

Randwick Local Planning Panel (Public) Meeting

Thursday 11 May 2023



RANDWICK LOCAL PLANNING PANEL (PUBLIC)

Notice is hereby given that a Randwick Local Planning Panel (Public) meeting will be held in the Coogee Room on Thursday, 11 May 2023 at 1pm.

Acknowledgement of Country

I would like to acknowledge that we are meeting on the land of the Bidjigal and the Gadigal peoples who occupied the Sydney Coast, being the traditional owners. On behalf of Randwick City Council, I acknowledge and pay my respects to the Elders past and present, and to Aboriginal people in attendance today.

Declarations of Pecuniary and Non-Pecuniary Interests

Address of RLPP by Councillors and members of the public

Privacy warning;

In respect to Privacy & Personal Information Protection Act, members of the public are advised that the proceedings of this meeting will be recorded.

Development Application Reports

D28/23 3 Berwick Street, Coogee (DA/432/2022) 1

Kerry Kyriacou
DIRECTOR CITY PLANNING

Development Application Report No. D28/23

Subject: 3 Berwick Street, Coogee (DA/432/2022)

Executive Summary

Proposal: Demolition of existing structures, Torrens title subdivision and the construction of two semidetached dwellings and associated site works.

Ward: East Ward

Applicant: Tone Wheeler

Owner: Belle Living Pty Ltd

Cost of works: \$2,178,526.00

Reason for referral:

- The development contravenes the development standard for building height by more than 10%
- 10 or more unique submissions by way of objection were received

Recommendation

That the RLPP refuse consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 432/2022 for the demolition of existing structures, Torrens title subdivision and the construction of two semidetached dwellings, at No. 3 Berwick Street, Coogee, for the following reasons:

1. The proposed development is of an excessive height and is incompatible with surrounding developments, resulting in non-compliance with the building height development standard prescribed by clause 4.3 of RLEP 2012, and the maximum external wall height specified by RDCP 2013. The submitted clause 4.6 is not considered to be well founded in that it does not sufficiently demonstrate that the proposed height breach is unreasonable or unnecessary in the circumstances of the case, nor that there are sufficient environmental planning grounds to justify a variation to the development standard.
2. The proposal would not conserve the environmental heritage of Randwick as it would involve the removal of a proposed heritage item of local significance.
3. The proposal would not conserve the significance of the heritage item due to the removal and loss of significant heritage fabric.
4. The proposal is inconsistent with the objectives of the R3 Medium Density Residential Zone of the RLEP 2012 in that the proposed development does not contribute to the desired future character of the area, proposing a development that significantly exceeds a level of built form anticipated for the subject site, nor recognises the desirable elements of the existing streetscape. The proposed development will result in unreasonable amenity impacts upon the adjoining and surrounding properties, and an adverse visual impact as viewed from the public domain.
5. The proposal is inconsistent with the guidelines and recommendations outlined in Part B2, Section 1.9 (Demolition) of the Randwick DCP 2013.
6. The development proposes an excessive level of Gross Floor Area. The additional floor area results in an excessive level of built form on the site and detrimental visual impact.
7. The proposed development shall result in an excessive level of bulk and scale on the site and is inconsistent with the existing and desired future character of the streetscape and the locality.
8. The proposed development shall result in unreasonable residential amenity impacts upon the surrounding properties with regards to visual amenity, solar access, visual and acoustic privacy and view loss.
9. The proposal involves the demolition of historical fabric of a draft heritage item contrary to the Randwick Local Environmental Plan 2012 Clause 5.10 (1) which includes an objective of conserving the heritage significance of heritage items and heritage conservation areas, including associated fabric, setting and views.

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10. The proposal involves the demolition of historical fabric of a draft heritage item contrary to the objectives and intended outcomes of the Planning Proposal to list No 5 (and No. 1) Berwick Street which is currently on public exhibition as required under the associated Gateway Determination.
11. The site and property at 3 Berwick Street, Coogee, is the subject of an Interim Heritage Order supported by a heritage study by City Plan Heritage that finds the existing property meets the relevant criteria for heritage listing being Criteria A (historic significance), B (historical association), C (aesthetic), F (rarity) and G (representative) of the "Assessing Heritage Significance", prepared by the NSW Heritage Office.
12. The issue of an Interim Heritage Order on the subject site authorises Council to preserve an item whilst its heritage significance is considered and determined pursuant to Section 25(2) of the Heritage Act 1977 which refers to 'further inquiry or investigation' to established heritage significance, and is reinforced by the fact that a subsequent listing of an item on local planning instrument the State Heritage Register or revokes any Interim Heritage Order.

Attachment/s:

Nil



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1. Executive summary

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

- The development contravenes the development standard for building height by more than 10%.
- 10 or more unique submissions by way of objection were received.

The proposal seeks development consent for the demolition of existing structures, Torrens title subdivision of one lot into two and the construction of a semidetached dwelling and associated site works.

The proposal was notified in accordance with Councils Community Participation Plan and 22 unique submissions were received, objecting to the proposal. A detailed summary of the submissions received is provided within the report.

The key issues associated with the proposal relate to the property listed as an Interim Heritage Order (IHO) and at the time of writing this report, the appeal against the IHO made in respect of the subject site was listed for hearing before Commissioner Dickson of the Land and Environment Court on Monday 17 and Tuesday 18 April 2023 with the judgement reserved.

At the Council Meeting on 13 December 2022, Council resolved, to exhibit a planning proposal to list Nos. 1 and 3 Berwick Street, Coogee, as local heritage items under Schedule 5 of the Randwick Local Environmental Plan 2012. The planning proposal will be on exhibition for comment from Monday 17 April until Friday 12 May 2023. The planning proposal is intended to protect and conserve these buildings which have been identified by heritage studies as having heritage significance and/or contributing to the heritage significance of the local area.

Notwithstanding, an assessment of the proposed development has been undertaken and found that the development would not be supported regardless of the heritage status. The proposed development results in substantial variations to the development standards in relation to building height and several non-compliances with the applicable planning controls within Section C2 of Randwick Development Control Plan 2013. The proposed development is considered to result in adverse impacts on neighbouring properties, the streetscape and occupant amenity.

Additional key issues such as non-compliance's with development standards and provisions within the Randwick Development Control Plan 2013 are discussed further within this report.

As such, the subject development application is recommended for refusal.

2. Site Description and Locality

The site is legally described as Lot B in DP 313214 and is known as 3 Berwick Street, Coogee. The site is located on the southern side of Berwick Street and is one lot removed from the intersection of Carr Street, Mount Street and Berwick Street.

The site has an area of 367.2m² and an angled frontage to Berwick Street of 15.24m. The eastern boundary has a length of 25.35m and the western boundary a length of 34.265m.

The site is currently improved by a single storey, brick and sandstone dwelling. A garage is located below the eastern side of the dwelling. The front setback of the dwelling ranges from approximately 3-9m due to the angled alignment of the front boundary. The dwelling occupies most of the remainder of the allotment with a 1.1m setback to the eastern side boundary and 0.9m setback to the western boundary. The majority of the dwelling has a rear setback of approximately 2.9m.

A rendered wall has been constructed to the rear of the site, inside the boundary of the site. There are no significant trees or vegetation on the site. The site has a moderate fall of 3m from the rear to the front boundary.

Figures 1-5 outline the location and context of the site.



Figure 1: Site Locality Plan Demonstrating the Development Site Outlined in Yellow (Source: NSW Planning Portal).

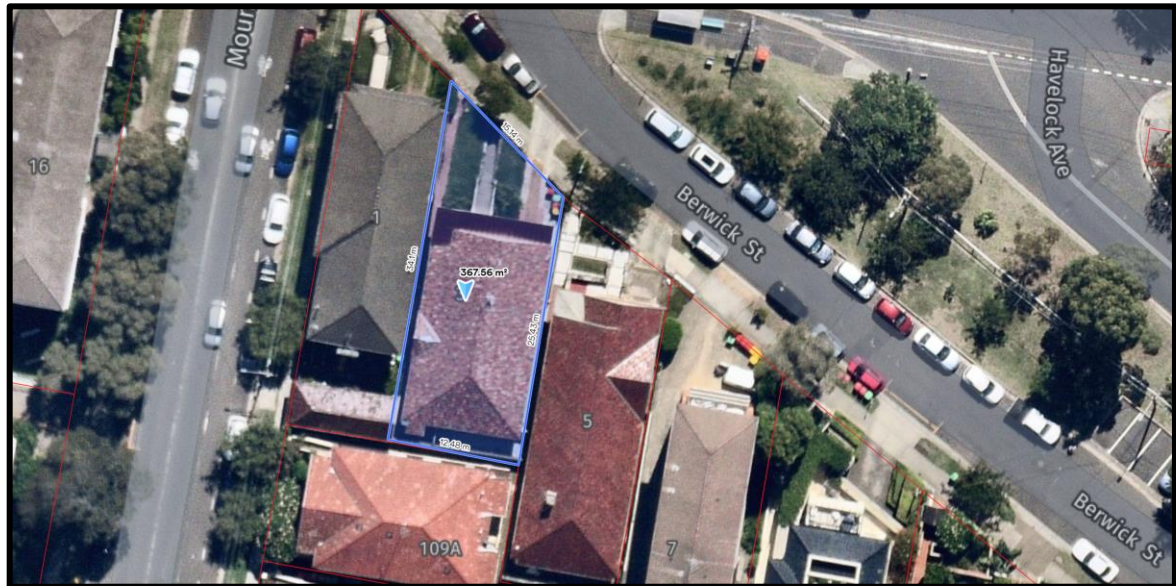


Figure 2: Location Plan Demonstrating the Site Area Hatched in Blue (Source: Nearmap).

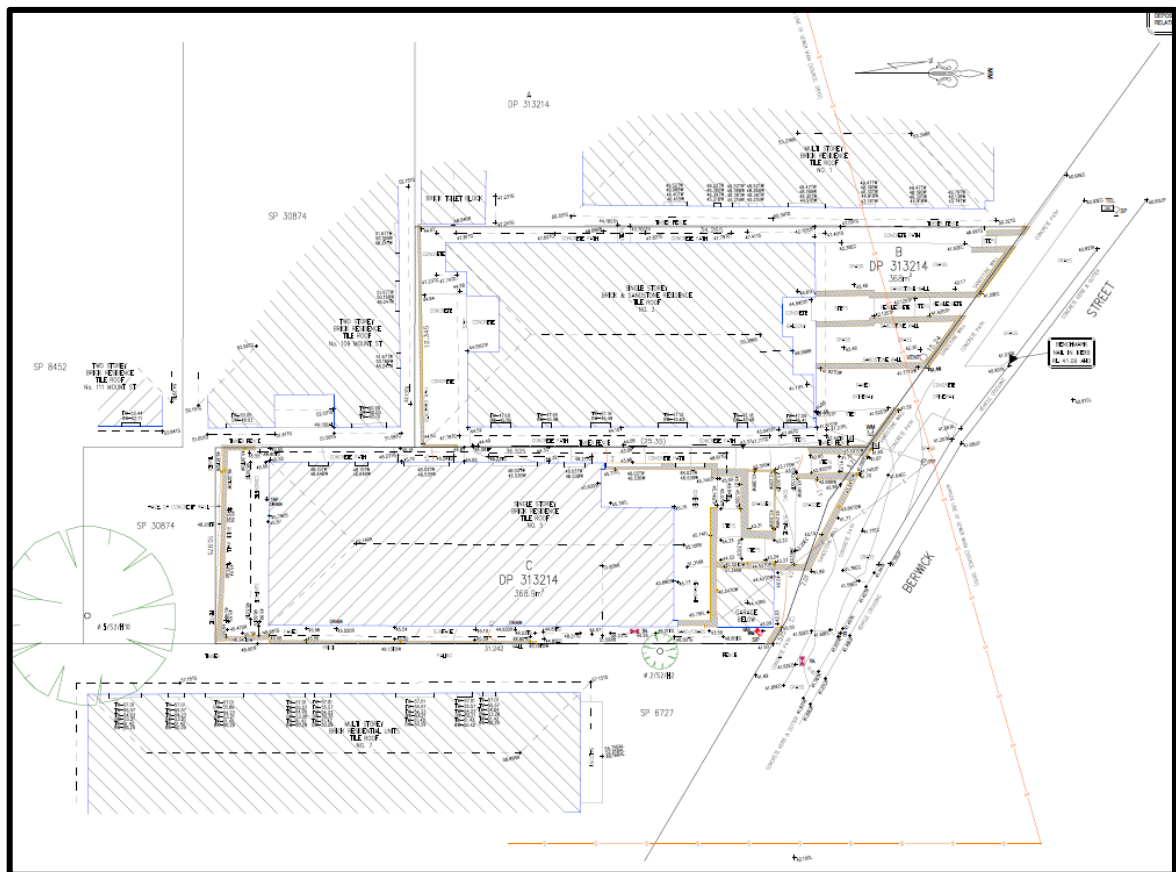


Figure 3: Site Survey (Source: Total Surveying Solutions).

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Figure 4: Northern Elevation of Subject Site (Source: Randwick City Council).



Figure 5: North Elevation of Adjoining Heritage Listed Property at 1 Berwick Street, Coogee (109A Mount Street, Coogee) (Source: Randwick City Council).



Figure 6: North Elevation of Berwick Street, Coogee (Source: Randwick City Council).

3. Relevant history

The following history is relevant to the subject application, and is detailed as follows:

- BA/1286/1975 – Alterations
- BA/392/1949 – Alts for surgery
- SC/1653/1922 – Land for subdivision into 5 lots
- DA/303/2020 – sought demolition for the existing structures at No. 3 & 5 Berwick Street and the construction of a Residential Flat Building comprising 6 apartments and 10 car parking spaces. The development was amended on 28 October 2021 to allow for the retention of the dwelling at 5 Berwick Street and the construction of a four-storey residential flat building comprising 3 apartments at 3 Berwick Street. The Application was subsequently withdrawn.

3.1 Planning Proposal to create new Local Heritage Item

Council's Heritage Planner provided the following information with regards to the current Planning Proposal which affects the subject site:

Background

On 26 August 2022, a Development Application (DA/432/2022) was received for the Torrens-title subdivision of No. 3 Berwick Street, Coogee, into two (2) allotments and construction of two (2) semi-detached dwellings, one on each allotment. The DA was placed on public exhibition between in September 2022. A significant number of submissions from the community raised objections to the proposed development on the grounds that the proposal would result in the demolition of the existing dwelling house on-site which was viewed as, potentially, heritage significant.

At the Council meeting on 27 September 2022, Council resolved as follows in relation to 3 Berwick Street, Coogee:

RESOLVED: (Olive/Neilson) that Item UB49/22 (Preliminary heritage assessment of the building at 3 Berwick Street, Coogee) be considered as urgent business.

- a) Council officers urgently undertake a preliminary heritage assessment of the building at 3 Berwick Street, Coogee to determine if it is likely to be found, on further inquiry and investigation, to be of local heritage significance;
- b) it is noted 1, 3 and 5 Berwick Street form a cluster of interwar buildings; and
- c) if the preliminary heritage assessment is suggestive of 3 Berwick Street having local heritage significance, then an interim heritage order be placed on the property so its heritage values can be fully assessed

In view of the concerns raised in the community submissions to DA/432/2022; the CDC for demolition, and having regard to Council's resolution, City Plan Heritage (CPH), was appointed to prepare an urgent assessment of the heritage significance of the property. On 13 October 2022, City Plan Heritage provided Council with a Heritage Assessment of No 3 Berwick Street, Coogee, finding, among other things, that:

"Based on the documentary and physical evidence, it is concluded that the subject building at 3 Berwick Street is of local heritage significance and meets the threshold for individual heritage listing under Criteria (a), (b), (c), (f) and (g) of the Assessing Heritage Significance as defined in the Statement of Significance"

Accordingly, City Plan Heritage recommended in the Assessment:

- *"that the inter-war bungalow at 3 Berwick Street in Coogee is of local heritage significance and meets the significance assessment criteria for listing as a heritage item under Part 1 (Heritage items) of Schedule 5 of Randwick LEP 2012. "*
- *"that although each property at 1, 3 and 5 Berwick Street in Coogee meets the threshold for heritage listing individually, their collective interwar heritage values make stronger contribution and add to the environmental heritage of Randwick LGA..."*

Interim Heritage Order (IHO)

In view of City Plan Heritage's recommendation, Council, under delegated authority, placed an Interim Heritage Order (IHO) on the building and site at 3 Berwick Street, Coogee, (Lot B DP 313214) on 14 October 2022 following notification of the IHO in the Government Gazette (Government Gazette No. 484 – Local Government). The IHO is consistent with the provisions of the Heritage Act 1977 and the Heritage Guidelines. In particular, Section 25 of the Heritage Act 1977 authorises a council to make an Interim Heritage Order for a building or place that council considers may be found to be of local heritage significance and is being or is likely to be harmed. The property warrants preservation in line with the assessment, findings and recommendations of the heritage assessment prepared by Council's heritage consultant, City Plan Heritage, dated 13 October 2022, and in view of its proposed demolition under development application No: DA/432/2022 and a recent CDC application for demolition.

Notice of the interim heritage order is available online and can be viewed on the following link: [Government Gazette 484 – 14 October 2022.pdf](#)

The Ministerial Order authorising the making of Interim Heritage Orders requires that a council must not make an Interim Heritage Order (IHO) unless:

- (a) an environmental planning instrument containing a schedule of heritage items derived from a heritage study and provisions for the management of those items is in force in the Local Government Area.

Comment: The Randwick LEP 2012 meets this criterion.

- (b) it has considered a preliminary heritage assessment of the item prepared by a person with appropriate heritage knowledge, skills and experience employed or retained by the council and considers that the item is or is likely to be found on further inquiry and investigation, to be of local heritage significance.

Comment: City Plan Heritage has suitable heritage knowledge, skills and experience. City Plan Heritage's assessment report finds that No 3 Berwick Street, meets the threshold for individual heritage listing under Criteria A (historic significance), B (historical association), C (aesthetic), F (rarity) and G (representative) of the "Assessing Heritage Significance", prepared by the NSW Heritage Office.

In regard to criterion A (historic significance), City Plan Heritage advises that:

"The house demonstrates the suburbanisation of Coogee following the subdivision of the nineteenth-century estates in the area and the period of prosperity in the Municipality of Randwick following World War 1. 3 Berwick Street also represents Coogee's first purpose-built registered dental surgery from the 1920s with dental surgery and residence that have operated continually as a dental practice for the last 96 years and still functioning as one."

In regard to criterion B (historical association), City Plan Heritage advises that:

"3 Berwick Street was constructed for Victor Emmanuel Pugliese of Ulan (Dentist) in 1924, the first registered Dentist in the village of Coogee. The house remained in the ownership of Victor's family until 1949, soon after Victor's death in April 1948."

In regard to Criterion C (aesthetic), City Plan Heritage advises that:

"3 Berwick Street is a good example of an Inter-War bungalow in Randwick. The house exterior includes face brick and sandstone walls, a prominent gable with half-timber detailing supported on brick and sandstone columns, a recessed verandah and entrance, and single hung timber windows with Venetian glass."

In regard to criterion F (rarity), City Plan Heritage advises that:

"The house is a highly intact example of an Inter-War bungalow, including examples of interior fixtures and finishes dating from its construction in c1924. The Inter-War bungalows are now unusual and seldom found in the area and are now "rare" items in Coogee."

In regard to Criterion G (representativeness), City Plan Heritage advises that:

3 Berwick Street is representative of the Inter-war suburban residential development constructed in Randwick in the first half of the twentieth century. The residence is also representative of Coogee's first purpose-built registered dental surgery from 1924.

- (c) the item is being or is likely to be harmed.

Comment: If there is a development application, and a complying development certificate application, indicating demolition of the potential heritage item, as is presently the case, then that is sufficient evidence that it is likely to be harmed.

- (d) the IHO is confined to the item determined as being under threat.

Comment: The proposed IHO will be confined to No 3 Berwick Street, Coogee as being the property under threat.

Accordingly, there are adequate grounds for the making of the interim heritage order to protect the property at No 3 Berwick Street from likely harm.

A planning proposal was subsequently prepared to facilitate the following proposed amendment to the *Randwick Local Environmental Plan 2012* (RLEP 2012):

- Include the following sites as local heritage items:
 - 1 Berwick Street, Coogee (Lot A DP 313214) following a request by its owner for heritage listing.
 - 3 Berwick Street, Coogee (Lot B DP 313214) following the issue of the IHO.

On 24 November 2022, the Planning Proposal was referred to the Randwick Local Planning Panel for assessment. The Panel resolved to support the Planning Proposal subject to conditions.

Following the RLPP meeting a report and the draft planning proposal was provided to the Randwick Ordinary Council meeting held on 13 December 2022 for their consideration.

At this meeting, Council resolved as follows in relation to 1 and 3 Berwick Street, Coogee:

RESOLUTION: (Olive/Wilson) that Council:

- a) consider the advice provided by the Randwick Local Planning Panel at its meeting of 24 November 2022 and endorse the attached draft Planning Proposal to amend Schedule 5 to include No.1 Berwick Street and No 3 Berwick Street, Coogee, as local heritage items.
- b) forward the attached draft Planning Proposal to the Department of Planning and Environment as delegate to the Minister for Planning requesting 'Gateway Determination' under Section 3.34 of the Environmental Planning and Assessment Act 1979.
- c) exhibit the draft Planning Proposal following 'Gateway Determination' in accordance with conditions of the Gateway Determination and bring back a report to Council detailing the results of the community consultation for final consideration by Council;
- d) authorise the Director, City Planning to make typographical, grammatical or formatting changes to the documentation prior to submission to the Department of Planning and Environment.

The planning proposal received gateway determination from the NSW Department of Planning on 2 March 2023 and one of the conditions of this approval required that Council place the planning proposal on public exhibition for 20 days in accordance with section 3.34(2)(c) and clause 4 of Schedule 1 to the EP& A Act. Accordingly, the Planning Proposal is on public exhibition for community comment from Monday 17 April until Friday 12 May 2023.

A Class 1 application for appeal was lodged by the owner of 3 Berwick Street, Coogee, on 11 November 2022, pursuant to 30(1) of the Heritage Act 1977 (NSW) (Heritage Act) against the making of the IHO by Randwick City Council over the property at 3 Berwick Street, Coogee. The matter was heard at the Court hearing on 12 and 13 April 2023. Judgment has been reserved.

Proposal

The proposal is for Torrens-title subdivision of No. 3 Berwick Street, Coogee, into two (2) allotments and construction of two (2) semi-detached dwellings, one on each allotment.

Controls

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

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

The Heritage Act 1977 provides for the identification and registration of items of State or Local Heritage significance. The Act seeks to protect and conserve items of State or Local Heritage significance through the operation and establishment of the Heritage Council of NSW and its associated functions.

The Heritage section of Randwick Development Control Plan 2013 provided Objectives and Controls in relation to heritage properties.

Comments

An inspection of the relevant plans and elevations indicate that the proposal will involve outright demolition of the existing building on site. In fact, on 13 October 2022, Council was advised by the owner of a neighbouring property to the subject site that correspondence had been received from a private certifier advising that 3 Berwick Street would be demolished under Complying Development Certificate (CDC).

As the property is the subject of an IHO supported by a heritage study by CPH that finds the existing property meets the relevant criteria for heritage listing as well as a Planning Proposal which has received Gateway Determination, demolition of the property will be contrary to the terms of the IHO; the findings of the CPH heritage study; and the objectives and intended outcomes of the Planning Proposal.

It should be further noted that the Planning Proposal to list No 3 (and No. 1) Berwick Street is currently on public exhibition as required under the Gateway Determination prior to the making of the LEP to heritage list the subject property in Schedule 5 of the Randwick LEP. In effect, the subject site/property should be treated as draft heritage item that should be afforded all the necessary and required protection under all relevant legislation.

Recommendation

The Development Application for the for Torrens-title subdivision of No. 3 Berwick Street, Coogee, into two (2) allotments and construction of two (2) semi-detached dwellings, is not supported from a heritage perspective for the following reasons:

- The proposal involves the demolition of historical fabric of a draft heritage item contrary to the Randwick Local Environmental Plan 2012 Clause 5.10 (1) which includes an objective of conserving the heritage significance of heritage items and heritage conservation areas, including associated fabric and setting.
- The proposal involves the demolition of historical fabric of a draft heritage item contrary to the objectives and intended outcomes of the Planning Proposal to list No 3 (and No. 1) Berwick Street which is currently on public exhibition from Monday 17 April until Friday 12 May 2023 as required under the associated Gateway Determination.
- The site and property at 3 Berwick Street, Coogee, is the subject of an Interim Heritage Order supported by a heritage study by City Plan Heritage that finds the existing property meets the relevant criteria for heritage listing being Criteria A (historic significance), B (historical association), C (aesthetic), F (rarity) and G (representative) of the "Assessing Heritage Significance", prepared by the NSW Heritage Office.
- The issue of an Interim Heritage Order on the subject site authorises Council to preserve an item whilst its heritage significance is considered and determined pursuant to Section 25(2) of the Heritage Act 1977 which refers to 'further inquiry or investigation' to established heritage significance, and is reinforced by the fact that a subsequent listing of an item on local planning instrument the State Heritage Register or revokes any Interim Heritage Order.

4. Proposal

The proposal seeks development consent for the demolition of the existing structures, the Torrens title subdivision of the site into two allotments and the construction of a semi-detached dwelling on each allotment. Specifically, the following works are proposed:

- Demolition
 - Demolition of existing structures.
- Subdivision
 - The western allotment (Site A) has area of 187 square metres and a 7.162 metre frontage to Berwick Street. The eastern allotment (Site B) will be a marginally wider allotment, with a width of 8.078 metres, but is not as deep due to the alignment of the northern boundary. Site B has an area of 181 square metres.
- Dwellings
 - Construction of two (2), three (3) storey semi-detached dwellings, comprising four (4) bedrooms and two (2) car parking spaces (tandem).
 - Level 1 of both dwellings includes a single width garage that provides tandem car parking for two vehicles. A laundry and powder room are located on the southern side of each garage. Lift and stair access is provided to the levels above. The front door of House 1 is located on Level 1 whilst stairs to Level 2 provide access to the front door of House 2.
 - An open plan living area, kitchen and dining room is proposed on Level 2 of both dwellings. Each living room opens to a north facing balcony and a ground level area of private open space on the southern side of the living area.
 - Two bedrooms and a bathroom are proposed on Level 3 of each dwelling. The bedrooms on the northern side of Level 3 open to a balcony.
 - Two bedrooms are located on Level 4. The main bedroom includes an ensuite. The bedroom on the northern side of Level 4 opens to a north facing balcony.

	Combined	Site A - House 1	Site B - House 2
Site Area	368 m ²	187 m ²	181 m ²
Gross Floor Area	361.86 m ²	179.2 m ²	182.66 m ²
Site coverage	168.65 m ² (45.829%)	83.11 m ² (44.44%)	85.54m ² (47.26)
Deep soil zone	113.54 m ² (30.853%)	64.56m ² (34.524%)	49.98m ² (7.613%)
Private open space at rear	N/A	39.6 m ²	30.8 m ²
	Combined	Site A - House 1	Site B - House 2
Private open space (balconies)		33 m ²	32 m ²
Total private open space		72.6 m ²	62.8 m ²

Figure 7: Development Data Provided within Applicant SEE (Source: Sutherland Planning).

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:

- 10/20 Carr Street – Lesley Taylor
- 139 Clovelly Road, Randwick – T. Craven
- 5 Berwick Street, Coogee – Andrew & Thanh Nguyen
- 3/7 Berwick Street, Coogee – Mira Porkovich

- 1 Dennes Place, Lyons (ACT) – Ian Freeman
- 12/29 Carr Street, Coogee – Gary & Lee Tutty
- 3/30 Frances Street, Coogee – Wendy Power
- 9 Woodland Street, Coogee – Thomas Nguyen
- 160 Carrington Road, Waverley – Colin McDermid
- 1 Berwick Street, Coogee – Maurice Cunningham
- Serpentine Street, Greenwich – Jeanette Lamb
- 4/11A-15 Berwick Street, Coogee – Olivia Fernandes
- Address withheld – Rona Wade
- 111 Mount Street, Coogee – Oliver Nicholson
- Address withheld – Linda Avramides
- Cox Avenue, Bondi – Ruth Brent
- 3/109 Mount Street, Coogee – John O'Donoghue
- 1/109 Mount Street, Coogee – Adam Gruszka
- Address withheld - Genevive Freeman
- 340 Arden Street, Coogee – Kathleen Robinson
- 109A Mount Street, Coogee – Zoe Allison, Alexandra Berry, Anna Fernandez, Zoe Hanson
- 4/109 Mount Street, Coogee – Ryan Elliot

Issue	Comment
<ul style="list-style-type: none"> • No Notification Signage 	The development application was notified in accordance with Council's Community Engagement Strategy.
<p>Heritage</p> <ul style="list-style-type: none"> • Protection under Council's Heritage Conservation Plan • Loss of local heritage • No. 1, 3 & 5 should be heritage listed and if no. 3 is demolished, the cohesive part of the streetscape will be destroyed. • The Heritage Report is paid for by developers which result in significant conflicts of interest. • Demolition of heritage home in good condition allows a concrete block to further contribute to greenhouse gas emissions. 	Noted. See comments from Council's Heritage Planner.
<p>Incompatible with the local character</p> <ul style="list-style-type: none"> • Out of character for Berwick Street • Size and scale is not compatible for the desired future character. • Not compatible with the scale and character of contributory buildings in a conservation area or near a heritage item. • Detrimental effects on streetscape • Generic ugly concrete mass that is out of character for the area. • First dental surgery in Coogee 	Noted. The proposed development is considered to be incompatible with the character of the local area, including the existing and desired future character of the locality. See Key Issues for further discussion.

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Issue	Comment
<p>Traffic and Parking</p> <ul style="list-style-type: none"> • Loss of on street parking • Insufficient parking spaces • Increase of traffic in an already congested street. • Two way traffic flow and narrow street. 	<p>Noted. Refer to DCP assessment.</p>
<p>Form, Bulk, Scale, Mass</p> <ul style="list-style-type: none"> • Variation to height of building • Variation to maximum wall height not justified • Noncompliance setback • Noncompliance lot frontage • Non compliance building depth • Non compliance 4.1B of RLEP • Lot size is too small to subdivide and increase in density is not appropriate. • Subjectively, the proposal is aesthetically inferior and takes away from the visuals of no. 1, 3 & 5 Berwick street. • SEPP (Exempt and Complying Development Code) greatly expands CDC allowances • Variation justification is unconvincing • Variations are unreasonable and inappropriate variations reference 7 Berwick street which was constructed at a time of more colorful planning decisions – historical development should not be used for precedent. • The developers claims regarding floor space ratio are suspect. The LEP does not identify FSR for lots under 300sqm however the General Housing Code outlines a percentage approach for said lots. • The lot requirements under the Housing Code for CDCs must not be less than 200m2 and the width must be at least 6m. • DA/123/2021/A and DA/558/2021 set precedence for rejections regarding height and bulk. 	<p>Noted. The proposed development results in a level of built form that significantly exceeds that anticipated for the site, and an excessive level of bulk and scale. As such the proposed development is not supported. Council note that the subject DA is seeking approval by way of Development Consent, and not Complying Development, and therefore the SEPP is not triggered. Refer to Key Issues discussion.</p>

Issue	Comment
<p>Amenity Impacts</p> <ul style="list-style-type: none"> • Solar access impacts to no. 1 Berwick street • Solar access impacts to no. 5 Berwick street • Serious adverse impacts on amenity of adjoining and neighbouring land in terms of visual bulk, overshadowing, privacy, acoustic and views. • Architectural plans do not show windows on 109 Mount Street directly opposite the glass windows (referencing height plane diagram) and amenity is directly impacted. • The development does not consider people at the rear of the site. 	<p>Noted. Refer to key issues discussion.</p>
<p>Insufficient information</p> <ul style="list-style-type: none"> • Lack of information on the sewer main which connects properties from Mount street to Carr Street. • Site survey has noted only the approximate line of the sewer main. The main sewer of Mount street will be impacted. • The applicant has not addressed the conflict between the proposed ramped driveway below ground level and the depth of the sewer line. • Existing ground levels incorrectly identified • The Geotechnical report was prepared for the original developer, and speaks of 4m excavation for construction across 3 & 5 Berwick. It states that this report is not for use for other projects or purposes on the same site or by a third party. It is fair to say that a Geotech report has not been provided for the proposed development • Fire egress non adequately considered 	<p>Noted. Information on sewer mains is a consideration for Sydney Water.</p>
<ul style="list-style-type: none"> • Loss of green space which impacts urban heat. • Tress loss and nature strip loss. 	<p>Concerns are noted. However the proposed development includes additional landscaping. Refer to Landscape Technician comments.</p>
<ul style="list-style-type: none"> • Will not solve housing shortages as units are primarily sold to overseas buyers or investors. 	<p>Noted. However technically speaking, the proposed development increases density by providing an additional dwelling, which aids in housing supply. Notwithstanding, Council does not support the proposal, for reasons discussed herein.</p>

Issue	Comment
<ul style="list-style-type: none"> Based on the layout, there is concerns that the developer could convert the semis to a Residential Flat Building. 	Council notes concerns, however has undertaken an assessment against the proposed development, which is that of a semidetached dwelling.
<ul style="list-style-type: none"> The proposed development is not justified for its adverse environmental impacts. 	Noted. Refer to assessment against 4.15 of the EP&A Act 1979 below.
<ul style="list-style-type: none"> Non compliant with objectives of the R3 zone. 	Noted. The proposed development is found to be inconsistent with the R3 zone objectives, see Key Issues for further discussion.
<ul style="list-style-type: none"> Does not comply with the Department of Planning Apartment Design Guide. 	Not applicable. The proposed development does not trigger an assessment against SEPP 65 or the ADG.

6. Relevant Environment Planning Instruments

6.1. SEPP (Building Sustainability Index: BASIX) 2004

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

6.2. SEPP (Resilience and Hazards) 2021

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

Chapter 4, Section 4.6 of the SEPP requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on land and whether the site is suitable for residential development.

The Applicant has outlined that the land use and residential nature of the site is not proposed to change. Historically, the site has been used for residential purposes. Council not that the dental surgery is an additional use within the front of the dwelling. It is not anticipated that the site is potentially contaminated.

Furthermore, the subject site is not identified under RLEP 2012 as constituting contaminated land or land that must be subject of an audit statement. Accordingly, nothing restricts Council, under the SEPP from consenting to the carrying out of development subject to the appropriate conditions of consent.

6.3. SEPP (Biodiversity and Conservation) 2021

The Biodiversity and Conservation SEPP came into force on 02 March 2022. The new Biodiversity and Conservation SEPP shall replace the SEPP (Vegetation in Non-rural Areas) 2017, with Chapter 2 of the new SEPP applicable to the proposed development. There are no general savings and transitional provisions under the new SEPP and therefore the applicable is determined under the new SEPP (Biodiversity and Conservation) 2021. As such, consideration of the new Biodiversity SEPP has been undertaken in accordance with the provisions of Section 4.15 of the Act.

The provisions of the vegetation SEPP have generally been transferred over to the new Biodiversity and Conservation SEPP with particular regards to when a permit from Council is required to remove vegetation and the considerations for Council when granting consent to remove vegetation. As such, it is considered that the proposed development will remain consistent with the provisions of the new Biodiversity and Conservation SEPP.

6.4. SEPP (Transport and Infrastructure) 2021

SEPP (Transport and Infrastructure) 2021

Chapter 2, Part 2.3 Division 5 Section 2.48 of the SEPP outlines requirements for development likely to affect an electricity transmission or distribution network, and states the following:

- (1) *This section applies to a development application (or an application for modification of a consent) for development comprising or involving any of the following—*
 - (a) *the penetration of ground within 2m of an underground electricity power line or an electricity distribution pole or within 10m of any part of an electricity tower,*
 - (b) *development carried out—*
 - (i) *within or immediately adjacent to an easement for electricity purposes (whether or not the electricity infrastructure exists), or*
 - (ii) *immediately adjacent to an electricity substation, or*
 - (iii) *within 5m of an exposed overhead electricity power line,*
 - (c) *installation of a swimming pool any part of which is—*
 - (i) *within 30m of a structure supporting an overhead electricity transmission line, measured horizontally from the top of the pool to the bottom of the structure at ground level, or*
 - (ii) *within 5m of an overhead electricity power line, measured vertically upwards from the top of the pool,*
 - (d) *development involving or requiring the placement of power lines underground, unless an agreement with respect to the placement underground of power lines is in force between the electricity supply authority and the council for the land concerned.*
- (2) *Before determining a development application (or an application for modification of a consent) for development to which this section applies, the consent authority must—*
 - (a) *give written notice to the electricity supply authority for the area in which the development is to be carried out, inviting comments about potential safety risks, and*
 - (b) *take into consideration any response to the notice that is received within 21 days after the notice is given.*
- (3) *Subsection (2) does not apply to development specified in subsection (1)(b) if the development involves only one or more of the following—*
 - (a) *internal alterations to a building,*
 - (b) *a change of use of an existing building,*
 - (c) *a change to the hours of operation specified in the development consent,*
 - (d) *a subdivision that does not involve construction work.*

Specific reference is given to section 2.48(1)(b)(ii). Council note that there are exposed overhead electricity lines within the road reserve adjacent to the subject site. Refer to **Figure 8** below.



Figure 8: Street View of Northern Elevation Demonstrating the Location of Overhead Infrastructure along Berwick Street (Source: Google Street View).

At the time of writing this report, response from Ausgrid had not been received.

6.5. Randwick Local Environmental Plan 2012 (LEP)

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

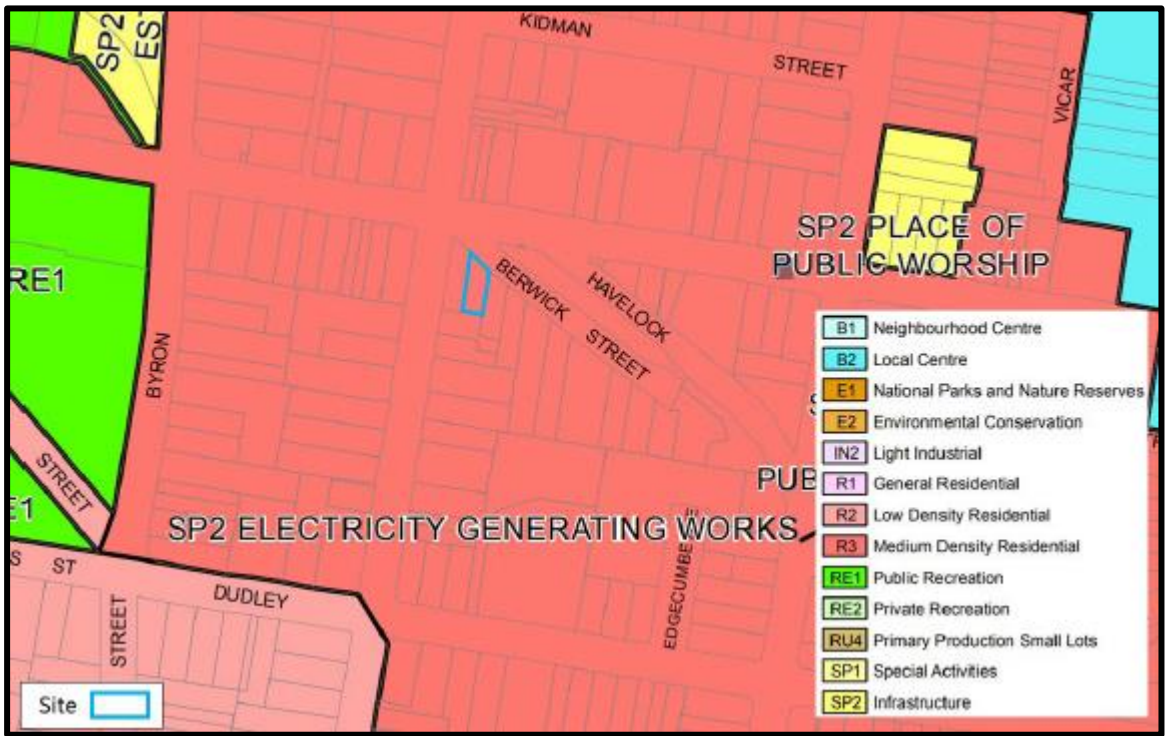


Figure 9: Land Zoning Map with Development Site Outlined in Blue (Source: RLEP 2012).

The proposal is inconsistent with the specific objectives of the zone for reasons discussed in section 7 below.

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)	N/A	N/A	N/A
Cl 4.3: Building height (max)	9.5m	9.804m & 10.746m	No
Cl 4.1: Lot Size (min)	N/A	N/A	Yes

6.5.1. Clause 2.6 Subdivision Consent Requirements

The development seeks consent for the subdivision of one (1) lot into two (2).

6.5.2. Clause 2.7 Demolition Requires Development Consent

The demolition of a building or work may be carried out only with development consent.

6.5.3. Clause 4.1 Minimum Subdivision Size

N/A. No minimum lot size is identified.

6.5.4. Clause 4.1B Exceptions to Minimum Subdivision Lot Size in Zone R3

N/A. The minimum subdivision lot size for any lot resulting from the subdivision of a lot in Zone R3 Medium Density Residential that is being used, or is proposed to be used, for the purpose of a dwelling house or for a purpose other than residential accommodation is 325 square metres. The proposed development is not for the purposes of a dwelling house.

A semi-detached dwelling is defined as follows:

semi-detached dwelling means a dwelling that is on its own lot of land and is attached to only one other dwelling.

Note—

Semi-detached dwellings are a type of **residential accommodation**—see the definition of that term in this Dictionary.

Given that a semidetached dwelling is a type of residential accommodation, and not a dwelling house, this clause does not apply.

6.5.5. Clause 4.3 Building Height

The proposal does not comply with the development standard for the height of buildings.

The proposal fails to comply with the height of buildings development standard within Clause 4.3 of the RLEP 2012 and the external wall height requirement under the RDCP 2013. The applicant has failed to provide for a written request under Clause 4.6 of the RLEP 2012 to demonstrate sufficient environmental planning grounds to justify the variation or that the variation is in the public interest by being consistent with the zone and standard objectives.

- Under Clause 4.3 of the RLEP 2012, the maximum height of buildings permitted for most development within the zone is 12m. Clause 2A provides that despite subclause 2, the maximum height for a dwelling house or semidetached dwelling within the R3 zone is 9.5m. The proposed development seeks to vary the control by 13.12% overall.
- Part 4.4 of the RDCP 2013 prescribes the following objectives and controls relating to external wall height:
 - To control the bulk and scale of development and minimise the impacts on the neighbouring properties in terms of overshadowing, privacy and visual amenity.
 - To ensure that the building form provides for interesting roof forms and is compatible with the streetscape.
 - Where the site is subject to a 12m building height limit under the LEP, a maximum external wall height of 10.5m applies.
- The proposed external wall height along the southern elevation, seeks to vary the wall height for house 2 by 8.74m and house 1 by 12.28m.
- The Applicant argues that the floor to ceiling heights are appropriate in that the pitched roof forms are consistent with the predominate roof form of the locality. However as mentioned throughout this report, the predominant roof form within Berwick Street was considered under now repealed planning controls, and is therefore not considered to contribute to the desired future character of the locality.
- Furthermore, the Applicant states that the floor to ceiling heights proposed are appropriate. It is noted that the living rooms on the ground floor are proposed 2.7m which meets the minimum requirements, but the floor to ceiling heights for the first and second floor are proposed at 2.7m with the minimum being 2.4m, and therefore exceed the minimum.
- The change in existing levels introduces additional bulk beyond that foreshadowed by the controls as the basement, which is at street level, with 3 levels above, means the building reads as 4 storeys to the street, notwithstanding how one applies the numerical definitions. The controls provide for a built form that would be in the order of 3 to 4 storeys.

6.5.6. Clause 4.4 – Floor Space Ratio

Clause 4.4(2) of the LEP provides that the maximum FSR for the site is not to exceed 0.9:1.

Subclause 2b outlines that despite subclause 2, there is no maximum FSR for a semidetached dwelling on a lot that has an area of 300m² or less. The resulting allotments comprise areas of 187m² and 181m² and therefore a numerical control does not apply. Notwithstanding, the development is to be assessed against the objectives of the control, noted as follows:

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

Comment: For reasons discussed throughout this report, the proposed development is not considered to appropriately satisfy the objectives of this control given the adverse impacts that arise in terms of amenity, visual bulk, privacy, overshadowing and views.

6.5.7. *Clause 4.6 - Exceptions to development standards*

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

6.5.8. *Clause 5.10 - Heritage conservation*

During the course of the assessment of the application, the site was subject to a Planning Proposal which sought to list the subject property as an item of local heritage significance and part of a new Heritage Conservation Area. As such the application was referred to Council's Heritage Planner for comment and/or recommendations. Refer to Council's Heritage Comments.

Recommendation

The proposal for demolition of the dwelling should be refused on the following grounds:

- *The proposal would not conserve the environmental heritage of Randwick as it would involve the removal of a draft heritage item of local significance;*
- *The proposal would not conserve the significance of the draft heritage item due to the removal and loss of significant fabric;*
- *The proposal is inconsistent with the guidelines and recommendations outlined in Part B2, Section 1.9 (Demolition) of the Randwick DCP 2013.*

Assessment Officer comments:

Since the completion of the Heritage referral and comments from Council's Heritage Planner, the amendment to RLEP 2012 which lists the site at 3 Berwick Street as an item of local heritage significance has been gazatted, and is currently out for community consultation. As such, the comments from Council's Heritage Planner hold significant weight given that the site has been formally identified as a heritage item and the amendment to RLEP now made.

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.4: Floor space ratio (max)	N/A	Site A – 0.95:1 Site B – 0.1:1	N/A	N/A

CI 4.3: Building height (max)	9.5m	Site A – 10.746m Site B – 9.804m	1.246m 304mm	13.12% 3.2%
CI 4.1: Lot Size (min)	N/A	Site A – 187m ² Site B – 181m ²	N/A	N/A

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.1. Exception to the Building Height development standard (Cl 4.3)

The applicant's written justification for the departure from the Height of Building (HOB) 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 HOB 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 HOB standard are set out in Clause 4.3 (1) of RLEP 2012. The applicant has addressed each of the objectives as follows:

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

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

The desired future character of the locality referred to in objective (a) is not defined in the LEP.

Recent case law shows that 'desired future character is determined by a range of factors including the LEP and the existing approved development that forms the built context of the site (SJD DB2 Pty Ltd v Woollahra Municipal Council [2020] NSWLEC 1112, Woollahra Municipal Council v SJD DB2 Pty Limited [2020] NSWLEC 115 (SJD), Big Property Pty Ltd v Randwick City Council [2021] and HPG Mosman Projects Pty Ltd v Mosman Municipal Council [2021]). The proposed listing of 5 Berwick Street as a heritage item with local significance also guides the desired future character of Berwick Street. DCP provisions designed to protect the amenity of the surrounding properties and ensure adequate landscaped open space and private open space also assist in determining the built form character of the locality and assist in determining an appropriate scale for future development.

Existing development

The height and scale of the surrounding buildings is highly variable, ranging from dwellings that are one to two storeys in height to three and four storey residential flat buildings, as shown in Photograph 1.

1 Berwick Street has a height of 2 and 3 storeys with the northern side of the building visible from Berwick Street having a height of 3 storeys.

3 and 5 Berwick Street have a height of part one and two storeys with a steeply pitched roof, with the two-storey element being on the northern side of each building, clearly visible from Berwick Street. Numerous residential flat buildings in the locality, including the residential flat building at 7 Berwick Street, have a height of four storeys.

To the south of the site, 109 Mount Street has a height of two storeys however further south are a number of four storey residential flat buildings

Planning Provisions

The LEP promotes variation in the height of development in the locality. A 12-metre height applies to the most types of development in the R3 zone however a 9.5 metre height applies to dwelling houses and semi-detached dwellings.

Both the surrounding development, and the applicable built form controls, support the continuation of built form in the area having a variable height of up to 12 metres.

The proposed listing of 5 Berwick Street as a heritage item with local significance influences the character of the future surrounding development in terms of setbacks, scale, architectural style and materiality. The massing of surrounding development needs to be carefully considered to ensure that the scale of development surrounding the heritage item does not overwhelm the dwelling and detract from the significance of the dwelling.

The DCP provisions (and the extent of compliance with those provisions for existing and recently approved development) including the solar access provisions, deep soil zone and site coverage provisions and setback controls also guide the desired future character of the locality and influence the desired scale and size of future development.

Consistency with the desired future character

Having regard to the elements described above that guide the desired future character of development in the locality, the scale and size of the proposed development is consistent with the desired future character of the locality notwithstanding a variation is proposed to the 9.5 metre height of buildings standard in that:

- *The massing and footprint of the development responds to the varied scale and placement of the surrounding development.*

The proposal is compatible with the height and roof form of existing buildings and provides a cohesive streetscape because the design is highly responsive to the context of the site, which includes the two-storey height of 5 Berwick Place, the three-storey height of 1 Berwick Street and the four-storey height of residential flat buildings in the zone.

The development complies with the private open space area and dimension requirements of the RDCP and the deep soil and site coverage requirements of the DCP. The development complies with the side boundary setback provisions of the DCP and exceeds the rear setbacks provided by the existing building on the site and the surrounding buildings. Compliance with these controls, and consistency with the surrounding built form demonstrates that the scale and placement of the building is compatible with the desired future character of the locality notwithstanding a variation is proposed to the height of buildings standard.

- *The staggered front setback, the overall height of the building and recessed upper level ensure that the development provides an appropriate transition in scale between the development at 1 Berwick Street and the proposed heritage item at 5 Berwick Street.*

- *The building has been designed to provide a transition in height from 1 Berwick Street to 5 Berwick Street. The uppermost ridge level of House 1 matches the ridge level of 1 Berwick Street (both RL 53.34) and the ridge level of House 2 steps down to RL53.13, so that the scale of the building reduces adjacent to the 5 Berwick Street which has a ridge height of RL52.1.*

An additional setback is proposed for Level 4 to ensure that the scale of the development does not overwhelm the scale of 5 Berwick Street. The uppermost level of the proposal is suitably recessive so that the proposal does not present as a four-storey building in the same way as most residential flat buildings in the surrounding area, but presents as a three-storey form when viewed from Berwick Street, with a recessed fourth level. The three storey, northern façade of the building has a height that is considerably lower than the ridge levels of 5 Berwick Street. The ridge of the roof over Level 3 has an RL of 50.98 for House 1 and RL50.73 for House 2 which is similar to (and lower than) the primary ridge RL of 5 Berwick Street which is 52.10 and the lower ridge over the verandah of RL 51.31.

- *The staggered front setback and stepped height of the building ensures that the massing of is compatible with, and does not overwhelm, the two-storey height of the building at 5 Berwick Street. The Statement of Heritage Impact prepared by Graham Hall and Partners confirms that whilst the rear part of the development will be higher than 5 Berwick Street (as are all the nearby flat buildings), the development will not visually overwhelm or dominate the item.*
- *The scale of development proposed will not result in any unreasonable impacts on the solar access available to the surrounding properties as demonstrated by the shadow diagrams and solar access diagrams prepared by Environa Studio. The north facing living room windows of the apartments at 109 Mount Street will receive over 3 hours of solar access on 21 June and the development will not result in any non-complying impacts on the communal*

open space of this property. The shadow diagrams also demonstrate that the additional shadow cast by the elements of the building that exceed that 9.5 metre height limit will not result in any noticeable impacts on the solar access available to the adjoining developments (refer to Drawing 910 prepared by Enviro Studio).

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

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

The site is not identified as a heritage item pursuant to Schedule 5 of the RLEP nor is it located within a heritage conservation area. The closest heritage item listed in Schedule 5 is 21 Carr Street which is located on the north-west corner of the intersection of Mount Street and Carr Street.

The adjoining site to the east, known as 5 Berwick Street, is identified as a heritage with local significance in the Randwick Comprehensive Planning Proposal to amended Randwick Local Environmental Plan 2012. The Statement of Significance for the Item in the Randwick Heritage Study Draft Heritage Items is as follows:

5 Berwick Street is of local heritage significance as evidence of the re-subdivision of large landholdings, and subsequent suburban development of Randwick in the first half of the twentieth century and following the construction of a tram line. The house is a highly intact example of an Inter-war bungalow within the area featuring face brick walls, prominent gables supported on brick columns, half-timbered gable details, recessed verandah and entrance. It was constructed for John Thomas Donnison in 1925, a prominent hotel-owner and the first president of the Federal United Licenced Victuallers' Association. The house remained in the ownership of the Donnison family until 1972.

An additional setback is proposed for Level 4 so that the scale of the development relates to the scale of 5 Berwick Street. The development will appear as a three-storey development with a recessed upper level. The three storey, northern façade of the building has a height that is considerably lower than the ridge levels of 5 Berwick Street. The ridge of the roof over Level 3 has an RL of 51.82 which is similar to (and lower than) the primary ridge RL of 5 Berwick Street which is 52.10 and the lower ridge over the verandah of RL51.31.

A Statement of Heritage Impact prepared by Graham Hall and Partners accompanies the application. The report notes that the proposed new building, with its articulated massing, recessive colour scheme and moderately pitched roofs, is a building of its time which is sympathetic to this streetscape. The report notes that the building will not visually overwhelm or dominate the item, which will remain understandable. The report concludes the proposal will have a minimal and acceptable impact on the heritage significance of 5 Berwick Street.

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

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

Visual Impact

The stepped height of the development and articulated form of the building reduces the visual impact of the development as viewed from the street.

The increase in the height of the development from the front to the rear of the site ensures the scale of the building responds to the two-storey scale of the proposed heritage item at 5 Berwick Street and the heights of the surrounding residential flat buildings as detailed under objective (a).

The non-complying elements of the building are setback a minimum of 6 metres from the street and sit in the background of views of the development from the street.

The photomontage prepared by Enviro Studio (Drawing 001) demonstrates the development will not have an adverse impact on the streetscape despite the variation proposed. As such, the visual impact of the development on the streetscape has been minimised despite the variation to the height standard proposed.

Privacy

The proposed variation does not result in any privacy impacts on the adjoining properties. The variation is not associated with providing a roof top terrace or balcony.

Solar Access

The shadow diagrams demonstrate that the additional shadow cast by the elements of the building that exceed that 9.5 metre height limit will not result in any noticeable impacts on the solar access available to the adjoining developments (refer to Drawing 910 prepared by Enviro Studio).

Views

The proposed variation to the height of buildings standard will not result in any unreasonable impacts on views available to the surrounding properties noting that the coastline is located to the east and the development at 7 Berwick Street has a height of RL58.89, which is considerably higher than the proposed development.

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

The objectives and purpose of the height control are relevant to the proposed development. The proposed development is consistent with those objectives as detailed above.

3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

The underlying objectives and purpose of the standard are relevant to the proposed development.

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

The standard applies and can be varied where compliance with the standard is unreasonable and unnecessary.

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

The zoning of land is appropriate.

In summary strict compliance with the development standard is unnecessary or unreasonable in the circumstance of this site as discussed below:

- *The proposed development is consistent with the RLEP objectives for building height as detailed above.*
- *The proposed development is consistent with the objectives of the R3 Low Density Residential zone below.*

- *The proposed building height responds to the heights of the surrounding development and provides an appropriate height transition as detailed above.*
- *The development does not result in any unreasonable impacts on the heritage significance of the proposed heritage item at 5 Berwick Street despite the variation.*
- *The proposed height non-compliance does not result in any unreasonable impacts on the amenity of the surrounding properties.*

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

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

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

Land & Environment Court matter of Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 2018, provides assistance in relation to the consideration of sufficient environmental planning grounds whereby Preston J observed that:

- *in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and*
- *there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.*
- *the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature. 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 s 1.3 of the Environmental Planning & Assessment Act 1979 (EP&A Act).*

Further guidance is also provided in Eather v Randwick City Council [2021] NSWLEC 1075 and Petrovic v Randwick City Council [202] NSW LEC 1242 which indicates that the small departure from the actual numerical standard and the lack of any material impacts are environmental grounds.

The environmental planning grounds relevant to the standard that is to be varied are:

- *The extent of the variation is minor in that it only represents a 3.2% variation to the standard for House 2 for a small area of the ridge on Level 4 and a maximum exceedance of 13.12% to part of the roof of House 1. The majority of each dwelling complies with the height limit.*
- *The variation is reasonable and appropriate given the height of the building is consistent with the height of the building at 1 Berwick Street and the height of the building is stepped to respond to the varied height of the surrounding developments.*
- *The non-complying elements of the building are setback a minimum of 6 metres from the street and sit in the background of views of the development from the street. The non-complying areas of the building relate to the scale of the surrounding development as detailed above and as such will not result in any adverse visual impact on the streetscape.*

- *The variation does not result in any unreasonable view loss or loss of solar access to the adjoining properties nor does it result in any visual or privacy impacts on the adjoining properties as detailed in section 1.6 of this clause 4.6 request.*
- *The variation does not hinder the attainment of the objects of the Environmental Planning and Assessment Act 1979. In fact the variation allows for a gradual transition in height from 1 Berwick Street to 5 Berwick Street. In this regard the development is consistent with object (g) of the Act which seeks to promote good design and amenity of the built environment.*
- *Section 1.6 of this clause 4.6 details the proposal's consistency with the objectives of the standard. The objectives of the control cover key environmental planning grounds that are directly relevant to the standard.*

The discussion under section 1.6 demonstrates the elements of the building that exceed the height standard do not result in any inconsistency with the objectives of the control.

On the basis of the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed variation to the height of buildings standard.

Assessing officer's comment: For reasons discussed herein, Council does not concur with the Applicants written request. The variation is considered to result in adverse impacts on visual amenity, privacy and bulk and scale. The Applicant has not adequately addressed how compliance with the development standard is unreasonable and unnecessary in this case. In conclusion, the Applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify the contravention.

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

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

Assessment against objectives of building height standard

- to ensure that the size and scale of development is compatible with the desired future character of the locality,*
- to ensure that the size and scale of development is compatible with the scale, and character of contributory buildings in a conservation area or near a heritage item,*
- to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.*

Assessing officer's comment: The desired future character of the locality is established in the planning standards and controls that apply to the site.

The proposed building height non-compliance of 13.2% is substantially higher than the 9.5m permitted at the subject site and the neighbouring properties. The non-compliance results in a building that is greater in bulk and scale than the predominant form of development in the immediate locality and substantially greater than what is permissible on surrounding sites. Therefore, the size and scale of the development is not compatible with the desired future character of the locality.

Furthermore, the RDCP 2013 provides supplementary controls to the maximum height of the development by way of an external wall height and requirements in relation to roof forms, in order to guide the appropriate level of built form for a site. The difference in height between the LEP and DCP is to allow flexibility in roof forms and to provide for interesting forms, and for the provisions of plant, services and overruns. The proposed development does not comply with the external wall height or maximum height of buildings and is inconsistent with the requirements of roof structures.

The Applicant argues that the proposal is consistent with the existing adjoining developments, however the existing dwellings within the vicinity of the subject site were

constructed prior to the current planning controls and as such are not considered to represent the desired future character of the locality as anticipated by the current planning controls. The desired future character can be determined by the current and future planning controls applicable to the site.

In view of the above and given the extent of the non-compliances with the current planning controls for the site, the development cannot be said to be consistent with the desired future character of the locality or compatible with the scale and character of contributory heritage buildings nearby. Furthermore, as discussed previously, the property has been identified as having heritage significance and is subject to an interim Heritage Order (IHO). As such the proposed development, which seeks to demolish all existing structures on site, cannot be said to be consistent with the desired future character of the area which Council envisages the subject property to be preserved.

The proposal is also considered to result in unreasonable amenity impacts upon surrounding properties with regards to visual amenity, view loss, privacy and solar access, and shall result in an adverse visual impact as viewed from the public domain.

In view of the above the proposed development cannot achieve the objectives of clause 4.3.

The proposed development is also found to be inconsistent with the objectives of the R3 zone in that the zone provides for a variety of low and medium density housing within the zone, comprising single dwellings, dual occupancies, and RFBs and as such the constraints of the site, including size and topography, may not make it appropriate for the proposed semidetached dwelling. The proposed development does not recognise the desirable elements of the existing streetscape and built form, as the proposal shall present a visual bulk Berwick Street that is significantly greater in size and scale than surrounding developments and is incompatible with the streetscape. Finally, the proposal shall result in adverse amenity impacts upon local residents with regards to visual amenity, privacy, overshadowing and view loss.

It is considered that the Applicant has not adequately demonstrated that the proposed development is unreasonable or unnecessary in the circumstances of the case given that the proposed development fails to meet the objectives of clause 4.3 and the R3 zoning, nor are there sufficient environmental planning grounds to warrant variation of the development standard. As such the clause 4.6 written statement is not considered to be well founded and development consent cannot be granted for development that contravenes the height of buildings standard.

Assessment against objectives of the R3 medium Density zone

The objectives of the Residential R3 Medium Density zone are:

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

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

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

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

Variation of the maximum floor space ratio standard will 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 should not be granted for development that contravenes the HOB 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	During the course of the application, the subject property has been identified as a draft heritage item, with public consultation occurring from April 2023 to May 2023. The heritage significance of the subject site has been taken into consideration in the assessment of the application.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal does not satisfy the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning	Not applicable.

Section 4.15 'Matters for Consideration'	Comments
Agreement or draft Planning Agreement	
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is inconsistent with the dominant character in the locality, and shall be detrimental to the desired character of the local area.</p> <p>The demolition of the existing dwelling would be detrimental to the proposed heritage listing of the site which shall benefit the community as whole by preserving the history of the local area and is a significant social benefit.</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	<p>The proposal is inconsistent with the objectives of the zone and will result in any significant adverse environmental impacts on the locality. Furthermore, the application received numerous submissions in objection to the proposed development.</p> <p>Accordingly, the proposal is not considered to be in the public interest.</p>

9.1. Discussion of key issues

The subject application has a fundamental issue in that prior to the lodgement of the application an Interim Heritage Order was placed on the subject site with the intention of including the property as a heritage item, pursuant to clause 5.10 and Schedule 5 of RLEP 2012. During the course of the application, an amendment to the LEP was gazetted. As such Council is not in a position to support the current application which involves the demolition of all structures on the site, including the heritage item.

Notwithstanding the above, an assessment of the application has also identified several issues with the proposed development which would not allow Council to support the application, which are outlined below:

Built Form

As discussed under Section 7.0 of the report, the proposed development results in significant variations to the maximum Building Height as stipulated by RLEP 2012. The submitted clause 4.6 written statements in relation to both standards are not considered to be well founded and are not supported in this instance. Furthermore, the proposed development results in non-compliances with several of the built form planning controls within RDCP 2013 as follows:

Front and Rear Setback

In accordance with clause 3.3.1 the front setback must be consistent with the average setbacks of the adjoining dwellings.

A staggered front setback is proposed that maintains the setback of the north-east corner of the existing dwelling on the site and seeks to provide a transition to the setback of 1 Berwick Street.

The front setback proposed maintains a view of 5 Berwick Street from the intersection of Mount Street and Carr Street.

The minimum rear setback must be 25% of the allotment depth or 8 metres, whichever is the lesser, with Site A has a minimum depth of between 30.09 and 34.265m. 25% of the allotment would equate to between 7.5 to 8.57m. As such a 7.5 to 8m applies to Site A. A setback of 7.4 metres is proposed.

Site B has a depth of between 25.35 and 30.09m. 25% of the allotment would equate to between 6.34 and 7.5m. A setback of 5.2m is proposed.

The proposed development shall result in a four (4) storey building fronting the street and as such the proposed development would be out of character with the existing setbacks of the street. The excessive height of the development combined with the setback shall result in an unacceptable level of built form, and the proposal shall be dominate the streetscape. Notwithstanding, the proposed development would also not comply with a minimum rear setback between 7.5 – 8m.

Building Design

Concerns are raised with regards to the overall design of the building, including the materials, colours and finishes of the development. The proposal provides inadequate articulation to break up the building mass as it lacks recessed and protruding elements of sufficient depth to provide adequate modulation of the facades and elevations.

External Wall Height and Roof Design

Subclause 4.4 of RDCP 2013 specifies a maximum wall height in order to control the bulk and scale of development and minimise the visual impact of development upon neighbouring properties. The proposed development results in a maximum wall height of 12.28m and a significant variation to the control. The roof design emphasises the height of the development and is inconsistent with clause 4.2 of RDCP 2013 which aims to provide quality roof designs or architectural interest.

In view of the above, it is considered that the cumulative impact of the non-compliances results in a level of built form that significantly exceeds that anticipated for the site.

Residential Amenity of Proposed Development

- Internal circulation
- External pedestrian access

The proposed pedestrian internal and external access is unacceptable and not supported. Pedestrian entry for house 1 is via the garage through the basement only, in comparison to pedestrian entry for house 2 provided via the garage internally or a ramp externally to the ground floor. This is not acceptable and provides unreasonable amenity and safety concerns for future occupants of the proposed dwellings.

Amenity of Neighbouring Properties

- Solar Access

The application has not provided sufficient information to adequately assess the full extent of overshadowing on the neighbouring property to the south. Given that the site is changing from a single storey dwelling to two four (4) storey semidetached dwellings which extends across a substantial portion of the site, concerns are raised regarding the extent of overshadowing of the adjoining property to the south noting non-compliances with building height, and it is considered that the proposed development shall result in unreasonable solar access impacts upon the adjoining properties.

- Visual Privacy

The proposed development has several elevated balconies. In order to mitigate privacy impacts, balconies are recessed and have side walls. It is considered the proposed walls shall adversely attribute to the overall bulk and scale of the development. The proposed walls will also result in

detrimental residential amenity on the northern balconies, being fully enclosed for house 1 and only comprising small openings for house 2.

Without the walls the proposed balconies shall result in unreasonable amenity impacts upon adjoining properties with regards to overlooking. The number of balconies proposed, being three (3) balcony areas per dwelling is excessive.

- View Sharing

The proposed development shall result in view loss, including water views, from surrounding properties. In view of the excessive level of built form proposed, including a significant variation to the maximum building height, the resultant view loss is unreasonable.

10. Conclusion

The proposed development results in non-compliances with several of Council's built form planning controls and is inconsistent with the provisions of RLEP 2012 and RDCP 2013, resulting in a development that grossly exceeds that anticipated for the site. During the course of the assessment of the application, the subject site was part of a Planning Proposal to list the property as a local heritage item. As such the proposed development, which includes demolition of the existing dwelling would be in complete contradiction to the heritage significance of the site and the desired future character of the area which seeks to retain and preserve the existing dwelling.

The proposed development will also result in adverse amenity impacts upon surrounding properties with regards to visual amenity, view loss, visual and acoustic privacy and solar access. As such, the proposed development cannot be supported, and it is recommended that the application for the demolition of existing structures, and construction of two semidetached dwellings and associated works be refused for the following reasons:

1. The proposal would not conserve the environmental heritage of Randwick as it would involve the removal of a proposed heritage item of local significance.
2. The proposal would not conserve the significance of the heritage item due to the removal and loss of significant fabric.
3. The proposal is inconsistent with the objectives of the R3 Medium Density Residential Zone of the RLEP 2012 in that the proposed development does not contribute to the desired future character of the area, proposing a development that significantly exceeds a level of built form anticipated for the subject site, nor recognise the desirable elements of the existing streetscape. The proposed development shall result in unreasonable amenity impacts upon the adjoining and surrounding properties, and an adverse visual impact as viewed from the public domain.
4. The proposal is inconsistent with the guidelines and recommendations outlined in Part B2, Section 1.9 (Demolition) of the Randwick DCP 2013.
5. The proposed development is of an excessive height and is incompatible with surrounding developments, resulting in non-compliance with the building height development standard prescribed by clause 4.3 of RLEP 2012, and the maximum external wall height specified by RDCP 2013. The submitted clause 4.6 is not considered to be well founded in that it does not sufficiently demonstrate that the proposed height breach is unreasonable or unnecessary in the circumstances of the case, nor that there are sufficient environmental planning grounds to justify a variation to the development standard.
6. The development proposes an excessive level of Gross Floor Area. The additional floor area results in an excessive level of built form on the site and detrimental visual impact.
7. The proposed development shall result in an excessive level of bulk and scale on the site and is inconsistent with the existing and desired future character of the streetscape and the locality.
8. The proposed development shall result in unreasonable residential amenity impacts upon the surrounding properties with regards to visual amenity, solar access, visual and acoustic privacy and view loss.

9. The proposal involves the demolition of historical fabric of a draft heritage item contrary to the Randwick Local Environmental Plan 2012 Clause 5.10 (1) which includes an objective of conserving the heritage significance of heritage items and heritage conservation areas, including associated fabric, setting and views.
10. The proposal involves the demolition of historical fabric of a draft heritage item contrary to the objectives and intended outcomes of the Planning Proposal to list No 5 (and No. 1) Berwick Street which is currently on public exhibition as required under the associated Gateway Determination.
11. The site and property at 3 Berwick Street, Coogee, is the subject of an Interim Heritage Order supported by a heritage study by City Plan Heritage that finds the existing property meets the relevant criteria for heritage listing being Criteria A (historic significance), B (historical association), C (aesthetic), F (rarity) and G (representative) of the "Assessing Heritage Significance", prepared by the NSW Heritage Office.
12. The issue of an Interim Heritage Order on the subject site authorises Council to preserve an item whilst its heritage significance is considered and determined pursuant to Section 25(2) of the Heritage Act 1977 which refers to 'further inquiry or investigation' to established heritage significance, and is reinforced by the fact that a subsequent listing of an item on local planning instrument the State Heritage Register or revokes any Interim Heritage Order.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Heritage Planner

Refer to comments in Section 3.1 of this report.

1.2. Landscape Technician

I have no grounds to object to this proposal given that there's no major vegetation, their landscape area/POS will be improved compared to what's currently provided, and they've also submitted a Landscape Plan which will increase the amount of trees/plant material at the site.

1.3. Development Engineer

An application has been received for subdivision of the subject site into 2 allotments and construction of a 4 bedroom dwelling on each lot. Each dwelling will have 2 car parking spaces, (compliant).

The development application is recommended for refusal given the site has an interim heritage order pending. This engineering assessment is aimed at providing any potential issues should the application be approved.

There are no obvious issues from a Development Engineering perspective. Recommended conditions of consent would be included to ensure the development meets all relevant standards and Council policy. A possible issue would be the location of the board sewer that crosses the site (see eview attached). The depth of the sewer, however, is likely to be below the garage excavation given it also passes under the development to the west. Sydney Water would need to assess and provide conditions for building over the sewer main.

There is minor ponding of water within the site for the critical 1% AEP storm (see Email 2 of 2 for the flood plot). Once again any issues could be dealt with through conditions of consent.

Council would require the vehicular crossings in Berwick Street to be at 90 degrees to the Berwick Street property boundary, (not the angle shown on the attached level 1 Plan). This can be dealt with by Condition.

Flood plot for the critical 1% AEP storm event below. Flood depths are very low and conditions of consent would be imposed to minimise any adverse impacts within the site or adjacent areas.

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

1.0 CLAUSE 4.6 REQUEST – BUILDING HEIGHT

1.1 Introduction

This written request for an exception to a development standard is submitted in respect of the development standard contained at Clause 4.3 'Height of Buildings' of the Randwick Local Environmental Plan 2012 (RLEP).

The request relates to an application for the demolition of the existing structures at 3 Berwick Street, Coogee, the Torrens title subdivision of the site into two allotments and the construction of a semi-detached dwelling on each allotment as detailed in the Statement of Environmental Effects prepared by Sutherland and Associates Planning.

1.2 Clause 4.6 Exceptions to development standards

Randwick Local Environmental Plan 2012 (RLEP) applies to the land. Pursuant to clause 4.6(2) of RLEP development consent may be granted for development even though the development would contravene a development standard imposed by the RLEP, or any other environmental planning instrument.

However, clause 4.6(3) states that development consent must not be grant 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 circumstance of the case, and
- (b) there are sufficient environmental planning grounds to justify contravening the development standard.

In accordance with clause 4.6(3) the applicant requests that the development standard contained within Clause 4.3(2A) 'Height of Buildings' of the RLEP be varied.

1.3 Development Standard to be varied

Clause 4.3 'Height of Buildings' of the RLEP is as follows:

- (1) The objectives of this clause are as follows—

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

- (2) The height of a building on any land is not to exceed the maximum height shown for the land on the Height of Buildings Map.

(2A) Despite subclause (2), the maximum height of a dwelling house or semi-detached dwelling on land in Zone R3 Medium Density Residential is 9.5 metres. (Emphasis added in underline.)

Clause 4.6 – Building Height - 3 Berwick Street, Coogee

In accordance with clause 4.3(2) the maximum height shown for the land on the Height of Buildings Map is 12 metres as shown in Figure 1.

However, as the site is zoned R3 Medium Density Residential as shown in Figure 2 and the proposed development comprises two semi-detached dwellings, a maximum height of 9.5 metres applies pursuant to clause 4.3(2A).

The standard to be varied is the 9.5 metre height of buildings standard in clause 4.3(2A),



Figure 1:

Extract from the RLEP Height of Buildings Map

Clause 4.6 – Building Height – 3 Berwick Street, Coogee

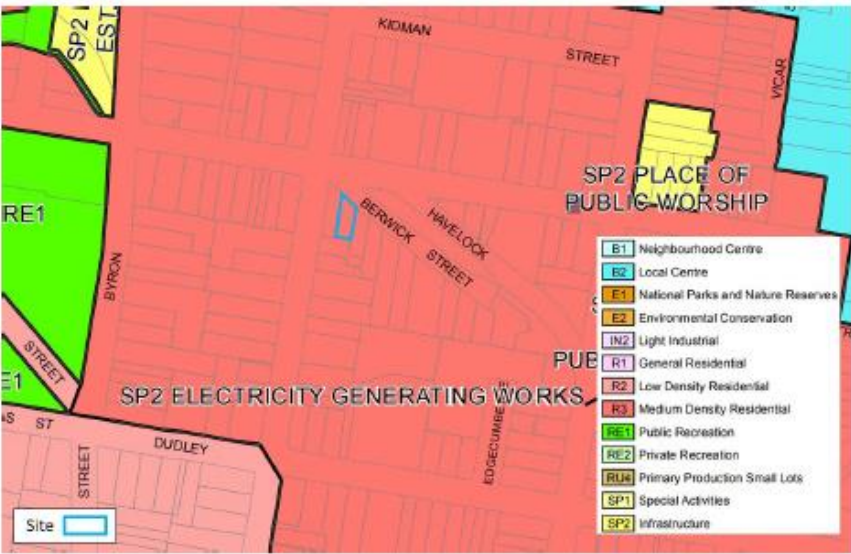


Figure 2:

Extract from the RLEP Land Zoning Map

1.4 Extent of Variation to the Development Standard

A small part of the northern end of the roof over Level 4 for both houses exceeds the 9.5 metre height limit as shown on the height plane diagram (refer to Figure 3) and the sections prepared by Envirova Studio. The maximum extent of the exceedance for House 1 is 1.246 metres (a 13.12% variation) and the maximum extent of the exceedance is 304mm for House 2 (a 3.2% variation).

The southern side of the roof, and the roof over the three-storey element on the northern side of the building, fully complies with the height limit.

The development does not exceed the 12-metre height limit which applies to other forms of development in the R3 zone.

Clause 4.6 – Building Height – 3 Berwick Street, Coogee

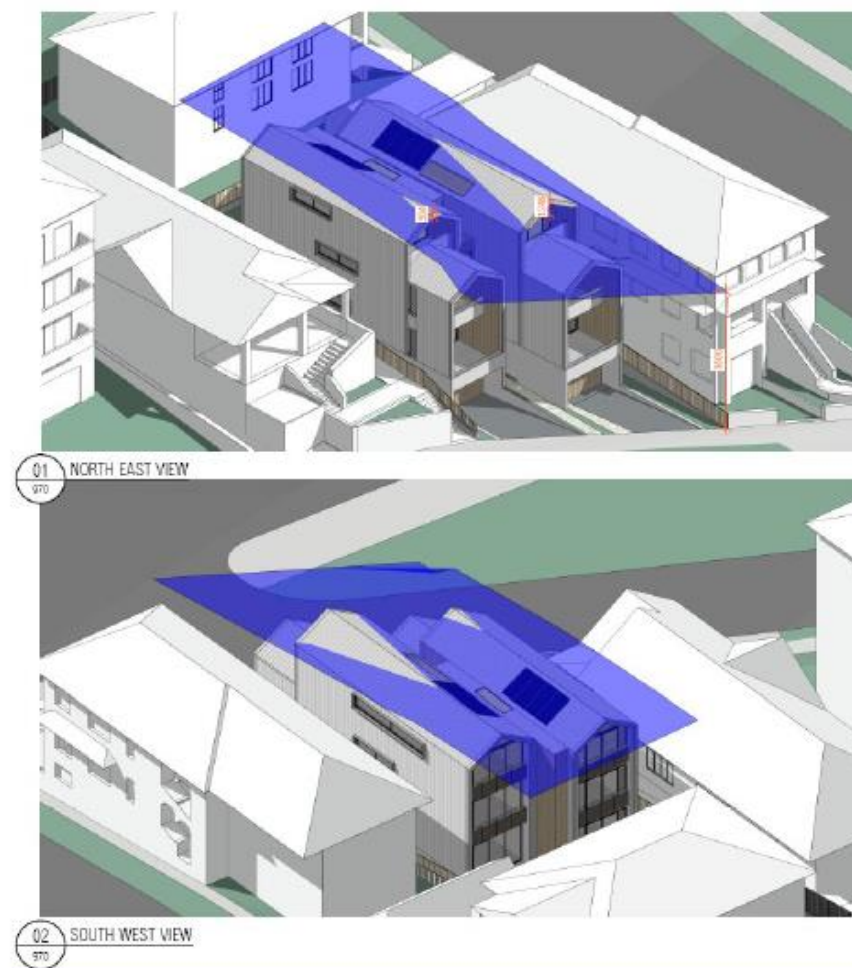


Figure 3:

Extract from the height plane diagram prepared by Environa Studio (Drawing 970)

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

Historically the most commonly invoked way to establish that a development standard was unreasonable or unnecessary was satisfaction of the first test of the five set out in *Wehbe v Pittwater Council* [2007] NSWLEC 827 which requires that the objectives of the standard are achieved notwithstanding the non-compliance with the standard.

In addition, in the matter of *Randwick City Council v Mical Holdings Pty Ltd* [2016] NSWLEC 7 [34] the Chief Justice held that "establishing that the development would not cause environmental harm and is consistent with the objectives of the development standards is an established means of demonstrating that compliance with the development standard is unreasonable or unnecessary".

This section of the clause 4.6 request addresses the five-part test described in *Wehbe v Pittwater Council* [2007] NSWLEC 827 and demonstrates that compliance with the development standard is unreasonable and unnecessary in the circumstances of the case.

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

The objectives of the standard are identified in clause 4.3(1). Each objective is set out below and is followed by a comment on the proposal's consistency with the objective.

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

The desired future character of the locality referred to in objective (a) is not defined in the LEP.

Recent case law shows that 'desired future character is determined by a range of factors including the LEP and the existing approved development that forms the built context of the site (*SJD DB2 Pty Ltd v Woollahra Municipal Council* [2020] NSWLEC 1112, *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 (SJD), *Big Property Pty Ltd v Randwick City Council* [2021] and *HPG Mosman Projects Pty Ltd v Mosman Municipal Council* [2021]). The proposed listing of 5 Berwick Street as a heritage item with local significance also guides the desired future character of Berwick Street. DCP provisions designed to protect the amenity of the surrounding properties and ensure adequate landscaped open space and private open space also assist in determining the built form character of the locality and assist in determining an appropriate scale for future development.

Existing development

The height and scale of the surrounding buildings is highly variable, ranging from dwellings that are one to two storeys in height to three and four storey residential flat buildings, as shown in Photograph 1.

1 Berwick Street has a height of 2 and 3 storeys with the northern side of the building visible from Berwick Street having a height of 3 storeys.

3 and 5 Berwick Street have a height of part one and two storeys with a steeply pitched roof, with the two-storey element being on the northern side of each building, clearly visible from Berwick Street. Numerous residential flat buildings in the locality, including the residential flat building at 7 Berwick Street, have a height of four storeys.

To the south of the site, 109 Mount Street has a height of two storeys however further south are a number of four storey residential flat buildings.



Photograph 1:

View of the site and the adjoining development

Planning Provisions

The LEP promotes variation in the height of development in the locality. A 12-metre height applies to the most types of development in the R3 zone however a 9.5 metre height applies to dwelling houses and semi-detached dwellings.

Both the surrounding development, and the applicable built form controls, support the continuation of built form in the area having a variable height of up to 12 metres.

The proposed listing of 5 Berwick Street as a heritage item with local significance influences the character of the future surrounding development in terms of setbacks, scale, architectural style and materiality. The massing of surrounding development needs to be carefully considered to ensure that the scale of development surrounding the heritage item does not overwhelm the dwelling and detract from the significance of the dwelling.

The DCP provisions (and the extent of compliance with those provisions for existing and recently approved development) including the solar access provisions, deep soil zone and site coverage provisions and setback controls also guide the desired future character of the locality and influence the desired scale and size of future development.

Consistency with the desired future character

Having regard to the elements described above that guide the desired future character of development in the locality, the scale and size of the proposed development is consistent with the desired future character of the locality notwithstanding a variation is proposed to the 9.5 metre height of buildings standard in that:

- The massing and footprint of the development responds to the varied scale and placement of the surrounding development.

The proposal is compatible with the height and roof form of existing buildings and provides a cohesive streetscape because the design is highly responsive to the context of the site, which includes the two-storey height of 5 Berwick Place, the three-storey height of 1 Berwick Street and the four-storey height of residential flat buildings in the zone.

The development complies with the private open space area and dimension requirements of the RDCP and the deep soil and site coverage requirements of the DCP. The development complies with the side boundary setback provisions of the DCP and exceeds the rear setbacks provided by the existing building on the site and the surrounding buildings. Compliance with these controls, and consistency with the surrounding built form demonstrates that the scale and placement of the building is compatible with the desired future character of the locality notwithstanding a variation is proposed to the height of buildings standard.

- The staggered front setback, the overall height of the building and recessed upper level ensure that the development provides an appropriate transition in scale between the development at 1 Berwick Street and the proposed heritage item at 5 Berwick Street.

The building has been designed to provide a transition in height from 1 Berwick Street to 5 Berwick Street. The uppermost ridge level of House 1 matches the ridge level of 1 Berwick Street (both RL 53.34) and the ridge level of House 2 steps down to RL53.13, so that the scale of the building reduces adjacent to the 5 Berwick Street which has a ridge height of RL52.1.

An additional setback is proposed for Level 4 to ensure that the scale of the development does not overwhelm the scale of 5 Berwick Street. The uppermost level of the proposal is suitably recessive so that the proposal does not present as a four-storey building in the same way as most residential flat buildings in the surrounding area, but presents as a three-storey form when viewed from Berwick Street, with a recessed fourth level. The three storey, northern façade of the building has a height that is considerably lower than the ridge levels of 5 Berwick Street. The ridge of the roof over Level 3 has an RL of 50.98 for House 1 and RL50.73 for House 2 which is similar to (and lower than) the primary ridge RL of 5 Berwick Street which is 52.10 and the lower ridge over the verandah of RL 51.31.



Figure 4:

Extract of the East Elevation (Drawing 130) prepared by Environa Studio

- The staggered front setback and stepped height of the building ensures that the massing of is compatible with, and does not overwhelm, the two-storey height of the building at 5 Berwick Street. The Statement of Heritage Impact prepared by Graham Hall and Partners confirms that whilst the rear part of the development will be higher than 5 Berwick Street (as are all the nearby flat buildings), the development will not visually overwhelm or dominate the item.
- The scale of development proposed will not result in any unreasonable impacts on the solar access available to the surrounding properties as demonstrated by the shadow diagrams and solar access diagrams prepared by Environa Studio. The north facing living room windows of the apartments at 109 Mount Street will receive over 3 hours of solar access on 21 June and the development will not result in any non-complying impacts on the communal open space of this property. The shadow diagrams also demonstrate that the additional shadow cast by the elements of the building that exceed that 9.5 metre height limit will not result in any noticeable impacts on the solar access available to the adjoining developments (refer to Drawing 910 prepared by Environa Studio).

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

The site is not identified as a heritage item pursuant to Schedule 5 of the RLEP nor is it located within a heritage conservation area. The closest heritage item listed in Schedule 5 is 21 Carr Street which is located on the north-west corner of the intersection of Mount Street and Carr Street.

The adjoining site to the east, known as 5 Berwick Street, is identified as a heritage with local significance in the Randwick Comprehensive Planning Proposal to amended Randwick Local Environmental Plan 2012. The Statement of Significance for the Item in the Randwick Heritage Study Draft Heritage Items is as follows:

5 Berwick Street is of local heritage significance as evidence of the re-subdivision of large landholdings, and subsequent suburban development of Randwick in the first half of the twentieth century and following the construction of a tram line. The house is a highly intact example of an Inter-war bungalow within the area featuring face brick walls, prominent gables supported on brick columns, half-timbered gable details, recessed verandah and entrance. It was constructed for John Thomas Donnison in 1925, a prominent hotel-owner and the first president of the Federal United Licensed Victuallers' Association. The house remained in the ownership of the Donnison family until 1972.

An additional setback is proposed for Level 4 so that the scale of the development relates to the scale of 5 Berwick Street. The development will appear as a three-storey development with a recessed upper level. The three storey, northern façade of the building has a height that is considerably lower than the ridge levels of 5 Berwick Street. The ridge of the roof over Level 3 has an RL of 51.82 which is similar to (and lower than) the primary ridge RL of 5 Berwick Street which is 52.10 and the lower ridge over the verandah of RL51.31.

A Statement of Heritage Impact prepared by Graham Hall and Partners accompanies the application. The report notes that the proposed new building, with its articulated massing, recessive colour scheme and moderately pitched roofs, is a building of its time which is sympathetic to this streetscape. The report notes that the building will not visually overwhelm or dominate the item, which will remain understandable. The report concludes the proposal will have a minimal and acceptable impact on the heritage significance of 5 Berwick Street.

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

Visual Impact

The stepped height of the development and articulated form of the building reduces the visual impact of the development as viewed from the street.

The increase in the height of the development from the front to the rear of the site ensures the scale of the building responds to the two-storey scale of the proposed heritage item at 5 Berwick Street and the heights of the surrounding residential flat buildings as detailed under objective (a).

The non-complying elements of the building are setback a minimum of 6 metres from the street and sit in the background of views of the development from the street.

The photomontage prepared by Enviro Studio (Drawing 001) demonstrates the development will not have an adverse impact on the streetscape despite the variation proposed. As such, the visual impact of the development on the streetscape has been minimised despite the variation to the height standard proposed.

Privacy

The proposed variation does not result in any privacy impacts on the adjoining properties. The variation is not associated with providing a roof top terrace or balcony.

Solar Access

The shadow diagrams demonstrate that the additional shadow cast by the elements of the building that exceed that 9.5 metre height limit will not result in any noticeable impacts on the solar access available to the adjoining developments (refer to Drawing 910 prepared by Envirova Studio).

Views

The proposed variation to the height of buildings standard will not result in any unreasonable impacts on views available to the surrounding properties noting that the coastline is located to the east and the development at 7 Berwick Street has a height of RL58.89, which is considerably higher than the proposed development.

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

The objectives and purpose of the height control are relevant to the proposed development. The proposed development is consistent with those objectives as detailed above.

3. the underlying object of purpose would be defeated or thwarted if compliance was required and therefore compliance is unreasonable;

The underlying objectives and purpose of the standard are relevant to the proposed development.

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

The standard applies and can be varied where compliance with the standard is unreasonable and unnecessary.

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

The zoning of land is appropriate.

In summary strict compliance with the development standard is unnecessary or unreasonable in the circumstance of this site as discussed below:

- The proposed development is consistent with the RLEP objectives for building height as detailed above.
- The proposed development is consistent with the objectives of the R3 Low Density Residential zone below.
- The proposed building height responds to the heights of the surrounding development and provides an appropriate height transition as detailed above.
- The development does not result in any unreasonable impacts on the heritage significance of the proposed heritage item at 5 Berwick Street despite the variation.
- The proposed height non-compliance does not result in any unreasonable impacts on the amenity of the surrounding properties.

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

The Land & Environment Court matter of *Initial Action Pty Ltd v Woollahra Council [2018] NSWLEC 2018*, provides assistance in relation to the consideration of sufficient environmental planning grounds whereby Preston J observed that:

- in order for there to be 'sufficient' environmental planning grounds to justify a written request under clause 4.6, the focus must be on the aspect or element of the development that contravenes the development standard and the environmental planning grounds advanced in the written request must justify contravening the development standard, not simply promote the benefits of carrying out the development as a whole; and
- there is no basis in Clause 4.6 to establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development.
- the grounds relied on by the applicant in the written request under cl 4.6 must be "environmental planning grounds" by their nature. 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 s 1.3 of the Environmental Planning & Assessment Act 1979 (EP&A Act).

Further guidance is also provided in *Eather v Randwick City Council [2021] NSWLEC 1075* and *Petrovic v Randwick City Council [202] NSW LEC 1242* which indicates that the small departure from the actual numerical standard and the lack of any material impacts are environmental grounds.

The environmental planning grounds relevant to the standard that is to be varied are:

- The extent of the variation is minor in that it only represents a 3.2% variation to the standard for House 2 for a small area of the ridge on Level 4 and a maximum exceedance of 13.12% to part of the roof of House 1. The majority of each dwelling complies with the height limit.
- The variation is reasonable and appropriate given the height of the building is consistent with the height of the building at 1 Berwick Street and the height of the building is stepped to respond to the varied height of the surrounding developments.
- The non-complying elements of the building are setback a minimum of 6 metres from the street and sit in the background of views of the development from the street. The non-complying areas of the building relate to the scale of the surrounding development as detailed above and as such will not result in any adverse visual impact on the streetscape.
- The variation does not result in any unreasonable view loss or loss of solar access to the adjoining properties nor does it result in any visual or privacy impacts on the adjoining properties as detailed in section 1.6 of this clause 4.6 request.
- The variation does not hinder the attainment of the objects of the Environmental Planning and Assessment Act 1979. In fact the variation allows for a gradual transition in height from 1 Berwick Street to 5 Berwick Street. In this regard the development is consistent with object (g) of the Act which seeks to promote good design and amenity of the built environment.
- Section 1.6 of this clause 4.6 details the proposal's consistency with the objectives of the standard. The objectives of the control cover key environmental planning grounds that are directly relevant to the standard.

Clause 4.6 – Building Height – 3 Berwick Street, Coogee

The discussion under section 1.6 demonstrates the elements of the building that exceed the height standard do not result in any inconsistency with the objectives of the control.

On the basis of the above, it has been demonstrated that there are sufficient environmental planning grounds to justify the proposed variation to the height of buildings standard.

1.7 Clause 4.6(4)(a)(i) consent authority satisfied that this written request has adequately addressed the matters required to be demonstrated by Clause 4.6(3)

Clause 4.6(4)(a)(i) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is satisfied that the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3).

These matters are comprehensively addressed above in this written request with reference to the five-part test described in *Wehbe v Pittwater Council* [2007] NSWLEC 827 for consideration of whether compliance with a development standard is unreasonable or unnecessary in the circumstances of the case. In addition, the establishment of environmental planning grounds is provided, with reference to the matters specific to the proposal and site, sufficient to justify contravening the development standard.

1.8 Clause 4.6(4)(a)(ii) consent authority satisfied that the proposal is in the public interest because it is consistent with the zone and development standard objectives

Clause 4.6(4)(a)(ii) states that development consent must not be granted for development that contravenes a development standard unless the consent authority is 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.

Objective of the Development Standard

The proposal's consistency with the objectives of the development standard have been addressed in detail in this clause 4.6 request.

Objectives of the Zone

Clause 4.6(4) also requires consideration of the relevant zone objectives. The site is located within the R3 Medium Density Residential zone.

The objectives of the R3 Medium Density Residential 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 proposed development provides for medium density housing that does not result in any unreasonable impacts on the amenity of the surrounding residential properties.

The development replaces a single dwelling with a pair of contemporary semi-detached dwellings and as such, increases the supply of dwellings in the area. The new dwellings provide a much higher level of amenity for occupants than the existing dwelling with both dwellings having north facing living areas, multiple outdoor spaces including a complying landscaped open space to the rear of each dwelling, a design that facilitates the natural ventilation of each dwelling and measures to minimise the privacy impacts on residents and the surrounding property owners.

The development has been designed to minimise the visual and acoustic privacy impacts on the amenity of the surrounding properties. The development includes highlight windows on the eastern and western elevations to prevent overlooking and the proposed balconies face north and overlook the street rather than facing the adjoining residential properties.

The development will not result in any unreasonable impacts on the solar access available to the surrounding properties as demonstrated by the shadow diagrams prepared by Enviro Studio.

The design of the semi-detached dwellings provides an appropriate response to the development on the adjoining allotments, including the proposed heritage item at 5 Berwick Street.

For the reasons given the proposal is considered to be consistent with the objectives of the R3 zone.

1.9 Objectives of Clause 4.6

The specific objectives of Clause 4.6 are:

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

The development application and clause 4.6 request demonstrate that it is appropriate in this circumstance to provide flexibility in the application of the height of buildings development standard because it will allow for a form of development which is consistent with scale of developments in the vicinity of the site and will deliver a built form that is responsive to the varied character and scale of the surrounding development. The development also does not result in any unreasonable impacts on the amenity of the surrounding properties.

Conclusion

The proposed variation to the height of buildings development standard contained within clause 4.3 of the RLEP has been found to be reasonable and appropriate in the circumstances of the case. In addition there are sufficient environmental planning grounds to justify the variation. In this regard it is reasonable and appropriate to vary the height of buildings development standard to the extent proposed.

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

DCP Clause	Controls	Proposal	Compliance
2.1	Minimum lot size and frontage		
	Minimum lot size (RLEP): <ul style="list-style-type: none"> • R2 = 400sqm • R3 = 325sqm 	No requirement.	Yes on merit.
	Minimum frontage		
	i) Min frontage R2 = 12m ii) Min frontage R3 = 9m iii) No battle-axe or hatchet in R2 or R3 iv) Minimum frontage for attached dual occupancy in R2 = 15m v) Minimum frontage for detached dual occupancy in R2 = 18m	No minimum frontage requirements for semidetached dwellings	On merit.
2.3	Site coverage		
	Up to 300 sqm = 60%	168.65m 45.8% Site A = 83.11m = 44% Site B = 85.54m = 47.2%	Yes.
2.4	Landscaping and permeable surfaces		
	i) Up to 300 sqm = 20% ii) 301 to 450 sqm = 25% iii) 451 to 600 sqm = 30% iv) 601 sqm or above = 35% v) Deep soil minimum width 900mm. vi) Maximise permeable surfaces to front vii) Retain existing or replace mature native trees viii) Minimum 1 canopy tree (8m mature). Smaller (4m mature) If site restrictions apply. ix) Locating paved areas, underground services away from root zones.	Site A/House 1 has a complying deep soil area of 64.56 square metres or 34.524%. Site B/House 2 has a complying site coverage of 49.98 square metres or 27.613%.	Yes.
2.5	Private open space (POS)		
	Dwelling & Semi-Detached POS		
	Up to 300 sqm = 5m x 5m	House 1 has a 5.816 x 6.84 metre (39.78m ²) area of private open space to the rear of the dwelling. House 1 also has a total of 33 square metres of north-facing balcony area. House 2 has a 5.224 x 6.513 metre (30.87m ²) area of private open space to the rear of the dwelling. House 2 also has a total of 32 square metres	Refer to key issues discussion regarding balconies.

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DCP Clause	Controls	Proposal	Compliance
		<p>of north-facing balcony area.</p> <p>The private open space area to the rear of each dwelling is accessible from the open plan, living, dining and kitchen area on Level 2 of each dwelling.</p> <p>Whilst the area of private open space for each dwelling that complies with the 5m x 5m minimum requirement is on the southern side of the dwelling, each dwelling also has a large, north facing balcony that is also directly accessible from the living area.</p>	
3	Building envelope		
3.1	Floor space ratio LEP 2012 =	N/A.	Refer to key issues discussion & LEP Assessment.
3.2	Building height		
	Maximum overall height LEP 2012 =		Refer to key issues discussion & LEP Assessment.
	i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded		Refer to key issues discussion & LEP Assessment.
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		No. Refer to key issues discussion & LEP Assessment.
3.3.2	Side setbacks: Semi-Detached Dwellings: <ul style="list-style-type: none"> • Frontage b/w 6m and 8m = 900mm for all levels 	1m	Complies
3.3.3	Rear setbacks		No. refer to key

DCP Clause	Controls	Proposal	Compliance
	<p>i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments.</p> <p>ii) Provide greater than aforementioned or demonstrate not required, having regard to:</p> <ul style="list-style-type: none"> - Existing predominant rear setback line - reasonable view sharing (public and private) - protect the privacy and solar access <p>iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions.</p> <p>iv) For irregularly shaped lots = merit assessment on basis of:-</p> <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p>		issues discussion.
4	Building design		
4.1	General		
	<p>Respond specifically to the site characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> • articulated to enhance streetscape • stepping building on sloping site, • no side elevation greater than 12m • encourage innovative design 		No. Refer to key issues discussion.
4.5	Colours, Materials and Finishes		
	<p>i) Schedule of materials and finishes</p> <p>ii) Finishing is durable and non-reflective.</p> <p>iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration)</p> <p>iv) Articulate and create visual interest by using combination of materials and finishes.</p> <p>v) Suitable for the local climate to withstand natural weathering, ageing and deterioration.</p> <p>vi) recycle and re-use sandstone (See also section 8.3 foreshore area.)</p>		No. Refer to key issues discussion.
4.6	Earthworks		
	<p>i) excavation and backfilling limited to 1m, unless gradient too steep</p> <p>ii) minimum 900mm side and rear setback</p> <p>iii) Step retaining walls.</p> <p>iv) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm.</p> <p>v) sloping sites down to street level must minimise blank retaining walls (use</p>		No. Refer to key issues discussion.

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DCP Clause	Controls	Proposal	Compliance
	<p>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>		Refer to key issues discussion.
	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. 		Refer to key issues discussion.
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 		BASIX Certificate provided.

DCP Clause	Controls	Proposal	Compliance
	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>		
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. Refer to key issues discussion.
	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. Refer to key issues discussion.
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. Refer to key issues discussion.
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		No. Refer to key issues discussion.

DCP Clause	Controls	Proposal	Compliance
	landscaping does not to obstruct casual surveillance (maintain safe access)		
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. Refer to key issues discussion.
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)	Each dwelling has a single width garage facing the street as each allotment has a frontage of less than 12 metres.	No. garages are larger than single width but not larger than double width. Garages also comprise excessive additional areas (laundry, powder room and storage).
6.3	Setbacks of Parking Facilities		
	i) Garages and carports comply with Sub-Section 3.3 Setbacks. ii) 1m rear lane setback iii) Nil side setback where: - nil side setback on adjoining property; - streetscape compatibility; - safe for drivers and pedestrians; and - Amalgamated driveway crossing		Complies.
6.4	Driveway Configuration		
	Maximum driveway width: - Single driveway – 3m - Double driveway – 5m Must taper driveway width at street boundary and at property boundary		No. Driveways are excessive and measure approx.. 4.6m.

DCP Clause	Controls	Proposal	Compliance
6.5	Garage Configuration		
	i) recessed behind front of dwelling ii) The maximum garage width (door and piers or columns): - Single garage – 3m - Double garage – 6m iii) 5.4m minimum length of a garage iv) 2.6m max wall height of detached garages v) recess garage door 200mm to 300mm behind walls (articulation) vi) 600mm max. parapet wall or bulkhead vii) minimum clearance 2.2m AS2890.1		As above. Garage configurations are considered excessive. Noting that they are tandem spaces to allow for two vehicles, the internal width of 4m is larger than necessary and therefore results in additional excavation.
7	Fencing and Ancillary Development		
7.3	Side and rear fencing		
	i) 1800mm maximum height (from existing ground level). Sloping sites step fence down (max. 2.2m). ii) Fence may exceed max. if level difference between sites iii) Taper down to front fence height once past the front façade alignment. iv) Both sides treated and finished.		Unclear what is proposed on the plans, but the SEE states that 1.8m maximum is proposed.
7.6	Air conditioning equipment		
	i) Minimise visibility from street. ii) Avoid locating on the street or laneway elevation of buildings. iii) Screen roof mounted A/C from view by parapet walls, or within the roof form. iv) Locate to minimise noise impacts on bedroom areas of adjoining dwellings.		Unclear on plans.
7.7	Communications Dishes and Aerial Antennae		
	i) Max. 1 communications dish and 1 antenna per dwelling. ii) Positioned to minimise visibility from the adjoining dwellings and the public domain, and must be: - Located behind the front and below roof ridge; - minimum 900mm side and rear setback and - avoid loss of views or outlook amenity iii) Max. 2.7m high freestanding dishes (existing).		Unclear on plans.
7.8	Clothes Drying Facilities		
	i) Located behind the front alignment and not be prominently visible from the street		Located along side boundaries.

3.2 Section B7: Transport, Traffic, Parking and Access

DCP Clause	Controls	Proposal	Compliance
3.2	Vehicle Parking Rates		

	<ol style="list-style-type: none">1. Space per dwelling house with up to 2 bedrooms2. Spaces per dwelling house with 3 or more bedrooms <p>Note: Tandem parking for 2 vehicles is allowed.</p>		2 spaces (tandem) provided.
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Responsible officer: Isobella Lucic, Senior Environmental Planning Officer

File Reference: DA/432/2022