

# Randwick Local Planning Panel (Electronic) Meeting

Thursday 13 April 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, 13 April 2023

### **Declarations of Pecuniary and Non-Pecuniary Interests**

#### **Development Application Reports**

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Kerry Kyriacou  
**DIRECTOR CITY PLANNING**

## Development Application Report No. D22/23

**Subject:** Units 2 & 3, 8 Cliffbrook Parade, Clovelly (DA/795/2021)

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<b>Proposal:</b>	Alterations and additions to an existing residential flat building - internal alteration and ground floor extension to units 2 and 3, with a first floor part addition. New swimming pool and landscaping.
<b>Ward:</b>	North Ward
<b>Applicant:</b>	Mrs G J Fordham
<b>Owner:</b>	The Owners - Strata Plan No. 13633
<b>Cost of works:</b>	\$978,994
<b>Reason for referral:</b>	Contravention of the development standard exceeds 10%.

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### Recommendation

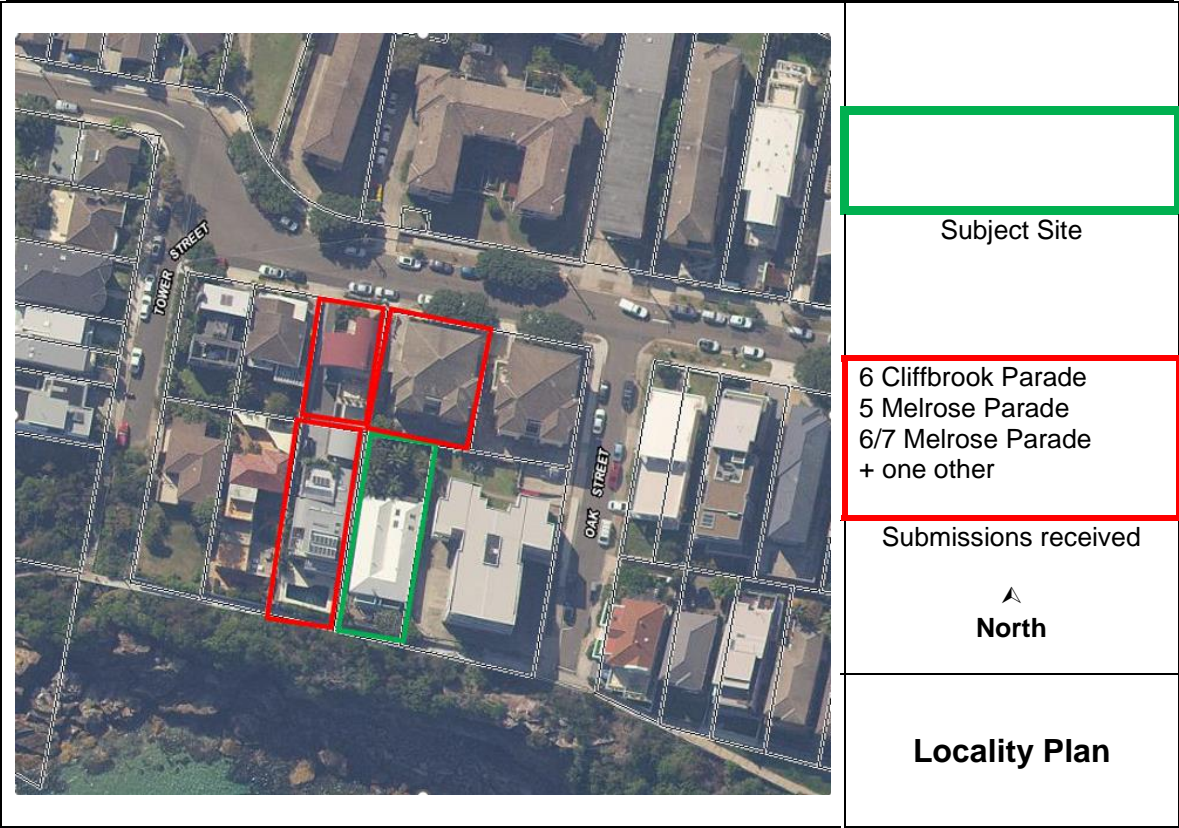
- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the FSR development standard in Clause 4.4 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning and Environment has been 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. 795/2021 for Alterations and additions to an existing residential flat building with new roof, internal alteration to Unit 2 with a first floor part addition, new landscaping, at No. 8 Cliffbrook Parade, Clovelly, subject to the development consent conditions attached to the assessment report.

### Attachment/s:

1.  2023 RLPP Dev Consent Conditions (med density res) - DA 795 2021 - 8 Cliffbrook Parade CLOVELLY
2.  Clause 4.6 Application (CI 4.4 FSR) - 8 Cliffbrook Parade CLOVELLY(2)

D22/23

D22/23



**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%

The proposal seeks development consent for alterations and additions to an existing residential flat building including a new roof, internal alteration to Unit 2 with a first floor part addition and new landscaping.

The key issues associated with the proposal relate to the sufficiency of the Clause 4.6 request relating to exceedance of the floor space ratio standard, exceedance of the wall height control, view loss and privacy.

The proposal is recommended for approval subject to non-standard conditions that require a new strata plan to be prepared and registered and a privacy screen on the western side of the rear balcony. A condition also requires waste storage facilities to be located not within sight of the public footpath of Cliffbrook Parade.

**2. Site Description and Locality**

The subject site is known as 8 Cliffbrook Parade Clovelly and is legally described as Lots 2 and 3 in SP13633. The site is 506.6m<sup>2</sup>, is nearly regular in shape with an eastern boundary of 38.3m, western boundary of 39.065m, southern boundary of 13.125m and northern boundary of 13.105m. The site has no direct street frontage and is accessed via other properties on Melrose Parade. Cliffbrook Parade to the south is a clifftop pathway with pedestrian access only.

The site contains a one and two storey rendered residential flat building with a metal roof accommodating 3 units. The lower ground is occupied by Unit 1 and the ground floor by Units 2 and 3. Unit 2 is on the eastern side adjacent to a residential flat building at 10-12 Cliffbrook Parade. Unit



3 is on the western side adjacent to 6 Cliffbrook Parade. Each unit has ground level private access to Cliffbrook Parade pathway and to Melrose Parade via rights of way. The front setback to Cliffbrook Parade has an interface with the ocean with a landscaped area offering uninterrupted water views. There is dense vegetation within the rear (northern) setback area.

The site slopes approximately 4.31m from RL31.44 (approximately) on the northern boundary to RL27.13 in the south-west corner (a 15.9% slope).

Adjoining the site are various residential flat buildings between 2 to 5 storeys and dwelling houses of up to 3 storeys. As with the site, the residential flat buildings adjoining the site are subject to existing use rights as they (together with the site) are within the R2 low density residential zone under RLEP 2012.



Fig 1: View of site from Cliffbrook Parade footpath



D22/23



Figure 2 View of eastern side of 8 Cliffbrook Parade (unit 2) from outside the residential flat building of 10-12 Cliffbrook Parade from the coastal footpath



Fig 3 Rear of Unit 3 looking south





Fig 4 View across Gordons Bay looking south from the ground floor balcony of Unit 3

### 3. Relevant history

On 12 August 2014 consent was granted under DA/255/2014 for alterations and additions to an existing residential flat building including internal reconfiguration, changes to window/door openings on elevations, new single storey additions to the northern side of Units 2 and 3 including new decks, new storage shed to Unit 2, new roof skylight windows, and new awnings on eastern side of the building. The approved additions were to the rear (north) of the existing ground floor level.

On 14 March 2017 consent was granted under DA/596/2016 for Alterations, rear ground and first floor additions to the existing building and conversion of the building to a pair semi-detached dwellings including amendment to Strata Plan (variation to floor space ratio control). The proposal added another floor and a view loss assessment was conducted and found to be satisfactory. It proposed to decrease the number of units from 3 to 2 and to convert the site into semi-detached dwellings (a permissible use in the relevant R2 Low Density Residential zoning). Amendments were made to the plans so that the FSR control of 0.65:1 was not breached and provided for an FSR of 0.62:1 – 311.92m<sup>2</sup>). The first floor addition was placed on the eastern side of the existing building, providing for a top roof RL of RL37.48 for the majority of the roof and a clerestory window apex of RL38.58. Conditions of consent required the first floor level to be set back 1800mm from the eastern side boundary and the ground floor south facing deck to be setback 2.1m from the western boundary. This consent has not been constructed or apparently commenced.

On 22 February 2022 consent was granted under DA/644/2021 for alterations and additions to existing unit 1 including partial demolition, internal reconfiguration, extension into subfloor area to the north, changes to windows and doors, new deck to the south, new external stairs on eastern and western sides, tree removal and associated works. The proposal increased the GFA of Unit 1 by 20m<sup>2</sup>. Consent was granted in the knowledge that this DA/795/2021 had been lodged and the report indicates that the landscape plan was amended to accord with the landscaping proposed in this DA/795/2021 (as originally lodged).

On 20 February 2023 approval was provided under delegated authority to a s4.55(1A) modification application to DA/644/2021 affecting Unit 1. DA/644/2021/A was provided to amend doors and windows and to amend the stairs on the eastern side of the building to Unit 1.

On 28 February 2023 approval was granted by delegated authority to DA/7/2023 to demolish and replace the existing southern balconies to units 2 and 3 within the existing setbacks, including replacement of the support posts.

#### 4. Proposal

The proposal originally sought development consent for alterations and additions to an existing residential flat building including internal alteration and ground floor extension to Units 2 and 3, with a first floor part addition, new swimming pool and landscaping, at No.8 Cliffbrook Parade Clovelly. Elements of the original proposal includes:

- Ground floor:
  - Internal demolition and removal of the front balconies;
  - Reinstatement of balconies as a single balcony divided by a privacy screen closer to the side boundaries and the vegetation which is to be retained;
  - Reconfiguration of the front rooms as a master bedrooms and the rear section as bathrooms and staircases and entries;
  - Addition of a guest/living room on a new concrete slab at the rear for Unit 3 at RL31.06;
- First floor
  - Construction of a whole new level for units 2 and 3, each comprising a living/dining and kitchen area and WC or small bathroom and stairwell;
  - Large terrace at the front overlooking the ocean off the living rooms of 5.403m x approximately 4.7-4.8m wide (25.4m<sup>2</sup> – 26m<sup>2</sup>). A privacy screen was proposed immediately adjacent to the living room on each side boundary but not for the bulk of the terrace. A privacy screen separating unit 2 and 3 was proposed on both the first floor terrace and the ground floor balcony;
  - Unit 3 to include a study/bedroom to the rear above the proposed new guest/living room, including a small balcony facing east against the rear wall of unit 2;
- Roof
- Landscaping works:
  - Removal of a considerable amount of vegetation from the rear yard
  - Construction of a swimming pool in the north eastern corner

Side setbacks for the ground level additions were proposed to be 1.2m (as per the existing side setbacks). The side setbacks for the first floor were proposed to be 1.8m. The front setback to the ground floor balconies were proposed to be 3.940m.

On 4 April 2022 the assessing officer wrote to the applicant expressing concern about the following matters:

- Exceedance of the FSR control and the clause 4.6 is inadequate;
- Deep soil and landscaping calculations are inadequate. There is no landscape plan and the trees should be retained not removed;
- The view loss analysis is inadequate and does not include view loss from 5 Melrose Parade. The existing proposal will lead to unacceptable view loss for 5 Melrose Parade. Any subsequent proposal will require height pole analysis;
- Exceedance of the wall height control is not supported and articulation is required;
- The southern balconies must remain at least 2m from the trees. The proposed terraces are not supportable in terms of visual and acoustic privacy. The rear balcony to unit 3 creates privacy concerns for unit 2;
- Concerns about changes to the strata plan, access and amenity;
- Side setback to be 2m;
- Recommended for withdrawal.

On 25 May 2022 after a site visit to 5 Melrose Parade to view the height poles which had been erected, Council's external consultant advised the applicant of areas where construction could not be contemplated due to view impacts on 5 Melrose Parade. It was reiterated that the GFA exceedance was excessive, that the wall height exceedance was not acceptable and the 2m side setback was required. Again, the applicant was invited to withdraw.

On 3 June 2022, Council's external consultant responded to an amended proposal for a small first floor addition at the rear of unit 3 and a reduced first floor addition over unit 2. The consultant issued concerns about:

- The useability of the space proposed on level 1 of unit 3, which would make justification of the FSR exceedance difficult. Any first floor extension should be limited to above unit 2;
- Clarity on the existing GFA is required;
- A very good clause 4.6 request will be required to justify the amount of GFA and the client's expectations for the amount of GFA which can be justified on the site need to be reduced.

On 21 September 2022, following receipt of further amended plans, the following advice was provided to the applicant:

- The exceedance of the GFA is excessive and will require a very good clause 4.6 exception request with excellent justifications. Consideration should be given to substantially reducing the proposed GFA;
- The wall height exceedance is not supported as it contributes to the FSR exceedance;
- Any extension into the landscape area if the landscape area does not comply with the controls will be hard to justify;
- The southern balconies must remain with their existing side setbacks to protect privacy;
- A proposed balcony on the roof of unit 3 for the benefit of unit 2 is not supportable due to potential view impacts and acoustic impacts for unit 3 and 6 Cliffbrook Parade.

On 13 October 2022, the applicant provided a further set of plans and documentation. The revised plans were noted as Rev C issued on 10/10/2022. The documents included existing and proposed plans, Basix, a height pole survey, a letter of advice, a revised clause 4.6 exception request, survey and consolidated bylaws for the existing strata plan 13633 as registered on 14 September 2022. The amended October proposal included:

- Ground floor:
  - Internal demolition of Unit 2 and removal of the front (southern) balconies
  - Reinstatement of balconies as a single balcony divided by a privacy screen maintaining the same side setbacks as existing
  - Reconfiguration in Unit 2 of the front room as a master bedroom with walk in robe and ensuite, a total of 4 bedrooms on the ground floor, a bathroom and a study and staircase
  - Extension of the rear setback of Unit 2 by 1.653m, providing an additional GFA on this level of approximately 8.7m<sup>2</sup>
  - The study on the northern side to open out with bifold doors to an approximate 1m paved area with grass beyond
- First floor
  - Construction of a new level for unit 2, comprising a living/dining and kitchen area and bathroom facing to the south (to the ocean), and a media room on the northern side.
  - A terrace of 18m<sup>2</sup> (4m x 4.53m) is proposed to the south of the living area overlooking the ocean. Glazed balustrading is proposed.
  - A balcony 1.25m wide, is proposed to the north of the media room with the consequence that the rear setback of the site is reduced by 2.903m to 9.549m.
  - Side setback to the east is 2.0m
  - Front façade is 13.754m from the southern Cliffbrook Parade boundary on the eastern side, with the terrace being 9.754m from the southern boundary.
  - Highlight windows at 1500mm are proposed

- There is a DCP wall height exceedance on the eastern side for a distance of approximately 1m of up to approximately 800mm
- Roof is revised to a near flat metal roof with various skylights
- Landscaping works
  - Removal of 2 x cocos palms to eastern boundary, a stretlitzia nicholii, lilly pilly and shrubs to the rear northern boundary. Existing magnolias and lilly pillies to the eastern boundary to be retained
  - The proposed swimming pool is deleted.

Council sought to undertake notification of the October 2022 material, however the notification was defective as not all documents were uploaded to the Council Track DA website.

On 12 November 2022, the consultant wrote to the applicant advising that renotification of the plans was required to satisfy the notification requirements, and advised the applicant of numerous matters which remained as issues with the proposal. The applicant was offered the opportunity to submit final documents before the renotification. The issues raised are summarised as:

- Building design:
  - FSR is excessive
  - Wall height exceedance is not justified
  - Lack of articulation in the side first floor walls
  - Privacy from the rear balcony, and the terrace
  - Demonstration that the minimum 2.7m floor to ceiling height is achieved
- Further information required:
  - Professional view analysis and assessment under Tenacity
  - Clarification of existing GFA
  - Amended shadow diagrams are required
  - Waste areas need to be identified
- Clause 4.6 is unsatisfactory:
  - Incorrect calculations are referenced and inaccurate statements made
  - Lack of justification within the clause 4.6 of the matters sought to be relied upon
  - Lack of analysis of desired future character and insufficient consideration of environmental planning grounds
  - The justifications based on FSR exceedances elsewhere is unconvincing when the exceedance sought is significantly greater than others indicated where that exceedance is largely within the existing building envelope.

On 15 February 2023, further amended documentation was uploaded to the planning portal. The proposed plans are generally identified as Rev D dated 20/01/2023 These plans and documents were placed on notification from 20 February 2023 for 14 days. This is the set of plans upon which this assessment is based. The Rev D plans dated 20 January 2023 seek the following:

- Ground floor:
  - Internal demolition of Unit 2 and demolition of the northern decks for Units 2 and 3
  - Reconfiguration in Unit 2 of the front room as a master bedroom with walk in robe and ensuite, a total of 3 bedrooms on the ground floor, a bathroom and an office and staircase
  - The office on the northern side of unit 2 to open out with bifold doors to an approximate 1m wide paved area with grass beyond.
- First floor
  - Construction of a new level for unit 2, comprising a living/dining and kitchen area. The length from north to south is 9.0m – 0.1m less than the length approved under DA/596/2016.
  - A terrace of 22.5m<sup>2</sup> (4.8m x 4.730mm) is proposed to the south of the living/dining area overlooking the ocean. 8.5m<sup>2</sup> closest to the living area is covered with a louvred roof and the remaining 14m<sup>2</sup> is open and tiled. Timber privacy screens to 1.6m are proposed on the eastern side of the terrace. The balustrading to the south is not shown on the plans.



- A balcony 1.0m wide, with glass balustrading is proposed to the north of the kitchen (an area of 3.62m<sup>2</sup>) with the consequence that the rear setback of the site is reduced by 1.0m to 11.45m. There is a privacy screen on the east (but not west) side to 1.6m
- Side setback to the east is 2.0m
- Front façade is 17.613m from the southern Cliffbrook Parade boundary on the eastern side, with the terrace being 12.813m from the southern boundary.
- No windows are proposed on the side elevations
- There is no exceedance of the DCP wall height
- Including the approved increase in GFA under DA/644/2021, the proposal will increase the GFA by 32m<sup>2</sup> from 332.7m<sup>2</sup> (FSR of 0.657:1), to 364.7m<sup>2</sup> (FSR of 0.72:1).
- Roof is revised to a near flat metal roof with three skylights over the first floor of Unit 2
- Landscaping works
  - Existing magnolias and lilly pillies to eastern boundary, to be retained.
  - Remove 2 x cocos palms to the eastern boundary, remove a stretlitzia nicholii, lilly pilli and shrubs to the rear northern boundary.
  - Existing deep soil coverage to be increased from 57.5m<sup>2</sup> to 145.4m<sup>2</sup> for compliance with the RDCP 2013, by removal of the paved courtyard to Unit 3 and the timber decking for Unit 2.

The outcome is that the proposal is similar in size to that approved under DA/596/2016.

## 5. Notification

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

- Planning consultant on behalf of 6 Cliffbrook Parade, Clovelly

Issue	Comment
Floor space ratio exceedance. An FSR of 0.92:1 is a significant variation and no justification is provided. No detailed GFA plans show and confirm the breakdown of the FSR calculation.	Noted. Amendments have been made to reduce the FSR exceedance, however there remain no detailed GFA plans.
Fails to satisfy the objectives of the R2 zone and clause 4.4 of the RLEP.	Agreed that the original clause 4.6 request was unsatisfactory
The clause 4.6 thresholds to meet the objectives of the zone and the standard are not met and the application must be refused.	
The two decks are large (combined over 50m <sup>2</sup> ) and there are no decks of this size in the vicinity. It will adversely affect the amenity of adjoining properties by creating additional overlooking from the upper level deck, and increased acoustic impacts	The upper level balcony adjacent to 6 Cliffbrook Parade is removed. The deck size is reduced and the opportunity for visual privacy issues is reduced including by retention of the ground floor balcony side setback and privacy screen
It will not increase housing affordability – an objective of the zone	Noted and agreed
Privacy impacts from the two new upper level terraces with sightlines into the master bedroom. The decks require reducing and privacy screens	The upper level balcony adjacent to 6 Cliffbrook Parade is removed. The deck size is reduced and the opportunity for visual privacy issues is reduced including by retention of the ground floor balcony side setback and privacy screen
A minimum side setback of 2m is required under the DCP	Agreed – this is now provided



Issue	Comment
Bulk is unreasonable	Noted

- 6 Cliffbrook Parade Clovelly

Issue	Comment
Privacy to the master bedroom from the open terraces is impinged with clear line of sight. Privacy screens are grossly inadequate.	The first floor terrace adjacent to 6 Cliffbrook Parade is removed. The balcony at ground level is retained at the existing depth and side setback with additional privacy screens.
Terraces should be limited in depth to extend no further than in alignment with the exterior wall of the master bedroom	The Unit 2 first floor terrace is slightly forward of the master bedroom wall
Breach of the wall height and the FSR controls show that the proposal goes too far	Noted. See comments elsewhere in this report

- 5 Melrose Parade Clovelly

Issue	Comment
Bulk and scale – a previous application DA/596/2016 was reduced prior to approval to accommodate view impacts	Noted. Amendments have been made to mostly deal with the view impacts
View loss of iconic views of the ocean and Wedding Cake Island is devastating under the Tenacity principles for 5 and 7 Melrose Parade and from the western side balcony of the mid level unit in the residential flat building at 10 Cliffbrook Parade. The application should be refused.	Noted. Amendments have been made to mostly deal with the view impacts
Variation of the FSR control is 213m <sup>2</sup> (84%) over the control and is unreasonable	The extent of exceedance has been reduced to 143.7m <sup>2</sup> (56.7% exceedance)
The clause 4.6 request lacks planning merit as the quantum of variation sought is unclear, non-compliance is associated with unreasonable impacts (view loss) and fails to satisfy the requirements of the clause	Agreed as regards the initial clause 4.6 request. Also agreed regarding the second clause 4.6 request

- 6/7 Melrose Parade Clovelly

Issue	Comment
Breach of SEPP (Vegetation in Non-Rural Areas) 2017 due to removal of the vegetation for the pool, impacting on biodiversity and privacy	Much of the vegetation is to remain and the pool proposal has been deleted
The swimming pool pump can create acoustic impacts	Swimming pool proposal is deleted
Loss of sea views with a consequent reduction in the value of the property	Noted. No assessment from this unit has been provided

- Local resident

Issue	Comment
View loss from property to the rear is not clearly demonstrated	Noted that no view loss is provided. The flat from which the objector is referring is not identified
The increase in height exceeds allowable limits and will affect the amenity and visual impact of Gordon's Bay	The proposal is compliant with the RLEP height control

Issue	Comment
The large entertainment balcony is out of proportion to the units and will likely significantly increase noise to Gordon's Bay and neighbours and is not warranted in such an elevated and prominent position	The decks have been reduced from 2 to one and reduced in size.
Access provisions to the flats are not clear, including transfer and collection of refuse	These matters are now to remain as existing

### 5.1. Renotification

The amended plans provided on 13 October 2022 were renotified to the owners of adjoining and likely affected neighbouring properties. However, as all of the plans were not uploaded by Council to the website correctly, the neighbours were unable to clearly identify what was being proposed, and the comments received reflected confusion.

The final amended plans received on 15 February 2023 – being Rev D dated 20 January 2023 were renotified to the owners of adjoining and likely affected neighbouring properties in accordance with the Randwick Community Participation Plan. No submissions were received as a result of the renotification process:

## 6. Relevant Environment Planning Instruments

### 6.1. SEPP 65 - Design Quality of Residential Apartment Developments

The [\*State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development\*](#) (SEPP 65) aims to promote quality design of Residential Flat Buildings. The proposed development is subject to SEPP 65 as it involves alterations and additions to a residential flat building.

As the residential flat building contains less than 4 dwellings SEPP 65 and the Apartment Design Guide do not apply to the proposal.

### 6.2. SEPP (Building Sustainability Index: BASIX) 2004

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

### 6.3. SEPP (Resilience and Hazards) 2021 Chapter 2 Coastal Management

The site is within both the coastal environment area and the coastal use area. The proposal will not have any impact upon the matters outlined in clause 2.10(1) relating to the coastal environment area.

The proposal will not have any impact on the aspects outlined in clause 2.11(1) relating to the coastal use area. The proposal could have the potential to have an adverse impact on the visual amenity and scenic qualities of the coast, however given the presence of residential flat buildings surrounding the site this is not considered likely.

### 6.4. SEPP (Resilience and Hazards) 2021 Chapter 4 – Remediation of Land

The available history of the site indicates that the site has been used for residential purposes for a significant period of time. No significant risk is posed and therefore, under Clause 4.6(1)(b) and (c) of the SEPP the land is considered suitable for the proposed alterations and additions.

### 6.5. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned Residential R2 Low Density under Randwick Local Environmental Plan 2012 where residential flat buildings are not permitted. The property enjoys existing use rights as a residential flat building.

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. The final documents and shadow and view analysis together with privacy screens demonstrate that (subject to conditions) the amenity of the local residents has been adequately protected.

The RLEP development standards apply to the site with existing use rights as set out in the judgment of *Saffioti v Kiama Municipal Council* [2019] NSWLEC 57.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4: Floor space ratio (max)	0.5:1	0.72:1	No
CI 4.3: Building height (max)	9.5m	8.8m	Yes

#### 6.5.1. Clause 4.6 - Exceptions to development standards

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

#### 6.5.2. Clause 6.7 - Foreshore scenic protection area

The site is within the foreshore scenic protection area. The proposal is largely located to minimise its visual impact on public areas of the coastline – being set back from the public walkway. Although it may be visible from the coastal foreshore it is unlikely to have a great visual impact or to adversely affect the quality of the coastal foreshore.

### 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 4.4: Floor space ratio (max)	0.5:1 (253.3m <sup>2</sup> on a site of 506.6m <sup>2</sup> )	0.72:1 (364.7m <sup>2</sup> )  Existing is 0.657:1 (332.7m <sup>2</sup> )	111.4 m <sup>2</sup> (This application increasing the exceedance by 32m <sup>2</sup> )	43.98% This application increasing the exceedance by 12.6%

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 seeks to demonstrate that this objective is satisfied by noting that development surrounding the site comprises 2-5 storey residential flat buildings and detached dwelling houses. The request notes that the proposal is compliant with the LEP building height, and the DCP wall and ceiling height controls, setbacks, building depth, landscaped area, and deep soil area. The request notes that the FSR is 35.41m<sup>2</sup> above the 0.65:1 FSR control for dwelling houses or semi-detached dwellings for this site. The requested exceedance would be 10.75% above that 0.65:1 FSR control (if it applied).

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

The applicant's written justification seeks to demonstrate that this objective is satisfied by noting that the roof over unit 3 will be lowered by 1.5m which will reduce building bulk and increase water views over that part of the building; that the site complies with the building depth control with a maximum depth of 9m. It also mentions compliant natural light and ventilation to all rooms, outdoor space on balconies and in the rear yard with improved landscape and deep soil areas on site to increase stormwater retention and soft landscaping.

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

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

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

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

The applicant's written justification seeks to demonstrate that this objective is satisfied by noting that the proposal is compliant with the building height, building depth, and setbacks for the site. The request states that visual bulk will be reduced by 1.5m over unit 3 (and increased by 1.5m height over part of level 2). The request considers that privacy concerns have been considered, and overshadowing is compliant.

The request includes a view analysis which was somewhat hampered by being unable to obtain access to the relevant dwellings. Photographs from real estate photos and drones were used. An analysis under *Tenacity* is provided for 6 Cliffbrook Parade, 5 and 7 Melrose Parade and 10-12 Cliffbrook Parade.

Assessing officer's comment: The clause 4.6 is considerably improved from the previous clause 4.6 requests provided with the application. The analysis includes the approved additional GFA for Unit 1 and has corrected the numerous inaccuracies which were in the previous clause 4.6 exception requests.

In relation to objective (a), the compliance with the majority of the controls other than the FSR control – in both RLEP 2012 and RDCP 2013, does assist in demonstrating that the proposal is compatible with the desired future character of the locality.

In relation to objective (b), it is agreed that the proposal does improve articulation from earlier proposals, including the balconies and the reduction in the length of the side wall of the first floor to below the DCP maximum of 10m. It is also agreed that the improvement in the soft landscaping elements which remove much of the paved courtyard and timber decking for units 2 and 3 in the rear of the property and retain some of the existing vegetation will improve the environmental and energy credentials of the site, and enable compliance with the RDCP 2013 deep soil coverage control.

In relation to objective (d) the clause 4.6 has undertaken a detailed consideration of the following matters and it is agreed that the clause 4.6 identifies aspects which achieve the objective:

- **Visual Bulk** – The clause 4.6 identifies the reduction in the roof height of 1.5m over unit 3, with an increase (over a smaller area) over unit 2 of 1.5m. The DCP compliant building height, wall height, building depth and setbacks have resulted in a modest built form as set out in the clause 4.6.
- **Privacy** – It is agreed that the privacy measures in the plans provide acceptable privacy. Any additional screening could be conditioned.
- **Overshadowing** – The clause 4.6 demonstrates that the overshadowing is minor and compliance with the shadowing provisions in the RDCP 2013 are met.
- **Views** – The clause 4.6 has undertaken a detailed view analysis, however this is hampered by the inability to obtain photographs from the various neighbours who have indicated concern about view loss. The use of drone photography to undertake the view analysis is not ideal, however does provide a reasonable indication of the likely view loss from the proposal.
  - **6 Cliffbrook Parade.** Using photographs from realestate.com.au the clause 4.6 states that the proposal will not be visible from 6 Cliffbrook Parade. Taking into account the photograph from the submission on behalf of the owners of 6 Cliffbrook Parade, the view from their upstairs bedroom window will not extend further to the north than the most southern window on the ground floor of the western façade. The timber



balustrade for the proposed southern deck on the first floor will not be visible from the bedroom of 6 Cliffbrook Parade as shown by the extracts below: Therefore, although the statement made in the clause 4.6 of 8 Cliffbrook Parade not being visible from 6 Cliffbrook Parade is incorrect, other documentation does support the conclusion reached – being that the proposal will have no impact on views from 6 Cliffbrook Parade.



Fig 5: View from upstairs bedroom of 6 Cliffbrook Parade from their submission



Fig 6 Red line shows the approximate view from 6 Cliffbrook Parade with the view to the right of the red line

- **5 Melrose Parade.** The clause 4.6 uses photographs which the consultant town planner author of this report took when visiting 5 Melrose Parade when the height poles were erected. Having been within 5 Melrose Parade, the montage images provided by the applicant appear accurate and clearly demonstrate retention of the view to Wedding Cake Island. It is agreed that there will be additional water visible between Wedding Cake Island and the site's roof over unit 3, due to the reduction in the height over unit 3. It is agreed that the first floor addition will be fully concealed behind existing vegetation.
- **7 Melrose Parade**  
There are 6 residential units in the residential flat building at 7 Melrose Place. It is accepted that there are no views to the site from the ground floor apartments being units 1 and 2.



- **Unit 3.** Drone photography approximately 1m to the west of the rear window shows that the existing roof of the site is visible, potentially blocking view to the waters of Gordons Bay. The montage indicates that the additional first floor level will have a negligible, almost imperceptible impact on the view from Unit 3.
- **Unit 4.** Drone photography approximately 1m to the east of the rear window shows that the existing roof covers part of the waters of Gordons Bay, reaching to the cliffs. The montage illustrates that the proposal will remove an additional portion of the waters of Gordons Bay from the view. The clause 4.6 indicates that this is a minor impact to the land and water interface, which is agreed. The clause 4.6 anticipates that the reduction in roof height of unit 3 and the removal of some vegetation will open up equivalent land water interface views to the west of the proposed first floor addition. Whilst the montage does not demonstrate additional land water interface, it is accepted that this may occur. However it is considered that the clause 4.6 demonstrates that this is a minor impact on views on a small portion of the water/land interface.
- **Unit 5.** Drone photography approximately 1m to the west of the rear window shows that the existing roof covers part of the waters of Gordons Bay, with the water element still visible between the existing roof and the cliffs on the south western side of Gordons Bay. The montage illustrates that the impact on views to the water land interface will be negligible. The small expanse of water will remain visible. Whilst there will be a change in the building form which will be discernible, the impact on views to the waters and cliffs of Gordons Bay will be very negligible.
- **Unit 6.** The photograph from inside Unit 6 illustrates that the existing roof covers some parts of the waters of Gordons Bay, with the expanse of water slightly larger between the roof and the cliffs than for unit 5. The photomontage illustrates that the land water interface will remain clearly visible, that there will be a slight reduction in the extent of visible water on the eastern side towards 10-12 Cliffbrook Parade, and there will be a gain of water views over the reduced roof height of Unit 3 which is of a similar scale. The view impact is considered to be minor.

This assessment agrees with the conclusion of the clause 4.6 that the proposal will have a minor impact on a small portion of water and land/water interface views obtained from the mid and upper level units at 7 Melrose Parade, with the vast majority of existing water views to be retained. Although that view loss arises from non-compliance with the FSR control, the other bulk and scale controls are met by the proposal. This proposal has arisen following a lengthy process of considering alternative designs, and it is considered that, notwithstanding the FSR non-compliance, the very minor view impacts to 7 Melrose Parade are reasonable and acceptable from a view sharing perspective following the analysis set out in the clause 4.6 request.

- **10-12 Cliffbrook Parade.** This building is a 5 storey residential flat building of 14 units. Access to the units was not provided to the applicant and drone photography was therefore used. The clause 4.6 adequately demonstrates that the lower levels are unaffected, the mid levels have a slight improvement in view and the upper level is unaffected by the proposal.
  - **Ground/First/Second levels.** The clause 4.6 demonstrates that the lower levels (ground, first and second floor) have no view to the water which would be impacted by the development.
  - **Third/fourth floor.** The photomontages in the clause 4.6 illustrate that the view to beach area of Gordons Bay, being the land water interface, will be improved due to the reduction in the roof height above unit 3 and the southern portion of Unit 2.
  - **5<sup>th</sup> Level.** Views from the 5<sup>th</sup> level are demonstrated to be obtained above the current roofline of the existing building with no impact on the broad water views arising from the proposal.

This assessment considers that the clause 4.6 has adequately considered the *Tenacity* principles in relation to 10-12 Cliffbrook Parade and that the views are either improved or unaffected by the proposal.

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. There is sufficient justification within the clause 4.6 request to demonstrate that the objectives of the standard have been achieved.

## 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:

- By setting out a comparison to the existing use FSR exceedances for 7 and 9 Melrose Parade and 10-12 Cliffbrook Parade;
- By stating that there will be no negative impact on the environment or surrounding properties in relation to view, solar access and privacy as previously set out;
- By stating that as the design no longer proposes a first floor addition to unit 3, there is no view loss as demonstrated by the shadow diagrams, view loss analysis/height pole studies
- By stating that it is surrounded by residential flat buildings with an FSR of 0.91:1 to 1.5:1 and is located in close proximity to zone R3 with a permissible FSR of 0.9:1;
- By noting that if the site included a dwelling house or semi-detached dwelling the FSR permissible would be 0.65:1 and the variation sought would be just 35.41m<sup>2</sup> or 10.75%
- That therefore the site is in context and is less bulky than the adjoining residential flat buildings and nearby medium density development;
- By providing a model image of the proposal in the context of the surrounding properties;
- By indicating compliance with the building height, wall height, building depth, setbacks, landscaped area, deep soil area and private open space provisions and is designed to be recessive and retains the extensive vegetation, with complimentary materials and colours;
- That a number of sites have been the subject of recent exceedances of the FSR control (listing 11) which have variations of between 22.81% to 86.7% and that therefore the varied FSR is reasonable and consistent with clause 1.3(c) and (d) (presumably referring to the objects of the Environmental Planning & Assessment Act 1979)
- By stating that the proposal will increase the current GFA on the site from 332.7m<sup>2</sup> to 364.7m<sup>2</sup> – an addition of 32m<sup>2</sup> or a 9.62% increase which is comparable to the increases set out with the listed sites above;
- That the proposal:
  - allows for the modernization and extension of the units to meet the changing housing needs of residents,
  - is an efficient use of the site with services readily available
  - is consistent with other buildings in the locality and with the current planning controls;
  - the resultant development retains a low-density scale and replacement of the existing pitched roof with a flat roof minimizes building bulk and presents as an appropriate 2-3 storey building;
  - given the site context, is reasonable as it does not result in unreasonable impacts to neighbouring properties
  - will not hinder any future development of the lot
  - demonstrates fulfillment of clause 1.3(a), (b), (c) and (g) (presumably of the EP & A Act)
- Is consistent with the zone objectives, allowing for the continued residential land use with a bulk and scale consistent with the locality and therefore fulfils clause 1.3(c)
- Allows for current and future needs of residents and reduces environmental impacts by developing on an existing developed lot within the existing building footprint
- That the proposal will result in compliant and improved landscaped area and deep soil area, allowing for stormwater infiltration and soft landscaping
- Will have a positive social impact allowing for the housing needs of residents to be met in their current local community (satisfying clause 1.3(b))

- Is not an overdevelopment as it satisfies the objectives of the zone and the development standard.

It is stated that these points reflect the unique circumstances for the site and the proposed development and that there will not be excessive bulk from the public domain and there is recent precedent for similar variations.

Assessing officer's comment:

The clause 4.6 request is considered to adequately establish sufficient environmental planning grounds to justify contravening the development standard. Most notably the clause 4.6 includes adequate discussion justifying the exceedance in relation to overshadowing, building height, wall height and setback compliance, landscaping and deep soil compliance and view loss analysis. The provision of the contextual diagram is also of assistance to demonstrate the environmental grounds.

The clause 4.6 has listed a number of recently approved FSR exceedances. The information provided in the clause 4.6 is set out in the first three columns of the table below. Analysis of the approvals demonstrates the information set out in the four columns to the right. In summary the analysis demonstrates:

- That the additional proposed GFA of 32m<sup>2</sup> (9.62% variation) is within the range of additions from the cited DAs;
- That the majority of the approved FSR additional exceedances arise from within the existing building envelope.

It is considered that the increase in variation is in fact 12.6% and not 9.62%, however it is considered that this does not have a significant bearing on the argument made.

In short the reference to these approved FSR exceedances gives some credence to support the clause 4.6 claim that the other approved FSR exceedances are an environmental planning grounds justifying the contravention of the standard, although this argument is certainly not determinative on its own as a sufficient environmental planning ground to justify the exceedance of the control.

DA	Address	FSR var %	Zone	+m <sup>2</sup>	+% var	Comment
<b>DA/795/2021</b>	<b>8 Cliffbrook Pde Coogee</b>	<b>56.7</b>	<b>R2</b>	<b>32.0</b>	<b>9.62</b>	<b>New partial first floor</b>
DA/2/2021	1 Adams Ave Malabar	62.8	R3	30.3	10.7	Consistent with adjoining studios
DA/04/2021	76 Bream St Coogee	70.8	R3	17.3	2.4	Infill of balconies to match floors above and below
DA/288/2021	102-104 Brook St Coogee	69.4	R3	17.8	0.28	Glazed enclosure for a café in mixed use building
DA/206/2021	166-172 Arden St Coogee	39.53	R3	13.5	0.59	Enclose undercroft area
DA/302/2020	17 Oswald St Randwick	49.96	R3	17	15	Not visible from the street
DA/52/2021	5-5A Lion St Randwick	30.39	R3	18.7	13	New FSR within the existing Art Deco building envelope
DA/180/2021	20 Gumara St Randwick	26.3	R3	15	0.66	Enclosing a patio of 15m <sup>2</sup>
DA/652/2020	59 Carrington Rd Randwick	73	R3	15.8	16	Altering rear garage and adding studio above. Similar to adjoining development. Site is 189.7m <sup>2</sup> so a small

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DA	Address	FSR var %	Zone	+m <sup>2</sup>	+% var	Comment
						exceedance is exacerbated.
DA/442/2020	37-39 Prince St Randwick	22.81	R3	64	8.49	Arising from converting the existing garages which are too small to park in, to storage (for which it is currently used). Enables +3 streetside car spaces
DA/483/2020	148 Barker St Randwick	58	R2	Nil	Nil	Existing use rights for vet, and proposed dual occ above does not increase FSR on site
DA/88/2020	78 Bream St Coogee	86.7	R3	48.99	6.0	Within the existing roof form

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

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

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

***Assessment against objectives of floor space ratio standard***

For the reasons outlined above it is considered that the applicant's written request has demonstrated that the development is consistent with the objectives of the FSR standard.

***Assessment against objectives of R2 Low Density zone***

The objectives of the Residential R2 Low Density zone are:

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

Assessing officer's comment:

The clause 4.6 states that the proposal is consistent with all the above objectives (save the second and last which are not applicable). This is because:

- The development will allow for improvements and upgrades to the existing unit by the minor 32m<sup>2</sup> first floor addition to unit 2
- That the works propose a new home office to unit 2, providing for necessary facilities for the residents to work from home
- That the works are of an appropriate scale, compliant with the current controls relating to building height, wall height, building depth and setbacks and are complimentary to the existing streetscape and surrounding coastal environment
- The building will retain its two storey presentation to Cliffbrook Parade with a setback of 17.2m to the proposed first floor

- The existing balcony and vegetation presentation to the parade frontage will be retained with increased landscaping in the rear yard.
- It will not result in any unreasonable impacts on the residential amenity with compliant solar access, views and privacy retained
- That it will retain the existing residential density providing additional living spaces and bedrooms to the existing unit.

The clause 4.6 has demonstrated within the document that there are no unreasonable impacts on residential amenity. It also demonstrates through compliance with the majority of the controls and within the document, that the desirable elements of the streetscape and built form are recognized. The clause 4.6 request has demonstrated that the development is consistent with the objectives of the floor space ratio standard and the R2 Low Density Residential zone. It is therefore demonstrated that the development will be in the public interest.

#### 4. Has the concurrence of the Secretary been obtained?

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

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

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

*Is there public benefit from maintaining the development standard?*

The clause 4.6 has demonstrated that 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 can be granted for development that contravenes the FSR development standard.

#### 8. Development control plans and policies

##### 8.1. Randwick Comprehensive DCP 2013

The RDCP 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 RDCP 2013 controls apply to the site with existing use rights as set out in the judgment of *Saffioti v Kiama Municipal Council* [2019] NSWLEC 57.

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	See discussion in sections 6 & 7 and key issues below.

Section 4.15 'Matters for Consideration'	Comments
environmental planning instrument	
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	The draft changes to the LEP which have been exhibited do not impact upon the site.
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. However the proposal does not meet the requirements of the FSR control in the LEP and DCP. A satisfactory clause 4.6 request has been provided. 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 discussed in this report.</p> <p>The proposed development has demonstrated that the impacts of the development are satisfactory in terms of view loss analysis and other environmental impacts as required by the section.</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 some additional proposed floor space
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 discussed in this report.
Section 4.15(1)(e) – The public interest	The proposal has demonstrated that the additional exceedance of the FSR control 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

### Floor Space Ratio

The site is 506.6m<sup>2</sup>. With a maximum FSR of 0.5:1, which represents a maximum of 253.3m<sup>2</sup> GFA.

The existing non-compliance is a GFA of 332.7m<sup>2</sup> or an FSR of 0.66:1. This is an existing exceedance of 79.4m<sup>2</sup> above the control or a 31.3% variation.

The proposal seeks a GFA of 364.7m<sup>2</sup> or an FSR of 0.72:1. This is an exceedance of 111.4m<sup>2</sup> above the control or a 43.98% variation.

The proposal represents a request for an additional 32m<sup>2</sup> or an additional 12.6% variation to the control.

The proposed exceedance of the floor space ratio is high. The existing development already exceeds the FSR standard which would apply if the proposal was a dwelling house or semi-detached development which has an increased FSR from the applicable 0.5:1 to 0.65:1.



The applicant has provided a number of proposals during the course of the assessment period. The set provided in February 2023 dated 20 January 2023 has now adequately demonstrated that the reduction in the size of the first floor addition will both meet the majority of the RDCP 2013 controls, but also protect the privacy and amenity of neighbours. The clause 4.6 demonstrates that the environmental impacts on neighbours will be acceptable and that the view sharing will be reasonable.

It is considered that the clause 4.6 exception request has discharged the requirements of the clause.

### **Wall height exceedance**

On a number of occasions it was made clear to the applicant that any wall height exceedance arising from the proposal would not be justifiable, given that that wall height exceedance would arise from the further exceedance of the FSR control. The latest set of plans has removed the wall height exceedance by reducing the size of the first floor. The proposal has now adequately demonstrated that the proposal meets the objectives of the DCP control include to control the bulk and scale of the development and to minimize the impacts on the neighbouring properties in terms of overshadowing, privacy, visual amenity and view loss.

### **View Loss**

Photographs from 5 Melrose Parade following the installation of the height poles indicated that the original proposal would severely impact on the view from their living spaces to Wedding Cake Island and the ocean. The proposal has been amended to only include an additional floor over the eastern half of the site (unit 2) and to reduce the roof height over unit 3. The latest set of plans have reduced the southern extent of the first floor to ensure that there is no wall height exceedance.

The view analysis set out in the clause 4.6 request is somewhat flawed as access to the neighbouring dwellings was not provided. View analysis was largely produced by drone or photographs taken by this assessor and the applicant. Although not perfect, it does provide a reasonable basis upon which to assess the potential view loss and an assessment under the *Tenacity* principles has been undertaken. That assessment has demonstrated that the view loss from the neighbours is either negligible or minor, and that in some cases the views will be slightly improved due to the reduction in height of the roof over unit 3.

Having taken the deficiencies in the montages into consideration, and the assessment provided in the clause 4.6 request, (as discussed at length in section 7.1 above) it is considered that the view loss arising from the proposal is reasonable and adequate view sharing is provided by the revised proposal.

### **Privacy**

Generally the privacy issues can be managed by conditions of consent. A 1.6m high privacy screen is provided on the eastern side of the southern and northern first floor balcony to protect the privacy of the residents of 10-12 Cliffbrook Parade.

Privacy for the rear yard of Unit 3 would be improved if the balcony from the first floor level off the kitchen was provided with a privacy screen on the western side near the boundary with unit 3. That could be managed by a condition of consent.

### **Landscaping**

Council's landscaping officer has reviewed the final set of plans and amended the report and suggested conditions to reflect the removal of the pool from the proposal.



## 10. Conclusion

That the application for alterations and additions to an existing residential flat building with new roof, internal alteration to Unit 2 with a first floor part addition, new landscaping be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013
- The proposal is consistent with the specific objectives of the R2 zone in that the proposal provides for upgrades to the existing unit, whilst protecting the amenity of the residents by the use of a limited first floor extension which complies with most RDCP 2013 controls and has negligible impact on the amenity of neighbours (including view loss).
- 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.
- An acceptable clause 4.6 exception request meeting the requirements of the clause has been provided with respect to the exceedance of the FSR control in RLEP 2012.

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## Appendix 1: Referrals

### 1. Internal referral comments:

Internal referrals were received in respect of the original proposal which included a much larger first floor addition, a swimming pool and replacement of the south facing ground floor balconies. The first floor balconies have been approved for replacement under DA/7/2023 the comments included by the landscape officer regarding distances of the balconies from the two trees in the southern/front setback, have been included in the approval for DA/7/2023. The pool has been removed from the proposal.

#### 1.1. Landscape Officer

*The landscape officer provided comments in relation to the original proposal. Following receipt of the Rev D plans dated 20 January 2023 which included the removal of the originally proposed pool, the landscape officer updated his comments and draft conditions and those comments are provided below. The updated conditions have been included in the draft conditions.*

DA/644/2021 for this same site recently approved works at the Ground Floor Level internally to Unit 1, as well as an upgrade of the courtyard/private open space fronting Cliffbrook Parade, with there being a mature *Washingtonia robusta* (Mexican Fan Palm) in the southwest site corner, and a mature *Banksia integrifolia* (Coastal Banksia) in the southeast site corner.

Part B, Section B5, sub-clause 2, Exceptions, point iii, of Council's DCP 2013 – Preservation of trees or vegetation allows the removal of trees when located within 2m of any part of a dwelling, and so to prevent this clause being activated as a result of those works, condition 17, point b of the consent referred to above specifies that:

- b. All Construction Certificate plans must include measurements in millimetres showing that a minimum distance of **2000mm** will be provided from any part of the building, including wall, gutter, eave, fascia, balcony, post, fixed awning or similar; and the outside edge of their trunks, measured horizontally 1 metre above ground level.*

Similarly with this application, the Ground Floor Demolition Plan (CD.01.09), as well as the Proposed Lower Ground Floor (CD.02.01), Ground Floor (CD.02.02) and First Floor (CD.02.03) all show that the existing balconies will be replaced, which will then be offset only 1200mm from the Palm and slightly further away from the Banksia, and so as to ensure that a consistent approach is also applied to this application, a condition requiring the same 2m exclusion zone has been imposed in this report.

Whilst a deck at ground level can be provided as desired, this restriction applies only to posts, awnings, eaves/fascia/gutters, upper-level balconies, and similar structures that are directly attached to the building, with only these types of components needing to be re-designed to comply with the 2m exclusion zone requirement.

Progressing into the rear setback, in the eastern half, along the eastern boundary, closest to the northeast corner of the existing dwelling, is a row of mature, 5-6m tall Magnolia's and Lilly Pillies, which provide valuable screening and privacy by preventing overlooking into this private open space from the adjoining unit block to the east at no.10, and can be retained as existing site features within the future lawn area, as has been shown and noted on the plans, with relevant conditions to ensure this imposed.

Just to their northwest are two mature, 10-12m tall Cocos Palms, which despite being the tallest specimens in this rear area are exempt from Council's DCP due to their low landscape value, meaning they could already be removed at any time, without consent, irrespective of these works, and as the plans note them for removal, no objections are raised.

The clump of *Strelitzia nicholii* (Giant Bird of Paradise) around the northeast site corner as well as the perimeter Lilly Pillies and other shrubs across the rear boundary were noted to assist with screening and privacy, which is important for amenity for both occupants and neighbours.

The in-ground pool that was originally shown on the Rev B plans dated 17/12/21 in this same area was in direct conflict so would have required their removal; however, as this has now been deleted from the proposal, there is now no justification for this, as other than demolition of the existing brick paving, timber decking and planters, all construction works associated with the actual building are setback well away to the south, and as such, these can all be retained for their screening and amenity function as described above, particularly as no replacement planting has been indicated.

There are numerous 5-10m tall *Howea fosteriana* (Kentia Palms) in the western half of the rear setback, being a row of four in the centre of the site, along the internal dividing fence, another group of three adjacent off the rear of the existing dwelling, then another two around the northwest site corner, that also includes an *Archontophoenix cunninghamiana* (Bangalow Palm), which are all desirable native feature species that contribute to site amenity given the quantity provided in such a small space, with their co-joined crowns minimising overlooking from the adjoining unit block on higher ground to the north at 7 Melrose Parade.

The same as described earlier also applies here in that as the pool no longer forms part of this application, the central group of four Kentia Palms along the dividing fence will no longer be affected, so can remain, along with the other two and a Bangalow Palm in the northwest site corner, with relevant protection conditions imposed.

The group of three Kentia's closest to the building will still require removal as they already appear exempt from the DCP due to their close proximity to the dwelling, which would still be the case after these improvements, so no objections are raised to their removal as the retention of additional trees is now seen to offset any impacts arising from their loss.

Still in the western half of the rear setback, adjacent the northwest corner of the existing building and side timber walkway are a group of closely planted/competing trees, being what appears to be a sparse *Hibiscus tiliaceus* (Cottonwood), which is leaning over the western boundary, above the neighbours roof, then a co-joined *Eucalyptus microcorys* (Tallowood) and *Lophostemon confertus* (Brush Box), which despite being this sites most established specimens, have been heavily lopped and are also leaning acutely to the north, so are regarded as being in poor condition, as the majority of their crowns comprises deadwood and poorly attached sucker growth.

Given their lean and condition, size at maturity and the limited space available for future growth both above and below ground, combined with the fact that the rear extension will occupy this same area of the site, their removal is warranted as sought, consistent with past consents (DA/255/2014 & DA/596/2016), with relevant conditions provided.

Just to the east, located centrally is a juvenile *Corymbia maculata* (Spotted Gum), which given its large size at maturity, is not sustainable into the future, and as the rear extension will finish just to its south, can also be removed.

There is an established 8m tall *Schefflera actinophylla* (Umbrella Tree) on the rear boundary/Right of Way, just east of the pedestrian entrance, which is recognised as an invasive environmental weed, so conditions formally require its removal, even though not directly affected by these works, so as to eliminate this weed source from the highly sensitive native bushland within Gordons Bay, with the small Citrus tree in this same area being insignificant.

## 1.2. Development Engineer

*The following comments were provided in relation to the original proposal.*

### General Comments

No objections are raised to the development subject to the comments and conditions provided in this report.

### Parking Comments

There is no off-street parking currently provided on the site with only a Right of Way access to Melrose Parade available for pedestrians granted over the neighbouring property at the rear being No.7 Melrose Parade. Pedestrian access is also available to the coastal walk which is situated immediately in front of the site on Cliffbrook Parade

Units 2 & 3 are indicated on the submitted plans as both currently being 2 bedroom units which would generate a parking demand of **2.4 spaces (2 x 1.2)** when assessed against the parking rates in Part B7 of Council's DCP.

The proposed alterations and additions will result in both Units 2 & 3 being enlarged to 3 bedroom units which would generate a parking demand of **3.0 spaces (2 x 1.5)** and being an **increase of 0.6 spaces** above the existing situation.

As no additional off-street parking has been proposed any increase in parking demand will be burdened by the surrounding street network and will contribute to the already significant parking shortfall being experienced by the site.

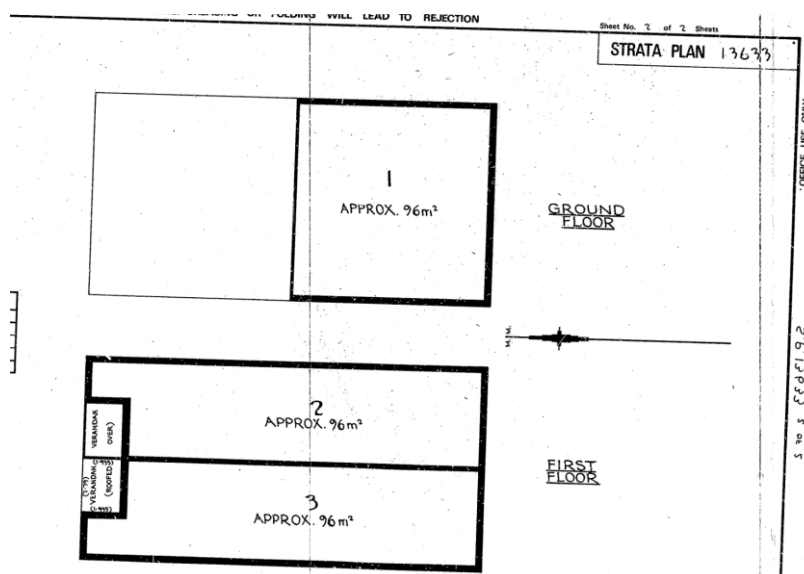
The SEE has not acknowledged or addressed the increase in the parking shortfall and this would normally not be supported as the locality is already experiencing very high parking pressures due to its proximity to Clovelly Beach.

This application maintains the number of dwellings as 3 with only an increase in the number of bedrooms, hence any increase in parking demand is relatively modest when compared to a potential increase in the number of dwellings, which Development Engineering would not have supported.

In consideration of this and the lack of a suitable street frontage to provide vehicular access to provide off-street parking, no objections are raised by Development Engineering in this instance.

### Strata Comments

The proposed alterations and additions will necessitate an amendment of the current strata plan operating on the site under SP 13633 (see below)



The developer is to meet all the relevant requirements of NSW Land Registry Services relating to new strata plans being prepared and registered for the site. Appropriate conditions have been included in this report.

### Drainage Comments

All stormwater run-off from the redeveloped portion of the site must be piped to a sediment/silt arrester pit that then drains under the coastal walk to discharge to Gordon's Bay Reserve via a suitable outlet. If an upgrade of the existing stormwater drainage system is required to meet his requirement detailed drainage plans with levels reduced to Australian Height Datum (AHD), shall be prepared by a suitably qualified Hydraulic Engineer. Any discharge point in Gordons Bay Reserve shall be subject to the approval of Council's Development Engineer and Natural Resources Coordinator

**Gordons Bay Reserve Comments**

The site lies adjacent to Gordons Bay Reserve. Conditions relating to the protection of this reserve have been included in his report.

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

See Attachment 2

## Appendix 3: DCP Compliance Table

### 3.1 Section B6: Recycling and Waste Management

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
<b>4.</b>	<b>On-Going Operation</b>		
	(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.	The existing waste storage areas will be retained, although the plans do not identify where these are.	Can be conditioned
	(v) Locate the waste storage facilities to minimise odour and acoustic impacts on the habitable rooms of the proposed development, adjoining and neighbouring properties.	It is unclear where these are located	Can be conditioned
	(vi) Screen the waste storage facilities through fencing and/or landscaping where possible to minimise visual impacts on neighbouring properties and the public domain.		Can be conditioned
	(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).		Can be conditioned
	(viii) Provide sufficient storage space within each dwelling / unit to hold a single day's waste and to enable source separation.	Sufficient space is provided	
	(ix) Bin enclosures / rooms must be ventilated, fire protected, drained to the sewerage system and have lighting and water supply.	NA	NA

### 3.2 Section B7: Transport, Traffic, Parking and Access

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
<b>3.</b>	<b>Parking &amp; Service Delivery Requirements</b>		
	Car parking requirements: <ul style="list-style-type: none"> <li>1 space per 2 studios</li> <li>1 space per 1-bedroom unit (over 40m<sup>2</sup>)</li> <li>1.2 spaces per 2-bedroom unit</li> <li>1.5 spaces per 3 or more bedroom unit</li> <li>1 visitor space per 4 dwellings</li> </ul>	None provided which is as per existing. No street access is available	No but engineering accepts this as the number of dwellings remains at 3 and there is no suitable street frontage to provide parking

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	Motor cycle requirements: 5% of car parking requirement	None	No – see above
<b>4.</b>	<b>Bicycles</b>		
	Residents: • 1 bike space per 2 units Visitors: • 1 per 10 units	None is proposed, however there is adequate space within each exclusive use area to store bikes	No but acceptable

### 3.3 Section C2: Medium Density Residential

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
<b>2.</b>	<b>Site Planning</b>		
<b>2.1</b>	<b>Site Layout Options</b>		
	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"> <li>• Two block / courtyard example</li> <li>• T-shape example</li> <li>• U-shape example</li> <li>• Conventional example</li> </ul>	Noted – alterations to an existing RFB	Noted
<b>2.2</b>	<b>Landscaped open space and deep soil area</b>		
<b>2.2.1</b>	<b>Landscaped open space</b>		
	A minimum of 50% of the site area (253.3m <sup>2</sup> ) is to be landscaped open space.	Stated to be 290m <sup>2</sup> .	Yes
<b>2.2.2</b>	<b>Deep soil area</b>		
	(i) A minimum of 25% of the site area (126.65m <sup>2</sup> ) should incorporate deep soil areas sufficient in size and dimensions to accommodate trees and significant planting.	Stated that existing deep soil is 57.5m <sup>2</sup> and proposed will be 145.4m <sup>2</sup> .	Yes
	(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.	At ground level and capable of growth of vegetation	Yes
	(iii) Deep soil areas are to have soft landscaping comprising a variety of trees, shrubs and understorey planting.	A landscape plan could be conditioned, however the updated landscape comments have retained additional trees with the removal of the pool from the proposal	Yes
	(iv) Deep soil areas cannot be located on structures or facilities such as basements, retaining walls, floor slabs, rainwater tanks or in planter boxes.	Noted	NA
	(v) Deep soil zones shall be contiguous with the deep soil zones of adjacent properties.	Contiguous	Yes



DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
<b>2.3</b>	<b>Private and communal open space</b>		
<b>2.3.1</b>	<b>Private open space</b>		
	Private open space is to be: (i) Directly accessible from the living area of the dwelling. (ii) Open to a northerly aspect where possible so as to maximise solar access. (iii) Be designed to provide adequate privacy for residents and where possible can also contribute to passive surveillance of common areas.	Unit 2's Ground floor rear private open space is to the rear (north) and accessible from office. Privacy is by a 1.8m fence between units 2 and 3. The southern terrace is off the living room and 1 <sup>st</sup> floor rear balcony off the kitchen	Yes
	<b>For residential flat buildings:</b> (vi) Each dwelling has access to an area of private open space in the form of a courtyard, balcony, deck or roof garden, accessible from within the dwelling. (vii) Private open space for apartments has a minimum area of 8m <sup>2</sup> and a minimum dimension of 2m.	Balconies, terraces and rear yards all accessible for each unit and comply with the minimum requirements	Yes
<b>2.3.2</b>	<b>Communal open space</b>		
	Communal open space for residential flat buildings is to be: (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.	None is provided which retains the existing situation	No. There are only three apartments and the proposal retains the existing situation and is considered acceptable
<b>3.</b>	<b>Building Envelope</b>		
<b>3.1</b>	<b>Floor space ratio</b>		
	FSR for residential flat buildings is 0.5:1	0.72:1	No – a 43.98% variation
<b>3.2</b>	<b>Building height</b>		
	9.5m	8.84m	Yes
<b>3.3</b>	<b>Building depth</b>		
	For residential flat buildings, the preferred maximum building depth (from window to window line) is between 10m and 14m. Any greater depth must demonstrate that the design solution provides good internal amenity such as via cross-over, double-height or corner dwellings / units.	Depth of proposed first floor is approximately 9m	Yes
<b>3.4</b>	<b>Setbacks</b>		
<b>3.4.1</b>	<b>Front setback</b>		

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>(i) The front setback on the primary and secondary property frontages must be consistent with the prevailing setback line along the street. Notwithstanding the above, the front setback generally must be no less than 3m in all circumstances to allow for suitable landscaped areas to building entries.</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>	Front setback to remain the same	Yes
<b>3.4.2</b>	<b>Side setback</b>		
	<p><b>Residential flat building</b></p> <p>(i) Comply with the minimum side setback requirements stated below:</p> <ul style="list-style-type: none"> <li>- 12m ≤ site frontage width &lt; 14m: 2.0m</li> </ul> <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"> <li>- Create articulations to the building facades.</li> <li>- Reserve open space areas and provide opportunities for landscaping.</li> <li>- Provide building separation.</li> <li>- Improve visual amenity and outlook from the development and adjoining residences.</li> <li>- Provide visual and acoustic privacy for the development and the adjoining residences.</li> <li>- Ensure solar access and natural ventilation for the development and the adjoining residences.</li> </ul> <p>(iii) A fire protection statement must be submitted where windows are 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</p>	<p>Site width is 13.125m. 2.0m side setback provided to first floor. Ground floor extension retains existing side setback of 1.19m</p>	<p>Yes first floor. No for ground floor but existing and no change</p>

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	enable operation of the windows (where required) whilst still being capable of complying with the relevant provisions of the BCA.		
<b>3.4.3</b>	<b>Rear setback</b>		
	For residential flat buildings, provide a minimum rear setback of 15% of allotment depth (5.85m) or 5m, whichever is the greater.	11.45m provided	Yes
<b>4.</b>	<b>Building Design</b>		
<b>4.1</b>	<b>Building façade</b>		
	<ul style="list-style-type: none"> <li>(i) Buildings must be designed to address all street and laneway frontages.</li> <li>(ii) Buildings must be oriented so that the front wall alignments are parallel with the street property boundary or the street layout.</li> <li>(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.</li> <li>(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.</li> <li>(vi) Conceal building services and pipes within the balcony slabs.</li> </ul>	Extension faces Cliffbrook Parade walkway.	<p>Yes</p> <p>Yes for articulation.</p>
<b>4.2</b>	<b>Roof design</b>		
	<ul style="list-style-type: none"> <li>(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.</li> <li>(ii) Design the roof form to respond to the orientation of the site, such as eaves and skillion roofs to respond to sun access.</li> <li>(iii) Use a similar roof pitch to adjacent buildings, particularly if there is consistency of roof forms across the streetscape.</li> <li>(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.</li> <li>(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</li> </ul>	Generally flat on both levels. Dwellings face south so sun access not a great concern. This allows for a 1.5m lower roof to improve some views over unit 3. Part of unit 2 is 1.5m higher than existing but generally this is behind vegetation. Skylights used.	Yes acceptable

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>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"> <li>- There are no direct sightlines to the habitable room windows and private and communal open space of the adjoining residences.</li> <li>- The size and location of terrace or deck will not result in unreasonable noise impacts on the adjoining residences.</li> <li>- 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.</li> <li>- Any shading devices, privacy screens and planters do not adversely increase the visual bulk of the building.</li> </ul> <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>		
<b>4.3</b>	<b>Habitable roof space</b>		
	<p>Habitable roof space may be considered, provided it meets the following:</p> <ul style="list-style-type: none"> <li>- Optimises dwelling mix and layout, and assists to achieve dual aspect or cross over units with good natural ventilation.</li> <li>- Has a maximum floor space of 65% of the storey immediately below.</li> <li>- Wholly contain habitable areas within the roof space.</li> <li>- 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.</li> <li>- Design windows to habitable roof</li> </ul>	NA	NA

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	space as an integrated element of the roof. - Submit computer generated perspectives or photomontages showing the front and rear elevations of the development.		
<b>4.4</b>	<b>External wall height and ceiling height</b>		
	(ii) Where the site is subject to a 9.5m building height limit under the LEP, a maximum external wall height of 8m applies.	Maximum wall height is approximately 6.84m – from roof of RL37.21 to approximately RL30.37 on the eastern side The wall height to the louvred deck covering is approximately 7.29m	Yes
	(iii) The minimum ceiling height is to be 2.7m for all habitable rooms.	3.0m for first floor. No change to ground floor	Yes
<b>4.5</b>	<b>Pedestrian Entry</b>		
	(i) Separate and clearly distinguish between pedestrian pathways and vehicular access.	Provided	Yes
	(ii) Present new development to the street in the following manner: - 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.  Postal services and mailboxes (i) Mailboxes are provided in accordance with the delivery requirements of Australia Post. (ii) A mailbox must clearly mark the street number of the dwelling that it serves.	Building entries largely to remain the same	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(iii) Design mail boxes to be convenient for residents and not to clutter the appearance of the development from the street.		
<b>4.6</b>	<b>Internal circulation</b>		
	(i) Enhance the amenity and safety of circulation spaces by: <ul style="list-style-type: none"> <li>- Providing natural lighting and ventilation where possible.</li> <li>- Providing generous corridor widths at lobbies, foyers, lift doors and apartment entry doors.</li> <li>- Allowing adequate space for the movement of furniture.</li> <li>- Minimising corridor lengths to give short, clear sightlines.</li> <li>- Avoiding tight corners.</li> <li>- Articulating long corridors with a series of foyer areas, and/or providing windows along or at the end of the corridor.</li> </ul>	There are no communal facilities – NA	NA
	(ii) Use multiple access cores to: <ul style="list-style-type: none"> <li>- Maximise the number of pedestrian entries along a street for sites with wide frontages or corner sites.</li> <li>- Articulate the building façade.</li> <li>- Limit the number of dwelling units accessible off a single circulation core on a single level to 6 units.</li> </ul>	NA	NA
	(iii) Where apartments are arranged off a double-loaded corridor, limit the number of units accessible from a single core or to 8 units.	NA	NA
<b>4.7</b>	<b>Apartment layout</b>		
	(i) Maximise opportunities for natural lighting and ventilation through the following measures: <ul style="list-style-type: none"> <li>- Providing corner, cross-over, cross-through and double-height maisonette / loft apartments.</li> <li>- Limiting the depth of single aspect apartments to a maximum of 6m.</li> <li>- Providing windows or skylights to kitchen, bathroom and laundry areas where possible.</li> </ul> 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.	New skylights provided to Unit 2 over the first floor stairwell, living and kitchen. The first floor addition has large glazing to both the north and south	Yes
	(ii) Design apartment layouts to accommodate flexible use of rooms	Acceptable	Yes

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	and a variety of furniture arrangements.		
	(iii) Provide private open space in the form of a balcony, terrace or courtyard for each and every apartment unit in a development.	Provided	Yes
	(iv) Avoid locating the kitchen within the main circulation space of an apartment, such as hallway or entry.	Provided	Yes
<b>4.8</b>	<b>Balconies</b>		
	(i) Provide a primary balcony and/or private courtyard for all apartments with a minimum area of 8m <sup>2</sup> and a minimum dimension of 2m and consider secondary balconies or terraces in larger apartments.	Provided – see below	Yes
	(ii) Provide a primary terrace for all ground floor apartments with a minimum depth of 4m and minimum area of 12m <sup>2</sup> . All ground floor apartments are to have direct access to a terrace.	Unit 1 retains existing courtyard. Unit 2 retains its existing courtyard of 79m <sup>2</sup> and balcony of 7.2m <sup>2</sup> . Additionally it obtains a new first floor balcony to the ocean of 8.5m <sup>2</sup> covered and 14m <sup>2</sup> uncovered (total additional 22.5m <sup>2</sup> ). There is also an additional small balcony to the rear off the kitchen of 3.6m <sup>2</sup> .  Unit 3 retains its existing courtyard of 60m <sup>2</sup> and balcony of 7.2m <sup>2</sup> .	Yes
<b>4.9</b>	<b>Colours, materials and finishes</b>		
	(i) Provide a schedule detailing the materials and finishes in the development application documentation and plans. (ii) The selection of colour and material palette must complement the character and style of the building. (iv) Use the following measures to complement façade articulation: - Changes of colours and surface texture - Inclusion of light weight materials to contrast with solid masonry surfaces - The use of natural stones is encouraged. (v) Avoid the following materials or treatment: - Reflective wall cladding, panels and tiles and roof sheeting - High reflective or mirror glass	Provided. Colours are white with timber batten privacy screens, including light weight upper floor and glass balustrades	Yes. Can also be conditioned

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<ul style="list-style-type: none"> <li>- Large expanses of glass or curtain wall that is not protected by sun shade devices</li> <li>- Large expanses of rendered masonry</li> <li>- Light colours or finishes where they may cause adverse glare or reflectivity impacts</li> </ul> <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>		
<b>4.12</b>	<b>Earthworks Excavation and backfilling</b>		
	<p>(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 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>	No excavation or fill proposed	NA
	<p><b>Retaining walls</b></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>	None proposed	NA
<b>5.</b>	<b>Amenity</b>		
<b>5.1</b>	<b>Solar access and overshadowing</b>		
	<b>Solar access for proposed development</b>		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(i) Dwellings must receive a minimum of 3 hours sunlight in living areas and to at least 50% of the private open space between 8am and 4pm on 21 June.	The main living area for unit 2 will face south. It currently has a small lounge facing south and a larger living area with glass doors facing east in the middle of the unit which is in shade most of the day. The fact that no sun will fall on the living area will be no substantive change. Sunlight to the private open spaces at the northern rear will not change, although may be enhanced by the removal of some vegetation. Sunlight on the first floor terrace is unlikely given its southern orientation	No. This reflects the site orientation to the south, its topography below the land to the north, the existing residential flat building to the east. There is little change to the existing scenario. It is considered acceptable in the circumstances.
	(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.	As per the discussion above, this is not achieved	No – see discussion above
	(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.	There are no single aspect units	NA
	(iv) Any variations from the minimum standard due to site constraints and orientation must demonstrate how solar access and energy efficiency is maximised.	Skylights provided to unit 2. Basix certificate is provided	Noted
	<b>Solar access for surrounding development</b>		
	(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.	The impact on living areas appears limited to an hour at 3pm for some windows of 10-12 Cliffbrook Parade	Yes - acceptable
	(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.	There appears to be very little impact on the landscaped areas of neighbours	
	(iii) Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further.		
<b>5.2</b>	<b>Natural ventilation and energy efficiency</b>		
	(i) Provide daylight to internalised areas within each dwelling and any poorly lit habitable rooms via measures such	Additional generous sized windows provided to the	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	as ventilated skylights, clerestory windows, fanlights above doorways and highlight windows in internal partition walls.	south. Additional skylights to unit 2	
	(ii) Sun shading devices appropriate to the orientation should be provided for the windows and glazed doors of the building.	Basix sets out various awnings to W1-2, and W10	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.	Provided	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.	Provided	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.	Cross ventilation provided for all units	Yes
	(vi) A minimum of 25% of kitchens within a development should have access to natural ventilation and be adjacent to openable windows.	All have access to natural ventilation	Yes
	(vii) Developments, which seek to vary from the minimum standards, must demonstrate how natural ventilation can be satisfactorily achieved, particularly in relation to habitable rooms.	Noted	NA
<b>5.3</b>	<b>Visual privacy</b>		
	<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>Southern ground level balconies retained. It is noted that DA/7/2023 is approved to replace the balconies including privacy screens on the sides which improves privacy situation for 6 Cliffbrook Parade.</p> <p>First floor southern balcony will not overlook 6 Cliffbrook as there are no windows on its eastern elevation.</p> <p>A privacy screen is provided on the eastern side of the large southern balcony and it is approximately level with</p>	<p>Partly. Conditions could require privacy fencing on the western side of the kitchen balcony on the first floor.</p>

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(v) Incorporate materials and design of privacy screens including: <ul style="list-style-type: none"> <li>- Translucent glazing</li> <li>- Fixed timber or metal slats</li> <li>- Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings</li> <li>- Screen planting and planter boxes as a supplementary device for reinforcing privacy protection</li> </ul>	some windows of 10-12 Cliffbrook Parade. Privacy would be enhanced to the rear of Unit 3 from the kitchen balcony if it was provided with a privacy screen to 1.6m	
<b>5.4</b>	<b>Acoustic privacy</b>		
	(i) Design the building and layout to minimise transmission of noise between buildings and dwellings. (ii) Separate “quiet areas” such as bedrooms from common recreation areas, parking areas, vehicle access ways and other noise generating activities. (iii) Utilise appropriate measures to maximise acoustic privacy such as: <ul style="list-style-type: none"> <li>- Double glazing</li> <li>- Operable screened balconies</li> <li>- Walls to courtyards</li> <li>- Sealing of entry doors</li> </ul>	This is satisfactory internally. The southern first floor terrace is reasonably large which may lead to acoustic impacts should it be utilized for large gatherings. However it is only 10m <sup>2</sup> greater than the minimum requirement under the Apartment design guide for a 3+ bedroom apartment and is therefore not considered excessive	Yes
<b>5.5</b>	<b>View sharing</b>		
	(i) The location and design of buildings must reasonably maintain existing view corridors and vistas to significant elements from the streets, public open spaces and neighbouring dwellings. (ii) In assessing potential view loss impacts on the neighbouring dwellings, retaining existing views from the living areas should be given a priority over those obtained from the bedrooms and non-habitable rooms. (iii) Where a design causes conflicts between retaining views for the public domain and private properties, priority must be given to view retention for the public domain. (iv) The design of fences and selection of plant species must minimise obstruction of views from the neighbouring residences and the public domain. (v) Adopt a balanced approach to privacy protection and view sharing, and avoid the creation of long and	The view sharing analysis and consideration of the Tenacity Principles in the clause 4.6 exception request illustrate that the view loss will be negligible or minor, with some small improvements where the reduction in height of unit 3's roof is able to be appreciated.	Yes – considered to be acceptable.

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>massive blade walls or screens that obstruct views from the neighbouring dwellings and the public domain.</p> <p>(vi) Clearly demonstrate any steps or measures adopted to mitigate potential view loss impacts in the development application.</p>		
<b>5.6</b>	<b>Safety and security</b>		
	(i) Design buildings and spaces for safe and secure access to and within the development.	Access arrangements to largely remain as existing	Yes
	(iii) For residential flat buildings, provide direct, secure access between the parking levels and the main lobby on the ground floor.	Access arrangements to largely remain as existing	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.	Acceptable	Yes
	(v) Avoid high walls and parking structures around buildings and open space areas which obstruct views into the development.	None provided	NA
	(vi) Resident car parking areas must be equipped with security grilles or doors.	NA	NA
	(vii) Control visitor entry to all units and internal common areas by intercom and remote locking systems.	Access arrangements to largely remain as existing	Yes
	(viii) Provide adequate lighting for personal safety in common and access areas of the development.	Access arrangements to largely remain as existing. There are no common areas	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.	Living areas have views over the public pathway of Cliffbrook Parade. There are no common areas	Yes
	(x) External lighting must be neither intrusive nor create a nuisance for nearby residents.	Noted	This could be conditioned
	(xi) Provide illumination for all building entries, pedestrian paths and communal open space within the development.	Noted	This could be conditioned
<b>6.</b>	<b>Car parking and access</b>		
<b>6.1</b>	<b>Location</b>		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(i) Car parking facilities must be accessed off rear lanes or secondary street frontages where available.	None provided as no street/vehicular access	NA
	(ii) The location of car parking and access facilities must minimise the length of driveways and extent of impermeable surfaces within the site.	NA	NA
	(iii) Setback driveways a minimum of 1m from the side boundary. Provide landscape planting within the setback areas.	NA	NA
	(iv) Entry to parking facilities off the rear lane must be setback a minimum of 1m from the lane boundary.	NA	NA
	(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 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.	None provided as no vehicular access to the site	No – but acceptable given the location
<b>6.2</b>	<b>Configuration</b>		
	(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.	NA	NA
	(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.	NA	NA
	(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	NA	NA

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>does not apply to sites affected by potential flooding.</p> <p>(d) Use landscaping to soften or screen any car park enclosing walls.</p> <p>(e) Provide safe and secure access for building users, including direct access to dwellings where possible.</p> <p>(f) Improve the appearance of car park entries and avoid a 'back-of-house' appearance by measures such as:</p> <ul style="list-style-type: none"> <li>- Installing security doors to avoid 'black holes' in the facades.</li> <li>- Returning the façade finishing materials into the car park entry recess to the extent visible from the street as a minimum.</li> <li>- Concealing service pipes and ducts within those areas of the car park that are visible from the public domain.</li> </ul>		
<b>7. Fencing and Ancillary Development</b>			
<b>7.1</b>	<b>Fencing</b>		
	<p>(i) Fences are constructed with durable materials that are suitable for their 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"> <li>- Steel post and chain wire</li> <li>- Barbed wire or other dangerous materials</li> </ul> <p>(iii) Expansive surfaces of blank rendered masonry to street frontages must be avoided.</p>	1.8m timber fence proposed in rear yard between units 2 and 3	Yes
<b>7.2</b>	<b>Front Fencing</b>		
	<p>(i) The fence must align with the front property boundary or the predominant fence setback line along the street.</p>	None proposed	NA
	<p>(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.</p>	NA	NA
	<p>(iii) Construct the non-solid portion of the fence with light weight materials that</p>	NA	NA



DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	are at least 30% open and evenly distributed along the full length of the fence.		
	(iv) Solid front fence of up to 1800mm in height may be permitted in the following scenarios: - 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. 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.	NA	NA
	(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.	NA	NA
	(vi) The preferred materials for front fences are natural stone, face bricks and timber.	NA	NA
	(vii) Gates must not open over public land.	NA	NA
	(viii) The fence adjacent to the driveway may be required to be splayed to ensure adequate sightlines for drivers and pedestrians.	NA	NA
<b>7.3</b>	<b>Side and Rear Fencing</b>		
	(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). (ii) In the scenario where there is significant level difference between the subject and adjoining allotments, the fencing height will be considered on merits. (iii) The side fence must be tapered down to match the height of the front fence once pasts the front façade alignment. (iv) Side or common boundary fences must be finished or treated on both sides.	Limited to 1800mm	Yes
<b>7.6</b>	<b>Storage</b>		
	(i) The design of development must provide for readily accessible and	Storage is provided in Unit 2 at ground level.	Yes

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>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 – 6m<sup>3</sup></p> <p>(b) 1-bedroom apartments – 6m<sup>3</sup></p> <p>(c) 2-bedroom apartments – 8m<sup>3</sup></p> <p>(d) 3 plus bedroom apartments – 10m<sup>3</sup></p>		
<b>7.7</b>	<b>Laundry facilities</b>		
	(i) Provide a retractable or demountable clothes line in the courtyard of each dwelling unit.	Provided for unit 2 at ground level. No clothes lines identified	Yes for laundry. No for clothes lines but could be conditioned for the rear yard if necessary
	(ii) Provide internal laundry for each dwelling unit.	Provided in Unit 2 ground floor with the bathroom	Yes
	(iii) Provide a separate service balcony for clothes drying for dwelling units 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.	NA	NA
<b>7.8</b>	<b>Air conditioning units:</b>		
	<ul style="list-style-type: none"> <li>Avoid installing within window frames. If installed in balconies, screen by suitable balustrades.</li> <li>Air conditioning units must not be installed within window frames.</li> </ul>	None proposed	NA

**Responsible officer:** Urban Perspectives, Town Planners (Ros Read)

**File Reference:** DA/795/2021

## Development Consent Conditions (Medium density residential)



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<b>Folder /DA No:</b>	DA/795/2021
<b>Property:</b>	8 Cliffbrook Parade, CLOVELLY NSW 2031
<b>Proposal:</b>	Alterations and additions to an existing residential flat building with new roof, internal alteration to Unit 2 with a first floor part addition, new landscaping.
<b>Recommendation:</b>	Approval

### Development Consent Conditions

#### GENERAL CONDITIONS

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

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, and associated *Environmental Planning & 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:

<b>Plan</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Received by Council</b>
Proposed Plan Ground floor CD.02.02 Rev D	SMT Studio	20/01/2023	15/02/2023
Proposed plan first floor CD.02.03 Rev D	SMT Studio	20/01/2023	15/02/2023
Proposed plan roof + stormwater CD.02.04 Rev D	SMT Studio	20/01/2023	15/02/2023
Elevation proposed north CD.02.05 Rev D	SMT Studio	20/01/2023	15/02/2023
Elevation proposed east CD.02.06 Rev D	SMT Studio	20/01/2023	15/02/2023
Elevation proposed south CD.02.07 Rev D	SMT Studio	20/01/2023	15/02/2023
Elevation proposed west CD.02.08 Rev D	SMT Studio	20/01/2023	15/02/2023

Section proposed CD.02.09 Rev D	SMT Studio	20/01/2023	15/02/2023
General notes + Basix CD.02.10 Rev D	SMT Studio	20/01/2023	15/02/2023
Proposed landscape plan CD.02.11 Rev D	SMT Studio	20/01/2023	15/02/2023

<b>BASIX Certificate No.</b>	<b>Dated</b>	<b>Received by Council</b>
A442096_03	19 January 2023	15/02/2023

**Amendment of Plans & Documentation**

2. The approved plans and documents must be amended in accordance with the following requirements:
- A privacy screen having a height of 1.6m (measured above the finished floor level of the balcony) shall be provided to the western side of the northern balcony of the kitchen for Unit 2.  
  
Privacy screen/s, including those set out in the approved plans must be constructed with either:
    - Translucent or obscured glazing (The use of film applied to the clear glass pane is unacceptable);
    - Fixed lattice/slats with individual openings not more than 30mm wide;
    - Fixed vertical or horizontal louvres with the individual blades angled and spaced appropriately to prevent overlooking into the private open space or windows of the adjacent dwellings.
  - The plans must identify the location and design of the waste storage facilities which must not be visible from the public footpath on Cliffbrook Parade.

**New Strata Plans**

3. New Strata Plans shall be prepared and registered for the site that subdivide the existing strata lots and common property so as to incorporate the proposed alterations & additions into the strata scheme. The developer shall obtain a strata/subdivision certificate and comply with all requirements of NSW Land Registry Services (LRS) in this regard. Confirmation of compliance must be obtained from a registered surveyor to the satisfaction of the Principal Certifier prior to the issuing of a final occupation certificate.

NOTE: All additional created floor area for the units must be incorporated into the strata lots.

**REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED**

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

These conditions have been applied to satisfy the relevant requirements of the *Environmental Planning & Assessment Act 1979*, and associated *Environmental Planning & 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 adjacent development to maintain the integrity and amenity of the building and the streetscape.

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

**Section 7.12 Development Contributions**

6. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$978,994 the following applicable monetary levy must be paid to Council: \$9,789.00 .

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

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

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

Where:

**IDC** = the indexed development cost

**ODC** = the original development cost determined by the Council

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

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

Council's Development Contribution Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at [www.randwick.nsw.gov.au](http://www.randwick.nsw.gov.au).

**Long Service Levy Payments**

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

*At the time of this development consent, Long Service Levy payment is applicable on building work having a value of \$250,000 or more.*

**Security Deposits**

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

- \$2,000.00 - Damage / Civil Works Security Deposit

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

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

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

#### **Sydney Water Requirements**

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

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

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

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

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

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

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

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

#### **Stormwater Drainage**

10. All stormwater run-off from the redeveloped portion of the site must generally be piped to a sediment/silt arrester pit that then drains under the coastal walk to discharge to Gordon's Bay Reserve via a suitable outlet. If an upgrade of the existing stormwater drainage system is required to meet this requirement detailed drainage plans with levels reduced to Australian Height Datum (AHD), shall be prepared by a suitably qualified Hydraulic Engineer and be submitted to and approved by the certifying authority. A copy of the plans shall be forwarded to Council, if Council is not the certifying authority.

The drainage plans must demonstrate compliance with the Building Code of Australia, Australian Standard AS3500.3:2003 (Plumbing and Drainage - Stormwater Drainage) and the relevant conditions of this development approval.

11. The location and details of any proposed internal stormwater pipelines, silt arrester pit and outlet shall be submitted to and approved by the certifying authority (\* and Council see note b below) prior to a construction certificate being issued for the development. A copy of the plans shall be forwarded to Council, prior to a construction certificate being issued, if Council is not the certifying authority.

Notes:

- a. The sediment/silt arrester pit shall be constructed:-



- i. within the site at or near the southern boundary.
  - ii. with a child proof and corrosion resistant fastening system (e.g. spring loaded jay-bolt).
  - iii. with a minimum of 4 x 90 mm diameter weep holes (preferably located in the walls of the pit at the floor level) and with a suitable geotextile material **with a high filtration rating** located around the weep holes.
  - iv. with the pit floor being a minimum 300mm below the invert level of the outlet pipelines.
  - v. with a **galvanised** heavy duty screen (Lysaght RH3030 Maximesh or similar) located over the outlet pipes draining to Gordons Bay Reserve.
- b. The location and features of any new point of discharge (e.g headwall) in Gordon's Bay Reserve must be approved by Council's Development Engineer (9093-6881) and Natural Resources Coordinator (9093-6686) in writing prior to a construction certificate being issued for this development.

#### Tree Protection Measures

12. In order to ensure retention of the *Washingtonia robusta* (Mexican Fan Palm) that is located in the front setback, in the southwest site corner, fronting Gordons Bay, as well as the *Banksia integrifolia* (Coastal Banksia) to its east, in the southeast site corner, then the hedge of Magnolia's & Lilly Pillies in the rear setback, along the eastern boundary, adjacent the northeast corner of the existing dwelling, the group of *Howea fosteriana* (Kentia Palms) located centrally, along the existing internal dividing fence line, two *Howea fosteriana* (Kentia Palms) and an *Archontophoenix cunninghamiana* (Bangalow Palm) on the rear, northern boundary, towards the northwest site corner, and lastly, the clump of *Strelitzia nicholii* (Giant Bird of Paradise) around the northeast site corner as well as the perimeter Lilly Pillies and other shrubs across the rear boundary the following measures are to be undertaken:
- a. All documentation submitted for the Construction Certificate application must show their retention, with the position and diameter of their trunks and canopies/crowns to be clearly and accurately shown on all plans in relation to the works.
  - b. Other than a Ground Level deck, all Construction Certificate plans must include measurements in millimetres showing that a minimum distance of **2000mm** will be provided from all other parts of the building, including wall, gutter, eave, fascia, balcony, post, fixed awning or similar, and the outside edge of the trunks of both the Mexican Fan Palm and Coastal Banksia in the front setback, measured horizontally 1 metre above ground level, with distances in millimetres to be included to confirm compliance.
  - c. All Construction Certificate plans show that the **bin/waste storage which is currently proposed across the rear boundary, in direct conflict with some of the trees listed above** will be relocated to an alternative location to now ensure their retention, with the new position to be shown so as to confirm compliance.
  - d. All Construction Certificate plans must also demonstrate how the hedge of Magnolia's and Lilly Pillies in the rear setback, adjacent the northeast corner of the building, along the eastern boundary, will be incorporated into a formal garden bed as existing site features.
  - e. Prior to the commencement of any site works, the trunks of the Mexican Fan Palm and Coastal Banksia in the front setback (as well as any lower growing branches) must be physically protected by wrapping layers of geo-textile, underfelt, carpet, hessian or similar, from ground level to a height of 2m, to which, lengths of 50mm x 100mm hardwood timbers shall be placed around their circumference and are then to

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be secured by 8-gauge wires or steel strapping at 300mm spacing. NO nailing to the trunk.

- f. The hedge of Magnolia's and Lilly Pillies in the rear setback, along the eastern boundary, the group of *Howea fosteriana* (Kentia Palms) located centrally, along the existing internal dividing fence line, the two *Howea fosteriana* (Kentia Palms) and an *Archontophoenix cunninghamiana* (Bangalow Palm) on the rear, northern boundary, towards the northwest site corner, and lastly, the clump of *Strelitzia nicholii* (Giant Bird of Paradise) around the northeast site corner as well as the perimeter Lilly Pillies and other shrubs across the rear boundary must all be physically protected by the installation of 1.8 metre high steel mesh/chainwire fencing panels, which shall be located a minimum distance of **1.5 metres from their trunks** matching up with the respective property boundaries or similar, so as to completely enclose/exclude them for the duration of works.
- g. This protection shall be installed prior to the commencement of demolition and must remain in place until all works are completed, to which, signage containing the following words shall be clearly displayed and permanently attached: "TREE PROTECTION, DO NOT REMOVE".
- h. There is to be no storage of materials, machinery or site office/sheds, nor is cement to be mixed or chemicals spilt/disposed of and no stockpiling of soil or rubble within the TPZ's, around their trunks, or in areas where they can runoff towards these trees, with all Site Management Plans to comply with these requirements.
- i. In order to prevent soil/sediment being washed over their root systems, erosion control measures must also be provided at ground level around the perimeter of the TPZ's.
- j. Where roots are encountered which are in direct conflict with the approved works, they may then be cut cleanly, using only hand-held tools, not machinery, with the affected area/s to be backfilled with clean site soil as soon as practically possible so that roots are not left exposed to the atmosphere.
- k. The Principal Certifier must ensure compliance with these requirements, both on the plans as well as on-site during works, and prior to any Occupation Certificate.

**REQUIREMENTS TO BE INCLUDED IN THE CONSTRUCTION CERTIFICATE**

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

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

**Compliance with the Building Code of Australia & Relevant Standards**

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

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

**BASIX Requirements**

14. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and section 75 of the *Environmental Planning & 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.*

**Site stability, Excavation and Construction work**

15. A report must be obtained from a suitably qualified and experienced *professional engineer*, which includes the following details, to the satisfaction of the Certifier for the development:-
- a) Geotechnical details which confirm the suitability and stability of the site for the development and relevant design and construction requirements to be implemented to ensure the stability and adequacy of the development and adjacent land.
  - b) Details of the proposed methods of excavation and support for the adjoining land (including any public place) and buildings.
  - c) Details to demonstrate that the proposed methods of excavation, support and construction are suitable for the site and should not result in any damage to the adjoining premises, buildings or any public place, as a result of the works and any associated vibration.
  - d) The adjoining land and buildings located upon the adjoining land must be adequately supported at all times throughout demolition, excavation and building work, to the satisfaction of the *Principal Certifier*.
  - e) Written approval must be obtained from the owners of the adjoining land to install any ground or rock anchors underneath the adjoining premises (including any public roadway or public place) and details must be provided to the *Certifier*.

**REQUIREMENTS PRIOR TO THE COMMENCEMENT OF ANY WORKS**

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

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

**Building Certification and Associated Requirements**

16. 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**

17. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and section 69 of the *Environmental Planning & Assessment Regulation 2021*, the relevant requirements of the *Home Building Act 1989* must be complied with.

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

#### **Dilapidation Reports**

18. A dilapidation report (incorporating photographs of relevant buildings) 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*.

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

#### **Construction Site Management Plan**

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

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

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

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

**Demolition Work Plan**

20. A Demolition Work Plan must be prepared for the development in accordance with Australian Standard AS2601-2001, Demolition of Structures and relevant environmental/work health and safety requirements.

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

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

**Construction Noise & Vibration Management Plan**

21. A *Construction Noise & Vibration Management Plan*, prepared in accordance with the Environment Protection Authority (EPA) Guidelines for Construction Noise and Assessing Vibration, by a suitably qualified person, is to be developed and implemented prior to commencing site work and throughout the course of construction, in accordance with the following requirements:

- a) Noise and vibration emissions during the construction of the building and associated site works must not result in damage to nearby premises or result in an unreasonable loss of amenity to nearby residents.

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

- b) The *Construction Noise & Vibration Management Plan* must include details of measurements, analysis and relevant criteria and demonstrate that the noise and vibration emissions from the work satisfy the relevant provisions of the *Protection of the Environment Operations Act 1997*, current EPA Guidelines for Construction Noise and Assessing Vibration and Councils conditions of consent.

- c) A further report/correspondence must be obtained from the consultant as soon as practicable upon the commencement of works, which reviews and confirms the implementation and suitability of the noise and vibration strategies in the *Construction Noise & Vibration Management Plan* and which demonstrates compliance with relevant criteria.

- d) Any recommendations and requirements contained in the *Construction Noise & Vibration Management Plan* and associated reports are to be implemented accordingly and should noise and vibration emissions not comply with the terms and conditions of consent, work must cease forthwith and is not to recommence until details of compliance are submitted to Council and the *Principal Certifier*.

A copy of the *Construction Noise & Vibration Management Plan* and associated acoustic/vibration report/s must be maintained on-site and a copy must be provided to Council and the Principal Certifier accordingly.

**Public Liability**

22. The owner/builder is required to hold Public Liability Insurance, with a minimum liability of \$10 million and a copy of the Insurance cover is to be provided to the Principal Certifier and Council.



**Public Utilities**

23. A *Public Utility Impact Assessment* must be carried out on all public utility services on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the development/building works and include relevant information from public utility authorities and exploratory trenching or pot-holing, if necessary, to determine the position and level of service.
24. The applicant must meet the full cost for telecommunication companies, gas providers, Ausgrid, and Sydney Water to adjust/repair/relocate their services as required. The applicant must make the necessary arrangements with the service authority.

**REQUIREMENTS DURING CONSTRUCTION & SITE WORK**

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

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

**Inspections during Construction**

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

**Building & Demolition Work Requirements**

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

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

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

**Removal of Asbestos Materials**

27. Any work involving the demolition, storage or disposal of asbestos products and materials must be carried out in accordance with the following requirements:
- Occupational Health & Safety legislation and WorkCover NSW requirements
  - Randwick City Council's Asbestos Policy
  - A WorkCover licensed demolition or asbestos removal contractor must undertake removal of more than 10m<sup>2</sup> of bonded asbestos (or as otherwise specified by WorkCover or relevant legislation). Removal of friable asbestos material must only be undertaken by contractor that holds a current friable asbestos removal licence. A copy of the relevant licence must be provided to the Principal Certifier.
  - On sites involving the removal of asbestos, a sign must be clearly displayed in a prominent visible position at the front of the site, containing the words 'DANGER ASBESTOS REMOVAL IN PROGRESS' and include details of the licensed contractor.

- Asbestos waste must be stored, transported and disposed of in compliance with the *Protection of the Environment Operations Act 1997* and the *Protection of the Environment Operations (Waste) Regulation 2005*. Details of the landfill site (which must be lawfully able to receive asbestos materials) must be provided to the Principal Certifier.
- A Clearance Certificate or Statement, prepared by a suitably qualified person (i.e. an occupational hygienist, licensed asbestos assessor or other competent person), must be provided to Council and the Principal Certifier upon completion of the asbestos related works which confirms that the asbestos material have been removed appropriately and the relevant conditions of consent have been satisfied.

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

**Excavations, Back-filling & Retaining Walls**

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

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

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

**Support of Adjoining Land**

29. In accordance with section 4.17 (11) of the *Environmental Planning & Assessment Act 1979* and clause 98 E of the *Environmental Planning & Assessment Regulation 2000*, it is a prescribed condition that the adjoining land and buildings located upon the adjoining land must be adequately supported at all times.

**Sediment & Erosion Control**

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

Details must be included in the Construction Site Management Plan and a copy must be provided to the Principal Certifier and Council. A copy must also be maintained on site and be made available to Council officers upon request.

**Dust Control**

31. During demolition excavation and construction works, dust emissions must be minimised, so as not to result in a nuisance to nearby residents or result in a potential pollution incident.

Adequate 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 a 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.*

#### **Temporary Site Fencing**

32. Temporary site safety fencing or site hoarding must be provided to the perimeter of the site throughout demolition, excavation and construction works, to the satisfaction of Council, in accordance with the following requirements:
- Temporary site fences or hoardings must have a height of 1.8 metres and be a cyclone wire fence (with geotextile fabric attached to the inside of the fence to provide dust control), or heavy-duty plywood sheeting (painted white), or other material approved by Council.
  - Hoardings and site fencing must be designed to prevent any substance from, or in connection with, the work from falling into the public place or adjoining premises and if necessary, be provided with artificial lighting.
  - All site fencing and hoardings must be structurally adequate, safe and be constructed in a professional manner and the use of poor quality materials or steel reinforcement mesh as fencing is not permissible.
  - An overhead ('B' Class) type hoarding is required is be provided to protect the public (unless otherwise approved by Council) if:
    - materials are to be hoisted (i.e. via a crane or hoist) over a public footway;
    - building or demolition works are to be carried out on buildings which are over 7.5m in height and located within 3.6m of the street alignment;
    - it is necessary to prevent articles or materials from falling and causing a potential danger or hazard to the public or occupants upon adjoining land;
    - as may otherwise be required by WorkCover, Council or the *Principal Certifier*.

#### **Notes:**

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

#### **Public Safety & Site Management**

33. Public safety and convenience must be maintained at all times during demolition, excavation and construction works and the following requirements must be complied with to the satisfaction of Council:
- 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.
  - The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times. Any damage caused to the road, footway,

vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.

- c) All building and site activities (including storage or placement of materials or waste and concrete mixing/pouring/pumping activities) must not cause or be likely to cause 'pollution' of any waters, including any stormwater drainage systems, street gutters or roadways.

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

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

#### Site Signage

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

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

#### Restriction on Working Hours

35. 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"> <li>Monday to Friday - 7.00am to 5.00pm</li> <li>Saturday - 8.00am to 5.00pm</li> <li>Sunday &amp; public holidays - No work permitted</li> </ul>
Excavating or sawing of rock, use of jack-hammers, pile-drivers, vibratory rollers/compactors or the like	<ul style="list-style-type: none"> <li>Monday to Friday - 8.00am to 1.00pm only</li> <li>Saturday - No work permitted</li> <li>Sunday &amp; public holidays - No work permitted</li> </ul>
Additional requirements for all development	<ul style="list-style-type: none"> <li>Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted</li> </ul>

*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.*

#### **Survey Requirements**

36. A Registered Surveyor's check survey certificate or other suitable documentation must be obtained at the following stage/s of construction to demonstrate compliance with the approved setbacks, levels, layout and height of the building to the satisfaction of the Principal Certifier:

- prior to construction (pouring of concrete) of footings and boundary retaining structures,
- prior to construction (pouring of concrete) of each floor slab,
- upon completion of the building, prior to issuing an *Occupation Certificate*,
- as otherwise may be required by the *Principal Certifier*.

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

#### **Building Encroachments**

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

#### **Gordons Bay Reserve**

38. No foreign matter, including, but not limited to: litter, cement wash, concrete, fill, soils, mulch, building materials, chemicals, petroleum-based products, paint, etc, shall be disposed of in, or placed in, or where they may enter, Gordons Bay Reserve. In all instances where such substances have been disposed of in, have been placed in, or have entered, the reserve, all affected areas shall be immediately repaired to the satisfaction of Council's Natural Resources Coordinator.

39. The applicant must maintain pedestrian access along Cliffbrook Parade (coastal walk) at all times during the course of the proposed works unless approved in writing by Council.

#### **Road / Asset Opening Permit**

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

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

For further information, please contact Council's Road / Asset Opening Officer on 9399 0691 or 9399 0999.

#### **Tree Management**

41. Approval is granted for removal of the following vegetation from with this development site:
- a) The two mature Cocos Palms in the eastern half of the rear setback, as they are a low value exotic species, which are exempt from the DCP, meaning they could already be removed at any time, without consent, even irrespective of these works;
  - b) The group of three *Howea fosteriana* (Kentia Palms) off the rear of the existing dwelling, should the applicant wish, given their close proximity to the existing building and proposed footprint, as well as to accommodate the improvements to the rear open space as shown;



- c) The group adjacent the northwest corner of the existing building and side timber walkway, including a sparse *Hibiscus tiliaceus* (Cottonwood), which is leaning over the western boundary, above the neighbours roof, a co-joined *Eucalyptus microcorys* (Tallowood) and a *Lophostemon confertus* (Brush Box), which have both have been heavily lopped, are leaning acutely to the north and are in poor condition, will be too large at maturity for the limited space available, and are also in conflict with the rear extension in this same area;
- d) Just to their east, the centrally located, juvenile *Corymbia maculata* (Spotted Gum) as its large size at maturity is not sustainable into the future, particularly as the rear extension will encroach closer, just to its south;
- e) The established *Schefflera actinophylla* (Umbrella Tree) on the rear boundary/Right of Way, just east of the pedestrian entrance, as it is an invasive environmental weed, that is exempt from the DCP, and while not directly affected by these works, this weed source needs to be eliminated from the highly sensitive native bushland within Gordons Bay;
- f) The small Citrus tree in this same area, on the rear fence.

**REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE**

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

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

**Occupation Certificate Requirements**

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

**Fire Safety Certificates**

- 43. Prior to issuing an interim or Occupation Certificate, a single and complete *Fire Safety Certificate*, encompassing all of the essential fire safety measures contained in the *fire safety schedule* must be obtained and be submitted to Council, in accordance with the provisions of the *Environmental Planning and Assessment Regulation 2000*. The *Fire Safety Certificate* must be consistent with the *Fire Safety Schedule* which forms part of the Construction Certificate.

A copy of the *Fire Safety Certificate* must be displayed in the building entrance/foyer at all times and a copy must also be forwarded to Fire and Rescue NSW.

**Structural Certification**

- 44. A Certificate must be obtained from a *professional engineer*, which certifies that the building works satisfy the relevant structural requirements of the Building Code of Australia and approved design documentation, to the satisfaction of the *Principal Certifier*. A copy of which is to be provided to Council with the Occupation Certificate.

**Sydney Water Certification**

- 45. A *section 73 Compliance Certificate*, under the *Sydney Water Act 1994* must be obtained from Sydney Water Corporation. An Application for a Section 73 Certificate must be made through an authorised Water Servicing Coordinator. For details, please refer to the Sydney Water web site [www.sydneywater.com.au](http://www.sydneywater.com.au) > Building and developing > Developing your Land > Water Servicing Coordinator or telephone 13 20 92.

Please make early contact with the Water Servicing Co-ordinator, as building of water/sewer extensions may take some time and may impact on other services and building, driveway or landscape design.

The Section 73 Certificate must be submitted to the Principal Certifier and the Council prior to issuing an Occupation Certificate or Subdivision Certificate, whichever the sooner.

#### **BASIX Requirements & Certification**

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

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

#### **Noise Control Requirements & Certification**

47. The operation of plant and equipment 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 Environment Protection Authority (EPA) Noise Control Guidelines.

48. A report must be obtained from a suitably qualified and experienced consultant in acoustics, which demonstrates and certifies that noise and vibration from any plant and equipment (e.g. mechanical ventilation systems and air-conditioners) satisfies the relevant provisions of the *Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority (EPA) Noise Control Manual, Industrial Noise Policy and Council's development consent.

A copy of the report must be provided to the *Principal Certifier* and Council prior to an occupation certificate being issued.

#### **Council's Infrastructure, Vehicular Crossings, street verge**

49. The applicant must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.

50. All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must be carried out in accordance with Council's "Crossings and Entrances – Contributions Policy" and "Residents' Requests for Special Verge Crossings Policy" and the following requirements:

- a) Details of the proposed civil works to be carried out on Council land must be submitted to Council in a Civil Works Application Form. Council will respond, typically within 4 weeks, with a letter of approval outlining conditions for working on Council land, associated fees and workmanship bonds. Council will also provide details of the approved works including specifications and construction details.
- b) Works on Council land, must not commence until the written letter of approval has been obtained from Council and heavy construction works within the property are complete. The work must be carried out in accordance with the conditions of development consent, Council's conditions for working on Council land, design details and payment of the fees and bonds outlined in the letter of approval.

- c) The civil works must be completed in accordance with the above, prior to the issuing of an occupation certificate for the development, or as otherwise approved by Council in writing.

**Stormwater Drainage**

51. Should amendments to the stormwater drainage system be required, the applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced Hydraulic Engineer confirming that the design and construction of the stormwater drainage system complies with Australian Standard 3500.3:2003 (Plumbing & Drainage-Stormwater Drainage) and the conditions of this development approval. The certification must be provided following inspection/s of the site stormwater drainage system by the certifying engineers and shall be provided to the satisfaction of the PCA.

**NOTE:**

Council's Development Engineer and Natural Resources Coordinator must be notified to arrange inspection of any completed drainage works within Gordons Bay reserve. The completed works and any required remedial action must be to the satisfaction of Council. Please contact Council's Development Engineer (9093-6881) and Natural Resources Coordinator (9093-6686) at the appropriate time.

**Street and/or Sub-Address Numbering**

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

If this application results in an additional lot, dwelling or unit, an application must be submitted to and approved by Council's Director of City Planning, together with the required fee, for the allocation of appropriate street and/or unit numbers for the development. The street and/or unit numbers must be allocated prior to the issue of an occupation certificate.

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

**OPERATIONAL CONDITIONS**

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

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

**Fire Safety Statements**

53. A single and complete *Fire Safety Statement* (encompassing all of the fire safety measures upon the premises) must be provided to the Council in accordance with the requirements of the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021* on an annual basis each year and as specified in the *Fire Safety Schedule* for the building.

The *Fire Safety Statement* is required to confirm that all the fire safety measures have been assessed by a competent fire safety practitioner and are operating in accordance with the standards of performance specified in the *Fire Safety Schedule*.

A copy of the *Fire Safety Statement* must be displayed in the building entrance/foyer at all times and a copy must also be forwarded to Fire & Rescue NSW.

**Environmental Amenity**

54. 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.

D22/23



D22/23

## 8 CLIFFBROOK PARADE CLOVELLY

CLAUSE 4.6 VARIATION REQUEST (FSR)  
FOR ALTERATIONS AND ADDITIONS TO A RESIDENTIAL FLAT BUILDING



Report prepared for  
**Gemma Fordham**  
February 2023

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## 1.0 Introduction

1.1 This is a Clause 4.6 variation request to Clause 4.4, *Floor Space Ratio* of the Randwick Local Environmental Plan 2012, for alterations and additions to an existing residential flat building at 8 Cliffbrook Parade Clovelly NSW 2031.

1.2 This report has been prepared with reference to the following:

- ◆ Site visit,
- ◆ Architectural drawings prepared by SMT Studio (DA Issue dated 20/01/2023),
- ◆ Statement of Environmental Effects prepared by Watermark Planning.

## 2.0 The site and its locality

2.1 The subject site is located on the northern side of Cliffbrook Parade in Clovelly, approximately 25 metres west of its intersection with Oak Street. The site is legally described as Lot 2 and 3 SP 13633.

2.2 It is a generally rectangular shaped lot with boundaries of 13.105 metres (north), 13.125 metres (south), 38.3 metres (west) and 39.065 metres (east). The lot has an area of 506.6m<sup>2</sup> and slopes from north to south (towards the Cliffbrook Parade frontage).

2.3 The site is currently occupied by a one and two storey rendered brick unit block, comprising of 3 units (Unit 1 is located on the lower ground floor and Unit 2 & 3 are located on the ground floor).

2.4 The site has no direct street frontage or vehicular access, with pedestrian access available from Cliffbrook Parade and via a right of way, over 7 Melrose Parade to the rear. Vehicular access via this right of way is currently obstructed by an attached single garage and letter boxes, on the western side of 7 Melrose Place. The property has ocean views across Gordons Bay to the south.

2.5 The site is predominately surrounded by multi-dwelling housing and residential flat buildings, with some semi-detached and detached dwellings in the locality. The Cliffbrook Parade pedestrian walkway adjoins the southern boundary of the site, which falls steeply to Gordons Bay below. It is located in close proximity to shops and services in Clovelly to the north, Coogee to the south and Randwick to the west.





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Figure 1. The site and its immediate surrounds

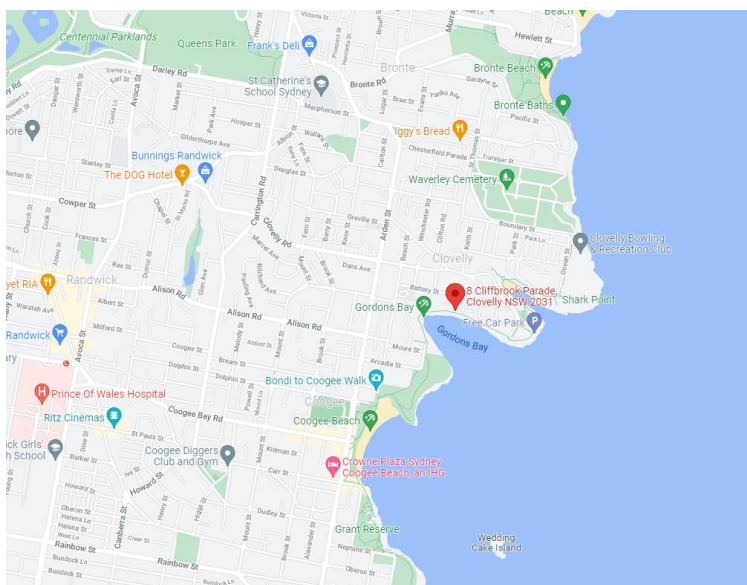


Figure 2. The site within the locality

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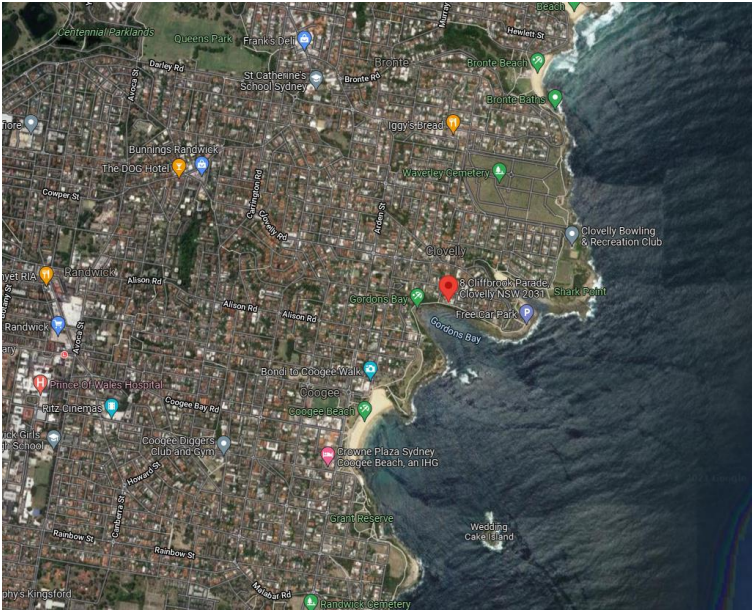


Figure 3. Aerial image of the site within the locality



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### 3. Site Photos



Figure 4. The subject site and adjoining units looking north-west from Cliffbrook Parade

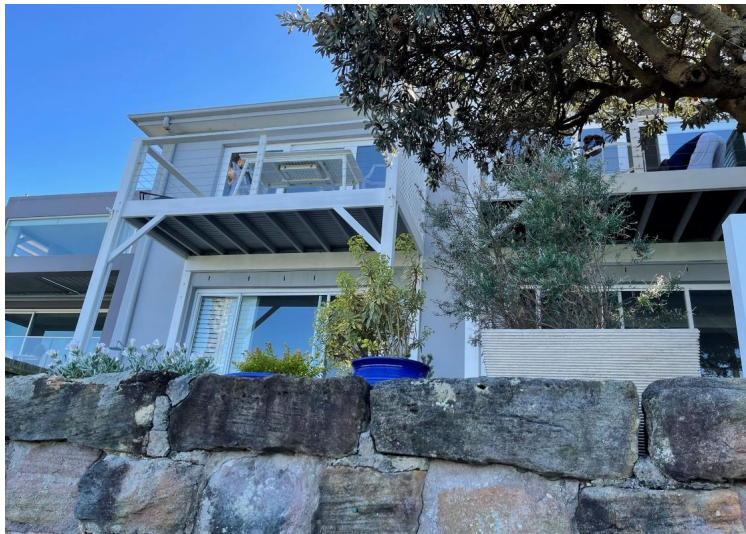


Figure 5. The subject site looking north from Cliffbrook Parade





Figure 6. The rear yard of Unit 3, looking south.



Figure 7. View from the subject site, looking south-west.



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Figure 8. The existing right of way over 7 Melrose Parade.



Figure 9. View from 7 Melrose Parade, looking over the subject site to the south.



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#### 4. Proposed Development

4.1 The proposed development is for ground floor alterations and a small first-floor addition to unit 2; a new ground floor living room door and new roof to Unit 3 and site landscaping works.

4.2 The proposed works will be made up as follows:

##### Unit 2

##### Ground Floor

- Convert the lounge and bedroom 2 into a master bedroom with WIR and ensuite,
- A new door to the south facing balcony,
- Convert bedroom 1, the living room and part of the bathroom into bedrooms 2 & 3, hallway, storage and European laundry,
- Convert the kitchen, part of the bathroom and laundry to a bathroom, office, hallway and staircase to access the first floor,
- New paving and landscaping to the rear yard.

##### New First Floor comprising of:

- Kitchen, dining and living room,
- Staircase to access the ground floor,
- Balcony and deck with partial louvered roof.

##### Unit 3

- A new door to the south facing balcony,
- New paving and landscaping to the rear yard,
- A new roof.





## 5. Clause 4.6 Exceptions to Development Standards – Floor Space Ratio

Clause 4.6 of the Randwick Local Environmental Plan 2012 (RLEP 2012) permits departures from development standards in certain circumstances. In this case, it is necessary to consider if compliance with the development standard is consistent with the aims of the policy and, in particular, does compliance with the development standard tend to hinder the attainment of the objects specified in section 1.3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) being:

- (a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*
- (b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*
- (c) to promote the orderly and economic use and development of land,*
- (d) to promote the delivery and maintenance of affordable housing,*
- (e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*
- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*



The aims and objectives of the Randwick LEP 2012 Clause 4.6 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.*

Under Clause 4.6(3) and (4) of the RLEP 2012, consent for a development that contravenes a development standard must not be granted unless the consent authority is satisfied that:

*(3)(a) compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*

*(3)(b) there are sufficient environmental planning grounds to justify contravening the development standard.*

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

These matters, along with case law judgements from the NSW Land and Environment Court, are addressed below.

## **1. Environmental Planning Instrument Details**

### **1.1 What is the name of the environmental planning instrument that applies to the land?**

Randwick Local Environmental Plan 2012

### **1.2 What is the zoning of the land?**

R2 Low Density Residential

### **1.3 What are the objectives of the zone?**

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



- To encourage housing affordability.
- To enable small-scale business uses in existing commercial buildings.

**1.4 What is the development standard being varied?**

Clause 4.4 – Floor Space Ratio

**1.5 Under what clause is the development standard listed in the environmental planning instrument?**

Clause 4.4 of the Randwick LEP 2012.

**1.6 What are the objectives of the development standard?**

(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.

**1.7 What is proposed numeric value of the development standard in the environmental planning instrument?**

The maximum FSR permitted is 0.5:1. This equates to a maximum permitted GFA of 253.3m<sup>2</sup> for the site area of 506.6m<sup>2</sup>.

It is noted that an FSR of 0.65:1 is permitted for the site area of 450m<sup>2</sup> – 600m<sup>2</sup>, for the development of a dwelling house or semi-detached dwelling, which equates to 329.29m<sup>2</sup>.

**1.8 What is the numeric value of the development standard in your development application?**

The existing GFA on the subject site is non-compliant at 332.7m<sup>2</sup> or FSR of 0.66:1 (figure includes the DA approved 20m<sup>2</sup> addition to Unit 1).

The development will result in a GFA of 364.7m<sup>2</sup> or FSR of 0.72:1, a variation of 111.4m<sup>2</sup> or 43.98% to the 0.5:1 FSR control.



Based on the maximum 0.65:1 FSR currently permitted on the site for a dwelling house or semi-detached dwelling, the variation sought is just 35.41m<sup>2</sup> or 10.75%.

**1.9 What is the percentage variation (between your proposal and the environmental planning instrument)?**

The percentage variation sought is 43.98% or 111.4m<sup>2</sup>.

**2. NSW Land and Environment Court Case Law**

Several key Land and Environment Court (NSW LEC) judgements have refined the manner in which variations to development standards are required to be approached. The key findings and direction of each of these matters are outlined in the following discussion.

**2.1 Wehbe v Pittwater [2007] NSW LEC 827**

The decision of Justice Preston in *Wehbe v Pittwater [2007] NSW LEC 827*, (expanded on the findings in *Winten v North Sydney Council*), identified 5 ways in which the applicant might establish that compliance with a development standard is unreasonable or unnecessary. It was not suggested that the five ways were the only ways that a development standard could be shown to be unreasonable or unnecessary.

The five ways outlined in *Wehbe* include:

1. *The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).*
2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).*
3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).*
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 (Fourth Way).*
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 (Fifth Way).*



In the Micaul decision Preston CJ confirmed that the requirements mandated by SEPP 1 (as discussed in *Wehbe*) are only relevant in demonstrating that compliance with a development standard is unreasonable or unnecessary for the purpose of Clause 4.6(3)(a).

## 2.2 Four2Five Pty Ltd v Ashfield Council [2015] NSW LE

In the matter of *Four2Five Pty Ltd v Ashfield Council [2015] NSW LEC*, initially heard by Commissioner Pearson, upheld on appeal by Justice Pain, it was found that an application under Clause 4.6 to vary a development standard must go beyond the five (5) part test of *Wehbe V Pittwater [2007] NSW LEC 827* and demonstrate the following:

1. Compliance with the particular requirements of Clause 4.6, with particular regard to the provisions of subclauses (3) and (4) of the LEP;
2. That there are sufficient environment planning grounds, particular to the circumstances of the proposed development (as opposed to general planning grounds that may apply to any similar development occurring on the site or within its vicinity);
3. That maintenance of the development standard is unreasonable and unnecessary on the basis of planning merit that goes beyond the consideration of consistency with the objectives of the development standard and/or the land use zone in which the site occurs;
4. All three elements of clause 4.6 have to be met and it is best to have different reasons for each but it is not essential.

## 2.3 Randwick City Council v Micaul Holdings Pty Ltd [2016] NSWLEC 7

In *Randwick City Council v Micaul Holdings*, the Court allowed a departure from development standards, provided the processes required by clause 4.6 are followed, a consent authority has a broad discretion as to whether to allow a departure from development standards under clause 4.6, even where the variation is not justified for site or development specific reasons.

Preston CJ noted that *the Commissioner did not have to be satisfied directly that compliance with each development standard was unreasonable or unnecessary in the circumstances of the case, but only indirectly by being satisfied that the appellant's written request had adequately addressed the matter in clause 4.6(3)(a) that compliance with each development standard was unreasonable or unnecessary.*

## 2.4 Zhang v City of Ryde

Commissioner Brown reiterated that clause 4.6 imposes three preconditions which must be satisfied before the application could be approved:

1. The consent authority must be satisfied that the proposed development will be consistent with the objectives of the zone;
2. The consent authority must be satisfied that the proposed development will be consistent



with the objects of the standard which is not met; and

3. The consent authority must be satisfied that the written request demonstrates that compliance with the development standard is unreasonable or unnecessary in the circumstances and there are sufficient environmental planning grounds to justify contravening the development standard.

It is only if all of these conditions are met that consent can be granted to the application, subject to an assessment of the merits of the application.

The Commissioner applied the now familiar approach to determining consistency with zone objectives by considering whether the development was antipathetic to the objectives.

In contrast to four2five, the reasons relied on to justify the departure from the standards in this case were not necessarily site specific.

### 3. Consideration

The following section addresses the provisions of clause 4.6 of the WLEP 2012 together with principles established in the NSW Land and Environment Court Case Law outlined above.

**Clause 4.6(3)(A) - Is compliance with the development standard unreasonable or unnecessary in the circumstances of the case (and is a development which complies with the development standard unreasonable or unnecessary in the circumstances of the case)?**

In order to demonstrate that compliance with the development standard is unreasonable or unnecessary, in the circumstances of the case, the Five (5) Part Test established in *Winten v North Sydney Council* and expanded by Justice Preston in *Wehbe v Pittwater* [2007] NSW LEC 827 is considered:

The five ways outlined in *Wehbe* include:

#### 3.1 Five (5) Part Test - *Wehbe v Pittwater*

##### 1. ***The objectives of the standard are achieved notwithstanding non-compliance with the standard (First Way).***

The Objectives of the standard are:

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

#### Comment

The subject site contains an existing 1 and 2 storey residential flat building and





development surrounding the site currently comprises of 2-5 storey residential flat buildings and detached dwelling houses. The site is located in the R2 low density residential zone, with R3 medium density zoning located in close proximity to the site.

The proposed development will result in a 2 and 3 storey, low-density built form and despite a variation being proposed to the current FSR control, the proposal complies with the current building height, wall height, setbacks, building depth, landscaped area and deep soil area controls as discussed below. In addition, the revised proposal is smaller in term of building height and length, than alterations and additions approved on the site by DA 596/2016.

#### Building Height

The LEP restricts the height of any development on the subject site to 9.5 metres. The development proposes a compliant maximum height of 7.9 metres to the dwelling and 8.8 metres to the top of the deck louvres.

#### Wall and Ceiling Height

The DCP requires a maximum wall height of 8 metres and a minimum ceiling height of 2.7 metres. The development proposes a compliant maximum wall height of 6.3 metres and a compliant ceiling height of 2.85 metres.

#### Setbacks

##### **Front setback**

A front setback of 3 metres is required by the DCP.

The development proposes to retain the existing front setback of 3.94 metres to the ground floor balcony and 5.73 - 6.351 metres to the building line.

The new first floor to unit 3, proposes a compliant front setback of 17.2 metres to the building line and 12.4 metres to the deck.

##### **Side setbacks**

The DCP requires a minimum side setback 2 metres for lots with a width of 12m – 14m.

The subject site has existing minimum side setbacks of 1.1 metres (east) and 1.2 metres (west) on the lower ground floor and ground floors, which will be retained.



The new first floor to unit 3, proposes compliant side setbacks of 2 metres (east) and 6.4 metres (west).

#### **Rear setback**

The DCP requires a minimum rear setback of 15% of the allotment depth or 5 metres, whichever is greater. The relevant control is 5.86 metres for the lot depth of 39.065 metres.

The development proposes a compliant rear setback of 12.45 metres to the building line and 11.45 metres to the balcony.

#### **Building Depth**

The DCP specifies a preferred maximum building depth of 10 – 14 metres. The existing building has a maximum depth on the ground floor of 20.2 metres which will be retained.

The new first floor proposes a compliant maximum depth of 9 metres.

#### **Landscaped Area**

The DCP requires a minimum landscaped open space area of 50% which equates to 253.3m<sup>2</sup> for the site area of 506.6m<sup>2</sup>. It is noted that the minimum 2 metre width is not specified for residential flat buildings.

The development proposes a compliant landscaped area of 290m<sup>2</sup>.

#### **Deep Soil Area**

The DCP requires a minimum deep soil area of 25%, which equates to 126.65m<sup>2</sup> for the site area of 506.6m<sup>2</sup>.

The site has an existing non-compliant deep soil area of 57.5m<sup>2</sup> and the previous development proposed a deep soil area of 119.3m<sup>2</sup>. The revised design proposes a compliant deep soil area of 145m<sup>2</sup>, which is a substantial 87.5m<sup>2</sup> increase to the existing deep soil area, improving the retention of stormwater on the site and providing additional area for soft landscaping.

#### **FSR**

As noted above the existing GFA on the subject site is non-compliant with the 0.5:1 FSR control, at 332.7m<sup>2</sup> or FSR of 0.66:1 (figure includes the DA approved 20m<sup>2</sup> addition to Unit 1).



The development will result in a GFA of 364.7m<sup>2</sup> or FSR of 0.72:1, a variation of 111.4m<sup>2</sup> or 43.98% to the 0.5:1 FSR control.

It is re-iterated that a maximum 0.65:1 FSR is currently permitted on the site for dwelling houses or semi-detached dwellings and the variation sought, in relation to the maximum 0.65:1 FSR permitted on the site is minor at just 35.41m<sup>2</sup> or 10.75%.

Compliance with the abovementioned current planning controls (with a minor variation proposed to the maximum FSR permitted on the site), ensures the resulting development remains an appropriate scale and therefore compatible with the future built form and character for the area sought by Council, while allowing for appropriate upgrades to the existing residential flat building.

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

#### Comment

The development proposed will result in a well-articulated, aesthetically pleasing built form which sits comfortable in the surrounding environment.

The existing building footprint on the lower ground and ground floors will be retained. A new flat roof is proposed to replace the existing pitched roof to unit 3, in response to the sites environmental feature of water views. A reduction in overall building height in this location by 1.5 metres, will reduce the building bulk and increase water views for the rear neighbours.

The proposed first floor addition to unit 2, is setback from the ground floor and incorporates balconies on the northern and southern elevations to provide articulation and architectural interest. The new works easily comply with the 10-14 metre building depth control, proposing a maximum depth of 9 metres.

The design achieves compliant BASIX certificates and provides compliant natural light and ventilation to all rooms. Outdoor space is provided on balconies and in the rear yard for clothes drying and passive recreation, while the landscape and deep soil areas on the site will be increased to improve stormwater retention and soft landscaping. Mature landscaping on the site will be retained, providing screening between adjoining properties and maintaining privacy.

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



#### Comment

Not relevant. The site is not a heritage item, is not located within a heritage conservation area and is not located in proximity to 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.*

#### Comment

The proposed variation to floor space ratio does not result in any unreasonable impacts to the amenity of adjoining dwellings in regards to visual bulk or privacy. Compliant levels of solar access are maintained despite the proposed variation and the revised design ensures there will be no impact on views for surrounding properties, as assessed in detail below and evidenced in the sun shadow diagrams included with this submission.

#### **Visual Bulk**

As described in detail above, the development proposes a compliant building height, wall height, building depth and setbacks, resulting in a modest and appropriate built form on the site.

The design will result in an overall reduction in visual bulk, by replacing the existing pitched roof, with a flat roof which sits 1.5 metres lower than the existing roof structure over unit 3 when viewed from the rear (north elevation). The new first floor to unit 2 also proposes a flat roof, resulting in a minor 1.5 metre increase to the overall building height in this location, as illustrated below.



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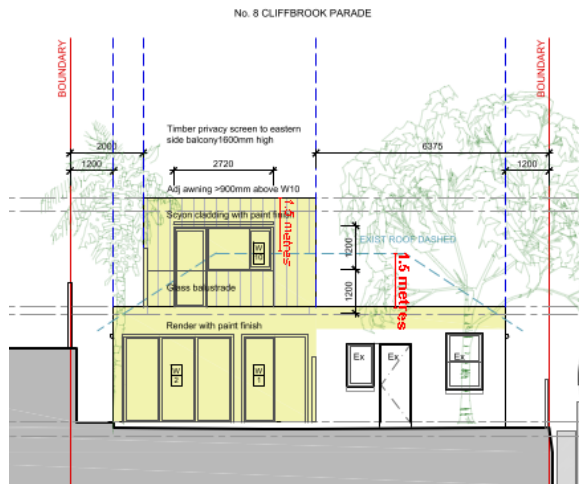


Figure 10: Plan Extract: North Elevation

### Privacy

Visual privacy will be retained with compliant setbacks and no direct overlooking into any key living areas. The existing ground floor is visually separated from the neighbouring properties by the side boundary fencing and landscaping.

A number of privacy measures have been incorporated into the revised design including retaining existing side setbacks to the front balconies, orienting first floor glazing to the front and rear of the lot, privacy screening to the deck and the retention of landscaping.

### Overshadowing

The DCP requires 3hrs sunlight to living areas and 50% of POS from 8am – 4pm for the subject site and surrounding properties on 21 June.

The revised shadow diagrams provided with this application, illustrate that the development will result in a minor increase in shadowing to No. 10 Cliffbrook Parade at 3pm only (3pm illustrated below, with the full set of shadow diagrams provided in the current plans). There will be no increase in shadowing at other times between 8am and 4pm on 21 June.

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Figure 11: Plan Extract: Shadow Diagram – Existing and Proposed at 3pm on 21 June.





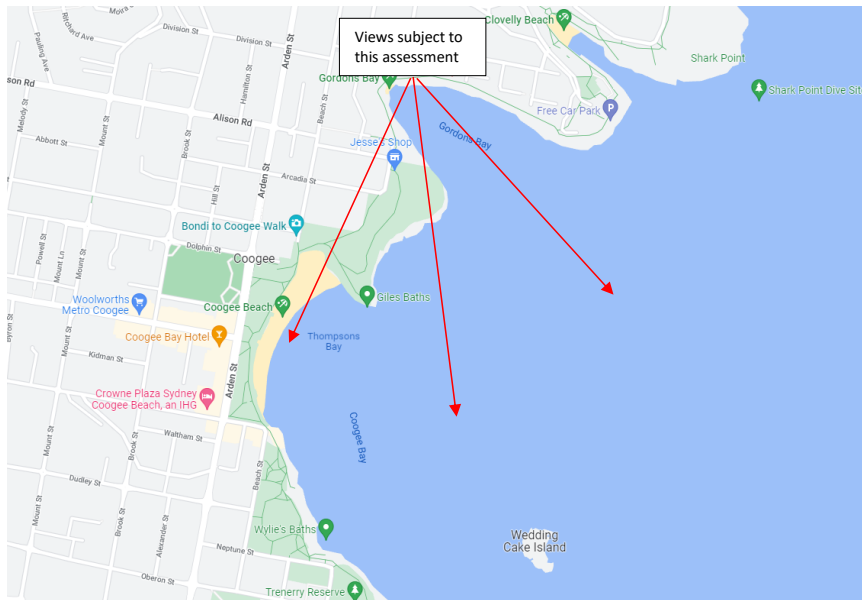
## Views

*Tenacity Consulting v Warringah Council (2004) NSWLEC 140. The Planning Principle established a four-step process for considering the impact of a development on views.*

**Step 1. An assessment of the value of views to be affected by reference to their nature, extent and completeness.**

The views subject to this assessment are from 6 Cliffbrook Parade (single dwelling), 5 Melrose Parade (single dwelling), 7 Melrose Parade (apartments) and 10-12 Cliffbrook Parade (apartments) in Clovelly.

The nature of the views under assessment are ocean views across Gordons Bay and views to Wedding Cake Island to the south-west, south and south-east.



**Figure 12: Aerial Image of the subject site and views subject to this assessment**



**Step 2. A consideration of how views are obtained and what part of the property the views are obtained from.**

Access was obtained to Unit 2/7 and 6/7 Melrose Parade, early in the design and assessment process. In the interest of gaining additional images and conducting a more detailed assessment, Watermark Planning contacted the residents of 6 Cliffbrook Parade (single dwelling), 5 Melrose Parade (single dwelling), 7 Melrose Parade (each apartment) and 10-12 Cliffbrook Parade (each apartment) by letter on 29th November 2022, requesting a site visit to take photos of views from each individual property. Unfortunately, no responses were received.

As access to all individual properties was not possible, drone images, a desktop assessment and photographs taken by Council from 5 Melrose Parade, supplement the images below.

**6 Cliffbrook Parade**

No. 6 Cliffbrook Parade is a single residential dwelling, located immediately to the west of the subject site. The following images obtained from <https://www.realestate.com.au/property/6-cliffbrook-pde-clovelly-nsw-2031> demonstrate the subject site is not visible from 6 Cliffbrook Parade. The proposed first floor addition will not be visible from No. 6 and there are no existing windows on the eastern façade of this site.

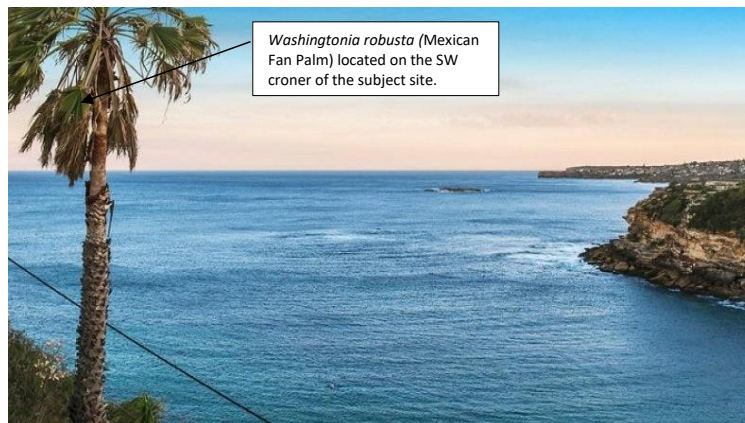


Figure 13: Views from 6 Cliffbrook Parade.



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Figure 14: Views from 6 Cliffbrook Parade.



Figure 15: Views from 6 Cliffbrook Parade.



Figure 16: Views from 6 Cliffbrook Parade.



Figure 17: Views from 6 Cliffbrook Parade.





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Figure 18: Views from 6 Cliffbrook Parade.



Figure 19: Views from 6 Cliffbrook Parade.



Figure 20: Views from 6 Cliffbrook Parade.





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### 5 Melrose Parade

No. 5 Melrose Parade is a single residential dwelling, located to the north-west of the subject site. The following images illustrate views from No. 5 Melrose Parade, across the subject site. Refer to survey dated 14/05/2022 for the location and height of the poles installed to the existing roof at 8 Cliffbrook Parade.



Figure 21: Views from 5 Melrose Parade.



Figure 22: Views from 5 Melrose Parade.



Figure 23: Views from 5 Melrose Parade.



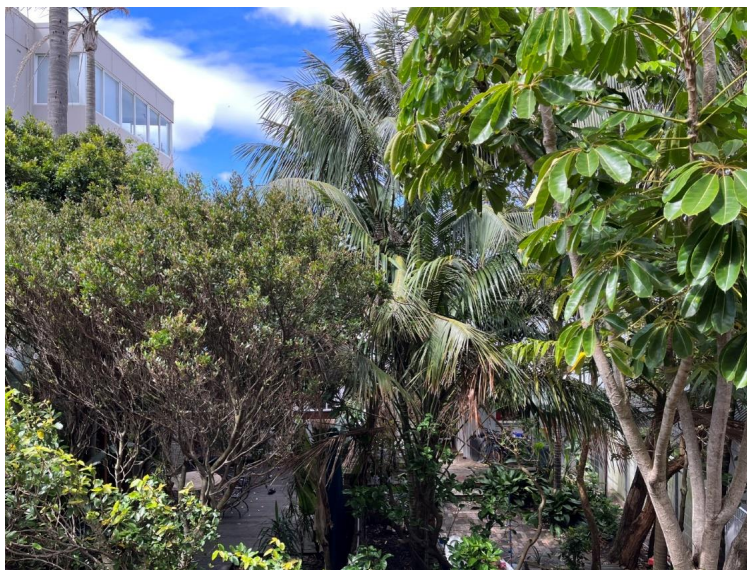
Figure 24: Views from 5 Melrose Parade.



### 7 Melrose Parade

No. 7 Melrose Parade is a residential flat building, comprising of 6 units. The following images were obtained from a combination of photos taken during a site visit and from <https://www.domain.com.au/building-profile/7-melrose-parade-clovelly-nsw-2031>

The images identify that no water views are obtained from the lower-level units (Units 1 & 2) at 7 Melrose Parade. Units 3, 4, 5 & 6 have water views over the subject site from a bedroom / sunroom.



**Figure 25: Views across the subject site from 2 / 7 Melrose Parade (existing structure concealed by vegetation).**





Figure 26: Views across the subject site from 2 / 7 Melrose Parade, overlaid with existing building footprint.



Figure 27: View from approx. 1m west of Unit 3 / 7 Melrose Parade rear window.



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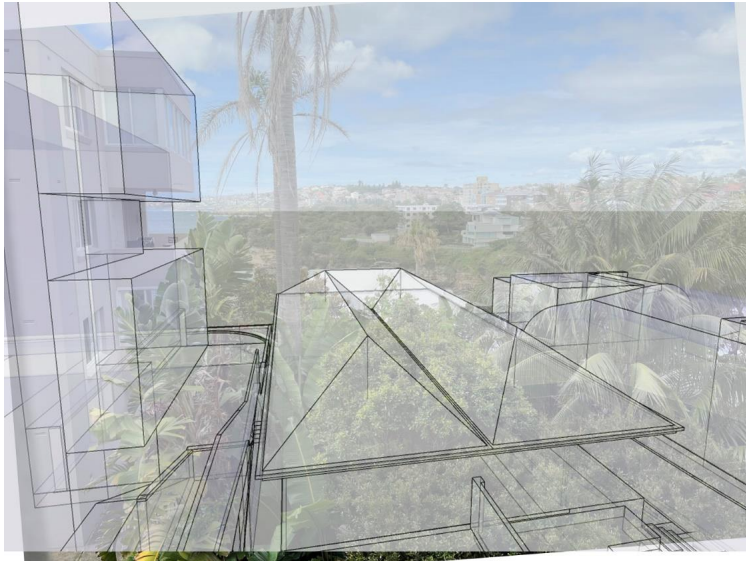


Figure 28: View from approx. 1m west of Unit 3 / 7 Melrose Parade rear window, overlaid with existing building footprint.



Figure 29: View from approx. 1m east of Unit 4 / 7 Melrose Parade rear window.



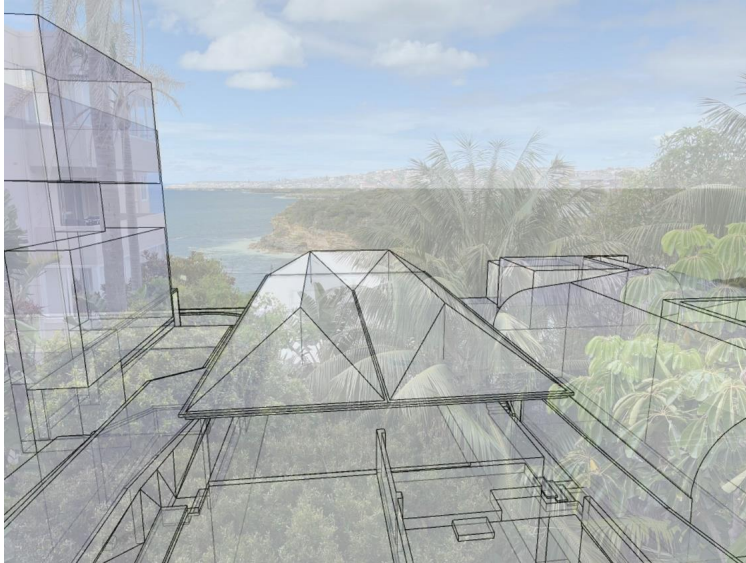


Figure 30: View from approx. 1m east of Unit 4/7 Melrose Parade rear window, overlaid with existing building footprint.



Figure 31: View from approx. 1m to the west of Unit 5/7 Melrose Parade rear window.





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Figure 32: View from approx. 1m to the west of Unit 5 / 7 Melrose Parade rear window, overlaid with existing building footprint.



Figure 33: View over the subject site from Unit 6 / 7 Melrose Parade.



Figure 34: View over the subject site from Unit 6 / 7 Melrose Parade.



### 10-12 Cliffbrook Parade

10 Cliffbrook Parade is a 5 storey residential flat building comprising of 14 units. Access to individual properties was not possible, however drone images and a desktop assessment identifies that the primary views from this property are to the south, while the proposed development on the subject site is located to the east.



Figure 35: View over the subject site from the ground floor of 10-12 Cliffbrook Parade.



Figure 36: View over the subject site from the first floor of 10-12 Cliffbrook Parade.





Figure 37: View over the subject site from the second floor of 10-12 Cliffbrook Parade.



Figure 38: View over the subject site from the third - fourth floor of 10-12 Cliffbrook Parade.



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Figure 39: View over the subject site from the fifth floor of 10-12 Cliffbrook Parade.



Figure 40: Views from 10-12 Cliffbrook Parade, looking south.



***Step 3. A qualitative assessment of the extent of the impact in terms of severity particularly as to whether that impact is negligible, minor, moderate, severe or devastating.***

#### 6 Cliffbrook Parade

The images provided above demonstrate the subject site and therefore the proposed development, is not visible from 6 Cliffbrook Parade, as such there will be no impact on views from 6 Cliffbrook Parade. There are no existing windows on the eastern façade of No. 6 Cliffbrook Parade (as illustrated in the site survey) and therefore no overlooking of the subject site.

#### 5 Melrose Parade

The montage images provided below demonstrate the proposed development will have no impact on views obtained from 5 Melrose Parade, with full water views and views of Wedding Cake Island retained. The reduction in roof height at 8 Cliffbrook Parade will further open up views of the water and Wedding Cake Island from No.5 and the proposed first-floor addition is fully concealed behind existing vegetation on the subject site.

The proposed development is shown as a semi-transparent overlay of the existing structure below, with the height poles in the images representing the previously proposed larger scale development. The location of the height poles relative to the revised design, are provided on sheet CD02.04 – Proposed Roof Plan, of the architectural plan set.





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Figure 41: Montage of Proposed Development on Views from 5 Melrose Parade.



Figure 42: Montage of Proposed Development on Views from 5 Melrose Parade.



Figure 43: Montage of Proposed Development on Views from 5 Melrose Parade.

#### 7 Melrose Parade

The visual assessment and montage images provided below illustrate the development will have a minor impact to Unit 4 land and water interface views obtained across Gordons Bay, however we anticipate that the reduction in roof height above Unit 3 and the removal of some vegetation, will open up equivalent land water interface views to the west of the proposed first floor addition.

There will be no impact to views obtained from other apartments at No. 7 Melrose parade.



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Figure 44: Montage of Proposed Development on Views from 2/7 Melrose Parade.



Figure 45: Montage of Proposed Development on Views from approx. 1m west of Unit 3/7 Melrose Parade rear window.





**Figure 46: Montage of Proposed Development on Views from approx. 1m east of Unit 4/7 Melrose Parade rear window.**



**Figure 47: Montage of Proposed Development on Views from approx. 1m west of Unit 5/7 Melrose Parade rear window.**



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Figure 48: Montage of Proposed Development on Views from 6/7 Melrose Parade



Figure 49: Montage of Proposed Development on Views from 6/7 Melrose Parade



### 10-12 Cliffbrook Parade

The montage images provided below demonstrate the development will improve views obtained from the mid-level units at 10-12 Cliffbrook Parade, due to the new flat roof proposed and lowered building height. There will have no impact on broad water views obtained from upper-level units across the subject site and no change to the broad water views obtained to the south.



Figure 50: Improvement to views from the 3<sup>rd</sup> – 4<sup>th</sup> floor mid- level units at 10 Cliffbrook Parade (coloured aqua).



Figure 51: Views from the 3<sup>rd</sup> – 4<sup>th</sup> floor mid- level units at 10 Cliffbrook Parade.





***Step 4. An assessment of the reasonableness of the proposal causing the impact particularly in terms of compliance with applicable planning controls and whether a different or complying design must produce a better result. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable.***

It is concluded that the development will have no impact on views obtained from No. 6 Cliffbrook Parade, 5 Melrose Parade or 10-12 Cliffbrook Parade, with existing views retained from these properties and water views increased from 5 Melrose Parade and 10-12 Cliffbrook Parade, as a result of the lower roof structure.

The proposal will have a minor impact on a small portion of water and land / water interface views obtained from the mid and upper level units at 7 Melrose Parade, however the vast majority of existing water views are retained.

The alterations and additions propose a variation to the FSR control, however a compliant building height, wall height, building depth, setbacks, landscaped area and deep soil area is proposed, as summarised in the numerical control table below. It is considered the minor FSR variation will have no impact on the enjoyment of views from surrounding properties and does not exacerbate or create unreasonable view loss, given the proposal complies with all other relevant numerical controls.

This assessment concludes that the proposed development implements appropriate view sharing principles, for the enjoyment of the residents of the subject site and adjoining properties.



- 2. *The underlying objective or purpose of the standard is not relevant to the development and therefore compliance is unnecessary (Second Way).***

This exception to development standards request does not rely on this reason.

- 3. *The underlying object or purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable (Third Way).***

This exception to development standards request does not rely on this reason

- 4. *The development standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and hence compliance with the standard is unnecessary and unreasonable (Fourth Way).***

This exception to development standards request does not rely on this reason.

- 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 (Fifth Way).***

This exception to development standards request does not rely on this reason.

This clause 4.6 variation request establishes that compliance with the development standard is unreasonable or unnecessary in the circumstances of the proposed development because the objectives of the standard are achieved and accordingly justifies the variation to the FSR control pursuant to the First Way outlined in Wehbe.

Thus it is considered that compliance with Clause 4.6(3)(a) is satisfied.

#### **4.2 Clause 4.6(3)(B) – Are there sufficient environmental planning grounds to justify contravening the development standard?**

There are sufficient grounds to permit the variation of the development standard. The development has been considered below with particular reference to the Objects of the Environmental Planning and Assessment Act 1979, which are accepted as the best gauge of *environmental planning grounds*. In particular:

##### **Context**

- The area surrounding the subject site is characterised by 2 to 5 storey residential flat buildings, which enjoy existing use rights and the have floor areas that far exceed the maximum 0.5:1 FSR as described below:



#### 7 Melrose Parade

- Site area 465m<sup>2</sup>
- GFA approx. 699m<sup>2</sup>
- FSR 1.5:1

#### 9 Melrose Parade

- Site area approx. 459m<sup>2</sup>
- GFA 418.9m<sup>2</sup>
- FSR 0.91:1

#### 10-12 Cliffbrook Parade

- Site area 1,055m<sup>2</sup>
- GFA approx. 1320m<sup>2</sup>
- FSR 1.25:1

In addition, we note that the properties located in close proximity to the north and east of the site, are zoned R3 – medium density residential, with a permitted FSR of 0.9:1.

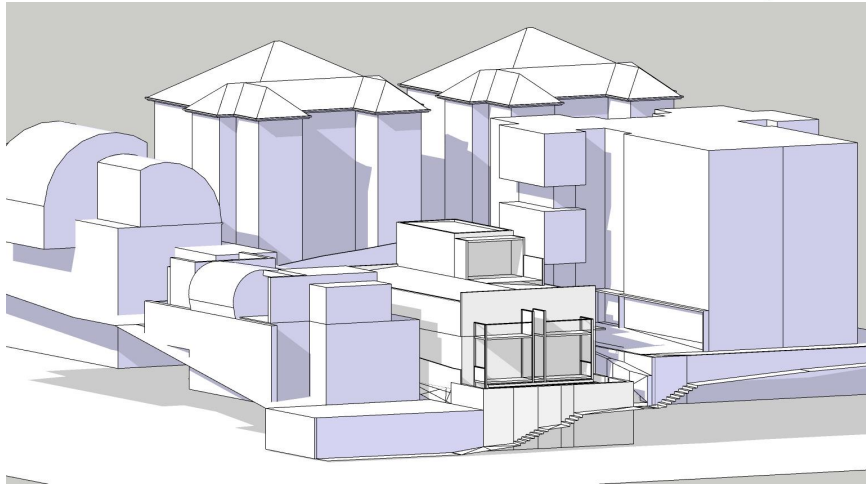
The proposed variation is considered appropriate, as the resulting development will have no negative impact on the environment or surrounding properties in regards to views, solar access and privacy, as described in detail above.

The site has unique environmental planning grounds to justify a variation to the FSR control, given the subject site contains an existing residential flat building with a non-compliant FSR of 0.66:1, it is surrounded by residential flat buildings with an FSR of 0.91:1 – 1.5:1, far exceeding the current FSR control and is located in close proximity to land zoned R3 with a permitted FSR of 0.9:1.

In addition, an FSR of 0.65:1 is permitted for sites with an area of 450m<sup>2</sup> – 600m<sup>2</sup>, for the development of a dwelling house or semi-detached dwelling, which equates to 329.29m<sup>2</sup> by the LEP. Based on the maximum FSR currently permitted on the site, the variation sought is just 35.41m<sup>2</sup> or 10.75%.

In light of the above, the proposed FSR of 0.72:1 represents an appropriate transition between the 0.9:1 FSR permitted in the R3 zone and the 0.65:1 FSR permitted on the site.

It remains in context with the surrounding streetscape and presents with a significantly lesser bulk than adjoining residential flat buildings and nearby medium density development as illustrated in the model below. The density proposed fits comfortably within the immediate and wider streetscape context and is appropriate for the site.



**Figure 52: Image of the proposed development, in the context of surrounding properties.**

- The alterations and additions propose a compliant building height, wall height, building depth, setbacks, landscaped area, deep soil area and private open space area and has been designed to remain recessive to the surrounding environment and consistent with the character of the area, through design, architectural features, retaining extensive vegetation and complimentary materials and colour choices.
- Variation to the Randwick LEP 2012 Cl. 4.4 FSR, control has been the subject of recent precedent for the following developments:
  - DA/2/2021 – 1 Adams Avenue Malabar, FSR Variation of 62.8%
  - DA/04/2021 – 76 Bream Street Coogee, FSR Variation of 70.8%
  - DA/288/2021 – 102-104 Brook Street Coogee, FSR Variation of 69.4%
  - DA/206/2021 – 166-172 Arden Street Coogee, FSR Variation of 39.53%
  - DA/302/2020 – 17 Oswald Street Randwick, FSR Variation of 49.96%
  - DA/ 52/2021 – 5-5A Lion Street Randwick, FSR Variation of 30.39%
  - DA/180/2021 – 20 Gumara Street Randwick, FSR Variation of 26.3%
  - DA/652/2020 – 59 Carrington Rd Randwick, FSR Variation of 73%
  - DA/442/2020 – 37-39 Prince St Randwick, FSR Variation of 22.81%
  - DA/483/2020 – 148 Barker St Randwick, FSR Variation of 58%
  - DA/88/2020 – 78 Bream St Coogee, FSR Variation of 86.7%
- The development proposes to increase the current GFA on the site from 332.7m<sup>2</sup> to 364.7m<sup>2</sup>, an addition of 32m<sup>2</sup> or 9.62% increase, which remains comparable to the increases permitted in the examples provided above,



- The setting and context with similar FSR variations recently approved, demonstrates that a varied FSR is reasonable and that it is consistent with clause 1.3(c) and (d).

#### **Future Development**

- The proposed development will allow for the modernisation and extension of the existing residential units to meet the changing housing needs of the residents,
- This represents an efficient use of an existing developed site, with all services readily available.
- The built form proposed is consistent with other buildings in the locality and compliant with current planning controls for building height, wall height, building depth, setbacks, landscaped area and deep soil area as demonstrated above,
- The resulting development retains a low-density scale and the replacement of the existing pitched roof with a flat roof, minimises building bulk and presents as an appropriate 2-3 storey building,
- Given the site context, the proposed variation is reasonable as it does not result in any unreasonable impacts to neighbouring properties,
- The proposed works will not hinder any future development of the lot,
- The development proposed demonstrates fulfillment of clause 1.3(a), (b), (c) and (g).

#### **Consistent with Zone Objectives**

- The extent of the variation is considered to be in the public interest, as the proposal remains consistent with the objectives of the zone as assessed in detail above, allowing for the continued residential land use, with a bulk and scale consistent with the locality.
- Compliance with the FSR standard based on this would be unreasonable, with clause 1.3(c) demonstrated as fulfilled.

#### **Natural Environment**

- The proposed development allows for the current and future housing needs of the residents to be met, without developing a greenfield site, representing an efficient use of existing developed land,





- The proposal allows for environmental impacts to be minimised, by locating works on an already disturbed residential lot, within the existing building footprint,
- The development will result in a compliant and improved landscaped area and deep soil area, allowing for stormwater infiltration and soft landscaping,
- The natural environment is unaffected by the departure to the development standard and it would be unreasonable for the development to be refused on this basis with Cl 1.3(b) satisfied.

#### **Social and Economic Welfare**

- The variation to the FSR will have a positive social impact, as it will allow the housing needs of the residents to be met in their current local community. It allows for a modern floor plan and utilises existing services, satisfying Cl1.3(b). Accordingly, refusal of the development based on this reason would be unreasonable.

#### **Appropriate Environmental Planning Outcome**

- The development proposed is not an overdevelopment of the site given it satisfies the objectives of the zone and the development standard,

The variation to the FSR and the discussion above reflects the unique circumstances for the subject site and proposed development. The proposed development will not present with excessive bulk from the public domain and there is recent precedent of similar variations being accepted by Council.

By supporting this variation, in its current form, it is considered that an appropriate degree of flexibility be applied, which results in a reasonable built form, consistent with developments within the locality.

The sufficient environmental planning grounds stipulated above demonstrate that the proposal aligns with the relevant objects of the EP&A Act i.e. the development is an orderly and economic and development of the land, notwithstanding the FSR variation.

**4.3 Clause 4.6(4)(A)(ii) – Will the proposed development be in the public interest because it is consistent with the objectives of the particular standard and objectives for development within the zone which the development is proposed to be carried out.**

The proposed development is consistent with the objectives of the standard (see Cl 4.6(3)(A)). An assessment of consistency with the objectives of the Zone is provided below:



## Zone – R2 Low Density Residential

### Objectives of zone

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

Consistent. The site contains an existing approved residential flat building, comprising of 3 units. The development retains the existing dwelling density, proposing a minor 32m<sup>2</sup> first floor addition to unit 2, providing floor plan improvements and upgrades to the existing unit.

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

Consistent. The alterations and additions propose a new home office to Unit 2, providing the necessary facilities for the residents to work from home.

The development retains the primary residential land use on the site.

- *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 works proposed are of an appropriate scale, complying with the current controls relating to building height, wall height, building depth and setbacks and will be complimentary to the existing streetscape and surrounding coastal environment as described and demonstrated above.

The building will retain its 2-storey presentation to Cliffbrook Parade, with a setback of 17.2 metres proposed to the new first floor.

The existing ground floor balconies and vegetation on the parade frontage will be retained. In addition, increased landscaping in the rear yard provides a softening of the overall built form.

- *To protect the amenity of residents.*

Consistent. The development will not result in any unreasonable impacts on residential amenity with compliant solar access, views and privacy retained, as assessed in detail earlier in this report.

- *To encourage housing affordability.*

Consistent. The development will retain the existing residential density, providing additional living spaces and bedrooms to the existing unit.



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

Not relevant. The development proposes to retain the existing residential land use.

The proposed development is not contrary to the public interest, because it is consistent with the objectives of the standard (see CI 4.6(3)(A)) and objectives for development within the zone.

**4.4 Clause 4.6(5)(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning,**

The non-compliance will not raise any matter of State or Regional Significance.

**4.5 Clause 4.6(5)(b) the public benefit of maintaining the development standard,**

The proposed development is not contrary to the public interest, accordingly there can be no quantifiable or perceived public benefit in maintaining the standard.

**4.6 Clause 4.6(5)(c) any other matters required to be taken into consideration by the Secretary before granting concurrence**

**4.7 How would strict compliance hinder the attainment of the objects specified in Section 1.3 of the Act.**

Strict compliance with the standard would hinder the attainment of the objects specified in section 1.3 of the Act

*(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,*

*(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,*

*(c) to promote the orderly and economic use and development of land,*

*(d) to promote the delivery and maintenance of affordable housing,*

*(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats,*



- (f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage),*
- (g) to promote good design and amenity of the built environment,*
- (h) to promote the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants,*
- (i) to promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State,*
- (j) to provide increased opportunity for community participation in environmental planning and assessment.*

Strict compliance with the 0.5:1 FSR development standard would hinder the development for the purpose of *promoting the orderly and economic use and development of land, promoting good design and amenity of the built environment and promoting the proper construction and maintenance of buildings, including the protection of the health and safety of their occupants.*

The proposed development is for alterations and additions to the existing, approved residential flat building on land zoned R2 Low Density Residential.

The existing GFA on the subject site is non-compliant at 332.7m<sup>2</sup> or FSR of 0.66:1 (figure includes the DA approved 20m<sup>2</sup> addition to Unit 1) and the development will result in a GFA of 364.7m<sup>2</sup> or FSR of 0.72:1 (+111.4m<sup>2</sup> or 43.98%).

As demonstrated above, the proposed development does not present with excessive bulk and is of a consistent scale to surrounding properties. It is considered to be an appropriate development worthy of Council consent.

D22/23



Planner Declaration

Report Version: FINAL

Document Control Table

Document Purpose:	Clause 4.6 Variation Request (FSR)	
Date	Prepared by	Reviewed by
6 February 2023	Naomi Lyons Senior Planner	Sarah McNeilly Director

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## Development Application Report No. D23/23

**Subject:** 45 Storey Street, Maroubra (DA/541/2022)

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### Executive Summary

<b>Proposal:</b>	Construction of a driveway and hard stand car space.
<b>Ward:</b>	West Ward
<b>Applicant:</b>	Pinnacle Design Company Pty Ltd
<b>Owner:</b>	Mr P & Mrs L Smirniotis
<b>Cost of works:</b>	\$10,000.00
<b>Reason for referral:</b>	Conflict of interest


### Recommendation

- A. 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. 541/2022 for the construction of a driveway and hard stand car space, at No. 45 Storey Street, Maroubra, subject to the development consent conditions attached to the assessment report.

### Attachment/s:

1.  RLPP Dev Consent Conditions (dwellings dual occ) - DA/541/2022 - 45 Storey Street, MAROUBRA

D23/23

	
	Subject Site
	Submissions received
	North
	Locality Plan

1. Executive summary

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

- The applicant has declared a conflict of interest due to business relations with a Council officer and the subject application is referred to the RLPP as a result of General Manager’s discretion.

The proposal seeks development consent for the construction of a new driveway and hard stand car space at the front of the dwelling.

The proposal will provide for one (1) car parking space on the site, as the owners currently rely on on-street parking. There are no structures proposed. The proposal is similar to other properties along Storey Street, including the adjoining property at No. 47 Storey Street which has a hard stand space in front of the dwelling.

The key issues associated with the proposal relate to the depth of the car space, proximity of the driveway to the street tree and power pole. However, these issues have been resolved through amended plans.

The proposal is recommended for approval subject to a condition that requires a recessed area within the front façade to provide a minimum ground clearance of 1.2m and depth of 600mm, to achieve a minimum length of 5m for the car space.

## 2. Site Description and Locality

The subject site is known as 45 Storey Street, Maroubra and is legally described as Lot 12 in DP 538749. The site is 242m<sup>2</sup>, is regular in shape and has a 6.57m frontage to Storey Street to the north. The site contains a two-storey rendered semi-detached dwelling. The site falls sideways from the west to the east.



Figure 1: The subject site (in the centre of the photo), the street tree and power pole.

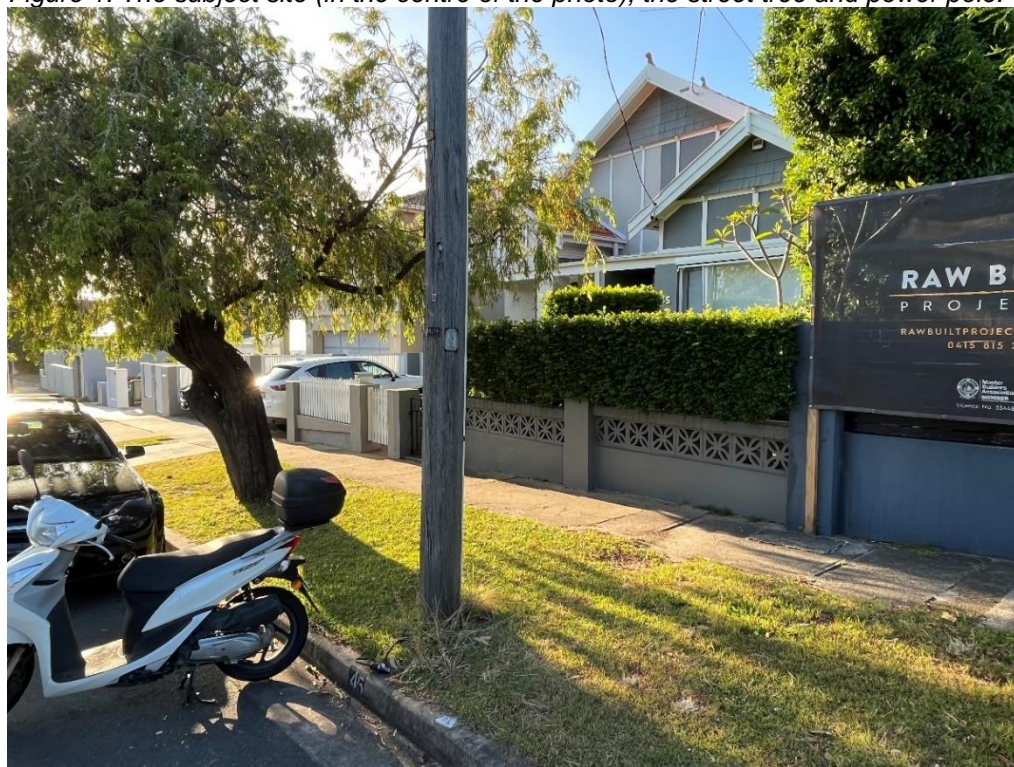


Figure 2: The subject site. The property adjoining to the east (left side of photo) at No. 47 has a car space in front of the dwelling which is visible.



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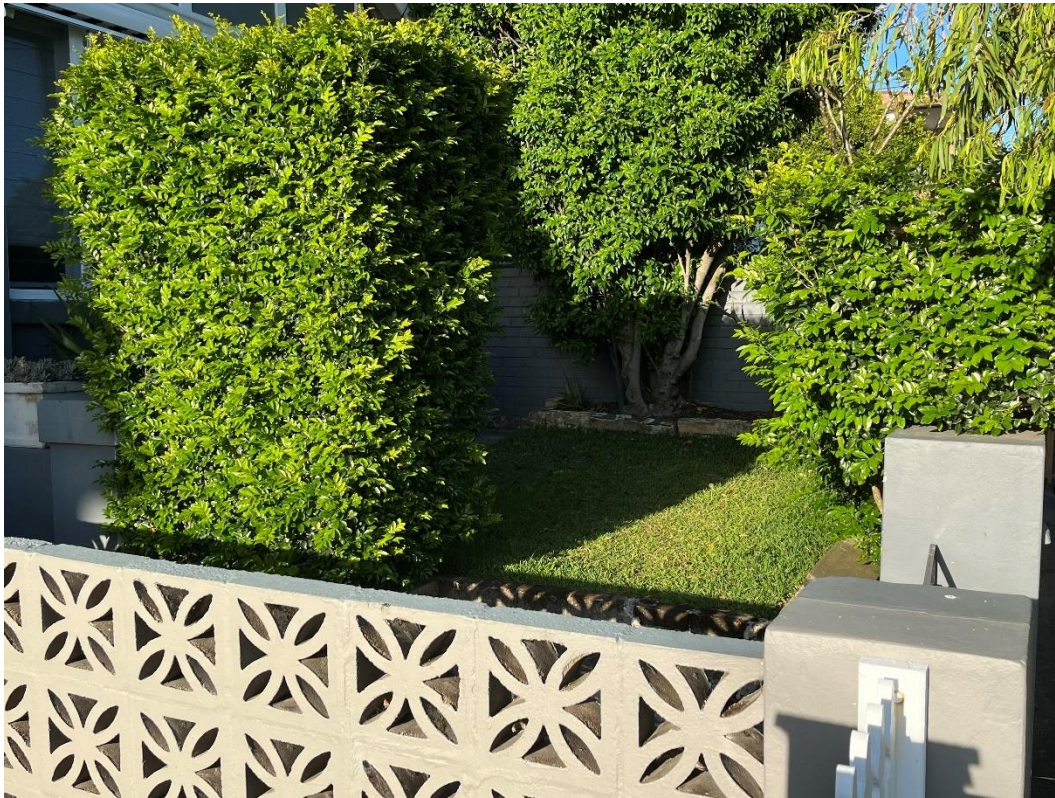


Figure 3: The front yard of the site where the hard stand car space is proposed.



Figure 4: The front façade of the dwelling, which will be modified to accommodate the car space.

The site is located within an established low density residential area, directly opposite Snape Park. Unrestricted parking is available along Storey Street.

### 3. Relevant history

The previous applications for the site relate to a first floor addition to the dwelling approved in 2009 (DA/801/2009) and subsequent modifications made under DA/801/2009/A and DA/801/2009/B.

## 4. Proposal

The proposal seeks development consent for the construction of a driveway and hard stand car space at the front of the site.

The hard stand area will measure 3m wide by 5m in length. Minor cut (approximately 1cbm) will be required within the existing front garden to accommodate the hard stand area. The front setback is currently less than 5m in depth and Council's Development Engineer has required a recessed/indented area beneath the front of the dwelling (0.60m deep and 1.20m high) to meet Council's requirements to achieve an absolute minimum internal length of the car space of 5m. The width of the indent is proposed to be 2.735 as reflected on the amended plans, which are replicated below.

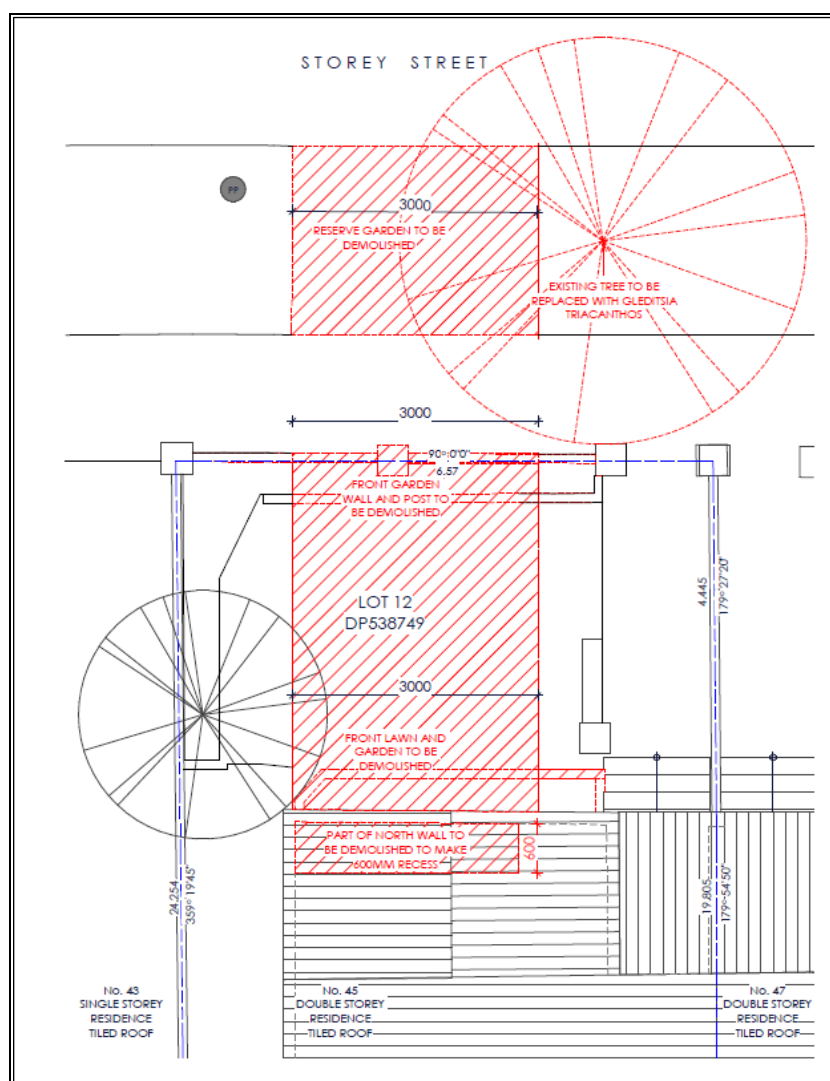


Figure 5 Plan showing demolition works  
(Drawing DA-02.10 Rev 3 prepared by Pinnacle Design Studio)



D23/23

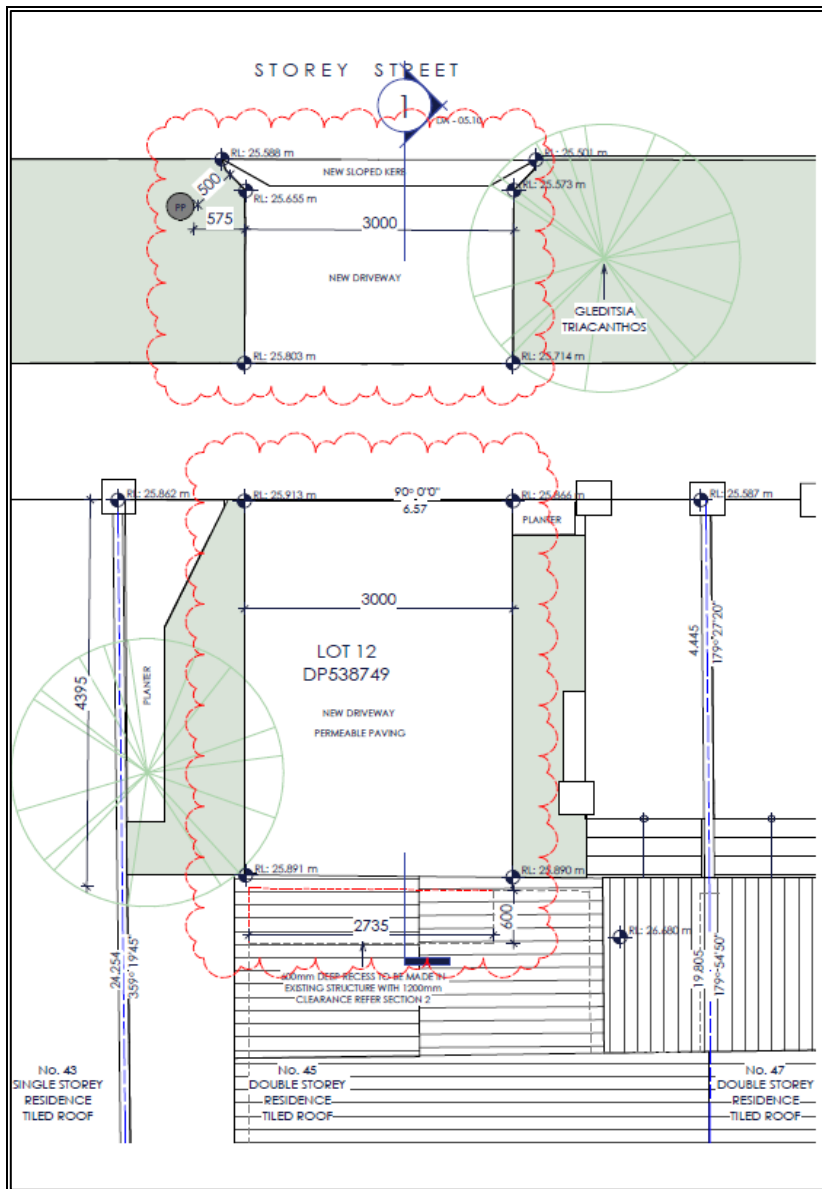


Figure 6 Plan showing proposed driveway and hard stand area  
(Drawing DA-03.00 Rev 3 prepared by Pinnacle Design Studio)

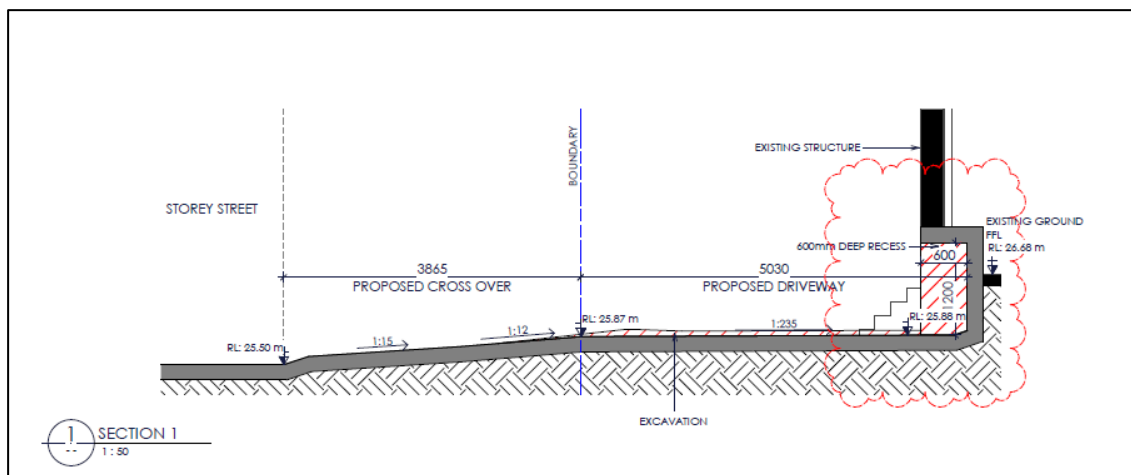


Figure 7 Plan showing existing ground line, proposed cut and existing ground floor level of dwelling  
(Drawing DA-05.10 Rev 3 prepared by Pinnacle Design Studio)

## 5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development between 4 November and 18 November 2022 in accordance with the Randwick Community Participation Plan. No submissions were received as a result of the notification process.

## 6. Relevant Environment Planning Instruments

### 6.1. SEPP (Building Sustainability Index: BASIX) 2004

A BASIX certificate is not required for the proposed development, as no changes are proposed to any openings of the dwelling. Therefore, the provisions of SEPP (Building Sustainability Index: BASIX) 2004 are not applicable.

### 6.2. SEPP (Biodiversity and Conservation) 2021

#### Chapter 2 Vegetation in Non-Rural Areas

The application was referred to Council's Landscape Development Officer to comment on the potential impact of the driveway on the tree within Council's Storey Street verge. This tree is a mature *Agonis flexuosa* (Willow Myrtle) and is automatically protected by the DCP due to its location on public property.

Council's Landscape Development Officer observed the tree to be in poor condition due to being lopped beneath the overhead wires by service authorities, with all lower growing branches also having been lopped off to provide a clearance from the footpath to its south and roadway to its north.

This species is no longer used by Council as a street tree due to issues associated with cavities/splits and their short lifespans, with *Gleditsia*'s noted as being the new strategy in this street, as can be seen just past the western site boundary, as well as further down the street to the east, with there being ample space nearby for the planting of new, compensatory street trees.

Council's Landscape Development Officer has provided advice which states that despite the original plans showing a minimal offset of 1055mm being provided between the eastern edge of the new centrally located vehicle crossing and its trunk (presumably to attempt its retention), Council advised this was insufficient due both to the amount of root damage that would occur as well as future line of sight/safety issues.

Due also to the width of this Lot and the presence of the existing power pole towards the western boundary (which requires a setback of 500mm), there is no other option for a re-design where the tree could remain whilst still providing off-street parking due to a lack of available space.

For these reasons, and consistent with past advice, conditions of consent are recommended from Council's Landscape Development Officer allowing removal of this tree, which will then allow a more desirable replacement species which is consistent with the theme throughout the rest of the streetscape to be provided in its place.

There is no objection to the removal of various shrubs in the front setback as they are all insignificant.

### 6.3. SEPP (Resilience and Hazards) 2021

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

#### 6.4. Randwick Local Environmental Plan 2012 (LEP)

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

The proposal is consistent with the specific objectives of the zone in that the proposed activity and changes to the front setback will provide for the needs of the owners whilst enhancing the aesthetic character and protecting the amenity of the local residents.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4: Floor space ratio (max)	0.5:1	No change to the existing	N/A
CI 4.3: Building height (max)	9.5m	No change to the existing	N/A
CI 4.1: Lot Size (min)	400m <sup>2</sup>	No change to the existing	N/A

##### 6.4.1. Clause 4.6 - Exceptions to development standards

There are no non-compliances with the development standards.

##### 6.4.2. Clause 5.10 - Heritage conservation

The site is not affected by heritage.

##### 6.4.3. Clause 6.7- Foreshore scenic protection area

The site is not within a foreshore scenic protection area.

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

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

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

The final Comprehensive Planning Proposal was submitted to the Department of Planning and Environmental on 20 September 2022 for formal approval and finalization.

No changes to zoning, height or FSR controls are proposed for the subject site.

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

### 7. Development control plans and policies

#### 7.1 Randwick Comprehensive DCP 2013

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

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

## 8. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	The Comprehensive Planning Proposal that updates the Randwick LEP 2012 needs to be considered under this section of the Act. See section 6.5 for discussion.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 2 and the discussion in key issues below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant residential character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions were received during the notification period.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

### 8.1. Discussion of key issues

- **Hard stand area**

The proposal seeks to have a new driveway and hardstand area within the front setback area. Council's Development Engineer determined via site inspection that the length of the proposed car space did not meet the minimum 5m required. Council's Development Engineer referred to the Ordinary Council meeting held on 24 July 2007 where Council passed a resolution that;

*(a) Councillors resolve not to use call up powers for a development application on the sole basis of a residential car parking space where the space does not comply with Australian Standard AS 2890.1 Parking Facilities or has a length of at least 5 metres, whichever is lesser; and*

*(b) Council not rely on the minimum dimension for open car spaces detailed in the Parking and Single Dwelling DCP and assess all the current and future Development Applications against the Australian Standard or a minimum length of 5 metres, whichever is the lesser.*

A request for further information (RFI) letter was sent to the applicant dated 8 December 2022 asking that amended plans be submitted to show a recessed/indented area beneath the front of the dwelling (0.60m deep and 1.20m high) so as to meet Council's requirements to achieve an absolute minimum internal length of the car space of 5.00m.

The applicant provided amended plans 13 December and further clarification on 16 December 2022. The amended plans were referred to Council's Development Engineer and comments have been received advising that the recessed/indented area is acceptable to Council as it meets the minimum requirements requested.

- **Existing street tree and power pole along the Storey Street frontage**

The applicant originally sought to retain the existing street tree located on Council's Storey Street verge and have to the driveway located 290mm away from the power pole.

Council's Landscape Development Officer has observed that the tree is in poor condition due to lopping by service authorities and the species is no longer used by Council as a street tree due to issues associated with cavities/splits and their short lifespans. No objection is therefore raised to this tree being removed to allow for a more suitable replacement species that is consistent with the streetscape.

The amended plans submitted have also relocated the proposed driveway to be setback 500mm from the power pole as required by Council.

## **9. Conclusion**

That the application to construct a new driveway and hard stand car space at the front of the dwelling at 45 Storey Street, Maroubra be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013
- The proposal is consistent with the specific objectives of the R2 zone in that the proposal will improve the amenity for the owners of the site and will be consistent with the existing streetscape character.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.



## Appendix 1: Referrals

### Development Engineer and Landscape Development Officer

An **amended application** has been received for a hardstand carpark space at the front of the existing dwelling.

This report is based on the following plans and documentation:

- **Amended** Architectural Plans by Pinnacle Designs dated 13.12.22;
- Statement of Environmental Effects by Pinnacle Plus;
- Survey Plan by Harrison Friedman & Assoc.

### Car Space Comments/Amendments

Amended plans have been submitted, as requested, which show a recessed/indented area beneath the front of the dwelling (0.60m deep and 1.20m high) so as to meet Council's requirements to achieve an absolute minimum internal length of the car space of 5.00m.

The recessed/indented area is acceptable to Council as it meets the minimum requirements requested. The amended plans do not show the width of the indentation which Development Engineering will condition to be shown on the plans prior to the issuing of a Construction Certificate.

### Car space Length

In an ordinary Council meeting on the 24<sup>th</sup> July 2007 Council passed a resolution that;

(a) Councillors resolve not to use call up powers for a development application on the sole basis of a residential car parking space where the space does not comply with Australian Standard AS 2890.1 Parking Facilities or has a length of at least 5 metres, whichever is lesser; and

(b) Council not rely on the minimum dimension for open car spaces detailed in the Parking and Single Dwelling DCP and assess all the current and future Development Applications against the Australian Standard or a minimum length of 5 metres, whichever is the lesser.

### Tree Management Comments

While the mature *Agonis flexuosa* (Willow Myrtle) located on Council's Storey Street verge, towards the eastern site boundary is automatically protected by the DCP due to its location on public property, it was observed to be in poor condition due to being topped beneath the overhead wires by service authorities, with all lower growing branches also having been lopped off as well so as to provide a clearance from the footpath to its south and roadway to its north.

This species is no longer even used by Council as a street tree due to issues associated with cavities/splits and their short lifespans, with *Gleditsia*'s noted as being the new strategy in this street, as can be seen just past the western site boundary, as well as further down the street to the east, with there being ample space nearby for the planting of new, compensatory street trees.

Despite the original plans showing a minimal offset of 1055mm being provided between the eastern edge of the new centrally located vehicle crossing and its trunk (presumably to attempt its retention), Council advised this was insufficient due both to the amount of root damage that would occur as well as future line of sight/safety issues.

Due also to the width of this Lot and the presence of the existing power pole towards the western boundary (which requires a setback of 500mm), there is no other option for a re-design where the tree could remain whilst still providing off-street parking due to a lack of available space.

For these reasons, and consistent with past advice, conditions allow removal of this declining specimen, which will then allow a more desirable replacement species which is consistent with the theme throughout the rest of the streetscape to be provided in its place.

The various shrubs in the front setback are all insignificant so will not pose a constraint to these works and can be removed where needed.

**Appendix 2: DCP Compliance Table****3.1 Section C1: Low Density Residential**

DCP Clause	Controls	Proposal	Compliance
	<b>Classification</b>	Zoning = R2	Yes
<b>2</b>	<b>Site planning</b>	No changes to lot size or dimensions.	Yes
<b>2.1</b>	<b>Minimum lot size and frontage</b>		
	Minimum lot size (RLEP): <ul style="list-style-type: none"> <li>R2 = 400sqm</li> <li>R3 = 325sqm</li> </ul>	400m <sup>2</sup>	No change to the lot size
	<b>Minimum frontage</b>		
	i) Min frontage R2 = 12m ii) Min frontage R3 = 9m iii) No battle-axe or hatchet in R2 or R3 iv) Minimum frontage for attached dual occupancy in R2 = 15m v) Minimum frontage for detached dual occupancy in R2 = 18m	Min = 12m Existing = 6.57m	No change
<b>2.3</b>	<b>Site coverage</b>		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45%	Site = 242m <sup>2</sup> Maximum = 60% Proposed = no change as driveways are excluded from site coverage.	No change
<b>2.4</b>	<b>Landscaping and permeable surfaces</b>		
	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 = 242m <sup>2</sup> Existing = 136m <sup>2</sup>  It is proposed to reduce this by 13m <sup>2</sup> , which will result in approx. 122m <sup>2</sup> or 50% landscaped area.	Yes
<b>2.5</b>	<b>Private open space (POS)</b>		
	<b>Dwelling &amp; Semi-Detached POS</b>		
	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 = 242m <sup>2</sup> The existing rear yard will not be altered.	Yes
<b>3</b>	<b>Building envelope</b>		
<b>3.1</b>	<b>Floor space ratio LEP 2012 =</b>	There is no change to the GFA or FSR.	No change
<b>3.2</b>	<b>Building height</b>		
	<b>Maximum overall height LEP 2012 =</b>	There is no change to the	No change

DCP Clause	Controls	Proposal	Compliance
		height of the dwelling.	
	i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded	There is no change to the height of the dwelling.	No change
<b>3.3</b>	<b>Setbacks</b>		
<b>3.3.1</b>	<b>Front setbacks</b> 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	There is no change to the front setback of the dwelling.	No change
<b>3.3.2</b>	<b>Side setbacks:</b> Semi-Detached Dwellings: • Frontage less than 6m = merit • Frontage b/w 6m and 8m = 900mm for all levels Dwellings: • Frontage less than 9m = 900mm • Frontage b/w 9m and 12m = 900mm (Gnd & 1 <sup>st</sup> floor) 1500mm above • Frontage over 12m = 1200mm (Gnd & 1 <sup>st</sup> floor), 1800mm above.  Refer to 6.3 and 7.4 for parking facilities and outbuildings	There is no change to the side setback of the dwelling.	No change
<b>3.3.3</b>	<b>Rear setbacks</b> i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments. ii) Provide greater than aforementioned or demonstrate not required, having regard to: - Existing predominant rear setback line - reasonable view sharing (public and private) - protect the privacy and solar access iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions. iv) For irregularly shaped lots = merit assessment on basis of: - - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts  Refer to 6.3 and 7.4 for parking facilities and outbuildings	There is no change to the rear setback of the dwelling.	No change

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DCP Clause	Controls	Proposal	Compliance
<b>4</b>	<b>Building design</b>		
<b>4.1</b>	<b>General</b>		
	Respond specifically to the site characteristics and the surrounding natural and built context - <ul style="list-style-type: none"> <li>articulated to enhance streetscape.</li> <li>stepping building on sloping site,</li> <li>no side elevation greater than 12m</li> <li>encourage innovative design</li> </ul>	A minor alteration will be made to the front façade for a recessed area beneath the front of the dwelling to accommodate the parking space.	Yes, as per the Development Engineer's comments
<b>4.2</b>	<b>Additional Provisions for symmetrical semi-detached dwellings</b>		
	i) Enhance the pair as coherent entity: <ul style="list-style-type: none"> <li>behind apex of roof; low profile or consistent with existing roof</li> <li>new character that is first floor at front only after analysis streetscape outcome</li> </ul> ii) Constructed to common boundary of adjoining semi iii & iv) avoid exposure of blank party walls to adjoining semi and public domain	The proposed changes to the front façade will not significantly alter the pair of semi-detached dwellings at 45 & 47 Storey St.	Yes
<b>4.3</b>	<b>Additional Provisions for Attached Dual Occupancies</b>		
	Should present a similar bulk as single dwellings. i) Garage for each dwelling shall have a single car width only ii) Articulate and soften garage entry iii) Minimise driveway width iv) Maximum 2m setback of front entry from front façade v) Maximise landscape planting at front	N/A	N/A
<b>4.4</b>	<b>Roof Design and Features</b>		
	<i>Rooftop terraces</i> i) on stepped buildings only (not on uppermost or main roof) ii) above garages on sloping sites (where garage is on low side) <i>Dormers</i> iii) Dormer windows don't dominate iv) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof. v) Multiple dormers consistent vi) Suitable for existing <i>Celestial windows and skylights</i> vii) Sympathetic to design of dwelling <i>Mechanical equipment</i> viii) Contained within roof form and not visible from street and surrounding properties.	N/A	N/A
<b>4.5</b>	<b>Colours, Materials and Finishes</b>		
	i) Schedule of materials and finishes	N/A	N/A

DCP Clause	Controls	Proposal	Compliance
	ii) Finishing is durable and non-reflective. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) recycle and re-use sandstone (See also section 8.3 foreshore area.)		
<b>4.6</b>	<b>Earthworks</b>		
	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.	Minimal cut is proposed within the hard stand area, as shown on the submitted plans.	Yes
<b>5</b>	<b>Amenity</b>		
<b>5.1</b>	<b>Solar access and overshadowing</b>		
	<b>Solar access to proposed development:</b>		
	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) receives a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.	The works do not affect solar access or overshadowing.	No change
	<b>Solar access to neighbouring development:</b>		
	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"> <li>Degree of meeting the FSR, height,</li> </ul>	The works do not affect solar access or overshadowing.	No change



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DCP Clause	Controls	Proposal	Compliance
	setbacks and site coverage controls. <ul style="list-style-type: none"> <li>Orientation of the subject and adjoining allotments and subdivision pattern of the urban block.</li> <li>Topography of the subject and adjoining allotments.</li> <li>Location and level of the windows in question.</li> <li>Shadows cast by existing buildings on the neighbouring allotments.</li> </ul>		
<b>5.2</b>	<b>Energy Efficiency and Natural Ventilation</b>		
	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"> <li>Skylights (ventilated)</li> <li>Clerestory windows</li> <li>Fanlights above doorways</li> <li>Highlight windows in internal partition walls.</li> </ul> ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries. iii) living rooms contain windows and doors opening to outdoor areas. <i>Note:</i> The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable	The works do not affect energy efficiency or natural ventilation.	No change
<b>5.3</b>	<b>Visual Privacy</b>		
	<b>Windows</b>		
	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"> <li>windows are offset or staggered.</li> <li>minimum 1600mm windowsills</li> <li>Install fixed and translucent glazing up to 1600mm minimum.</li> <li>Install fixed privacy screens to windows.</li> <li>Creating a recessed courtyard (minimum 3m x 2m).</li> </ul> ii) orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)	N/A	N/A
	<b>Balcony</b>		
	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)	N/A	N/A

DCP Clause	Controls	Proposal	Compliance
	vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.		
<b>5.4</b>	<b>Acoustic Privacy</b>		
	i) noise sources not located adjacent to adjoining dwellings bedroom windows <i>Attached dual occupancies</i> ii) Reduce noise transmission between dwellings by: <ul style="list-style-type: none"> <li>- Locate noise-generating areas and quiet areas adjacent to each other.</li> <li>- Locate less sensitive areas adjacent to the party wall to serve as noise buffer.</li> </ul>	The car space will be located at the front of the site, similar to that of No. 47 Storey St.	Yes
<b>5.5</b>	<b>Safety and Security</b>		
	i) dwellings main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 square metres) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not to obstruct casual surveillance (maintain safe access)	The dwelling entry will remain visible from the street.	Yes
<b>5.6</b>	<b>View Sharing</b>		
	i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas. ii) retaining existing views from the living areas are a priority over low use rooms iii) retaining views for the public domain takes priority over views for the private properties iv) fence design and plant selection must minimise obstruction of views v) Adopt a balanced approach to privacy protection and view sharing vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA. (certified height poles used)	Not affected.	N/A
<b>6</b>	<b>Car Parking and Access</b>		
<b>6.1</b>	<b>Location of Parking Facilities:</b>		
	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: <ul style="list-style-type: none"> <li>- Frontage &gt;12m,</li> <li>- Consistent with pattern in the street;</li> <li>- Landscaping provided in the front yard.</li> </ul>	The site only has access to Storey St and a single driveway is proposed. The site is constrained in that the only area available for parking is within the front setback. No structures are proposed. The car space is	Yes

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DCP Clause	Controls	Proposal	Compliance
	v) Minimise excavation for basement garages vi) Avoid long driveways (impermeable surfaces)	dissimilar to others in the streetscape.	
<b>6.2</b>	<b>Parking Facilities forward of front façade alignment (if other options not available)</b>		
	i) The following may be considered: <ul style="list-style-type: none"> <li>- An uncovered single car space</li> <li>- A single carport (max. external width of not more than 3m and</li> <li>- Landscaping incorporated in site frontage</li> </ul> ii) Regardless of the site's frontage width, the provision of garages (single or double width) within the front setback areas may only be considered where: <ul style="list-style-type: none"> <li>- There is no alternative, feasible location for accommodating car parking;</li> <li>- Significant slope down to street level</li> <li>- does not adversely affect the visual amenity of the street and the surrounding areas;</li> <li>- does not pose risk to pedestrian safety and</li> <li>- does not require removal of significant contributory landscape elements (such as rock outcrop or sandstone retaining walls)</li> </ul>	As above, the only area available for a car space is in front of the dwelling. The single car space will be uncovered and will be of permeable paving.	Yes
<b>6.3</b>	<b>Setbacks of Parking Facilities</b>		
	i) Garages and carports comply with Sub-Section 3.3 Setbacks. ii) 1m rear lane setback iii) Nil side setback where: <ul style="list-style-type: none"> <li>- nil side setback on adjoining property;</li> <li>- streetscape compatibility;</li> <li>- safe for drivers and pedestrians; and</li> <li>- Amalgamated driveway crossing</li> </ul>	No garage or carport is proposed.	N/A
<b>6.4</b>	<b>Driveway Configuration</b>		
	Maximum driveway width: <ul style="list-style-type: none"> <li>- Single driveway – 3m</li> <li>- Double driveway – 5m</li> </ul> Must taper driveway width at street boundary and at property boundary.	The driveway will be 3m wide and will taper at the property boundary.	Yes
<b>6.5</b>	<b>Garage Configuration</b>		
	i) recessed behind front of dwelling ii) The maximum garage width (door and piers or columns): <ul style="list-style-type: none"> <li>- Single garage – 3m</li> <li>- Double garage – 6m</li> </ul> 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	A garage is not proposed.	N/A
<b>6.6</b>	<b>Carport Configuration</b>		

DCP Clause	Controls	Proposal	Compliance
	i) Simple post-support design (max. semi-enclosure using timber or metal slats minimum 30% open). ii) Roof: Flat, lean-to, gable or hipped with pitch that relates to dwelling iii) 3m maximum width. iv) 5.4m minimum length v) 2.6m maximum height with flat roof or 3.0m max. height for pitched roof. vi) No solid panel or roller shutter door. vii) front gate allowed (minimum 30% open) viii) Gate does not open to public land	No carport is proposed.	N/A
<b>6.7</b>	<b>Hardstand Car Space Configuration</b>		
	i) Prefer permeable materials in between concrete wheel strips. ii) 2.4m x 5.4m minimum dimensions	Permeable paving will be used for the 3m x 5m car space.	Yes
<b>7</b>	<b>Fencing and Ancillary Development</b>		
<b>7.1</b>	<b>General - Fencing</b>		
	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	No new fencing is proposed.	N/A
<b>7.2</b>	<b>Front Fencing</b>		
	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) lightweight materials used for open design and evenly distributed iii) 1800mm max solid front fence permitted in the following scenarios: - Site faces arterial road - Secondary street frontage (corner allotments) and fence is behind the alignment of the primary street façade (tapered down to fence height at front alignment). <i>Note: Any solid fences must avoid continuous blank walls (using a combination of materials, finishes and details, and/or incorporate landscaping (such as cascading plants))</i> iv) 150mm allowance (above max fence height) for stepped sites v) Natural stone, face bricks and timber are preferred. Cast or wrought iron pickets may be used if compatible. vi) Avoid roofed entry portal, unless complementary to established fencing pattern in heritage streetscapes. vii) Gates must not open over public land. viii) The fence must align with the front property boundary or the predominant fence setback line along the street.	No new fencing is proposed. A section of the existing front fence will be demolished to accommodate the car space, as indicated on the submitted plans.	Yes

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DCP Clause	Controls	Proposal	Compliance
	ix) Splay fence adjacent to the driveway to improve driver and pedestrian sightlines.		
<b>7.3</b>	<b>Side and rear fencing</b>		
	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.	No change.	N/A
<b>7.4</b>	<b>Outbuildings</b>		
	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"> <li>- finished external walls (not requiring maintenance;</li> <li>- no openings facing neighbours lots and</li> <li>- maintain adequate solar access to the neighbours dwelling</li> </ul> v) First floor addition to existing may be considered subject to: <ul style="list-style-type: none"> <li>- Containing it within the roof form (attic)</li> <li>- Articulating the facades;</li> <li>- Using screen planting to visually soften the outbuilding;</li> <li>- Not being obtrusive when viewed from the adjoining properties;</li> <li>- Maintaining adequate solar access to the adjoining dwellings; and</li> <li>- Maintaining adequate privacy to the adjoining dwellings.</li> </ul> vi) Must not be used as a separate business premises.	None proposed.	N/A
<b>7.5</b>	<b>Swimming pools and Spas</b>		
	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.	None proposed.	N/A
<b>7.6</b>	<b>Air conditioning equipment</b>		



DCP Clause	Controls	Proposal	Compliance
	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.	None proposed.	N/A
<b>7.7</b>	<b>Communications Dishes and Aerial Antennae</b>		
	i) Max. 1 communications dish and 1 antenna per dwelling. ii) Positioned to minimise visibility from the adjoining dwellings and the public domain, and must be: <ul style="list-style-type: none"> <li>- Located behind the front and below roof ridge;</li> <li>- minimum 900mm side and rear setback and</li> <li>- avoid loss of views or outlook amenity</li> </ul> iii) Max. 2.7m high freestanding dishes (existing).	None proposed.	N/A
<b>7.8</b>	<b>Clothes Drying Facilities</b>		
	i) Located behind the front alignment and not be prominently visible from the street	None proposed.	N/A
<b>8</b>	<b>Area Specific Controls</b>		
<b>8.1</b>	<b>Development in Laneways</b>		
	i) Max. 6m height. Max. 4.5m external wall height. Mass and scale to be secondary to primary dwelling and upper level contained within roof form (attic storey). ii) 1 operable window to laneway elevation (casual surveillance) iii) Aligns with consistent laneway setback pattern (if no consistent setback, then 1m rear setback). (Refer to Sub-Section 6 for controls relating to setback to garage entry.) iv) Nil side setback allowed subject to: <ul style="list-style-type: none"> <li>- adjoining building similarly constructed</li> <li>- no unreasonable visual, privacy and overshadowing impacts</li> </ul> v) Screen or match exposed blank walls on adjoining properties (i.e. on common boundary).	Not applicable.	N/A

### 3.2 Section B7: Transport, Traffic, Parking and Access

DCP Clause	Controls	Proposal	Compliance
<b>3.2</b>	<b>Vehicle Parking Rates</b>		
	1 space per dwelling house with up to 2 bedrooms 2 spaces per dwelling house with 3 or more bedrooms  Note: Tandem parking for 2 vehicles is allowed.	1 car space is proposed.	Yes

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**Responsible officer:** GAT & Associates, Town Planners

**File Reference:** DA/541/2022

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## Development Consent Conditions (Dwellings and Dual Occupancies)



<b>Folder /DA No:</b>	DA/541/2022
<b>Property:</b>	45 Storey Street, MAROUBRA NSW 2035
<b>Proposal:</b>	Construction of a driveway and hard stand car space.
<b>Recommendation:</b>	Approval

### Development Consent Conditions

#### GENERAL CONDITIONS

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

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

#### Approved Plans & Supporting Documentation

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

<b>Plan</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Received by Council</b>
DA-01.10 Revision 3 Ground Floor Plan	Pinnacle Design Studio	16.12.22	20.02.23
DA-02.10 Revision 3 Roof Plan	Pinnacle Design Studio	16.12.22	20.02.23
DA-03.00 Revision 3 Site Plan	Pinnacle Design Studio	16.12.22	20.02.23
DA-05.10 Revision 3 Driveway Section	Pinnacle Design Studio	16.12.22	20.02.23

#### 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**

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

**Security Deposits**

3. The following damage/civil works security deposits requirement must be complied with as security for making good any damage caused to the roadway, footway, verge or any public place; and as security for completing any public work; and for remedying any defect on such public works, in accordance with section 4.17(6) of the *Environmental Planning and Assessment Act 1979*:

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

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

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

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

**Sydney Water Requirements**

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

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

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

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

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

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

**Design Alignment Levels**

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

- **Match the back of the existing Council footpath levels along the full site frontage.**

The design alignment levels at the property boundary as issued by Council and their relationship to the Council footpath must be indicated on the building plans for the construction certificate (a construction note on the plans is considered satisfactory). The design alignment level at the street boundary, as issued by the Council, must be strictly adhered to.

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

6. The above alignment levels and the site inspection by Council's Development Engineer have been issued at a prescribed fee of **\$176**. This amount is to be paid prior to a construction certificate being issued for the development.

**Internal Car space Design prior to issuing Construction Certificate**

7. The gradient of the car space must be designed and constructed to not exceed 1 in 20 (5%) and the levels of the car space must match the alignment levels at the property boundary (as specified by Council). Details of compliance are to be included in the construction certificate documentation.

8. Prior to the issuing of a Construction Certificate the plans for the internal car space are to show the following:

A recessed/indented area under the front of the dwelling which is 0.60m deep from the front of the dwelling x 1.20m high/clear from the paving level of the proposed car space to the underside of the indented area.

The recessed/indented area is also to be a minimum 2.40m wide.

The above requirements are needed to ensure the internal car space satisfies the absolute minimum length of 5.00m.

The Principal Certifier is to ensure compliance with the above requirements prior to issuing a Construction Certificate.

**Stormwater Drainage**

9. Surface water/stormwater runoff from the car space must be drained and discharged to the street gutter in front of the site to the satisfaction of the Principal Certifier and details of the proposed stormwater drainage system are to be included in the construction certificate details for the development.

**Street Tree Management**

10. The applicant must submit a payment of **\$1,145.65** (GST inclusive) to cover the following costs:
  - a) For Council to remove, stump-grind and dispose of the *Agonis flexuosa* (Willow Myrtle) from the Storey Street verge, towards the eastern site boundary, so as to allow for the new vehicle crossing just to its west as shown, with there being insufficient space for a re-design to allow its retention due to a combination of the width of this Lot and the presence of the power pole towards the western site boundary;
  - b) For Council to supply, plant and maintain 1 x 25 litre replacement *Gleditisa triacanthos* 'Sunburst' (Honey Locust) back on the nature strip, around the common boundary between this site and the adjoining private property at no.47;



- c) A loss of amenity fee in recognition that the only reason this established native tree is being removed from public property is to accommodate the development of private property, with this part of the fee to be used towards additional public plantings elsewhere in the street and surrounding area.

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

**The applicant must contact Council's Landscape Development Officer on 9093-6613 (quoting the receipt number) AND GIVING UP TO SIX WEEKS NOTICE to arrange for its removal prior to the commencement of site works, as well as upon completion, to arrange for planting of the replacement.**

**After advising of the receipt number, any further enquiries regarding scheduling/timing or completion of street tree works are to be directed to Council's South Area Tree Preservation & Maintenance Coordinator on 9093-6964.**

#### REQUIREMENTS PRIOR TO THE COMMENCEMENT OF WORKS

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

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

#### Building Certification & Associated Requirements

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.

**Construction Site Management Plan**

13. 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.

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

**Construction Noise & Vibration Management Plan**

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

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

**Demolition Work**

16. 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 10m<sup>2</sup> of bonded asbestos materials or any friable asbestos material, the work must be undertaken by a SafeWork Licensed Asbestos Removal Contractor.*

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

**Public Utilities**

17. A *Public Utility Impact Assessment* must be carried out on all public utility services on the site, roadway, nature strip, footpath, public reserve or any public areas associated with and/or adjacent to the development/building works and include relevant information from public utility authorities and exploratory trenching or pot-holing, if necessary, to determine the position and level of service.
18. The applicant must meet the full cost for telecommunication companies, gas providers, Ausgrid, and Sydney Water to adjust/repair/relocate their services as required. The applicant must make the necessary arrangements with the service authority.

# **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.

19. The Principal Certifier is to ensure the internal car space is constructed in accordance with the required dimensions of the indented portion of the internal car space.

## **Vegetation**

20. Due to their small size and insignificance, no objections are raised to removing any of the vegetation throughout the front setback of this development site where needed to accommodate the works in this same area as shown, subject to a high quality selection and arrangement of decorative species being provided back in their place to assist with presentation to the streetscape.

## **Site Signage**

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

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

## **Restriction on Working Hours**

22. 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"><li>• Monday to Friday - 7.00am to 5.00pm</li><li>• Saturday - 8.00am to 5.00pm</li><li>• Sunday &amp; public holidays - No work permitted</li></ul>
Excavations in rock, sawing of rock, use of jack-hammers, driven-type piling/shoring or the like	<ul style="list-style-type: none"><li>• Monday to Friday - 8.00am to 3.00pm (maximum)</li><li>• As may be further limited in Noise &amp; Vibration Management Plan</li><li>• Saturday - No work permitted</li><li>• Sunday &amp; public holidays - No work permitted</li></ul>

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

**Construction Site Management**

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

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

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

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

*Notes:*

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

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

- a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.
- b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident.
- c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction.
- d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times.
- e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.
- f) Noise and vibration from the work shall be minimised and appropriate strategies are to be implemented, in accordance with the Noise and Vibration Management Plan prepared in accordance with the relevant EPA Guidelines.
- g) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident.



- h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.
- i) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.
- j) A Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the *Roads Act 1993* and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details.

#### **Demolition Work & Removal of Asbestos Materials**

- 25. 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 10m<sup>2</sup> 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](http://www.randwick.nsw.gov.au) in the Building & Development section or a copy can be obtained from Council's Customer Service Centre.

#### **Excavations and Support of Adjoining Land**

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

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

#### **Building Encroachments**

27. There must be no encroachment of any structures or building work onto or within 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 Requirements

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

#### Council's Infrastructure, Vehicular Crossings, street verge

29. The applicant must meet the full cost for a Council approved contractor to:

- a) Construct a concrete vehicular crossing and layback at kerb opposite the vehicular entrance to the site, to Council's specifications and requirements.

Note: The western edge of the Council driveway is to be constructed with a 0.50m offset from the edge of the Ausgrid Power Pole.

30. The applicant must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.
31. All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must be carried out in accordance with Council's "Crossings and Entrances – Contributions Policy" and "Residents' Requests for Special Verge Crossings Policy" and the following requirements:
- a) Details of the proposed civil works to be carried out on Council land must be submitted to Council in a Civil Works Application Form. Council will respond, typically within 8 weeks, with a letter of approval outlining conditions for working on Council land, associated fees and workmanship bonds. Council will also provide details of the approved works including specifications and construction details.
- b) Works on Council land, must not commence until the written letter of approval has been obtained from Council and heavy construction works within the property are complete. The work must be carried out in accordance with the conditions of development consent, Council's conditions for working on Council land, design details and payment of the fees and bonds outlined in the letter of approval.

- c) The civil works must be completed in accordance with the above, prior to the issuing of an occupation certificate for the development, or as otherwise approved by Council in writing.
32. That part of the nature-strip upon Council's footway which is damaged during the course of the works shall be re-graded and re-turfed with Kikuyu Turf rolls, including turf underlay, wholly at the applicant's cost, to Council's satisfaction, prior to any Occupation Certificate.

**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.

33. Vehicles parked within the car space must not protrude beyond the front property boundary onto the Council footpath or nature strip at any time.

D23/23



## Development Application Report No. D24/23

**Subject:** Unit 5, 184 Arden Street, Coogee (DA/467/2022)

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### Executive Summary

**Proposal:** Unit 5 – Internal alterations to the residential unit  
**Ward:** East Ward  
**Applicant:** Ms Sophie Johnston C/- Council Approval Group  
**Owner:** Ms Sophie Johnston  
**Cost of works:** \$17,380.00  
**Reason for referral:** Demolition works (internal wall) to a Heritage Item

### Recommendation

- A. 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/467/2022 for Internal alterations to the residential unit, at No. 5/184 Arden Street, Coogee, subject to the development consent conditions attached to the assessment report.

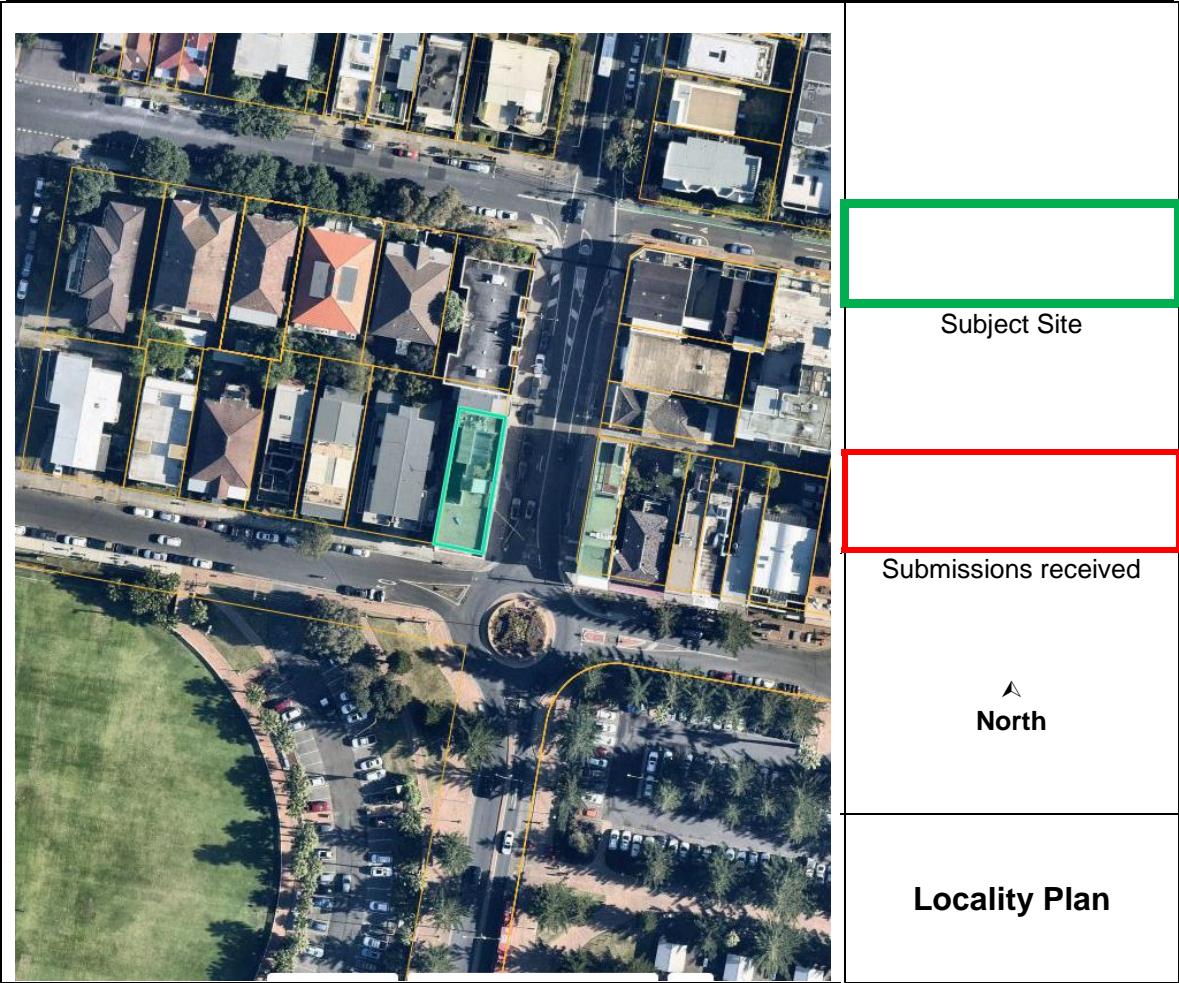
### Attachment/s:

1.  RLPP Dev Consent Conditions - DA/467/2022 - 184 Arden Street, COOGEE NSW  
 2034 - DEV - Randwick City Council

D24/23



D24/23



1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development proposes demolition of an internal wall to a Heritage Item.

2. Site Description and Locality

The subject site is located on the north eastern corner of Arden Street & Dolphin Street in Coogee and is listed as Local Heritage item No. I46 (*Beach Court, Neo-classical Residential Flat Building (RFB)*), under the Randwick Local Environmental Plan 2012. The site is presently occupied by an existing four storey RFB, containing 15 apartments in total. The subject property is located on the first floor and identified as Unit 5. The site has a frontage width of 10.98m, a side boundary depth of 30.48m and has an overall site area of 328.8m<sup>2</sup>.

The surrounding locality consists of a mixture of residential properties (RFBs, dwelling houses and the like); mixed use development (shop top housing); commercial premises (predominantly license and unlicensed food and drink premises), to the east of the site, along the northern side of Dolphin Street and the Coogee Oval Cricket Ground is opposite, on the southern side of Dolphin Street. **Figure 1** is a street view of the subject site.



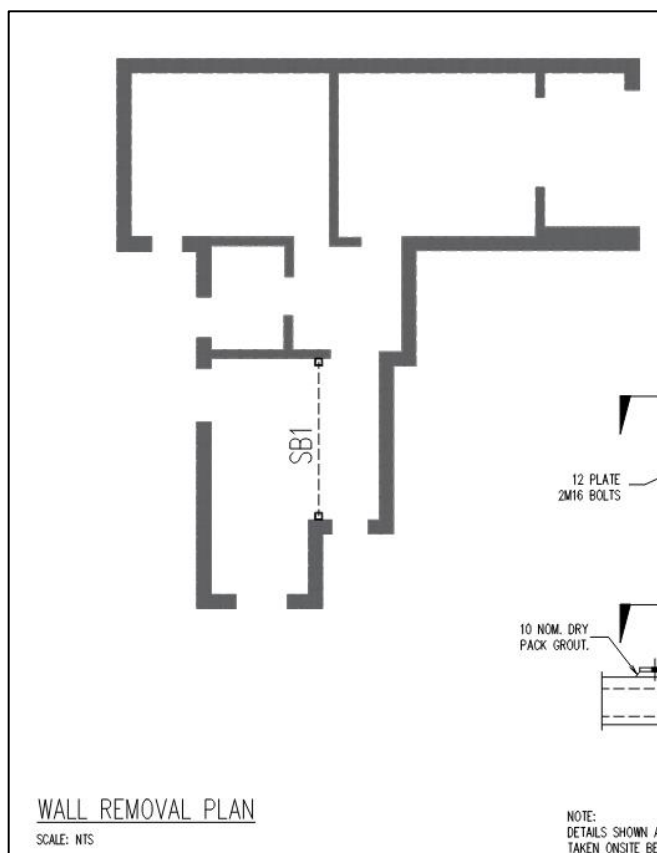
**Figure 1** - View of the existing building from Arden Street (Source: Google Street view)

### 3. Relevant history

There is no relevant history pertaining to this application.

### 4. Proposal

The proposal involves removal of an internal structural wall to facilitate the existing kitchen area. This includes removal of an internal wall between the kitchen and the hallway, and kitchen fit out works. Extracts of the floor plans showing the proposed alterations are provided below in **Figures 2 and 3**.



**Figure 2** – Wall Removal Plan

D24/23

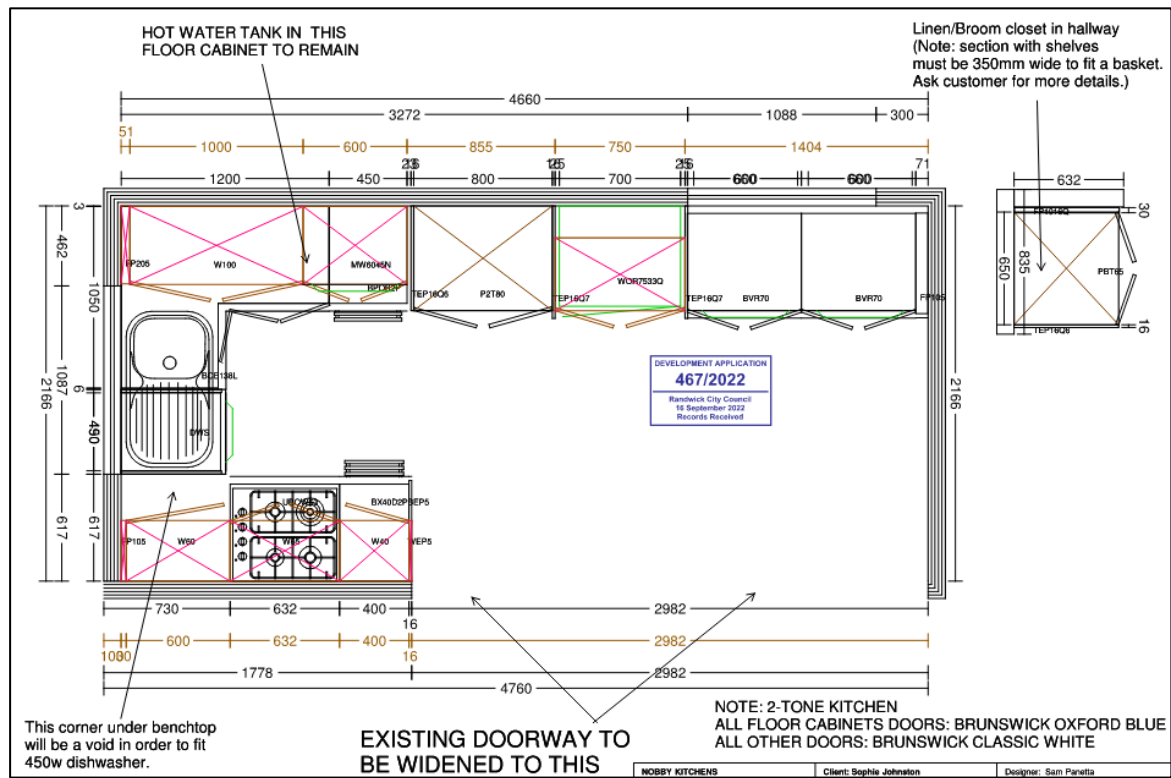


Figure 3 – Proposed modified layout – Apartment 5



This diagram is for illustrative purpose only. All reasonable care has been taken in the preparation, but no warranty is given to the accuracy of the information. This document does not constitute any part of any offer or contract. Dimensions shown are approximate only. Prospective purchasers must rely on their own enquiries.

Figure 4 – Existing Floor Plan (Source: Realestate.com.au)

## 5. Notification

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

## 6. Relevant Environment Planning Instruments

The existing use of the site is for a Residential Flat Building. As detailed under the Key Issues heading, existing use rights pertain to the site under Part 4, Division 4.11 of the EP&A Act and Part 5 of the EP&A Regulation 2000, and the subject application therefore may be considered and determined under the provisions.

### 6.1. SEPP 65 - Design Quality of Residential Apartment Developments

The *State Environmental Planning Policy No 65—Design Quality of Residential Apartment Development* (SEPP 65) aims to promote quality design of Residential Flat Buildings. The proposed development has historically been subject to SEPP 65 as it involves a development that contains more than four dwellings and more than three storeys. The proposal is for renovation of a kitchen and removal of an internal structural wall between the kitchen and the hallway, to Unit 5 within the existing RFB and an assessment has been carried out in conjunction with the ADG for this apartment. The proposed development is not considered a substantial redevelopment or refurbishment of the existing residential flat building. As a result, SEPP 65 is not triggered in this case because *the alterations and additions do not substantially change the built form*.

Notwithstanding, reference to Appendix 3 which is a SEPP 65 compliance table is made to demonstrate that the proposal will remain compliant with SEPP 65 and the ADG.

### 6.2. SEPP (Resilience Hazards) 2021

The SEPP promotes an integrated and coordinated approach to development assessment, with tailored development controls to ensure development proponents and consent authorities consider and address the most important issues for the coastal management area(s) the proposal falls within.

Chapter 2 (Coastal Management) of the SEPP implements the objectives of the *Coast Management Act 2016* from a land use planning perspective, by specifying approval pathways and how development proposals are to be assessed if they fall within the coastal zone.

The coastal zone is defined in the Act as being the area comprised of one or more of four coastal management areas:

- Coastal wetlands and littoral rainforests area – defined as areas with particular hydrological and ecological characteristics.
- Coastal vulnerability area – defined as the area affected by any one of seven coastal hazards.
- Coastal environmental area – defined as the coastal waters of the state, estuaries, coastal lakes and foreshores including beaches, dunes, headlands and rock platforms as well as surrounding land.
- Coastal use area – defined as land adjacent to the coast, where development is or may be carried out.

The proposed development is not identified on Council's mapping system as being located within any of the four coastal zones outlined above, and therefore further consideration is not deemed necessary in this instance.

Chapter 4 (Remediation) of the SEPP establishes a statewide planning approach for the remediation of contaminated land. It promotes the remediation of contaminated land to reduce the potential risk and harm to human health or/and the environment by:

- Making remediation work permissible, despite anything to the contrary in other environmental planning instrument.



- Specifying when development consent is, and is not required, for remediation work.
- Specifying considerations that are relevant in determining development applications.
- Requiring remediation work meet certain standards and notification requirements.

Chapter 4, section 4.6 of the SEPP requires Council to consider contamination and remediation in determining a development application. The development site has been utilised for the purposes of a dwelling for a period of time, and such use is not proposed to change as part of this modification application. Notwithstanding, the development site is not considered to be contaminated land in accordance with council's Contaminated Land Policy and subsequently, further investigation is not considered necessary in this instance.

### 6.3. SEPP (Building Sustainability Index: BASIX) 2004

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

### 6.4. Randwick Local Environmental Plan 2012 (LEP)

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

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

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.4: Floor space ratio (max)	0.9:1	No change proposed.	Yes
Cl 4.3: Building height (max)	12m	No change proposed.	Yes
Cl 4.1: Heritage	Proposal site is identified as an item of local heritage significance 146 'Beach Court'.	The application solely relates to demolition of an internal wall to the kitchen to facilitate a kitchen renovation. No works are proposed to the external building façade.	Yes – Refer to key issues section above and referral comments from relevant technical specialists below. Proposal is supported subject to removal of an internal kitchen wall to facilitate a kitchen renovation.

#### 6.4.1. Clause 4.6 - Exceptions to development standards

The proposal involves a renovation to the existing kitchen and removal of internal structural walls between the kitchen and the hallway. Therefore, the development standards will remain unchanged.

#### 6.4.2. Clause 5.10 - Heritage conservation

Refer to the Referrals section below for an assessment against Clause 5.10 of the RLEP 2012.

#### 6.4.3. Clause 6.7 - Foreshore scenic protection area

The site is identified as being located within the Foreshore Scenic Protection Area pursuant to the Foreshore Scenic Protection Area Map referred to in Clause 6.7 (2) of the RLEP 2012.

#### 6.7 Foreshore scenic protection area

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

- (a) *to recognise, protect and enhance the natural, visual and environmental qualities of the scenic areas of the coastline,*
- (b) *to protect and improve visually prominent areas adjoining the coastal foreshore,*
- (c) *to protect significant public views to and from the coast,*
- (d) *to ensure development in these areas is appropriate for the location and does not detract from the scenic qualities of the coast.*

(2) *This clause applies to land identified as "Foreshore scenic protection area" on the [Foreshore Scenic Protection Area Map](#).*

(3) *Development consent must not be granted for development on land to which this clause applies unless the consent authority is satisfied that the development:*

- (a) *is located and designed to minimise its visual impact on public areas of the coastline, including views to and from the coast, foreshore reserves, open space and public areas, and*
- (b) *contributes to the scenic quality of the coastal foreshore.*

#### Assessing officer's comment:

The proposed alterations are to renovate the kitchen and will remove the structural wall between the kitchen and the hallway. The alterations are internal and will not be visible from the street. The proposal will not alter the FSR and building height standards, and therefore will not have any impact to views to or from the coast. The existing presentation to the street will remain unchanged. The proposal will therefore contribute to the scenic qualities of the coastal foreshore, retaining the existing use.

## 7. Development control plans and policies

### 7.1. Randwick Comprehensive DCP 2013

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

The relevant provisions of the DCP are addressed in Appendix 4.

## 8. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 4 and the discussion in key issues below.



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Section 4.15 'Matters for Consideration'	Comments
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 residential character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	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.

### 8.1. Discussion of key issues

#### Heritage Items

The site is a residential flat building is not contained within a Heritage Conservation Area (HCA), however it is locally listed Heritage Item (I46), within Schedule 5 of the Randwick Local Environmental Plan 2012.



**Figure 4 – Proximity to Heritage Items**

The subject site is located to the south-west of numerous Heritage sites including:

- No.169-181 Dolphin Street, Coogee
- No. 182 Arden Street, Coogee
- No.158 – 176 Arden Street, Coogee
- No. 29 Arcadia Street, Coogee
- No. 26 – 30 Arcadia Street, Coogee

The subject site is located adjacent to another locally listed heritage item (I145) at number 182 Arden Street.

The proposal involves the removal of an internal wall located between the entrance hallway and the kitchen. This will facilitate enlargement of the kitchen and eating area. Given, the traditional configuration of the apartment a substantial entrance and circulatory space is provided. The internal alterations will not unreasonably reduce public view of the heritage item or its setting, the new development will not visually dominate the heritage building. The internal alterations will not unreasonably overshadow any heritage buildings and it is consistent with the character and form of other heritage items within the locality.

## 9. Conclusion

That the application to Unit 5 – Internal alterations to the residential unit be approved (subject to conditions) for the following reasons:

- The proposed development is consistent with the relevant objectives contained within the Randwick Local Environmental Plan 2012 and the relevant requirements of the Randwick Development Control Plan 2013.
- The proposal is consistent with the objectives contained within SEPP 65.
- The proposal is consistent with the specific objectives of the R3 zone in that the proposed activity and built form will provide for the housing needs of the community whilst enhancing the aesthetic character and protecting the amenity of the local residents.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.

- The proposal consists of internal works of a minor nature that will not be visible from the exterior of the building and the kitchen fitout will have minimal impact on the significance of the building, which satisfies the heritage requirements of the Randwick Local Environmental Plan 2012 and Randwick Development Control Plan 2013.

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## Appendix 1: Referrals

### 1. Internal referral comments:

#### 1.1. Heritage planner

##### The Site

The subject property is one of 15 apartments contained within an interwar residential flat building located at 184 Arden Street Coogee, on the corner of Arden and Dolphin Streets. The building has a legal land parcel description of SP54713. This building, named as *Beach Court* is a large, rendered and painted Neo-Classical presentation of four-storeys, including a basement level (which is at full height on the Dolphin Street façade). The Arden Street facade features a visually impressive recessed central section set within a large two-storey portico supported by huge classical columns and incorporating balconies at each level. The building is maintained in generally good condition and with appropriate paintwork.

This residential flat building is not contained within a Heritage Conservation Area (HCA), however, it is a locally listed Heritage Item (I146), within Schedule 5 of the Randwick Local Environmental Plan 2012. It is also located adjacent to another locally listed heritage item (I145) at number 182 Arden Street. The proposed work, however, is simple in nature and is contained within the building, with no visible relationship to either the exterior of the building nor any other heritage item.

Within this flat building the subject property is known as apartment 5 and is located on the first floor. It is sited immediately below apartments 9 and 15 and it mirrors the layout of both.

##### Background

Several decorative balcony sections are now fully enclosed. There are some light-metal security enclosures to the balconies on the east side. In both the apartments 5 and 9 the former balcony spaces to Arden Street are now enclosed and functioning named as internal spaces.

##### Proposal

The proposal involves only apartment 5 and is for the removal of about two metres of an internal structural wall located between the entrance hallway and the kitchen. This will allow for an enlargement of the existing kitchen and eating area for better contemporary amenity.

It is noted that the traditional configuration of these apartments included substantial entrance and circulatory spaces. In contemporary circumstances these spaces are often disproportionate to the overall size of the apartment.

##### Submission

The submission includes:

- Body Corporate owners consent with Common Seal dated 1 September 2022 and including also the Strata Plan (received by Council 16 September 2022)
- A Statement of Environmental Effects (SEE) prepared by Tom Hutchison of *Council Approval Group* 8 September 2022 (received by Council 16 September 2022)
- A Statement of Heritage Impact prepared by *Council Approval Group* 8 September 2022 (received by Council 16 September 2022)
- Detailed sets of engineering and kitchen plans of February 2022 (received by Council 16 September 2022)

##### 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.

### **Comments**

- The proposed internal works are of a minor in nature and will not be visible from the exterior of the building
- The proposed kitchen fitout will have minimal perceived impact on the significance of the building
- The proposed part wall removal is reversible should a future owner wish to reinstate the wall to recreate the original floor plan
- The proposed changes have both Body Corporate approval and structural engineering analysis and certification
- On this basis, the proposal is consistent with the relevant considerations of the RLEP 2012 and the RDCP 2013

### **Recommendation**

There are no further heritage conditions to be included.

## Appendix 2: 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)	No change to communal open space area.	Satisfactory												
	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).	No change to communal open space area.	Satisfactory												
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>&lt; 650m<sup>2</sup></td><td>-</td><td>7%</td></tr><tr><td>650–1,500m<sup>2</sup></td><td>3m</td><td>7%</td></tr><tr><td>&gt;1,500m<sup>2</sup></td><td>6m</td><td>7%</td></tr></table>	Site Area	Min. Dimension	Deep Soil Zone (% site)	< 650m <sup>2</sup>	-	7%	650–1,500m <sup>2</sup>	3m	7%	>1,500m <sup>2</sup>	6m	7%	No change to communal open space area.	Satisfactory
Site Area	Min. Dimension	Deep Soil Zone (% site)													
< 650m <sup>2</sup>	-	7%													
650–1,500m <sup>2</sup>	3m	7%													
>1,500m <sup>2</sup>	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	No change to windows and openings	Satisfactory
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.	This RFB has never had parking and therefore, not applicable.	Satisfactory												

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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>	Notwithstanding, the proposal will not increase the amount of bedrooms.	
<b>Part 4: Designing the Building</b>			
<b>4A</b>	<b>Solar and Daylight Access</b>		
	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.	No change to existing	Satisfactory
	A maximum of 15% of apartments in a building receive no direct sunlight between 9 am and 3 pm at mid-winter	Unit was already approved	Satisfactory
<b>4B</b>	<b>Natural Ventilation</b>		
	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	No change to existing apartment	Satisfactory
	Overall depth of a cross-over or cross-through apartment does not exceed 18m, measured glass line to glass line.	No change to existing apartment	Satisfactory
<b>4C</b>	<b>Ceiling Heights</b>		
	<p>Measured from finished floor level to finished ceiling level, minimum ceiling heights are:</p> <ul style="list-style-type: none"> <li>Habitable Rooms – 2.7m</li> <li>Non-habitable – 2.4m</li> <li>Attic spaces – 1.8m at edge with min 30 degree ceiling slope</li> <li>Mixed use areas – 3.3m for ground and first floor</li> </ul> <p>These minimums do not preclude higher ceilings if desired</p>	No change to existing apartment	Satisfactory
<b>4D</b>	<b>Apartment Size and Layout</b>		
	<p>Apartments are required to have the following minimum internal areas:</p> <ul style="list-style-type: none"> <li>Studio - 35m<sup>2</sup></li> <li>1 bedroom - 50m<sup>2</sup></li> <li>2 bedroom - 70m<sup>2</sup></li> <li>3 bedroom - 90m<sup>2</sup></li> </ul> <p>The minimum internal areas include only one bathroom. Additional bathrooms increase the minimum internal area by 5m<sup>2</sup> each</p> <p>A fourth bedroom and further additional bedrooms increase the minimum internal area by 12 m<sup>2</sup> each</p>	No change to existing apartment internal layout	Satisfactory
	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	Internal reconfiguring proposed however, no change to	Yes, the removal of part of the

Clause	Design Criteria	Proposal	Compliance															
	area of the room. Daylight and air may not be borrowed from other rooms	windows and openings that would impact internal circulation.	wall between the kitchen and hallways is consistent with the Heritage components of the RFB.															
	Habitable room depths are limited to a maximum of 2.5 x the ceiling height	No change to existing apartment internal layout.	Satisfactory															
	In open plan layouts (where the living, dining and kitchen are combined) the maximum habitable room depth is 8m from a window	No change to existing apartment internal layout.	Satisfactory															
	Master bedrooms have a minimum area of 10m <sup>2</sup> and other bedrooms 9m <sup>2</sup> (excluding wardrobe space)	No change to existing apartment internal layout.	Satisfactory															
	Bedrooms have a minimum dimension of 3m (excluding wardrobe space)	No change to existing apartment internal layout.	Satisfactory															
	Living rooms or combined living/dining rooms have a minimum width of: <ul style="list-style-type: none"><li>• 3.6m for studio and 1 bedroom apartments</li><li>• 4m for 2 and 3 bedroom apartments</li></ul>	No change to existing apartment internal layout.	Satisfactory															
	The width of cross-over or cross-through apartments are at least 4m internally to avoid deep narrow apartment layouts	No change to existing apartment internal layout.	Satisfactory															
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 m<sup>2</sup></td><td>-</td></tr><tr><td>1 bedroom</td><td>8 m<sup>2</sup></td><td>2m</td></tr><tr><td>2 bedroom</td><td>10 m<sup>2</sup></td><td>2m</td></tr><tr><td>3+ bedroom</td><td>12 m<sup>2</sup></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 <sup>2</sup>	-	1 bedroom	8 m <sup>2</sup>	2m	2 bedroom	10 m <sup>2</sup>	2m	3+ bedroom	12 m <sup>2</sup>	2.4m	Internal reconfiguring proposed however, no change to windows and openings that would impact internal circulation.	Yes, the removal of part of the wall between the kitchen and hallways is consistent with the Heritage components of the RFB.
Dwelling type	Minimum area	Minimum depth																
Studio	4 m <sup>2</sup>	-																
1 bedroom	8 m <sup>2</sup>	2m																
2 bedroom	10 m <sup>2</sup>	2m																
3+ bedroom	12 m <sup>2</sup>	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 <sup>2</sup> and a minimum depth of 3m	No change to existing apartment.	Satisfactory															
4F	Common Circulation and Spaces																	
	The maximum number of apartments off a circulation core on a single level is eight	No change to existing apartment	Satisfactory															
	For buildings of 10 storeys and over, the maximum number of apartments sharing a single lift is 40	No change to existing apartment	Satisfactory															
4G	Storage																	
	In addition to storage in kitchens, bathrooms and bedrooms, the following storage is provided:	No change to the existing storage situation within Unit 5	Satisfactory															

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Clause	Design Criteria	Proposal	Compliance
	<ul style="list-style-type: none"><li>• Studio apartments - 4m<sup>3</sup></li><li>• 1 bedroom apartments - 6m<sup>3</sup></li><li>• 2 bedroom apartments - 8m<sup>3</sup></li><li>• 3+ bedroom apartments - 10m<sup>3</sup></li></ul> <p>At least 50% of the required storage is to be located within the apartment</p>		

**Appendix 4: DCP Compliance Table****3.3 Section C2: Medium Density Residential**

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
<b>3.</b>	<b>Building Envelope</b>		
<b>3.1</b>	<b>Floor space ratio</b>		
	0.9:1	No change	Yes
<b>3.2</b>	<b>Building height</b>		
	12m	No change	Yes
<b>4.</b>	<b>Building Design</b>		
<b>4.1</b>	<b>Building façade</b>		
	(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.	No change to the building façade.	Yes
<b>4.6</b>	<b>Internal circulation</b>		
	(i) Enhance the amenity and safety of circulation spaces by: <ul style="list-style-type: none"> <li>- Providing natural lighting and ventilation where possible.</li> <li>- Providing generous corridor widths at lobbies, foyers, lift doors and apartment entry doors.</li> <li>- Allowing adequate space for the movement of furniture.</li> <li>- Minimising corridor lengths to give short, clear sightlines.</li> <li>- Avoiding tight corners.</li> <li>- Articulating long corridors with a series of foyer areas, and/or providing windows along or at the end of the corridor.</li> </ul>	Internal reconfiguring proposed however, no change to windows and openings that would impact internal circulation.	Yes, the removal of part of the wall between the kitchen and hallways is consistent with the Heritage components of the RFB.
	(ii) Use multiple access cores to: <ul style="list-style-type: none"> <li>- Maximise the number of pedestrian entries along a street for sites with wide frontages or corner sites.</li> <li>- Articulate the building façade.</li> <li>- Limit the number of dwelling</li> </ul>	No change to existing apartment	Satisfactory

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	units accessible off a single circulation core on a single level to 6 units.		
	(iii) Where apartments are arranged off a double-loaded corridor, limit the number of units accessible from a single core or to 8 units.	No change to existing apartment	Satisfactory
<b>4.7</b>	<b>Apartment layout</b>		
	(i) Maximise opportunities for natural lighting and ventilation through the following measures: <ul style="list-style-type: none"> <li>- Providing corner, cross-over, cross-through and double-height maisonette / loft apartments.</li> <li>- Limiting the depth of single aspect apartments to a maximum of 6m.</li> <li>- Providing windows or skylights to kitchen, bathroom and laundry areas where possible.</li> </ul> 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.	Internal reconfiguring proposed however, no change to windows and openings that would affect internal circulation.	Yes, the removal of part of the wall between the kitchen and hallways is consistent with the Heritage components of the RFB.
	(ii) Design apartment layouts to accommodate flexible use of rooms and a variety of furniture arrangements.	Internal reconfiguring proposed however, no change to windows and openings that would affect internal circulation.	Yes, the removal of part of the wall between the kitchen and hallways is consistent with the Heritage components of the RFB.
	(iii) Provide private open space in the form of a balcony, terrace or courtyard for each and every apartment unit in a development.	No change to private open space.	Satisfactory
	(iv) Avoid locating the kitchen within the main circulation space of an apartment, such as hallway or entry.	The kitchen will remain as existing	Satisfactory
<b>4.9</b>	<b>Colours, materials and finishes</b>		
	(i) Provide a schedule detailing the materials and finishes in the development application documentation and plans. (ii) The selection of colour and material palette must complement the character and style of the building. (iv) Use the following measures to complement façade articulation: <ul style="list-style-type: none"> <li>- Changes of colours and surface texture</li> <li>- Inclusion of light weight materials to contrast with solid masonry surfaces</li> <li>- The use of natural stones is</li> </ul>	No change to the façade of the building	Satisfactory

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>encouraged.</p> <p>(v) Avoid the following materials or treatment:</p> <ul style="list-style-type: none"> <li>- Reflective wall cladding, panels and tiles and roof sheeting</li> <li>- High reflective or mirror glass</li> <li>- Large expanses of glass or curtain wall that is not protected by sun shade devices</li> <li>- Large expanses of rendered masonry</li> <li>- Light colours or finishes where they may cause adverse glare or reflectivity impacts</li> </ul> <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>		
<b>5.</b>	<b>Amenity</b>		
<b>5.1</b>	<b>Solar access and overshadowing</b>		
	<b>Solar access for proposed development</b>		
	(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.	No change to existing apartment	Satisfactory
	(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.	No change to existing apartment	Satisfactory
	(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.	No change to existing apartment	Satisfactory
	(iv) Any variations from the minimum standard due to site constraints and orientation must demonstrate how solar access and energy efficiency is maximised.	No change to existing apartment	Satisfactory
	<b>Solar access for surrounding development</b>		
	(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.	No change to existing apartment	Satisfactory
	(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.		



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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	(iii) Where existing development currently receives less sunlight than this requirement, the new development is not to reduce this further.		
<b>5.2</b>	<b>Natural ventilation and energy efficiency</b>		
	(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.	Internal reconfiguring proposed however, no change to windows and openings that would affect internal circulation	Yes, the removal of part of the wall between the kitchen and hallways is consistent with the Heritage components of the RFB.
	(ii) Sun shading devices appropriate to the orientation should be provided for the windows and glazed doors of the building.	No change to existing apartment	Satisfactory
	(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.	No change to existing apartment	Satisfactory
	(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.	No change to existing apartment	Satisfactory
	(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.	No change to existing apartment	Satisfactory
	(vi) A minimum of 25% of kitchens within a development should have access to natural ventilation and be adjacent to openable windows.	No change to existing apartment	Satisfactory
	(vii) Developments, which seek to vary from the minimum standards, must demonstrate how natural ventilation can be satisfactorily achieved, particularly in relation to habitable rooms.	No change to existing apartment	Satisfactory
<b>5.3</b>	<b>Visual privacy</b>		
	(i) Locate windows and balconies of habitable rooms to minimise overlooking of windows or glassed doors in adjoining dwellings.	No change to existing apartment	Satisfactory
	(ii) Orient balconies to front and rear boundaries or courtyards as much as possible. Avoid orienting balconies to any habitable room windows on the		

DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>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"> <li>- Translucent glazing</li> <li>- Fixed timber or metal slats</li> <li>- Fixed vertical louvres with the individual blades oriented away from the private open space or windows of the adjacent dwellings</li> <li>- Screen planting and planter boxes as a supplementary device for reinforcing privacy protection</li> </ul>		
<b>5.4</b>	<b>Acoustic privacy</b>		
	<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"> <li>- Double glazing</li> <li>- Operable screened balconies</li> <li>- Walls to courtyards</li> <li>- Sealing of entry doors</li> </ul>	No change to existing apartment	Satisfactory
<b>5.5</b>	<b>View sharing</b>		
	<p>(i) The location and design of buildings must reasonably maintain existing view corridors and vistas to significant elements from the streets, public open spaces and neighbouring dwellings.</p> <p>(ii) In assessing potential view loss impacts on the neighbouring dwellings, retaining existing views from the living areas should be given a priority over those obtained from the bedrooms and non-habitable rooms.</p> <p>(iii) Where a design causes conflicts between retaining views for the</p>	No change to existing apartment	Satisfactory

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DCP Clause	Control	Proposal	Compliance (Yes/No/NA/Conditioned)
	<p>public domain and private properties, priority must be given to view retention for the public domain.</p> <p>(iv) The design of fences and selection of plant species must minimise obstruction of views from the neighbouring residences and the public domain.</p> <p>(v) Adopt a balanced approach to privacy protection and view sharing, and avoid the creation of long and massive blade walls or screens that obstruct views from the neighbouring dwellings and the public domain.</p> <p>(vi) Clearly demonstrate any steps or measures adopted to mitigate potential view loss impacts in the development application.</p>		

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**Responsible officer:** George Anderson, Environmental Planning Officer

**File Reference:** DA/467/2022

## Development Consent Conditions



<b>Folder /DA No:</b>	DA/467/2022
<b>Property:</b>	Unit 5, 184 Arden Street, COOGEE NSW 2034
<b>Proposal:</b>	Unit 5 - Internal alterations to the residential unit (Heritage Item)
<b>Recommendation:</b>	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:

<b>Plan</b>	<b>Drawn by</b>	<b>Dated</b>
DWG No S100 – Wall Removal – Rev A	Congineering	08/02/2022
Kitchen Plan	Nobby Kitchens	11/02/2022
Kitchen Elevation	Nobby Kitchens	11/02/2022
Kitchen Elevation (Dishwasher & Drainer)	Nobby Kitchens	11/02/2022
Kitchen Elevation (Gas Cooktop & Oven)	Nobby Kitchens	11/02/2022

### 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

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

#### Long Service Levy Payments

3. The required Long Service Levy payment, under the *Building and Construction Industry Long Service Payments Act 1986*, must be forwarded to the Long Service

Levy Corporation or the Council, in accordance with Section 6.8 of the *Environmental Planning and Assessment Act 1979*.

*At the time of this development consent, Long Service Levy payment is applicable on building work having a value of \$250,000 or more, at the rate of 0.25% of the cost of the works.*

#### **Sydney Water Requirements**

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

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

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

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

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

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

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

#### **REQUIREMENTS TO BE INCLUDED IN THE CONSTRUCTION CERTIFICATE**

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

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

#### **Building Code of Australia**

5. 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.

#### **REQUIREMENTS PRIOR TO THE COMMENCEMENT OF WORKS**

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

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

**Building Certification & Associated Requirements**

6. 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**

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

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

**Dilapidation Report**

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

The dilapidation report must be submitted to the *Principal Certifier*, Council and the owners of the adjoining/nearby premises encompassed in the report, prior to



commencing any site works (including any demolition work, excavation work or building work).

#### **Construction Noise & Vibration Management Plan**

9. 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.

#### **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**

10. A sign must be installed in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details:
- name, address, contractor licence number and telephone number of the principal building contractor, including a telephone number at which the person may be contacted outside working hours, or owner-builder permit details (as applicable)
  - name, address and telephone number of the Principal Certifier,
  - a statement stating that "unauthorised entry to the work site is prohibited".

#### **Restriction on Working Hours**

11. 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"> <li>• Monday to Friday - 7.00am to 5.00pm</li> <li>• Saturday - 8.00am to 5.00pm</li> <li>• Sunday &amp; public holidays - No work permitted</li> </ul>
Excavations in rock, sawing of rock, use of jack-hammers, driven-type piling/shoring or the like	<ul style="list-style-type: none"> <li>• Monday to Friday - 8.00am to 3.00pm (maximum)</li> <li>• As may be further limited in Noise &amp; Vibration Management Plan</li> <li>• Saturday - No work permitted</li> <li>• Sunday &amp; public holidays - No work permitted</li> </ul>

*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.

#### **Demolition Work & Removal of Asbestos Materials**

12. 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 10m<sup>2</sup> 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](http://www.randwick.nsw.gov.au) in the Building & Development section or a copy can be obtained from Council's Customer Service Centre.

#### **Public Safety & Site Management**

13. Public safety and convenience must be maintained at all times during demolition, excavation and construction works and the following requirements must be complied with to the satisfaction of Council:

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

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

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

#### REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

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

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

#### Occupation Certificate Requirements

14. 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*.

#### Fire Safety Certificates

15. Prior to issuing an interim or final Occupation Certificate, a single and complete *Fire Safety Certificate*, encompassing all of the essential fire safety measures contained in the *fire safety schedule* must be obtained and be submitted to Council, in accordance with the provisions of the *Environmental Planning and Assessment Regulation 2000*. The *Fire Safety Certificate* must be consistent with the *Fire Safety Schedule* which forms part of the Construction Certificate.

A copy of the *Fire Safety Certificate* must be displayed in the building entrance/foyer at all times and a copy must also be forwarded to Fire and Rescue NSW.

#### Structural Certification

16. A Certificate must be obtained from a *professional engineer*, which certifies that the building works satisfy the relevant structural requirements of the Building Code of Australia and approved design documentation, to the satisfaction of the *Principal Certifying Authority*. A copy of which is to be provided to Council with the 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.

**Fire Safety Statements**

17. A single and complete *Fire Safety Statement* (encompassing all of the fire safety measures upon the premises) must be provided to the Council (at least on an annual basis) in accordance with the requirements of the *Environmental Planning & Assessment Regulation 2000*.

The *Fire Safety Statement* is required to confirm that all the fire safety measures have been assessed by a competent fire safety practitioner and are operating in accordance with the standards of performance specified in the *Fire Safety Schedule*.

A copy of the *Fire Safety Statement* must be displayed in the building entrance/foyer at all times and a copy must also be forwarded to Fire & Rescue NSW.

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## Development Application Report No. D25/23

**Subject:** 1249 Anzac Parade, Chifley (DA/640/2022)

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
### Executive Summary

<b>Proposal:</b>	Torrens title subdivision of an attached dual occupancy into two lots
<b>Ward:</b>	South Ward
<b>Applicant:</b>	Mr Dirk Anderson
<b>Owner:</b>	Mr Alexander Petrovic
<b>Cost of works:</b>	Nil
<b>Reason for referral:</b>	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 lot size development standard in Clause 4.1 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning and Environment has been 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/640/2022 for Torrens title subdivision on an attached dual occupancy into two lots at No. 1249 Anzac Parade, Chifley, subject to the development consent conditions attached to the assessment report.

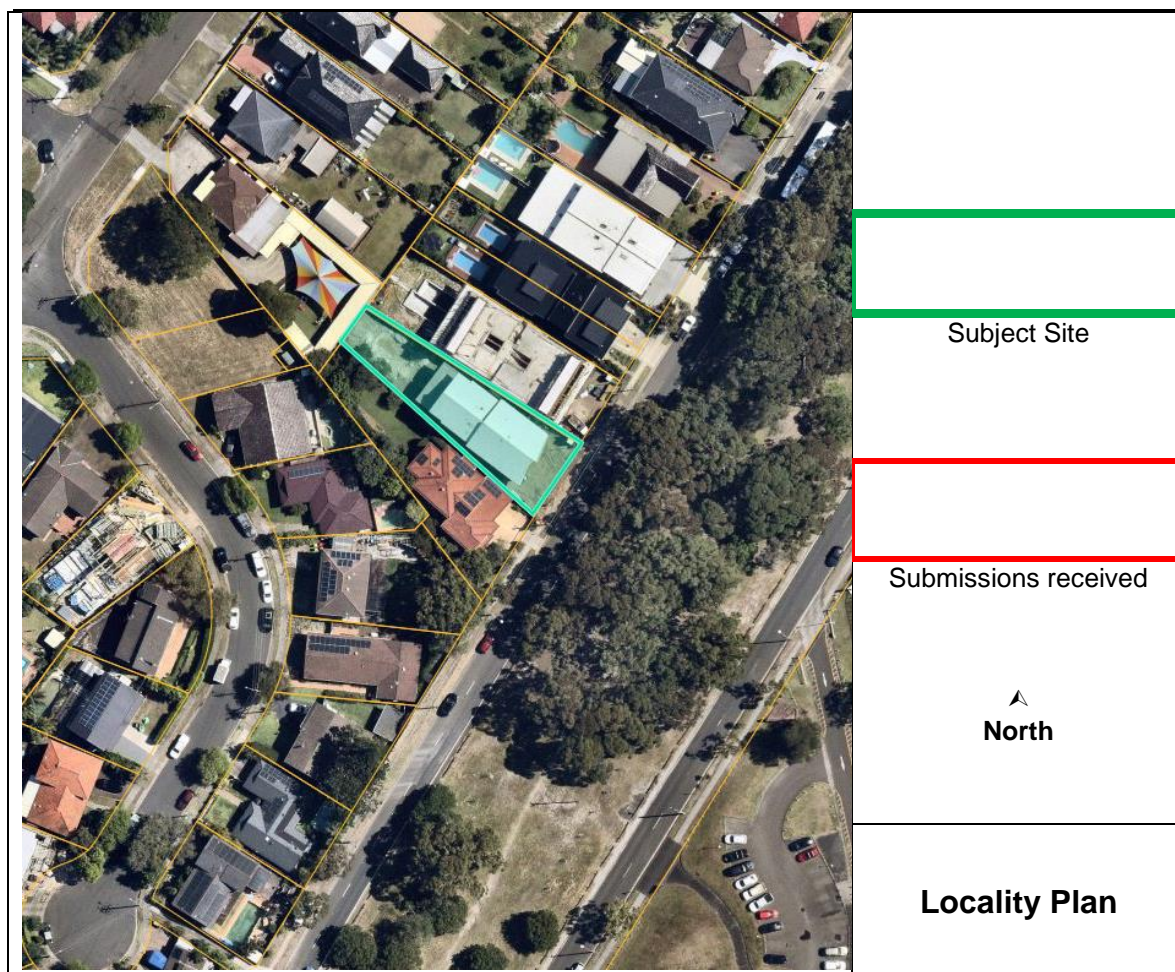
### Attachment/s:

1.  RLPP Dev Consent Conditions (general) - DA/640/2022 - 1249 Anzac Parade, CHIFLEY NSW 2036 - DEV - Mr Dirk Anderson

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## 1. Executive summary

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

The proposal seeks development consent for the Torrens title subdivision of an attached dual occupancy into two lots. The dual occupancy and Strata subdivision of the dual occupancy was approved in October 2019 by the Land and Environment Court and the proposal seeks to change the approved subdivision from Strata to Torrens title.

The key issues associated with the proposal relate to non-compliance with the minimum lot size development standard and minimum frontage width control for both proposed allotments.

The key issues associated with the proposal relate to non-compliance with the minimum subdivision lot size of 400m<sup>2</sup> and a minimum frontage width of 12m 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 subject site is known as 1249 Anzac Parade, Chifley and has a legal description of Lot 9 in Deposited Plan 253076. The site is irregular in shape and has a total area of 669m<sup>2</sup>. The site is located on the north-western side of Anzac Parade. The site experiences a fall of approximately 3.42m from the front south-eastern boundary down towards the rear north-western boundary, with an average slope of approximately 7.06%. The site is zoned R2 - Low Density Residential and contains a dual occupancy approved under DA/798/2018. The property is surrounded by residential properties to the north, south and west. Long Bay Correctional Facility is located to the south-east of the subject site and Malabar Beach is located to the far east of the site. The prevailing architectural style of the streetscape is older style one and two storey dwelling houses and emerging dual occupancies. There are several newer developments within the vicinity which adopt modern and contemporary architectural designs. The site is identified as being within the vicinity of a State listed heritage item, being Long Bay Correctional Centre.

The site is identified as Lot 9 DP 253076, 1249 Anzac Parade, Chifley NSW 2036. The site is located on the north-western side of Anzac Parade, between Mitchell Street to the north and Forrest Street to the south.



**Figure 1:** South oblique view of the subject allotment and surrounding area (April 2022) – 1249 Anzac Parade, 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:

Development Approvals in Relation to the Site		
Application Number	Description	Decision
CC/230/2021	Demolition of existing structures, strata subdivision of site, construction of two x part 2/part 3 storey semi-detached dwellings with tandem garages, landscaping	Approved



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	and associated works. AC CC No. 19/250.	
DA/692/2019	Change of the subdivision of an approved attached dual occupancy from Strata to Torrens title	Refused
DA/798/2018	Demolition of existing structures, strata subdivision of site, construction of two x part 2/part 3 storey semi-detached dwellings with tandem garages, landscaping and associated works.	Approved
DA/483/2012	Development application for tree works Consent is granted to remove Phoenix Palm within prison complex	Approved
DA/444/2011	Tree Removal/Pruning – 19 Trees Consent granted as per arborist report submitted	Approved
DA/136/2007/A	Section 96 (1) – Delete advisory condition No.1 Original Proposal – Subdivision of Land at Long Bay Gaol into 3 residential lots & residue lot. (Heritage Item)	Approved
DA/136/2007	Subdivision of land at Long Bay Gaol into 3 residential lots and 1 residue lot (Heritage Item).	Approved

#### 4. Proposal

The proposal seeks development consent for Torrens title subdivision of the approved dual occupancy development. Specifically, the proposal seeks to change the approved subdivision from Strata subdivision to Torrens title subdivision. No physical works are proposed as part of the application.

The proposed lots shall comprise the following:

	<u>Lot Size</u>	<u>Front Boundary (Eastern)</u>	<u>Rear Boundary (Western)</u>	<u>Side Boundary (North)</u>	<u>Side Boundary (South)</u>
<b>Lot 1</b>	331.9m <sup>2</sup>	8.555m	4.22m	51.815m	52.27m (Common Boundary)
<b>Lot 2</b>	337.1m <sup>2</sup>	8.67m	4.22m	52.27m (Common Boundary)	53.1m

#### 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.

The approved dual occupancy development and Strata subdivision was considered to be consistent with the objectives of the R2 zone in that it was not inconsistent with the current and future character of the area or streetscape. The proposed development shall facilitate the housing needs for the community within a low density residential environment, and the amenity of residents shall be maintained given there is no changes proposed to the built form. As such it is considered that the proposed development is consistent with the objectives of the R2 zone.

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 800m<sup>2</sup> (requiring each new lot to be a minimum of 400m<sup>2</sup>).

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 400m<sup>2</sup> to 275m<sup>2</sup>, 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.*

Whilst the area maintains subdivisions Torrens Title subdivisions along Anzac Parade with dual occupancies, there is no predominant subdivision pattern within the surrounding area. 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 <sup>2</sup>	Lot 1 = 331.9m <sup>2</sup>	No
		Lot 2 = 337.1m <sup>2</sup>	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 <sup>2</sup>	Lot 1 = 331.9m <sup>2</sup>	68.1m <sup>2</sup>	17.025%
		Lot 2 = 337.1m <sup>2</sup>	62.9m <sup>2</sup>	15.725%

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 55 of the Environmental Planning and Assessment Regulation 2021, the Secretary has given written notice 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 (Clause 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 strict compliance with the standard would result in an inflexible application of policy in this case. The positive benefits of orderly and economic development of the land derived from the proposal, are achieved and strict compliance would not serve any purpose that should outweigh this.

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 LEC Case 2019/00018565 and Council reference: DA/798/2018.

#### Assessing officer's comment:

The built form of the dual occupancy development was approved under development consent DA/798/2018. Development consent DA/798/2018 also approved the Strata subdivision of the dual occupancy. The proposed development shall not alter the approved built form and it is considered that the proposed development shall not result in any additional impacts upon the residential amenity of surrounding properties. The previous development consent demonstrates that the site is sufficient in size to accommodate a dual occupancy development. The approved dual occupancy was considered to be consistent with the provisions of RLEP 2012 and RDCP 2013 and it is noted that the resultant allotments and approved development would remain consistent with Council's built form planning controls with particular regards to site coverage, deep soil and landscaping, and setbacks.

The minimum lot size of 400m<sup>2</sup> 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 400m<sup>2</sup> to 275m<sup>2</sup> and proposed street frontage, 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 meets with the objectives of the Zone R2.
- The proposal will deliver increased housing and density to the area while meeting the LEP and DCP controls and providing a positive contribution to the streetscape.
- The proposed minimum lot size variation is minor and when considered in the context of the objectives of the Zone and Development Standard and the positive contribution of the building to the future character of the area it is a reasonable variation to the standard.
- As demonstrated in this request, the proposal is in the public interest, being consistent with the objectives of the standards and objectives of the R2 zone.
- This submission demonstrates that compliance with the unreasonable and unnecessary in the circumstances of this case.

Assessing officer's comment:

As detailed within key issues section of the report, development consent has been granted for the Strata subdivision of the dual occupancy development. The proposed subdivision is consistent with the configuration and size of the approved Strata allotments. As such the proposed Torrens title subdivision does not require any amendments to the built form, vehicular and pedestrian access, or off-street parking, and shall not result in any additional amenity impacts upon the neighbouring properties or the locality.

The proposed allotments are of similar size and configuration to the approved subdivision at 1245 Anzac Parade. The Torrens title subdivision of 1245 Anzac Parade was approved in September 2018. The subdivision was approved pursuant to clause 4.1D of RLEP 2012 which relates to dual occupancy developments in which development consent was granted prior to 6 July 2018. The minimum lot size development standard of 400m<sup>2</sup> was not applicable in this instance and a variation was not sought. As such, the lot sizes and configuration of 1245 and

1245A Anzac Parade were approved under different circumstances and cannot be used as precedent.

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 400m<sup>2</sup> to 275m<sup>2</sup>, with the exception of land within a Heritage Conservation Area. The subject site meets the requirements of minimum lot size, being 331.9m<sup>2</sup> and 337.1m<sup>2</sup> respectively. In addition, the subject site is not within a Heritage Conservation Area.

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 800m<sup>2</sup> (requiring each new lot to be a minimum of 400m<sup>2</sup>). 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 450m<sup>2</sup>, whereas the subdivision of dual occupancies and creation of semi-detached dwellings requires a minimum site area of 800m<sup>2</sup>).

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.

It should be noted that the variation to the minimum lot size is only supported in view of the approved Strata subdivision of the development. The proposed allotment sizes and configuration of the proposed Torrens title subdivision are consistent with the Strata allotments approved under development consent DA/798/2018, and as such the proposed change from Strata to Torrens title shall not result in any additional impacts upon the built and natural environment.

## 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

Section 4.15 'Matters for Consideration'	Comments
	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

#### **Approved Strata subdivision under Development Consent DA/798/2018**

On 15 October 2019, development consent was granted by NSW Land and Environment Court for the construction of an attached dual occupancy and the Strata subdivision of the dual occupancy. The approved subdivision plan allocated one (1) dwelling and the surrounding land to each Strata lot with the Strata boundary located along the common party wall. The subdivision plan does not contain any common property. Furthermore, a condition of consent was imposed on DA/798/2018 for separate public utilities to be contained and managed within the relevant Strata lot boundary. An easement is to be created for rights of carriageways across the driveways of each dwelling to facilitate vehicular access to the relevant lots. The subject application seeks to change the approved Strata subdivision to Torrens title. The proposed subdivision plan adopts the same configuration and boundaries as the approved Strata plan.

#### **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 8.55m & 8.67m 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 400m<sup>2</sup> to 275m<sup>2</sup>, 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 8.55m & 8.67m 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 8.55m & 8.67m for each allotment, which would comply with this proposed draft control.

As such, the non-compliance is considered acceptable.

### **Part B7 (Transport, Traffic, Parking and Access) of RDCP 2013**

The proposed development shall retain a minimum of two (2) off-street parking spaces per dwelling. It is considered that the proposed subdivision shall not result in any increased traffic or parking demand.

### **Part 2 Site Planning of RDCP 2013**

The approved dual occupancy was considered to be consistent with the provisions of RDCP 2013 and it is noted that the resultant allotments and approved development would remain consistent with Council's built form planning controls with particular regards to site coverage, deep soil and landscaping, and setbacks. The future allotments would result in the following site cover, landscaping and permeable spaces and private open space listed below.

<b>Site Planning</b>	<b>RDCP 2013 Standard</b>	<b>Proposed</b>
Site Coverage	301 to 450 sqm (55%)	Lot 1 – 43.3% Lot 2 – 43.6%
Landscaping and Permeable Surfaces	301 to 450 sqm (25%)	Lot 1 – 44.8% Lot 2 – 45.1%
Private Open Space	6m x 6m	Complies

The minimum lot size of 400m<sup>2</sup> 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. The proposed lot sizes are able to accommodate development that is suitable for its purpose.

## **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 1249 Anzac Parade, Chifley NSW 2036 be approved (subject to conditions) for the following reasons:

1. The subject application seeks to change the approved Strata subdivision of the dual occupancy to Torrens title subdivision with no changes to the built form or the approved allotment boundaries and all conditions of development consent DA/798/2018.
2. 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.
3. 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.
4. The proposed development is consistent with the objectives of the R2 zone in relation to providing for the housing needs of the community, recognising the desirable elements of the streetscape and the desired character of the area, protecting the amenity of residents, and encouraging housing affordability.



## Appendix 1: Referrals

### 1. Internal referral comments:

#### 1.1. Development Engineer

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 of the above site into 2 lots.*

*This report is based on the following plans and documentation:*

- *Draft Subdivision Plans by Ndrsn;*
- *Statement of Environmental Effects by Ndrsn.*

#### **General Comments**

The application was referred to Council's Development Engineer who raised no objection to the proposed subdivision subject to recommended conditions of consent including the creation of appropriate easements, to be carried out prior to the issue of the subdivision certificate.

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



/NDRSN

### CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS, NO. 1249 ANZAC PARADE, CHIFLEY NSW 2036

Change of the subdivision of an approved attached dual occupancy from Strata subdivision to Torrens subdivision at 1249 Anzac Parade Chifley 2036

2 December 2022

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

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

Randwick Local Environmental Plan 2012.

**2. What is the zoning of the land?**

R2 – Low Density Residential

**3. What are the objectives of the zone?**

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

**4. What is the development standard being varied?**

Minimum Subdivision Lot Size

**5. Under what clause is the development standard listed in the environmental planning instrument?**

Clause 4.1

**6. What are the objectives of the development standard?**

The objectives of this clause are as follows

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

**7. What is the numeric value of the development standard in the environmental planning instrument?**

400M2

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

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**Application?**

331.90M2 &amp; 337.10M2

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

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

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

The objectives of 'Clause 4.1 Minimum subdivision lot size' are as follows:

- a. to minimise any likely adverse impact of subdivision and development on the amenity of neighbouring properties,*

Comment:

The proposal has been designed as a dual occupancy in which development consent (Iec Case 2019/00018565) had been granted on 21 October 2019.

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

The southern and northern neighbouring residences, No. 1251 and No.1247 Anzac Parade, are one storey brick single dwelling, with tiled roof. Further North, neighbour No. 1245 and No.1245A Anzac Parade, comprises of semi-detached dwellings with a lot area of 381.6 and 385.4 M2 respectively. No. 1243 and 1243A consist also of a dual occupancy. Hence, this Development will be in-line and appropriately justifies the requirement to be sub-divided.

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

Comment:

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

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

- c. to ensure that lot sizes can accommodate development that is suitable for its purpose.*

Comment:

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

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

Not relevant to this instance.

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

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

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

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

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

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

The standard has not been abandoned by Council although with respect to the streetscape and surrounding dwellings in this area, they do not meet the minimum lot size controls as required. As such we believe this request is suitable with respect to the similar lots nearby.

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

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

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

The objectives of this Act are:

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

#### Comment:

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

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



welfare. Dual occupancy offers a housing solution with better affordability and more efficient use of the land.

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

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

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

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

The proposal meets with the objectives of the Zone R2.

The proposal will deliver increased housing and density to the area while meeting the LEP and DCP controls and providing a positive contribution to the streetscape.

The proposed minimum lot size variation is minor and when considered in the context of the objectives of the Zone and Development Standard and the positive contribution of the building to the future character of the area it is a reasonable variation to the standard.

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

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

**13. Does the proposed variation comply with the projected development standards approved by Council in Randwick Comprehensive LEP Planning Proposal (soon to be submitted to Department of Planning and Environment for gazettal)?**

It is proposed to divide the existing 669 square meters lot into two Torrens title lots of approximately 331.9 square meters and 337.1 square meters. These lot sizes will exceed the minimum 275 square meters minimum lot size as prescribed in the Randwick Comprehensive LEP Planning Proposal that was exhibited to the public and approved by Council on 6 September 2022. The applicant understands that the Planning Proposal is soon to be submitted to Department of Planning and Environment for gazettal.

When clauses of '4.1 Minimum subdivision lot sizes' mentioned above in 9. Part 1 are applied to the proposed variation in light of the future planning controls, the following conclusions can be derived:

- Objective (a): Construction of the already approved dual occupancy is nearly complete. A Torrens title subdivision will not change the approved built form and the subdivision will not have any adverse impact on the amenity to the neighboring properties,



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*Photo showing the nearly completed dual occupancy at 1249 Anzac Parade, Chifley*

- Objective (b): The Torrens lots are consistent with the approved dual occupancy development and the semi-detached dwellings resulting from the subdivision meet the building envelope development standard and development controls contained in Part C1 of the DCP. The proposed subdivision presents no change to the approved built form and will not impact any heritage items.
- Objective (c): The Council approved Randwick Comprehensive LEP Planning Proposal stipulates a minimum 275 square meter lot size. The proposed Torrens title subdivision will result in two lots of 331.9 square meters and 337.1 square meters. The already approved development contains one dwelling on each lot and allows for substantial landscape area, building setbacks and on-site car parking.
- As noted above the objectives of the minimum lot size standard are fulfilled and the request for the variation to the standard is well founded.

In terms of Environmental Planning Grounds [Clause 4.6(3)]:

1. The Randwick Comprehensive LEP Planning Proposal stipulates a minimum 275 square meter lot size. This reduced lot size is the new future desired character for the area the site is located in. The proposed new Torrens lot sizes are approximately 331.9 square meters and 337.1 square meters. The proposed Torrens subdivision is therefore in keeping with the desired future character for the area.
2. The proposed Torrens title subdivision is drawn to the party wall of the approved dual occupancy development in accordance with development consent granted by the Court for strata subdivision in accordance with development application No. 798/2018. The Torrens title subdivision simply changes the title of this approval from strata subdivision to Torrens title subdivision.

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3. The proposed subdivision will not result in negative impacts to neighbouring properties.
4. The proposed Torrens subdivision is in keeping with the Torrens subdivisions that have been approved at 1243 Anzac Parade Chifley and also at 1245 Anzac Parade Chifley.

When objectives of the 'R2 – Low Density Residential' zoning regulations mentioned above in 3. are applied to the proposed variation in light of the future planning controls, the following conclusions can be derived:

- It meets the first objective in that it provides a very desired form of housing in a residential environment.
- The second objective is not applicable.
- The third objective is met because the proposed Torrens subdivision is in keeping with the desired future character of the area as evidenced by the Council approval of the Randwick Comprehensive LEP Planning Proposal that stipulates a reduced 275 square meter reduced lot size.
- The fourth objective is met because the nearly completed construction of the new development is well placed on site and fits well within its location.
- The fifth objective is also met because the proposal provides a most desired form of housing while also relatively affordable.
- The final objective is not applicable.

According to Clause 4.6(5):

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

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

It is understood the concurrence of the Secretary may be assumed in this circumstance because:

- a) contravention of the development standard does not raise any matter of significance for State or regional environmental planning and
- b) there is no public benefit in maintaining the minimum lot size standard as it is no longer the desired future character of the area.

Strict compliance with the minimum lot size is unreasonable and unnecessary in the context of the proposal and its particular circumstances.

The proposed Torrens title subdivision meets the underlying intent of the control and is compatible with its surrounding and the desired future character for the area. The proposal will not have any adverse effect on the surrounding locality.

The proposal promotes the economic use and development of the land consistent with its zone and purpose. The consent authority is requested to invoke its powers under Clause 4.6 to permit the variation proposed. The variation is well founded and taking into account the absence of adverse environmental, social or economic impacts, it is requested that the consent authority support the development proposal.

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**Responsible officer:** George Anderson, Environmental Planning Officer

**File Reference:** DA/640/2022

D25/23

## Development Consent Conditions



<b>Folder / DA No:</b>	DA/640/2022
<b>Property:</b>	1249 Anzac Parade, CHIFLEY NSW 2036
<b>Proposal:</b>	Proposed Torrens title subdivision to existing dual occupancy development.
<b>Recommendation:</b>	Approval

### Development Consent Conditions

#### GENERAL CONDITIONS

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

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

#### Approved Plans & Supporting Documentation

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

<b>Plan</b>	<b>Drawn by</b>	<b>Dated</b>	<b>Received by Council</b>
Proposed Subdivision Plan – Drawing DA1.1 – Rev A	NDRSN	17/11/2022	12/12/2022

#### 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](https://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 s73 issued under the construction DA (DA/798/2018) will not be sufficient to satisfy this condition. A new s73 will be required that specifically refers to the subdivision of the site into 2 lots approved under this consent.

**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. Evidence of registration of the "restriction on the use of land" and "positive covenant" (as required under condition 51 of DA/798/2018) on the title of the subject property 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.

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.

**Development Consent Conditions (DA/798/2018)**

8. All conditions of DA/798/2018 must be satisfied and an occupation certificate issued for the development prior to the issuing of any subdivision certificate.

NOTE: This shall include all requirements in relation to the undergrounding of power as required by conditions 15 & 50 in DA/798/2018.

**Subdivision Certificate**

9. 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. D26/23

**Subject:** 104 Gardeners Road Kingsford (DA/211/2022)

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### Executive Summary

<b>Proposal:</b>	Construction of a detached secondary dwelling at the rear of the existing semi-detached dwelling
<b>Ward:</b>	West Ward
<b>Applicant:</b>	Corona Projects Pty Ltd
<b>Owner:</b>	Alex Machkevitch
<b>Cost of works:</b>	\$78,000
<b>Reason for referral:</b>	Variation to a development standard by more than 10%

### Recommendation

That the RLPP refuse consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 211/2022 for construction of a detached secondary dwelling at the rear of the existing semi-detached dwelling at No. 104 Gardeners Road, Kingsford for the following reason:

1. The Clause 4.6 written request has failed to adequately address the matters under Clause 4.6 of the Randwick Local Environmental Plan 2012 and the proposal cannot be supported.
2. An approval of the proposed development would not be in the public interest as it would facilitate an additional dwelling on an allotment of land that is significantly smaller than the minimum standard of 450m<sup>2</sup>.

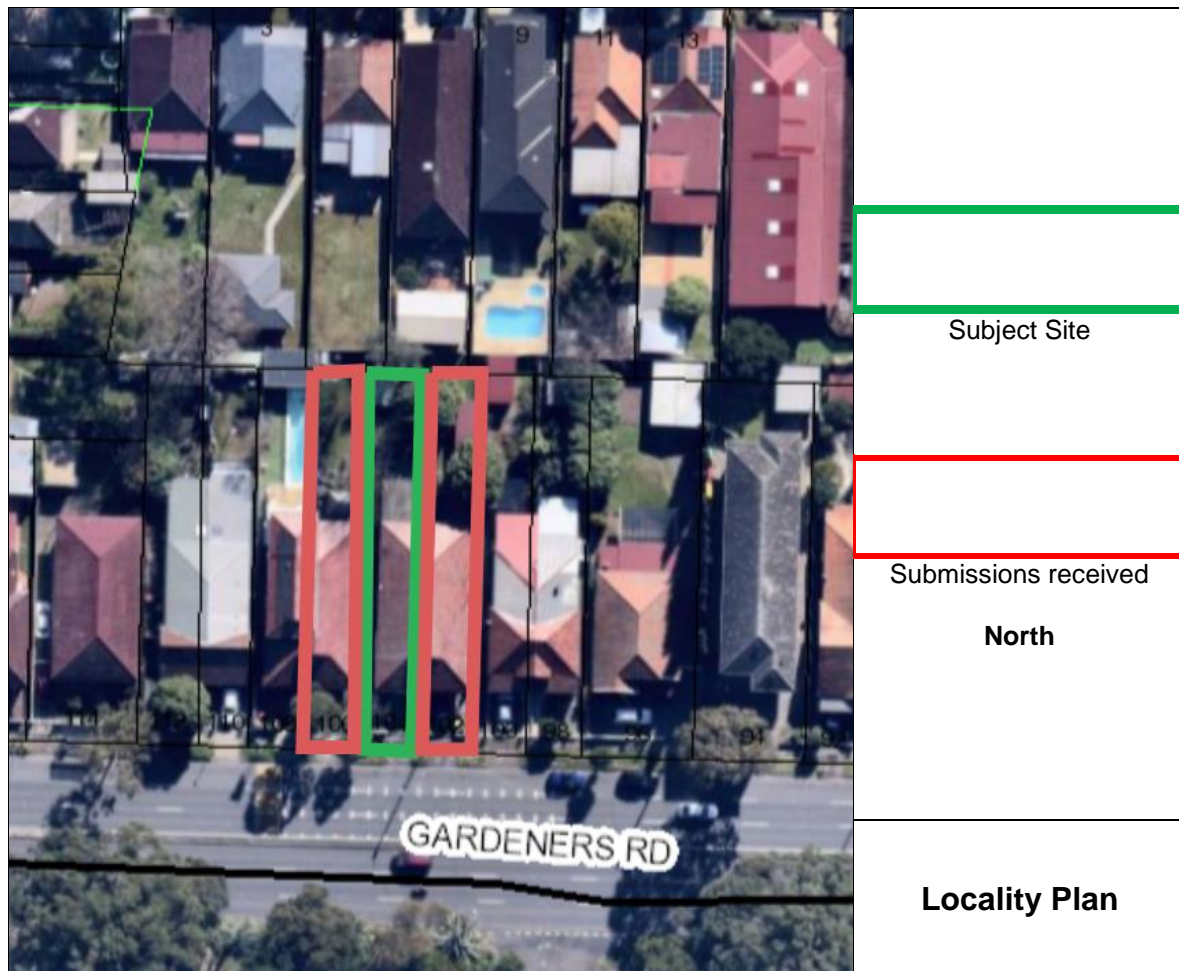
### Attachment/s:

Nil

D26/23



D26/23



## 1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development contravenes the non-discretionary development standard for a detached secondary dwelling under the Housing SEPP 2021 by more than 10%.

The proposal seeks development consent for the construction of a detached secondary dwelling at the rear of the existing semi-detached dwelling.

The provision of a secondary dwelling is prohibited in the R2 zone under Randwick Local Environmental Plan 2012 (RLEP 2012). However, the proposal is permissible pursuant to the provisions of the State Environmental Planning Policy (Housing SEPP) 2021.

Pursuant to Clause 53 of the Housing SEPP, a minimum site area of 450m<sup>2</sup> applies to a detached secondary dwelling. The subject site has an area of 307m<sup>2</sup>. The applicant submitted a Clause 4.6 written request seeking an exception to the minimum site area development standard. However, Council is not satisfied that the written request has demonstrated that compliance is unreasonable or unnecessary in the circumstances of the case.

On that basis, the Clause 4.6 written request has failed to adequately address the matters under Clause 4.6 and the proposal cannot be supported.

The application is therefore recommended for refusal.

## 2. Site Description and Locality

The site is rectangular in shape with a total area of 307.6m<sup>2</sup>, a 6.77m frontage to Gardeners Road and a maximum side boundary depth of 45.72m. The site contains a single storey semi-detached dwelling comprising 4 bedrooms and a detached shed in the rear yard (refer to **Figures 3** and 4).

The adjoining property to the east at 102 Gardeners Road forms a pair of semis with the subject site. The adjoining property to the west at 106 Gardeners Road also contains a semi-detached dwelling. Adjoining to the north is the rear yard of two dwellings fronting Doran Street.



**Figure 3** – Existing dwelling on the site viewed from the street



**Figure 4** – Rear yard and location of the proposed secondary dwelling

### 3. Relevant history

There are no previous determinations of relevance to this application.

### 4. Proposal

The proposal is for the construction of a detached secondary dwelling at the rear of the existing semi-detached dwelling. The proposed secondary dwelling will comprise of two bedrooms, ensuite, bathroom, kitchen and a living room. No works are proposed to the principal dwelling on the site.

#### *Amended Proposal*

On 18 August 2022, Council issued a Request for Additional Information (RFI) identifying issues in particular, the non-compliance with the minimum 450m<sup>2</sup> site area non-discretionary development standard under the Housing SEPP, noting the small size of the site (307m<sup>2</sup>) and its narrow configuration not being appropriate for a secondary dwelling. Council recommended the floor area and height of the secondary dwelling be reduced and a 900mm setback provided to the western boundary without reducing the setback to the other boundaries.

On 31 August 2022, the Applicant submitted amended plans that:

- increased the setback to the western boundary from nil to 900mm
- reduced the setback to the eastern boundary from 1.1m to 900mm
- reduced the total floor area from 49m<sup>2</sup> to 44m<sup>2</sup>
- modified the roof from skillion to a pitched roof form, resulting in increase in building height of 3.6m to the roof ridge
- replaced the concrete walkway with deep soil landscape
- relocated the entry door from the southern elevation to the western elevation
- changed the internal layout.

The amended proposal was re-notified to the adjoining properties (refer to the discussion below).

On 7 December 2022, Council advised the applicant that a Clause 4.6 written request to vary the development standard was required to be submitted with the application.

On 20 January 2023, the applicant submitted amended plans (Rev B, dated 8 December 2022), a Clause 4.6 written request to vary the site area development standard and an updated Statement of Environmental of Effects. The main design change reduced the size of the secondary dwelling to 40m<sup>2</sup>. Despite the improved built form outcome, Council officers maintained their concerns in relation to the significant variation to the site area development standard, and the amended plans were therefore not formally accepted by Council.

This assessment is based on the amended proposal that was re-notified to the neighbours (Rev A dated 26 August 2022). Extracts of the floor plan and elevations, as amended, are provided in **Figures 1 and 2**.



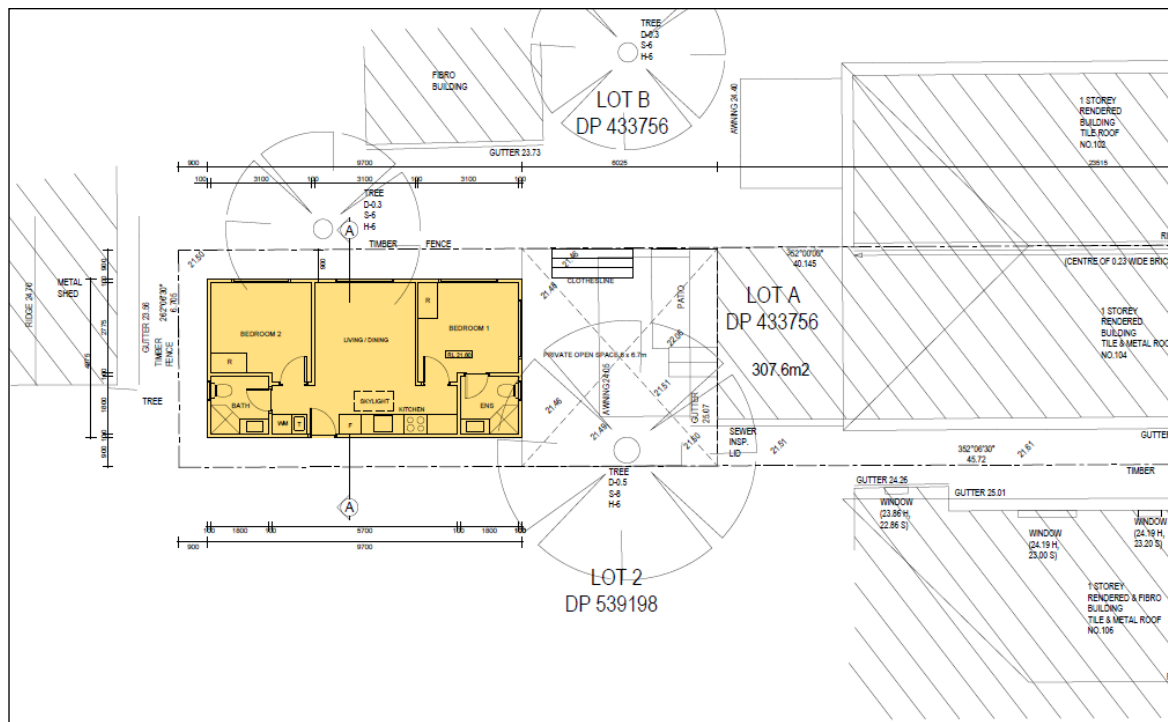


Figure 1 – Proposed floor plan

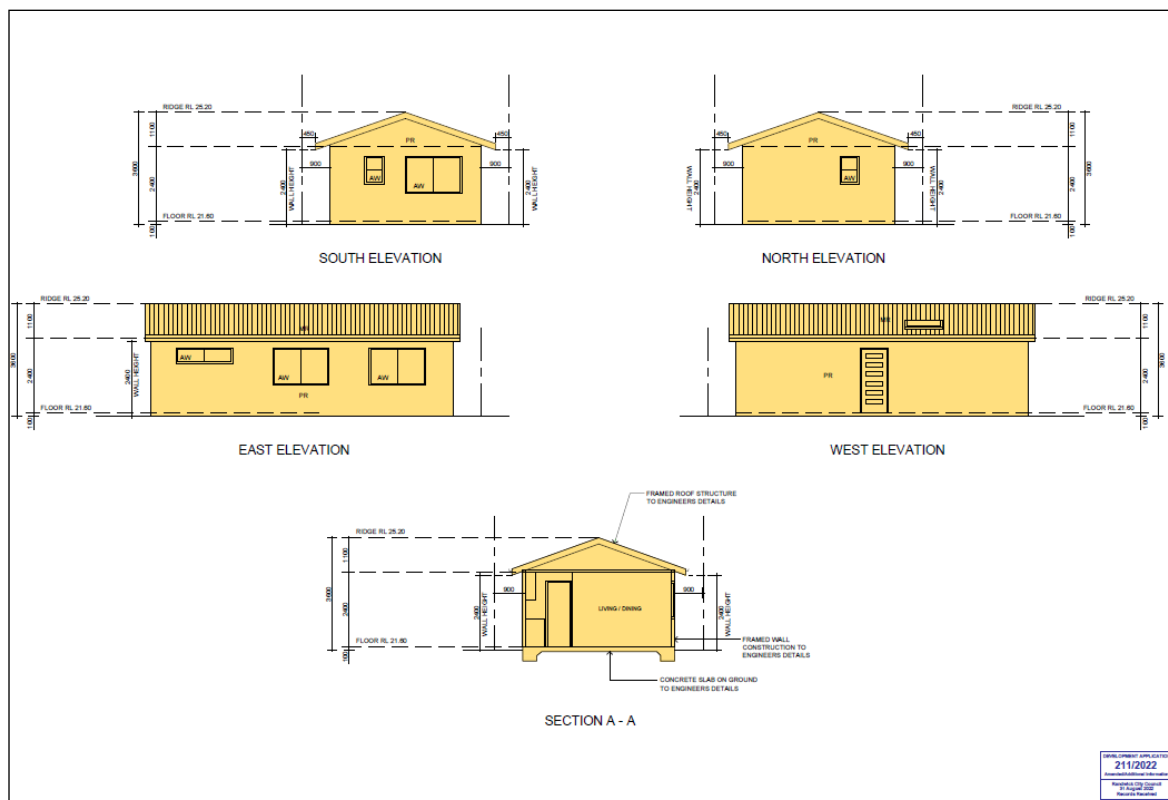


Figure 2 – Proposed elevations and section

## 5. Notification

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

*First Notification*

- 106 Gardeners Road (Civic Town Planning on behalf of the owner)

Issue	Comment
Nil setback to the eastern boundary is inappropriate and it should be moved closer to the eastern boundary or the size of internal bedrooms should be reduced to enable increased setback.	The amended proposal introduces a 900mm setback to the western boundary. However, the setback to the eastern boundary was reduced from 1.1m to 900mm.
In order to minimise the visual impact of the building: the facades should be articulated; a contemporary and innovative design encouraged; and roof design to integrate with the form proportions and façade composition of the building.	The facades of the building will not be readily visible from the adjoining properties due to the intervening boundary fence and additional articulation is not warranted. The amended pitched roof design will be more visible from the surrounding area.
Traditional hip or gable roof would suite the surrounding character or a north -south skillion roof would have less visual impact and allow better sunlight access	The amended proposal adopts a pitched roof form with a gable end.
A sewer pipe is located close to the boundary.	No concerns were raised by Council's Development Engineer in relation to the sewer pipe on the adjoining property.
The design and siting should be responsive to the environment	Noted

- 102 Gardeners Road

Issue	Comment
Ambitious project likely to cause disruptions to tenants.	The proposal will result in short term disruption during the construction period, but this is inevitable. No building works are proposed to the existing semi-detached dwelling under this application.
Structural damage to existing semi-detached dwelling	No building works are proposed to the existing semi-detached dwelling under this application and on that basis, there is not likely to be any adverse structural impacts to the adjoining semi.
Detract from the value of the dwelling	This is not a matter for consideration in the assessment of the application.
Impact the symmetrical proportions of the pair of semis	No building works are proposed to the existing semi-detached dwelling under this application and there will be no physical change the existing pair of semis within the streetscape.

**5.1. Renotification**

The amended proposal was re-notified to the adjoining neighbours. The following submission were received as a result of the re-notification process:

- 106 Gardeners Road

Issue	Comment
The amended proposal is a more suitable form with a 900mm setback.	Noted.
The amount of in-situ paving to be removed for deep soil landscape is a concern.	The proposed removal of the existing concrete walkway along the western side of the principal dwelling will assist in offsetting the loss of deep soil landscape associated with the new building to the extent that the amended proposal complies with the deep soil landscape control under RDCP 2013. However, whilst gravel pathway can be counted as deep soil landscape area, it does not contribute to site amenity
Any consent should include a condition for dilapidation report and restriction on hours and machinery	Noted
A condition should be imposed requiring protection of the existing boundary fence.	The application does not propose to change the existing boundary fence and a condition requiring protection is not warranted. The boundary fence is a separate matter for consideration under the Dividing Fences Act 1991, which regulates the dividing fences between neighbouring properties.
Greater articulation should be provided to the western facade	The western façade will not be readily visible from the ground level of the adjoining properties due to the intervening boundary fence.
Traditional hip or gable roof would suite the surrounding character or a north -south skillion roof would have less visual impact and allow better sunlight access	The amended proposal adopts a pitched roof form.
A sewer pipe is located close to the boundary	No concerns were raised by Council's Development Engineer in relation to the any impact on the existing sewer pipe on the adjoining property.
The design and siting should be responsive to the environment and protection of the boundary fence	Noted
Proposal is an overdevelopment of the site and numerical compliance does not always achieve the best result.	The proposal does not comply with the minimum site area development standard and the proposed development is therefore considered to be an overdevelopment of the site.

## 6. Relevant Environment Planning Instruments

### 6.1. SEPP (Housing) 2021

#### ***Secondary Dwelling***

The application has been submitted seeking consent under Chapter 3 Diverse Housing Part 1 Secondary Dwellings the Housing SEPP. Under Division 1, the following clauses are applicable:

#### Clause 49 – Definition

The proposed development falls within the scope of the definition of a secondary dwelling in that it entails the erection of a secondary dwelling in a R2 Low Density Residential zone.



Clause 50 – Application of Part

This development is for the purposes of a secondary dwelling on land in a residential zone where a dwelling house is permissible on the land under RLEP 2012 with Council's consent.

Clause 51 – No Subdivision

The proposed development for a secondary dwelling does not involve subdivision.

Under Division 2, the following clauses are applicable:

Clause 52 – Development may be carried out with consent

Under subclause (2) a consent authority must not consent to development to which this Division applies if there is on the land, or if the development would result in there being on the land, any dwelling other than the principal dwelling and the secondary dwelling. The proposal will result in no additional dwelling other than the principal and secondary dwelling. A condition to this effect is included in the recommended development consent.

Under subclause 2(c), the following criteria applies:

- i) *The total floor area of the principal dwelling and the secondary dwelling is no more than the maximum floor area for a dwelling house on the land under another environmental planning instrument.*
- ii) *The total floor area of the secondary dwelling is no more than 60 square metres or, if a greater floor area is permitted in respect of a secondary dwelling on the land under another environmental planning instrument, that greater floor area.*

The site has an area of 307m<sup>2</sup>. In accordance with Clause 4.4(2A) of Randwick LEP 2012 the site has an FSR of 0.75:1. The proposal will result in an FSR of 0.48:1.

The secondary dwelling will have a floor area of 44m<sup>2</sup>, satisfying the SEPP ARH.

Clause 53 - Non-discretionary development standards—the Act, s 4.15

The object of this section is to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters. The following are non-discretionary development standards in relation to the carrying out of development to which this Part applies-

- (a) *for a detached secondary dwelling-a minimum site area of 450m<sup>2</sup>,*
- (b) *the number of parking spaces provided on the site is the same as the number of parking spaces provided on the site immediately before the development is carried out.*

The site has an area of 307m<sup>2</sup>, which is less than the required 450m<sup>2</sup> site area. The applicant submitted a written request to vary the development standard (refer to discussion below). There will be no change to the existing parking space at the front of the principal dwelling.

**6.2. SEPP (Biodiversity and Conservation) 2021**

## Chapter 2 Vegetation in non-rural areas

The aims of Chapter 2 are:

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

Clause 7(1) requires a permit to be granted by the Council for the clearing of vegetation in non-rural areas (such as City of Randwick). Council's Landscape Officer raised no objection to the removal of existing trees in the rear of the site to make way for the new building.

### 6.3. SEPP 55 – Remediation of Land

#### *Chapter 4 Remediation of Land*

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

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

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

### 6.4. SEPP (Building Sustainability Index: BASIX) 2004

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

### 6.5. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned R2 Low Density Residential under RLEP 2012. The application for a secondary dwelling is prohibited development as specified by the Land Use Table for the R2 Low Density Residential zone, in accordance with the RLEP 2012.

However, pursuant to Clause 50 of the Housing SEPP, secondary dwellings are permissible in R2 zones only if development for the purposes of a dwelling house is permissible in that zone. Under the provisions of RLEP 2012, dwelling houses are permissible in R2 zones and therefore permissibility is pursuant to the provisions of SEPP ARH.

The proposal is inconsistent with the specific objectives of the R2 zone as it is contrary to the desired future character of the surrounding area.

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

Description	Council Standard	Proposed	Compliance (Yes/No/NA)
Floor Space Ratio (Maximum)	0.75:1	0.48:1	Yes
Height of Building (Maximum)	9.5m	3.6m	Yes

#### 6.5.1. Clause 4.6 - Exceptions to development standards

The non-compliance with the minimum site area development standard under the Housing SEPP 2021 is discussed in section 7 below.

### 7. Clause 4.6 exception to a development standard

The proposal seeks to vary the following non-discretionary development standard contained within the Housing SEP 2021:

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
CI 53 Non-discretionary development standard	450m <sup>2</sup>	307m <sup>2</sup>	143 m <sup>2</sup>	32

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 Site Area development standard (Cl 53 of Housing SEPP)**

The applicant's written justification for the departure from the minimum site area standard is contained in **Appendix 1**.

- 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?**

There are no objectives expressly stated for the development standard. The applicant's written request seeks to justify the contravention of the minimum site area development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case because the policy principles in the Housing SEPP are still achieved. The applicant's response to the policy principles provided in the Clause 4.6 written request is outlined below.

- (a) *enabling the development of diverse housing types, including purpose-built rental housing,*

The proposal enables the development of a diverse housing type, being a secondary dwelling,  
 (b) *encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,*

The proposal provides a type of housing capable of meeting the needs of more vulnerable members of the community, including very low to moderate income households and seniors, young persons, key workers, students and other persons in need of accommodation,

(c) *ensuring new housing development provides residents with a reasonable level of amenity,*

The proposal provides housing with a good level of amenity,

(d) *promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*

The proposal provides housing in a location where it will make good use of existing, planned and readily available infrastructure and services,

(e) *minimising adverse climate and environmental impacts of new housing development,*

The proposal will minimise adverse climate and environmental impacts through compliance with BASIX requirements and provision of adequate landscaping,

(f) *reinforcing the importance of designing housing in a way that reflects and enhances its locality,*

The design of the secondary dwelling is suitable in its locality, and is designed in accordance with local planning objectives,

(g) *supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*

In the long term, the secondary dwelling is capable of supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, with limited social and environmental impacts from this use,

(h) *mitigating the loss of existing affordable rental housing.*

The secondary dwelling contributes to the availability of affordable housing, mitigating the loss of existing affordable rental housing.

The applicant's written request contends the development standard is unreasonable and unnecessary for the following additional reasons:

- The proposed building height and bulk is of an appropriate form and scale and is not inconsistent with the pattern of development within the locality.
- The provision of a primary and secondary dwelling on the existing site is compliant with the maximum site coverage control of 55% set out in 2.3, Control i) of the Randwick DCP 2013, demonstrating that the site is not being overdeveloped.
- The provision of a secondary dwelling on the existing site does not result in a non-compliance with the deep soil permeable surface control as the proposal provides a deep soil area of 82m<sup>2</sup>, equating to 26.7% of the site, compliant with the 25% control set out in 2.4, Control i) of the Randwick DCP 2013.
- A private open space area for the development as a whole of 7m x 6.7m, exceeding the control of 6m x 6m as set out in 2.5, Control i) of the Randwick DCP 2013.
- The secondary dwelling has a gross floor area of 39.7m<sup>2</sup>, which is below the maximum control of 60m<sup>2</sup> set out in Section 52((c)(i) of the Housing SEPP.



- The floor area of the secondary dwelling equates to 13% of the site, which is comparable with a 60m<sup>2</sup> secondary dwelling on a 450m<sup>2</sup> lot (13%), demonstrating that the size of the lot is suitable for the proposed development.
- The provision of the secondary dwelling will not create additional building bulk that results in unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity.

Assessing officer's comment: In the absence of specific objectives for the minimum site area development standard under the Housing SEPP, the applicant's written request relies on the principles of the Housing SEPP policy to determine whether the development standard is unreasonable or unnecessary in the circumstances. However, Council is not satisfied that the written request has in fact demonstrated that compliance 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 site area development standard as follows:

- *Compliance with the development standard is unreasonable and unnecessary as the proposed building height and bulk is of an appropriate form and scale and is not inconsistent with the pattern of development within the locality.*
- *The proposed development complies with the minimum required deep soil permeable area, site coverage and private open space required by the Randwick DCP 2013 demonstrating that the site is capable of accommodating the proposal and is therefore suitable for the development (Section 4.15(c) of the EP&A Act, 1979).*
- *Given the suitability of the site, the lack of impact arising from the development and the provision of affordable housing in a locality well serviced by public transport and facilities, the proposal is consistent with object (c) of the EP& Act, 1979 to promote the orderly and economic development of land.*
- *The proposal is consistent with object (d) of the EP&A Act, 1979 to promote the delivery and management of affordable housing on a site, which has been identified as being suitable.*
- *The secondary dwelling has a gross floor area of 39.7m<sup>2</sup>, which is below the maximum control of 60m<sup>2</sup> set out in Section 52(l(i) of the Housing SEPP. The floor area of the secondary dwelling equates to 13% of the site, which is comparable with a 60m<sup>2</sup> secondary dwelling on a 450m<sup>2</sup> lot (13%), demonstrating that the size of the lot is suitable for the proposed development.*
- *The provision of the secondary dwelling will not create additional building bulk that results in unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity.*
  - *The proposal will not result in the loss of views from surrounding development, given its location and limited to single storey;*
  - *The proposal will not result in unreasonable overshadowing of adjoining properties, as the structure is limited to one storey and set back off the boundaries of the site;*
  - *The proposal will ensure that the visual and acoustic privacy of adjoining properties is maintained with windows located below fence height and provide a low density residential use with an internal space of less than 40m<sup>2</sup>; and*
  - *The proposal will provide a single storey secondary dwelling, which is in keeping with the scale of developments on adjoining properties and therefore is of an appropriate visual bulk for the locality.*

Assessing officer's comment:

The applicant's environmental planning grounds include matters relating to the building form, planning controls, affordability and environmental impacts. However, the focus must be on the



aspect of the development that contravenes the development standard (the site area), not the development as a whole.

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

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

To determine whether the proposal will be in the public interest, an assessment against the objectives of the particular standard and R2 zone is provided below:

**Assessment against objectives of the development standard**

In the absence of specific objectives of the standard, the Applicant reiterates that the compliance with the standard is unreasonable and unnecessary in the circumstances of this case for the following reasons:

- *Compliance with the development standard is unreasonable and unnecessary as the proposed building height and bulk is of an appropriate form and scale and is not inconsistent with the pattern of development within the locality.*
- *The footprint of the secondary dwelling combined with the existing dwelling provides a site coverage of 169m<sup>2</sup>, equating to 54.94% of the site and compliant with the maximum area control of 55%.*
- *The footprint of the secondary dwelling allows for the predominance of soft landscaped areas on the site and provides a deep soil area of 82m<sup>2</sup>, equating to 26.7% of the site, compliant with the 25% control.*
- *A private open space area for the site of 7m x 6.7m, exceeding the control of 6m x 6m.*
- *The secondary dwelling has a gross floor area of 39.7m<sup>2</sup>, which is below the maximum control of 60m<sup>2</sup> set out in Section 52((c)(i).*
- *The floor area of the secondary dwelling equates to 13% of the site, which is comparable with a 60m<sup>2</sup> secondary dwelling on a 450m<sup>2</sup> lot (13%), demonstrating that the size of the lot is suitable for the proposed development.*
- *The provision of the secondary dwelling will not create additional building bulk that results in unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity.*

**Assessment against objectives of the R2 zone**

The objectives of R2 zone are:

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

The applicant contends that the proposal is consistent with the R2 zone objectives in the following manner:

- *The proposal assists in meeting the housing needs of the community within a low density residential environment.*
- *The proposal will not affect the provision of other land uses that provide facilities or services to meet the day to day needs of residents.*

- *The proposal will not impact on the existing streetscape and is suitable in terms of built form having regard to its limited footprint and single storey height.*
- *The proposal will protect the amenity of residents in terms of solar access, privacy, visual amenity and views.*
- *The proposal will provide a form of affordable housing.*
- *The proposal will not inhibit the provision of small-scale business uses in existing commercial buildings.*

**Assessing officer's comment:** The proposed development is ordinarily prohibited in the R2 zone and is only permissible by virtue of the Housing SEPP 2021. Notwithstanding, it is considered the development would not contribute to the desired future character of the area and is inconsistent with the objectives of the R2 zone. Therefore, the development is not 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?*

There is a public benefit in maintaining the development standard in this instance as it will allow for the orderly use of the site.

#### 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 there is no legal basis for Council to grant development consent for a development that contravenes the minimum site area development standard under the Housing SEPP 2021.

#### 8. Development control plans and policies

##### 8.1. Randwick Comprehensive DCP 2013

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

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

#### 9. Environmental Assessment

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

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.  The proposed development is inconsistent with the dominant character in the locality.
Section 4.15(1)(c) – The suitability of the site for the development	The site has insufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered unsuitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal is inconsistent with the relevant objective of the zone and will result in adverse environmental impacts on the locality. Accordingly, the proposal is not considered to be in the public interest.

### 9.1. Discussion of key issues

#### Clause 4.6 - Exception to a Development Standard

Pursuant to Clause 53 of the Housing SEPP, a minimum site area of 450m<sup>2</sup> applies to a detached secondary dwelling. The subject site has an area of 307m<sup>2</sup> and therefore the proposal represents a 32% variation above the development standard. The applicant submitted a Clause 4.6 written request seeking an exception to the minimum site area development standard.

Council can only grant development consent for a development that contravenes a development standard if it is satisfied that the written request has adequately addressed 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.

In the absence of specific objectives relating to the minimum site area development standard, the applicant relies on the principles in Chapter 1 Cl.3 of the Housing SEPP. However, Council is not satisfied that the written request has in fact demonstrated both that compliance is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify the contravention.

In conclusion, it is considered that the requirements of Clause 4.6(4) have not been satisfied and that there is no legal basis for Council to grant development consent for a development that contravenes the minimum site area development standard under the Housing SEPP 2021.

## 10. Conclusion

That the application to construct a detached secondary dwelling at the rear of the existing semi-detached dwelling be refused for the following reason:

1. The Clause 4.6 written request has failed to adequately address the matters under Clause 4.6 and the proposal cannot be supported.
2. An approval of the proposed development would not be in the public interest as it would facilitate an additional dwelling on an allotment of land that is significantly smaller than the minimum standard of 450m<sup>2</sup>.

D26/23

## Appendix 1: Referrals

### 1. Internal referral comments:

#### 1.1. Development Engineer

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

##### *Amended Plan Comments*

*The amended plans relate to moving the proposed secondary dwelling off the western side boundary by 900mm and moving it closer to the eastern side boundary by 200mm so as to also provide a 900mm offset.*

##### *Drainage Comments*

*Stormwater runoff from the (redeveloped portion) site shall be discharged either:*

- a) *To the kerb and gutter along the site frontage by gravity (preferably without the use of a charged system); OR*
- b) *To a suitably sized infiltration area.*

##### *Tree Management Comments*

*The established canopy tree in the rear setback of this site, along the western boundary, is in poor condition due to being cleared/lopped away from both houses, and is also leaning to the west, over the dividing fence, into the neighbouring property at no.106.*

*While not directly affected by the works proposed in this application it is growing in a very restricted area, and is already noted as being exempt from the DCP due to its location only 1700mm from the northwest corner of the subject dwelling (when scaled off the site survey), meaning it could be removed at any time, without consent, even irrespective of these works, so approval for this has been included in this report, should the applicant wish.*

*Further to its north, between the existing free-standing storage shed and the northern boundary is an insignificant Olive Tree, with no objections raised to its removal to accommodate the new secondary dwelling in this same area as shown, with the same also applying to the mature, 5-6m tall Persea americanna (Avocado), that is on the opposite side of the rear yard, halfway along the eastern boundary, given that it is a common, exotic species, with a re-design to allow its retention not warranted given the impact this would have on the whole scheme.*

*The tree that is growing wholly in the rear setback of the adjoining private property to the east, no.102, close to the common boundary, should not be affected by excavations for the new building, with a 200mm reduction in the side setback in this area, from 1100mm as originally proposed down to 900mm not to result in any major increase in impact given a combination of its relatively small size and the fact that works are limited to one side of its root plate only, with consent also granted for selective clearance pruning from its western aspect so as to avoid conflict/damage during works.*

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



104 Gardeners Road Kingsford

**REQUEST FOR VARIATION TO FLOOR SPACE RATIO OF BUILDINGS  
DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6(3) OF  
RANDWICK LEP 2012**

This Clause 4.6 variation relates to a proposal for a detached secondary dwelling to the rear of the existing dwelling on the subject site.

The proposed development comprises a single-storey secondary dwelling, with one ensuite, one bedroom, one bathroom and a living / dining room.

**Section 53 – Minimum Lot Size for Secondary Dwellings (Non-discretionary development standards)**

Section 53(2)(a) of the State Environmental Planning Policy (Housing) 2021 (**Housing SEPP**) prescribes a minimum lot size for development of detached secondary dwellings. The site has an area of 306.6m<sup>2</sup>. The proposal seeks to provide a secondary detached dwelling, providing a non-compliance with this control. The percentage variation is 31.6%.

The proposal therefore seeks to vary the minimum lot size area non-discretionary development standard set out in the Housing SEPP, pursuant to Clause 4.6 of the Randwick LEP 2012 (**RLEP**).

There are no objectives relating specifically to the minimum lot size non-discretionary standard. The objective of Section 53 is *“to identify development standards for particular matters relating to development for the purposes of a secondary dwelling that, if complied with, prevent the consent authority from requiring more onerous standards for the matters”*.

However, any underlying objective, in this case the principles of the policy, would be considered relevant in terms of enabling secondary dwelling development. The principles of the policy are:

- (a) *enabling the development of diverse housing types, including purpose-built rental housing,*



- (b) *encouraging the development of housing that will meet the needs of more vulnerable members of the community, including very low to moderate income households, seniors and people with a disability,*
- (c) *ensuring new housing development provides residents with a reasonable level of amenity,*
- (d) *promoting the planning and delivery of housing in locations where it will make good use of existing and planned infrastructure and services,*
- (e) *minimising adverse climate and environmental impacts of new housing development,*
- (f) *reinforcing the importance of designing housing in a way that reflects and enhances its locality,*
- (g) *supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, while managing the social and environmental impacts from this use,*
- (h) *mitigating the loss of existing affordable rental housing.*

The request demonstrates that compliance with the non-discretionary development standard relating to minimum lot size for a detached secondary dwelling is unreasonable or unnecessary in the circumstances of the case and establishes that there are sufficient environmental planning grounds to justify contravening the development standard, satisfying clause 4.6(3) of the RLEP.

Based on this Clause 4.6 request, the consent authority can be satisfied that the written request has adequately addressed the matters required to be demonstrated by subclause (3), and that the proposed development will be in the public interest because it is consistent with the objectives for development within the R2 – Low density residential zone under the RLEP 2012, in which the development is proposed to be carried out and is consistent with the principles of the Housing SEPP.

The nature of the exceedance to the development standard relating to minimum lot size for secondary dwellings is set out below, followed by consideration of the relevant matters in clause 4.6 of the RLEP.

This written request to vary the standards is based on the Guide prepared

by The NSW Department of Planning, Industry and Environment (DPI&E) 'Varying development standards: A Guide' (August 2011).

### Zoning of the site

The zoning of the land is R2 – Low Density Residential. The objectives of the R2 zone are:

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

### Clause 4.6 – Exceptions to Development Standards

Clause 4.6 of the RLEP 2012 allows for exceptions to Development Standards. The objectives of this 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 of the RLEP allows for exceptions of Development Standards. The objectives of this 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(2) provides the power for development consent to be granted even though the development would contravene a development standard, subject to that clause:

- (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.*

Clause 4.6(3) sets out what a clause 4.6 written request seeking to justify a contravention of a development standard must demonstrate in order for consent to be granted for development that contravenes a development standard:

- (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*

Clause 4.6(4) sets out the matters which a consent authority must be satisfied of in order to grant consent to a development that contravenes a development standard:

- (4) *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.*

This document constitutes the written request referred to in Clause 4.6(3) in relation to the proposal's breach of the non-discretionary development standard provided for minimum lot size in the Housing SEPP. Clause 53(2)(a) and provides the necessary information for the consent authority to be satisfied of the matters in clause 4.6(4).

The matters required to be demonstrated under clause 4.6(3) are set out below as Points 1 and 2.

**1. Clause 4.6(3)(a) - Compliance with the development standard must be unreasonable or unnecessary in the circumstances of the case:**

In order to assess whether strict compliance with the development standard is unreasonable or unnecessary, a proposal is considered against the following five ways<sup>1</sup>:

1. The objectives of the development standard are achieved notwithstanding non-compliance with the standard;
2. The underlying objective or purpose is not relevant to the development with the consequence that compliance is unnecessary;
3. The underlying objective or purpose would be defeated or thwarted if compliance was required with the consequence that 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; or
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 the land.

These five ways were re-emphasised by the Court<sup>2</sup>. Each 'test' offers a potential way of demonstrating that compliance is unnecessary or unreasonable in a particular circumstance<sup>3</sup>. All tests are separate and not all tests may not be applicable in each case. Therefore, not all tests need to be met.

There are no objectives relating to the subject non-discretionary development standard and therefore, the first three tests cannot be undertaken. However, with respect to the principles of the Housing SEPP, the proposal is consistent in the following manner:

<sup>1</sup> see *Wehbe v Pittwater Council* [2007] NSWLEC 827

<sup>2</sup> *Micaul Holdings Pty Limited v Randwick City Council* [2015] NSWLEC 1386

<sup>3</sup> *Mecone Pty Limited v Waverley Council* [2015] NSWLEC 1312



- (a) The proposal enables the development of a diverse housing type, being a secondary dwelling,
- (b) The proposal provides a type of housing capable of meeting the needs of more vulnerable members of the community, including very low to moderate income households and seniors, young persons, key workers, students and other persons in need of accommodation,
- (c) The proposal provides housing with a good level of amenity,
- (d) The proposal provides housing in a location where it will make good use of existing, planned and readily available infrastructure and services,
- (e) The proposal will minimise adverse climate and environmental impacts through compliance with BASIX requirements and provision of adequate landscaping,
- (f) The design of the secondary dwelling is suitable in its locality, and is designed in accordance with local planning objectives,
- (g) In the long term, the secondary dwelling is capable of supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, with limited social and environmental impacts from this use,
- (h) The secondary dwelling contributes to the availability of affordable housing, mitigating the loss of existing affordable rental housing.

The shortfall in lot size should not preclude this site being developed for the purposes of a secondary dwelling, given the site is suitable (see comments below) and the use is permissible in the zone and encouraged by the Housing SEPP.

In addition, it is considered that compliance with the standard is unreasonable and unnecessary in the circumstances of this case for the following reasons:

- The proposed building height and bulk is of an appropriate form and scale and is not inconsistent with the pattern of development within the locality.

- The provision of a primary and secondary dwelling on the existing site is compliant with the maximum site coverage control of 55% set out in 2.3, Control i) of the Randwick DCP 2013, demonstrating that the site is not being overdeveloped.
- The provision of a secondary dwelling on the existing site does not result in a non-compliance with the deep soil permeable surface control as the proposal provides a deep soil area of 82m<sup>2</sup>, equating to 26.7% of the site, compliant with the 25% control set out in 2.4, Control i) of the Randwick DCP 2013.
- A private open space area for the development as a whole of 7m x 6.7m, exceeding the control of 6m x 6m as set out in 2.5, Control i) of the Randwick DCP 2013.
- The secondary dwelling has a gross floor area of 39.7m<sup>2</sup>, which is below the maximum control of 60m<sup>2</sup> set out in Section 52((c)(i) of the Housing SEPP.
- The floor area of the secondary dwelling equates to 13% of the site, which is comparable with a 60m<sup>2</sup> secondary dwelling on a 450m<sup>2</sup> lot (13%), demonstrating that the size of the lot is suitable for the proposed development.
- The provision of the secondary dwelling will not create additional building bulk that results in unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity.

**2. Clause 4.6(3)(b) - There are sufficient environmental planning grounds to justify contravening the development standard:**

The sufficient environmental planning grounds which justify contravening the standard are:

- Compliance with the development standard is unreasonable and unnecessary as the proposed building height and bulk is of an appropriate form and scale and is not inconsistent with the pattern of development within the locality.
- The proposed development complies with the minimum required deep soil permeable area, site coverage and private open space required by the Randwick DCP 2013 demonstrating that the site is capable of



accommodating the proposal and is therefore suitable for the development (Section 4.15(c) of the EP&A Act, 1979).

- Given the suitability of the site, the lack of impact arising from the development and the provision of affordable housing in a locality well serviced by public transport and facilities, the proposal is consistent with object (c) of the EP&A Act, 1979 to promote the orderly and economic development of land.
- The proposal is consistent with object (d) of the EP&A Act, 1979 to promote the delivery and management of affordable housing on a site, which has been identified as being suitable.
- The secondary dwelling has a gross floor area of 39.7m<sup>2</sup>, which is below the maximum control of 60m<sup>2</sup> set out in Section 52(1)(i) of the Housing SEPP. The floor area of the secondary dwelling equates to 13% of the site, which is comparable with a 60m<sup>2</sup> secondary dwelling on a 450m<sup>2</sup> lot (13%), demonstrating that the size of the lot is suitable for the proposed development.
- The provision of the secondary dwelling will not create additional building bulk that results in unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity.
  - The proposal will not result in the loss of views from surrounding development, given its location and limited to single storey;
  - The proposal will not result in unreasonable overshadowing of adjoining properties, as the structure is limited to one storey and set back off the boundaries of the site;
  - The proposal will ensure that the visual and acoustic privacy of adjoining properties is maintained with windows located below fence height and provide a low density residential use with an internal space of less than 40m<sup>2</sup>; and
  - The proposal will provide a single storey secondary dwelling, which is in keeping with the scale of developments on adjoining properties and therefore is of an appropriate visual bulk for the locality.

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

Based on the above, the written request adequately addresses the matters referred to above by Clause 4.6(3).

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**4. Clause 4.6(4)(a)(II) - The proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out:**

**Objectives of Standard**

There are no objectives relating to the subject non-discretionary development standard.

Notwithstanding, it is considered that compliance with the standard is unreasonable and unnecessary in the circumstances of this case for the following reasons:

- Compliance with the development standard is unreasonable and unnecessary as the proposed building height and bulk is of an appropriate form and scale and is not inconsistent with the pattern of development within the locality.
- The footprint of the secondary dwelling combined with the existing dwelling provides a site coverage of 169m<sup>2</sup>, equating to 54.94% of the site and compliant with the maximum area control of 55%.
- The footprint of the secondary dwelling allows for the predominance of soft landscaped areas on the site and provides a deep soil area of 82m<sup>2</sup>, equating to 26.7% of the site, compliant with the 25% control.
- A private open space area for the site of 7m x 6.7m, exceeding the control of 6m x 6m.
- The secondary dwelling has a gross floor area of 39.7m<sup>2</sup>, which is below the maximum control of 60m<sup>2</sup> set out in Section 52((c)(i).
- The floor area of the secondary dwelling equates to 13% of the site, which is comparable with a 60m<sup>2</sup> secondary dwelling on a 450m<sup>2</sup> lot (13%), demonstrating that the size of the lot is suitable for the proposed development.
- The provision of the secondary dwelling will not create additional building bulk that results in unreasonable environmental amenity impacts in terms of overshadowing, loss of views, loss of privacy or loss of visual amenity.

## Objectives of the Zone

The zoning of the property is R2 and the objectives of the zone are:

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

The proposal is consistent with the zone objectives in the following manner:

- The proposal assists in meeting the housing needs of the community within a low density residential environment.
- The proposal will not affect the provision of other land uses that provide facilities or services to meet the day to day needs of residents.
- The proposal will not impact on the existing streetscape and is suitable in terms of built form having regard to its limited footprint and single storey height.
- The proposal will protect protect the amenity of residents in terms of solar access, privacy, visual amenity and views.
- The proposal will provide a form of affordable housing.
- The proposal will not inhibit the provision of small-scale business uses in existing commercial buildings.

The proposed development will be in the public interest because it is consistent with the objectives of the R2 zone and is consistent with the principles of the Housing SEPP in the following manner:

- (a) The proposal enables the development of a diverse housing type, being a secondary dwelling,
- (b) The proposal provides a type of housing capable of meeting the needs of more vulnerable members of the community, including very low to moderate income households and seniors,

- (c) The proposal provides housing with a reasonable level of amenity,
- (d) The proposal provides housing in a location where it will make good use of existing and planned infrastructure and services,
- (e) The proposal will minimise adverse climate and environmental impacts through compliance with BASIX requirements and provision of adequate landscaping,
- (f) The design of the secondary dwelling is suitable its locality,
- (g) In the long term, the secondary dwelling is capable of supporting short-term rental accommodation as a home-sharing activity and contributor to local economies, with limited social and environmental impacts from this use,
- (h) The secondary dwelling contributes to the availability of affordable housing, mitigating the loss of existing affordable rental housing.

The shortfall in lot size should not preclude this site being developed for the purposes of a secondary dwelling, given the site is suitable, as demonstrated in this written statement, and the use is permissible in the zone and encouraged by the Housing SEPP.

Compliance with the control is therefore unreasonable and unnecessary in the circumstances of this case.

**5. Clause 4.6(4)(b) – the concurrence of the Planning Secretary has been obtained**

Concurrence of the Planning Secretary is taken to have been obtained as a result of written notice dated 5 May 2020 attached to the Planning Circular PS 20-002.

**6. Clause 4.6(5)**

In the context of the requirements of Clause 4.6(5), it is considered that no matters of State or regional planning significance are raised by the proposed development. Moreover, it is considered that there would be no public benefit in maintaining the particular planning control in question, in the case of this specific development.

## Conclusion

The consistency of the development with the zone objectives with the absence of adverse impacts arising establish that there are sufficient grounds to support the variation from the development standard and confirm that it is unreasonable and unnecessary for the development to comply. This therefore demonstrates sufficient environmental planning grounds to justify contravening the standard. In addition, the resultant development will be in the public interest as it complies with the objectives of the zone.

The proposal is consistent with the objects of Section 1.3 of the EP& A Act, 1979, which are to encourage development that promotes the social and economic welfare of the community and a better environment, to promote and coordinate orderly and economic use and development of land, to promote the delivery and maintenance of affordable housing and to promote good design and amenity of the built environment.

This submission is considered to adequately address the matters required by Clause 4.6 and demonstrates that compliance with the development standard would be unreasonable and unnecessary in the circumstances of this case and there are sufficient environmental planning grounds to support the variation.

Based on this Clause 4.6 request, the consent authority can be satisfied that the written request has adequately addressed the matters required to be demonstrated by subclause (3), and that the proposed development will be in the public interest.



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

DCP Clause	Controls	Proposal	Compliance
	<b>Classification</b>	Zoning = R2	
<b>2</b>	<b>Site planning</b>		
<b>2.3</b>	<b>Site coverage</b>		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45%	53%	Yes
<b>2.4</b>	<b>Landscaping and permeable surfaces</b>		
	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.	25%	Yes
<b>2.5</b>	<b>Private open space (POS)</b>		
	<b>Dwelling &amp; Semi-Detached POS</b>		
	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	6m x 6.7m	Yes
<b>3</b>	<b>Building envelope</b>		
<b>3.1</b>	<b>Floor space ratio LEP 2012 = 0.75:1</b>	0.48:1	Yes
<b>3.2</b>	<b>Building height</b>		
	<b>Maximum overall height LEP 2012 = 9.5m</b>	3.6m	Yes
	i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded	2.4m	Yes
<b>3.3</b>	<b>Setbacks</b>		
<b>3.3.1</b>	<b>Front setbacks</b> i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary street frontage: - 900mm for allotments with primary frontage width of less than 7m - 1500mm for all other sites iii) do not locate swimming pools, above-ground rainwater tanks and outbuildings in front	No change to existing	
<b>3.3.2</b>	<b>Side setbacks:</b>	900mm	Yes

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DCP Clause	Controls	Proposal	Compliance
	<p>Semi-Detached Dwellings:</p> <ul style="list-style-type: none"> <li>Frontage less than 6m = merit</li> <li>Frontage b/w 6m and 8m = 900mm for all levels</li> </ul> <p>Dwellings:</p> <ul style="list-style-type: none"> <li>Frontage less than 9m = 900mm</li> <li>Frontage b/w 9m and 12m = 900mm (Gnd &amp; 1<sup>st</sup> floor) 1500mm above</li> <li>Frontage over 12m = 1200mm (Gnd &amp; 1<sup>st</sup> floor), 1800mm above.</li> </ul> <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p>		
3.3.3	<p><b>Rear setbacks</b></p> <p>i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments.</p> <p>ii) Provide greater than aforementioned or demonstrate not required, having regard to:</p> <ul style="list-style-type: none"> <li>Existing predominant rear setback line - reasonable view sharing (public and private)</li> <li>protect the privacy and solar access</li> </ul> <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"> <li>Compatibility</li> <li>POS dimensions comply</li> <li>minimise solar access, privacy and view sharing impacts</li> </ul> <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p>	900mm	The proposal complies with the Outbuilding controls in Section 8.1 of this table and the rear setback is acceptable.
<b>4</b>	<b>Building design</b>		
<b>4.1</b>	<b>General</b>		
	<p>Respond specifically to the site characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> <li>articulated to enhance streetscape</li> <li>stepping building on sloping site,</li> <li>no side elevation greater than 12m</li> <li>encourage innovative design</li> </ul>	The building occupies the majority of the rear yard and does not respond appropriately to the site.	Yes
<b>4.2</b>	<b>Additional Provisions for symmetrical semi-detached dwellings</b>		
	<p>i) Enhance the pair as coherent entity:</p> <ul style="list-style-type: none"> <li>behind apex of roof; low profile or consistent with existing roof</li> <li>new character that is first floor at front only after analysis streetscape outcome</li> </ul>	No change to the existing semi on the site.	Yes

DCP Clause	Controls	Proposal	Compliance
	ii) Constructed to common boundary of adjoining semi iii & iv) avoid exposure of blank party walls to adjoining semi and public domain		
<b>4.5</b>	<b>Colours, Materials and Finishes</b>		
	i) Schedule of materials and finishes ii) Finishing is durable and non-reflective. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) recycle and re-use sandstone (See also section 8.3 foreshore area.)	The plans show a metal roof, aluminium windows and rendered walls. Details should be provided to ensure the roof is non-reflective.	Yes
<b>4.6</b>	<b>Earthworks</b>		
	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.	No significant earthworks are proposed.	Yes
<b>5</b>	<b>Amenity</b>		
<b>5.1</b>	<b>Solar access and overshadowing</b>		
	<b>Solar access to proposed development:</b>		
	i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.	The windows along the eastern elevation will receive a minimum 3 hours direct sunlight at the winter solstice.	Yes
	<b>Solar access to neighbouring development:</b>		
	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	The proposal is single storey and will not result in any unreasonable overshadowing impacts to the adjoining properties.	Yes

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DCP Clause	Controls	Proposal	Compliance
	<p>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 &lt;6m above ground) of neighbouring dwellings.</p> <p>vi) Variations may be acceptable subject to a merits assessment with regard to:</p> <ul style="list-style-type: none"> <li>Degree of meeting the FSR, height, setbacks and site coverage controls.</li> <li>Orientation of the subject and adjoining allotments and subdivision pattern of the urban block.</li> <li>Topography of the subject and adjoining allotments.</li> <li>Location and level of the windows in question.</li> <li>Shadows cast by existing buildings on the neighbouring allotments.</li> </ul>		
<b>5.2</b>	<b>Energy Efficiency and Natural Ventilation</b>		
	<p>i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as:</p> <ul style="list-style-type: none"> <li>Skylights (ventilated)</li> <li>Clerestory windows</li> <li>Fanlights above doorways</li> <li>Highlight windows in internal partition walls</li> </ul> <p>ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries</p> <p>iii) living rooms contain windows and doors opening to outdoor areas</p> <p><i>Note: The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</i></p>	The layout and design will provide adequate internal amenity for the future occupants.	Yes
<b>5.3</b>	<b>Visual Privacy</b>		
	<b>Windows</b>		
	<p>i) proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures:</p> <ul style="list-style-type: none"> <li>windows are offset or staggered</li> <li>minimum 1600mm window sills</li> <li>Install fixed and translucent glazing up to 1600mm minimum.</li> <li>Install fixed privacy screens to windows.</li> <li>Creating a recessed courtyard (minimum 3m x 2m).</li> </ul>	The proposal is single storey and there will be no visual privacy impacts to the adjoining properties.	Yes

DCP Clause	Controls	Proposal	Compliance
	ii) orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)		
<b>5.4</b>	<b>Acoustic Privacy</b>		
	i) noise sources not located adjacent to adjoining dwellings bedroom windows <i>Attached dual occupancies</i> ii) Reduce noise transmission between dwellings by: <ul style="list-style-type: none"> <li>- Locate noise-generating areas and quiet areas adjacent to each other.</li> <li>- Locate less sensitive areas adjacent to the party wall to serve as noise buffer.</li> </ul>	The proposed secondary dwelling is enclosed and located at the rear of the property and not adjacent to the bedrooms on the adjoining properties.	Yes
<b>5.5</b>	<b>Safety and Security</b>		
	i) dwellings main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 square metres) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not obstruct casual surveillance (maintain safe access)	Direct, obvious and secure access will be provided to the proposed secondary dwelling.	Yes
<b>5.6</b>	<b>View Sharing</b>		
	i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas. ii) retaining existing views from the living areas are a priority over low use rooms iii) retaining views for the public domain takes priority over views for the private properties iv) fence design and plant selection must minimise obstruction of views v) Adopt a balanced approach to privacy protection and view sharing vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA. (certified height poles used)	The proposal will not result in any undue view impacts to the adjoining properties.	Yes
<b>6</b>	<b>Car Parking and Access</b>		
<b>6.1</b>	<b>Location of Parking Facilities:</b>		
	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:	There will be no change to the existing parking arrangement at the front of the principal dwelling.	Yes

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DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> <li>- Frontage &gt;12m,</li> <li>- Consistent with pattern in the street;</li> <li>- Landscaping provided in the front yard.</li> </ul> v) Minimise excavation for basement garages vi) Avoid long driveways (impermeable surfaces)		
<b>7</b>	<b>Fencing and Ancillary Development</b>		
<b>7.1</b>	<b>General - Fencing</b>		
	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	There will be no change to the existing boundary fencing.	Yes
<b>7.4</b>	<b>Outbuildings</b>		
	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"> <li>- finished external walls (not requiring maintenance;</li> <li>- no openings facing neighbours lots and</li> <li>- maintain adequate solar access to the neighbours dwelling</li> </ul> v) First floor addition to existing may be considered subject to: <ul style="list-style-type: none"> <li>- Containing it within the roof form (attic)</li> <li>- Articulating the facades;</li> <li>- Using screen planting to visually soften the outbuilding;</li> <li>- Not being obtrusive when viewed from the adjoining properties;</li> <li>- Maintaining adequate solar access to the adjoining dwellings; and</li> <li>- Maintaining adequate privacy to the adjoining dwellings.</li> </ul> vi) Must not be used as a separate business premises.	The proposed secondary dwelling will be located in the rear yard and have a maximum external wall height of 2.4m and a maximum overall height of 3.6m.	Yes

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**Responsible officer:** Thomas Mithen, Environmental Planner

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