

Randwick Local Planning Panel (Public) Meeting

Thursday 8 February 2024



RANDWICK LOCAL PLANNING PANEL (PUBLIC)

Notice is hereby given that a Randwick Local Planning Panel (Public) meeting will be held in the Coogee Room on Thursday, 8 February 2024 at 1pm

Acknowledgement of Country

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

Declarations of Pecuniary and Non-Pecuniary Interests

Address of RLPP by Councillors and members of the public

Privacy warning;

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

Development Application Reports

D1/24 61 The Corso Maroubra (DA/436/2022) 1

Kerry Kyriacou
DIRECTOR CITY PLANNING

Development Application Report No. D1/24

Subject: 61 The Corso Maroubra (DA/436/2022)

Executive Summary


Proposal:	Demolition of all structures on site and construction of a new part three and part four storey dwelling house with semi-basement level for parking and plant room, associated site and landscape works.
Ward:	Central Ward
Applicant:	Mrs B Wu
Owner:	Mrs B Wu
Cost of works:	\$2,712,976.00
Reason for referral:	More than 10 submissions objecting to the proposal have been received.

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 Planning Secretary may be assumed.

- B. That the RLPP grant consent under Sections 4.16 and 4.17 of the *Environmental Planning and Assessment Act 1979*, as amended, to Development Application No. DA/436/2022 for demolition of all structures on site and construction of a new part three and part four storey dwelling house with semi-basement level for parking and plant room, associated site and landscape works at No. 61 The Corso, Maroubra NSW 2031, subject to the development consent conditions attached to the assessment report.

Attachment/s:

1.  RLPP Dev Consent Conditions (general) - DA/436/2022 - 61 The Corso, MAROUBRA

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	Subject Site
	Submissions received
	<p>North</p>
	Locality Plan
<p>N.B. a total of 13 submissions have been received, 3x unique submissions from No. 59 The Corso, 3x from No. 55 The Corso and 1x without an address.</p>	

1. Executive summary

The application is referred to the Randwick Local Planning Panel (RLPP) as more than 10 unique submissions by way of objection were received by Council.

The proposal seeks development consent for demolition of all structures on site and construction of a new part three and part four storey dwelling house with semi-basement level for parking and plant room, associated site and landscape works.

The key issues associated with the proposal relate to a minor variation to the floor space ration development standard, the deficiency in the amount of deep soil permeable area within the allotment, the breach of the front and rear setbacks from awning/ pergola structures, adequately protecting the visual privacy of neighbouring dwellings, and the view sharing impacts of the proposed dwelling to several neighbours within the vicinity. Each of these issues has been assessed in detail in the Key Issues section of the report below.

In response to the abovementioned concerns, the proposal is recommended for approval subject to non-standard conditions that require the following:

- A non-standard condition for an additional 63.1m² of deep soil permeable area, as per the definition of deep soil permeable surfaces in Council’s DCP, shall be provided at the subject site.
- A non-standard condition in relation to the cantilevered dwelling entrance awning adjoining the eastern side of the first floor terrace and planter being reduced to a maximum depth of 800mm, as measured from the external wall of the ground floor entrance.

- A non-standard condition to require the rear pergola to the ground floor rear patio being reduced to a maximum depth of 1.45m, as measured from the external wall of the ground floor dwelling and increasing the awning setback to 8m from the rear boundary line.
- A non-standard condition to require the first floor front balcony is reduced to a maximum depth of 1.5m, as measured from the external face of the rumpus sliding doors. The deleted portion of the balcony is to be converted into either a planter box treatment or non-trafficable roof space.
- A non-standard condition to require the first floor front balcony balustrading to be constructed with either translucent or obscured glazing.
- A non-standard condition to require the privacy screen adjoining the internal courtyard along the north-western side of the dwelling is fixed and constructed with the individual blades that are angled and spaced appropriately to prevent overlooking into the windows of the adjacent dwelling.
- A non-standard condition to require the ceiling height of the first floor incorporate a height of RL31.47 (with the first floor retaining a floor-to-ceiling height of 2.4m) and a corresponding finished floor level of the attic floor above at a height of RL31.87.
- A non-standard condition to require the overall height of the dwelling and lift overrun is reduced to a maximum height of RL34.57, or alternatively, a revised lift specification is installed that does not require a roof overrun.
- A non-standard condition has been included to require that the void area on the first floor and attic floor are not to be infilled as floor space or roof space.
- A non-standard condition has been included to require that window W210 must have a minimum sill height of 1.6m above floor level, or alternatively, the window is to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height.
- A non-standard condition has been included to require the metal clad screen adjoining the north-western side of the main dwelling entrance and along the north-western side boundary, must be reduced to a maximum height of 1.8m, as measured from the existing ground level.

2. Site Description and Locality

The site is known as No. 61 The Corso, Maroubra and has a legal description of Lot 36 in DP 6127. The subject site is located to the south-western side of The Corso. The site is rectangular in shape with a north-eastern frontage to The Corso and south-western rear boundary of 13.41m in length, and side boundaries of 40.235m in length, resulting in a total site area of 539.6m². The site exhibits a fall of approximately 2m from the rear to the front boundary.

Existing on the site is a detached single storey dwelling with a rendered garage at the rear of the property and a front entrance verandah. Vehicle access to the site is provided off a single driveway which extends to the garage at the rear of the dwelling. The site contains several small tree emplacements within the rear yard, however there is no significant vegetation onsite.

The site is located within the R2 Low Density Residential zone and surrounding development is characterised by a mixture of one, two and three storey dwelling houses, including examples of basement garages. To the south-east the site is located within 100m walking distance of Jack Vanny Reserve, which connects to Maroubra beach further to the south. Maroubra Beach Town Centre has several cafes and restaurants as well as other services. The area is well serviced by public transport. Numerous bus stops are situated along Torrington Road (located parallel to The Corso), which provide services around the local area and include connections through to the city and wider Sydney.

The south-east of the site is directly adjoined by No. 63 The Corso, which contains an attached 2 storey dwelling that shares a party wall with No. 65 The Corso. Although attached, the dwellings at No. 63 and 65 The Corso vary in terms of form, materials and finishes.

The north-west of the site is adjoined by No. 59 and 57 The Corso, consisting of a rendered dual occupancy. No. 59 The Corso has several large windows facing east toward the ocean views. Further to the north-west is a four storey residential flat building at No. 55 The Corso with balconies and windows also orientated towards eastern ocean views. At the rear of the subject site is No. 62 Sackville Street, which is a two storey rendered detached dwelling. The subject site retains rear yard privacy from this dwelling through dense vegetation along the rear boundary.



Figure 1: Photo of the front of the subject dwelling from The Corso (Source: Randwick City Council)



Figure 2: Photo of the front of the subject dwelling and No's 63 & 65 The Corso (Source: Randwick City Council)



Figure 3: Photo of the front of the subject dwelling and No. 59 The Corso (Source: Randwick City Council)



Figure 4 & 5: Photo of the front of the No's 55, 57 & 59 The Corso (Source: Randwick City Council)



Figure 6 & 7: Photo of the front of the No's 49 & 51 The Corso (Source: Randwick City Council)



Figure 8: West oblique view of the local neighbourhood (May 2023) - 61 The Corso, Maroubra (Source: Nearmap)

3. Relevant history

There are no recent relevant applications pertinent to the subject development site.

Additional Information Request

On 02 June 2023, Council sent a formal additional information request to the applicant outlining several issues relating to building height non-compliances, deep soil planting and landscaping, external wall height and the streetscape presentation of the proposed second floor, front porch, view impacts and visual privacy concerns regarding window W102.

On 03 August 2023, following a review of draft plans and documentation, the applicant provided a formal set of amended architectural plans and documentation. As the amended documentation had some significant changes from the original proposed, including the conversion of the proposed second floor to an attic floor contained within a habitable roof form, the proposal was re-notified to neighbouring dwellings in accordance with Council's Community Engagement Strategy.

On 06 October 2023, following a request from Council, the applicant provided hourly shadow diagrams and sun eye views between 8am to 4pm.

On 25 October 2023, the Assessing Officer conducted a site visit of No. 55 The Corso, gaining access to Units 2, 4, 5 & 6, to determine the potential view loss impact of the proposed development to these units. Following this site visit, Council provided residents an additional 1-week period to make submissions regarding the proposal.

On 4 November 2023, Council sent a second formal additional information request to the applicant with photos gathered from site visits of relevant properties with potential view loss impacts, requesting the preparation of a view loss assessment. The request outlined issues with view sharing and requested that the applicant consider reducing the overall height of the dwelling to retain a reasonable level of views for neighbours adjoining to the west. Council also outlined other issues including the calculation of deep soil landscaping, the front entrance awning setback breach, the rear pergola setback breach, and overlooking from the first floor front terrace.

On 21 November 2023, the applicant provided preliminary amended plans for meeting deliberations.

On 04 December 2023, Council met online with the applicant's architect and planner to discuss preliminary amended plans addressing the view concerns outlined in the additional information request dated 04/11/2023. Council acknowledged that the overall height had been reduced however it was noted that there was still sufficient scope to further reduce the overall height of the building and further retain a greater portion of ocean views to neighbours, whilst preserving internal amenity for future occupants. However, the applicant advised that no further amendments would be made to reduce the overall height of the development.

On 06 December 2023, the applicant provided an amended set of architectural plans and a view loss assessment for Council consideration.

On 30 January 2024, the applicant provided their final set of architectural plans, as well as a Clause 4.6 Statement for the variation to the floor space ratio development standard.

4. Proposal

The proposal seeks development consent to demolish the existing dwelling and garage, and removal of trees along the rear boundary of the site to facilitate the construction of a part three and part four storey dwelling house, comprising of the following:

Basement Floor

- A garage with parking spaces for two vehicles.
- A plant room accommodating mechanical, pool and water tank equipment.
- Storage room.
- A lift and stairway access.

Ground Floor

- An entry porch and terrace are located at the front of the dwelling with ancillary planter boxes.
- An open plan living/dining/kitchen area with associated pantry at the front of the dwelling.
- A separate laundry and W/C.
- The lift and stairway access are situated in the middle of the dwelling.
- A side courtyard/landscaped area with pond are situated in the middle of the dwelling.
- A bedroom/study with adjoining ensuite bathroom.
- A second casual living area at the rear of the dwelling with an adjoining roofed patio area.
- A 30KL swimming pool is located within the rear yard with a paved area, outdoor shower and planting to the perimeter of the rear yard area.

First Floor

- A rumpus room and adjoining bathroom at the front of the dwelling.
- (2x) bedrooms and (1x) adjoining ensuite bathroom.

- A terrace adjoining the rumpus room and Bedroom 2 at the front of the building.
- A balcony adjoining Bedroom 3 at the rear of the dwelling.
- (2x) large void areas to the middle courtyard and casual living room on the ground floor below.

Attic Floor

- The main bedroom with an adjoining walk-in-robe and ensuite bathroom.
- A terrace adjoining the main bedroom at the front of the building.
- The Lift and stairway access are situated in the middle of the dwelling.

Roof

- (3x) roof voids servicing the northern void, attic terrace and ensuite bathroom window.
- A lift overrun to the southern side of the proposed roof with a window to the south.

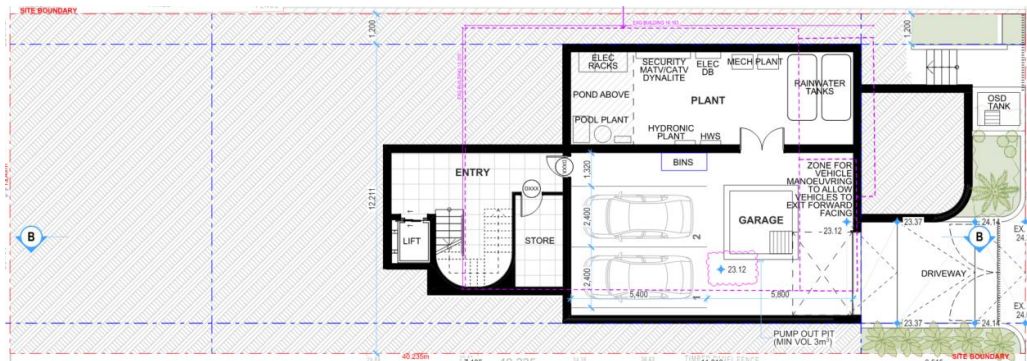


Figure 9: Proposed basement floor plan - 61 The Corso, Maroubra (Source: PopovBass)

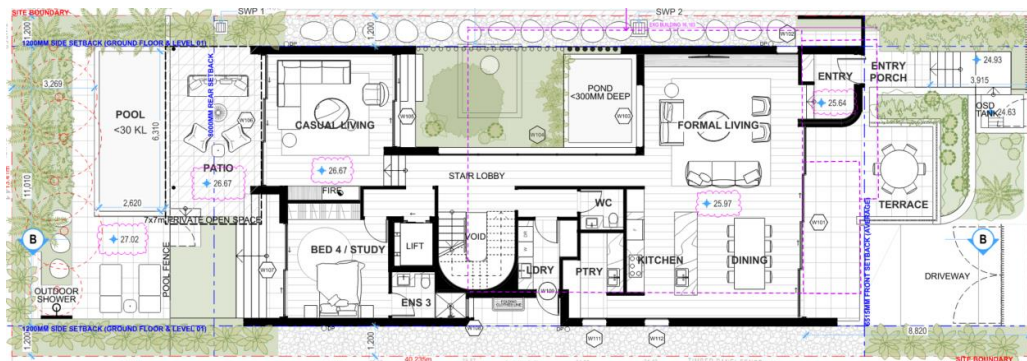


Figure 10: Proposed ground floor plan - 61 The Corso, Maroubra (Source: PopovBass)

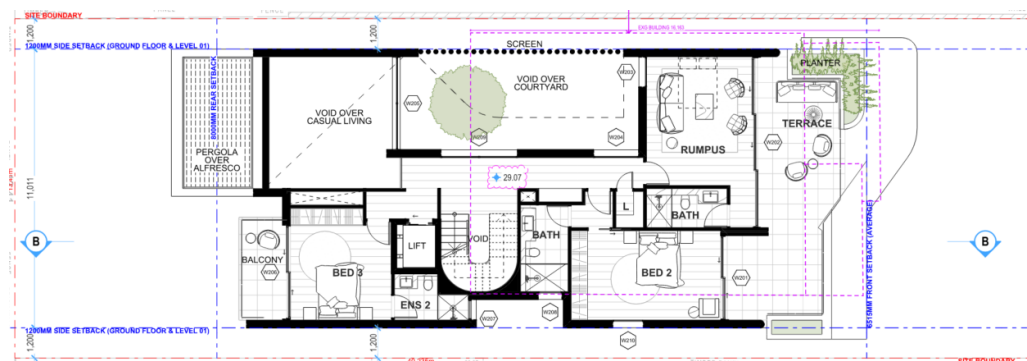


Figure 11: Proposed first floor plan - 61 The Corso, Maroubra (Source: PopovBass)

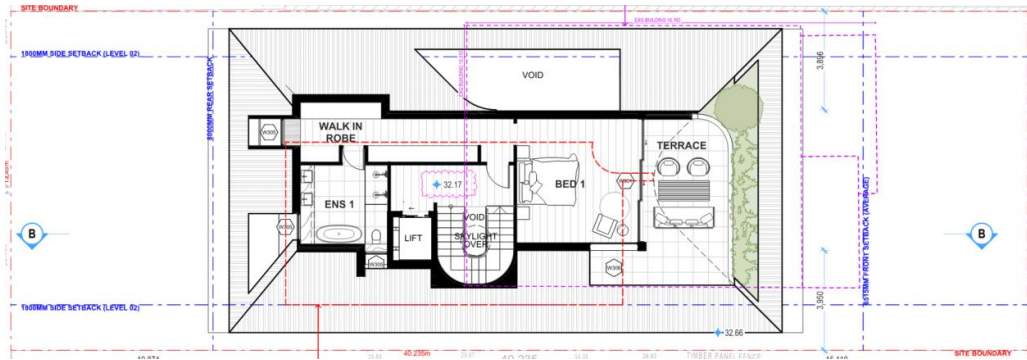


Figure 12: Proposed attic floor plan - 61 The Corso, Maroubra (Source: PopovBass)

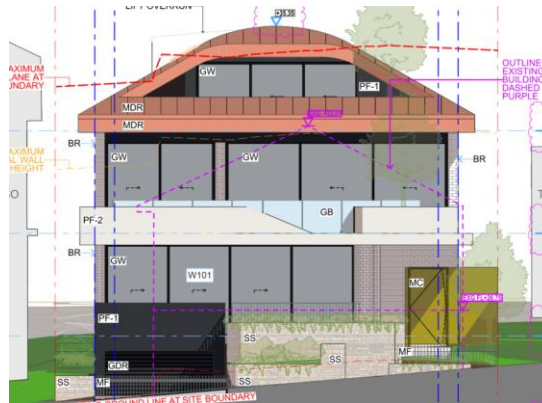


Figure 13: Proposed north-east elevation - 61 The Corso, Maroubra (Source: PopovBass)



Figure 14: Proposed north-west elevation - 61 The Corso, Maroubra (Source: PopovBass)



Figure 15: Proposed south-east elevation - 61 The Corso, Maroubra (Source: PopovBass)



Figure 16: Proposed 3D perspective of the front of the dwelling - 61 The Corso, Maroubra (Source: PopovBass)

5. Notification

The owners of adjoining and likely affected neighbouring properties were notified of the proposed development in accordance with Council’s Community Engagement Strategy. The following submissions were received during the notification process and have been paraphrased and summarised below:

- Address not provided

Issue	Comment
<p><u>Building height</u> We are deeply concerned that the proposed development exceeds the maximum building height and request that Council not allow a variation. The current proposal will severely impact our visual privacy and long held water and headland views. The mass of the development will also be detrimental to the amenity of the existing streetscape.</p>	<p>The applicant has amended the scheme to comply with the overall building height and external wall height controls. Council is satisfied that the proposed development will have a reasonable level of amenity impact on to neighbouring development, in terms of visual privacy and views subject to recommended condition amendments.</p> <p>In terms of visual privacy, the proposal has been amended to delete the attic floor rear balcony. The first floor bedroom 3 balcony is setback 9m from the rear boundary line, complying with relevant controls. In addition, the balcony is relatively small measuring 1.75m width x 3.95m length, of which Council is satisfied will have minimal adverse privacy impacts. Nonetheless, a condition has been recommended for frosted or translucent glazing to reduce potential overlooking.</p> <p>In relation to the view loss impacts, see a full view loss assessment in the Key Issues section of the Report.</p>

- 60 Sackville Street

Issue	Comment
<u>Loss of privacy</u>	

Issue	Comment
<p>The rear windows and balconies have no screens and will impact on our privacy. The proposed design includes 2 balconies on L2 and L3 which overlook our backyard and have direct sight into our living area, backyard and pool. No privacy screens have been provided and the planting along the rear is to be replaced with something else.</p>	<p>The proposal has been amended to delete the attic floor rear balcony. The first floor bedroom 3 balcony is setback 9m from the rear boundary line, complying with relevant controls. In addition, the balcony has been appropriately designed with a reduced area measuring 1.75m width x 3.95m length, of which Council is satisfied will have minimal adverse privacy impacts. Nonetheless, a condition has been recommended for frosted or translucent glazing to reduce potential overlooking.</p>
<p><u>Loss of morning sunlight</u> Private open space must receive a min of 3 hours of direct sunlight between 8am to 4pm. The DA does not provide shadow analysis of Sackville Street properties. We request Council to undertake this analysis to assess our morning sun access to the backyard, kitchen and living area.</p>	<p>Amended solar diagrams have been provided to show the hourly solar impact. Based on the site orientation of this block (being north-east to south-west) and the solar diagrams provided, Council can confirm that a minimum of 3 hours of solar access will be maintained to the POS of No.60 Sackville Street.</p>
<p><u>Loss of water views to the north Maroubra headland</u> If the proposed build is to proceed, we will lose all views toward the north of the Maroubra Headland. We therefore disagree with the statement that the “proposal is considered to be entirely consistent with the objective and controls of the LEP”.</p>	<p>Council is satisfied with the view loss resultant from this development, noting that existing views are distant and currently obscured by existing buildings. See a full view loss assessment in the Key Issues section of the Report.</p>
<p><u>Building height</u> The proposed height is higher than the maximum height allowance and the maximum wall height on eastern side is 10m. The proposed building will have more visual bulk than a design that adheres to the height controls. This will cause significant overshadowing to properties at the rear.</p>	<p>The applicant has amended the scheme to comply with the overall building height and external wall height controls. The overall height of the dwelling has been reduced and the top floor level has been converted into an attic floor which significantly reduces the external wall height to comply with DCP controls.</p>

- 62 Sackville Street

Issue	Comment
<p><u>Overall design</u> The proposed dwelling is non-compliant regarding the height of the dwelling, and unreasonable impacts to neighbouring dwellings.</p>	<p>Amended plans have been provided to address Council’s concerns regarding the built form and impacts to neighbours. Overall, Council is satisfied with the amended proposal subject to conditions.</p>
<p><u>Loss of privacy</u> The plans propose balconies to the first and second floor rear bedrooms, which will directly look into our garden, deck and living space. The second floor balcony will have a major impact on our privacy and solar access, as the design has not made considerations for Sackville Street properties. There is no mention of privacy screens and existing planting is being replaced along the rear boundary. Perhaps replacement trees can already be mature to adequately replace privacy current provided.</p>	<p>The proposal has been amended to delete the attic floor rear balcony. The first floor bedroom 3 balcony is setback 9m from the rear boundary line, complying with DCP setback controls. In addition, the balcony has incorporated a reduced area that measures 1.75m in width x 3.95m in length, of which Council is satisfied will have minimal adverse privacy impacts. Nonetheless, a condition has been recommended for frosted or translucent glazing to reduce potential overlooking.</p>

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Issue	Comment
<p><u>Overshadowing/solar loss</u> The proposed dwelling will impact solar access. The extra height will ensure no access to morning sun. The overshadowing is a direct result of the disregard of the height restrictions. Current overshadowing is from the existing planting, see photo at 10am below.</p> <p><u>Loss of water views</u> We currently have water views from upstairs. The proposed dwelling will remove these views almost completely. If the building was within the height restriction, the impact would be far less.</p>	<p>Amended solar diagrams have been provided to show the hourly solar impact. Based on the site orientation of the block (being north-east to south-west) and the solar diagrams provided, Council can confirm that a minimum of 3hours of solar access will be maintained to the POS of No.62 Sackville Street.</p> <p>Council is satisfied with the view loss resultant from this development, noting that existing views are distant and currently obscured by existing buildings. See a full view loss assessment in the Key Issues section of the Report.</p>

- 64 Sackville Street

Issue	Comment
<p><u>Loss of privacy</u> The rear balconies on levels 2 & 3 will look directly into our backyard, pool area and first floor living area and main bedroom. Our understanding is that privacy screens are required in these circumstances however none have been proposed on the submitted plans.</p> <p><u>Shadowing</u> The maximum wall height on the eastern side is 10m, being non-compliant with the control by 2-3m. This will cause significant shadowing of our backyard and pool. We feel a shadow diagram should be independently commissioned to show impacts to our home and other Sackville residences.</p> <p><u>Views</u> Our northern ocean views will also be adversely impacts by the 2-3m eastern height non-compliance.</p>	<p>The proposal has been amended to delete the attic floor rear balcony. The first floor bedroom 3 balcony is setback 9m from the rear boundary line, complying with the controls. In addition, the balcony has a reduced area measuring 1.75m in width x 3.95m in length, of which Council is satisfied will have minimal adverse privacy impacts. Nonetheless, a condition has been recommended for frosted or translucent glazing to reduce potential overlooking.</p> <p>Amended solar diagrams have been provided to show the hourly solar impact. Based on the site orientation of the block (being north-east to south-west) and the solar diagrams provided, Council can confirm that a minimum of 3hours of solar access will be maintained to the POS of No.64 Sackville Street.</p> <p>Council is satisfied with the view loss resultant from this development, noting that existing views are distant and currently obscured by existing buildings. See a full view loss assessment in the Key Issues section of the Report.</p>

- 66 Sackville Street

Issue	Comment
<p><u>Loss of Privacy</u> The rear of our house faces the rear of No 61. We are concerned that the top level balcony and windows (W302 and W303) will directly look into all of our living/dining areas. The only way to retain privacy is to close the curtains and eliminate all natural light into our home. We have no intention of living like this.</p>	<p>Amended plans have been received from the applicant that have converted the second floor to an attic floor. As such, proposed rear balcony has been deleted. Council is satisfied that windows to the rear of the attic floor are from low-use rooms and therefore will have minimal privacy impacts to rear adjoining neighbours and have been sited to comply with DCP setback requirements.</p>

Issue	Comment
<p>A few years ago, No 63 underwent a renovation – the rear of their building was required to have only a single frosted window in order to afford neighbouring properties some privacy. The photos attached show this precedent. The intended height of windows/balcony on the top floor of No 61 is well above the roofline of No 63. We wish that W302 and W303 will be frosted/opaque so we can continue to use our living areas.</p> <p>We have no issue with the windows/balcony on the floor below as some trees can be grown to block off the direct line of sight.</p>	

- Unit 1 & 4/55 The Corso

Issue	Comment
<p><u>Views</u></p> <p>I am concerned that easterly views from Number 4 will be obscured from three easterly facing windows: 1) the smallest bedroom, 2) the main bedroom, 3) the eastern side of the balcony, for a wide angle.</p> <p>I am concerned that easterly views from my balcony will be impaired, should the building extend beyond that of my neighbours in 57 and 59 The Corso.</p> <p>I am not concerned about the views from Number 1, as my only obstructed will be part of the awning over their small balcony facing the street.</p>	<p>The applicant has amended the scheme to comply with the overall building height and external wall height controls. Council is satisfied that the proposed dwelling complies with the setback controls, subject to conditions. See Key issues for a full assessment of the setback.</p> <p>In terms of view sharing, see the Key Issues for a full, detailed assessment of the view sharing considerations.</p>

- Unit 2/55 The Corso

Issue	Comment
<p><u>Views</u></p> <p>I am concerned that easterly views from my balcony will be impaired, should the building extend beyond that of my neighbours in 57 and 59 The Corso.</p> <p><u>Noise</u></p> <p>I am concerned about noise levels, especially considering the developer intends drilling/digging to make car spaces below the street line.</p>	<p>Council is satisfied that the subject dwelling does not have any significant views across the rear of the subject site. See a full view loss assessment in the Key Issues section of the report.</p> <p>Conditions of consent have been issued requiring a noise and vibration management plan to be implemented through the construction phase of the project. Subject to this and other conditions regarding earthwork management, Council is satisfied with the impact of the proposal in terms of the construction phase.</p>

- Unit 5/55 The Corso

Issue	Comment
<u>Height</u>	

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Issue	Comment
<p>Height of the design of the rear of the building should not exceed the permitted height restrictions. Having the current design will impinge on blocking the view to my property from bedrooms 1 & 2 and the lounge.</p> <p><u>Privacy</u> The bedroom on the top floor has a balcony enclave facing directly to bedroom 2 and 1. This is an impingement on privacy as its in direct line with their balcony.</p> <p><u>Setbacks</u> The length to the back of the house will impinge on bedroom, block both sunlight in early morning, privacy and views.</p>	<p>The applicant has amended the scheme to comply with the overall building height and external wall height controls. In terms of view sharing, see the Key Issues for a full, detailed assessment of the view sharing considerations.</p> <p>Council is satisfied that the attic floor balcony is partially enclosed on the side, reducing overlooking to neighbouring dwellings. See Key issues for a full assessment of the visual privacy interface.</p> <p>Council is satisfied that the proposed building envelope and setbacks comply with relevant objectives and controls, subject to conditions. See Key issues for a full assessment of the rear setback.</p>

- 57 The Corso

Issue	Comment
<p><u>Height of structure</u> At present there are no part 3 part 4 storey structures in the lower end of The Corso. This makes a mockery of RCC if buildings are allowed to exceed RCC height standards.</p> <p><u>Noise pollution</u> The construction of the proposed building will take a long time. I estimate 12 months minimum. There will be trades on site using loud equipment. Nearby residents will be expected to either sufficient noise pollution or wear ear pieces within their homes.</p> <p><u>Parking during construction</u> There will be significant traffic and parking interruptions for The Corso, caused by large trucks. The Corso is a very narrow street and large trucks will potentially block driveways and the street.</p>	<p>The applicant has amended the scheme to comply with the overall building height and external wall height controls.</p> <p>Conditions of consent have been issued to control building noise during the construction phase of the development to the satisfaction of Council.</p> <p>Council is satisfied with the level of traffic and parking interruptions to be caused by the proposed development. No Works Zone will be required under this subject DA.</p>

- 59 The Corso – Submission 1

Issue	Comment
<p><u>Natural light and views</u> The proposed development will take away all the natural light for No 59, my client's property as well as removing their views.</p>	<p>Amended solar diagrams have been provided to show the hourly solar impact. Council is satisfied that the solar impact on No. 59 The Corso will comply with the controls as per the DCP (noting the development will not impact overshadowing to north-facing windows or the rear POS).</p> <p>In terms of view sharing, Council is satisfied with the view impact the proposed development will have on No. 59 The Corso. See the Key Issues for a full, detailed assessment of the view sharing considerations.</p>

- 59 The Corso – Submission 2

Issue	Comment
<p>Bulk of 4 storey dwelling The DA proposal is entirely unreasonable and unfair. It encroaches on my beautiful light filled, ocean view property. The previous owners had a single one storey dwelling on a double lot. The current landowners now expect to build a 4 storey dwelling, taking away from every other neighbouring property and reducing the value of those around to add value to their property instead. The sheer size of this plan is completely unfathomable and affects everyone else around it.</p>	<p>The applicant has amended the scheme to comply with the overall building height and external wall height controls. Overall, Council is satisfied with the proposed development, subject to conditions as per Condition 2 in the consent requiring setback and height amendments.</p>

- 59 The Corso – Submission 3

Issue	Comment
<p>Excessive GFA and 4-storey built form The additional GFA in this case results in a 4 storey built form presentation to the street and a habitable roof level.</p> <p>Adopting the applicant GFA calculation (which we say is incorrect), the applicant redistributes floor space from the lower parking level (not a basement by definition) to the upper most master bedroom level, which causes most of the concern, which is the offending room with regard to view loss. If the master bedroom was deleted to comply with FSR then a flat roof could be adopted to comply with the height control and impact views.</p> <p>The GFA is not compliant as the lower level is not a basement by RLEP definition. Consequently, all areas except the lift and plan rooms plus 32.4sqm of carparking should be counted as GFA, increasing GFA above the permitted amount. The parking area is excessive and not required under the DCP. In addition, the lower ground stair and entry needs to be added to the total GFA.</p> <p>We request Council critically review this issue because additional GFA has been distributed to the roof level which causes the view loss. Our submission is that the upper level should be removed so that full height and FSR compliance is achieved.</p> <p>Privacy impacts The proposal reduces the privacy to the private ground floor bedroom terrace at the front of the dwelling as well as the entry area and associated pathways. The concern is that the rumpus terrace is elevated above our client's bedroom terrace, large enough to support smaller gatherings rather than a small breakout</p>	<p>The proposed development is seeking a minor 1.88% variation to the floor space ratio development standard. See Section 7.1 of the report for a full assessment and consideration of the proposed variation.</p> <p>Agreed. See Key Issues for a full assessment of the first floor front balcony and conditions to reduce the depth of the balcony.</p> <p>Screening is proposed opposite the first floor stair landing and has been conditioned for</p>

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Issue	Comment
<p>area. The proposal relies upon the planter and vegetation to screen the cross view.</p> <p>To satisfy the DCP objectives, the balance is to be made narrower so that the size of the balcony cannot support gathering, taking advantage of water views.</p> <p>In addition, there is potential privacy regarding the upper-level stair and landing.</p> <p><u>View loss</u> The client's dwelling comprises a layout of a bedroom, kitchen, dining area, lounge and POS to the rear. The upper level comprises bedrooms all having varying degrees of water views. The upper levels obtain water views to bedrooms at the front as the rear living areas have no views.</p> <p>The main bedroom is affected by the hipped roof with the view impact low to moderate but can be avoided with a compliant dwelling. The primary view loss occurs from the upper level lightwell, stair and corridor which is an integral feature of the property. The remaining bedrooms also have views impacted.</p> <p><u>Loss of visual outlook/bulk and scale</u> The additional bulk and scale over and above a compliant development will burden the existing outlook from the front door located at the side of the dwelling. The view of the sky will be lost, and the amount of natural light significantly reduced.</p>	<p>amendment in accordance with Council's privacy controls.</p> <p>Council is satisfied with the view impact the proposed development will have on No. 59 The Corso. See the Key Issues for a full, detailed assessment of the view sharing considerations.</p> <p>Council is satisfied that the proposed dwelling is compatible with the streetscape and complies with the building envelope controls including building height, external wall height, and setbacks (front and rear setbacks subject to conditions).</p>

- 63 The Corso

Issue	Comment
<p><u>Excessive excavation</u> The proposal significant exceeds Council's maximum excavation, exacerbating construction time, noise and risking damage to the water table. The drive may be compromised to flooding should mechanical pump-out fail.</p> <p><u>Height limit</u> The proposed exceeds the height limit with significant impact to neighbouring properties. Couple with the over-excavation the result is a 4th storey, not in keeping with the desired homes in the street being up to 3 storeys. The 4th storey will affect solar access and amenity to No. 63. Should the 4th storey be warranted, the location of least affect will be the north-west.</p>	<p>Conditions of consent have been issued requiring a noise and vibration management plan to be implemented through the construction phase of the project. Subject to this and other conditions managing earthworks, Council is satisfied with the impact of the proposal in terms of the construction phase.</p> <p>The applicant has amended the scheme to comply with the overall building height and external wall height controls.</p>

Issue	Comment
<p><u>Bulk</u> The bulk of the building is heavy and reads more like an apartment building. This is not in keeping with Council’s controls nor the character of the street.</p>	<p>Council is satisfied that the proposed dwelling is compatible with the streetscape and complies with the building envelope controls including building height, external wall height and setbacks (front and rear setbacks subject to conditions). See Section 7.1 of the report regarding the minor 1.88% variation to the floor space ratio development standard.</p>
<p><u>Wall height</u> The wall height along the side boundaries is excessive, creating a canyon effect at more than 3 storeys.</p>	<p>As noted above, the applicant has amended the scheme to comply with the external wall height controls.</p>

5.1. Re-notification

As noted in the background section of the report, on 03 August 2023, following review of draft plans and documentation, the applicant provided a formal set of amended architectural plans and documentation. As the amended documentation had some significant changes from what was original proposed, including the conversion of the proposed second floor to an attic floor being contained within the roof form. Accordingly, the proposal was re-notified to neighbouring dwellings in accordance with Council’s Community Engagement Strategy.

The re-notification period was for 14-days, between 29/08/2023 to 12/09/2023. The contents of the submissions received under both notification periods, as well as following the site visit by the Assessing Officer of 55 The Corso, have been addressed above.

6. Relevant Environment Planning Instruments

6.1. SEPP (Biodiversity and Conservation) 2021

Chapter 2 ‘Vegetation in non-rural areas’

The aims of Chapter 2 are:

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

The proposed development involves the removal of vegetation within the site. The proposed removal is permitted without development consent on the basis that the clearing is ancillary to the proposal and the affected vegetation does not trigger a separate permit, and is not a heritage item nor within a heritage conservation area. As such, the proposal achieves the relevant objectives and provisions under Chapter 2.

6.2. SEPP (Building Sustainability Index: BASIX) 2004

A BASIX Certificate No. 1308622S_02 has been submitted, prepared by House Energy Certified, dated 02 August 2023, satisfying the requirements of the *State Environmental Planning Policy (Building Sustainability Index: BASIX) 2004*.

6.3. 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 2.11 applies to development on land within the coastal use area

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.*

Comments:

The site is mapped as part of the coastal use areas pursuant to Chapter 2 of SEPP (Resilience and Hazards) 2021. 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 (subject to conditions). It is noted that the bulk and scale issues identified in the report are more related to the impacts on neighbouring development rather than the scenic quality of the area. As such, Council is satisfied that Clause 2.11 of SEPP (Resilience and Hazards) 2021 has been satisfied. Furthermore, in accordance with clause 2.12 of the SEPP, the proposal is not likely to cause increased risk of coastal hazards on the land or other land.

Chapter 4 'Remediation of land'

Chapter 4 of SEPP (Resilience and Hazards) 2021 applies to all land and aims to provide for a State-wide planning approach to the remediation of contaminated land.

Clause 4.6 of SEPP (Resilience and Hazards) 2021 requires the consent authority to consider whether land is contaminated prior to granting consent to the carrying out of any development on that land. The subject site is not identified under RLEP 2012 as constituting contaminated land or land that must be subject to a site audit statement. 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 suitable for the proposed land use.

6.4. Randwick Local Environmental Plan 2012 (LEP)

The site is zoned Residential R2 Low Density Residential under the Randwick Local Environmental Plan 2012 and the proposal is permissible with Council's 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, subject to recommended consent conditions.

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

Description	Standard	Proposed	Compliance (Yes/No/NA)
Clause 4.3: Height of Building (Maximum)	9.5m	9.49m (RL35.35-RL25.86) N.B. as per the LEP definition, building height is measured from the existing ground level.	Yes, complies
Clause 4.4: Floor Space Ratio (Maximum)	0.65:1 Site area = 539.6m ² Max GFA = 350.74m ²	Site = 539.6m ² Proposed FSR = 0.65:1 (357.3m ²) N.B. the x2 parking spaces and associated access are not included in the GFA calculation. In addition, the basement floor meets the definition of 'basement' as per the RLEP. As such, basement storage is not included within the GFA calculation.	No, see Clause 4.6 Assessment

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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 6.2 - Earthworks*

The objective of Clause 6.2 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.

The development satisfies Clause 6.2(3) in that:

- Conditions of consent are imposed to minimise impact on drainage patterns, soil stability and adjoining structures.
- The proposed excavation area is located mainly within the proposed building footprint, which is suitably scaled for the subject site. The size of the excavation does not have an adverse impact on the likely future use or redevelopment of the land.
- The site has been used for residential purposes for an extended period of time and there is unlikely to be contamination issues with the quality of the soil.
- Conditions of consent are imposed to manage demolition and waste removal.
- The proposed excavation does not have an adverse impact on the amenity of adjoining properties. The excavation is mainly located within the building footprint. No changes are proposed to levels along the side passages or rear yard area. Therefore, there is no adverse visual bulk impact, privacy or other amenity impacts to neighbouring dwellings.
- The proposal is unlikely to disturb relics – the site is not in a heritage conservation area nor is listed as a heritage item.
- The scale and siting of the proposal minimises impact on waterways, water catchments and environmentally sensitive areas.
- The submitted Geotechnical Report from Douglas Partners, dated June 2022, demonstrates that the proposed excavation works are satisfactory on the site, subject to conditions relating to vibration management, dilapidations surveys, excavation support, footings and groundwater. A condition of consent will be issued requiring these recommendations to be implemented as part of the construction phase of the development.

6.4.3. *Clause 6.7 'Foreshore scenic protection area'*

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

- (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.*



Figure 17: The Foreshore Scenic Protection Area and the subject site in orange – 61 The Corso, Maroubra

Comment:

The proposed development is seeking consent for a part three and part four storey detached dwelling house (due to the topography of the land and proposed attic floor level).

The dwelling house is proposed to be integrated within the existing steeply sloping topography, from the north to south. The Corso street frontage of the dwelling presents as a part two and part three storey detached dwelling house, with a basement garage located below street level. Council is satisfied that the proposed dwelling has been designed and sited to minimise the visual impact of the dwelling to the streetscape, in keeping with similar scale development within the foreshore area. In addition, Council is satisfied of the level of view sharing for an underdeveloped dwelling house in a densely developed coastal area, subject to conditions to reduce the height of the dwelling (see Key Issues for full assessment of view impacts due to the development).

Council is not satisfied that the proposed dwelling contributes to the scenic qualities of the coastal foreshore in terms of the colours, materials and finishes submitted with the application. See ‘Section B10: Foreshore Scenic Protection Area’ in the compliance table below for the assessment of the proposed scheme, outlining the requirement for colours to be of light hue tones.

Therefore, in light of the above, the proposed works are considered generally acceptable. As such, Council is satisfied that Clause 6.7 of the RLEP has been complied with, subject to conditions.

7. Clause 4.6 exception to a development standard

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

Clause	Development Standard	Proposed	Proposed Variation	Proposed Variation (%)
Cl 4.4: Floor space ratio (max)	0.65:1 Site Area: 539.6m ² Max GFA: 350.74m ²	0.66:1 (357.34m ²)	0.01 (6.6m ²)	1.88%

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 2021*, 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 the development is compatible with the height, bulk and scale of the character of other buildings in the locality. The three storey (or equivalent) built form matches that of other buildings in the vicinity notably Nos. 63, 65 and 55 The Corso. Nos. 63 and 65 The Corso contain three storey dwellings, indicating that this is a scale typical in the locality. As such, the development will not appear visually jarring or out of context in the visual catchment.

In terms of surrounding development, built forms at Nos. 63, 65 and 55 The Corso demonstrate that the proposed development will not be out of scale or incompatible with surrounding and existing development that contribute to the desired future character. Drawing on Preston CJ's assertion that desired character can be set by other buildings nearby, the proposed must be compatible with the desired future character of the locality, despite the variation with the Floor Space Ratio development standard.

It cannot be said that the proposed development is out of scale or context with the existing or anticipated envelopes established by the applicable planning controls, both of which assist in shaping the desired future character of the locality.

Assessing officer's comment:

Council is satisfied that minor variation of 1.88% will have minimal impact on the size and scale of the development and the desired future character of the locality. The variation is to the lift cavity to each floor only, which provides an important access to all four levels, increasing the longevity of the dwelling life. The proposed development is in keeping with other dwellings along the south-western side of The Corso. Overall, Council is satisfied with the building envelope generally complies the DCP controls in terms of site coverage and setbacks (subject to conditions outlined in the Key Issues section of this report).

(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 development is articulated with varying setbacks and façade treatment provided on all levels. As a result, there are minimal continuous walls proposed and the dwelling which provides visual interest to the streetscape and public domain. A side courtyard is provided to the western elevation to reduce bulk and scale, provide additional landscape and deep soil planting for the site but also improve the internal amenity for the occupants. The second floor level is significantly smaller in scale than the lower levels with greater setbacks provided and is integrated into the proposed roof to present a well-considered dwelling to the streetscape and utilised the roof area more effectively. The additional GFA does not impinge on the well-articulated and thoughtful design of the dwelling that is of a bulk and scale that is visually within character and context with the surrounding properties and streetscape.

Environmentally, a BASIX Certificate is submitted with the application and confirms that the proposal (once operational) will comply with the water, thermal comfort and energy efficiency requirements of the SEPP (Sustainable Buildings) 2022. The proposal has been designed to have no significant impact on the topography, micro-climate, air or water quality of the locality resulting in a suitable residential development (with the inclusion of the GFA breach) that will have no adverse environmental impacts and can meet the energy needs. Accordingly, the proposal meets objective (b)).

Assessing officer's comment:

Council is satisfied that the proposed development is well articulated on all sides with wall section <12m in length, new balconies, window/door openings, a large void area screened with privacy battens, as well as a mixture of materials. The additional FSR will have minimal impact on the potential bulk perceptions of the development.

The proposal also responds to the environmental and energy needs through the submission of BASIX certificates, which demonstrate that the development meets the relevant water and energy saving targets. Council is satisfied that the proposed future occupants will receive sufficient amenity, including the recommended changes outlined in the Key Issues section of the report.

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

The applicant's written justification demonstrates that this objective is satisfied by noting that the development is not in a heritage conservation area and is not considered a heritage item or located near either. Thus, this objective is considered irrelevant.

Assessing officer's comment:

The proposed development is not located in a conservation area or near a heritage item.

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

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

In terms of visual bulk, the scale of the proposed development has largely been addressed in objective (a). For the reasons discussed in objective (a), the proposed development represents a scale which is compatible with the character of the locality.

In terms of privacy, the extent of privacy impacts caused by the FSR breach will have no greater impact on the privacy to the adjoining properties when compared to a compliant built form. The proposed FSR breach pertains to the lift overrun, thus not specifically relating to a privacy concern. The additional privacy impacts as a result of the FSR breach when compared to a compliant development are insignificant.

With regards to overshadowing, the extent of the additional GFA particularly from the lift shafts creates no adverse additional overshadowing impacts to adjoining properties when compared to a compliant building envelope. The FSR breach will not result in any non-compliance with the solar access requirements under RDCP 2013 for surrounding properties. The extent of additional impact from the additional GFA would be insignificant and would not be noticeable to the owners of surrounding properties.

In terms of views, the GFA breach will not result in any significant view loss. The proposed development complies with the overall height of building development standard and given the topography, the 6.6m² variation to the GFA is unlikely to result in any significant view loss from surrounding properties. The extent of view loss caused by the non-compliant element would be insignificant. The adjoining properties to the west have uninterrupted views over the front boundary and to the north-east which will not be affected by the proposed GFA breach. The views over the side are across a side boundary and view

sharing is retained despite the FSR variation. That is, the additional view loss (if any) caused by the non-compliant GFA would be insignificant or nil.

Assessing officer's comment:

Council is satisfied that the proposed development will not have an adverse impact on the amenity of adjoining and neighbouring land in terms the following:

- Visual bulk: The proposed building envelope generally complies with the DCP controls relating to site coverage, setbacks (subject to conditions), external wall height, floor-to-ceiling height, wall lengths and articulation requirements. The minor 1.88% variation to the FSR standard will have minimal discernable visual impact to the development, accounted for by the inclusion of a lift cavity to each floor.
- Loss of privacy: A detailed assessment of privacy impacts is provided in Key Issues section of the report. Council is satisfied that the proposed development will not result in any unreasonable adverse privacy impacts, subject to conditions.
- Overshadowing: Whilst the proposed development will impact upon the solar access to the 2x north-facing ground floor dining room window to 63 The Corso, the proposed development retains sufficient solar access to the other north-facing living rooms windows to 63 The Corso, in accordance with the DCP controls. An alternative design would unlikely retain such solar access without impacting the amenity of the proposed development. In addition, these windows are susceptible to overshadowing from developing an existing single storey dwelling. Furthermore, the POS of neighbouring dwellings will also receive adequate direct solar access. Sa such, the level of overshadowing is considered acceptable.
- Views: A detailed view loss assessment is provided in Key Issues section of the report. It shows that the proposed FSR variation will have minimal impact upon the any view corridors within the locality, as view loss is mainly from the proposed dwelling height.

Conclusion: 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:

- *It is considered that the Variation is particularly small. In this regard, the difference between FSR complaint and non-compliant is the inclusion of the lift shaft at all levels of the dwelling. This particularly small departure (6.6m²) is also considered not to have any material impact, which arises as a consequence of the Variation, on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality. Specifically:*
 - *The extent of the additional GFA creates no adverse additional overshadowing impacts to adjoining properties when compared to a compliant building envelope. It is concluded the GFA breach will not result in any adverse loss of solar access to surrounding properties and continues to provide sufficient solar access to neighbouring private open space. That is, the extent of additional overshadowing from the additional GFA would be insignificant and would not be noticeable to surrounding properties or the public domain;*
 - *The GFA breach does not result in any adverse additional privacy impacts. The extent of privacy impacts caused by the GFA breach will have no greater impact on the privacy to the adjoining properties when compared to the existing dwelling or elements that comply with the FSR development standard. In this regard, the proposed terraces are not considered GFA and the lift shafts*

that has been included as GFA resulting in the non-compliant FSR, does not include any windows. All proposed windows do not result in any adverse additional privacy impacts. Therefore, the GFA variation will have no greater impact on the privacy of adjoining properties when compared to the complying elements of the building.

- *The GFA breach will not result in any significant view loss. The proposed development complies with the height of buildings development standard and surrounding properties have views which will not be materially affected by proposed development, irrespective of the 6.6m² GFA variation. Any properties with views affected by the GFA breach will be over the side boundary which are harder to protect or have better views in a different direction which are not affected. Views have been provided over and above the subject site due to the under-developed nature of the existing dwelling relative to the permissible controls and view sharing would not be achieved if compliance with the GFA was insisted upon. As such, the proposal would permit view sharing and the additional view loss (if any) caused by the non-compliant GFA would be insignificant or nil.*
- *The proposed variation will not result in any discernible increase to bulk and scale or change to the character of the dwelling when viewed from the neighbouring properties or public domain. That is, the additional GFA does not bring with it a built form that is excessive nor does it appear out of context with the scale and character of the dwellings within the streetscape and locality. Importantly, the proposed development complies with the height of buildings development standard and results in a technical breach to the FSR of 6.6m² but does not result in a form that is not anticipated by the planning controls. The resultant built form is similar to the scale of neighbouring properties along The Corso in particular Nos. 63, 65, and 55 The Corso which are of a three storey scale.*
- *The non-compliance facilitates an arrangement of floor space on the site in a manner that is effective in providing high levels of amenity to occupants of the development without impacting the amenity of neighbouring properties. Insistence on compliance with the FSR standard would result in the removal of the lift shafts which results in a dwelling that does not promote equitable access or ageing in place and is a disproportionate response to the internal amenity impacts created by the proposal. Compliance with the FSR standard will be a sub-optimal outcome for future occupants where equitable access and aging in place should be encouraged which would not be achieved without a variation to the GFA development standard.*
- *The proposed development will result in a variation to the GFA development standard that will not have any adverse impacts on the amenity of adjoining properties but results in significant benefits for the amenity of occupants. In this regard, the proposed second floor level and lift will generate greater amenity benefits that will not be realised without the variation to the GFA development standard. Specifically, the GFA will facilitate larger internal areas for the occupants, greater views, more private open spaces, equitable access and increased solar access. These benefits are not possible without the minor GFA variation.*

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 FSR standard and R2 Low Density Residential 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 floor space ratio standard.

Assessment against objectives of R2 Low Density zone

The objectives of the Residential R2 Low Density zone are:

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

Assessing officer's comment: The proposed development will provide for the housing needs of the community, providing a low density dwelling house within the locality. Council is satisfied that the proposed dwelling is in keeping with the streetscape of other dwellings to The Corso, generally complies with the DCP building envelope controls (subject to conditions relating to setbacks and height), which will have a sufficient amenity impact on adjoining neighbours with adequate protections (including privacy and views, see Key Issues).

The development is consistent with the objectives of the FSR 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 Planning Secretary, the matters in Clause 4.6(5) have been considered:

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

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

Is there public benefit from maintaining the development standard?

The 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.

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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 considerations within the subject report.
Section 4.15(1)(a)(ii) – Provisions of any draft environmental planning instrument	The Draft Comprehensive Planning Proposal to update the Randwick Local Environmental Plan (RLEP) 2012 was publicly exhibited from the 31 May to the 12 July 2022. The proposed development would not be inconsistent with the provisions of the draft RLEP 2012.
Section 4.15(1)(a)(iii) – Provisions of any development control plan	The proposal generally satisfies the objectives and controls of the Randwick Comprehensive DCP 2013. See table in Appendix 3 and the discussion in key issues below.
Section 4.15(1)(a)(iiia) – Provisions of any Planning Agreement or draft Planning Agreement	Not applicable.
Section 4.15(1)(a)(iv) – Provisions of the regulations	The relevant clauses of the Regulations have been satisfied.
Section 4.15(1)(b) – The likely impacts of the development, including environmental impacts on the natural and built environment and social and economic impacts in the locality	The environmental impacts of the proposed development on the natural and built environment have been addressed in this report. The proposed development is consistent with the dominant residential character in the locality. The proposal will not result in detrimental social or economic impacts on the locality.
Section 4.15(1)(c) – The suitability of the site for the development	The site is in 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 in the public interest.

9.1. Discussion of key issues

Landscaping and permeable surfaces

Clause 2.4 'Landscaping and Permeable Surfaces' requires that 30% of the subject site (i.e. 161.88m²) is to be designated as deep soil permeable surfaces, with >900mm widths.

The applicant has identified that there is 32.9% (177.65m²) of the site designed as deep soil area. This area calculation includes some areas less than 900mm in width, both of the side passage along the side of the dwelling, in addition to planters located within the front setback area.

As per the DCP, the definition of deep soil permeable surfaces include:

Areas used for the growing of plants (including grasses, shrubs and trees) and areas occupied by loose gravels upon soil at the ground level of the site. In addition, deep soil permeable surfaces do not include swimming and spa pools, paved areas, planter boxes, or planted areas above basements, podiums, roofs or slabs.

Council has calculated the proposed deep soil permeable area as 18.3% (98.8m²).

The landscaping plan identifies that the north-western side passage comprises of Bluestone steppers and Nepean pebbles. This material detail does not meet the definition of deep soil permeable surfaces. In addition, details of the materials of the south-eastern side passage are not noted on the plan.

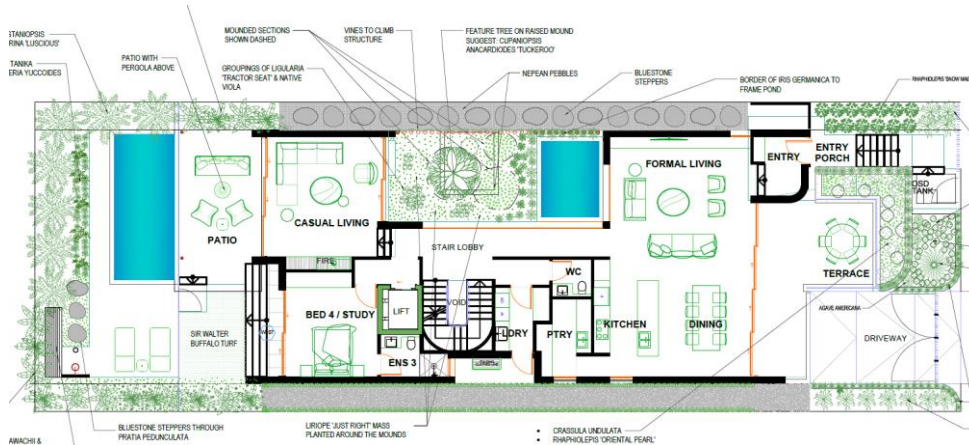


Figure 18: Proposed ground floor landscape plan - 61 The Corso, Maroubra (Source: Bell Landscapes)

Council does not support the subject proposal, as it fails to meet the objectives of the Clause 2.4 of the DCP in that:

- Landscaped areas have not been effectively distributed on the site to achieve a visual balance between building structures and open space.
- Areas within the site have not been sufficiently provided for canopy trees and large shrubs to contribute to the establishment of vegetation corridors across the locality.
- The deficiency in deep soil permeable area does not assist with stormwater infiltration and reduction of overland flow.

As such, Council will require the site to comply with the 30% control, noting that there are no constraints that would prevent compliance as a part of an entirely new development form.

It is further noted that Council’s draft DCP (which has been adopted for consideration for DA’s lodged from 01 September 2023) requires a site of this size the need for 40% deep soil permeable area. Whilst this DCP is not relevant to this proposal, it shows that sufficient and increased landscaping on sites is the future desired character that Council and the community expects for new development.

In order for these areas to be included in the deep soil permeable surfaces calculation and to comply with the 30% requirement, a condition of consent will be issued requiring that an additional 63.1m² of deep soil permeable area, as per the definition of deep soil permeable surfaces in Council’s DCP, shall be provided at the subject site.

In summary, the amount of landscaping and permeable surfaces is considered acceptable, subject to condition.

Front Setback

Clause 3.3.1 ‘Front Setbacks’ requires that the front setback is consistent with the average setbacks

of the adjoining dwellings. Where there are no adjoining dwellings, the setback must be no less than 6m.

As per the DCP, the measurement rules for setbacks notes that setback distances are measured perpendicular (that is, at 90 degrees angle) from the boundary to the outer face of the building elevation, excluding eaves, gutters, unroofed terraces, decks or landings not more than 1m above ground level (finished) and minor projecting features, such as awnings, sun hoods, screening devices and the like.

The proposed ground floor external dwelling wall is setback 6.515m from the front boundary, which is consistent with the adjoining dwellings. However, the proposed entrance has a 2.1m-2.7m deep awning that extends forward of the front building line (N.B. there are inconsistencies between the floor plan and elevation, see Figures 19 & 20 below). Council considers that a 2.1m-2.7m deep awning is not a minor projecting feature and therefore constitutes additional built form as a part of the front setback calculation.

Notwithstanding, the proposed unroofed ground level front terrace is only 970mm above the existing ground level and has not been factored into the front setback calculation.

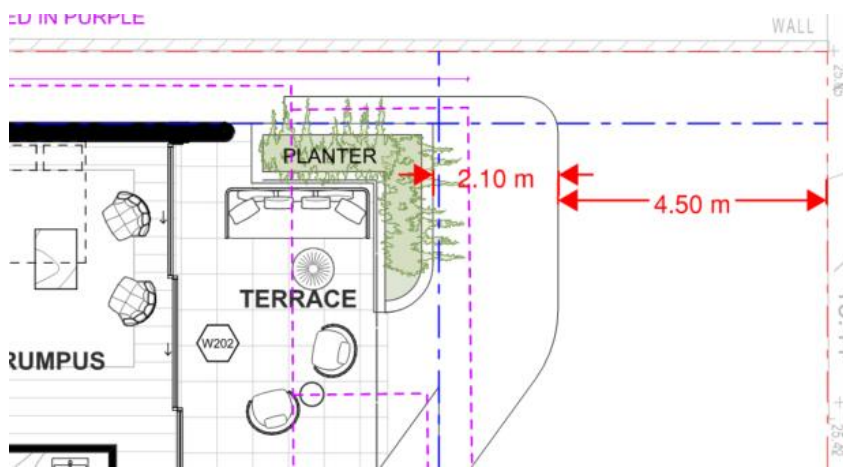


Figure 19: Proposed first floor plan with Council markings in red - 61 The Corso, Maroubra (Source: PopovBass)

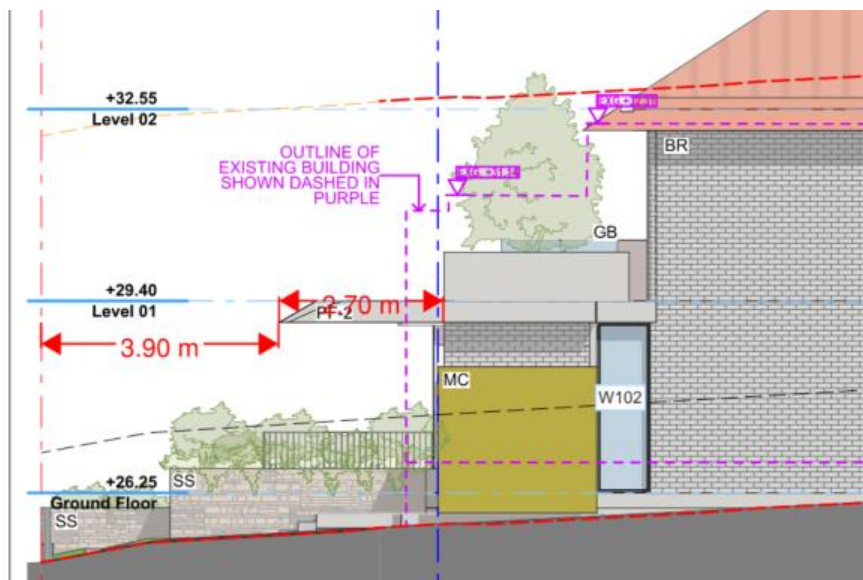


Figure 20: Proposed north-western elevation with Council markings in red - 61 The Corso, Maroubra (Source: PopovBass)

Council is concerned that such a large projecting structure is not in keeping with the streetscape presentation of structures on the south-western side of The Corso. As such, to enable the consideration of this awning as a minor projecting structure, a condition of consent will be issued requiring that the awning is to have a maximum depth of 800mm as measured from the external wall of the ground floor entrance. An 800mm awning will provide further articulation to the front of the dwelling and some protection to occupants from the weather when entering the dwelling, whilst reducing the visual bulk impact of the structure upon the streetscape.

In summary, the front setback is considered acceptable, subject to Council’s recommended condition.

Rear Setback

Clause 3.3.3 ‘Rear Setbacks’ requires that the rear setback must be 25% of allotment depth or 8m, whichever is the lesser. Increased rear setbacks are required over and above the minimum requirements, or demonstrate that this is not required, having regard to the following matters:

- Existing predominant rear setback line in the subject urban block.
- The need to achieve reasonable view sharing with the neighbouring dwellings and the public domain.
- The need to adequately protect the privacy and solar access to the neighbouring dwellings.

As noted above and as per the DCP, the measurement rules for setbacks notes that setback distances are measured perpendicular (that is, at 90 degrees angle) from the boundary to the outer face of the building elevation, excluding eaves, gutters, unroofed terraces, decks or landings not more than 1m above ground level (finished) and minor projecting features, such as awnings, sun hoods, screening devices and the like.

The proposed ground floor external dwelling wall is setback between 9.85m and 10.6m from the rear boundary, which is consistent with the adjoining dwellings and supported by Council. However, the proposed pergola above the ground floor terrace extends 3.25m beyond the rear building line. As such, Council considers that the 3.25m deep pergola is not a minor projecting feature and would form a part of the rear setback calculation. The proposed pergola breaches the beyond the rear setback line of the established urban block of The Corso.

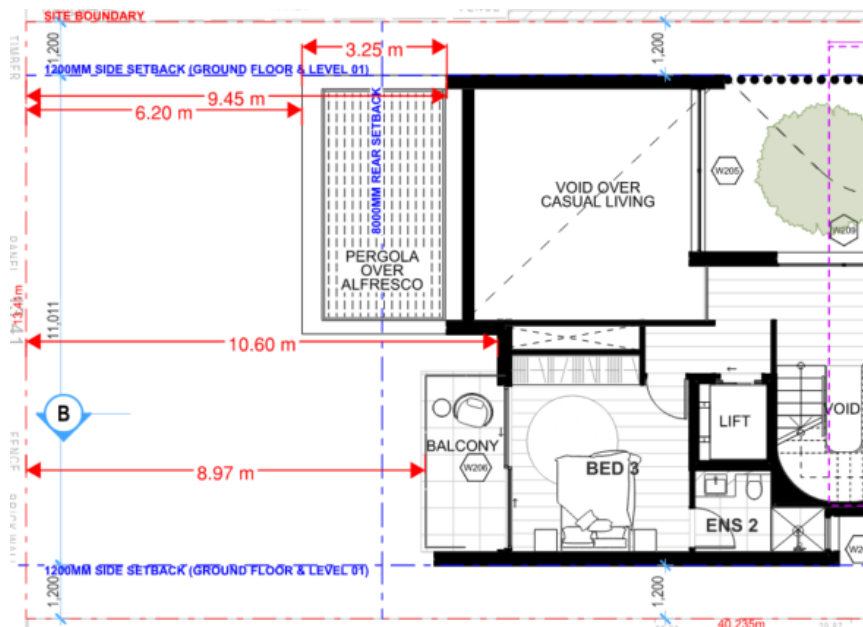


Figure 21: Proposed first floor plan with Council markings in red - 61 The Corso, Maroubra (Source: PopovBass)

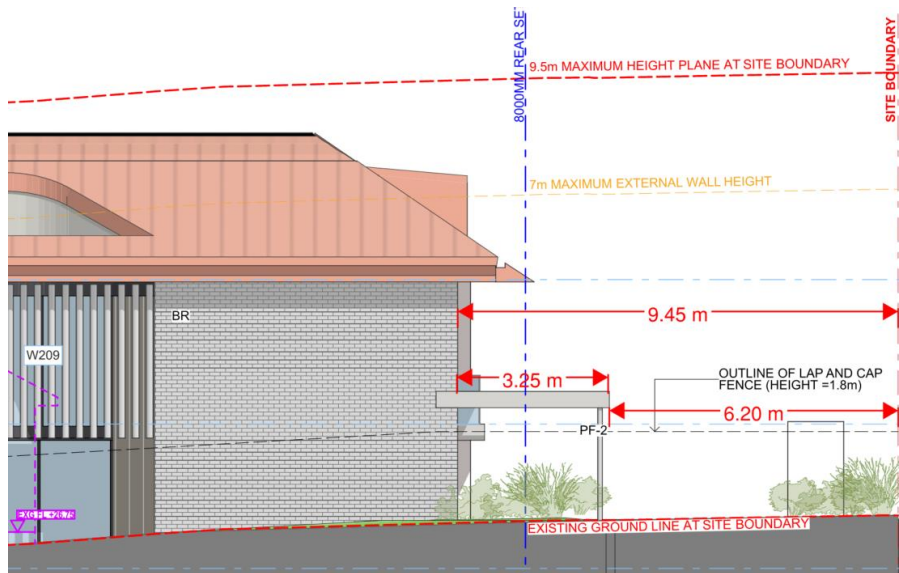


Figure 22: Proposed north-western elevation with Council markings in red - 61 The Corso, Maroubra (Source: PopovBass)

In order to assess the non-compliance and consider the justification above, Council needs to consider the proposal against the objectives of the relevant clause. The relevant objectives of Section 3 ‘Building Envelope’ have been reproduced below:

- To ensure adequate separation between neighbouring buildings for visual and acoustic privacy and solar access.
- To reserve adequate areas for the retention or creation of private open space and deep soil planting.
- To enable a reasonable level of view sharing between a development and the neighbouring dwellings and the public domain.

In addition, Council will consider the matters noted above as per subclause 3.3.3 (ii) of the DCP.

The proposed variation to the rear setback is not supported for the following reasons:

- The proposed pergola is only setback 6.2m from the rear boundary line. Whilst Council notes that there is no predominant rear setback line, the proposed awning will extend further towards the rear boundary line than other dwellings and structures on the south-eastern side of The Corso. Support of such a proposal will compromise the integrity of the rear setback controls and encourage other future development in the block to vary the rear boundary line.

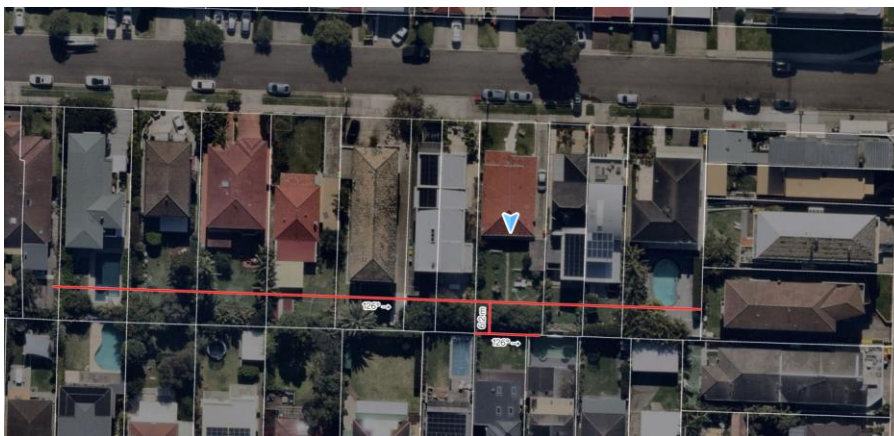


Figure 23: Aerial view of the subject neighbourhood showing the proposed awning and breach of the predominant rear setback (May 2023) - 61 The Corso, Maroubra (Source: Nearnmap)

- The most recent development in this urban block regarding the rear setback was at No. 45A The Corso Maroubra where Council supported a 8.8m rear setback single storey extension under DA/926/2015/A (dated 20/07/2016).
- The proposed pergola will be visible from the adjoining properties including those located on Sackville Street and will impact upon their visual amenity.
- The proposed main private open space for the subject site is located underneath the proposed pergola. As per the POS definition, the POS area is required to be adjacent to and directly accessible from the living or dining room of the dwelling and does not include any open space on podiums or roofs. The subject site requires the main POS area to have a dimension of 7m x 7m. The proposed dimensions are only 6.2m x 11.9m, with the deficiency being accounted for by the proposed pergola. Whilst only a slight variation to the control, compliance with the numerical control should be achieved on a site with a new proposed dwelling that is not constrained by an existing built form.
- It is noted that the proposed awning will not affect any views or solar access to/from neighbouring dwellings or the public domain.

In order for the predominant rear setback line to be maintained and preserved from future variations, as well as to reduce the visual bulk of the proposed awning and retain a sufficient POS area, a condition of consent will be issued requiring that the ground floor rear awning is to have a maximum depth of 1.45m, being setback 8m from the rear boundary line. Compliance with the numerical control should be attained to satisfy the objectives of sufficient separation and a provide compliance with POS area controls.

In summary, the rear setback is considered acceptable, subject to Council's recommended consent condition.

Visual Privacy

Council has identified several visual privacy issues related to the proposed development.

Ground level

The proposed ground floor front terrace is located 970mm above the existing ground level and oriented to the north-east towards the ocean views. The neighbouring terrace above the garage of No. 59 was approved with FFL of approximately RL27.8 (as per DA/201/2001). As such, the proposed FFL of the new terrace will be 1.55m below the existing neighbour's terrace and has incorporated sufficient separation to prevent cross viewing, noting that planters have also been provided to mitigate privacy impacts. Overall, Council is satisfied that the privacy of the terrace at No.59 is maintained, and a low impact would result from the proposed ground floor front terrace. In addition, the ground floor rear patio is located in line with the existing ground level and as such will not overlook adjoining dwellings.

First Floor Front Terrace

Council is concerned with the interface related to the first floor front terrace adjoining the rumpus room, which will directly overlook an adjacent main bedroom floor-to-ceiling window at No. 59 The Corso. There is a proposed separation of approximately 4.96m between the edge of the trafficable area of the terrace and the first floor bedroom window. The trafficable area of the terrace has incorporated a north-west 940mm planter with a planting area of 630mm that has been implemented by the applicant to manage privacy. The FFL of the terrace is RL29.4 whilst sill height of the floor-to-ceiling window at No. 59 The Corso is RL30.75. As such, the FFL of the proposed terrace is approximately 1.35m lower than that of the adjoining windowsill.

Whilst this south-eastern side bedroom window is already compromised in part by the public domain, the proposed terrace within closer a 5m separation distance presents an unacceptable level of cross viewing. As such, Council is concerned that from the proposed terrace would allow direct sight lines into the adjoining bedroom window, particularly noting that the proposed planter cannot be relied upon for complete privacy mitigation, as outlined in subclause 5.3(v) of the DCP.

The south-eastern dwelling adjoining the terrace (No. 63 The Corso) is only a single storey building at the front of the site, with window heights ranging from RL27.62-RL28.73. As such, there are no

concerns for overlooking this subject property and its window.

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Figure 24: Photo of the subject bedroom window at the adjoining neighbour with the existing subject dwelling in the background - 61 The Corso, Maroubra (Source: Randwick City Council)

It is further noted that Subclause 5.3(iii) of the DCP requires that any elevated balconies or balcony returns on the side facade must have a narrow width to minimise privacy impacts on the adjoining properties. In addition, Subclause 5.3(iv) of the DCP requires that where a terrace is likely to impact the windows of the adjacent dwellings, privacy screens must be installed in positions suitable to mitigate the loss of privacy, within a minimum height of 1.6m from the FFL.

Council has considered the requirement for a privacy screen along the north-western side of the terrace to prevent cross-viewing impacts. A 1.6m privacy screen will not prevent overlooking between the terrace and adjoining bedroom window, noting the difference in FFL of approximately 1.68m. See Figure 25 that demonstrates the inefficiency of a privacy screen to prevent overlooking.

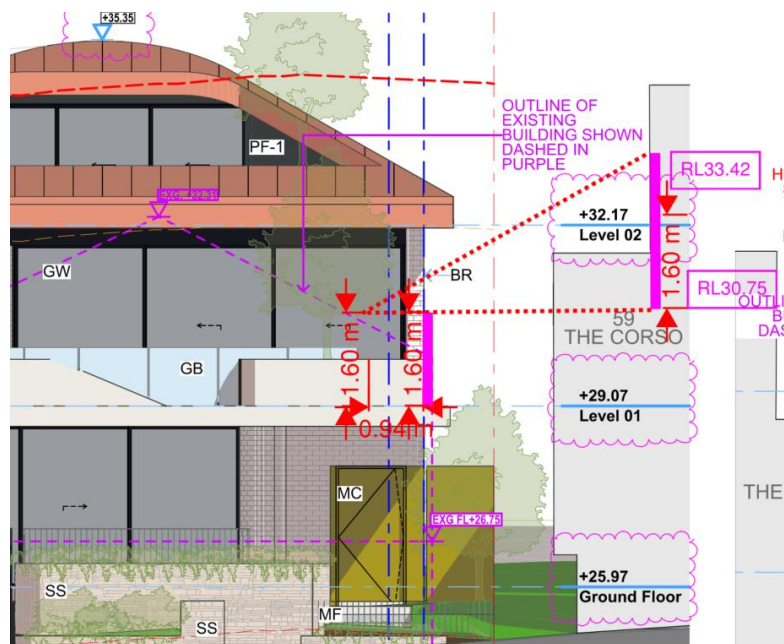


Figure 25: Proposed north-east elevation with sight lines in red and adjoining window in pink - 61 The Corso, Maroubra (Source: PopovBass)

Council also considered the requirement for a higher privacy screen along the north-western side of the terrace that prevents overlooking. The privacy screen would need to be at least 2.55m in height to block a significant portion of overlooking to the window. See Figure 26 below. This privacy screen would not be bound by a roof above resulting in a distracting and non-integrated element of the design, as well as blocking existing water views from the adjoining dwelling to the ocean. As such, Council does not support the addition of any privacy screens within this interface.

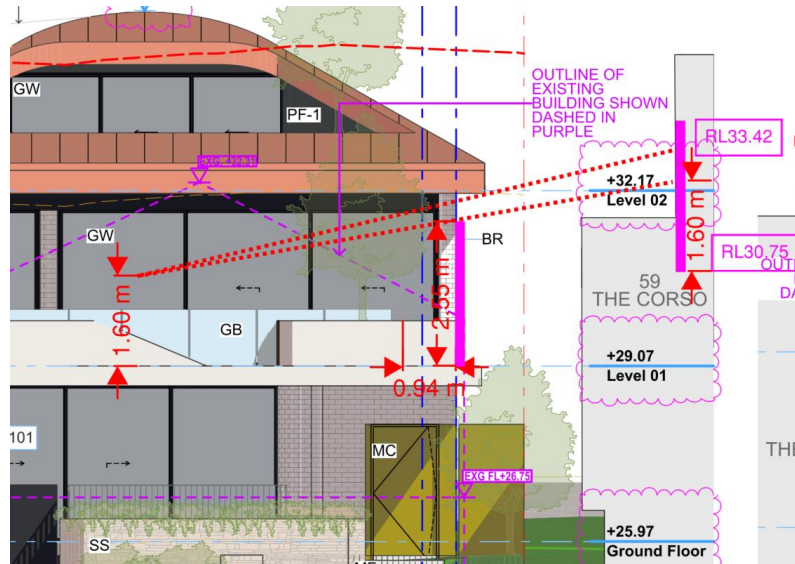


Figure 26: Proposed north-east elevation with sight lines in red and adjoining window in pink - 61 The Corso, Maroubra (Source: PopovBass)

Accordingly, to address the overlooking impacts of the proposed balcony, Council will require that the proposed first floor balcony is to be reduced to a maximum depth of 1.5m as measured from the external face of the rumpus sliding doors and 2.8m as measured from the external face of the bedroom 2 sliding doors. The reduced balcony area is to be converted into an additional planter box or non-trafficable roof space.

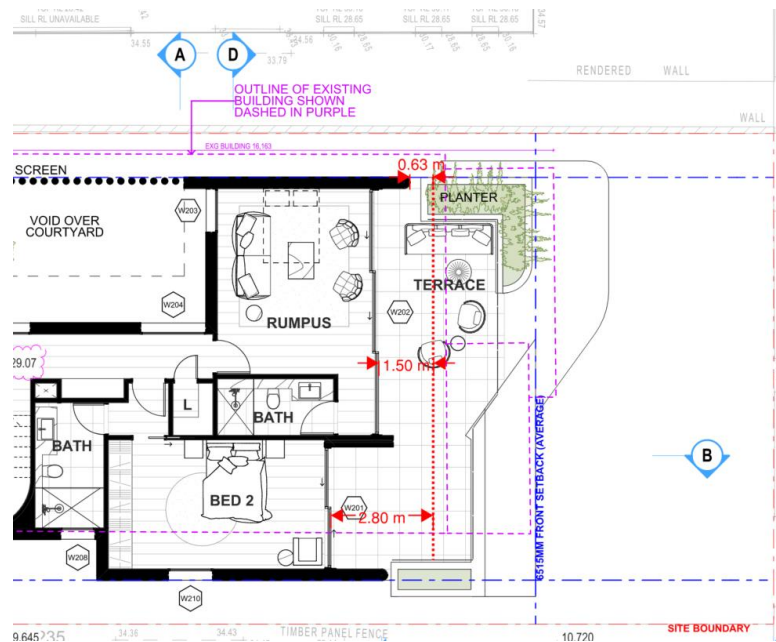


Figure 27: Proposed first floor addition showing in red the conditioned depth of the terrace - 61 The Corso, Maroubra (Source: PopovBass)

It is noted that a small gap of 630mm between the edge of the dwelling wall and terrace area will remain within this interface, however Council is satisfied that this minor cross-over will not result in

unacceptable privacy impacts and has balanced view sharing to retain the main bedroom view corridor and orientate the remaining balcony area towards the eastern ocean outlook rather than the adjoining bedroom window.

Council is satisfied that a 1.5m deep balcony to the rumpus and 2.8m balcony to bedroom 2 will retain sufficient amenity to future occupants (noting numerous other POS areas are provided on the ground floor of the dwelling that meet the DCP requirements) whilst protecting the visual privacy and views of the adjoining neighbour and reducing the visual bulk of the building from the streetscape perspective.

First Floor Rear Balcony

Council is satisfied that the first floor rear balcony adjoining bedroom 3 is an appropriate size to a bedroom and will provide positive amenity to the proposed dwelling and future occupants. However, Council is concerned that the first floor rear balcony adjoining bedroom 3 will compromise upon the privacy of the adjoining POS areas to properties along Sackville Street. In order to reduce overlooking, a consent condition has been recommended that will require the balustrading to be constructed with either translucent or obscured glazing. This condition will assist in reducing overlooking at a seated position from both the bedroom and on the balcony, without impacting upon the amenity of the balcony.

Attic

The attic floor front terrace is enclosed on the sides of the terrace by the proposed curved roof form. The opening of the balcony is completely orientated to the street and does not overlook adjoining neighbours. As such, Council is satisfied that the visual privacy of neighbouring dwellings is not impacted by this upper level terrace.

Courtyard

Council will ensure that privacy is maintained to the adjoining dwelling at No. 59 The Corso, through the recommendation of a consent condition that requires the privacy screen adjoining the internal courtyard along the north-western side of the dwelling must be fixed and constructed with the individual blades angled and spaced appropriately to prevent overlooking into the windows of the adjacent dwelling.

Overall, Council is satisfied with the proposed visual privacy interface to adjoining dwellings, subject to the conditions that reduce the depth of the first floor front balcony and regulate the design of courtyard screening.

View Sharing

The Randwick DCP 2013, Section 5.6 specifies objectives and controls for view sharing within sensitive coastal zones. The DCP provides for the following explanation of intended effect for this section of the DCP:

The concept of view sharing relates to the equitable distribution of views between development and neighbouring dwellings and the public domain. View sharing control aims 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. In established inner metropolitan areas like Randwick City, development inevitably causes varying degree of view loss. The intent of the DCP is to ensure development is sensitively and skilfully designed, so that a reasonable level of views is retained for the surrounding areas.

Where view loss impact is likely to occur, development proposals must address this sub-section of the DCP. The relevant objectives of the DCP applicable to this proposal 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 ensure development is sensitively and skilfully designed to maintain a reasonable amount of views from the development, neighbouring dwellings and the public domain.*

The proposal will cause a range of view loss impacts to neighbouring dwellings, in particular the adjoining semi-detached dwelling at No. 59 The Corso, the four-storey six-unit residential flat building at No. 55 The Corso, as well as the rear neighbouring detached dwellings being No's 58-64 Sackville Street. Loss of views has been raised by each of these objectors in their submissions.

It is noted that on 25 October 2023, the Assessing Officer conducted a site visit of No. 55 The Corso, gaining access to Units 2, 4, 5 & 6, to determine the potential view impact of the proposed development on each of these units. Following the site visit, objections addressing view loss were submitted to Council by Units 2, 4 and 5. Unit 3 has also been included in the assessment of the impact, noting that the site will have similar view loss impacts as to Unit 4.

The view impacts range from negligible to moderate views of the Pacific Ocean and north Maroubra Headland, currently enjoyed by neighbouring dwellings. The main reason for the view impacts is in relation to the development of an underdeveloped dwelling house within the urban block being a single storey dwelling. The more significant impact is due to the proposed dwelling height, with minimal impact as a result of the proposed variation sought to the floor space ratio development standard.



Figure 28: Aerial view for view loss consideration (January 2024) (Source: Nearmap)

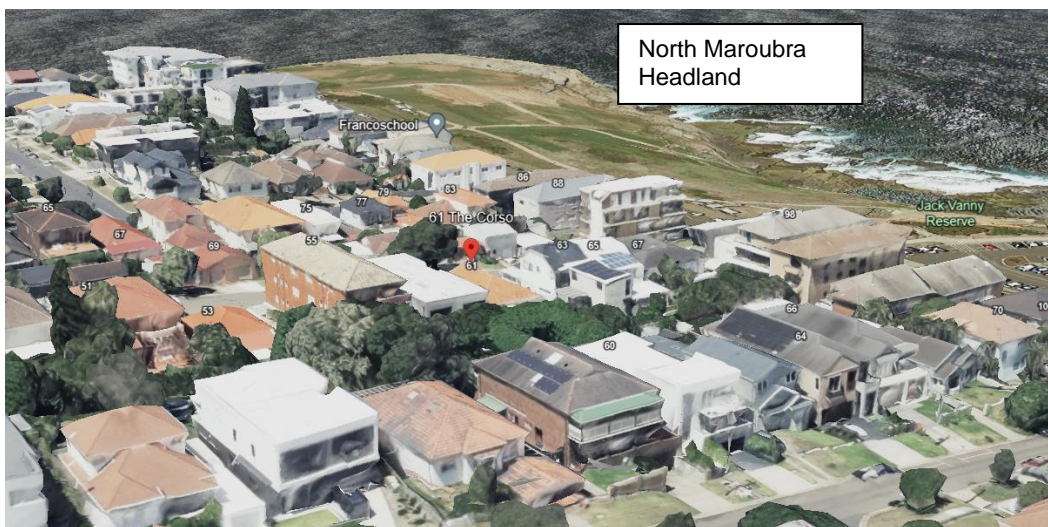


Figure 29: 3D oblique view for view loss consideration (Source: Google Earth)

The applicant has provided the following justification to support the proposed development:

View Loss Assessment

A preliminary view loss assessment was provided in the SEE prepared by Planning Ingenuity submitted with the development application. This was based on the information available to the applicant at the time on real estate websites. Given that access was not available to surrounding properties, an abbreviated test in accordance *Tenacity Consulting v Warringah Council [2004] NSWLEC 140* (henceforth known as *Tenacity*) was undertaken.

It is noted that the only property to object during the original notification period was No. 59 The Corso, which is considered below. During the assessment process, Council staff contacted other surrounding properties in order to access their properties to assess view loss and provided additional time to provide submission. No additional detail has been provided in relation to further submissions by the properties accessed by Council staff, but the applicant would like to put on record that this process is unfair and unreasonable given these properties had not originally objected to the proposal. Furthermore, this practice certainly does not accord with the Council RDCP nor the Departments "Development Assessment Best Practice Guide" where the objectives of the policy seeks to ensure timely decisions.

As a direct result, Council has raised issues with views from Nos. 4 and 6/55 The Corso and from No. 58 Sackville Road. Interestingly, no issue was raised with regard to No. 59 The Corso. Notwithstanding this, a *Tenacity* assessment has been undertaken from the properties below based on photographs provided by Council either after a site inspection or from an objection. In both instances, we are critical of the view loss assessment undertaken as neither the submission nor Council photographs consider the views from every relevant location in order to make a determination on view loss. In particular, the view loss photographs provided by Council only consider views that are potentially affected and ignore other views available. This makes a holistic consideration of the views difficult and we have again been forced to rely on real estate photographs to make an assessment where possible. We note this is not possible for No. 4/ This will be detailed below.

1. An assessment of the views affected

No. 59 The Corso

No. 59 The Corso adjoins the subject site to the west and is a two storey dwelling house. Due to the under-developed nature of the subject site relative to the planning controls, No. 59 The Corso enjoys views towards the Pacific Ocean from multiple rooms on the first floor level. The views from the front (northern) end of the dwelling are whole views while the views from the rooms towards the southern end of the dwelling are partial views impeded by built form of the subject site and surrounding properties.

No. 4/55 The Corso

No. 4/55 The Corso is a 3 storey RFB above ground level parking (4 storey equivalent) that is one property removed to the west from the subject site with No. 59 The Corso between the apartments and the subject site. The building appears to be a typical "six pack", with two units per floor, one facing the front and one facing the rear. Therefore, 4/55 The Corso is the rear unit on the middle level. The views from No. 4/55 The Corso are partial views of the Pacific Ocean currently impeded by built form of No. 59 The Corso and surrounding properties.

It is noted that No. 6/55 The Corso has views towards the south and south-east but photographs in this direction have not been provided and none can be found on the relevant real estate websites to demonstrate the views available. This makes consideration for this apartment difficult.

No. 6/55 The Corso

As discussed for No. 4/55 The Corso, No. 6/55 The Corso is the top floor rear apartment. Given the elevation, the views available from this level are only partially impeded by built form but expansive views are available which includes views

toward Malabar Headland. Again, photographs towards the south and south-east have not been provided by Council but real estate websites contain photos which are considered below.

No. 58 Sackville Street

No. 58 Sackville Street is located behind No. 55 The Corso and does not directly adjoin the subject site and the front elevation faces south. Views are available towards the Pacific Ocean to the north which are partially impeded by built form which extends to views of Maroubra Beach to the south, again partially impeded by built form. Again, photographs towards the south and south-east have not been provided by Council but real estate websites contain photos which are considered below.

2. Consideration from what part of the property views are obtained

No. 59 The Corso

The views from No. 59 The Corso are achieved from the first floor level and are across the side boundary, with the exception of the views from the first floor level master bedroom balcony which are achieved across the front boundary over the Corso road reserve. Tenacity notes that *“The expectation to retain side views and sitting views is often unrealistic”*.

We have reviewed images used in the submission prepared by Andrew Martin Planning (Figures E-K) which appear to focus on the extent of view loss rather than taking a balanced view loss assessment. For example, Figure E is taken at an unknown height and ignores expansive views available which is detailed in Figure 1 below.



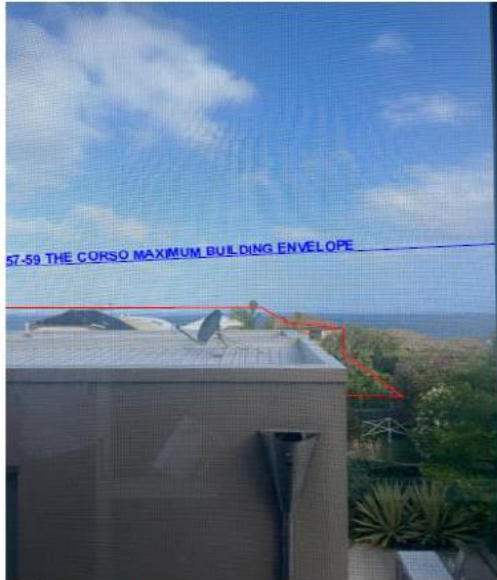
Figure 1: Real estate photos from the main bedroom (left) and front balcony (right)

Figures F-I are taken from the stair, lightwell and corridor area which are non-habitable and transient spaces within the dwelling. Whilst views are available, these are across the side boundary and through the permissible envelope of the subject site. Similarly, Figures J-K detail views from the bedrooms which are located towards the southern (rear) end of the dwelling and across a side boundary. The submission notes that a development compliant with the height and FSR would result in a greater view of the horizon. This ignores the fact the existing building has a height of approximately 7m with the permissible height being 9.5m. In any event, the proposal complies with the height and FSR development standards as detailed on the revised architectural plans prepared by Popov Bass (discussed below).

No. 4/55 The Corso

No. 4/55 The Corso is an apartment with the views obtained across the side boundary and through the permissible building envelope of No. 59 The Corso. Views are possible from bedrooms 1 and 2 and the living area and enclosed balcony area. Tenacity notes that *“The expectation to retain side views and sitting views is often unrealistic”*.

Importantly, Council did not provide any assessment of views towards the south-west and south and no real estate photos are available. The views available for No. 4/55 The Corso and the consideration of the views affected by the proposed development are provided in Figure 2.



1 4/55 The Corso - Balcony - With Existing Building



2 4/55 The Corso - Balcony - With Proposed Building



3 4/55 The Corso - Living - With Existing Building



4 4/55 The Corso - Living - With Proposed Building

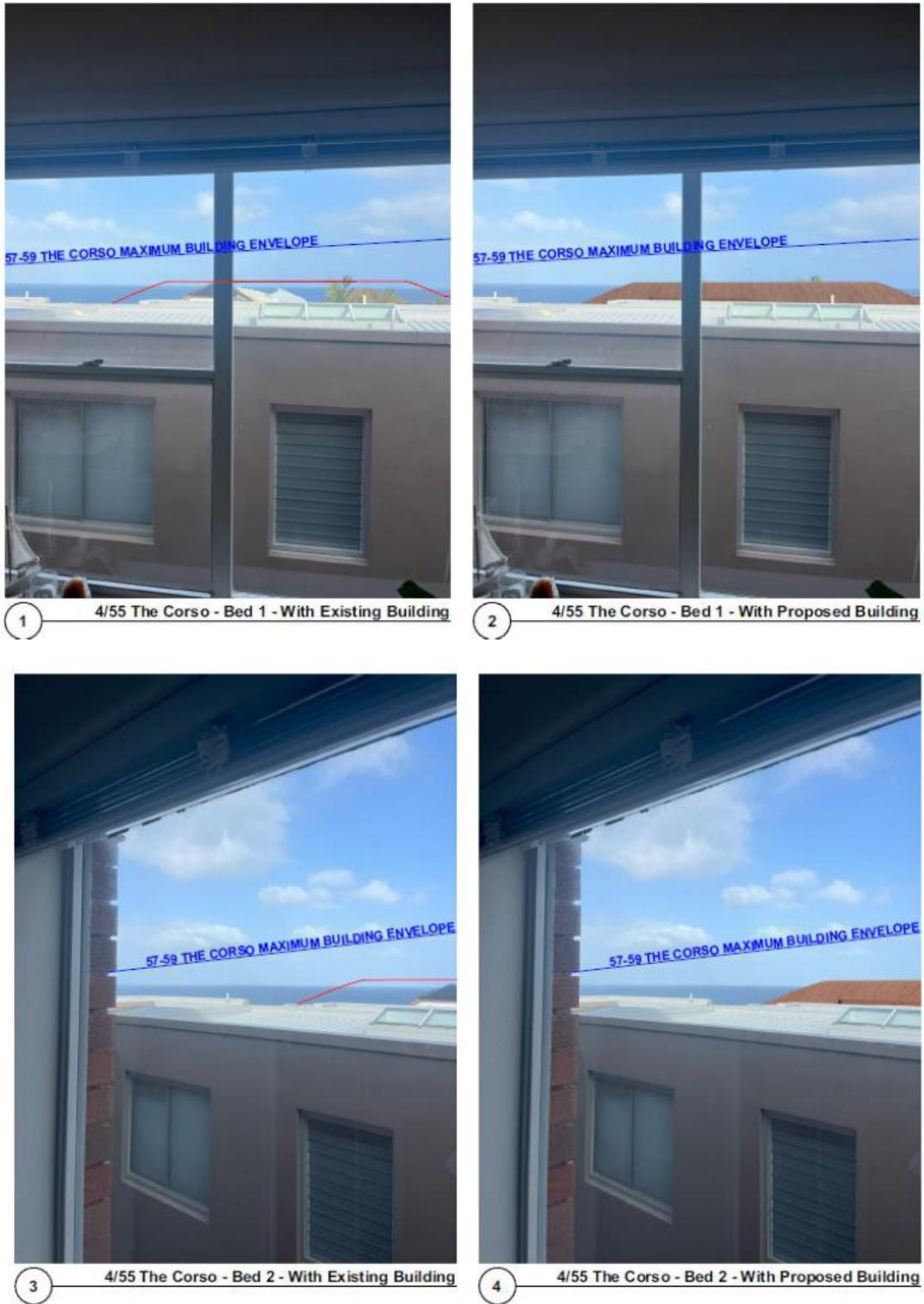


Figure 2: Views from No. 4/55 The Corso (left) with the proposed development superimposed (right)

No. 6/55 The Corso

No. 6/55 The Corso is an apartment with the views obtained across the side boundary and towards the rear. Views are possible from bedrooms 1 and 2 and the living area and balcony area. Given the elevation on the top level, expansive views are available that are not adversely affected by the proposed development from a sitting or standing position. Tenacity notes that “*The expectation to retain side views and sitting views is often unrealistic*”.

Importantly, Council did not provide any assessment of views towards the south-west and south but real estate photos are available. The views available for No. 6/55 The Corso and the consideration of the views affected by the proposed development are provided in Figure 3-4.

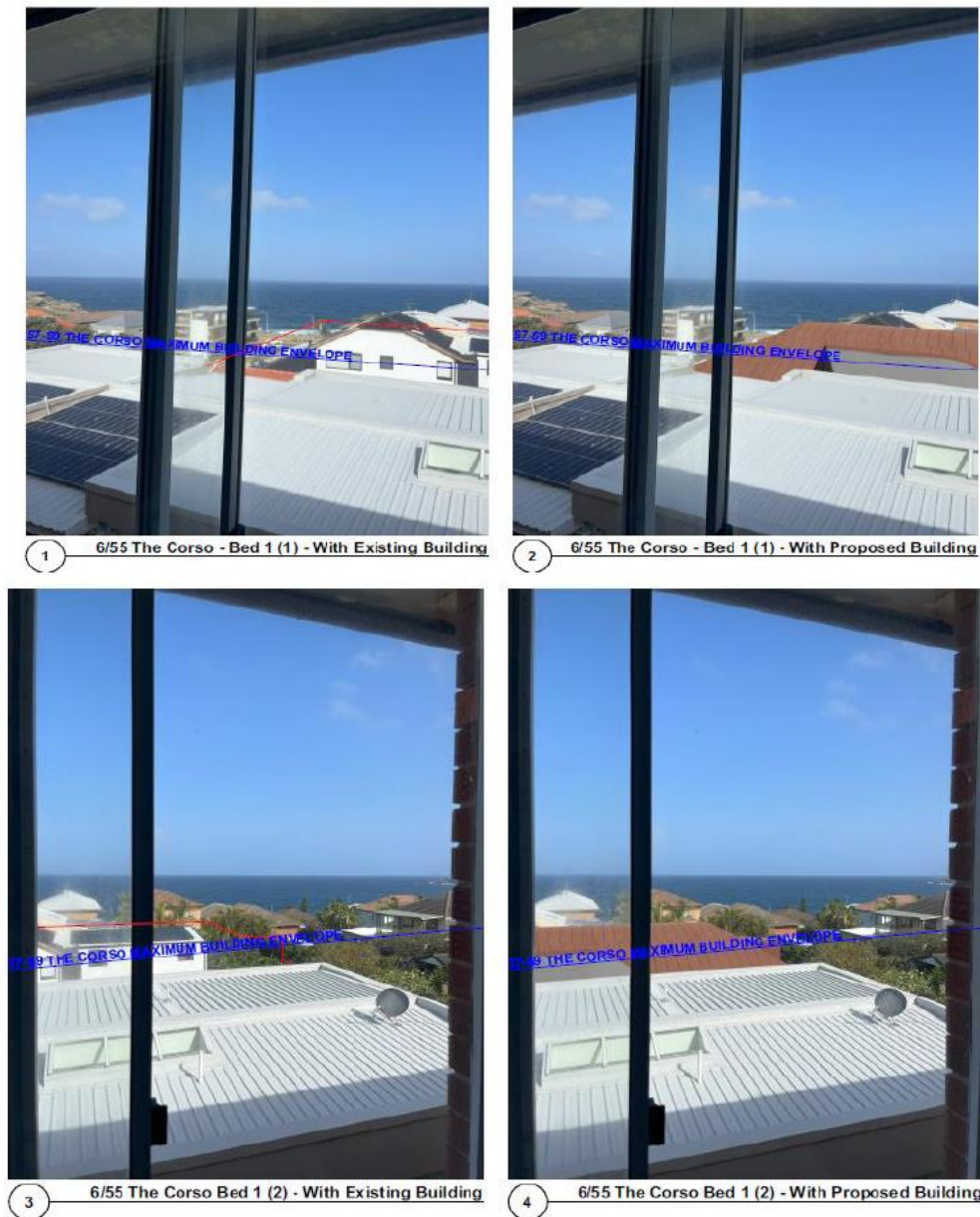


Figure 3: Views from No. 6/55 The Corso (left) with the proposed development superimposed (right)



Figure 4: Views to the south-east not captured in the view loss assessment (Source realestate.com)

No. 58 Sackville Street

No. 58 Sackville Street is a detached dwelling located behind No. 55 The Corso and does not directly adjoin the subject site. Any views affected by the proposed development are obtained across the side boundary and towards the rear. Tenacity notes that “*The expectation to retain side views and sitting views is often unrealistic*”.

Views are possible from the first floor level master bedroom, family room and balcony towards the subject site and from the first floor level bedrooms and balcony and lounge room on the ground floor level towards the south. Importantly, Council did not provide any assessment of views towards the south-west and south but real estate photos are available. The views available for No. 58 Sackville Street and the consideration of the views affected by the proposed development are provided in Figure 5-6.



Figure 5: Views from No. 58 Sackville Street (left) with the proposed development superimposed (right)



Figure 6: Views to the south-east not captured in the view loss assessment (Source realestate.com)

3. The extent of the impact

No. 59 The Corso

In terms of the extent of view loss from the whole of No. 59 The Corso, when considering the images provided (above and in the submission), the use of the rooms, the views affected are obtained across the side boundary and through the permissible building envelope permitted by the planning controls, the qualitative extent of view loss is considered to be minor.

No. 4/55 The Corso

In terms of the extent of view loss from the whole of No. 4/55 The Corso, this consideration is made difficult due to the lack of information provided by Council to photograph the full extent of views, rather than just the views impacted.

Despite this, when considering the images provided (above), the use of the rooms, the views affected are obtained across the side boundary and through the permissible building envelope permitted by the planning controls of No. 59 The Corso and the subject site, the qualitative extent of view loss is considered to be moderate.

No. 6/55 The Corso

In terms of the extent of view loss from the whole of No. 6/55 The Corso, this consideration is made difficult due to the lack of information provided by Council to photograph the full extent of views, rather than just the views impacted. Despite this, when considering the images provided (above), the use of the rooms, the views affected are obtained across the side boundary and through the permissible building envelope permitted by the planning controls of No. 59 The Corso and the subject site, the qualitative extent of view loss is considered to be negligible-minor.

No. 58 Sackville Street

In terms of the extent of view loss from the whole of No. 58 Sackville Street, this consideration is made difficult due to the lack of information provided by Council to photograph the full extent of views, rather than just the views impacted. Despite this, when considering the images provided (above), the use of the rooms, the views affected are obtained across the side boundary and through the permissible building envelope permitted by the planning controls, the qualitative extent of view loss is considered to be negligible-minor.

4. The reasonableness of the proposal that is causing the impact

In considering Step 4, it is important to consider the extent of compliance (or otherwise) with Council's current planning controls. In this regard, the revised architectural plans prepared by Popov Bass note the following:

- The proposal complies with the height development standard;
- The proposal complies with the FSR development standard;
- The proposal complies with the front, side and rear setback requirements; and
- The proposal complies with the wall height requirements.

Therefore, the revised proposal is entirely compliant with the building envelope controls anticipated by the current planning controls. Importantly in this instance, the revised proposal now complies with the 9.5m height of buildings development standard afforded by RLEP 2012.

The applicant has sought to maximise the development potential (and views) by constructing a three storey dwelling within the permissible building envelope to significantly increase the amenity for the occupants in terms of floor area, views, solar access and ventilation. This is a key component to Step 4 of *Tenacity* which states "*With a complying proposal, the question should be asked whether a more skilful 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.*"

There is no doubt that the revised proposal is a compliant development. Further reductions to the height of scale of the building would not bring about any significant increase in views and would ignore the key component of Step 4 in *Tenacity*, namely that the applicant should achieve "*the same development potential and amenity and reduce the impact on the views of neighbours*" as the revised proposal allows for better views and amenity of the occupants on the second floor level.

We say, any further reduction or changes to the revised proposal is not reasonable for the following reasons:

- The effective deletion or relocation of the proposed second floor level would certainly not provide the applicant with the same level of amenity as better access to views, solar access and ventilation are available from the second floor level;
- The effective deletion or relocation of the proposed second floor level would result in FSR being located outside of the permissible building envelope and result in non-compliances with other controls, such as deep soil and site coverage; and
- The applicants would not be able to achieve the same level of development potential.

In all instances, the views affected by the proposed development are achieved over the side boundary where *Tenacity* acknowledges that "*The expectation to retain side views and sitting views is often unrealistic*". Furthermore, better and uninterrupted views are available from other areas of each property which was not considered by Council or the neighbours consultant which are not affected by the revised proposal. For these reasons, the proposed second floor level is considered to be reasonable and satisfy Step 4 of *Tenacity*.

In terms of a more skilful design, in many respects the proposed development is a more skilful design as the proposal complies with the relevant building envelope controls and there are no other viable alternatives for the applicant to achieve the same development potential and amenity whilst retaining neighbouring views.

In particular, the objectives of the height and FSR development standards under RLEP 2012 seek to "*not adversely impact*". Similarly, the objectives of RDCP 2013, seek to "*maintain a reasonable amount of views*". In both instances, this does not mean the elimination of impact and contemplates an impact (*Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 at [94]).

The view sharing controls in this DCP and those in *Tenacity* seek to strike a balance between accommodating new development while providing, where practical, reasonable access to views from surrounding properties. The view loss from surrounding properties is achieved across a side boundary and through the permissible building envelope of the site and surrounding properties and is therefore considered to be inevitable and reasonable in this instance. Therefore, it is considered that view sharing is achieved and the application is worthy of Council's support.

Conclusion

We trust the above information addresses the matters request by Council and demonstrates that the proposed development is meritorious, does not have any adverse impact on the surrounding environment and is worthy of approval.

Assessing Officer's Assessment:

The following assessment of view loss is carried out in accordance with *Tenacity Consulting v Warringah [2004] NSWLEC 140 (Tenacity)*.

1. Quality of Views:

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

Comments:

The views currently obtained from the properties are of the Pacific Ocean to the north-east and east across the subject site. Views vary from different floors and vantage points of each dwelling. All views are currently obstructed views with other buildings and canopy trees within the view corridors. In addition, some dwellings have other views to the north and south, that will not be impacted by the proposed development. See specific views from properties below:

N.B. photos of views that have not been included in the applicants above assessment have been provided below for reference:

- Unit 2, 55 The Corso – no coastal views are obtained from the site, as views are of neighbouring properties and trees/planting within their sites. As such, Council is satisfied that the proposed development does not impact upon any views from this property.



Figure 30: Photo of the existing outlook from the front terrace at Unit 2, 55 The Corso (Source: Randwick City Council)

- Unit 4, 55 The Corso – views obtained from this property are to the east, being obscured views of the ocean. The proposed development will result in the loss of some of these ocean views to the east.

N.B. whilst Council did not receive a submission from Unit 3/55, nor was able to gain access to the property, considering that this unit shares the same floor level and eastern aspect, views from this property are considered comparable to 4/55 The Corso. Based on this assessment and other analysis of view corridors and the built form within the locality, Council has determined that current eastern obscured ocean views will be impacted whilst some to the north-east will be retained.

- Unit 5, 55 The Corso – views obtained from this property are significant northern district views and of the north Maroubra headland, eastern ocean views and views of Mahon Ocean Pool, and southern views of the Malabar Headland and district views. The outlined northern and southern views will be maintained as existing, with the only view loss to be to the east of Mahon Pool and some currently obscured ocean views.



Figure 31 & 32: Photos of the existing views from the front balcony at No 5/55 The Corso (Source: Randwick City Council)



Figure 33 & 34: Photos of the existing views from the front balcony at No 5/55 The Corso (Source: Randwick City Council)



Figure 35 & 36: Photos of the existing views from the side bedroom window at No 5/55 The Corso (Source: Randwick City Council)

- Unit 6, 55 The Corso - views obtained from this property are north-eastern views of the north Maroubra headland, eastern ocean views and views of Mahon Ocean Pool, and southern views of the Malabar Headland and district views. The outlined north-eastern and southern views will be maintained as existing, with the only view loss to be to the east of Mahon Pool and some currently obscured ocean views.
- No. 59 The Corso – views obtained from this property are north-eastern views of the north Maroubra headland, eastern ocean views and south-eastern ocean views. The outlined north-eastern and south-eastern views will be maintained as existing, with the only view loss to be to the currently obscured eastern ocean views from the first floor of the dwelling, noting the proposed reduction of the first floor terrace depth within the site.



Figure 37 & 38: Photo of the existing views from the front terrace at No 59 The Corso (Source: Randwick City Council)



Figure 39 & 40: Photos of the existing views from the front balcony at No 59 The Corso (Source: Randwick City Council)



Figure 41 & 42: Photos of the existing views from the front bedroom at No 59 The Corso (Source: Randwick City Council)



Figure 43: Photo of the existing views from the dwelling stairwell at No 59 The Corso (Source: Randwick City Council)



Figure 44 & 45: Photos of the existing views from the rear bedroom at No 59 The Corso (Source: Randwick City Council)

- No. 58 Sackville Street - views obtained from this property are significantly obscured north-eastern ocean views and of the north Maroubra Headland. Other views obtained are to the south-eastern ocean and Malabar Headland views. The outlined south-eastern views will be maintained as existing, with the only view loss to be to the currently obscured north-eastern ocean views and complete loss of the north Maroubra Headland.
- No. 60, 62 & 64 Sackville Street - views obtained from this property are significantly obscured north-eastern ocean views and more significant south-eastern ocean and

Malabar Headland views. The outlined south-eastern views will be maintained as existing, with the only view loss to be to the currently obscured north-eastern ocean views.



Figure 46: Photo of the existing views from the rear at No 60 Sackville Street.



Figure 47: Photo of the existing views from the rear at No 62 Sackville Street.

2. Reasonable Expectation of View Retention:

“The second step is to consider from 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 and sitting views is often unrealistic.”

Comments:

The views being lost from all the The Corso properties are obtained across the respective side boundaries to the eastern aspect. These views are obtained from both standing and sitting positions.

The views being lost from all the Sackville Street properties are from the rear of their respective dwellings. Views from No. 58 & 60 are obtained across the side boundary whilst No. 62 & 64 adjoin the rear of the subject site and are therefore obtained across the rear boundary. Views from the Sackville Street properties are obtained from both standing and seated positions.

3. Extent of Impact:

“The third step is to assess the extent of the impact. This should be done for the whole 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.”

Comments:

The views that are impacted of Units 3 and 4, 55 The Corso are views from living rooms and bedrooms along the eastern aspect. Considering the current views are already obscured by buildings and some ocean views will be retained, the view loss is classified as minor/moderate.

The views that are impacted of Units 5 and 6, 55 The Corso are views from living rooms and bedrooms along the eastern aspect. Considering the current views are already obscured by buildings and the more significant north/north-eastern and south/south-eastern views will be retained, the view loss is classified as minor.

The views that are impacted of 59 The Corso are views from first floor landing area as well as the front bedroom along the eastern aspect. Considering the current views are already obscured by buildings, from low use rooms and that the north-eastern and south-eastern views will be retained, the view loss is classified as negligible/minor.

The views that are impacted of the Sackville Street properties are views from a secondary living room, bedrooms and adjoining rear balconies (in some cases) along the northern dwelling façade. Considering the current views are already obscured by buildings and the higher quality south-eastern views will be retained, the view loss is classified as minor.

4. Reasonableness of Proposed Development:

“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 skilful design could provide the applicant with the same development potential and amenity and reduce the impact upon 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.”

Comments:

The views that are impacted are caused from the proposed new dwelling with a building envelope that extends further than the existing dwelling.

The most significantly impacted views are from No's 3 & 4/55 The Corso, which have ocean views across the side boundary from both standing and seated positions from bedrooms and living rooms, as well as No. 58 Sackville Street which will lose interface views of the north Maroubra headland and the ocean.

It is noted that the proposed dwelling complies with the maximum building envelope controls (i.e. overall dwelling height, external wall height, minimum floor-to-ceiling heights, setbacks being subject to condition), as set out in the LEP and DCP.

For No's 3 & 4/55 The Corso, whilst the views that are enjoyed from the side boundaries are much more difficult to retain, Council is not satisfied that the proposed development has adequately considered alternative design options that maintain sufficient amenity for the proposed dwelling and future occupants whilst still retaining panoramic view corridors to neighbours.

The proposed development seeks the following floor-to-ceiling heights to each floor:

- Basement: 2.6m
- Ground floor: 2.75m
- First floor: 2.75m
- Attic floor: between 2.1-2.8m.

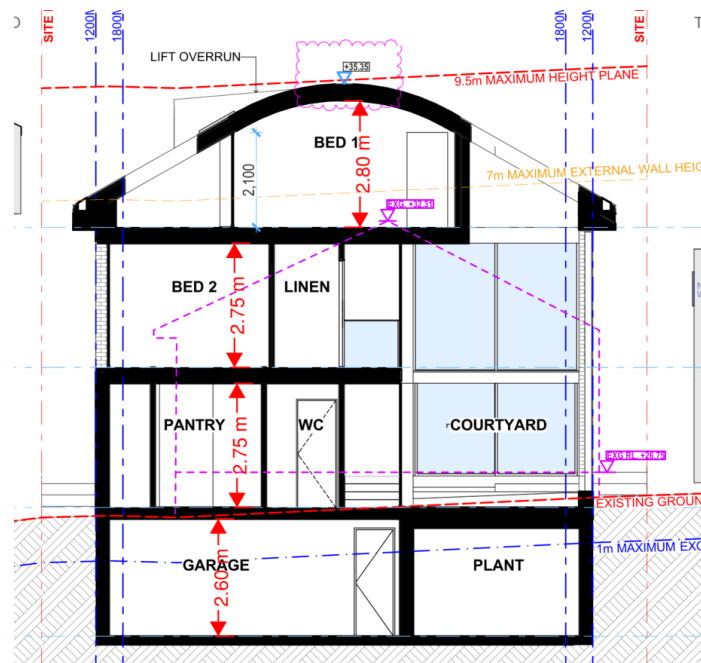


Figure 48: Proposed short section with F2C heights by Council in red - 61 The Corso, Maroubra (Source: PopovBass)

Based on these heights, Council has determined that there is scope within the development to reduce the overall height of the building to match the height of the adjoining flat roof to No. 59 The Corso, being RL34.57.

Council deems an appropriate outcome to retain the proposed basement and ground floor levels, citing that changes to these levels would have more detrimental impacts on the amenity of the site including access to all sides of the site and sufficient floor-to-ceiling heights to sustain the use of the ground floor level as the main living space.

Between the FFL of the first floor (RL29.07) and the height of the roof at No. 59 The Corso (RL34.57), there is 5.5m. Under the DCP, the minimum floor-to-ceiling height for living areas, such as living room/lounge and dining room, is 2.7m. As the main living areas of the dwelling are located on the ground floor level and the rumpus room to the first floor is a supplementary living room, a minimum floor-to-ceiling height for this floor that adequately provide sufficient amenity to occupants can be 2.4m (complying with Part 10.3 'Room heights' of the NCC 2022). As for the attic floor, to comply with the requirements under Part 10.3 'Room heights' of the NCC 2022, habitable floor space in the attic level must maintain a height of not less than 2.2m for at least two-thirds of the floor area of the room or space. Based on these requirements, Council will require the following conditions to imposed on the development:

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- The ceiling height of the first floor level shall have a height of RL31.47 (with the first floor having a floor-to-ceiling height of 2.4m).
- The FFL of the attic level shall have a height of RL31.87.
- The overall height of the dwelling shall be reduced to a maximum height of RL34.57.

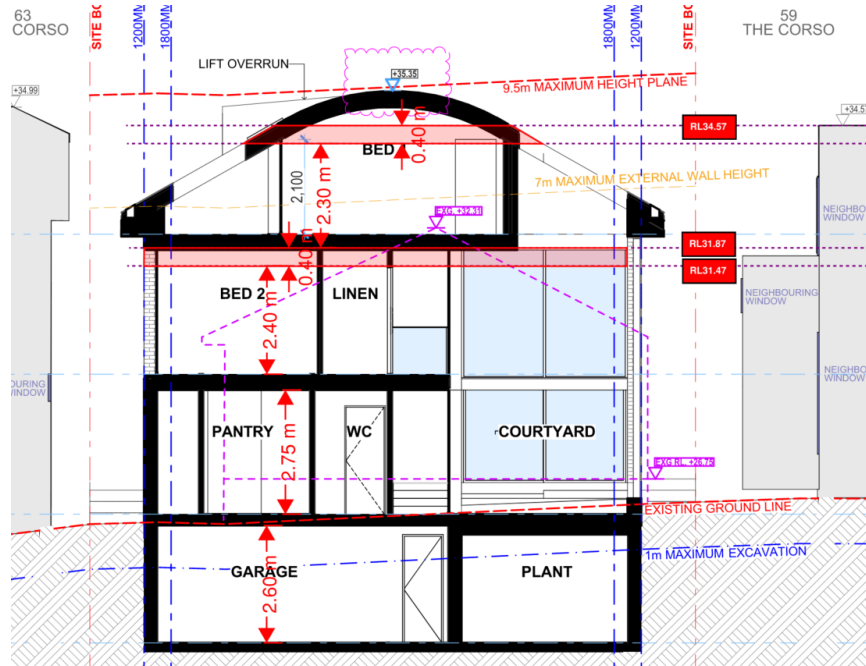


Figure 49: Proposed short section showing the conditioned amendments to building height and F2C heights in red - 61 The Corso, Maroubra (Source: PopovBass)

Based on Council's calculations, a reduction of this size will provide sufficient amenity of the proposed dwelling occupants whilst maintaining the views from No's 3 & 4/55 The Corso across the side of the site.

The conditioned reduction of the dwelling height will also retain the views from No. 58 Sackville Street of the north Maroubra Headland. Whilst the property will continue to enjoy views to the east and south at different vantage points, a significant portion of the existing headland view will continue to be enjoyed, achieving a further positive outcome for view sharing within the vicinity.



Figure 50: Photo of the existing view from 58 Sackville Street show the north Maroubra headland view to be retained above the red line - 61 The Corso, Maroubra

Council also notes that the applicant proposes a lift for access to all 4 levels with an overrun located on the proposed roof. Subject to the conditioned roof height decrease, Council is concerned that the roof overrun will protrude above the new height and impact upon the view corridors that are

being retained. For a single residential dwelling, the provision of a lift with an overrun is not required, with other roof designs possible that do not require the overrun. The design of the proposed lift has not been made clear to Council as part of this application process, including as to the accuracy of the proposed height of the proposed lift. In addition, Council is concerned that the proposed lift overrun would not integrate into the design of the dwelling roof and will not present as a minor feature as viewed from neighbouring properties.

In order to confirm that the proposed lift overrun does not impact upon the view corridor, a condition of consent will be issued requiring that either the lift overrun shall be reduced to a maximum height of RL34.57, or alternatively, an amended lift specification shall be installed that does not require an overrun to the roof. This condition allows the applicant to explore different options for a lift that are more appropriate to the sensitivities of this development site context.

Subject to the above conditions, Council is satisfied with the level of view impact to the other dwellings in the locality. The views enjoyed from Units 5 & 6/55 The Corso will be maintained as existing. The existing views from 59 The Corso across the side of the site is much more difficult to retain, considering that the further significant reductions to the dwelling would be required to retain these views. It is noted that the most significant views to the front of the site will be mostly retained, at both the ground and first floor though condition amendments.

In terms of the dwellings at 60-64 Sackville Street, the views enjoyed from the rear first floor outlook of these dwellings are mostly obscured by existing buildings and canopy trees. The views that each currently enjoys mostly from the underdevelopment of the existing dwelling on the site as a single storey house. Considering other views are enjoyed to the east and south, as well as the points noted above, Council is satisfied that no alternative design could better retain these views.

Final comments:

Overall, the view impacts range from negligible to moderate, depending on the dwelling the views are from. The most significant view loss is to No's 3 and 4/55 The Corso across the side boundary from both standing and sitting positions to bedrooms, living rooms and balconies, as well as 58 Sackville Street across the rear boundary from both standing and sitting positions to the first floor rear living room/bedroom/balcony. Council is not satisfied that the dwelling has been appropriately designed to retain these views where possible without impacting upon the amenity of the dwelling's future occupants. Therefore, conditions have been issued requiring the dwelling to be reduced in height to retain these views.

The loss of views from other properties are considered acceptable in that their more significant views will be retained, the impact is to currently obscured views of ocean disrupted by existing buildings and canopy trees, and the view loss is negligible or minor.

Therefore, subject to conditions, the proposal has therefore passed the test in Tenacity, complies with section 5.6 of the RDCP 2013 and is accordingly supported in this instance.

10. Conclusion

That the application to demolition of all structures on site and construction of a new part three and part four storey dwelling house with semi-basement level for parking and plant room, associated site and landscape 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 proposal is consistent with the specific objectives of the R2 zone providing for the housing needs of the community within a low density residential environment that recognise the desirable elements of the existing streetscape and built form, whilst protecting the amenity of future dwelling occupants and neighbouring residents.
- The scale and design of the proposal is considered to be suitable for the location and is compatible with the desired future character of the locality.

- The development enhances the visual quality of the public domain/streetscape in the Foreshore Scenic Protection Area.
- The applicant has adequately addressed the floor space ratio variations sought under the proposal, demonstrating compliance with Clause 4.6 of the RLEP 2012.
- Several non-standard conditions have been included to improve deep soil permeable area compliance, remove front and rear setback encroachments, mitigate visual privacy, visual bulk and view loss impacts through balcony depth and building height reductions.

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Appendix 1: Referrals

1. Internal referral comments:

1.1. Development Engineering

On 06 October 2023, Council's Development Engineer has confirmed the proposed development is satisfactory and provided the following comments:

“General Comments

Amendments to the plans include lowering the basement level garage from RL 23.67m AHD to RL 23.40m AHD (270mm from original proposal). It appears internal driveway grades should comply with the relevant Aust Standards.

Parking Comments

*Under Part B7 of Council's DCP 2013 the proposed 4-bedroom residence is required to provide a minimum of 2 off-street car spaces. The submitted plans **do** demonstrate compliance with this requirement.*

*The proposed garage and driveway **complies** with the minimum requirements of Australian Standard 2890.1:2004 in regards to size, grades, and overhead clearances.*

Drainage Comments

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.

Roof stormwater must be directed to a suitably designed and constructed rainwater tank, as required in the relevant BASIX Certificate for the dwelling. The overflow from the rainwater tank and other surface stormwater must be directed (via a sediment/silt arrestor pit) to:

- Council's kerb and gutter (or underground drainage system) in The Corso; OR
- A suitably sized infiltration area.

Landscape Comments

There are no existing trees, covered by Part B5 (Preservation of Trees and Vegetation) in Council's DCP 2013, that will be affected by this proposal.

Undergrounding of power lines to site

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

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

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

On 16 January 2024, Council's Development Engineer, following review of the amended plans showing the reduced basement floor level from RL23.40 to RL23.12, confirmed that the proposed reduced basement level was satisfactory, subject to relevant conditions relating to the internal driveway design.

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

2.1 Clause 4.3 ‘Building Height’

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CLAUSE 4.6 VARIATION STATEMENT (FLOOR SPACE RATIO)

Demolition of the existing dwelling and construction of a three storey dwelling over basement parking with associated landscaping

61 The Corso
Maroubra

Prepared for: Mr Elvis Wu

REF: M210654

DATE: 30 January 2024





Clause 4.6 Variation Statement – Floor Space Ratio (Clause 4.4)

1. INTRODUCTION

This Variation Statement has been prepared in accordance with Clause 4.6 of Randwick Local Environmental Plan 2012 (RLEP 2012) to accompany a development application to Randwick City Council in respect of No. 61 The Corso, Maroubra for “construction of a new dwelling over basement parking”.

2. FLOOR SPACE RATIO STANDARD

Clause 4.4 of RLEP 2012 relates to maximum allowable Floor Space Ratio. In accordance with Clause 4.4(2A), as the site is a dwelling house within R2 Low Density Residential Zone with a site area of 539.6 m², the maximum FSR permitted at the subject site is 0.65:1.

The floor space ratio of buildings on a site is the ratio of the gross floor area of all buildings within the site to the site area. Gross floor area is defined to mean:

“...means the sum of the floor area of each floor of a building measured from the internal face of external walls, or from the internal face of walls separating the building from any other building, measured at a height of 1.4 metres above the floor, and includes:

- (a) the area of a mezzanine, and*
- (b) habitable rooms in a basement or an attic, and*
- (c) any shop, auditorium, cinema, and the like, in a basement or attic,*

but excludes:

- (d) any area for common vertical circulation, such as lifts and stairs, and*
- (e) any basement:*
 - (i) storage, and*
 - (ii) vehicular access, loading areas, garbage and services, and*
- (f) plant rooms, lift towers and other areas used exclusively for mechanical services or ducting, and*
- (g) car parking to meet any requirements of the consent authority (including access to that car parking), and*
- (h) any space used for the loading or unloading of goods (including access to it), and*
- (i) terraces and balconies with outer walls less than 1.4 metres high, and*
- (j) voids above a floor at the level of a storey or storey above.”*

3. PROPOSED VARIATION

The site area is 539.6m² and the maximum allowable gross floor area is 350.7m² with a floor space ratio (FSR) of 0.65:1.

Based on the judgement in *Connoisseur Investments Pty Ltd v Sutherland Shire Council* [2020] NSWLEC 1181 (*‘Connoisseur Investments’*) we are of the opinion the GFA of the development is 350.6m² with a floor space ratio (FSR) of 0.649:1. 6 which complies with the FSR development standard. This is because in *Connoisseur Investments* the Court accepted the following:

83. As GFA is calculated at 1.4m above a floor, and as it excludes voids above a floor at the level of a storey or storey above, I accept the method articulated by Mr Betros in relation to stairs and lifts because, at the level at which GFA is measured, stairs and lift wells appear as voids, or part voids, and do not constitute floor area that is available to be stood upon or counted.

Council contends that the lift shaft area at each level is included based upon the judgement in *Chami v Lane Cove Council [2015] NSWLEC 1003 (at [273] – [280]) ('Chami')*. However, *Chami* includes stairs and lift shaft at all levels, whereas Council's DA Guide states the following:

Gross floor area calculations

Where stairs and landings in a building service only one dwelling (i.e. dwelling house, attached dual occupancy, etc) they will not be an "area for **common** vertical circulation" as referred to in the definition of gross floor area that appears in the Dictionary of Randwick Local Environmental Plan 2012. Therefore stairs and associated landings within a dwelling must be included as gross floor area (GFA).

However, on the upper level of a dwelling the 'area' above the staircase is a void area and may therefore be excluded from being GFA.

Examples:

- In a 2 storey dwelling, the area of the staircase would be included in the GFA calculations for the lower level but excluded for the upper level.
- In a 3 storey dwelling the area of the staircase would be included in the GFA calculations for the first two levels but excluded for the third (upper most) level.

Where a lift in a building services only one dwelling, the area of the lift shaft must be included in the GFA calculations for all levels.

That is, Council accepts that the upper level of a stair case is a void, contrary to *Chami* but consistent with *Connoisseur Investments*, but does not accept that the lift shaft is a void and only counted at one level. As discussed above, the lift shafts cannot be measured 1.4m above the floor at each level as there is no floor at each level, and as such, must be considered as a void above the lowest level (as undertaken by the applicant).

It is noted that DA Guide is dated June 2020 whereas the judgement for *Connoisseur Investments* was not released until 17 June 2020 and therefore the DA Guide is unlikely to consider *Connoisseur Investments* or the other evolving caselaw.

On a without prejudice basis, this cl4.6 variation request has been prepared in the event that Council does not accept the applicant's calculations for FSR. Randwick Council has requested to include all the lift shafts on all levels as gross floor area, resulting in the non-compliant FSR. In this event, the development proposal results in the total gross floor area of 357.3m² and floor space ratio of 0.66:1 which exceeds the maximum floor space ratio control by 6.6m² or 1.88%.

The maximum FSR under Clause 4.4 is a "development standard" to which exceptions can be granted pursuant to Clause 4.6 of the LEP. Whilst the lift shafts should be considered as a void and not included in the FSR, a clause 4.6 variation statement has been provided on a without prejudice basis and to satisfy the request of Randwick Council.

4. OBJECTIVES AND PROVISIONS OF CLAUSE 4.6

The objectives and provisions of Clause 4.6 are as follows:

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) (i) the proposed development will be in the public interest because it is consistent with the objectives of the particular standard and the objectives for development within the zone in which the development is proposed to be carried out, and
- (b) the concurrence of the Secretary has been obtained.
- (5) In deciding whether to grant concurrence, the Secretary must consider:
- (a) whether contravention of the development standard raises any matter of significance for State or regional environmental planning, and
- (b) the public benefit of maintaining the development standard, and
- (c) any other matters required to be taken into consideration by the Secretary before granting concurrence.
- (6) Development consent must not be granted under this clause for a subdivision of land in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU6 Transition, Zone R5 Large Lot Residential, Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living if:
- (a) the subdivision will result in 2 or more lots of less than the minimum area specified for such lots by a development standard, or
- (b) the subdivision will result in at least one lot that is less than 90% of the minimum area specified for such a lot by a development standard.
- Note. When this Plan was made it did not include any of these zones.
- (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).



The development standards in Clause 4.4 are not “expressly excluded” from the operation of Clause 4.6.

Objective 1(a) of Clause 4.6 is satisfied by the discretion to a consent authority by virtue of subclause 4.6(2) and the limitations to that discretion contained in subclauses (3) to (8). This submission will address the requirements of subclauses 4.6(3) & (4) in order to demonstrate to Council that the exception sought is consistent with the exercise of “an appropriate degree of flexibility” in applying the development standard, and is therefore consistent with objective 1(a). In this regard, the extent of the discretion afforded by subclause 4.6(2) is not numerically limited, in contrast with the development standards referred to in, subclause 4.6(6).

The *Floor Space Ratio Map* nominates a maximum FSR of 0.65:1m for the site. It is hereby requested, on a without prejudice basis, that an exception to this development standard be granted pursuant to Clause 4.6 so as to permit a maximum FSR of 0.66:1 which equates to a numerical variation of 6.6m² (1.88%).

5. THAT COMPLIANCE WITH THE DEVELOPMENT STANDARD IS UNREASONABLE OR UNNECESSARY IN THE CIRCUMSTANCES OF THE CASE (CLAUSE 4.6(3)(a))

In *Wehbe v Pittwater Council* [2007] NSW LEC 827 Preston CJ sets out ways of establishing that compliance with a development standard is unreasonable or unnecessary. This list is not exhaustive. It states, inter alia:

An objection under SEPP 1 may be well founded and be consistent with the aims set out in clause 3 of the Policy in a variety of ways. The most commonly invoked way is to establish that compliance with the development standard is unreasonable or unnecessary because the objectives of the development standard are achieved notwithstanding non-compliance with the standard.

The judgement goes on to state that:

The rationale is that development standards are not ends in themselves but means of achieving ends. The ends are environmental or planning objectives. Compliance with a development standard is fixed as the usual means by which the relevant environmental or planning objective is able to be achieved. However, if the proposed development proffers an alternative means of achieving the objective strict compliance with the standard would be unnecessary (it is achieved anyway) and unreasonable (no purpose would be served).

Preston CJ in the judgement then expressed the view that there are 5 different ways in which an objection may be well founded and that approval of the objection may be consistent with the aims of the policy, as follows (with emphasis placed on number 1 for the purposes of this Clause 4.6 variation [our underline]):

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

Relevantly, in *Initial Action Pty Ltd v Woollahra Municipal Council* [2018] NSWLEC 118 (paragraph 16), Preston CJ makes reference to *Wehbe* and states:

“...Although that was said in the context of an objection under State Environmental Planning Policy No 1 – Development Standards to compliance with a development standard, the discussion is equally applicable to a written request under cl 4.6 demonstrating that compliance with a development standard is unreasonable or unnecessary.”

Clause 4.6(3)(a) requires that the written request to vary a development standard demonstrate that compliance with the development standard is unnecessary or unreasonable in the circumstances of the case.

Requiring strict compliance with the standard is unreasonable or unnecessary because:

- The development is consistent with the standard and zone objectives, even with the proposed variation;
- There are no significant adverse impacts arising from the proposed non-compliance; and
- Important planning goals are better achieved by the approval of the variation.

On this basis, the requirements of Clause 4.6(3)(a) are satisfied.

6. SUFFICIENT ENVIRONMENTAL PLANNING GROUNDS (CLAUSE 4.6(3)(b))

Having regard to Clause 4.6(3)(b) and the need to demonstrate that there are sufficient environmental planning grounds to justify contravening the development standard. Specifically, Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118* (paragraph 24) states:

*The environmental planning grounds relied on in the written request under cl 4.6 must be "sufficient". There are two respects in which the written request needs to be "sufficient". First, the environmental planning grounds advanced in the written request must be sufficient "to justify contravening the development standard". The focus of cl 4.6(3)(b) 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: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248* at [15]. Second, 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 cl 4.6(4)(a)(i) that the written request has adequately addressed this matter: see *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* at [31].*

The assessment of this numerical non-compliance is also guided by the decisions of the NSW LEC in *Four2Five Pty Ltd v Ashfield Council [2015] NSWLEC 90* and *Four2Five Pty Ltd v Ashfield Council [2015] NSWCA 248* whereby Justice Pain ratified the original decision of Commissioner Pearson.

It is important to reiterate here that the maximum variation (or contravention) is 6.6m² or 1.88%.

It has been held in *Eather v Randwick City Council [2021] NSWLEC 1075* that a particularly small departure from the actual numerical standard which lacks any material impacts consequential of the departure will be a sufficient environmental planning ground to justify contravening the development standard.

It is considered that the Variation is particularly small. In this regard, the difference between FSR compliant and non-compliant is the inclusion of the lift shaft at all levels of the dwelling. This particularly small departure (6.6m²) is also considered not to have any material impact, which arises as a consequence of the Variation, on the amenity or the environmental values of surrounding properties, the amenity of future building occupants and on the character of the locality. Specifically:

- The extent of the additional GFA creates no adverse additional overshadowing impacts to adjoining properties when compared to a compliant building envelope. It is concluded the GFA breach will not result in any adverse loss of solar access to surrounding properties and continues to provide sufficient solar access to neighbouring private open space. That is, the extent of additional overshadowing from the additional GFA would be insignificant and would not be noticeable to surrounding properties or the public domain;
- The GFA breach does not result in any adverse additional privacy impacts. The extent of privacy impacts caused by the GFA breach will have no greater impact on the privacy to the adjoining properties when compared to the existing dwelling or elements that comply with the FSR development standard. In this regard, the proposed terraces are not considered GFA and the lift shafts that has been included as GFA resulting in the non-compliant FSR, does not include any windows. All proposed windows do not result in any adverse additional privacy impacts. Therefore, the GFA variation will have no greater impact on the privacy of adjoining properties when compared to the complying elements of the building.

- The GFA breach will not result in any significant view loss. The proposed development complies with the height of buildings development standard and surrounding properties have views which will not be materially affected by proposed development, irrespective of the 6.6m² GFA variation. Any properties with views affected by the GFA breach will be over the side boundary which are harder to protect or have better views in a different direction which are not affected. Views have been provided over and above the subject site due to the under-developed nature of the existing dwelling relative to the permissible controls and view sharing would not be achieved if compliance with the GFA was insisted upon. As such, the proposal would permit view sharing and the additional view loss (if any) caused by the non-compliant GFA would be insignificant or nil.

Accordingly, the Variation is justifiable.

Further the following discussion provides that not only does the Variation advance the objects of the *Environmental Planning and Assessment Act 1979*, but also advances an environmental and planning benefit:

1. On the basis of the judgement in *Connoisseur Investments Pty Ltd v Sutherland Shire Council* [2020], the lift shafts cannot be measured 1.4m above the floor at each level as there is no floor at each level, and as such, must be considered as a void and only considered gross floor area to one level. As a result, the exclusion of the lift shafts with only one level counted, results in a GFA of 350.6m² (0.649:1) which complies with the maximum FSR permitted. Therefore, the FSR breach is considered a "technical" breach due to the request of Randwick Council to include every level of the lift shafts as GFA and as such, resulting in a minor breach of 6.6m² additional GFA and FSR variation of 1.88%.
2. The proposed variation will not result in any discernible increase to bulk and scale or change to the character of the dwelling when viewed from the neighbouring properties or public domain. That is, the additional GFA does not bring with it a built form that is excessive nor does it appear out of context with the scale and character of the dwellings within the streetscape and locality. Importantly, the proposed development complies with the height of buildings development standard and results in a technical breach to the FSR of 6.6m² but does not result in a form that is not anticipated by the planning controls. The resultant built form is similar to the scale of neighbouring properties along The Corso in particular Nos. 63, 65, and 55 The Corso which are of a three storey scale. Therefore, the proposed development will not appear visually jarring or out of character in the visual catchment which must be considered consistent with the judgment in *Woollahra Municipal Council v SJD DB2 Pty Limited* [2020] NSWLEC 115 at Para 62-63. It follows that the location of the additional floor area will not result in any amenity impacts to neighbouring properties beyond the existing and/or permissible built form in terms of solar access, views or privacy as discussed above.
3. The non-compliance facilitates an arrangement of floor space on the site in a manner that is effective in providing high levels of amenity to occupants of the development without impacting the amenity of neighbouring properties. Insistence on compliance with the FSR standard would result in the removal of the lift shafts which results in a dwelling that does not promote equitable access or ageing in place and is a disproportionate response to the internal amenity impacts created by the proposal. Compliance with the FSR standard will be a sub-optimal outcome for future occupants where equitable access and aging in place should be encouraged which would not be achieved without a variation to the GFA development standard.
4. When considering the development in the context of the surrounding development, the proposal development, even with the GFA variation, will sit in harmony with surrounding development and is considered to be entirely compatible with the scale and character of surrounding development, noting that compatible does not mean sameness (*Project Venture Developments Pty Ltd v Pittwater Council* [2005] NSWLEC 191).
5. The proposed development will result in a variation to the GFA development standard that will not have any adverse impacts on the amenity of adjoining properties but results in significant benefits for the amenity of occupants. In this regard, the proposed second floor level and lift will generate greater amenity benefits that will not be realised without the variation to the GFA development standard. Specifically, the GFA will facilitate larger



internal areas for the occupants, greater views, more private open spaces, equitable access and increased solar access. These benefits are not possible without the minor GFA variation.

6. There is no planning purpose to be served by limiting the proposed FSR of 0.66:1 to 0.65:1 given the absence of significant amenity related impacts. Compliance with the objectives of the development standard and zone is achieved regardless of the variation and that the GFA standard and the impacts of the proposed non-compliant FSR building is no greater than a compliant FSR building.
7. The proposed development meets the objectives of the development standard and meets the objectives of the R2 Low Density Residential zone (as further detailed in Section 8 below).
8. The proposed development achieves the objects in Section 1.3 of the EP&A Act, specifically:
 - a. The proposal promotes the orderly and economic use and development of land by providing an improved residential development (1.3c); and
 - b. The proposed developed promotes good design and amenity of the built environment through a well-considered design which is responsive to its setting and context (1.3g).

The above environmental planning grounds are not general propositions. They are unique circumstances to the proposed development. The proposed development, even with the additional GFA, will be compatible with the scale of developments in the locality. The proposed dwelling provides high internal amenity, equitable access, aging in place and a contemporary and sympathetic design without having a significant adverse impacts on the amenity of adjoining properties. These are not simply benefits of the development as a whole, but are benefits emanating from the GFA breach.

It is noted that *Initial Action Pty Ltd v Woollahra Municipal Council [2018] NSWLEC 118*, Preston CJ clarified what items a Clause 4.6 does and does not need to satisfy. Importantly, there does not need to be a "better" planning outcome:

86. *The second way is in an error because it finds no basis in cl 4.6. 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. This test is also inconsistent with objective (d) of the height development standard in cl 4.3(1) of minimising the impacts of new development on adjoining or nearby properties from disruption of views or visual intrusion. Compliance with the height development standard might be unreasonable or unnecessary if the non-compliant development achieves this objective of minimising view loss or visual intrusion. It is not necessary, contrary to what the Commissioner held, that the non-compliant development have no view loss or less view loss than a compliant development.*
87. *The second matter was in cl 4.6(3)(b). I find that the Commissioner applied the wrong test in considering this matter by requiring that the development, which contravened the height development standard, result in a "better environmental planning outcome for the site" relative to a development that complies with the height development standard (in [141] and [142] of the judgment). Clause 4.6 does not directly or indirectly establish this test. The requirement in cl 4.6(3)(b) is that there are sufficient environmental planning grounds to justify contravening the development standard, not that the development that contravenes the development standard have a better environmental planning outcome than a development that complies with the development standard.*

As outlined above, it is considered that the proposal will provide for a better planning outcome than a strictly compliant development and existing development due to the enhanced amenity for the occupants. At the very least, there are sufficient environmental planning grounds in this case to justify contravening the development standard.

7. THE APPLICANT'S WRITTEN REQUEST HAS ADEQUATELY ADDRESSED THE MATTERS REQUIRED TO BE DEMONSTRATED BY SUBCLAUSE (3), (CLAUSE 4.6(4)(A)(I))

Preston CJ in *Initial Action Pty Ltd v Woollahra Municipal Council* details how Clause 4.6(4)(a) needs to be addressed (paragraphs 15 and 26 are rephrased below):

The first opinion of satisfaction, in clause 4.6(4)(a)(i), is that a 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). These matters

are twofold: first, that compliance with the development standard is unreasonable or unnecessary in the circumstances of the case (clause 4.6(3)(a)) and, secondly, that there are sufficient environmental planning grounds to justify contravening the development standard (clause 4.6(3)(b)). This written request has addressed Clause 4.6(3)(a) in Section 4 above (and furthermore in terms of meeting the objectives of the development standard, this is addressed in 7a below). Clause 4.6(3)(b) is addressed in Section 5 above.

The second opinion of satisfaction, in clause 4.6(4)(a)(ii), is 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. The second opinion of satisfaction under cl 4.6(4)(a)(ii) differs from the first opinion of satisfaction under clause 4.6(4)(a)(i) in that the consent authority, or the Court on appeal, must be directly satisfied about the matter in clause 4.6(4)(a)(ii), not indirectly satisfied that the applicant's written request has adequately addressed the matter in clause 4.6(4)(a)(i). The matters in Clause 4.6(4)(a)(ii) are addressed in Section 7 below.

8. 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 (CLAUSE 4.6(4)(a)(ii))

8a. Objectives of Development Standard

The objectives and relevant provisions of Clause 4.4 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.

In order to address the requirements of subclause 4.6(4)(a)(ii), the objectives of Clause 4.4 are addressed below.

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

It is noted that objective (a) refers to being “compatible” with adjoining development. It is considered that “compatible” does not promote “sameness” in built form but rather requires that development fits comfortably with its urban context (*Project Venture Developments Pty Ltd v Pittwater Council [2005] NSWLEC 191*).

The subject site is zoned R2 – Low Density Residential which anticipates a low density form. The development is compatible with the height, bulk and scale of the character of other buildings in the locality. The three storey (or equivalent) built form matches that of other buildings in the vicinity notably Nos. 63, 65 and 55 The Corso. Nos. 63 and 65 The Corso contain three storey dwellings, indicating that this is a scale typical in the locality. As such, the development will not appear visually jarring or out of context in the visual catchment.

In terms of desired scale and character, Council does not have any specific desired future character objectives but reiterate that the desired future character is set by the applicable planning controls. However, Preston CJ in *Woollahra Municipal Council v S/D DB2 Pty Limited [2020] NSWLEC 115* found the following at Para 54:

In circumstances where the term “desired future character” is undefined and unconfined in WLEP, the matters that may be taken into account in evaluating what is the desired future character of a particular neighbourhood or area at any point in time will similarly be unconfined, except insofar as there may be found in the subject matter, scope and purpose of WLEP some implied limitation on the matters that may legitimately be considered. There is no limitation found in the subject matter, scope and purpose of WLEP which would preclude consideration of developments that have been approved and constructed in the neighbourhood or area.



The desired future character of the neighbourhood is subjective and can be set by the existing, recently approved and proposed buildings within the neighbourhood. In terms of surrounding development, built forms at Nos. 63, 65 and 55 The Corso demonstrate that the proposed development will not be out of scale or incompatible with surrounding and existing development that contribute to the desired future character. Drawing on Preston CJ's assertion that desired character can be set by other buildings nearby, the proposed must be compatible with the desired future character of the locality, despite the variation with the Floor Space Ratio development standard.

It cannot be said that the proposed development is out of scale or context with the existing or anticipated envelopes established by the applicable planning controls, both of which assist in shaping the desired future character of the locality. Accordingly, the proposal meets objective (a).

Objective (b) – “to ensure that buildings are well articulated and respond to environmental and energy needs”

The development is articulated with varying setbacks and façade treatment provided on all levels. As a result, there are minimal continuous walls proposed and the dwelling which provides visual interest to the streetscape and public domain. A side courtyard is provided to the western elevation to reduce bulk and scale, provide additional landscape and deep soil planting for the site but also improve the internal amenity for the occupants. The second floor level is significantly smaller in scale than the lower levels with greater setbacks provided and is integrated into the proposed roof to present a well-considered dwelling to the streetscape and utilised the roof area more effectively. The additional GFA does not impinge on the well-articulated and thoughtful design of the dwelling that is of a bulk and scale that is visually within character and context with the surrounding properties and streetscape.

Environmentally, a BASIX Certificate is submitted with the application and confirms that the proposal (once operational) will comply with the water, thermal comfort and energy efficiency requirements of the SEPP (Sustainable Buildings) 2022. The proposal has been designed to have no significant impact on the topography, micro-climate, air or water quality of the locality resulting in a suitable residential development (with the inclusion of the GFA breach) that will have no adverse environmental impacts and can meet the energy needs. Accordingly, the proposal meets objective (b)).

Objective (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 in a heritage conservation area and is not considered a heritage item or located near either. Thus this objective is considered irrelevant.

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

In terms of visual bulk, the scale of the proposed development has largely been addressed in objective (a). For the reasons discussed in objective (a), the proposed development represents a scale which is compatible with the character of the locality.

In terms of privacy, the extent of privacy impacts caused by the FSR breach will have no greater impact on the privacy to the adjoining properties when compared to a compliant built form. The proposed FSR breach pertains to the lift overrun, thus not specifically relating to a privacy concern. The additional privacy impacts as a result of the FSR breach when compared to a compliant development are insignificant.

With regards to overshadowing, the extent of the additional GFA particularly from the lift shafts creates no adverse additional overshadowing impacts to adjoining properties when compared to a compliant building envelope. The FSR breach will not result in any non-compliance with the solar access requirements under RDCP 2013 for surrounding properties. The extent of additional impact from the additional GFA would be insignificant and would not be noticeable to the owners of surrounding properties.

In terms of views, the GFA breach will not result in any significant view loss. The proposed development complies with the overall height of building development standard and given the topography, the 6.6m² variation to the GFA is unlikely to result in any significant view loss from surrounding properties. The extent of view loss caused by the non-compliant element would be insignificant. The adjoining properties to the west have uninterrupted views over the front boundary and to the north-east which will not be affected by the proposed GFA breach. The views over the side are across a side boundary and view

sharing is retained despite the FSR variation. That is, the additional view loss (if any) caused by the non-compliant GFA would be insignificant or nil.

The examination of the GFA breach demonstrates that there will be no adverse impact to adjoining properties in relation to visual bulk, overshadowing, views or privacy. Accordingly, the development is satisfactory in regard to neighbouring amenity and meets objective (d).

8b. Objectives of the Zone

Clause 4.6(4)(a)(ii) also requires consideration of the relevant zone objectives. The objectives of the R2 Low Density Residential zone and how the proposal meets is provided below:

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

The FSR variation will facilitate a high amenity residential home which replaces a smaller and tired dwelling in a highly sought-after area and is therefore seen as meeting the housing need of the community.

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

The proposal does not impede the use of other land for facilities and services that 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.*

As discussed above, the development matches the built form of various other buildings in the streetscape. The proposed additional GFA is contained within a dwelling that is compatible with the character of surrounding buildings and will ensure no adverse impact on the character of the streetscape.

- *To protect the amenity of residents.*

The proposal will not lead to any significant impacts in terms of overshadowing, view loss or privacy for neighbouring sites. The proposal improves amenity for occupants with the provision of improved internal layout and a lift.

- *To encourage housing affordability.*

The proposal replaces an existing residential dwelling and makes no changes to the existing housing affordability in the area.

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

The proposal is not for a commercial premises and therefore this objective is not applicable.

Accordingly, the proposed development is in line with all the objectives of the R2 Low Density Residential zone, despite the non-compliance with the FSR development standard and for that reason the proposed variation is acceptable.

9. THE CONCURRENCE OF THE SECRETARY HAS BEEN OBTAINED (CLAUSE 4.6(4)(B))

The second precondition in cl 4.6(4) that must be satisfied before the consent authority can exercise the power to grant development consent for development that contravenes the development standard is that the concurrence of the Secretary (of the Department of Planning and the Environment) has been obtained (cl 4.6(4)(b)). Under cl 64 of the Environmental Planning and Assessment Regulation 2000, 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 cl 4.6, subject to the conditions in the table in the notice.

10. WHETHER CONTRAVENTION OF THE DEVELOPMENT STANDARD RAISES ANY MATTER OF SIGNIFICANCE FOR STATE OR REGIONAL ENVIRONMENTAL PLANNING (CLAUSE 4.6(5)(a))

Contravention of the maximum Floor Space Ratio development standard proposed by this application does not raise any matter of significance for State or regional environmental planning.



10. THE PUBLIC BENEFIT OF MAINTAINING THE DEVELOPMENT STANDARD (CLAUSE 4.6(5)(b))

As detailed in this submission there are no unreasonable impacts that will result from the proposed variation to the maximum floor space ratio. There is no public benefit in maintaining strict compliance with the development standard in this specific case because the development will achieve compliance with the objectives for controlling FSR.

The proposal seeks a maximum floor space ratio of 0.66:1 which is a 1.88% variation to the development standard under Clause 4.4 of the *Randwick Local Environmental Plan 2012*.

Whilst the proposed floor space ratio exceeds the maximum permitted on the site, the proposed development is consistent with the objectives of the development standard for FSR and is also consistent with the objectives for development in Zone R2. It is the proposed development's consistency with the objectives of the development standard as well as the objectives of the zone that make the proposal in the public interest.

11. CONCLUSION

This written request has been prepared in relation to the proposed variation to the floor space ratio development standard contained in the *Randwick Local Environmental Plan 2012*.

Despite the minor numeric non-compliance with the floor space ratio development standard, the proposed built form is compatible with the character of the locality as anticipated by the objectives to the planning controls.

It has been demonstrated that the proposed development is appropriate to the context and setting, the character of the locality and the amenity of neighbouring properties. The additional GFA will have no implications for increased intensification of the site in comparison to a compliant development. There will be no detrimental external impacts and no environmental, amenity, character or social impacts.

This request explains that, with the proposed variation, the development satisfies the objectives of the standard and the objectives for development in Zone R2. It further explains why it is therefore unreasonable and unnecessary to require strict numeric compliance with the floor space ratio development standard. In addition, this request demonstrates that there are sufficient development-specific environmental planning grounds to justify the variation in this case and grant a degree of flexibility, and therefore the proposal is considered to be in the public interest.



Appendix 3: DCP Compliance Table

3.1 Section B10: Foreshore Scenic Protection Area

D1/24

DCP Clause	Controls	Proposal	Compliance
	i) Consider visual presentation to the surrounding public domain, including streets, lanes, parks, reserves, foreshore walkways and coastal areas. All elevations visible from the public domain must be articulated. ii) Integrated outbuildings and ancillary structures with the dwelling design (coherent architecture). iii) Colour scheme complement natural elements in the coastal areas (light toned neutral hues). iv) Must not use high reflective glass v) Use durable materials suited to coast vi) Use appropriate plant species vii) Provide deep soil areas around buildings viii) Screen coping, swimming and spa pools from view from the public domain. ix) Integrate rock outcrops, shelves and large boulders into the landscape design x) Any retaining walls within the foreshore area (that is, encroaching upon the Foreshore Building Line) must be constructed or clad with sandstone.	The proposed works shall not impact on the scenic qualities of the FSPA as the dwelling has been designed with materials that are sympathetic to the scenic qualities. That being said, Council is concerned that some of the colour choices submitted in the scheme (i.e. PF-1 and MC) are of a dark tone and do not compliment the scenic qualities of the area. As such, a condition of consent will be issued requiring that an amended colours, materials and textures schedule be provided to Council that replaces dark hue colours with lighter finishes.	Yes, complies on merit, subject to condition

3.2 Section C1: Low Density Residential

DCP Clause	Controls	Proposal	Compliance
	Classification	Zoning = R2	
2	Site planning	Site = 539.6m ²	
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 = 539.6m ² Proposed = 40.4% (217.8m ²) N.B. the site coverage calculation does not include balconies or terraces that are not enclosed by a wall to a height of 1.4m.	Yes, complies
2.4	Landscaping and permeable surfaces		
	i) Up to 300 sqm = 20% ii) 301 to 450 sqm = 25% iii) 451 to 600 sqm = 30%	Site = 539.6m ² Proposed = 18.3% (98.8m ²)	No, see Key Issues

DCP Clause	Controls	Proposal	Compliance
	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.	N.B. the deep soil permeable area does not include areas <900mm in width, the side passages to both sides of the dwelling, the front planter, as identified by the applicant.	
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 = 539.6m ² Proposed = 6.2m x 11.9m	See Key Issues for further discussion
	ii) POS satisfy the following criteria: <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 	The POS does not include the rear patio as it is roofed by the awning above. However, the POS is located at rear of site, on ground level, and receives north solar access, accessible from the secondary casual living room. An additional terrace is provided to the front of the dwelling to provide a secondary POS to the main open-plan living/kitchen/dining room.	Yes, complies
3	Building envelope		
3.1	Floor space ratio		
	Maximum floor space ratio LEP 2012 = 0.65:1	Site = 539.6m ² Proposed FSR = 0.66:1 (357.3m ²) N.B. the (x2) parking spaces and associated access are excluded from the GFA calculation. In addition, the basement floor meets the definition of 'basement' as per the RLEP. As such, basement storage is not included within the	No, see Clause 4.6 Assessment above

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DCP Clause	Controls	Proposal	Compliance
		GFA calculation.	
3.2	Building height		
	Maximum overall height LEP 2012 = 9.5m	Proposed = 9.49m (RL35.35-RL25.86) N.B. as per the LEP definition, building height is measured from the existing ground level.	Yes, complies
	i) Maximum external wall height = 7m (Minimum floor to ceiling height = 2.7m) ii) Sloping sites = 8m iii) An alternative design that variates from the above external wall height controls may be acceptable having regard to the following consideration: - Site topography - Site orientation - Allotment configuration - Allotment dimensions - Potential impacts on the visual amenity, solar access, privacy and views of the adjoining properties	Proposed external wall height = 6.94m Proposed BF F2C height = 2.6m Proposed GF & 1F F2C height = 2.7m Proposed Attic F2C heights – to comply with Part 10.3 of the NCC, as per standard conditions for NCC/BCA compliance.	Yes, subject to condition
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	See assessment below.	No, see Key Issues regarding front awning
	Proposed GF = 6.515m; Proposed 1F = 10m-10.57m No. 59 GF & 1F = 6.6m; No. 63 LGF & GF = 6.45m; No. 63 1F = 11.6m The proposed dwelling is setback in keeping with the adjoining dwellings. The proposed unroofed front terrace is 970mm above the existing ground level. As such, it is not included in the front setback calculation. The proposed entrance has a 2.1m awning that extends forward of the front building line. A 2.1m long awning is not considered a minor projection feature and Council therefore includes it as part of the front setback calculation.		
3.3.2	Side setbacks: <u>Dwellings & Dual Occupancies (Attached & Detached):</u> <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 	Minimum GF & 1F = 1200mm Proposed GF & 1F = 1200mm N.B. the basement level is not included	Yes, complies

DCP Clause	Controls	Proposal	Compliance
	<p>floor), 1800mm above.</p> <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p>	<p>in this calculation as it is not counted as a storey (as per the DCP definition).</p>	
<p>3.3.3</p>	<p>Rear setbacks</p> <p>i) Minimum 25% of allotment depth or 8m, whichever lesser. Note: control does not apply to corner allotments.</p> <p>ii) Provide greater than aforementioned or demonstrate not required, having regard to:</p> <ul style="list-style-type: none"> - Existing predominant rear setback line - Reasonable view sharing (public and private) - Protect the privacy and solar access <p>iii) Garages, carports, outbuildings, swimming or spa pools, above-ground water tanks, and unroofed decks and terraces attached to the dwelling may encroach upon the required rear setback, in so far as they comply with other relevant provisions.</p> <p>iv) For irregularly shaped lots = merit assessment on basis of:-</p> <ul style="list-style-type: none"> - Compatibility - POS dimensions comply - minimise solar access, privacy and view sharing impacts <p>Refer to 6.3 and 7.4 for parking facilities and outbuildings</p>	<p>Minimum = 8m Proposed GF = 6.2m awning over pergola & 9.85m-10.6m to the dwelling Proposed 1F = 9m to balcony and 9.8m to dwelling.</p> <p>No. 59 GF & 1F = 10.065m</p> <p>No. 63 GF & 1F = 8.9m</p> <p>The subject dwelling complies with the control and setback line however, the proposed awning above the patio area breaches the rear setback line.</p>	<p>No, see Key Issues</p>
<p>4</p>	<p>Building design</p>		
<p>4.1</p>	<p>General</p>		
	<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>See assessment below.</p>	<p>Yes, complies</p>
	<p>The proposed dwelling responds to the topography of the site, being stepped to follow the rise of the site to the rear.</p> <p>The proposed walls sections are separated into sections <12m in length.</p> <p>The eastern side wall is articulated with mixed materials being brick walls sections and privacy screens. The privacy screens to the void area to the northern side of the dwelling provide an open perception, reducing the visual bulk of the dwelling whilst providing visual privacy to the adjoining neighbour. Any potential future development to infill this area will not be supported as a solid enclosure of this courtyard area will adversely impact visual bulk to the adjoining neighbour.</p>		
<p>4.4</p>	<p>Roof Design and Features</p>		
	<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 do not dominate</p> <p>iv) Maximum 1500mm height, top is below roof ridge; 500mm setback from side of roof,</p>	<p>See assessment below.</p>	<p>Yes, complies on merit</p>

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DCP Clause	Controls	Proposal	Compliance
	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.		
	The proposed 1F terrace and attic floor terrace is provided within the stepped building envelope and form. The dormer window on the south-western elevation is of an appropriate size and form. Other cut outs in the roof forms, including skylights, provide further features to the roof form that are sympathetic to the roof design. See view loss assessment with regard to the proposed lift overrun.		
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.)	The colours, materials and finishes submitted with the application are generally satisfactory. See B10 for assessment against Foreshore Scenic Protection Area controls.	See assessment above.
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.	See assessment below.	Yes, complies on merit, subject to condition
	The extent of excavation pertinent to the proposed basement level is considered acceptable. Whilst >1m within the building footprint, it will have minimal adverse impacts on the adjoining dwellings and is setback >900mm for side and rear boundaries, supported by finding from a Geotechnical Report prepared by Douglas Partners, dated June 2022. Recommendations for vibration, excavation and structural support will be conditioned as part of the consent. Outside the building footprint, changes to existing ground levels are minimal. The extent of excavation pertinent to the proposed swimming pool is considered acceptable.		
5	Amenity		
5.1	Solar access and overshadowing		
	Solar access to proposed development:		

DCP Clause	Controls	Proposal	Compliance
	i) Portion of north-facing living room windows must receive a minimum of 3 hrs direct sunlight between 8am and 4pm on 21 June ii) POS (passive recreational activities) receive a minimum of 3 hrs of direct sunlight between 8am and 4pm on 21 June.	See assessment below.	Yes, complies
	<p>The allotment has a north-east to south-west orientation (i.e. north-east being the front and south-west being the rear).</p> <p>The proposed ground floor open-plan living/dining/kitchen and first floor rumpus is orientated to the northern aspect of the site, receiving sufficient solar access in accordance with the DCP controls. The additional casual living space at the rear of the site has northern windows opening to a side courtyard, that will receive some direct sunlight via the void/courtyard area. Any potential future development to infill this void area will not be supported as it would have an adversely impact on solar access to these north-facing windows.</p> <p>The POS area located adjoining the casual living space at the rear of the site will receive adequate solar access in the afternoon, especially with the reduction of the awning located above the patio area.</p>		
	Solar access to neighbouring development:		
	iii) 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. 	See assessment below	Yes, complies on merit
	<p>As noted above, the allotment has a north-east to south-west orientation (i.e. north-east being the front and south-west being the rear). Due to the subdivision pattern of the block and the topographical rise to the rear of the site, the allotment to the south is reasonably expected to be overshadowed.</p> <p>The property to the south-east is No. 63 The Corso. The dwelling contains north-western oriented windows to the ground floor of the dwelling. A portion of the front sunroom and living room will receive 3 hours of direct sunlight between 10am-12pm. The 2x north facing ground floor dining room windows do not receive 3hours of sunlight, being located further into the</p>		

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DCP Clause	Controls	Proposal	Compliance
	<p>site. As the dwelling complies with the external wall and setback controls (subject to conditions), these windows are susceptible to overshadowing from developing an existing single storey dwelling. An alternative design would unlikely retain such solar access without significantly impacting the amenity of the proposed development. As such, Council is satisfied that this window will be overshadowed.</p> <p>The rear neighbouring dwellings being No's 60-64 Sackville Street will have their POS at the rears of their sites overshadowed in the morning but will receive sufficient direct sunlight at midday and in the afternoon, as demonstrated by the submitted hourly solar and sun eye diagrams (and verified by Council).</p> <p>Overall, considering the site conditions and general compliance with the control, Council is satisfied with the level of solar access to adjoining dwellings.</p>		
5.2	Energy Efficiency and Natural Ventilation		
	<p>i) Provide day light to internalised areas within the dwelling (for example, hallway, stairwell, walk-in-wardrobe and the like) and any poorly lit habitable rooms via measures such as:</p> <ul style="list-style-type: none"> • Skylights (ventilated) • Clerestory windows • 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>	See assessment below.	Yes, complies
	<p>The submitted development has been accompanied with a BASIX Certificate identifying compliance with thermal and water energy. In addition, the location of windows and doors have been considered as acceptable, addressing the matter of natural light and ventilation.</p> <p>It is noted that Council is satisfied that the proposed design includes an internal courtyard and large void area to the first floor and roof area, adjoining the rear living room. This courtyard design supports the required solar access, daylight and ventilation to this important living space adjoining the dwelling's main POS area. The site orientation generally limits such access, however the design appropriately factors this into the proposal. It is noted that any future infilling of this courtyard, void above or skylight will not be supported noting the positive amenity impacts it will have to the dwelling and its occupants.</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</p>	In order to protect the visual privacy of the adjoining bedroom at No. 63 The Corso, a condition of consent will be issued requiring windows W210 to be either fixed and frosted or have a minimum sill height of 1.6m.	Yes, subject to condition

DCP Clause	Controls	Proposal	Compliance
	from adjacent dwellings (that is orient to front or rear or side courtyard)		
	Balcony		
	iii) Upper floor balconies to street or rear yard of the site (wrap around balcony to have a narrow width at side) iv) minimise overlooking of POS via privacy screens (fixed, minimum of 1600mm high and achieve minimum of 70% opaqueness (glass, timber or metal slats and louvers) v) Supplementary privacy devices: Screen planting and planter boxes (Not sole privacy protection measure) vi) For sloping sites, step down any ground floor terraces and avoid large areas of elevated outdoor recreation space.	The proposal includes numerous patios and terrace areas to all floor levels of the dwelling. See Key Issues above for a full assessment of each of these elements.	See Key Issues
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. 	Council is satisfied that the proposed development will not detrimentally cause adverse acoustic privacy impacts, having designed the dwelling to consider the adjoining neighbours.	Yes, complies
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 main dwelling entrance is located on the front elevation fronting The Corso, with sufficient windows and terraces to provide casual surveillance of the street.	Yes, 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 impact existing ocean and headland views currently enjoyed by a number of neighbouring dwellings. See Key Issues above for a full assessment of view sharing impacts of the development.	See Key Issues
6	Car Parking and Access		
6.1	Location of Parking Facilities:		
	i) Maximum 1 vehicular access	See assessment	Yes, on merit

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DCP Clause	Controls	Proposal	Compliance
	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)	below	
	<p>The proposed parking facilities are provided via a single vehicular access on The Corso. The proposal seeks consent for an extra wide single garage entrance (being 3.3m in width) which is permitted as the site has a frontage width of 13.41m.</p> <p>Whilst significant excavation is required to facilitate the proposed basement garage, it is considered acceptable in this instance as the site has a rear slope which reduces some of the excavation. In addition, a number of properties along the south-western side of The Corso present as three storey dwellings with a lower garage level and (x2) additional floor levels, including No's 35, 37-37A, 39, 41, 43, 49, 51, 57, 59 & 67. It is noted that the attic level is contained within the roof form and does not present as an additional level from the street.</p>		
6.3	Setbacks of Parking Facilities		
	i) Garages and carports comply with Sub-Section 3.3 Setbacks. ii) 1m rear lane setback iii) Nil side setback where: - nil side setback on adjoining property; - streetscape compatibility; - safe for drivers and pedestrians; and - Amalgamated driveway crossing	The proposed garage is setback >900mm from the side boundaries.	Yes, complies
6.4	Driveway Configuration		
	Maximum driveway width: - Single driveway – 3m - Double driveway – 5m Must taper driveway width at street boundary and at property boundary	The proposal includes a 4m wide internal driveway. As the subject site with a frontage of 13.41m can support a double garage and the elevation of the driveway, a 4m wide driveway is considered acceptable.	Yes, on merit
6.5	Garage Configuration		
	i) Recessed behind front of dwelling ii) The maximum garage width (door and piers or columns): - Single garage – 3m - Double garage – 6m iii) 5.4m minimum length of a garage iv) 2.6m max wall height of detached garages v) recess garage door 200mm to 300mm	The proposed garage has an internal measurement of 11.2m x 6.4m. This area includes spaces for vehicle manoeuvring to exit	Yes, complies on merit

DCP Clause	Controls	Proposal	Compliance
	behind walls (articulation) vi) 600mm max. parapet wall or bulkhead vii) minimum clearance 2.2m AS2890.1	forwards out of the site, as well as a passage area for access to the entrance area and plant room. The enlarged garage does not impact upon the amenity of the streetscape or adjoining neighbours. The garage door has a clearance of 2.4m, recessed 300mm behind the front walls with the parapet forming part of the balcony wall above.	
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	The proposed sandstone and metal fence is satisfactory as durable materials.	Yes, 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	The proposed front fence will vary in height between 0.6m-1.8m, being solid sandstone. The applicant notes that this is to respond to the site topography and desired fence design. Council supports the proposed solid wall portions, noting they are in keeping with other dwellings along the south-western side of The Corso.	Yes, complies on merit

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DCP Clause	Controls	Proposal	Compliance
	line along the street. ix) Splay fence adjacent to the driveway to improve driver and pedestrian sightlines.		
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.	See assessment below.	Yes, subject to condition
<p>The proposed side and rear boundary fences have a maximum height of 1.8m, following the topography of the retained existing ground level.</p> <p>The proposal also includes a metal cladding screen adjoining the north-western side of the main dwelling entrance to the streetscape and on the boundary, to a height of 2.4m. Council is concerned that the proposed screen adds unnecessary visual bulk to the streetscape and adjoining neighbour. As such, a condition of consent will be imposed requiring that the metal cladding screen is reduced to a maximum height of 1.8m, as measured from the existing ground level.</p>			
7.5	Swimming pools and Spas		
	i) Locate behind the front building line ii) Minimise damage to existing tree root systems on subject and adjoining sites. iii) Locate to minimise noise impacts on the adjoining dwellings. iv) Pool and coping level related to site topography (max 1m over lower side of site). v) Setback coping a minimum of 900mm from the rear and side boundaries. vi) Incorporate screen planting (min. 3m mature height unless view corridors affected) between setbacks. vii) Position decking to minimise privacy impacts. viii) Pool pump and filter contained in acoustic enclosure and away from the neighbouring dwellings.	The proposed swimming pool is located behind the dwelling in the rear yard, approximately 200mm above the existing ground level of the site. The outer edge of the coping is setback >900mm from side and rear boundaries, separated by planting to each boundary. The pool pump and filter are located within the basement plant room.	Yes, complies
7.8	Clothes Drying Facilities		
	i) Located behind the front alignment and not be prominently visible from the street	The proposed clothing line is located within the recessed section of the south-eastern side of the dwelling, not visible from the streetscape and behind the front dwelling alignment.	Yes, complies

Responsible officer: William Joannides, Environmental Planning Officer

File Reference: DA/436/2022

Development Consent Conditions



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Folder / DA No:	DA/436/2022
Property:	61 The Corso, MAROUBRA NSW 2035
Proposal:	Amended plans including revised internal basement access, front entry, fenestration, external elevations, roof form and upper level. Original proposal: Demolition of all structures on site and construction of a new part three part four storey dwelling house with semi-basement level for parking and plant room, associated site and landscape works.
Recommendation:	Approval

Development Consent Conditions

<p>GENERAL CONDITIONS</p> <p>The development must be carried out in accordance with the following conditions of consent.</p> <p>These conditions have been applied to satisfy the relevant requirements of the <i>Environmental Planning and Assessment Act 1979</i> and associated Environmental Planning and Assessment Regulations and to provide reasonable levels of environmental amenity.</p>

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
Site Plan, Page 0612-DA102, Rev 07	Popov Bass	30/01/2024	30/01/2024
Basement Plan, Page 0612-DA103, Rev 10	Popov Bass	30/01/2024	30/01/2024
Ground Floor Plan, Page 0612-DA104, Rev 10	Popov Bass	30/01/2024	30/01/2024
Level 01 Plan, Page 0612-DA105, Rev 10	Popov Bass	30/01/2024	30/01/2024
Level 02 Plan, Page 0612-DA106, Rev 11	Popov Bass	30/01/2024	30/01/2024
Roof Plan, Page 0612-DA107, Rev 09	Popov Bass	30/01/2024	30/01/2024
North East & South West Elevations, Page 0612-DA108,	Popov Bass	30/01/2024	30/01/2024

Rev 08			
South East Elevation, Page 0612-DA109, Rev 09	Popov Bass	30/01/2024	30/01/2024
North West Elevation, Page 0612-DA110, Rev 08	Popov Bass	30/01/2024	30/01/2024
Schedule of Finishes & 3D Perspectives, Page 0612-DA111, Rev 06	Popov Bass	30/01/2024	30/01/2024
Section AA & DD, Page 0612-DA112, Rev 09	Popov Bass	30/01/2024	30/01/2024
Section BB, Page 0612-DA113, Rev 08	Popov Bass	30/01/2024	30/01/2024

BASIX Certificate No.	Dated	Received by Council
1308622S_02	02 August 2023	03 August 2023

Amendment of Plans & Documentation

2. The approved plans and documents must be amended in accordance with the following requirements:
 - a. An additional 63.1m² of deep soil permeable area, as per the definition of deep soil permeable surfaces in Council's DCP, shall be provided within the subject site.
 - b. The dwelling entrance awning adjoining the eastern side of the first floor terrace and planter, shall have a maximum depth of 800mm, as measured from the external wall of the ground floor entrance below.
 - c. The rear pergola to the ground floor rear patio shall have a maximum depth of 1.45m, as measured from the external wall of the ground floor dwelling, increasing the awning structure setback to 8m from the rear boundary line.
 - d. The first floor front balcony is to be reduced to a maximum depth of 1.5m, as measured from the external face of the rumpus sliding doors. The reduced balcony area is to be converted into either a planter box or non-trafficable roof space.
 - e. The first floor front balcony balustrading shall be constructed with either translucent or obscured glazing (the use of film applied to the clear glass pane is unacceptable).
 - f. The privacy screen adjoining the internal courtyard along the north-western side of the dwelling is to be fixed and constructed with the individual blades that are angled and spaced appropriately to prevent overlooking into the windows of the adjacent dwelling.
 - g. The ceiling height of the first floor shall have a height of RL31.47 (with the first floor having a floor-to-ceiling height of 2.4m).
 - h. The finished floor level of the attic floor shall have a height of RL31.87.
 - i. The overall height of the dwelling shall be reduced to a maximum height of RL34.57.

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- j. The lift overrun shall be reduced to a maximum height of RL34.57, or alternatively, a revised lift specification is installed that does not require a roof overrun.
- k. The void area on the first floor and attic floor are not to be infilled as floor space or a roof enclosure.
- l. The following window must have a minimum sill height of 1.6m above floor level, or alternatively, the window is to be fixed and be provided with translucent, obscured, frosted or sandblasted glazing below this specified height:
 - W210
- m. The metal clad screening adjoining the north-western side of the main dwelling entrance and along the north-western side boundary, shall be reduced to a maximum height of 1.8m, as measured from the existing natural ground level.

Amended plans demonstrating compliance with the above are to be submitted to and approved by Council's Manager Development Assessment prior to the issue of a Construction Certificate.

REQUIREMENTS BEFORE A CONSTRUCTION CERTIFICATE CAN BE ISSUED

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

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

Consent Requirements

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

External Colours, Materials & Finishes

- 4. External materials, finishes and colours of the building are required to match, as closely as possible, the existing building and any metal roof sheeting is to be pre-painted (e.g. Colourbond) to limit the level of reflection and glare. All colours within the scheme are to complement natural elements in the coastal areas (being light toned neutral hues), in accordance with Section B10 'Foreshore Scenic Protection Area' of the DCP.

Details of the amended colours, materials and textures are to be submitted to and approved by Council's Manager Development Assessments, prior to issuing a construction certificate for the development.

Section 7.12 Development Contributions

- 5. In accordance with Council's Development Contributions Plan effective from 21 April 2015, based on the development cost of \$2,712,976.00 the following applicable monetary levy must be paid to Council: \$27,129.75.

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:

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

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

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

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

Security Deposit

7. 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*:

- \$3,000.00 - 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.

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

- **Match the back of the existing Council footpath level at all points along the full site frontage.**

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

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

9. The above alignment levels and the site inspection by Council's Development Engineering Section have been issued at a prescribed fee of **\$804.00** 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.

Internal Driveway Design

10. The gradient of the internal access driveway must be designed and constructed in accordance with AS 2890.1 (2004) – Off Street Car Parking and the levels of the driveway must match the alignment levels at the property boundary (as specified by Council). Details of compliance are to be included in the construction certificate.

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™ 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. 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.

13. A site stormwater drainage system is to be provided in accordance with the following requirements (as applicable):
- a) The stormwater drainage system must be designed and constructed to satisfy the relevant requirements in the Building Code of Australia,
 - b) Roof stormwater must be directed to a suitably designed and constructed rainwater tank, as required in the relevant BASIX Certificate for the dwelling,
 - c) The overflow from the rainwater tank and other surface stormwater must be directed to a suitably designed sediment/silt arrestor pit which drains to Council's kerb and gutter in front of the site,
 - d) 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.
 - e) Site discharge pipelines shall cross the verge at an angle no less than 45 degrees to the kerb line and must not encroach across a neighbouring property's frontage unless approved in writing by Council's Development Engineering Coordinator.
 - f) Details of the design and construction of the stormwater drainage system, sediment site arrestor pit/s and infiltration areas must be submitted to and approved by the Principal Certifier with the Construction Certificate and all works are to be carried to the satisfaction of the Principal Certifier.
 - g) Any rainwater tank overflow/stormwater runoff which cannot be directed to the kerb and gutter at the front of the property (due to topographical constraints), shall be discharged either:

To Council's kerb and gutter or underground drainage system in front of the site, via a new grated gully pit;

or

To a separate suitably sized infiltration area to the satisfaction of the Principal Certifier. As a guide, infiltration areas which do not have an overflow to the street should 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 draining to the infiltration area.

- h) The design and construction of any infiltration areas must be appropriate having regard to the site and ground characteristics.

Infiltration areas must be a minimum of 3.0 metres from any structure (note: this setback 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) and 2.1 metres from any adjacent side or rear boundary.

If there is no formal overland escape route from the infiltration area to Council's kerb and gutter/street drainage system, a suitable investigation is required to be carried out by a *professional engineer* to determine the suitability of the ground for infiltration and the design of the proposed infiltration system,

Infiltration may not be appropriate if the site is subject to rock and/or a water table within 2 metres of the base of the infiltration area, or the ground conditions comprise low permeability soils such as clay.

Should ground conditions preclude construction of an infiltration pit (i.e. rock and/or a high water table be present on the site) and the owner/applicant be unable to obtain a private drainage easement to dispose of the stormwater to Council's stormwater drainage system, consideration may be given to the use of a pump out system.

- i) Pump-out systems must be designed by a suitably qualified and experienced hydraulic consultant/engineer and the pump-out system designed and constructed generally in accordance with Council's Stormwater Code.

Pump-out systems must be provided with two pumps and be installed, connected in parallel (with each pump being 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 is required to be sized for the 1 in 100 year, 2 hour storm assuming both pumps are not working,

- j) Any pump out water must pass through a stilling pit prior to being discharged by gravity to the kerb and gutter.
- k) Details of the design and construction of the stormwater drainage system, sediment silt arrestor pit/s and infiltration area/s must be submitted to and approved by the Principal Certifier with the Construction Certificate and all works are to be carried to the satisfaction of the Principal Certifier.

14. Sediment/silt arrestor pit/s are to be provided within the site at or near the street boundary prior to stormwater being discharged from the site or into any infiltration areas. The sediment/silt arrestor pits are to be constructed generally in accordance with the following requirements, to the satisfaction of the Principal Certifier:

- The base of the pit located a minimum 300mm under the invert level of the outlet pipe.
- The grate is to be a galvanised heavy-duty grate that has a provision for a child proof fastening system.
- A minimum of 4 x 90 mm diameter weep holes located in the walls of the pit at the floor level with a suitable geotextile material with a high filtration rating located over the weep holes.
- A galvanised heavy-duty screen located over the outlet pipe (Mascot GMS Multi-purpose filter screen or similar)
- A child proof and corrosion resistant fastening system for the access grate (spring loaded j-bolts or similar).
- The inlet pipeline located on the side of the pit so that the stormwater will discharge across the face of the screen.

Public Utilities

15. 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.

Undergrounding of Site Power from Ausgrid Power Pole

16. Power supply to the proposed development shall be provided via an underground (UGOH) connection from the nearest mains distribution pole in The Corso. No Permanent Private Poles are to be installed with all relevant documentation submitted for the construction certificate to reflect these requirements to the satisfaction of the Principal Certifier. The applicant/owner is to liaise with an Ausgrid Accredited Service Provider to carry out the works to the requirements and satisfaction of Ausgrid and at no cost to Council.

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

17. 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

18. 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

19. 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.

Swimming Pools & Spas

20. 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.

21. 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.
- Geotechnical Report**
22. The recommendations outlined in the Geotechnical Report, Project Ref 214247.00, prepared by Douglas Partners, dated June 2022, are to be incorporated into the development methodology and practice prior to the issue of the Construction Certificate, to the satisfaction of the Certifier. A copy of the report must be submitted to Council if Council is not the Principal Certifier.

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**
23. 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

24. 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

25. 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

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

Construction Noise & Vibration Management Plan

27. 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 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.

Demolition & Construction Waste

28. 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.

Landscaping

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

REQUIREMENTS 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

- 31. 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

- 32. 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

33. 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

34. 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.*

Site Management

35. Public safety and convenience must be maintained during demolition, excavation and construction works and the following requirements must be complied with at all times:
- a) Building materials, sand, soil, waste materials, construction equipment or other articles must not be placed upon the footpath, roadway or nature strip at any time.
 - b) Soil, sand, cement slurry, debris or any other material must not be permitted to enter or be likely to enter Council's stormwater drainage system or cause a pollution incident.
 - c) Sediment and erosion control measures must be provided to the site and be maintained in a good and operational condition throughout construction.
 - d) The road, footpath, vehicular crossing and nature strip must be maintained in a good, safe, clean condition and free from any excavations, obstructions, trip hazards, goods, materials, soils or debris at all times.
 - e) Any damage caused to the road, footway, vehicular crossing, nature strip or any public place must be repaired immediately, to the satisfaction of Council.
 - f) During demolition excavation and construction works, dust emissions must be minimised, so as not to have an unreasonable impact on nearby residents or result in a potential pollution incident.
 - g) Excavations must also be properly guarded to prevent them from being dangerous to life, property or buildings.
 - h) The prior written approval must be obtained from Council to discharge any site stormwater or groundwater from a construction site into Council's drainage system, roadway or Council land.
 - i) Adequate provisions must be made to ensure pedestrian safety and traffic flow during the site works and traffic control measures are to be implemented in accordance with the relevant provisions of the Roads and Traffic Manual "Traffic Control at Work Sites" (Version 4), to the satisfaction of Council.
 - j) A Road/Asset Opening Permit must be obtained from Council prior to carrying out any works within or upon a road, footpath, nature strip or in any public place, in accordance with section 138 of the Roads Act 1993 and all of the conditions and requirements contained in the Road/Asset Opening Permit must be complied with. Please contact Council's Road/Asset Openings officer on 9093 6691 for further details.

Site Access

36. 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

37. 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

38. 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

39. 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

40. 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 investigated, 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.

Building Encroachments

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

Check Survey's

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

- 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,
- upon completion of the building, prior to issuing an *Occupation Certificate*, and
- as otherwise may be required by the PCA.

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

Tree Management

43. Approval is granted for removal of all existing vegetation within the site due to their small size and insignificance, as well as to accommodate the proposed works as shown, subject to full implementation of the approved landscaping.

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

44. 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

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.

Swimming Pool Safety

47. 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).
48. 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.
49. 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

50. 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, Council's specifications and requirements.
 - b) Remove any redundant concrete vehicular crossing and layback and to reinstate the area with concrete footpath, turf and integral kerb and gutter to Council's specification.
51. 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.

52. 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

53. 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.

Undergrounding of Power from Ausgrid Power Pole

54. Prior to the issuing of a Construction Certificate the Principal Certifier shall ensure that all power supply to the development site has been provided as an underground (UGOH) connection from the nearest main pole in The Corso, with all work completed to the requirements and satisfaction of Ausgrid and at no cost to Council. All private poles must be removed prior to the issuing of an occupation certificate, unless otherwise approved in writing by Council's Development Engineering Coordinator.

Landscaping

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

OPERATIONAL CONDITIONS

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

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

Planning and Assessment Regulations, Council's development consent and to maintain reasonable levels of public health and environmental amenity.

Use of Premises

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

External Lighting

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

Plant & Equipment

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

Heating

59. All heating within the dwelling is to be provided as by either gas or electric means. No natural wood is to be used for any heating purposes.