor space of 65% of the storey immediately below; that when viewed from the surrounding public and private domain, the roof form (including habitable roof space, associated private open space and plant and machinery) has the appearance of a roof; and that windows are designed as an integrated element of the roof. The note requires that a proposal including habitable roof space must allow for adequate ceiling heights and floor slab and roof construction, and that it should meet the building height and FSR controls.

The Proposal does not meet the height or FSR controls. The GFA is 94.8% of the GFA of the floor below. The habitable roof space will clearly be viewed as another level and not as a roof, particularly given the balconies to the front and rear, and the large and extensive number of dormer windows at the sides.

The internal walls prior to the roof form appear to be about 1.5m and variable, taking approximately 1.4m to reach the flat roof section. The ceiling heights vary across the two habitable roof units from approximately 2.9m towards the front of unit 3.01 to 2.6m at the rear of Unit 3.02. Within this sloping roof section of each apartment are toilets, a shower, living areas and the walkway to get into the bed. There is a very real concern that there is insufficient ceiling height for adequate use of these areas. It is not considered that the toilets for instance will have a ceiling height of 2.1m in accordance with the BCA.

The provided habitable roof form does not achieve the requirements for such space under the DCP and leads to a poor quality living space for the occupants.

External Wall Height

Control i) of section 4.4 of Part C2 of RDCP 2013 sets out the following relevant control:

"Where the site is subject to a 12m building height limit under the LEP, a maximum external wall height of 10.5m applies".

The south-eastern corner of the building adjacent to G02 has its nearest spot height on the survey at RL76.17. A compliant wall height at that point must be less than RL86.67. A spot height towards the middle of the eastern wall of the proposed building is at RL76.25, providing a compliant wall height to be less than RL86.75. The plans indicate (by measuring off the plan) that the wall height will be approximately between RL86.73 to RL86.93. Those figures are less than the compliant maximum wall heights identified in the previous sentences and therefore mean that the wall heights are 10.56-10.76m above the spot height of RL76.17, and 10.48-10.68m at the spot height of RL76.25. The Proposal therefore exceeds the wall height control and fails to satisfy the objectives.

Noncompliance with ADG objectives and provisions with relation to Pedestrian entry and access

The proposed development is inconsistent with pedestrian access and entries objectives and provisions in section 3C-2, 3G-1, 3G-2 and 4F-2 of the ADG.

The Proposal seeks to amend the approved ramped access to the lobby by requiring a series of steps down combined with a ramp. Accessibility is provided by a stair platform lift within the 2m wide stairway. The result is an access which does not present to the public domain, is located well below street level, has multiple level changes, requires another mechanical lift to provide accessibility

(being the platform lift), and is hard to locate – being placed more than halfway back into the property. The outcome is an extremely compromised entry.

These proposed changes to the approved entry are necessitated because of the Proposal's incorporation of an extra storey largely (but not wholly) within the existing above ground building envelope. The ground floor level is reduced from RL77.68 to RL76.13 – 1.55m lower. The lowering of the ground level sets the ground floor units well below the street level, resulting in a very poor pedestrian entry; very poor accessibility, poor street domain interface, reduced amenity for the ground floor units and compromised visual privacy.

The entry lobby is small, tight and uninviting. It is inconsistent with Objective 4F-2 of the ADG as it does not promote social interaction between residents. It is inconsistent with the design guidance in 4F-2 of the ADG to avoid tight corners and spaces and to provide communal seating.

Insufficient information provided with relation Building Code of Australia requirements

Ceiling Height

The proposed development has not demonstrated that the single exit from the basement car park can be justified by a performance solution as a result of the car stacker. This is also identified within the BCA Report lodged by the Applicant.

Furthermore, the units on Level 3 do not satisfy the requirements of Part F3.1 of the National Construction Code 2019 BCA Volume 1 (NCC) relating to minimum ceiling heights.

It is noted that the NCC requires the height of rooms for buildings classified as 2, 3 or 4 to have a habitable room ceiling height of 2.4m for not less than two thirds of the floor area of the room and in non-habitable rooms, the height of not less than 2.1m for not less than two thirds of the room. Compliance with this provision has not been achieved.

Noncompliance with Randwick Development Control Plan (DCP) 2013 with relation to deep soil planting and landscaping

Section 2.2 'Landscaped open space and deep soil area' in Part C2 Medium Density Residential of RDCP 2013 sets out the following relevant objectives:

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

Control 2.2.1i) requires a minimum 50% of the site area to be landscaped area, with 45% of the site area proposed as landscaped open space.

Control 2.2.2i) requires a minimum of 25% of the site area to have deep soil areas sufficient in size and dimensions to accommodate trees and significant planting, with 20.9% deep soil proposed.

The narrow width of the side setbacks and planting area of only about 1 meter wide does not allow for the growing of substantial vegetation or for the area to be used for recreational activities and the objective is therefore not achieved.

The landscape plan LPDA 21-129/2 dated August 2022 shows stepping pavers between the fire stairs and the private open space of G02 on the eastern side. Plan DA 1102 Issue K dated 17/8/2022 indicates that this area will not be accessible at all – with the fire stairs to the north and some form of wall on the northern-eastern edge of G02. It is unclear as to how this area will be maintained.

Non-compliance with ADG objectives and provisions with relation to Communal open space

3D-1 of the ADG requires a minimum area of 25% of the site for communal open space with a minimum of 50% direct sunlight of 2 hours between 9am and 3pm midwinter. No communal open space is proposed.

Non-compliance with ADG objectives and provisions with relation to Storage

4G-1 requires 8m³ storage for 2 bedroom apartments and 10m³ for 3 bedroom apartments – with half located within the apartment.

The plans identify that the internal storage is in the kitchen. Once stoves, fridges, sinks and pantries are taken into account (they are not shown on the plans), there will not be the stated amount of storage within any of the units, in fact there will barely be any in for example G02, 102, 202, 302 and 301. In unit 101 much of any identified storage area left over will likely be used for a television. Insufficient storage is provided internally which will impact on amenity for the occupants, particularly given that there is no identified linen cupboard either. Council notes that there are no clothes drying facilities identified.

Adverse amenity impacts

Clause 1.2(2)(d) of RLEP 2012 includes as an aim of the LEP *"to achieve a high standard of design in the private and public domain that enhances the quality of life of the community"*.

The fifth bullet pointed objective of the R3 Medium Density Residential zone is to protect the amenity of residents.

SEPP 65 includes Design Quality Principles which includes that good design positively influences internal and external amenity for residents and neighbours.

Section 2.1(7) of Part B1 of RDCP 2013 includes amenity as one of the ten design quality principles to achieve good design: *"Good design provides amenity through the physical, spatial and environmental quality of a development. It includes considering aspects of accessibility, sunlight, ventilation, visual and acoustic privacy, the size and configuration of rooms and spaces."*

Unit G01 is proposed to be at RL76.13 which is below the street at RL78.35 by 2.22metres

Having regard to the sunken nature of the below ground ground-floor units, the poor visual privacy arising from the reduced setbacks and the access pathway, the poor interface with the public domain, the poor level of accessibility to the units, the lack of internal storage, the lack of clothes drying facilities, the lack of communal open space and the low ceilings on level 3, the consent authority cannot be satisfied that the proposal represents acceptable amenity for residents and neighbours as envisaged by the design quality principles in RDCP 2013 and the ADG, or the objective of the R3 zone. Nor can the consent authority find that the quality of life of the community is enhanced by this proposal, being one of the aims of the RLEP 2012.

Adverse impacts on the public domain and character of the locality and heritage

The proposed development is not sympathetic to the desirable elements of the streetscape, nor does it provide an acceptable relationship to the adjoining heritage conservation area.

Clause 1.12 in Part B2 of RDCP 2013 requires all new development in the vicinity of a heritage conservation area or heritage item to be considered for its likely effect on heritage significant and setting. The mansard roof form will erode the pitched roof form which is approved that was intended to relate the development to the surrounding buildings. The side elevations and vertical emphasis to openings and large overhanging dormer windows will increase the apparent bulk and scale of the development in the streetscape which is inconsistent with the two storey scale of adjoining development within the heritage conservation area to the west and the two and three storey scale of development to the east. The proposed roof form has failed to recognize the desirable elements of the streetscape.

Section 3C of the ADG advises that dwellings slightly elevated by up to 1m from the footpath have enhanced privacy. Objective 3F-2 (visual privacy) includes design guidance to raise apartments/private open space above the public domain. The design guidance for Objective 4L-2 (ground floor apartments) of the ADG recommends the elevation of private gardens and terraces above street level by 1- 1.5m.

The built form of one level which is almost wholly sunken below the street level fails to achieve the various objectives and criteria of the ADG relating to the interface with the public domain, and does not recognize the desirable elements of the existing streetscape.

The building form is inconsistent with the desired future character of the area as demonstrated by the exceedance of the FSR and building height controls in the RLEP 2012; and by the failure to recognize the desirable elements of the existing streetscape and built form as required by the objective of the R3 zone.

Non-compliance with ADG & DCP objectives and provisions and insufficient information provided with relation Car parking

The proposed development proposes a car parking deficit that relies 100% on mechanical devices.

The proposal is for 8 units comprising of 4 x 2 bedroom and 4 x 3 bedroom units resulting in a total parking requirement under the DCP of 13 spaces including 2 visitor spaces.

As the proposal only provides for 12 spaces with no visitor spaces, there is a total shortfall of 1 space (8%) and a visitor parking shortfall of 2 spaces (100%).

Despite the traffic report saying that there is sufficient parking capacity to accommodate the visitor parking requirements, no justification has been provided to support this statement. No parking survey has been undertaken to determine the availability of on-street parking in the locality.

Any service vehicles would also be required to park-on street thereby exacerbating the visitor parking shortfall.

The proposal is likely to lead to unacceptable impacts in the availability of on-street parking including on the weekend where residents currently receive a reprieve from the parking demand associated with the Emanuel School.

Section 3.2(iv) of Part B7 of RDCP 2013 states, “minimise the use of mechanical parking devices (car stackers or turntables) particularly on difficult (e.g. constrained access) sites and where queuing may result or safety is jeopardised.”

The Proposal includes both a car lift and car-stackers being inconsistent with Clause 3.2 and would be unprecedented within Randwick LGA;

The extended waiting times to utilise both devices will likely be a significant deterrent to residents who would more likely park on-street thereby exacerbating the demand for on-street parking;

The configuration does not allow for visitor or service and delivery parking which will be burdened onto the surrounding street network;

Transporting waste bins kerbside for collection will be 100% reliant on the car-lift which is problematic in the event of a breakdown;

Swept paths have not been provided into the car-stackers opposite the storage cages and bicycle parking which are more restricted due to the narrower aisle width at this location. Typically entry/exit into car-stackers require a wider aisle width due to the restricted nature of the car-stacker platform and associated infrastructure. Access into these spaces has not been satisfactorily demonstrated.

10. Conclusion

That the application for alterations and additions to an approved Residential Flat Building be refused for the following reasons for the reasons mentioned below.

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Appendix 1: Design Excellence Panel Comments

1. Design Excellence Panel Comments

“INTRODUCTION

Attached is a copy of the minutes relating to this Design Excellence Advisory Panel meeting.

The Panel's comments are intended to assist Council in their design consideration of an application against the SEPP 65 or/and Design Excellence principles. The absence of a comment under a head of consideration does not imply that particular matter to be satisfactorily addressed, more likely the changes are suggested elsewhere to generate a desirable change.

Your attention is drawn to the following;

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

Both documents are available from the NSW Department of Planning.

Note:

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

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

PANEL COMMENTS

DA INFORMATION

Alterations and additions to the approved residential flat building including changes to the internal layout, reduction in common lobby size and increase in total units by two.

LEP DCP Control TABLE			
LEP DESCRIPTION	COUNCIL STANDARD	PROPOSED	COMPLIANCE
Floor Space Ratio (Maximum)	0.9:1	Approved (0.89:1) Proposed 1.42:1	No
Height of	12m	12.4	No

Building(Maximum)			

PANEL COMMENTS

1. **Context and Neighbourhood Character**

- the quality and amenity of the public domain

- The cutouts further erode the already minimal pitched roof form for new balconies and windows
- The large, horizontally proportioned front window needs to be more consistent with the area's heritage character.
- The increase in wall height and apparent bulk is out of scale with the neighbourhood

2. **Built Form and Scale**

- The increased building height adds to its already substantial bulkiness
- The insertion of large windows and balconies into the roof form increases the wall height and apparent bulk of the building, particularly along the east and west sides.

3. **Density**

- The proposal amounts to an increase in density for this well-serviced area. However, the additional floor space results in a bulky presence and sub-standard amenity of internal spaces and for its neighbours.

4. **Sustainability**

- The proposal's density compromises sustainable aspects such as privacy, see discussion in 6. Amenity below.
- The Panel does not believe the assertion that an increase in floor area will increase density and is, therefore, a sustainable outcome is a sufficient justification for the proposed design.
- The increase in carpark footprint will not sustain landscaping in the eastern and western setbacks above.
- There does not appear to be any sun-shading on the east and west facades

5. **Landscape**

- The proposal removes deep soil along the side boundary and therefore the opportunity to sustain substantial plant growth along the boundary which would afford privacy and shading.

6. **Amenity**

- The proposal's increased floorspace further compromises amenity for occupants and neighbours, including solar access, sky views and privacy.

- *The additional large windows facing east and west greatly increase overlooking of the eastern and western neighbours.*
- *The reduced common entry area and deletion of planters downgrade the amenity of the communal areas.*

7. Safety

- *The roof will require safe roof access for maintenance.*

8. Housing Diversity and Social Interaction

- *There is an increase in the number of occupants proposed, accompanied by less generous entry and circulation areas and no communal open space, thus demoting opportunities for social interaction.*

9. Aesthetics

- *Architectural Design, Materials and Detailing*
- *The already minimal pitched roof form is further eroded by the cutouts for new balconies and windows, with awkward fragmentary remains.*
- *No gutters are shown for the front roof, which would need to be carefully resolved.*
- *The large, horizontally proportioned front window needs to be more consistent with the area's heritage character.*

SUMMARY AND RECOMMENDATIONS

The Panel cannot see any improvements to the proposed design compared to that approved. The design is inferior to the approved scheme in several respects, including its increased bulk, fragmentary roof form, and the high adverse privacy impacts. The Panel does not support the design.

2. Internal referral comments:

2.1. Heritage planner

The Site

The site is occupied by a single storey Californian Bungalow style cottage, retaining much of its original character, but not well maintained and in deteriorated condition. To the north of the site at no.18 - 20 Stanley Street is the Emanuel School, listed as a heritage item under Randwick LEP 2012 and listed on the State Heritage Register. The listing includes Aston Lodge, as well as the former Little Sisters of the Poor Chapel and the former Little Sisters of the Poor Novitiate. The Heritage NSW datasheet for "Aston Lodge" identifies its significance as an "excellent example of Mid-Victorian architecture designed by Edmund Blacket. Colonial Georgian features dominate, with Victorian verandah. Considerable historical interest. Part of outstanding Aston Lodge group. Hardly altered." To the south of the site at nos.44 – 46 Avoca Street is a two storey semi-detached pair also listed as a heritage item. Immediately to the west of the site is the North Randwick heritage conservation area. The Statement of Significance for the hca notes that the aesthetic significance of the area "largely derives from its Federation and Inter-War housing, its predominantly single storey scale, face brick construction, dominant slate and terra cotta tiled roofs and well established cultural plantings."

Background

DA/625/2020 proposed to replace the existing cottage with a residential flat building comprising 3 residential levels over ground level carparking. The application was ultimately approved in the Land

and Environment Court following submission of amended plans. The Joint Expert Report: Heritage raised concerns that the proposed 45 degree pitched mansard roof form would be incompatible with surrounding buildings and would increase the visibility of the roof, considerably adding to the bulk and apparent height of the proposed development. **These heritage comments were based on an amended revision H of the drawings which have not been located on the Trim file. Comparison of Court approved drawings with the current proposal has been made through the drawings provided within the Statement of Environment Effects.**

Proposal

A development application has now been received which proposes a residential flat building comprising 3 residential levels over ground level carparking. An additional fourth level is partially contained within a steeply pitched roof. At basement level a car lift replaces the previous vehicular access ramp, and at ground, first floor and second floor levels, apartment sizes have been increased.

Submission

The application has been accompanied by a Statement of Environmental Effects which includes a section addressing Heritage issues as follows:

Clause 5.10 of the LEP relates to heritage items and heritage conservation areas. Any effect of the proposed development on the heritage significance of the item, nearby item, surrounding conservation area must be considered in the assessment of any proposed development. While the subject site is located within the vicinity of the North Randwick Heritage Conservation Area and a state listed heritage item (Emanuel School), the subject site is not identified as a heritage item.

As the proposal relates to alterations and additions to the approved residential flat building, the proposal can be considered appropriate in respect of heritage and conservation as per the previous judgement. On this basis, Clause 5.10 does not apply to the subject site and the proposed works.

Controls

Clause 5.10(1) of Randwick Local Environmental Plan 2012 includes an Objective of conserving the heritage significance of heritage items and heritage conservation areas, including associated fabric, setting and views.

Comments

The application proposes a three storey building over basement carparking, with a fourth level partially contained within a roof form which comprises a 30 degree pitched roof "skirt" around the perimeter of a low pitched roof.

Immediately to the west of the site, within the heritage conservation area is a single storey Federation style cottage. Further to the west is a group of early twentieth century two storey semi-detached dwellings. To the east of the site is a two storey Interwar residential flat building, and further to the east on the corner of Avoca Street is a three storey residential flat building. The Emanuel School site includes a number of 2 and 3 storey buildings to its southern and western perimeter.

The site is separated from the heritage items to the north and south and will not impact on their fabric. Subject to standard consent conditions in relation to excavation, the proposal will not impact on the physical fabric of the dwelling to the west, within the heritage conservation area.

The proposed basement level car lift will not result in substantial changes to the approved building envelope. Changes to apartment sizes at ground, first floor and second floor levels will fill in previously open circulation areas, but will have minimal streetscape visibility. There are concerns that the additional fourth level partially contained within the roof form will erode the pitched roof form which was intended to relate the development to the surrounding buildings. There are concerns that the treatment of the side elevations, including vertical emphasis to openings, and large overhanging "dormer windows" will increase the apparent scale and bulk of the development in the streetscape. There are concerns that the scale and bulk of the proposal is inconsistent with the two storey scale of adjoining development within the heritage conservation area to the west, and with the two and three storey scale of development to the east.

In relation to materials and finishes, it is suggested that a traditional brickwork colour would better relate to the face brickwork of existing development to the east and west of the site than the white bricks proposed.

Recommendation

A meeting should be organised to discuss these issues.

2.2. Development Engineer Referral Comments

1. Car Parking

The application should be refused because there is a shortfall of parking (including no visitor parking) and the parking provision is 100% reliant on mechanical devices .

Particulars

(a) *Part B7 of the RDCP specifies the following parking rates applicable to the proposed development*

- *1.2 spaces per 2 bedroom unit*
- *1.5 spaces per 3 bedroom unit*
- *1 visitor space per 4 units*

(b) *The proposal is for 8 units comprising of 4 x 2 bedroom and 4 x 3 bedroom units resulting in a total parking requirement under the DCP of **13 spaces including 2 visitor spaces** .*

*As the proposal only provides for **12 spaces with no visitor spaces**, there is a total shortfall of **1 space (8%)** and a visitor parking shortfall of **2 spaces (100%)**.*

- *The shortfalls in the total and visitor parking are not acceptable as the site lies within a locality that is experiencing high parking pressures due to its location opposite the Emmanuel school.*
 - *Despite the traffic report saying that there is sufficient parking capacity to accommodate the visitor parking requirements, no justification has been provided to support this statement. No parking survey has been undertaken to determine the availability of on-street parking in the locality*
 - *Any service vehicles would also be required to park-on street thereby exacerbating the visitor parking shortfall.*
 - *The proposal is likely to lead to unacceptable impacts in the availability of on-street parking including on the weekend where residents currently receive a reprieve from the parking demand associated with the Emmanuelle school*
- (c) *Section 3.2(iv) of Part B7 of RDCP states, “minimise the use of mechanical parking devices (car stackers or turntables) particularly on difficult (eg constrained access) sites and where queuing may result or safety is jeopardised.”*
- *The amended DA proposes both a car lift and car-stackers being inconsistent with Clause 3.2 and would be unprecedented within Randwick LGA*
 - *The extended waiting times to utilise both devices will likely be a significant deterrent to residents who would more likely park on-street thereby exacerbating the demand for on-street parking*

- *The configuration does not allow for visitor or service and delivery parking which will be burdened onto the surrounding street network..*
- *The high costs in maintaining both systems is likely to be a significant burden on any future strata scheme with only 8 dwellings*
- *Transporting waste bins kerbside for collection will be 100% reliant on the car-lift which is problematic in the event of a breakdown.*
- *Swept paths have not been provided into the car-stackers opposite the storage cages and bicycle parking which are more restricted due to the narrower aisle width at this location. Typically entry/exit into car-stackers require a wider aisle width due to the restricted nature of the car-stacker platform and associated infrastructure. Access into these spaces has not been satisfactorily demonstrated.*

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

RANDWICK LOCAL ENVIRONMENTAL PLAN (LEP) 2012 CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

APPLICANT'S NAME: Parseh Holdings Pty Ltd

SITE ADDRESS: No. 29 Stanley Street, Randwick

PROPOSAL: Alterations and additions to the approved residential flat building

1. (i) **Name of the applicable planning instrument which specifies the development standard:**

Randwick Local Environmental Plan (LEP) 2012

(ii) **The land is zoned:**

R3 Medium Density Residential. The objectives of the R3 Medium Density Residential Zone are as stated:

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

(iii) **The number of the relevant clause therein:**

Clause 4.4 – Floor Space Ratio which is stated as follows:

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

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning.

2. Overview

This Clause 4.6 Exception to Development Standards has been prepared in accordance with the most recent case law. In our opinion, the variation is consistent with the objectives of the zone and development standard and has demonstrated there are sufficient environmental planning grounds to justify contravening the development standard.

3. Background

The site was subject to a recent development application for demolition of the existing dwelling and construction of a three-storey residential flat building with basement parking (DA 625/2020). This application was approved by the Court on **11 March 2022** (*Mark Zhang v Randwick City Council* [2022] NSWLEC 1120).

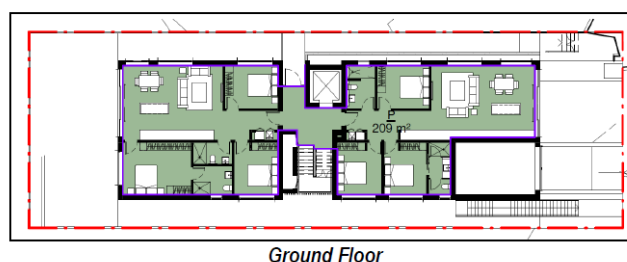
This proposal seeks to undertake alterations and additions to the approved building, as approved under DA 625/2020.

4. Specify the nature of Development Standard sought to be varied and details of variation:

The development standard to which this request for variation relates is Clause 4.4 of the LEP – Floor Space Ratio. This Clause operates in conjunction with the FSR Map which indicates a maximum FSR of 0.9:1 applies to the subject site. The approved residential flat building had an FSR of 0.89:1 (DA 625/2020). The proposal seeks to enclose the approved lobby areas, while increasing the internal unit sizes, which will increase the FSR by 0.53:1 to a total of 1.42:1 (see **Figure 1** below and on the following page).

The approved residential flat building demonstrates a high-quality contemporary design, with a three storey overall building height and pitched roof form above (DA 625/2020). The proposed alterations and additions to the approval will maintain a similar overall envelope, overall design and appearance, with two additional apartments provided within the habitable roof form which was considered acceptable by the Court (*Mark Zhang v Randwick City Council* [2022] NSWLEC 1120).

Irrespective of the proposed works, the proposal will maintain a similar external building envelope when compared to the approved built form. In particular, the proposal will maintain the existing maximum roof level (RL 88.53 AHD), with all setbacks maintained as approved. The additional GFA is therefore a function of increasing the various unit sizes in place of the common lobby, enclosing the common lobby and providing a habitable roof level.



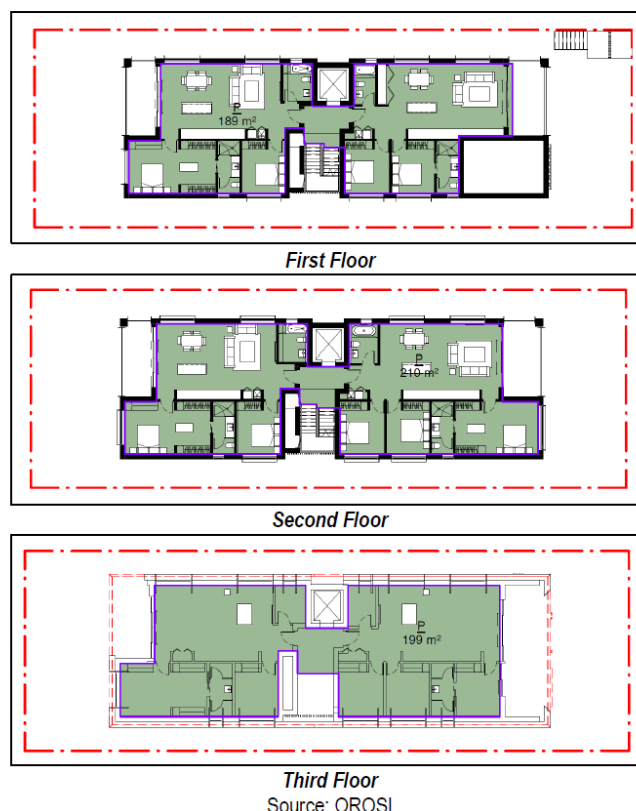


Figure 1: Proposed GFA Plans

5. Consistency with Objectives of Clause 4.6

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (*Initial Action*), Preston CJ notes at [87] and [90]:

Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.

However, it is still useful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

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

Flexibility is sought in the application of the FSR development standard to the proposed development in the circumstance of this particular case. The FSR exceedance is a function of the approved building footprint, which is to be maintained by the proposal. The proposal will continue to provide a residential flat

building up to 12m in height, with a similarly compatible bulk and scale to the approved built form (DA 625/2020).

By enclosing the approved common lobby areas and providing a habitable roof form, the proposal will result in additional GFA without noticeably increasing the overall scale of the approved building. Furthermore, the design of the proposed third storey, incorporating an additional setback from the front façade, limits the visibility of that level when viewed from Stanley Street. As such, the proposal will continue to present as three storeys with a (mansard) roof form above.

The proposal will remain consistent with the previous approval on the site, which ensures consistency with the existing character of the surrounding area. Importantly, the proposed contravention of the development standard will not result in any adverse impacts on the amenity of the site, nor neighbouring properties.

Accordingly, the proposal provides an improved planning outcome both for and from the development and flexibility should be afforded in this instance.

6. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause states, inter alia:

- (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.*

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

6.1 Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

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

It is our opinion that the proposal satisfies Test 1 established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant test will be considered below.

Test 1 - The objectives of the standard are achieved notwithstanding non-compliance with the standard;

Despite the proposed development's non-compliance with the applicable FSR development standard, the proposal is consistent with the desired medium density character of the area. The proposal provides a bulk and scale that is generally consistent with that envisaged by Council's controls. Reasons why the proposed development is consistent with the objectives of the FSR standard are explained below.

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

'Desired future character' is not defined in the LEP. The meaning of 'desired future character' is derived from the text and context of the provisions of the LEP in which it is used and the other provisions of the LEP that form the urban character and built form of the area. The relevant clauses in the LEP which relate to urban character and built form are:

- a) The zoning of the land (Clause 2.2 and the Land Zoning Map);
- b) The zone objectives (Clause 2.3);
- c) The land use table (at the end of Part 2); and
- d) The development standards in Part 4:
 - i. Clause 4.3 Height of Buildings and Height of Buildings Map which prescribes a maximum height of 12m; and
 - ii. Clause 4.4 Floor Space Ratio and Floor Space Ratio Map which prescribes a maximum FSR of 0.9:1.

The R3 Medium Density Residential zoning permits a wide range of uses and built form on the site, which promotes the eclectic desired future character. The permissible uses are:

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Business premises; Car parks; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Group homes; Home businesses; Hostels; Hotel or motel accommodation; Multi dwelling housing; Neighbourhood shops; Office premises; Oyster aquaculture; Passenger transport facilities; Places of public worship; Recreation facilities (indoor); Recreation facilities (outdoor); Residential flat buildings; Respite day care centres; Restaurants or cafes; Roads; Semi-detached dwellings; Seniors housing; Serviced apartments; Shops; Tank-based aquaculture

The proposal will continue to contribute to the eclectic mix of permissible uses in the R3 zone. The proposal also remains compatible with the envelope of nearby developments recently approved and constructed. Importantly, this includes the previously approved residential flat building on the subject site (DA 625/2020), which had a maximum roof height of RL 88.53 AHD and setbacks to match the proposal. In other words, the height and envelope is consistent with these buildings and compatible with the area's desired future character as per the Court judgement of *SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112. In this judgement, Clay AC notes:

The desired future character in my opinion must take into account the form of the buildings to the east which the Council approved under effectively the same controls as present. Those buildings exceed the height and floor space ratio controls. As the Applicant pointed out in submissions, this is not a case where there is an adjacent development approved and constructed many years ago which sits as an anomaly in the street. The developments under construction represent the recently expressed attitude of the Respondent to the controls and what is desired in this part of Cross Street.

This approach was confirmed in the Appeal by Preston CJ, that the desired future character should be informed by the nearby and future development, and not limited by the development standards. Indeed, the Chief Judge linked this to Clause 4.6 and stated at [60], inter alia:

...the application of cl 4.6 of WLEP to the height and FSR development standards supports a broader not narrower construction of the term 'desired future character used in those development standards. Clause 4.6 provides an appropriate degree of flexibility in applying certain development standards to particular development (cl 4.6(1)(a)). However, cl 4.6 does not apply to a development standard that is expressly excluded from the operation of the clause (cl 4.6(2)). Neither the height of buildings development standard in cl 4.3 nor the FSR development standard in cl 4.4 is expressly excluded from the operation of cl 4.6. This contemplates that development that contravenes the height and development standards may be approved under cl 4.6.

The subject site is in an area which includes several other residential flat buildings, many of which are between three and four storeys in height (see **Figure 2**).



Source: SIX Maps

Figure 2: Aerial Map of Site

● 3-4 Storey Built Form
 ■ Subject Site

When viewed from Stanley Street, the proposed residential flat building will appear as three storeys with a mansard roof form, with no apparent addition to the bulk and scale of the proposal (see **Figure 3** on the following page). Where additional floor space is proposed at the Third Floor level, this has been designed to form part of a mansard roof which will match the height of the approved form, thus providing a similar appearance. The proposed area of additional floor space, at the central lobby area and within the roof form will not alter this compatibility.



Source: OROSI

Figure 3: Proposed Photomontage

It is noted that the approved and proposed residential flat building use is listed as a permissible use and is envisioned appropriate in the location. Further, the application of a 12 metre maximum building height allows for a four storey built form, as is proposed. Irrespective of the additional floor space, the proposal will match the existing approved building height, which will continue to comply with the LEP height limit. While the approved built form complied with the FSR provision, where additional floor-compliance is proposed, this relates solely to the central lobby and habitable roof form, which will not limit compatibility with the desired future character of the locality.

Accordingly, the proposed alterations and additions to the approved built form remains consistent with the desired future character of Randwick.

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

The proposed alterations and additions to the approved residential flat building will maintain a similar contemporary style, as an architecturally designed built form. This ensures that the proposal provides a well-articulated built form which contributes to visual interest when viewed from Stanley Street and neighbouring properties. The proposed building facades incorporates articulation breaks and openings, particularly at the front and rear facades.

The proposal will continue to provide an environmentally sensitive design, with natural cross-ventilation achieved for 100% of the units (both approved and proposed), while each unit will receive compliant levels of solar access. The alterations and additions will also meet the requirements under State Environmental Planning Policy (SEPP) BASIX – 2004 and the majority of provisions under SEPP 65 – Design Quality of Residential Apartment Development.

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

The subject site is neither a heritage or contributory item, nor does it directly adjoin any items of heritage significant. The site does adjoin the North Randwick Heritage Conservation Area and is opposite a heritage item which is to the north (Item Nos. I449). The surrounding neighbourhood, including the subject site, is all zoned R3 Medium Density Residential. The R3 zone is characterised by a variety of detached dwellings, multi-unit housing and residential flat buildings. The proposal is unlikely to affect the amenity of nearby heritage items and will maintain the approved contemporary style, residential flat building use and overall building envelope.

In the recent judgement for the approved residential flat building on the site (*Mark Zhang v Randwick City Council* [2022] NSWLEC 1120), Commissioner Dickson provided the following comment with regards to potential heritage impacts:

The site is not a heritage item nor is it located in a heritage conservation area. However, the land across from the site is within the North Randwick Heritage Conservation area, and the land to the north (Emanuel School) contains a state listed heritage item. Clause 5.10 of LEP 2012 does not apply.

The proposed works are therefore considered unlikely to impact on the heritage significance of nearby heritage items or conservation areas.

While the proposal seeks to provide habitable roof space as part of the approved roof form, this has been designed to match the existing overall height at RL 88.53 AHD. The proposal will therefore match the approved bulk and scale, with the front glazing line of proposed Unit 301 recessed from the front façade by an additional 2.4m. The proposal maintains the approved building height, which remains compliant, and the extent of additional floor space is located within the approved building envelope. The proposed built form will continue to be perceived as three storeys from the front and rear, with a mansard roof form. This remains a compatible scale and character with the nearby provides an appropriate transition in scale to the adjoining medium density development.

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

In our opinion, given the proposal will maintain the approved building height and building envelope, with the extent of non-compliance to form part of the approved built form, the proposal will not result in unreasonable impacts on adjoining or nearby properties in respect of views, privacy or overshadowing. The location of the additional floor space, as part of the enclosed central lobbies which are towards the centre of the site and at the proposed habitable roof form, does not add to the visual bulk of the residential flat building and limits its visibility from the public domain and surrounding properties.

The area of non-compliance will not affect solar access for neighbouring properties and their private open space. As demonstrated by the shadow diagrams prepared by OROSI (submitted separately), the proposal will not result in a discernible increase in shadowing to the adjoining properties, given it will generally maintain the approved envelope.

In terms of view loss, it should be noted that we have not had the opportunity to inspect the surrounding properties. However, given the proposal will retain the approved maximum building height at RL 88.53 AHD, it is unlikely that the proposed additional floor space within the approved envelope will impact on views from surrounding properties.

Notwithstanding the proposed FSR non-compliance, compliance with visual and acoustic privacy has been achieved. All primary habitable rooms along each of the side boundaries have included privacy screens to maintain visual privacy for residents of adjoining properties. This limits any potential sightlines from the subject site to adjoining properties and their private open space.

In our opinion, the area of non-compliance is not likely to result in significant impacts in terms of view loss, privacy, overshadowing and visual intrusion and satisfies the intent of objective (d).

Accordingly, although the proposal will exceed the FSR control, this is unlikely to have any significant adverse impacts as the design is generally contained within a compliant building envelope.

6.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

The proposal is permissible in the R3 Medium Density Residential zone, is consistent with the zone objectives and satisfies an 'unreasonable and unnecessary' test established by the court in *Wehbe*. The non-compliance relates to additional floor space at the roof form and central lobbies and is part of the approved building envelope. Sufficient environmental planning grounds to justify the proposed FSR exceedance include consistency within the context and environmental amenity.

Consistency within the Context

The proposal will provide increased housing stock in a medium-density residential environment while retaining the approved scale of the residential flat building on the site (DA 625/2020). The proposed alterations and additions to the approval will maintain a similar overall envelope, overall design and appearance, with two additional apartments provided within the habitable roof form which was considered acceptable by the Court (*Mark Zhang v Randwick City Council [2022] NSWLEC 1120*). Notwithstanding the approved development on the site, the proposal remains compatible with the envelope of nearby developments recently approved and constructed. In other words, the height and envelope are consistent with these buildings and compatible with the area's desired future character as per the Court judgement of *SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112*.

The proposal will continue to present a built form of a similar scale to the area's existing and desired high-quality developments in the streetscape. The proposal will consist of two- and three-bedroom units, which will add to the supply of housing options in Randwick. The elevation to Stanley Street has been designed to create visual interest and will provide an enhanced visual outcome which will maintain the site's relationship with the evolving character and has been designed to create visual interest. The incorporation of a variety of materials and landscaping on the site and building will provide further visual and amenity benefits.

In *Initial Action v Woollahra Municipal Council [2019] NSWLEC 1097*, Commissioner O'Neill states at [42], inter alia:

I am satisfied that justifying the aspect of the development that contravenes the development standard as creating a consistent scale with neighbouring development can properly be described as an environmental planning ground within the meaning identified by His Honour in Initial Action [23], because the quality and form of the immediate built environment of the development site creates unique opportunities and constraints to achieving a good design outcome (see s 1.3(g) of the EPA Act).

This report demonstrates the proposed alterations and additions to the approved residential flat building will be compatible with the nearby developments. As noted, three and four storey residential flat buildings are not uncommon in the streetscape. The areas of contravention for the additional floor space will be contained within the approved roof form. With the exception of the balcony openings, the proposed third

floor level will not be easily discernible from Stanley Street and therefore will not impact the streetscape amenity or existing characteristics of the area.

Environmental Amenity

Our assessment has demonstrated the proposal will preserve neighbours' privacy, solar access and views, as per the approved residential flat building on the site. Despite the proposed additional floor space, this forms part of the approved envelope and will therefore maintain a similar relationship with neighbouring properties. Conversely, the proposed additional floor space will contribute to amenity improvements for future occupants, with larger unit sizes facilitated by reducing the extent of the central lobby. As the floor space variation forms part of an architecturally designed residential flat building which substantially improves the amenity of the future occupants, we consider the proposal is in the public interest.

As detailed, strict compliance with the development standard would not result in a better outcome for development. It would unnecessarily complicate orderly and economic development of the land in accordance with the intentions of the zoning and objects of the EPA Act and would limit the provision of the proposed one two-bedroom and one three-bedroom unit within the approved building envelope.

Accordingly, in our opinion, the non-compliance will not be inconsistent with existing and desired future planning objectives for the locality. For the reasons contained in this application, there are sufficient environmental planning grounds to justify the variation to the development standard in the circumstances of this case, as required in Clause 4.6(3)(b).

7. Clause 4.6(4)(a) Requirements

Clause 4.6(4)(a) guides the consent authority's consideration of this Clause 4.6 variation request. It provides that:

- (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*

The applicant submits that the consent authority can be satisfied of each of the requirements of Clause 4.6(4)(a), for all the reasons set out in this written request, and having regard to the site and locality.

In our opinion, the proposal is consistent with the objectives of the FSR Development Standard, as already demonstrated; and the R3 Medium Density Residential zone, as discussed below:

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

Response: The proposed works to the approved residential flat building will provide for the housing needs of the community by providing an additional two units, which will form part of a residential flat building that has previously been considered consistent within the R3 zone.

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

Response: The proposal will continue to provide a mixture of two- and three-bedroom units within a four storey residential flat building, which will contribute to the variety of housing types in this zone.

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

Response: N/A

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

Response: The proposal will continue to present as three storeys above basement parking, with the proposed fourth storey to form part of the roof form. This design approach will recognise the desirable elements of the streetscape by providing a well-designed contemporary building which remains consistent with the previous approval on the site (DA 625/2020) and those for nearby properties on Stanley and Avoca Street. The proposal remains compliant with the building height control, which ensures the height and scale of the proposal is consistent in the context.

Objective: To protect the amenity of residents.

Response: The proposal will predominately retain the approved building envelope and will match the approved building height at RL 88.53 AHD, which ensures the proposal will have no discernible impact on amenity of neighbouring residents and will benefit future occupants of the site.

Objective: To encourage housing affordability.

Response: The proposal will encourage housing affordability by providing two additional units, which will increase housing supply in the locality.

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

Response: N/A

From this, we consider the proposal is in the public interest and should be supported.

8. Clauses 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 55 of the Environmental Planning and Assessment Regulation 2021, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. While the proposal exceeds the development standard by over 10%, the Planning Circular provides for the Local Planning Panel to assume concurrence.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The FSR non-compliance will enhance the amenity and functionality of the approved residential flat building without significantly, unreasonably or unacceptably impacting neighbouring properties. This is achieved by providing larger units in place of the existing lobby area, and as such, the proposal will maintain a similar external envelope and overall footprint.

The public benefit of maintaining the development standard is not considered significant given that, regardless of the non-compliance, the proposal will appear consistent in the streetscape. The proposed third floor level has been designed to form part of the proposed mansard roof form and incorporates setbacks from each façade. This ensures that the proposed level adopts a recessive appearance within the streetscape and maintains a similar presentation to the previous approval on the site (DA 625/2020).

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

9. Conclusion

This written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the compliance matrix prepared in light of *Initial Action* (see **Table 1** on the following page).

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the development objectives of the R3 Medium Density Residential Zone pursuant to the LEP. On that basis, the request to vary Clause 4.4 should be upheld.

Table 1: Compliance Matrix

Para (Initial Action)	Requirement	Section of this Report	Summary	Satisfied
10	Is it a development standard (s.1.4)	1	Yes	
11	What is the development standard	1	Clause 4.4: FSR	
12	What is the control	1 & 2	0.9.1	
14	First Precondition to Enlivening the Power – Consent authority must form 2 positive opinions.		Both positive opinions can be formed as detailed below.	YES
15, 25	1st Positive Opinion – That the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement.	6	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
16-22	First Aspect is Clause 4.6(3)(a) – That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in <i>Wehbe</i> .	6.1	The proposal satisfies Test 1 of <i>Wehbe</i> : <ul style="list-style-type: none"> The objectives of the standard are achieved notwithstanding the non-compliance with the standard. 	YES
23-24	Second Aspect is Clause 4.6(3)(b) – The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under Clause 4.6(4)(a)(i) that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: <ol style="list-style-type: none"> The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole. 	6.2	Sufficient environmental planning grounds include, inter alia: <ul style="list-style-type: none"> The proposed FSR facilitates a medium density development consistent with the planning objectives of the area; The proposal will maintain consistency within the context; The proposal will provide an improved amenity outcome for future occupants while maintaining approved levels of amenity for neighbouring properties; and The proposal will predominately maintain the approved building envelope. 	YES
26-27	2nd Positive Opinion – That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the	7	The proposed development is consistent with the objectives of the FSR standard as addressed under Test 1 of <i>Wehbe</i> . The proposal is also consistent with the objectives of the R3 Medium Density Residential Zone.	YES

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	objectives for development for the zone in which the development is proposed to be carried out.			
28-29	Second Precondition to Enlivening the Power – That the concurrence of the Secretary has been obtained [Clause 4.6(4)(b)]. On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under Clause 4.6.	8	As the relevant matters for consideration under Clause 4.6 have been satisfied as outlined above, the Council can grant development consent.	YES

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Appendix 3: SEPP 65 Compliance Table

Clause	Design Criteria	Proposal	Compliance												
Part 3: Siting the Development															
3D-1	Communal and Public Open Space														
	Communal open space has a minimum area equal to 25% of the site (see figure 3D.3)		Refer to Key issues discussion.												
	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).		Partial												
3E-1															
	Deep soil zones are to meet the following requirements: Site Area: <table><tr><th>Site Area</th><th>Min. Dimension</th><th>Deep Soil Zone (% site)</th></tr><tr><td>< 650m²</td><td>-</td><td>7%</td></tr><tr><td>650–1,500m²</td><td>3m</td><td>7%</td></tr><tr><td>>1,500m²</td><td>6m</td><td>7%</td></tr></table>	Site Area	Min. Dimension	Deep Soil Zone (% site)	< 650m ²	-	7%	650–1,500m ²	3m	7%	>1,500m ²	6m	7%		Refer to Key issues discussion.
Site Area	Min. Dimension	Deep Soil Zone (% site)													
< 650m ²	-	7%													
650–1,500m ²	3m	7%													
>1,500m ²	6m	7%													
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: <table><tr><th>Building Height</th><th>Habitable Rooms and Balconies</th><th>Non-habitable rooms</th></tr><tr><td>Up to 12m (4 storeys)</td><td>6m</td><td>3m</td></tr><tr><td>Up to 25m (5-8 storeys)</td><td>9m</td><td>4.5m</td></tr><tr><td>Over 25m (9+ storeys)</td><td>12m</td><td>6m</td></tr></table> <p>Note: Separation distances between buildings on the same site should combine required building separations depending on the type of room (see figure 3F.2)</p> <p>Gallery access circulation should be treated as habitable space when measuring privacy separation distances between neighbouring properties</p>	Building Height	Habitable Rooms and Balconies	Non-habitable rooms	Up to 12m (4 storeys)	6m	3m	Up to 25m (5-8 storeys)	9m	4.5m	Over 25m (9+ storeys)	12m	6m		Refer to Key issues discussion.
Building Height	Habitable Rooms and Balconies	Non-habitable rooms													
Up to 12m (4 storeys)	6m	3m													
Up to 25m (5-8 storeys)	9m	4.5m													
Over 25m (9+ storeys)	12m	6m													
3J-1	Bicycle and Car Parking														
	For sites located within 800m of a light rail stop, the minimum car parking requirement for residents and visitors is set out in the Guide to Traffic Generating Developments.		Refer to Key issues discussion.												

D12/23

D12/23

Clause	Design Criteria	Proposal	Compliance
	<p>or the car parking requirement prescribed by the relevant council, whichever is less.</p> <p>The car parking needs for a development must be provided off street</p>		
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.		Yes
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter		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		Yes
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.		Yes
4C	Ceiling Heights		
	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <ul style="list-style-type: none"> Habitable Rooms – 2.7m Non-habitable – 2.4m Attic spaces – 1.8m at edge with min 30 degree ceiling slope Mixed use areas – 3.3m for ground and first floor <p>These minimums do not preclude higher ceilings if desired</p>		No
4D	Apartment Size and Layout		
	<p>Apartments are required to have the following minimum internal areas:</p> <ul style="list-style-type: none"> Studio - 35m² 1 bedroom - 50m² 2 bedroom - 70m² 3 bedroom - 90m² <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m² each</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12 m² each</p>		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		Yes

Clause	Design Criteria	Proposal	Compliance															
	area of the room. Daylight and air may not be borrowed from other rooms																	
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height		Yes															
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window		Yes															
	Master bedrooms have a minimum area of 10m ² and other bedrooms 9m ² (excluding wardrobe space)		Yes															
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space)		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		Yes															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts		Yes															
4E	Apartment Size and Layout																	
	<div>All apartments are required to have primary balconies as follows:<table><tr><th>Dwelling type</th><th>Minimum area</th><th>Minimum depth</th></tr><tr><td>Studio</td><td>4 m²</td><td>-</td></tr><tr><td>1 bedroom</td><td>8 m²</td><td>2m</td></tr><tr><td>2 bedroom</td><td>10 m²</td><td>2m</td></tr><tr><td>3+ bedroom</td><td>12 m²</td><td>2.4m</td></tr></table></div> <div>The minimum balcony depth to be counted as contributing to the balcony area is 1m</div>	Dwelling type	Minimum area	Minimum depth	Studio	4 m ²	-	1 bedroom	8 m ²	2m	2 bedroom	10 m ²	2m	3+ bedroom	12 m ²	2.4m		Yes
Dwelling type	Minimum area	Minimum depth																
Studio	4 m ²	-																
1 bedroom	8 m ²	2m																
2 bedroom	10 m ²	2m																
3+ bedroom	12 m ²	2.4m																
	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		Yes															
4F	Common Circulation and Spaces																	
	The maximum number of apartments off a circulation core on a single level is eight		Yes															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40		Yes															
4G	Storage																	
	<div>In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:<ul style="list-style-type: none">• Studio apartments - 4m³• 1 bedroom apartments - 6m³• 2 bedroom apartments - 8m³• 3+ bedroom apartments - 10m³</div> <div>At least 50% of the required storage is to be located within the apartment</div>		Refer to Key issues discussion.															

D12/23

Appendix 4: DCP Compliance Table**3.1 Section B6: Recycling and Waste Management**

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
4.	On-Going Operation		
	(iv) Locate and design the waste storage facilities to visually and physically complement the design of the development. Avoid locating waste storage facilities between the front alignment of a building and the street where possible.		Yes
	(v) Locate the waste storage facilities to minimise odour and acoustic impacts on the habitable rooms of the proposed development, adjoining and neighbouring properties.		Yes
	(vi) Screen the waste storage facilities through fencing and/or landscaping where possible to minimise visual impacts on neighbouring properties and the public domain.		Yes
	(vii) Ensure the waste storage facilities are easily accessible for all users and waste collection personnel and have step-free and unobstructed access to the collection point(s).		Refer to Key issues discussion.
	(viii) Provide sufficient storage space within each dwelling / unit to hold a single day's waste and to enable source separation.		Yes
	(ix) Bin enclosures / rooms must be ventilated, fire protected, drained to the sewerage system and have lighting and water supply.		Unclear

3.2 Section B7: Transport, Traffic, Parking and Access

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
3.	Parking & Service Delivery Requirements		
	Car parking requirements: <ul style="list-style-type: none"> • 1 space per 2 studios • 1 space per 1-bedroom unit (over 40m²) • 1.2 spaces per 2-bedroom unit • 1.5 spaces per 3 or more bedroom unit • 1 visitor space per 4 dwellings 		Refer to Key issues discussion.
	Motor cycle requirements:		Yes

	5% of car parking requirement		
4.	Bicycles		
	Residents: <ul style="list-style-type: none"> 1 bike space per 2 units Visitors: <ul style="list-style-type: none"> 1 per 10 units 		Refer to Key issues discussion.

3.3 Section C2: Medium Density Residential

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
2.	Site Planning		
2.1	Site Layout Options		
	Site layout and location of buildings must be based on a detailed site analysis and have regard to the site planning guidelines for: <ul style="list-style-type: none"> Two block / courtyard example T-shape example U-shape example Conventional example 		
2.2	Landscaped open space and deep soil area		
2.2.1	Landscaped open space		
	A minimum of 50% of the site area (284.55m ²) is to be landscaped open space.		Refer to Key issues discussion.
2.2.2	Deep soil area		
	(i) A minimum of 25% of the site area (142.28m ²) should incorporate deep soil areas sufficient in size and dimensions to accommodate trees and significant planting.		Refer to Key issues discussion.
	(ii) Deep soil areas must be located at ground level, be permeable, capable for the growth of vegetation and large trees and must not be built upon, occupied by spa or swimming pools or covered by impervious surfaces such as concrete, decks, terraces, outbuildings or other structures.		Refer to Key issues discussion.
	(iii) Deep soil areas are to have soft landscaping comprising a variety of trees, shrubs and understorey planting.		Refer to Key issues discussion.
	(iv) Deep soil areas cannot be located on structures or facilities such as basements, retaining walls, floor slabs, rainwater tanks or in planter boxes.		Refer to Key issues discussion.
	(v) Deep soil zones shall be contiguous with the deep soil zones of adjacent properties.		Refer to Key issues discussion.
2.3	Private and communal open space		
2.3.1	Private open space		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>Private open space is to be:</p> <ul style="list-style-type: none"> (i) Directly accessible from the living area of the dwelling. (ii) Open to a northerly aspect where possible so as to maximise solar access. (iii) Be designed to provide adequate privacy for residents and where possible can also contribute to passive surveillance of common areas. 		Partial. Refer to Key Issues Discussion with regards to privacy.
	<p>For residential flat buildings:</p> <ul style="list-style-type: none"> (vi) Each dwelling has access to an area of private open space in the form of a courtyard, balcony, deck or roof garden, accessible from within the dwelling. (vii) Private open space for apartments has a minimum area of 8m² and a minimum dimension of 2m. 		Yes.
2.3.2	Communal open space		
	<p>Communal open space for residential flat buildings is to be:</p> <ul style="list-style-type: none"> (a) Of a sufficient contiguous area, and not divided up for allocation to individual units. (b) Designed for passive surveillance. (c) Well oriented with a preferred northerly aspect to maximise solar access. (d) adequately landscaped for privacy screening and visual amenity. (e) Designed for a variety of recreation uses and incorporate recreation facilities such as playground equipment, seating and shade structures. 		Refer to Key issues discussion.
3.	Building Envelope		
3.1	Floor space ratio		
			Refer to Key issues discussion.
3.2	Building height		
			Refer to Key issues discussion.
3.3	Building depth		
	<p>For residential flat buildings, the preferred maximum building depth (from window to window line) is between 10m and 14m.</p> <p>Any greater depth must demonstrate that the design solution provides good internal</p>		Refer to Key issues discussion.

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	amenity such as via cross-over, double-height or corner dwellings / units.		
3.4	Setbacks		
3.4.1	Front setback		
	<p>(i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street.</p> <p>Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances to allow for suitable landscaped areas to building entries.</p> <p>(ii) Where a development is proposed in an area identified as being under transition in the site analysis, the front setback will be determined on a merit basis.</p> <p>(iii) The front setback areas must be free of structures, such as swimming pools, above-ground rainwater tanks and outbuildings.</p> <p>(iv) The entire front setback must incorporate landscape planting, with the exception of driveways and pathways.</p>		Yes.
3.4.2	Side setback		
	<p>Residential flat building</p> <p>(i) Comply with the minimum side setback requirements stated below:</p> <ul style="list-style-type: none"> - 14m ≤ site frontage width < 16m: 2.5m <p>(ii) Incorporate additional side setbacks to the building over and above the above minimum standards, in order to:</p> <ul style="list-style-type: none"> - Create articulations to the building facades. - Reserve open space areas and provide opportunities for landscaping. - Provide building separation. - Improve visual amenity and outlook from the development and adjoining residences. - Provide visual and acoustic privacy for the development and the adjoining residences. - Ensure solar access and natural ventilation for the development and the adjoining residences. <p>(iii) A fire protection statement must be submitted where windows are</p>		Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	proposed on the external walls of a residential flat building within 3m of the common boundaries. The statement must outline design and construction measures that will enable operation of the windows (where required) whilst still being capable of complying with the relevant provisions of the BCA.		
3.4.3	Rear setback		
	For residential flat buildings, provide a minimum rear setback of 15% of allotment depth (6.225m) or 5m, whichever is the greater.		Refer to Key issues discussion.
4.	Building Design		
4.1	Building façade		
	<ul style="list-style-type: none"> (i) Buildings must be designed to address all street and laneway frontages. (ii) Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout. (iii) Articulate facades to reflect the function of the building, present a human scale, and contribute to the proportions and visual character of the street. (iv) Avoid massive or continuous unrelieved blank walls. This may be achieved by dividing building elevations into sections, bays or modules of not more than 10m in length, and stagger the wall planes. (vi) Conceal building services and pipes within the balcony slabs. 		Refer to Key issues discussion.
4.2	Roof design		
	<ul style="list-style-type: none"> (i) Design the roof form, in terms of massing, pitch, profile and silhouette to relate to the three dimensional form (size and scale) and façade composition of the building. (ii) Design the roof form to respond to the orientation of the site, such as eaves and skillion roofs to respond to sun access. (iii) Use a similar roof pitch to adjacent buildings, particularly if there is consistency of roof forms across the streetscape. (iv) Articulate or divide the mass of the roof structures on larger buildings into distinctive sections to minimise the visual bulk and relate to any context of similar building forms. 		Refer to Key issues discussion.

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(v) Use clerestory windows and skylights to improve natural lighting and ventilation of internalised space on the top floor of a building where feasible. The location, layout, size and configuration of clerestory windows and skylights must be sympathetic to the overall design of the building and the streetscape.</p> <p>(vi) Any services and equipment, such as plant, machinery, ventilation stacks, exhaust ducts, lift overrun and the like, must be contained within the roof form or screened behind parapet walls so that they are not readily visible from the public domain.</p> <p>(vii) Terraces, decks or trafficable outdoor spaces on the roof may be considered only if:</p> <ul style="list-style-type: none"> - There are no direct sightlines to the habitable room windows and private and communal open space of the adjoining residences. - The size and location of terrace or deck will not result in unreasonable noise impacts on the adjoining residences. - Any stairway and associated roof do not detract from the architectural character of the building, and are positioned to minimise direct and oblique views from the street. - Any shading devices, privacy screens and planters do not adversely increase the visual bulk of the building. <p>(viii) The provision of landscape planting on the roof (that is, "green roof") is encouraged. Any green roof must be designed by a qualified landscape architect or designer with details shown on a landscape plan.</p>		
4.3	Habitable roof space		
	<p>Habitable roof space may be considered, provided it meets the following:</p> <ul style="list-style-type: none"> - Optimises dwelling mix and layout, and assists to achieve dual aspect or cross over units with good natural ventilation. - Has a maximum floor space of 65% of the storey immediately below. - Wholly contain habitable areas within the roof space. 		Refer to Key issues discussion.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none"> - When viewed from the surrounding public and private domain, the roof form has the appearance of a roof. A continuous flat roof with habitable space within it will not satisfy this requirement. - Design windows to habitable roof space as an integrated element of the roof. - Submit computer generated perspectives or photomontages showing the front and rear elevations of the development. 		
4.4	External wall height and ceiling height		
	(ii) Where the site is subject to a 9.5m building height limit under the LEP, a maximum external wall height of 8m applies.		Refer to Key issues discussion.
	(iii) The minimum ceiling height is to be 2.7m for all habitable rooms.		Refer to Key issues discussion.
4.5	Pedestrian Entry		
	(i) Separate and clearly distinguish between pedestrian pathways and vehicular access.		Refer to Key issues discussion.
	(ii) Present new development to the street in the following manner: <ul style="list-style-type: none"> - Locate building entries so that they relate to the pedestrian access network and desired lines. - Design the entry as a clearly identifiable element in the façade composition. - Integrate pedestrian access ramps into the overall building and landscape design. - For residential flat buildings, provide direct entries to the individual dwellings within a development from the street where possible. - Design mailboxes so that they are convenient to residents, do not clutter the appearance of the development at street frontage and are preferably integrated into a wall adjacent to the primary entry (and at 90 degrees to the street rather than along the front boundary). - Provide weather protection for building entries. 		Refer to Key issues discussion.
	Postal services and mailboxes <ul style="list-style-type: none"> (i) Mailboxes are provided in accordance with the delivery requirements of Australia Post. 		

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(ii) A mailbox must clearly mark the street number of the dwelling that it serves. (iii) Design mail boxes to be convenient for residents and not to clutter the appearance of the development from the street.		
4.6	Internal circulation		
	(i) Enhance the amenity and safety of circulation spaces by: <ul style="list-style-type: none"> - Providing natural lighting and ventilation where possible. - Providing generous corridor widths at lobbies, foyers, lift doors and apartment entry doors. - Allowing adequate space for the movement of furniture. - Minimising corridor lengths to give short, clear sightlines. - Avoiding tight corners. - Articulating long corridors with a series of foyer areas, and/or providing windows along or at the end of the corridor. 		Yes.
4.7	Apartment layout		
	(i) Maximise opportunities for natural lighting and ventilation through the following measures: <ul style="list-style-type: none"> - Providing corner, cross-over, cross-through and double-height maisonette / loft apartments. - Limiting the depth of single aspect apartments to a maximum of 6m. - Providing windows or skylights to kitchen, bathroom and laundry areas where possible. Providing at least 1 openable window (excluding skylight) opening to outdoor areas for all habitable rooms and limiting the use of borrowed light and ventilation.		Yes.
	(ii) Design apartment layouts to accommodate flexible use of rooms and a variety of furniture arrangements.		Yes.
	(iii) Provide private open space in the form of a balcony, terrace or courtyard for each and every apartment unit in a development.		Yes.
	(iv) Avoid locating the kitchen within the main circulation space of an apartment, such as hallway or entry.		Yes.
4.8	Balconies		
	(i) Provide a primary balcony and/or private courtyard for all		Yes.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	apartments with a minimum area of 8m ² and a minimum dimension of 2m and consider secondary balconies or terraces in larger apartments.		
	(ii) Provide a primary terrace for all ground floor apartments with a minimum depth of 4m and minimum area of 12m ² . All ground floor apartments are to have direct access to a terrace.		Yes.
4.9	Colours, materials and finishes		
	<p>(i) Provide a schedule detailing the materials and finishes in the development application documentation and plans.</p> <p>(ii) The selection of colour and material palette must complement the character and style of the building.</p> <p>(iv) Use the following measures to complement façade articulation:</p> <ul style="list-style-type: none"> - Changes of colours and surface texture - Inclusion of light weight materials to contrast with solid masonry surfaces - The use of natural stones is encouraged. <p>(v) Avoid the following materials or treatment:</p> <ul style="list-style-type: none"> - Reflective wall cladding, panels and tiles and roof sheeting - High reflective or mirror glass - Large expanses of glass or curtain wall that is not protected by sun shade devices - Large expanses of rendered masonry - Light colours or finishes where they may cause adverse glare or reflectivity impacts <p>(vi) Use materials and details that are suitable for the local climatic conditions to properly withstand natural weathering, ageing and deterioration.</p> <p>(vii) Sandstone blocks in existing buildings or fences on the site must be recycled and re-used.</p>		Refer to Heritage referral comments in Appendix 1 .
4.12	Earthworks Excavation and backfilling		
	(i) Any excavation and backfilling within the building footprints must be limited to 1m at any point on the allotment, unless it is demonstrated that the site gradient is too steep to reasonably construct a building		Refer to Key issues discussion.

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>within this extent of site modification.</p> <p>(ii) Any cut and fill outside the building footprints must take the form of terracing following the natural landform, in order to minimise the height or depth of earthworks at any point on the site.</p> <p>(iii) For sites with a significant slope, adopt a split-level design for buildings to minimise excavation and backfilling.</p>		
	<p>Retaining walls</p> <p>(iv) Setback the outer edge of any excavation, piling or sub-surface walls a minimum of 900mm from the side and rear boundaries.</p> <p>(v) Step retaining walls in response to the natural landform to avoid creating monolithic structures visible from the neighbouring properties and the public domain.</p> <p>(vi) Where it is necessary to construct retaining walls at less than 900mm from the side or rear boundary due to site conditions, retaining walls must be stepped with each section not exceeding a maximum height of 2200mm, as measured from the ground level (existing).</p>		Refer to Key issues discussion.
5. Amenity			
5.1	Solar access and overshadowing		
	Solar access for proposed development		
	(i) Dwellings must receive a minimum of 3 hours sunlight in living areas and to at least 50% of the private open space between 8am and 4pm on 21 June.		Yes.
	(ii) Living areas and private open spaces for at least 70% of dwellings within a residential flat building must provide direct sunlight for at least 3 hours between 8am and 4pm on 21 June.		Yes.
	(iii) Limit the number of single-aspect apartments with a southerly aspect to a maximum of 10 percent of the total units within a residential flat building.		Yes.
	Solar access for surrounding development		
	(i) Living areas of neighbouring dwellings must receive a minimum of 3 hours access to direct sunlight to a part of a window between 8am and 4pm on 21 June.		Partial.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(ii) At least 50% of the landscaped areas of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight to a part of a window between 8am and 4pm on 21 June.</p> <p>(iii) Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further.</p>		
5.2	Natural ventilation and energy efficiency		
	(i) Provide daylight to internalised areas within each dwelling and any poorly lit habitable rooms via measures such as ventilated skylights, clerestory windows, fanlights above doorways and highlight windows in internal partition walls.		Yes.
	(ii) Sun shading devices appropriate to the orientation should be provided for the windows and glazed doors of the building.		Yes.
	(iii) All habitable rooms must incorporate windows opening to outdoor areas. The sole reliance on skylight or clerestory windows for natural lighting and ventilation is not acceptable.		Yes.
	(iv) All new residential units must be designed to provide natural ventilation to all habitable rooms. Mechanical ventilation must not be the sole means of ventilation to habitable rooms.		Yes.
	(v) A minimum of 90% of residential units should be naturally cross ventilated. In cases where residential units are not naturally cross ventilated, such as single aspect apartments, the installation of ceiling fans may be required.		Yes.
	(vi) A minimum of 25% of kitchens within a development should have access to natural ventilation and be adjacent to openable windows.		Yes.
5.3	Visual privacy		
	<p>(i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings.</p> <p>(ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to any habitable room windows on the side elevations of the adjoining residences.</p> <p>(iii) Orient buildings on narrow sites to the front and rear of the lot, utilising the</p>		Refer to Key issues discussion.

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>street width and rear garden depth to increase the separation distance.</p> <p>(iv) Locate and design areas of private open space to ensure a high level of user privacy. Landscaping, screen planting, fences, shading devices and screens are used to prevent overlooking and improve privacy.</p> <p>(v) Incorporate materials and design of privacy screens including:</p> <ul style="list-style-type: none"> - Translucent glazing - Fixed timber or metal slats - Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings - Screen planting and planter boxes as a supplementary device for reinforcing privacy protection 		
5.4	Acoustic privacy		
	<p>(i) Design the building and layout to minimise transmission of noise between buildings and dwellings.</p> <p>(ii) Separate “quiet areas” such as bedrooms from common recreation areas, parking areas, vehicle access ways and other noise generating activities.</p> <p>(iii) Utilise appropriate measures to maximise acoustic privacy such as:</p> <ul style="list-style-type: none"> - Double glazing - Operable screened balconies - Walls to courtyards - Sealing of entry doors 		Partial.
5.6	Safety and security		
	(i) Design buildings and spaces for safe and secure access to and within the development.		Yes.
	(iii) For residential flat buildings, provide direct, secure access between the parking levels and the main lobby on the ground floor.		Yes.
	(iv) Design window and door placement and operation to enable ventilation throughout the day and night without compromising security. The provision of natural ventilation to the interior space via balcony doors only, is deemed insufficient.		Yes.
	(v) Avoid high walls and parking structures around buildings and open space areas which obstruct views into the development.		Yes.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(vi) Resident car parking areas must be equipped with security grilles or doors.		Yes.
	(vii) Control visitor entry to all units and internal common areas by intercom and remote locking systems.		Yes.
	(viii) Provide adequate lighting for personal safety in common and access areas of the development.		Yes.
	(ix) Improve opportunities for casual surveillance without compromising dwelling privacy by designing living areas with views over public spaces and communal areas, using bay windows which provide oblique views and casual views of common areas, lobbies / foyers, hallways, open space and car parks.		Yes.
	(x) External lighting must be neither intrusive nor create a nuisance for nearby residents.		Yes.
	(xi) Provide illumination for all building entries, pedestrian paths and communal open space within the development.		Yes.
6. Car parking and access			
6.1	Location		
	(i) Car parking facilities must be accessed off rear lanes or secondary street frontages where available.		N/A.
	(ii) The location of car parking and access facilities must minimise the length of driveways and extent of impermeable surfaces within the site.		Refer to Key issues discussion.
	(iii) Setback driveways a minimum of 1m from the side boundary. Provide landscape planting within the setback areas.		Refer to Key issues discussion.
	(iv) Entry to parking facilities off the rear lane must be setback a minimum of 1m from the lane boundary.		Refer to Key issues discussion.
	(v) For residential flat buildings, comply with the following: (a) Car parking must be provided underground in a basement or semi-basement for new development. (b) On grade car park may be considered for sites potentially affected by flooding. In this scenario, the car park must be located on the side or rear of the allotment away from the primary street frontage. (c) Where rear lane or secondary street access is not available, the car park entry must be		Refer to Key issues discussion.

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	recessed behind the front façade alignment. In addition, the entry and driveway must be located towards the side and not centrally positioned across the street frontage.		
6.2	Configuration		
	(i) With the exception of hardstand car spaces and garages, all car parks must be designed to allow vehicles to enter and exit in a forward direction.		Yes.
	(ii) For residential flat buildings, the maximum width of driveway is 6m. In addition, the width of driveway must be tapered towards the street boundary as much as possible.		Yes.
	(iv) Provide basement or semi-basement car parking consistent with the following requirements: (a) Provide natural ventilation. (b) Integrate ventilation grills into the façade composition and landscape design. (c) The external enclosing walls of car park must not protrude above ground level (existing) by more than 1.2m. This control does not apply to sites affected by potential flooding. (d) Use landscaping to soften or screen any car park enclosing walls. (e) Provide safe and secure access for building users, including direct access to dwellings where possible. (f) Improve the appearance of car park entries and avoid a 'back-of-house' appearance by measures such as: - Installing security doors to avoid 'black holes' in the facades. - Returning the façade finishing materials into the car park entry recess to the extent visible from the street as a minimum. - Concealing service pipes and ducts within those areas of the car park that are visible from the public domain.		Refer to Key issues discussion and Engineering referral comments in Appendix 1.
7.	Fencing and Ancillary Development		
7.1	Fencing		
	(i) Fences are constructed with durable materials that are suitable for their		Yes.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>purpose and can properly withstand wear and tear and natural weathering.</p> <p>(ii) Sandstone fencing must not be rendered and painted.</p> <p>(iii) The following materials must not be used in fences:</p> <ul style="list-style-type: none"> - Steel post and chain wire - Barbed wire or other dangerous materials <p>(iii) Expansive surfaces of blank rendered masonry to street frontages must be avoided.</p>		
7.2	Front Fencing		
	(i) The fence must align with the front property boundary or the predominant fence setback line along the street.		N/A.
	(ii) The maximum height of front fencing is limited to 1200mm, as measured from the footpath level, with the solid portion not exceeding 600mm, except for piers. The maximum height of front fencing may be increased to 1800mm, provided the upper two-thirds are partially open, except for piers.		N/A.
	(iii) Construct the non-solid portion of the fence with light weight materials that are at least 30% open and evenly distributed along the full length of the fence.		N/A.
	<p>(iv) Solid front fence of up to 1800mm in height may be permitted in the following scenarios:</p> <ul style="list-style-type: none"> - Front fence for sites facing arterial roads. - Fence on the secondary street frontage of corner allotments, which is behind the alignment of the primary street façade. <p>Such solid fences must be articulated through a combination of materials, finishes and details, and/or incorporate landscaping, so as to avoid continuous blank walls.</p>		N/A.
	(v) The fence must incorporate stepping to follow any change in level along the street boundary. The height of the fence may exceed the aforementioned numerical requirement by a maximum of 150mm adjacent to any stepping.		N/A.
	(vi) The preferred materials for front fences are natural stone, face bricks and timber.		N/A.
	(vii) Gates must not open over public land.		N/A.

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(viii) The fence adjacent to the driveway may be required to be splayed to ensure adequate sightlines for drivers and pedestrians.		N/A.
7.3	Side and Rear Fencing		
	<p>(i) The maximum height of side, rear or common boundary fences is limited to 1800mm, as measured from the ground level (existing). For sloping sites, the fence must be stepped to follow the topography of the land, with each step not exceeding 2200mm above ground level (existing).</p> <p>(ii) In the scenario where there is significant level difference between the subject and adjoining allotments, the fencing height will be considered on merits.</p> <p>(iii) The side fence must be tapered down to match the height of the front fence once pasts the front façade alignment.</p> <p>(iv) Side or common boundary fences must be finished or treated on both sides.</p>		Yes.
7.6	Storage		
	<p>(i) The design of development must provide for readily accessible and separately contained storage areas for each dwelling.</p> <p>(ii) Storage facilities may be provided in basement or sub floor areas, or attached to garages. Where basement storage is provided, it should not compromise any natural ventilation in the car park, reduce sight lines or obstruct pedestrian access to the parked vehicles.</p> <p>(iii) In addition to kitchen cupboards and bedroom wardrobes, provide accessible storage facilities at the following rates:</p> <p>(a) Studio apartments – 6m3</p> <p>(b) 1-bedroom apartments – 6m3</p> <p>(c) 2-bedroom apartments – 8m3</p> <p>(d) 3 plus bedroom apartments – 10m3</p>		Refer to Key issues discussion.
7.7	Laundry facilities		
	(i) Provide a retractable or demountable clothes line in the courtyard of each dwelling unit.		Unclear.
	(ii) Provide internal laundry for each dwelling unit.		Yes.
	(iii) Provide a separate service balcony for clothes drying for dwelling units		Unclear.

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	where possible. Where this is not feasible, reserve a space for clothes drying within the sole balcony and use suitable balustrades to screen it to avoid visual clutter.		
7.8	Air conditioning units:		
	<ul style="list-style-type: none"> Avoid installing within window frames. If installed in balconies, screen by suitable balustrades. Air conditioning units must not be installed within window frames. 		Unclear.

Responsible officer: Isobella Lucic, Senior Environmental Planning Officer

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