

Randwick Local Planning Panel (Electronic) Meeting

Thursday 22 February 2024



RANDWICK LOCAL PLANNING PANEL (ELECTRONIC)

Notice is hereby given that a Randwick Local Planning Panel (Electronic) meeting will be held on Thursday, 22 February 2024 at 1pm

Declarations of Pecuniary and Non-Pecuniary Interests

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Kerry Kyriacou
DIRECTOR CITY PLANNING

Development Application Report No. D10/24

Subject: 23 Mermaid Avenue, Maroubra (DA/362/2022)


Executive Summary

Proposal:	Demolition of existing dwelling and construction of a new dwelling house, swimming pool and associated works.
Ward:	Central Ward
Applicant:	Mr J W Cemm
Owner:	Mr J W Cemm
Cost of works:	\$2,716,371.00
Reason for referral:	The development contravenes the development standard for floor space ratio by more than 10%

Recommendation

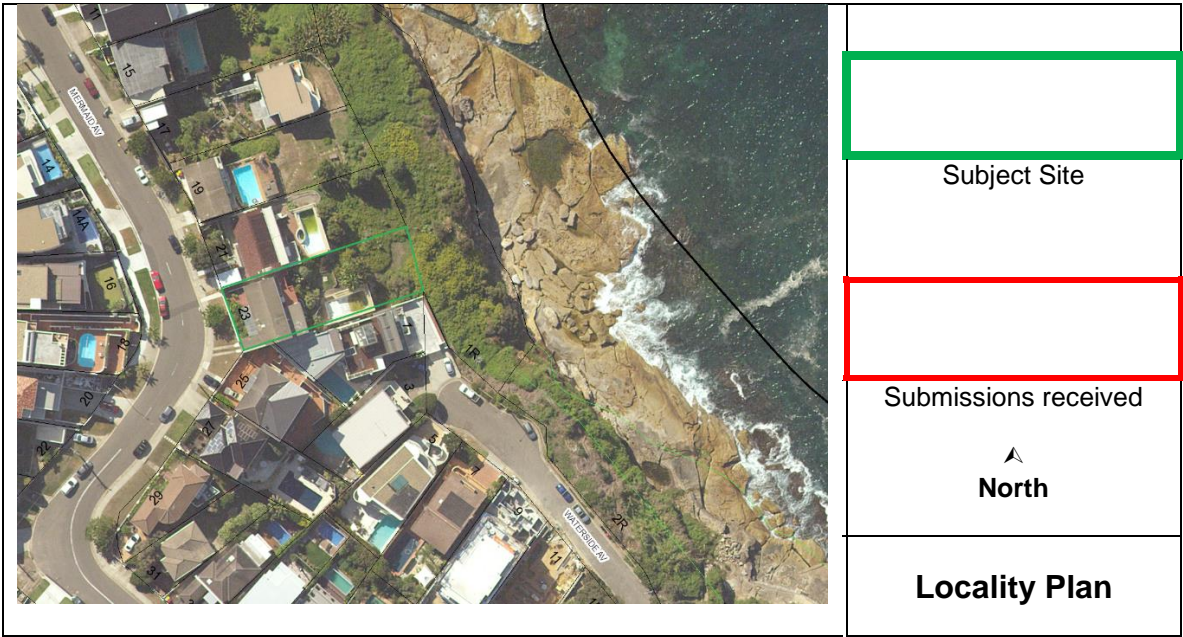
- A. That the RLPP is satisfied that the matters detailed in clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the FSR development standard in Clause 4.4, respectively of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning, Industry and Environment may be assumed.
- B. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/362/2022 for demolition of existing dwelling and construction of a new dwelling house, swimming pool and associated works at No. 23 Mermaid Avenue, Maroubra, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (general) - DA/362/2022 - 23 Mermaid Avenue, MAROUBRA NSW 2035 - DEV - Randwick City Council

D10/24

D10/24



1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) for determination as the proposed development contravenes the development standard maximum for floor space ratio contained in Randwick LEP 2012 by more than 10%.

The proposal seeks development consent for demolition of existing dwelling and construction of a new dwelling house, swimming pool and associated works.

The key issues associated with the proposal relate to the variation to the FSR control, overall bulk and scale of development, non-compliance with external wall height, side setbacks and excavation works, solar access, view loss and privacy.

The applicant has submitted written requests to vary the standards under Clause 4.6, which are considered to be well-founded as the overall bulk, scale and built form of the development is considered to be compatible in character with other development in the immediate streetscape and will not result in any unreasonable amenity impacts (with regards to solar access and subject to conditions views and privacy) upon adjoining and surrounding properties or streetscape, subject to the recommendations within the report.

The proposal is recommended for approval subject to non-standard conditions that require privacy measures to be implemented.

2. Site Description and Locality

The subject site is known as 23 Mermaid Avenue, Maroubra and is legally described as Lot 12 in DP 12218. The site area is 691.3m², is generally regular in shape and has a 15.545m frontage to Mermaid Avenue to the south west, a north eastern rear boundary of 15.555m, a north western side boundary of 45.11m and a south eastern side boundary of 43.89m.

The site slopes dramatically from the street towards the rear of the site, with a fall of approximately 17.8m. The site has a north to south fall of 0.23m along the front boundary.

The site is occupied by a part one and three storey dwelling house and semi-inground pool. There are no noteworthy trees or significant vegetation within or near the area proposed for redevelopment.

The locality is characterised by low density residential development comprising single dwelling houses. As evidenced by the building work occurring at various properties in the street, the area is

undergoing transition, whereby older housing stock is being demolished and replaced with larger, contemporary style dwellings.



Figure 1: The subject site as viewed from Mermaid Avenue



Figure 2: The rear yard of subject site

D10/24

3. Relevant history

DA/372/2015 was approved by Ordinary Council Meeting on 22 March 2016 for demolition of existing structures and construction of a new four storey dwelling house and swimming pool. The application was approved with a variation to FSR and height controls.

4. Proposal

The proposal seeks development consent for demolition of existing dwelling and construction of a new contemporary dwelling house, swimming pool and associated works and involves a variation to the floor space ratio development standard. When viewed from the rear, the proposal will have a four-storey appearance, with upper levels setback to create an articulated and stepped built form.

Proposed building works involves the following:

First Floor Level FFL 25.62 AHD

This level comprises three bedrooms with ensuites; storage and plant space at the rear and an internal lift and stairs.

Second Floor Level FFL 28.70 AHD

This level comprises the media room with cellar, powder room, internal lift and stairs and open plan kitchen, living and dining spaces which open out toward a rear terrace.

Third Floor Level FFL 32.40 AHD

This level comprises the master bedroom including a walk-in-robe and ensuite and the internal lift and stairs. The master opens out toward a non-trafficable garden terrace at the rear.

Fourth Floor Level FFL 35.97 AHD

This level comprises the main entrance, bar, bathroom, lounge room and a study. An arrival courtyard is located at the northern portion of the front setback and an off-street carport structure for two vehicles located at the southern portion of the frontage.

5. Notification

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

6. Relevant Environment Planning Instruments

6.1. 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.

The proposed development involves the removal of vegetation. Council's Landscape Development Officer reviewed the proposal and confirmed support for the proposed removal and landscaping treatments, subject to the imposition of conditions (refer to Referrals section below). As such, the proposal satisfies the relevant objectives and provisions under Chapter 2.

6.2. SEPP (Resilience and Hazards) 2021

Chapter 2 - 'Coastal management'

Chapter 2 of SEPP (Resilience and Hazards) 2021 applies to development within the category of Coastal Management.

Clause 2.10 applies to development on land within the coastal environment area

- 1) *Development consent must not be granted to development on land that is within the coastal environment area unless the consent authority has considered whether the proposed development is likely to cause an adverse impact on the following—*
 - a) *the integrity and resilience of the biophysical, hydrological (surface and groundwater) and ecological environment,*
 - b) *coastal environmental values and natural coastal processes,*
 - c) *the water quality of the marine estate (within the meaning of the [Marine Estate Management Act 2014](#)), in particular, the cumulative impacts of the proposed development on any of the sensitive coastal lakes identified in Schedule 1,*
 - d) *marine vegetation, native vegetation and fauna and their habitats, undeveloped headlands and rock platforms,*
 - e) *existing public open space and safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - f) *Aboriginal cultural heritage, practices and places,*
 - g) *the use of the surf zone.*
- 2) *Development consent must not be granted to development on land to which this section applies unless the consent authority is satisfied that—*
 - a) *the development is designed, sited and will be managed to avoid an adverse impact referred to in subsection (1), or*
 - b) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - c) *if that impact cannot be minimised—the development will be managed to mitigate that impact.*

Clause 2.11 applies to development on land within the coastal use area

- 1) *Development consent must not be granted to development on land that is within the coastal use area unless the consent authority—*

- a) *has considered whether the proposed development is likely to cause an adverse impact on the following—*
- (i) *existing, safe access to and along the foreshore, beach, headland or rock platform for members of the public, including persons with a disability,*
 - (ii) *overshadowing, wind funnelling and the loss of views from public places to foreshores,*
 - (iii) *the visual amenity and scenic qualities of the coast, including coastal headlands,*
 - (iv) *Aboriginal cultural heritage, practices and places,*
 - (v) *cultural and built environment heritage, and*
- b) *is satisfied that—*
- (i) *the development is designed, sited and will be managed to avoid an adverse impact referred to in paragraph (a), or*
 - (ii) *if that impact cannot be reasonably avoided—the development is designed, sited and will be managed to minimise that impact, or*
 - (iii) *if that impact cannot be minimised—the development will be managed to mitigate that impact, and*
- c) *has taken into account the surrounding coastal and built environment, and the bulk, scale and size of the proposed development.*

The site is mapped as part of the coastal environmental, and coastal use areas pursuant to the State Environmental Planning Policy (Coastal Management) 2018 – maps.

In response to Clause 2.10 of Division 2 – Coastal environment area, the proposal will not impede public access to the foreshore or use of the surf zone, or impact ecological or coastal environmental values.

In response to Division 5 – General, the proposal will not increase coastal hazards.

In response to Clause 2.11 of Division 4 – Coastal use area, the proposal will not impede access to the foreshore or impact views from public places to the foreshore, or the scenic qualities of the coast given that the proposal is of adequate height and materials. The height, bulk and scale of the development is compatible with other dwelling houses and built form in the immediate neighbourhood and is an appropriate design that relates to the topography and its context.

Chapter 4 – Remediation of land

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. 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.

In this regard it is Council's position that the site will be suitable for the proposed development, posing no risk of contamination. Pursuant to Clause 4.6 of SEPP (Resilience and Hazards) 2021, the land is considered to be suitable for the proposed land use.

6.3. Randwick Local Environmental Plan 2012 (LEP)

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

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

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Clause 4.4: Floor space ratio (max) Site area = 691.3m ²	0.6:1 (or 414.78m ²)	0.8:1 (or GFA of 553m ²)	No. Refer to Clause 4.6 - Exceptions to development standards under Section 7 below.
Cl 4.3: Building height (max)	9.5m	9.5m	Yes

6.3.1. **Clause 4.6 - Exceptions to development standards**

The non-compliances with the development standard is discussed in section 7 below.

6.3.2. **Clause 6.2 – Earthworks**

- (1) The objective of this clause is to ensure that earthworks for which development consent is required will not have a detrimental impact on environmental functions and processes, neighbouring uses, cultural or heritage items or features of the surrounding land.
- (2) Development consent is required for earthworks unless:
 - (a) the earthworks are exempt development under this Plan or another applicable environmental planning instrument, or
 - (b) the earthworks are ancillary to development that is permitted without consent under this Plan or to development for which development consent has been given.
- (3) Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters:
 - (a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,
 - (b) the effect of the development on the likely future use or redevelopment of the land,
 - (c) the quality of the fill or the soil to be excavated, or both,
 - (d) the effect of the development on the existing and likely amenity of adjoining properties,
 - (e) the source of any fill material and the destination of any excavated material,
 - (f) the likelihood of disturbing relics,
 - (g) the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,
 - (h) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.

A geotechnical report has been prepared by Douglas Partners which determines the subsurface soil, existing rock types, ground water conditions and excavation methods in order to limit effects on nearby residents and developments.

Any future redevelopment will be of a similar nature i.e. a dwelling house and will likely follow a similar built form, requiring an equivalent degree of excavation. The utility value of the site is not likely to be compromised as a result of excavation.

The application has been referred to Council's Development Engineer for assessment. It is considered that the proposal will not adversely impact on the drainage pattern and use of the land, subject to the recommended engineering conditions.

The site has been used for residential purposes for many years and the materials to be excavated are expected to be of good quality. There are no evident to suggest that the site is likely to contain any relics.

Specific conditions have been recommended to ensure that all excavations and backfilling associated with the development are properly guarded and supported to prevent them from being dangerous to life, property or buildings.

Subject to implementation of appropriate sediment and erosion controls, no adverse impacts on the coastal foreshore due to excavation are anticipated. Installation of appropriate sediment and erosion controls will be conditioned. A construction and vibration management plan will also need to be prepared to demonstrate how vibration will be mitigated and managed during construction.

The SEE notes that the disposal methods and destination for the excavation material will be outlined in a future Construction Management Plan.

Therefore, the proposal is considered satisfactory in this regard, subject to the recommended conditions.

6.3.3. *Clause 6.7 Foreshore scenic protection area*

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

6.7 Foreshore scenic protection area

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

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

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

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

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

The proposed development will have an aesthetic appearance that will not be detrimental to the visual qualities and amenity of the foreshore. The proposed building bulk, scale and height responds satisfactorily to surrounding topography and will contribute to the scenic quality of the coastal foreshore and integrate effectively with existing development within the foreshore area.

The proposal meets the relevant objectives outlined for Foreshore scenic protection areas under Clause 6.7 of the RLEP 2012.

7. Clause 4.6 Exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Clause 4.4: Floor space ratio (max)	0.6:1 (or 414.78m ²)	0.8:1 (or GFA of 553m ²)	0.2:1 (or GFA of 138.22m ²)	33.32%

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the scale of the development is compatible with the desired future character of the locality, it remains consistent in its finished built form with the surrounding residential development and existing topography of the site which has a fall of approx. 41% from street level to its rear boundary.

Due to the sloping topography of the area, developments near the subject site on the eastern side of Mermaid Avenue typically present as one or two storey to the street and have built form that steps down the site toward the rear. The proposal presents as single storey to the street frontage and has a built form over four staggered levels when viewed from the rear which is consistent with the pattern of development on the eastern side of the street. As such, the extent of FSR variation will not be discernible when viewed from the street or surrounding development.

The overall height, bulk and scale of the building will be compatible with other similar residential developments in the locality and is well modulated and utilises a range of contemporary materials and finishes to contribute to the recessive appearance.

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the design of the proposed development responds to the site's step topography and presents a building that is highly articulated with varying setbacks, recessive upper levels, landscaping treatments and a range of materials and finishes.

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

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

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

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the proposed development will not contribute to any unreasonable adverse impacts upon the amenity of surrounding properties in terms of its visual bulk, subject to conditions loss of privacy, overshadowing or enjoyment of views.

Visual bulk: The applicant's written justification demonstrates that this objective is satisfied by noting that the proposed development has a compliant building height and a built form that presents as single storey to Mermaid Avenue which is compatible with the surrounding development and desired future character of the locality. The stepped built form reduces the visual bulk to neighbouring properties so that the dwelling appears as a more modest development that is below the LEP height limit and is an improvement when compared to the previously approved DA which exceeded the height limit.

The non-compliance is localised to small sections of the building where the site drops significantly from the natural ground line and is accommodated within subterranean portions of the development. A majority of the external wall height is single storey and well below 8m. Therefore, the non-compliant elements do not significantly contribute to the visual bulk of the dwelling.

Overall, the visual bulk will be in keeping with existing and emerging development along Mermaid Avenue.

Loss of Privacy: A detailed assessment of privacy impacts is provided below under Section 9.1 Discussion of key issues which demonstrates that the proposed development (subject to a condition) will not result in any unreasonable adverse privacy impacts.

Overshadowing: A detailed assessment of the overshadowing impacts is provided in below under Section 9.1 Discussion of key issues. This assessment shows that solar access is maintained to the neighbourings and the proposed development results in minimal additional overshadowing impacts to the neighbouring properties. The elevational shadow diagram also demonstrates minimal impact to the northern side elevation of No. 1 Waterside Avenue and the reduction in the wall height would not result in significant improvements to the solar access.

View loss: A view loss assessment was carried out which demonstrates that the proposed development will have negligible view loss impacts on neighbouring properties. Refer to Section 9.1 Discussion of key issues under Sub-Section 5.6 – View Sharing for detailed assessment.

Assessing officer's comment:

Based on the above assessment, it is considered that development will not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, overshadowing or view sharing and privacy loss subject to conditions.

The size and scale of the proposed development is considered to be generally consistent with other residential developments in the immediate vicinity of the site with particular regards to immediate adjoining development.

The proposed built form responds to the topography of the site by incorporating stepping down the building and creating recessed built form architectural element into the design which will ensure the bulk and scale is adequately distributed to minimise visual amenity impacts to neighbouring properties and streetscape. In this regard, there are no significant view loss impacts associated with the proposed FSR variation noting that the variation results from the subterranean habitable zones and access core, which is not perceptible from surrounding development or the public domain. Refer to Discussions of key issues under Sub-Section 5.6 – View Sharing for detailed assessment.

The proposed development is therefore compatible with the desired future character of the locality. In addition, the proposed development will not result in any significant adverse amenity impacts to the adjoining residential properties in terms of overshadowing, visual bulk, privacy or view loss (refer to Discussions of key issues section of this report).

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

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

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

- The proposed variation is largely attributed to the areas below the natural ground level being included in the GFA calculation which are not visible from the street. If these below ground area calculation are excluded, the proposal would have a FSR of 0.55:1 which comply with the development standard. The proposal skillfully utilises areas below the natural ground level at the rear of the first and second floor levels to provide internal access throughout the dwelling.
- The proposal complies with the LEP height limit and a majority of the built form control requirements and amenity provisions in the DCP. Given that a significant portion of the built form is located below natural ground level, the additional GFA is unlikely to result in any unreasonable adverse environmental impacts to the subject site or neighbouring properties.
- The proposed development has been skillfully designed to maintain views and privacy for surrounding development and will not result in significant additional solar access impacts when compared to a fully compliant building envelope. Additionally, when compared to the previously approved DA the proposal results in a reduction in shadowing to the north facing windows of No.1 Waterside Avenue.

Assessing officer's comment:

The applicant's environmental planning grounds provided to justify contravention of the development standard relate to the site and its context and has minimal environmental impacts on the adjoining properties.

The dwelling has been designed to step down the hill side and a large portion of the gross floor area is cut into the site and situated below existing ground level. Calculations indicate that only 0.55:1 will be visual above ground and therefore, the portion of the development that contributes to the visual bulk and scale complies with the FSR standard of 0.6:1 in the LEP.

The proposed development is considered to be well articulated in that it steps down the hillside to respond to the topography of the site with majority of the built form being single storey. The portion of the development that is two storey in height is well articulated and does not result in any unreasonable view loss or overshadowing impacts.

The part of the development that is visible from the natural ground line is well integrated into the articulated design aesthetic of the built form and positively contributes to locality, particularly when viewed from the public domain. The front, side and rear elevations are appropriately modulated with projections and recessed elements, combination of external materials, openings & privacy screens.

The non-complying external wall height elements and side setbacks will not result in any unreasonable adverse amenity impacts to the adjoining residential properties or any undue visual impacts when viewed from the streetscape. The proposal is sensitively designed to mitigate amenity impacts to the surrounding neighbouring properties by reasonably preserving solar access, and subject to conditions privacy and view sharing.

Overall, the bulk and scale of the development is considered to be compatible with the existing and emerging built form in the locality and will comply with the objectives of the standard. In conclusion, the applicant's written request has adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard.

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

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

Assessment against objectives of floor space ratio standard

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

Assessment against objectives of the R2 zone

The objectives of R2 zone are:

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

Assessing officer's comment: The proposed development provides housing in a low-density residential environment that will be compatible with the desired future character of the locality. The proposed development will result in minimal impact as the built form steps down following the topography of the land which results in the dwelling being mainly single storey and protects the amenity of adjoining residents.

The proposed development is therefore consistent with the objectives of the FSR standard and the R2 zone and will be in the public interest.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

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

Conclusion

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

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

The DCP provisions are structured into two components: objectives and controls. The objectives provide the framework for assessment under each requirement and outline key outcomes that a

development is expected to achieve. The controls contain both numerical standards and qualitative provisions. Any proposed variations from the controls may be considered only where the applicant successfully demonstrates that an alternative solution could result in a more desirable planning and urban design outcome.

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

9. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7 and key issues below.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions have been received.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

9.1. Discussion of key issues

Randwick Comprehensive DCP 2013

Part C1 – Low Density Residential

Sub-Section 3.2 - External Wall Height

Objectives

- *To ensure development height establishes a suitable scale to the street and contributes to its character.*
- *To ensure development height does not cause unreasonable impacts upon the neighbouring dwellings in terms of overshadowing, view loss, privacy and visual amenity.*
- *To ensure the form and massing of development respect the topography of the site.*

The DCP control limits the external wall height to 8m for sloping sites. The site slopes dramatically from the street towards the rear of the site, with a fall of approximately 17.8m.

The maximum external wall height of proposed development is 9.5m to the southern side elevation and 8.81m to the northern side elevation from the natural ground line to the top of the parapet where the site drops significantly around the centre portion of the dwelling. Refer to Figure 3 below which demonstrates the non-compliances.

Despite the non-compliance, the proposal will satisfy the objectives of the control in that:

- The external walls which are non-compliant with wall height controls are not visible from the street due to the fall of the site and therefore will have no impact on streetscape character. **The** dwelling presents to Mermaid Ave as a single story dwelling and is of a suitable scale.
- The non-compliance is localised to small sections of the building where the site drops significantly from the natural ground line and majority of the external wall height is single storey and well below 8m. Non-compliant elements do not significantly contribute to the visual bulk of the dwelling i.e. to require strict compliance with the external wall height control would result in no substantive difference in terms of bulk and scale.
- The height of the building will relate compatibly with those in the surrounding streetscape along Mermaid Avenue being single/two storey at the front and steps down to four storeys to the rear and therefore, the breach will not be visually intrusive and will be in keeping and compatible with the existing built form and character within the locality.
- The sections of external wall height that is non-compliant will not compromise or give rise to any detrimental amenity impacts to the surrounding residential areas in terms of privacy, solar access, views, and bulk and scale as indicated in relevant assessment sections of this report. The shadow diagrams submitted with the application indicate that the non-compliant external walls will cause no unreasonable overshadowing impacts on the neighbouring dwellings.
- The proposed development has a contemporary form with different materials and finishes provided and windows and balconies for articulation along all elevations ensuring that the appearance of the walls from both street level and neighbouring properties is not obtrusive.

Given the above arguments, the design of the proposed development is considered to have minimised environmental impacts and is reasonable within regard to the context of the site.

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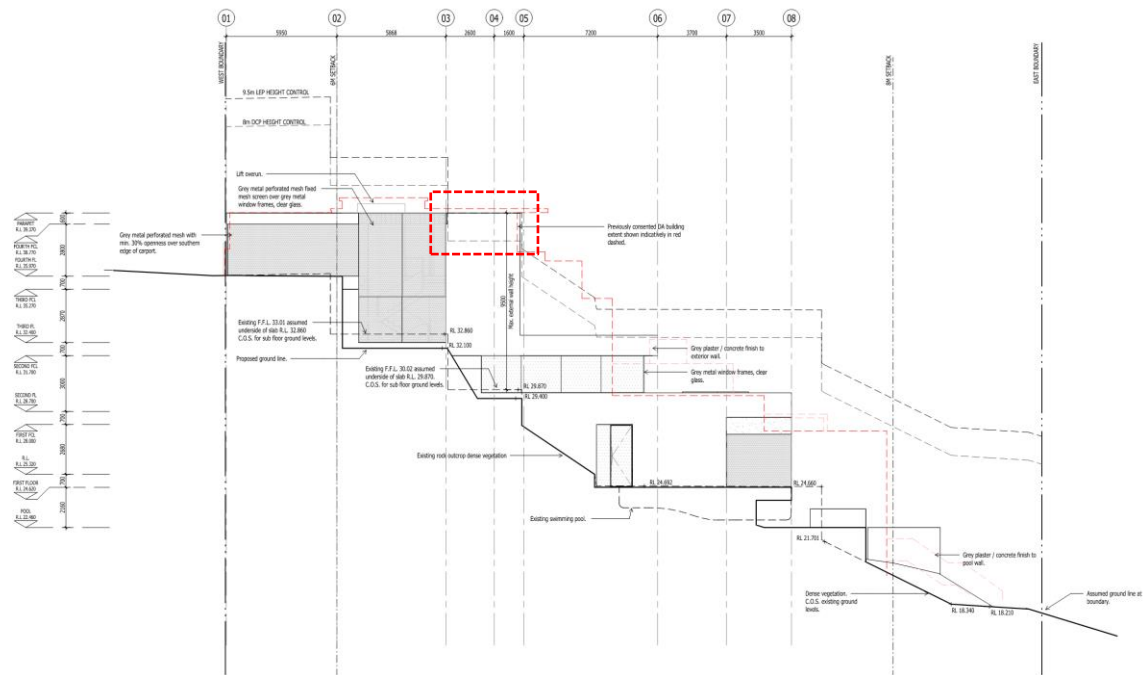


Figure 3: Southern Elevation showing non-compliant external wall height area dashed in red line

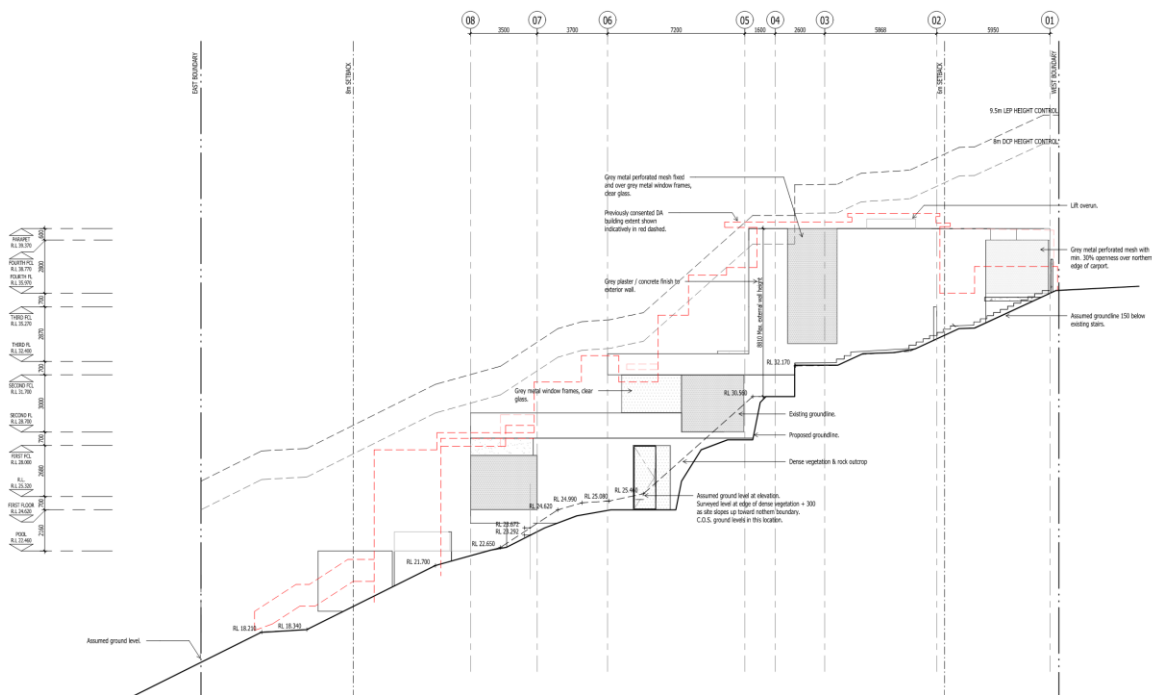


Figure 4: Northern Elevation showing non-compliant external wall height area dashed in red line

Sub-Section 3.3 - Setbacks

Section 3.3 of the Randwick DCP 2013 contains controls relating to building setbacks. The objectives of the controls is to maintain a consistent rhythm of street setbacks and to ensure form and massing complement streetscape character, to ensure separation of buildings for visual and acoustic privacy and solar access and to reserve adequate areas of private open space and deep soil planting.

- Control 3.3.1 (i) states that the front setback must be consistent with the average setbacks of the adjoining dwellings.

Comment: The property to the north has a garage built to the boundary while the property to the south has a front setback of approximately 4.2m. The average of the two is therefore 2.1m. The subject site has an existing garage and high masonry fence built on the property boundary as illustrated in Figure 5 below.

The application proposes the construction of a partially enclosed double carport to replace the existing single garage. The double carport will be situated on the front property boundary and measures 6m in width with the existing driveway being widened to 5m. The carport is positioned in this location as there is no other feasible option due to the slope of the site i.e. the front setback area is the only viable and safest position for parking facilities.

A nil setback is considered acceptable in the context of this locality for the following reasons:

- There is an existing garage and high masonry fence on the subject site and these structures obscure views of the house from the street. The proposed arrangement (6m wide double carport with metal perforated mesh gate (30% open) and masonry fence for the balance of the street frontage) will improve the presentation to the street.
- Nil setbacks, particularly in relation to garage facilities, are characteristic of the street, as illustrated in Figures 6 & 7. There are numerous examples of both single and double garages built to the front property boundary. In this regard, the proposal is consistent with predominant streetscape character.



Figure 5: Existing garage and masonry fence on property boundary

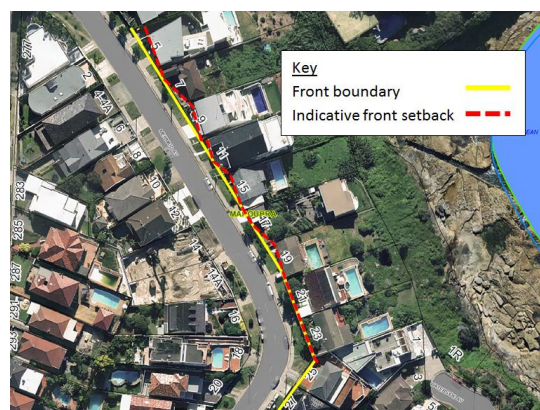


Figure 6: Characteristic of front setback

Despite non-compliance with side setback requirements, the proposal is considered to comply with the relevant building setback objectives contained in the DCP and can be supported on the following basis:

- Control **3.3.2 (i)** requires that, for sites with a frontage width of > 12m, the ground and first storey are required to be set 1200mm from side boundaries and the second storey and above are to be 1800mm from the side boundaries.

Comment: The proposed dwelling comprises four storeys however the storeys cascade down the hillside rather than being stacked in a conventional vertical arrangement. As a result, the dwelling presents as a two to four storey dwelling as it moves down the block, as illustrated in Figure 8.

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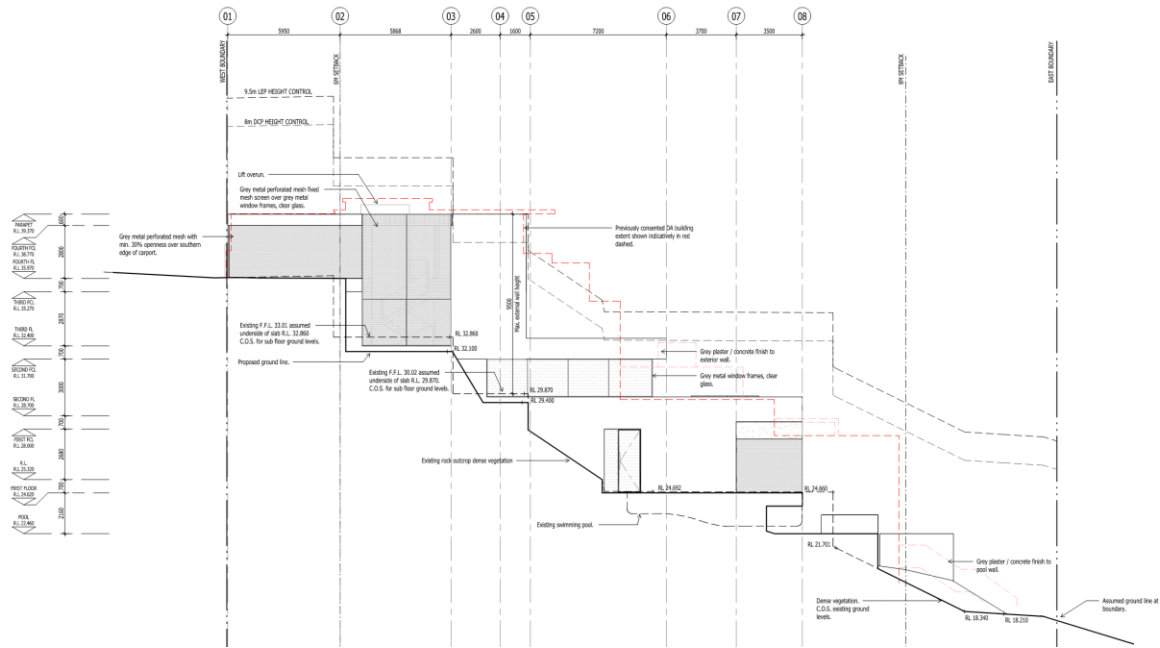


Figure 7: Southern ellevation which showing the levels cascading down into four storeys following the contours of the land.

Proposed setbacks are provided in the table below:

Levels as noted on plans	Northern	Southern
Carport	-	Nil setback
First floor level	1200mm	1200mm
Second floor level	1200mm	1200mm
Third floor level	1200mm	1200mm
Fourth floor level	1200mm	1200mm

A nil side setback for the carport is considered acceptable in the context of the locality for the following reasons:

- The proposed carport is replacing an existing structure which is also situated on the side property boundary and in this regard will have no additional impact relative to the present situation in terms of streetscape compatibility or the amenity of neighbours.

The proposed setback of the dwelling house to the side boundaries is also considered acceptable in the circumstances for the following reasons:

- The survey plan submitted with the application indicates that the existing dwelling is also situated on the southern boundary with a nil setback. The proposed dwelling is set 1200mm off the southern boundary and is therefore an improvement on the existing situation, in terms of meeting the numeric requirements.
- The three storey components of the proposed dwelling are not readily visible from the street due to the topography of the site and will therefore have no impact on streetscape character. The fourth level which is visible from the street and presents as a single storey development has an adequate setback from the northern side boundary and is consistent with streetscape character.
- Subject to conditions, the applicant has demonstrated that the dwelling will have no substantial adverse impacts on the amenity of neighbouring dwellings in terms of overshadowing, visual and acoustic privacy and view loss.

- The setback enables an acceptable building separation within the built form context of the site and as discussed in the relevant sections of this report subject to conditions will allow acceptable privacy, view sharing and solar access to be retained to the adjoining sites. The dwelling has been appropriately articulated and modulated with openings and materials and follows the contours of the land. The design of the proposed side elevations are considered to have minimised environmental impacts and are reasonable within regard to the context of the site.
- The proposed development makes a positive contribution to the streetscape and enhances the amenity of the locality. When considered on balance with a compliant scheme, there are minimal additional environmental impacts resulting from the proposed setback variation.
- The development will provide a reasonable level of amenity for future occupants of the subject site in that adequate levels of private open space and landscaped area have been provided and the proposal thereby meets the relevant objectives of the control.

Sub-section 5.1 - Solar Access and Overshadowing

Objectives

- *To ensure new dwellings and alterations and additions are sited and designed to maximise solar access to the living areas and private open space.*
- *To ensure development retains reasonable levels of solar access to the neighbouring dwellings and their private open space.*
- *To provide adequate ambient daylight to dwellings and minimise the need for artificial lighting.*

Controls

Solar access to proposed development:

- i) *A portion of the north-facing living area windows of proposed development must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June (in so far as it does not contradict any BASIX requirements).*
- ii) *The private open space of proposed development must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. The area covered by sunlight must be capable of supporting passive recreation activities.*

Controls

Solar access to neighbouring development:

- i) *A portion of the north-facing living area windows of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June.*
- ii) *The private open space of neighbouring dwellings must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. The area covered by sunlight must be capable of supporting passive recreation activities.*
- iii) *Existing 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. Where the neighbouring dwellings do not contain any solar panels, direct sunlight must be retained to the northern, eastern and/or western roof planes of neighbouring dwellings, which are at least 6m above ground level (existing), so that future solar panels capturing not less than 3 hours of sunlight between 8am and 4pm on 21 June may be installed.*

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iv) Any variation from the above requirements will be subject to a merit assessment having regard to the following factors:

- Degree of meeting the FSR, height, setbacks and site coverage controls.
- Orientation of the subject and adjoining allotments and subdivision pattern of the urban block.
- Topography of the subject and adjoining allotments.
- Location and level of the windows in question.
- Shadows cast by existing buildings on the neighbouring allotments.

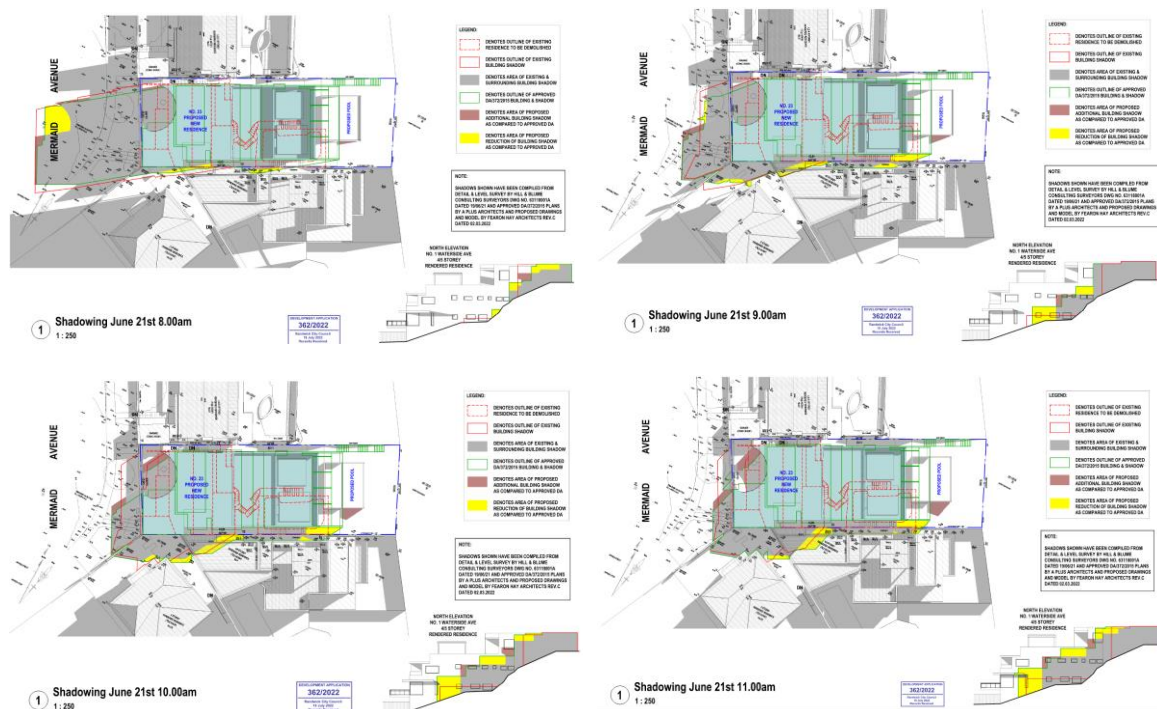
The shadow diagrams provided in Figure 8 below demonstrate that a portion of the north facing open plan living and dining area windows to the proposed development will receive a minimum of 3 hours of solar access.

The shadow diagrams submitted demonstrate that solar access to the principal outdoor recreation space within the rear yard on the subject and surrounding properties will receive a minimum of 3 hours of solar access.

The northern elevation of the neighbouring dwelling at no. 1 Waterside Avenue contains a single north facing living room window on the lower ground floor and a bedroom window on the floor above the living area. Elevational shadow diagrams submitted by the applicant demonstrate that solar access will be maintained to these windows for at least 3 hours between 8am and 4pm as stipulated by the DCP.

Elevational shadow diagrams have also been submitted to demonstrate the overshadowing impacts of the development on the dwelling at 25 Mermaid Avenue. This dwelling has a large dining room window and a kitchen window situated on the northern elevation. The shadow diagrams demonstrate that these windows will not be overshadowed by the proposed development and sufficient direct sunlight will be maintained.

When compared to the previously approved development, the shadow diagrams in Figure 8 below demonstrate that the proposal will result in a reduction in shadow impacts to the north facing living room window of no. 1 Waterside Avenue 25 Mermaid Avenue.



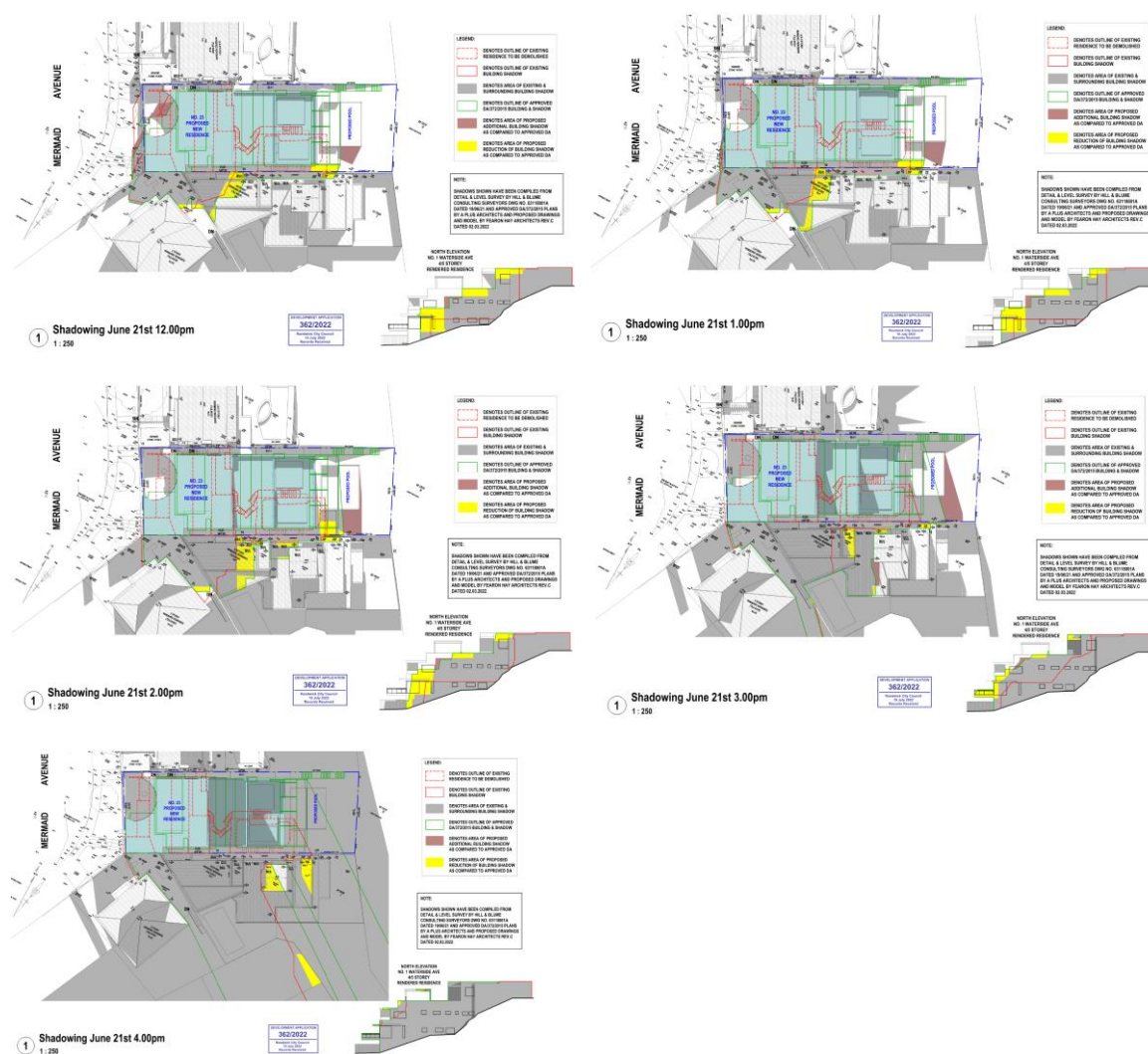


Figure 8: Existing and proposed shadow diagrams on 21 June

Sub-section 5.3 - Visual Privacy

Objective

- To ensure development minimise overlooking or cross-viewing to the neighbouring dwellings to maintain reasonable levels of privacy.

Controls

- All habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings.
- The windows to the living areas must be oriented away from the adjacent dwellings where possible. In this respect, they may be oriented to:
 - Front or rear of the allotment;
 - Side courtyard.
- Where a balcony, deck or terrace is likely to overlook the private open space or windows of the adjacent dwellings, privacy screens must be installed in positions suitable to mitigate the loss of privacy.

It is not expected that the proposed development will result in any unreasonable privacy impacts to neighbouring properties.

Fouth floor plan – The window opening on this level are offset from adjoining window openings and do not cause any overlooking impacts. The window openings to the rear of the dwelling will primarily

overlook the roof area on the subject site. There would be some level of overlooking to neighbouring properties in an oblique angle; however, it would not be substantial given the significant level difference. Moreover, it is expected that there will be some level of privacy impacts in order to retain views beyond.

Third floor plan – Grey metal perforated mesh is fixed over the windows to minimise any potential overlooking impacts to neighbouring properties. A condition is included which requires the perforated mesh to be designed with 30% openness. This will ensure that the proposed privacy screens are appropriate to mitigate any potential overlooking impacts.

The window openings to the rear of the dwelling on this level and will primarily overlook the garden roof terrace area on the subject site. Given the low use of the rooms (being a master bedroom and ensuite) any potential cross viewing in an oblique angle is not considered to be significant.

Second floor plan – Fixed grey metal perforated mesh is proposed over the proposed dining window opening to the northern side elevation for a distance of approx. 2.25m the remaining window opening is clear glass and has the potential to cause overlooking impacts to the neighbouring property at no. 21 Mermaid Avenue. It is recommended that appropriate privacy measures be implemented to the remaining portion of the window opening to a minimum height of 1.6m from the finished floor level.

To the southern side elevation the proposed living room window openings are offset from adjoining window openings and will not cause any unreasonable overlooking impacts. The window top sill heights on the southern elevation of the neighbouring property at 1 Waterside Avenue are RL 27.29 & RL 27.38 which is lower the finished floor level of FFL 28.700 proposed on the subject site.

Screen planting is proposed to the northern side and wraps around to part of the eastern and western ends of the terrace. A BBQ area with screen planting is proposed to the southern side of the terrace area. The screen planting and BBQ area will limit the size and use of the terrace areas and restricts overlooking into neighbouring properties.

First floor plans – The proposed window openings to the northern and southern elevations are offset from adjoining window openings and below the sill height of neighbouring properties window openings. However, bedroom 3 window opening and terrace area to the southern side may have the potential to cause privacy impacts to the living room window opening of the neighbouring property at no. 1 Waterside Avenue and for this reason a 1.6m fixed screen shall be provided to this side of the window and terrace balcony.

Subject to condition, the window openings and terrace balconies off the bedrooms to the rear of the dwelling are not expected to cause any unreasonable overlooking impacts to neighbouring properties.

Sub-Section 5.6 - View Sharing

The objectives of the view sharing control are as follows:

- To acknowledge the value of views to significant scenic elements, such as ocean, bays, coastlines, watercourses, bushland and parks; as well as recognised icons, such as city skylines, landmark buildings / structures and special natural features.
- To protect and enhance views from the public domain, including streets, parks and reserves.
- To ensure development is sensitively and skilfully designed to maintain a reasonable amount of views from the neighbouring dwellings and the public domain.

Controls

- i) The location and design of dwellings and outbuildings must reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas.

- ii) In assessing potential view loss impacts on the neighbouring dwellings, retaining existing views from the living areas (such as living room, dining room, lounge and kitchen) should be given a priority over those obtained from the bedrooms and non-habitable rooms.
- iii) Where a design causes conflicts between retaining views for the public domain and private properties, priority must be given to view retention for the public domain.
- iv) The design of fences and selection of plant species must minimise obstruction of views from the neighbouring dwellings and the public domain.
- v) Adopt a balanced approach to privacy protection and view sharing, and avoid the creation of long and massive blade walls or screens that obstruct views from the neighbouring dwellings and the public domain.
- vi) Clearly demonstrate any steps or measures adopted.

View loss assessment

Council planner requested that a view loss assessment be undertaken from No. 1 Waterside Avenue and Nos. 21 and 25 Mermaid Avenue against the Land and Environment Court 'Tenacity' Planning principles.

Introduction

Sharing of views is a design performance requirement in Randwick Council's Development Control Plan 2013.

An assessment of the proposed development and its impact on views is carried out in accordance with the Land and Environment Court planning principle after Roseth SC pp.25-29 in Tenacity Consulting v Warringah [2004] NSWLEC 140. This assessment is guided by a four step process identified by the *Land and Environment Court*.

Step 1. "The first step is the assessment of views to be affected. Water views are valued more highly than land views. Iconic views (e.g. of the Opera House, the Harbour Bridge or North Head) are valued more highly than views without icons. Whole views are valued more highly than partial views, e.g. a water view in which the interface between land and water is visible is more valuable than one in which it is obscured."

Water views of the Pacific Ocean, Lurline Bay and/or land/water interface views are available from No. 1 Waterside Avenue and Nos. 21 and 25 Mermaid Avenue to varying degrees. There are no iconic views that will be impacted by the proposed development.

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Figure 9: Location of surrounding properties that potentially could be impacted by the proposed development.

Step 2. “The second step is to consider from what part of the property the views are obtained. For example the protection of views across side boundaries is more difficult than the protection of views from front and rear boundaries. In addition, whether the view is enjoyed from a standing or sitting position may also be relevant. Sitting views are more difficult to protect than standing views. The expectation to retain side views and sitting views is often unrealistic.

16 and 18 Mermaid Avenue, Maroubra

The properties at No.’s 16 and 18 Mermaid Avenue are located on the western side of the subject site.

<i>View is obtained</i>	<i>Standing/siting view</i>
<p>Ocean water and land/water interface views are available from the street frontage facing living room windows and open spaces at the upper levels of each dwelling and will remain predominantly unobstructed, (see Photos 1 to 3).</p> <p>Partial land/water interface views are also available from the north-eastern perspective of open space areas.</p>	<p>The views are obtained from a standing and sitting positions. Refer to Photos 1 to 3.</p>



Photo 1: North-eastern perspective from Living room balcony at No. 16 Mermaid Avenue



Photo 2: North-eastern outlook from No. 16 Mermaid Avenue.



Photo 3: Eastern Outlook from No, 18 Mermaid Avenue over current site structures.

21 Mermaid Avenue, Maroubra

The property at No. 21 Mermaid Avenue is located on the northern side of the subject site.

<i>View is obtained</i>	<i>Standing/siting view</i>
Ocean water and land/water interface views are available from the rear eastern facing windows and private open space at the ground and subfloor level, (see Photos 4-6).	The views are obtained from a standing and sitting positions. Refer to Photos 4 to 6.

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Views are also obtained from the first floor rear balcony across the side boundary shared with the subject site, (see Photo 7). Photos provided by the GSA Planning.

The dwelling does not comprise any windows on the side elevations.



Photo 4: Ground Floor Level Eastern Balcony



Photo 5: Subfloor Level Eastern Balcony



Photo 6: Pool Level Surrounds Closest to Dwelling



Photo 7: Rear first floor balcony off living area

1 Waterside Avenue, Maroubra

The property at No. 1 Waterside Avenue is located on the south eastern side of the subject site.

View is obtained	Standing/siting view
<p>Ocean water and land/water interface views are available from the street frontage eastern facing windows and open spaces at each level of the dwelling and are unobstructed, (see Photos 8 to 10). Photos provided by the GSA Planning.</p> <p>Partial land/water interface views are also available from select south facing windows. There are no water or land/water interface views available from the north facing windows of the property.</p>	<p>The views are obtained from a standing and sitting positions. Refer to Photos 1 to 3.</p>
A photograph showing a ground floor level eastern living room window and associated balcony with a view of the ocean and coastline. <p>Photo 8: Ground Floor Level Eastern Living Room Window and Associated Balcony</p>	

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Photo 9: First Floor Level Eastern Bedroom Window



Photo 10: Second Floor Level Eastern Master Bedroom Window and Balcony

25 Waterside Avenue, Maroubra

The property at No. 25 Waterside Avenue is located on the south western side of the subject site. Due to the irregular allotment angle of this property, the primary available views are across the side boundary. Views are currently partially obstructed by the existing built forms at No. 1 Waterside Avenue and No. 23 Mermaid Avenue.

<i>View is obtained</i>	<i>Standing/siting view</i>
Due to the irregular diagonal orientation the views of the ocean and land/water interface are partially obstructed from the rear south-eastern facing balcony and the eastern facing windows at the ground and first floor levels, (see Photos 7 to 9). Photos provided by the GSA Planning.	The views are obtained from a standing and sitting positions. Refer to Photos 8 to 10.



Photo 8: Ground Floor Level Eastern Kitchen Window



Photo 9: Ground Floor Level Southern Balcony



Photo 10: First Floor Level Eastern Master Bedroom Window

Step 3. “The third step is to assess the extent of the impact. This should be done for the whole of the property, not just for the view that is affected. The impact on views from living areas is more significant than from bedrooms or service areas (though views from kitchens are highly valued because people spend so much time in them). The impact may be assessed quantitatively, but in many cases this can be meaningless. For example, it is unhelpful to say that the view loss is 20% if it includes one of the sails of the Opera House. It is usually more useful to assess the view loss qualitatively as negligible, minor, moderate, severe or devastating.”

16 & 18 Mermaid Avenue, Maroubra

<i>View is obtained</i>	<i>Extent of Impact</i>
16 Mermaid Avenue upper-level eastern Living Room Window and Associated Balcony.	Existing views will be predominantly retained and will not be impacted by the proposed development. No view analysis required.
18 Mermaid Avenue upper-level Living Room Window and Associated Balcony.	Existing views will be predominantly retained and will not be impacted by the proposed development. No view analysis required.

Due to the location and siting of the proposed built form on the subject site, the proposal will not result in the loss of any sweeping water or land/water interface views from the eastern street frontage windows to living rooms or the private open spaces of No.'s 16 & 18 Mermaid Avenue, as demonstrated in photos 1 to 3 above.

1 Waterside Avenue, Maroubra

<i>View is obtained</i>	<i>Extent of Impact</i>
Ground Floor Level Eastern Living Room Window and Associated Balcony	Existing views will be retained and will not be impacted by the proposed development. No view analysis required.
First Floor Level Eastern Bedroom Window	Existing views will be retained and will not be impacted by the proposed development. No view analysis required.
Second Floor Level Eastern Master Bedroom Window and Balcony	Existing views will be retained and will not be impacted by the proposed development. No view analysis required.

Due to the location and siting of the proposed built form on the subject site, the proposal will not result in the loss of any sweeping water or land/water interface views from the eastern street frontage windows to living rooms, bedrooms or the private open spaces of No. 1 Waterside Avenue. The proposal will also not affect any secondary south eastern or northern views from this property as demonstrated in Photo 11.

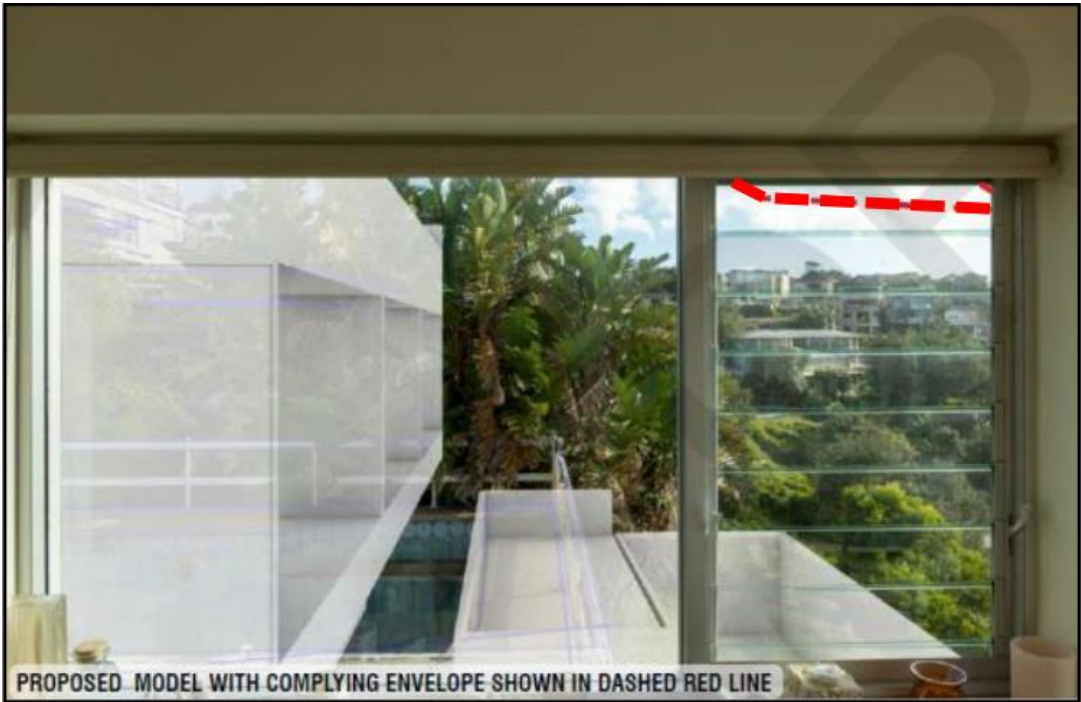


Photo 11: Existing and proposed model (white) view looking from first floor northern side bedroom window of No. 1 Waterside Avenue. Compliant building envelope is shown in red dashed line.

21 Mermaid Avenue, Maroubra

<i>View is obtained</i>	<i>Extent of Impact</i>
Ground Floor Level Eastern Balcony	Existing views will be retained and will not be impacted by the proposed development. No view analysis required.
Subfloor Level Eastern Balcony	Existing views will be retained and will not be impacted by the proposed development. No view analysis required.
Pool Level Surrounds Closest to Dwelling	Existing views will be retained and will not be impacted by the proposed development. No view analysis required.
Rear first floor balcony off living room	The proposal will result in a portion of south eastern view loss from the first floor rear balcony across the side boundary shared with the subject site. Refer to Photo 12 below.

Due to the location and siting of the proposed built form on the subject site, the proposal will not result in the loss of any eastern views from the rear facing windows or balconies at the ground or subfloor level of No. 21 Mermaid Avenue. The proposal will also not impact any north eastern water or land/water interface views from this property. Notwithstanding, a condition is recommended to reduce the depth of the proposed second floor terrace balcony and balance view sharing of the land/water interface from the neighbouring first floor balcony. The proposed amendment has been recommended to improve the retention of the south eastern headland view from the first floor balcony as shown in Photo 12 below.

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Photo 12: Proposed View Looking South East From First Floor Rear Balcony of No. 21 Mermaid Avenue.

25 Mermaid Avenue, Maroubra

View is obtained	Extent of Impact
Ground Floor Level Eastern Kitchen Window	As demonstrated in Photo 13 below the proposed development will result in a minor loss of ocean and headland views.
Ground Floor Level Southern Balcony	As demonstrated in Photo 14 below the proposed development will result in a minor loss of ocean and headland views.
First Floor Level Eastern Master Bedroom Window	As demonstrated in Photo 15 below the proposed development will result in a minor loss of ocean and headland views.

The view analysis in photos 13 to 15 indicate that the proposal will result in minor loss of water and land interface views. Majority of the water and interface views will be retained.



Photo 13: Existing and proposed view looking east from ground floor kitchen window

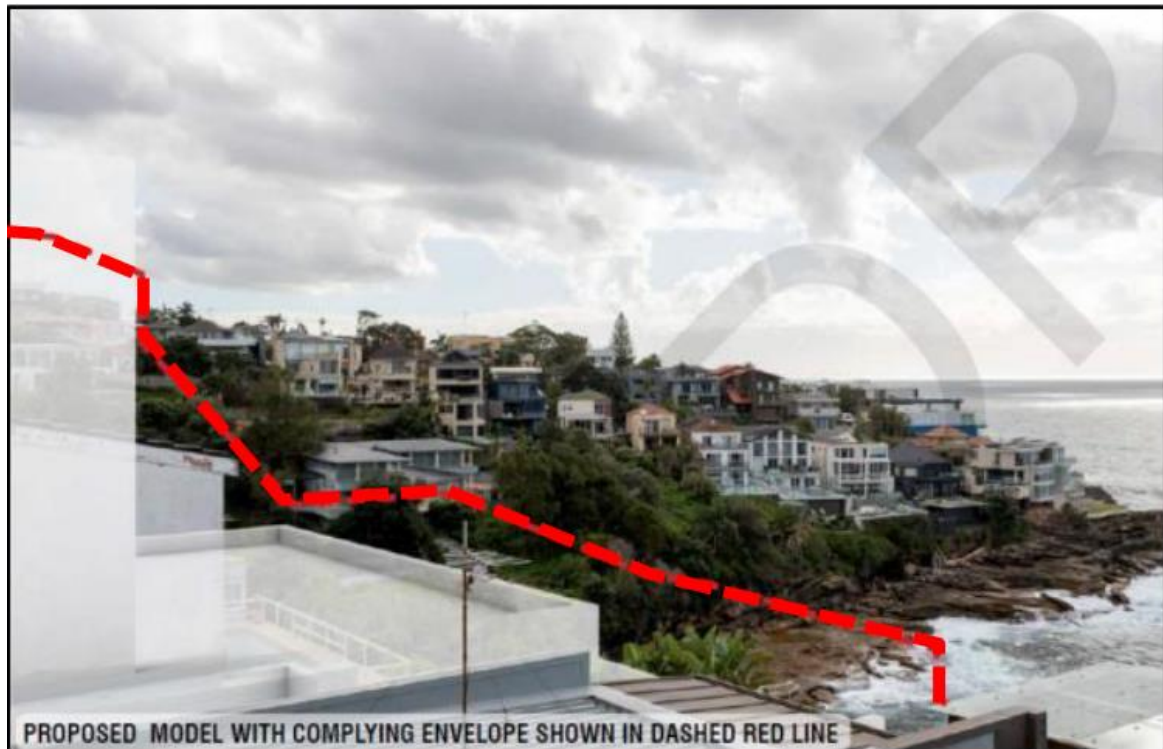


Photo 14: Existing and proposed view looking north east from ground floor rear balcony

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Photo 15: Existing and proposed view looking east from first floor master bedroom window

Step 4: The fourth step is to assess the reasonableness of the proposal that is causing the impact. A development that complies with all planning controls would be considered more reasonable than one that breaches them. Where an impact on views arises as a result of non-compliance with one or more planning controls, even a moderate impact may be considered unreasonable. With a complying proposal, the question should be asked whether a more skillful design could provide the applicant with the same development potential and amenity and reduce the impact on the views of neighbours. If the answer to that question is no, then the view impact of a complying development would probably be considered acceptable and the view sharing reasonable.

The view loss assessment concludes that the proposed development will not result in any unreasonable view loss impacts to neighbouring properties, subject to conditions amendments regarding the depth of the second floor rear terrace. The land/water interface views from the living areas, bedrooms and private open spaces of No. 1 Waterside Avenue, 16 and 18 Mermaid will be predominantly maintained as existing.

A majority of the land/water interface views from No. 21 Mermaid Avenue will be retained with the exception of view loss to the south-eastern from the first floor rear balcony, which will be improved via a recommended consent condition to reduce the rear bulk of the second floor terrace. The existing land/water interface views to the eastern and north-eastern from the rear facing windows to living areas, bedrooms and private open spaces at No. 21 Mermaid Avenue will be maintained as existing. The impacts are considered acceptable, subject to recommended condition amendments.

A majority of the land/water interface views from No. 25 Mermaid Avenue will be retained. However, there will be a negligible extent of land/water interface view loss from the rear ground floor balcony, ground floor kitchen window and first floor master bedroom window. The impacts are considered minor/negligible.

The development complies with the LEP control standard for Height of Building and the non-compliant FSR control will not result in any unreasonable view loss impacts as the primary water and land/water interface views remain predominantly unaffected, in particular from the habitable rooms of neighbouring development which meets the objectives of the FSR control.

As discussed in the relevant section of this report, the height, bulk and scale of the development is compatible with other dwelling houses and built form in the immediate neighbourhood and is an appropriate design that relates to the topography and its context. Further, the proposed development predominantly satisfies the relevant objectives and controls of the DCP with regard to Building Envelope and Building Design.

Subject to condition amendments, the development has been carefully configured to achieve a satisfactory level of view sharing between the site and the neighbouring properties. Accordingly, the view sharing principles identified by the Land and Environment Court have been satisfied.

10. Conclusion

That the application for demolition of existing dwelling and construction of a new dwelling house, swimming pool and associated works be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013.
- The variation to the FSR control standard has been supported in that it will not result in any unreasonable adverse impacts upon either the amenity of the adjoining premises or the character of the locality.
- The proposed development is consistent with the specific objectives of the R2 zone in that proposed activity and built form will provide for the continued use of the site as a low scale residential development, shall not fundamentally alter the existing streetscape, and shall not result in any unreasonable amenity impacts upon adjoining and surrounding properties.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- The development enhances the visual quality of the public domain/streetscape and will make a positive contribution to the streetscape and users of the site.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineer

An application has been received for construction of a new dwelling at the above site.

This report is based on the following plans and documentation:

- Architectural Plans by Fearon Hay dated 11.07.22;
- Statement of Environmental Effects by GSA Planning, job no: 21141, issue A dated July 2022;
- Arboricultural Impact Assessment by Bluegum Tree Care & Consultancy dated May 2022;
- Landscape Plans by Taylor Brammer, dwg's LA00-LD01, rev A, B & C, stamped received by Council 19/07/22;
- Drainage Plans by Partridge Hydraulic Services;
- Detail & Level Survey by Hill & Blume dated 19.6.21.

Drainage Comments

Stormwater drainage is to be in general accordance with the submitted Drainage Plans by Partridge Hydraulic Services Job No: 2021H0111, Drwg No's SWDA1.1-1.6, Dated May 2022.

Tree Management & Landscape Comments

There is a semi-mature, 4-5m tall *Cupaniopsis anacardioides* (Tuckeroo, T1) on Council's public verge, centrally across the width of this site, of good health and condition which is automatically protected by the DCP due to its location on public property and is also part of a formal scheme of this species, which as a group, are a main feature of the streetscape.

The existing layback, concrete strips and internal garage hard up against the southern site boundary will be removed and replaced back in this same area, and while the new formalised vehicle crossing will be widened further to the north, finishing closer to T1, when scaled off the Fourth Floor Reference Plan, sheet 04, a setback in excess of 4 metres will still be maintained, which is sufficient to ensure its safe retention, with relevant conditions and a bond imposed.

The clump of *Strelitzia nicholii* (Giant Bird of Paradise, T2) located centrally in the rear setback of this development site is a low value exotic species, so no objections can be raised to its removal as recommended in the Arborist Report so as to accommodate the major civil works that are shown here, along with any of the dense, overgrown weeds that are occupying this same area, around the rock outcrops, and the lower parts of the site towards the rear boundary.

Lastly, in and around the northeast site corner are a group of *Banksia integrifolia* (Coastal Banksias), which are endemic to this LGA and appear to have self-seeded, comprising firstly, T3, of 3-4m in height, right in the northeast corner of the development site, then to its east, three separate trees that have been grouped together as T4 in the Arborist Report, of similar dimensions, which are wholly on the adjoining foreshore reserve.

While T3 does not meet the minimum threshold for protection under the DCP, the Arborist recommends its retention by the placement of protective fencing, and while Council can't formally require this as it is not even a 'prescribed tree', it will be possible to enforce this in this case as these measures are still relevant for the protection of the group T4 on the adjoining public property, with relevant conditions included in this report.

It is noted that the new pool will now be provided several metres further to the east of its current location, with the submitted documentation stating that any visual impacts arising from this are anticipated to be minimal given the steep fall of land down to the east, and the fact that the new pool level (RL22.460) will be 2.24m lower than the existing pool which is at 24.70, so should be less visually intrusive when viewed from the foreshore.

The application also states that shifting the pool as shown will benefit occupants by improving access and usability of their private open space, as level areas will now be provided directly off the rear of the respective levels of the dwelling.

The Landscape Plans show a high level of detail and treatment which will increase the amount of plant material in all areas and levels of the site when compared to the current situation; however, several species which are not in keeping with the natural floristics of the area and also/either have the potential to obstruct water views due to their height at maturity have been selected, with conditions requiring that the plans and plant schedules be amended to now include more suitable alternative species.

Lastly, the applicant's DCP Compliance table details that this proposal achieves numerical compliance with the minimum deep soil area control by providing 35% of site area as landscaping.

Undergrounding of power lines to site

The subject site already has the power lines underground.

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

gsa planning

RANDWICK LOCAL ENVIRONMENTAL PLAN (LEP) 2012 CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS

APPLICANT'S NAME: Jamie Cemm

SITE ADDRESS: No. 23 Mermaid Avenue, Maroubra

PROPOSAL: Demolition of the Existing Dwelling and Construction of a New Dwelling House

1. (i) **Name of the applicable planning instrument which specifies the development standard:**

Randwick Local Environmental Plan (LEP) 2012

(ii) **The land is zoned:**

R2 Low Density Residential. The objectives of the R2 Low Density Residential Zone are as stated:

- 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.

(iii) **The number of the relevant clause therein:**

Clause 4.4 – Floor Space Ratio. Clause 4.4 is stated as follows:

- (1) The objectives of this clause are as follows—
- (a) to ensure that the size and scale of development is compatible with the desired future character of the locality,
 - (b) to ensure that buildings are well articulated and respond to environmental and energy needs,
 - (c) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,
 - (d) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map.
- (2A) Despite subclause (2), the maximum floor space ratio for a dwelling house or semi-detached dwelling on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential is not to exceed—
- (a) if the lot is more than 300 square metres but not more than 450 square metres—0.75:1, or
 - (b) if the lot is more than 450 square metres but not more than 600 square metres—0.65:1, or
 - (c) if the lot is more than 600 square metres—0.6:1.
- (2B) Despite subclause (2), there is no maximum floor space ratio for a dwelling house or semi-detached dwelling on a lot that has an area of 300 square metres or less.

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning.

2. Overview

This Clause 4.6 Exception to Development Standards has been prepared in accordance with the most recent case law. In our opinion, the variation is consistent with the objectives of the zone and development standard and has demonstrated there are sufficient environmental planning grounds to justify contravening the development standard.

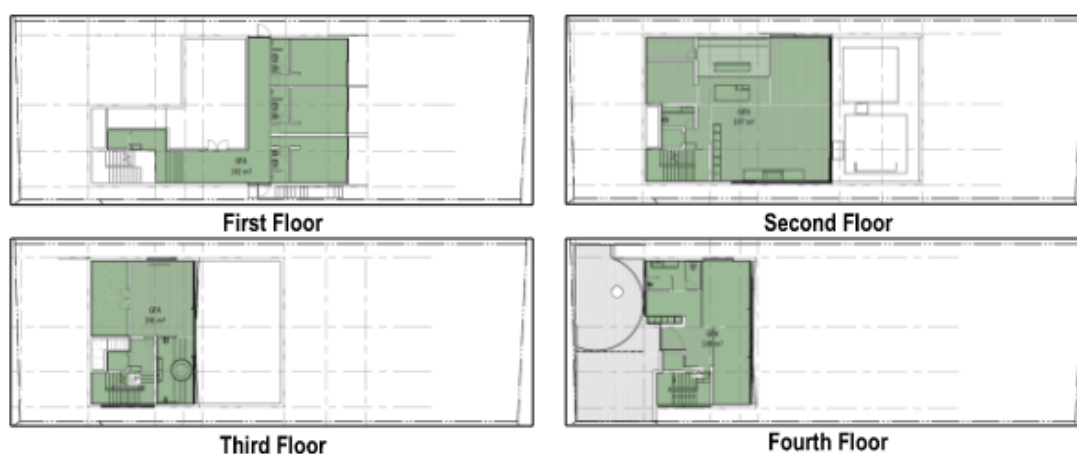
3. Specify the nature of Development Standard sought to be varied and details of variation:

The development standard to which this request for variation relates is Clause 4.4 of the LEP – Floor Space Ratio. This Clause operates in conjunction with Clause 2A (c), which indicates a maximum 0.6:1 applies to the subject site. Clause 4.4 is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

The proposal will have a GFA of 553m² and an FSR of 0.8:1 (see **Figure 1**). This is a function of the site's steeply sloping topography and the need to create floor layouts that will relate to both the pedestrian entrance at the street level and the private open space at the rear of the site (approximately 7.6m below street level). Accordingly, the western portions of the first and second floor levels are located below the natural ground level.

If the areas below the natural ground level are excluded from the GFA calculation, the 'above ground' GFA would be in the order of 379m², with an above ground FSR of approximately 0.55:1, being compliant with the standard. Further, given the steep topography, the dwelling requires lift and stair access to each level, which in the circumstances of this case contributes to the FSR calculation. If the lift and stairs were excluded from the calculation, the proposal would have a GFA of 495m² and an FSR of 0.72:1.

Also, it should be noted that a previous approval on the subject site (DA 372/2015) achieved a non-compliant FSR of 0.71:1 coupled with a non-compliant building height. The current proposal complies with the building height development standard, a majority of the built form and amenity provisions of the DCP and has been designed to maintain compatibility with the existing and desired future character of the area.



Source: Fearon Hay Architects

Figure 1: Diagram Showing GFA Calculations

4. Consistency with Objectives of Clause 4.6

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (*Initial Action*), Preston CJ notes at [87] and [90]:

Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.

However, it is still useful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

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

The proposal seeks flexibility in the application of the FSR development standard to the development in the circumstances of this particular case.

The proposal has been designed to present a built form that is similar to existing and emerging development in the surrounding area, when viewed from the public domain. The proposal complies with the LEP height development standard and a majority of the built form and amenity provisions under the DCP. In our opinion, the selected areas below the natural ground level would be irrelevant as contextually, visually and amenity wise, these areas will not contribute to the bulk and scale of the dwelling in the context of the locality. Notwithstanding the variation, the proposal provides an appropriate balance of bulk and scale relative to surrounding existing and emerging development.

As indicated, a previous approval for a dwelling house on the subject site was approved with a non-compliant FSR of 0.71:1. The proposal has been designed in consideration of the previous approval on site and provides an improved bulk and scale compared to the approval. This is outlined in Section 5 of this report.

The extent of FSR exceedance is reasonable and will not unreasonably affect neighbouring properties, as demonstrated in the SEE and accompanying documentation.

5. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause states, inter alia:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in these circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

5.1 Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

It is our opinion that the proposal satisfies Test 1 established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. Test 1 will be considered below.

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

Despite the FSR variation, the proposal is consistent with the desired low density character of the area. The proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls. Reasons why the proposed development is consistent with the objectives of the FSR standard are explained below.

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

The site is located within the R2 Low Density Residential Zone and the locality is characterised by a mix of dwelling houses of varying scales and architectural styles. Due to the sloping topography of the area, developments near the subject site on the eastern side of Mermaid Avenue typically present as one or two storeys to the street and have a built form that steps down the site toward the rear.

The proposal will replace the existing dwelling which is in an ageing condition, with a high quality contemporary dwelling that makes a positive contribution to the locality. The proposal presents as single storey to the street frontage and has a built form over four staggered levels when viewed from the rear, which is consistent with the pattern of development on the eastern side of the street. The proposal is also in keeping with the existing and emerging character of development in Maroubra. The proposed contemporary dwelling will result in a positive design outcome in respect of volumetric above ground massing, which is comparable with the predominant surrounding built form. As such, the extent of FSR variation will not be discernible when viewed from the street or surrounding development.

The proposal has a well modulated design and utilises a range of contemporary materials and finishes to contribute to the recessive appearance. Accordingly, the proposed dwelling is compatible with the bulk and scale, streetscape and desired future character of the locality.

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

The proposed dwelling has been designed in response to the site's steep topography and presents a building that is highly articulated with varying setbacks, recessed upper levels, landscaping treatments and a range of materials and finishes. The dwelling has also been designed to ensure energy efficiency through BASIX commitments and to meet the modern living requirements of the owner. In our opinion, the proposal will provide a building that is highly articulated and will effectively 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,

N/A.

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

The proposal has been designed to maintain the amenity of neighbouring dwellings. This is achieved through a compliant building height and a built form that presents as single storey to Mermaid Avenue which is compatible with surrounding development. The stepped built form reduces the visual bulk so that the dwelling appears as a more modest development that is well below the LEP height limit. This is an improvement when compared to the previously approved DA which exceeded the height limit. Accordingly, the visual bulk will be in keeping with existing and emerging development along Mermaid Avenue.

Privacy will be maintained through generous building separation, a compatible front setback, compliant rear setback and compliant side setbacks at the first and second floor levels. As a portion of the additional GFA is located below natural ground level, the amenity of neighbouring development is largely preserved. Additionally, some of the GFA exceedance can be attributed to the internal stairs and lift which provide access throughout the dwelling and are unlikely to result in a loss of privacy to neighbouring development. Given the available views are to the east, windows are primarily orientated toward the rear in order to maximise views and prevent overlooking to neighbouring development. As such, the proposed FSR is unlikely to result in adverse privacy impacts to neighbouring development when compared to the previously approved FSR non-compliant dwelling.

Importantly, the shadow diagrams (submitted separately), demonstrate that the proposed development is likely to result in a reduction in shadowing to the north facing windows of development to the south at No. 1 Waterside Avenue when compared to the previously approved DA.

Finally, the proposal will not unreasonably affect neighbouring views as it will retain a single storey built form to the street frontage. Development to the north and south will maintain eastern views as existing, and development to the west is located at a higher level than the subject site and is also elevated above the street level, and therefore is likely to maintain views. Notwithstanding the variation, the dwelling will predominantly maintain views and view sharing as existing and as previously approved.

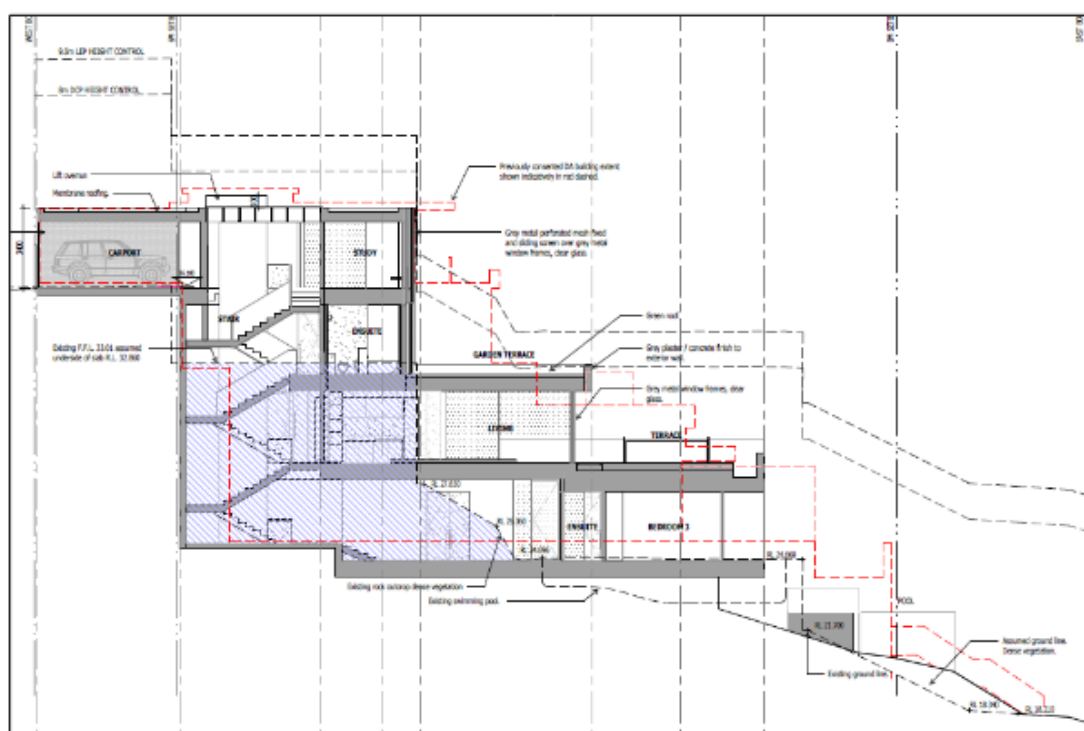
Accordingly, the proposed development is an appropriate scale and maintains the environmental amenity of neighbouring properties. The additional floor space is unlikely to affect the privacy, solar access or views obtained from neighbouring properties.

5.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

There are a number of environmental planning grounds that justify the FSR in this particular circumstance. In addition to consistency with the objectives of the zone and the development standard, environmental planning grounds include a portion of the additional GFA being located below the natural ground level, a portion of the GFA being attributed to the required stairs and lift throughout the dwelling, acceptable environmental impacts, consistency with surrounding development, the previous non-compliant approval on site, compliance with a majority of the built form provisions and examples of other non-compliant development applications that have been accepted by Council. These will now be addressed.

Location of Additional GFA

As discussed, the proposed variation is largely attributed to the areas below the natural ground level being included in the GFA calculation, which are not visible from the street (see **Figure 2**). If these below ground area calculations are excluded, the proposal would have a FSR of 0.55:1 which would comply with the development standard. The proposal skilfully utilises areas below the natural ground level at the rear of the first and second floor levels to provide internal access throughout the dwelling. However, it is noted that the FSR variation can also be attributed to the inclusion of the stairs and lift in the FSR calculation as required by Council.



Source: Fearon Hay

Figure 2: Long Section Identifying Areas Located Below Ground Level (hatched blue)

Environmental Impacts

The proposal complies with the LEP height limit and a majority of the built form and amenity provisions of the DCP. Also, given a part of the additional GFA is located below the natural ground level, the additional GFA is unlikely to result in adverse environmental impacts to the subject site or neighbouring development. As discussed, views and privacy for surrounding development will be maintained through a skilful design and the proposal is unlikely to result in significant additional solar access impacts when

compared to a fully compliant building envelope. Additionally, the proposal results in a reduction in shadowing to the north facing windows of No. 1 Waterside Avenue when compared to the previously approved DA.

Consistency with Surrounding Development

Due to the sloping topography of the area, the proposal will present as a contemporary single storey dwelling with a carport to the street frontage, which is consistent with the context of development on the eastern side of Mermaid Avenue. As a majority of additional floor space is located below the existing ground level, it will not contribute to the visible bulk of the building.

The proposal will result in a built form which is consistent with the surrounding and desired density of the area. In *Initial Action v Woollahra Municipal Council* [2019] NSWLEC 1097, Commissioner O'Neill states at [42] that:

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

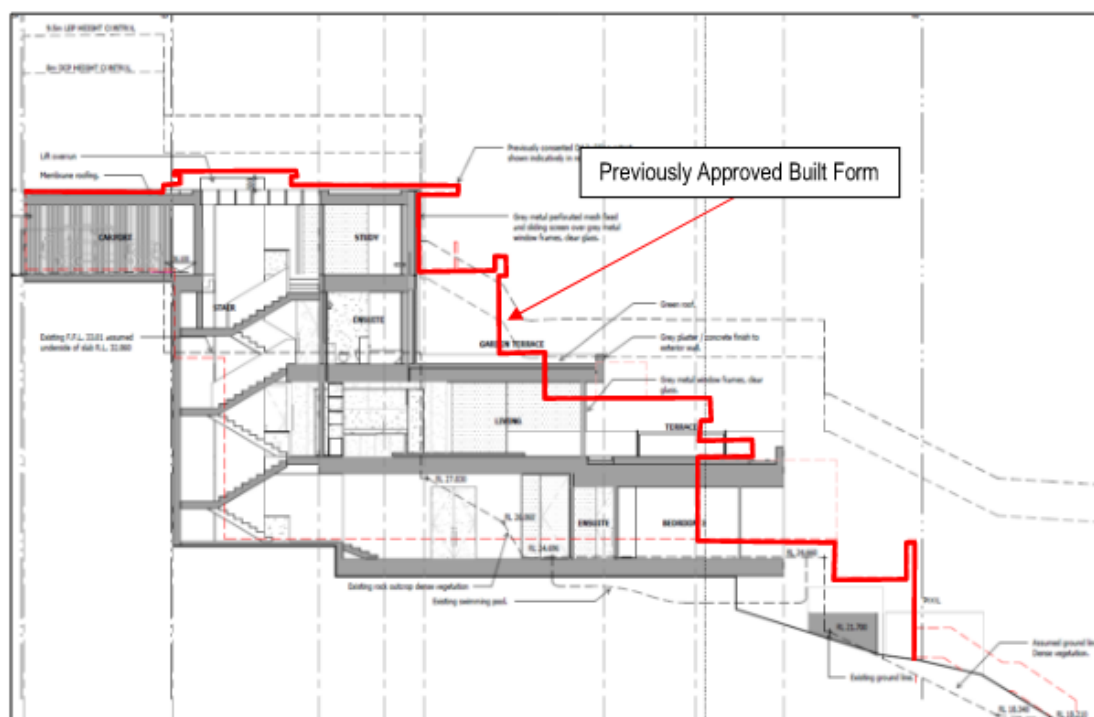
The proposed FSR is proportionally and contextually consistent with surrounding developments. The design of the dwelling will contribute to the emerging character of Mermaid Avenue and the Maroubra area.

Previous Approval on the Site

On 4 June 2015, a Development Application (DA 372/2015) was lodged with Randwick Council for demolition of the existing dwelling and construction of a new four storey dwelling house and swimming pool. The proposal was approved by Council on 22 March 2016 with a non-compliant building height and FSR of 0.71:1. The Council Officer's Report states inter alia:

- *The dwelling has been designed to step down the hillside and therefore a large portion of the gross floor area is cut into the site and situated below ground, as illustrated in figure 1. Calculations indicate that only 321m² of the overall 489m² of floor area will be visible above ground, which equates to an FSR of 0.46:1. The portion of the development that contributes to visible bulk and scale comfortably complies with the FSR standard of 0.6:1.*
- *The bulk and scale of the development is considered to be compatible with the existing and emerging scale of development in the locality. A series of dwellings in the immediate locality exceed prescribed FSR limitations, some by a margin that is greater than the subject development.*
- *The proposed development is considered to be well articulated in that it steps down the hillside to respond to the topography of the site. That part of the development that is visible is reasonably well articulated on each elevation through physical modulation, projecting and recessed elements, appropriately located openings / privacy screens and a combination of external cladding materials. Building articulation successfully reduces the apparent bulk of the development, despite the non-compliance with the FSR development standard.*
- *Despite not compliance with the FSR development standard, the proposed development will have no significant impact on the amenity of neighbouring or adjoining land...*

As portions of the proposed building are similar to the approval in that they are located below existing ground level, it is our opinion that the above comments would in part be applicable. In fact, when compared to the approval, the built form above existing ground level has less visual impact (see **Figure 3** on the following page).



Source: Fearon Hay Architects

Figure 3: Previously Approved Built Form vs Proposed Built Form

Compliance with Built Form Controls

The proposal has been carefully designed in consideration of the statutory and non-statutory controls for the site. The proposal satisfies the relevant objectives of the zone under the LEP and complies with the building height development standard. The proposal complies with a majority of the built form and amenity provisions of the DCP including site coverage; landscaping; front and rear setbacks; building design; roof design; colours, materials and finishes; solar access; aural and visual privacy; safety and security; and view sharing. Given compliance with the abovementioned provisions, the proposal provides a building envelope envisioned by Council that is compatible with surrounding development.

Examples of Other Non-Compliant Approvals in the LGA

It is noted that there have been numerous other applications in the Randwick LGA for new single dwelling houses with non-compliant FSR's that have been supported by Randwick Council. We note that each development application is assessed on its own merits and the context of the individual site. However, it is relevant to consider similar breaches to the development standard that were accepted by Council. These include the following:

- No. 23 Mermaid Avenue, Maroubra (DA 372/2015)
- No. 2 Pearce Street, South Coogee (DA 561/2015)
- No. 1169 Anzac Parade, Matraville (DA 392/2016)
- No. 34 Victoria Street, Malabar (DA 542/2016)
- No. 10 Paton Street, Kingsford (DA 361/2016)
- No. 15 Oorana Avenue, Phillip Bay (DA 239/2017)
- No. 28A Dudley Street, Randwick (DA 460/2017)
- No. 28 Wolseley Road, South Coogee (DA 337/2021)

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

6. Clause 4.6(4)(a) Requirements

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

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

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

In our opinion, the proposal is consistent with the objectives of the FSR Development Standard, as already demonstrated; and the R2 Low Density Residential Zone, as discussed below:

Objective:	<i>To provide for the housing needs of the community within a low density residential environment.</i>
Response:	The proposal will continue to provide for the housing needs of the community within a low density residential zone.
Objective:	<i>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.</i>
Response:	The proposal will replace the existing structure on site with a contemporary dwelling house that will have a compliant building height and will be compatible with the built form of existing and emerging development along Mermaid Avenue.
Objective:	<i>To protect the amenity of residents.</i>
Response:	The proposal has been designed to protect the amenity of surrounding development. This is further discussed in Section 5.0 of the SEE, separately submitted.

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

7. Clauses 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning, Industry and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a 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 Clause 4.6, subject to the conditions in

the table in the notice. While the proposal exceeds the development standard by over 10%, the Planning Circular provides for the Local Planning Panel to assume concurrence.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

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

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The FSR non-compliance will enhance the amenity and functionality of the proposed dwelling without significantly, unreasonably or unacceptably impacting neighbouring properties.

The public benefit of maintaining the development standard is not considered significant given that, regardless of the non-compliance, the proposal will appear compatible with other development when viewed from Mermaid Avenue. The additional GFA is partially located below the natural ground level and will not be visible from neighbouring dwellings or the public domain.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

8. Conclusion

This written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the compliance matrix prepared in light of *Initial Action* (see **Table 1** on the following page).

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the development objectives of the R2 Low Density Residential Zone pursuant to the LEP. On that basis, the request to vary Clause 4.4 should be upheld.

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Table 1: Compliance Matrix

Para (Initial Action)	Requirement	Section of this Report	Summary	Satisfied
10	Is it a development standard (s.1.4)	1	Yes	
11	What is the development standard	1	Clause 4.4: FSR	
12	What is the control	1 & 2	0.6:1	
14	First Precondition to Enlivening the Power – Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES
15, 25	1st Positive Opinion – That the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement.	5	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
16-22	First Aspect is Clause 4.6(3)(a) – That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in <i>Wehbe</i> .	5.1	The proposal satisfies Test 1 <i>Wehbe</i> : <ul style="list-style-type: none"> The objectives of the standard are achieved notwithstanding the non-compliance with the standard 	YES
23-24	Second Aspect is Clause 4.6(3)(b) – The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under Clause 4.6(4)(a)(i) that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: a) The environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. b) The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole.	5.2	Sufficient environmental planning grounds include, inter alia: <ul style="list-style-type: none"> The proposal satisfies the relevant objectives of the R2 Low Density Residential Zone by providing for the housing needs of the community in the form of a new dwelling house; The additional GFA is partially below existing ground level and does not contribute to the perceived bulk or scale of the dwelling; The additional GFA can also be attributed to the lift and stairs throughout the dwelling which provide vertical access throughout the dwelling; The proposed dwelling maintains neighbouring amenity in respect of privacy, solar access and views; Compliance with a majority of the built form and amenity controls of the DCP has been achieved; The proposed built form has a similar bulk and scale to the previously approved dwelling on the site which also had a non-compliant FSR in addition to a non-compliant building height; The proposal is consistent with the scale of development in the locality and the desired future character of the area; 	YES
			<ul style="list-style-type: none"> There are other examples of new dwellings within the LGA with non-compliant FSR's that have been accepted by Randwick Council; and Enforcing strict compliance would unreasonably restrict the amenity of the site without noticeably benefiting neighboring properties. 	
26-27	2nd Positive Opinion – That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.	6	The proposed development is consistent with the objectives of the FSR standard as addressed under Test 1 of <i>Wehbe</i> . The proposal is also consistent with the objectives of the R2 Low Density Residential Zone.	YES
28-29	Second Precondition to Enlivening the Power – That the concurrence of the Secretary has been obtained [Clause 4.6(4)(b)]. On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under Clause 4.6.	7	As the relevant matters for consideration under Clause 4.6 have been satisfied as outlined above, the Council can grant development consent.	YES

Appendix 3: DCP Compliance Table

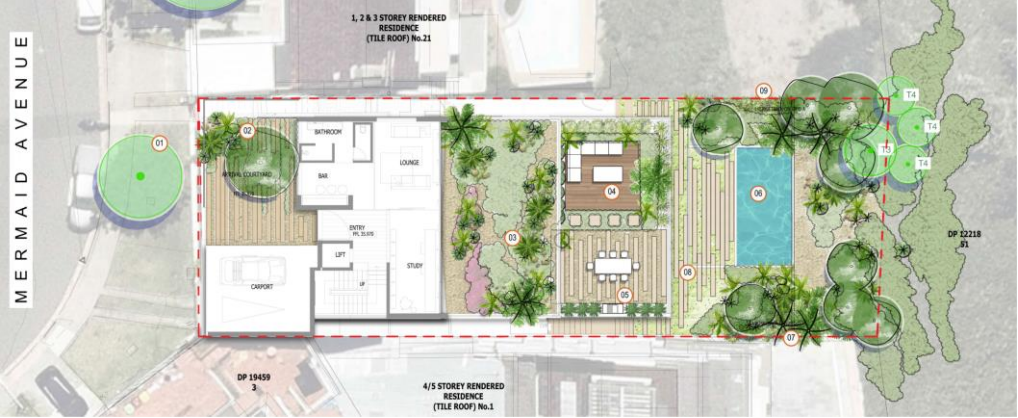
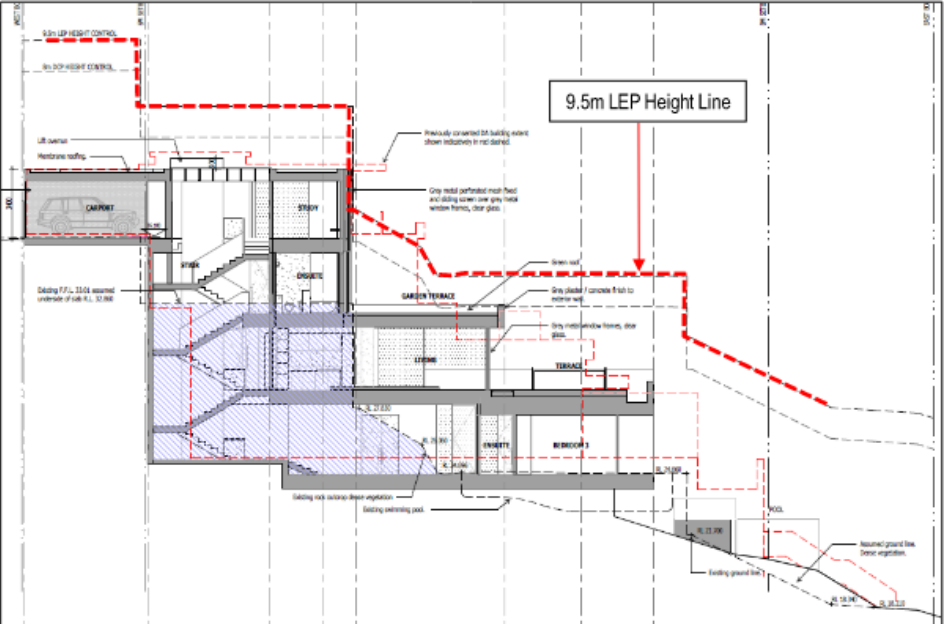
3.1 Section C1: Low Density Residential

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

The relevant provisions of the DCP are addressed in the table below. (Note: a number of control provisions that are not related to the proposal have been deliberately omitted.)

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	
2	Site planning		
2.3	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45%	Site area = 691.3m ² Proposed = 42% (or 291m ²)	Complies
2.4	Landscaping and permeable surfaces		
	i) Up to 300 sqm = 20% ii) 301 to 450 sqm = 25% iii) 451 to 600 sqm = 30% iv) 601 sqm or above = 35% v) Deep soil minimum width 900mm. vi) Maximise permeable surfaces to front vii) Retain existing or replace mature native trees viii) Minimum 1 canopy tree (8m mature). Smaller (4m mature) If site restrictions apply. ix) Locating paved areas, underground services away from root zones.	Site area = 691.3m ² Proposed = 35% (or 241m ²) The contiguous private open space is located at the rear of the second floor terrace area level due to topography constraints at the rear of the site. There is also adequate area within the rear yard for contiguous private open space; however, due to the topography of the land accessibility is constrained. This is considered to be acceptable given the topography of the site. A minimum of 1 canopy tree is provided to the rear of the property that is capable of reaching 8m at maturity.	Complies

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DCP Clause	Controls	Proposal	Compliance
	 <p>Figure 11: Deep soil calculation area</p>		
2.5	Private open space (POS)		
	Dwelling & Semi-Detached POS		
	Up to 300 sqm = 5m x 5m 301 to 450 sqm = 6m x 6m 451 to 600 sqm = 7m x 7m 601 sqm or above = 8m x 8m	Site area = 691.3m ² Proposed = A minimum of 8m x 8m of private open space is provided to the rear of the dwelling.	Yes
3	Building envelope		
3.1	Floor space ratio LEP 2012 = 0.6:1 (or 414.78m²)	Site area = 691.3m ² Proposed FSR = 0.8:1 (or GFA of 553m ²)	No. Refer to Clause 4.6 - Exceptions to development standards under Section 7 above.
3.2	Building height		
	Maximum overall height LEP 2012 = 9.5m	Proposed = 9.5m	Complies
	 <p>Figure 12: Existing and proposed height</p>		

DCP Clause	Controls	Proposal	Compliance
	i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) Merit assessment if exceeded	Proposed = The maximum wall height to the southern side is 9.5m and to the northern side is 8.81m from the existing natural ground line or underside of exiting slab.	Refer to Section 9 - Discussion of Key Issues above.
3.3	Setbacks		
3.3.1	Front setbacks i) Average setbacks of adjoining (if none then no less than 6m) Transition area then merit assessment. ii) Corner allotments: Secondary street frontage: - 900mm for allotments with primary frontage width of less than 7m - 1500mm for all other sites iii) do not locate swimming pools, above-ground rainwater tanks and outbuildings in front	The front setback of the dwelling is consistent with neighbouring built form at No. 21 Mermaid Avenue. The carport structure built up to the boundary is also consistent with No. 27 Mermaid Avenue.	Complies with the objectives of the control.
3.3.2	Side setbacks: Semi-Detached Dwellings: • Frontage less than 6m = merit • Frontage b/w 6m and 8m = 900mm for all levels Dwellings: • Frontage less than 9m = 900mm • Frontage b/w 9m and 12m = 900mm (Gnd & 1 st floor) 1500mm above • Frontage over 12m = 1200mm (Gnd & 1st floor), 1800mm above. Refer to 6.3 and 7.4 for parking facilities and outbuildings	All levels are setback 1.2m Carport built to southern side boundary with nil setback.	No. Refer to Section 9 - Discussion of Key Issues above.
3.3.3	Rear setbacks i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments. ii) Provide greater than aforementioned or demonstrate not required, having regard to: - Existing predominant	Minimum = 8m Proposed = The dwelling is setback greater than 8m from the rear boundary (13.5m).	Complies

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DCP Clause	Controls	Proposal	Compliance
	<p>rear setback line - reasonable view sharing (public and private)</p> <ul style="list-style-type: none"> - protect the privacy and solar access <p>iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions.</p> <p>iv) For irregularly shaped lots = merit assessment on basis of:</p> <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p>		
4	Building design		
4.1	General		
	<p>Respond specifically to the site characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> • articulated to enhance streetscape • stepping building on sloping site, • no side elevation greater than 12m • encourage innovative design 	<p>The proposed dwelling is well articulated with recessed building elements, different finishes and materials which create visual interest to the front and sides of the facades.</p> <p>The dwelling follows the contours of the land, respond to the site characteristics and is consistent with the surrounding natural built form with the area.</p>	Complies
4.4	Roof Design and Features		
	<p><i>Rooftop terraces</i></p> <p>i) on stepped buildings only (not on uppermost or main roof)</p> <p>ii) above garages on sloping sites (where garage is on low side)</p> <p><i>Dormers</i></p> <p>iii) Dormer windows don't dominate</p>	<p>The proposed flat roof is sympathetic to the design of the dwelling and foreshore scenic protection area.</p>	Complies

DCP Clause	Controls	Proposal	Compliance
	iv) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof. v) Multiple dormers consistent vi) Suitable for existing <i>Celestial windows and skylights</i> vii) Sympathetic to design of dwelling <i>Mechanical equipment</i> viii) Contained within roof form and not visible from street and surrounding properties.		
4.5	Colours, Materials and Finishes		
	i) Schedule of materials and finishes ii) Finishing is durable and non-reflective. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) recycle and re-use sandstone (See also section 8.3 foreshore area.)	An external finishes schedule has been submitted with the plans. The proposed colours and finishes are of light earthy and neutral tones will complement the character and style of existing and neighbouring buildings. The construction materials are documented on the plans and are of durable material.	Complies
4.6	Earthworks		
	i) excavation and backfilling limited to 1m, unless gradient too steep ii) minimum 900mm side and rear setback iii) Step retaining walls. iv) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm. v) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping)	The maximum excavation works on the site is approximately 8.9m from the existing ground level. This is acceptable given the significant gradient of the site and the works excavation works are setback a minimum distance of 900mm from the side and rear boundaries with the exception of the carport structure. The carport structure will have minimal excavation impacts as they are only for footings.	No. However, complies with the objectives of the control.

DCP Clause	Controls	Proposal	Compliance
	vi) cut and fill for POS is terraced <i>where site has significant slope:</i> vii) adopt a split-level design viii) Minimise height and extent of any exposed under-croft areas.	<p>A maximum of approx. 1.3m of back fill is proposed to the rear yard. This will have no impact on neighbouring properties as the rear yard is heavily vegetated and will not cause privacy impacts.</p> <p>Appropriate conditions are included to ensure that the excavation works are properly guarded and supported to prevent the danger of life, movement of soil and to support the adjacent land and buildings. Adequate conditions have also been included to ensure that adequate provisions are made for drainage.</p>	
	<p>Figure 13: Section indicating the amount of excavation works proposed from the natural ground line</p>		
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational	A portion of the north facing living room windows and POS will receive a minimum of 3 hours of direct sunlight.	Complies

DCP Clause	Controls	Proposal	Compliance
	activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.		
	Solar access to neighbouring development:		
	<p>i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June.</p> <p>iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.</p> <p>v) solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings.</p> <p>vi) Variations may be acceptable subject to a merits assessment with regard to:</p> <ul style="list-style-type: none"> Degree of meeting the FSR, height, setbacks and site coverage controls. Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. Topography of the subject and adjoining allotments. Location and level of the windows in question. Shadows cast by existing buildings on the neighbouring allotments. 	<p>A portion of the north facing living room windows of No.1 Waterside Avenue will receive a minimum of 3 hours of solar access.</p> <p>The POS of neighbouring properties will receive a minimum of 3 hours of solar access.</p>	Complies
5.2	Energy Efficiency and Natural Ventilation		
	i) Provide day light to	The submitted development	Complies

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DCP Clause	Controls	Proposal	Compliance
	<p>internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as:</p> <ul style="list-style-type: none"> • Skylights (ventilated) • Clerestory windows • Fanlights above doorways • Highlight windows in internal partition walls <p>ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries</p> <p>iii) living rooms contain windows and doors opening to outdoor areas</p> <p><i>Note:</i> The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable</p>	<p>has been accompanied with a BASIX Certificate identifying compliance with thermal and water energy.</p> <p>In addition, the location of windows and doors have been considered as acceptable, addressing the matter of natural light and ventilation.</p>	
5.3	Visual Privacy		
	Windows		
	<p>i) proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures:</p> <ul style="list-style-type: none"> - windows are offset or staggered - minimum 1600mm window sills - Install fixed and translucent glazing up to 1600mm minimum. - Install fixed privacy screens to windows. - Creating a recessed courtyard (minimum 3m x 2m). <p>ii) orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)</p>	Subject to conditions is considered to be acceptable.	Refer to Section 9 - Discussion of Key Issues above.
	Balcony		
	iii) Upper floor balconies to street or rear yard of the site	Subject to conditions is considered to be	Refer to Section 9 - Discussion of Key

DCP Clause	Controls	Proposal	Compliance
	(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.	acceptable.	Issues above.
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. 	The proposed layout considers acoustic privacy and is acceptable.	Complies
5.5	Safety and Security		
	i) dwellings main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 square metres) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not obstruct casual surveillance (maintain safe access)	The main entry door continues to face the front of the dwelling. The proposed dwelling includes sufficient habitable room windows that provide casual surveillance of Mermaid Avenue.	Complies
5.6	View Sharing		
	i) Reasonably maintain existing view corridors or vistas from the neighbouring dwellings, streets and public open space areas.	Acceptable.	Refer to Section 9 - Discussion of Key Issues above.

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DCP Clause	Controls	Proposal	Compliance
	<ul style="list-style-type: none"> 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) 		
6	Car Parking and Access		
6.1	Location of Parking Facilities:		
	<ul style="list-style-type: none"> i) Maximum 1 vehicular access ii) Locate off rear lanes, or secondary street frontages where available. iii) Locate behind front façade, within the dwelling or positioned to the side of the dwelling. <i>Note: See 6.2 for circumstances when parking facilities forward of the front façade alignment may be considered.</i> iv) Single width garage/carport if frontage <12m; Double width if: <ul style="list-style-type: none"> - 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) 	<p>A maximum of one vehicular access is provided off Mermaid Avenue.</p> <p>The carport structure is located forward the front building line.</p>	<p>Carport structure does not comply. Refer to Section 9 - Discussion of Key Issues above.</p>
6.2	Parking Facilities forward of front façade alignment (if other options not available)		
	<ul style="list-style-type: none"> i) The following may be considered: <ul style="list-style-type: none"> - An uncovered single car space - A single carport (max. 	<p>The carport structure is located forward of the front building line as there is no other viable option.</p>	<p>Complies with the objectives of the control. Refer to Section 9 - Discussion of Key</p>

DCP Clause	Controls	Proposal	Compliance
	<p>external width of not more than 3m and</p> <ul style="list-style-type: none"> - Landscaping incorporated in site frontage <p>ii) Regardless of the site's frontage width, the provision of garages (single or double width) within the front setback areas may only be considered where:</p> <ul style="list-style-type: none"> - There is no alternative, feasible location for accommodating car parking; - Significant slope down to street level - does not adversely affect the visual amenity of the street and the surrounding areas; - does not pose risk to pedestrian safety and - does not require removal of significant contributory landscape elements (such as rock outcrop or sandstone retaining walls) 	Parking behind the existing dwelling is not possible due to the topography of the site.	Issues above.
6.3	Setbacks of Parking Facilities		
	<p>i) Garages and carports comply with Sub-Section 3.3 Setbacks.</p> <p>ii) 1m rear lane setback</p> <p>iii) Nil side setback where:</p> <ul style="list-style-type: none"> - nil side setback on adjoining property; - streetscape compatibility; - safe for drivers and pedestrians; and - Amalgamated driveway crossing 	<p>The carport structure is sited on the front boundary and south eastern boundary with a nil setback.</p> <p>No objections were raised by Council Development Engineers.</p>	Refer to Section 9 - Discussion of Key Issues above.
6.4	Driveway Configuration		
	<p>Maximum driveway width:</p> <ul style="list-style-type: none"> - Single driveway – 3m - Double driveway – 5m <p>Must taper driveway width at street boundary and at property boundary</p>	Double driveway = 5m	Complies

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DCP Clause	Controls	Proposal	Compliance
6.6	Carport Configuration		
	<ul style="list-style-type: none"> i) Simple post-support design (max. semi-enclosure using timber or metal slats minimum 30% open). ii) Roof: Flat, lean-to, gable or hipped with pitch that relates to dwelling iii) 3m maximum width. iv) 5.4m minimum length v) 2.6m maximum height with flat roof or 3.0m max. height for pitched roof. vi) No solid panel or roller shutter door. vii) front gate allowed (minimum 30% open) viii) Gate does not open to public land 	<p>The carport structure is 6m in width x 6m in length.</p> <p>Grey metal perforated mesh with min. 30% open spaces is proposed to the side and front of the carport structure.</p>	Meets the objectives of the control. Refer to Section 9 - Discussion of Key Issues above.
7	Fencing and Ancillary Development		
7.1	General – Fencing		
	<ul style="list-style-type: none"> i) Use durable materials ii) sandstone not rendered or painted iii) don't use steel post and chain wire, barbed wire or dangerous materials iv) Avoid expansive surfaces of blank rendered masonry to street 	Masonry fence is proposed to the front boundary which replaces the existing solid fence. The fence will be constructed of grey plaster with concrete finish which is considered to be of durable material.	Complies.
7.2	Front Fencing		
	<ul style="list-style-type: none"> i) 1200mm max. (Solid portion not exceeding 600mm), except for piers. <ul style="list-style-type: none"> - 1800mm max. provided upper two-thirds partially open (30% min), except for piers. ii) light weight materials used for open design and evenly distributed iii) 1800mm max solid front fence permitted in the following scenarios: <ul style="list-style-type: none"> - Site faces arterial road - Secondary street frontage (corner allotments) and fence is behind the alignment of the primary street façade (tapered down to fence height at front alignment). 	A 1.7m high solid fence is proposed to the front boundary. The height of the fence is considered to be acceptable in that it is replacing an existing solid fence and the entry gate and carport roller door to the front of the dwelling will be of open design (30% open).	Complies with the objectives of the control.

DCP Clause	Controls	Proposal	Compliance
	<p><i>Note: Any solid fences must avoid continuous blank walls (using a combination of materials, finishes and details, and/or incorporate landscaping (such as cascading plants))</i></p> <p>iv) 150mm allowance (above max fence height) for stepped sites</p> <p>v) Natural stone, face bricks and timber are preferred. Cast or wrought iron pickets may be used if compatible</p> <p>vi) Avoid roofed entry portal, unless complementary to established fencing pattern in heritage streetscapes.</p> <p>vii) Gates must not open over public land.</p> <p>viii) The fence must align with the front property boundary or the predominant fence setback line along the street.</p> <p>ix) Splay fence adjacent to the driveway to improve driver and pedestrian sightlines.</p>		
7.3	Side and rear fencing		
	<p>i) 1800mm maximum height (from existing ground level). Sloping sites step fence down (max. 2.2m).</p> <p>ii) Fence may exceed max. if level difference between sites</p> <p>iii) Taper down to front fence height once past the front façade alignment.</p> <p>iv) Both sides treated and finished.</p>	No side boundary fencing is proposed.	N/A
7.5	Swimming pools and Spas		
	<p>i) Locate behind the front building line</p> <p>ii) Minimise damage to existing tree root systems on subject and adjoining sites.</p> <p>iii) Locate to minimise noise impacts on the adjoining dwellings.</p> <p>iv) Pool and coping level related to site topography (max 1m over lower side of site).</p> <p>v) Setback coping a minimum</p>	<p>The proposed swimming pool is located to the rear of the dwelling and is setback greater than 900mm from the side and rear boundaries.</p> <p>Despite the swimming pool being elevated from the ground level it is much lower than the existing swimming pool and will not result in any unreasonable</p>	Complies

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DCP Clause	Controls	Proposal	Compliance
	<p>of 900mm from the rear and side boundaries.</p> <p>vi) Incorporate screen planting (min. 3m mature height unless view corridors affected) between setbacks.</p> <p>vii) Position decking to minimise privacy impacts.</p> <p>viii) Pool pump and filter contained in acoustic enclosure and away from the neighbouring dwellings.</p>	<p>privacy impacts.</p> <p>Screen planting is proposed around the perimeter of the swimming pool.</p> <p>Conditions are included to ensure that the pool pump and filter equipment are acoustic enclosed and away from neighbouring dwellings.</p>	
7.6	Air conditioning equipment		
	<p>i) Minimise visibility from street.</p> <p>ii) Avoid locating on the street or laneway elevation of buildings.</p> <p>iii) Screen roof mounted A/C from view by parapet walls, or within the roof form.</p> <p>iv) Locate to minimise noise impacts on bedroom areas of adjoining dwellings.</p>	The air condition unit will be located within the storage/plant room.	Complies
7.8	Clothes Drying Facilities		
	<p>i) Located behind the front alignment and not be prominently visible from the street</p>	There is sufficient area to the rear of the dwelling for clothes drying facilities.	Complies

Section B10: Foreshore Scenic Protection Area

DCP Clause	Controls	Proposal	Compliance
	<p>i) Consider visual presentation to the surrounding public domain, including streets, lanes, parks, reserves, foreshore walkways and coastal areas. All elevations visible from the public domain must be articulated.</p> <p>ii) Integrated outbuildings and ancillary structures with the dwelling design (coherent architecture).</p> <p>iii) Colour scheme complement natural elements in the coastal areas (light toned neutral hues).</p> <p>iv) Must not use high reflective glass</p> <p>v) Use durable materials suited</p>	<p>The scheme presents satisfactory design merit in relation to the foreshore, in-so-far as it's visual presentation and use of colours and materials will integrate effectively with existing and surrounding development within the foreshore area.</p> <p>The proposed building bulk, height and scale responds satisfactorily to surrounding topography and streetscape with sufficient deep soil planting around the perimeters of the building structures.</p>	Complies

	<p>to coast</p> <p>vi) Use appropriate plant species</p> <p>vii) Provide deep soil areas around buildings</p> <p>viii) Screen coping, swimming and spa pools from view from the public domain.</p> <p>ix) Integrate rock outcrops, shelves and large boulders into the landscape design</p> <p>x) Any retaining walls within the foreshore area (that is, encroaching upon the Foreshore Building Line) must be constructed or clad with sandstone.</p>		
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Responsible officer: Chahrazad Rahe, Senior Assessment Planner

File Reference: DA/362/2022

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Development Consent Conditions

Folder / DA No:	DA/362/2022
Property:	23 Mermaid Avenue, MAROUBRA NSW 2035
Proposal:	Demolition of existing dwelling and construction of a new dwelling house, swimming pool and associated works.
Recommendation:	Approval

GENERAL CONDITIONS

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

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

Approved Plans & Supporting Documentation

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

Plan	Drawn by	Dated	Received by Council
Sheet (0)11 (Revision E)	Fearon Hay	11/07/2022	19 July 2022
Sheet (0)12 (Revision E)	Fearon Hay	11/07/2022	19 July 2022
Sheet (1)01 (Revision E)	Fearon Hay	11/07/2022	19 July 2022
Sheet (1)02 (Revision F)	Fearon Hay	13/07/2022	19 July 2022
Sheet (1)03 (Revision E)	Fearon Hay	11/07/2022	19 July 2022
Sheet (1)04 (Revision E)	Fearon Hay	11/07/2022	19 July 2022
Sheet (1)05 (Revision E)	Fearon Hay	11/07/2022	19 July 2022
Sheet (2)01 (Revision E)	Fearon Hay	11/07/2022	19 July 2022
Sheet (2)02 (Revision E)	Fearon Hay	02/06/2022	19 July 2022
Sheet (2)03 (Revision F)	Fearon Hay	11/07/2022	19 July 2022
Sheet (2)04	Fearon Hay	02/06/2022	19 July 2022

(Revision E)			
Sheet (2)11 (Revision F)	Fearon Hay	02/06/2022	19 July 2022
Sheet (2)12 (Revision C)	Fearon Hay	04/05/2022	19 July 2022
Sheet (2)13 (Revision C)	Fearon Hay	11/07/2022	19 July 2022
LA01	Taylor Brammer Landscape Architect	27/05/2022	19 July 2022
LA02	Taylor Brammer Landscape Architect	27/05/2022	19 July 2022
LA03	Taylor Brammer Landscape Architect	27/05/2022	19 July 2022
LA04	Taylor Brammer Landscape Architect	27/05/2022	19 July 2022
LA05	Taylor Brammer Landscape Architect	04/05/2022	19 July 2022
LA06	Taylor Brammer Landscape Architect	27/05/2022	19 July 2022
Sheet (0)71 (Titled: Material Pallete)	Fearon Hay	11/07/2022	19 July 2022

BASIX Certificate No.	Dated	Received by Council
1285856S_02	8 July 2022	19 July 2022

Amendment of Plans & Documentation

2. The approved plans and documents must be amended in accordance with the following requirements:

- a. A privacy screen having a height of 1.6m (measured above finished floor level) shall be provided to the remaining portion of the dining room window on the second-floor plan to the northern side and the Bedroom 3 window opening and terrace area to the southern side on first floor level.

Privacy screens must be constructed with either:

- Translucent or obscured glazing (The use of film applied to the clear glass pane is unacceptable);
 - Fixed lattice/slats or perforated mesh with individual openings not more than 30mm wide;
 - Fixed vertical or horizontal louvres with the individual blades angled and spaced appropriately to prevent overlooking into the private open space or windows of the adjacent dwellings.
- b. The proposed perforated mesh window and balcony screens shall be designed with individual openings of not more than 30mm.
- c. The depth of the proposed second floor roof terrace, balustrade and landscape treatment (i.e. planter box) shall be reduced to directly align with the eastern edge of the first floor bedroom sliding doors. Light weight roof awning up to 900mm in depth may be provided above the sliding doors of Bedrooms 1 to 3 on first floor level.

The abovementioned amendments must be endorsed by Council's Manager of Development Assessment prior to the release of any construction certificate.

Pool Plant

3. Pool plant and equipment is to be enclosed in a sound absorbing enclosure or installed within a building, to minimise noise emissions and possible nuisance to nearby residents.

The operation of swimming pool/spa pool pump and equipment is restricted, if the noise emitted can be heard within a habitable room in any other residential premises, the equipment shall not be operated during the following hours, or, as otherwise specified in relevant Noise Control Regulations:

- before 8.00am or after 8.00pm on any Sunday or public holiday; or
- before 7.00am or after 8.00pm on any other day.

REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

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

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

Consent Requirements

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

External Colours, Materials & Finishes

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

Section 7.12 Development Contributions

6. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$2,716,371.00 the following applicable monetary levy must be paid to Council: \$27,163.70.

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

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

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

Where:

IDC = the indexed development cost

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- ODC** = the original development cost determined by the Council
CP2 = the Consumer Price Index, All Groups, Sydney, as published by the ABS in respect of the quarter ending immediately prior to the date of payment
CP1 = the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.

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

Long Service Levy Payments

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

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

Security Deposit

8. The following damage / civil works security deposit requirement must be complied with as security for making good any damage caused to the roadway, footway, verge or any public place; and as security for completing any public work; and for remedying any defect on such public works, in accordance with section 80A(6) of the *Environmental Planning and Assessment Act 1979*:

- \$3000.00 - Damage / Civil Works Security Deposit

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

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

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

Design Alignment Levels

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

- **Pedestrian Gate Entrance & Garage Entrance – RL36.05m AHD**

Refer to Survey Plan by Hill & Blume Surveyors for Reference Mark/ Benchmark

The design alignment levels at the property boundary as issued by Council must be indicated on the building plans for the construction certificate. The design

alignment level at the street boundary, as issued by the Council, must be strictly adhered to.

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

10. The above alignment levels and the site inspection by Council's Development Engineering Section have been issued at a prescribed fee of **\$902.00** calculated at \$58.00 per metre of site frontage. This amount is to be paid prior to a construction certificate being issued for the development.

Sydney Water

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

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

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

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

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

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

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

Stormwater Drainage

12. Stormwater drainage is to be in general accordance with the submitted Drainage Plans by Partridge Hydraulic Services Job No: 2021H0111, Drwg No's SWDA1.1-1.6, Dated May 2022. All works are to be carried to the satisfaction of the Principal Certifier.

Public Utilities

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

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

Street Tree Protection Measures

7. To ensure retention of the *Cupaniopsis anacardioides* (Tuckeroo, T1) that is located on Council's Mermaid Avenue verge, centrally across the width of this site, as well as the group of four *Banksia integrifolia* (Coastal Banksia's) at the rear of the property, comprising T3 in the northeast site corner of this site, then a group of three (T4) that are just beyond the rear boundary, on the adjoining coastal reserve in good health, the following measures are to be undertaken:
- All documentation submitted for the Construction Certificate application must show their retention, with the position and diameter of their trunks, canopies, SRZ's, TPZ's and Tree Identification Numbers as taken from the Arboricultural Impact Assessment by Bluegum Tree Care & Consultancy dated May 2022 (*'the Arborist Report'*) to be clearly and accurately shown in relation to the site and any new works.
 - All Construction Certificate plans must show that the new vehicle crossing and garage will be maintained along the southern site boundary as indicated on the Fourth Floor Reference Plan, sheet (1)04, rev E dated 11/07/22, with measurements in millimetres to be included showing that a minimum distance of 4 metres will be maintained between the northern edge of the crossing and the street tree.
 - Similarly, all Construction Certificate plans must also show that the footprint of the pool and associated works in the rear setback will be consistent with the First Floor Reference Plan by Fearon Hay, sheet (1)01, rev E dated 11/07/22.
 - Any excavations associated with the installation of new services, pipes, stormwater systems or similar over public property can only be located along either of the sites side boundaries; or, against either side of the new vehicle crossing, with the Principal Certifier to ensure that all Services Plans are both prepared and then installed on-site to comply with these requirements.
 - Prior to proceeding with any works associated with the installation of new stormwater systems in the rear setback, or, their discharge to the property boundary, the applicant must firstly obtain the specific written approval from Council's Bushland Supervisor (9093-6683) for these components, and has been imposed for the purpose of preventing erosion, scouring, sedimentation and similar to the foreshore reserve.
 - These trees are to be physically protected by the installation of 1.8 metre high steel mesh/chainwire fencing panels to the extent shown at **Appendix C** of the Arborist Report, so as to completely exclude/enclose them for the duration of works.
 - This fencing shall be installed prior to the commencement of demolition and construction works and shall remain in place until all works are completed, to which, signage containing the following words shall be clearly displayed and permanently attached: "TREE PROTECTION ZONE (TPZ), DO NOT REMOVE/ENTER".
 - To prevent soil/sediment being washed over the root systems of those at the rear, erosion control measures must be provided at ground level around the perimeter of their TPZ's.

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- i. The applicant is not authorised to perform any other works to any public trees and must contact Council's Landscape Development Officer on 9093-6613 should clearance pruning or similar be necessary. If approval is given, it can only be performed by Council, wholly at the applicants cost, GIVING UP TO SIX WEEKS NOTICE, with payment to be received prior to pruning or any Occupation Certificate.
 - j. Within the TPZ's there is to be no storage of materials, machinery or site office/sheds, nor is cement to be mixed or chemicals spilt/disposed of and no stockpiling of soil or rubble, with all Site Management Plans to comply with these requirements.
 - k. The Principal Certifier must ensure compliance with these requirements, both on the plans as well as on-site during the course of works and prior to any Occupation Certificate.
 - l. A refundable deposit in the form of cash, credit card or cheque for an amount of **\$2,500.00** must be paid at the Cashier on the Ground Floor of the Administrative Centre, **prior to a Construction Certificate being issued for the development** to ensure compliance with the conditions listed in this consent, and ultimately, preservation of the tree.

The refundable deposit will be eligible for refund following an Occupation Certificate, subject to completion and submission of Council's 'Security Deposit Refund Application Form' and pending a satisfactory inspection by Council's Landscape Development Officer (9093-6613).

Any contravention of Council's conditions relating to the tree at any time during the course of the works or prior to an Occupation Certificate may result in Council claiming all or part of the lodged security in order to perform any rectification works necessary, as per the requirements of 80A (6) of the Environmental Planning and Assessment Act 1979.

REQUIREMENTS TO BE INCLUDED IN THE CONSTRUCTION CERTIFICATE

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

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

Building Code of Australia & Relevant Standards

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

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

BASIX Requirements

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

Assessment Regulation 2021, the requirements and commitments contained in the relevant BASIX Certificate must be complied with.

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

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

Site stability, Excavation and Construction work

16. A report must be obtained from a suitably qualified and experienced professional engineer/s, which includes the following details, to the satisfaction of the appointed Certifier for the development:
- a) Geotechnical details which confirm the suitability and stability of the site for the development and relevant design and construction requirements to be implemented to ensure the stability and adequacy of the development and adjoining properties.
 - b) Details of the proposed methods of excavation and support for the adjoining land (including any public place) and buildings.
 - c) Details to demonstrate that the proposed methods of excavation, support and construction are suitable for the site and should not result in any damage to the adjoining premises, buildings or any public place, as a result of the works and any associated vibration.
 - d) Recommendations and requirements in the geotechnical engineers report shall be implemented accordingly and be monitored during the course of the subject site work.
 - e) Written approval must be obtained from the owners of the adjoining land to install any ground or rock anchors underneath the adjoining premises (including any public roadway or public place) and details must be provided to the appointed Certifier for the development prior to issue of a relevant construction certificate.
17. Swimming Pools and Spa Pools are to be designed and installed in accordance with the requirements of the Building Code of Australia and be provided with a child-resistant barrier in accordance with the *Swimming Pools Act 1992*; the *Swimming Pools Regulation 2018* and Australian Standard AS 1926.1 (2012) (Swimming Pool Safety Part 1 - Safety Barriers for Swimming Pools).

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

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

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

included in the Construction Certificate, to the satisfaction of the appointed Certifier for the development.

18. Swimming pools are to be designed, installed and operated in accordance with the following general requirements:
- Backwash of the pool filter and other discharge of water is to be drained to the sewer in accordance with the requirements of the Sydney Water Corporation.
 - Pool plant and equipment must be enclosed in a sound absorbing enclosure or installed with a building to minimise noise emissions or result in a noise nuisance.
 - Water recirculation and filtrations systems are required to comply with AS 1926.3 (2010) Swimming Pool Safety – Water Recirculation and Filtration Systems.
 - Paving and ground surfaces adjacent to swimming pools are to be graded and so as to ensure that any pool overflow water is drained away from buildings and adjoining premises, so as not to result in a nuisance or damage to premises.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF WORKS

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

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

Building Certification and Associated Requirements

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

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

- e) at least two days notice must be given to the *Principal Certifier* and Council, in writing, prior to commencing any works.

Dilapidation Reports

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

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

Construction Site Management Plan

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

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

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

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

Sediment Control Plan

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

Demolition Work Plan

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

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

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

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

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

Construction Noise & Vibration Management Plan

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

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

- a) The *Construction Noise & Vibration Management Plan* must be prepared by a suitably qualified acoustic consultant, in accordance with the Environment Protection Authority *Guidelines for Construction Noise* and *Assessing Vibration: A Technical Guideline* (or other relevant and recognised Vibration guidelines or standards) and the conditions of development consent, to the satisfaction of the Certifier.
- b) Noise and vibration from any rock excavation machinery, pile drivers and all plant and equipment must be minimised, by using appropriate plant and equipment, silencers and the implementation of noise management and mitigation strategies.
- c) Noise and vibration levels must be monitored during the works and a further report must be obtained from the acoustic/vibration consultant as soon as

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practicable after the commencement of the works, which reviews and confirms the implementation and suitability of the noise and vibration strategies in the *Construction Noise & Vibration Management Plan* and which demonstrates compliance with relevant criteria.

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

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

- e) Noise and vibration levels must be monitored during the site work and be reviewed by the acoustic/vibration consultant periodically, to ensure that the relevant strategies and requirements are being satisfied and details are to be provided to the Principal Certifier and Council accordingly.

Public Liability

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

Demolition & Construction Waste

26. A *Demolition and Construction Waste Management Plan* (WMP) must be developed and implemented for the development.

The Waste Management Plan must provide details of the type and quantities of demolition and construction waste materials, proposed re-use and recycling of materials, methods of disposal and details of recycling outlets and land fill sites.

Where practicable waste materials must be re-used or recycled, rather than disposed and further details of Council's requirements including relevant guidelines and pro-forma WMP forms can be obtained from Council's Customer Service Centre or by telephoning Council on 1300 722 542.

Details and receipts verifying the recycling and disposal of materials must be kept on site at all times and presented to Council officers upon request.

Amended Landscape Plans

27. The Landscape Plans by Taylor Brammer, dwg's LA00-LD01, rev A, B & C, stamped received by Council on 19/07/22 must be amended to comply with the following requirements:
- a. So as to maintain existing water views for residents on the opposite, western side of the street, all planting within the front courtyard must be restricted to those species which will not exceed a height of more than 4 metres at maturity, with the 'B.i', *Banksia integrifolia* (Coastal Banksia) that is currently shown for this area on the Fourth Floor Plan (LA05) to be replaced with an alternative/compliant species;
- b. The same as described above also applies to species selection for the planting proposed at both the 'Sun View Lounge' area on the Second Floor

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Level (LA03) and the 'Succulent Garden' on the Third Floor Plan (LA04), with the 2 x 'Pa.te', *Pandanus tectorius* (Screw Pine) to be replaced with alternatives that will not exceed the finished floor height of the floor level directly above each of these two respective areas, with a comparison of RL's to be provided to demonstrate compliance;

- c. To assist with integration of this development into the natural settings of the adjoining Lurline Bay, species selection for the area between the pool and rear site boundary must comprise only those native coastal species which can withstand persistent, front-line winds, resulting in a composition that reflects the naturally occurring vegetation in the adjoining coastal reserve;
- d. For the reasons specified in point 'c' above, the 'Bi-no' *Bismarckia nobilis* (Bismark Palm) and Screw Pines that are currently shown here are to be deleted from the Planting Plan and Schedule and be replaced with alternative/compliant species, to the satisfaction of Council's Bushland Supervisor (9093-6683);
- e. Details must be provided of the treatment to be applied to the face of the exposed, eastern pool wall, demonstrating how a material that will assist with blending this structure into the natural settings of the area will be used;
- f. Construction details of all podium planting, showing how sufficient soil depth (minimum of 400mm for succulents and 1000mm for larger shrubs/trees) and soil volume will be provided to sustain the nominated species for the life of the development.

The applicant/Landscape Architect shall liaise with Council's Landscape Development Officer (9093-6613) and/or Bushland Supervisor (9093-6683) to discuss how compliance with the requirements specified above can be achieved on a revised scheme.

Silt Fencing

- 28. Silt fencing shall be maintained across the rear boundary for the duration of works to ensure that no foreign matter, including, but not limited to litter, cement wash, concrete, fill, soils, mulch, building materials, chemicals, petroleum-based products, paint and similar shall be disposed of or placed in an area where they may enter the adjoining Gordons Bay Reserve, with all Site, Sediment & Erosion Control Plans and similar to demonstrate what measures will be implemented so that compliance is achieved.

REQUIREMENTS DURING CONSTRUCTION & SITE WORK

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

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

Site Signage

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

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

Building & Demolition Work Requirements

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

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as detailed below)	<ul style="list-style-type: none"> • Monday to Friday - 7.00am to 5.00pm • Saturday - 8.00am to 5.00pm • Sunday & public holidays - No work permitted
Excavations within rock, sawing of rock, use of jack-hammers, driven-type piling or the like	<ul style="list-style-type: none"> • Monday to Friday - 8.00am to 3.00pm (maximum) • As may be further limited in Noise & Vibration Management Plan • Saturday - No work permitted • Sunday & public holidays - No work permitted
Internal work only within a commercial or industrial development, located in a commercial or industrial zone, which is not audible within any residential dwelling or commercial or industrial premises	<ul style="list-style-type: none"> • Monday to Saturday - No time limits (subject to work not being audible in any residential dwelling or commercial/industrial tenancy or building) • Sunday & public holidays - No work permitted
Additional requirements for all development (except for single residential dwellings)	<ul style="list-style-type: none"> • Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted

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

Noise & Vibration

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

Temporary Site Fencing

32. Temporary site safety fencing or site hoarding must be provided to the perimeter of the site prior to commencement of works and throughout demolition,

excavation and construction works, in accordance with the SafeWork guidelines and the following requirements:

- a) Temporary site fences or hoardings must have a height of 1.8 metres and be a cyclone wire fence (with geotextile fabric attached to the inside of the fence to provide dust control), heavy-duty plywood sheeting (painted white), or other material approved by Council in writing.
- b) Hoardings and site fencing must be designed to prevent any substance from, or in connection with, the work from falling into the public place or adjoining premises and if necessary, be provided with artificial lighting.
- c) All site fencing, hoardings and barriers must be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.
- d) Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land.
- e) Site access gates must open inwards and not onto Council land.

Notes:

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

Site Management

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

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

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

Site Access

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

Removal of Asbestos Materials

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

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

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

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

Dust Control

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

Dust control measures and practices may include:

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

Excavations & Support of Adjoining Land

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

Survey Requirements

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

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

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

Building Encroachments

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

Road/Asset Opening Permit

40. Any openings within or upon the road, footpath, nature strip or in any public place (i.e. for proposed drainage works or installation of services), must be carried out in accordance with the following requirements, to the satisfaction of Council:

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

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- The owner/builder must ensure that all works within or upon the road reserve, footpath, nature strip or other public place are completed to the satisfaction of Council, prior to the issuing of a *final occupation certificate* for the development.
- Relevant *Road / Asset Opening Permit* fees, repair fees, inspection fees and security deposits, must be paid to Council prior to commencing any works within or upon the road, footpath, nature strip or other public place.

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

Vegetation

41. Approval is granted for removal of the clump of *Strelitzia nicholii* (Giant Bird of Paradise, T2) located centrally in the rear setback of this development site both as it is a low value exotic species, that is also in direct conflict with the major civil works that are shown for this same area, and also applies to any of the other dense, overgrown weeds around the rock outcrops and lower parts of the site towards the rear boundary, subject to full implementation of the approved Landscape Plans.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

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

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

Post-construction Dilapidation Reports

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

The dilapidation report shall detail whether:

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

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

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Occupation Certificate

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

Structural Certification

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

BASIX Requirements & Certification

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

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

Street and/or Sub-Address Numbering

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

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

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

Noise Control Requirements & Certification

47. The use and operation of the development (including all plant and equipment) shall not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and *Regulations*.
48. Swimming Pools [and Spa Pools] are to be provided with a child-resistant barrier (i.e. fence, in accordance with the Swimming Pools Act 1992; the Swimming Pools Regulation 2018 and Australian Standard AS 1926.1 (2012) (Swimming Pool Safety Part 1 - Safety Barriers for Swimming Pools).
49. A 'warning notice' must be installed in a prominent position in the immediate vicinity of a Swimming Pool [or Spa Pool], in accordance with the provisions of the Swimming Pools Regulation 2018, detailing pool safety requirements, resuscitation techniques and the importance of the supervision of children at all times.
50. The owner of the premises must 'register' their Swimming Pool [or Spa Pool] on the NSW Swimming Pool Register, in accordance with the Swimming Pools Act

1992. The Swimming Pool Register is administered by the NSW Government and registration on the Swimming Pool Register may be made on-line via their website www.swimmingpoolregister.nsw.gov.au.

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

Council's Infrastructure, Vehicular Crossings & Road Openings

51. The owner/developer must meet the full cost for a Council approved contractor to:
 - a) Construct a new concrete vehicular crossing and layback at kerb opposite the vehicular entrance to the site, to Council's specifications and requirements.
 - b) Remove the redundant pedestrian pathway at the northern end of the site and replace with turf.
52. The applicant must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.
53. All external civil work to be carried out on Council property (including the installation and repair of roads, footpaths, vehicular crossings, kerb and guttering and drainage works), must be carried out in accordance with Council's "Crossings and Entrances – Contributions Policy" and "Residents' Requests for Special Verge Crossings Policy" and the following requirements:
 - a) Details of the proposed civil works to be carried out on Council land must be submitted to Council in a Civil Works Application Form. Council will respond, typically within 4 weeks, with a letter of approval outlining conditions for working on Council land, associated fees and workmanship bonds. Council will also provide details of the approved works including specifications and construction details.
 - b) Works on Council land must not commence until the written letter of approval has been obtained from Council and heavy construction works within the property are complete. The work must be carried out in accordance with the conditions of development consent, Council's conditions for working on Council land, design details and payment of the fees and bonds outlined in the letter of approval.
 - c) The civil works must be completed in accordance with the above, prior to the issuing of an occupation certificate for the development, or as otherwise approved by Council in writing.

Stormwater Drainage

54. The applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced Hydraulic Engineer confirming that the design and construction of the stormwater drainage system complies with Australian Standard 3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and the conditions of this development consent.

The certification must be provided following inspection/s of the site stormwater drainage system by the certifying engineers and shall be provided to the satisfaction of the Principal Certifier.

Landscape Certification

55. Prior to any Occupation Certificate, certification from a qualified professional in the Landscape industry must be submitted to, and be approved by, the Principal Certifier, confirming the date that the completed landscaping was inspected, and that it has been installed substantially in accordance with the AMENDED Landscape Plans by Taylor Brammer, dwg's LA00-LD01, rev A, B & C, stamped received by Council 19/07/22 and any relevant conditions of consent.
56. Suitable strategies shall be implemented to ensure that the landscaping is maintained in a healthy and vigorous state until maturity, for the life of the development.
57. The nature-strip upon Council's footway shall be re-graded and re-turfed with Kikuyu Turf rolls, including turf underlay, wholly at the applicant's cost, to Council's satisfaction, prior to any Occupation Certificate.

Foreshore Certification

58. Prior to any Occupation Certificate, the applicant must firstly contact Council's Landscape Development Officer (9093-6613) to conduct a site inspection to confirm that all requirements relating to protection of the foreshore reserve have been complied with as part of the works, including but not restricted to items such as species and material selection, stormwater treatment/disposal and similar, with written approval of satisfaction to be obtained.

OPERATIONAL CONDITIONS

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

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

Use of Parking spaces

59. The car spaces within the development are for the exclusive use of the occupants and visitors of the building. The car spaces must not be leased to any person/company that is not an occupant of the building.

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Development Application Report No. D11/24

Subject: 10 Moore Street, Coogee (DA/200/2023)


Executive Summary

Proposal:	Alterations and additions to an existing dual occupancy, including an extension of the lower ground floor level, an internal reconfiguration of the ground and first floor levels and the provision of an attic level with an amended rear roof structure. The proposal also includes landscaping works and a new swimming pool.
Ward:	North Ward
Applicant:	Ms J Bishop
Owner:	Strata Plan No. 96178
Cost of works:	\$1,830,711.00
Reason for referral:	A section of the new roof structure is 1680mm above the 9.5m height restriction, exceeding the limit by 17.68%. Any exceedance greater than 10% is required to be referred to the Randwick Local Planning Panel.

Recommendation

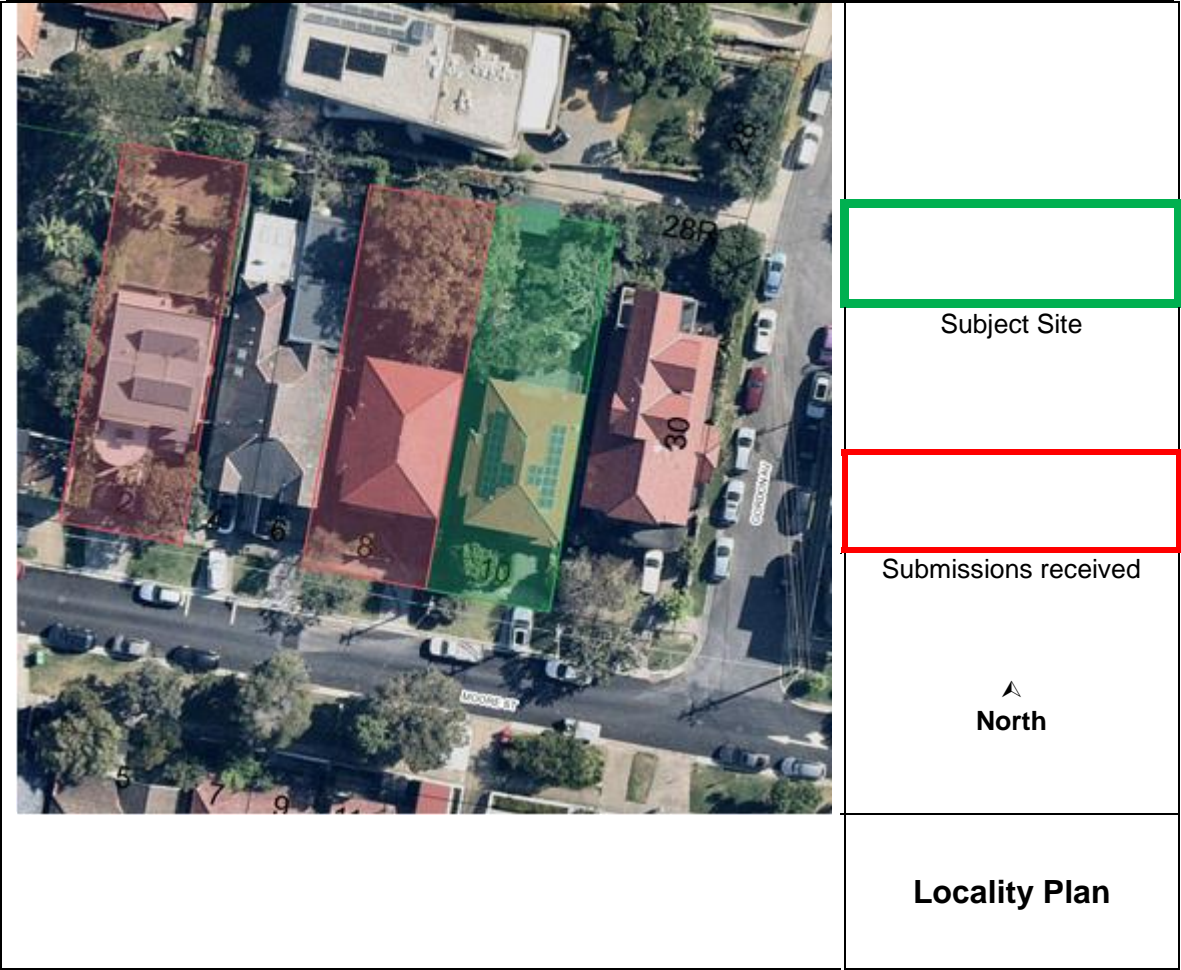
- A. That the RLPP is satisfied that the matters detailed in Clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the maximum building height development standard in Clause 4.3 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning, Industry and Environment may be assumed.
- B. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/200/2023 for alterations and additions to an existing dual occupancy, at No. 10 Moore Street, Coogee, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Consent Conditions - DA/200/2023

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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%

The proposal seeks development consent for alterations and additions to an existing dual occupancy, the proposal will result in an additional ground floor garage, alterations to ground floor living space for house 1, and alterations to first floor living space and the addition of an attic living space for house 2 in addition to a swimming pool and outdoor dining cabana structure in the rear garden.

The proposal was notified in accordance with Council's Community Participation Plan and two (2) submissions by way of unique objection were received with the key issues related to visual privacy, the bulk and scale of the development, the character of the development and the outlook and solar access for neighbouring properties.

The key issues associated with the proposal relate to:

- 1. Height of the roof reconstruction being 1680mm above the 9.5m height limit.
- 2. Wall height – existing non-compliance and justification of compliance of proposal
- 3. Roof design – the height of the dormers
- 4. Side setbacks of the upper two levels
- 5. Solar access for the POS and living areas of House 1
- 6. View sharing
- 7. Outbuilding
- 8. The height and presentation of the rear fencing.

Amended plans and supporting documents were submitted by the Applicant to address the concerns of objectors and Council in accordance with the following:

- Clause 4.6 variation – Exceptions to Development Standards – Height of Buildings.
- Redesign of the landscaping and permeable surfaces, including the use of a permeable driveway and paving along the side of the dwelling, the addition of planting, including a privacy screen.
- Re-design of the external staircase, to better comply with the setback controls and reduce the visual bulk.
- Integration of the attic addition behind the apex of the roof, allowing the addition to be contained within the existing roof form.
- Privacy concerns were addressed by using obscure glazing on the western side of the first floor and attic level (W-L1-01 & W-L2-01).
- The rear garden cabana structure wall along the western boundary was redesigned to comply with the National Construction Code for Fire Safety.
- Further assessment against the DCP of three dormer windows in the attic level addition
- Shadow study diagrams to demonstrate direct sunlight to House 1 Private Open Space (POS) and internal living areas
- Nomination of additional rear yard POS for House 1

The proposal is recommended for approval subject to conditions imposed.

2. Site Description and Locality

The subject site is known as No. 10 Moore Street, Coogee and is legally described as Strata Plan No. 96178. The site is located on the northern side of Moore Street, one property to the east of the corner with Gordon Avenue.

The property is located approximately 110m away from the public track which runs along the coastline to Gordon's Bay.



Figure 1: Location of the subject shade – No. 10 Moore Street (shaded in sky blue) in relation to Gordon's Bay (Source: NearMap)

The site comprises an area of 453.9m², is rectangular in shape and has a 12.16m frontage to Moore Street to the south, a western side boundary of 37.285m, a rear (northern) boundary of 12.16m and an eastern side boundary of 37.38m.

The site has a west to east fall along the rear boundary of 0.29 metres (RL 38.12 AHD to RL 37.83 AHD). The site also has a west to east fall along the front boundary to Moore Street of 1.02 metres (RL 33.61 AHD to RL 32.59 AHD). The site has a north to south cross fall of 5.14 metres (RL 38.08 AHD to RL 32.94 AHD).

The existing site contains a two-storey, brick-faced stacked dual occupancy with a pitched tile roof, elevated above an excavated lower ground floor garage (refer to Figures 2 to 4). The existing layout featuring a dwelling (House 1) on the ground floor and a 2nd dwelling (House 2) on the first floor. The dual occupancy reads as double storey building when viewed from the rear of the property (Kildare Lane).

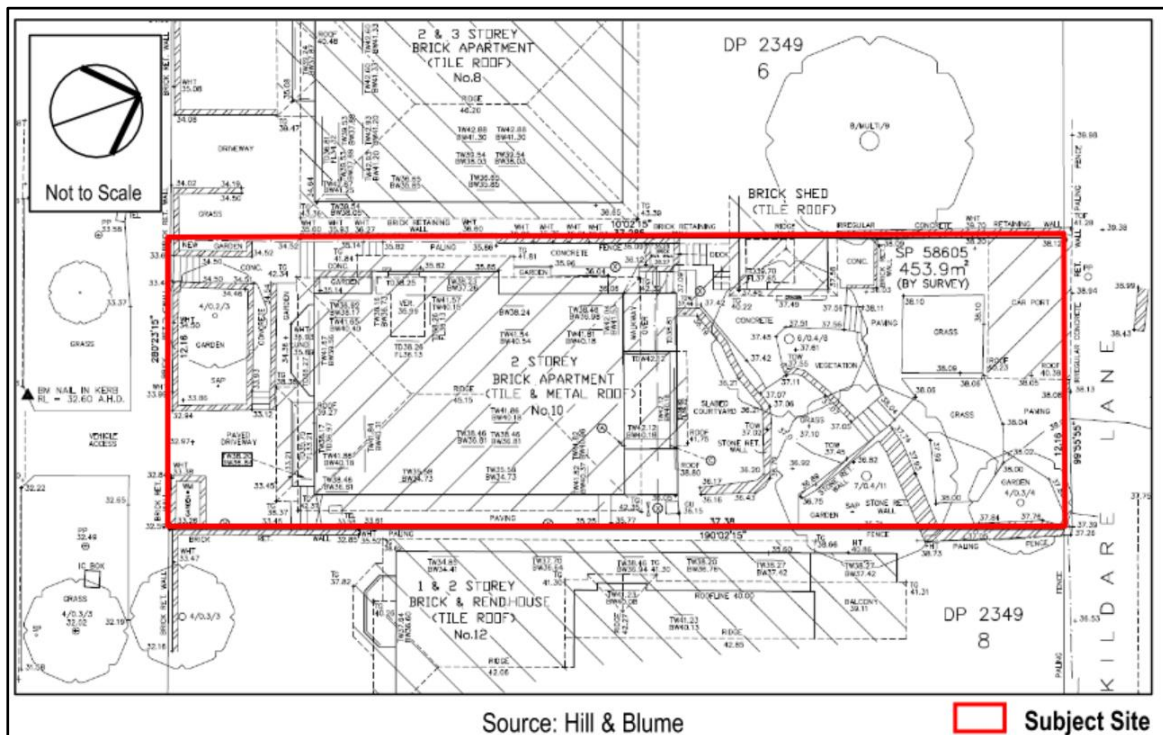


Figure 2: Survey Plan of No. 10 Moore Street (Source: Hill and Blume)



Figure 3: Streetscape view of No. 10 Moore Street (Source: Google Maps, October 2020)



Figure 4: Existing rear garden of No. 10 Moore Street (Source: SEE)

The surrounding area is characterised by low-medium density residential development, including dwelling houses and residential flat buildings. Adjoining the site to the east is No. 30 Gordons Avenue (refer to Figure 5), and adjoining the property to the west is No. 8 Moore Street (refer to Figure 6),

which is a similar design to No. 10 Moore Street, being two storeys above a lower ground floor garage. Located to the rear of the property is No. 28 Gordon Avenue (refer to Figure 7).



Figure 5: No. 30 Gordon Avenue (east-adjointing neighbour)
(Source: Google Maps, October 2020)



Figure 6: No. 8 Moore Street (west-adjointing neighbour)
(Source: Site visit on 16 January 2024)

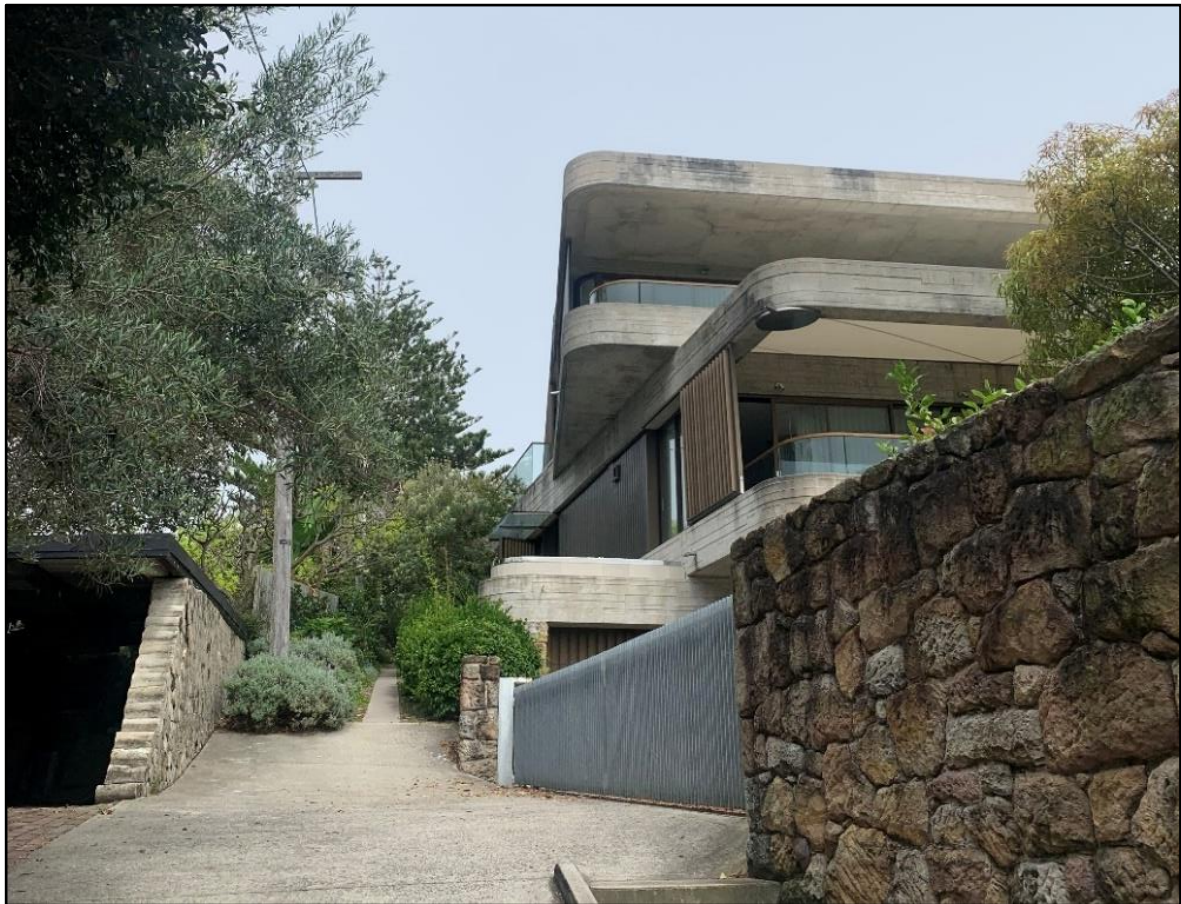


Figure 7: No. 28 Moore Street (rear-adjoining / north-adjoining neighbour)
(Source: Site visit on 16 January 2024)

Located across the road from the subject site are four (4) storey residential flat buildings (RFB's) at No.'s 15 and 17 Moore Street (refer to Figures 8 and 9).



Figures 8 and 9: No. 17 Moore Street (left) and No. 15 Moore Street (right)

The site is not listed as a Heritage Item or within a Heritage Conservation Area.

3. Relevant history

The site has been subject to several previous development applications that relate to the subject proposal, including:

- **SC/18/2016** – Strata Subdivision into 2 Lots.

- **DA/622/2015** and **DA/622/2015/A** – for alterations and additions to the existing ground floor unit, new first floor balcony for upper level unit and vehicle crossing.

4. Development Proposal

Council is in receipt of a development application seeking consent for the addition of single garage, internal access, a laundry and a plant storage room on the lower ground floor level, internal reconfiguration of the ground and first floor levels and provision of an attic level with an amended rear roof structure. The proposal also includes landscape works and a new swimming pool.

The proposal will result in the following layout for the dual occupancy building:

Lower ground floor: Two (2) garages, one for each unit, in addition to a laundry, the storage for the plant room and internal stairs to unit 2.

Ground floor: living quarters for unit 1, which includes a bedroom, bathroom, living room and open plan kitchen and dining. Unit 1 also has its own private space located at the rear of the property. The ground floor also contains the private open space for unit 2, including a swimming pool and outdoor dining area as well as a landscaped garden.

First floor: bottom level of unit 2, which includes 2 bedrooms, a bathroom, a butlers pantry and open plan kitchen, living and dining, as well as a balcony that overlooks the rear garden and a non-trafficable balcony along the property frontage to the south. There is external access from the ground floor, via stairs down the western side, as well as internal stairs leading up to the attic floor and down to the ground floor.

Attic level: Upper floor of unit 2, accessed by internal stairs. The layout includes a master bedroom, walk in wardrobe, a bathroom and a washroom, as well as a balcony overlooking the rear garden.

Important note
For the assessment of side setback provisions the lower ground floor is defined as the ground floor. Resulting in the ground floor being defined as the first floor, the first floor as the second floor and the attic addition as a third floor. However, throughout the rest of the report, the different floors will be referred to as above and will align with the application documents.

Specifically, the proposal is seeking to:

Lower ground floor:
Retain the existing eastern garage and construct a new garage on the western side for House 2. The proposal includes an addition of a laundry, plant and storage room and internal stairs to the rear, which lead to house 1. The proposal includes new front landscaping, including planterboxes and a permeable driveway, which is wider than the existing driveway. In addition to the removal and replanting of a tree and new accessways. Refer to Figure 10 for an illustration of the proposal.

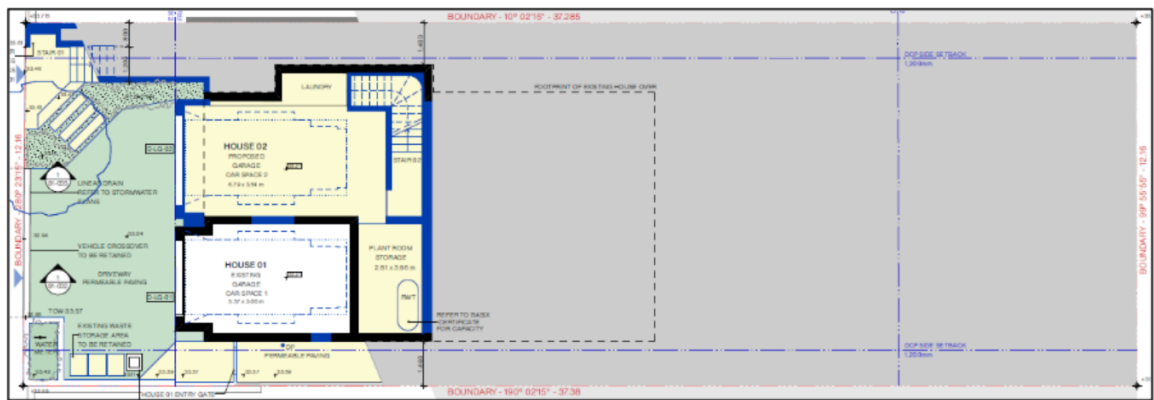


Figure 10: Lower Ground Floor Plan - 10 Moore Street (Source: Tribe Studios)

Ground floor

Internal reconfiguration of House 1, which comprises a bedroom, bathroom, living room and an open plan kitchen and dining area. The proposal also includes a main entrance and internal stairs

to House 2 on the western side. New external stairs on the western side will lead to the rear garden. The entrance to House 1 will be down the eastern side of the property.

A new pool, cabana structure and outdoor dining area for House 2 is also proposed at the rear of the property. The two large trees (T02 & T03) in the rear garden will be retained. Refer to Figure 11 for an illustration of the proposal.

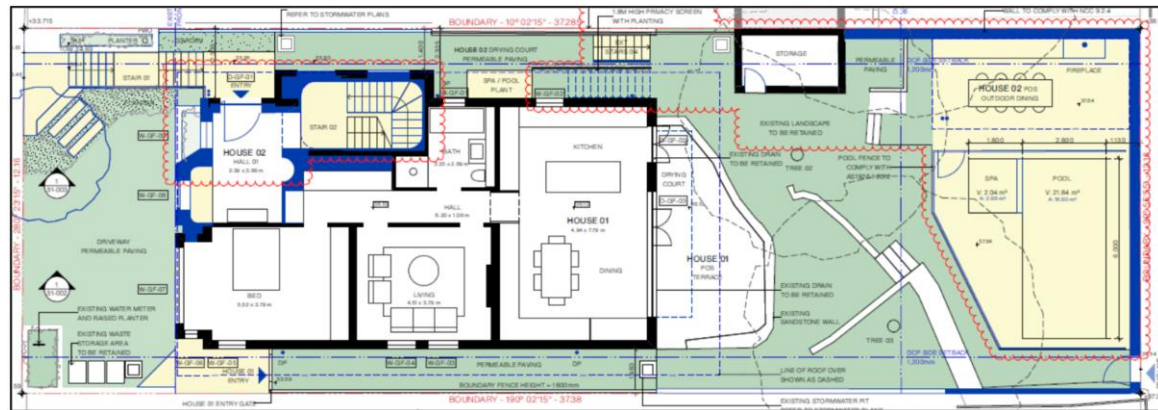


Figure 11: Ground floor plan 10 Moore Street (Source: Tribe Studios)

First floor

Internal reconfiguration of House 2, including internal stairs, two bedrooms, a powder room, bathroom, butler's pantry and an open plan kitchen, dining and living area.

The proposal also includes external stairs, providing access from the ground floor at the rear of the property. As well as a balcony orientated over the rear garden and a terrace along the front of the property, which is not trafficable. Refer to Figure 12 below for an illustration of the proposal.

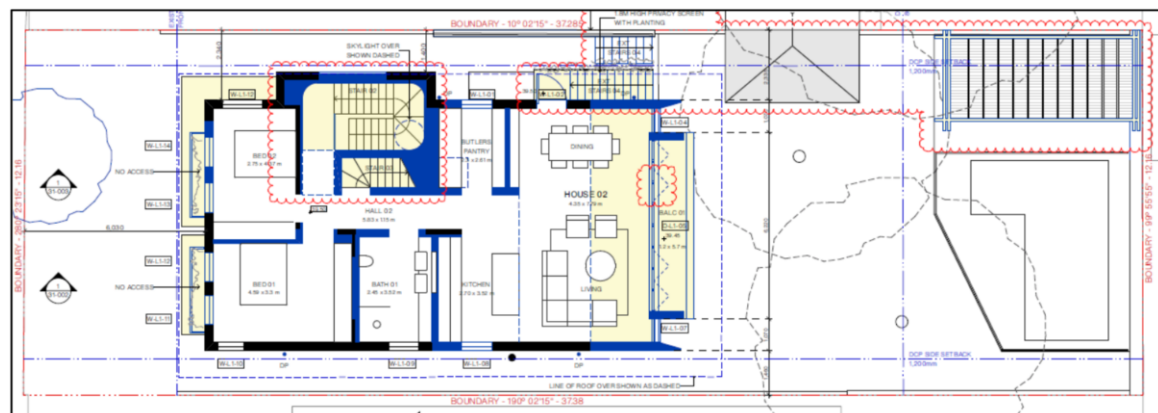


Figure 12: First floor plan - 10 Moore Street (Source: Tribe Studios)

Second floor / attic level

The addition of an attic level will comprise the upper level of House 2. The attic level includes internal stairs and a master suite with a walk-in wardrobe, bathroom, and washroom. The attic level will also include a rear facing balcony with a planter balustrade. The proposal includes 1 dormer window to the west and 2 dormer windows to the east.

Refer to Figure 13 below for an illustration of the proposal.

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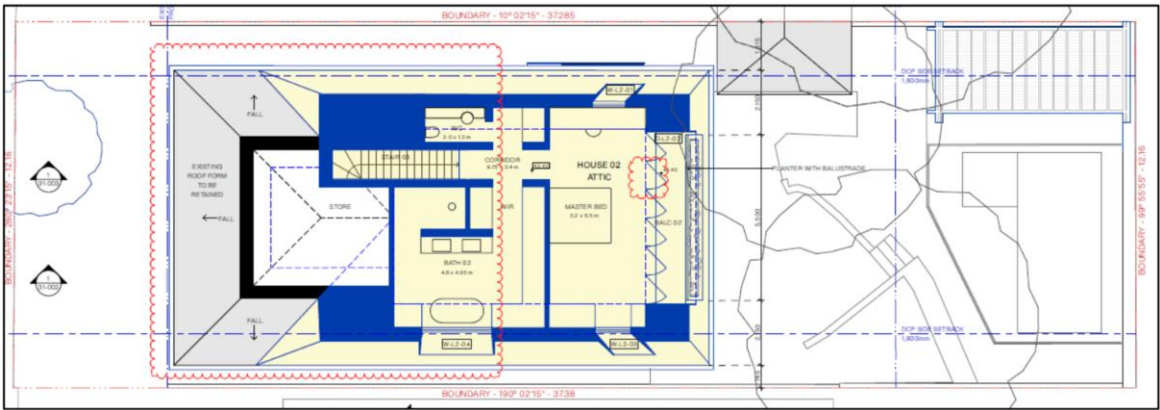


Figure 13: Level 2 / attic level plan - 10 Moore Street (Source: Tribe Studios)

Roof plan

The rear portion of the existing roof (behind the front apex) is to be demolished and replaced with a new pitched zinc sheet roof form. New dormers will be constructed of steel plate. A section of the proposed new roof breaches the 9.5m height limit under the RLEP 2012 and a section of the existing ridge line of roof at the property frontage is 12.12m, which is an existing non-compliance with the maximum building height provision under Clause 4.3 of the RLEP 2012.

Refer to Figure 14 below for an illustration of the proposal.

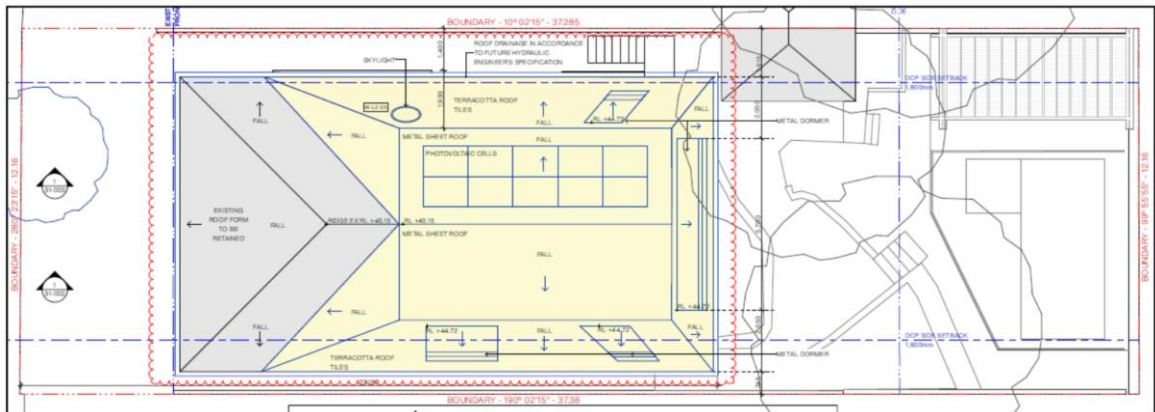


Figure 14: Roof plan - 10 Moore Street (Source: Tribe Studios)

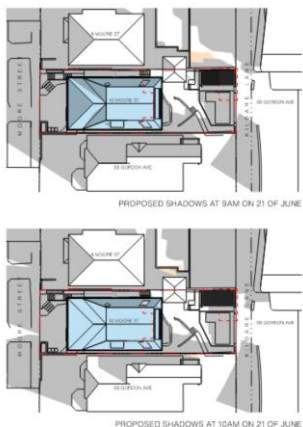
5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Engagement Strategy. A total of two (2) submissions were received as a result of the notification process. Submissions were received from the following addresses:

- No. 2 Moore Street, Coogee

Issue	Comment
Concerned about the proposed rooftop dormer window labelled W-L2-01 and whether it would overlook the rear balcony at 2 Moore Street. Requested that this window be opaque.	This window will have obscure glazing in accordance with the approved plans. This directly addresses the submission raised.

- No. 8 Moore Street, Coogee

Issue	Comment
<p>Visual amenity of No. 8 Moore Street due to the height and bulk of the proposed additions.</p> <p>Affect the current outlook and solar access of No. 8 Moore Street.</p> <p>Out of character and scale with the surrounding area.</p>  <p>PROPOSED SHADOWS AT 9AM ON 21 OF JUNE</p> <p>PROPOSED SHADOWS AT 10AM ON 21 OF JUNE</p> <p>LEGEND</p> <ul style="list-style-type: none"> ■ DENOTES AREA OF PROPOSED NEW RESIDENCE □ DENOTES OUTLINE OF EXISTING STRUCTURES TO BE DEMOLISHED ■ DENOTES AREA OF EXISTING & SURROUNDING BUILDING SHADOWS AND SHADOW TO SUBJECT SITE ■ DENOTES AREA OF PROPOSED ADDITIONAL BUILDING SHADOW TO ADJACENT PROPERTY ■ DENOTES AREA OF PROPOSED REDUCTION OF BUILDING SHADOW (STRUCTURES TO BE DEMOLISHED) TO ADJACENT PROPERTY 	<p>The original proposal comprised of alterations and additions in front of the apex, changing the visual amenity of the property from Moore Street. Revised plans have been proposed, which site the attic extension entirely behind the front apex, maintaining the existing frontage height and appearance on Moore Street.</p> <p>The proposed additions and alterations are compliant with the maximum floor space ratio. A sufficient justification to the minor height non-compliance along the eastern side of the building has been provided in a clause 4.6 statement.</p> <p>The proposal does not significantly the solar access of Moore Street. There will only be very minor additional overshadowing of 8 Moore Street's Garden between 9am and 10am on the 21st of June (Winter Solstice).</p> <p>The proposal is not considered to be out of character with the surrounding area, as it is generally maintaining the existing style and form as well as mostly containing the additions within the existing roof form.</p>

5.1. Re-notification

In accordance with the Randwick City Council Community Engagement Strategy, section 5.5.2 states that a DA may be amended or varied by the Applicant before the application is determined. Council may renotify those persons who made submissions on the original application. A review of the amended plans has identified that given the nature and extent of the the changes proposed, any impacts are considered reduced compared to the original proposal. As such, requirements for re-notification were not triggered by the amended plans.

6. Relevant Environment Planning Instruments

6.1. SEPP (Building Sustainability Index: BASIX) 20

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

6.2. SEPP (Biodiversity and Conservation) 2021

Chapter 2 of the SEPP applies to the proposal and subject site. The aims of this Chapter are:

- (a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and
- (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

The proposed development involves the removal of vegetation. Council's Landscape Development Officer reviewed the proposal and confirmed support for the proposed removal and landscaping treatments, subject to the imposition of conditions (see referrals section below). As such, the proposal satisfies the relevant objectives and provisions under Chapter 2.

6.3. SEPP (Resilience and Hazards) 2021

Coastal Management

Chapter 2 of the Resilience and Hazards SEPP relates to coastal management. Clause 2.11 of the SEPP requires the consent authority to consider whether the proposal is likely to cause an adverse effect within the coastal use area.

Noting the nature of works, the proposed development is unlikely to cause an adverse impact on the following:

- Access to and along the foreshore;
- Overshadowing, wind funnelling, and loss of views to the foreshore;
- Visual amenity and scenic qualities of the coast;
- Aboriginal cultural heritage, practices and places – NB: nil known in vicinity; and
- Cultural and built environment heritage – NB: nil known in vicinity.

Remediation of Land

The provisions of SEPP (Resilience and Hazards) require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site.

The subject site has only previously been used for residential purposes and as such is unlikely to contain any contamination. The nature and location of the proposed development involving alterations and additions to a dual occupancy are such that any applicable provisions and requirements of the above SEPP have been satisfactorily addressed.

6.4. Randwick Local Environmental Plan 2012 (LEP)

The subject site is situated on land zoned R3 – Medium Density Residential under the Randwick Local Environmental Plan 2012, and the proposal, involving alterations and additions to a *dual occupancy* is permissible land use with consent, in this zone.

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

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.4: Floor space ratio (max)	0.75:1	0.69:1	Yes
Cl 4.3: Building height (max)	9.5m	11.18m	No (1.68m or 17.7% variation)

6.4.1. Clause 4.6 - Exceptions to development standards

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

6.4.2. Clause 6.7 Foreshore scenic protection area

The subject site is located in the Foreshore Scenic Protection Area. Clause 6.7 of RLEP 2012 requires Council to be satisfied that the development has minimal visual impact on the coastline and contributes to the scenic quality of the foreshore.

The proposal will not compromise the scenic qualities of the foreshore location. The proposed alterations and additions will not significantly alter the appearance of the existing building when viewed from the coast. The proposed works have been designed to protect existing water views from neighbouring properties. On this basis, the development is satisfactory with regard to Clause 6.7 of RLEP 2012.

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation
Cl 4.3: Building height (max)	9.5m	Up to 11.18m	1.68m or 17.68%

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 Height of Buildings development standard (Cl 4.3)

The Applicant’s written justification for the departure from the Height of Buildings 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?**

In response to the above question, an excerpt of the Applicant's written request is provided below:

Flexibility in applying the height development standard is appropriate in this case. The existing built form comprises a portion of non-compliant building height at the street frontage due to the existing basement level. Therefore, any works to this portion of the roof would inevitably also exceed the height limit. Given the proposal includes an amended roof form to accommodate an attic level, it is inevitable that the amended roof above the existing basement would continue to exceed the height development standard. However, the proposal will maintain the building height as existing and the minor extent of new variation is likely to maintain the amenity of neighbouring development as existing. Importantly, the proposal complies with the FSR development standard.

Flexibility in this circumstance will provide a better outcome both for and from the development. Strict compliance would result in a reduced and dysfunctional attic level that would not meet the needs of the owner. Strict compliance would also result in an inconsistent roof form and a poor visual outcome for the street. To refuse this application would prevent the orderly and economic use and development of the land.

It is our opinion that the proposal satisfies Test 1 established in Wehbe and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant test will be considered below.

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

Despite the proposed development's non-compliance with the applicable height development standard, the proposal is consistent with the desired medium density character of the area. The proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls. Reasons why the proposed development is consistent with the objectives of the height standard are explained below.

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

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

The proposed alterations and additions to the existing dual occupancy will contribute to the eclectic mix of permissible uses in the R3 Zone. Although the proposal continues to exceed the height limit, given the maximum height and roof ridge is maintained, the building remains compatible with the envelope of existing and emerging development in the area and as such, the desired future character of Coogee. Moore Street is characterised by a mix of residential buildings, including single dwellings, semi-detached dwellings, dual occupancies and residential flat buildings. Older buildings are being refurbished or replaced by contemporary built forms creating the emerging contemporary character.

The building will continue to present as two storeys above a garage level to Moore Street and the minor extent of height non-compliance will not be readily noticeable once constructed when compared to the existing situation. The proposed building height will remain consistent with the height, bulk and scale of existing and emerging development in the area. The amended roof form has been designed in accordance with the desired future character of the area and is set back beyond the front apex of the existing roof. In our opinion, the proposed design improvements are considered to more than offset the area of height non-compliance which follows the existing ridge line.

Despite the small portion of additional height exceedance as a result of the existing built form to be retained and existing excavation on site, the proposal sympathetically responds to the character of nearby developments. It will not appear out of character when viewed in its context and the proposal will continue to provide a height transition between No. 8 Moore Street and No. 30 Gordon Avenue.

Assessing officer's comments: A review of the Applicant's written request in-combination with Council's independent assessment of the proposal confirmed that the above matters raised in the request are generally concurred with. The Applicant's request has adequately justified the contravention of the Building Height development standard and has demonstrated that compliance is unreasonable or unnecessary in the circumstances of the case.

It is noted that the existing building on the subject site has a maximum height of 12.12m. The proposal maintains the existing roof ridge, thereby ensuring that the maximum building height on the site remains at 12.12m. The height breach relates only to a minor portion of the reconstructed roof on the eastern side, to a maximum height of 11.18m (being an exceedance of the height limit by 1.68m or 17.68%) (refer to Figure 15). The existing roof in this section is already non-compliant with the height limit and this is partially attributed to the topography of the site. Notably, all other components comprising the additions, including the western and rear extent of the attic addition comply with the height limit.

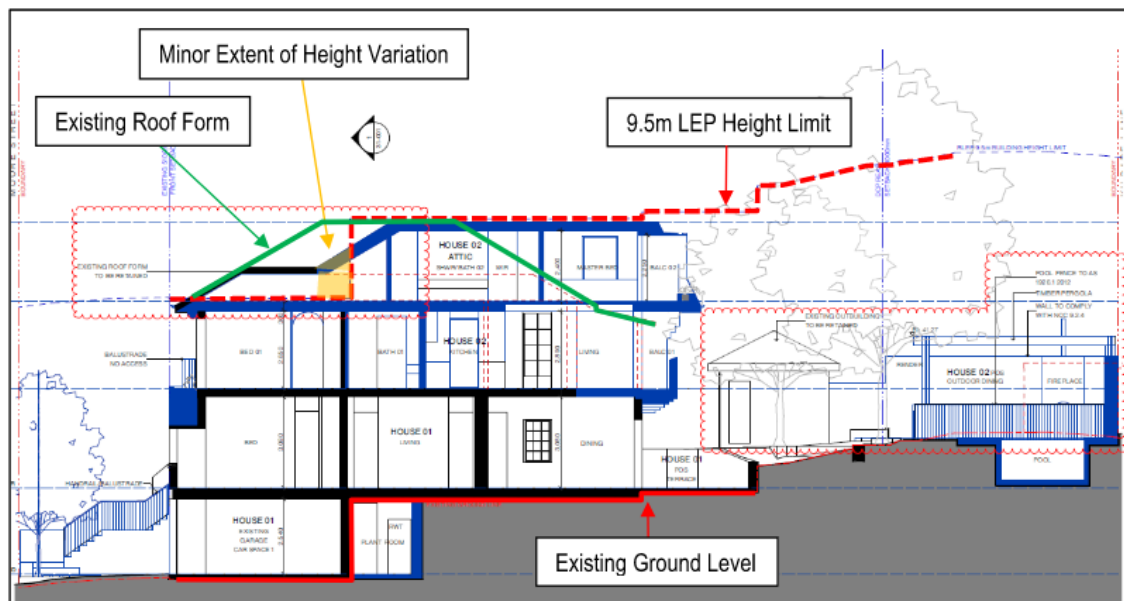


Figure 15: Existing and proposed building height – long section (Source: GSA Planning)

The height variation is considered a technical variation, because of the need to reform the roof to incorporate the attic addition, beneath the maximum roof height. When viewed from Moore Street, the proposal will maintain the maximum building height and the two (2) storey appearance above a garage level. The area of the height breach will not be readily visible and will not appear out of character when viewed from Moore Street.

Further to the above, the proposal generally complies all other requirements and controls associated with bulk and scale, including the maximum floor space ratio development standard under the RLEP 2012.

The potential impacts associated with the proposed development was evaluated and it was identified that any potential impacts are considered minor and/or reasonable and acceptable (refer to Assessment section below).

The objectives of the Building Height development 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 proposal is for alterations and additions to a dual occupancy, which is a permitted built form in the R3 Medium Density Residential Zone. The maximum building height and

existing ridge is being maintained, which is consistent with existing and emerging development in the locality and therefore, the desired future character of Coogee.

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

- (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 the following for visual bulk, privacy, overshadowing and views. An excerpt of the Applicant's written request is provided below:

The minor extent of height variation will occur only to the eastern side of the roof and is due to continuation of the existing ridge. As such, the variation is unlikely to adversely impact the amenity of neighboring land, in particular given the maximum height will be maintained. This will now be specifically addressed in relation to visual bulk, privacy, overshadowing and views.

Visual Bulk

The proposal only seeks to breach the building height on the eastern side of the attic level in the area directly above the existing excavated garage. The additional bulk above the height limit is minor in extent and follows the existing roof ridge, meaning it is unlikely to adversely increase the visual bulk above the height limit when compared to the existing situation. It is noted that the minor extent of height breach is sited behind the existing front roof apex and as such will not be readily visible from Moore Street. Importantly, the proposal will continue to ensure a height transition between the adjoining buildings at No. 8 Moore Street and No. 30 Gordon Avenue. The works do not result in adverse additional bulk above the height limit.

Privacy

The minor extent of height variation is likely to maintain the privacy of adjoining and neighbouring development as existing. This is because the portion of variation does not include any windows and therefore will not result in overlooking to adjoining development. Accordingly, the minor extent of height breach is likely to maintain the privacy of surrounding development as existing.

Overshadowing

The minor extent of height non-compliance located on the eastern side of the roof will not result in additional shadowing to neighbouring windows or private open space when compared to the existing situation.

Views

The minor extent of additional height to the eastern portion of the attic and roof will maintain views for surrounding development as existing. Development to the west in the immediate vicinity of the site does not comprise upper floor levels which would have access to eastern views over the existing or proposed roof form. Therefore, the height variation does not result in adverse view impacts. In any event, it is noted that the existing roof ridge line and maximum building height is being maintained.

The proposal provides a sympathetic overall design that is unlikely to result in adverse amenity impacts to neighbouring development.

Assessing officer's comment: In conclusion, the Applicant's written request has adequately demonstrated that compliance with the maximum building height 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 Building Height development standard as follows:

The artificial existing ground line

The building height exceedance is a result of measuring the existing ground level as the underside of the excavated garage. Resulting in a portion of the proposed attic on the eastern side that follows the existing ridgeline and sits above the excavated garage to exceed the height limit.

Assessing officer's comment: The excavation of the existing garage is minimal and is approximately 0.35m below the existing ground level directly to the east of the garage. It is noted that the western boundary does not contain an excavated garage in addition to having a higher existing ground level and therefore there is no breach in the building height limit on the western side.

The existing built form will be maintained

The proposal maintains the existing roof ridge and existing maximum building height. The existing built form on site predominately complies with the height limit, except for the roofing directly above the excavated basement garage. Because the proposal is retaining the existing roof ridge, it is expected that the associated roofing above the garage will exceed the height limit.

Assessing officer's comment: The proposal has sited the attic addition behind the front apex, which is maintaining the existing built form along the property frontage. To accommodate the attic level living space, reforming of the roof above the height limit is required.

Consistency in the context

The proposed building height to the eastern portion of the roof form will be compatible with the existing and future desired character of the area. The proposal will maintain the existing frontage height and provides a transition in height between 8 Moore Street, the subject site and 30 Gordon Avenue. The proposed height breach ensures one consistent attic roof form addition and is integral to the design.

Assessing officer's comment: The height breach is necessary to ensure a consistent roof form for the attic extension.

Enhanced amenity

The additional building height will enhance the amenity of House 2. If the proposal was to fully comply with the building height control, there would be the removal of a significant portion of the bathroom and creation of a disjointed roof form. The breach of building height allows for an adequately sized bathroom and enhancement of the internal amenity.

Assessing officer's comment: The height breach does allow for increased amenity.

It should also be noted that the proposal improves the amenity of the subject site while maintaining the amenity of neighbouring development; is consistent with the objectives of the R3 Medium Density Residential Zone and the relevant DCP built form and amenity provisions; and results in an improved streetscape outcome for the site. While these factors may not strictly constitute environmental planning grounds, they should be considered in the assessment of the height breach.

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

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

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

In the aim of determining whether the proposal will be in the public interest, consideration is given to the objectives of the Building Height standard and the R3 zone.

As discussed in Section 6.2 of this report, the proposal is considered consistent with the objectives of the R3 zone, and as outlined above, the proposed development is also found to be consistent with the objectives of clause 4.3 Height of Buildings and therefore the development will be in the public interest.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

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

Conclusion

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

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Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	The issues raised in the submissions have been addressed in this report.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

9.1. Discussion of key issues

Building height

Refer to Section 7 of this report.

Wall height

Section 3.2 of the DCP 2013 contains controls for wall height, stating that the maximum wall height on sloping sites should be 8m. The existing first floor level exceeds the maximum wall height along the frontage, however, this is not being altered. As such, the exceedance is a pre-existing variation.

The SEE submitted with the application states that the rear facing portion of the attic addition will be a dormer (which is non-compliant with the DCP controls) and therefore will cause a breach in the wall height controls along the eastern side of the dwelling. However, Council does not consider this rear facing addition and balcony to be a dormer design. As such, the wall height will be measured to the underside of the eaves. This means that the proposed development involves no exceedance in wall height pertaining to the proposed additions and alterations.

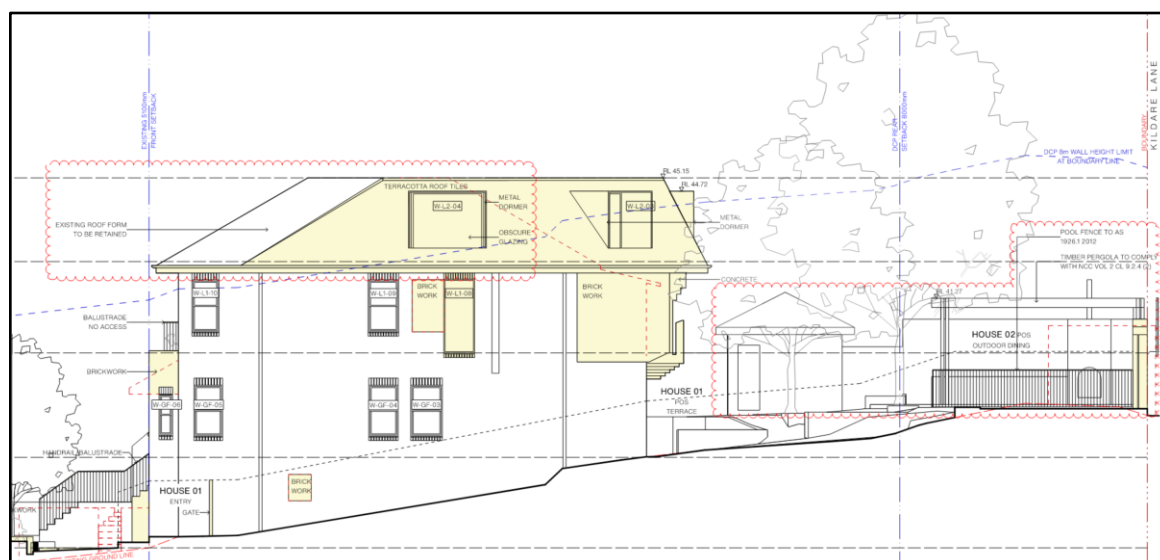


Figure 16: Eastern elevation of proposed additions at 10 Moore Street, showing the 8m Wall Height limit (Source: Tribe Architects)

Side setbacks

In accordance with the RDCP 2013 (C1 – Low Density Residential), the lower ground floor garage would be counted as the ground floor, because it protrudes more than 1.2m above the finished ground level. Therefore, side setbacks of 1.8m apply to the attic level addition as well as the floor below (level 2, which is referred to and noted as level 1 in the application and plans).

Towards the eastern boundary both the attic level addition and level 2 are non-compliant with the side setback control of 1.8m. The eastern side setback of level 2 is approximately 1.45m and the set back of the attic level is approximtaily 1.55m.

The attic level addition is compliant on the western boundary, whereas the second floor setback to the west is non-compliant with the side setback of 1.8m. However, the existing roof form, which is being retained is also non-compliant with this setback control.

Because the addition cannot comply with the controls, an assessment against the objectives must be undertaken. An assessment against the relevant objectives is contained below.

- *To ensure the form and massing of development complement and enhance the streetscape character.*

The attic level addition is setback behind the front apex, maintaining a similar mass at the property frontage, which is consistent with surrounding development. The form and massing complements the streetscape character and is consistent with the eclectic nature of the R3 – Medium Density Residential zoning.

- *To ensure adequate separation between neighbouring buildings for visual and acoustic privacy and solar access.*

The setbacks of external walls of the second floor on both the eastern and western extent of the building are being maintained, but being extended to the rear of the property and replaced in sections. The non-compliance with the side setback is existing and the side setbacks are not being reduced further by this proposal.

The eastern setback of the attic level addition is non-compliant with the side setback, however, this is a minor non-compliance of approx. 0.25m and is caused by the existing structure and external walls of the building.

The proposal does not decrease separation between neighbouring dwellings. The proposal ensures adequate separation for visual and acoustic privacy as well as solar access for neighbouring properties (8 Moore Street and 30 Gordon Avenue).

- *To enable a reasonable level of view sharing between a development and the neighbouring dwellings and the public domain.*

A reasonable level of view sharing is maintained to neighbouring development and the public domain. 8 Moore Street does not have access to views to the east because the existing built form of the subject property blocks these views. 30 Gordon Avenue has existing views to the east, which will not be impacted by this proposal.

Overall, the proposed side setbacks are considered acceptable and are not contrary to the objectives of the RDCP 2013.

Roof design and features

Section 4.4 of the DCP 2013 contains controls and objectives for the roof design and features of proposals. The proposed dormers in the attic level addition (2 on the eastern side and 1 on the western) do not comply with the height control because the maximum height from base to ridge is more than 1500mm for all of the proposed dormers.

The dormers must be located and have a size, bulk and scale that do not dominate the roof form or add excessively to the building mass.

An assessment against the relevant objective is contained below:

- *To ensure roof design integrates with the form, proportions and façade composition of the building.*

The dormers are non-compliant with the height control by approx. 0.35m on the eastern side and 0.15m on the western dormer. The dormers allow for an appropriate incorporation of the attic level addition into the roof space.

The dormers have been sympathetically designed to be architecturally integrated with façade of the building. The side dormers comply with all relevant provisions with the exception of a minor height non-compliance. This height variation will not be readily visible from the street and will add a high level of amenity to the attic addition. The dormers are sited below the ridgeline and setback from the edge of the roof.

Privacy

The RL of the ridgeline of 30 Gordon Avenue (the neighbouring property along the eastern boundary) is 42.85. Whereas, the RL of the floor of the attic level addition of the subject property is 42.45. Therefore, the eastern facing window W-L2-03 will look over the top of the ridgeline of 30 Gordon Avenue towards Gordons Bay. The two proposed new windows on the eastern side of the attic level are appropriately offset with the window facing the subject property from 30 Gordon Avenue, noting that W-L2-04 is obscure glazing. Therefore, there are no privacy concerns from the proposed eastern facing attic level dormer windows.

The western facing window in the attic level addition (W-L2-01) is obscure glazing and will not cause privacy concerns or overlooking and also addresses the submission of 2 Moore Street.

The rear facing balcony in the attic level addition is set back into the building footprint and will not directly overlook the neighbouring properties private open space to the east and west. Furthermore, there are two large trees (Tree 02 & 03) in the rear garden, which help to obscure any privacy views of neighbouring properties. A condition requiring that the balustrade for this balcony is modified to feature an opaque/frosted glass/solid form design, will be imposed should consent be granted.

The eastern facing window L1-08 on level 1 is located directly adjacent to an existing window, which will be blocked up. This window looks at the roof of 30 Gordons Avenue and is not overlooking any neighbouring windows at 30 Gordon's Avenue.

The two (2) new windows on level 1 facing west (W-L1-01 & W-L1-02) will have obscured glazing and therefore will not cause privacy concerns. Both windows are setback approximately 3.8m from the neighbouring property (8 Moore Street) and are appropriately offset from windows on that property. Furthermore, W-L1-02 is sited behind a privacy screen, which is 1.8m high, further reducing privacy concerns.

The level 1 balcony is appropriately setback into the building footprint and will not overlook neighbouring properties private open space to the east or west. There is also an existing outbuilding along the western boundary (which will be retained for storage), the ridge of this building has a RL of 41.45, the RL of the floor of the level 2 balcony is 39.45, therefore, this building will block views into the rear garden of 8 Moore Street. The two large trees in the rear garden also obscure views over the rear boundary, which is 15m away, located at a higher RL and will have rear fencing.

The windows located on the front façade are appropriate and do not cause privacy concerns.

Solar access

Section 5.1 of the DCP contains the controls and objectives for solar access to private open space (POS) and north facing living area windows. An updated architectural drawing set was provided on 1 February 2024, which includes a rear yard shadow study. Figure 17 below shows that House 1 will receive more than three (3) hours of direct sunlight to the POS and north facing living area windows during mid-winter, in full compliance with the Section 5.1 controls.

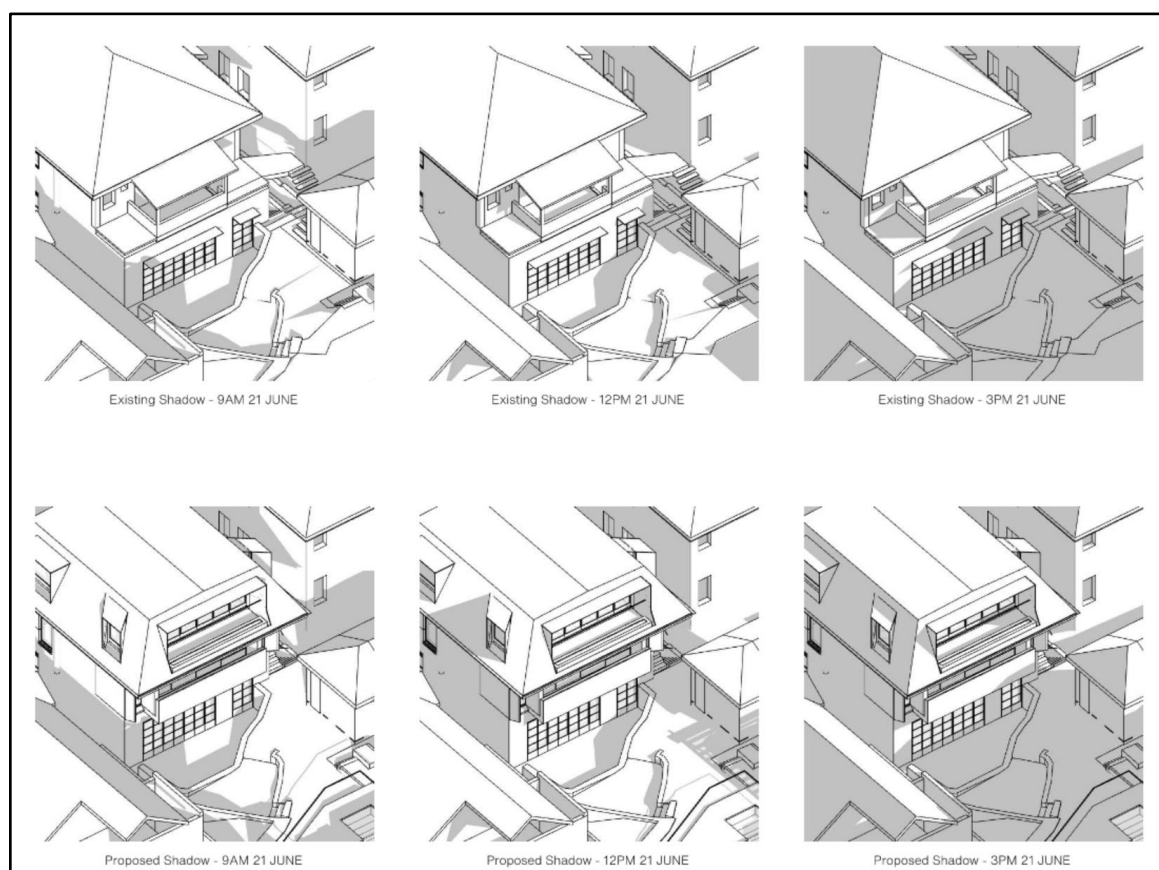


Figure 17: Rear yard shadow study (Source: Tribe Studio Architects)

View sharing

The concept of view sharing refers to equitable distribution of views between the development, neighbouring dwellings and the public domain. View sharing controls aim to achieve a balance between facilitating quality development and preserving an equitable amount of views for the surrounding properties as far as is practicable and reasonable.

View sharing does not prescribe the total retention of all significant views and vistas. The intent of the DCP is to ensure development is sensitively and skillfully designed, so that a reasonable level of views is retained for surrounding areas.

A site visit to the surrounding area to confirm this desktop analysis was conducted on 1 February 2024.

An assessment against the objectives is contained below:

- To acknowledge the value of views to significant scenic elements, such as ocean, bays, coastlines, watercourses, bushland and parks; as well as recognised icons, such as city skylines, landmark buildings / structures and special natural features.

There are two particularly high value views from properties in this area, being views over Coogee Beach, as well as over Gordons Bay and surrounding coastline. However, the alterations and additions at No. 10 Moore Street are not expected to block any views of Coogee beach or Gordons Bay. The subject view, which may be impacted are ocean outlook views over the top of 10 Moore Street. Figure 18 below shows a photo from the property listing website realestate.com.au for No. 79 Beach Street. This photo is useful in depicting the surrounding coastline and potential views.



Figure 18: Image from the property listing of No. 79 Beach Street, showing the surrounding area (Source: Realestate.com.au)

The maximum building height of No. 10 Moore Street is remaining the same but will extend further towards the rear of the property by 7m. This will likely block a small section of views from both 81 and 83 Beach Street. An assessment of the significance of this view loss is contained below.

The RL of the ridgeline of No. 81 Beach Street is 52.68 and the RL of No. 83 Beach Street is 49.98. Whereas the RL of the ridgeline of the attic level addition at the subject property is 45.15. Therefore, 81 and 83 Beach Street are elevated above the subject property by approx. 7m & 4.5m. Therefore, these properties will look over the top of the subject property and the view loss will be minimal. The views lost will consist of residential development.

Properties at No.'s 81 – 87 Beach Street were not notified of the application and therefore did not have an opportunity to submit on the application. These properties were not notified of the application because their property boundary is greater than 40m from the subject property.

The property to the rear of the site, No. 28 Gordon Avenue will have minimal view loss impacts and did not put forward a submission (Refer to Figure 24).

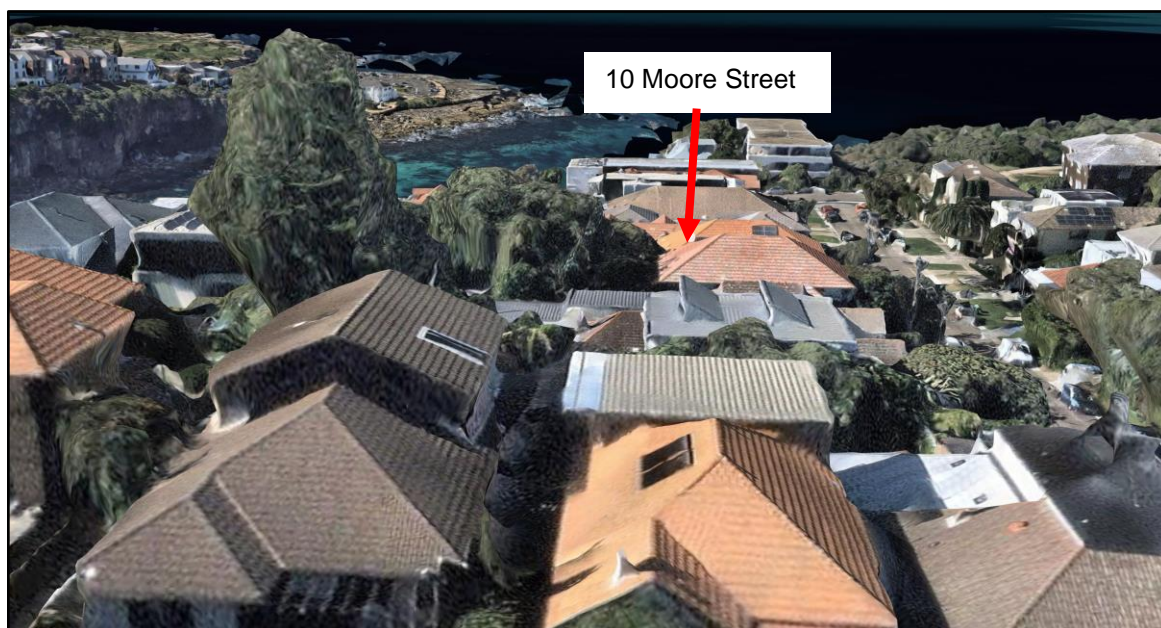


Figure 19: 3-D view from 81 and 83 Beach Street towards the coastline (Source: Nearmap)

D11/24



Figure 20: 3-D imagery looking west from 30 Gordon Avenue, the neighbouring property to 10 Moore Street (Source: Nearmap)

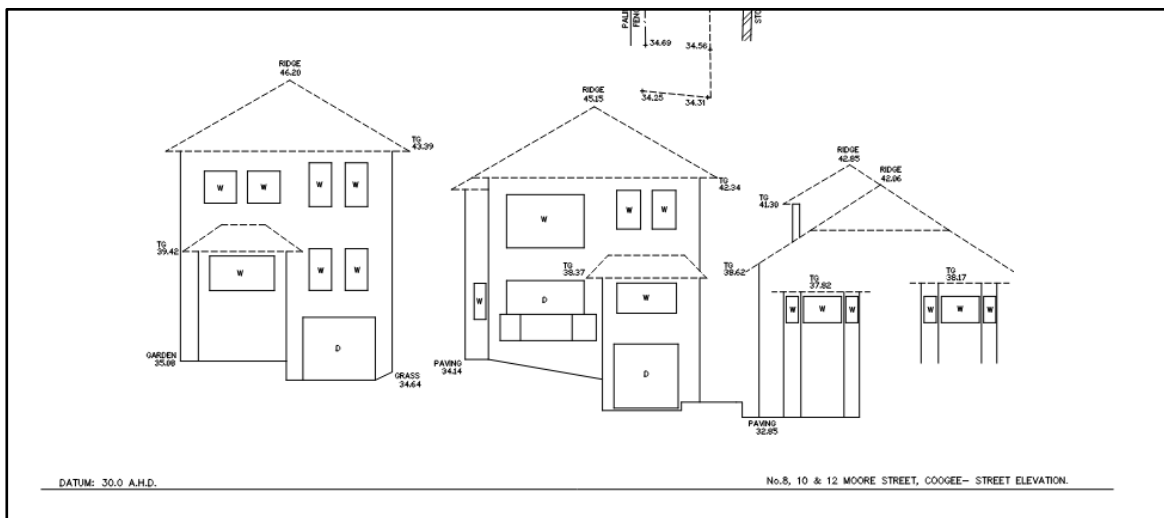


Figure 21: 8 & 10 Moore Street and 30 Gordon Avenue (left to right) (Source: Survey Plan: Hill & Blume)

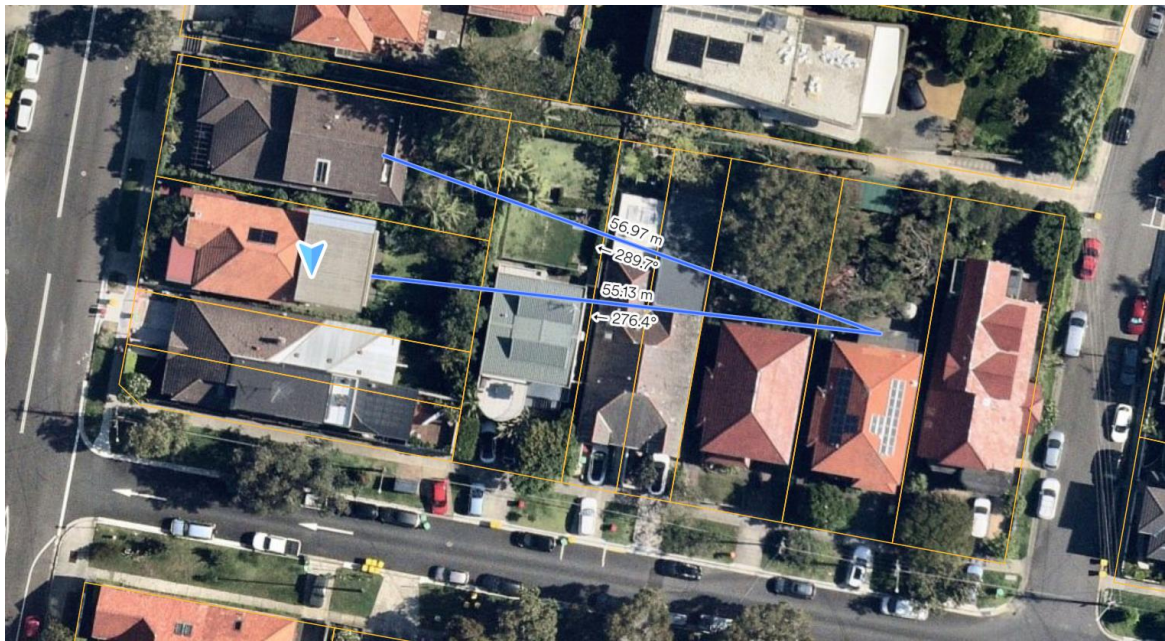


Figure 22: Distance from subject property to 81 and 83 Beach Street (Source: Nearmap)



Figure 23: Image from the property listing of 79 Beach Street, showing the surrounding area (Source: Realestate.com.au)



Figure 24: View of neighbouring property to the rear (28 Gordon Avenue) from the subject sites garden (Source: Site visit)

- *To protect and enhance views from the public domain, including streets, parks and reserves.*

The alterations and additions at the subject property will protect the views from the public domain.

- *To ensure development is sensitively and skillfully designed to maintain a reasonable amount of views from the development, neighbouring dwellings and the public domain.*

The design will enhance views from the subject property, whilst maintaining a reasonable amount of views for neighbouring dwellings and the public domain. The rear addition, which may have a minor impact on view loss is fully compliant with the DCP height and rear setback controls.

Outbuilding

Section 7.4 of the DCP 2013 contains the controls for outbuildings, there are no objectives specifically for outbuildings. However, there are more general objectives for ancillary development. The proposed cabana structure in the rear garden is considered an outbuilding.

Ancillary development should be of smaller scale and visually compatible with the design of the dwelling in terms of form, colours and finishes. The outbuildings need to be positioned to minimize visual impact on the public domain.

The relevant objectives are:

- *To provide for ancillary development that enhances the livability of dwellings and maintains reasonable levels of visual amenity, solar access and privacy for the neighbouring dwellings.*

The cabana structure will enhance the livability of the dual occupancy and will maintain reasonable levels of visual amenity, solar access and privacy for neighbouring dwellings.

- *To ensure ancillary development do not present as prominent features and detract from the streetscape character.*

The cabana structure will not be able to be seen from Moore Street and therefore will not present as a prominent feature or detract from the streetscape character. The cabana will be located behind rear and side fencing of an appropriate size and therefore will not appear as prominent or detract from the streetscape character from Kildare Lane.

Rear fencing

The fencing along Kildare Lane to the rear of the subject site was proposed to be a maximum of 2.425m high, which is non-compliant with the DCP controls. There is a cross fall from west to east of approximately 2m (from RL 39.38 to RL 37.39), however, this does not justify a fence of this height.

The rear fence must be redesigned to comply with a maximum height of 1.8m measured from the existing ground level of Kildare Lane, a condition to this effect has been included in the consent conditions.

Side fencing

The fencing along the eastern boundary is proposed to be a maximum of 1.8m. The new section of fencing shown in Dark Blue on Plan A-DA-11-008 (Revision S5) must also be limited to a height of 1.8m from the existing ground level of the subject site (10 Moore Street). A condition to this effect has been included in the consent conditions.

The existing ground of the neighbouring property 8 Moore Street is higher than the subject property. The existing carport along the boundary with 8 Moore Street will be demolished.



Figures 25 and 26: Existing carport at the rear of 10 Moore Street (left) and existing timber fence along rear – adjoining No. 8 Moore Street (right) (Source: Site visit on 16 January 2024)

The proposed wall along the side of the cabana and pergola structure is proposed to be at an RL of 40.59, which will then transition into a 1.8m high boundary fence along the western boundary with No. 8 Moore Street.

Because of the difference in height of the ground levels at No. 8 Moore Street and the subject property, the boundary wall will present significantly lower when viewed from No. 8 Moore Street. A condition has been included which limits the height of the boundary wall to 1.8m above the existing ground level of 8 Moore Street. An elevational plan showing how the wall would present on the 8 Moore Street side was requested, but could not be provided. The existing ground levels of 8 Moore Street were also requested and not provided. Therefore, this condition was deemed necessary to limit the height of the wall.

For reference of the different heights, the RL of the top of the proposed boundary wall is 40.59, whereas the RL of the existing paling fence at the rear of 8 Moore Street is 41.28 (refer to Figure 27), the RL of the ridge of the existing outbuilding (located on the western boundary) is 41.45 (Refer to Figure 28).

The pergola structure will have a maximum height of RL 41.27, which means it will sit 0.68 higher than the proposed wall. This is illustrated in the Figures 28 and 29 below.



Figure 27: Wall along the boundary with 8 Moore Street
(Source: Site visit on 16 January 2024)

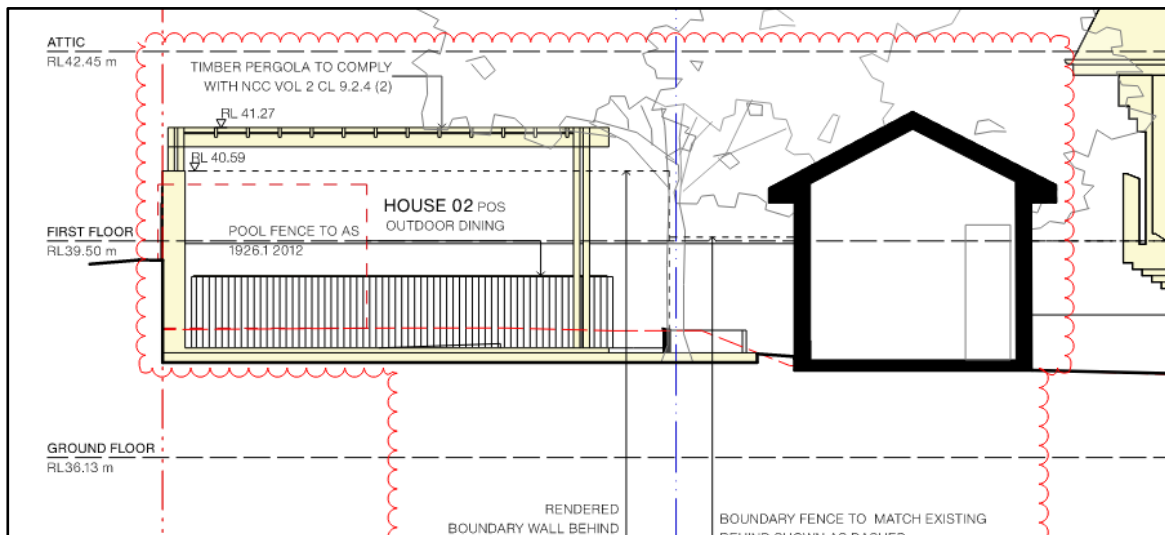


Figure 28: Demolition of existing carport wall (shown in red) and construction of pergola wall and structure (Source: Tribe Studios)

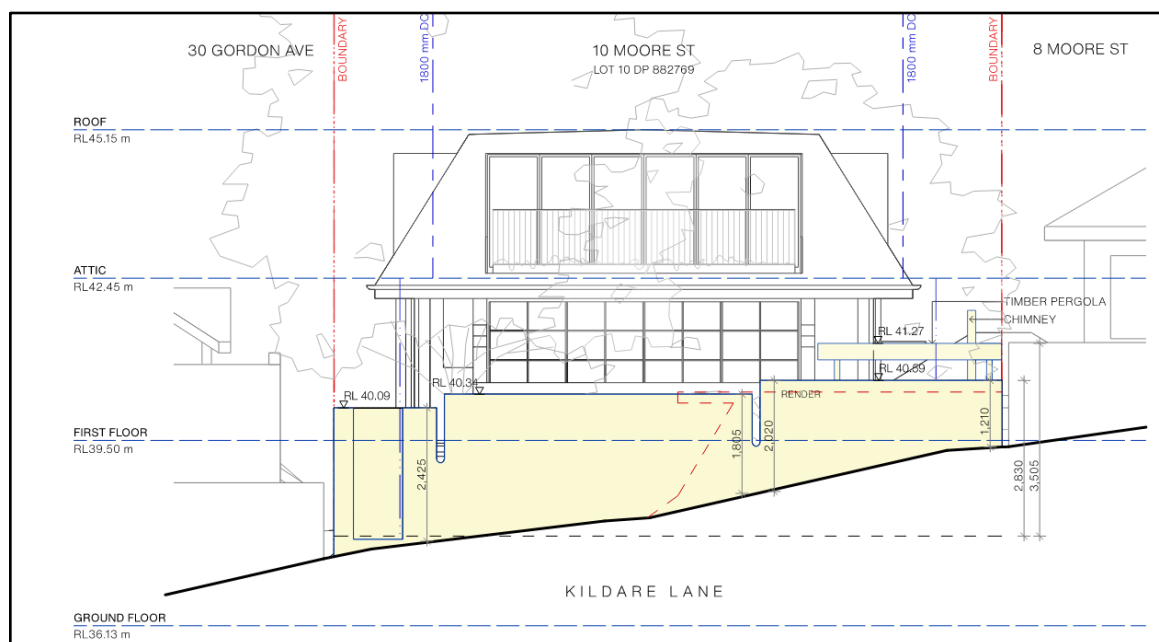


Figure 29: Proposed rear fencing for 10 Moore Street and the height of the pergola structure (Source: Tribe Studios)

The rear and side wall enclose the pergola on two sides.

10. Conclusion

That the application for alterations and additions to an existing dual occupancy, including an extension of the lower ground floor level, an internal reconfiguration of the ground and first floor levels and the provision of an attic level with an amended rear roof structure. The proposal also includes landscaping works and a new swimming pool, be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013
- The proposal is consistent with the specific objectives of the R3 Medium Density Residential zone in that the additions and alterations to the stacked dual occupancy will provide for the housing needs of the community, appropriate to a medium density residential environment and facilitates redevelopment of the site that retains and supports the dual occupancy use by improving layout, access, facilities and amenities within the built form. The proposal ensures the redevelopment does not compromise residential amenity of neighbouring properties.
- The scale and design of the proposal are considered to be suitable for the location and is compatible with the desired future character of the locality.
- The development enhances the visual quality of the public domain/streetscape
- The proposed development will make a positive contribution to the residential area.

Appendix 1: Referrals

1. External referral comments:

- 1.1. Ausgrid provided a response under clause 45(2) of the State Environmental Planning Policy (Infrastructure) 2007, stating that they do not object the proposed development.

The advisory letter from Ausgrid is provided in Appendix 4.

2. Internal referral comments:

2.1. Development Engineer

Overall, there are no objections to the proposal subject to the comments and conditions provided in the referral.

Comments

The proposed new garage can comply with the minimum internal dimensions required by Australian Standard 2890.1:2004.

Conditions have been provided to facilitate a wider driveway and crossing to alleviate difficulty for users reversing out of the proposed new garage onto the roadway and any conflicts between users of both garages.

Details of the proposed rear retaining wall are to be included in the construction certificate documentation.

Applicant is required to submit detailed drainage plans to principle certifier, no drainage plans will be approved through this development application. The stormwater must be discharged by gravity directly to the kerb and gutter in front of the subject site in Moore Street.

The subject site is located within 15m of a mains power distribution pole on the same side of the street, a suitable condition has been provided.

Assessing officer's comment: Any conditions recommended by Council's Development Engineer will be imposed should consent be granted.

2.2. Landscape Development Officer

A site inspection was undertaken on 23 August 2023, with pictures of all vegetation saved on file.

Comments

Landscape officer recommended protection of Honey Gum tree on the council road reserve, by TPZ fencing and a bond.

Landscape officer approved the removal of Magnolia tree in the front raised bed, because it is in direct conflict with the proposed works and there is not sufficient room to allow works to proceed and retain the tree. Removal is at the Applicants cost.

In the rear garden, the removal of Olive Tree T04 is approved because the tree is in close conflict of the works.

The Spotted gum (Corymbia maculata) tree (T03) will have minimal impact on the proposed works. TPZ fencing and relevant conditions are suggested.

The mature Smooth Barked apple myrtle (Angophora costata) will only receive minimal impacts from the works. TPZ fencing and relevant conditions have been suggested.

The mature Swamp mahogany (eucalyptus robusta) on the neighbouring property is clear of all works.

Other small insignificant vegetation within the scope of the works on the upper level are of no significance and will be removed prior to any works.

Assessing officer's comment: Any conditions recommended by Council's Landscape Development Officer will be imposed should consent be granted.

2.3 Building Regulation

Comments

The Applicant has provided a BCA Design Assessment Report and also a Fire Safety Upgrade Strategy to address the provisions of clause 64 of the EP&A Regulation 2021.

No objections are raised in relation to the proposed development, subject to compliance with the abovementioned reports and proposed conditions of consent.

Recommendation:

Should the application be approved, it is recommended that the following conditions be included in the consent:

Assessing officer's comment: Any conditions recommended by the Manager of Health Building and Regulatory Services will be imposed should consent be granted.

D11/24

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

D11/24



gsa planning

RANDWICK LEP 2012 Clause 4.6 Exceptions to Development Standards – Height of Buildings

Proposed Alterations and Additions to an Existing Dual
Occupancy at

**No. 10 Moore Street,
Coogee**

Prepared for:

Juliet Bishop
c/o Tribe Studio Architects
247 Devonshire Street
Surry Hills NSW 2010

Prepared by:

GSA PLANNING
Urban Design, Environmental & Traffic Planners
(A.B.N 89 643 660 628)
95 Paddington Street, Paddington NSW 2021
p: 02 9362 3364
e: info@gsaplanning.com.au

JOB NO. 22291
December 2023

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**RANDWICK LOCAL ENVIRONMENTAL PLAN (LEP) 2012
CLAUSE 4.6 EXCEPTIONS TO DEVELOPMENT STANDARDS**

APPLICANT'S NAME: Juliet Bishop

SITE ADDRESS: No. 10 Moore Street, Coogee

PROPOSAL: Alterations and Additions to an Existing Dual Occupancy

1. (i) **Name of the applicable planning instrument which specifies the development standard:**

Randwick Local Environmental Plan (LEP) 2012

- (ii) **The land is zoned:**

R3 Medium Density Residential. The objectives of the R3 zone are as stated:

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

- (iii) **The number of the relevant clause therein:**

Clause 4.3 – Height of Buildings which is stated as follows:

- (1) *The objectives of this clause are as follows—*
- (a) *to ensure that the size and scale of development is compatible with the desired future character of the locality,*
 - (b) *to ensure that 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.*

This Clause 4.6 Exception to Development Standards should be read in conjunction with the Statement of Environmental Effects (SEE) prepared by GSA Planning.

2. Overview

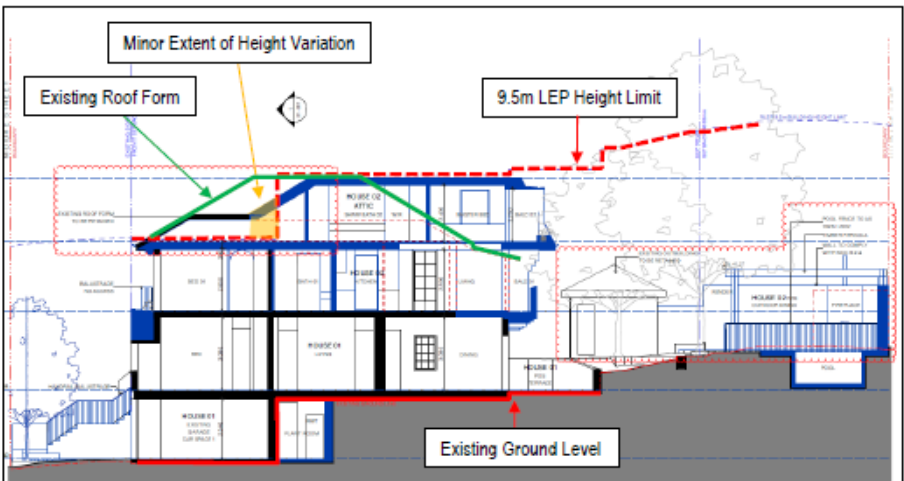
This Clause 4.6 Exception to Development Standards has been prepared in accordance with the most recent case law. In our opinion, the variation is consistent with the objectives of the zone and development standard and has demonstrated there are sufficient environmental planning grounds to justify contravening the development standard.

3. Specify the nature of Development Standard sought to be varied and details of variation:

The development standard to which this request for variation relates is Clause 4.3 of the LEP - Height of Buildings. This Clause operates in conjunction with the height Map which indicates a maximum 9.5m applies to the subject site. Clause 4.3 is consistent with the definition for a development standard under Section 1.4 of the Environmental Planning and Assessment Act 1979 (EPA Act).

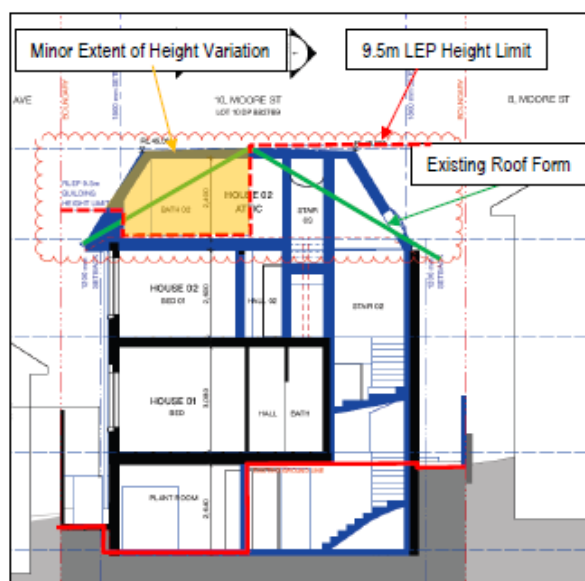
The proposal consists of alterations and additions to the existing dual occupancy, including but not limited to internal reconfigurations and construction of a new attic level partially within the existing roof form.

The existing building on the subject site has a maximum height of 12.12m, measured from the ridge of the roof at RL 45.15 existing ground level immediately below. The existing building exceeds the height development standard by 2.62m, being a 27.57% variation. The proposal maintains the existing roof ridge, and therefore the maximum building height on site remains at 12.12m. It is noted that the height breach relates only to a minor portion of the reconstructed roof directly above the existing basement (where the existing roof is already non-compliant with the height limit). All other aspects of the built form including the western and rear extent of the attic addition will comply with the height limit (see Figures 1 and 2 on the following page).



Source: Tribe Studio Architects

Figure 1: Existing and Proposed Building Height – Long Section



Source: Tribe Studio Architects

Figure 2: Existing and Proposed Building Height - Short Section

The proposed height variation is considered a technical variation as it is a function of previous excavation beneath the existing building. As discussed, the existing ridge and maximum building height will be maintained as existing.

When viewed from Moore Street, the proposal will maintain the maximum building height and two storey appearance above a garage level. The minor extent of height breach will not be readily visible from Moore Street. At the rear, the proposal complies with the height standard and will appear as two storeys with an attic level.

4. Consistency with Objectives of Clause 4.6

The objectives of Clause 4.6 seek to provide appropriate flexibility to the application of development standards in order to achieve better planning outcomes both for the development and from the development. In the Court determination in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] 236 LGERA 256 (*Initial Action*), Preston CJ notes at [87] and [90]:

Clause 4.6 does not directly or indirectly establish a test that the non-compliant development should have a neutral or beneficial effect relative to a compliant development...In any event, Clause 4.6 does not give substantive effect to the objectives of the clause in Clause 4.6(a) or (b). There is no provision that requires compliance with the objectives of the clause.

However, it is still useful to provide a preliminary assessment against the objectives of the Clause. The objectives of Clause 4.6 and our planning response are as follows:

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

Flexibility in applying the height development standard is appropriate in this case. The existing built form comprises a portion of non-compliant building height at the street frontage due to the existing basement level. Therefore, any works to this portion of the roof would inevitably also exceed the height limit. Given the proposal includes an amended roof form to accommodate an attic level, it is inevitable that the amended roof above the existing basement would continue to exceed the height development standard. However, the proposal will maintain the building height as existing and the minor extent of new variation is likely to maintain the amenity of neighbouring development as existing. Importantly, the proposal complies with the FSR development standard.

Flexibility in this circumstance will provide a better outcome both for and from the development. Strict compliance would result in a reduced and dysfunctional attic level that would not meet the needs of the owner. Strict compliance would also result in an inconsistent roof form and a poor visual outcome for the street. To refuse this application would prevent the orderly and economic use and development of the land.

5. Justification of Variation to Development Standard

Clause 4.6(3) outlines that a written request must be made seeking to vary a development standard and that specific matters are to be considered. The Clause states, inter alia:

- (3) *Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating:*
 - (a) *that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and*
 - (b) *that there are sufficient environmental planning grounds to justify contravening the development standard.*

This written request justifies the contravention of the development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances; and there are sufficient environmental planning grounds to justify the non-compliance. These matters are discussed in the following sections.

5.1 Compliance with the Development Standard is Unreasonable and Unnecessary in the Circumstances of the Case

Clause 4.6(3)(a) requires the applicant to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. In *Wehbe v Pittwater Council* (2007) 156 LGERA 446 (*Wehbe*), Preston CJ established five potential tests for determining whether a development standard could be considered unreasonable or unnecessary. This is further detailed in *Initial Action* where Preston CJ states at [22]:

These five ways are not exhaustive of the ways in which an applicant might demonstrate that compliance with a development standard is unreasonable or unnecessary; they are merely the most commonly invoked ways. An applicant does not need to establish all the ways. It may be sufficient to establish only one way, although if more ways are applicable, an applicant can demonstrate that compliance is unreasonable or unnecessary in more than one way.

It is our opinion that the proposal satisfies Test 1 established in *Wehbe* and for that reason, the development standard is unreasonable and unnecessary in this instance. The relevant test will be considered below.

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

Despite the proposed development's non-compliance with the applicable height development standard, the proposal is consistent with the desired medium density character of the area. The proposal provides a height, bulk and scale that is generally consistent with that envisaged by Council's controls. Reasons why the proposed development is consistent with the objectives of the height standard are explained below.

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

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

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

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

The proposed alterations and additions to the existing dual occupancy will contribute to the eclectic mix of permissible uses in the R3 Zone. Although the proposal continues to exceed the height limit, given the maximum height and roof ridge is maintained, the building remains compatible with the envelope of existing and emerging development in the area and as such, the desired future character of Coogee. Moore Street is characterised by a mix of residential buildings, including single dwellings, semi-detached dwellings, dual occupancies and residential flat buildings. Older buildings are being refurbished or replaced by contemporary built forms creating the emerging contemporary character. The building will continue to present as two storeys above a garage level to Moore Street and the minor extent of height non-compliance will not be readily noticeable once constructed when compared to the existing situation. The proposed building height will remain consistent with the height, bulk and scale of existing and emerging development in the area. The amended roof form has been designed in accordance with the desired future character of the area and is set back beyond the front apex of the existing roof. In our opinion, the proposed design improvements are considered to more than offset the area of height non-compliance which follows the existing ridge line.

Despite the small portion of additional height exceedance as a result of the existing built form to be retained and existing excavation on site, the proposal sympathetically responds to the character of nearby developments. It will not appear out of character when viewed in its context and the proposal will continue to provide a height transition between No. 8 Moore Street and No. 30 Gordon Avenue.

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

N/A. Site is not within a conservation area or within the vicinity of 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.

The minor extent of height variation will occur only to the eastern side of the roof and is due to continuation of the existing ridge. As such, the variation is unlikely to adversely impact the amenity of neighboring land, in particular given the maximum height will be maintained. This will now be specifically addressed in relation to visual bulk, privacy, overshadowing and views.

Visual Bulk

The proposal only seeks to breach the building height on the eastern side of the attic level in the area directly above the existing excavated garage. The additional bulk above the height limit is minor in extent and follows the existing roof ridge, meaning it is unlikely to adversely increase the visual bulk above the height limit when compared to the existing situation. It is noted that the minor extent of height breach is sited behind the existing front roof apex and as such will not be readily visible from Moore Street. Importantly, the proposal will continue to ensure a height transition between the adjoining buildings at No. 8 Moore Street and No. 30 Gordon Avenue. The works do not result in adverse additional bulk above the height limit.

Privacy

The minor extent of height variation is likely to maintain the privacy of adjoining and neighbouring development as existing. This is because the portion of variation does not include any windows and therefore will not result in overlooking to adjoining development. Accordingly, the minor extent of height breach is likely to maintain the privacy of surrounding development as existing.

Overshadowing

The minor extent of height non-compliance located on the eastern side of the roof will not result in additional shadowing to neighbouring windows or private open space when compared to the existing situation.

Views

The minor extent of additional height to the eastern portion of the attic and roof will maintain views for surrounding development as existing. Development to the west in the immediate vicinity of the site does not comprise upper floor levels which would have access to eastern views over the existing or proposed roof form. Therefore, the height variation does not result in adverse view impacts. In any event, it is noted that the existing roof ridge line and maximum building height is being maintained.

The proposal provides a sympathetic overall design that is unlikely to result in adverse amenity impacts to neighbouring development.

5.2 There are Sufficient Environmental Planning Grounds to Justify Contravening the Development Standard

The proposal is permissible in the R3 Medium Density Residential Zone, is consistent with the relevant zone objectives and satisfies an 'unreasonable and unnecessary' test established by the Court in *Wehbe*. The non-compliance is primarily a result of the existing excavated basement area and the measurement of height from the existing ground level.

There are sufficient environmental planning grounds to justify the building height non-compliance. They include the artificial existing ground line; existing built form to be maintained; consistency in the context and enhanced amenity. These will now be discussed.

Artificial Existing Ground Line

The building height variation is a result of the measurement of building height from the existing ground level, which in this case is the underside of the existing excavated garage. Therefore, a portion of the proposed attic level on eastern side that follows the existing ridgeline and sits directly above the existing garage will exceed the height limit. As such, the minor extent of height breach which follows the existing ridge is considered technical.

Existing Built Form

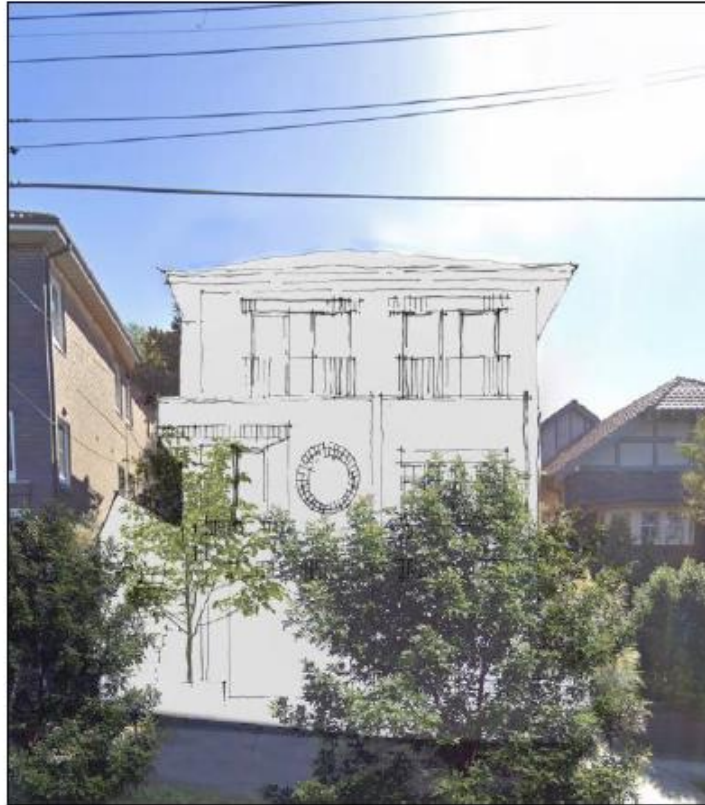
The proposal maintains the existing roof ridge and existing maximum building height. The existing built form on site predominantly complies with the height limit, with the exception of the roofing directly above the excavated basement garage. Given the proposal retains the roof ridge, it is inevitable that the proposed new attic and associated roofing above the existing excavated basement garage will be above the height limit.

Contextual Compatibility

The proposal, although partially height non-compliant is compatible with the context of existing and emerging development in the area. In *Initial Action v Woollahra Municipal Council* [2019] NSWLEC 1097, Commissioner O'Neill states at [42], inter alia:

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

This report demonstrates that the proposed building height to the eastern portion of the roof form will be compatible with the existing and desired future character of the area, in particular given the roof ridge and maximum building height is to be maintained as existing. The proposal will maintain a two storey appearance above a garage level to Moore Street and will continue to provide a transition in height between No. 8 Moore Street and No. 30 Gordon Avenue (see **Figure 2** on the following page). The minor extent of height variation is restricted to one portion of the roof and once constructed will not present as a built form with obvious height non-compliances when compared to the existing situation. Rather, the proposed height breach ensures one consistent attic roof form addition. In our opinion, the portion of variation is integral to the overall design of the alterations and additions and positively contributes to and provides compatibility with the desired future of the area.



Source: Tribe Studio Architects

Figure 2: The Proposal in the Streetscape

Enhanced Amenity

The proposal for additional building height will enhance the amenity of House 2. To achieve a fully compliant building height would require removal of a substantial portion of the bathroom at the attic level. As such, the minor extent of additional building height to the eastern portion of the roof will enable an adequately sized bathroom at the attic level which will substantially enhance the internal amenity and functionality of House 2.

Other Matters for Consideration:

It should also be noted that the proposal improves the amenity of the subject site while maintaining the amenity of neighbouring development; is consistent with the objectives of the R3 Medium Density Residential Zone and the relevant DCP built form and amenity provisions; and results in an improved streetscape outcome for the site. While these factors may not strictly constitute environmental planning grounds, they should be considered in the assessment of the height breach.

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

6. Clause 4.6(4)(a) Requirements

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

- (4) *Development consent must not be granted for development that contravenes a development standard unless:*
 - (a) *the consent authority is satisfied that:*
 - (i) *the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and*
 - (ii) *the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out*

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

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

Objective: *To provide for the housing needs of the community within a medium density residential environment.*
Response: The proposal will continue to provide for the housing needs of the community as a dual occupancy compatible within the medium density residential environment.

Objective: *To provide a variety of housing types within a medium density residential environment.*
Response: The proposal retains the existing dual occupancy and provides sympathetically designed alterations and additions. It will provide one 1 x bedroom house and one 3 x bedroom house which is, in our opinion, an appropriate variety of housing for the subject site.

Objective: *To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition, that contribute to the desired future character of the area.*
Response: The proposed alterations and additions, although partially height non-compliant with the existing height maintained, will improve the appearance of the subject site from Moore Street and are in-keeping with the scale and desired future character of the area.

Objective: *To protect the amenity of residents.*
Response: The proposal will provide a significant improvement to the existing dual occupancy. Although partially height non-compliant, the existing building height has been maintained as existing and the proposal has been skilfully designed to protect neighbouring amenity with respect to solar access, acoustic and visual privacy and views.

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

7. Clauses 4.6(4)(b) and 4.6(5) Requirements

Clause 4.6(4)(b) of the LEP requires the concurrence of the Secretary (of the Department of Planning and Environment) before the consent authority can exercise the power to grant development consent for development that contravenes a development standard.

Under Clause 55 of the Environmental Planning and Assessment Regulation 2021, the Secretary has given written notice dated 5 May 2020, attached to the Planning Circular PS 20-002 issued on 5 May 2020, to each consent authority, that it may assume the Secretary's concurrence for exceptions to

development standards in respect of applications made under Clause 4.6, subject to the conditions in the table in the notice. While the proposal exceeds the development standard by over 10%, the Planning Circular provides for the Local Planning Panel to assume concurrence.

Nevertheless, the matters in Clause 4.6(5) should still be considered when exercising the power to grant development consent for development that contravenes a development standard (*Fast Buck\$ v Byron Shire Council* (1999) 103 LGERA 94 at [100] and *Wehbe* at [41]). In deciding whether to grant concurrence, the Secretary is required to consider the following:

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

The proposal is not considered to raise any matter of significance for State or regional environmental planning. The height non-compliance will enhance the amenity and functionality of the proposed dual occupancy without significantly, unreasonably or unacceptably impacting neighbouring properties.

The public benefit of maintaining the development standard is not considered significant given that, regardless of the non-compliance, the proposal will appear consistent in the streetscape.

Accordingly, the proposal is consistent with the matters required to be taken into consideration before concurrence can be granted. The non-compliance contributes to a quality development which is consistent with the desired character of the precinct and is, in our opinion, in the public interest.

8. Conclusion

This written request has adequately demonstrated that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and that there are sufficient environmental planning grounds to justify contravening the development standard. This is summarised in the compliance matrix prepared in light of *Initial Action* (see **Table 1** on the following page).

We are of the opinion that the consent authority should be satisfied that the proposed development will be in the public interest because it is consistent with the objectives of the standard and the development objectives of the R3 Medium Density Residential Zone pursuant to the LEP. On that basis, the request to vary Clause 4.3 should be upheld.

Table 1: Compliance Matrix

Para (Initial Action)	Requirement	Section of this Report	Summary	Satisfied
10	Is it a development standard (s.1.4)	1	Yes	
11	What is the development standard	1	Clause 4.3: Height of Buildings	
12	What is the control	1 & 2	9.5m	
14	First Precondition to Enlivening the Power – Consent authority must form 2 positive opinions:		Both positive opinions can be formed as detailed below.	YES
15, 25	1 st Positive Opinion – That the applicant's written request seeking to justify the contravention of the development standard has adequately addressed the matters required to be demonstrated by Clause 4.6(3). There are two aspects of that requirement.	5	The Clause 4.6 variation has adequately addressed both matters in Clause 4.6(3) by providing a detailed justification in light of the relevant tests and planning considerations.	YES
16-22	First Aspect is Clause 4.6(3)(a) – That compliance with the development standard is unreasonable or unnecessary in the circumstances of the case. Common ways are as set out in Wehbe.	5.1	The proposal satisfies Test 1 of Wehbe: <ul style="list-style-type: none"> The objectives of the standard are achieved notwithstanding the non-compliance with the standard. 	YES
23-24	Second Aspect is Clause 4.6(3)(b) – The written request must demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard so as to enable the consent authority to be satisfied under Clause 4.6(4)(a)(i) that the written request has adequately addressed this matter. The environmental planning grounds must be "sufficient" in two respects: <ol style="list-style-type: none"> The environmental planning grounds advanced in the written request must be sufficient to justify contravening the development standard. The focus is on the aspect or element of the development that contravenes the development standard, not on the development as a whole, and why that contravention is justified on environmental planning grounds. The environmental planning grounds advanced in the written request must justify the contravention of the development standard, not simply promote the benefits of carrying out the development as a whole. 	5.2	Sufficient environmental planning grounds include, inter alia: <ul style="list-style-type: none"> The technical height non-compliance is a result of an existing excavated area on site; The proposal retains the existing maximum building height and roof ridge line; The existing built form and proposal responds to the sloping topography of the site; The building height remains contextually compatible with the existing situation and desired future character of the area; and The building height caters for enhanced amenity to the office level. 	YES
26-27	2 nd Positive Opinion – That the proposed development will be in the public interest because it is consistent with the objectives of the particular development standard that is contravened and the objectives for development for the zone in which the development is proposed to be carried out.	6	The proposed development is consistent with the objectives of the height standard as addressed under Test 1 of Wehbe. The proposal is also consistent with the objectives of the R3 Medium Residential Zone.	YES
28-29	Second Precondition to Enlivening the Power –	7	As the relevant matters for consideration under Clause 4.6 have	YES

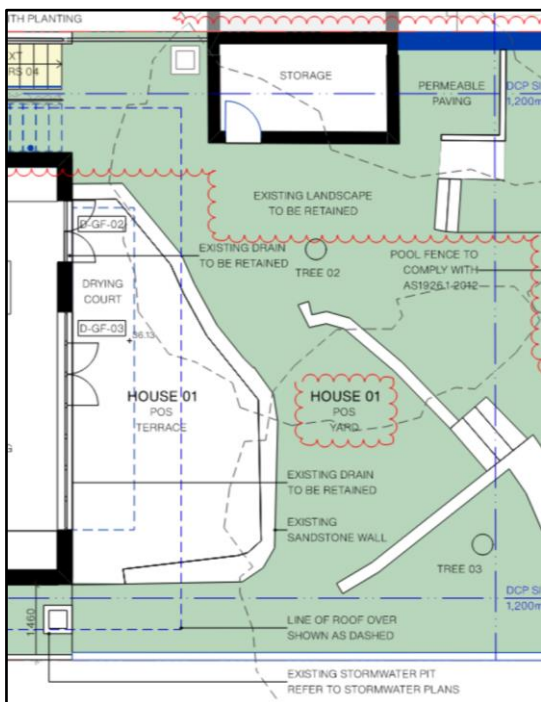
Clause 4.6 Exceptions to Development Standards – Height of Buildings
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That the concurrence of the Secretary has been obtained (Clause 4.6(4)(b)). On appeal, the Court has the power to grant development consent, subject to being satisfied of the relevant matters under Clause 4.6.	been satisfied as outlined above, the Council can grant development consent.	
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Appendix 3: DCP Compliance Table**3.1 Section C1: Low Density Residential**

DCP Clause	Controls	Proposal	Compliance (Yes, No, N/A, Conditioned)
	Classification	Zoning = R3	
2	Site planning		
2.3	Site coverage		
	Up to 300 sqm = 60% 301 to 450 sqm = 55% 451 to 600 sqm = 50% 601 sqm or above = 45%	Site = 453.9m ² Existing = 145.73m ² / 32.1% Proposed = 167.4m ² / 36.8%	Complies
2.4	Landscaping and permeable surfaces		
	i) Up to 300 sqm = 20% ii) 301 to 450 sqm = 25% iii) 451 to 600 sqm = 30% iv) 601 sqm or above = 35% v) Deep soil minimum width 900mm. vi) Maximise permeable surfaces to front vii) Retain existing or replace mature native trees viii) Minimum 1 canopy tree (8m mature). Smaller (4m mature) If site restrictions apply. ix) Locating paved areas, underground services away from root zones.	Site = 453.9m ² Existing = 97.87m ² / 21.7% Proposed = 137.91m ² / 30% The width of the deep soil permeable surfaces is not less than 900mm. The amended plans include a permeable driveway and paving along the western boundary, which are counted in the permeable surfaces calculation. The proposal increases the permeable surfaces on site by over 8%. There are two large canopy trees in the rear garden, which will be retained and the permeable surfaces at the front of the property are being significantly increased.	Complies
2.5	Private open space (POS)		
	Dual Occupancies (Attached and Detached) POS		
	451 to 600 sqm = 5m x 5m each 601sqm or above = 6m x 6m each ii) POS satisfy the following criteria:	Site = 453.9m ² <u>Proposed:</u> House 1: >25m ² ,	Complies

DCP Clause	Controls	Proposal	Compliance (Yes, No, N/A, Conditioned)
	<ul style="list-style-type: none"> Situated at ground level (except for duplex) No open space on podiums or roofs Adjacent to the living room Oriented to maximise solar access Located to the rear behind dwelling Has minimal change in gradient  <p>Figure 1: POS diagram (Source: Tribe Studio Architects)</p>	<p>additional information received on 01 February 2024 details that House 1 will have access to use the rear yard as POS. This significantly increases House 1's POS from the existing situation and fully complies with the DCP.</p> <p>House 2: >25m², POS is at ground level and located to the rear behind the dwelling.</p> <p>Both areas are located directly adjacent to the living areas and do not include open space on podiums or roofs.</p>	
3	Building envelope		
3.1	Floor space ratio LEP 2012 = 0.75:1	<p>Site area = 453.9m²</p> <p>Existing FSR = 0.51:1</p> <p>Proposed FSR = 0.69:1</p>	Complies
3.2	Building height		
	Maximum overall height LEP 2012 = 9.5m	<p>Existing = 12.12m</p> <p>Proposed = 11.18m</p>	Clause 4.6 – variation discussed in section 7.
	<p>i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m)</p> <p>ii) Sloping sites = 8m</p> <p>iii) Merit assessment if exceeded</p>	<p>Existing = 8.5m</p> <p>Proposed = 8.5m</p> <p>The site slopes by approximately 5m from north (rear) to south (front).</p> <p>The existing dwelling does have external wall heights greater than 8m, being</p>	Acceptable on merit – see the key issues section.

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DCP Clause	Controls	Proposal	Compliance (Yes, No, N/A, Conditioned)
		<p>approximately 8.5m on the eastern side, near the front of the property. This is caused by the cross fall of approximately 1m from west to east.</p> <p>The proposal does not result in any new external wall height >8m.</p>	
3.3	Setbacks		
3.3.1	Front setbacks <ul style="list-style-type: none"> 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 	<p>Minimum = merit assessment</p> <p>Existing = 5.09m</p> <p>Proposed = 5.09m</p> <p>The proposed additions will not reduce the existing front setback, which is consistent with the adjoining properties. A setback of 5.09m is satisfactory.</p>	Complies
3.3.2	Side setbacks: Dwelling Houses & Dual Occupancies: <ul style="list-style-type: none"> • Frontage less than 9m = 900mm • Frontage b/w 9m and 12m = 900mm (Gnd & 1st floor) 1500mm above • Frontage over 12m = 1200mm (Gnd & 1st floor), 1800mm above. <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p>	Discussed in the key issues section.	Acceptable on merit - see the detailed assessment in the key issues section.
3.3.3	Rear setbacks <ul style="list-style-type: none"> i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments. ii) Provide greater than aforementioned or demonstrate not required, having regard to: <ul style="list-style-type: none"> - Existing predominant rear setback line - reasonable view sharing (public and private) - protect the privacy and solar access iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions. iv) For irregularly shaped lots = merit assessment on basis of:- 	<p>Minimum = 8m</p> <p>Proposed = approx. 15m</p> <p>The setbacks for the swimming pool and outbuilding are subject to comply with other relevant provisions.</p>	Complies

DCP Clause	Controls	Proposal	Compliance (Yes, No, N/A, Conditioned)
	<ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p>		
4	Building design		
4.1	General		
	<p>Respond specifically to the site characteristics and the surrounding natural and built context -</p> <ul style="list-style-type: none"> • articulated to enhance streetscape • stepping building on sloping site, • no side elevation greater than 12m • encourage innovative design 	<p>The proposal respects and follows the topography of the site, stepping the building on site.</p> <p>The building is appropriately articulated, particularly with the constraints of the existing built form.</p> <p>There are portions of the building with side elevation greater than 12m, but this is a constraint of the existing built form.</p> <p>The proposal displays innovative design.</p>	Acceptable on merit.
4.3	Additional Provisions for Attached Dual Occupancies		
	<p>Should present a similar bulk as single dwellings</p> <ul style="list-style-type: none"> i) Garage for each dwelling shall have a single car width only ii) Articulate and soften garage entry iii) Minimise driveway width iv) Maximum 2m setback of front entry from front façade v) Maximise landscape planting at front 	<p>The two garages are both single widths.</p> <p>The front façade will be appropriately softened.</p> <p>The driveway width is appropriate.</p> <p>The main entrances to the dwellings are maintained on the side elevations.</p> <p>Landscaping has been provided in the front setback on either side of the driveway.</p>	Complies
4.4	Roof Design and Features		
	<p><i>Rooftop terraces</i></p> <ul style="list-style-type: none"> i) on stepped buildings only (not on uppermost or main roof) ii) above garages on sloping sites (where 	<p>The proposal contains two dormers located towards the rear of the property</p>	Acceptable on merit – see the key issues section.

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DCP Clause	Controls	Proposal	Compliance (Yes, No, N/A, Conditioned)
	garage is on low side) <i>Dormers</i> iii) Dormer windows do not dominate iv) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof, face behind side elevation, above gutter of roof. v) Multiple dormers consistent vi) Suitable for existing <i>Clerestory windows and skylights</i> vii) Sympathetic to design of dwelling <i>Mechanical equipment</i> viii) Contained within roof form and not visible from street and surrounding properties.	on the eastern side of the attic addition, as well as 1 dormer on the western side. The dormers are > 1.5m in height and are therefore non-compliant with the controls. The dormers will not be readily visible from the street and neighbouring dwellings.	
4.5	Colours, Materials and Finishes		
	i) Schedule of materials and finishes ii) Finishing is durable and non-reflective. iii) Minimise expanses of rendered masonry at street frontages (except due to heritage consideration) iv) Articulate and create visual interest by using combination of materials and finishes. v) Suitable for the local climate to withstand natural weathering, ageing and deterioration. vi) recycle and re-use sandstone (See also section 8.3 foreshore area.)	A condition requiring approval the materials and schedules finishes will be included. The external materials will be durable and non-reflective. A combination of materials and finishes will articulate long walls and create visual interest.	Complies
4.6	Earthworks		
	i) Excavation and backfilling limited to 1m, unless gradient too steep ii) Minimum 900mm side and rear setback iii) Step retaining walls. iv) If site conditions require setbacks < 900mm, retaining walls must be stepped with each stepping not exceeding a maximum height of 2200mm. v) sloping sites down to street level must minimise blank retaining walls (use combination of materials, and landscaping) vi) cut and fill for POS is terraced <i>where site has significant slope:</i> vii) adopt a split-level design viii) Minimise height and extent of any exposed under-croft areas.	The excavation required to accommodate the garage for House 2 will exceed 1m. The works have been supported by a Geotechnical Report.	Complies subject to geotechnical report.
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		
	i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June	A portion of both dwellings' north-facing living room windows will receive	Complies

DCP Clause	Controls	Proposal	Compliance (Yes, No, N/A, Conditioned)
	ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.	a minimum of 3 hours direct sunlight between 8am and 4pm on the 21 st of June. The POS of both dwellings will receive >3 hours of direct sunlight on 21 June.	
	Solar access to neighbouring development:		
	i) Portion of the north-facing living room windows must receive a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. iv) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June. v) Solar panels on neighbouring dwellings, which are situated not less than 6m above ground level (existing), must retain a minimum of 3 hours of direct sunlight between 8am and 4pm on 21 June. If no panels, direct sunlight must be retained to the northern, eastern and/or western roof planes (not <6m above ground) of neighbouring dwellings. vi) Variations may be acceptable subject to a merits assessment with regard to: <ul style="list-style-type: none"> Degree of meeting the FSR, height, setbacks and site coverage controls. Orientation of the subject and adjoining allotments and subdivision pattern of the urban block. Topography of the subject and adjoining allotments. Location and level of the windows in question. Shadows cast by existing buildings on the neighbouring allotments. 	The north facing windows and private open space of the directly neighbouring properties (8 Moore Street & 30 Gordon Avenue) will receive more than 3 hours of direct sunlight. Direct sunlight to at least one roof plane for at least 3 hours on 21 June is maintained at 8 Moore Street and 30 Gordon Avenue.	Complies
5.2	Energy Efficiency and Natural Ventilation		
	i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as: <ul style="list-style-type: none"> Skylights (ventilated) Clerestory windows Fanlights above doorways Highlight windows in internal partition walls ii) Where possible, provide natural lighting and ventilation to any internalised toilets, bathrooms and laundries iii) living rooms contain windows and doors	The proposed design provides day light to internalised areas within the dwelling. All living rooms, dining rooms, kitchens and bedrooms will incorporate windows opening to outdoor areas.	Complies

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DCP Clause	Controls	Proposal	Compliance (Yes, No, N/A, Conditioned)
	opening to outdoor areas <i>Note:</i> The sole reliance on skylight or clerestory window for natural lighting and ventilation is not acceptable		
5.3	Visual Privacy		
	Windows		
	<p>i) Proposed habitable room windows must be located to minimise any direct viewing of existing habitable room windows in adjacent dwellings by one or more of the following measures:</p> <ul style="list-style-type: none"> - windows are offset or staggered - minimum 1600mm window sills - Install fixed and translucent glazing up to 1600mm minimum. - Install fixed privacy screens to windows. - Creating a recessed courtyard (minimum 3m x 2m). <p>ii) Orientate living and dining windows away from adjacent dwellings (that is orient to front or rear or side courtyard)</p>	<p>Western privacy: New windows on the western side are obscure glazing (W-L1-01, W-L1-02 & W-L2-01). A privacy screen obscures the view of W-L1-02.</p> <p>Rear privacy (north): 2 new balconies orientated over the rear garden.</p> <p>Level 1 balcony has side walls, reducing overlooking of neighbouring properties POS. W-L1-04 & W-L1-07 located to the rear of level 1 do not overlook neighbouring properties.</p> <p>Attic level balcony is set back into the building, reducing overlooking of neighbouring properties POS. Two large canopy trees located in the rear garden.</p> <p>There are no privacy concerns for 8 Moore Street (western neighbour).</p> <p>Privacy to the east: 30 Gordon Avenue (eastern neighbour) has very few windows orientated towards the subject property.</p> <p>Bathroom window in the attic level (W-L2-04) is obscure</p>	Complies

DCP Clause	Controls	Proposal	Compliance (Yes, No, N/A, Conditioned)
		glazing. Eastern facing attic level window (W-L2-03) is sited above the ridgeline and will look over the top of the neighbouring property. New side and rear attic bedroom windows will not result in direct views of existing habitable room windows.	
	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.	Upper floor balconies are orientated toward the rear yard. The street frontage on level 1 contains a balustrade restricting access to the flat section of roof. Appropriate screening and management of overlooking is proposed for the rear balconies on level 1 and in the attic addition. The overlooking of neighbouring properties is minimised, by use of screening and planter boxes.	Complies subject to privacy screening on the attic level balcony balustrade.
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. 	Noise Sources are located appropriately and will not create acoustic privacy concerns. Main living room windows, outdoor living areas and the swimming pool are not located immediately adjacent to the bedroom windows of neighbouring properties.	Complies

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DCP Clause	Controls	Proposal	Compliance (Yes, No, N/A, Conditioned)
5.5	Safety and Security		
	i) Dwelling's main entry on front elevation (unless narrow site) ii) Street numbering at front near entry. iii) 1 habitable room window (glazed area min 2 square metres) overlooking the street or a public place. iv) Front fences, parking facilities and landscaping does not obstruct casual surveillance (maintain safe access)	The entrances to the dwellings are located along the side of the property. This is not proposed to be changed by the addition and all other relevant controls are satisfactorily complied with.	Complies
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)	The proposed development will not result in view loss and is consistent with the objectives of the DCP.	Complies – see the key issues section for a detailed analysis.
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)	There will only be one vehicle accessway, located at the property frontage and within the dwelling footprint. The proposal removes the existing 2 nd vehicular accessway. The property frontage is 12.16m and will contain 2 single garages, as well as a permeable driveway, which can be used as additional parking. The proposal does include excavation for the lower ground floor garage, a geotechnical report has supported these works.	Complies
6.2	Parking Facilities forward of front façade alignment (if other options not available)		

DCP Clause	Controls	Proposal	Compliance (Yes, No, N/A, Conditioned)
	i) The following may be considered: <ul style="list-style-type: none"> - An uncovered single car space - A single carport (max. external width of not more than 3m and - Landscaping incorporated in site frontage ii) Regardless of the site's frontage width, the provision of garages (single or double width) within the front setback areas may only be considered where: <ul style="list-style-type: none"> - There is no alternative, feasible location for accommodating car parking; - Significant slope down to street level - does not adversely affect the visual amenity of the street and the surrounding areas; - does not pose risk to pedestrian safety and - does not require removal of significant contributory landscape elements (such as rock outcrop or sandstone retaining walls) 	Uncovered parking areas will be located forward of the front façade alignment. Landscaping has been incorporated in the site frontage.	Complies
6.3	Setbacks of Parking Facilities		
	i) Garages and carports comply with Sub-Section 3.3 Setbacks. ii) 1m rear lane setback iii) Nil side setback where: <ul style="list-style-type: none"> - nil side setback on adjoining property; - streetscape compatibility; - safe for drivers and pedestrians; and - Amalgamated driveway crossing 	The garages comply with the setbacks and are setback from the road.	Complies.
6.4	Driveway Configuration		
	Maximum driveway width: <ul style="list-style-type: none"> - Single driveway – 3m - Double driveway – 5m Must taper driveway width at street boundary and at property boundary	The driveway width is 5m and the access to garages is appropriate.	Complies.
6.5	Garage Configuration		
	i) recessed behind front of dwelling ii) The maximum garage width (door and piers or columns): <ul style="list-style-type: none"> - Single garage – 3m - Double garage – 6m iii) 5.4m minimum length of a garage iv) 2.6m max wall height of detached garages v) recess garage door 200mm to 300mm behind walls (articulation) vi) 600mm max. parapet wall or bulkhead vii) minimum clearance 2.2m AS2890.1	The garage is recessed behind the front of the dwelling. House 1's garage is remaining as existing. House 2's garage is 4m wide and 7m long, which is non-compliant with the controls. However, this garage also contains access to House 2, a laundry and a plant storage room. Therefore, it is considered appropriate on merit.	Acceptable on Merit.

D11/24

D11/24

DCP Clause	Controls	Proposal	Compliance (Yes, No, N/A, Conditioned)
7	Fencing and Ancillary Development		
7.1	General - Fencing		
	i) Use durable materials ii) Sandstone not rendered or painted iii) Do not use steel post and chain wire, barbed wire or dangerous materials iv) Avoid expansive surfaces of blank rendered masonry to street	Fences will be constructed with durable materials and will comply with the general requirements.	Complies
7.2	Front Fencing		
	i) 1200mm max. (Solid portion not exceeding 600mm), except for piers. - 1800mm max. provided upper two-thirds partially open (30% min), except for piers. ii) light weight materials used for open design and evenly distributed iii) 1800mm max solid front fence permitted in the following scenarios: - Site faces arterial road - Secondary street frontage (corner allotments) and fence is behind the alignment of the primary street façade (tapered down to fence height at front alignment). <i>Note: Any solid fences must avoid continuous blank walls (using a combination of materials, finishes and details, and/or incorporate landscaping (such as cascading plants))</i> iv) 150mm allowance (above max fence height) for stepped sites v) Natural stone, face bricks and timber are preferred. Cast or wrought iron pickets may be used if compatible vi) Avoid roofed entry portal, unless complementary to established fencing pattern in heritage streetscapes. vii) Gates must not open over public land. viii) The fence must align with the front property boundary or the predominant fence setback line along the street. ix) Splay fence adjacent to the driveway to improve driver and pedestrian sightlines.	The front fencing will be demolished. There is no proposed front fencing as a replacement. The driveway will be wider than existing and there will be planters and vegetation in the front setback.	Complies
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.	The side fencing along both the eastern and western boundaries will be 1.8m high in most sections. The wall of the cabana will be conditioned to be no more than 1.8m high when viewed from the neighbouring property (8 Moore Street).	Conditioned to comply.

DCP Clause	Controls	Proposal	Compliance (Yes, No, N/A, Conditioned)
		The rear fencing is conditioned to be no more than 1.8m high when viewed from Kildare Lane.	
7.4	Outbuildings		
	<ul style="list-style-type: none"> i) Locate behind the front building line. ii) Locate to optimise backyard space and not over required permeable areas. iii) Except for laneway development, only single storey (3.6m max. height and 2.4m max. wall height) iv) Nil side and rear setbacks where: <ul style="list-style-type: none"> - finished external walls (not requiring maintenance; - no openings facing neighbours lots and - maintain adequate solar access to the neighbours dwelling v) First floor addition to existing may be considered subject to: <ul style="list-style-type: none"> - Containing it within the roof form (attic) - Articulating the facades; - Using screen planting to visually soften the outbuilding; - Not being obtrusive when viewed from the adjoining properties; - Maintaining adequate solar access to the adjoining dwellings; and - Maintaining adequate privacy to the adjoining dwellings. vi) Must not be used as a separate business premises. 	<p>The Cabana structure is located in the rear garden, adjacent to the pool, behind the front building line optimises rear yard space.</p> <p>The cabana is single storey, with a maximum height of 3.53m and a wall height of 2.83m.</p> <p>The wall along the boundary with 8 Moore Street will comply with the fire safety requirements of the National Construction Code 9.2.4.</p> <p>External walls will be finished and will not require frequent maintenance.</p> <p>There are no openings facing the adjoining allotments and adequate solar access to the adjoining dwellings will be maintained.</p>	Complies
7.5	Swimming pools and Spas		
	<ul style="list-style-type: none"> i) Locate behind the front building line ii) Minimise damage to existing tree root systems on subject and adjoining sites. iii) Locate to minimise noise impacts on the adjoining dwellings. iv) Pool and coping level related to site topography (max 1m over lower side of site). v) Setback coping a minimum of 900mm from the rear and side boundaries. vi) Incorporate screen planting (min. 3m mature height unless view corridors affected) between setbacks. vii) Position decking to minimise privacy impacts. viii) Pool pump and filter contained in acoustic 	<p>Pool & spa are located in rear garden on a level area & minimise damage to tree roots.</p> <p>Pool location will minimise noise impacts.</p> <p>The pool is setback 1.1m from the rear boundary and approx. 1.8m and 4.3m from the eastern and western</p>	Acceptable on merit.

D11/24

D11/24

DCP Clause	Controls	Proposal	Compliance (Yes, No, N/A, Conditioned)
	enclosure and away from the neighbouring dwellings.	<p>boundaries.</p> <p>Screen planting along the boundaries is not proposed, which is acceptable.</p> <p>Pool pump and filter are appropriately sited and contained to limit noise.</p>	

Appendix 4: Letter from Ausgrid



TELEPHONE: 13 13 65
EMAIL: development@ausgrid.com.au

24-28 Campbell St
Sydney NSW 2000
All mail to
GPO Box 4009
Sydney NSW 2001
T +61 2 13 13 65
ausgrid.com.au

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

Ausgrid does not object to the proposed development.

The applicant/developer should note the following comments below regarding any proposal within the proximity of existing electrical network assets.

Ausgrid Underground Cables are in the vicinity of the development

Special care should be taken to ensure that driveways and any other construction activities do not interfere with existing underground cables located in the footpath or adjacent roadways.

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

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

SafeWork Australia – Excavation Code of Practice.

Ausgrid's Network Standard NS156 which outlines the minimum requirements for working around Ausgrid's underground cables.

The following points should also be taken into consideration.

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

Should ground anchors be required in the vicinity of Ausgrid underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable.

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D11/24

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Ausgrid Overhead Powerlines are in the vicinity of the development

The developer should refer to SafeWork NSW Document – Work Near Overhead Powerlines: Code of Practice. This document outlines the minimum separation requirements between electrical mains (overhead wires) and structures within the development site throughout the construction process. It is a statutory requirement that these distances be maintained throughout the construction phase.

Consideration should be given to the positioning and operating of cranes, scaffolding, and sufficient clearances from all types of vehicles that are expected be entering and leaving the site.

The “as constructed” minimum clearances to the mains must also be maintained. These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid’s website at www.ausgrid.com.au.

It is the responsibility of the developer to verify and maintain minimum clearances onsite. In the event where minimum safe clearances are not able to be met due to the design of the development, the Ausgrid mains may need to be relocated in this instance. Any Ausgrid asset relocation works will be at the developer’s cost.

Additional information can be found in the Ausgrid Quick Reference Guide for Safety Clearances “Working Near Ausgrid Assets - Clearances”. This document can be found by visiting the following Ausgrid website:
www.ausgrid.com.au/Your-safety/Working-Safe/Clearance-enquiries

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

Regards,
Ausgrid Development Team

For Official use only

Responsible officer: Joseph Edmonds, Environmental Planning Officer

File Reference: DA/200/2023

Development Consent Conditions



Folder /DA No:	DA/200/2023
Property:	10 Moore Street, COOGEE NSW 2034
Proposal:	Alterations and additions to existing dual occupancy.
Recommendation:	Approval

GENERAL CONDITIONS

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

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

Approved Plans & Supporting Documentation

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

Plan	Drawn by	Dated	Received by Council
GA Plans Lower Ground – A-DA-11-007 – Rev S5	Tribe Studio Architects	13.12.2023	1 February 2024
GA Plans Ground Floor – A-DA-11-008 – Rev S5	Tribe Studio Architects	13.12.2023	1 February 2024
GA Plans First Floor – A-DA-11-010 – Rev S5	Tribe Studio Architects	13.12.2023	1 February 2024
GA Plans Attic – A-DA-11-020 – Rev S5	Tribe Studio Architects	13.12.2023	1 February 2024
GA Plans South Elevation – A-DA-21-001 – Rev S5	Tribe Studio Architects	13.12.2023	1 February 2024
GA Plans North Elevation – A-DA-21-002 – Rev S5	Tribe Studio Architects	13.12.2023	1 February 2024
GA Plans East Elevation – A-DA-21-003 – Rev S5	Tribe Studio Architects	13.12.2023	1 February 2024
GA Plans West Elevation – A-DA-21-004 – Rev S5	Tribe Studio Architects	13.12.2023	1 February 2024
GA Plans Roof Plan – A-DA-11-030 – Rev S5	Tribe Studio Architects	13.12.2023	1 February 2024
GA Sections Section BB – A-DA-31-002 – Rev S5	Tribe Studio Architects	13.12.2023	1 February 2024
GA Sections Section CC – A-DA-31-003 –	Tribe Studio Architects	13.12.2023	1 February 2024

Rev S5			
GA Sections Section AA – A-DA-31-001 – Rev S5	Tribe Studio Architects	13.12.2023	1 February 2024
Site Plan – A-DA-02-002 – Rev S5	Tribe Studio Architects	13.12.2023	1 February 2024
BASIX Certificate No.		Dated	Received by Council
A483293_04		13 December 2023	14 December 2023

Amendment of Plans & Documentation

2. The approved plans and documents must be amended in accordance with the following requirements:
- The balustrade of the rear-facing balcony off the master bedroom in the attic level of House 02 must be modified to feature an opaque/frosted glass/solid form design. Any plantings/landscaping contained within the planter box adjacent to the balustrade must be maintained in perpetuity by the owner/s of House 02.
 - Permeable fencing (with gates) must be provided to clearly delineate the private open spaces between the two (2) residences – House 01 and House 02. The private open spaces must be designed to facilitate adequate and independent access for each residence. Any fencing must comply with the relevant requirements under the DCP or as per the *Exempt Development Code* under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.
 - Any new side and rear fencing (including walls) along the property boundaries must be amended and re-designed as follows:
 - All side fencing (including walls) along the eastern side boundary must not exceed 1.8m, as measured from the existing ground levels of the subject site, adjacent to the eastern boundary.
 - All side fencing (including walls) along the western side boundary must not exceed 1.8m, as measured above the existing ground levels of the adjoining property (at No. 8 Moore Street, Coogee), adjacent to the western boundary.
 - All rear fencing (including walls) along the rear (northern) boundary must not exceed 1.8m, measured from the existing ground levels of Kildare Lane, adjacent to the rear (northern) boundary.

The above amendments/design changes must be reflected in the final construction plans and construction certificate and must be approved by the Principal Certifier.

Requirements from Ausgrid

3. The following requirements from Ausgrid must be complied with and reflected in the construction certificate plans and associated documentation:

Ausgrid Underground Cables are in the vicinity of the development

Special care should be taken to ensure that driveways and any other construction activities do not interfere with existing underground cables located in the footpath or adjacent roadways.

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

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

- SafeWork Australia – Excavation Code of Practice.
- Ausgrid's Network Standard NS156 which outlines the minimum requirements for working around Ausgrid's underground cables.

The following points should also be taken into consideration.

- Ausgrid cannot guarantee the depth of cables due to possible changes in ground levels
- from previous activities after the cables were installed.
- Should ground anchors be required in the vicinity of Ausgrid underground cables, the anchors must not be installed within 300mm of any cable, and the anchors must not pass over the top of any cable.

Ausgrid Overhead Powerlines are in the vicinity of the development

The developer should refer to SafeWork NSW Document – Work Near Overhead Powerlines: Code of Practice. This document outlines the minimum separation requirements between electrical mains (overhead wires) and structures within the development site throughout the construction process. It is a statutory requirement that these distances be maintained throughout the construction phase.

Consideration should be given to the positioning and operating of cranes, scaffolding, and sufficient clearances from all types of vehicles that are expected be entering and leaving the site.

The "as constructed" minimum clearances to the mains must also be maintained.

These distances are outlined in the Ausgrid Network Standard, NS220 Overhead Design Manual. This document can be sourced from Ausgrid's website at www.ausgrid.com.au.

It is the responsibility of the developer to verify and maintain minimum clearances onsite. In the event where minimum safe clearances are not able to be met due to the design of the development, the Ausgrid mains may need to be relocated in this instance. Any Ausgrid asset relocation works will be at the developer's cost.

Additional information can be found in the Ausgrid Quick Reference Guide for Safety Clearances "Working Near Ausgrid Assets - Clearances". This document can be found by visiting the following Ausgrid website: www.ausgrid.com.au/Your-safety/Working-Safe/Clearance-enquiries

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

REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

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

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

Consent Requirements

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

5. **External Colours, Materials & Finishes**
The colours, materials and surface finishes to the development must be consistent with the relevant plans, documentation and colour schedules provided with the development application.

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

6. **Section 7.12 Development Contributions**
In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$1,830,711.00 the following applicable monetary levy must be paid to Council: \$18,307.11.

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

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

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

Where:

IDC = the indexed development cost

ODC = the original development cost determined by the Council

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

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

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

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

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

8. **Security Deposits**
The following damage / civil works security deposit requirement must be complied with as security for making good any damage caused to the roadway, footway, verge or any public place; and as security for completing any public work; and for remedying any defect on such public works, in accordance with section 80A (6) of the *Environmental Planning and Assessment Act 1979*:

- **\$4000.00** - **Damage / Civil Works Security Deposit**

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

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

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

Internal Driveway Design

9. Plans submitted for the construction certificate are to demonstrate compliance with the following amendments and requirements in relation to the vehicle access.

- The internal driveway is to 5m wide at the front property boundary and then begin widening straight after to better facilitate vehicle movements into the proposed new garage.
- The vehicle crossing across the Council verge is to be widened to 5m to match the internal driveway as indicated on the approved plans.
- The gradient of the internal access driveway/s must be designed and constructed in accordance with Australian Standard 2890.1 (2004) – Off Streetcar Parking and the levels of the driveway/s must match the alignment levels at the property boundary (as specified by Council).

Design Alignment levels

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

Vehicle Access

- **RL 33.15 (AHD) Western edge of 5m wide driveway.**
- **RL 32.84 (AHD) Eastern edge of 5m wide driveway (existing).**

Pedestrian Access

- **Match the back of the existing footpath.**

The design alignment levels at the property boundary as issued by Council must be indicated on the building plans for the construction certificate. The design alignment level at the street boundary, as issued by the Council, must be strictly adhered to.

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

Enquiries regarding this matter should be directed to Council's Development Engineer on 9093-6881.

11. The above alignment levels and the site inspection by Council's Development Engineering Section have been issued at a prescribed fee of **\$731** calculated at **\$60.00** per metre of site frontage. This amount is to be paid prior to a construction certificate being issued for the development.

Support of Council Land (Kildare Lane)

12. Adequate provisions must be made to support Kildare Lane as required. Detailed plans for the proposed retaining wall on the rear boundary and design certification from a suitably qualified structural Engineer against the relevant Australian standards are to be included in the Construction Certificate documentation. A copy of the structural plans and design certification is to be forwarded to Council's Development Engineers.

NOTES

- The boundary retaining wall is to be located wholly on the subject property.
- Any required works within Kildare Lane must be carried out to the satisfaction of Council and certification from a professional engineer is to be provided to Council upon completion of the works.

Sydney Water

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

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

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

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

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

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

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

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

Stormwater Drainage

14. Stormwater drainage plans have not been approved as part of this development consent. Detailed drainage plans with levels reduced to Australian Height Datum (AHD), shall be prepared by a suitably qualified Hydraulic Engineer and be submitted to and approved by the Principal Certifier. A copy of the plans shall be forwarded to Council, if Council is not the Principal Certifier.

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

- a. Stormwater runoff from the (redeveloped portion) site shall be discharged to the kerb and gutter along the site frontage by gravity (preferably without the use of a charged system); OR
15. Should a charged system be required to drain any portion of the site, the charged system must be designed such that;
- i. There are suitable clear-outs/inspection points at pipe bends and junctions.
 - ii. The maximum depth of the charged line does not exceed 1m below the gutter outlet.
16. Should a pump system be required to drain any portion of the site the system must be designed with a minimum of two pumps being installed, connected in parallel (with each pump

capable of discharging at the required discharge rate) and connected to a control board so that each pump will operate alternatively. The pump wet well shall be sized for the 1 in 100 year, 2 hour storm assuming both pumps are not working.

The pump system must also be designed and installed strictly in accordance with Randwick City Council's Stormwater Code.

17. All pump out water must pass through a stilling pit, located within the site, prior to being discharged by gravity to the kerb and gutter.

Site seepage & Groundwater

18. The development must comply with the following requirements to ensure the adequate management of site seepage and sub-soil drainage:
 - a. Seepage/ground water and subsoil drainage must not be collected & discharged directly or indirectly to Council's Street gutter.
 - b. Adequate provision is to be made for any seepage/ground water to drain around the new lower ground level to ensure it does not dam or slow the movement of the ground water through the development site.
 - c. The walls of the new lower ground level are to be waterproofed/tanked to restrict the entry of any seepage water and subsoil drainage into the lower ground level and the stormwater drainage system for the development.
 - d. Sub-soil drainage systems may discharge via infiltration subject to the hydraulic consultant/engineer being satisfied that the site and soil conditions are suitable, and the seepage is able to be fully managed within the site, without causing a nuisance to any premises and ensuring that it does not drain or discharge (directly or indirectly) to the street gutter.
 - e. Details of the proposed stormwater drainage system including methods of tanking the lower ground levels and any sub-soil drainage systems (as applicable) must be prepared or approved by a suitably qualified and experienced Professional Engineer to the satisfaction of the Principal Certifier and details are to be included in the construction certificate. **A copy of the proposed method for tanking the basement levels must be forwarded to Council if Council is not the Principal Certifier.**

Street Tree Protection Measures

19. To ensure retention of the semi mature *Grevillia 'Honey Gem'* (Honey gem grevillea) that is located west of 10 Moore Street nature strip, in good health, the following measures are to be undertaken.
 - a. All documentation submitted for the Construction Certificate application must show their retention, with the position and diameter of their trunks and canopies to be clearly and accurately shown in relation to the site and all works.
 - b. This tree must also be physically protected by installing a evenly spaced star pickets at a setback of 600 mm to their trunk and matching up with the kerb to which, safety para-webbing then be permanently attached to completely enclose the tree/s for the duration of works.
 - c. This protection shall be installed prior to the commencement of demolition and construction works and shall remain in place until all works are completed, to which, signage containing the following words shall be clearly displayed and permanently attached: **"TREE PROTECTION ZONE (TPZ), DO NOT REMOVE/ENTER"**
 - d. Within the TPZ's there is to be no storage of materials, machinery nor is cement to be mixed or chemicals spilt/disposed of and no stockpiling of soil or rubble with all Site Management Plans to comply with these requirements.

- e. The Principal Certifier must ensure compliance with these requirements, both on the plans as well as on-site during works and prior to any Occupation Certificate.
- f. A refundable deposit in the form of cash, credit card or cheque for an amount of **\$300.00** must be paid at the Cashier on the Ground Floor of the Administrative Centre, **prior to a Construction Certificate being issued for the development** to ensure compliance with the conditions listed in this consent, and ultimately, preservation of the trees.

The refundable deposit will be eligible for refund following an Occupation Certificate, subject to completion and submission of Council's 'Security Deposit Refund Application Form' and pending a satisfactory inspection by Council's Landscape Development Officer (9093-6633). Any contravention of Council's conditions relating to the trees at any time during the course of works or prior to an Occupation Certificate may result in Council claiming all or part of the lodged security in order to perform any rectification works necessary, as per the requirements of 80A (6) of the Environmental Planning and Assessment Act 1979.

Protection of neighbour's tree

20. To ensure retention of the T05, mature Swamp mahogany (*eucalyptus robusta*) located wholly in the rear setback of the adjoining private property to the west, no.8, near the common boundary in good health, the following measures are to be undertaken:
- All documentation submitted for the Construction Certificate application must show their retention, with the position and diameter of their trunks and canopies to be clearly and accurately shown in relation to the site and all works.
 - Demolition/Removal of the existing gardens, edging, paving, retaining walls, surfacing and similar along the western site boundary, adjacent this tree, must be performed by hand, not machinery, so as to avoid the indiscriminate damage of roots.
 - Where there is a difference in level between this site and an adjoining property, and the soil level where the trees are growing is higher than the subject site, if the soil profile is to be exposed for any period of time, temporary shoring must be provided along the common boundary so as to prevent failure of the soil and trees, with a suitable system to be approved by the PCA, prior to installation.
 - Where roots with a diameter of less than 50mm are found which are in direct conflict with the approved works, permission is given for their pruning, they may be cut cleanly using hand-held tools only, with the affected area to then be backfilled with clean site soil as soon as practically possible.

Tree Protection measures

21. Rear of the property, looking southeast into rear setback from Kildare Lane, T03, mature Spotted gum (*Corymbia maculata*) 13 metres high, West of T03, a mature Smooth Barked apple myrtle (*Angophora costata*) T02, 9 metres high good health, good condition, the following measures are to be undertaken:
- All documentation submitted for the Construction Certificate application must show its retention, with the position and diameter of its trunk and canopy to be clearly and accurately shown in relation to the site and all work.
 - These trees are to be physically protected by the installation of star pickets on all four corners with **construction power webbing securely** attached to pickets, which shall be located a minimum distance of 1.5 metres from its trunk, to completely enclose tree for the duration of works.
 - This fencing shall be installed prior to the commencement of construction works and shall remain in place until all works are completed, to which, signage containing the following words shall be clearly displayed and permanently attached: **"TREE PROTECTION ZONE (TPZ), DO NOT REMOVE/ENTER"**

- d. To prevent soil/sediment being washed over the root system, erosion control measures must be provided at ground level around the perimeter of the TPZ's.
- e. Within the TPZ, there is to be no storage of materials, machinery or site office/sheds, nor is cement to be mixed or chemicals spilt/disposed of and no stockpiling of soil or rubble
- f. Where roots with a diameter of less than 50mm are found which are in direct conflict with the approved works, and permission is given for their pruning, they may be cut cleanly using hand-held tools only, with the affected area to then be backfilled with clean site soil as soon as practically possible.
- g. Ground levels within the TPZ's must not be altered by more than 200mm, with no other structures such as continuous strip footings, planter boxes or similar to be located in this area, which is to remain as undisturbed, deep soil.
- h. Ground protection comprising strapped together rumble boards, sheets of plywood or similar shall be provided on top of the mulched area described in point G above and must remain in place for the duration of works, until such time as the approved landscaping is being installed.
- i. The Principal Certifier must ensure compliance with these requirements, both on the plans as well as on-site during works and prior to any Occupation Certificate.
- j. The applicant is not authorised to perform any other works to these trees and must contact Council's Landscape Development Officer on 9093-6633 should clearance pruning or similar be needed.
- k. The Principal Certifier must ensure compliance with these requirements, both on the plans as well as on-site during the course of works and prior to any Occupation Certificate.

Public Utilities

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

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

Fire Safety Conditions

23. In accordance with the provisions of section 64 of the Environmental Planning and Assessment Regulation 2021, the existing levels of fire and safety within the premises are to be upgraded to achieve an adequate level of safety and the following requirements are to be satisfied:

- a) Compliance with the BCA Design Assessment Report by Design Confidence P222_214-03 (BCA) LB (updated 14 April 2023).
- b) Compliance with the Fire Safety Upgrade Strategy Report by Design Confidence P222_214-3 (FSUS)LB (updated 13 April 2023).
- c) All new building work (including alterations and additions) must comply with the relevant performance requirements of the Building Code of Australia.
- d) Floors, walls and ceilings separating the two dwellings are required to satisfy the relevant performance requirements of the Building Code of Australia.

- e) The upgrading works contained in the abovementioned reports are to be included in the construction certificate and be implemented prior to issuing an occupation certificate for the new building or part/s.

REQUIREMENTS TO BE INCLUDED IN THE CONSTRUCTION CERTIFICATE

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

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

Building Code of Australia & Relevant Standards

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

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

BASIX Requirements

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

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

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

Site stability, Excavation and Construction work

26. A report must be obtained from a suitably qualified and experienced professional engineer/s, which includes the following details, to the satisfaction of the appointed Certifier for the development:
- Geotechnical details which confirm the suitability and stability of the site for the development and relevant design and construction requirements to be implemented to ensure the stability and adequacy of the development and adjoining properties.
 - Details of the proposed methods of excavation and support for the adjoining land (including any public place) and buildings.
 - Details to demonstrate that the proposed methods of excavation, support and construction are suitable for the site and should not result in any damage to the adjoining premises, buildings or any public place, as a result of the works and any associated vibration.
 - Recommendations and requirements in the geotechnical engineers report shall be implemented accordingly and be monitored during the course of the subject site work.
 - Written approval must be obtained from the owners of the adjoining land to install any ground or rock anchors underneath the adjoining premises (including any public

roadway or public place) and details must be provided to the appointed Certifier for the development prior to issue of a relevant construction certificate.

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

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

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

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

28. Swimming pools are to be designed, installed and operated in accordance with the following general requirements:

- Backwash of the pool filter and other discharge of water is to be drained to the sewer in accordance with the requirements of the Sydney Water Corporation.
- Pool plant and equipment must be enclosed in a sound absorbing enclosure or installed with a building to minimise noise emissions or result in a noise nuisance.
- Water recirculation and filtrations systems are required to comply with AS 1926.3 (2010) Swimming Pool Safety – Water Recirculation and Filtration Systems.
- Paving and ground surfaces adjacent to swimming pools are to be graded and so as to ensure that any pool overflow water is drained away from buildings and adjoining premises, so as not to result in a nuisance or damage to premises.

Excavation Work & Support of Adjoining Land

29. Details of proposed excavations and support of the adjoining land and buildings are to be prepared by a *professional engineer* and be included in the construction certificate, to the satisfaction of the appointed Certifier.

Structural Adequacy Report

30. A report or certificate of adequacy is to be obtained from a *professional engineer* and be submitted to the Registered Certifier (and the Council) prior to a construction certificate being issued for the development, certifying the structural adequacy of the existing structure to support the proposed building works.

Swimming Pool & Spa Pool barriers

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

The access gate to the pool area must open outwards from the pool area and any structures located in or nearby to the pool area must not affect compliance with the requirements of the *Swimming Pools Act 1992* and AS1926.1 (2012).

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

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

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

32. Swimming pools are to be designed, installed and operated in accordance with the following general requirements:
- ☐ Backwash of the pool filter and other discharge of water is to be drained to the sewer in accordance with the requirements of the Sydney Water Corporation.
 - ☐ Pool plant and equipment must be enclosed in a sound absorbing enclosure or installed with a building to minimise noise emissions or result in a noise nuisance.
 - ☐ Water recirculation and filtrations systems are required to comply with AS 1926.3 (2010) Swimming Pool Safety – Water Recirculation and Filtration Systems.
 - Paving and ground surfaces adjacent to swimming pools are to be graded and so as to ensure that any pool overflow water is drained away from buildings and adjoining premises, so as not to result in a nuisance or damage to premises.

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF WORKS

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

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

Building Certification and Associated Requirements

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

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

Dilapidation Reports

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

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

Demolition Work Plan

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

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

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

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

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

Construction Site Management Plan

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

- location and construction of protective site fencing and hoardings
- location of site storage areas, sheds, plant & equipment
- location of building materials and stock-piles

- tree protective measures
- dust control measures
- details of sediment and erosion control measures
- site access location and construction
- methods of disposal of demolition materials
- location and size of waste containers/bulk bins
- provisions for temporary stormwater drainage
- construction noise and vibration management
- construction traffic management details
- provisions for temporary sanitary facilities
- measures to be implemented to ensure public health and safety

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

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

Sediment Control Plan

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

Construction Noise & Vibration

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

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

- a) Noise and vibration levels must be monitored during the site work and be reviewed by the acoustic/vibration consultant periodically, to ensure that the relevant strategies and requirements are being satisfied and details are to be provided to the Principal Certifier and Council accordingly.

Public Liability

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

Demolition & Construction Waste

43. A *Demolition and Construction Waste Management Plan* (WMP) must be developed and implemented for the development, to the satisfaction of Council.

The Waste Management Plan must provide details of the type and quantities of demolition and construction waste materials, proposed re-use and recycling of materials, methods of disposal and details of recycling outlets and land fill sites.

Where practicable waste materials must be re-used or recycled, rather than disposed and further details of Council's requirements including relevant guidelines and pro-forma WMP forms can be obtained from Council's website at https://www.randwick.nsw.gov.au/data/assets/pdf_file/0007/22795/Waste-Management-Plan-Guidelines.pdf or contact Council Development Engineer on 9093-6881/9093-6923.

Details and receipts verifying the recycling and disposal of materials must be kept on site at all times and presented to Council officers upon request.

Construction Traffic Management

44. An application for a 'Works Zone' and Construction Traffic Management Plan must be submitted to Councils Integrated Transport Department, and approved by the Randwick Traffic Committee, for a 'Works Zone' to be provided in Moore Street for the duration of the demolition & construction works.

The 'Works Zone' must have a minimum length of 12m and extend for a minimum duration of three months. The suitability of the proposed length and duration is to be demonstrated in the application for the Works Zone. The application for the Works Zone must be submitted to Council at least six (6) weeks prior to the commencement of work on the site to allow for assessment and tabling of agenda for the Randwick Traffic Committee.

The requirement for a Works Zone may be varied or waived only if it can be demonstrated in the Construction Traffic Management Plan (to the satisfaction of Council's Traffic Engineers) that all construction related activities (including all loading and unloading operations) can and will be undertaken wholly within the site. The written approval of Council must be obtained to provide a Works Zone or to waive the requirement to provide a Works Zone prior to the commencement of any site work.

45. A detailed Construction Site Traffic Management Plan must be submitted to and approved by Council, prior to the commencement of any site work.

The Construction Site Traffic Management Plan must be prepared by a suitably qualified person and must include the following details, to the satisfaction of Council:

- A description of the demolition, excavation and construction works
- A site plan/s showing the site, roads, footpaths, site access points and vehicular movements
- Any proposed road and/or footpath closures
- Proposed site access locations for personnel, deliveries and materials
- Size, type and estimated number of vehicular movements (including removal of excavated materials, delivery of materials and concrete to the site)
- Provision for loading and unloading of goods and materials
- Impacts of the work and vehicular movements on the road network, traffic and pedestrians
- Proposed hours of construction related activities and vehicular movements to and from the site.
- Current/proposed approvals from other Agencies and Authorities (including NSW Roads & Maritime Services, Police and State Transit Authority)
- Any activities proposed to be located or impact upon Council's Road, footways or any public place
- Measures to maintain public safety and convenience.

The approved Construction Site Traffic Management Plan must be complied with at all times, and any proposed amendments to the approved Construction Site Traffic Management Plan must be submitted to and be approved by Council in writing, prior to the implementation of any variations to the Plan.

REQUIREMENTS DURING CONSTRUCTION & SITE WORK

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

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

Regulations and to provide reasonable levels of public health, safety and environmental amenity during construction.

Site Signage

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

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

Working Hours

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

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as detailed below)	<ul style="list-style-type: none"> • Monday to Friday - 7.00am to 5.00pm • Saturday - 8.00am to 5.00pm • Sunday & public holidays - No work permitted
Excavations within rock, sawing of rock, use of jack-hammers, driven-type piling or the like	<ul style="list-style-type: none"> • Monday to Friday - 8.00am to 3.00pm (maximum) • As may be further limited in Noise & Vibration Management Plan • Saturday - No work permitted • Sunday & public holidays - No work permitted
Additional requirements for all development (except for single residential dwellings)	<ul style="list-style-type: none"> • Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted

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

Demolition Work

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

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

- A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m² of bonded asbestos (i.e. fibro),
- Asbestos waste must be disposed of in accordance with the *Protection of the Environment Operations Act 1997* and relevant Regulations
- A sign must be provided to the site/building stating "Danger Asbestos Removal In Progress",

- Council is to be given at least two days written notice of demolition works involving materials containing asbestos,
- Copies of waste disposal details and receipts are to be maintained and made available to the Principal Certifier and Council upon request,
- A Clearance Certificate or Statement must be obtained from a suitably qualified person (i.e. Occupational Hygienist or Licensed Asbestos Removal Contractor) which is to be submitted to the Principal Certifier and Council upon completion of the asbestos removal works.

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

Noise & Vibration

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

Temporary Site Fencing

50. Temporary site safety fencing or site hoarding must be provided to the perimeter of the site prior to commencement of works and throughout demolition, excavation and construction works, in accordance with the SafeWork guidelines and the following requirements:
- Temporary site fences or hoardings must have a height of 1.8 metres and be a cyclone wire fence (with geotextile fabric attached to the inside of the fence to provide dust control), heavy-duty plywood sheeting (painted white), or other material approved by Council in writing.
 - Hoardings and site fencing must be designed to prevent any substance from, or in connection with, the work from falling into the public place or adjoining premises and if necessary, be provided with artificial lighting.
 - All site fencing, hoardings and barriers must be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.
 - Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land.
 - Site access gates must open inwards and not onto Council land.

Notes:

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

Overhead Hoardings

51. An overhead ('B' class) type hoarding is required is be provided to protect the public (unless otherwise approved by Council) if:
- goods or materials are to be hoisted (i.e. via a crane or hoist) over a pedestrian footway
 - building or demolition works are to be carried out on buildings which are over 7.5m in height and located within 3.6m of the street alignment
 - it is necessary to prevent articles or materials from falling and causing a potential danger or hazard to the public or adjoining land
 - as may otherwise be required by SafeWork NSW, Council or the Principal Certifier.

Site Management

52. Public safety and convenience must be maintained during demolition, excavation and construction works and the following requirements must be complied with at all times:
- a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.
 - b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident.
 - c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction.
 - d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times.
 - e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.
 - f) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident.
 - g) Excavations must also be properly guarded to prevent them from being dangerous to life, property or buildings.
 - h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.
 - i) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.
 - j) A Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details.

Site Fencing & Hoardings

53. Temporary site safety fencing or site hoarding must be provided to the perimeter of the site prior to commencement of works and throughout demolition, excavation and construction works, in accordance with the SafeWork guidelines and the following requirements:
- a. Temporary site fences or hoardings must have a height of 1.8 metres and be a cyclone wire fence (with geotextile fabric attached to the inside of the fence to provide dust control), heavy-duty plywood sheeting (painted white), or other material approved by Council in writing.
 - b. Hoardings, site fencing and other barriers must be designed to prevent any substance from, or in connection with, the work from falling into the public place or adjoining premises.
 - c. All site fencing, hoardings and barriers must be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.

Notes:

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

Site Access

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

Removal of Asbestos Materials

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

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

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

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

Dust Control

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

Dust control measures and practices may include:

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

Excavations & Support of Adjoining Land

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

Complaints Register

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

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

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

Survey Requirements

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

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

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

Building Encroachments

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

Road/Asset Opening Permit

61. Any openings within or upon the road, footpath, nature strip or in any public place (i.e. for proposed drainage works or installation of services), must be carried out in accordance with the following requirements, to the satisfaction of Council:

- A *Road / Asset Opening Permit* must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the *Roads Act 1993* and all of the conditions and requirements contained in the *Road / Asset Opening Permit* must be complied with.
- The owner/builder must ensure that all works within or upon the road reserve, footpath, nature strip or other public place are completed to the satisfaction of Council, prior to the issuing of a *final occupation certificate* for the development.
- Relevant *Road / Asset Opening Permit* fees, repair fees, inspection fees and security deposits, must be paid to Council prior to commencing any works within or upon the road, footpath, nature strip or other public place.

For further information, please contact Council's Road / Asset Opening Officer on 9399 0691 or 1300 722 542.

Drainage

62. Adequate provisions must be made to collect and discharge stormwater drainage during construction of the building to the satisfaction of the Principal Certifier.

The prior written approval of Council must be obtained to connect or discharge site stormwater to Council's stormwater drainage system or street gutter.

Ausgrid Power Feed Connection

63. Should the existing overhead power feed from the Ausgrid Power Pole need to be reconnected to the site during any stage of building works it is to comply with either of the following methods:

- a) From the power pole directly to the façade of dwelling/s, similar to the existing connection, to the satisfaction of Ausgrid
- b) Relocate the existing overhead power feed from the distribution pole in the street to the development site via an underground (UGOH) connection (No Private Pole is to be provided). These works are to be to Ausgrid requirements.

Note: A temporary private power pole at the front of the site is permitted during construction but must be removed at the completion of works. The applicant is to liaise with an Ausgrid Accredited Service Provider to carry out the works as mentioned above at their own expense to the satisfaction of Ausgrid and the Principal Certifier.

Removal of Olive Tree

64. Rear of property looking southeast into rear setback from Kildare Lane, T04, mature Olive tree (*Olea europaea*), poor health, good condition, close conflict to works, removal is granted for manoeuvring of construction vehicles and the like from the rear Kildare Lane.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

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

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

Post-construction Dilapidation Reports

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

The dilapidation report shall detail whether:

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

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

Occupation Certificate

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

Fire Safety Certificate

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

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

Structural Certification

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

Sydney Water Certification

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

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

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

BASIX Requirements & Certification

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

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

Street and/or Sub-Address Numbering

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

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

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

Waste Management

72. Adequate provisions are to be made within the premises for the storage, collection and disposal of trade/commercial waste and recyclable materials, to the satisfaction of Council.

Trade/commercial waste materials must not be disposed in or through Council's domestic garbage service. All trade/commercial waste materials must be collected by Council's Trade Waste Service or a waste contractor authorised by the Waste Service of New South Wales and details of the proposed waste collection and disposal service are to be submitted to Council prior to commencing operation of the business.

The operator of the business must also arrange for the recycling of appropriate materials and make the necessary arrangements with an authorised waste services contractor accordingly.

73. Any liquid trade waste materials are to be disposed of in accordance with the requirements of the Sydney Water, Trade Waste Department (i.e. via a grease trap) and details of compliance are to be submitted to the Certifier prior to the commencement of any works.

Noise Control Requirements & Certification

74. The use and operation of the development (including all plant and equipment) shall not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and *Regulations*.

75. A report must be obtained from a suitably qualified and experienced consultant in acoustics, which demonstrates and certifies that noise and vibration from the development (and plant and equipment) satisfies the relevant provisions of the *Protection of the Environment Operations Act 1997*, NSW Environment Protection Authority (EPA) Noise Policy for Industry and Council's development consent.

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

76. Swimming Pools [and Spa Pools] are to be provided with a child-resistant barrier (i.e. fence, in accordance with the Swimming Pools Act 1992; the Swimming Pools Regulation 2018 and Australian Standard AS 1926.1 (2012) (Swimming Pool Safety Part 1 - Safety Barriers for Swimming Pools).

77. A 'warning notice' must be installed in a prominent position in the immediate vicinity of a Swimming Pool [or Spa Pool], in accordance with the provisions of the Swimming Pools Regulation 2018, detailing pool safety requirements, resuscitation techniques and the importance of the supervision of children at all times.

78. The owner of the premises must 'register' their Swimming Pool and Spa Pool on the NSW Swimming Pool Register, in accordance with the Swimming Pools Act 1992. The Swimming Pool Register is administered by the NSW Government and registration on the Swimming Pool Register may be made on-line via their website www.swimmingpoolregister.nsw.gov.au.

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

Council's Infrastructure, Vehicular Crossings & Road Openings

79. Prior to the issuing of an occupation certificate the applicant must meet the full cost for a Council approved contractor to:

- a) Extend/Re-Construct concrete vehicular crossing and layback at kerb opposite the vehicular entrance to the site on Moore Street, to Council's specifications and requirements.
- b) NOTE: The vehicle crossing shall be widened to 5m in width

- c) Re/construct a 1.8m wide concrete footpath along the full site frontage on Moore Street. Any unpaved areas on the nature strip must be turfed and landscaped to Council's specification.
- d) Undertake any required road works in Kildare Lane adjacent to the new boundary retaining wall and make good.

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

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

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

Power Connection

82. The Principal Certifier shall ensure that all power supply to the development site has been provided directly from the power pole in front of the site to the façade of dwelling/s (similar to the existing connection), or as an underground (UGOH) connection, with all work completed to the requirements and satisfaction of Ausgrid and at no cost to Council. Any private poles must be removed prior to the issuing of an occupation certificate.

Stormwater Drainage Certification

83. The applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced Hydraulic Engineer, which confirms that the design and construction of the stormwater drainage system complies with the Building Code of Australia, Australian Standard AS3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and conditions of this development consent.

The certification must be provided following inspection/s of the site stormwater drainage system by the Hydraulic Engineers to the satisfaction of the Principal Certifier.

Retaining Wall Certification

84. The applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced structural Engineer, which confirms that the design and construction of the rear boundary retaining wall complies with the relevant Australian standards and conditions of this development consent.

The certification must be provided following inspection/s of the retaining wall by the Structural Engineer to the satisfaction of the Principal Certifier.

85. The naturestrip upon Council's footway shall be excavated to a depth of 150mm, backfilled with topsoil equivalent with 'Organic Garden Mix' as supplied by Australian Native Landscapes, and re-turfed with Kikuyu Turf or similar. Such works shall be installed prior to the issue of a final Occupation Certificate.

REQUIREMENTS PRIOR TO THE ISSUE OF ANY STRATA CERTIFICATE

The following conditions of consent must be complied with prior to an *Accredited Certifier* or *Randwick City Council* issuing a *Strata Certificate*.

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

Strata Subdivision

86. A new Strata Certificate, pursuant to the Strata Schemes (Freehold Development) Act 1973, that authorises registration of the strata plan, strata plan of subdivision or notice of conversion at NSW Land Registry Services must be obtained and must reflect the approved development (as built and as per the Final Occupation Certificate).

If the Strata Certificate is obtained from an Accredited Certifier, other than the Council, the certifier is to provide Council with a copy of the endorsed Strata Certificate within 7 days of issuing the same, pursuant to the Strata Schemes (Freehold Development) Regulation 2002.

OPERATIONAL CONDITIONS

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

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

Use of Parking spaces

87. The car spaces within the development are for the exclusive use of the occupants and visitors of the building. The car spaces must not be leased to any person/company that is not an occupant of the building.

Management of Strata Parking

88. A *Strata Parking Management Plan* must be developed and implemented for the development, which includes strategies and measures to 'self-manage' resident and visitor parking within the development.

Strategies and measures may include:

- ☐ Adoption of parking by-laws;
- ☐ Installation of suitable barriers, bollards, low-height fencing and gates;
- ☐ Installation of signage and notices;
- ☐ Intercom or key card systems;
- ☐ Security systems and security personnel;
- ☐ Enforcement processes and provisions to be implemented by the Owners Corporation/Strata Management

Fire Safety Statement

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

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

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

90. The site stormwater system must be regularly cleaned and maintained to ensure it operates as required by the design.

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Development Application Report No. D12/24

Subject: 2-8 and 10-14 Prince Edward Street, Malabar (DA/971/2023)


Executive Summary

Proposal:	Alterations and additions to Block A at St Andrew's Catholic Primary School including replacement of stairs, internal fitout works, new courtyard roof, new learning support/meeting room at GF courtyard, upgraded landscaping and car park line markings
Ward:	South Ward
Applicant:	Robinson Urban Planning Pty Ltd
Owner:	Trustees of the Roman Catholic Church for the Archdiocese of Sydney
Cost of works:	\$3,661,896.00
Reason for referral:	The development involves demolition works to a heritage item.

Recommendation

- A. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/971/2023 for Alterations and additions to Block A at St Andrew's Catholic Primary School including replacement of stairs, internal fitout works, new courtyard roof, new learning support/meeting room at GF courtyard, upgraded landscaping and car park line markings at Nos. 2-8 and 10-14 Prince Edward Street, Malabar, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (mixed-use) - DA/971/2023 - 2-14 Prince Edward Street, MALABAR NSW 2036 - DEV - Randwick City Council

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1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as the development involves demolition works to a heritage item.

The proposal seeks development consent for alterations and additions to Block A at St Andrew’s Catholic Primary School including replacement of existing internal stairs, internal fitout works, new courtyard roof, new learning support/meeting room at ground level, and associated landscaping and car parking works.

The key issues associated with the proposal relate to the site’s identification as a local heritage item and built form being demolished and/or retained as part of the proposal. The details of the heritage significant fabric and an assessment of the proposed works have been outlined in the comments provided by Council’s Heritage Planner.

2. Site Description and Locality

The subject site is known as 2-8 and 10-14 Prince Edward Street, Malabar and is occupied by St Andrew’s Catholic Primary School (refer Figures 1-3). The school campus site is irregular in shape and is relatively flat. The campus is located to the south-west corner of the intersection of Prince Edward Street and Ireton Street.

The site contains two (2) local Heritage Items listed under Schedule 5 of RLEP 2012 – item Nos. I195 (*St. Andrew’s Church*) and I196 (*Stella Maris Convent*).

The majority of the proposed works are limited to Block A (i.e. No. 10-14 Prince Edward Street), which is legally identified as Lot 202, DP 717359. A small scope of works (relating to the car parking area) is located within Lot 301, DP 807604 (i.e. No. 2-8 Prince Edward Street). Block A has an area of 1,538m², with a 36.67m frontage to Prince Edward Street.

Surrounding development comprises one (1) to two (2) storey dwellings of varying architectural style and era. To the west of the site, on the opposite side of Anzac Parade, is Matraville Sports High School.



Figure 1: School campus site plan (Source: Leaf Architecture)



Figure 2: Existing Block A building, viewed to west from Prince Edward Street (Source: Council officer)

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Figure 3: Rear of existing Block A building, viewed from carpark (Source: Council officer)

3. Relevant history

A search of Council's records returned the following relevant applications for the site:

- DA/92/1977 – approved 24/06/1977 for alterations and additions to existing school.
- DA/115/1993 – approved 28/04/1993 for change of use of part of the St Andrews house and additions to primary school.
- DA/1029/1998 – approved 01/06/1999 for construction of 2 meeting rooms & new school assembly room at rear of existing church to Anzac Pde.
- DA/126/2012 – approved 28/06/2012 for extension to existing school hall at St Andrews Primary School, construction of covered access around part of the hall, landscaping and associated works.
- DA/237/2019 – approved 23/05/2019 for installation of signage for St Andrew's Catholic Primary School adjacent to Prince Edward Street frontage.
- PL/19/2023 – pre-lodgment advice issued 23/10/23 relating to alterations and additions to St Andrew's Catholic Primary School.

Request for Information

Council's Heritage Planner raised concern regarding the replacement of the existing internal staircase with a new staircase. On 31 January 2024, the Applicant submitted an analysis of alternative design solutions to demonstrate that the originally proposed stair design and location is most suitable. Refer to further discussion at Appendix 1 of this report.

4. Proposal

The proposal seeks development consent for alterations and additions to the existing two (2) storey building identified as Block A. As shown in Figures 4-8, the proposed works include:

- Internal reconfiguration, refurbishment, and fitout of ground and first floor levels, including demolition of existing internal walls and door openings.
- Replacement of existing internal staircase with new staircase to achieve BCA compliance. NB: elements of the existing stair (i.e. balusters, handrail, newel posts, stringers, and timber paneling) will be reinstated in the new stair design.
- Infill of existing internal courtyard to accommodate a meeting room and learning support room at ground floor level, with void, acoustic batten ceiling, and glazed roof above.
- Minor reconfiguration of car park and landscaping to provide one (1) accessible car parking space.
- Replacement of existing external staircase (to southern side of building) and existing entry door (to eastern side of building).
- Refurbishment of existing windows as required.

The proposal does not result in any change to existing staff numbers, the student population or hours of operation. No new signage, fencing, or external lighting is proposed.



Figure 4: Proposed ground floor plan (Source: Leaf Architecture)

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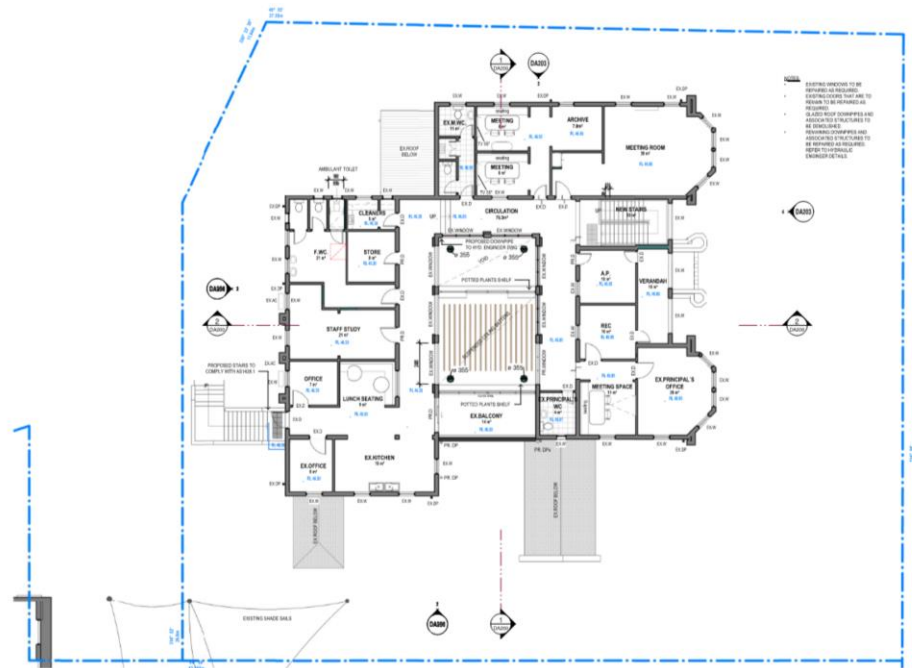


Figure 5: Proposed first floor plan (Source: Leaf Architecture)



Figure 6: Proposed south-east and south-west elevations (Source: Leaf Architecture)

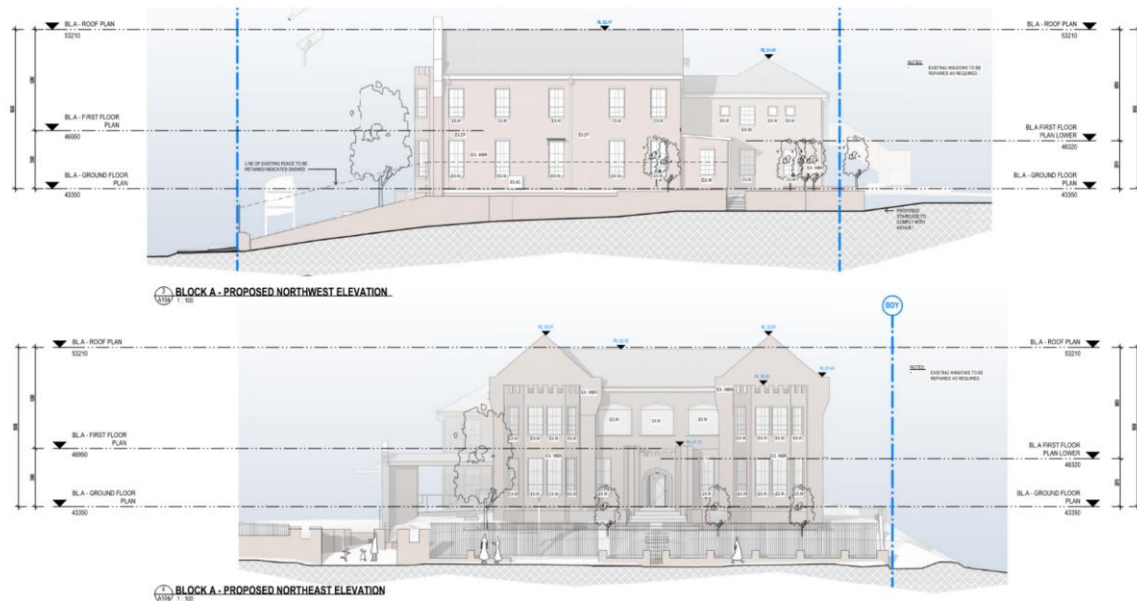


Figure 7: Proposed north-west and north-east elevations (Source: Leaf Architecture)

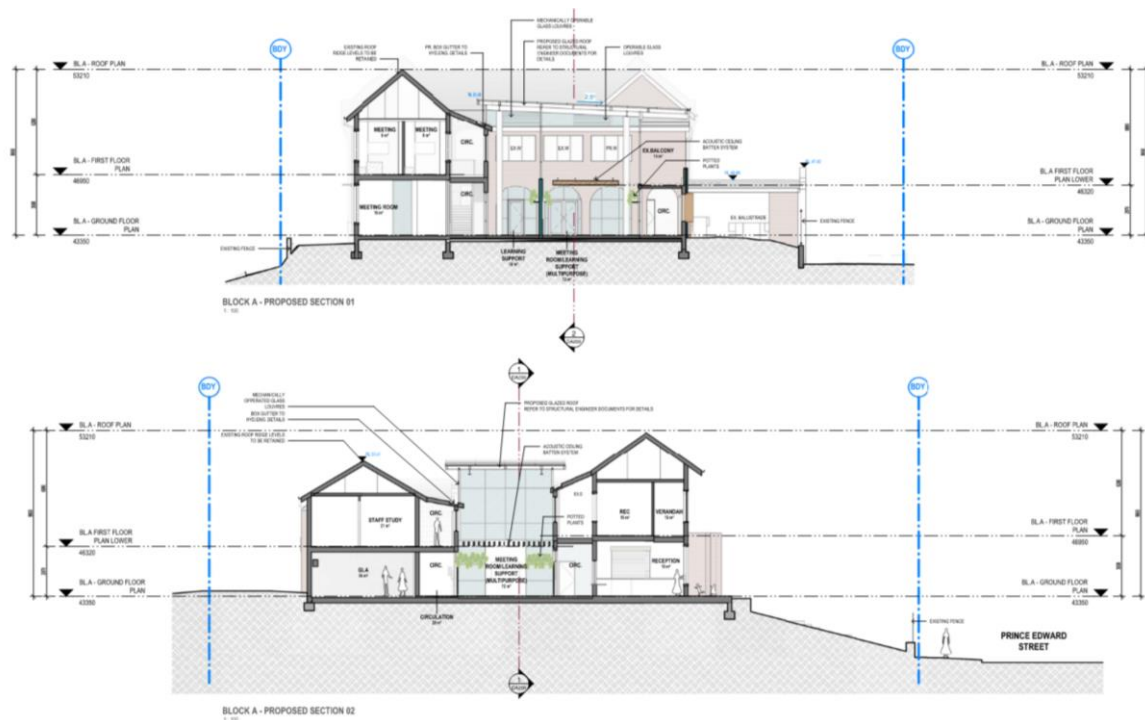


Figure 8: Proposed section plans (Source: Leaf Architecture)

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Engagement Strategy. No submissions were received during the notification process.

6. Relevant Environment Planning Instruments

6.1. SEPP (Biodiversity and Conservation) 2021

Chapter 2 of the SEPP applies to the proposal and subject site. The aims of this Chapter are:

- (a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and
- (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

The proposed development does not involve the removal of any vegetation (including any trees). As such, the proposal achieves the relevant objectives and provisions under Chapter 2.

6.2. SEPP (Transport and Infrastructure) 2021

Chapter 3 – Educational establishments and child care facilities

Pursuant to section 3.36 of *State Environmental Planning Policy (Transport and Infrastructure) 2021 (T&I SEPP)*, development for the purpose of a school may be carried out by any person with consent on land in a prescribed zone. The SP2 zone is identified as a prescribed zone under section 3.34 of the T&I SEPP.

Subsection 3.36(6) of the T&I SEPP states:

- “Before determining a development application for development of a kind referred to in subsection (1), (3) or (5), the consent authority must take into consideration—*
- (a) the design quality of the development when evaluated in accordance with the design quality principles set out in Schedule 8, and*
 - (b) whether the development enables the use of school facilities (including recreational facilities) to be shared with the community.”*

An assessment of the design quality principles set out in Schedule 8 of the T&I SEPP is provided in the below table.

Design Quality Principle	Comment
<p>1. <u>Context, built form and landscape</u></p> <p>Schools should be designed to respond to and enhance the positive qualities of their setting, landscape and heritage, including Aboriginal cultural heritage. The design and spatial organisation of buildings and the spaces between them should be informed by site conditions such as topography, orientation and climate.</p> <p>Landscape should be integrated into the design of school developments to enhance on-site amenity, contribute to the streetscape and mitigate negative impacts on neighbouring sites.</p> <p>School buildings and their grounds on land that is identified in or under a local environmental plan as a scenic protection area should be designed to recognise and protect the special visual qualities and natural environment of the area, and located and designed to minimise the development’s visual impact on those qualities and that natural environment.</p>	<p>The continued use of the site by St Andrew’s Catholic Primary School appropriately responds to the site’s educational context. The proposal seeks to provide improved indoor space for students and staff by way of appropriate weather protection and improved connectivity throughout the building. Proposed new landscaping appropriately responds to the site and its context.</p>
<p>2. <u>Sustainable, efficient, and durable</u></p> <p>Good design combines positive environmental, social and economic</p>	<p>The proposal will retain and ‘make-good’ the existing building on the site, reducing the need</p>

<p>outcomes. Schools and school buildings should be designed to minimise the consumption of energy, water and natural resources and reduce waste and encourage recycling.</p> <p>Schools should be designed to be durable, resilient and adaptable, enabling them to evolve over time to meet future requirements.</p>	<p>for new building materials. All new works have been designed to be durable, adaptable, and resilient to meet the changing needs of the school.</p>
<p>3. <u>Accessible and inclusive</u></p> <p>School buildings and their grounds should provide good wayfinding and be welcoming, accessible and inclusive to people with differing needs and capabilities.</p> <p>Schools should actively seek opportunities for their facilities to be shared with the community and cater for activities outside of school hours.</p>	<p>The proposal has been specifically designed to meet the needs of primary school aged students. The inclusion of new stairs, as well as other design features, improves usability and accessibility.</p> <p>The school campus is currently shared with the local community and used outside of school hours for various activities.</p>
<p>4. <u>Health and safety</u></p> <p>Good school development optimises health, safety and security within its boundaries and the surrounding public domain, and balances this with the need to create a welcoming and accessible environment.</p>	<p>The proposal seeks to improve the health, safety, and security of the school by providing new teaching facilities to support the current and future needs of students and staff.</p>
<p>5. <u>Amenity</u></p> <p>Schools should provide pleasant and engaging spaces that are accessible for a wide range of educational, informal and community activities, while also considering the amenity of adjacent development and the local neighbourhood.</p> <p>Schools located near busy roads or near rail corridors should incorporate appropriate noise mitigation measures to ensure a high level of amenity for occupants.</p> <p>Schools should include appropriate, efficient, stage and age appropriate indoor and outdoor learning and play spaces, access to sunlight, natural ventilation, outlook, visual and acoustic privacy, storage and service areas.</p>	<p>The proposal seeks to provide flexible and age -appropriate teaching and recreational spaces that will provide a suitable standard of amenity for students and staff.</p> <p>Appropriate noise mitigation measures have been included in the proposed design to ensure suitable amenity for students and staff.</p>
<p>6. <u>Whole of life, flexible and adaptive</u></p> <p>School design should consider future needs and take a whole-of-life-cycle approach underpinned by site wide strategic and spatial planning. Good design for schools should deliver high environmental performance, ease of adaptation and maximise multi-use facilities.</p>	<p>The proposal has been designed to meet current and future needs of students and staff.</p>
<p>7. <u>Aesthetics</u></p>	

<p>School buildings and their landscape setting should be aesthetically pleasing by achieving a built form that has good proportions and a balanced composition of elements. Schools should respond to positive elements from the site and surrounding neighbourhood and have a positive impact on the quality and character of a neighbourhood.</p> <p>The built form should respond to the existing or desired future context, particularly, positive elements from the site and surrounding neighbourhood, and have a positive impact on the quality and sense of identity of the neighbourhood.</p>	<p>The proposal seeks to enhance the aesthetic character of the school. The proposed built form responds to the existing and desired future context of the site and surrounding neighbourhood.</p>
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In considering whether the development enables the use of school facilities (including recreational facilities) to be shared with the community, the submitted SEE states that the school campus is currently shared with the local community and used outside of school hours for various activities. No change is proposed to this existing arrangement.

Pursuant to section 3.58 of the T&I SEPP, development resulting in an educational establishment being able to accommodate 50 or more additional students and involving any enlargement of an existing premises or a new premises must be referred to Transport for NSW (TfNSW).

Noting that the proposal does not result in any change to existing staff or student populations, referral to TfNSW is not required in this instance.

6.3. SEPP (Resilience and Hazards) 2021

Chapter 4 - Remediation of Land

The provisions of Chapter 4 of the Resilience and Hazards SEPP require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site.

The subject site has previously been used for the purposes of a school and no change is proposed to this use. The nature and location of the proposed development are such that any applicable provisions and requirements of the above SEPP have been satisfactorily addressed.

6.4. Randwick Local Environmental Plan 2012 (LEP)

On 18 August 2023, the Department of Planning and Environment (DPE) formally notified the LEP amendment (amendment No. 9) updating the *Randwick Local Environmental Plan 2012*, and the updated LEP commenced on 1 September 2023. As the subject application was lodged on or after 1 September 2023, the provisions of RLEP 2012 (Amendment No. 9) are applicable to the proposed development, and the proposal shall be assessed against the updated RLEP 2012.

The site is located within the SP2 Infrastructure – Place of Public Worship zone. Educational establishments (i.e. schools) are not listed as permissible within the SP2 zone under RLEP 2012.

However, pursuant to section 3.36 of *State Environmental Planning Policy (Transport and Infrastructure) 2021 (T&I SEPP)*, development for the purpose of a school may be carried out by any person with consent on land in a prescribed zone. The SP2 zone is identified as a prescribed zone under section 3.34 of the T&I SEPP. Refer to discussion at Section 6.2 of this report.

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will provide for improved educational infrastructure, will support the needs of the community by providing improved educational facilities, and will not adversely affect the amenity of nearby and adjoining development.

There are no development standards for lot size, floor space ratio, or building height under RLEP 2012 applying to the subject site.

Clause 5.10 - Heritage conservation

Clause 5.10(1) of the RLEP 2012 includes the 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.

Council's Heritage Planner is satisfied that the proposed works comply with clause 5.10 of RLEP 2012. Refer to referral comments from Council's Heritage Planner at Appendix 1 of this report.

7. Development control plans and policies

7.1. Randwick Comprehensive DCP 2013

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

The relevant provisions of the DCP are addressed below:

Part B2 – Heritage

Refer to discussion by Council's Heritage Planner at Appendix 1 of this report.

Part B6 – Recycling and Waste Management

Capable of complying, subject to suitable conditions.

Part B7 – Transport, Traffic, Parking and Access

The proposal will not generate any increase in traffic or car parking demand as there will be no increase in the student or staff population of the school. It is also noted that the provision of an accessible parking space will improve existing parking operations.

8. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	Refer to discussion in Section 6 of this report.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Not applicable.

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

9. Discussion of key issues

Built Form

The proposed works are predominately contained within the existing building envelope. The works associated with the new void and glazed roof will be contained well behind the existing parapet facing Prince Edward Street. These works will only be visible from the south-east elevation of the building, which faces the school grounds (playing fields and Block B).

The visual prominence of the void/roof addition has been minimised as it is set behind the street façade and comprises glazed and FC cladding materials. The proposal will not adversely impact on the appearance of the Heritage Item and the streetscape and is considered satisfactory from an urban design perspective.

Overshadowing & Solar Access

The proposed works will result in minor additional overshadowing of the school grounds between 12noon and 4pm midwinter (refer Figure 9). Notwithstanding, the proposal will not result in any additional overshadowing of residential properties.

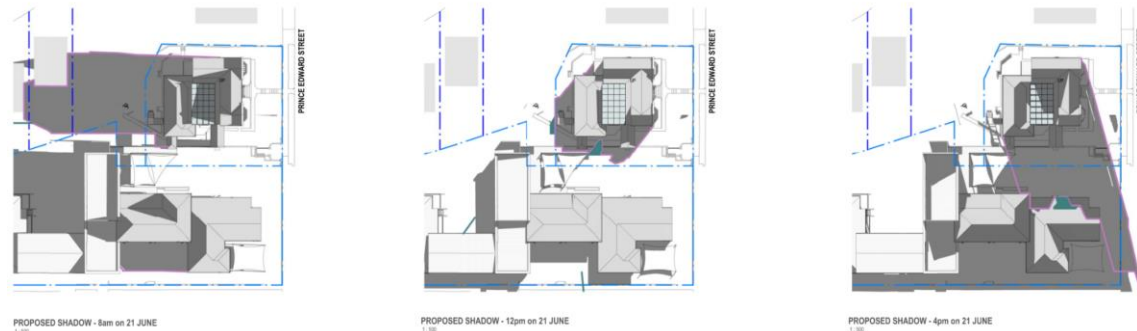


Figure 9: Proposed shadow diagrams – additional overshadowing shown in blue (Source: Leaf Architecture)
Acoustic & Visual Privacy

The proposal will not give rise to any additional acoustic or visual privacy impacts noting that it does not include any changes to existing external openings. Additionally, the proposal does not result in any change to existing staff or student populations or hours of operation. In this regard, there will be no intensification of use at the site, which is wholly surrounded by the school and church grounds.

10. Conclusion

That the application to undertake alterations and additions to Block A at St Andrew's Catholic Primary School including replacement of stairs, internal fitout works, new courtyard roof, new learning support/meeting room at GF courtyard, upgraded landscaping and car park line markings be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013.
- The proposal is consistent with the relevant requirements contained within Chapter 3 of SEPP (Transport and Infrastructure) 2021.
- The proposal is consistent with the specific objectives of the SP2 zone in that it will provide for improved educational infrastructure, will support the needs of the community by providing improved educational facilities, and will not adversely affect the amenity of nearby and adjoining development.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.
- Suitable conditions are included to ensure that the works minimise alterations and new penetrations to original heritage fabric.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Heritage Planner

Council's Heritage Planner has reviewed the proposal and provides the following comments:

The Site

The site is occupied by the former Stella Maris convent, listed as a local heritage item under Randwick LEP 2012.

Controls

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

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

The Heritage section of Randwick Development Control Plan 2023 provided Objectives and Controls in relation to heritage properties.

Comments

Replacement of existing staircase (Stair 1)

- *Not supported - the proposed change / demolition of original staircase does not comply / satisfy the objectives of Burra Charter Article 15., Randwick DCP 2023 Section 2.12. Access and Mobility, and Randwick LEP 2012. It is understood that the exiting staircase (stair 1) is BCA and NCC non-compliance. Change may be necessary, however, it is essential to carefully consider its impact on the heritage fabric. Change is undesirable where the impact is high or cannot be reversed. Furthermore, when considering change for a contemporary use, a range of options and other alternative solutions should be explored to minimise the impact on original fabric. It appears that no other alternative solutions have been explored or considered unfeasible to justify / support the current scheme (i.e. can the new learning support room 121 area be an option for the new staircase?). Please note that non-reversible changes should be only used as a last resort. The issue raised above has not been addressed nor other design solutions have been explored in the Heritage Impact Statement or the Design Verification Statement.*

Removal of contemporary bathroom fitout and joinery

- *Supported - non-original fabric*

Alterations to internal wall openings and doors

- *Supported – changes are mainly to the non-original fabric, positive, or reversible*

Removal and replacement of existing contemporary courtyard roof

- *Supported – non-original fabric and a better design outcome*

Replacement of existing stairs (Stair 2)

- *Supported – non-original fabric*

Following review of the additional information and the supporting letter by Weir Phillips Heritage and Planning (submitted on 31 January 2024), Council's Heritage Planner provides the following comments:

I concur with the recommendation made as to preserve and incorporate and upgrade the existing staircase while conserving the original elements of the staircase including but not limited to handrail, balustrade, posts, stringers, and timber paneling.

It is also recommended that:

- *The works to be undertaken under supervision of suitably qualified and experienced heritage practitioner or architect,*
- *The proposed works are to be carried out in a manner that minimises alterations and new penetrations to the original fabric,*
- *The fabric and features to be retained by the proposal must be properly protected during the process of removal and re-construction,*
- *An appropriately qualified tradespersons (as appropriate) are to be commissioned who are skilled in traditional building and engineering trades to carry out the proposed scope of works.*

1.2. Building Surveyor

As detailed below, Council's Building Surveyor has reviewed the proposal and raises no concern, subject to suitable conditions:

Classification:

- *Ground floor – Class 9b – Assembly building*
- *First floor – Class 5 – office*

Rise of storeys – 2

Type of Construction – Type B Construction

An inspection and onsite discussion with Ms Georgia Howard (Sydney Catholic Schools) and Mr Robert Hughes (Senior Project Manager – Sign Management), on 14 December 2023, revealed the following;

- a. The proposed works are mainly internal with the change of use of the first floor level from a previous residential use to a proposed office use.*
- b. There is a current roof over the existing ground floor courtyard area with a new roof material to be installed (See Sections 01 and 02 of the architectural plans).*
- c. There are two existing exits on the first floor level.*

A BCA Design Assessment Report, dated 27 September 2023 and prepared by Design Confidence, advising that it is capable of achieving compliance with the performance requirements of the BCA.

Responsible officer: Julia Warren, Senior Environmental Planning Officer

File Reference: DA/971/2023

Development Consent Conditions (School)



Folder /DA No:	DA/971/2023
Property:	2-8 and 10-14 Prince Edward Street, MALABAR NSW 2036
Proposal:	Alterations and additions to Block A at St Andrew's Catholic Primary School including replacement of stairs, internal fitout works, new courtyard roof, new learning support/meeting room at ground floor courtyard, upgraded landscaping and car park line markings (Heritage Item).
Recommendation:	Approval

Development Consent Conditions

GENERAL CONDITIONS

Condition

1. **Approved plans and documentation**

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

<i>Plan</i>	<i>Drawn by</i>	<i>Dated</i>	<i>Received by Council</i>
Dwg. A110, Rev. B – Demolition Ground Floor Plan	Leaf Architecture	2/11/2023	06/12/2023
Dwg. A111, Rev. B – Demolition First Floor Plan	Leaf Architecture	2/11/2023	06/12/2023
Dwg. A112, Rev. A – Demolition Roof Plan	Leaf Architecture	12/09/2023	06/12/2023
Dwg. A150, Rev. D – Proposed Ground Floor Plan	Leaf Architecture	02/11/2023	06/12/2023
Dwg. A151, Rev. D – Proposed First Floor Plan	Leaf Architecture	02/11/2023	06/12/2023
Dwg. A152, Rev. A – Proposed Roof Plan	Leaf Architecture	12/09/2023	06/12/2023
Dwg. A200, Rev. A – Proposed Sections	Leaf Architecture	12/09/2023	06/12/2023
Dwg. A201, Rev. A – Proposed Southeast & Southwest Elevations	Leaf Architecture	12/09/2023	06/12/2023
Dwg. A203, Rev. A – Proposed Northwest & Northeast Elevations	Leaf Architecture	12/09/2023	06/12/2023

In the event of any inconsistency between the approved plans and supplementary documentation, the approved drawings will prevail.

Condition Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

2. **Retention of Internal Features**

- a) The internal original feature including but not limited to ornate decorate

Condition
ceiling elements, architraves, skirtings, and picture rails are to be retained.
b) Where internal walls are to be removed on ground and first levels of the building at least 1m of wall (including architraves and skirting boards) are to be retained in the locations marked in red on the plans (excluding L shaped Staff Room 108 wall) at key junctions of the original room layout to assist interpretation of the former layout of the building. Where internal joinery features are to be conserved, any components replaced or reinstated, are to match the existing in profile and section size.
c) The layout of the ground and first floors of the existing building are to incorporate a minimum 300mm nib walls and beams projecting below ceiling level, as evidence of the original layout of the building and facilitate patching of plasterwork.
d) Upgrade works to the existing staircase shall conserve the original elements of the staircase including but not limited to handrail, balustrade, posts, stringers, and timber panelling.

Condition Reason: To satisfy heritage considerations.

3. **General Heritage Conditions**

- The proposed works are to be carried out in a manner that minimises demolition, alterations, and new penetrations/fixings to the significant fabric of the existing building which is listed as a Heritage Item.
- The fabric and features to be retained by the proposal must be properly protected during the process of demolition and construction. The protection measures are to be specified in the construction management plan.
- New services must use existing service runs; and where this is not possible, details of an alternative solution must be shown on drawings at a suitable scale and submitted and approved by Council prior to the issue of any Construction Certificate.
- Appropriately qualified tradespersons are to be commissioned who are skilled in traditional building and engineering trades to carry out the proposed scope of works.
- The original fabric including but not limited to brickwork, stone, tiles must not be rendered, painted or coated.

Condition Reason: To satisfy heritage considerations.

**BUILDING WORK
BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE**

Condition
4. Consent Requirements The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation. Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.
5. External Colours, Materials & Finishes The colours, materials and surface finishes to the development must be consistent

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- | | Condition |
|----|--|
| | <p>with the relevant plans, documentation and colour schedules provided with the development application.</p> <p>The colour Surfmist is not permitted due to its reflectivity. The roof sheeting must be replaced with an alternative colour to the satisfaction of Council's Manager Development Assessment prior to the release of any construction certificate.</p> <p>Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.</p> |
| 6. | <p>Section 7.12 Development Contributions</p> <p>In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of 3,661,896.00 the following applicable monetary levy must be paid to Council: \$36,618.95.</p> <p>The levy must be paid in cash, bank cheque or by credit card prior to a construction certificate being issued for the proposed development. The development is subject to an index to reflect quarterly variations in the Consumer Price Index (CPI) from the date of Council's determination to the date of payment. Please contact Council on telephone 9093 6000 or 1300 722 542 for the indexed contribution amount prior to payment.</p> <p>To calculate the indexed levy, the following formula must be used:</p> $IDC = ODC \times CP2/CP1$ <p>Where:</p> <p>IDC = the indexed development cost</p> <p>ODC = the original development cost determined by the Council</p> <p>CP2 = the Consumer Price Index, All Groups, Sydney, as published by the ABS in respect of the quarter ending immediately prior to the date of payment</p> <p>CP1 = the Consumer Price Index, All Groups, Sydney as published by the ABS in respect of the quarter ending immediately prior to the date of imposition of the condition requiring payment of the levy.</p> <p>Council's Development Contributions Plans may be inspected at the Customer Service Centre, Administrative Centre, 30 Frances Street, Randwick or at www.randwick.nsw.gov.au.</p> <p>Condition Reason: To ensure relevant contributions are paid.</p> |
| 7. | <p>Long Service Levy Payments</p> <p>Before the issue of a Construction Certificate, the relevant long service levy payment must be paid to the Long Service Corporation of Council under the Building and Construction industry Long Service Payments Act 1986, section 34, and evidence of the payment is to be provided to the Principal Certifier, in accordance with section 6.8 of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p><i>At the time of this development consent, Long Service Levy payment is applicable on building work having a value of \$250,000 or more, at the rate of 0.25% of the cost of the works.</i></p> <p>Condition Reason: To ensure the long service levy is paid.</p> |
| 8. | <p>Security Deposits</p> <p>The following security deposits requirement must be complied with prior to a construction certificate being issued for the development, as security for making good any damage caused to Council's assets and infrastructure; and as security for completing any public work; and for remedying any defect on such public works, in accordance with section 4.17(6) of the <i>Environmental Planning and Assessment</i></p> |

	Condition
	<p><i>Act 1979:</i></p> <ul style="list-style-type: none"> \$5,000.00 - Damage / Civil Works Security Deposit <p>Security deposits may be provided by way of a cash, cheque or credit card payment and is refundable upon a satisfactory inspection by Council upon the completion of the civil works which confirms that there has been no damage to Council's infrastructure.</p> <p>The owner/builder is also requested to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.</p> <p>To obtain a refund of relevant deposits, a <i>Security Deposit Refund Form</i> is to be forwarded to Council's Director of City Services upon issuing of an occupation certificate or completion of the civil works.</p> <p>Condition Reason: To ensure any damage to public infrastructure is rectified and public works can be completed.</p>
9.	<p>Sydney Water</p> <p>All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.</p> <p>The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met.</p> <p>The Tap in™ service provides 24/7 access to a range of services, including:</p> <ul style="list-style-type: none"> Building plan approvals Connection and disconnection approvals Diagrams Trade waste approvals Pressure information Water meter installations Pressure boosting and pump approvals Change to an existing service or asset, e.g. relocating or moving an asset. <p>Sydney Water's Tap in™ in online service is available at: https://www.sydneywater.com.au/SW/plumbing-building-developing/building/sydney-water-tap-in/index.htm</p> <p>The Principal Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements.</p>
10.	<p>Building Code of Australia</p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 69 of the <i>Environmental Planning and Assessment Regulation 2021</i>, it is a prescribed condition that all building work must be carried out in accordance with the provisions of the National Construction Code - Building Code of Australia (BCA).</p> <p>Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application.</p>

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Condition	
	<p>All works must be carried out in accordance with the conclusions of the BCA Design Assessment Report, prepared by Design Confidence, dated 27 September 2023.</p> <p>Condition Reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.</p>
11.	<p>Building Code of Australia</p> <p>Access and facilities for people with disabilities must be provided to new building work in accordance with the relevant requirements of the Building Code of Australia, Disability (Access to Premises – Buildings) Standards 2010 and relevant Australian Standards, to the satisfaction of the Registered Certifier for the development and details are to be included in the construction certificate for the development.</p> <p>Condition Reason: To ensure safe and easy access to the premises for people with a disability.</p>
12.	<p>Excavation Earthworks and Support of Adjoining Land</p> <p>Details of proposed excavations and support of the adjoining land and buildings are to be prepared by a professional engineer and be included in the construction certificate, to the satisfaction of the appointed Certifier.</p> <p>Condition Reason: To ensure adjoining land is adequately supported.</p>
13.	<p>Stormwater Drainage</p> <p>Detailed drainage plans with levels reduced to Australian Height Datum (AHD), shall be prepared by a suitably qualified Hydraulic Engineer and be submitted to and approved by the Principal Certifier. A copy of the plans shall be forwarded to Council, if Council is not the Principal Certifier.</p> <p>The drainage plans must demonstrate compliance with the Building Code of Australia, Australian Standard AS3500.3:2003 (Plumbing and Drainage - Stormwater Drainage) and the relevant conditions of this development approval.</p> <p>Condition Reason: To control and manage stormwater run-off.</p>
14.	<p>Fire Safety</p> <p>In accordance with the provisions of section 64 of the Environmental Planning and Assessment Regulation 2021, the existing levels of fire and safety within the premises are to be upgraded to achieve an adequate level of safety and the following requirements are to be satisfied:</p> <p>(a) A report prepared by a suitably qualified Registered Building Certifier or Building Code of Australia Consultant must be submitted to and approved by Council's Manager Health, Building & Regulatory Services (or delegate), in accordance with section 4.17(2) of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p>The report must include an assessment of the existing building and the relevant provisions of the National Construction Code - Building Code of Australia. The report must also include details of the measures and works considered appropriate to achieve an adequate level of fire and safety for the building and the occupants, for consideration by Council.</p> <p>(b) The upgrading works contained in the report (as approved by Council) are to be included in the construction certificate and be implemented prior to issuing an occupation certificate for the new building or part and written confirmation is to be provided to Council accordingly.</p> <p>Condition Reason: Statutory requirement. To ensure compliance with the</p>

- | | Condition |
|-----|---|
| | <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> , and that adequate provision is made for fire safety in the premises for building occupant safety. |
| 15. | <p>Photographic Archival Documentation</p> <p>A digital photographic archival recording of the property internally and externally shall be prepared and submitted to and approved by Council, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development. This recording shall be in accordance with the NSW Heritage Office 2006 Guidelines for Photographic Recording of Heritage Items using Digital Capture.</p> <p>The first submission of the archival recording of significant building fabric or furnishings is to be prepared prior to the removal of any significant building fabric or furnishings from the site, and must be submitted to and approved by Council prior to the commencement of any work on site and prior to a Construction Certificate being issued.</p> <p>The second submission of the archival recording is of significant building fabric or furnishings that is exposed during demolition or construction and after work has been completed on site and must be submitted to Council prior to any Occupation Certificate being issued.</p> <p>This recording shall be in accordance with the NSW Heritage Office 2006 Guidelines for Photographic Recording of Heritage Items using Film or Digital Capture. One bound copy and one digital copy (DVD or USB) of the archival recording is to be submitted to Council for inclusion in the Local History Collection of Randwick City Library and for Council's own records incorporating the following:</p> <ul style="list-style-type: none">• A PDF copy of the archival record incorporating a detailed historical development of the site, purpose of the archival recording, copyright permission for Council to use the photographs for research purposes, photographic catalogue sheet cross-referenced to the base floor and site plans showing the locations of archival photographs taken, and index print of the photographs;• Digital copies of the archival photographs in JPEG and TIFF formats. <p>Condition Reason: To satisfy heritage considerations.</p> |
| 16. | <p>Salvage, Reuse and Recycling of Traditional Building Materials</p> <p>A salvage plan shall be prepared and submitted to and approved by Council, in accordance with Section 4.17 of the Environmental Planning and Assessment Act 1979 prior to a construction certificate being issued for the development. The salvage plan is required to ensure that materials including but not limited to architraves, skirtings, windows, sandstone/brick, doors, and remnant components of significant heritage fabric are carefully removed and stored, sold or donated to a heritage salvaging yard to facilitate the conservation of other buildings of a similar period.</p> <p>Condition Reason: To satisfy heritage considerations.</p> |
| 17. | <p>Landscape Plan</p> <p>Detailed landscape drawings and specifications are to be submitted to and approved by the Principal Certifier with the construction certificate and the landscaping is required to be implemented in accordance with the approved plans and specifications. The landscape drawings and specifications are to be prepared by a qualified Landscape Architect who is eligible for membership with the Australian Institute of Landscape Architects (AILA). If Council is not the Principal Certifier for the development, a copy of the approved plans and specifications are to be forwarded to Council with the construction certificate.</p> |

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Condition

Condition Reason: To ensure residential amenity and that appropriate landscaping is provided.

BEFORE BUILDING WORK COMMENCES

Condition

18. **Building Certification & Associated Requirements**

The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work:

- a) a *Construction Certificate* must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.

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

Condition reason: Statutory requirement. To ensure appropriate safeguarding measures are in place prior to the commencement of any building, work, demolition or excavation.

19. **Construction Noise & Vibration Management Plan**

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

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

- (a) The *Construction Noise & Vibration Management Plan* must be prepared by a suitably qualified acoustic consultant, in accordance with the Environment Protection Authority *Guidelines for Construction Noise and Assessing Vibration: A Technical Guideline* (or other relevant and recognised Vibration guidelines or standards) and the conditions of development consent, to the satisfaction of the Certifier.
- (b) Noise and vibration from any rock excavation machinery, pile drivers and all plant and equipment must be minimised, by using appropriate plant and equipment, silencers and the implementation of noise management and mitigation strategies.

	Condition
	<p>(c) Noise and vibration levels must be monitored during the works and a further report must be obtained from the acoustic/vibration consultant as soon as practicable after the commencement of the works, which reviews and confirms the implementation and suitability of the noise and vibration strategies in the <i>Construction Noise & Vibration Management Plan</i> and which demonstrates compliance with relevant criteria.</p> <p>(d) Any recommendations and requirements contained in the <i>Construction Noise & Vibration Management Plan</i> and associated reports are to be implemented accordingly and should noise and vibration emissions not comply with the terms and conditions of consent, work must cease forthwith and is not to recommence until details of compliance are submitted to the Principal Certifier and Council.</p> <p>A copy of the Construction Noise & Vibration Management Plan and associated acoustic/vibration report/s must be maintained on-site and a copy must be provided to the Principal Certifier and Council prior to commencement of any site works.</p> <p>(e) Noise and vibration levels must be monitored during the site work and be reviewed by the acoustic/vibration consultant periodically, to ensure that the relevant strategies and requirements are being satisfied and details are to be provided to the Principal Certifier and Council accordingly.</p> <p>Condition Reason: To protect the amenity of the neighbourhood during construction.</p>
20.	<p>Construction Site Management Plan</p> <p>A Construction Site Management Plan must be developed and implemented prior to the commencement of any works. The construction site management plan must include the following measures, as applicable to the type of development:</p> <ul style="list-style-type: none"> • location and construction of protective site fencing and hoardings • location of site storage areas, sheds, plant & equipment • location of building materials and stock-piles • tree protective measures • dust control measures • details of sediment and erosion control measures • site access location and construction • methods of disposal of demolition materials • location and size of waste containers/bulk bins • provisions for temporary stormwater drainage • construction noise and vibration management • construction traffic management details • provisions for temporary sanitary facilities • measures to be implemented to ensure public health and safety. <p>The site management measures must be implemented prior to the commencement of any site works and be maintained throughout the works.</p> <p>A copy of the Construction Site Management Plan must be provided to the Principal Certifier and Council prior to commencing site works. A copy must also be maintained on site and be made available to Council officers upon request.</p> <p>Condition Reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>
21.	<p>Sediment and Erosion Control</p> <p>A <i>Sediment and Erosion Control Plan</i> must be developed and implemented</p>

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Condition

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

Condition Reason: To protect the environment from the effects of sedimentation and erosion from development sites.

22. **Public Liability**

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

Condition Reason: To ensure the community is protected from the cost of any claim for damages arising from works or activities on public land.

DURING BUILDING WORK

Condition

23. **Site Signage**

It is a condition of the development consent that a sign must be erected in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details:

- a) showing the name, address and telephone number of the principal certifier for the work, and
- b) showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) and
- c) stating that unauthorised entry to the work site is prohibited.

The sign must be—

- a) maintained while the building work is being carried out, and
- b) removed when the work has been completed.

This section does not apply in relation to—

- a) building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, or
- b) Crown building work certified to comply with the Building Code of Australia under the Act, Part 6.

Condition reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.

24. **Restriction on Working Hours**

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

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

Condition	
	<ul style="list-style-type: none"> Saturday - No work permitted Sunday & public holidays - No work permitted
Additional requirements for all development (except for single residential dwellings)	<ul style="list-style-type: none"> Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted

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

Condition reason: To protect the amenity of the surrounding area.

25. **Noise & Vibration**

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

Condition Reason: To protect the amenity of the neighbourhood during construction.

26. **Construction Site Management**

Temporary site safety fencing or site hoarding must be provided to the perimeter of the site prior to commencement of works and throughout demolition, excavation and construction works, in accordance with the SafeWork guidelines and the following requirements:

- (a) Temporary site fences or hoardings must have a height of 1.8 metres and be a cyclone wire fence (with geotextile fabric attached to the inside of the fence to provide dust control), heavy-duty plywood sheeting (painted white), or other material approved by Council in writing.
- (b) Hoardings and site fencing must be designed to prevent any substance from, or in connection with, the work from falling into the public place or adjoining premises and if necessary, be provided with artificial lighting.
- (c) All site fencing, hoardings and barriers must be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.
- (d) Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land.
- (e) Site access gates and doors must open into the construction site/premises and must not open out into the road or footway at any time.
- (f) Excavations must also be properly guarded to prevent them from being dangerous to life, property or buildings.

Notes:

- Temporary site fencing may not be necessary if there is an existing adequate fence in place having a minimum height of 1.5m.

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	Condition
	<ul style="list-style-type: none"> A separate Local Approval application must be submitted to and approved by Council's Health, Building & Regulatory Services before placing any fencing, hoarding or other article on the road, footpath or nature strip.
	<p>Condition Reason: To require measures that will protect the public, and the surrounding environment, during site works and construction.</p>
27.	<p>Overhead Hoardings</p>
	<p>An overhead ('B' class) type hoarding is required to be provided to protect the public (unless otherwise approved by Council) if:</p>
	<ul style="list-style-type: none"> goods or materials are to be hoisted (i.e. via a crane or hoist) over a pedestrian footway building or demolition works are to be carried out on buildings which are over 7.5m in height and located within 3.6m of the street alignment it is necessary to prevent articles or materials from falling and causing a potential danger or hazard to the public or adjoining land as may otherwise be required by SafeWork NSW, Council or the Principal Certifier.
	<p>Condition Reason: To ensure proper management of public land and ensure public safety during site works and construction.</p>
28.	<p>Public Safety & Site Management</p>
	<p>Public safety and convenience must be maintained during demolition, excavation and construction works and the following requirements must be complied with at all times:</p>
	<p>a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.</p>
	<p>b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident.</p>
	<p>c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction.</p>
	<p>d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times.</p>
	<p>e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.</p>
	<p>f) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident.</p>
	<p>g) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.</p>
	<p>h) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.</p>
	<p>i) Road/Asset Opening Permit must be obtained from Council prior to carrying</p>

Condition	
	<p>out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details.</p> <p>Condition reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>
29.	<p>Excavations and Support of Adjoining Land</p> <p>Tin accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 74 of the <i>Environmental Planning and Assessment Regulation 2021</i>, it is a prescribed condition that the adjoining land and buildings located upon the adjoining land must be adequately supported at all times.</p> <p>Condition Reason: Prescribed condition under section 74 of the Environmental Planning and Assessment Regulation 2021.</p>
30.	<p>Building Encroachments</p> <p>There must be no encroachment of any structures or building work onto Council's road reserve, footway, nature strip or public place.</p> <p>Condition Reason: To ensure no encroachment onto public land and to protect Council land.</p>
31.	<p>Survey Report</p> <p>A Registered Surveyor's check survey certificate or other suitable documentation must be obtained at the following stage/s of construction to demonstrate compliance with the approved setbacks, levels, layout and height of the building:</p> <ul style="list-style-type: none"> • prior to construction (pouring of concrete) of footings for the building and boundary retaining structures, • prior to construction (pouring of concrete) of new floor levels, • prior to issuing an Occupation Certificate, and • as otherwise may be required by the Principal Certifier. <p>The survey documentation must be forwarded to the Principal Certifier and a copy is to be forwarded to the Council.</p> <p>Condition Reason: To ensure compliance with approved plans.</p>

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition	
32.	<p>Occupation Certificate Requirements</p> <p>An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>Condition reason: Statutory requirement. To ensure the site is authorised for occupation.</p>
33.	<p>Fire Safety Certificate</p> <p>A single and complete <i>Fire Safety Certificate</i>, certifying the installation and operation of all of the fire safety measures within the building must be submitted to</p>

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	Condition
	<p>Council with the Occupation Certificate, in accordance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>A copy of the <i>Fire Safety Certificate</i> must be displayed in the building entrance/foyer at all times and a copy of the <i>Fire Safety Certificate</i> and <i>Fire Safety Schedule</i> must also be forwarded to Fire and Rescue NSW.</p> <p>Condition Reason: Statutory requirement. To ensure compliance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>, and that adequate provision is made for fire safety in the premises for building occupant safety.</p>
34.	<p>Structural Certification</p> <p>A Certificate must be obtained from a professional engineer, which certifies that the building works satisfy the relevant structural requirements of the Building Code of Australia and approved design documentation, to the satisfaction of the <i>Principal Certifier</i>. A copy of which is to be provided to Council.</p> <p>Condition Reason: To ensure the structural adequacy of the building and works.</p>
35.	<p>Waste Management</p> <p>Adequate provisions are to be made within the premises for the storage, collection and disposal of trade/commercial waste and recyclable materials, to the satisfaction of Council.</p> <p>Trade/commercial waste materials must not be disposed in or through Council's domestic garbage service. All trade/commercial waste materials must be collected by Council's Trade Waste Service or a waste contractor authorised by the Waste Service of New South Wales and details of the proposed waste collection and disposal service are to be submitted to Council prior to commencing operation of the business.</p> <p>The operator of the business must also arrange for the recycling of appropriate materials and make the necessary arrangements with an authorised waste services contractor accordingly.</p> <p>Condition Reason: To ensure that waste and recycling is appropriately managed.</p>
36.	<p>Council's Infrastructure, Vehicular Crossings, street verge</p> <p>The applicant must meet the full cost for Council or a Council approved contractor to repair/replace any damaged sections of Council's footpath, kerb & gutter, nature strip etc which are due to building works being carried out at the above site. This includes the removal of cement slurry from Council's footpath and roadway.</p> <p>Condition Reason: To ensure rectification of any damage to public infrastructure.</p>
37.	<p>Stormwater Drainage</p> <p>The applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced Hydraulic Engineer confirming that the design and construction of the stormwater drainage system complies with Australian Standard 3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and the conditions of this development consent.</p> <p>The certification must be provided following inspection/s of the site stormwater drainage system by the certifying engineers and shall be provided to the satisfaction of the Principal Certifier.</p> <p>Condition Reason: To ensure compliance with the consent and relevant standards, and adequate management of stormwater.</p>

Condition	
38.	Landscape Certification Prior to any Occupation Certificate, certification from a qualified professional in the Landscape industry must be submitted to, and be approved by, the Principal Certifier, confirming the date that the completed landscaping was inspected, and that it has been installed substantially in accordance with the approved plan and relevant conditions of consent. Condition Reason: To ensure landscaping is implemented in accordance with the consent and maintained for the life of the development.

OCCUPATION AND ONGOING USE

Condition	
39.	External Lighting External lighting to the premises must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance. Condition Reason: To protect the amenity of surrounding areas.
40.	Operational Noise Noise from the operation of all plant and equipment upon the premises shall not give rise to an 'offensive noise' as defined in the <i>Protection of the Environment Operations Act 1997 and Regulations</i> . Condition Reason: To protect the amenity of surrounding areas.
41.	Fire Safety Statement A single and complete <i>Fire Safety Statement</i> (encompassing all of the fire safety measures upon the premises) must be provided to the Council in accordance with the requirements of the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> at least on an annual basis each year following the issue of the <i>Fire Safety Certificate</i> , and in accordance with the <i>Fire Safety Schedule</i> for the building. The <i>Fire Safety Statement</i> is required to confirm that all the fire safety measures have been assessed by a registered fire safety practitioner and are operating in accordance with the standards of performance specified in the <i>Fire Safety Schedule</i> . A copy of the <i>Fire Safety Statement</i> must be displayed within the building entrance or foyer at all times and a copy must also be forwarded to Fire & Rescue NSW. Condition Reason: Statutory requirement. To ensure compliance with the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i> , and that adequate provision is made for fire safety in the premises for building occupant safety.

DEMOLITION WORK BEFORE DEMOLITION WORK COMMENCES

Condition	
42.	Demolition Work A Demolition Work Plan must be developed and be implemented for all demolition work, in accordance with the following requirements: a) Demolition work must comply with Australian Standard AS 2601 (2001), Demolition of Structures; SafeWork NSW requirements and Codes of

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Condition	
	Practice and Randwick City Council's Asbestos Policy.
b)	<p>The Demolition Work Plan must include the following details (as applicable):</p> <ul style="list-style-type: none"> • The name, address, contact details and licence number of the Demolisher /Asbestos Removal Contractor • Details of hazardous materials in the building (including materials containing asbestos) • Method/s of demolition (including removal of any hazardous materials including materials containing asbestos) • Measures and processes to be implemented to ensure the health & safety of workers and community • Measures to be implemented to minimise any airborne dust and asbestos • Methods and location of disposal of any hazardous materials (including asbestos) • Other measures to be implemented to ensure public health and safety • Date the demolition works will commence/finish. <p>The Demolition Work Plan must be provided to the Principal Certifier prior to commencing any demolition works or removal of any building work or materials. A copy of the Demolition Work Plan must be maintained on site and be made available to Council officers upon request.</p> <p>If the demolition work involves asbestos products or materials, a copy of the Demolition Work Plan must be provided to Council not less than 2 days before commencing any work.</p> <p><i>Notes: it is the responsibility of the persons undertaking demolition work to obtain the relevant SafeWork licences and permits and if the work involves the removal of more than 10m² of bonded asbestos materials or any friable asbestos material, the work must be undertaken by a SafeWork Licensed Asbestos Removal Contractor.</i></p> <p><i>A copy of Council's Asbestos Policy is available on Council's web site at www.randwick.nsw.gov.au in the Building & Development section or a copy can be obtained from Council's Customer Service Centre.</i></p> <p>Condition reason: To ensure demolition work area carried out in accordance with the relevant standards and requirements.</p>

DURING DEMOLITION WORK

Condition	
43.	<p>Demolition Work and Removal of Asbestos Materials</p> <p>Demolition work must be carried out in accordance with relevant Safework NSW Requirements and Codes of Practice; Australian Standard AS 2601 (2001) - Demolition of Structures and Randwick City Council's Asbestos Policy. Details of compliance are to be provided in a <i>demolition work plan</i>, which shall be maintained on site and a copy is to be provided to the Principal Certifier and Council.</p> <p>Demolition or building work relating to materials containing asbestos must also be carried out in accordance with the following requirements:</p> <ul style="list-style-type: none"> • A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m² of bonded asbestos (i.e. fibro), • Asbestos waste must be disposed of in accordance with the <i>Protection of</i>

Condition
<p><i>the Environment Operations Act 1997 and relevant Regulations</i></p> <ul style="list-style-type: none">• A sign must be provided to the site/building stating "Danger Asbestos Removal In Progress",• Council is to be given at least two days written notice of demolition works involving materials containing asbestos,• Copies of waste disposal details and receipts are to be maintained and made available to the Principal Certifier and Council upon request,• A Clearance Certificate or Statement must be obtained from a suitably qualified person (i.e. Occupational Hygienist or Licensed Asbestos Removal Contractor) which is to be submitted to the Principal Certifier and Council upon completion of the asbestos removal works,• Details of compliance with these requirements must be provided to the Principal Certifier and Council upon request.

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

Condition reason: To ensure that the handling and removal of asbestos from the site is appropriately managed.

Development Application Report No. D13/24

Subject: 16R Argyle Crescent and 21-29 Munda Street,
Randwick(DA/990/2023)



Executive Summary

Proposal:	Demolition of existing structures and construction of a new facility for WIRES at Randwick Environmental Park.
Ward:	East Ward
Applicant:	Randwick City Council
Owner:	Randwick City Council
Cost of works:	\$997,128.00
Reason for referral:	Conflict of interest

Recommendation

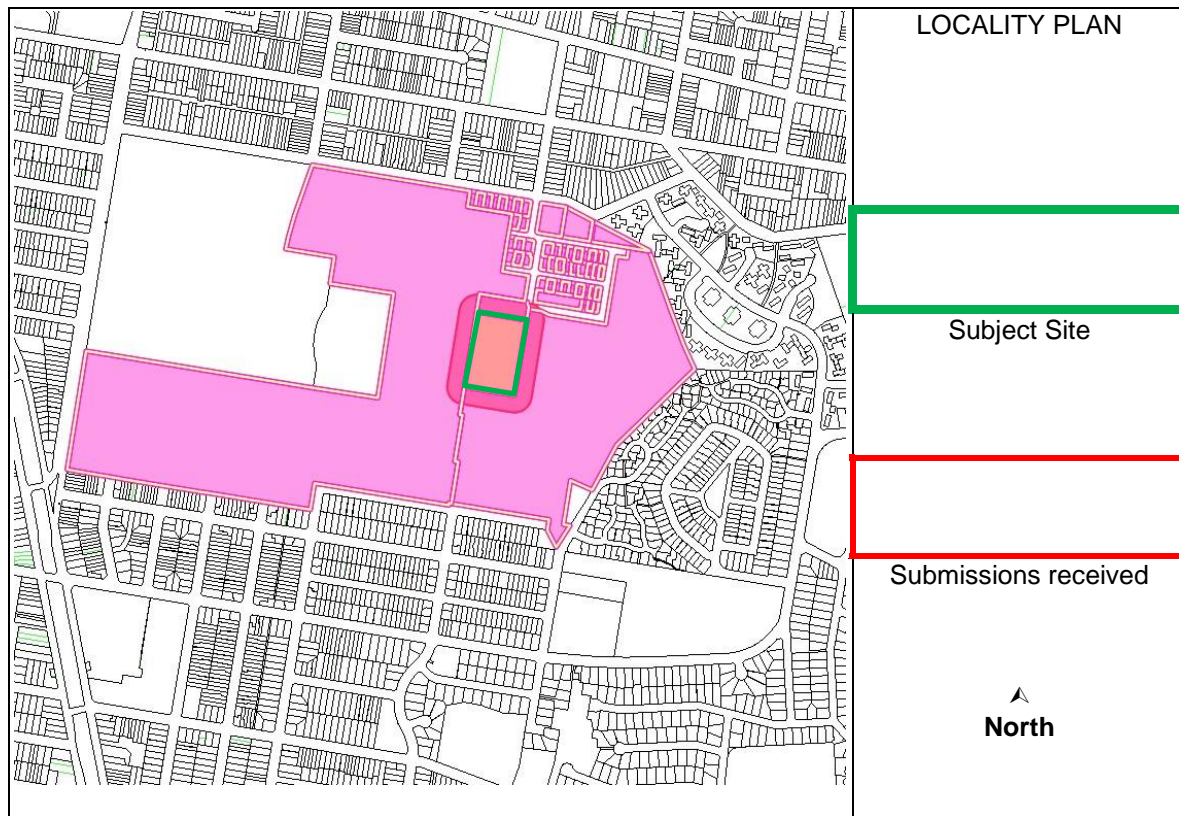
- A. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. 990/2023 for demolition of existing structures and construction of a new wildlife rescue facility for WIRES at Randwick Environmental Park, at Nos. 16R Argyle Crescent & 21-29 Munda Street, Randwick, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (general) - DA/990/2023 - 21-29 Munda Street, RANDWICK


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1. Executive summary

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

- The applicant/landowner is Council.

The proposal seeks development consent for the relocation of the WIRES Wildlife Rescue Facility from the Randwick Environmental Park to the Sustainability Hub within the grounds of the adjacent Randwick Community Centre.

The proposal is recommended for approval subject to the conditions of consent detailed as attached.

2. Site Description and Locality

The subject site is known as 21-29 Munda Street and is legally described as Lot 11 in DP 1042814. The site is 14,240m², is regular in shape and has a corner frontage to Hendy Avenue and Dooligah Avenue to the northeast. The site contains various improvements including Randwick Community Centre, vegetation, and sustainability classrooms.

Demolition works are also proposed to the site to the east of the subject site. This site is known as 16R Argyle Crescent, Randwick and is legally described as Lot 17 in DP 1042814. The site is irregular in shape and comprises some 13 hectares.

Both sites are owned by Randwick City Council.



Figure 1 Aerial Photo of the Subject Site (source: sixmaps)

3. Relevant history

The subject site benefits from several development consents as identified below.

DA/761/2007: Development application for the construction of a new shade structure to the existing preschool. Approved on 19 September 2007.

DA/206/2010: Development application for retrofit of Randwick Community Centre to improve energy and water efficiency including alterations to openings, addition of awning, installation of rain water tanks and solar panels, installation of new kitchen, construction of an outdoor classroom, shed, wind turbine, lighting, new interpretive fence and roof over existing interpretive structure. Approved on 25 May 2010.

DA/311/2011: Development application for construction of a covered walkway adjacent to existing day care centre, alterations to the pedestrian access into the centre, relocate airconditioning and associated works. Approved on 29 June 2011.

DA/311/2011/A: Modification application to development consent DA/311/2011 to relocate the internal door openings, enlarge bay window to eastern elevation, install new skylights to the roof over the walkway and relocate AC units above walkway roof. Approved on 21 October 2011.

DA/897/2015: Development application for a new advertising structure for the Munda Street Community Centre and new landscaping works including pedestrian pathways, vegetation and stone walls. Approved on 8 March 2016.

4. Proposal

The proposal seeks development consent for the relocation of the WIRES Wildlife Rescue Facility from 16R Argyle Crescent, Randwick (the Randwick Environmental Park) to 21-29 Munda Street, Randwick (The Sustainability Hub). The proposed facility is a single storey structure comprising 180sqm GFA including an external food preparation area, internal animal food preparation area, staff kitchen, ten (10) possum cages, two (2) bird aviaries and a larger flight aviary and bin storage

Appropriate conditions of consent are proposed to ensure compliance with the relevant provisions of Chapter 2 of the SEPP.

6.2. State Environmental Planning Policy (Sustainable Buildings) 2022

Chapter 3 of the *State Environmental Planning Policy (Sustainable Buildings) 2022* provides sustainability standards for non-residential development with a capital investment value of \$5 million or more. The estimated cost of the proposed development is approximately \$997,128 (including GST). As such, the provisions of the SEPP are not applicable to the subject application.

6.3. State Environmental Planning Policy (Resilience and Hazards) 2021

Chapter 4 of the *State Environmental Planning Policy (Resilience and Hazards) 2021* includes provisions relating to contamination and remediation of contaminated sites. Clause 4.6 of the SEPP requires that the consent authority consider the status of the land subject to a development application, and whether the land is potentially contaminated.

The entirety of the Randwick Environmental Park (REP), Munda Reserve, and the land currently situated to the north/east of the REP underwent comprehensive remediation before its subdivision and development. This process adhered to the stringent criteria and standards outlined in the NSW land contamination and remediation guidelines. An independent NSW EPA accredited Site Auditor issued a Site Audit Statement for the land, confirming its compliance with established remediation standards.

Based on the above, the site is not considered to be in a contaminated state requiring remediation for the purposes of the SEPP.

6.4. Randwick Local Environmental Plan 2012 (LEP)

On 18 August 2023, the Department of Planning and Environment (DPE) formally notified the LEP amendment (amendment No. 9) updating the *Randwick Local Environmental Plan 2012*, and the updated LEP commenced on 1 September 2023. As the subject application was lodged on or after 1 September 2023, the provisions of RLEP 2012 (Amendment No. 9) are applicable to the proposed development, and the proposal shall be assessed against the updated RLEP 2012.

The site is zoned RE1 Public Recreation and C2 Environmental Conservation under Randwick Local Environmental Plan 2012. The application's accompanying Statement of Environmental Effects identifies the proposed land use as being ancillary to the dominant land use of the site as a **community facility**. A **community facility** is permissible with consent in the RE1 Public Recreation zone and is defined as follows.

community facility means a building or place—

- (a) owned or controlled by a public authority or non-profit community organisation, and
- (b) used for the physical, social, cultural or intellectual development or welfare of the community, but does not include an educational establishment, hospital, retail premises, place of public worship or residential accommodation.

The Randwick Community Centre provides various community related uses that support the physical, social, cultural or intellectual development or welfare of the community. Included in these are a family day care, a preschool centre, a day respite dementia facility, the Randwick Community Centre Hall, Randwick City Council offices and meeting rooms. There is also a sustainability classroom, permaculture garden and large open space areas for public enjoyment and events.

The WIRES Wildlife Rescue Facility is considered to be consistent with the land use of the community centre in that:

- It would be operated by a volunteer not for profit community organization;
- It would share the amenities of the existing community centre;
- Its use is consistent with the definition of a community facility in that it is *used for the physical, social, cultural or intellectual development or welfare of the community* where the welfare of the community and its physical, social, cultural or intellectual development is

inherently connected to the care and welfare of native wildlife that form a part of the community and its environment.

On this basis, it is considered that the relocation of the WIRES Wildlife Rescue Facility is permissible with development consent in the RE1 Public Recreation zone.

Further, the proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will “*protect, manage and restore areas with high biodiversity, ecological and aesthetic values, including buffer areas and habitat corridors.*”

The following provisions in the RLEP 2012 apply to the proposal.

6.4.1. Clause 5.10 - Heritage conservation

The site is not identified as a heritage item. However, the proposed demolition works at 16R Argyle Crescent, Randwick involve works in an area that is identified as a heritage conservation area under the RLEP (Randwick Environmental Park Heritage Conservation Area). The proposed works at 21-29 Munda Street, Randwick are also within close proximity to the adjacent heritage conservation area. As such, the provisions of clause 5.10 of the RLEP 2012 are applicable to the proposal.

Subclause 5.10(4) requires the following.

Effect of proposed development on heritage significance *The consent authority must, before granting consent under this clause in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned. This subclause applies regardless of whether a heritage management document is prepared under subclause (5) or a heritage conservation management plan is submitted under subclause (6).*

The application was referred to Council’s heritage officer for comment. Comment was received on 6 December 2023. Council’s heritage officer noted that the demolition of the existing wire sheds at 16R Argyle Crescent is acceptable as the structures are a contemporary addition with no heritage significance. The proposed tree removal at 21-29 Munda Street was also considered to be acceptable as the trees do not form part of the heritage conservation area.

Based on Council heritage officer’s comments, the proposal is considered to have minimal impact on the heritage conservation area, and achieves the objectives of clause 5.10 of the RLEP 2012.

6.4.2. Clause 5.23 – Public Bushland

Clause 5.23 of the RLEP 2012 includes provisions relating to the protection of ‘public bushland’. Subclause (9) defines ‘public bushland’ as follows.

public bushland means land—

- (a) on which there is vegetation that is—
 - (i) a remainder of the natural vegetation of the land, or
 - (ii) representative of the structure and floristics of the natural vegetation of the land, and
- (b) that is owned, managed or reserved for open space or environmental conservation by the Council or a public authority.

No. 16R Argyle Crescent contains 3.6 hectares of Eastern Suburbs Banksia Scrub, a critically endangered ecological community that is a remainder of the natural vegetation of the land. The site is owned and managed by Randwick City Council and is zoned C2 Environmental Conservation under the RLEP 2012. As such, the site is classified as **Public Bushland** under cl. 5.23 of the RLEP 2012.

Given the minor nature of works proposed at 16R Argyle Crescent, the development is not considered to be reasonably likely to disturb the public bushland for the purposes of cl. 5.23(3). Notwithstanding, the proposed works are also considered to be for a purpose that is in the public interest (cl 5.23(3)(a)).

No. 21-29 Munda Street is considered to be “land adjoining public bushland” for the purposes of cl. 5.23(7). The relevant matters of consideration under this subclause are assessed in the following table.

<i>Cl. 5.23(7) In deciding whether to grant development consent to development on land adjoining public bushland, the consent authority must consider the following -</i>	
<i>(a) the need to retain public bushland adjoining the site of the development</i>	It is acknowledged that there is an inherent need to retain the public bushland at No. 16R Argyle Crescent. The site is appropriately zoned for environmental conservation and a dedicated plan of management is in place to manage and retain the bushland at the site. The proposed works are minor in nature and include sufficient landscaping and stormwater management infrastructure to mitigate adverse stormwater impacts. The proposal would not adversely impact the public bushland on the adjoining site.
<i>(b) the likely effect of the development on public bushland, including the following –</i> <i>(i) the erosion of soil,</i> <i>(ii) the siltation of streams and waterways,</i> <i>(iii) the spread of weeds and non-native plants within public bushland</i>	The application is accompanied by a sediment and erosion control plan which would effectively mitigate the erosion of soil at the site. The landscape plan accompanying the application does not propose the planting of non-native plants within the bushland. The siltation of streams and waterways in the surrounding area is unlikely to occur due to the minor nature of the development.
<i>(c) other matters the consent authority considers relevant to the protection and preservation of public bushland.</i>	N/A.

Based on the above, the proposal meets the requirements and objectives of clause 5.23 of the RLEP 2012.

6.4.3. Clause 6.2 – Earthworks

Clause 6.2(2) of the RLEP requires development consent for development involving earthworks. The proposal includes minor earthworks for the purposes of footings for the proposed development. As such, the provisions of cl. 6.2 are applicable to the proposed development.

The application is assessed against the relevant matters of consideration under cl. 6.2(3) in the following table.

<i>Cl. 6.2(3) Before granting development consent for earthworks (or for development involving ancillary earthworks), the consent authority must consider the following matters—</i>	
<i>(a) the likely disruption of, or any detrimental effect on, drainage patterns and soil stability in the locality of the development,</i>	The application is accompanied by a sediment and erosion control plan which, when implemented, will effectively minimize the potential for disruption to soil stability and drainage patterns in the locality.
<i>(b) the effect of the development on the likely future use or redevelopment of the land,</i>	The site is zoned RE1 Public Recreation and is unlikely to accommodate further forms of development.
<i>(c) the quality of the fill or the soil to be excavated, or both,</i>	No fill is proposed. The quality of the soil at the site has been considered in the application's accompanying geotechnical report. The soil is generally suitable for the proposed development.

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(d) <i>the effect of the development on the existing and likely amenity of adjoining properties,</i>	The proposal will generate positive impacts on the amenity of the adjoining environmental park by providing rehabilitative services to local wildlife.
(e) <i>the source of any fill material and the destination of any excavated material,</i>	No fill material is proposed.
(f) <i>the likelihood of disturbing relics,</i>	A condition of consent has been recommended by Council's heritage officer which details actions and steps to be taken in the event that any relics are unexpectedly discovered at the site.
(g) <i>the proximity to, and potential for adverse impacts on, any waterway, drinking water catchment or environmentally sensitive area,</i>	The proposal is unlikely to give rise to adverse impacts on the adjoining heritage conservation area. Sufficient measures are incorporated into the design of the building (such as landscaping, stormwater, and erosion & sediment control) to minimize adverse impacts.
(h) <i>any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</i>	Measures proposed to minimize potential adverse impacts such as landscaping, stormwater, and erosion and sediment control have been effectively incorporated into the development.

Based on the above, the proposal is considered to be consistent with the requirements and objectives of cl. 6.2 of the RLEP 2012.

6.4.4. Clause 6.5 – Terrestrial Biodiversity

Clause 6.5 of the RLEP 2012 applies to land identified as "biodiversity" on the RLEP Terrestrial Biodiversity Map. Whilst 21-29 Munda Street is not identified, 16R Argyle Crescent is identified on the map. The provisions of clause 6.5 are applicable to the application, to the extent of the demolition works proposed at 16R Argyle Crescent.

The application is assessed against the relevant matters of consideration under cl. 6.5(3) and (4) in the following table.

<i>Cl. 6.5(3) Before determining a development application for development on land to which this clause applies, the consent authority must consider—</i>	
(a) <i>Whether the development is likely to have –</i> (a) <i>any adverse impact on the condition, ecological value and significance of the fauna and flora on the land, and</i>	The proposed demolition works will have minimal adverse impacts on the condition of the public bushland at 16R Argyle Crescent. Appropriate conditions of consent are recommended to minimize potential impacts often associated with demolition works. The provision of a new wildlife rehabilitation facility would result in positive impacts on flora and fauna on the land.
(ii) <i>any adverse impact on the importance of the vegetation on the land to the habitat and survival of native fauna, and</i>	The demolition works would not result in the removal of habitat within identified biodiversity areas.
(iii) <i>any potential to fragment, disturb or diminish the biodiversity structure, function and composition of the land, and</i>	The demolition works would not result in the removal of habitat within identified biodiversity areas.
(iv) <i>any adverse impact on the habitat elements providing connectivity on the land, and</i>	The demolition works would not result in the removal of habitat within identified biodiversity areas.

<i>(b) any appropriate measures proposed to avoid, minimise or mitigate the impacts of the development.</i>	Appropriate conditions of consent are recommended to minimize potential impacts often associated with demolition works.
<i>Cl. 6.5(4) Development consent must not be granted to development on land to which this clause applies unless the consent authority is satisfied that—</i>	
<i>(a) the development is designed, sited and will be managed to avoid any significant adverse environmental impact, or</i>	The proposed development includes sufficient design measures (such as landscaping, stormwater and sediment & erosion control measures) to mitigate potential adverse impacts on the adjoining biodiversity land. The demolition of the existing facility would not give rise to adverse impacts on biodiversity at the site.
<i>(b) if that impact cannot be reasonably avoided by adopting feasible alternatives—the development is designed, sited and will be managed to minimise that impact, or</i>	
<i>(c) if that impact cannot be minimised—the development will be managed to mitigate that impact.</i>	

Based on the above, the proposal is considered to be consistent with the objectives and requirements of cl. 6.5 of the RLEP 2012.

6.4.5. Clause 6.10 – Essential Services

Clause 6.10 of the RLEP requires the consent authority to be satisfied that the supply of water and electricity, disposal and management of sewage, stormwater drainage, and suitable vehicular access is available at the site.

Vehicular access to the site is provided through a right-of-way easement on the adjoining land to the west. The site has existing developments with water, electricity and sewage connections. Sufficient stormwater infrastructure is proposed as part of the application.

On this basis, the proposal is considered to adequately meet the provisions of cl. 6.10.

6.4.6. Clause 6.11 – Design Excellence

Clause 6.11 of the RLEP 2012 applies to development involving the construction of a new building on a site that has an area of 10,000sqm or greater. The subject site comprises an area of some 14,240sqm. As such, the provisions of cl. 6.11 are applicable to the development proposal.

The application is assessed against the relevant matters of consideration under cl. 6.11(4) in the following table.

<i>Cl. 6.11(4) In considering whether the development exhibits design excellence, the consent authority must have regard to the following matters—</i>	
<i>(a) whether a high standard of architectural design, materials and detailing appropriate to the building type and location will be achieved,</i>	The application is accompanied by a schedule of materials and finishes. The palette of materials selected reflects the bushland setting that the proposed development is located. The materials and finishes proposed are high quality and are broadly suitable.
<i>(b) whether the form and external appearance of the development will improve the quality and amenity of the public domain,</i>	The form and external appearance of the building will be in harmony with the surrounding natural environment and will enhance the amenity of the area.
<i>(c) how the proposed development responds to the environmental and built characteristics of the site and whether it achieves an acceptable relationship with other buildings on the same site and on neighbouring sites,</i>	The proposal responds to the bushland setting of the site through the use of sympathetic colours and materials such as Colourbond Pale Eucalypt and Woodland Grey. The proposal would achieve an acceptable relationship with other development at the site, as it is of a similar form and scale.

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(d) <i>whether the building meets sustainable design principles in terms of sunlight, natural ventilation, wind, reflectivity, visual and acoustic privacy, safety and security, resource, energy and water efficiency, renewable energy sources and urban heat island effect mitigation,</i>	The proposal includes sufficient landscaping and stormwater infrastructure to meet the relevant sustainability principles under the LEP and DCP.
(e) <i>whether the proposed development detrimentally impacts on view corridors and landmarks.</i>	The proposed development is not located within any identified view corridor and would not obstruct views to any landmark.

Based on the above, the proposal is considered to exhibit design excellence.

6.4.7. *Clause 6.12 – Development requiring the preparation of a development control plan*

Clause 6.12 of the RLEP 2012 requires the development on land that has a site area of at least 10,000sqm be accompanied by a site-specific development control plan. The subject site comprises an area of at least 10,000sqm. As such, the provisions of cl. 6.12 are applicable to the proposal.

Clause 6.12(3) provides exceptions in which a development control plan is not required to be prepared. Of relevance to the application is subclause 6.12(3)(c).

(3) Development consent must not be granted for development on land to which this clause applies unless –

(c) The development is of a minor nature and is consistent with the objectives of the zone in which the land is situated.

The proposed development comprises a single storey structure with approximately 180sqm of gross floor area. In the context of the broader site, it is considered to be of a minor nature. In addition, the proposed development is considered to be broadly consistent with the relevant objectives of the zone in which the land is situated (see assessment above).

On this basis, the preparation of a site-specific development control plan is not required.

7. Development control plans and policies

7.1. Randwick Comprehensive DCP 2013

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

Council has commenced a comprehensive review of the existing Randwick Development Control Plan 2013. Stage 1 of the RDCP 2013 review has concluded, and the new RDCP comprising Parts B2 (Heritage), C1 (Low Density Residential), E2 (Randwick) and E7 (Housing Investigation) commenced on 1 September 2023. As the subject application was lodged on or after 1 September 2023, the provisions of the new RDCP 2023 are applicable to the proposed development, and the proposal shall be assessed against the new DCP.

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

8. Environmental Assessment

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

Section 4.15 'Matters for Consideration'	Comments
Section 4.15 (1)(a)(i) – Provisions of any environmental planning instrument	See discussion in sections 6 & 7.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>The environmental impacts of the proposed development on the natural and built environment have been addressed in this report.</p> <p>The proposed development is consistent with the dominant character in the locality.</p> <p>The proposal will not result in detrimental social or economic impacts on the locality.</p>
Section 4.15(1)(c) – The suitability of the site for the development	The site is located in close proximity to local services and public transport. The site has sufficient area to accommodate the proposed land use and associated structures. Therefore, the site is considered suitable for the proposed development.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions received.
Section 4.15(1)(e) – The public interest	The proposal promotes the objectives of the zone and will not result in any significant adverse environmental, social or economic impacts on the locality. Accordingly, the proposal is considered to be in the public interest.

9. Conclusion

That development application DA/990/2023 be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013. The proposed facility is intended to be used for protecting and caring injured native wildlife. As such, the key aims of the RLEP 2012 the pertain to the protection, enhancement, promotion and conservation of environmental qualities and character of Randwick are achieved. Further, the proposed facility promotes additional opportunities for community activities in the LGA.

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- The proposal provides a facility available for public usage that achieves key objectives under Section 6.5 of the RLEP 2012 – as it enables protection of native fauna, associated ecological processes and encourages the recovery of native fauna.
- The proposal is consistent with the specific objectives of the RE1 zone in that it supports the ecological values of the site and protects the natural environment by providing facilities for protecting and caring of injured native wildlife.
- The scale and design of the proposal are considered to be suitable for the location and is compatible with the desired future character of the locality. The proposed facility will not be highly visible nor dominant when viewed from the street. Its location, scale and massing are such that it can be regarded as an ancillary built form to the environmental park and blends with the surrounding bushland.
- The proposed development will make a positive contribution to the adjoining environmental park by providing new facilities to the immediate locality that are available to the community for protection and care of native wildlife.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Heritage planner

Comment from Council's Heritage Planner was received on 6 December 2023.

Council's heritage officer noted that the proposed tree removal is not within the adjacent HCA and is therefore acceptable (from a heritage perspective). The proposed development appears to comply with the objective and controls in terms of design and character, scale and form, siting, and materials and finishes.

Conditions of consent were recommended by Council's heritage officer.

1.2. Development Engineer

Comment from Council's development engineer was received on 25 January 2024.

Traffic and Parking

Council's engineer raised no concerns regarding potential traffic and parking impacts, as the proposal involves the relocation of an existing facility. No additional parking demands are anticipated, and there is sufficient on-site parking available at the site.

Drainage

Council's engineer determined that the application's accompanying geotechnical report and stormwater plans are satisfactory. The proposed stormwater infiltration rate of between 0.1-0.5L/m²/sec is acceptable. Council's engineer recommended a condition of consent requiring that stormwater runoff from the proposed development be discharged to a suitably sized infiltration area.

Flooding

Council's engineer determined that the location of the proposed facility is generally unaffected by flooding, being at a natural high point and not located within the flow path or flood storage area. Within the immediate surrounding area, the surface flooding is very minor, with flood depths of generally less than 100mm predicted for the 1% AEP storm event. The top water level of the large entrapped basin to the south and east of the site is well below the general level of the site and will not impact the proposed development.

The proposed facility has a floor level of RL 33.25 AHD which appears to be generally 100mm above the surrounding ground surface which is itself raised relative to the flowpath. The proposed floor level is therefore above the surrounding flood levels and is therefore acceptable.

Right of Way/ Department of Defence Comments

The assessing officer is advised that access to the Community centre and the development site is via a Right of Way from Marida Street over the neighbouring Dept of Defence land (Lot 37) and provides legal public and Council Access to the community centre and neighbouring reserve.

The Right of Way however depicted as (c) on the plot below only extends to the end of the public carpark but no further (see below).

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Anything south of the carpark and west of the community centre lot (lot 11) is solely Defence land and access over this land will require their permission. It is likely that access over this portion of Defence Land of the land will be required for vehicles during the construction phase of this development hence permission to use this land must be sought from Department of Defence. An appropriate clause has therefore been included as part of the Construction site Management Plan condition.

Waste Management

The proposed Wires facility provides waste storage facilities and an Operational Waste Management plans (OWMP) has been provided by the applicant. The OWMP proposes collection by private contractor with bins presented to Hendy Ave to the north via a network of pedestrian paths through Randwick Environmental Park. Council's Lead Specialist of Strategic Waste has advised that the WMP does not address all matters and some clarification on some issues is required.

As any amendments to the WMP would likely be minor it is considered this can be addressed by condition requiring an amended WMP to be submitted and approved by Council's Lead Specialist of Strategic waste prior to the issuing of a construction certificate. A suitable condition has been included in this report.

Tree Management

The submitted Arborist Report has assessed a total of ten (10 trees) with the area of proposed works, all of which are identified as planted specimens that were installed during creation of the Randwick Environmental Park & Community Centre, rather than being naturally occurring species that characterise ESBS.

They have been provided in northwest-southeast rows across the width of the site, with the plans showing that the new WIRES building will be constructed into the southeast site corner, in direct conflict with three trees, being two small, low value and insignificant, 4-5m tall *Acacia saligna* (Wattles, Trees 3-4) then a single, larger *Angophora costata* (Sydney Red Gum, T5) of around 14m in height to their west.

While an alternative design/material was considered for the infiltration area around the perimeter of the new building in an attempt to retain T5, its SRZ will still be impacted on two of its for aspects for these works, and as it can still attain much larger dimensions, the most appropriate decision in this situation is considered to be removal and replacement in positions that are more suitable in relation to the new footprint, with the relevant consent for the removal of these three included in this report.

The Landscape Plan shows that 4 x 100 litre replacement Spotted Gums (canopy trees) will be provided as compensation for the 3 discussed above, with the Arborist stating their locations at the northwest extent of this group/area were determined following discussions with Council's Bushland and Coastal Walk Supervisor, Matt Leary, with these to be complemented further by lower growing mass-planting across the northern side of the facility, comprising exclusively native species, all of which ensure an acceptable level of environmental amenity is maintained at the site.

Others nearby, including Trees 1-2 & 6-10, which are further to the north and west of both the trees described above and the new building are all sited at such a distance that they would not be directly affected; however, secondary impacts associated with access routes, the storage of materials, landscaping and similar may pose a threat to their preservation, so conditions in this report adopt the Arborists recommendations that ideally, these components be located outside of their TPZ's, and if this is not achievable, then ground and trunk protection be provided as an alternative solution, with relevant conditions provided.

1.3. Environmental Health

Comment from Council's Environmental Health Unit was received on 10 January 2024.

Contamination

The Randwick Environment Park, where the proposed WIRES Wildlife Rescue Facility will be relocated, was originally part of the Randwick Army Barracks. Between 2000 – 2010 a re-development process was commenced by the Department of Defence.

As part of the redevelopment of the site, a number of contamination investigations were undertaken. The results of these investigations have indicated that there is no widespread chemical contamination of soil or groundwater, although there have been some localised areas of metal and organic contamination identified in soils and these have been remediated.

The entirety of the Randwick Environment Park (REP), Munda Reserve, and the land currently situated to the north/east of the REP underwent comprehensive remediation before its subdivision and development. This process adhered to the stringent criteria and standards outlined in the NSW land contamination and remediation guidelines. An independent NSW EPA accredited Site Auditor issued a Site Audit Statement for the land, confirming its compliance with established remediation standards.

An Environmental Management Plan (EMP) (Trim Doc Ref: D01174217) was developed for the site, These plans are designed to safely address and manage any potential unexpected discoveries, such as asbestos fragments, that could arise in the future. This must be incorporated and adhered to for development at the site.

The subject DA submission included A Preliminary Waste Classification Assessment. The report is titled "Preliminary Waste Classification Assessment, Proposed Wires Wildlife Rescue Facility Development, 21 – 29 Munda Street, Randwick, prepared by JK Environments, dated 15 August 2023 Project Reference: E36178BTlet-WC"

In summary, the report concludes the following:

"Based on the results of the assessment, and at the time of reporting, the fill material is assigned a preliminary classification of General Solid Waste (non-putrescible). Inspection of the material should be undertaken during excavation to confirm this classification prior to off-site disposal of the waste. The anticipated waste quantities should also be confirmed at that time and documented in the report"

Based on the scope of work undertaken for this assessment, and at the time of reporting, JKE are of the opinion that the natural soil at the site meets the definition of VENM for off-site disposal or re-use purposes. VENM is considered suitable for re-use on-site, or alternatively, the information included in this report may be used to assess whether the material is suitable for beneficial reuse at another site as fill material. In accordance with Part 1 of the Waste Classification Guidelines 2014, the VENM is pre-classified as general solid waste and can also be disposed of accordingly to a facility that is licensed by the NSW EPA to accept it.

Any unexpected finds encountered during the site works should be inspected by a suitably qualified contaminated land consultant. In the event that the find has the potential to alter the waste classification documented in this report, additional testing and reporting should be undertaken.

2. External referral comments:

2.1. NSW Police – Eastern Beaches Area Command

A referral to the NSW Police Eastern Beaches Area Command was made on 6 December 2023. Comment was received on 5 February 2024. NSW Police raised no objection to the proposal and made the following recommendations.

- It is recommended that there is sufficient lighting around the venue including in the carpark for when staff and visitors enter and leave their parked vehicles especially at night
- We encourage the use of proactive security such as CCTV cameras not only concentrated inside the building but also the outside of the building such as the car parking for both staff and visitors
- It is recommended that staff only areas are clearly marked and be restricted to authorised personnel only by using security cards or similar. This measure will ensure the restriction of unauthorised personnel from gaining entry to the restricted areas including where the animals will be held.
- We recommend the use of signage throughout this site to direct people to where they are meant to be, particularly staff only areas. This will reduce excuse making and loitering opportunities for potential offenders.
- It is recommended that the premises avoid putting obstructions on windows by not displaying posters and advertisements etc on them. These environments allow offenders to scan their surroundings without being noticed. If a crime is occurring inside the premise, the posters and advertisements will obstruct visibility.
- It is encouraged that local police contact numbers are clearly displayed and accessible for staff.
- It is recommended consideration is given to traffic within in the vicinity with people coming and going. This also includes the construction phase with trucks etc
- We recommend ongoing maintenance of the vegetation, trees etc around the venue to ensure it doesn't become over grown which can encourage offenders to hide in
- We recommend adequate and clear signature along the rough to the venue

Appendix 2: DCP Compliance Table**3.1 Section B1: Design**

DCP Clause	Control	Compliance
2.1	Ten Design Quality Principles	<p>The application proposes a single storey structure utilizing high quality materials and finishes. The colour scheme of the proposed development is broadly sympathetic with the surrounding natural environment. The proposal also incorporates sustainable design measures such as landscaping and stormwater infrastructure to minimize adverse impacts on the surrounding environment.</p> <p>The proposal is therefore compatible with the design principles under the DCP.</p>

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3.2 Section B2: Heritage

DCP Clause	Control	Compliance
1.9	Demolition	The application proposes the demolition of non-contributory items in the Randwick Environmental Park Heritage Conservation Area. The demolition of the non-contributory items are broadly consistent with the provisions under DCP cl. 1.9.
1.12	Development in the vicinity of heritage items and heritage conservation areas	The proposed development is minor in nature and will be constructed utilizing materials and finishes that are sympathetic with the ecological values of the adjoining heritage conservation area. The proposal is broadly consistent with the requirements under DCP cl. 1.12.
2.2	Design and character	The proposal would result in the demolition of a detracting building within a heritage conservation area and the construction of a new facility with materials and finishes that are sympathetic to the ecological values of the area. The proposal is therefore considered to be consistent with the design and character provisions under cl. 2.2 of the DCP.
2.3	Scale and Form	The proposed development is of a small scale, comprising a total of 180sqm of GFA. The development would not dominate the landscape and is considered to be generally compatible with the adjacent heritage conservation area.
2.4	Siting and setbacks.	There are no prevailing setbacks for this form of development in the surrounding area. The surrounding area is not defined by subdivision patterns, and setbacks do not form a critical role in the visual appearance of the adjoining heritage conservation area. As such, the proposed setbacks for the facility are considered to be acceptable.

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DCP Clause	Control	Compliance
2.6	Materials, finishes and colour schemes	The proposed materials, finishes and colour scheme of the development is sympathetic with the ecological values of the adjacent heritage conservation area.
4.14	Randwick Environment Park Heritage Conservation Area	The proposed development is consistent with the significance statement for the Randwick Environment Park Heritage Conservation Area. The development is of a type that is complementary to the conservation area's ecological significance in the Randwick LGA.

3.3 Section B3: Ecological Sustainable Development

DCP Clause	Control	Compliance
2	Building Materials and Finishes	The proposed materials and finishes are broadly compatible with the objectives of cl 2 and appropriately integrate the development into its surrounding natural environment.
3	Energy and Water Efficiency	The application is accompanied by a Section J Report which demonstrates that suitable energy and water efficiency measures will be incorporated into the development.

3.4 Section B4: Landscaping and Biodiversity

DCP Clause	Control	Compliance
2	Landscape Plan	The application is accompanied by a landscape concept plan, in accordance with cl 2.
3	Landscape Design	The application is broadly consistent with the controls and objectives under cl. 3. Suitable plant species have been selected in the accompanying landscape plans. The proposal minimizes the removal of vegetation from the site, and only removes 2 trees of low retention value and one tree of moderate retention value.
5	Development in or near areas of biodiversity significance	The proposal is considered to be of low risk to the adjoining areas of biodiversity significance located within the Randwick Environmental Park. Appropriate conditions of consent are recommended to minimize the potential for adverse impacts during construction and demolition works.

3.5 Section B6: Recycling and Waste Management

DCP Clause	Control	Compliance
2	Recycling and Waste Management Plan	The application is accompanied by an operational waste management plan in accordance with the requirements of the DCP.

DCP Clause	Control	Compliance
		A condition of consent is recommended requiring the preparation of a demolition and construction waste management plan prior to the release of the construction certificate.

3.6 Section B8: Water Management

DCP Clause	Control	Compliance
3	Stormwater Management	The application is accompanied by stormwater plans which have been reviewed by Council's engineer. The stormwater measures proposed within the application are considered to be satisfactory.

3.7 Section F1: Development in Recreation Zones

DCP Clause	Control	Compliance
Controls	Development proposed in a RE1 or RE2 zone must demonstrate the following as a minimum: i) The need for the proposed development on that land	The proposal would replace an existing dilapidated facility that provides rehabilitative services to local wildlife. It provides essential services to the native species of wildlife in the adjacent parkland. There is an inherent need for the development.
	ii) the need to retain the land for its existing or likely future recreation use;	The development comprises a small footprint and would not impede on the land's likely future recreation use.
	iii) the impact of the proposed development on the existing or likely future use of the land;	The development is located in the south-western corner of the site away from the principal recreational area of the site. The proposal will have limited impact on the existing or likely future use of the land.
	iv) whether the proposed development is complementary to the scenic, recreational and/or ecological values of the land; and	As established above, the proposal is considered to be complimentary to the ecological values of the surrounding area.
	v) in the case of RE1 Public Recreation zoned land, whether the proposed development would: a) unreasonably impede or diminish the intended public use or public access to the land; b) be consistent with any relevant plan of management adopted by Council.	The proposal is not considered to impede or diminish the intended public use of the land.

Responsible officer: Weir Phillips Heritage and Planning, Philip North

File Reference: DA/990/2023

Development Consent Conditions



Folder /DA No:	DA/990/2023
Property:	21-29 Munda Street, RANDWICK NSW 2031 16R Agyle Crescent, RANDWICK NSW 2031
Proposal:	Demolition of existing structures and construction of a new facility for WIRES at Randwick Environmental Park.
Recommendation:	Approval

GENERAL CONDITIONS

Condition

1. Approved plans and documentation

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

<i>Plan</i>	<i>Drawn by</i>	<i>Dated</i>	<i>Received by Council</i>
Site Analysis	Melocco and Moore Architects	13.11.2023	05.12.2023
Site Plan	Melocco and Moore Architects	13.11.2023	05.12.2023
Ground Floor Plan	Melocco and Moore Architects	13.11.2023	05.12.2023
Roof plan	Melocco and Moore Architects	13.11.2023	05.12.2023
Elevations 1	Melocco and Moore Architects	13.11.2023	05.12.2023
Elevations 2	Melocco and Moore Architects	13.11.2023	05.12.2023
Sections	Melocco and Moore Architects	13.11.2023	05.12.2023
Typical Section - Possium	Melocco and Moore Architects	13.11.2023	05.12.2023
Typical Section - Aviary	Melocco and Moore Architects	13.11.2023	05.12.2023
Material Schedule	Melocco and Moore Architects	13.11.2023	05.12.2023
Site Plan & Legend	INLINE Hydraulic Services	23.10.2023	05.12.2023
Ground Floor Plan	INLINE Hydraulic Services	23.10.2023	05.12.2023
Roof Plan	INLINE Hydraulic Services	23.10.2023	05.12.2023
Landscape Concept Plan	Black Beetle Landscape Architecture and Design	23.10.23	05.12.2023

In the event of any inconsistency between the approved plans and supplementary documentation, the approved drawings will prevail.

Condition Reason: To ensure all parties are aware of the approved plans and supporting documentation that applies to the development.

BUILDING WORK BEFORE ISSUE OF A CONSTRUCTION CERTIFICATE

	Condition
2.	<p>Consent Requirements</p> <p>The requirements and amendments detailed in the 'General Conditions' must be complied with and be included in the construction certificate plans and associated documentation.</p> <p>Condition Reason: To ensure any requirements or amendments are included in the Construction Certificate documentation.</p>
3.	<p>External Colours, Materials & Finishes</p> <p>The colours, materials and surface finishes to the development must be consistent with the relevant plans, documentation and colour schedules provided with the development application.</p> <p>Condition Reason: To ensure colours, materials and finishes are appropriate and compatible with surrounding development.</p>
4.	<p>Long Service Levy Payments</p> <p>Before the issue of a Construction Certificate, the relevant long service levy payment must be paid to the Long Service Corporation of Council under the Building and Construction industry Long Service Payments Act 1986, section 34, and evidence of the payment is to be provided to the Principal Certifier, in accordance with section 6.8 of the <i>Environmental Planning and Assessment Act 1979</i>.</p> <p><i>At the time of this development consent, Long Service Levy payment is applicable on building work having a value of \$250,000 or more, at the rate of 0.25% of the cost of the works.</i></p> <p>Condition Reason: To ensure the long service levy is paid.</p>
5.	<p>Sydney Water</p> <p>All building, plumbing and drainage work must be carried out in accordance with the requirements of the Sydney Water Corporation.</p> <p>The approved plans must be submitted to the Sydney Water Tap in™ online service, to determine whether the development will affect Sydney Water's wastewater and water mains, stormwater drains and/or easements, and if any further requirements need to be met.</p> <p>The Tap in™ service provides 24/7 access to a range of services, including:</p> <ul style="list-style-type: none"> • Building plan approvals • Connection and disconnection approvals • Diagrams • Trade waste approvals • Pressure information • Water meter installations • Pressure boosting and pump approvals • Change to an existing service or asset, e.g. relocating or moving an asset. <p>Sydney Water's Tap in™ in online service is available at: https://www.sydneywater.com.au/SW/plumbing-building-</p>

Condition	
	developing/building/sydney-water-tap-in/index.htm
	The Principal Certifier must ensure that the developer/owner has submitted the approved plans to Sydney Water Tap in online service.
	Condition Reason: To ensure the development satisfies Sydney Water requirements.
6.	<p>Stormwater Drainage</p> <p>Stormwater runoff from the proposed development shall be discharged to a suitably sized infiltration area in general accordance with the submitted drainage plans by InLine Hydraulic Services Dwg No HDA01-05/A dated 29-08-2023 and subject to the following requirements;</p> <ul style="list-style-type: none"> a) The infiltration area shall be sized based on a minimum requirement of 1 m² of infiltration area (together with 1 m³ of storage volume) for every 20 m² of roof/impervious area on the site. b) Infiltration areas must be located a minimum of 3.0 metres from any structure (note: this set back requirement may not be necessary if a structural engineer or other suitably qualified person certifies that the infiltration area will not adversely affect the structure). <p>Condition Reason: To control and manage stormwater run-off.</p>
7.	<p>Landscape Plans</p> <p>Written certification from a qualified professional in the Landscape industry (must be eligible for membership with a nationally recognised organisation/association) must state that the scheme submitted for the Construction Certificate is substantially consistent with the Landscape Plan by Black Beetle Landscape Architects, dwg LA LP 01, issue 05 dated 23/10/23, with both this written statement and plans to then be submitted to, and be approved by, the Principal Certifier.</p> <p>Condition Reason: To ensure residential amenity and that appropriate landscaping is provided.</p>
8.	<p>Tree Protection Measures</p> <p>To ensure the retention of Trees 1-2 & 6-10 as identified in the Arboricultural Impact Assessment by Green Spaces Consultancy dated 07/11/23 (<i>'the Arborist Report'</i>) that are located within this development site, to the northwest of the new building in good health, the following measures are to be undertaken:</p> <ul style="list-style-type: none"> a) All documentation submitted for the Construction Certificate application must note them for retention, with the position and diameter of their trunks, canopies, SRZ's, TPZ's and Tree Identification Numbers as taken from 'the Arborist Report' to be clearly and accurately shown on all plans in relation to the new work. b) Prior to the commencement of any site works, the Principal Certifier must ensure that an AQF Level 5 Consulting Arborist (who is eligible for membership with a nationally recognized organization/association) has been engaged as <i>'the Project Arborist'</i> for the duration of works and will be responsible for both implementing and monitoring these conditions of development consent, Section 8 – Recommendations (Tree Management Specification) of the Arborist Report and any other verbal instructions issued on-site.

Condition
<p>c) The Project Arborist must be present on-site at the relevant stages of works and must keep a log of the dates of attendance and the works performed, which is to be presented as a <i>'Final Compliance Report'</i> for the approval of the Principal Certifier, prior to any Occupation Certificate.</p> <p>d) All Construction Certificate plans must show that the footprint of the new building/facility will occupy the southeast corner of the site, to the extent, setbacks, finished levels and similar as the Architectural Plans by Melocco & Moore, sheets 000-911, revisions D-F, stamped received by Council 05/12/23.</p> <p>e) Any excavations associated with the installation of new services, pipes, stormwater systems or similar must be consistent with the Hydraulic Services Plans by In Line Hydraulic Services, dwg's HDA01-05, issue A dated 23/10/23, with the Principal Certifier to ensure that all documentation submitted for the Construction Certificate complies with this requirement and must also be installed on-site to be consistent with this approach.</p> <p>f) The most desirable access pathway for vehicles, machinery and similar during works must be determined by the Project Arborist, prior to the commencement of any site works, similar to what is indicated at Appendix 2 – Tree Protection Plan Concept, with all vehicles to exclusively use these areas for duration of the project.</p> <p>g) These trees are to be physically protected by the installation of 1.8 metre high steel mesh/chainwire fencing panels to the extent shown at Appendix 2 – Tree Protection Plan Concept, as confirmed and approved by the Project Arborist, to completely enclose/exclude these trees from the works.</p> <p>h) This fencing shall be installed prior to the commencement of demolition and construction works and shall remain in place until all works are completed, to which, signage containing the following words shall be clearly displayed and permanently attached: "TREE PROTECTION ZONE (TPZ), DO NOT REMOVE/ENTER".</p> <p>i) If additional trunk or branch protection is required, this can be provided by wrapping layers of geo-textile, underfelt, carpet, hessian or similar around affected areas, to which, lengths of evenly spaced hardwood timbers shall then be placed around their circumference and are to be secured by 8 gauge wires or steel strapping at 300mm spacing. NO nailing to the trunk.</p> <p>j) To prevent soil/sediment being washed over their root systems, erosion control measures must be provided at ground level around the perimeter of the TPZ's.</p> <p>k) Where TPZ fencing is not possible or needs to be temporarily dismantled/removed, ground protection comprising strapped together rumble boards, sheets of plywood, layers of mulch or similar must then be provided as an alternative solution to protect their roots for the duration of works, to the extent determined by the Project Arborist.</p> <p>l) Within the TPZ's there is to be no storage of materials, machinery or site office/sheds, nor is cement to be mixed or chemicals spilt/disposed of and no stockpiling of soil or rubble, with all Site Management Plans to show that the potential storage/wash down area will be beyond their TPZ's, such as in the area indicated at Appendix 2 – Tree Protection Plan Concept.</p>

Condition
<p>m) Demolition/removal of existing surfacing and structures, as well as all initial excavations for footings and similar within their TPZ's can only be performed by hand, not machinery, either by, or under the direct supervision of the Project Arborist.</p> <p>n) Where roots are encountered which are in direct conflict with the approved works and the Project Arborist gives permission for their pruning, they must be cut cleanly using only hand-held tools, not machinery, with the affected areas to then be backfilled with clean site soil as soon as practically possible, with time stamped photos demonstrating compliance to be included in the 'Final Compliance Report'.</p> <p>o) Ground levels within the TPZ's must not be altered by more than 200mm, with no other structures such as continuous strip footings, planter boxes or similar to be located in these areas, which is to remain as undisturbed, deep soil.</p> <p>p) The Principal Certifier and Project Arborist must ensure compliance with these requirements, both on the plans as well as on-site during the course of works and prior to any Occupation Certificate.</p>

Condition Reason: Protection of existing environment public infrastructure, community assets and significant trees.

9. **Waste Management**

The submitted Waste Management Plan has not been approved as part of this development consent. The applicant shall submit an amended Waste Management Plan detailing the waste and recycling storage and removal strategy for all of the development, is required to be submitted to and approved by Council's Lead Specialist Strategic Waste prior to the issuing of a construction certificate.

The Waste Management plan is required to be prepared in accordance with Council's Waste Management Guidelines for Proposed Development and must include the following details (as applicable):

- The use of the premises and the number and size of occupancies.
- The type and quantity of waste to be generated by the development.
- Demolition and construction waste, including materials to be re-used or recycled.
- Details of the proposed recycling and waste disposal contractors.
- Waste storage facilities and equipment.
- Access arrangements.
- The procedures and arrangements for on-going waste management including collection, storage and removal of waste and recycling of materials, materials and presentation of bins for collection.

Further details of Council's requirements and guidelines, including pro-forma Waste Management plan forms can be obtained from Council's website at: https://www.randwick.nsw.gov.au/_data/assets/pdf_file/0007/22795/Waste-Management-Plan-Guidelines.pdf

Condition Reason: To ensure that waste and recycling is appropriately managed, and waste collection is operated in accordance with Council's policies.

10. **Randwick Environment Park Management Plan**

Condition	
	<p>Any relevant requirements contained within the Randwick City Council, Randwick Environmental Park Environmental Management Plan (EMP) – (Trim Doc Ref: D01174217) form part of this consent and must be implemented accordingly.</p> <p>Condition Reason: To ensure the approved development is undertaken and operated in accordance with any requirements within the Randwick Environment Park – Plan of Management and relevant documentation such as the Randwick Environment Park – Environmental Management Plan.</p>
11.	<p>Building Code of Australia</p> <p>In accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 69 of the <i>Environmental Planning and Assessment Regulation 2021</i>, it is a prescribed condition that all building work must be carried out in accordance with the provisions of the National Construction Code - Building Code of Australia (BCA).</p> <p>Details of compliance with the relevant provisions of the BCA and referenced Standards must be included in the Construction Certificate application.</p> <p>Condition Reason: Prescribed condition under section 69 of the Environmental Planning and Assessment Regulation 2021.</p>
12.	<p>Site stability, Excavation and Construction work</p> <p>A report must be obtained from a suitably qualified and experienced professional engineer/s, which includes the following details, to the satisfaction of the appointed Certifier for the development:</p> <ol style="list-style-type: none"> Geotechnical details which confirm the suitability and stability of the site for the development and relevant design and construction requirements to be implemented to ensure the stability and adequacy of the development and adjoining properties. Details of the proposed methods of excavation and support for the adjoining land (including any public place) and buildings. Details to demonstrate that the proposed methods of excavation, support and construction are suitable for the site and should not result in any damage to the adjoining premises, buildings or any public place, as a result of the works and any associated vibration. Recommendations and requirements in the geotechnical engineers report shall be implemented accordingly and be monitored during the course of the subject site work. Written approval must be obtained from the owners of the adjoining land to install any ground or rock anchors underneath the adjoining premises (including any public roadway or public place) and details must be provided to the appointed Certifier for the development prior to issue of a relevant construction certificate. <p>Condition Reason: To ensure that the site is suitable for the proposed works, including excavation, to protect the amenity of adjoining land, and ensure work is carried out in accordance with engineering requirements.</p>

BEFORE BUILDING WORK COMMENCES

	Condition
13.	<p>Building Certification & Associated Requirements</p> <p>The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work:</p> <ul style="list-style-type: none"> a) a <i>Construction Certificate</i> must be obtained from a Registered (Building) Certifier, in accordance with the provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>. <p>A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.</p> <ul style="list-style-type: none"> b) a Registered (Building) Certifier must be appointed as the <i>Principal Certifier</i> for the development to carry out the necessary building inspections and to issue an occupation certificate; and c) a principal contractor must be appointed for the building work, or in relation to residential building work, an owner-builder permit may be obtained in accordance with the requirements of the <i>Home Building Act 1989</i>, and the Principal Certifier and Council must be notified accordingly (in writing); and d) the principal contractor must be advised of the required critical stage inspections and other inspections to be carried out, as specified by the Principal Certifier; and e) at least two days notice must be given to the Principal Certifier and Council, in writing, prior to commencing any works. <p>Condition reason: Statutory requirement. To ensure appropriate safeguarding measures are in place prior to the commencement of any building, work, demolition or excavation.</p>
14.	<p>Construction Site Traffic Management</p> <p>Any access for construction vehicles and plant/equipment must be wholly contained within Council owned land. Should any construction traffic require access via land owned by the Department of Defence, a written agreement must be obtained from the Department of Defence, prior to the commencement of any site works.</p> <p>Any agreed access negotiated with the Department of Defence must be contained within a detailed Construction Site Traffic Management Plan (CSTMP). The CSTMP must be submitted to the Department of Defence, prior to the commencement of any construction works.</p> <p>Condition Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and residential amenity in the locality, without unreasonable inconvenience to the community.</p>
15.	<p>Construction Site Traffic Management</p> <p>A detailed Construction Site Traffic Management Plan must be submitted to and approved by Council, prior to the commencement of any site work.</p>

Condition

The Construction Site Traffic Management Plan must be prepared by a suitably qualified person and must include the following details, to the satisfaction of Council:

- A description of the demolition and construction works
- A site plan/s showing the site, roads, footpaths, site access points and vehicular movements
- Any proposed road and/or footpath closures
- Proposed site access locations for personnel, deliveries and materials.
- Provision for loading and unloading of goods and materials.
- Proposed hours of construction related activities and vehicular movements to and from the site
- Any activities proposed to be located or impact upon Council's road, footways or any public place
- Measures to maintain public safety and convenience

The approved Construction Site Traffic Management Plan must be complied with at all times, and any proposed amendments to the approved Construction Site Traffic Management Plan must be submitted to and be approved by Council in writing, prior to the implementation of any variations to the Plan.

Condition Reason: To ensure appropriate measures have been considered for site access, storage and the operation of the site during all phases of the construction process in a manner that respects adjoining owner's property rights and residential amenity in the locality, without unreasonable inconvenience to the community.

16. **Construction Site Management Plan**

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

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

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

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

Condition Reason: To require details of measures that will protect the public, and

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Condition	
	the surrounding environment, during site works and construction.
17.	<p>Construction Site Management Plan</p> <p>A <i>Sediment and Erosion Control Plan</i> must be developed and implemented throughout the course of demolition and construction work in accordance with the manual for Managing Urban Stormwater – Soils and Construction, published by Landcom. A copy of the plan must be maintained on site and a copy is to be provided to the Principal Certifier and Council.</p> <p>Condition Reason: To protect the environment from the effects of sedimentation and erosion from development sites.</p>
18.	<p>Public Liability</p> <p>The owner/builder is required to hold Public Liability Insurance, with a minimum liability of \$20 million and a copy of the Insurance cover is to be provided to the Principal Certifier and Council.</p> <p>Condition Reason: To ensure the community is protected from the cost of any claim for damages arising from works or activities on public land.</p>

DURING BUILDING WORK

Condition			
19.	<p>Site Signage</p> <p>It is a condition of the development consent that a sign must be erected in a prominent position at the front of the site before/upon commencement of works and be maintained throughout the works, which contains the following details:</p> <ul style="list-style-type: none">a) showing the name, address and telephone number of the principal certifier for the work, andb) showing the name, address, contractor, licence number and telephone number of the principal contractor, including a telephone number on which the principal contractor may be contacted outside working hours, or owner-builder permit details (as applicable) andc) stating that unauthorised entry to the work site is prohibited. <p>The sign must be—</p> <ul style="list-style-type: none">a) maintained while the building work is being carried out, andb) removed when the work has been completed. <p>This section does not apply in relation to—</p> <ul style="list-style-type: none">a) building work, subdivision work or demolition work carried out inside an existing building, if the work does not affect the external walls of the building, orb) Crown building work certified to comply with the Building Code of Australia under the Act, Part 6. <p>Condition reason: Prescribed condition under section 70 of the Environmental Planning and Assessment Regulation 2021.</p>		
20.	<p>Restriction on Working Hours</p> <p>Building, demolition and associated site works must be carried out in accordance with the following requirements:</p> <table><tr><td>Activity</td><td>Permitted working hours</td></tr></table>	Activity	Permitted working hours
Activity	Permitted working hours		

Condition	
All building, demolition and site work, including site deliveries (except as detailed below)	<ul style="list-style-type: none"> Monday to Friday - 7.00am to 5.00pm Saturday - 8.00am to 5.00pm Sunday & public holidays - No work permitted
Excavations in rock, sawing of rock, use of jack-hammers, driven-type piling/shoring or the like	<ul style="list-style-type: none"> Monday to Friday - 8.00am to 3.00pm (maximum) Saturday - No work permitted Sunday & public holidays - No work permitted
Additional requirements for all development (except for single residential dwellings)	<ul style="list-style-type: none"> Saturdays and Sundays where the preceding Friday and/or the following Monday is a public holiday - No work permitted

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

Condition reason: To protect the amenity of the surrounding area.

21.

Construction Site Management

Temporary site safety fencing or site hoarding must be provided to the perimeter of the site prior to commencement of works and throughout demolition, excavation and construction works, in accordance with the SafeWork guidelines and the following requirements:

- Temporary site fences or hoardings must have a height of 1.8 metres and be a cyclone wire fence (with geotextile fabric attached to the inside of the fence to provide dust control), heavy-duty plywood sheeting (painted white), or other material approved by Council in writing.
- Hoardings and site fencing must be designed to prevent any substance from, or in connection with, the work from falling into the public place or adjoining premises and if necessary, be provided with artificial lighting.
- All site fencing, hoardings and barriers must be structurally adequate, safe and be constructed in a professional manner and the use of poor-quality materials or steel reinforcement mesh as fencing is not permissible.
- Adequate barriers must also be provided to prevent building materials or debris from falling onto adjoining properties or Council land.
- Site access gates and doors must open into the construction site/premises and must not open out into the road or footway at any time.
- Excavations must also be properly guarded to prevent them from being dangerous to life, property or buildings.

Condition	
<p><i>Notes:</i></p> <ul style="list-style-type: none"> • Temporary site fencing may not be necessary if there is an existing adequate fence in place having a minimum height of 1.5m. • A separate Local Approval application must be submitted to and approved by Council's Health, Building & Regulatory Services before placing any fencing, hoarding or other article on the road, footpath or nature strip. <p>Condition Reason: To require measures that will protect the public, and the surrounding environment, during site works and construction.</p>	
22.	<p>Public Safety & Site Management</p> <p>Public safety and convenience must be maintained during demolition, excavation and construction works and the following requirements must be complied with at all times:</p> <ul style="list-style-type: none"> a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time. b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident. c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction. d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times. e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council. f) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident. g) Excavations must also be properly guarded to prevent them from being dangerous to life, property or buildings. h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land. i) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council. <p>Condition reason: To require details of measures that will protect the public, and the surrounding environment, during site works and construction.</p>
23.	<p>Dust Control</p> <p>Dust control measures must be provided to the site prior to the works commencing and the measures and practices must be maintained throughout the demolition, excavation and construction process, to the satisfaction of Council.</p>

Condition	
	<p><i>Dust control measures and practices may include:</i></p> <ul style="list-style-type: none"> • <i>Provision of geotextile fabric to all perimeter site fencing (attached on the prevailing wind side of the site fencing).</i> • <i>Covering of stockpiles of sand, soil and excavated material with adequately secured tarpaulins or plastic sheeting.</i> • <i>Installation of water sprinkling system or provision hoses or the like.</i> • <i>Regular watering-down of all loose materials and stockpiles of sand, soil and excavated material.</i> • <i>Minimisation/relocation of stockpiles of materials, to minimise potential for disturbance by prevailing winds.</i> • <i>Landscaping and revegetation of disturbed areas.</i> <p>Condition Reason: To ensure residential amenity is maintained in the immediate vicinity.</p>
24.	<p>Excavations and Support of Adjoining Land</p> <p>Tin accordance with section 4.17 (11) of the <i>Environmental Planning and Assessment Act 1979</i> and section 74 of the <i>Environmental Planning and Assessment Regulation 2021</i>, it is a prescribed condition that the adjoining land and buildings located upon the adjoining land must be adequately supported at all times.</p> <p>Condition Reason: Prescribed condition under section 74 of the Environmental Planning and Assessment Regulation 2021.</p>
25.	<p>Complaints Register</p> <p>A Complaints Management System must be implemented during the course of construction (including demolition, excavation and construction), to record resident complaints relating to noise, vibration and other construction site issues.</p> <p>Details of the complaints management process including contact personnel details shall be notified to nearby residents, the Principal Certifier and Council and all complaints shall be investigation, actioned and responded to and documented in a Complaints Register accordingly.</p> <p>Details and access to the Complaints Register are to be made available to the Principal Certifier and Council upon request.</p> <p>Condition Reason: To ensure any complaints are documented and recorded, and to protect the amenity of the surrounding area and residents.</p>
26.	<p>Survey Report</p> <p>A Registered Surveyor's check survey certificate or other suitable documentation must be obtained at the following stage/s of construction to demonstrate compliance with the approved setbacks, levels, layout and height of the building:</p> <ul style="list-style-type: none"> • prior to construction (pouring of concrete) of footings for the building and boundary retaining structures, • prior to construction (pouring of concrete) of new floor levels, • prior to issuing an Occupation Certificate, and • as otherwise may be required by the Principal Certifier. <p>The survey documentation must be forwarded to the Principal Certifier and a copy is to be forwarded to the Council.</p>

Condition	
Condition Reason: To ensure compliance with approved plans.	
27.	<p>Tree Management</p> <p>Approval is granted for removal of the two small, low value and insignificant <i>Acacia saligna</i> (Wattles, Trees 3-4) and the single, larger <i>Angophora costata</i> (Sydney Red Gum, T5) from within this development site given their direct conflict with the new footprint as shown, as detailed in the Arborist Report, and is subject to full implementation of the adopted Landscape Plans.</p> <p>Condition Reason: To ensure that vegetation has been assessed against Council's environmental and biodiversity controls.</p>
28.	<p>Pruning</p> <p>Permission is granted for the minimal and selective pruning of only those lower growing, lower order branches from those trees listed in the 'Tree Protection Measures' condition earlier in this report, only where needed to avoid damage to the trees or interference with the approved works.</p> <p>Condition Reason: To ensure the protection and longevity of existing significant trees.</p>
29.	<p>Pruning</p> <p>All pruning must be undertaken by an Arborist who holds a minimum of AQF Level III/V in Arboriculture, and to the requirements of Australian Standard AS 4373-2007 'Pruning of Amenity Trees,' and NSW Work Cover Code of Practice for the Amenity Tree Industry (1998).</p> <p>Condition Reason: To ensure the protection and longevity of existing significant trees.</p>
30.	<p>Unexpected Finds</p> <p>Any unexpected finds encountered during the site works should be inspected by a suitably qualified contaminated land consultant. In the event that the find has the potential to alter the waste classification documented in this report, additional testing and reporting should be undertaken.</p> <p>Condition Reason: To prevent the unnecessary destruction or removal of unrecorded historical or Aboriginal relics.</p>
31.	<p>Unexpected Finds</p> <p>Should any relics be unexpectedly discovered in any areas of the site, then all excavation or disturbance to the area is to stop immediately and the Heritage Council of NSW should be informed in accordance with the requirements of the Heritage Act 1977.</p> <p>Condition Reason: To prevent the unnecessary destruction or removal of unrecorded historical or Aboriginal relics.</p>
32.	<p>Unexpected Finds</p> <p>Should Aboriginal objects be found, the Department of Environment and Conservation (DEC) is to be informed (as required by the provisions of the NSW National Parks and Wildlife Act 1974). Subject to an assessment of the extent, integrity and significance of any exposed objects, applications under either Section 87 or Section 90 of the National Parks and Wildlife Act may be required before</p>

Condition	
	works resumes.
	Condition Reason: To prevent the unnecessary destruction or removal of unrecorded historical or Aboriginal relics.
33.	<p>Regulatory Requirements</p> <p>Hazardous or intractable wastes arising from the works must be removed, managed and disposed of in accordance with the relevant requirements of SafeWork NSW and the Environment Protection Authority, including:</p> <ul style="list-style-type: none"> • <i>Work Health and Safety Act, 2011 and associated Regulations</i> • <i>Protection of the Environment Operations Act 1997 (NSW) and</i> • <i>NSW DECC/EPA Waste Classification Guidelines (2014).</i> <p>Condition Reason: To ensure that the handling and removal of hazardous materials from the site is appropriately managed and works are carried out in accordance with the relevant standards and requirements.</p>

BEFORE ISSUE OF AN OCCUPATION CERTIFICATE

Condition	
34.	<p>Occupation Certificate Requirements</p> <p>An Occupation Certificate must be obtained from the Principal Certifier prior to any occupation of the building work encompassed in this development consent (including alterations and additions to existing buildings), in accordance with the relevant provisions of the <i>Environmental Planning and Assessment Act 1979</i> and the <i>Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021</i>.</p> <p>Condition reason: Statutory requirement. To ensure the site is authorised for occupation.</p>
35.	<p>Sydney Water Certification</p> <p>A <i>section 73 Compliance Certificate</i>, under the <i>Sydney Water Act 1994</i> must be obtained from Sydney Water Corporation. An Application for a Section 73 Certificate must be made through an authorised Water Servicing Coordinator. For details, please refer to the Sydney Water web site www.sydneywater.com.au > <i>Building and developing</i> > <i>Developing your Land</i> > <i>Water Servicing Coordinator</i> or telephone 13 20 92.</p> <p>Please make early contact with the Water Servicing Coordinator, as building of water/sewer extensions may take some time and may impact on other services and building, driveway or landscape design.</p> <p>The Section 73 Certificate must be submitted to the Principal Certifier and the Council prior to issuing an Occupation Certificate or Subdivision Certificate, whichever the sooner.</p> <p>Condition Reason: To ensure the development satisfies Sydney Water requirements.</p>
36.	<p>Waste Management</p> <p>Adequate provisions are to be made within the premises for the storage, collection</p>

	Condition
	<p>and disposal of trade/commercial waste and recyclable materials, to the satisfaction of Council.</p> <p>Trade/commercial waste materials must not be disposed in or through Council's domestic garbage service. All trade/commercial waste materials must be collected by Council's Trade Waste Service or a waste contractor authorised by the Waste Service of New South Wales and details of the proposed waste collection and disposal service are to be submitted to Council prior to commencing operation of the business.</p> <p>The operator of the business must also arrange for the recycling of appropriate materials and make the necessary arrangements with an authorised waste services contractor accordingly.</p> <p>Condition Reason: To ensure that waste and recycling is appropriately managed.</p>
37.	<p>Stormwater Drainage</p> <p>The applicant shall submit to the Principal Certifier and Council, certification from a suitably qualified and experienced Hydraulic Engineer confirming that the design and construction of the stormwater drainage system complies with Australian Standard 3500.3:2003 (Plumbing & Drainage- Stormwater Drainage) and the conditions of this development consent.</p> <p>The certification must be provided following inspection/s of the site stormwater drainage system by the certifying engineers and shall be provided to the satisfaction of the Principal Certifier.</p> <p>Condition Reason: To ensure compliance with the consent and relevant standards, and adequate management of stormwater.</p>
38.	<p>Landscape Certification</p> <p>Prior to any Occupation Certificate, certification from a qualified professional in the Landscape industry must be submitted to, and be approved by, the Principal Certifier, confirming the date that the completed landscaping was inspected, and that it has been installed substantially in accordance with the Landscape Plan by Black Beetle Landscape Architects, dwg LA LP 01, issue 05 dated 23/10/23.</p> <p>Condition Reason: To ensure landscaping is implemented in accordance with the consent and maintained for the life of the development.</p>
39.	<p>Landscape Certification</p> <p>Suitable strategies shall then be implemented to ensure that the landscaping is maintained in a healthy and vigorous state until maturity, for the life of the development.</p> <p>Condition Reason: To ensure landscaping is implemented in accordance with the consent and maintained for the life of the development.</p>
40.	<p>Project Arborist Certification</p> <p>Prior to any Occupation Certificate, the Project Arborist must submit to, and have approved by, the Principal Certifier, a written '<i>Final Compliance Report</i>' which confirms compliance with the conditions of consent and Section 8 – Recommendations, of the Arborists Report, the dates of attendance and works performed/supervised relating to the retention of Trees 1-2 & 6-10 and must also include time stamped photos of any root pruning performed.</p>

Condition	
	Condition Reason: To ensure the protection of existing environment public infrastructure, community assets and significant trees.
41.	<p>Landscape Certification</p> <p>That part of the Randwick Environmental Park/Reserve/Community Centre surface which is damaged during the course of works shall be re-graded and re-turfed with Kikuyu Turf rolls, including turf underlay, wholly at the applicant's cost, to Council's satisfaction, prior to any Occupation Certificate.</p> <p>Condition Reason: To ensure that community assets are presented in accordance with reasonable community expectations.</p>
42.	<p>NSW Police Requirements</p> <p>The following measures must be implemented/incorporated into the approved development, as recommended by NSW Police.</p> <ul style="list-style-type: none"> a) Outdoor lighting around the approved building must be provided in accordance with the relevant Australian Standard. b) CCTV surveillance equipment must be installed outside the building. c) Staff areas shall be clearly marked with appropriate signage and be restricted to authorised personnel through the use of security cards or the like. d) No obstructions on windows are permitted such as posters or advertisements. e) Local police contact numbers shall be displayed in a prominent position within the facility. f) Landscaping shall be adequately maintained, with any overgrowth trimmed and removed in a timely manner. <p>Evidence of compliance with the above requirements shall be submitted to the principal certifier prior to the issue of the occupation certificate.</p> <p>Condition Reason: To ensure that NSW Police requirements are met.</p>

OCCUPATION AND ONGOING USE

Condition	
43.	<p>Operational Hours</p> <p>Monday to Sunday: 7am – 10pm (except in emergency circumstances that requires out of hours access).</p> <p>Condition Reason: To ensure that the approved use is operated within the approved hours of operation, to ensure safety and security and protect the amenity of surrounding areas.</p>
44.	<p>Environmental Amenity</p> <p>The use and operation of the site must not cause any environmental pollution, public nuisance or, result in an offence under the <i>Protection of the Environment Operations Act 1997</i>, associated Regulations, Guidelines and Policies.</p> <p>Condition reason: To protect the amenity of the surrounding area and residents.</p>

DEMOLITION WORK BEFORE DEMOLITION WORK COMMENCES

Condition

45.

Demolition Work

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

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

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

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

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

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

Condition reason: To ensure demolition work area carried out in accordance with the relevant standards and requirements.

DURING DEMOLITION WORK

Condition

Condition	
46.	<p>Demolition Work and Removal of Asbestos Materials</p> <p>Demolition work must be carried out in accordance with relevant Safework NSW Requirements and Codes of Practice; Australian Standard AS 2601 (2001) - Demolition of Structures and Randwick City Council's Asbestos Policy. Details of compliance are to be provided in a <i>demolition work plan</i>, which shall be maintained on site and a copy is to be provided to the Principal Certifier and Council.</p> <p>Demolition or building work relating to materials containing asbestos must also be carried out in accordance with the following requirements:</p> <ul style="list-style-type: none"> • A licence must be obtained from SafeWork NSW for the removal of friable asbestos and or more than 10m² of bonded asbestos (i.e. fibro), • Asbestos waste must be disposed of in accordance with the <i>Protection of the Environment Operations Act 1997</i> and relevant Regulations • A sign must be provided to the site/building stating "Danger Asbestos Removal In Progress", • Council is to be given at least two days written notice of demolition works involving materials containing asbestos, • Copies of waste disposal details and receipts are to be maintained and made available to the Principal Certifier and Council upon request, • A Clearance Certificate or Statement must be obtained from a suitably qualified person (i.e. Occupational Hygienist or Licensed Asbestos Removal Contractor) which is to be submitted to the Principal Certifier and Council upon completion of the asbestos removal works, • Details of compliance with these requirements must be provided to the Principal Certifier and Council upon request. <p><i>A copy of Council's Asbestos Policy is available on Council's web site at www.randwick.nsw.gov.au in the Building & Development section or a copy can be obtained from Council's Customer Service Centre.</i></p> <p>Condition reason: To ensure that the handling and removal of asbestos from the site is appropriately managed.</p>

Development Application Report No. D14/24

Subject: 54-54A Australia Avenue, Matraville (DA/157/2023)


Executive Summary

Proposal:	Strata subdivision of an existing attached dual occupancy
Ward:	South Ward
Applicant:	Ms A Massain
Owner:	Mrs E Shatari
Cost of works:	\$0 (Nil)
Reason for referral:	Variation to a non-numerical development standard

Recommendation

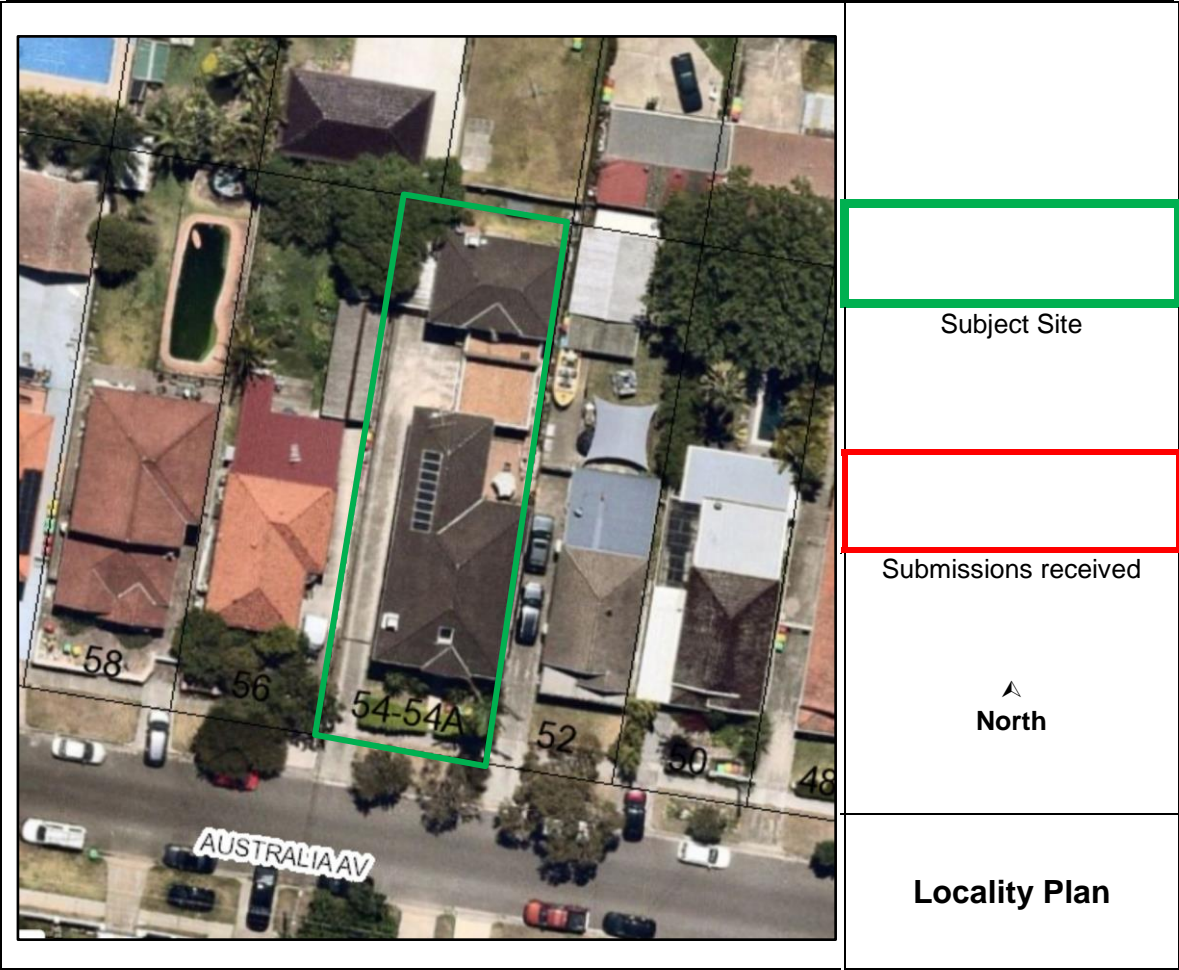
- A. That the RLPP is satisfied that the matters detailed in Clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes a non-numerical development standard in Clause 4.1D of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning and Environment may be assumed.
- B. That the RLPP grants consent under Sections 4.16 and 4.17 of the *Environmental Planning and Assessment Act 1979*, as amended, to Development Application No. DA/157/2023 for strata subdivision of an existing dual occupancy, at No. 54-54A Australia Avenue, Matraville, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (general) - DA/157/2023 - 54-54A Australia Avenue, MATRAVILLE NSW 2036

D14/24

D14/24



1. Executive summary

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

- The development involves a contravention to a non-numerical development standard.

The proposal seeks development consent for strata subdivision of an existing dual occupancy development at No. 54-54A Australia Avenue, Matraville.

The subject land is zoned R2 Low Density Residential and the site has an area of 614.13m².

The issue associated with the proposal relate to the non-compliance with a development standard contained in Clause 6.2 of the SEPP (Exempt and Complying Development Codes) 2008 that requires dwelling must be located behind any other dwelling on the same lot (except in the case of a corner lot or a parallel road lot).

The proposed subdivision is supported given the consistency of the strata subdivision with the minimum subdivision lot size requirements for strata subdivision and the desired future characteristics of the R2 zone, as envisaged by the RLEP 2012.

2. Site Description and Locality

The subject site is known as No. 54-54A Australia Avenue, Matraville and is legally described as Lot 2 in DP 817721. The site comprises an area of 614.13m², is rectangular in shape and has a 13.9m frontage to Australia Avenue to the south. The site contains an existing dual occupancy development with a front and rear dwelling arrangement. Both dwellings have vehicular parking with

access via a concrete driveway along the western side. Figures 1 to 3 show the current development existing onsite.



Figure 1: Front of subject site showing southern (front) dwelling forming part of dual occupancy



Figure 2: Existing driveway along western side setback

D14/24



Figure 3: Northern (rear) dwelling forming part of dual occupancy

3. Relevant history

DA/279/1992 – Attached Dual Occupancy

The subject site contains an approved attached, 2-storey dual occupancy (as per DA/279/1992 and BA/657/1992). This dual occupancy was approved on 18 August 1992. An Occupation Certificate has been issued for this development (dated 14 January 1993).

Figures 4 and 5 show the approved floor and elevation plans of the existing dual occupancy.

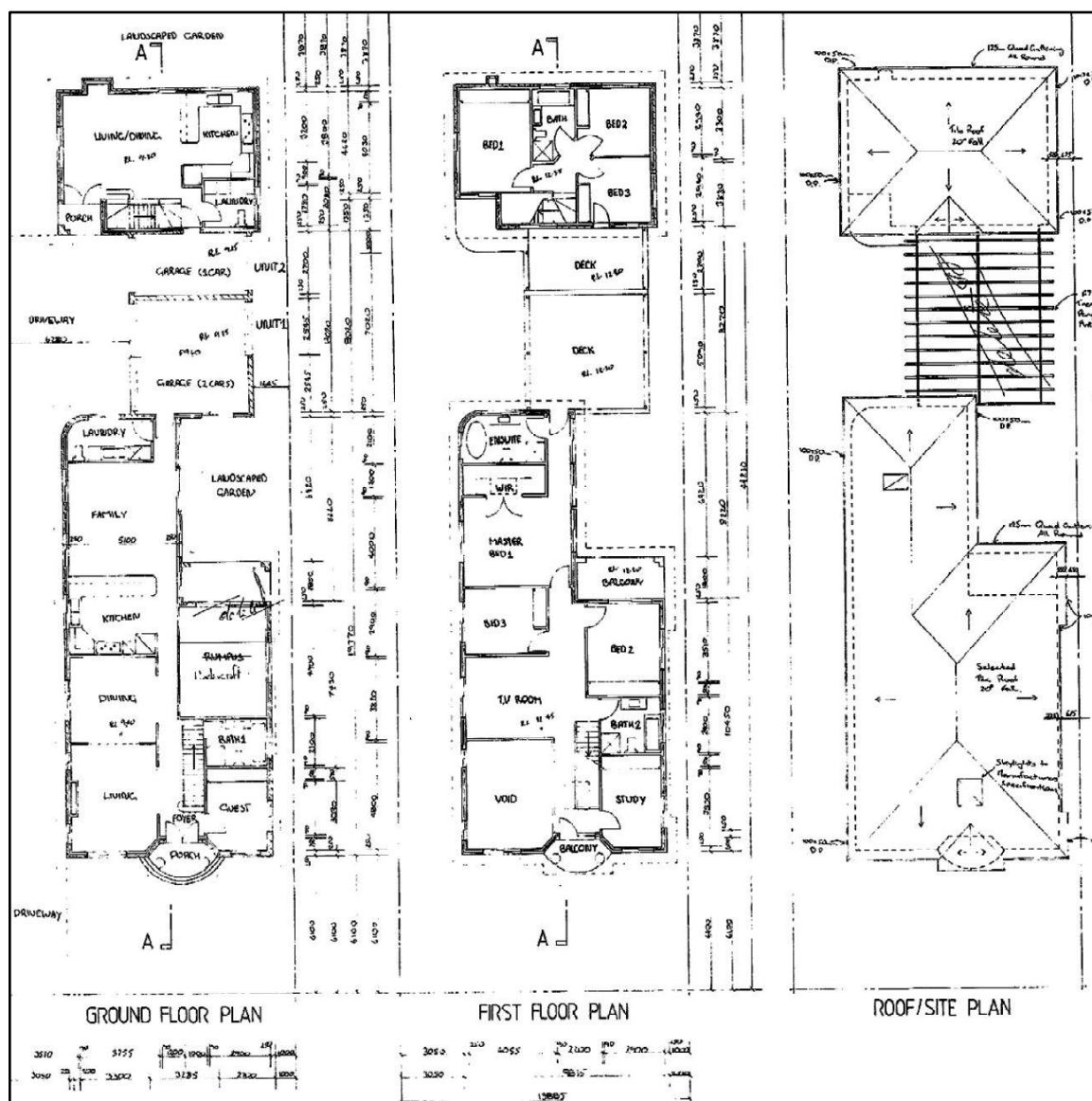


Figure 4: Floor Plans of Dual Occupancy

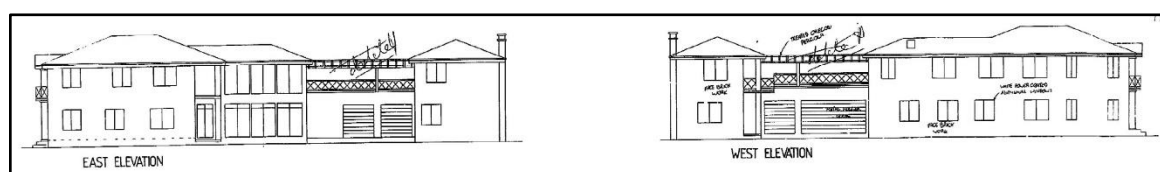


Figure 5: East and West Elevations of Dual Occupancy

DA/76/2022 – Strata Subdivision of Dual Occupancy

A previous development application (DA/76/2022) was refused by Council under delegation on 1 September 2022. This application sought consent for Strata subdivision of an existing dual occupancy.

4. Proposal

The proposal seeks development consent for Strata subdivision of an existing dual occupancy development at No. 54-54A Australia Avenue, Matraville. This dual occupancy was approved on 18 August 1992 (as per DA/279/1992 and BA/657/1992).

The proposed subdivision is illustrated in Figures 6 and 7 below.

D14/24

D14/24

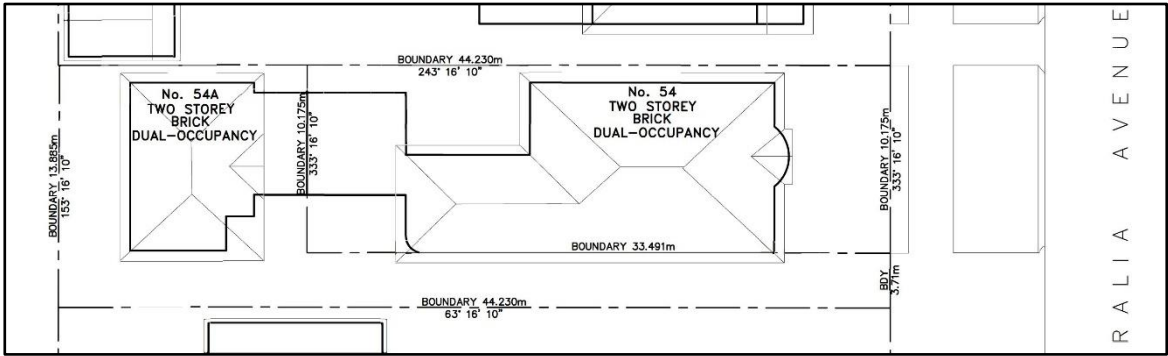


Figure 6: Site Plan

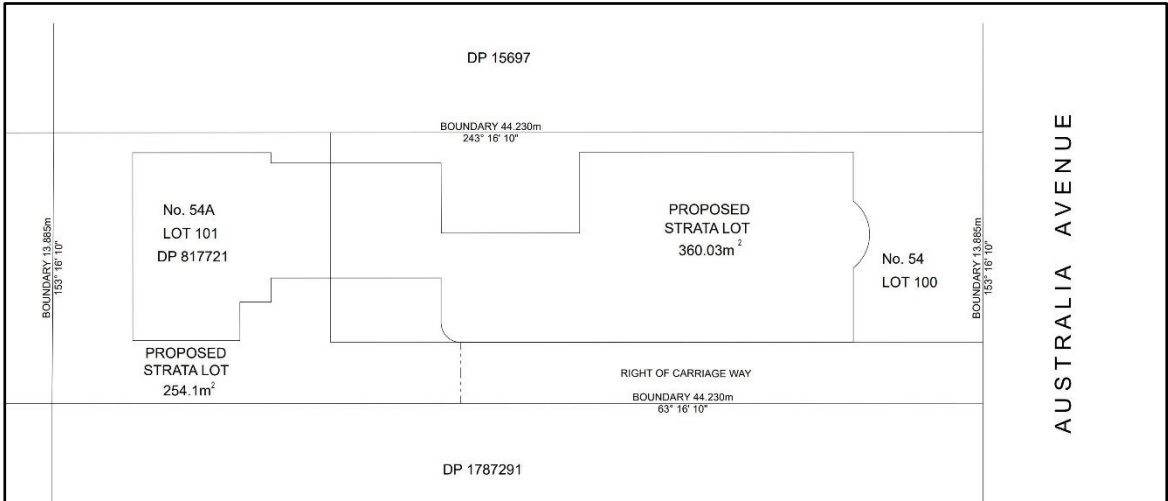


Figure 7: Draft Strata Subdivision Plan

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development. No submissions were received as a result of the notification process.

6. Relevant Environment Planning Instruments

6.1. SEPP (Biodiversity and Conservation) 2021

Chapter 2 of the SEPP applies to the proposal and subject site. The aims of this Chapter are:

- (a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and
- (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

The proposed development does not involve the removal of any vegetation (including any trees). As such, the proposal achieves the relevant objectives and provisions under Chapter 2.

6.2. SEPP (Resilience and Hazards) 2021

The provisions of SEPP (Resilience and Hazards) require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site.

The subject site has only previously been used for residential accommodation/residential purposes and as such is unlikely to contain any contamination. The nature and location of the proposed development (involving Strata subdivision) are such that any applicable provisions and requirements of the above SEPP have been satisfactorily addressed.

6.3. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned R2 – Low Density Residential under Randwick Local Environmental Plan 2012 (RLEP 2012) and the proposal (comprising Strata subdivision of an existing dual occupancy) is permissible with consent pursuant to Clause 2.6 of the RLEP 2012.

The proposal is not consistent with the specific objectives of the R2 – Low Density Residential zone in that the proposed subdivision does not provide for the housing needs of the community; contribute to the desired future character of the area; or encourage housing affordability. The proposed subdivision is not consistent with the prevailing development and subdivision pattern of the locality and facilitates an undesirable outcome that fails to comply with a non-numerical development standard.

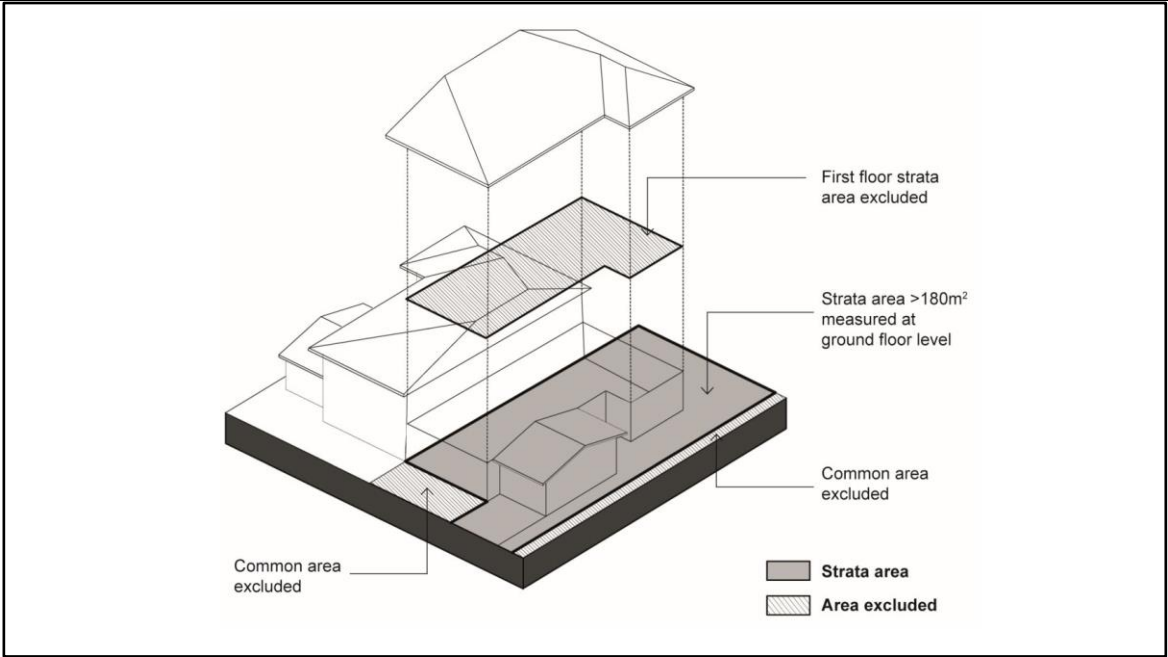
On 17 August 2018, the Randwick Local Environmental Plan 2012 (Amendment No 5) was published. The amendment incorporated a new Clause 4.1D that allows for subdivision of an attached dual occupancy (despite any other provisions in the RLEP) provided:

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

The subject site is zoned R2 low density residential and consent for the dual occupancy was granted prior to 6 July 2018. Consequently, the first two criteria are satisfied.

The table below assesses the proposal against each of the development standards contained in Clause 6.2 of the SEPP (Exempt and Complying Development Codes) 2008:

Development standard	Proposal	Compliance
The subdivision must not contravene any condition of any development consent or complying development certificate applying to the development.	There were no conditions attached to the development consent that prohibited subdivision of the dual occupancy.	Yes
Each dwelling must have lawful frontage to a public road (other than a lane).	Lot 100 and Lot 101 front Australia Avenue. Both lots would have lawful frontage and access to Australia Avenue.	Yes
No dwelling must be located behind any other dwelling on the same lot (except in the case of a corner lot or a parallel road lot).	The existing rear dwelling is behind the other dwelling.	No As existing.
Each resulting lot must have a minimum width (measured at the building line) of 6m.	Minimum width of Lot 100 = 9m Minimum width of Lot 101 = 9.6m	Yes Yes
In the case of a dual occupancy where no part of a dwelling is located above any part of another dwelling, the strata area (being the area of the ground floor of all dwellings) is not less than 180m ² (refer to Figure 8 below).	Ground floor area of Lot 100 = 360.03m ² Ground floor area of Lot 101 = 137.12m ²	Yes Yes

Development standard	Proposal	Compliance
<div><div>D14/24</div><div><p>Figure 8: Diagram showing strata area to be included and excluded area as per subclause (c) Source: State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</p></div></div>		

Accordingly, the third criteria cannot be met by the proposal given that the Strata subdivision involves retention of the current front and rear dwelling arrangement.

7. Clause 4.6 exception to a development standard

The proposal seeks to vary the development standard in Clause 4.1D. Specifically the proposal seeks to vary the development standard contained in Clause 6.2(b)(ii) of the SEPP Exempt and Complying Development Codes):

No dwelling must be located behind any other dwelling on the same lot (except in the case of a corner lot or a parallel road lot).

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.*
- Page 248

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 (2) 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.

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.*

7.1. **Exception to a non-numerical development standard (Cl 4.1D)**

The Applicant's written justification for the departure from the non-numerical development 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 non-numerical development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case as follows:

Compliance with the development standard is unreasonable and unnecessary in the circumstances for the following reasons:

- *The standard, introduced in 2008 is aimed at controlling building types, different to that approved on the subject site.*
- *The existing development on the subject site was approved under DA/279/1992 and deemed as an appropriate form of development under the planning controls applicable at the time.*
- *The subsequent division into Company Title is an indication of the long-term existence of separate entities for each of the dwellings.*
- *The proposed strata title subdivision will simply facilitate a preferred form of tenure over each of the dwellings without any adverse impacts, notwithstanding the strict non-compliance with the development standard.*
- *The inability on merit to strata subdivide a building constructed lawfully in accordance with the planning controls applicable some 16 years ago, would not represent a sound planning outcome in the circumstances.*
- *The strata subdivision will have a negligible impact on the presentation of the existing development to the streetscape and not require any substantial works beyond those that are present in relation to the existing dual occupancy.*
- *Council has a documented history of applying a flexible approach to the application of development standards as per the allowances under Clause 4.6, in appropriate circumstances.*

For the reasons outlined above, the imposition of the development standard in this instance would not facilitate a sound planning outcome in the circumstances. As such, the request for contravention is entirely justified and worthy of support on this occasion.

Assessing officer's comment: The Applicant's written request seeks to demonstrate that compliance with the non-numerical development standard is unreasonable or unnecessary in the circumstances of the case. The justification and matters mentioned in the Applicant's written request are considered and generally concurred with. The proposed Strata subdivision results in an outcome that demonstrates consistency with the underlying objectives of the development standard and will result in a development that is compatible with the established and desired future character of the locality. As such, the Applicant's written request has demonstrated that compliance with the development standard is unreasonable and unnecessary with regard to the proposal.

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 non-numerical development standard as follows:

The understood intention of the standard is designed to apply to dual occupancies, manor houses or multi dwelling housing (terraces) carried out as Complying development. Whilst relevant, it is not reasonably applied to a development lawfully approved under DA/279/1992, endorsed as an acceptable form of development with acceptable impacts on surrounding properties.

In this instance, the underlying objective or purpose would be defeated or thwarted if compliance was required, as the proposed departure represents an opportunity to improve internal amenity, without adversely impacting on the amenity of surrounding residents or the public domain.

Whilst the abovementioned standard has not been abandoned or destroyed by the Council's own actions, it is frequently varied by Council in justified circumstances, such as those evident on this occasion.

The zoning of the land on this occasion is not regarded as unreasonable or inappropriate. Moreover, the strict numerical non-compliance will not alter the acceptable relationship of the existing development with the applicable objectives of the R2 Low Density Residential zoning.

As such, the request on this occasion satisfies more than one (one only required) means of justifying contravention of the standard and manifestly worthy of support.

Sufficient environmental planning grounds exist to justify departure from the development standard on this occasion in that:

- *Notwithstanding the strict non-compliance with the standard, amenity impacts including those relating to visual bulk, scale and height, visual and acoustic privacy, solar access and overshadowing are sustainable.*
- *The acceptable streetscape presentation of the existing development will not be altered by the proposed strata subdivision.*

Having due regard to the Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118, it is affirmed that the above environmental planning grounds which justify contravention of the standard in this instance, are not general propositions. They are unique circumstances of the proposed development in the context of the building on the subject and surrounding sites.

Finally, having regard to the environmental benefits associated with the development in its current form and the acceptable amenity impacts, notwithstanding the strict departure from standard, the proposed variation is justified and there are sufficient environmental grounds to support the departure.

Consistency with the Objectives of the Standard and the Zone Objectives (R2)

The proposed development is consistent with the zone objectives in that:

- *The strata titled dual occupancy will continue to provide for the housing needs of the community within a low-density residential environment.*
- *It will recognise the desirable elements of the existing streetscape and built form and contribute to the desired future character of the area.*
- *It will continue to protect the amenity of residents and encourage preferred forms of housing affordability.*

As such, the proposed development is in the public interest in that consistency with the understood objectives of the standard and the objectives for development within the zone have been achieved.

Assessing officer's comment: The Applicant's written request seeks to demonstrate that there are sufficient environmental planning grounds to justify contravening the non-numerical development standard. The above matters in the Applicant's written request have been considered and generally concurred with. The Applicant has demonstrated sufficient environmental planning grounds for the proposed and the resultant outcome will not result in any adverse amenity or streetscape impacts. On this basis, there are grounds to justify the contravention of the development standard.

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

Assessing officer's comment: As mentioned above, there are no objectives relating to the development standard as stipulated under Clause 4.1D. In this regard, the development standard is referenced in Section 6.2 of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008. It is evident that the intention of the non-numerical development standard is to avoid the provision of dual occupancy development comprising a front and rear dwelling arrangement (except for corner/parallel road lots). In this instance, the existing front and rear dwelling arrangement was approved and lawfully constructed as per DA/279/1992. The proposed subdivision does not alter nor reinforce this circumstance. The resultant Strata subdivision is dependent on the existence of the dual occupancy.

In addition, the Applicant provided justification for the proposed variation in their Statement of Environmental Effects as follows:

The configuration of the subdivision will provide new lots dividing the attached dwellings to two separate lots so they are no longer located on the same lot. Randwick Council has supported this proposal on numerous occasions including DA/251/2021, DA/49/2019 & DA/845/2018.

The proposed Strata subdivision will not likely result in undesirable outcomes nor create precedence in the local area that encourage dual occupancy development in front and rear arrangements. Such built forms are not frequently found in the Randwick LGA and whilst support for Strata subdivision has occurred previously – these are generally in relation to approved dual occupancies. The merits of the built form and design of these built forms have been tested.

The objectives of R2 zone are:

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

The proposal is consistent with the relevant objectives of the R2 zone in that the proposed strata subdivision will provide for the housing needs of the community and will contribute to the desired future character of the area.

No change is proposed to the streetscape presentation or built form of the existing dual occupancy. The proposal will not result in any impacts to the amenity of neighbouring residents.

The development is consistent with the objectives of the R2 zone and will therefore 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 non-numerical development standard will allow for the orderly use of the site and there is a no public benefit in maintaining the development standard in this instance.

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(4) have been satisfied and that development consent may be granted for development that contravenes the non-numerical development standard under Clause 4.1D.

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	The proposal is consistent with the objectives of the R2 Low Density Residential zone in that the proposal provides for the housing needs of the community and contributes to the desired future character of the area. The proposal will not result in impacts in terms of residential amenity.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The subject application seeks consent for Strata subdivision of an existing attached dual occupancy. No changes are proposed to the built form. The proposed subdivision demonstrates compliance with the applicable provisions under the RDCP 2013.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	This application to subdivide the dual occupancy will have no adverse impacts on the environment or to any neighbouring properties and the wider community.
Section 4.15(1)(c) – The suitability of the site for the development	The site was assessed as being suitable for a dual occupancy when consent for the built form was granted. The site is suitable for the proposed Strata subdivision.
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	Public notification was not required as no changes to the built form are proposed.
Section 4.15(1)(e) – The public interest	The proposal is in the public interest for reasons mentioned under Section 7.1 of this report.

10. Conclusion

That Development Application No. DA/157/2023 for Strata Subdivision of Existing Dual Occupancy, at No. 54-54A Australia Avenue, Matraville, be approved (subject to conditions) for the following reasons:

1. Whilst the proposed Strata subdivision does not comply with the non-numerical development standard pursuant to Clause 4.1D of RLEP 2012, the proposal is consistent

- with the Aims of the RLEP 2012 relating the efficient use of land and facilitating sustainable population and housing growth.
2. Compliance with the non-numerical development standard is considered to be unreasonable or unnecessary in the circumstances of this case and there are environmental planning grounds that warrant a variation to the development standard. As such, the written request pursuant to Clause 4.6 of RLEP 2012 to vary the non-numerical development standard is considered to be well founded.
 3. The proposed Strata subdivision is consistent with the objectives of the R2 zone in relation to providing for the housing needs of the community, recognising the desirable elements of the streetscape and the desired character of the area and protecting the amenity of residents. The proposal does not involve any changes to the existing dual occupancy and the current front and rear dwelling arrangement as it only involves Strata subdivision.
 4. The proposed Strata subdivision will not generate any adverse or substantial or unreasonable impacts to the environment or to adjoining and neighbouring properties and upon the wider community.
 5. The proposed Strata subdivision is in the public interest for the reasons mentioned above and as detailed in this report. The proposal will not likely result in an undesirable precedence, particularly given that the resultant lots are consistent with and compatible to the prevailing development and subdivision pattern of the immediate locality.

Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineer

The application was referred to Council's Development Engineer and the following advice was received:

There are no objections to the strata subdivision subject to the comments and conditions provided in this report. It is noted there are no areas of common boundary with internal ceilings/floors and external walls/rooves of the dwelling forming part of the strata lot. A first-floor plan is therefore not required.

The dual occupancy development at the rear was approved under DA/279/1992 and BA/657/1992. A site inspection on 30/05/2023 has confirmed the proposed boundaries are consistent with the existing occupations.

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



LIAISON – LAND USE APPRAISALS – EXEMPT AND COMPLYING DEVELOPMENT CHECKS – STATEMENTS
OF ENVIRONMENTAL EFFECTS – ENVIRONMENTAL IMPACT STATEMENTS – PLANNING PROPOSALS –
LAND & ENVIRONMENT COURT REPRESENTATION

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RANDWICK LOCAL ENVIRONMENTAL PLAN 2012 (RLEP) CLAUSE 4.6 REQUEST FOR CONTRAVENTION OF DEVELOPMENT STANDARD

APPLICANT: Solutions Zane
ADDRESS: 54 & 54A Australia Avenue, Matraville
PROPOSAL: Proposed 2 lot Strata title subdivision of existing dual occupancy
DEVELOPMENT STANDARD: Non-Numerical Development Standard under Clause 4.1D (2)
(a) of the RLEP

INTRODUCTION

This submission is a request for contravention of the above development standard in relation to a proposed 2 lot Strata title subdivision of existing dual occupancy at Nos. 54 & 54A Australia Avenue, Matraville on the basis that:

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and;
2. There are sufficient environmental planning grounds to justify contravening the development standard and;
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 and as such is well founded.
4. Contravention of the standard in this instance will not raise any matters of State or Regional significance.
5. There is no public benefit in maintaining the standard on this occasion.
6. The proposal achieves the objectives of Clause 4.6 of the RLEP of providing an appropriate degree of flexibility in applying certain development standards to particular development and achieves better outcomes for and from development by allowing flexibility in particular circumstances.

The development standard to which the request relates

Clause 4.1D (2) (a) states:

4.1D Subdivision of dual occupancies (attached) in Zone R2

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(1) This clause applies to a dual occupancy (attached) on land in Zone R2 Low Density Residential for which development consent was granted before 6 July 2018.

(2) *Despite any other provision in this Plan, development consent may be granted for the subdivision of a dual occupancy to which this clause applies if the development meets the standards specified in the following provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008—*

- (a) for strata subdivision—clause 6.2, or*
(b) for Torrens title subdivision—clause 6.4.

Section 6.2 (b) (ii) states:

(ii) no dwelling must be located behind any other dwelling on the same lot (except in the case of a corner lot or a parallel road lot)

In this instance, the existing dual occupancy comprises one dwelling behind the other on a conventional lot and not a corner lot or a parallel road. As such it does not conform to the standard.

The objectives of the development standard

Whilst there are no stated objectives of the standard on this occasion, it is understood that the requirement is aimed at the subdivision of dual occupancies, multi-unit housing and Manor houses approved as complying development under SEPP (Exempt and Complying Development Codes) 2008.

The nature of the departure from the development standard

As the standard is non-numerical, a merit assessment of the non-compliance is warranted.

Why compliance with the development standard is unreasonable or unnecessary in the circumstances of the case

Compliance with the development standard is unreasonable and unnecessary in the circumstances for the following reasons:

- The standard, introduced in 2008 is aimed at controlling building types, different to that approved on the subject site.
- The existing development on the subject site was approved under DA/279/1992 and deemed as an appropriate form of development under the planning controls applicable at the time.
- The subsequent division into Company Title is an indication of the long-term existence of separate entities for each of the dwellings.
- The proposed strata title subdivision will simply facilitate a preferred form of tenure over each of the dwellings without any adverse impacts, notwithstanding the strict non-compliance with the development standard.
- The inability on merit to strata subdivide a building constructed lawfully in accordance with the planning controls applicable some 16 years ago, would not represent a sound planning outcome in the circumstances.
- The strata subdivision will have a negligible impact on the presentation of the existing development to the streetscape and not require any substantial works beyond those that are present in relation to the existing dual occupancy.
- Council has a documented history of applying a flexible approach to the application of development standards as per the allowances under Clause 4.6, in appropriate circumstances.

Chief Justice Preston of the NSW Land and Environment Court in the case of *Wehbe v Pittwater Council* [2007] NSWLEC 827 established 5 ways in which a departure from a development standard can be justified and this was reiterated by Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118. The most invoked means

of justifying a departure from a development standard is the achievement of the end objectives, despite the strict numerical non-compliance.

For the reasons outlined above, the imposition of the development standard in this instance would not facilitate a sound planning outcome in the circumstances. As such, the request for contravention is entirely justified and worthy of support on this occasion.

Given the justification provided in this request, the remaining ways by which a clause 4.6 Request may be justified, do not require elaboration. Notwithstanding, for the purposes of completeness, the remaining ways are articulated with relevant commentary:

- *The underlying objective or purpose of the standard is not relevant to the development*

Comment

The understood intention of the standard is designed to apply to dual occupancies, manor houses or multi dwelling housing (terraces) carried out as Complying development. Whilst relevant, it is not reasonably applied to a development lawfully approved under DA/279/1992, endorsed as an acceptable form of development with acceptable impacts on surrounding properties.

- *The underlying objective or purpose would be defeated or thwarted if compliance was required.*

Comment

In this instance, the underlying objective or purpose would be defeated or thwarted if compliance was required, as the proposed departure represents an opportunity to improve internal amenity, without adversely impacting on the amenity of surrounding residents or the public domain.

- *The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or*

Comment

Whilst the abovementioned standard has not been abandoned or destroyed by the Council's own actions, it is frequently varied by Council in justified circumstances, such as those evident on this occasion.

- *The zoning of land was unreasonable or inappropriate, such that the standards for that zoning are also unreasonable or unnecessary.*

Comment

The zoning of the land on this occasion is not regarded as unreasonable or inappropriate. Moreover, the strict numerical non-compliance will not alter the acceptable relationship of the existing development with the applicable objectives of the R2 Low Density Residential zoning.

As such, the request on this occasion satisfies more than one (one only required) means of justifying contravention of the standard and manifestly worthy of support.

The environmental grounds which justify contravening the development standard

Sufficient environmental planning grounds exist to justify departure from the development standard on this occasion in that:

- Notwithstanding the strict non-compliance with the standard, amenity impacts including those relating to visual bulk, scale and height, visual and acoustic privacy, solar access and overshadowing are sustainable.
- The acceptable streetscape presentation of the existing development will not be altered by the proposed strata subdivision.

Having due regard to the *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, it is affirmed that the above environmental planning grounds which justify contravention of the standard in this instance, are not general propositions. They are unique circumstances of the proposed development in the context of the building on the subject and surrounding sites.

Finally, having regard to the environmental benefits associated with the development in its current form and the acceptable amenity impacts, notwithstanding the strict departure from standard, the proposed variation is justified and there are sufficient environmental grounds to support the departure.

The Public Interest/Consistency with the Objectives of the Standard and the objectives for development within the zone

The proposed development is consistent with the relevant objectives of the standard as detailed above.

The zone objectives 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 is consistent with the zone objectives in that:

- The strata titled dual occupancy will continue to provide for the housing needs of the community within a low-density residential environment.
- It will recognise the desirable elements of the existing streetscape and built form and contribute to the desired future character of the area.
- It will continue to protect the amenity of residents and encourage preferred forms of housing affordability.

As such, the proposed development is in the public interest in that consistency with the understood objectives of the standard and the objectives for development within the zone have been achieved.

Significance for State and Regional Planning

The proposed development is consistent with State and Regional Planning Policies in that the proposed development, inclusive of the strict departure from the standard, will result in an orderly and economic use of the land, in accordance with the objects of the Environmental Planning and Assessment Act, 1979.

Despite the non-compliance with the standard, the proposed development achieves compliance with the understood objectives of the standard, and the objectives of the R2 Low-Density Residential zone.

The proposed development in its current form will continue to contribute to the desired future character of this established residential area, which is well located in relation to shops, schools, local and regional centres and community facilities. The site is well connected to public transport, infrastructure, including bus stops within walking distance of the subject site, providing access to community infrastructure, beaches and the Sydney CBD. As such, the

proposed development does not raise any matters of significance for State or Regional Planning.

Consistency with Clause 4.6 of the RLEP

The objectives of Clause 4.6 are:

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

The justification for the provision of an appropriate degree of flexibility in the present circumstances has been demonstrated in this objection. The wider planning intentions for the locality will not be compromised by the departure in the circumstances.

Having regard to the contents of this submission, this objection is well founded and worthy of support.

Departure from the standard on this occasion (whilst not required to) will achieve a better outcome for and from the proposed development by way of consistency with the understood objectives of the standard and those of the R2 Low-Density Residential zone, will not raise any matter of significance for State or Regional Environmental Planning and no public benefit will be served by maintaining the standard in the circumstances.

The justification for the departure from the development standard is worthy of support.

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

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

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	
2.1	Minimum lot size and frontage		
	Minimum lot size for Strata subdivision of attached dual occupancies (RLEP): <ul style="list-style-type: none"> R2 = 180m² 	Proposed Lot 100 = 360.03m ² Proposed Lot 101 = 254.1m ²	As per Code SEPP.
	Minimum frontage		
	No battle-axe or hatchet in R2 or R3 Minimum frontage for attached dual occupancy in R2 = 15m	Proposal results in a battle-axe/hatchet allotment. Proposed Lot 100 = 13.885m Proposed Lot 101 = 10.175m	As per Code SEPP.
2.3	Site coverage		
	Up to 300m ² = 60% 301 to 450m ² = 55% 451 to 600m ² = 50% 601m² or above = 45%	Not changing	Not changing

Responsible officer: Perry Head, Environmental Planning Officer

File Reference: DA/157/2023

Development Consent Conditions



Folder /DA No:	DA/157/2023
Property:	54-54A Australia Avenue, MATRAVILLE NSW 2036
Proposal:	Strata Subdivision of Existing Dual Occupancy.
Recommendation:	Approval

Development Consent Conditions

GENERAL CONDITIONS

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

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

Approved Plans & Supporting Documentation

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

Plan	Drawn by	Dated	Received by Council
Proposed Subdivision Plan	Superior Design	29 January 2024	1 February 2024

REQUIREMENTS PRIOR TO THE ISSUE OF A STRATA CERTIFICATE

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

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

Strata Plans

2. All floors, external walls and ceilings depicted in the proposed strata plan must correspond to the building as constructed.
3. The applicant shall create suitable right of carriageway and easements as required, however generally all services lines (including stormwater) over any strata lot serving another strata lot are to be common property.

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

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

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

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

NOTE: The S73 compliance certificate issued under the construction approval (DA/279/1992) will not be sufficient to satisfy this condition. A new Section 73 certificate must be obtained that refers to the subdivision of the property approved under this consent.

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

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

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

Development Application Report No. D15/24

Subject: 38 Boyce Road, Maroubra (DA/337/2023)


Executive Summary

Proposal:	Torrens title subdivision of subject site into two (2) x allotments
Ward:	Central Ward
Applicant:	ABC Planning Pty Ltd
Owner:	D Brandon
Cost of works:	\$0
Reason for referral:	Development that involves contravention of a development standard (Clause 4.1 – minimum subdivision lot size) by more than 10%

Recommendation

- A. That the RLPP is satisfied that the matters detailed in Clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the minimum subdivision lot size development standard in Clause 4.1 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning, Industry and Environment may be assumed.
- B. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/337/2023 for Torrens title subdivision of subject site into two (2) x allotments, at No. 38 Boyce Road, Maroubra, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Conditions of Consent - DA/337/2023

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1. Executive summary

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

- Development that contravenes the development standard for minimum subdivision lot size (Clause 4.1) by more than 10%.

The proposal seeks development consent for Torrens title subdivision of a single allotment into two (2) new lots.

The key issues associated with the proposal relate to non-compliance with the minimum subdivision lot size of 400m² pursuant to Clause 4.1 of RLEP 2012 and non-compliance with the minimum frontage width pursuant to Part C1, Section 2.1 of RDCP 2013.

The proposed subdivision is supported given the consistency of the subdivision with the minimum lot size requirements and desired future characteristics of the R2 zone, as envisaged by the Planning Proposal endorsed by Council on 6 September 2022 to amend RLEP 2012.

The amended LEP (Amendment No. 9) commenced on 1 September 2023; however the subject application was lodged prior to this date. Pursuant to Clause 1.8A of the amended LEP, the amendments do not apply to a development application made but not finally determined before the commencement of the plan.

2. Site Description and Locality

The subject site is known as No. 38 Boyce Road, Maroubra and is legally described as Lot 26 in DP 7062. The site is a dual frontage allotment comprising an area of 673m², a rectangular shape and frontages of 10.06m to Boyce Road to the south and Mason Street to the north. The site currently contains a single storey dwelling house with ancillary structures including a detached garage facing Mason Street (refer to Figures 1 and 2).



Figure 1: Front of existing dwelling within subject site (addressing Boyce Road)



Figure 2: Rear of subject site showing existing detached garage (addressing Mason Street)

The site is elongated with a minimum depth of 67m and features a sloping topography, with a fall of 4m from Mason Street (northern boundary) to Boyce Road (southern boundary).

The site is within a low density residential area, primarily characterised by single and double storey dwelling houses on rectangular, narrow lots – along both Boyce Road and Mason Street (refer to Figures 3 and 4).



Figure 3: Existing kerb/gutter in front of subject site and immediate streetscape within Boyce Road



Figure 4: Streetscape within Mason Street (Source: Google Maps, February 2022)

3. Relevant history

There are no historical applications relevant to the subject site and proposal.

4. Proposal

The proposal seeks development consent for Torrens title subdivision of a single parcel of land into two (2) x allotments. Specifically, the proposed subdivision involves:

- Torrens title subdivision to create two (2) x individual, rectangular shaped lots – each with a street frontage to either Boyce Road or Mason Street. Refer to Table 1 below for dimensions.
- Land dedication to Council comprising 45m² to be situated within Mason Street, for road widening.

Table 1: Proposed Lot Dimensions

Lots	Lot size	Front	Rear	Side (E)	Side (W)
Lot 261 Southern Lot – Boyce Road	314m ²	10.06m	10.06m	31.25m	31.25m
Lot 262 Northern Lot – Mason Street	314m ²	10.06m	10.06m	31.25m	31.25m
Land dedication for road widening (Mason Street)	45m ²	Width: 10.06m Depth 4.57m			

Figure 5 illustrates the proposed subdivision.

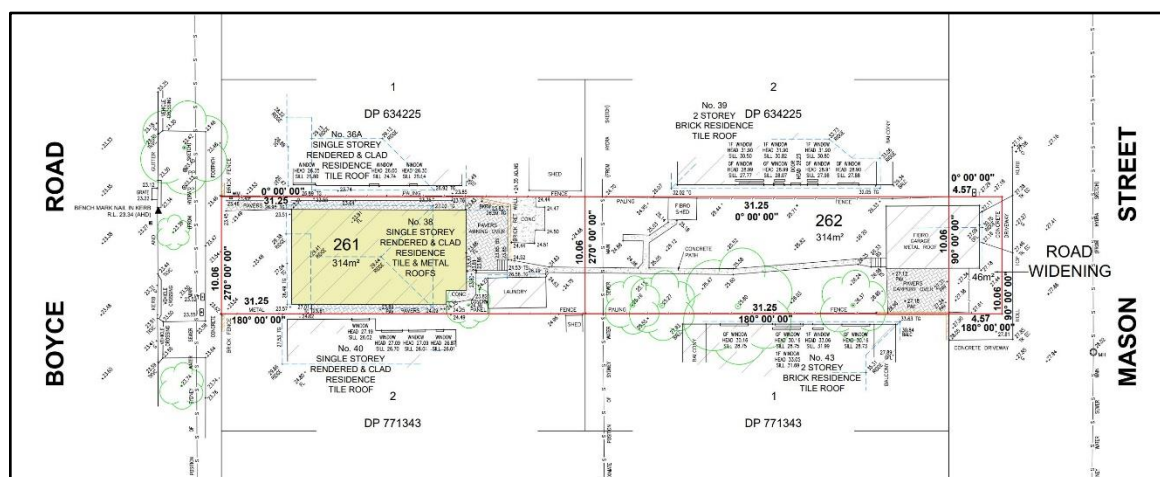


Figure 5: Proposed subdivision plan

5. Notification

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

6. Relevant Environment Planning Instruments

6.1. SEPP (Biodiversity and Conservation) 2021

Chapter 2 of the SEPP applies to the proposal and subject site. The aims of this Chapter are:

- (a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and
- (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

The proposed development does not involve the removal of any vegetation (including any trees). As such, the proposal achieves the relevant objectives and provisions under Chapter 2.

6.2. SEPP (Resilience and Hazards) 2021

Chapter 4 - Remediation of Land

The provisions of SEPP (Resilience and Hazards) require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site.

The subject site has only previously been used for residential accommodation/residential purposes and as such is unlikely to contain any contamination. The nature and location of the proposed development (land subdivision) are such that any applicable provisions and requirements of the above SEPP have been satisfactorily addressed.

6.3. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned R2 Low Density Residential under Randwick Local Environmental Plan 2012 (RLEP 2012), and the proposal, being for *Torrens title subdivision*, is permissible with consent.

The proposal is consistent with the specific objectives of the R2 zone, as detailed in this report.

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

Clause	Development Standard	Proposal	Compliance
CI 4.1: Minimum Subdivision Lot Size	At time of application: 400m ² (per lot)	Lot 261 = 314m ²	No (21.5% variation)
		Lot 262 = 314m ²	No (21.5% variation)
	Current provision: 275m ² (per lot)	Lot 261 = 314m ²	Yes
		Lot 262 = 314m ²	Yes

Clause 4.1 – Minimum Subdivision Lot Size

On 6 September 2022, Council endorsed a Planning Proposal to amend the RLEP 2012 in relation to minimum lot sizes for the R2 Low Density Residential zone. Specifically, Council endorsed amendments to Clause 4.1 to reduce the minimum lot size for land in the R2 zone from 400m² to 275m², with the exception of land within a heritage conservation area.

On 1 September 2023, the above amendments to the RLEP 2012 were formally adopted; however the subject application was lodged prior to this date (27 June 2023). Pursuant to Clause 1.8A of the amended LEP, the amendments do not apply to a development application made but not finally determined before the commencement of the plan.

Noting the above, Council is required to consider the amended LEP as a matter of consideration under Section 4.15 of the *Environmental Planning and Assessment Act 1979*. This provision has been reproduced below:

4.15(1)(a)(ii) any proposed instrument that is or has been the subject of public consultation under this Act and that has been notified to the consent authority (unless the Planning Secretary has notified the consent authority that the making of the proposed instrument has been deferred indefinitely or has not been approved), and

As such, Council has taken into consideration the amended minimum lot size provision endorsed under the amended LEP. It is noted that the proposed development complies with the minimum lot size requirements under the amended LEP.

Notwithstanding, noting that the proposed development seeks to vary the current (at time of lodgment) LEP minimum lot size of 400m², a Clause 4.6 Variation Request has been submitted by the Applicant. Refer to Section 7 of this report.

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Complies	Variation
CI 4.1: Minimum Subdivision Lot Size	At time of application: 400m ² (per lot)	Lot 261 = 314m ²	No	21.5% (86m ²)
		Lot 262 = 314m ²	No	21.5% (86m ²)

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 (2) respects in which the written request needs to be “sufficient”.

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

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

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

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

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

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

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

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

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

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

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

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

The Applicant's written request seeks to justify the contravention of the minimum lot size development standard by demonstrating that compliance is unreasonable or unnecessary in the circumstances of the case as follows:

- *It is considered that strict compliance with the development standard for the minimum subdivision lot size proposed for the proposed lot sizes of 3.14m² is unreasonable and unnecessary in the circumstances for the following reasons:*
- *The proposal complies with the objectives of the development standard and the R2 Low Density Residential zone. Furthermore, compliance with the development standard is unreasonable and unnecessary as it is in the public interest given it is consistent with the objectives for development within the zone.*
- *The proposed lot size is consistent with the prevailing sizes of lots in the surrounding local area, with the existing lot being an anomaly in the block.*
- *Predominantly all north-south orientated lots within the block are less than 400m² in size, with the exception of 60 Boyce Road.*
- *It is noted that the existing lot frontages of 10.06m to Boyce Road and Mason Street are 1.94m below the 12m lot frontage requirement of the RDCP 2013; however, such lot frontages exist and are consistent with the prevailing lot frontages of other sites in the vicinity of the site along both Boyce Rd and Mason St frontages.*

Assessing officer's comment: The Applicant's written request seeks to demonstrate that compliance with the minimum lot size development standard is unreasonable or unnecessary in the circumstances of the case. The proposed lot sizes are consistent with the underlying objectives of the development standard and will result in a development that is consistent with the established and desired future character of the locality.

The Applicant provided a detailed review and analysis of the existing subdivision pattern of the immediate area. Notably, there are a number of existing allotments within the immediate vicinity that are of similar size and widths – reflecting the existence of lots split to feature dwellings within frontages to either Mason Street or Boyce Road (refer to Figure 5). Examples of existing allotments that are below 400m² and have widths less than 12m include: No.'s 36A, 40, 42, 48, 54, 56, and 62 Boyce Road and No.'s 43, 45, 49, 55, 57, 61 and 63 Mason Street.

As previously noted, on 6 September 2022, Council endorsed a Planning Proposal to amend RLEP 2012 in relation to minimum lot sizes for the R2 zone, specifically to amend clause 4.1 to reduce the minimum lot size for the subdivision of land zoned R2 from 400m² to 275m², with the exception of land within a heritage conservation area. Amendment (9) of the *Randwick Local Environmental Plan* 2012 commenced on 1 September 2023 bringing this amendment into action.

In considering this Draft LEP (now current through amendment 9), the proposed subdivision is consistent with the minimum lot size requirements and future desired characteristics of the R2 zone, as envisaged by the Planning Proposal and then then-Draft LEP.

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Figure 5: Map showing existing subdivision pattern of immediate vicinity with subject site (shaded in yellow) and current lots less than 400m² (shaded in green) (Source: Council's Interactive Mapping System)

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

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

The proposed lot sizes of 314m² are compliant with the lot size requirement that has been introduced following lodgment of the subject application. On 1 September 2023, the LEP was amended to amend the minimum lot size from 400m² to 275 m². On this basis, the proposed lot sizes would satisfy the minimum lot size under the amended version of the LEP under Clause 4.1.

It is acknowledged that the proposed lot widths are below the 15-metre requirement of the DCP. However, the accompanying cadastral plan shows that the proposed lot widths are consistent with the predominant lot widths along both Boyce Rd and Mason Street. Furthermore, the accompanying sketch, which includes the concept plan, demonstrates that the proposed lot widths do not generate any non-compliance with the building envelope and amenity provisions of the LEP and DCP. This is considered to constitute sufficient ground for environmental planning.

The proposal is in relation to the Torrens title subdivision, and due to there being no increase to the existing building height or envelope, the proposed subdivision will not be responsible for any adverse environmental impacts in relation to loss of privacy, loss of view, noise, or traffic and parking impacts.

The proposed subdivision is consistent and compliant with the existing subdivision pattern within the locality.

The proposal still achieves the objectives of the R2 Low-density residential zone and that of the RLEP 2012 development standards. The proposed lot sizes represent an orderly and economic use of the site, with no adverse environmental impacts above and beyond that of a compliant lot size. Based on the above points, it is therefore considered that there are sufficient environmental planning grounds to permit the minimum lot size for dwelling houses in this instance.

Assessing officer's comment: The Applicant's written request seeks to demonstrate that there are sufficient environmental planning grounds to justify contravening the minimum lot size development standard. The above matters in the Applicant's written request has been considered and generally concurred with. The Applicant has demonstrated sufficient environmental planning grounds for the

proposed and the resultant outcome will not result in any adverse amenity or streetscape impacts. On this basis, there are grounds to justify the contravention of the development standard.

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

To determine whether the proposal will be in the public interest, an assessment against the objectives of the minimum lot size standard and R2 zone is provided below:

Assessment against objectives of minimum lot size standard

The objectives of the minimum lot size standard are:

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

Assessing officer's comment: The proposal is consistent with the relevant objectives of the minimum lot size development standard. The proposed subdivision involving the creation of two (2) lots is not anticipated to result in any adverse impacts to the amenity of neighbouring properties. It is noted that no physical building works are proposed – however, it is noted that conditions of consent as recommended by Council's Development Engineer require any existing structures (including the detached garage) within the land dedication to be demolished prior to the release of any subdivision certificate.

The site does not hold any natural or cultural significance or include any special features. The proposed lot sizes allow ample space for the existing dwellings, and any future development of the site.

The proposed subdivision will contribute to the desired future character of the area as outlined in the endorsed Planning Proposal and the current RLEP 2012. .

In consideration of the then-Draft LEP as well as the current provisions under the RLEP 2012, under Section 4.15 of the *Environmental Planning and Assessment Act 1979*, the proposed subdivision is consistent with the minimum lot size requirements and the housing needs of the community. The proposed subdivision will promote housing affordability by providing diverse housing options.

The development is consistent with the objectives of the minimum lot size development standard and will therefore be in the public interest.

The objectives of R2 zone are:

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

Assessing officer's comment: The proposal is consistent with the relevant objectives of the R2 zone in that the proposed subdivision will provide for the housing needs of the community and will

contribute to the desired future character of the area as outlined in the endorsed Planning Proposal and the current RLEP 2012.

In consideration of the then-Draft LEP under Section 4.15(1)(a)(ii) of the *Environmental Planning and Assessment Act 1979*, the proposed subdivision is consistent with the minimum lot size requirements and the housing needs of the community within the R2 zone. The proposal will promote housing affordability by providing diverse housing options.

No change is proposed to the streetscape presentation or built form of the existing dwelling. The proposal will not result in any impacts to the amenity of neighbouring residents.

The development is consistent with the objectives of the R2 zone and will therefore be in the public interest.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

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

Conclusion

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

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

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

9. Environmental Assessment

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

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

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

9.1. Discussion of Key Issues

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

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

Subclause 2.1(i) specifies a minimum frontage width for resultant lots within the R2 zone of 12m for the purpose of dwelling houses. The subdivision proposes a frontage width of 10.06m for each allotment, resulting in a slight variation (1.94m / 16.2%) to the minimum 12m requirement.

As discussed under the Clause 4.6 assessment in Section 7 of this report, Council endorsed part of the Planning Proposal that amended the RLEP 2012 in relation to minimum lot sizes for the R2 'Low Density Residential' Zone, specifically to amend clause 4.1 to reduce the minimum lot size for subdivision of land zoned R2 'Low Density Residential' from 400m² to 275m², except for land within a heritage conservation area.

As such, the DCP controls relating to frontage width need to be considered within the context of Planning Proposal and amended Randwick Local Environmental Plan 2012. As such, the frontage width is considered on a merit assessment against the objectives of the clause. An assessment of

the proposal confirms that the proposed 10.06m frontage for each subdivided lot provides sufficient width in relation to any existing or new dwelling house on each lot. It is noted that the proposal does not involve any changes to the existing dwelling house facing Boyce Road. As such, the front/side setbacks, bulk/scale and footprint of the existing dwelling remain unchanged by the proposal. Whilst the proposal will result in alterations to the dwelling's response to certain Council controls – the proposal will result in development that reflects an appropriate balance of building, constructed and landscaped components and an outcome that is consistent and compatible with the prevailing development pattern and streetscape of the immediate locality.

The Applicant provided an indicative building footprint demonstrating that the new allotment addressing Mason Street can facilitate a compliant dwelling that meets the relevant controls and provisions under current Council policy (refer to Figure 6). In addition, the proposed width and variation are in keeping with the future desired design, pattern and amenity of the locality.

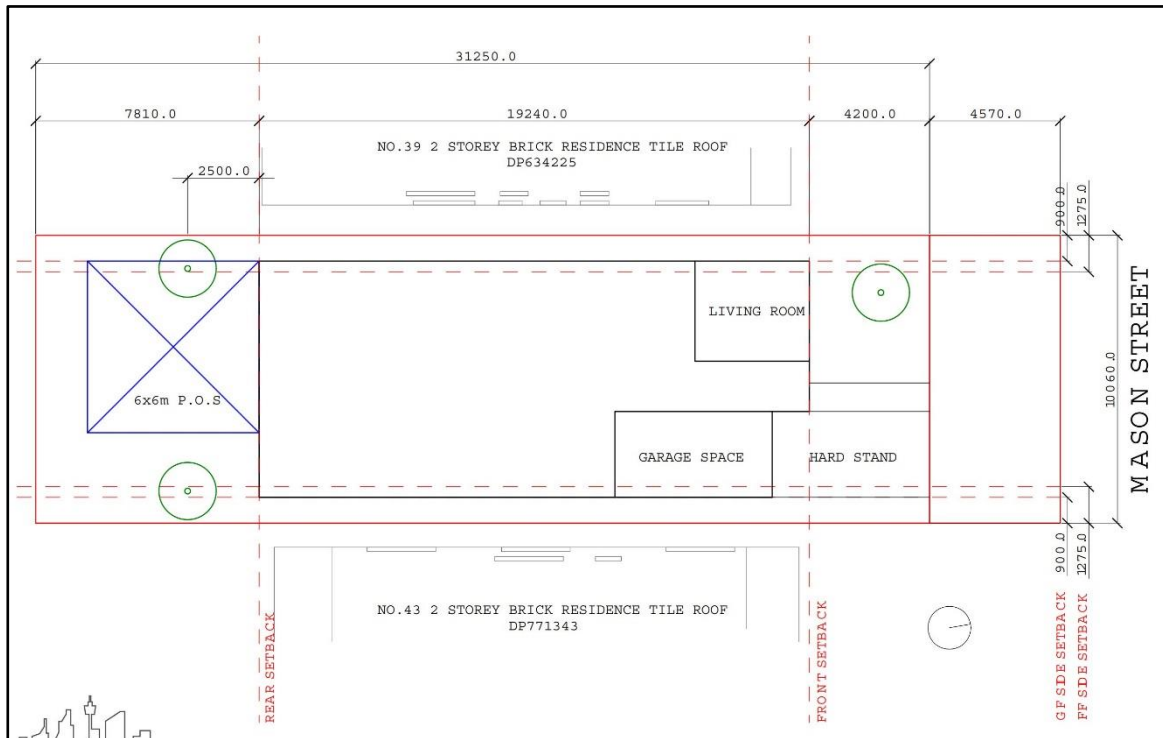


Figure 6: Indicative Building Footprint – Mason Street Lot (Lot 262)

In addition to the above arguments, the proposed subdivision achieves the respective objectives and controls specific to the locality – namely the matters under Part B11 (Development in Laneways Nominated for Road Widening) of the RDCP 2013. Part B11 states the following:

A number of narrow laneways in Randwick City have been identified for road widening. In many of these nominated laneways, Council has already commenced widening works which are gradually transforming the lane character.

These nominated laneways are listed below:

- a) *Ferguson Street, Maroubra, between Maroubra Road and Beauchamp Road*
- b) *Glanfield Street, Maroubra, between Bunnerong Road and Bruce Bennetts Place*
- c) *Green Street, Maroubra, between Anzac Parade and Cooper Street*
- d) *Galvin Street, Maroubra, between Cooper Street and Mulgray Avenue*
- e) *Mason Street, Maroubra, between Bunnerong Road and Anzac Parade***
- f) *Alma Road, Maroubra, between Anzac Parade and Cooper Street*

- g) Metcalfe Street, Maroubra, between Garden Street and Flower Street
- h) Nevorie Crescent, Maroubra, between Royal Street and Hannan Street
- i) Marjorie Crescent, Maroubra, between Storey Street and Royal Street
- j) Eastmore Place, Maroubra, between Bunnerong Road and Marjorie Crescent
- k) Bundock Lane, Randwick, between Avoca Street and Canberra Street

The development of residential dwellings fronting these laneways is encouraged. Subject to dedication of land for the purpose of laneway widening, payment of relevant fees and compliance with the objectives of this DCP, subdivision for a dwelling to the rear lane may be permitted, notwithstanding the minimum allotment sizes required for subdivision under the RLEP.

The subject site is within the nominated laneway area (as per above). As such, the provisions under B11 are relevant to the proposed subdivision. The objectives and controls under B11 are shown below.

Objectives

- To facilitate widening and streetscape improvement of specially nominated laneways in Randwick City.
- To achieve the dedication of land for laneway widening purposes through permitting subdivision and dwelling house development on nominated sites fronting the lanes.

Controls

Notwithstanding the minimum allotment size provisions of the RLEP and the minimum frontage width requirements of this DCP, the subdivision of land for a dwelling house fronting a nominated laneway may be permitted having regard to the following criteria:

- i) The merits of the proposal and compliance with the objectives of this DCP; and
- ii) The dedication to Council of a strip of land 4.57m in depth along the frontage of the lane for road widening purposes.

The proposed subdivision involves widening of Mason Street and land dedication – to which achieves the minimum requirements as per above (refer to Appendix 3).

Given the above considerations, the minor variation to the minimum lot width requirement demonstrates sufficient planning merit and is regarded as an acceptable and reasonable outcome.

10. Conclusion

That the application for Torrens title subdivision of subject site into two (2) x allotments be approved (subject to conditions) for the following reasons:

1. Whilst the proposed subdivision does not comply with the minimum subdivision lot size pursuant to Clause 4.1 of the RLEP 2012, the proposal is consistent with the Council

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- endorsed Planning Proposal and amendments to the RLEP 2012 relating to minimum subdivision lot size. Notably, the proposed subdivision complies with the current minimum subdivision lot size provision under Clause 4.1. On this basis, the proposal is consistent with the desired future character of the R2 zone.
2. Compliance with the minimum subdivision lot size development standard is considered to be unreasonable or unnecessary in the circumstances of this case and there are environmental planning grounds that warrant a variation to the development standard. As such, the written request pursuant to Clause 4.6 of RLEP 2012 to vary the minimum subdivision lot size development standard is considered to be well founded.
 3. The proposed subdivision is consistent with the objectives of the minimum subdivision lot size development standard as per Clause 4.1 of the RLEP 2012. The proposal will result in minimal impacts on the amenity of neighbouring properties and ensures that lot sizes are adequate and appropriate for and responsive to the locality, respective development pattern, site constraints and streetscape. The proposed subdivision provides for new lots that are capable of accommodating a well-balanced and proportionate built form that can comply with applicable planning requirements and controls under Council policy.
 4. The proposed subdivision is consistent with the objectives of the R2 zone in relation to providing for the housing needs of the community, recognising the desirable elements of the streetscape and the desired character of the area, protecting the amenity of residents, and encouraging housing affordability.
 5. The proposed subdivision will not generate any adverse or substantial or unreasonable impacts to the environment or to adjoining and neighbouring properties and upon the wider community.
 6. The proposed development is in the public interest for the reasons mentioned above and as detailed in this report. The proposal will not likely result in an undesirable precedence, particularly given that the resultant lots are consistent with and compatible to the prevailing development and subdivision pattern of the immediate locality. This is reflected in the presence of allotments in the vicinity and area featuring a similar size and dimensions.

Appendix 1: Referrals

1. External referral comments:

The subject application did not require further assessment by any external authorities or specialists.

2. Internal referral comments:

2.1. Development Engineer and Landscape Development Officer

Council's Development Engineer and Landscape Development Officer evaluated the proposal and provided the following comments:

An application has been received for a proposed Torrens Title Subdivision of the Lot at the above site into 2 Lots with the new Lot fronting Mason Street.

This report is based on the following plans and documentation:

- *Draft Subdivision Plans by surveyor xx stamped by Harrison Friedmann & Assoc;*
- *Statement of Environmental Effects stamped by ABC Planning.*

Drainage Comments

Development Engineering has included a Restriction on Use for the proposed rear Lot which would require the site to have on-site detention with any future development.

Car Space Comments – Boyce Road Frontage

The Lot fronting Boyce Road will require an off-street car space to be approved and constructed prior to the release of the Plans of Subdivision as the proposed subdivision removes parking for the existing Lot.

Tree Management Comments

While there are no physical works associated with this application that would affect vegetation, a row of established trees are noted in the existing rear setback, along the eastern site boundary (which will now be the new Lot fronting Mason Street), comprising from north to south, a 6m tall tree closest to the existing carport that occupies the northeast site corner, then a larger Eucalypt, a Bottlebrush and a Paperbark.

As they appear protected by the DCP, as well as assisting with screening, privacy and amenity between the development site and the neighbouring two storey dwelling to the east, 43 Mason Street, any future application will need to consider their presence, with their retention as existing site features being the preferred course of action as part of any future proposal.

Should any of them be sought for removal then the onus is entirely on the applicant/Arborist to provide a strong enough case for Council to agree to that.

Appendix 2: Applicant's written request seeking to justify the contravention of the development standard (Clause 4.1 – minimum subdivision lot size)

Clause 4.6 – Minimum Subdivision Lot Size

38 Boyce Road, Maroubra

UPDATED CLAUSE 4.6 TO CLAUSE 4.1 OF RANDWICK LEP 2012

EXCEPTIONS TO DEVELOPMENT STANDARDS –

MINIMUM SUBDIVISION LOT SIZE

Proposed Torrens title subdivision of subject site into two (2) x allotments

38 Boyce Road, Maroubra

PREPARED BY

ABC PLANNING PTY LTD

February 2024

RANDWICK LEP 2012 - CLAUSE 4.6 EXCEPTION TO DEVELOPMENT STANDARDS

This updated Clause 4.6 variation request has been prepared to accompany the development application for Torrens title subdivision of the subject site into two (2) x allotments at Lot 26 in DP7062 commonly known as 38 Boyce Road Maroubra. The application does not propose any building works or alterations to the existing developments on the subject site.

Clause 4.6 of the *Randwick Local Environmental Plan 2012* (RLEP2012) allows the consent authority to grant consent for development even though the development contravenes a development standard imposed by the LEP. The clause aims to provide an appropriate degree of flexibility in applying certain development standards.

This Clause 4.6 variation request takes into account the relevant aspects of the Land and Environment Court judgement from *Initial Action Pty Ltd v Woollahra Council* [2017] NSWLEC 1734, as revised by the NSW Court of Appeal in *RebelMH Neutral Bay Pty Limited v North Sydney Council* [2019] NSWCA 130.

Clause 4.6 Exceptions to development standards

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

*Clause 4.6 – Minimum Subdivision Lot Size**38 Boyce Road, Maroubra*

- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- (7) After determining a development application made pursuant to this clause, the consent authority must keep a record of its assessment of the factors required to be addressed in the applicant's written request referred to in subclause (3).
- (8) This clause does not allow development consent to be granted for development that would contravene any of the following:
- (a) a development standard for complying development,
- (b) a development standard that arises, under the regulations under the Act, in connection with a commitment set out in a BASIX certificate for a building to which State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004 applies or for the land on which such a building is situated,
- (c) clause 5.4,
- (9) (ca) clause 6.16 (3) (b).

Development Standard to be Varied

The proposal seeks a variation to the development standard contained within Clause 4.1 of the RLEP2012 – minimum subdivision lot size, demonstrated on the LEP map in the figure below.

The proposal seeks Torrens title subdivision of the subject site at 38 Boyce Road Maroubra, resulting in two (2) x allotments identified as:

- Proposed Lot 261 in DP 7062 (southern lot): Area of 314m²/ site frontage of 10.06m; and
- Proposed Lot 262 in DP 7062 (northern lot): Area of 314m²/ site frontage of 10.06m.

Pursuant to Clause 4.1¹ of the RLEP2012, the proposed two lots have an area of 314m² each and vary from the minimum subdivision lot size numerical development standard of 400m² by 86m² or 21.5%.

¹ 4.1 Minimum subdivision lot size

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

- (a) to minimise any likely adverse impact of subdivision and development on the amenity of neighbouring properties,
- (b) to ensure that lot sizes allow development to be sited to protect natural or cultural features, including heritage items, and to retain special features such as trees and views,
- (c) to ensure that lot sizes are able to accommodate development that is suitable for its purpose.
- (2) This clause applies to a subdivision of any land shown on the Lot Size Map that requires development consent and that is carried out after the commencement of this Plan.
- (3) The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map which is **400m² for the subject site**.

Clause 4.6 – Minimum Subdivision Lot Size

38 Boyce Road, Maroubra

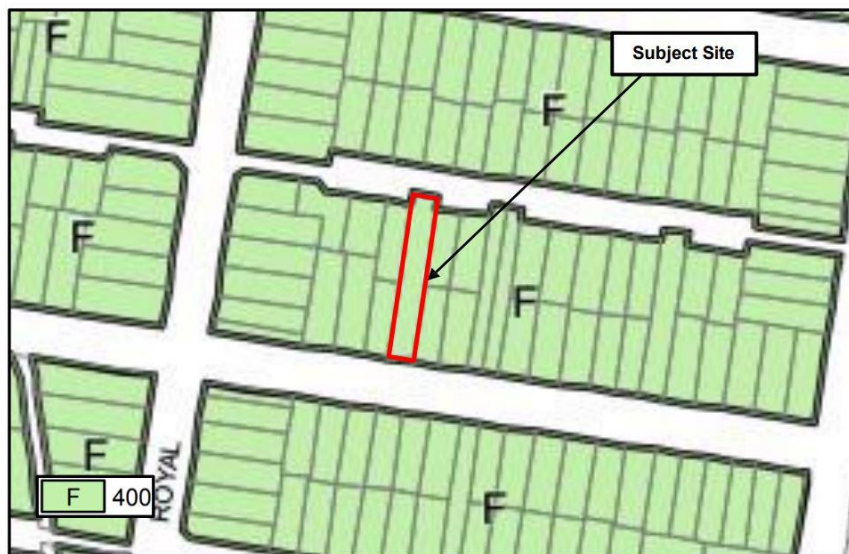


Figure 1: Minimum Lot Size Map

Justification for Contravention of the Development Standard

This written request is considered to justify the contravention of the development standard and addresses the matters required to be demonstrated by Clause 4.6(3), of which there are two aspects. Both aspects are addressed below:

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

Assessment: It is considered that strict compliance with the development standard for the minimum subdivision lot size proposed for the proposed lot sizes of 3.14m² is unreasonable and unnecessary in the circumstances for the following reasons:

- The proposal complies with the objectives of the development standard and the R2 Low-Density Residential zone, indicated in the assessment in **Table 2**. Furthermore, compliance with the development standard is unreasonable and unnecessary as it is in the public interest given it is consistent with the objectives for development within the zone.
- The proposed lot size is consistent with the prevailing sizes of lots in the surrounding local area, with the existing lot being an anomaly in the block (**See Figure 2 below**). Predominantly all north-south orientated lots within the block are less than 400m² in size, with the exception of 60 Boyce Road (**See Table 1 below**).
- It is noted that the existing lot frontages of 10.06m to Boyce Road and Mason Street are 1.94m below the 12m lot frontage requirement of the RDCP 2013; however, such lot frontages exist and are consistent with the prevailing lot frontages of other sites in the vicinity of the site along both Boyce Rd and Mason St frontages (**See Table 1 below**).

Clause 4.6 – Minimum Subdivision Lot Size

38 Boyce Road, Maroubra



Figure 2: Lot size analysis, which shows that the proposed lots will be compatible and consistent with numerous allotments within the immediate and slightly broader context of the subject site (NearMap, 2023)

Table 1: Lot Size and Lot frontage width analysis (NearMap 2023)

Street Name/Number	Lot Size M ²	Approx. Lot frontage width
36A Boyce Road	309.09	9.95m
40 Boyce Road	312.98	9.99m
42 Boyce Road	365.94	11.61m
48 Boyce Road	375.01	11.88m
50 Boyce Road	380.83	12.16m
52 Boyce Road	378.7	12.69m
54 Boyce Road	306.9	9.84m
56 Boyce Road	314.12	10.02m
60 Boyce Road	410.23	11.69m
62 Boyce Road	392.63	11.86m
39 Mason Street	317.16	9.94m
43 Mason Street	310.5	10.03m
45 Mason Street	362.84	11.66m
49 Mason Street	374.29	11.96m
51 Mason Street	386.78	12.27m
53 Mason Street	393.23	12.21m
55 Mason Street	316.1	9.94m
57 Mason Street	321.18	10.06m
61 Mason Street	325.59	11.73m
63 Mason Street	350.44	11.59m

Compliance with the recently adopted reduced lot size of 275sqm under Amendment No. 9 to Randwick LEP 2012

- The proposed lot sizes of 314 sqm are compliant with the lot size requirement that was introduced following the loading of the subject application. On 1 September 2023, the LEP was amended to amend the minimum lot size from 400sqm to 275sqm. On this basis, the proposed lot sizes would satisfy the minimum lot size under the amended version of the LEP under Clause 4.1, as shown in the excerpt from the spatial viewer below:

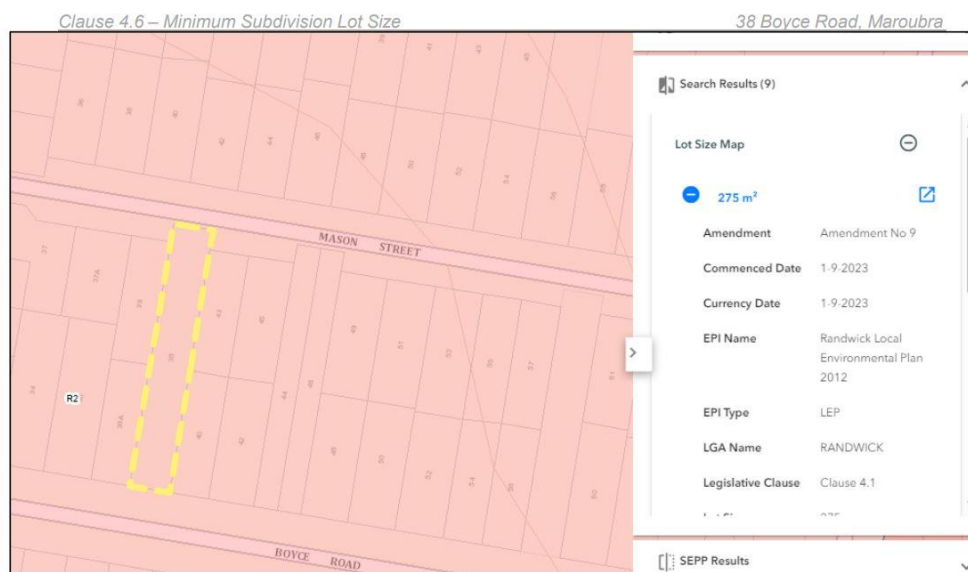


Figure 3: Excerpt of the spatial viewer, which confirms that the amended LEP adopted a reduced lot size of 275sqm

- It is acknowledged that the proposed lot widths are below the 15-metre requirement of the DCP. However, the accompanying cadastral plan shows that the proposed lot widths are consistent with the predominant lot widths along both Boyce Rd and Mason Street. Furthermore, the accompanying sketch, which includes the concept plan, demonstrates that the proposed lot widths do not generate any non-compliance with the building envelope and amenity provisions of the LEP and DCP.

Consistency with other approvals below 400sqm

- The proposed variation and circumstances, whereby the lot sizes are below the 400sqm standard at the time of lodgment but comply with the introduced reduced lot sizes under Amendment No. 9 (275sqm lot sizes), are similar to other approvals and assessments recommending approval. These include:
 - DA197/2023- 1125 Anzac Pde, Matraville- lot sizes of 297.7sqm supported
 - DA348/2023- 152 Moverly Rd, South Coogee- lot sizes of 346.5/357.7sqm approved
 - DA434/2023- 34 Reservoir St, Little Bay- lot sizes of 294.53/292.89sqm- approved
 - DA153/2023- 47 Maroubra Rd, Maroubra- lot sizes of 334.4sqm- approved
- The proposed lot sizes and lot frontages can accommodate future low-density residential dwellings on each lot that can be compliant with the LEP building height limit of 9.5 meters and FSR development standard of 0.75:1 or the newly adopted FSR of 0.6:1.
- Both the proposed lots can achieve compliance with front, side and rear setbacks, private open space, landscaping and parking provisions of Part C1 Low-Density Residential Development in accordance with RDCP2013.
- This is also demonstrated by the numerous houses on Boyce Road and Mason Street that have been constructed on lots of similar size and frontage.

Clause 4.6 – Minimum Subdivision Lot Size

38 Boyce Road, Maroubra

- The lot sizes and lot frontages are also identical to those approved nearby at 134 Gale Rd Maroubra, as outlined in greater detail below.

Similarity to the approved Torrens Title subdivision at 134 Gale Rd

- It is considered that the lot size variation and circumstances are similar to that of a recent application (DA/56/2021) that was approved on 09/12/2021 for the Torrens subdivision with similar lot sizes at 134 Gale Rd, Maroubra. The consistency of the lot pattern of that approval with that proposed is shown below. Further, the approved lots have a frontage of 10.06m, the same as the proposal.
- In the below instance, similar to the subject site, it also required a road widening along Metcalfe Street, and the approved lots were 314.28sqm, which represented a variation of 21.43%, which is almost identical to the proposed variation of 21.5%.



Figure 3: Site at 134 Gale Road, Maroubra that was approved for Torrens Title subdivision under DA/56/2021 (NearMap 2023).

Justification by the Council for this approved development included the following comments in the assessment report:

The proposed subdivision is supported given it is consistent with the established subdivision pattern of the area with 2 street frontages provided.

The proposal demonstrates that dwellings of an appropriate size and can be constructed on the site without creating adverse impacts on neighbouring properties, subject to conditions. This is also demonstrated by the numerous houses in Gale Road and Metcalfe Street which have been constructed on lots of a very similar size.

With regards to minimum allotment width, clause 2.1 of C1 of the Randwick DCP requires new allotments to have a minimum allotment width of 12m. 10.06m is proposed.

The proposed allotment widths are supported having regard to the objectives of the control noting the allotments respects the predominant subdivision and development patterns, with numerous allotments of a similar width, and the proposed allotments are able to accommodate dwellings that (subject to conditions) will provide good amenity and not result in adverse amenity impacts.

- Therefore, the approved DA demonstrates that the lot sizes allow for two new dwellings of desired future character and appropriate size to be constructed on the site without adversely impacting neighbouring properties. This is also demonstrated by the numerous houses on Gale Road and Metcalfe Street, which have been constructed on lots of very similar sizes.
- The consistency with 134 Gale Road in regard to lot sizes, lot frontage and lot depth justifies that the proposed variation is capable of achieving a similar outcome whilst having no significant adverse environmental amenity impacts, such as overshadowing, acoustic or visual privacy, and loss of views or outlook.

Absence of overshadowing impacts

- Given the proposal is for subdividing the subject site into 2 Torrens title lots with no building works proposed and no changes to existing development, there is no overshadowing.
- Notwithstanding the variation, the proposed subdivision of the site can accommodate future development on the proposed lots, given the north-south orientation of lots, will have compliant height and setbacks, and thereby result in dwelling houses that will retain three hours of sunlight to north-facing living areas and private open space of the adjoining dwellings to the east and west, between 8 am and 4 pm during mid-winter.

Absence of visual and acoustic privacy impacts

- Given the proposal is for subdividing the subject site into 2 Torrens title lots with no building works proposed and no changes to existing development, there are no visual and acoustic privacy impacts.
- Notwithstanding the variation, the proposed subdivision of the site can accommodate future development on the proposed lots that will have a compliant separation distance between the development and neighbouring dwellings to the east and west along with compliant deep soil planting in addition to appropriate measures to mitigate potential visual and acoustic privacy impacts.

Absence of visual bulk and scale impacts

- Given the proposal is for subdividing the subject site into 2 Torrens title lots with no building works proposed and no changes to existing development, there are no visual impacts from bulk and scale.
- Notwithstanding the variation, the proposed subdivision of the site can accommodate future development on the proposed lots that will have compliant height and FSR development standards, pursuant to RLEP2012.

Absence of view impacts

- Given the proposal is for subdividing the subject site into 2 Torrens title lots with no building works proposed and no changes to existing development, there are no view impacts.
- Notwithstanding the variation, the proposed lot size variation, the proposed subdivision of

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the site can accommodate future development on the proposed lots that will have compliant height limits in accordance with the RLEP2012 and further, the compliant setbacks will ensure that the outlook is maintained for adjoining properties and the public domain.

No unreasonable amenity impacts

- The proposal is in relation to the Torrens title subdivision. It does not propose any building works or alterations to the existing developments on the subject site and, thereby, has no amenity impacts.
- The proposed lot sizes would permit future development. The proposed lots are capable of having height, bulk and scale that is considered appropriate and will not be responsible for any adverse environmental impacts concerning loss of privacy, loss of view, noise, or traffic and parking impacts.
- The size and shape of the allotments are thereby sufficient to be able to satisfy the relevant provisions of the DCP for Low-Density Residential housing in regard to solar access and overshadowing, energy efficiency and natural ventilation, visual privacy, acoustic privacy, safety and security and view sharing.
- Despite the non-compliance, the proposal achieves the objectives of the development standard and the zoning, as demonstrated in the following table:

Table 2: Consistency with the objectives of the minimum lot size standard in the LEP

Consistency with the objectives of the minimum lot size standard in the LEP	
Objectives	Assessment
4.1 (a) to minimise any likely adverse impact of subdivision and development on the amenity of neighbouring properties,	Complies <ul style="list-style-type: none">• The proposal is for Torrens title subdivision and does not propose any building works or alterations to the existing developments on the subject site.• Both sites will have the ability to achieve compliance with 9.5m height and FSR development standards, private open space, landscaping and parking provisions in accordance with RLEP2012 and RDCP2013 for low-density residential dwellings.• Both the sites allow for the achievement of front, side and rear setbacks and retention of amenity to surrounding properties in relation to privacy and overshadowing.• The site area and frontage widths are also sufficient to enable compliance with parking and the orderly movement of vehicles to and from the site.
4.1 (b) to ensure that lot sizes allow development to be sited to protect natural or cultural features, including heritage items, and to retain special features such as trees and views,	Complies <ul style="list-style-type: none">• The proposal does not include the removal of existing trees and vegetation on the subject site and will also not be responsible for any adverse environmental impacts.• Notwithstanding the proposed lot size variation, the proposed subdivision of the site can accommodate future development on the proposed lots that will have a compliant 9.5m height limit and the compliant setbacks will ensure that outlook is maintained for adjoining properties and the public domain.

*Clause 4.6 – Minimum Subdivision Lot Size**38 Boyce Road, Maroubra*

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

Complies

- Justification has been provided where the proposal varies from the DCP controls for Minimum lot size and frontage, with the variation from the DCP considered acceptable given the limited

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	<p>environmental impacts and given the proposed lot size's consistency with the prevailing lot sizes in the surrounding local area predominantly being less than 400m² with similar lot frontages being less than 12m.</p> <ul style="list-style-type: none"> • A site plan with a concept dwelling layout has been prepared in support of the proposed lot size. <p>The site plan shows that a compliant dwelling that satisfies the relevant building envelope controls and amenity criteria can be achieved. The plan shows that a dwelling can be provided that satisfies or can satisfy:</p> <ul style="list-style-type: none"> - FSR - 9.5M height - Front setback (whilst allowing for road widening of 4.57m) - Side setbacks at the ground and 1st floor (in accordance with the latest version of the DCP) - Rear setback - Site cover - Landscaped area - Private open space - Area of deep soil in front setback - 3 canopy trees - North-facing living area <p>It is envisaged that the FSR will be distributed over a part 1, part 2 storey dwelling house. Such bulk and scale will allow for solar access to the rear yard whilst also maintaining solar access to the neighbouring properties either side and to the rear addressed to Boyce Rd.</p> <p>On this basis, it is demonstrated that the variation in the lot size will not generate any inconsistency with the objective of the standard.</p>
Consistency with the objectives of the R2 Low Density Residential Zone	
Objectives	Assessment
<ul style="list-style-type: none"> • 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. 	<ul style="list-style-type: none"> • The proposal is for Torrens title subdivision only and does not propose any building works or alterations to the existing developments on the subject site. The proposal is permissible in the R2 Low-Density Residential land use zone in accordance with the RLEP 2012. • It satisfies the zone objectives by way of recognising the desirable elements of the existing streetscape and providing for additional allotments that are consistent with the shape, size, and dimension of those within the block. • It is considered that the proposed Torrens title subdivision encourages housing affordability (in comparison to the existing large residential dwelling and large existing lot) whilst also providing for the housing needs of the community within a low-density residential environment. • Notwithstanding the lot size variation, it will continue to protect the amenity of residents to the extent that the objective was intended. • The proposal is therefore considered to be consistent with the zone objectives.

Based on the above assessment, it is considered that strict compliance with the LEP minimum lot size standard is unreasonable and unnecessary in this instance.

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

Assessment: It is considered that there are sufficient environmental planning grounds to justify varying the minimum subdivision lot size development standard, which includes:

- The proposed lot sizes of 314sqm are compliant with the lot size requirement that has been introduced following lodgement of the subject application. On 1 September 2023, the LEP was amended to amend the minimum lot size from 400sqm to 275sqm. On this basis, the proposed lot sizes would satisfy the minimum lot size under the amended version of the LEP under Clause 4.1, as shown in the excerpt from the spatial viewer below:

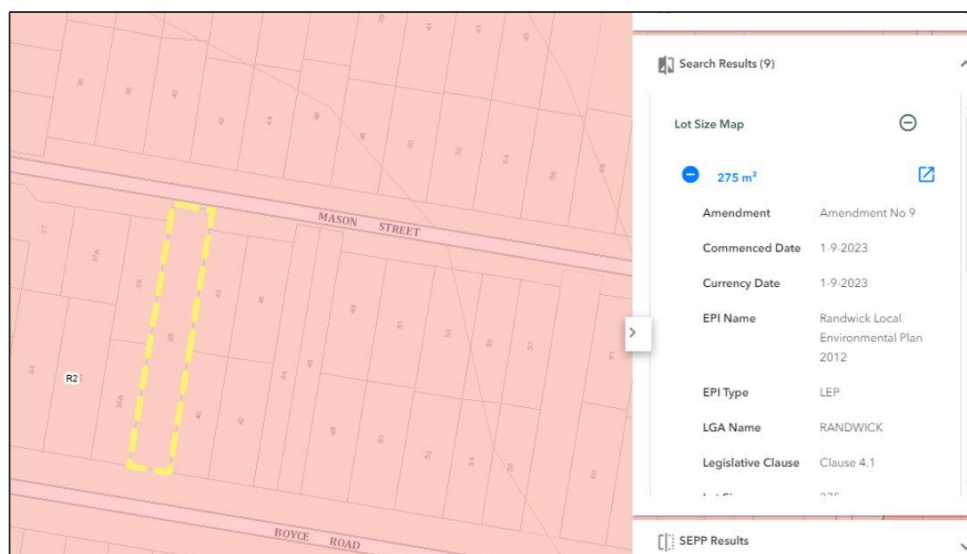


Figure 4: Excerpt of the spatial viewer, which confirms that the amended LEP adopted a reduced lot size of 275sqm.

It is acknowledged that the proposed lot widths are below the 15-metre requirement of the DCP. However, the accompanying cadastral plan shows that the proposed lot widths are consistent with the predominant lot widths along both Boyce Rd and Mason Street. Furthermore, the accompanying sketch, which includes the concept plan, demonstrates that the proposed lot widths do not generate any non-compliance with the building envelope and amenity provisions of the LEP and DCP. This is considered to constitute sufficient ground for environmental planning.

- The proposal is in relation to the Torrens title subdivision, and due to there being no increase to the existing building height or envelope, the proposed subdivision will not be responsible for any adverse environmental impacts in relation to loss of privacy, loss of view, noise, or traffic and parking impacts.

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- The proposed subdivision is consistent and compliant with the existing subdivision pattern within the locality.
- The proposal still achieves the objectives of the R2 Low-density residential zone and that of the RLEP 2012 development standards.

The proposed lot sizes represent an orderly and economic use of the site, with no adverse environmental impacts above and beyond that of a compliant lot size. Based on the above points, it is therefore considered that there are sufficient environmental planning grounds to permit the minimum lot size for dwelling houses in this instance.

Other Matters for Consideration

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

Assessment: The above assessment demonstrates that the proposed minimum lot size satisfies the objectives of the minimum subdivision lot size development standard and the R2 low-density residential zone.

Furthermore, it is considered that the variation does not raise any matters of public interest as there are no public views or detrimental streetscape outcomes associated with the minor minimum subdivision lot size variation.

Given that the proposal is consistent with the desired future character for the area nominated by the specific controls in the LEP and DCP, and that there are no adverse or unreasonable impacts to the broader community, it is considered that there are no public interest matters which would prevent a variation to the minimum subdivision lot size standard.

(5) In deciding whether to grant concurrence, the Director-General must consider:

(a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning

Assessment: The proposed minimum lot size variation allows for the orderly and economic use of land as envisaged by the *Environmental Planning and Assessment Act, 1979*.

The resultant lot sizes would permit future development and the proposed lots are capable of having height, bulk and scale that will not be visually dominant in the streetscape and will also be consistent with the character of the local area, whilst being compliant with the FSR development standard of 0.75:1/0.6:1 and building height standard of 9.5m in accordance with the RLEP2012.

The proposed lot size is therefore consistent with the State and Regional Policies, particularly urban consolidation principles which seek to provide additional height and density near transport and established services.

Concurrence

The Secretary's concurrence under clause 4.6(4) of the LEP has been delegated to the

*Clause 4.6 – Minimum Subdivision Lot Size**38 Boyce Road, Maroubra*

Council by written notice dated 21 February 2018, attached to the Planning Circular PS 18-003 issued on 21 February 2018. That concurrence may also be assumed by the Court pursuant to s39(6) of the Land and Environment Court Act.

(b) the public benefit of maintaining the development standard

Assessment: There is no public benefit in maintaining the minimum subdivision lot size development standard, given the limited amenity impacts associated with the development and the positive streetscape outcome that would arise from the redevelopment of the subject site.

(c) any other matters required to be taken into consideration by the Director-General before granting concurrence.

Assessment: There are not considered to be any additional matters to consider beyond those discussed above.

Conclusion

For reasons mentioned herein, this Clause 4.6 variation is forwarded in support of the development proposal at No. 38 Boyce Road, Maroubra and is requested to be looked upon favourably by the consent authority.

Appendix 3: DCP Compliance Table

Note: A number of requirements/controls that are not related to the proposal have been deliberately omitted.

3.1 Section C1: Low Density Residential

DCP Clause	Control	Proposal	Compliance
	Classification	Zoning = R2	
2	Site planning	Site = 673m²	
2.1	Minimum lot size and frontage		
	Minimum lot size (RLEP): R2 = 400m ²	Lot 261 = 314m ² Lot 262 = 314m ²	No, refer Clause 4.6 Assessment above
	Minimum frontage		
	Frontage R2 = 12m (min.) No battle-axe or hatchet in R2 or R3	Lot 261 = 10.06m Lot 262 = 10.06m Both lots have street frontage (not hatched-shaped or battle-axe lots)	No, refer Key Issues above. Complies.
2.3	Site Coverage		
	Up to 300m ² = 60% (max.)	Lot 261 = 41% (129m ²) (existing dwelling house)	Complies
		Lot 262 = 13% (41m ²) (existing garage)	Complies
2.5	Deep Soil Permeable Surfaces		
	Up to 300m ² = 30% (min.)	Lot 261 = >30% Lot 262 = >30%	Complies Complies
	Private open space (POS)		
	Dwelling Houses		
	Up to 300 sqm = 5m x 5m each (min.)	Lot 261 = > 5m x 5m Lot 262 = > 5m x 5m	Complies

3.2 Section B11: Development in Laneways Nominated for Road Widening

Nominated laneway:

Mason Street, Maroubra, between Bunnerong Road and Anzac Parade

Objectives

- To facilitate widening and streetscape improvement of specially nominated laneways in Randwick City.

Comment: Proposed land dedication will facilitate widening and streetscape improvement of nominated laneways.

- To achieve the dedication of land for laneway widening purposes through permitting subdivision and dwelling house development on nominated sites fronting the lanes.

Comment: The proposed subdivision involves land dedication that achieves the above objective for Mason Street (a nominated laneway).

Controls

Notwithstanding the minimum allotment size provisions of the RLEP and the minimum frontage width requirements of this DCP, the subdivision of land for a dwelling house fronting a nominated laneway may be permitted having regard to the following criteria:

- i) The merits of the proposal and compliance with the objectives of this DCP

Comment: Refer to Key Issues Assessment in report.

- ii) The dedication to Council of a strip of land 4.57m in depth along the frontage of the lane for road widening purposes.

Comment: Proposed land dedication comprises a strip of land of 4.57m depth along frontage (addressing Mason Street) to facilitate road widening.

Responsible officer: Miguel Rivera, Coordinator Fast Track

File Reference: DA/337/2023

D15/24

Development Consent Conditions



Folder /DA No:	DA/337/2023
Property:	38 Boyce Road, MAROUBRA NSW 2035
Proposal:	Proposed Torrens title subdivision of subject site into two (2) x allotments.
Recommendation:	Approval

Development Consent Conditions

GENERAL CONDITIONS

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

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

Approved Plans & Supporting Documentation

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

<i>Plan</i>	<i>Drawn by</i>	<i>Dated</i>	<i>Received by Council</i>
Plan of Proposed Subdivision	David John Tremain	27 July 2022	30 June 2023

REQUIREMENTS PRIOR TO THE ISSUE OF A SUBDIVISION CERTIFICATE

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

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

Off-Street Car Space (Lot Fronting Boyce Road)

- The property owner must have an internal off-street car space approved for the Lot fronting Boyce Road.

Note: The off-street car space is to be constructed in accordance with any approved plans, prior to the release of the plans for Subdivision.

Sydney Water

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

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

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

Drainage – Mason Street Frontage Lot (Detention System)

4. A "restriction as to user" shall be placed on the title of the proposed rear Lot fronting Mason Street in conjunction with the registration of the proposed plan of subdivision for this property. This restriction as to user shall indicate that onsite stormwater detention is required on the lot in conjunction with any development approval issued for the Mason Street Lot.

Note: This is to ensure that no works which could affect the provision of onsite detention on the subject lot shall be permitted to be carried out without the prior consent in writing of the Council). This restriction will also ensure that all prospective purchasers of the subject lot are aware that onsite stormwater detention will be required as a condition of any future development consent.

Easements (Drainage/Utility Services)

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

Road Widening Dedication (Mason Street Frontage)

6. The property owner must dedicate a strip of land 4.57 metres wide along the Mason Street frontage for road widening purposes. All costs associated with the dedication shall be borne by the property owner.

Removal of Structures – Mason Street Frontage

7. The property owner must remove all structures located within the dedicated strip of land including any portion of the northern side timber boundary fencing located within the road dedication.
8. The property owner must remove the existing concrete driveway slab within Council land (including the dedicate strip of land) and regrade and returf the section of land that is to be dedicated for road widening. The works must be to Council's satisfaction.

Subdivision Certificate

9. A formal application for a subdivision certificate is required to be submitted to and approved by the Council and all relevant conditions of this development consent are required to be satisfied prior to the release of the subdivision plans including the construction of the internal off-street car space fronting Boyce Road.

ADVISORY NOTES

The following information is provided for your assistance to ensure compliance with the *Environmental Planning & Assessment Act 1979*, *Environmental Planning & Assessment Regulation 2000*, or other relevant legislation and Council's policies. This information does not form part of the conditions of development consent pursuant to Section 80A of the Act.

- Prior to commencing any works, the owner/builder should contact *Dial Before You Dig* on 1100 or www.dialbeforeyoudig.com.au and relevant Service Authorities, for information on potential underground pipes and cables within the vicinity of the development site.
- The property owner is to advise Council in writing and/or photographs of any signs of existing damage to the Council roadway, footway, or verge prior to the commencement of any building/demolition works.
- The property owner is formally advised that as part of any future development within the newly created Lot fronting Mason Street, the presence of the row of established trees

along the eastern site boundary will need to be considered, with Council's preference being that they are retained and incorporated as existing site features so as to maintain biodiversity and environmental amenity. If removal of any is sought then the onus is placed entirely on the Property Owner/Arborist/Landscaper to provide a strong enough case and sufficient justification for such an action, for Council's consideration.

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Development Application Report No. D16/24

Subject: 36 Ocean Street, Clovelly (DA/54/2022)


Executive Summary

Proposal:	Internal alterations to reconfigure floor plan of dwelling within an existing residential flat building including enclosure of existing balcony.
Ward:	North Ward
Applicant:	S Pryce
Owner:	S Pryce
Cost of works:	\$150,000.00
Reason for referral:	The proposal exceeds the Floor Space Ratio development standard by more than 10%

Recommendation

- A. That the RLPP is satisfied that the matters detailed in Clause 4.6(4) of Randwick Local Environmental Plan 2012 have been adequately addressed and that consent may be granted to the development application, which contravenes the floor space ratio development standard in Clause 4.4 of Randwick Local Environmental Plan 2012. The concurrence of the Secretary of Planning, Industry and Environment may be assumed.
- B. That the RLPP grants consent under Sections 4.16 and 4.17 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/54/2022 for alterations and additions to Unit 3 including balcony enclosure at 36 Ocean Street, Clovelly, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  Consent Conditions - DA/54/2022 - 36 Ocean Street, CLOVELLY

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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 floor space ratio by more than 10%

The proposal seeks development consent for alterations and additions to Unit 3 within the existing residential flat building including the reconfiguration of the existing floor plan and enclosure of the balcony to provide additional floor area to bedroom 2.

The key issues associated with the proposal relate to the variation to the FSR development standard, and the existing use rights pertaining to the site. The FSR variation arises because of the FSR of the existing building already exceeding the current standard and these works further increase that.

The increase in GFA which is a result of the enclosure of the balcony is 4sqm.

This GFA increase is within the overall building envelope and does not contribute to the overall building and scale of the existing building envelope or will result in any unreasonable amenity impacts upon either the other dwellings within the building or adjoining properties.

The application is recommended for approval subject to conditions.

2. Site Description and Locality

The site is on the western side of Ocean Street and contains a present a three (3) storey residential flat building with garaging and building entrance below. The site is legally defined as Lot 101 in DP 540876, being lots 1-18 in SP 4437. The site has an area of 613m² and is within the R2 residential zone and also within the Foreshore Scenic Protection area.



Photo 1: Existing building as viewed from street frontage.

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Photo 2. Subject balcony to be enclosed, lower level Unit 3.



Photo 3: Subject balcony to be enclosed, lower level Unit 3.

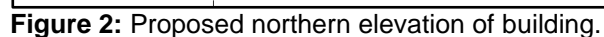
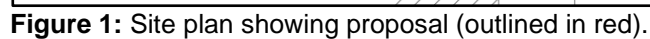
3. Relevant history

There have been a series of historical and recent approvals for the building which include the enclosure of balconies.

BA/18/1973 – Enclosure of balcony to Unit 3
BA/19/1973 – Enclosure of balcony to unit 1
BA/79/1973 – Enclosure of balcony to unit 9
BA/83/1973 – Enclosure of balcony to unit 6
BA/127/1981 – Enclosure of balcony to unit 2

DA/998/1999 – Enclosure of balcony and internal alterations to unit 5
DA/753/2013 – Enclosure of balcony to unit 5
DA/620/2017 – Enclosure of balcony to unit 4
DA/621/2017 – Enclosure of balcony to unit 7

Figures 1 to 4 illustrate the proposed development.



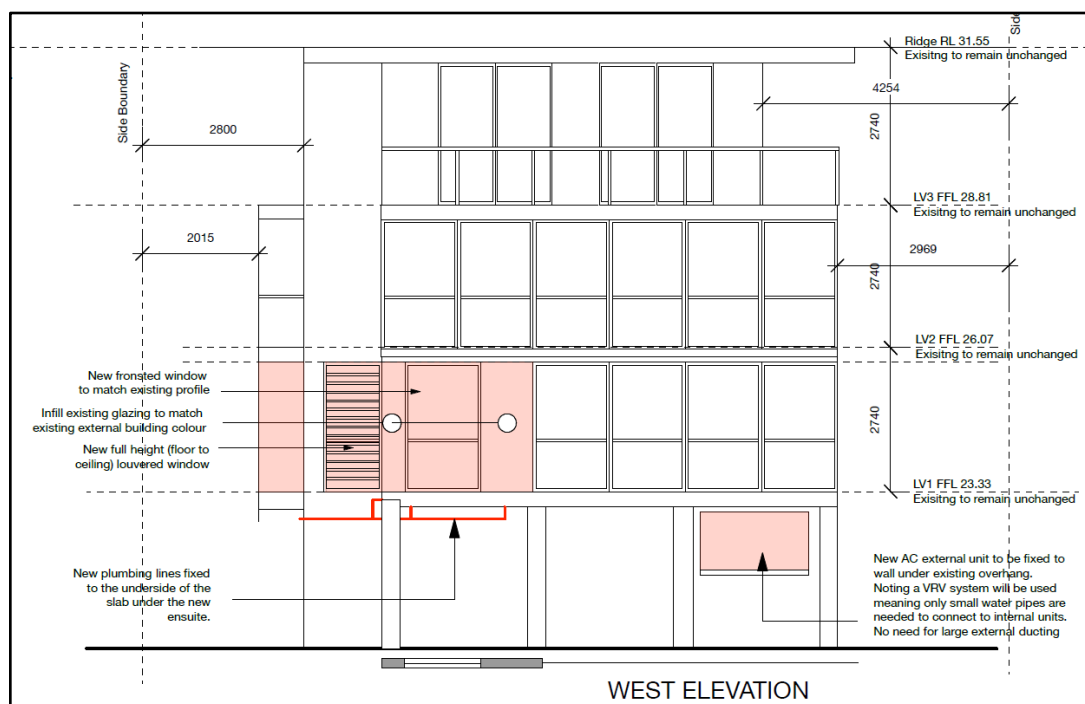


Figure 3: Proposed western elevation of building.

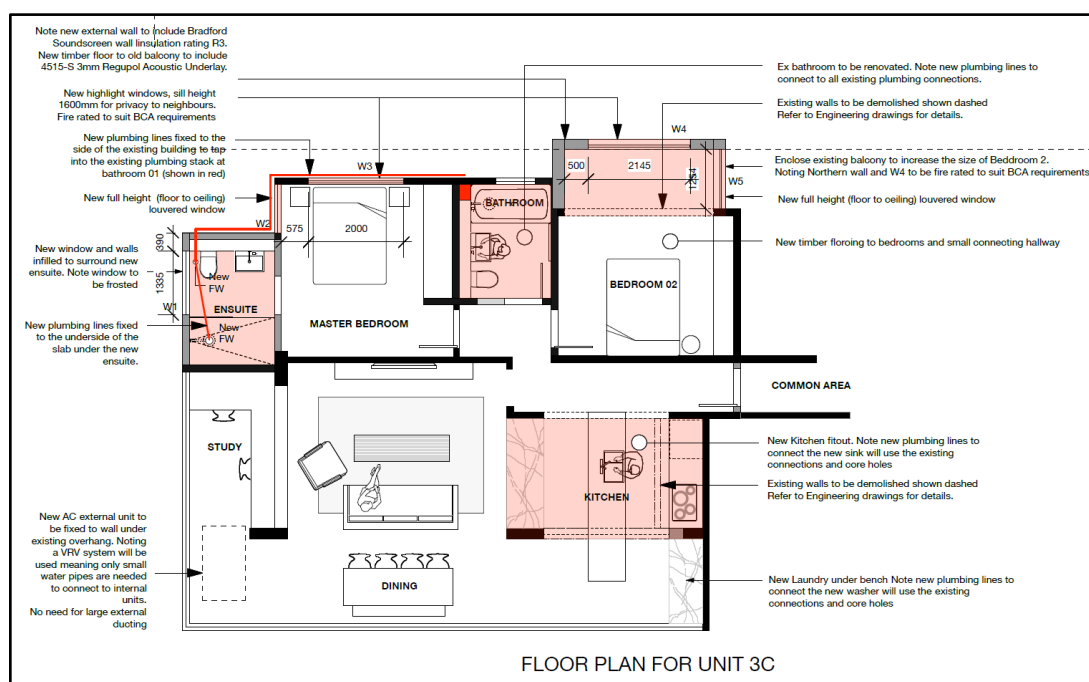


Figure 4: Proposed floor plan of dwelling 3.

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick Community Engagement Strategy. No submissions were received during the notification period.

6. Relevant Environment Planning Instruments

6.1. State Environmental Planning Policy 65 - Design Quality of Residential Apartment Developments

The proposed development involves minor alterations and additions to the existing Residential Flat Building to enclose the balcony and internal alterations to Unit 3.

Given the minor nature of the works which are contained within the existing building envelope, the proposed development is not considered to constitute the substantial redevelopment or substantial refurbishment of the existing building and therefore, SEPP 65 is not applicable in this instance. Notwithstanding, the proposed alterations shall provide better amenity for occupants and would be consistent with the design quality principals set out in Schedule 1 of SEPP 65, provided the rooms are utilised for their intended purpose of ancillary areas.

6.2. SEPP (Biodiversity and Conservation) 2021

Chapter 2 of the SEPP applies to the proposal and subject site. The aims of this Chapter are:

- (a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and*
- (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.*

The proposed development does not involve the removal of any vegetation (including any trees). As such, the proposal achieves the relevant objectives and provisions under Chapter 2.

6.3. SEPP (Resilience and Hazards) 2021

The provisions of SEPP (Resilience and Hazards) require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site.

The subject site has only previously been used for residential purposes and as such is unlikely to contain any contamination. The nature and location of the proposed development (involving alterations and additions to the existing dwelling) are such that any applicable provisions and requirements of the above SEPP have been satisfactorily addressed.

6.4. Randwick Local Environmental Plan 2012 (LEP)

The subject site is zoned R2 Low Density Residential as identified on the Land Zoning Map of RLEP 2012. The existing building on the subject site is defined as a Residential Flat Building. Pursuant to the Land Use Table in Part 2 of RLEP 2012, a "residential flat building" is a prohibited use in the R2 zone.

The Applicant claims the site benefits from existing use rights pursuant to Division 4.11 of the Environmental Planning and Assessment Act 1979. Section 4.65 of Division 4.11 requires that the use of a building, work or land was lawfully granted and commenced and in existence prior to the coming into effect of RLEP 2012. Furthermore, under Section 4.66, the use is presumed to be abandoned, unless the contrary is established, if the use ceases for a continuous period of 12 months.

A search of Council records indicates that the original building was approved under Building Application 1046/1967, and as noted above in the Section 3, relevant history above, the building has been the subject of numerous approvals for alterations to individual dwellings within the building, most commonly the similar enclosure of balconies.

It is therefore established that existing use rights apply to the site and there is no evidence to suggest that the approved use of the building as a residential flat building has been discontinued for any period of over 12 months since its commencement.

In view of the above, it is considered that existing use rights pertain to the site under Part 4, Division 4.11 of the EP&A Act and Part 7 of the EP&A Regulation 2021, and the subject application therefore may be considered and determined under the “existing use” provisions. See Key Issues for detailed existing use rights assessment.

The proposal is consistent with the specific objectives of the zone in that the proposed activity and built form will provide for the continued use of the site as a residential development, shall not fundamentally alter the existing streetscape, and shall not result in any unreasonable amenity impacts upon adjoining and surrounding properties.

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

Clause	Development Standard	Proposal	Compliance (Yes/No)
CI 4.4: Floor space ratio (max)	0.6:1	1.165:1	No, see Key Issues discussion of Clause 4.6 Objection.

6.4.1. Clause 4.6 - Exceptions to development standards

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

6.4.2. Clause 6.7 Foreshore scenic protection area

Clause 6.7 of the RLEP includes objectives in relation to the Foreshore Scenic Protection area which seek to;

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

Development must not be granted for development on land to which this clause applies unless the consent authority is satisfied that the development;

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

Having regard to the objectives of the clause there are no objections to the proposal as the scope of works are minimal, within the existing building envelope, in keeping with not only the established character and appearance of the existing building and those adjoining and will not detract from the appearance of the building within the existing local streetscape or detract from the aesthetics of the Foreshore Scenic Protection Area.

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.4: Floor space ratio (max)	0.6:1	1.165:1 NB: Existing FSR is 1.16:1	342m ²	206%

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Applicant's written justification for the departure from the FSR standard is contained in Appendix 1.

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

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

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

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

The Applicant's written justification demonstrates that this objective is satisfied by noting that the building works remain consistent with the desired future character of the locality by maintaining the existing residential use of the building.

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

The Applicant's written justification demonstrates that this objective is satisfied by noting that the built form is mostly existing and contributes to a well articulate building form.

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

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

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

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

The Applicant's written justification demonstrates that this objective is satisfied by noting that the scale of development will not result in detrimental impacts to the adjacent sites or public domain. The proposal has no impact upon views either to or from the subject premises or the adjoining sites.

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

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

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

The proposal's non-compliance with the development standard does not result in adverse environmental impacts in regard to the public domain, with there being no visual or acoustic impacts at all.

The proposed development maintains the existing well-articulated building, with the proposed second floor resulting in no perceived increase in bulk and scale when viewed from the public domain and adjacent site.

The proposal is compliant with the relevant objectives for the zone as outlined in the Randwick LEP.

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

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

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

Assessment against objectives of floor space ratio standard

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

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

Assessing officer's comment: The desired future character of the locality is maintained as the proposal details only minor alterations to the existing residential flat building and does not significantly alter or intensify that use with the primary residential character in the locality.

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

Assessing officer's comment: The proposed enclosure of the balcony to Unit 3 is consistent with most of the other balconies to the building that have already been enclosed and being similarly enclosed by glazing maintains the buildings presentation as a visually articulated building especially in this prominent location.

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

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

Assessing officer's comment: The site is not within a heritage conservation area or in the vicinity of any heritage item.

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

The assessment that must be made is whether or not the development will adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.

- Visual bulk: The development does not alter the visual presentation of the existing three story residential flat building within the existing streetscape.
- Loss of privacy: The development does not result in any significant privacy issues as the enclosure of the balcony, which is an open break out space for the dwelling, is not to now be part of the adjoining bedroom reduces which the potential use of that part of the building in terms of visual and acoustic privacy.
- Overshadowing: The proposal does not result in any additional overshadowing to any of the adjoining properties as the existing building envelope is maintained.
- Views: The proposal has no impact upon views either to or from the subject property or in the general locality.

Based on the above assessment, it is considered that development will 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 proposed development will maintain the existing level of housing needs of the community and in particular in relation to this building improves the amenity of the residents of this dwelling.

The development is consistent with the objectives of the floor space ratio standard and the R2 low density Residential zone. Therefore the development will be in the public interest.

4. Has the concurrence of the Secretary been obtained?

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

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

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

Is there public benefit from maintaining the development standard?

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

Conclusion

On the basis of the above assessment, it is considered that the requirements of Clause 4.6(3) have been satisfied and that development consent may be granted for development that contravenes the FSR development standard.

8. Development control plans and policies

8.1. Randwick Comprehensive DCP 2013

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

In the assessment of the proposed development, the provisions, requirements and controls under the DCP were considered. It is noted that given the nature and location of the proposal in combination with its reliance on the existing use rights under the EP&A Act – only some of these are triggered. The proposed development involves changes to the existing layout and in-fill of a balcony that are wholly contained within the current building footprint and therefore, do not result in any changes in terms of building height, site coverage, landscaped (deep soil/permeable surface) areas and setbacks. The resultant in-fill of the balcony contributes to changes to the presentation and expression of the building – however, the overall design is considered appropriate and ties-in with the remainder of the residential flat building – with a number of balconies having been converted to sunrooms/bedroom extensions. Notably, the external elements proposed to change are situated in the western portion (rear) of the site and will not be highly visible nor presentable to the public domain. An evaluation of potential visual bulk, privacy, overshadowing and view loss impacts has determined that any impacts of this nature generated by the proposal will be minor and reasonable.

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

9.1. Discussion of key issues

Existing Use Rights

Section 4.65 of Division 4.11 of the *Environmental Planning and Assessment Act 1979* requires that the use of a building, work or land was lawfully granted and commenced and in existence prior to the coming into effect of RLEP 2012. Based on a search of past approvals, the existing building was approved under Building Application BA/1046/1967 and the building has been the subject of numerous building and development applications in the past, most recently in 2017, for various alterations and additions to the building which have all maintained the existing and ongoing use of the building as a residential flat building.

It is also noted that the building has been in consistent pattern of ownership being individual strata lots with included nominated common areas.

Therefore it is established that the use of the building was lawfully granted and in existence prior to the implementation of RLEP 2012.

Section 4.67 of the EP&A Act provides that any provisions in an instrument that would derogate from the “incorporated provisions” of the Act would have no force or effect. It should be noted that derogation from the incorporated provisions has also been considered in recent caselaw with regards to the matters of *Saffioti v Kiama Municipal Council* [2019] NSWLEC 57 and *Made Property Group Pty Limited v North Sydney Council* [2020] NSWLEC 1332 in which it was determined that the provisions of a LEP do not necessarily derogate from the incorporated provisions of the EP&A Regs and that the existing use right permits the permissibility and alteration of the development, however may not result in the derogation from the standards of a LEP. In this instance (and adopting the Commissioner’s findings in the above LEC matters), it is considered that the provisions of clause 4.4 read in conjunction with clause 4.6 of RLEP 2012 allow the application to be made and considered by the consent authority, and do not derogate from the incorporated provisions, and that an assessment of the development in accordance with s4.15 of the EP&A Act should be undertaken.

Furthermore, as the provisions of clause 4.4 are applicable, and the Applicant seeks to vary the FSR, a clause 4.6 Objections has been provided and is assessed in Section 7.1 above.

The Land and Environment Court has established a planning principle for urban development (*Fodor Investments v Hornsby Shire Council*, 2005) which establishes criteria for the assessment of proposals on land with existing use rights. As such, the proposal has been assessed against the relevant provisions of RLEP 2012 and RDCP 2013 as well as the planning principal.

Assessment against the planning principal is provided below:

Planning Principal 1

How do the bulk and scale (as expressed by height, floor space ratio and setbacks) of the proposal relate to what is permissible on surrounding sites?

While planning controls, such as height, floor space ratio and setbacks do not apply to sites with existing use rights; they have relevance to the assessment of applications on such sites. This is because the controls apply to surrounding sites and indicate the kind of development that can be expected if and when surrounding sites are redeveloped. The relationship of new development to its existing and likely future context is a matter to be considered in all planning assessment.

The subject site is located within the R2 – Low Density Residential zoning, with the adjoining and adjacent properties within the surrounding area primarily low density developments in the form of dwelling houses and semi-detached dwellings. There are also several examples in the near vicinity of residential flat buildings of similar bulk and scale to this building which are also non-conforming uses.

The existing FSR of the building exceeds the permitted 0.5:1, being 1.16:1. The proposed works shall result in a minor increased to the approved FSR to 1.165:1 or an additional 4m².

The proposed works that provide for additional floor area constitute the enclosure of the balcony of unit No.3 and remains within the overall building envelope of the building.

The proposal does not alter the maximum height of the building, or the approved site coverage and landscaping on the site. While it is acknowledged that the proposed development significantly exceeds the FSR of the R2 – Low Density zone, given the context of the existing building and existing character of the immediate locality, the bulk and scale of the proposal is not considered to be incompatible with the existing streetscape or the character of the local area within the immediate vicinity.

In view of the above, and subject to the recommendations, the bulk and scale of the proposed development is supportable when considered in the context of the site and surrounds.

Planning Principal 2

What is the relevance of the building in which the existing use takes place?

Where the change of use is proposed within an existing building, the bulk and scale of that building are likely to be deemed acceptable, even if the building is out of scale with its surroundings, because it already exists.

The proposed development does not involve a change of use to the existing development. The proposed development seeks to improve the amenity of the existing Unit 3 by providing additional usable floor area within the dwelling. The proposal does not alter the number of bedrooms or otherwise intensify the use of the dwelling.

Planning Principal 3

What are the impacts on adjoining land?

The impact on adjoining land should be assessed as it is assessed for all development. It is true that where, for example, a development control plan requires three hours of sunlight to be maintained in adjoining rear yards, the numerical control does not apply. However, the overshadowing impact on adjoining rear yards should be reasonable.

Visual Privacy

The enclosure of the balcony of Unit 3 does not result in any additional privacy impacts. The enclosure of the balcony reduces existing privacy impacts given that the open nature of the balcony and use as an area of break out open space to the dwelling is altered to an internal bedroom that has a greater internal privacy for the occupants.

Acoustic Privacy

The enclosure of the balcony minimizes acoustic privacy impacts to the adjoining properties given that the enclosure will provide for noise attenuation that does not currently exist within the open balcony.

Solar Access and View Loss

Due to the proposed works not extending beyond the existing building envelope, the proposal does not impact solar access to adjoining properties or result in any view loss impacts.

Planning Principal 4

What is the internal amenity?

Internal amenity must be assessed as it is assessed for all development. Again, numerical requirements for sunlight access or private open space do not apply, but these and other aspects must be judged acceptable as a matter of good planning and design. None of the legal principles discussed above suggests that development on sites with existing use rights may have lower amenity than development generally.

The proposed development provides for increased amenity for occupants in conjunction with the floor plan reconfiguration of the dwelling improves the internal amenity of the dwelling.

Based on the above existing use rights assessment, and subject to the recommendations within the report, the proposal is considered reasonable.

10. Conclusion

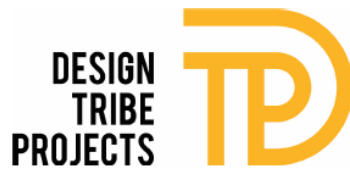
That the application to be approved (subject to conditions) for the following reasons:

- The proposal is consistent with the relevant objectives contained within the RLEP 2012 and the relevant requirements of the RDCP 2013

- The proposal is consistent with the specific objectives of the R2 zone in that the proposal will provide for the continued use of the site as a residential development and continues to reflect the desired future character of the area and not result in any unreasonable amenity impacts to the adjoining and surrounding properties.
- The site is subject to existing use rights and the proposal is considered to be appropriate to the subject site and will not result in any unreasonable adverse impacts upon either the amenity of the adjoining premises or the character of the locality.

D16/24

Appendix 1: Applicant's written request seeking to justify the contravention of the development standard



D16/24

May 2023 (Revision b)
Randwick Council

Re: 36 Ocean Street, Clovelly

Request to contravene a Development Standard in accordance with Clause 4.6 of Randwick Council LEP 2012

Lot Description: SP4437 for 36 Ocean Street, Clovelly
Site Area: 604m²
Zoning: R2 Low Density

Specify the nature of the Development standard sought to be varied and details of the variation.

This Section 4.55 development proposal seeks to vary the maximum floor space ratio control in relation to the proposed alterations to a residential flat building.

Clause 4.4	Description of Standard	LEP Standard	Existing	Proposed
	Floor Space Ratio	0.6:1	1.16:1	1.165:1

Site Area: 604m²

The floor space ratio defined for the subject site under the Randwick LEP 2012 is 0.6:1. The current FSR for the site is approximately 1.16:1, therefore already more than the existing zoning control by 0.56 or 700sqm over in terms of floor area.

Council's LEP Clause 4.6 variation allows for the consent authority to grant consent for a development that contravenes the imposed development standard set by the LEP. Clause 4.6 aims to provide an appropriate degree of flexibility in applying its development standards.

The proposed site enjoys 'existing use rights' pursuant to Division 4.11 of the Environmental Planning and Assessment Act 1979. Section 4.65 of Division 4.11 requires that the use of a building, work or land was lawfully granted and commenced and in existence prior to the coming into effect of RLEP 2012. There is no evidence to suggest the site has not been in use as a residential flat building for any 12 month period since its construction and the building was lawfully approved well before the RLEP2012 came into effect.

The new balcony enclosure will again increase this FSR to 1:1.65 by adding an additional 4sqm. Therefore the proposal will now be over FSR by 0.565 or 704sqm.

This application has been prepared in accordance with the NSW Department of Planning, Infrastructure and Environment (DPI&E) guideline Varying Development Standards: A Guide, August 2001, and has incorporated as relevant principles identified in the following judgements:

- Winten Property Group Limited v North Sydney Council [2001] NSWLEC 46;

- - Wehbe v Pittwater Council [2007] NSWLEC 827;
- - Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 1009 ('Four2Five No 1');
- - Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90 ('Four2Five No 2');
- - Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 248 ('Four2Five No 3');
- - Micaul Holdings Pty Limited v Randwick City Council (2015) NSWLEC 1386;
- - Randwick City Council v Micaul Holdings Pty Ltd (2016) NSW LEC7;
- - Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118;
- - RebelMH Neutral Bay v North Sydney Council [2019] NSWCA 130;
- - Baron Corporation v The Council of the City of Sydney [2019] NSWLEC 61; and
- - Al Maha Pty Ltd v Huajun Investments Pty Ltd [2018] NSWCA 245.

CLAUSE 4.6 – EXCEPTION TO DEVELOPMENT STANDARDS

4.6 Exceptions to development standards

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

- (a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,
 - (b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.
- (2) Development consent may, subject to this clause, be granted for development even though the development would contravene a development standard imposed by this or any other environmental planning instrument. However, this clause does not apply to a development standard that is expressly excluded from the operation of this clause.
 - (3) Development consent must not be granted for development that contravenes a development standard unless the consent authority has considered a written request from the applicant that seeks to justify the contravention of the development standard by demonstrating—
 - (a) that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case, and
 - (b) that there are sufficient environmental planning grounds to justify contravening the development standard.
 - (4) Development consent must not be granted for development that contravenes a development standard unless—
 - (a) the consent authority is satisfied that—
 - (i) the applicant's written request has adequately addressed the matters required to be demonstrated by subclause (3), and
 - (ii) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
 - (b) the concurrence of the Planning Secretary has been obtained.
 - (5) In deciding whether to grant concurrence, the Planning Secretary must consider—
 - (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
 - (b) the public benefit of maintaining the development standard, and
 - (c) any other matters required to be taken into consideration by the Planning Secretary before granting concurrence.
 - (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone C2 Environmental Conservation, Zone C3 Environmental Management or Zone C4 Environmental Living if—
 - (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
 - (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.

Note—

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

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

What is the name of the planning instrument that applies to the land?

Randwick Local Environment Plan 2012

What is the zoning of the land?

The subject site is zoned R2 Low Density Residential

Objectives of Zoning: R2 Low Density

1 Objectives of zone

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

What is the development standard being varied?

The development standard being varied is the maximum floor area standard.

Under what Clause is the development standard listed?

Randwick Local Environment Plan, Clause 4.4.

What are the objectives of the development standard?

Randwick Local Environment Plan 2012 - Clause 4.4 Maximum Floor Space

4.4 Floor space ratio

- (1) The objectives of this clause are as follows—
 - (a) to ensure that the size and scale of development is compatible with the desired future character of the locality,
 - (b) to ensure that buildings are well articulated and respond to environmental and energy needs,
 - (c) to ensure that development is compatible with the scale and character of contributory buildings in a conservation area or near a heritage item,
 - (d) to ensure that development does not adversely impact on the amenity of adjoining and neighbouring land in terms of visual bulk, loss of privacy, overshadowing and views.
- (2) The maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the [Floor Space Ratio Map](#).
- (2A) Despite subclause (2), the maximum floor space ratio for a dwelling house or semi-detached dwelling on land in Zone R2 Low Density Residential or Zone R3 Medium Density Residential is not to exceed—
 - (a) if the lot is more than 300 square metres but not more than 450 square metres—0.75:1, or
 - (b) if the lot is more than 450 square metres but not more than 600 square metres—0.65:1, or
 - (c) if the lot is more than 600 square metres—0.6:1.
- (2B) Despite subclause (2), there is no maximum floor space ratio for a dwelling house or semi-detached dwelling on a lot that has an area of 300 square metres or less.

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

The numeric value of the maximum floor space ratio control for the site is 0.6:1 (362.4m²).

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

The proposed development seeks a maximum floor space ratio of 0.165:1 (704m²)

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

The percentage variation between the proposed floor area of 704m² and the required 362.4m² is 341.6m² (206%).

How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

To assess whether strict compliance with the development standard is unreasonable or unnecessary in this case, the proposal is to be considered against the 5 methods of demonstrating that compliance with a standard is unreasonable or unnecessary as set out in *Preston CJ in Wehbe v Pittwater Council* [2007] NSWLEC 827. All tests are separate and not all tests may be applicable. Therefore, not all tests need to be met. The relevant tests are as follows:

1. Clause 4.6(3)(a) requires demonstration that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

How is strict compliance with the development standard unreasonable or unnecessary in this particular case?

Compliance with the standard is unreasonable and unnecessary as the proposed development has little impact on perceived bulk or scale or impact on the public domain or adjacent sites. The additional floor area increases the overall amenity and living nature of the house.

The enclosing of the balcony has no negative impact on the building articulation as it still remains an element that provides depth and movement to the overall façade design.

There is no Heritage impact due to the proposal and no adverse impact to the adjoining and neighbouring property in terms of visual bulk, loss of privacy, overshadowing and views. Privacy to the neighbouring property is increased.

Strict compliance with the control would not comply with the underlying objective of the control as:

- The envelope is consistent with the desired future character of the locality.
- The proposed form is mostly existing and contributes to a well-articulated building form.
- The visual appearance of the volume is consistent with the street due to its scale and location.
- The scale of the development will not result in detrimental impacts to the adjacent sites or public domain.
- The property seeks to use existing use rights as a residential flat building located in the R2 zone.

2. Clause 4.6(3)(b) requires demonstration that there are sufficient environmental planning grounds to justify contravening the development standard

Grounds to justify varying this development standard include:

In this instance the increased floor area can be achieved with no impact on the site itself or adjacent sites, as such strict numerical compliance would be unreasonable. Sufficient planning grounds to justify varying the development standard include:

- The proposals non-compliance with the development standard does not result in adverse environmental impacts in regards to the public domain, with there being no visual or acoustic impact at all.
- The proposed development results in a well-articulated building, with the proposed second floor resulting in no perceived increase in bulk and scale when viewed from the public domain and adjacent sites.
- The proposal is compliant with the relevant objectives for the zone as outlined in Randwick LEP.

The variation of the floor area development standard has been demonstrated to present no adverse environmental impacts and overall the varying of the control creates a better planning outcome, consistent with Clause 4.6(b) of the Randwick LEP resulting in a building of suitable form and density.

As a result the proposed development meets the assessment criteria outline in Clause 4.6(3)(a), (b) and (4)(a).

3. Is the proposed development in the public interest because it is consistent with the objectives of the particular standard and the objectives for development in the zone?

The proposed development will be in the public interest as it meets the objectives of both the Randwick LEP (as outlined above) and presents no impact on the amenity of the surrounding sites or public domain.

The proposal remains consistent with the objectives of the Zone outlined below in Clause 4.4 despite the non-compliance and is meets the requirements of the relevant controls.

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

4. Whether contravention of the development standard raises any matter of significance for the State or regional environmental planning?

As the proposed works have negligible environmental impacts and is generally compliant with Randwick's Local Environment Plan and Development Control Plan except for the FSR control, however the site has existing use rights that allows for this DA to be approved within the R2 zone. Existing use rights are contained in Part 4, Division 4.11 of the EP&A Act Part 7 of the EP&A Regulation 2021

5. Is there public benefit in maintaining the development standard?

The FSR control is used to ensure development of suitable density and scale and desired future character. As the minor FSR change is located by enclosing a rear unseen and unused balcony there is no reason that would benefit the public by maintaining the standard.

Is the objection well founded

The proposal has demonstrated that there will be no adverse environmental impacts on the subject site, adjacent sites, or the public domain. As a result it is considered that there is sufficient environmental planning grounds to justify varying the floor space ratio of the development standard on the grounds that such compliance would be considered unreasonable and unnecessary in this instance and therefore this is considered a well-founded submission.

Conclusion

Public interest has been demonstrated with there being no adverse environmental impacts and the proposal enhances the quality and amenity of the dwelling.

Responsible officer: Perry Head, Environmental Planning Officer

File Reference: DA/54/2022

Development Consent Conditions



Folder /DA No:	DA/54/2022
Property:	36 Ocean Street, CLOVELLY
Proposal:	Internal reconfiguration and enclosing of an existing balcony.
Recommendation:	Approval

Development Consent Conditions

GENERAL CONDITIONS

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

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

Approved Plans & Supporting Documentation

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

Plan	Drawn by	Dated	Received by Council
DA1.00	Design Tribe Projects	8/2/2022	14/2/2022
DA1.01	Design Tribe Projects	8/2/2022	14/2/2022

BASIX Certificate No.	Dated	Received by Council
A445071	23 rd December 2021	14 th February 2021

REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

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

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

Consent Requirements

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

External Colours, Materials & Finishes

- The colours, materials and finishes of the external surfaces to the building are to be compatible with the existing building external finishes to maintain the integrity and amenity of the building and the streetscape.

Section 7.12 Development Contributions

4. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$150 000 the following applicable monetary levy must be paid to Council: \$750.00.

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

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

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

Where:

IDC = the indexed development cost

ODC = the original development cost determined by the Council

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

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

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

Long Service Levy Payments

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

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

REQUIREMENTS TO BE INCLUDED IN THE CONSTRUCTION CERTIFICATE

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

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

Building Code of Australia

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

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

BASIX Requirements

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

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

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

REQUIREMENTS PRIOR TO THE COMMENCEMENT OF WORKS

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

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

Building Certification & Associated Requirements

8. The following requirements must be complied with prior to the commencement of any building works (including any associated demolition or excavation work):

- a) a *Construction Certificate* must be obtained from a *Registered (Building) Certifier*, in accordance with the provisions of the *Environmental Planning and Assessment Act 1979* and the *Environmental Planning and Assessment (Development Certification and Fire Safety) Regulation 2021*.

A copy of the construction certificate, the approved development consent plans and consent conditions must be kept on the site at all times and be made available to the Council officers and all building contractors for assessment.

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

Home Building Act 1989

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

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

Construction Site Management Plan

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

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

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

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

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

Demolition Work

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

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

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

Notes: it is the responsibility of the persons undertaking demolition work to obtain the relevant SafeWork licences and permits and if the work involves the removal of more

than 10m² of bonded asbestos materials or any friable asbestos material, the work must be undertaken by a SafeWork Licensed Asbestos Removal Contractor.

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

Public Utilities

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

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

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

REQUIREMENTS DURING CONSTRUCTION & SITE WORK

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

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

Site Signage

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

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

Restriction on Working Hours

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

Activity	Permitted working hours
All building, demolition and site work, including site deliveries (except as detailed below)	<ul style="list-style-type: none"> • Monday to Friday - 7.00am to 5.00pm • Saturday - 8.00am to 5.00pm • Sunday & public holidays - No work permitted

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

Construction Site Management

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

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

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

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

Notes:

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

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

- a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.
- b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident.
- c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction.
- d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times.
- e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.
- f) Noise and vibration from the work shall be minimised and appropriate strategies are to be implemented, in accordance with the Noise and Vibration Management Plan prepared in accordance with the relevant EPA Guidelines.
- g) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident.
- h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.
- i) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.
- j) A Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the *Roads Act 1993* and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details.

REQUIREMENTS PRIOR TO THE ISSUE OF AN OCCUPATION CERTIFICATE

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

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

Occupation Certificate Requirements

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

BASIX Requirements & Certification

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

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

OPERATIONAL CONDITIONS

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

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

Plant & Equipment

20. The operation of all plant and equipment (including air conditioners and pool pumps or other equipment) on the premises shall not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and Regulations.

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OPERATIONAL CONDITIONS

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

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

- External Lighting**
21. External lighting to the premises must be designed and located so as to minimise light-spill beyond the property boundary or cause a public nuisance.
- Waste Management**
22. Adequate provisions are to be made within the premises for the storage and removal of waste and recyclable materials, to the satisfaction of Council.
- Plant & Equipment**
23. The operation of all plant and equipment (including air conditioners and pool pumps or other equipment) on the premises shall not give rise to an 'offensive noise' as defined in the *Protection of the Environment Operations Act 1997* and Regulations.
- Use of parking spaces**
24. The car spaces within the development are for the exclusive use of the occupants of the building. The car spaces must not be leased to any person/company that is not an occupant of the building.

Updated 29 September 2022

Development Application Report No. D17/24

Subject: 52 Victoria Street, Malabar (DA/864/2023)

Executive Summary

Proposal:	Torrens title subdivision of existing lot into two (2) lots.
Ward:	South Ward
Applicant:	Mr C Rust
Owner:	Mrs C G Hogarth; J E Hogarth; Ms L G Wardle; Mr B R Wardle
Cost of works:	NA
Reason for referral:	Variation to the minimum subdivision lot size development standard by more than 10%.

Recommendation

That the RLPP refuses consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/321/2022 for Torrens title subdivision of existing lot into two (2) lots. at No. 52 Victoria Street, Malabar, for the following reasons:

Reasons for Refusal

1. Pursuant to Section 4.15 (1)(a) of the EP&A Act 1979, the proposed development does not comply with the following relevant environmental planning instruments and development controls as follows:
 - Clause 4.6 of the Randwick Local Environmental Plan 2012.
 - The consent authority is not satisfied that the applicant has demonstrated that compliance with the development standard (under Clause 4.1) is unreasonable or unnecessary in the circumstances.
 - The consent authority has identified that there are no sufficient environmental planning grounds to justify the contravention of the development standard (under Clause 4.1).
 - The consent authority has identified that the proposed development is not in the public interest as it fails to achieve consistency with the relevant objectives of Clause 4.1 and the R2 – Low Density Residential zone under the Randwick Local Environmental Plan 2012. As such, development consent cannot be granted to development that contravenes the respective development standard.
 - Randwick Local Environmental Plan 2012 – Aims of the Plan – unable to satisfy the key aims (2)(c) and (2)(g).
 - The proposal fails to promote a subdivision form or arrangement that is appropriate to its context and that supports an efficient use of land.
 - The proposal does not encourage the provision of housing mix and tenure choice, including affordable housing.
 - Randwick Local Environmental Plan 2012 – the relevant objectives of the R2 Low Density Residential zone. The proposal is not consistent with these objectives in that the proposed subdivision does not provide for the housing needs of the community; contribute to the desired future character of the streetscape/area; or

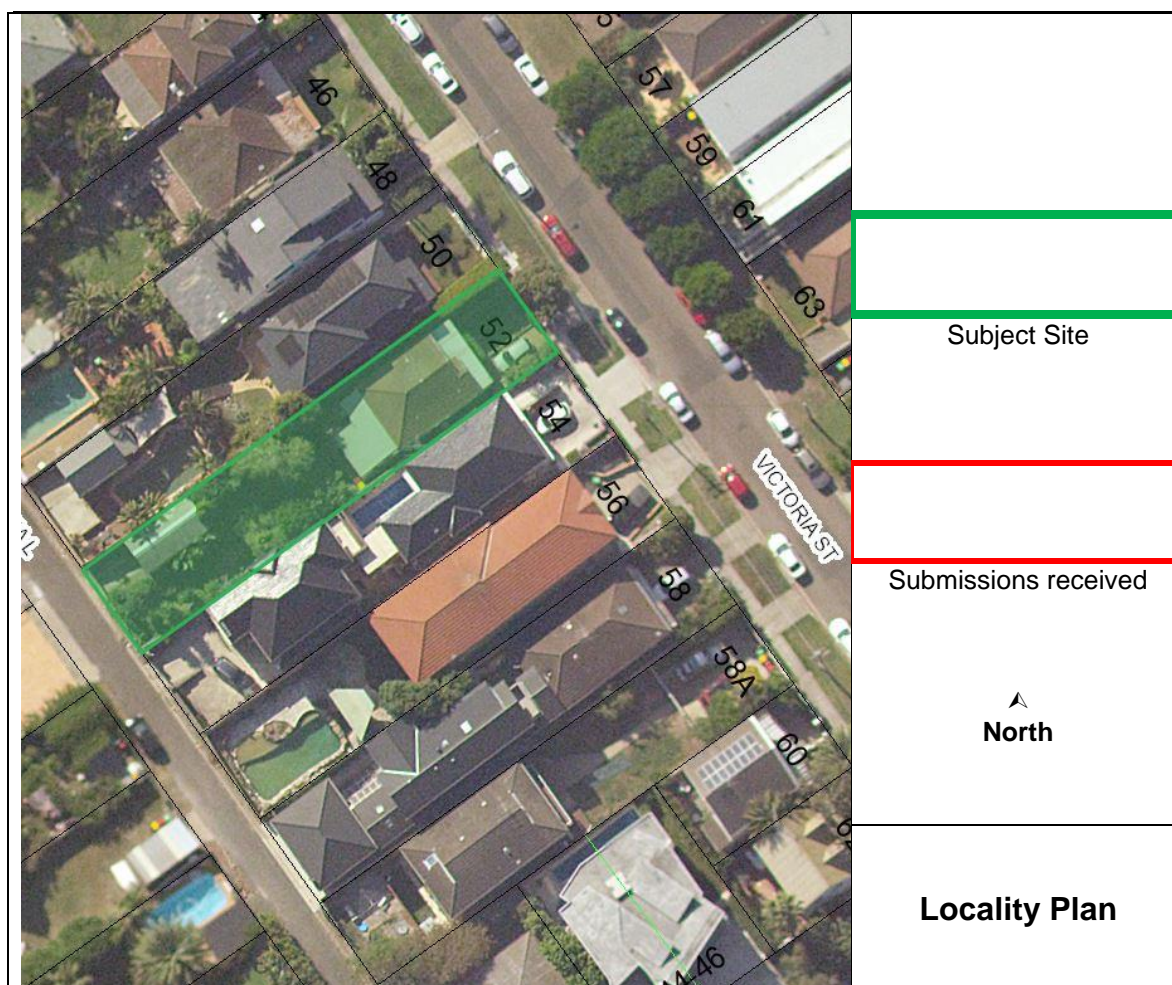
D17/24

encourage housing affordability. The proposed subdivision is not consistent with the prevailing development and subdivision pattern of the locality and facilitates an undesirable outcome that fails to comply with development standard. The proposed subdivision will result in undersized allotments that fail to reflect an appropriate and orderly development of land. Randwick Local Environmental Plan 2012 – development standard as per Clause 4.1. The proposal involves land subdivision to create two (2) lots that fail to comply with the minimum lot size development standard.

- Randwick Local Environmental Plan 2012 – the relevant objectives under Clause 4.1. The proposal is inconsistent with these objectives in that the proposed subdivision will have adverse impacts on prevailing development and subdivision pattern of the locality and does not ensure lot sizes are sufficient and able to accommodate suitable development.
 - Randwick Comprehensive Development Control Plan 2013, Part C1 – Low Density Housing: Section 2.1 Minimum Lot Size. The proposal fails to satisfy the relevant objectives and controls under this part. The proposal does not satisfy the objectives as the proposed subdivision fails to respect the predominant existing subdivision and development pattern of the locality; it does not ensure land subdivision creates allotments that have adequate site area.
2. Pursuant to Section 4.15(1)(b) of the EP&A Act 1979, the proposal is likely to have adverse impacts on the following aspects on the environment: subdivision irregularity due to fragmentation of land to create undersized lots; reduction of housing choice/diversity and affordability within the locality; and setting an undesirable precedence for subdivision of dual occupancy development to create undersized lots.
 3. Pursuant to Section 4.15(1)(c) of the EP&A Act 1979, the subject site is not suitable for the proposal for the following reasons: non-compatibility with prevailing development and subdivision pattern of locality and does not promote housing diversity/choice and affordability. The proposal does not achieve the objectives of Council policy with regard to housing diversity and affordability. The proposal fails to improve on the provision of affordable housing in the locality to meet the housing demands of very low, low and medium income households. The proposal fails to increase housing diversity and choice to support the growing population in areas with good access to public transport, services and town centres.
 4. Pursuant to Section 4.15(1)(e) of the EP&A Act 1979, the proposal is not considered to be in the public interest as it will set an undesirable precedence including endorsement of an unacceptable non-compliance to the minimum lot size provisions under Clause 4.1 and facilitates a subdivision form that does not respect the predominant subdivision and development pattern of the locality by creating two (2) undersized Torrens title allotments.

Attachment/s:

Nil



D17/24

1. Executive summary

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

The proposal seeks development consent for Torrens title subdivision of existing lot into two (2) lots.

The subject application was lodged on 31 October 2023.

The key issue associated with the proposal relates to the minimum subdivision lot size of 262.2m² for Lot 1 (4.6% less than the required 275m²) and 243.7m² for Lot 2 (11% less than required). In addition, Council's Development Engineer confirmed that Torrens title subdivision for a property fronting a laneway cannot be supported in this instance due to potential issues in relation to emergency services, public utilities, pedestrian access, and postal addresses.

On this basis, the proposal is recommended for refusal.

2. Site Description and Locality

The subject site is known as 52 Victoria Street, Malabar and is legally described as Lot C in DP 306399. The site is 505.9m², is regular in shape and has a 10.06 m frontage to Victoria Street to the east.

As shown in Figure 1, the site is currently occupied by a 3-bedroom two storey house. It is constructed of brick to the lower ground level and timber framed with a tile roof on the ground floor.

The site slopes approximately 5m upwards from east to west and between 1m to 0.5m north to south.



Figure 1: Existing dwelling at subject site, viewed to west from Victoria Street
(Source: Google Maps)

3. Relevant history

DA/387/2017

Development application for demolition of existing structures, construction of a partial two (2) and partial three (3) storey dual occupancy with garages and frontage to both Victoria Street and Victoria Lane (variation to floor space ratio control). This application was approved on 18 June 2018 under Council delegation. Council records indicate that no construction certificates have been issued for this approved development. Notwithstanding, the lapsing date of the consent has been extended by 2 years due to COVID and will expired in June 2025.

DA/312/2022

Development application for Torrens Title subdivision of the approved dual occupancy. This application was lodged on 21 June 2022 and withdrawn on 6 October 2022.

4. Proposal

The proposal seeks development consent for Torrens title subdivision of existing lot into two (2) lots. The site propose site layout is for Lot 1 to front Victoria Street and Lot 2 to front the rear lane with a legal right of way easement to access Victoria Street. Refer to Figures 1-3.

	<u>Lot Size</u>	<u>East (front)</u>	<u>West (rear)</u>	<u>North</u>	<u>South</u>
Lot 1	262.2m ²	10.06m	9.16m	26.645m	26.64m
Lot 2	243.7m ²	10.06m	10.06m	23.645m	30.12m

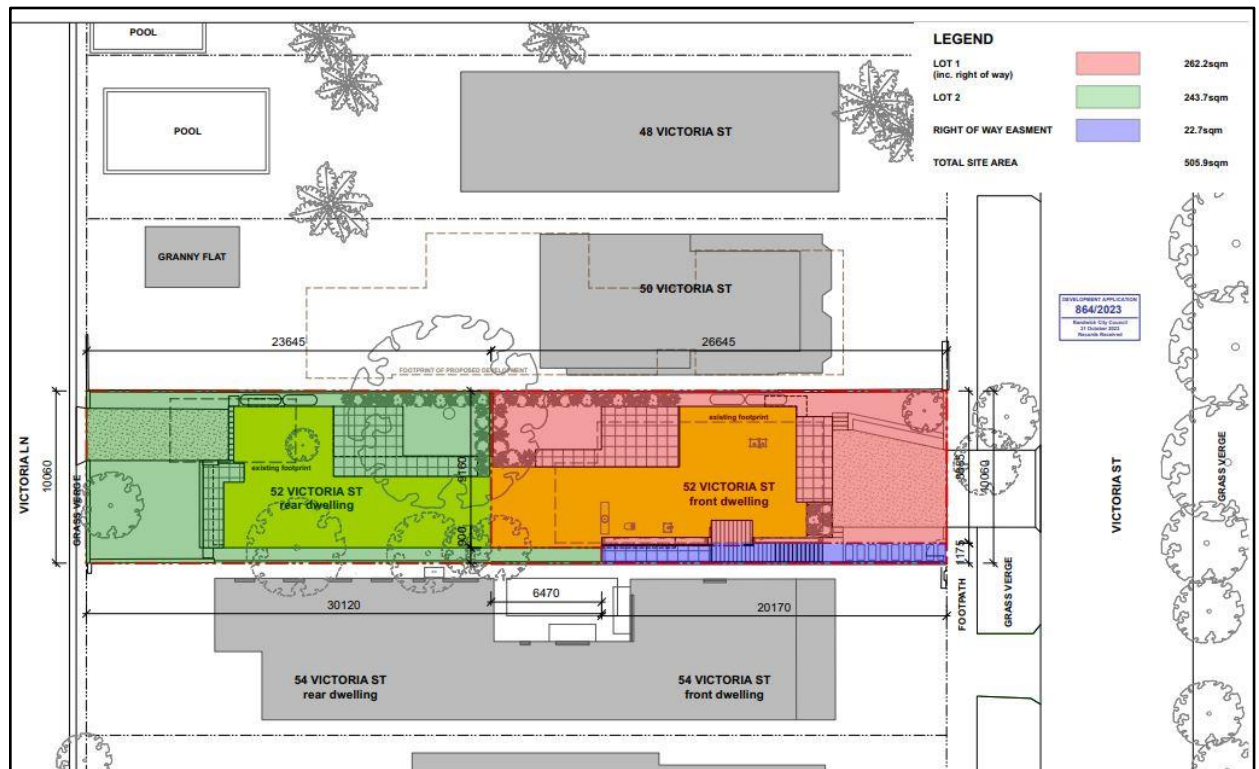


Figure 1: Subdivision layout & Area Plan (Source: Breathe Design)

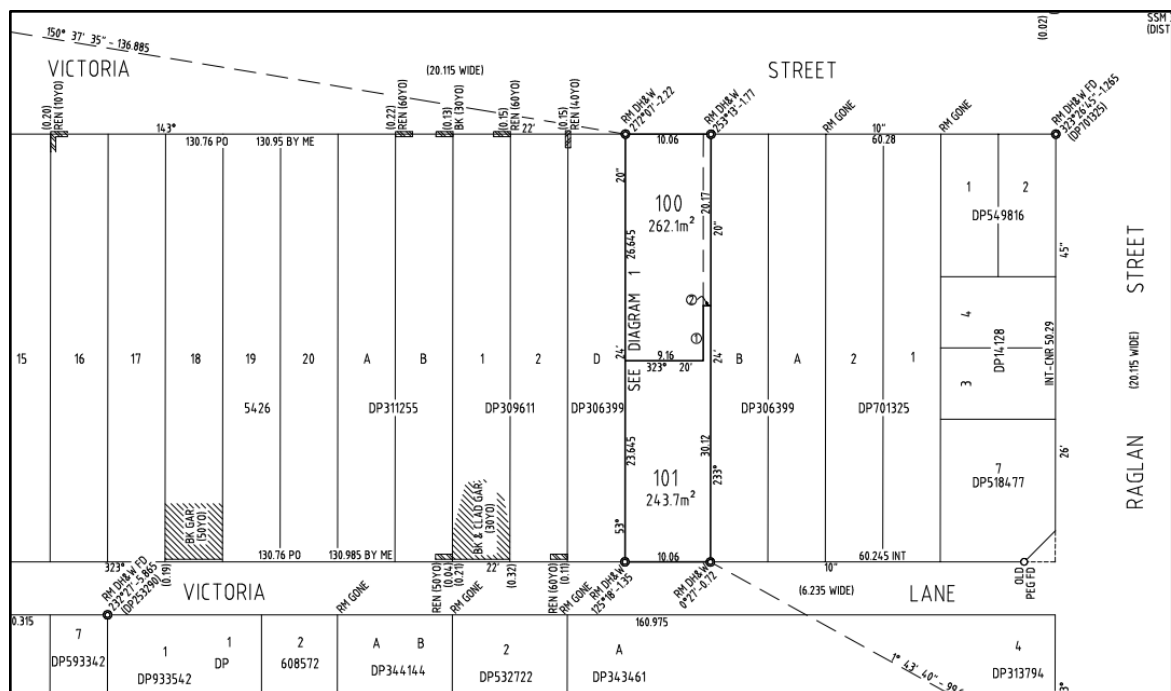


Figure 2: Plan of Subdivision (Source: Sharon Evelyn Johnson)

VICTORIA STREET

100
262.1m²

101
243.7m²

VICTORIA LANE

DIAGRAM 1

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5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with the Randwick City Community Engagement Strategy. No submissions were received during the notification period.

6. Relevant Environment Planning Instruments

6.1. SEPP (Biodiversity and Conservation) 2021

Chapter 2 of the SEPP applies to the proposal and subject site. The aims of this Chapter are:

- (a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and
- (b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

The proposed development does not involve the removal of any vegetation (including any trees). As such, the proposal achieves the relevant objectives and provisions under Chapter 2.

6.2. SEPP (Resilience and Hazards) 2021

The provisions of SEPP (Resilience and Hazards) require Council to consider the likelihood that the site has previously been contaminated and to address the methods necessary to remediate the site.

The subject site has only previously been used for residential accommodation/residential purposes and as such is unlikely to contain any contamination. The nature and location of the proposed development (involving land subdivision) are such that any applicable provisions and requirements of the above SEPP have been satisfactorily addressed.

6.3. Randwick Local Environmental Plan 2012 (LEP)

On 18 August 2023, the Department of Planning and Environment (DPE) formally notified the LEP amendment (amendment No. 9) updating the *Randwick Local Environmental Plan 2012*, and the updated LEP commenced on 1 September 2023. As the subject application was lodged on or after 1 September 2023, the provisions of RLEP 2012 (Amendment No. 9) are applicable to the proposed development, and the proposal shall be assessed against the updated RLEP 2012.

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

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

- *The land is zoned R2 Low Density Residential;*
- *Development consent for the dual occupancy was granted before 6 July 2018; and*

The subject site is zoned R2 Low Density Residential and the development consent for the dual occupancy was granted prior to 6 July 2018. As such, Clause 4.1D applies to the proposed subdivision.

Under Clause 4.1D (2):

Despite any other provision in this Plan, development consent may be granted for the subdivision of a dual occupancy to which this clause applies if the development meets the standards specified in the following provisions of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008—

- (a) for strata subdivision—clause 6.2, or*

(b) for Torrens title subdivision—clause 6.4.

The minimum lot size development standard contained in Clause 6.4 of the SEPP (Exempt and Complying Development Codes) states:

- 6.4 (d) (i) *the minimum size specified for the subdivision of land for the purpose of a dual occupancy in the environmental planning instrument that applies to the land*

The relevant environmental planning instrument for the site is the RLEP 2012, which specifies a 275m² minimum lots size for the subject site as per Clause 4.1 (Lot Size Map):

Clause	Development Standard	Proposal	Compliance (Yes/No)
Cl 4.1: Lot Size (min)	275m ²	262.2m ² (Lot 1) 243.7m ² (Lot 2)	No No

6.3.1. *Clause 4.6 - Exceptions to development standards*

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

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposal	Proposed variation	Proposed variation (%)
Cl 4.1: Lot Size (min)	275m ²	262.2m ² (Lot 1) 243.7m ² (Lot 2)	12.8m ² 31.3m ²	4.6% 11%

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Applicant's written justification for the departure from the Minimum Lot Size development standard is contained in Appendix 2.

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

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

The objectives of the minimum lot size standard are set out in Clause 4.1 of RLEP 2012:

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

The Applicant's written justification argues that a contravention to the development standard is appropriate for the following reasons:

1. *Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and;*
2. *There are sufficient environmental planning grounds to justify contravening the development standard and;*
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.*
4. *Contravention of the standard in this instance will not raise any matters of State or Regional significance.*
5. *There is no public benefit in maintaining the standard on this occasion.*
6. *The proposal achieves the objectives of Clause 4.6 of the RLEP of providing an appropriate degree of flexibility in applying certain development standards to particular development and achieves better outcomes for and from development by allowing flexibility in particular circumstances.*

Assessing officer's comment: The Applicant's written request fails to demonstrate that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case.

The proposed Torrens title subdivision to create two (2) lots sized 262.2m² and 243.7m² will result in two lots not meeting the proposed development standard adopted by Council as part of the

Randwick Comprehensive Planning Proposal 2022. To achieve two (2) lot sizes of at least 275m², a parent lot of 550m² is required. At 505.9m², the subject site falls short of the parent lot size required for subdivision (by 44.1m²). The alignment of the minimum lot size of 550m² for Torrens or strata subdivision was tested thoroughly during the preparation of the recent amendments to the Randwick Local Environmental Plan (LEP). Council Officers (Strategic Planning) conducted analysis on lot sizes between 450m² and 650m² in the R2 Low Density Residential zone. The analysis found that a reduction in the minimum lot size for both Torrens and strata to a minimum of 450m² would result in a significant increase in density in the southern portion of the LGA that is not well serviced by public transport and with limited access to shops and services. Alternatively, a 650m² minimum lot size for a dual occupancy (attached) would not provide the capacity to meet the needs of the Randwick City growing population and diverse housing needs. This strategic analysis concluded that a lot size of 550m² is the most appropriate lot size for dual occupancies (attached) in Randwick City. The decision to adopt a 275m² minimum lot size is therefore well founded and based on sound planning grounds. Should it not be consistently applied and incrementally eroded by variations, then there would be a cumulative impact on the character of the area that would undermine the intent of the standard and lead to a new de facto minimum lot size.

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

The environmental grounds to justify the contravention of the development standard provided in the Applicant's written request are:

- *Measures are incorporated into the approved design which ensure that no adverse environmental impacts will be generated by the non-compliant component.*
- *The approved dwellings are modest in scale and in proportion to the respective proposed lot sizes, thereby ensuring the dwellings are suitably sited in respect to the sites to protect natural or cultural features, and retain special features such as trees and views.*
- *The resultant lot sizes are able to accommodate development that is suitable for its purpose.*
- *The immediate neighbour at 50A & 50B Victoria St is an almost identical layout, providing further justification for the proposal*

Assessing officer's comment: The Applicant's written request has not adequately demonstrated that there are sufficient environmental planning grounds to justify contravening the development standard. The approved dual occupancy design does not form part of an environmental planning ground for consideration. As such, any arguments related to the approved dual occupancy are considered irrelevant.

The justification or argument pertaining to the existing development in No.'s 50A and 50B Victoria Street is not accepted. It is understood the Applicant was referring to 54 Victoria Street, as 50 Victoria Street is a single development without a dwelling constructed to the rear. 54 Victoria Street is an attached dual occupancy with a dwelling to the rear, however, the lot has not been subdivided. There is no precedent of Torrens title subdivision that contravenes the minimum lot size development standard within the area (refer Figure 4 & Table 1).

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Figure 4: Pattern of subdivision

Table 1: Lot sizes of existing properties in immediate vicinity and compliance against current minimum lot size provision under Clause 4.1

Address	Lot size (m ²)	Complies
Northern side of Victoria Street		
No. 44	459.6	Yes
No. 46	554.7	Yes
No. 48	456.1	Yes
No. 50	505.9	Yes
No. 54	505.9	Yes
No. 56	505.9	Yes
No. 58	505.9	Yes
No. 58A	505.9	Yes
Southern side of Victoria Street		
No. 49	474.2	Yes
No. 51	474.2	Yes
No. 53	474.2	Yes
No. 55	474.2	Yes
No. 57	373.1	Yes
No. 59	374.2	Yes
No. 61	373.1	Yes
No. 63	325.1	Yes
No. 63A	424.1	Yes
No. 65	373.1	Yes

It is evident that the existing subdivision pattern in the immediate locality features relatively uniform and rectangular allotments that comply with the respective provisions, requirements and controls under Council policy including the minimum lot size development standard. The proposed subdivision will lead to undesirable land fragmentation by setting a precedent for undersized and inappropriate allotments that will negatively affect the future subdivision pattern of the low density area.

The proposed Torrens title subdivision to create two (2) lots sized 262.2m² and 243.7m² will result in two (2) lots not meeting the proposed development standard adopted by Council as part of the Randwick Comprehensive Planning Proposal 2022. The aims and objectives of the development standard cannot be satisfied by the proposed development as it fails to enable an appropriate and orderly development of land. Further, it creates an undesirable outcome by facilitating two (2) undersized lots. It is evident that the merits of the variations and environmental grounds for supporting these have not been substantially demonstrated by the Applicant's written request.

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?

Assessing officer's comment: The justification provided has not adequately demonstrated that the proposed development is consistent with the objectives of the development standard.

The proposed subdivision that does not meet the minimum lot size and will result in fragmentation of land to create two (2) undersized lots that are not consistent with the prevailing subdivision and development pattern of the immediate vicinity. In turn, it would create precedence for future subdivision of land comprising dual occupancy development. The proposed subdivision is inconsistent with the minimum lot size requirements and desired future characteristics of the R2 zone, as envisaged by the Randwick Comprehensive Planning Proposal 2022.

The proposal is inconsistent with the objectives of the development standard in that the proposed subdivision will have adverse impacts on prevailing development and subdivision pattern of the locality and does not ensure lot sizes are sufficient and able to accommodate suitable development.

1. 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?

Assessing officer's comment: The proposed development and variation does not raise any matters of significance for state or regional environmental planning. Notwithstanding, the proposed variation of the minimum lot size development standard will not allow for the orderly use of the site and will create an undesirable precedence. Accordingly, there is a no public benefit in maintaining the development standard in this instance.

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 of this report.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	Nil.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposed subdivision fails to satisfy and comply with several objectives under the DCP (refer to Appendix 3).
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	<p>This application seeks consent to subdivide an approved dual occupancy to create two (2) undersized allotments that fail to comply with the current provisions under the RLEP 2012. The proposal will result in adverse impacts on the environment including:</p> <ul style="list-style-type: none"> • Subdivision irregularity. The proposal involves fragmentation of land to create undersized lots that are not consistent with the prevailing subdivision and development pattern of the vicinity. • Reduction of housing choice/diversity and affordability within the locality by modifying the approved dual occupancy use to two (2) semi-detached dwellings. • Undesirable precedence for subdivision of dual occupancy development to create undersized lots that do not comply with Council's current development standards for minimum lot size for dual occupancies and Torrens title subdivision of dual occupancies and the intended objectives of these standards.
Section 4.15(1)(c) – The suitability of the site for the development	<p>The subject site is not suitable for the proposal for the following reasons: non-compatibility with prevailing development and subdivision pattern of locality and does not promote housing diversity/choice and affordability. The proposal does not achieve the objectives of Council's Planning Proposal from September 2022 in regard to housing choice and affordability. The proposed subdivision will eliminate the approved dual occupancy use of the site and create two (2) semi-detached dwellings. The proposed subdivision would likely result in eliminating the single ownership of the dual occupancy or the potential for enabling intergenerational-family households to occur within the premises. Consequently, the proposal will diminish current housing diversity and affordable housing in the locality. The proposal fails to achieve key targets in Council and NSW policies to meet the housing demands of very low, low and medium income households and increase housing diversity and choice to support the growing population in areas with good access to public transport, services and town centers.</p>

Section 4.15 'Matters for Consideration'	Comments
Section 4.15(1)(d) – Any submissions made in accordance with the EP&A Act or EP&A Regulation	No submissions were received in relation to this application.
Section 4.15(1)(e) – The public interest	The proposed subdivision is not considered to be in the public interest and is likely to set an undesirable precedent including endorsement of an unacceptable non-compliance to the minimum lot size provisions under Clause 4.1 and facilitates a subdivision form that does not respect the predominant subdivision and development pattern of the locality by creating two (2) undersized Torrens title allotments.

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10. Conclusion

The proposal does not comply with the relevant assessment criteria and will result in adverse impacts upon character and subdivision pattern of the locality by introducing two (2) new lots that are undersized and non-compliant with Council's requirements.

The merits of the proposed subdivision and variation to the minimum lot size development standard under Council policy have not been demonstrated. The application is therefore recommended for refusal.

11. Recommendation

That the RLPP refuse consent under Section 4.16 of the Environmental Planning and Assessment Act 1979, as amended, to Development Application No. DA/321/2022 for Torrens title subdivision of existing lot into two (2) lots. at No. 52 Victoria Street, Malabar, for the following reasons:

Reasons for Refusal

5. Pursuant to Section 4.15 (1)(a) of the EP&A Act 1979, the proposed development does not comply with the following relevant environmental planning instruments and development controls as follows:
 - Clause 4.6 of the Randwick Local Environmental Plan 2012.
 - The consent authority is not satisfied that the applicant has demonstrated that compliance with the development standard (under Clause 4.1) is unreasonable or unnecessary in the circumstances.
 - The consent authority has identified that there are no sufficient environmental planning grounds to justify the contravention of the development standard (under Clause 4.1).
 - The consent authority has identified that the proposed development is not in the public interest as it fails to achieve consistency with the relevant objectives of Clause 4.1 and the R2 – Low Density Residential zone under the Randwick Local Environmental Plan 2012. As such, development consent cannot be granted to development that contravenes the respective development standard.
 - Randwick Local Environmental Plan 2012 – Aims of the Plan – unable to satisfy the key aims (2)(c) and (2)(g).
 - The proposal fails to promote a subdivision form or arrangement that is appropriate to its context and that supports an efficient use of land.
 - The proposal does not encourage the provision of housing mix and tenure choice, including affordable housing.
 - Randwick Local Environmental Plan 2012 – the relevant objectives of the R2 Low Density Residential zone. The proposal is not consistent with these objectives in

that the proposed subdivision does not provide for the housing needs of the community; contribute to the desired future character of the streetscape/area; or encourage housing affordability. The proposed subdivision is not consistent with the prevailing development and subdivision pattern of the locality and facilitates an undesirable outcome that fails to comply with development standard. The proposed subdivision will result in undersized allotments that fail to reflect an appropriate and orderly development of land. Randwick Local Environmental Plan 2012 – development standard as per Clause 4.1. The proposal involves land subdivision to create two (2) lots that fail to comply with the minimum lot size development standard.

- Randwick Local Environmental Plan 2012 – the relevant objectives under Clause 4.1. The proposal is inconsistent with these objectives in that the proposed subdivision will have adverse impacts on prevailing development and subdivision pattern of the locality and does not ensure lot sizes are sufficient and able to accommodate suitable development.
 - Randwick Comprehensive Development Control Plan 2013, Part C1 – Low Density Housing: Section 2.1 Minimum Lot Size. The proposal fails to satisfy the relevant objectives and controls under this part. The proposal does not satisfy the objectives as the proposed subdivision fails to respect the predominant existing subdivision and development pattern of the locality; it does not ensure land subdivision creates allotments that have adequate site area.
6. Pursuant to Section 4.15(1)(b) of the EP&A Act 1979, the proposal is likely to have adverse impacts on the following aspects on the environment: subdivision irregularity due to fragmentation of land to create undersized lots; reduction of housing choice/diversity and affordability within the locality; and setting an undesirable precedence for subdivision of dual occupancy development to create undersized lots.
 7. Pursuant to Section 4.15(1)(c) of the EP&A Act 1979, the subject site is not suitable for the proposal for the following reasons: non-compatibility with prevailing development and subdivision pattern of locality and does not promote housing diversity/choice and affordability. The proposal does not achieve the objectives of Council policy with regard to housing diversity and affordability. The proposal fails to improve on the provision of affordable housing in the locality to meet the housing demands of very low, low and medium income households. The proposal fails to increase housing diversity and choice to support the growing population in areas with good access to public transport, services and town centres.
 8. Pursuant to Section 4.15(1)(e) of the EP&A Act 1979, the proposal is not considered to be in the public interest as it will set an undesirable precedence including endorsement of an unacceptable non-compliance to the minimum lot size provisions under Clause 4.1 and facilitates a subdivision form that does not respect the predominant subdivision and development pattern of the locality by creating two (2) undersized Torrens title allotments.

Appendix 1: Referrals

1. External referral comments:

The proposed subdivision did not require any referrals to external authorities/agencies for further assessment.

2. Internal referral comments:

2.1. Development Engineer

An application has been received for the Torrens Title Subdivision of the DA approved dual occupancy development (DA/387/2017) at the above site into 2 lots as well as minor amendments to the original approved DA which have not been addressed as part of this application even though they would not alter any Development Engineering conditions in the original DA Consent (DA/387/2017).

This report is based on the following plans and documentation:

- Draft Subdivision Plans by surveyor Sharon Evelyn Johnson dated 3/2/2022;
- Statement of Environmental Effects by Breathe Design dated 9/10/23

Torrens Title Subdivision Comments

Development Engineering advises that as a general rule it does not support Torrens Title Subdivision for a property fronting a Laneway.

The dual occupancy development was approved under DA/387/2017. There appears to be no record of a Construction Certificate being issued for the site so there is a question whether DA/387/2017 has lapsed on 18 June 2023.

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



Clause 4.6 Variation Request

Rev A – October 2023



Clause 4.6 Request for Contravention to the Minimum Lot Size control
under Clause 4.1 of the Randwick City Council LEP

52 Victoria St, Malabar

Prepared under instructions from: Brian Wardle

breathe design ABN 35228135008

Development Standard

Clause 4.1 Minimum Lot Size for Subdivision of the Randwick City Council LEP including amendment No 9.

Introduction

This submission is a request for contravention of the abovementioned development standard in relation to the proposed subdivision of the approved dual occupancy DA/387/2018 on the basis that:

1. Compliance with the development standard is unreasonable or unnecessary in the circumstances of the case and;
2. There are sufficient environmental planning grounds to justify contravening the development standard and;
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.
4. Contravention of the standard in this instance will not raise any matters of State or Regional significance.
5. There is no public benefit in maintaining the standard on this occasion.
6. The proposal achieves the objectives of Clause 4.6 of the RLEP of providing an appropriate degree of flexibility in applying certain development standards to particular development and achieves better outcomes for and from development by allowing flexibility in particular circumstances.

The Development Standard To Which The Request Relates

Clause 4.1 (3) states:

The size of any lot resulting from a subdivision of land to which this clause applies is not to be less than the minimum size shown on the Lot Size Map in relation to that land.

The corresponding map accessed via the online active map portal identifies the minimum lot size after subdivision as being 275sqm for the subject site.

The Objectives of the Development Standard

(1) The objectives of the clause are as follows:

(a) to minimise any likely adverse impact of subdivision and development on the amenity of neighbouring properties,

(b) to ensure that lot sizes allow development to be sited to protect natural or cultural features, including heritage items, and to retain special features such as trees and views,

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

breatho design ABN 35228135008

The Nature of the Departure from the Development Standard

The lot size map states a minimum lot size of 275sqm. The proposed subdivision of the approved design creates 2 lots from the existing 505.9sqm site of:

Lot 1 = 262.2sqm (4.6% less than the 275sqm requirement)

Lot 2 = 243.7sqm (11.0% less than the 275sqm requirement)

Average variation for entire site is 9.2% smaller than the total min requirement of 550sqm.

Why Compliance with the Development Standard is Unreasonable or Unnecessary in the Circumstances of the Case.

Compliance with the development standard is unreasonable and unnecessary in the circumstances for the following reasons:

- The departure from the numerical standard for Lot 1 (front) is 4.6%, which can be considered a negligible amount given the scale of comparable dwellings in the vicinity.
- The departure from the numerical standard for Lot 2 (rear) is 11.0%, which can be considered reasonable.
- The departure from the numerical standard the entire site is 9.2%.
- The neighbour to the south consists of a very similar layout with a semi-detached dwelling with both front and rear frontages. This existing dwelling appears to be of a larger scale than the approved subject property.
- The rear dwelling is situated lower than the rear lane level, substantially reducing it's impact towards the immediate neighbours.
- FSR exception control of 0.65
- Despite the strict numerical departure from the development standard, the proposed development is consistent with the relevant objectives of the standard in that:
 - Given there are many existing precedents in the neighbourhood and locality, it seems unreasonable to assume this technical non-compliance could cause any likely adverse impacts on the amenity of the neighbouring properties.
 - The resultant lot sizes and layout allows the approved development to be situated in a way that protects cultural features and retain special features. Close attention was paid to view sharing as part of the approval and this was determined to be compliant.
 - The lot sizes are suitable for the approved dwellings, with a 3 bedroom dwellings approved for both lots, and compliant levels of landscaped area and private open space maintained.

Chief Justice Preston of the NSW Land and Environment Court in the case of *in Wehbe v Pittwater Council [2007] NSWLEC 827* established 5 ways in which a departure from a development standard can be justified and this was reiterated by Chief Justice Preston in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*. The most invoked means of justifying a departure from a development standard is the achievement of the end objectives, despite the strict numerical non-compliance.

For the reasons outlined above, the relevant objectives of the Floor Space Ratio standard, in this instance, are achieved and the request for departure is entirely justified and worthy of support on this occasion.

breathe design ABN 35228135008

Given the justification provided in this request, the remaining ways by which a Clause 4.6 Request may be justified do not require elaboration. Notwithstanding, for the purposes of completeness, the remaining ways are articulated with relevant commentary:

- *The underlying objective or purpose of the standard is not relevant to the development*

Comment

The underlying objective of the standard is relevant in this instance, moreover, has been satisfied, notwithstanding the strict numerical departure.

- *The underlying objective or purpose would be defeated or thwarted if compliance was required.*

Comment

In this instance, the underlying objective or purpose would be defeated or thwarted if compliance was required, as compliance would not facilitate any discernible benefits whilst severely compromising the amenity and architectural integrity of the proposal.

- *The standard has been virtually abandoned or destroyed by the Council's own actions in granting consents departing from the standard and/or*

Comment

The abovementioned standard has not been abandoned or destroyed by the Council's own actions.

- *The zoning of land was unreasonable or inappropriate, such that the standards for that zoning are also unreasonable or unnecessary.*

Comment

The zoning of the land on this occasion is not regarded as unreasonable or inappropriate.

As such, the request on this occasion satisfies more than one (one only required) means of justifying contravention of the standard and is manifestly worthy of support.

The environmental grounds which justify contravening the development standard

Sufficient environmental planning grounds exist to justify departure from the development standard on this occasion in that:

- Measures are incorporated into the approved design which ensure that no adverse environmental impacts will be generated by the non-compliant component.
- The approved dwellings are modest in scale and in proportion to the respective proposed lot sizes, thereby ensuring the dwellings are suitably sited in respect to the sites to protect natural or cultural features, and retain special features such as trees and views.
- The resultant lot sizes are able to accommodate development that is suitable for its purpose.
- The immediate neighbour at 50A & 50B Victoria St is an almost identical layout, providing further justification for the proposal.

The above environmental planning grounds are not general propositions. They are unique circumstances of the proposed development in the context of the subject site and surrounding properties.

Having regard to the environmental benefits associated with the development in its current form and the acceptable amenity impacts, notwithstanding the strict numerical departure from the standard, the proposed variation is justified and there are sufficient environmental grounds to support the departure.

Better Outcome For And From Proposed Development

Reducing the GFA of the proposed development by 7.0 square meters, to meet the 0.5:1 FSR, would seriously reduce the functionality of the design. This could only be achieved by the reduction in area to a 1st floor room, which would then render this space impractical.

A change as above would not affect the setbacks or privacy, and would make a very minor difference to overshadowing. The change would be towards the rear of the 1st floor mass so there would be no changes visible to the streetscape.

The 1st floor addition faces other 2 storey structures, which have limited glazing orientated towards the subject property, so it can be argued that the potential for impacts is further reduced due to this fact.

The proposal meets and exceeds all the setback and building footprint controls which demonstrates that it is not an overdevelopment of the site.

With the above points taken into consideration, it becomes clear that reducing the floor area to comply with the 0.5:1 control would at best offer very minor changes to the bulk and scale of the building while seriously compromising day to day livability of the proposal as a whole.

Consistency with Clause 4.6 of the Bayside LEP

The objectives of Clause 4.6 are:

(a) to provide an appropriate degree of flexibility in applying certain development standards to particular development,

(b) to achieve better outcomes for and from development by allowing flexibility in particular circumstances.

The justification for the provision of an appropriate degree of flexibility in the present circumstances has been demonstrated in this request. The wider planning intentions for the locality will not be compromised by the departure in the circumstances.

Having regard to the contents of this submission, this request for contravention is well founded and worthy of support.

Departure from the standard on this occasion, (whilst not required to) will achieve a better outcome for and from the proposed development by way of consistency with the objectives of the Subdivision Minimum Lot Size standard and those of the R2-Low Density Residential zone, will not raise any matter of significance for State or Regional Environmental Planning and no public benefit will be served by maintaining the standard in the circumstances.

The justification for the departure from the development standard is worthy of support.

Appendix 3: DCP Compliance Table

The relevant provisions of the DCP are addressed in the table below. (Note: a number of control provisions that are not related to the proposal have been deliberately omitted.)

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	
2	Site planning	Site = 505.9 m ² ,	
2.1	Minimum lot size and frontage		
	Minimum lot size (RLEP): • R2 = 275m ²	262.2m ² (Lot 1); 243.7m ² (Lot 2)	No. Refer to Section 7 of this report
	Minimum frontage		
	• Semi-detached dwelling: Parent lot minimum frontage= 15m Minimum frontage resulting lot following subdivision = 7.5m	Proposed = 10.06m	Yes

Responsible officer: Thomas Awford, Environmental Planning Officer

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