

Randwick Local Planning Panel (Electronic) Meeting

Thursday 11 May 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, 11 May 2023

Declarations of Pecuniary and Non-Pecuniary Interests

Development Application Reports

D29/23	1 Greville Street Clovelly (DA/491/2022).....	1
D30/23	27 Clifton Road, Clovelly (DA/35/2023).....	49
D31/23	17 Woomera Road, Little Bay (DA/88/2023)	79
D32/23	10 Palmer Street, South Coogee (DA/45/2023)	105

Kerry Kyriacou
DIRECTOR CITY PLANNING

Development Application Report No. D29/23

Subject: 1 Greville Street Clovelly (DA/491/2022)



Executive Summary

Proposal:	Change of use from mixed-use building to residential including new internal lift.
Ward:	North Ward
Applicant:	Ms Tara Ende
Owner:	Ms Tara Ende
Cost of works:	\$146,569.50
Reason for referral:	Development that contravenes the floor space ratio 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 Floor Space Ratio 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 grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/491/2022 for Change of use from mixed-use building to residential. New internal 2-stop lift (variation to FSR standard), at No. 1 Greville Street, Clovelly, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions - DA/491/2022 - 1 Greville Street, CLOVELLY NSW
 2031 - DEV - Randwick City Council

D29/23

D29/23



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 a change of use to the existing building from a mixed-use building (commercial office and residential) to a single residential dwelling. The building previously consisted of commercial space in the front section of the ground floor and was previously converted to facilitate residents to include a garage, entry foyer, cellar, media room and home gymnasium.

The proposal on the ground floor plan includes a tandem garage, entry, pantry/clothes drying, a hallway/lobby, dark room, wardrobe/storage, bedroom 4 and ensuite. the first floor plan will consist of bedroom 2 and ensuite, bedroom 3/home office, living room, ensuite, bathroom, W.I.R, master bedroom with ensuite, hallway, kitchen/dining, private open space and living room.

The proposal will include a new internal lift for access between the Ground Floor Plan and First Floor Plan. The installation of the lift will require minor structural works.

The proposal was notified in accordance with Council's Community Participation Plan and no submissions by way of objection were received.

The key issues associated with the proposal relate to non-compliance with the maximum floor space ratio development standards and the change of use. The applicant has submitted written request to vary the standard, which is considered to be well founded. The variations are assessed as being in the public interest given the development is consistent with the objectives of the standards and the R2 Low Density Residential zone. The additional FSR is attributed to the existing built form which precedes the dwelling use on site. The building will present as a two (2) storey structure to Greville Street and maintain an existing heigh of 9.11m.

The proposal is recommended for approval subject to non-standard conditions that require a non-standard condition to ensure the dwelling is utilised for a dwelling purpose.

2. Site Description and Locality

The subject site is on the northern side of Greville Street and has a frontage of 9.145m, depth of 37.49m and an area of 341.5m². The site is known as 1 Greville Street, Clovelly and a legal description of Lot A DP 355938.

Existing on the site is a two storey mixed use building, fronting Greville Street with vehicular access.

The site is zoned R2 Low Density Residential zone. The surrounding area comprises of a mix of one and two storey dwellings and residential flat buildings.

See site photo and extract of survey below.



Figure 1: Existing dwelling as viewed in Douglas Street (Source: Google Street View)

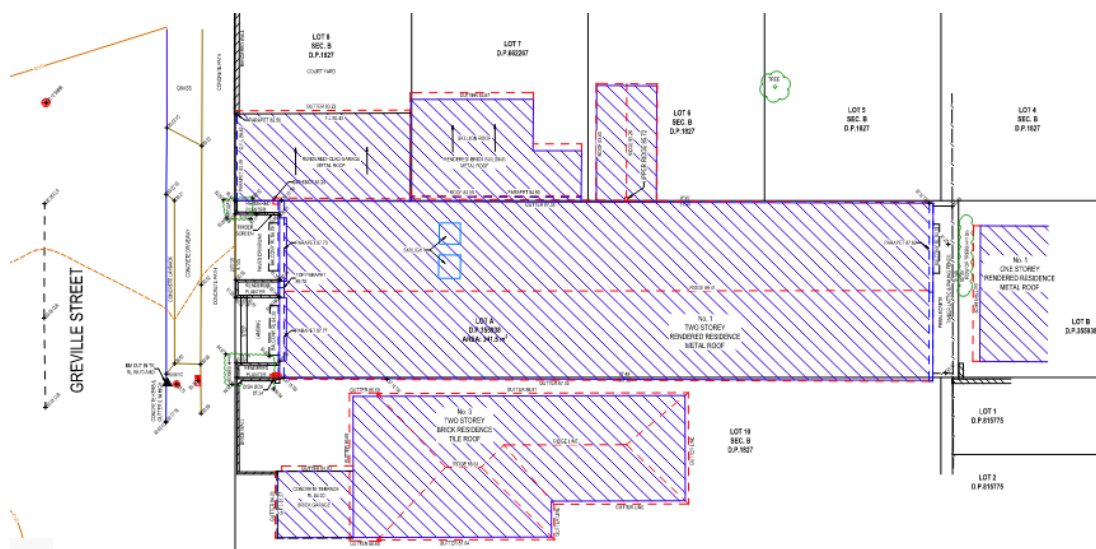


Figure 2: Survey Plan (Source: Sydney Surveyors)

3. Relevant history

The site itself has undergone various changes including different uses and in recent years, a summary of the summary of the development history that applies to the subject site is provided below.

DA/378/68 – On 15 October 1968, the Council granted its consent to use existing factory building for panel beating and storage.

DA/73/69 – On 18 March 1969, the Council granted its consent to dismantle and storage of car parts.

DA/68/87 – On 1 April 1987, the Council granted consent to use the existing 2 storey commercial building as a sun glasses importing business.

DA/381/95 – On 16 November 1995, the Council granted consent to change of use on the site.

DA/195/96 – On 27 June 1996, the Council granted consent for a change of use of ground floor for garment importing wholesale distribution business.

DA/555/96 – On 16 December 1996, Council granted its consent for a change of use from a garment wholesaler to a wholesaler of light fittings.

DA/1035/98 – On 1 February 1999, Council granted consent for a change of use of premises to resort marketing, reservations & acquisition & supply purchase/storage.

DA/256/99 – On 16 July 1999, Council granted consent to alterations and additions to the residential component of the existing mixed use building.

DA/214/2005 – On 21 April 2005, Council granted consent to change the use of the premises (ground floor) to use as a Private Investment Operations Office (fund and portfolio management) and associated accounting and administrative activities, hours of operation 8:30am to 5:30pm Monday to Friday.

4. Proposal

The proposal seeks development consent for a change of use of the building on site from a Private Investment Operations Office and associated accounting and administrative activities, to a residential dwelling. The proposed dwelling includes the following rooms:

Ground Floor Plan

- Double Garage (Tandem)
- Entry
- Pantry/Clothes Drying
- Dark Room
- Hallway/Lobby
- Wardrobe/Storage
- Storage
- W.I.R
- W.C
- 2 Stop Lift
- Bedroom with Ensuite
- Wetbar

First Floor Plan

- 3 Bedrooms
- Living Room
- Ensuite
- Bathroom
- W.I.R
- Laundry
- W.I.P
- Private Outdoor Space
- Kitchen/Dining

- Living Room
- 2 Stop Lift

The proposal includes re-classification of rooms for dwelling purposes and the construction of a new 2 stop lift. The new 2 stop lift is proposed for access between the Ground Floor and First Floor. The lift will require minor structural and non-structural works. No further physical works will be undertaken to the existing building. The lift shaft will not be visible from the public domain.

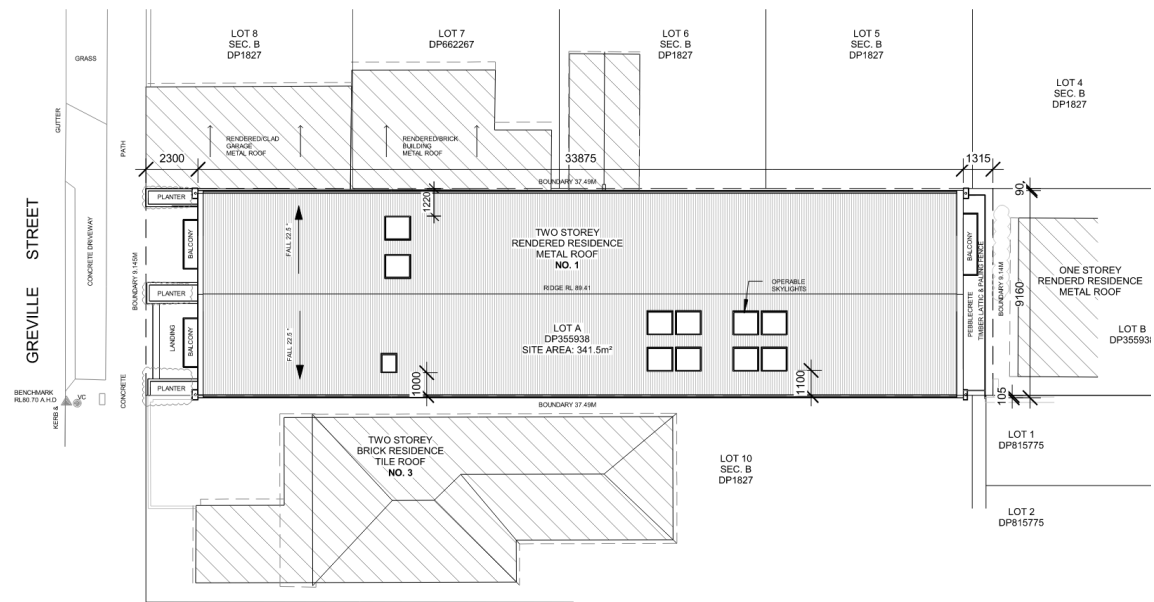


Figure 3: Site Plan (Source: HallGroup & Co)

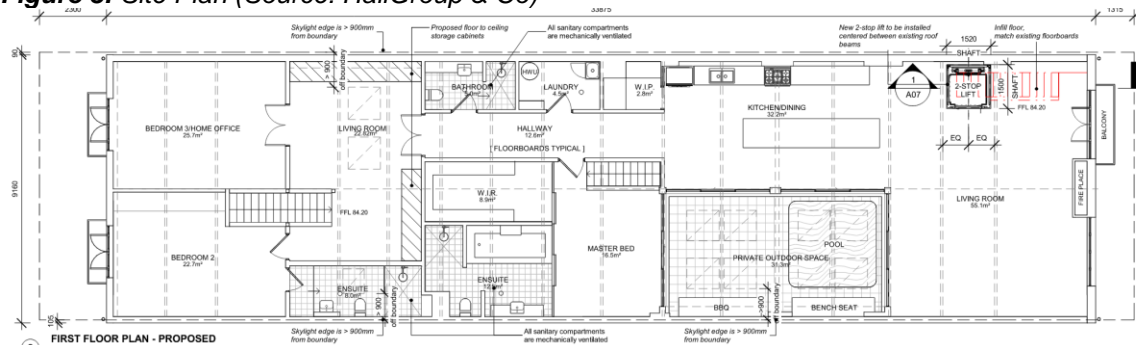


Figure 4: Proposed Ground Floor Plan (Source: HallGroup & Co)

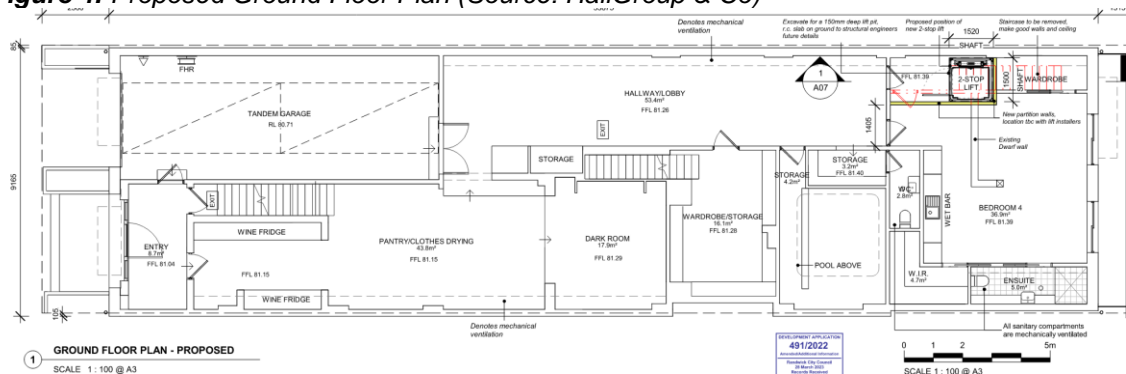


Figure 5: Proposed First Floor Plan (Source: HallGroup & Co)

D29/23

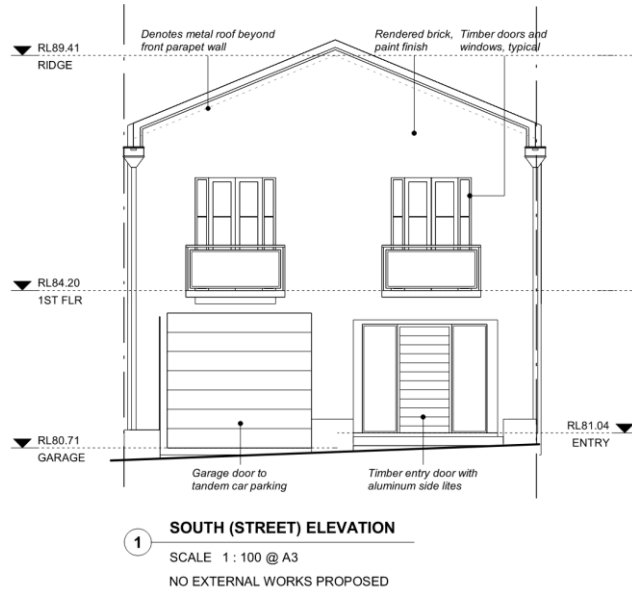


Figure 6: Proposed South (Street) Elevation (Source: HallGroup & Co)

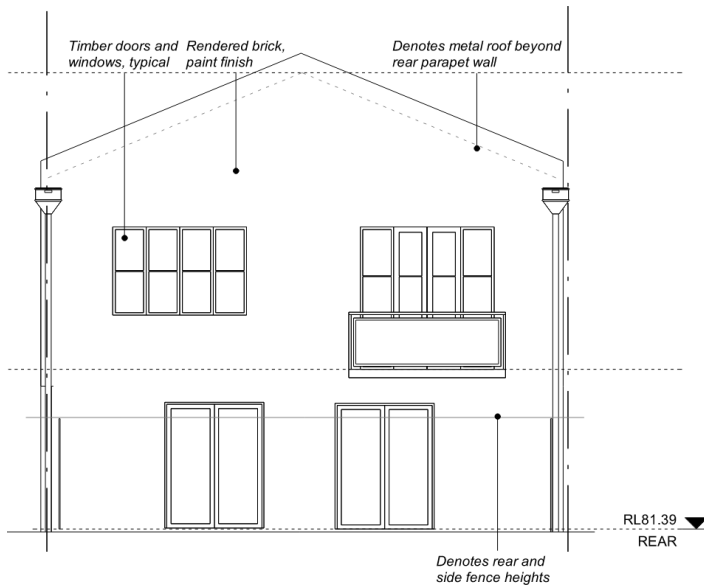


Figure 7: Proposed North (Rear) Elevation (Source: HallGroup & Co)

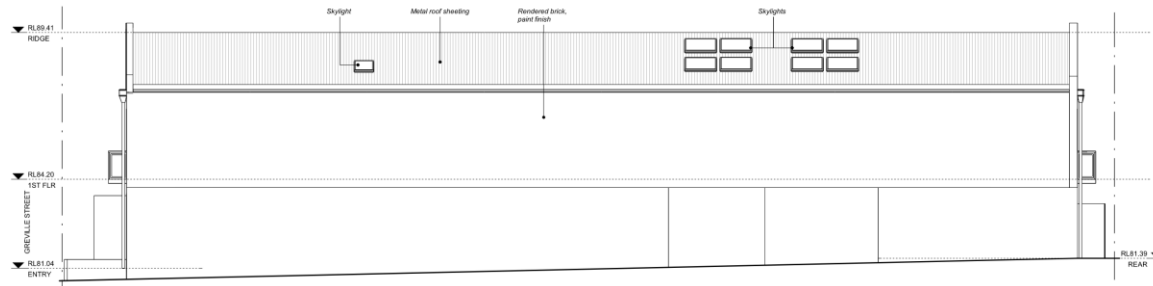


Figure 8: Proposed East (Side) Elevation (Source: HallGroup & Co)

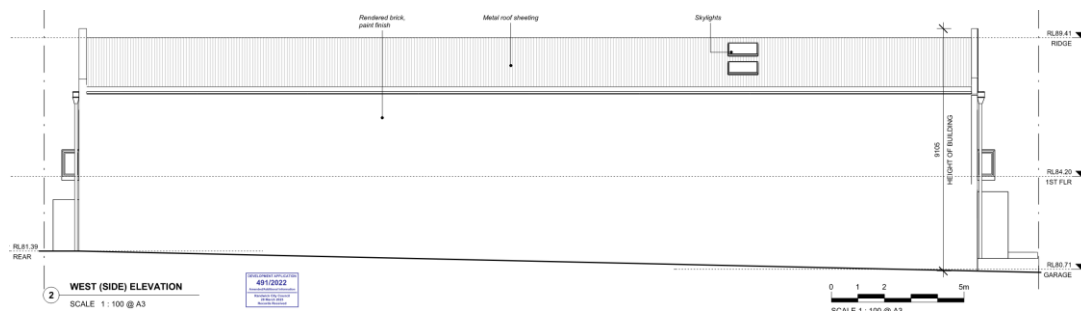


Figure 9: Proposed West (Side) Elevation (Source: HallGroup & Co)

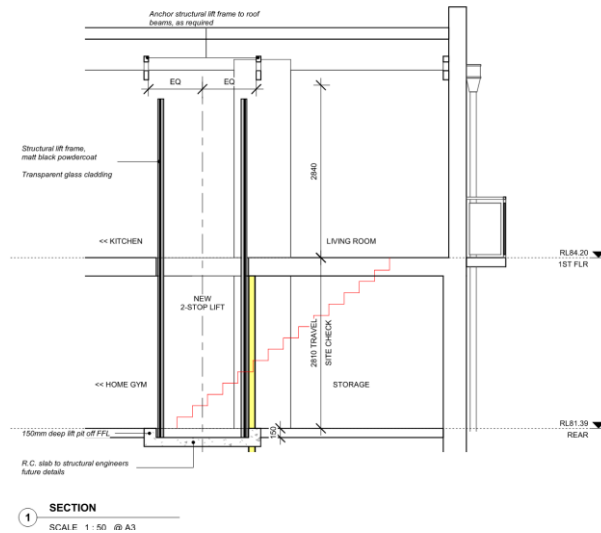


Figure 10: Proposed Section Plan (Source: HallGroup & Co)

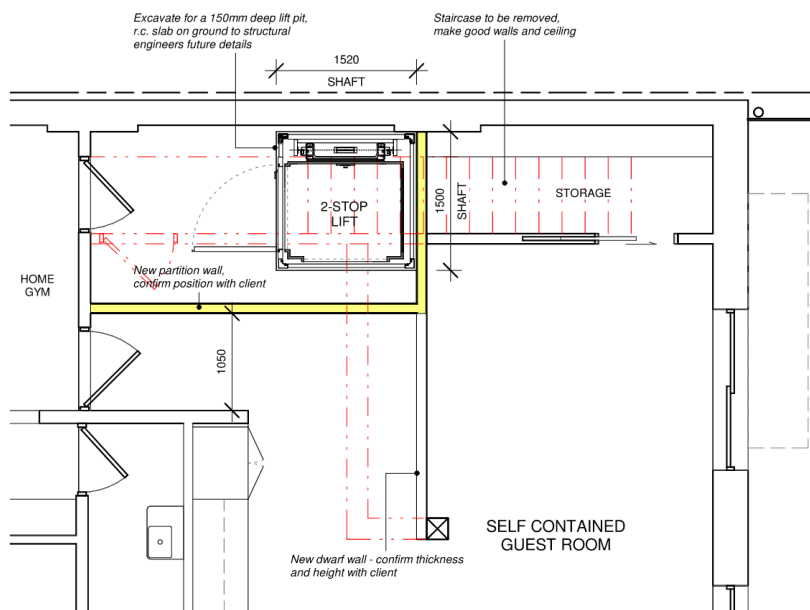


Figure 11: Lift Plan – Ground Floor Proposed (Source: HallGroup & Co)

D29/23

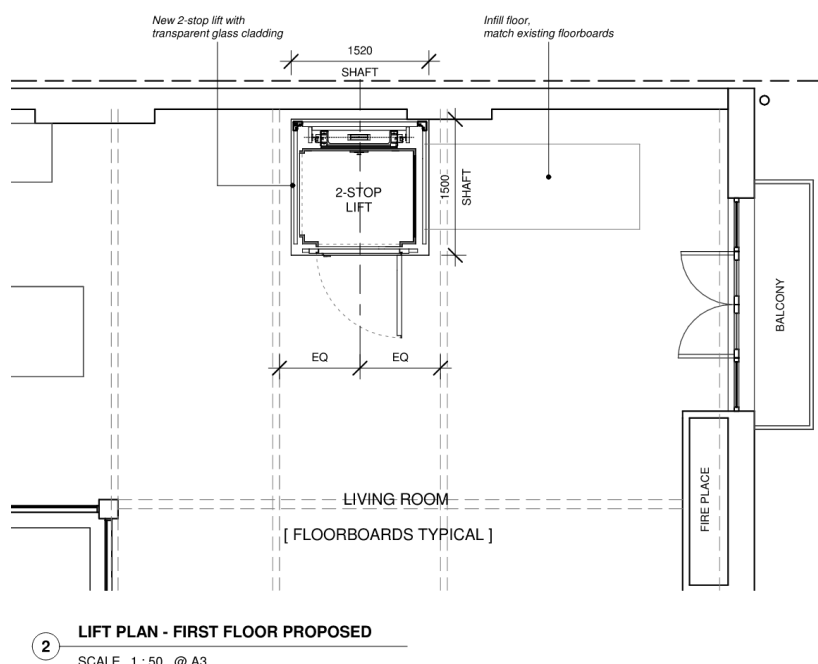


Figure 12: Lift Plan – First Floor Proposed (Source: HallGroup & Co)

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 during the notification period.

6. Relevant Environment Planning Instruments

6.1. SEPP (Building Sustainability Index: BASIX) 2004

A satisfactory BASIX Certificate (No. A475900 dated 2 October 2022) has been submitted in accordance with the requirements of the BASIX SEPP.

6.2. SEPP (Resilience and Hazards) 2021

State Environmental Planning Policy (Resilience and Hazards) 2021 applies to all land and aims to provide for a state-wide planning approach to the remediation of contamination land.

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 development 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. State Environmental Planning Policy (Housing) 2021 (Housing SEPP)

The application is for a change of use from a mixed-use building to a residential dwelling with the incorporation of a new lift. The application includes a section to the rear of the Ground Floor “Bedroom 4” which could potentially be closed off to facilitate a “secondary dwelling”.

The proposal for a secondary dwelling would generally be prohibited development as specified by the Land Use Table for the Low Density Residential (R2) zone within the RLEP 2012. Nevertheless, the proposal may rely on the provisions of the State Environmental Planning Policy (Housing) 2021 for the component of a secondary dwelling on site.

The SEPP was introduced on 26 November 2021 following the consolidation of 5 former housing-related SEPPs including the State Environmental Planning Policy (Affordable Rental Housing) 2009. The Housing SEPP gives incentives to supply the affordable and diverse housing in the right places and for every stage of life, introducing two new housing types: co-living housing and independent living units.

Comment:

The application was lodged with a “Self Contained Guest Room” to the rear of the Ground Floor including a kitchenette. Council raised the “Self Contained Guest Room” with the applicant and the Applicant provided revised plans with an additional Bedroom and Wetbar instead of a self contained guest room. A condition of consent has been included to ensure the dwelling does not incorporate a “Secondary Dwelling”.

6.4. Randwick Local Environmental Plan 2012 (LEP)

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

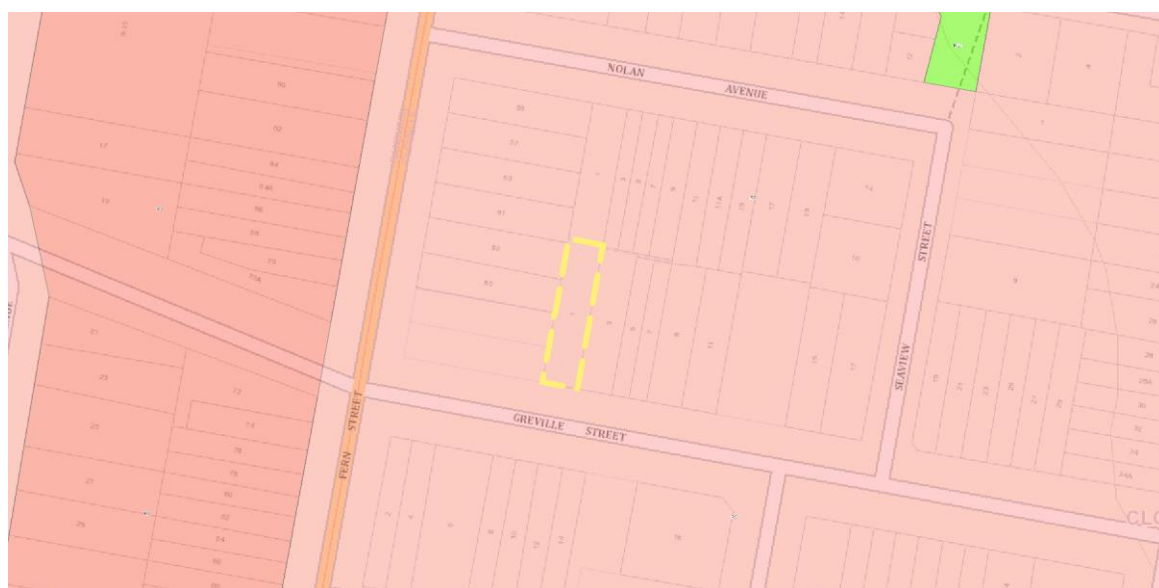


Figure 13: Lane Use Zoning Plan Demonstrating the Development Site Outlined in Yellow in R2 zone (Source: NSW Planning Portal).

2.3 Land Use Zoning

Zone R2 Low Density Residential

1 Objectives of zone

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

- To protect the amenity of residents.
- To encourage housing affordability.
- To enable small-scale business uses in existing commercial buildings.

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, will not be inconsistent with the existing streetscape and subject to the recommended conditions will not result in any unreasonable amenity impacts upon surrounding residents.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4: Floor space ratio (max)	0.75:1	1.53:1 (523.4m ²)	No
CI 4.3: Building height (max)	9.5m	9.15m	Yes

6.4.1. Clause 4.6 - Exceptions to development standards

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

6.4.2. Clause 5.10 - Heritage conservation

Clause 5.10 of the LEP relates to heritage items and heritage conservation areas. Any effect of the proposed development on the heritage significance of the item, nearby item, surrounding conservation area must be considered in the assessment of any proposed development. While the subject site is located within the vicinity of Heritage Items, the subject site is not identified as a heritage item.

The building is situated between Heritage Items 121, 122 to the west, I28 to the north and I24 to the east. The building is separated from the surrounding heritage buildings, so that the proposed works are unlikely to impact on the physical fabric of the heritage items. The proposal does not propose any external changes and will not impact on the streetscape setting or views to or from the adjacent heritage items.

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Existing	Proposal	Proposed variation	Proposed variation (%)
CI 4.4: Floor space ratio (max)	0.75:1 (256.125m ²)	1.54:1 (525.1m ²)	1.53:1 (523.4m ²)	267.275m ²	104.35%
CI 4.3: Building height (max)	9.5m	9.15m (As existing)	9.15m (As existing)	N/A	N/A

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

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

- (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and*
- (b) *the concurrence of the Secretary has been obtained.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Applicant's written justification

The applicant's written justification demonstrates that this objective is satisfied. The proposed alterations and additions the subject of this Submission are all to the internal space of the

dwelling and thus, will not adversely affect the existing size and scale of development, nor will it adversely impact adjoining and neighbouring land. The property has, to the best of the Owner's knowledge and belief, existed in its current size and scale for over a century.

For Council to require compliance with this development standard would be manifestly unreasonable and unnecessary, as it would require demolition of a substantial part of the dwelling, rendering the dwelling unlivable.

Assessing officer's comment:

The proposal is considered to respond appropriately to the existing building on site.

The proposed development will slightly decrease the gross floor area due to the installation of a lift. The alterations will retain the built form of a dwelling and ensure a size and scale of the development is compatible with the future of the locality.

The proposal is for a change of use and lift installation which will predominately retain the existing built form and setbacks. The proposal to the dwelling will facilitate internal alterations and not alter the built form including articulation to the external façade. No further overshadowing impacts to the adjoining property will result.

The proposal will retain the existing building which presents as a dwelling to the streetscape and neighbouring properties. The proposal will be compatible with the scale and character of contributory buildings in a conservation area or heritage item. The proposal will not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.

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

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

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

It is submitted that there are sufficient environmental planning grounds to justify varying the Floor Space Ratio standard for the following reasons:

- the variation in the floor space ratio of the dwelling will not adversely impact surrounding properties' current environmental amenities or views, or those of surrounding public spaces;
- the proposed alterations and additions are all to the internal space of the dwelling, not visible from neighbouring properties or the public domain, and will not affect the visible size or scale of the dwelling;
- the proposed alterations and additions contribute to a slight reduction in floor space ratio, thus bringing the property slightly closer to compliance with the development standard, and in all other respects, the proposed alterations and additions comply with all development controls and standards set out in the RLEP 2012;
- the proposed floor space ratio deviation does not affect the current building footprint of the dwelling on the lot.

Therefore, it is considered that the proposed deviation from the floor space ratio control is inconsequential in the circumstances and will not detract from the desired character of the subject site nor the locality.

Based on this, it is submitted that there are sufficient environmental planning grounds to permit the floor space ratio variation in this instance.

Assessing officer's comment: The overall height, bulk and scale of the development is compatible with the existing locality and immediately surrounding buildings on the northern side of Greville Street. The proposed variation will be a minor decrease as a result of the installation of the lift. The proposed variation has been designed in a manner that ameliorates adverse impacts. In conclusion, there are grounds to justify contravention of 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 FSR standard and R2 Low Density Residential zone is provided below:

Assessment against objectives of height standard

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

Assessment against objectives of the R2 Low Density Residential zone

The objectives of R2 zone are:

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

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

"Clause 4.6(4)(a)(ii) of the RLEP2012 requires the consent authority to be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of this standard and the objectives for development within the zone in which the development is proposed to be carried out.

It is submitted that the above analyses demonstrate that the proposed alterations and additions meet these criteria and area thus in the public interest. A refusal to grant consent to the Development Application to which this submission relates would result in the public and future applicants being unable to rely on previous decisions of the consent authority as to consistency in its decision-making.

It is noted that the Planning Secretary's concurrence under Clause 4.6(4)(b) is required to be obtained. It is further noted that such concurrence has been delegated to Council's Local Planning Panel pursuant to written notice dated 21 February 2018, attached to Planning Circular PS 20-002 issued on 5 May 2020."

Assessing officer's comment: The proposal demonstrates consistency with the zone objectives and preserves the streetscape and the amenity of adjoining residents. As demonstrated above, the proposed development is in the public interest, given that it has demonstrated consistency with the objectives of the FSR development standard and the objectives of the R2 zone. In addition, the above assessment demonstrates that compliance with the control is unreasonable and unnecessary in the instance of subject application.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

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

Conclusion

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

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

As the proposed development is for the purpose of a dwelling, the provisions of Part C1 of RDCP are applicable in this instance. The relevant provisions of the DCP are addressed in the Key Issues section of the report and Appendix 3.

9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions were received in relation to the 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

Heritage Conservation

The subject site is not identified as being a heritage item and is not within a Heritage Conservation Area. The subject site is surrounded by properties identified as heritage items. These include Item 65 Fern Street, Clovelly (I121), 67 Fern Street, Clovelly (I122) to the west, 5 Nolan Avenue, Clovelly (I28) to the north and 5 Greville Street, Clovelly (I24) to the east.

It is appreciated that the existing facades along this portion of Greville Street are largely intact and portray original features, it is noted that the streetscape as a whole provides a variety of architectural styles. The proposal seeks a minor internal structural alteration to construct a two storey lift which will maintain the large majority of the built form. The proposal seeks to largely retain the existing building and therefore façade of Greville Street. The proposed addition is located behind the apex of the existing building to align with the roof form and will minimise the visual impact of the proposed building. There are examples of modern additions within the immediate vicinity of the site and therefore the proposed would not be uncharacteristic of the area. Given, the the subject site is not identified as having any heritage significance, refusal of the application based on the architectural design would not be warranted in this instance.



Figure 14: Location Plan Demonstrating the Site Area Hatched in Purple in proximity to Heritage Items (Source: Randwick City Council Interactive Mapping).

Site Coverage

Part C1 – 2.3 of the RDCP stipulates to ensure new development and alterations and additions to existing dwellings reserve adequate unbuilt upon areas for the purpose of private open space, deep soil planting, permeable surfaces and ancilliary development.

The proposed dwelling has a 90% site coverage, with the dwelling maintaining the majority of the lot. The proposal includes the change of use of the building to a residential dwelling and the intallation of the 2 storey lift will result in the gross floor area reduction. The development will maintain the existing built form, bulk and scale of the site facilitating an area with a pool which acts similar to a “private open space” area internally on the First Floor. Further to this the, installation of the lift will not be visibale to the surrounding locality or futher alter the existing site coverage.

The proposal maintains an area with landscaping to the rear of the building and facilitates an internal area with a pool and a BBQ area that can facilitate the same use as a “private open space area”. The proposal is considered to achieve the objective regarding site coverage for the reasons stipulated above.

Landscaping

Part C1 – 2.4 Landscaping and Permeable Surfaces stipulates landscaping assists visually integrating development with the streetscape and the wider neighbourhood. It also provides an attractive and useable outdoor environment.

Given the built form encompasses the majority of the site, the proposal facilitates a small area “Pebblecrete” to the rear of the site. This area has been conditioned to provide landscaping to the rear of the dwelling.

Private Open Space

Part C1 – 2.5 of the RDCP stipulates private open space provides outdoor living areas for recreational activities of residents. Private Open Space should be located and designed to maximise solar access, privacy, accessibility and useability.

The development proposes to maintain the existing building on site. The built form will cover the majority of the lot and proposes an internal area consisting of a Patio Area and Pool in lieu of a "Private Open Space" area. This area will consist of 4.28m in width and 7.64m in length. Further to this, the proposal will maintain a small gravel area to the rear of the site with landscaping. Given the proposal is utilising an existing building the proposal is considered to facilitate an adequate level of private open space enabling passive activities by residents, whilst maintaining solar access and accessibility.

10. Conclusion

That the application for change of use from mixed-use building to residential and a new internal 2 stop lift (Variation to FSR) 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 proposed activity and built form will provide for housing needs of the community, will not be inconsistent with the existing streetscape and subject to the recommended conditions will not result in any unreasonable amenity impacts upon surrounding residents.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- The proposed development shall not result in any unreasonable impacts upon the residential amenity of the surrounding properties.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Heritage Planner

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

"The Site

The site is occupied by a two storey building occupying most of the site, which appears to date from the late twentieth century. Immediately to the west of the site at nos.65 and 67 Fern Street are a pair of Victorian Italianate houses listed as heritage items under Randwick LEP 2012. To the east of the site at nos.5 and 7 Greville Street is a two storey semi-detached pair also listed as a heritage item.

Proposal

The application proposes alterations and additions to the existing building to change its used from commercial/ residential to residential. Drawings which have been submitted do not contribute to an understanding of the proposed works. It appears that no external works are proposed, but a new lift is to be provided internally.

Controls

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

Comments

The building is separated from the surrounding heritage buildings, so that the proposed works are unlikely to impact on the physical fabric of the heritage items. The proposal does not propose any external changes and will not impact on the streetscape setting or views to or from the adjacent heritage items.

Recommendation

No additional consent conditions are required.”

1.2. Building Referral

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

“It is recommended that the said report recommendations outlined be adopted as a condition of development consent with details of the certification provided to the engaged Principal Certifier. As such, the report will need to be incorporated into the development consent and construction certificate application with a validation report provided to the Principal Certifier.”

D29/23

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



SUBMISSION PURSUANT TO CLAUSE 4.6 OF RANDWICK LOCAL ENVIRONMENTAL PLAN 2012
SEEKING EXCEPTION TO DEVELOPMENT STANDARD UNDER CLAUSE 4.4 - **FLOOR SPACE RATIO**

1 GREVILLE STREET, CLOVELLY

CHANGE OF USE FROM MIXED USE BUILDING TO RESIDENTIAL
INSTALLATION OF TWO-STOP INTERNAL LIFT AND ASSOCIATED ALTERATIONS

Randwick City Council

Prepared on behalf of Tara Ende

by

Plint Drafting Services

January 2023

 SUBMISSION PURSUANT TO CLAUSE 4.6 RANDWICK LOCAL ENVIRONMENTAL PLAN 2012

TABLE OF CONTENTS

1. INTRODUCTION	3
2. THE PROPOSAL	3
Description of Works	3
3. RELEVANT LEGISLATION	3
<i>Clause 4.4 -Floor Space Ratio</i>	3
<i>Clause 4.5 -Calculation of floor space ratio and site area</i>	3
<i>Clause 4.6 - Exceptions to development standards</i>	4
4. VARIATION SOUGHT TO DEVELOPMENT STANDARD	5
Description of Subject Site	5
Floor Space Ratio Control	5
The Proposal	5
Contravention of Floor Space Ratio	5
Justification for Contravention of the Development Standard	6
Assessment Against Development Standards	6
Further Matters for Consideration	7
Conclusion	8

SUBMISSION PURSUANT TO CLAUSE 4.6 RANDWICK LOCAL ENVIRONMENTAL PLAN 2012

1. INTRODUCTION

This Submission pursuant to Clause 4.6 of the Randwick Local Environmental Plan 2012 (Submission) has been prepared by Plint Drafting Services on behalf of the property owner, Tara Ende, and should be read in conjunction with the Statement of Environmental Effects (SEE) submitted with Development Application DA/491/2022 to Randwick City Council for proposed development at 1 Greville Street, Clovelly (the Subject Site).

2. THE PROPOSAL**Description of Works**

The works for which the Development Application seeks consent, and which are relevant to this Submission, are the installation of an internal two-stop lift with associated alterations. The Development Application also seeks consent for a change of use for the property from a mixed-use building to a residential dwelling.

3. RELEVANT LEGISLATION

This Submission has taken into consideration relevant provisions of the *Randwick Local Environmental Plan 2012* (RLEP2012), relevant sections of which, for the purpose of this Submission, are:

Clause 4.4 -Floor Space Ratio

- (1) *The objectives of this clause are as follows -*
 - (a) *to ensure the size and scale of development is compatible with the desired future character of the locality,*
 - (b) *[not relevant to Subject Site],*
 - (c) *to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,*
 - (d) *to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.*
- (2) *The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).*

Clause 4.5 -Calculation of floor space ratio and site area

- (1) **Objectives** *The objectives of this clause are as follows -*
 - (a) *to define **floor space ratio**,*
 - (b) *to set out rules for the calculation of the site area of development for the purpose of applying permitted floor space ratios, including rules to -*
 - (i) *prevent the inclusion in the site area of an area that has no significant development being carried out on it, and*
 - (ii) *prevent the inclusion in the site area of an area that has already been included as part of a site area to maximise floor space area in another building, and*
 - (iii) *require community land and public places to be dealt with separately.*
- (2) **Definition of "floor space ratio"** *The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area.*
- (3) **Site area** *In determining the site area of proposed development for the purpose of applying a floor space ratio, the site area is taken to be -*
 - (a) *if the proposed development is to be carried out on only one lot, the area of that lot, or*
 - (b) *if the proposed development is to be carried out on 2 or more lots, the area of any lot on which the development is proposed to be carried out that has at least one common boundary with another lot on which the development is being carried out.*

SUBMISSION PURSUANT TO CLAUSE 4.6 RANDWICK LOCAL ENVIRONMENTAL PLAN 2012

In addition, subclauses (4)–(7) apply to the calculation of site area for the purposes of applying a floor space ratio to proposed development.

- (4) **Exclusions from site area** The following land must be excluded from the site area -
 - (a) land on which the proposed development is prohibited, whether under this Plan or any other law,
 - (b) community land or a public place (except as provided by subclause (7)).
- (5) [not relevant to Subject Site].
- (6) [not relevant to Subject Site].
- (7) [not relevant to Subject Site].
- (8) **Existing buildings** The gross floor area of any existing or proposed buildings within the vertical projection (above or below ground) of the boundaries of a site is to be included in the calculation of the total floor space for the purposes of applying a floor space ratio, whether or not the proposed development relates to all of the buildings.
- (9) [not relevant to Subject Site].
- (10) [not relevant to Subject Site].
- (11) [not relevant to Subject Site].

Clause 4.6 - Exceptions to development standards

- (1) The objectives of this clause are as follows -
 - (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
- (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating -
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
- (4) Development consent must not be granted for development that contravenes a development standard unless -
 - (a) the consent authority is satisfied that -
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Planning Secretary has been obtained.
- (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.
- (6) [not relevant to this Development Application].
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) [not relevant to this Development Application].

SUBMISSION PURSUANT TO CLAUSE 4.6 RANDWICK LOCAL ENVIRONMENTAL PLAN 2012

4. VARIATION SOUGHT TO DEVELOPMENT STANDARD**Description of Subject Site**

The subject site is located in a residential area of the suburb of Clovelly, on the northern side of Greville Street. The building currently situated on the site is a two storey, three-bedroom house. The building was built in approximately 1900 (source: <https://www.propertyvalue.com.au/property/1-greville-street-clovelly-nsw-2031/1863376>).

The total lot size of the Subject Site is 341.9m². The existing development on the site occupies almost the whole of the site, having a gross floor area of 525.1m² across the two storeys. This represents a floor space ratio of 1.54:1. To the best of the Owner's knowledge, the property has had these dimensions since the property was built.

Floor Space Ratio Control

The Subject Site is located in an area of Randwick Local Government Area which is zoned as "D" for the purposes of floor space ratio, meaning the Subject Site has a maximum floor space ratio of 0.5:1. Clause 4.4(2A)(a) of RLEP2012 provides that a property with a lot size of between 300m² and 450m² is not to exceed a floor space ratio of 0.75:1.

The Proposal

The Development Application seeks consent of Council to alterations and additions to the dwelling on the subject site by:

- installing a two-stop lift; and
- alterations to the existing ground and first floors to accommodate the lift.

In addition, Council's consent is sought to the change of use of the property from a mixed-use building to a wholly residential dwelling house. A previous owner of the property had undertaken a conversion of the previously approved commercial office space on the ground floor of the property to additional residential living space. The Owner was not aware that this conversion had not been consented to by Council until investigations were conducted on the property while considering the current proposed alterations and additions to the property.

Contravention of Floor Space Ratio

As indicated above, to the best of the Owner's knowledge and belief, the existing building has occupied the Subject Site in its current size and scale since the property was built more than 120 years ago.

The proposed alterations and additions, rather than adding to the gross floor area, will slightly decrease the gross floor area to 523.4m², resulting in a floor space ratio reduction from 1.54:1 to 1.53:1.

Relevant calculations are:

Existing GFA = 245.9m² (Ground) + 279.2m² (First) = 525.1m²; 525.1m² (lot size) / 341.9m² = 1.54:1
 Proposed GFA = 243.6m² (Ground) + 279.8m² (First) = 523.4m²; 523.4m² (lot size) / 341.9m² = 1.53:1

SUBMISSION PURSUANT TO CLAUSE 4.6 RANDWICK LOCAL ENVIRONMENTAL PLAN 2012

Justification for Contravention of the Development Standard

The contravention of the Floor Space Ratio development standard can be justified for a number of reasons, namely:

- the existing floor space ratio of the building has, to the best of the Owner's knowledge, subsisted since the property was built in 1900, and has not been rejected by Council during the course of consideration of numerous prior development applications;
- the proposed alterations and additions will result in a small reduction of the existing non-compliant floor space ratio;
- the proposed alterations and additions are all to be undertaken to the internal space of the dwelling, and will not adversely impact the long-existing size and scale of the dwelling, nor the character of the locality;
- the proposed alterations and additions will not in any way alter the visual amenity of the dwelling when viewed from neighbouring properties and the public domain;
- given how long the property has existed in its current size and scale, and with the non-compliant floor space ratio, it would be manifestly unreasonable for Council to require the Owner of the property to reduce the floor space ratio to a compliant ratio.

Assessment Against Development Standards

Clause 4.6(3) of RLEP2012 requires the consent authority to consider two factors when considering a written request from an applicant to contravene the development standards. These are considered below:

4.6(3)(a): that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Determination of the unreasonableness or non-necessity of a requirement to comply with the development standard must have regard to the objectives of the relevant development standard. The relevant objectives set out in Clause 4.4 are:

- 4.4(1)(a) *to ensure that the size and scale of development is compatible with the desired future character of the locality,*
- 4.4(1)(b) *[not relevant in this instance],*
- 4.4(1)(c) *to ensure that the development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,*
- and
- 4.4(1)(d) *to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.*

The proposed alterations and additions the subject of this Submission are all to the internal space of the dwelling and thus will not adversely affect the existing size and scale of development, nor will it adversely impact adjoining and neighbouring land. The property has, to the best of the Owner's knowledge and belief, existed in its current size and scale for over a century.

For Council to require compliance with this development standard would be manifestly unreasonable and unnecessary, as it would require demolition of a substantial part of the dwelling, rendering the dwelling unliveable.

SUBMISSION PURSUANT TO CLAUSE 4.6 RANDWICK LOCAL ENVIRONMENTAL PLAN 2012

4.6(3)(b): that there are sufficient environmental planning grounds to justify contravening the development standard

It is submitted that there are sufficient environmental planning grounds to justify varying the Floor Space Ratio standard for the following reasons:

- the variation in the floor space ratio of the dwelling will not adversely impact surrounding properties' current environmental amenities or views, or those of surrounding public spaces;
- the proposed alterations and additions are all to the internal space of the dwelling, not visible from neighbouring properties or the public domain, and will not affect the visible size or scale of the dwelling;
- the proposed alterations and additions contribute to a slight reduction in floor space ratio, thus bringing the property slightly closer to compliance with the development standard, and in all other respects, the proposed alterations and additions comply with all development controls and standards set out in the RLEP2012;
- the proposed floor space ratio deviation does not affect the current building footprint of the dwelling on the lot.

Therefore, it is considered that the proposed deviation from the floor space ratio control is inconsequential in the circumstances and will not detract from the desired character of the Subject Site nor the locality.

Based on this, it is submitted that there are sufficient environmental planning grounds to permit the floor space ratio variation in this instance.

Further Matters for Consideration

Clause 4.6(4)(a)(ii) of the RLEP2012 requires the consent authority to be satisfied that 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.

It is submitted that the above analyses demonstrate that the proposed alterations and additions meet these criteria and are thus in the public interest. A refusal to grant consent to the Development Application to which this Submission relates would result in the public and future applicants being unable to rely on previous decisions of the consent authority as to consistency in its decision-making.

It is noted that the Planning Secretary's concurrence under Clause 4.6(4)(b) is required to be obtained. It is further noted that such concurrence has been delegated to Council's Local Planning Panel pursuant to written notice dated 21 February 2018, attached to Planning Circular PS 20-002 issued on 5 May 2020.

Clause 4.6(5)(a) of the RLEP2012 requires the Planning Secretary (and, by delegation, Council's Local Planning Panel), when deciding whether to grant concurrence, to consider whether contravention of the development standard raises any matter of significance for State or regional environmental planning, the public benefit of maintaining the development standard, and any other matters to be taken into consideration.

It is submitted that contravention of the development standard in this instance is insignificant and specific only to the site in question, and thus has no adverse significance for State and regional environmental planning. It is not, in this instance, in the public benefit to maintain the requirement of strict compliance with the Floor Space Ratio standard, given the lack of impacts associated with the site-specific breach of the standard in this instance. There are not considered to be any additional matters to be considered other than those set out above.

SUBMISSION PURSUANT TO CLAUSE 4.6 RANDWICK LOCAL ENVIRONMENTAL PLAN 2012

Conclusion

For the reasons set out herein, this Clause 4.6 variation is submitted in support of the Development Application relating to the Subject Site, and it is requested that the requested variation be considered favourably by the consent authority.

Your sincerely,

Avelene Plint

Owner

Plint Drafting Services

D29/23

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

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	Dwelling houses are within the R2 zone.
2	Site Planning		
2.3	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45%	Site = 341.5m ² Proposed = 92.09%	Does not comply. Refer to Key Issues.
2.4	Landscaping and permeable surfaces		
	i) Up to 300 sqm = 20% ii) 301 to 450 sqm = 25% iii) 451 to 600 sqm = 30% iv) 601 sqm or above = 35% v) Deep soil minimum width 900mm. vi) Maximise permeable surfaces to front vii) Retain existing or replace mature native trees viii) Minimum 1 canopy tree (8m mature). Smaller (4m mature) If site restrictions apply. ix) Locating paved areas, underground services away from root zones.	Site = 341.5m ² The shortfall in deep soil areas is supported noting that the existing building footprint shall be retained, and additional landscaping has been conditioned to provide a softer built form by removing the "pebblecrete" at the rear of the development.	Does not comply. Refer to Key Issues.
2.5	Private open space (POS)		
	Dual Occupancies (Attached and Detached) POS		
	451 to 600 sqm = 5m x 5m each 601sqm or above = 6m x 6m each ii) POS satisfy the following criteria: • Situated at ground level (except for duplex) • No open space on podiums or roofs • Adjacent to the living room • Oriented to maximise solar access • Located to the rear behind dwelling • Has minimal change in gradient	Site = 341.5m ² Proposed = BBQ and Pool area on First Floor Plan.	Does not comply. Refer to Key Issues.
3	Building envelope		
3.1	Floor space ratio LEP 2012 =	Site = 341.5m ² Proposed FSR = 1:54:1 (529.24m ²)	Does not comply. See Clause 4.6 assessment.
3.2	Building height		
	Maximum overall height LEP 2012 =	Proposed = 9.105m (As existing)	Complies.
	i) Maximum external wall height = 7m	Proposed = As existing	Complies.

DCP Clause	Controls	Proposal	Compliance
	(Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded		
3.3	Setbacks		
3.3.1	Front setbacks i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary street frontage: - 900mm for allotments with primary frontage width of less than 7m - 1500mm for all other sites iii) do not locate swimming pools, above-ground rainwater tanks and outbuildings in front	Proposed = As existing	As existing.
3.3.2	Side setbacks: Dwellings and dual occupancies: • Frontage less than 9m = 900mm • Frontage b/w 9m and 12m = 900mm (Gnd & 1st floor) 1500mm above • Frontage over 12m = 1200mm (Gnd & 1 st floor), 1800mm above. Refer to 6.3 and 7.4 for parking facilities and outbuildings	Minimum = 9m and 12m = 900mm (Gnd & 1 st floor) 1500mm above Proposed = 90mm (western) 105mm (eastern)	As existing.
3.3.3	Rear setbacks i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments. ii) Provide greater than aforementioned or demonstrate not required, having regard to: - Existing predominant rear setback line - reasonable view sharing (public and private) - protect the privacy and solar access 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	Minimum = 8m Proposed = 1.315m	As existing.
4	Building design		
4.1	General		
	Respond specifically to the site characteristics	The application is for an	Acceptable.

D29/23

DCP Clause	Controls	Proposal	Compliance
	and the surrounding natural and built context - <ul style="list-style-type: none"> articulated to enhance streetscape stepping building on sloping site, no side elevation greater than 12m encourage innovative design 	internal 2 storey lift and change of use to a residential dwelling. The external façade of the building will be maintained as existing.	As existing.
4.5	Colours, Materials and Finishes		
	<ul style="list-style-type: none"> 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.) 	A condition of consent is recommended for a final colours and materials scheme to be submitted to the Principal Certifier for approval prior to the issue of a Construction Certification.	Complies, subject to condition.
4.6	Earthworks		
	<ul style="list-style-type: none"> i) excavation and backfilling limited to 1m, unless gradient too steep ii) minimum 900mm side and rear setback iii) Step retaining walls. iv) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm. v) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping) vi) cut and fill for POS is terraced <i>where site has significant slope:</i> vii) adopt a split-level design viii) Minimise height and extent of any exposed under-croft areas. 	Minimal earthworks shall be required for the proposed lift development.	Complies.
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	<ul style="list-style-type: none"> i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. 	No change to external built form.	As existing.
	Solar access to neighbouring development:		
	<ul style="list-style-type: none"> 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, 	No change to external built form.	As existing.

DCP Clause	Controls	Proposal	Compliance
	<p>which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings.</p> <p>vi) Variations may be acceptable subject to a merits assessment with regard to:</p> <ul style="list-style-type: none"> Degree of meeting the FSR, height, setbacks and site coverage controls. Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. Topography of the subject and adjoining allotments. Location and level of the windows in question. Shadows cast by existing buildings on the neighbouring allotments. 		
5.2	Energy Efficiency and Natural Ventilation		
	<p>i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as:</p> <ul style="list-style-type: none"> Skylights (ventilated) Clerestory windows Fanlights above doorways Highlight windows in internal partition walls <p>ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries</p> <p>iii) living rooms contain windows and doors opening to outdoor areas</p> <p><i>Note: The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</i></p>	<p>A BASIX Certificate has been submitted with the application.</p> <p>The proposal incorporates sky lights for natural lighting and ventilation shall be facilitated through the design of the dwelling.</p>	Complies.
5.3	Visual Privacy		
	Windows		
	<p>i) proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures:</p> <ul style="list-style-type: none"> windows are offset or staggered minimum 1600mm window sills Install fixed and translucent glazing up to 1600mm minimum. Install fixed privacy screens to windows. Creating a recessed courtyard (minimum 	<p>The development does not propose any new windows to the building and will retain the windows to the southern (front) elevation and northern (rear) elevation.</p> <p>The windows are not directly adjacent to any</p>	Acceptable.

D29/23

DCP Clause	Controls	Proposal	Compliance
	3m x 2m). ii) orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)	neighbouring windows and no further privacy measures are required.	
	Balcony		
	iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side) iv) minimise overlooking of POS via privacy screens (fixed, minimum of 1600mm high and achieve minimum of 70% opaqueness (glass, timber or metal slats and louvers) v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure) vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.	The existing building will maintain Juliet balconies to the street and one to the rear of the site.	Acceptable.
5.4	Acoustic Privacy		
	i) noise sources not located adjacent to adjoining dwellings bedroom windows <i>Attached dual occupancies</i> ii) Reduce noise transmission between dwellings by: - Locate noise-generating areas and quiet areas adjacent to each other. - Locate less sensitive areas adjacent to the party wall to serve as noise buffer.	The outdoor living area for the dwelling is situated to the rear of the site which is consistent with the adjoining and nearby properties.	Acceptable.
5.5	Safety and Security		
	i) dwellings main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 square metres) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not to obstruct casual surveillance (maintain safe access)	The main entry of the front elevation will be maintained to Greville Street and is consistent with the street. The First Floor maintains windows that will overlook the public domain.	Acceptable.
6	Car Parking and Access		
6.1	Location of Parking Facilities:		
	i) Provide a maximum of 1 vehicular access per property. ii) Locate parking facilities off rear lanes, or secondary street frontages in the case of corner allotments, where available. iii) Where rear lane or secondary street access is not available, parking facilities must be located behind the front façade alignment, either integrated within the dwelling or positioned to the side of the dwelling. iv) Provide a single width garage or carport	The development will include a double garage (tandem) gaining access to Greville Street. The garage will be situated internally on the Ground Floor and is consistent with the streetscape and surrounding locality.	Complies.

DCP Clause	Controls	Proposal	Compliance
	<p>facing the primary street if the site frontage has a width of less than 12m.</p> <p>Double width garage or carport may only be provided where:</p> <ul style="list-style-type: none"> - The frontage width is at least 12m; - The development is consistent with the predominant pattern in the street; and - Landscaping can still be provided in the front yard areas. <p>v) On flat or gently sloping sites, any basement garage must NOT be situated substantially or completely below ground level (existing), in order to minimise excavation and apparent scale of the front elevation.</p> <p>vi) Avoid long driveways that occupy large expanses of impermeable surfaces.</p>		
6.4	Driveway Configuration		
	<p>1. The maximum width of driveway is as follows:</p> <ul style="list-style-type: none"> a. Single driveway – 3m b. Double driveway – 5m <p>In addition, the width of driveway must be tapered towards the street boundary and preferably form a single width at that boundary.</p>	As existing.	Acceptable.
6.5	Garage Configuration		
	<p>i) Garages must be recessed behind the front façade alignment of the dwelling on both the primary and secondary street elevations.</p> <p>ii) Garages must be recessed behind the front façade alignment of the dwelling on both the primary and secondary street elevations.</p> <ul style="list-style-type: none"> - Single garage – 3m - Double garage – 6m - <p>iii) The minimum internal length of a garage is 5.4m.</p> <p>iv) The maximum wall height of detached garages fronting the street is 2.6m and maximum building height of 3.0m for a pitched roof.</p> <p>v) Garage doors must not be flush with the alignment of the garage walls. As a guide, the</p>	<p>Car parking in the form of the existing double garage (tandem) shall be maintained on the site fronting Greville Street and there shall be no change to the car parking and access as a result of the proposed development.</p> <p>The garage door is not flush with the garage wall and maintains a height greater than 2.7m and length greater than 5.4m.</p>	Complies.

D29/23

D29/23

DCP Clause	Controls	Proposal	Compliance
	garage door should be recessed 200mm to 300mm behind the alignment of the walls, in order to provide articulation. vi) The height of any parapet wall or bulkhead above the garage entry must not exceed 600mm, in order to minimise the visual bulk of the garage.		

Responsible officer: George Anderson, Environmental Planning Officer

File Reference: DA/491/2022

Development Consent Conditions



Folder /DA No:	DA/491/2022
Property:	1 Greville Street, COOGEE NSW 2034
Proposal:	Change of use from mixed-use building to residential including new internal lift.
Recommendation:	Approval

GENERAL CONDITIONS

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

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

Approved Plans & Supporting Documentation

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

Plan	Drawn by	Dated
Site Plan – Sheet No: A01 – Issue: C	HallGroup & Co.	22/03/2023
Proposed Floor Plans – Sheet No: A03 – Issue: C	HallGroup & Co.	22/03/2023
Elevations 1 – Sheet No: A05 – Issue: C	HallGroup & Co.	22/03/2023
Elevations 2 – Sheet No: A06 – Issue: C	HallGroup & Co.	22/03/2023
Section – Sheet No: A07 – Issue: C	HallGroup & Co.	22/03/2023
Lift Plans – Sheet No: A10 – Issue: C	HallGroup & Co.	22/03/2023

BASIX Certificate No.	Dated
A475900	2/10/2022

Amendment of Plans & Documentation

- The approved plans and documents must be amended in accordance with the following requirements:
 - The "Pebblecrete" area to the rear of the site is to be removed and replaced with landscaping and permeable surfaces. This area should consist of deep soil permeable surfaces such as grasses, shrubs and trees.

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 construction certificate.

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

Consent Requirements

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

External Colours, Materials & Finishes

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

External materials, finishes and colours of the building are required to match, as closely as possible, the existing building and any metal roof sheeting is to be pre-painted (e.g. Colourbond) to limit the level of reflection and glare.

- b) 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 the Principle Certifying authority prior to issuing a construction certificate for the development.

Section 7.12 Development Contributions

5. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$146,569.50 the following applicable monetary levy must be paid to Council: \$732.85.

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

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

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

Where:

IDC = the indexed development cost

ODC = the original development cost determined by the Council

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

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

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

Long Service Levy Payments

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

At the time of this development consent, Long Service Levy payment is applicable on building work having a value of \$250,000 or more, at the rate of 0.25% of the cost of the works.

Security Deposits

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

- \$600.00 - Damage / Civil Works Security Deposit

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

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

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

Sydney Water

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

The approved plans must be submitted to the Sydney Water [Tap in™](#) online service, to determine whether the development will affect Sydney Water's wastewater 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.

Landscaping

9. Landscaping shall be provided to the site to enhance its amenity and reduce the impact of the development upon neighbouring properties and streetscape. A landscape plan shall be submitted to, and be approved by, the Principal Certifier, prior to a construction certificate being issued.
10. Landscaped areas should contain a predominance of species that require minimal watering once established or species with water needs that match rainfall and drainage conditions.

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

11. 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.

12. The applicant must comply with the requirements of the BCA & DDA Compliance Statement for this Development Application prepared by Silver End Pty Ltd, dated 23/03/2023.

BASIX Requirements

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

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

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

Stormwater Drainage

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

Swimming Pool

15. Swimming Pools and Spa Pools are to be designed and installed in accordance with the requirements of the *Building Code of Australia* and be provided with a child-resistant barrier in accordance with the *Swimming Pools Act 1992*; the *Swimming Pools Regulation 2018* and Australian Standard AS 1926.1 (2012) (Swimming Pool Safety Part 1 - Safety Barriers for Swimming Pools).

Details of compliance are to be provided in the Construction Certificate.

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

Note: This development consent does not approve the design and location of swimming/spa pool safety barriers. Swimming/spa pool safety barriers are required to comply with the Swimming Pools Act 1992, Swimming Pools Regulation 2018 and relevant Standards. Details of compliance are required to be included in the Construction Certificate, to the satisfaction of the appointed Certifier for the development.

16. Swimming pools are to be designed, installed and operated in accordance with the following general requirements:
- Backwash of the pool filter and other discharge of water is to be drained to the sewer in accordance with the requirements of the Sydney Water Corporation.
 - Pool plant and equipment must be enclosed in a sound absorbing enclosure or installed with a building to minimise noise emissions or result in a noise nuisance.
 - Water recirculation and filtrations systems are required to comply with AS 1926.3 (2010) Swimming Pool Safety – Water Recirculation and Filtration Systems.
 - Paving and ground surfaces adjacent to swimming pools are to be graded and so as to ensure that any pool overflow water is drained away from

buildings and adjoining premises, so as not to result in a nuisance or damage to premises.

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

17. 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

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

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

Dilapidation Reports

19. A dilapidation report must be obtained from a Professional Engineer, Building Surveyor or other suitably qualified person to the satisfaction of the appointed Registered Certifier for the development, in the following cases:

- excavations for new dwellings, additions to dwellings, swimming pools or other substantial structures which are proposed to be located within the zone of influence of the footings of any dwelling, associated garage or other structure located upon an adjoining premises;
- demolition or construction of new dwellings; additions to dwellings or outbuildings, which are sited up to or less than 900 mm from a site boundary (e.g. a semi-detached dwelling, terraced dwelling or other building sited less than 900mm from the site boundary);
- excavations for new dwellings, additions to dwellings, swimming pools or other substantial structures which are within rock and may result in vibration and or potential damage to any dwelling, associated garage or other substantial structure located upon an adjoining premises; and
- as may be required by the Principal Certifier for the development.

The dilapidation report shall include details of the current condition and status of any dwelling, or other structures located upon the adjoining premises and shall include relevant photographs of the structures.

The dilapidation report must be submitted to the Principal Certifier, the 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

20. 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 Plan

21. A demolition work plan must be developed and be implemented for the demolition works in accordance with AS2601 (2001)- Demolition of Structures.

The demolition work must be carried out in accordance with relevant SafeWork NSW Requirements and Codes of Practice; Australian Standard – AS 2601 Demolition of Structures and Randwick City Council's Asbestos Policy.

The demolition work plan must include details of the demolition, removal, storage and disposal of any hazardous materials (including materials containing asbestos).

A copy of the demolition work plan must be provided to the Principal Certifier and Council. A copy shall also be maintained on site and be made available to Council officers upon request.

Public Utilities

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

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

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

REQUIREMENTS DURING CONSTRUCTION & SITE WORK

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

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

Site Signage

23. 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

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

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as detailed below)	<ul style="list-style-type: none"> • Monday to Friday - 7.00am to 5.00pm • Saturday - 8.00am to 5.00pm • Sunday & public holidays - No work permitted
Excavations in rock, sawing of rock, use of jack-hammers, driven-type piling/shoring or the like	<ul style="list-style-type: none"> • Monday to Friday - 8.00am to 3.00pm (maximum) • Saturday - No work permitted • Sunday & public holidays - No work permitted

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

Demolition Work

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

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

Public Safety & Site Management

26. Public safety and convenience 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) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident.
- g) Public safety must be maintained at all times and public access to any demolition and building works, materials and equipment on the site is to be restricted. If necessary, a temporary safety fence or hoarding is to be provided to the site to protect the public. Temporary site fences are to be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.

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

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

- h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.
- i) Noise and vibration from the works are to be minimised and mitigated by implementing appropriate noise management and mitigation strategies, in accordance with the Noise and Vibration Management Plan prepared in accordance with the relevant EPA guidelines.
- j) 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.
- k) 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.

Building Encroachments

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

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*.

BASIX Requirements

- 29. In accordance with the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*, a Certifier must not issue an Occupation Certificate for this development, unless it is satisfied that each of the required BASIX commitments have been fulfilled.

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

Council's Infrastructure & Vehicular Crossings

30. All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must be carried out in accordance with Council's Policy for "Vehicular Access and Road and Drainage Works" and the following requirements:
- a) All work on Council land must be carried out by Council, unless specific written approval has been obtained from Council to use non-Council contractors.
 - b) Details of the proposed civil works to be carried out on Council land must be submitted to Council in a *Pre-paid Works Application Form*, prior to issuing an occupation certificate, together with payment of the relevant fees.
 - c) If it is proposed to use non-Council contractors to carry out the civil works on Council land, the work must not commence until the written approval has been obtained from Council and the work must be carried out in accordance with the conditions of consent, Council's design details and payment of a Council design and supervision fee.
 - d) The civil works must be completed in accordance with Council's conditions of consent and approved design and construction documentation, prior to occupation of the development, or as otherwise approved by Council in writing.

Swimming Pool Safety

31. Swimming Pools [and Spa Pools] are to be provided with a child-resistant barrier (i.e. fence, in accordance with the *Swimming Pools Act 1992*; the *Swimming Pools Regulation 2018* and Australian Standard AS 1926.1 (2012) (Swimming Pool Safety Part 1 - Safety Barriers for Swimming Pools).
32. A 'warning notice' must be installed in a prominent position in the immediate vicinity of a Swimming Pool [or Spa Pool], in accordance with the provisions of the *Swimming Pools Regulation 2018*, detailing pool safety requirements, resuscitation techniques and the importance of the supervision of children at all times.
33. The owner of the premises must 'register' their Swimming Pool [or Spa Pool] on the NSW Swimming Pool Register, in accordance with the *Swimming Pools Act 1992*. The Swimming Pool Register is administered by the NSW Government and registration on the Swimming Pool Register may be made on-line via their website www.swimmingpoolregister.nsw.gov.au.

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

Landscaping

34. The landscaping provisions shall be installed in accordance with the approved documentation prior to the issue of a final occupation certificate and landscaping is to be maintained in accordance with the approved plans and specifications.

Fire Safety Certificates

35. 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

36. 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.

Use of Premises

37. The premises must only be used as a single residential dwelling and must not be used for dual or multi-occupancy purposes. The Bedroom 4 located at the rear of the Ground Floor must not be used for separate habitation or as a secondary dwelling. No cooking facilities are to be provided in the Wet Bar.

External Lighting

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

Plant & Equipment

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

Air Conditioners

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

- a. before 8:00am or after 10:00pm on any Saturday, Sunday or public holiday; or
- b. before 7:00am or after 10:00pm on any other day.

Rainwater Tanks

41. The operation of plant and equipment associated with rainwater tanks are to be restricted to the following hours if the noise emitted can be heard within a habitable room in any other residential premises:

- a. before 8:00am or after 8:00pm on weekends or public holiday; or
- b. before 7:00am or after 8:00pm on weekdays.

Fire Safety Statements

42. 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.

Development Application Report No. D30/23

Subject: 27 Clifton Road, Clovelly (DA/35/2023)


Executive Summary

Proposal:	Alterations and additions to the existing dwelling involving demolition of front patio and construction of a new carport and driveway, new windows, and new roof over rear deck to replace existing roof
Ward:	North Ward
Applicant:	Mr C Rust
Owner:	Mr C W Ridler & Mrs N C Ridler
Cost of works:	\$61,600.00
Reason for referral:	Conflict of Interest

Recommendation

That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/35/2023 for alterations and additions to the existing dwelling involving demolition of front patio and construction of a new carport and driveway, new windows, and new roof over rear deck to replace existing roof, at No. 27 Clifton Road Clovelly, subject to the development consent conditions attached to the assessment report.

Attachment/s:

-  [RLPP Dev Consent Conditions \(general\) - DA/35/2023 - 27 Clifton Road, CLOVELLY NSW 2031 - DEV - Mr C Rust](#)

D30/23

D30/23



1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the part landowner is a Council staff who is principally involved in the exercise of Council's function under the EP&A Act 1979.

The proposal seeks development consent for alterations and additions to the existing dwelling involving demolition of front patio and construction of a new carport and driveway, new windows, and new roof over rear deck to replace existing roof.

The key issues associated with the proposal relate to the length of the car park, front fence height and side fence to the neighbour, and privacy.

The proposal is recommended for approval subject to non-standard conditions that require an absolute minimum length of the car space at 5m with vehicles to not protrude beyond the front boundary at any time. A further condition requires the retention of the sandstone column on the south-western boundary with 29 Clifton Road.

2. Site Description and Locality

The subject site is known as 27 Clifton Road Clovelly and is legally described as Lot 2 in DP 506517. The site is 304.5m², is regular in shape and has a 6.635m frontage to Clifton Road. The rear (eastern boundary) is 6.605m and the site boundaries to the north and south are 45.795. The site contains a one and two storey brick and rendered residence with a tile roof. It is semi-detached with its pair at 25 Clifton Road to the north.

There is a fall of 1.61m over the length of the site giving a slope from the street down to the rear of 3.5%.



Fig 1: The site is fronted by the blue front fence and 29 Clifton Road is to the right. The sandstone pillar is shown on the boundary between them (Google streetview)

3. Relevant history

There is no relevant history for this site.

4. Proposal

The proposal seeks development consent for alterations and additions to the existing dwelling involving demolition of front patio and construction of a new carport and driveway, new windows, and new roof over rear deck to replace existing roof. New front and side fencing is also proposed.

5. Notification

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

- 29 Clifton Road Clovelly

Issue	Comment
Height of the side fence near the front boundary at 1.6m is too height and will reduce light and add bulk to the front of the property. More details about the sandstone fence required	Amendments were made to the plans in consultation with the submitter to reduce the height of the front and side boundary fence and to retain the existing side rendered masonry wall. The plans indicate that the existing sandstone pillar will be retained if practical, given its current state of repair.

6. Relevant Environment Planning Instruments

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

The site will continue to be used for residential purposes and no excavation is proposed. It is considered that the site is suitable for continued occupation as a residence.

6.2. Randwick Local Environmental Plan 2012 (LEP)

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

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will continue to provide housing within a low density environment and recognizes the desirable elements of the existing streetscape and built form whilst protecting the amenity of residents.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.4: Floor space ratio (max)	0.75:1	0.51:1	Yes
Cl 4.3: Building height (max)	9.5m	9.38m	Yes

7. Development control plans and policies

7.1. Randwick Comprehensive DCP 2013

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

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

8. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal 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 'Matters for Consideration'	Comments
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

8.1. Discussion of key issues

8.1.1 Length of the car park.

Council's engineers have reviewed the proposal which has a car space length less than the Australian Standard and that in the DCP. Following a resolution by Council in 2007 the engineers have determined that the space available is approximately 5.0m and is therefore supported. Conditions of consent requiring vehicles not to protrude beyond the front property boundary are proposed.

8.1.2 Front and side fencing adjacent to 29 Clifton Road

The original plans included front fencing which exceeded 1.2m even though the upper portion was of open form. Fences in the street are fairly low and the applicant was requested to amend the fencing to not exceed 1.2m. The amended plans include fencing on the northern side of the front fence at 1155mm extending to 1350mm as it proceeds down the slope. Adjacent to the existing sandstone pillar the maximum height is 1400mm which does exceed the DCP recommendation for stepping on a 1.2m high front fence, however is below the height of the existing sandstone pillar on the boundary with 29 Clifton Road and it is required to be at this height to ensure that the bins are not visible from the street. It is considered that the front fences have been adequately reduced and are consistent with the streetscape.

The original plans also sought a 1.61m high side fence near the front boundary between the site and 29 Clifton Road. The neighbour was concerned about feeling enclosed and loss of sunlight. Following discussions between the applicants and the neighbour, amendments to the plans have lowered this fence and retained the existing rendered masonry wall.

The plans have described the existing stone column on the boundary with 29 Clifton Road as in a dilapidated condition, although the owner of 29 Clifton Road describes this as "in need of repair" and not dilapidated. She would prefer the column was retained as it forms part of the original design of the streetscape but is otherwise happy with the plans as now proposed. The column is almost wholly, but not entirely, on the site, with a small portion on 29 Clifton Road. The application does not include owner's consent from 29 Clifton Road for works on that site. It is therefore proposed that the plans be amended to require retention of the sandstone column.

8.1.3 Privacy

The proposed new windows on the southern side are considered satisfactory from a privacy perspective. The new bedroom 1 window is not opposite any windows, the replacement dining room window has a sill height of 1.8m. It is noted that the existing privacy screen on the rear deck will be retained. Privacy is therefore considered acceptable.

9. Conclusion

That the application for alterations and additions to the existing dwelling involving demolition of front patio and construction of a new carport and driveway, new windows, and new roof over rear deck to replace existing roof be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013.
- The proposal is consistent with the specific objectives of the R2 zone in that it provides for off street parking for one vehicle which assists in provision for the housing needs of the community, it recognizes the desirable elements of the existing streetscape with fencing which is compatible with the streetscape, and it protects the amenity of residents, in particular the neighbour at 29 Clifton Road.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- The development enhances the visual quality of the public domain/streetscape.

Non-standard conditions have been included which require the car space to have a minimum length of 5.00m with a width of 2.8m. A condition for use also requires that vehicles parked must not protrude beyond the front property boundary.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineer

This report is based on the following plans and documentation:

- Architectural Plans by Breathe Design dated February 2019;
- Statement of Environmental Effects by Breathe Design dated 24/01/2023

Car space Comments

Car space Length

In an ordinary Council meeting on the 24th 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.

A site inspection by Council's Development Engineer has revealed that the distance from the front of the building/bedroom windows of the front bedroom to the front property alignment is approximately 5.00m. This meets the 5.0m minimum requirement specified above and hence the proposed car space is supported by Development Engineering.

Landscape Comments

There are no existing trees, (covered by Council's Tree Preservation Order), that will be affected by this proposal.

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

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	
2	Site planning		
2.1	Minimum lot size and frontage		
	Minimum lot size (RLEP): <ul style="list-style-type: none"> R2 = 400sqm R3 = 325sqm 	304.5m ²	No - no change
	Minimum frontage		
	i) Min frontage R2 = 12m ii) Min frontage R3 = 9m iii) No battle-axe or hatchet in R2 or R3 iv) Minimum frontage for attached dual occupancy in R2 = 15m v) Minimum frontage for detached dual occupancy in R2 = 18m	Min = 12m Existing = 6.635m	No but no change
2.3	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% (167.5m²) 451 to 600 sqm = 50% 601 sqm or above = 45%	Site = 304.5m ² Existing = 131.4m ² (43%) Proposed = 131.4m ² (43%)	No but no change
2.4	Landscaping and permeable surfaces		
	i) Up to 300 sqm = 20% ii) 301 to 450 sqm = 25% (76.1m²) 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 = 304.5m ² Existing = 133.1m ² (43.7%) Proposed = 133.1m ² (43.7%) No trees to retain. No landscape plantings proposed	Yes
2.5	Private open space (POS)		
	Dwelling & Semi-Detached POS		
	Up to 300 sqm = 5m x 5m 301 to 450 sqm = 6m x 6m 451 to 600 sqm = 7m x 7m 601 sqm or above = 8m x 8m	Site = 304.5m ² Existing = 14.1 x 6.7 = 94.5m ² Proposed = same	Yes
3	Building envelope		
3.1	Floor space ratio LEP 2012 = 0.75:1 (228.4m²)	Site area = 304.5m ² Existing FSR = 154.4m ² = 0.51:1 Proposed FSR = same	Yes – no change
3.2	Building height		
	Maximum overall height LEP 2012 = 9.5m	Existing = 9.38m (Ridge RL39.61-ground RL30.23) Proposed = 9.38m	Yes.
	i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m	Existing = 7.43-7.7m approx Proposed = same	No but no change

DCP Clause	Controls	Proposal	Compliance
	iii) Merit assessment if exceeded	Slope is 3.5% so 7m control applies	
3.3	Setbacks		
3.3.1	Front setbacks i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary street frontage: <ul style="list-style-type: none"> - 900mm for allotments with primary frontage width of less than 7m - 1500mm for all other sites iii) do not locate swimming pools, above-ground rainwater tanks and outbuildings in front	Minimum = 3.215m Existing = 3.215m Proposed = same but nil to the carport	No but only the front carport is new and this is addressed in section 6.6
3.3.2	Side setbacks: Semi-Detached Dwellings: <ul style="list-style-type: none"> • Frontage less than 6m = merit • Frontage b/w 6m and 8m = 900mm for all levels Dwellings: <ul style="list-style-type: none"> • Frontage less than 9m = 900mm • Frontage b/w 9m and 12m = 900mm (Gnd & 1st floor) 1500mm above • Frontage over 12m = 1200mm (Gnd & 1st floor), 1800mm above. Refer to 6.3 and 7.4 for parking facilities and outbuildings	Minimum = 0.9m Existing = 0.92m Proposed = 0.92m	Yes
3.3.3	Rear setbacks i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments. ii) Provide greater than aforementioned or demonstrate not required, having regard to: <ul style="list-style-type: none"> - Existing predominant rear setback line - reasonable view sharing (public and private) - protect the privacy and solar access iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions. iv) For irregularly shaped lots = merit assessment on basis of:- <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts Refer to 6.3 and 7.4 for parking facilities and outbuildings	Minimum = 8m Existing = 15.3m Proposed = 15.3m	Yes
4	Building design		
4.1	General		
	Respond specifically to the site characteristics and the surrounding natural and built context -	Driveway and carport at lower	Yes

D30/23

D30/23

DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> articulated to enhance streetscape stepping building on sloping site, no side elevation greater than 12m encourage innovative design 	side away from street tree. Carports characteristic of the streetscape	
4.2	Additional Provisions for symmetrical semi-detached dwellings		
	i) Enhance the pair as coherent entity: <ul style="list-style-type: none"> behind apex of roof; low profile or consistent with existing roof new character that is first floor at front only after analysis streetscape outcome ii) Constructed to common boundary of adjoining semi iii & iv) avoid exposure of blank party walls to adjoining semi and public domain	Other semi has a flat roof carport on the uphill side. No change to main dwelling other than at the front setback and rear awning. Replacement of windows do not make any incoherence	Yes
4.4	Roof Design and Features		
	<i>Rooftop terraces</i> i) on stepped buildings only (not on uppermost or main roof) ii) above garages on sloping sites (where garage is on low side) <i>Dormers</i> iii) Dormer windows do not dominate iv) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof. v) Multiple dormers consistent vi) Suitable for existing <i>Clerestory windows and skylights</i> vii) Sympathetic to design of dwelling <i>Mechanical equipment</i> viii) Contained within roof form and not visible from street and surrounding properties.	NA	NA
4.5	Colours, Materials and Finishes		
	i) Schedule of materials and finishes ii) Finishing is durable and non-reflective. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) recycle and re-use sandstone (See also section 8.3 foreshore area.)	Schedule provided but no colours	Yes – could also be conditioned
4.6	Earthworks		
	i) Excavation and backfilling limited to 1m, unless gradient too steep ii) Minimum 900mm side and rear setback iii) Step retaining walls. iv) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm. v) sloping sites down to street level must	None proposed	NA

DCP Clause	Controls	Proposal	Compliance
	<p>minimise blank retaining walls (use combination of materials, and landscaping)</p> <p>vi) cut and fill for POS is terraced <i>where site has significant slope:</i></p> <p>vii) adopt a split-level design</p> <p>viii) Minimise height and extent of any exposed under-croft areas.</p>		
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	<p>i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June</p> <p>ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.</p>	<p>Living faces west and no windows to the north. Unlikely to get 3 hours sunlight due to replacement awning, but no change.</p> <p>POS will get 3 hours sunlight</p>	<p>No for living (but no change).</p> <p>Yes for POS</p>
	Solar access to neighbouring development:		
	<p>i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June.</p> <p>iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.</p> <p>v) Solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings.</p> <p>vi) Variations may be acceptable subject to a merits assessment with regard to:</p> <ul style="list-style-type: none"> Degree of meeting the FSR, height, setbacks and site coverage controls. Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. Topography of the subject and adjoining allotments. Location and level of the windows in question. Shadows cast by existing buildings on the neighbouring allotments. 	<p>Any north facing windows are unlikely to get 3 hours sunlight being only approximately 2-3m from the dwelling to the north, however no change to existing.</p> <p>POS would get 3 hours sunlight.</p> <p>No solar panels and no roof above 6m</p>	<p>No probably for living but no change.</p> <p>Yes for POS</p>
5.2	Energy Efficiency and Natural Ventilation		
	<p>i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as:</p> <ul style="list-style-type: none"> Skylights (ventilated) Clerestory windows 	<p>New windows to south side will increase daylight but not sun. No marked change to the rear living area.</p> <p>Front bedroom will</p>	<p>Natural light likely improved.</p>

D30/23

D30/23

DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> Fanlights above doorways Highlight windows in internal partition walls ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries iii) living rooms contain windows and doors opening to outdoor areas <i>Note: The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</i>	reduce sunlight due to the carport. Otherwise unchanged	
5.3	Visual Privacy		
	Windows		
	i) Proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures: <ul style="list-style-type: none"> windows are offset or staggered minimum 1600mm window sills Install fixed and translucent glazing up to 1600mm minimum. Install fixed privacy screens to windows. Creating a recessed courtyard (minimum 3m x 2m). ii) Orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)	No change to layout. New southern bedroom1 window is not opposite any windows. Replacement dining window is highlight and 1.8m above FFL	Yes
	Balcony		
	iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side) iv) minimise overlooking of POS via privacy screens (fixed, minimum of 1600mm high and achieve minimum of 70% opaqueness (glass, timber or metal slats and louvers) v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure) vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.	No change to. the deck other than a replacement awning at the rear. The existing privacy screen on the southern side is to remain	Yes
5.4	Acoustic Privacy		
	i) noise sources not located adjacent to adjoining dwellings bedroom windows <i>Attached dual occupancies</i> ii) Reduce noise transmission between dwellings by: <ul style="list-style-type: none"> Locate noise-generating areas and quiet areas adjacent to each other. Locate less sensitive areas adjacent to the party wall to serve as noise buffer. 	No change to noise sources	Ye
5.5	Safety and Security		
	i) Dwelling's 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	Main entry at front remains the same with bedroom at the front.	Yes

DCP Clause	Controls	Proposal	Compliance
	public place. iv) Front fences, parking facilities and landscaping does not to obstruct casual surveillance (maintain safe access)	Front fence is relatively low allowing for casual surveillance.	
5.6	View Sharing		
	i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas. ii) Retaining existing views from the living areas are a priority over low use rooms iii) Retaining views for the public domain takes priority over views for the private properties iv) Fence design and plant selection must minimise obstruction of views v) Adopt a balanced approach to privacy protection and view sharing vi) Demonstrate any steps or measures adopted to mitigate potential view loss impacts in the DA. (certified height poles used)	No view loss anticipated as all works are at ground level	NA
6	Car Parking and Access		
6.1	Location of Parking Facilities:		
	i) Maximum 1 vehicular access ii) Locate off rear lanes, or secondary street frontages where available. iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling. <i>Note: See 6.2 for circumstances when parking facilities forward of the front façade alignment may be considered.</i> iv) Single width garage/carport if frontage <12m; Double width if: - Frontage >12m, - Consistent with pattern in the street; - Landscaping provided in the front yard. v) Minimise excavation for basement garages vi) Avoid long driveways (impermeable surfaces)	1 vehicular access but no rear lane. Not behind front façade. Single width garage with minimal driveway and no excavation.	Yes
6.2	Parking Facilities forward of front façade alignment (if other options not available)		
	i) The following may be considered: - An uncovered single car space - A single carport (max. external width of not more than 3m and - Landscaping incorporated in site frontage ii) Regardless of the site's frontage width, the provision of garages (single or double width) within the front setback areas may only be considered where: - There is no alternative, feasible location for accommodating car parking; - Significant slope down to street level - does not adversely affect the visual amenity of the street and the surrounding areas; - does not pose risk to pedestrian safety and	A single carport with roof width of 3m is proposed. Some landscaping is proposed in front garden. No alternative location given it is a semi-detached and only 6.635m wide allotment. Does not adversely affect the street as there are a large number of carports in front of the façade alignment in the street.	Yes

D30/23

D30/23

DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> - does not require removal of significant contributory landscape elements (such as rock outcrop or sandstone retaining walls) 	Will not risk pedestrian safety as a straight street in that part. There is a sandstone wall but no natural sandstone outcrops	
6.3	Setbacks of Parking Facilities		
	i) Garages and carports comply with Sub-Section 3.3 Setbacks. ii) 1m rear lane setback iii) Nil side setback where: <ul style="list-style-type: none"> - nil side setback on adjoining property; - streetscape compatibility; - safe for drivers and pedestrians; and - Amalgamated driveway crossing 	Side setback of carport is 900mm (same as existing and required)	Yes
6.4	Driveway Configuration		
	Maximum driveway width: <ul style="list-style-type: none"> - Single driveway – 3m - Double driveway – 5m Must taper driveway width at street boundary and at property boundary	Single driveway width of 2.85m	Yes
6.5	Carport Configuration		
	i) simple post support and no solid enclosing walls ii) Flat roof, lean-to roof or gable or hipped roof iii) The maximum carport width: <ul style="list-style-type: none"> - Single carport – 3m - Double carport – 6m iv) 5.4m minimum length of a carport v) 2.6m max height for a flat roof or 3.0m for pitched. vi) Must not use a solid door vii) Can use a gate with minimum 30% openness viii) Gates cannot encroach into public land	Simple post support with lean-to roof. 2.8m wide. Min length is 5.0m Max height is 2.8m on uphill side and 2.65m on lower side. No gates proposed	Yes Yes No, but engineering supportive Roof height complies and lower than carports of both adjoining neighbours NA
7	Fencing and Ancillary Development		
7.1	General - Fencing		
	i) Use durable materials ii) Sandstone not rendered or painted iii) Do not use steel post and chain wire, barbed wire or dangerous materials iv) Avoid expansive surfaces of blank rendered masonry to street	None specified	NA
7.2	Front Fencing		
	i) 1200mm max. (Solid portion not exceeding 600mm), except for piers. <ul style="list-style-type: none"> - 1800mm max. provided upper two-thirds partially open (30% min), except for piers. ii) light weight materials used for open design and evenly distributed iii) 1800mm max solid front fence permitted in the following scenarios: <ul style="list-style-type: none"> - Site faces arterial road - Secondary street frontage (corner 	The fence varies from 1155mm to 1400mm, with the greater height required to cover the slightly elevated bins in the front yard and to relate to the existing sandstone column.	Generally considered acceptable

DCP Clause	Controls	Proposal	Compliance
	<p>allotments) and fence is behind the alignment of the primary street façade (tapered down to fence height at front alignment).</p> <p><i>Note: Any solid fences must avoid continuous blank walls (using a combination of materials, finishes and details, and/or incorporate landscaping (such as cascading plants))</i></p> <p>iv) 150mm allowance (above max fence height) for stepped sites</p> <p>v) Natural stone, face bricks and timber are preferred. Cast or wrought iron pickets may be used if compatible</p> <p>vi) Avoid roofed entry portal, unless complementary to established fencing pattern in heritage streetscapes.</p> <p>vii) Gates must not open over public land.</p> <p>viii) The fence must align with the front property boundary or the predominant fence setback line along the street.</p> <p>ix) Splay fence adjacent to the driveway to improve driver and pedestrian sightlines.</p>	It is open above the solid base	
7.3	Side and rear fencing		
	<p>i) 1800mm maximum height (from existing ground level). Sloping sites step fence down (max. 2.2m).</p> <p>ii) Fence may exceed max. if level difference between sites</p> <p>iii) Taper down to front fence height once past the front façade alignment.</p> <p>iv) Both sides treated and finished.</p>	1.4m originally proposed	Yes

Responsible officer: Urban Perspectives, Town Planners

File Reference: DA/35/2023

D30/23

Development Consent Conditions

Folder / DA No:	DA/35/2023
Property:	27 Clifton Road, CLOVELLY NSW 2031
Proposal:	Alterations and additions to the existing dwelling involving demolition of front patio and construction of a new carport and driveway, new windows, and new roof over rear deck to replace existing roof
Recommendation:	Approval

Development Consent Conditions**GENERAL CONDITIONS**

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

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

Approved Plans & Supporting Documentation

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

Plan	Drawn by	Dated
DA 101 Rev B Site Layout and Assessment Plan	Breath design	11/03/2023
DA 204 Rev B Proposed plan – ground floor	Breath design	11/03/2023
DA 205 Rev B Proposed plan – 1st floor plan	Breath design	11/03/2023
DA 206 Rev B Proposed Plan – roof plan	Breath design	11/03/2023
DA 301 Rev B Proposed section: Long section 1	Breath design	11/03/2023
DA 401 Rev B Proposed Plan – existing and proposed front elevations: West	Breath design	11/03/2023
DA 402 Rev B Existing and proposed side elevations: South	Breath design	11/03/2023
DA 403 Rev B Existing and proposed rear elevations: east	Breath design	11/03/2023

BASIX Certificate No.	Dated	Received by Council
A485306	26 January 2023	8/02/2023

Amendment of Plans & Documentation

2. The approved plans and documents must be amended in accordance with the following requirements:
 - a. Approved plan DA 401 Rev B shall be amended to correct the street numbering of the neighbours so that the uphill dwelling is 25 Clifton Road and the downhill dwelling is 29 Clifton Road.
 - b. The existing sandstone column on the south-western boundary with 29 Clifton Road shall be retained.

REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

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

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

Consent Requirements

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

External Colours, Materials & Finishes

4. The colours, materials and surface finishes to the development must be consistent with the relevant plans, documentation and colour schedules provided with the development application.

Security Deposits

5. 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

6. 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

7. 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 at all points 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.

8. 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

9. The gradient of the car space must be designed and constructed to not exceed 1 in 14 (7.14%) 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.
10. The internal car space is to have an absolute minimum length of 5.00m at all points for the car space width of 2.80m

Note: any underpinning/reconstruction beneath the front bedroom windows is to maintain a minimum length of 5.00m between it and the front boundary.

Stormwater Drainage

11. 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.

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 & Relevant Standards

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

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

BASIX Requirements

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

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

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

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF WORKS

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

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

Building Certification and Associated Requirements

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

A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.
 - b) a *Registered (Building) Certifier* must be appointed as the *Principal Certifier* for the development to carry out the necessary building inspections and to issue an *occupation certificate*; and
 - c) a *principal contractor* must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the *Home Building Act 1989*, and the *Principal Certifier* and Council must be notified accordingly (in writing); and
 - d) the *principal contractor* must be advised of the required critical stage inspections and other inspections to be carried out, as specified by the *Principal Certifier*; and
 - e) at least two days notice must be given to the *Principal Certifier* and Council, in writing, prior to commencing any works.

Dilapidation Reports

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

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

Construction Site Management Plan

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

- location and construction of protective site fencing and hoardings
- location of site storage areas, sheds, plant & equipment
- location of building materials and stock-piles
- tree protective measures
- dust control measures
- details of sediment and erosion control measures
- site access location and construction
- methods of disposal of demolition materials
- location and size of waste containers/bulk bins
- provisions for temporary stormwater drainage
- construction noise and vibration management
- construction traffic management details
- provisions for temporary sanitary facilities
- measures to be implemented to ensure public health and safety

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

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

Sediment Control Plan

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

Demolition Work Plan

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

- Date the demolition works will commence/finish.

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

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

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

Construction Noise & Vibration Management Plan

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

A *Construction Noise & Vibration Management Plan* must be developed and implemented throughout demolition and construction work.

- The *Construction Noise & Vibration Management Plan* must be prepared by a suitably qualified acoustic consultant, in accordance with the Environment Protection Authority *Guidelines for Construction Noise and Assessing Vibration: A Technical Guideline* (or other relevant and recognised Vibration guidelines or standards) and the conditions of development consent, to the satisfaction of the Certifier.
- 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 and mitigation strategies.
- Noise and vibration levels must be monitored during the works and a further report must be obtained from the acoustic/vibration consultant as soon as practicable after the commencement of the 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.
- 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 the Principal Certifier and Council.

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 the Principal Certifier and Council prior to commencement of any site works.

- Noise and vibration levels must be monitored during the site work and be reviewed by the acoustic/vibration consultant periodically, to ensure that

the relevant strategies and requirements are being satisfied and details are to be provided to the Principal Certifier and Council accordingly.

Public Liability

20. The owner/builder is required to hold Public Liability Insurance, with a minimum liability of \$20 million and a copy of the Insurance cover is to be provided to the Principal Certifier and Council.

Public Utilities

21. 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.
22. 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.

Site Signage

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

Building & Demolition Work Requirements

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

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as detailed below)	<ul style="list-style-type: none"> Monday to Friday - 7.00am to 5.00pm Saturday - 8.00am to 5.00pm Sunday & public holidays - No work permitted
Excavations within rock, sawing of rock, use of jack-hammers, driven-type piling or the like	<ul style="list-style-type: none"> Monday to Friday - 8.00am to 3.00pm (maximum) As may be further limited in Noise & Vibration Management Plan

	<ul style="list-style-type: none"> • Saturday - No work permitted • Sunday & public holidays - No work permitted
Internal work only within a commercial or industrial development, located in a commercial or industrial zone, which is not audible within any residential dwelling or commercial or industrial premises	<ul style="list-style-type: none"> • Monday to Saturday - No time limits (subject to work not being audible in any residential dwelling or commercial/industrial tenancy or building) • Sunday & public holidays - No work permitted
Additional requirements for all development (except for single residential dwellings)	<ul style="list-style-type: none"> • Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted

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

Noise & Vibration

25. Noise and vibration from the works are to be minimised by implementing appropriate noise management and mitigation strategies, in accordance with a *Construction Noise & Vibration Management Plan*, prepared in accordance with the Environment Protection Authority guidelines for Construction Noise and Assessing Vibration

Temporary Site Fencing

26. Temporary site safety fencing or site hoarding must be provided to the perimeter of the site prior to commencement of works and throughout demolition, excavation and construction works, in accordance with the SafeWork guidelines and 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), heavy-duty plywood sheeting (painted white), or other material approved by Council in writing.
 - 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, 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.
 - Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land.
 - Site access gates must open inwards and not onto Council land.

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.*

Overhead Hoardings

27. An overhead ('B' class) type hoarding is required to be provided to protect the public (unless otherwise approved by Council) if:
- goods or materials are to be hoisted (i.e. via a crane or hoist) over a pedestrian 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 adjoining land
 - as may otherwise be required by SafeWork NSW, Council or the Principal Certifier.

Site Management

28. Public safety and convenience 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) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident.
 - g) Excavations must also be properly guarded to prevent them from being dangerous to life, property or buildings.
 - 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.

Site Access

29. A temporary timber, concrete crossing or other approved stabilised access is to be provided to the site entrance across the kerb and footway area, with splayed edges, to the satisfaction of Council throughout the works, unless access is via an existing suitable concrete crossover. Any damage caused to the road, footpath, vehicular crossing or nature strip during construction work must be repaired or stabilised immediately to Council's satisfaction.

Removal of Asbestos Materials

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

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

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

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

Dust Control

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

Dust control measures and practices may include:

- *Provision of geotextile fabric to all perimeter site fencing (attached on the prevailing wind side of the site fencing).*

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

Excavations & Support of Adjoining Land

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

Complaints Register

33. A Complaints Management System must be implemented during the course of construction (including demolition, excavation and construction), to record resident complaints relating to noise, vibration and other construction site issues.

Details of the complaints management process including contact personnel details shall be notified to nearby residents, the Principal Certifier and Council and all complaints shall be investigation, actioned and responded to and documented in a Complaints Register accordingly.

Details and access to the Complaints Register are to be made available to the Principal Certifier and Council upon request.

Survey Requirements

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

- prior to construction (pouring of concrete) of footings for the building and boundary retaining structures,
- prior to construction (pouring of concrete) of new floor levels,
- prior to issuing an Occupation Certificate, and
- as otherwise may be required by the Principal Certifier.

The survey documentation must be forwarded to the Principal Certifier and a copy is to be forwarded to the Council.

Building Encroachments

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

Car Park internal space

36. The Principal Certifier is to ensure the internal car space is constructed with an absolute minimum of 5.00m in length.

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.

Post-construction Dilapidation Reports

37. A post-construction Dilapidation Report is to be prepared by a professional engineer for the adjoining and affected properties of this consent, to the satisfaction of the Principal Certifier, prior to the issue of an Occupation Certificate.

The dilapidation report shall detail whether:

- a) after comparing the pre-construction dilapidation report to the post-construction report dilapidation report required under this consent, there has been any damage (including cracking in building finishes) to any adjoining and affected properties; and
- b) where there has been damage (including cracking in building finishes) to any adjoining and/or affected properties, that it is a result of the building work approved under this development consent.

The report is to be submitted as a PDF in Adobe format or in A4 format and a copy of the post-construction dilapidation report must be provided to the Principal Certifier and to Council (where Council is not the principal certifier). A copy shall also be provided to the owners of the adjoining and affected properties and Council shall be provided with a list of owners to whom a copy of the report has been provided.

Occupation Certificate

38. 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 Certificate

39. A single and complete *Fire Safety Certificate*, certifying the installation and operation of all of the fire safety measures within the building must be submitted to Council with the *Occupation Certificate*, in accordance with the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

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

Structural Certification

40. 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.

Sydney Water Certification

41. 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 > 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

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

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

Council's Infrastructure, Vehicular Crossings, street verge

43. 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.
44. 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.
45. 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 8-10 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.

46. That part of the naturestrip upon Council's footway which is damaged during the construction of the proposed works shall be excavated to a depth of 150mm, backfilled with topsoil equivalent with 'Organic Garden Mix' as supplied by Australian Native Landscapes, and re-turfed with Kikuyu turf or similar. Such works shall be completed at the applicant's expense.

Street and/or Sub-Address Numbering

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

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

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

OPERATIONAL CONDITIONS

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

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

Use of Parking spaces

48. The car spaces within the development are for the exclusive use of the occupants and visitors of the building. The car spaces must not be leased to any person/company that is not an occupant of the building.
49. Vehicles parked within the internal car space must not protrude beyond the front property boundary onto the Council footpath at any time.

Development Application Report No. D31/23

Subject: 17 Woomera Road, Little Bay (DA/88/2023)


Executive Summary

Proposal:	Torrens title subdivision of an existing attached dual occupancy into two (2) lots.
Ward:	South Ward
Applicant:	Mr N Frier
Owner:	Ms P L Courtney & Mr B A Carsburg
Cost of works:	Nil.
Reason for referral:	Variation to the minimum subdivision lot size development standard by more than 10%.

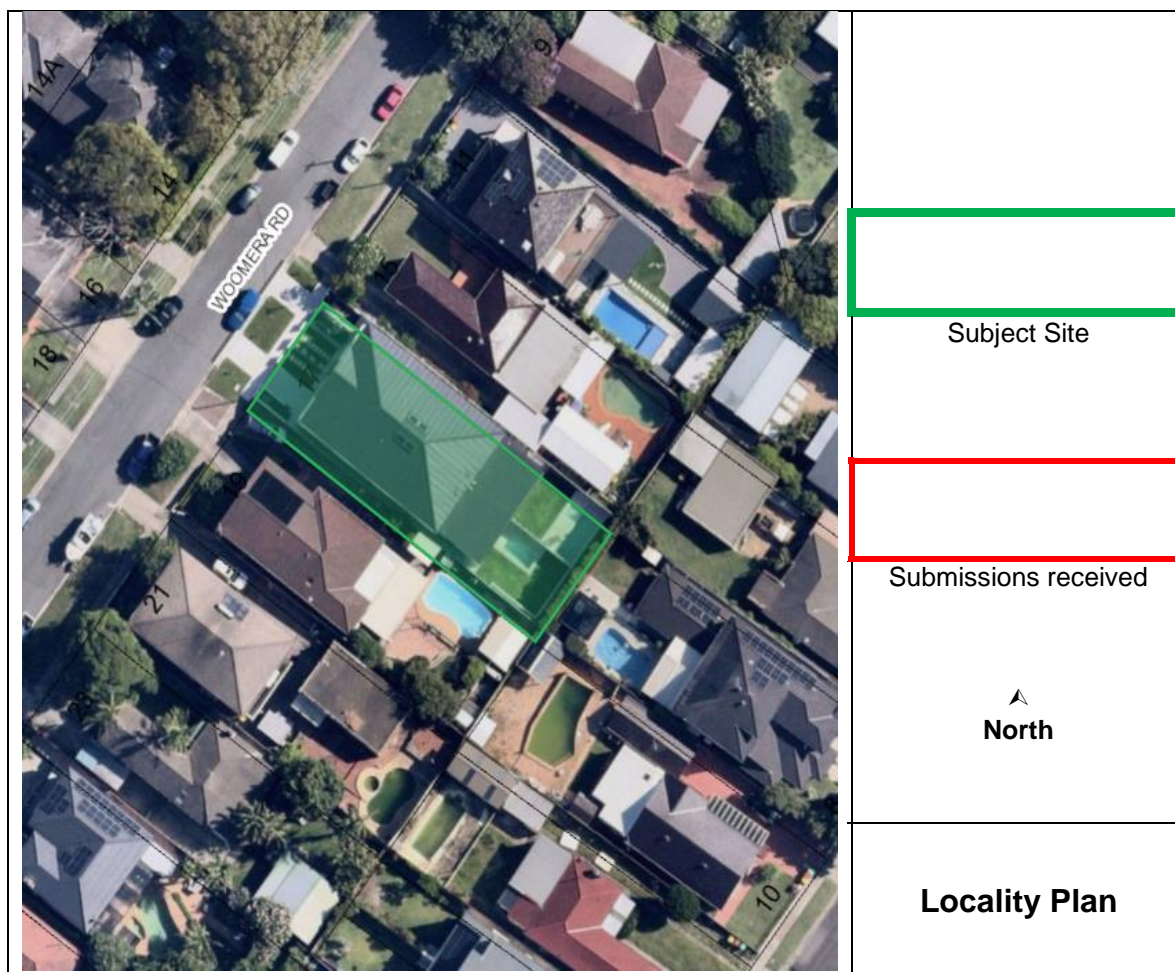
Recommendation

- A. That the RLPP is satisfied that the matters detailed in Clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the subdivision lot size development standard in Clause 4.1 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning and Environment may be assumed.
- B. That the RLPP grant consent under Section 4.16 of the *Environmental Planning and Assessment Act 1979*, as amended, to Development Application No. DA/88/2023 for Torrens Title subdivision of an existing dual occupancy into two (2) lots at No. 17 Woomera Road, Little Bay, subject to the development consent conditions attached to the assessment report.

Attachment/s:

- 1.  RLPP Dev Consent Conditions (general) - DA/88/2023 - 17 Woomera Road, LITTLE BAY NSW 2036 - DEV - Randwick City Council

D31/23



1. Executive summary

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

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

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

The proposal is recommended for approval subject to standard conditions.

2. Site Description and Locality

The site is identified as Lot 19 DP 30118, 17 Woomera Road, Little Bay NSW 2036. The site is located on the south-eastern side of Woomera Road, between Woonah Street to the north-east and Bega Avenue to the south-west.

The subject land is zoned R2 Low Density Residential. The site has an area of 659.9m² and a frontage width of 15.24m.

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

The surrounding area is characterised by low density residential development including dwelling houses and attached dual occupancies. Adjoining the site to the north-east at 15 Woomera Road is a single storey detached dwelling house, to the south-west at 19 Woomera Road is a two storey detached dwelling house, and to the south-east at the rear of the site at 8A Alkoo Avenue is a two storey detached dual occupancy dwelling.

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

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

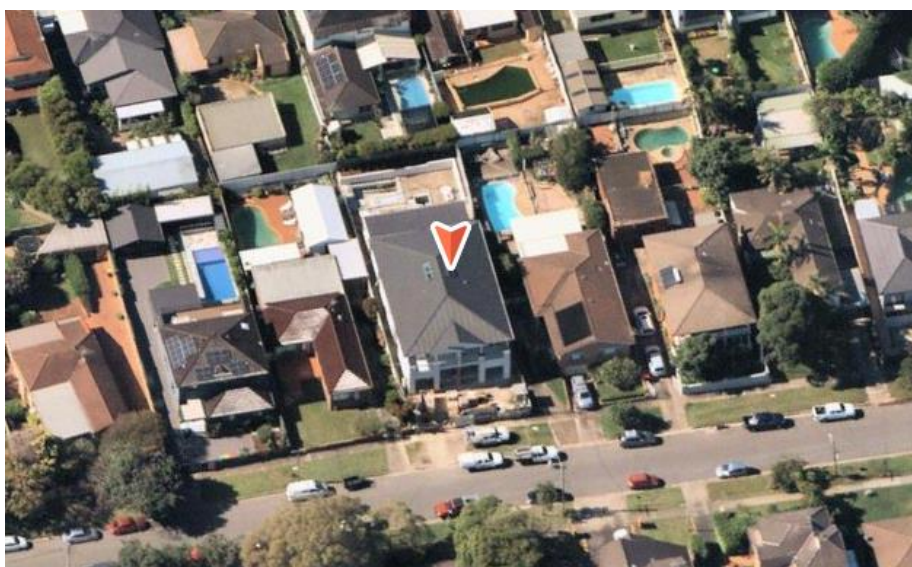


Figure 1: South-east oblique view of the subject allotment and surrounding area (April 2022) - 17 Woomera Road, Little Bay (Source: Nearmap)

3. Relevant history

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

DA/634/2020

Development Application No. DA/634/2020 for demolition of the existing dwelling house and construction of a dual-occupancy with a pool as part of dwelling one Variation to Floor Space) at the subject site was approved by Council under delegation on 02 March 2021.

CC/197/2021

Construction Certificate No. CC/197/2021 relating to Development Application No. DA/634/2020 was approved by the Principal Certifier Matt Fitzgerald (BDC 3219) of First Building Certifiers on 18 May 2021 (Certifier Reference No. F2021-/00062).

A Final Occupation Certificate relating to Construction Certificate No. CC/197/2021 was approved by the Principal Certifying Authority Matt Fitzgerald on 19 September 2022 (Certifier Reference No. XOC2022-/00132).

4. Proposal

The proposal seeks development consent for the Torrens title subdivision of an existing attached dual occupancy into two (2) lots. The proposed lots shall comprise the following:

	Lot Size	Front Boundary (North-western)	Rear Boundary (South-eastern)	Side Boundary (North-eastern)	Side Boundary (South-western)
Lot 1 (17)	329.9m ²	7.62m	7.62m	43.295m	Common Boundary
Lot 2 (17A)	330m ²	7.62m	7.62m	Common Boundary	43.305m

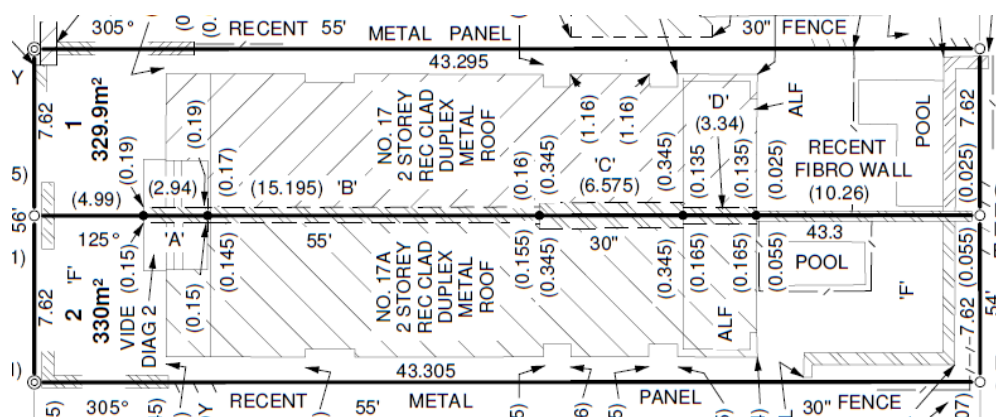


Figure 2: Proposed subdivision plan - 17 Woomera Road, Little Bay (Source: Ian Wicks)

5. Notification

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

6. Relevant Environment Planning Instruments

6.1. Randwick Local Environmental Plan 2012 (LEP)

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

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

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

The subject site is zoned R2 Low Density Residential, however the consent for the dual occupancy was not granted prior to 6 July 2018, as the dual occupancy was approved on 02 March 2021. Consequently, the second criterion has not been met. As such, it is noted that Clause 4.1D of the RLEP 2012 is not satisfied and therefore not relevant to this application.

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

R2 'Low Density Residential' Zone Objectives

The R2 zone permits a variety of low density housing forms including dwelling houses, semi-detached dwellings, boarding houses, and attached dual occupancies, and the objectives of the R2

zone aim to ensure that a mix of housing options are provided to facilitate the housing needs of the community. The relevant objectives of the R2 zone are considered below:

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

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

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

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

As noted above, there is no predominant subdivision pattern within the surrounding area and there are no proposed changes to the built form of the dual occupancy. In addition, as noted previously, the subdivision is in keeping with the desired future characteristic of lot sizes as per the draft Planning Proposal and amendments to the Randwick LEP. As such, the proposal contributes to the desired future character of the area.

- *To protect the amenity of residents.*

It is considered that imposition of minimum lot sizes pursuant to Clause 4.1 of RLEP 2012 are in order to prevent the subdivision of development where the resultant lots are undersized and inappropriate. As such, establishing a minimum lot size ensures that the amenity of neighbouring residents and occupants of the development is maintained. As discussed above, the proposed subdivision is consistent with the desired future characteristic of lot sizes as per the draft Planning Proposal and amendments to the Randwick LEP. As such, the proposal protects the amenity of residents.

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

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.1: Subdivision Lot Size (min)	400m ²	Lot 1 (17) = 329.9m ²	No
		Lot 2 (17A) = 330m ²	No

6.1.1. Clause 4.6 - Exceptions to development standards

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

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.1: Lot Size (min)	400m ²	Lot 1 (17) = 329.9m ²	70.1m ²	17.525%
		Lot 2 (17A) = 330m ²	70m ²	17.5%

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

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

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

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

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

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

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

The grounds relied on by the applicant in their written request must be "environmental planning grounds" by their nature. Chief Justice Preston at [23] notes the adjectival phrase

“environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s1.3 of the EPA Act.

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

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

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

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

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

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

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

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

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

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

7.1. Exception to the minimum lot size development standard (Cl 4.1)

The applicant’s written justification for the departure from the minimum lot size standard is contained in Appendix 2.

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

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

The objectives of the minimum lot size standard are set out in Clause 4.1 (1) of RLEP 2012. The applicant has addressed each of the objectives as follows:

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

The Applicant argues that compliance with the development standard is unnecessary in the circumstances of this particular case arguing that the proposal is consistent with the minimum lot size development standard of 275m² adopted by Council as part of the Randwick Comprehensive Planning Proposal. The proposed development represents an efficient and appropriate use of land that is compatible with the environmental capacity of the site and its R2 Low Density Residential Zoning, noting the lot size is consistent with the draft standard, which has been adopted by Council and is awaiting final determination by the Department of Planning & Environment.

The Applicant further justifies the proposal arguing that the subdivision would not produce a poor environmental outcome for the residents of the proposed development, the adjoining neighbours or the locality and will be consistent with the form of development anticipated by the incoming minimum lot size development size, which is due to be in force imminently.

Assessing officer's comment:

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

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

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

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

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

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

- *The proposed subdivision is consistent with the minimum lot size development standard of 275m² adopted by Council as part of the Randwick Comprehensive Planning Proposal.*
- *The proposed lot size variation sought would not produce a poor environmental outcome for the residents of the proposed development, the adjoining neighbours or the locality and will be consistent with the form of development anticipated by the incoming minimum lot size development size, which is due to be in force imminently.*
- *The proposed development represents an efficient and appropriate use of land that is compatible with the environmental capacity of the site and its R2 Low Density Residential Zoning, noting the lot size is consistent with the draft standard, which has been adopted by Council and is awaiting final determination by the Department of Planning & Environment.*

Assessing officer's comment:

As noted above, the proposal is in keeping with the minimum lot size requirements and future desired characteristics of the R2 Zone, as per the draft Planning Proposal and amendments to the Randwick LEP which has been endorsed by Council. The Planning Proposal was endorsed to reduce the minimum lot size for subdivision zoned R2 'Low Density Residential' from 400m² to 275m², with the exception of land within a Heritage Conservation Area. The subject site meets the requirements of minimum lot size, being 329.9m² and 330m² respectively. In addition, the subject site is not within a Heritage Conservation Area.

As noted previously, Clause 4.1D of RLEP 2012 was introduced in August 2018 and permits the subdivision of dual occupancy developments approved prior to 6 July 2018 in accordance with the provisions of the SEPP Exempt and Complying Development (which allows lesser allotment size requirements). It is noted that the dual occupancy was approved on 02 March 2021. As such, it is noted that Clause 4.1D of the RLEP 2012 is not satisfied and therefore not relevant to this application.

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

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

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

To determine whether the proposal will be in the public interest, an assessment against the objectives of the minimum lot size standard and the R2 zone has been undertaken. See above and Section 6.1 of the report for further discussion.

The above assessment of the proposal has found that the proposed subdivision achieves the objectives of Clause 4.1 in relation to minimum lot size or the objectives of the R2 zone. Therefore, the development will be in the public interest.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

Variation of the minimum lot size standard will allow for the orderly use of the site and there is a no public benefit in maintaining the development standard in this instance.

Conclusion

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

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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

9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in Sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	See discussion in Sections 6 in relation to the Planning Proposal and draft Randwick LEP.

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See Section 8.1 above.
Section 4.15(1)(a)(iia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The environmental impacts of the proposed development on the natural and built environment have been addressed in this report. The proposed development is consistent with the desired character of the locality. The proposal will not result in detrimental social or economic impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions were received in relation to this application.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

9.1. Discussion of key issues

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

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

Subclause 2.1(i) specifies a minimum frontage width for resultant lots within the R2 zone of 12m for the purpose of dwelling houses and semi-detached dwellings. The proposed subdivision would result in the existing development being re-defined as semi-detached dwellings. The subdivision proposes a frontage width of 7.62m for each allotment, resulting in a substantial non-compliance with the minimum 12m requirement. As discussed under the Clause 4.6 assessment in Section 7.1 of the report, Council has endorsed part of the Planning Proposal that amends the Randwick Local Environmental Plan 2012 in relation to minimum lot sizes for the R2 'Low Density Residential' Zone, specifically to amend clause 4.1 to reduce the minimum lot size for subdivision of land zoned R2 'Low Density Residential' from 400m² to 275m², with the exception of land within a Heritage Conservation Area.

As such, the DCP controls relating to frontage width need to be considered within the context of Planning Proposal and amendment to the Randwick Local Environmental Plan 2012. As such, the frontage width is considered on a merit assessment against the objectives of the clause. Assessment of the proposal deems that the proposed 7.62m frontage for each dual occupancy provides sufficient width in relation to the dwelling on the site. In addition, the width is in keeping with the future desired design, pattern and amenity of the locality.

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

As such, the non-compliance is considered acceptable.

10. Conclusion

That the application to Torrens Title subdivision of an existing dual occupancy into two (2) lots at 17 Woomera Road, Little Bay NSW 2036 be approved (subject to conditions) for the following reasons:

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

Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineering

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

"An application has been received for the Torrens title subdivision of the existing dual occupancy development at the above site into 2 lots.

This report is based on the following plans and documentation:

- *Draft Subdivision Plans by surveyor Ian Wicks stamped by Council 16th March 2023;*
- *Statement of Environmental Effects BY Complete Trade dated March 2023*

General Comments

The proposed boundaries are consistent with the existing occupations on the site and there are no objections to the proposal subject to the comments and conditions provided in this report.

The dual occupancy development was approved under DA/634/2020 and CC/197/2021 & CC/158/2022. A final occupation certificate appears to yet be issued for this development."

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

REQUEST FOR VARIATION TO MINIMUM LOT SIZE DEVELOPMENT
STANDARD PURSUANT TO CLAUSE 4.6(3) OF RANDWICK LEP 2012



PO Box 240, Annandale 2038
Complete Trade Pty Ltd
ABN: 28 627 248 971
ACN: 627 248 971
nick@completetrade.com.au
www.completetrade.com.au
0439599675

CLAUSE 4.6 APPLICATION TO VARY A DEVELOPMENT
STANDARD
REQUEST FOR VARIATION TO MINIMUM LOT SIZE
DEVELOPMENT STANDARD PURSUANT TO CLAUSE 4.6(3)
OF RANDWICK LEP 2012

Site Address: 17 Woomera Road Little Bay
March 2023

REQUEST FOR VARIATION TO MINIMUM LOT SIZE DEVELOPMENT
STANDARD PURSUANT TO CLAUSE 4.6(3) OF RANDWICK LEP 2012

D31/23

1.0 INTRODUCTION

This Clause 4.6 variation relates to a proposal for subdivision on the subject site.

It is proposed to undertake a Torrens Title subdivision of the existing attached dual occupancy development to allow for the provision of two lots, with each lot to accommodate one dwelling.

The proposal results in a non-compliance with clause 4.1 of the Randwick Local Environmental Plan 2012 (RLEP) which relates to minimum lot size. As such, this Clause 4.6 request has been prepared in accordance with Clause 4.6 of the RLEP, which applies to the subject site.

The request demonstrates that compliance with the development standard relating to minimum lot size 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 of the minimum lot size development standard and the objectives for development within the R2 – Low density residential zone under the RLEP, in which the development is proposed to be carried out.

The nature of the exceedance to the development standard relating to minimum lot size is set out below, followed by consideration of the relevant matters in clause 4.6 of the RLEP.

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

REQUEST FOR VARIATION TO MINIMUM LOT SIZE DEVELOPMENT
STANDARD PURSUANT TO CLAUSE 4.6(3) OF RANDWICK LEP 2012

2.0 DEVELOPMENT STANDARD TO BE VARIED

Clause 4.1 of the RLEP and the associated map prescribe a minimum lot size of 400m² for this site. The proposal seeks to undertake a Torrens Title subdivision of the existing attached dual occupancy development to allow for the provision of two lots, with each lot to accommodate one dwelling.

The lots are proposed as follows:

- Lot A: 329.9m²
- Lot B: 330m²

The proposal therefore provides a non-compliance with this control with the percentage variation being 17.5%.

The objectives of Clause 4.1

The objectives of Clause 4.1 are as follows:

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

Clause 4.6 - Exceptions to Development Standards

Clause 4.6 of the RLEP 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.

REQUEST FOR VARIATION TO MINIMUM LOT SIZE DEVELOPMENT
STANDARD PURSUANT TO CLAUSE 4.6(3) OF RANDWICK LEP 2012

D31/23

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 FSR development standard 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 (Wehbe v Pittwater Council [2007] NSWLEC 827):

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;

REQUEST FOR VARIATION TO MINIMUM LOT SIZE DEVELOPMENT
STANDARD PURSUANT TO CLAUSE 4.6(3) OF RANDWICK LEP 2012

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 (Micaul Holdings Pty Limited v Randwick City Council [2015] NSWLEC 1386).

Each 'test' offers a potential way of demonstrating that compliance is unnecessary or unreasonable in a particular circumstance. All tests are separate and not all tests may not be applicable in each case. Therefore, not all tests need to be met.

This objection relies on the first method set out above, that compliance with a standard is unreasonable and unnecessary given that the objectives of the standard are met even though the standard is not complied with.

Compliance with the objectives of the minimum lot size standard is addressed under **Point 4** below.

The following points are raised:

The proposed subdivision is consistent with the minimum lot size development standard of 275m² adopted by Council as part of the Randwick Comprehensive Planning Proposal.

The proposed lot size variation sought would not produce a poor environmental outcome for the residents of the proposed development, the adjoining neighbours or the locality and will be consistent with the form of development anticipated by the incoming minimum lot size development size, which is due to be in force imminently.

The proposed development represents an efficient and appropriate use of land that is compatible with the environmental capacity of the site and its R2 Low Density Residential Zoning, noting the lot size is consistent with the draft standard, which has been adopted by Council and is awaiting final determination by the Department of Planning & Environment.

2. Clause 4.6(3)(b) - There are sufficient environmental planning grounds to justify contravening the development standard:

The lots are proposed as follows:

- Lot A: 329.9m²
- Lot B: 330.0m²

The proposal therefore provides a non-compliance with this control with the percentage variation being 17.5%.

REQUEST FOR VARIATION TO MINIMUM LOT SIZE DEVELOPMENT
STANDARD PURSUANT TO CLAUSE 4.6(3) OF RANDWICK LEP 2012

D31/23

Given the consistency of the proposal against the zone objectives and minimum lot size objectives (see **Point 4 below regarding both**), in my opinion there are sufficient environmental planning grounds to justify contravening the development standard.

There are sufficient environmental planning grounds, which justify the noncompliance as follows:

- The proposed subdivision is consistent with the minimum lot size development standard of 275m² adopted by Council as part of the Randwick Comprehensive Planning Proposal.
- The proposed lot size variation sought would not produce a poor environmental outcome for the residents of the proposed development, the adjoining neighbours or the locality and will be consistent with the form of development anticipated by the incoming minimum lot size development size, which is due to be in force imminently.
- The proposed development represents an efficient and appropriate use of land that is compatible with the environmental capacity of the site and its R2 Low Density Residential Zoning, noting the lot size is consistent with the draft standard, which has been adopted by Council and is awaiting final determination by the Department of Planning & Environment.

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).

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 the Standard

The proposal will be in the public interest as it meets the objectives of the minimum lot size development standard as follows:

Objective (a)

To minimise any likely adverse impact of subdivision and development on the amenity of neighbouring properties,

Comment: The proposed subdivision will not result in any loss of amenity for the neighbouring properties, noting the built form has been approved and constructed.

Objective (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: The proposed subdivision will not impact on any natural or cultural features, heritage items, special features or trees.

REQUEST FOR VARIATION TO MINIMUM LOT SIZE DEVELOPMENT
STANDARD PURSUANT TO CLAUSE 4.6(3) OF RANDWICK LEP 2012

Objective (c)

To ensure that lot sizes are able to accommodate development that is suitable for its purpose.

Comment: The attached dual occupancy development has been approved and constructed and is suitable for its purpose. The subdivision will not change the built form but will allow for each of the dwellings to be located within their own lot.

This form of development is as envisaged by Council given the minimum lot size standard is soon to be amended to 275m². The proposed lot size for each lot at 330m² complies with this draft minimum lot standard.

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.

REQUEST FOR VARIATION TO MINIMUM LOT SIZE DEVELOPMENT
STANDARD PURSUANT TO CLAUSE 4.6(3) OF RANDWICK LEP 2012

CONCLUSION

The consistency of the development with the zone objectives and the objectives of the minimum lot size standard together 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 and the objectives of the development standard.

The proposal is consistent with the objects of Section 1.3 of the EP&A Act, 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.

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 because it is consistent with the objectives of the minimum lot size development standard and the objectives for development within the R2 – Low Density Residential zone under the RLEP, in which the development is proposed to be carried out.

D31/23

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

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

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	
2	Site planning	Site = 659.9m ² Proposed Lot 1 = 329.9m ² Proposed Lot 2 = 330m ²	
2.1	Minimum lot size and frontage		
	Minimum lot size (RLEP): • R2 = 400sqm • R3 = 325sqm	Proposed Lot 1 = 329.9m ² Proposed Lot 2 = 330m ²	No, see Clause 4.6 Assessment above.
	Minimum frontage		
	i) Min frontage R2 = 12m i) Min frontage R3 = 9m ii) No battle-axe or hatchet in R2 or R3 iii) Minimum frontage for attached dual occupancy in R2 = 15m iv) Minimum frontage for detached dual occupancy in R2 = 18m	Minimum = 12m Proposed = 7.62m	No, see Key Issues above.
2.3	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45%	Proposed Lot 1 = 44.7% (147.6m ²) Proposed Lot 2 = 44.7% (147.6m ²)	Yes, complies
2.4	Landscaping and permeable surfaces		
	i) Up to 300 sqm = 20% ii) 301 to 450 sqm = 25% iii) 451 to 600 sqm = 30% iv) 601 sqm or above = 35% v) Deep soil minimum width 900mm. vi) Maximise permeable surfaces to front vii) Retain existing or replace mature native trees viii) Minimum 1 canopy tree (8m mature). Smaller (4m mature) If site restrictions apply. ix) Locating paved areas, underground services away from root zones.	Proposed Lot 1 = 24.3% (80.15m ²) The 2.325m ² non-compliance is considered minor and acceptable on the basis that the proposal would not result in significant adverse beyond that associated with the approved development. Proposed Lot 2 = 30.5% (100.75m ²)	Yes, complies on merit
2.5	Private open space (POS)		
	Dual Occupancies (Attached and Detached) POS		
	451 to 600 sqm = 5m x 5m each 601sqm or above = 6m x 6m each ii) POS satisfy the following criteria:	Site = 659.9m ² Proposed = >6m x 6m	Yes, complies

DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none">• Situated at ground level (except for duplex• No open space on podiums or roofs• Adjacent to the living room• Oriented to maximise solar access• Located to the rear behind dwelling Has minimal change in gradient		

Responsible officer: William Joannides, Environmental Planning Officer

File Reference: DA/88/2023

D31/23

Development Consent Conditions

Folder / DA No:	DA/88/2023
Property:	17 Woomera Road, LITTLE BAY NSW 2036
Proposal:	Torrens title subdivision of an existing dual occupancy into two (2) lots.
Recommendation:	Approval

Development Consent Conditions**GENERAL CONDITIONS**

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

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

Approved Plans & Supporting Documentation

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

Plan	Drawn by	Dated	Received by Council
Plan of Subdivision of Lot 19 in DP 30118	Ian Wicks	10/02/2023	16/03/2023

REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

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

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

Occupation Certificate

- All conditions of DA/634/2020 must be satisfied and a final occupation certificate issued for the development prior to the issuing of a subdivision certificate.

Sydney Water

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

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

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

NOTE: The Section 73 certificate issued upon completion of the dwellings approved under DA/634/2020 will not be sufficient to comply with this condition. A new S73 certificate that refers to the subdivision of the site into two lots as approved under this consent must be provided.

Easements

4. 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

5. 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

6. 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

7. 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

8. A title folio search providing evidence of registration of the "restriction on the use of land" and "positive covenant" (required under condition 54 of DA/634/2020) shall be provided to Council prior to the issuing of a subdivision certificate.

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

Notes:

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

Subdivision Certificate

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. D32/23

Subject: 10 Palmer Street, South Coogee (DA/45/2023)


Executive Summary

Proposal:	Proposed strata title subdivision of existing dual occupancy into two (2) lots.
Ward:	East Ward
Applicant:	Ms A Massain
Owner:	Mr J Vasile & Mrs F Vasile
Cost of works:	Nil.
Reason for referral:	Variation to the Minimum Subdivision Lot Size Development Standard by more than 10%.

Recommendation

- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the minimum strata subdivision lot size development standard in Clause 4.1A of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning, Industry and Environment may be assumed.
- B. That the RLPP grant consent under Section 4.16 of the *Environmental Planning and Assessment Act 1979*, as amended, to Development Application No. DA/45/2023 for strata title subdivision of existing attached dual occupancy into two (2) lots at No. 10 Palmer Street, South Coogee, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (general) - DA/45/2023 - 10 Palmer Street, SOUTH COOGEE NSW 2034 - DEV - Randwick City Council

D32/23

D32/23



1. Executive summary

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

The proposal seeks development consent for the strata title subdivision of existing attached dual occupancy into two (2) lots.

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

The proposal is recommended for approval subject to standard conditions.

2. Site Description and Locality

The site is identified as Lot 17 DP 6772, 10 Palmer Street, South Coogee. The site is located on the northern side of Palmer Street, between Close Street to the west and Bunya Parade to the east.

The subject land is zoned R2 Low Density Residential. The site has an area of 609.3m² and a frontage width of 15.24m.

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

The surrounding area is characterised by low density residential development including dwelling houses and attached dual occupancies. Adjoining the site to the west at 8 Palmer Street is a single storey detached dwelling house, to the east at 12 Palmer Street is a two storey detached dwelling house, and to the north at the rear of the site at 19 and 21 Pearce Street is a part two part three storey detached dwelling house and a two storey detached dwelling house respectively.

There is no predominant subdivision pattern of the surrounding area, nor a prevailing architectural style of the streetscape and surrounding area with a mixture of old single storey red brick dwelling houses with pitched roofs and newer dwelling houses with modern and contemporary architectural designs.



Figure 1: North-west oblique view of the subject allotment and surrounding area (April 2022) – 10 Palmer Street, South Coogee (Source: Nearmap)

3. Relevant history

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

DA/245/2020

Development Application No. DA/245/2020 for demolition of existing dwelling and structures, and construction of a 2 storey attached dual occupancy with swimming pools at the rear, landscaping and associated works (variation to floor space ratio of the RLEP 2012) was approved by Council under delegation on 20 November 2020.

Modification Application No. DA/245/2020/A for inclusion of a basement level for storage for each dwelling with an area of 22.53sqm per basement was approved by Council under delegation on 25 January 2021.

Modification Application No. DA/245/2020/B for deletion of Conditions 2 (a), (b), (c) and (f) which relate to design amendments imposed as conditions of consent to the approved dwellings and modification of Condition 1 for amended kitchen layouts was approved by Council under delegation on 04 June 2021.

Modification Application No. DA/245/2020/C for modify condition 1, deletion of condition 2(a), (b) and (c), relating to the first floor balconies, and privacy screens was approved by Council under delegation on 31 December 2021.

CC/340/2021

Construction Certificate No. CC/340/2021 relating to Development Application No. DA/245/2020 was approved by the Principal Certifier Cameron James (BDC 2000) of Building Control Group on 01 September 2021 (Certifier Reference No. C210034-01).

N.b. No Occupation Certificate has been received by Council.

4. Proposal

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

	Lot Size	Front Boundary (Southern)	Rear Boundary (Northern)	Side Boundary (Western)	Side Boundary (Eastern)
Lot 1 (10)	304.65m ²	7.62m	7.62m	Common Boundary	39.98m
Lot 2 (10A)	304.65m ²	7.62m	7.62m	39.98m	Common Boundary

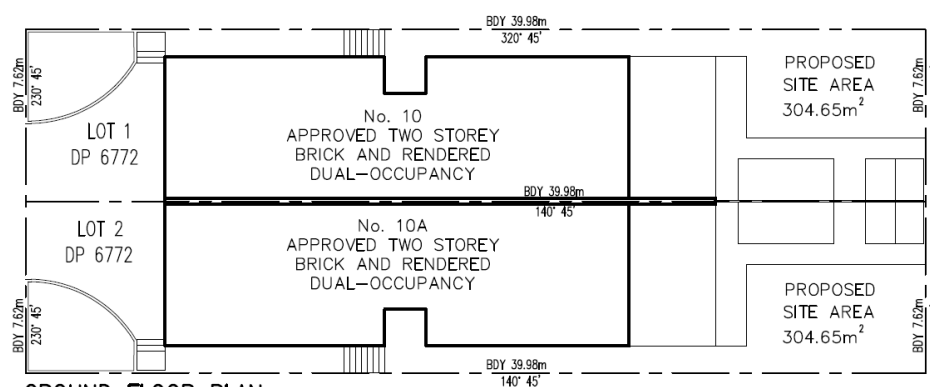


Figure 2: Proposed subdivision plan - 10 Palmer Street, South Coogee (Source: Superior Design)

5. Notification

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

6. Relevant Environment Planning Instruments

6.1. Randwick Local Environmental Plan 2012 (LEP)

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

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

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

The subject site is zoned R2 Low Density Residential, however the consent for the dual occupancy was not granted prior to 6 July 2018, as the dual occupancy was approved on 20 November 2020. Consequently, the second criterion has not been met. As such, it is noted that Clause 4.1D of the RLEP 2012 is not satisfied and therefore not relevant to this application.

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

R2 'Low Density Residential' Zone Objectives

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

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

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

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

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

As noted above, there is no predominant subdivision pattern within the surrounding area and there are no proposed changes to the built form of the dual occupancy. In addition, as noted previously, the subdivision is in keeping with the desired future characteristic of lot sizes as per the draft Planning Proposal and amendments to the Randwick LEP. As such, the proposal contributes to the desired future character of the area.

- *To protect the amenity of residents.*

It is considered that imposition of minimum lot sizes pursuant to Clause 4.1A of RLEP 2012 are in order to prevent the subdivision of development where the resultant lots are undersized and inappropriate. As such, establishing a minimum lot size ensures that the amenity of neighbouring residents and occupants of the development is maintained. As discussed above, the proposed subdivision is consistent with the desired future characteristic of lot sizes as per the draft Planning Proposal and amendments to the Randwick LEP. As such, the proposal protects the amenity of residents.

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

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl4.1A: Strata Subdivision Lot Size of Attached Dual Occupancy (min)	400m ²	Lot 1 (10) = 304.65m ²	No
		Lot 2 (10A) = 304.65m ²	No

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
CI4.1A: Strata Subdivision Lot Size of Attached Dual Occupancy (min)	400m ²	Lot 1 (10) = 304.65m ² Lot 2 (10A) = 304.65m ²	95.35m ² 95.35m ²	23.84% 23.84%

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

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

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

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

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

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

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

The grounds relied on by the applicant in their written request must be "environmental planning grounds" by their nature. Chief Justice Preston at [23] notes the adjectival phrase

“environmental planning” is not defined, but would refer to grounds that relate to the subject matter, scope and purpose of the EPA Act, including the objects in s1.3 of the EPA Act.

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

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

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

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

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

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

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

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

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

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

7.1. Exception to the Minimum Lot Size development standard (Cl 4.1A)

The applicant’s written justification for the departure from the minimum lot size standard is contained in Appendix 2.

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

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

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

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

The Applicant argues that compliance with the development standard is unnecessary in the circumstances of this particular case with consideration of the Randwick Comprehensive Planning Proposal and the amendments permitting a minimum lot size subdivision being 275m².

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

Assessing officer's comment:

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

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

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

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

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

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

- *The proposal is acceptable with regard to the Randwick Comprehensive Planning Proposal that was on Public Exhibition during 2022.*

- *The proposal is compliant with the proposed amendments to the RLEP with regard to minimum lot size and minimum frontage.*
- *The proposal is will not have any adverse impacts on the amenity of the adjoining properties as there are no proposed changes to the existing dual occupancy.*

Assessing officer's comment:

As noted above, the proposal is in keeping with the minimum lot size requirements and future desired characteristics of the R2 Zone, as per the draft Planning Proposal and amendments to the Randwick LEP which has been endorsed by Council. The Planning Proposal was endorsed to reduce the minimum lot size for subdivision zoned R2 'Low Density Residential' from 400m² to 275m², with the exception of land within a Heritage Conservation Area. The subject site meets the requirements of minimum lot size, being 304.65m². In addition, the subject site is not within a Heritage Conservation Area.

As noted previously, Clause 4.1D of RLEP 2012 was introduced in August 2018 and permits the subdivision of dual occupancy developments approved prior to 6 July 2018 in accordance with the provisions of the SEPP Exempt and Complying Development (which allows lesser allotment size requirements). It is noted that the dual occupancy was approved on 20 November 2020. As such, it is noted that Clause 4.1D of the RLEP 2012 is not satisfied and therefore not relevant to this application.

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

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

To determine whether the proposal will be in the public interest, an assessment against the objectives of the minimum lot size standard and the R2 zone has been undertaken. See above and Section 6.1 of the report for further discussion.

The above assessment of the proposal has found that the proposed subdivision achieves the objectives of Clause 4.1A in relation to minimum lot size or the objectives of the R2 zone. Therefore, the development will be in the public interest.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

Variation of the minimum lot size standard will allow for the orderly use of the site and there is a no public benefit in maintaining the development standard in this instance.

Conclusion

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

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

The relevant provisions of the DCP are addressed in Section 9.1 'Discussion of Key Issues' section of the report. In addition, it is noted that the proposed strata subdivision does not change the definition of the dwelling from an attached dual occupancy to a semi-detached dwelling as the dwellings are on one lot of land (but two strata lots). As such, the site considerations including site coverage, deep soil permeable areas and POS were considered and acceptable to Council at the stage of approving the attached dual occupancy. No such assessment of these controls is therefore required.

9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in Sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	See discussion in Sections 6 in relation to the Planning Proposal and draft Randwick LEP.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See the discussion in Key Issues section of the report below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The environmental impacts of the proposed development on the natural and built environment have been addressed in this report. The proposed development is consistent with the desired character of the locality. The proposal will not result in detrimental social or economic impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The application did not require notification.

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

9.1. Discussion of key issues

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

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

Subclause 2.1(j) specifies a minimum frontage width for resultant lots within the R2 zone of 12m for the purpose of dwelling houses and semi-detached dwellings. The proposed subdivision would result in the existing development being re-defined as semi-detached dwellings. The subdivision proposes a frontage width of 7.62m for each allotment, resulting in a substantial non-compliance with the minimum 12m requirement. As discussed under the Clause 4.6 assessment in Section 7.1 of the report, Council has endorsed part of the Planning Proposal that amends the Randwick Local Environmental Plan 2012 in relation to minimum lot sizes for the R2 'Low Density Residential' Zone, specifically to amend clause 4.1A to reduce the minimum lot size for subdivision of land zoned R2 'Low Density Residential' from 400m² to 275m², with the exception of land within a Heritage Conservation Area.

As such, the DCP controls relating to frontage width need to be considered within the context of Planning Proposal and amendment to the Randwick Local Environmental Plan 2012. As such, the frontage width is considered on a merit assessment against the objectives of the clause. Assessment of the proposal deems that the proposed 7.62m frontage for each dual occupancy provides sufficient width in relation to the dwelling on the site. In addition, the width is in keeping with the future desired design, pattern and amenity of the locality.

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

As such, the non-compliance is considered acceptable.

10. Conclusion

That the application DA/45/2023 to Strata Title subdivision of existing dual occupancy into two (2) lots at 10 Palmer Street, South Coogee NSW 2034 be approved (subject to conditions) for the following reasons:

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

of the RLEP 2012 to vary the minimum lot size standard pursuant to Clause 4.1A is considered to be well founded.

3. The proposed development is consistent with the objectives of the R2 zone in relation to providing for the housing needs of the community, recognising the desirable elements of the streetscape and the desired character of the area, protecting the amenity of residents, and encouraging housing affordability.

Appendix 1: Referrals**1. Internal referral comments:****1.1. Development Engineering**

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

This report is based on the following plans and documentation:

- Draft Strata Plans by Superior Design dated 16th Nov 2023
- Statement of Environmental Effects by Superior Design dated 16th Nov 2023

General Comments

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

The dual occupancy development was approved under DA/245/2020 and CC/340/2021. A final occupation certificate is yet to be issued for the development.

D32/23

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

Statement of Environmental Effects- Variation to Lot Size – 10 & 10A Palmer Street South Coogee

Appendix 1

Clause 4.6 Request to Vary Development Standard

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

Randwick Local Environmental Plan 2012.

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

Zone R2 Low Density Residential

1 Objectives of zone

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

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

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

4. Objective of the development Standard

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

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

(2) This clause applies to land in Zone R2 Low Density Residential.

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

Note—

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

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

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

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

Prepared by Superior Designs February 23

Statement of Environmental Effects- Variation to Lot Size – 10 & 10A Palmer Street South Coogee

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

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

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

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

Current Lot Size

Current Lot Size
 609.3sqm

Minimum Lots Size under the RLEP 2012
 400sqm

Proposed Lot size
 Lot 1 = 304.65m²
 Lot 2 = 304.65m²

Minimum Lot size requirement under the RLEP Comprehensive Planning Proposal (m2).
 275sqm

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

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

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

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

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

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

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

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

Prepared by Superior Designs February 23

Statement of Environmental Effects- Variation to Lot Size – 10 & 10A Palmer Street South Coogee

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

Note—

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

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

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

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

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

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

(a) the provisions of—

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

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

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

Prepared by Superior Designs February 23

Statement of Environmental Effects- Variation to Lot Size – 10 & 10A Palmer Street South Coogee

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

Responsible officer: William Joannides, Environmental Planning Officer

File Reference: DA/45/2023

D32/23

Development Consent Conditions

Folder / DA No:	DA/45/2023
Property:	10 Palmer Street, SOUTH COOGEE NSW 2034
Proposal:	Proposed strata title subdivision of existing attached dual occupancy into two (2) lots.
Recommendation:	Approval

Development Consent Conditions**GENERAL CONDITIONS**

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

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

Approved Plans & Supporting Documentation

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

Plan	Drawn by	Dated	Received by Council
Dwg No. 17/21, Issues A, Sheet 1 of 1	Superior Design	16/11/2021	14/02/2023

REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

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

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

Strata Plans

- All floors, external walls and ceilings depicted in the proposed strata plan must correspond to the building as constructed.
- All floors, external walls and ceilings depicted in the proposed strata plan must correspond to those depicted in the approved building plans for the site under DA/245/2020 (as amended) and CC/340/2021.

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

Plan of Survey

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

Sydney Water

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

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

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

NOTE: The S73 compliance certificate issued under the construction approval (DA/245/2020) will not be sufficient to satisfy this condition. A new Section 73 certificate must be obtained that refers to the subdivision of the property approved under this consent.

Public Utilities

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

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

Road / Asset Opening Permit

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

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

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

- Street and/or Sub-Address Numbering**
10. Street numbering must be provided to the front of the premises in a prominent position, in accordance with the Australia Post guidelines and AS/NZS 4819 (2003) to the satisfaction of Council.
- An application must be submitted to and approved by Council's Director of City Planning, together with the required fee, for the allocation of appropriate street and/or unit numbers for the development. The street and/or unit numbers must be allocated prior to the issue of a subdivision certificate.
- Please note: any Street or Sub-Address Numbering provided by an applicant on plans, which have been stamped as approved by Council are not to be interpreted as endorsed, approved by, or to the satisfaction of Council.
- Development Consent Conditions (DA/245/2020)**
11. The development is to have complied with all conditions of the Development Consent (DA/245/2020) and an occupation certificate issued prior to the release of the strata subdivision plans/certificate.
- Strata Certificate**
12. A formal application for a strata certificate is required to be submitted to and approved by the Council or registered certifier and all conditions of this development consent are required to be satisfied prior to the release of the strata subdivision plans.